STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

August 16, 2005

REGISTERED MAIL
RR 359 893 709 US

James and Nancy Johansen
PO Box 2923
Friday Harbor, WA 98250

Dear Mr. and Ms. Johansen:

RE: Order # 2591
U.S. Army Corps Reference No. 200301299
Water Quality Certification/Coastal Zone Consistency Determination for Johansen Pier, Wasp Passage, San Juan County, Washington

The request for certification for proposed work in and adjacent to Wasp Passage has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Interim Section Manager
Shorelands and Environmental Assistance Program

Enclosure
GT:RRP:rc
cc: Rozwin Liera, U.S. Army Corps of Engineers
Penny Keys, Ecology
Jeff Otis, Permit Resources
Loree' Randall, Ecology

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO James and Nancy Johansen in accordance with 33 U.S.C. 1341 FWPCA § 401, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER # 2591** U.S. Army Corps Reference No. 200301299 Construction of pier; includes ramp, float, anchoring system, and setting of piling into grout; Section 19, T. 36 N., R. 2 W., Crane Island, San Juan County, Washington.

TO: James and Nancy Johansen
PO Box 317
Deer Harbor, WA 98245

On June 21, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project, located at 393 Rocky Road, Crane Island, includes construction of a new 6' X 15' fixed pile pier, a 4' X 40' ramp, and an 8' X 40' float. Construction of the float includes placement of four 6,000-pound concrete anchors. Construction of the fixed pier includes placement of grout around the piling in the rock substrate, with all drilling and grouting to take place in the dry.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 2591 AND WATER QUALITY CERTIFICATION:

For purposes of this Order, the term "Applicant" shall mean James and Nancy Johansen and their agents and contractors.

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

A1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Construction:

B1. Wet grout shall be prevented from direct contact with marine waters. Placement of grout shall take place during low tide periods.

B2. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards shall be in place before starting construction.

B3. During construction on uplands, the Applicant shall take all necessary measures to minimize the alteration or disturbance to existing vegetation.

B4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

B5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters.

B6. The pier, ramp, float, and moorings shall be located to prevent shading of eelgrass (Zostera spp.).

B7. Construction activities shall not adversely impact eelgrass or kelp, i.e. barge shall not ground, equipment shall not operate, and other activities shall not occur in eelgrass or kelp.

C. Emergency/Contingency Measures:

C1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.

- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

C2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of any water body.

D. General Conditions:

D1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

D2. The Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

D3. The Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

D4. The Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order.

D5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, the Applicant shall ensure that project managers, construction superintendents,

and other responsible parties have read and understand relevant aspects of this Order and any subsequent revision or Ecology-approved plans.

D6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections or to ensure that conditions of this Order are being met.

D7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards), or if additional conditions are necessary to further protect the public interest.

D8. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated August 16, 2005 at Bellevue, Washington.

Geoff Tallent, Interim Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington