STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

February 23, 2012

US Army Corps of Engineers
Attn: Mr Ken Brunner
4735 E Marginal Way S
Seattle WA 98124

RE: Water Quality Certification - Order #8974/Corps Public Notice # CENWS-OD-TS-NS-35 – Dredging of the Snohomish River and Everett Harbor navigation channel over a period of 7 years in Snohomish County, Washington.

Dear Mr Brunner:

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.

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 0820 0001 9056 0946

Enclosure

cc: John Pell Corps
Laura Arber, WDFW
Graham Anderson, Port of Everett

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
David Pater, Ecology
Ecyrefedpermits
DMMP@dnr.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO US Army Corps of Engineers in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER #8974** **Corps Reference No. CENWS-OD-TS-NS-35** Dredging of the Snohomish River and Everett Harbor navigation channel over a period of 7 years in Snohomish County, Washington

TO: US Army Corps of Engineers
Attn: Mr Ken Brunner
4735 E Marginal Way S
Seattle WA 98124

On May 12, 2011 the US Army Corps of Engineers submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A 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 July 20, 2011.

The proposed work continues annual maintenance dredging by clamshell and pipeline dredges of up to an estimated 1,000,000 cubic yards (cy) of sediment annually from the Snohomish River navigation channel and settling basins at Everett Harbor.

Disposal of dredged material will occur either in one or more of the following open water or designated upland disposal sites:

- Open water disposal will be done at the existing Port Gardner Open Water Disposal site managed by the Washington State Department of Natural Resources (WADNR).

- Upland disposal will occur at the Riverside Business Park, Parcel O, or Jetty Island sites, depending on proximity of dredging to the sites.

Three proposed beneficial uses on Jetty Island are as follows:

- Continued nourishment of the Jetty Island berm, an eroding sand berm that protects a highly-productive intertidal saltmarsh. Renourishment has been required periodically since initial berm construction with Snohomish River dredge material in 1989. Nourishment was last performed in February 2009.

- Expansion of the island to the south along the existing rock jetty. The Island was expanded to the south in 2007 and additional expansion is sanctioned as a habitat enhancement project in the Snohomish River Basin Salmon Recovery Plan 3. Expansion placement of dredged materials was last conducted in February 2007.

- Continued suppression of areas of non-native upland plant species. Areas of Scot's broom and blackberry have been covered with clean dredge material in conjunction with river channel maintenance dredging projects. Scot's broom and blackberry suppression was last performed in February 2009.

Material disposed at Riverside Business Park and Parcel O would be re-handled by either the Port of Everett or the City of Everett for beneficial use.

Table 1 FY2012-2018 Maintenance Dredging Program by Federal Navigation Channel Feature

FEDERAL NAVIGATION CHANNEL FEATURE	ESTIMATED VOLUME (CUBIC YARDS)	DREDGE TYPE	CHANNEL DIMENSIONS[1] Depth at Mean Lower Low Water Datum (MLLW)	DISPOSAL AREA(S)	WORK SCHEDULE (Fisheries Window)
Snohomish River, Deep-Draft Channel	Up to 75,000 annually	Clamshell or Hydraulic with Pipeline	-15' MLLW 150-425' wide	Port Gardner open water site and/or Jetty Island	16 Oct to 14 Feb
Downstream Settling Basin	Up to 500,000 biennially	Clamshell or Hydraulic with Pipeline	-20' MLLW 1200 long, 700' wide	Port Gardner open water site and/or Jetty Island	16 Oct to 14 Feb
Snohomish River, Shallow Draft Channel	Up to 200,000 Annually	Clamshell or Hydraulic with Pipeline	-8' MLLW 150' wide	Port Gardner open water site, and/or Jetty Island, and/or Riverside Business Park, and/or Parcel O	16 Oct to 14 Feb
Upstream Settling Basin	Up to 800,000 biennially	Clamshell or Hydraulic with Pipeline	-40' MLLW 1,740' long, 30' wide	Port Gardner open water site, and/or Riverside Business Park, and/or Parcel O	16 Oct to 14 Feb

Notes:
1 Depths shown are authorized depths and do not include 2' overdepth tolerance. Widths shown are those of the channel bottom, and do not include extra width at channel bends. The deep-draft channel was deepened by the Port of Everett to minus 35 ft at MLLW in 1979 but has since shoaled in to controlling depths shallower than the Corps deep-draft channel depth of -15 ft at MLLW. Upstream settling basin dredging volume is often limited by disposal site capacity so dredging to -40ft @MLLW is infrequent compared to the -30 ft @MLLW most common dredging depth.

Actual volumes placed at the upland sites will depend on the outcome of required coordination, necessary permits, and site activities including beneficial uses which affect site availability and actual capacity. Port of Everett will provide all necessary permits, approvals and real estate documentation required prior to use of disposal sites.

The purpose of channel maintenance dredging is to maintain the efficiency and safety of water transportation in Everett Harbor. The Port of Everett is the local sponsor for the federal navigation project.

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 US Army Corps of Engineers 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 #8974 and Corps Reference # CENWS-OD-TS-NS-35.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on May 12, 2011. 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. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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, except as otherwise authorized by this Order.

C. Turbidity Mixing Zone:

1. The distance granted for the temporary turbidity mixing zone is 600 feet downstream from the in-water activity. In-water activity includes both dredging and discharge at the Port Gardner in-water disposal site. 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. The mixing zone is only approved during the fish window authorized for this project.

D. Water Quality Monitoring:

1. The Applicant shall implement the water quality monitoring plan submitted to Ecology on September 1, 2011. If this plan is modified at any time, the Applicant shall submit the revised plan to Ecology for approval prior to implementing the revised plan.

2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.

E. Dredging and Disposal:

1. All dredging is to be done using a clamshell or hydraulic dredge with a pipeline. **Use of any other type of dredge requires preapproval from Ecology.**

2. All dredged material will be taken to the following locations: the Port Gardner in-water site, Jetty Island, Riverside Business Park, or Parcel O. **Use of any other type of disposal method or location requires preapproval by Ecology.**

3. For material being taken to Port Gardner, all debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.

4. All return water from upland disposal shall be treated prior to it entering waters of the state.

5. 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.

6. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
7. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
8. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval 1 week prior to the pre-construction meeting.
9. 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.

F. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 7 years from date of issuance. Continuing this project beyond the 7 year term of this Order will require separate certifications every 7 years.

G. 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.

H. 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.

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 all of 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 Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608

DATED February 23, 2012 at Olympia, Washington.

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

ATTACHMENT A

US Army Corps of Engineers
Snohomish River Navigation Channel Dredging
Water Quality Certification Order #8974

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #8974 Section 401 Water Quality Certification for the Snohomish River Navigation Channel Dredging 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