



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

January 22, 2021

Mariners Cove Beach Club  
Attn: Mark Buchholz  
2197 Mariner Beach Drive  
Oak Harbor, WA 98277

RE: Water Quality Certification Order No. **19535** for Corps Public Notice No. **NWS-2019-00725**, Maintenance Dredge at Mariners Cove Beach Club in Oak Harbor, Island County, WA

Dear Mark Buchholz:

On February 19, 2020, Mariners Cove Beach Club submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for Mariners Cove Beach Club in Oak Harbor, Island County, Washington.

The proposed project includes maintenance dredging at the entrance channel and marina at Mariners Cove Beach Club, with beach nourishment and open water disposal. The project also includes transplanting eelgrass from the entrance channel to nearby eelgrass beds.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Laura Inouye at (360) 407-6165. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

Enclosure

e-cc: Jerry Gregory, Corps of Engineers  
Amy Lietman, MSA  
ECY RE FEDPERMITS  
Loree' Randall – HQ, SEA

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 19535</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2019-00725</b>
<b>CERTIFICATION TO</b>	)	Maintenance dredge at Mariners Cove Beach
<b>Mariner's Cove Beach Club, Inc.</b>	)	Club in Oak Harbor, Island County, Washington.
pursuant to with 33 U.S.C. 1341	)	
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

Mariners Cove Beach Club  
 Attn: Mark Buchholz  
 2197 Mariner Beach Drive  
 Oak Harbor, Washington 98277

On February 19, 2020, the Department of Ecology (Ecology) received a request from the Mariner's Cove Beach Club, Inc. for a Section 401 Water Quality Certification (WQC) for maintenance dredging at Mariners Cove Beach Club, Saratoga Passage, with disposal at either Rosario Straits or Elliott Bay open-water disposal sites. The U.S. Army Corps of Engineers (Corps) issued a joint public notice (JPN) for the project on January 23, 2020.

Maintenance dredging of up to 30,000 CY total would occur within two areas at the Mariner's Cove Beach Club: the marina (-5 ft MLLW) and the entrance channel (-4 ft MLLW), as shown in the JPN drawings. Up to 2280 CY of the entrance channel material will be beneficially used as beach nourishment. The remaining material will be disposed of at Rosario Straits (mechanically or hydraulically dredged material) or Elliott Bay (only mechanically dredged material) open-water disposal sites. This project also includes transplanting eel grass from the entrance channel dredge prism to an approved area.

This project is located in section NW02, township 32N, range 02E in WRIA 15, Oak Harbor.

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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 comply with 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 Mariner's Cove Beach Club to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

### **A. General Conditions**

1. In this Order, the term "Applicant" shall mean the Mariner's Cove Beach Club, Inc. and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology Headquarters Office, Attn: Federal Permit Manager, PO Box 67600, Olympia, Washington 98504-7600, or via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [laura.inouye@ecy.wa.gov](mailto:laura.inouye@ecy.wa.gov). The submittals shall be identified with Order #19535 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 19, 2020.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order shall be rescinded if the Corps does not issue a permit for this project.
7. The Applicant shall send (per A.2.) a copy of the final Corps permits (404/10) to Ecology's Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order 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.

9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. 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. 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, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
13. 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.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
15. This Order will automatically transfer to a new owner or operator if:
  - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
  - b. A copy of this Order is provided to the new owner or operator; and
  - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

## **B. Notification Requirements**

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [laura.inouye@ecy.wa.gov](mailto:laura.inouye@ecy.wa.gov). Notifications shall be identified with Order No. 19535 and

include the Applicants name, project name, project location, project contact and the contact's phone number.

- a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
  1. In addition to the phone or e-mail notification, the Applicant shall 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.
- b. At least ten (10) days prior to all pre-dredging meetings
- c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
- d. At least seven (7) days within project completion of each dredging cycle.

### **C. Timing**

1. This Order shall remain in effect for a period of five (5) years from the date of issuance of the Corps permit.
2. In-water work shall be conducted between August 1 and January 31 of any year, unless otherwise approved by Ecology.
3. In-water disposal at Elliott Bay or Rosario Straits shall be conducted between July 16 and February 15 of any year, unless otherwise approved by Ecology.
4. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review.

