STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
*PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000*
*711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341*

October 14, 2011

Mr. Fred McConkey
Fairweather Basin Boat Club
3000 Hunts Point Rd
Hunts Point WA 98004

RE: Water Quality Certification - Order #8781/Corps Public Notice # NWS-2009-1482
Dredging of up to 10,000 cubic yards of sediment from Fairweather Bay to be disposed of upland in Fairweather Bay, Lake Washington, King County, Washington

Dear Mr. McConkey:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies 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 certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

Please note that a Coastal Zone Management (CZM) Consistency review has not been completed because Ecology has not received the shoreline permit. Once we receive the shoreline permit we will complete the CZM review.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office - Ecology
State of Washington

by Certified Mail 7009 1410 0002 4001 1705

Enclosure

cc: Matt Bennett, Corps
Laura Arber, WDFW
DMMP@dnr.wa.gov

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Joe Burcar, Ecology
ecyrefedpermits

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|---|---|---|
| **IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Fairweather Basin Boat Club** in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC | ) ) ) ) ) ) ) | **ORDER #8781** **Corps Reference No. NWS-2009-1482** Dredging of up to 10,000 cubic yards of sediment from Fairweather Bay to be disposed of upland in Fairweather Bay, Lake Washington, King County, Washington |

TO: Mr. Fred McConkey
Fairweather Basin Boat Club
3000 Hunts Point Rd
Hunts Point WA 98004

On October 15, 2010 the Fairweather Basin Boat Club submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 15, 2010.

The Fairweather Basin Boat Club is proposing to dredge up to 10,000 cubic yards of sediment from Fairweather Bay using a barge mounted clamshell bucket. The channel will be dredged to an elevation of+12.0 feet below ordinary high water (21.8 feet COE Datum). Dredged material will be deposited into filter fabric bags and held in a containment pen to prevent sediment runoff into the lake. Fine sediment exiting the bags will be further filtered through hay bales. No materials will be returned to Lake Washington. Dredged materials will be transferred to trucks at the contractor's construction yard at Lake Union and trucked to an upland facility at Monroe, Washington.

The purpose of the project is to maintain a previously dredged private channel for navigation as per the Fairweather Basin Boat Club covenants which require homeowners to maintain a depth of not less than 6 feet below ordinary high water (21.8 feet COE Datum).

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 302, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; 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.

## WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

### A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Fairweather Basin Boat Club and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #8781 and Corps Reference # NWS-2009-1482.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 15, 2010. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.

6. 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 lead workers, and state and local government inspectors.

7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.

9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.

10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Water Quality Conditions:**

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i)(D). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

    - The area of mixing established for freshwater lakes is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard.

2. Visible turbidity anywhere at the 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.

**C. Dredging and Disposal:**

1. All dredging is to be done using a barge-mounted clamshell bucket. Use of any other type of dredge will require prior approval from Ecology.

2. All dredged material will be transported to the Contractor's yard and then trucked to an upland facility in Monroe, Washington.

3. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
4. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
5. Care shall be taken to prevent vessels and barges from grounding out while dredging and disposing of material.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

7. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued.

8. No untreated dewatering liquid from this sediment is allowed to enter waters of the state.

**D. Timing Requirements:**

1. All in-water work shall be completed by the end of the in-water work window for this area.

2. This Order shall remain in effect for a period of 5 years from date of issuance. Continuing this project beyond the 5 year term of this Order will require separate certifications every 5 years.

**E. Notification Requirements:**

1. The Applicant shall provide notice to Ecology's 401/CZM Federal permit coordinator at least 7 days prior to the start of dredging each dredging season and within 14 days after

completion of dredging each season. Notification should be made using all the information required in Condition A2.

**F. Emergency/Contingency Measures:**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
   a. Cease operations that are causing the compliance problem.
   b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
   c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
   d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
   e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
   f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
3. 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, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

## G. Appeal Process:

### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

### ADDRESS AND LOCATION INFORMATION

| Street Addresses | Mailing Addresses |
|---|---|
| **Department of Ecology**<br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503<br><br>**Pollution Control Hearings Board**<br>1111 Israel Rd SW<br>STE 301<br>Tumwater, WA 98501 | **Department of Ecology**<br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608<br><br>**Pollution Control Hearings Board**<br>PO Box 40903<br>Olympia, WA 98504-0903 |

### CONTACT INFORMATION

Please direct all questions about this Order to:

Helen Pressley
Department of Ecology SEA Program
PO Box 47600
Olympia WA 98504-7600
360-407-6076
hpre461@ecy.wa.gov

## MORE INFORMATION

**Pollution Control Hearings Board Website**
www.eho.wa.gov/Boards_PCHB.aspx

**Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board**
http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B

**Chapter 371-08 WAC – Practice And Procedure**
http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08

**Chapter 34.05 RCW – Administrative Procedure Act**
http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05

**Chapter 90.48 RCW – Water Pollution Control**
http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48

**Chapter 173.204 WAC – Sediment Management Standards**
www.ecy.wa.gov/biblio/wac173204.html

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
www.ecy.wa.gov/biblio/wac173201A.html

DATED - October 14, 2011 at Olympia, Washington.

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office – Ecology
State of Washington

## ATTACHMENT A

**Fairweather Basin Boat Club**
**Fairweather Basin Maintenance Dredge**
**Water Quality Certification Order #8781**

**Statement of Understanding of**
**Water Quality Certification Conditions**

I have read and understand the conditions of Order #8781 Section 401 Water Quality Certification for the Fairweather Basin Maintenance Dredge Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

_____ _____
Signature Date

_____
Print Name

_____
Company

_____
Title