### **D. Water Quality Monitoring & Criteria**

1. Oak Harbor is located in Saratoga Passage, and is categorized as excellent and the criteria of the categorization apply as described in WAC 173-201A-210 (1), except as specifically modified by this Order.
2. The Applicant shall conduct water quality monitoring as described in the approved draft Water Quality Monitoring Plan (hereafter referred to as the draft WQMP) prepared by Marine Surveys and Assessments, submitted and approved on January 15, 2021. The draft WQMP will be updated with contractor specific information and resubmitted for review and approval prior to the pre-dredge meeting (condition E9).
3. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
4. Monitoring results shall be submitted weekly to the Ecology Federal Permit Manager, per condition A.2.

5. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
6. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
7. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

#### **E. Dredging and Disposal**

1. All dredging is to be conducted using mechanical or hydraulic dredges. **Use of any other type of dredge requires preapproval from Ecology.**
2. Disposal of dredge material approved for in-water disposal:
  - a. Material being disposed of in the Elliott Bay open-water disposal site shall be mechanically dredged and transported in a bottom dump barge.
  - b. Hydraulically or mechanically dredged material may be disposed of in the Rosario Straits open-water disposal site.
  - c. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
3. Beneficial re-use of dredge material.
  - a. Up to 2280 CY of material dredged from entrance channel may be placed at an approved beach nourishment site.
  - b. Prior to beach placement, a forage fish survey must be completed to confirm fish will not be impacted. This survey shall be submitted to Ecology as per condition A.2.
4. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into state waters.
5. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
6. All debris larger than two (2) feet in any dimension shall be removed from the dredged sediment prior to disposal at the open water site. Similar-sized debris floating in the dredging or disposal area shall be removed.
7. Barges shall not be allowed to ground-out during in-water construction.
8. Barges are not allowed to dewater during transit.
9. Barges shall be kept free of material that could be blown into water.

10. A pre-dredge meeting is required to be convened prior to the start of each dredging cycle. A **Dredging and Disposal Workplan** and **final Water Quality Monitoring Plan** (condition D2) are required and shall be submitted to Ecology to the 401/CZM Federal permit manager at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-dredge meeting. The *Dredging and Disposal Workplan* shall include, at a minimum, the following:
  - a. General information including schedule, primary contact, and hours of operation
  - b. Dredged quantities and disposal location
  - c. BMPs
  - d. Dredging procedures and sequence
  - e. Equipment list
11. 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.
12. Dredging shall be confined to the existing footprint, except as modified by this Order.
13. Post-dredge bathymetry shall be submitted after each dredging event.

#### **F. Mitigation**

1. The Applicant shall implement the Mariner's Cove Beach Club Dredging Eelgrass Mitigation & Monitoring Plan, written by Marine Surveys & Assessments and dated November 25, 2020, unless otherwise approved by Ecology.
2. Monitoring results ("as built" = Year 0, Post-survey Years 1, 3, and 5) shall be submitted to Ecology within 6 months of completion of each survey.
3. Additional monitoring years may be added if a significant downward trend is detected at the transplant site but not at the reference site.

#### **G. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

4. 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.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B.1. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - 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 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.
  - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

#### **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 both 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## CONTACT INFORMATION

Please direct all questions about this Order to:

Laura Inouye  
Department of Ecology  
Headquarters Office  
PO Box 67600  
Olympia, WA 98504-7600  
(360) 407-6165  
[Laura.inouye@ecy.wa.gov](mailto:Laura.inouye@ecy.wa.gov)

## MORE INFORMATION

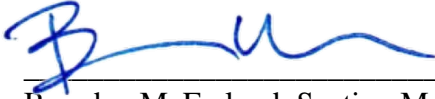
- **Pollution Control Hearings Board Website**  
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>

- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

**SIGNATURE**

Dated this 22 day of January, 2021 at the Department of Ecology, Olympia Washington



---

Brenden McFarland, Section Manager  
Environmental Review and Transport  
Shorelands and Environmental Assistance Program

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

Mariners Cove Beach Club  
Mark Buchholz  
Water Quality Certification Order No. **19535**  
and  
Corps Reference No. **NWS-2019-00725**

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for the Mariners Cove Beach Club in the site preparation and/or construction of the Mariners Cove Beach Club located at Oak Harbor, Saratoga Passage, Island County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 19535 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company