



**EXEMPTION FROM THE SHORELINE MANAGEMENT PROGRAM  
SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT**

**SHR2017-00007**

- Applicant:** Ocean Properties, LLC  
c/o Vic Unick  
6078 Neeval Rd.  
Ferndale, WA 98248
- Project Description:** Maintenance dredging of entrance to Sandy Point Canal.
- Project Location(s):** Lot 1, Sandy Point Marina Condominium  
Section 17, Township 38 North, Range 01 East W.M.
- Parcel Number:** 380117535540
- Water Body:** Sandy Point Canal
- Shoreline Designation:** Shoreline Residential
- SEPA:** Mitigated Determination of Non-Significance (MDNS) –  
Issued on November 13, 2020 under SEP2017-00051

Whatcom County Shoreline Management Program (SMP), Title 23, Section 23.60.022.B allows for the maintenance and repair of lawfully established structures without the need for a Shoreline Substantial Development Permit if done to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Such repair can be in the form of complete replacement where such replacement is the common method of repair for the type of structure or development and the replacement structure is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to the shoreline resources or the environment.

It has been determined that the proposal is consistent with the above-referenced exemption and qualifies for review without the need to obtain a shoreline substantial development permit.

Pursuant to WCC 23.90.120.C.9, maintenance dredging is permitted subject to the policies and regulations of the Shoreline Management Program without a conditional

use permit, provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization.

After originally applying for a shoreline substantial development permit and shoreline conditional use permit in 2017, the applicant supplemented the application in 2020 with documentation from the United States Army Corps of Engineers (USACE) which demonstrates that the original dredging of Sandy Point Canal was retroactively authorized by the USACE and established the original contours.

Note that obtaining a shoreline statement of exemption for a development or use does not excuse the applicant from complying with any other State, regional, or Federal statutes or regulations applicable to such development or use.

**The requested Shoreline statement of exemption is approved subject to the attached conditions.** Note that pursuant to Section 23.60.150, the applicant or any opponent of this determination may appeal this administrative permit decision to the office of the Hearing Examiner. The application for appeal from the Shoreline Administrator's decision may be obtained at the Planning and Development Services Office. Such an appeal shall be filed within twenty (20) calendar days of this determination.

**Official: Andrew Hicks**  
**Title: Shoreline Program Administrator**



**Date:** November 24, 2020

## **CONDITIONS ASSOCIATED WITH SHR2017-00007**

### **SEPA CONDITIONS**

1. *In-situ monitoring of shoreline ecological functions and ecosystem wide processes is required. A Mitigation Plan completed by a qualified professional as defined in WCC 16.16.900 must be approved by Whatcom County. If legal access to perform in-situ monitoring cannot be obtained then remote sensing monitoring techniques shall be employed. During the monitoring period identified in the Mitigation Plan, adaptive management strategies determined to be necessary shall be implemented.*

### **SHORELINE MASTER PROGRAM CONDITIONS**

2. *The proposed work shall be consistent with the scope of the application materials provided and reviewed by staff and consistent with the site plan stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on November 23, 2020, except as conditioned by this permit. Any changes will require additional review by the Whatcom County Shoreline Administrator.*
3. *Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*
4. *Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.*
5. *A bypass operation to place dredge material down-drift of the marina entrance is required, unless legal access to place the material cannot be obtained. The material shall be composed of gravels and sands similar to material observed up-drift of the marina entrance.*
6. *Legal access to place by-pass dredge material or complete adaptive management strategies on Lummi Nation tidelands and perform in-situ monitoring shall be pursued. Whatcom County shall be cc'd on all correspondence to the Lummi Nation. The applicant shall compose a letter after the effective date of the permit requesting that the Lummi Nation provide an easement to:
  - a. Place dredge material on Lummi tidelands in accordance with the approved by-pass operation plan;
  - b. Provide access for in-situ monitoring; and
  - c. Perform adaptive management strategies in the mitigation plan.*
7. *If legal access for Condition #5 cannot be obtained, either because access is denied outright or because no response is received from the Lummi Nation*

*within 180 calendar days of the request for access, Condition #5 shall not be required.*

- 8. Placement of dredge spoils on adjacent upland areas, other than for purposes of approved mitigation, shall be temporary. Spoils that are temporarily stored on adjacent upland areas shall be wholly removed from the upland environment upon completion of the dredging activities and either used for approved by-pass operation purposes or disposed as a beneficial use at an approved offsite upland location with a valid federal, state, or local permit. Any temporary placement of spoils on South Cape shall be confined to areas of existing improved gravel/impervious surfaces.*
- 9. For any disposal of spoils at an off-site location the applicant shall submit haul tickets and proof of a valid permit to Whatcom County Planning & Development Services at the time that the post-dredge survey is submitted.*
- 10. The applicant shall obtain any required haul route agreement from Public Works prior to hauling off any materials. A haul route questionnaire shall be completed and submitted to Whatcom County Public Works at the time that the post-dredge survey is submitted.*
- 11. Exclusionary fencing shall be installed around the outer edge of the salt marsh on South Cape.*
- 12. Adequate Erosion and Sedimentation Control (ESC) measures shall be installed to prevent sediment laden water from entering neighboring properties, surface drainages (i.e. ditches), and critical areas. The applicant shall be prepare and submit a stormwater pollution prevention plan.*
- 13. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.*
- 14. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.*
- 15. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.*
- 16. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and*

*protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.*

### **GEOHAZARD CONDITIONS**

- 17. Pre-dredge and annual post-dredge monitoring of coastal erosion rates at South Cape shall be performed in accordance with the methodology described in Attachments 3A and 3B of the Response to the Notice of Additional Requirements (NOAR): July 16, 2020, prepared by Blue Coast Engineering, dated November 10, 2020. Monitoring reports shall be provided annually to Whatcom County Planning and Development Services.*
- 18. In the event that erosion thresholds described by Blue Coast Engineer in Attachments 3A and 3B of the Response to the Notice of Additional Requirements (NOAR): July 16, 2020, dated November 10, 2020, are exceeded, the applicant shall retain a qualified professional to determine the cause of excess erosion and devise adaptive measures to mitigate the observed erosion.*

### **HABITAT CONSERVATION AREA CONDITIONS**

- 19. The Critical Area Assessment Report (CAAR), as approved, contains monitoring requirements for pre-dredge, dredge operations, and post dredge, the monitoring requirements in the approved documents together with conditions of approval shall be fully implemented.*
- 20. The CAAR, as approved, contains mitigation requirements to be completed pre-dredge and post dredge, the mitigation requirements in the approved documents together with conditions of approval shall be fully implemented.*
- 21. Conditions of approval for any Federal or State permits shall be considered conditions of approval for this project permit.*
- 22. The dredge bottom width shall not exceed 75 feet. The revised civil drawings submitted on November 11, 2020 indicate an increased dredge bottom width from 75 feet to 80 feet. The applicant had previously indicated a dredge bottom width of 75 feet was adequate for the proposed use; the new bottom width was presented with no new information to explain the increase.*

*WCC 16.16.225(B)(3) requires the proposed development to be operated, located, designed and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible.*

23. *Applicant shall provide updated civil drawings at the time of the pre-construction meeting.*

### **Pre-Dredge Operations**

24. *The findings from all pre-dredge surveys shall be submitted to Whatcom County PDS at least seven days prior to dredge operations with any contingency plans for avoidance or rectification of additional critical areas are found within or directly adjacent to dredge, laydown or staging areas which are not addressed in the approved CAAR.*
25. *Prior to commencement of any work, a surety bond or an assignment-of-savings shall be required to be established at a United States Bank or Bonding company for 125 percent of the estimated cost of the uncompleted cost of the actions or the estimated cost of restoring the functions and values of the critical areas that are at risk, whichever is greater. The surety shall be based on a itemized cost estimate of the mitigation activity including the cost of all pre and post construction survey, monitoring, maintenance of the affected environment, and other costs.*
26. *A pre-dredge eelgrass macro algae survey will be conducted within the dredge project area using WDFW guidelines. The dredge project area includes the dredge area, 200 feet water of the BLM tide boundary, and a 25-foot buffer from the dredge project area following WDFW guidelines.*
27. *If eelgrass is observed within the dredge area and 25 foot buffer zone, the eelgrass plants will be removed and permanently transplanted in accordance with the CAAR. Should the methodology recommended in the approved CAAR be shown to be unsuccessful, as an adaptive management strategy, a new eelgrass restoration plan shall be developed and approved which includes a literature review and selected methodology that reflects a high previous success rate and is adaptable to the particular environment of the project area.*
28. *Prior to commencement of dredge, a forage fish spawning survey will be conducted following Washington State Department of Fish and Wildlife methodology at the dredge area to determine whether eggs are present. If eggs are present, the dredge operation will be postponed until spawning and incubation activity has not been observed by subsequent surveys conducted at two-week intervals*
29. *Prior to commencement of dredge, an inventory of intertidal clams will be completed in the dredge area and at two control transects outside of the dredge area. Survey protocol will follow WDFW protocol as amended.*
30. *Prior to commencement of dredge operations, a copy of permits, a summary of relevant permit conditions required for construction and restoration, and plans and procedures will be provided to the construction contractor in Field Permit*

*Binders prior to construction. The Field Permit Binders will also be included as part of the construction contract documents.*

31. *At least seven days prior to the onset of dredging operations, the Project Contractors shall schedule a pre-construction site meeting with the Shoreline Administrator at Whatcom County Planning and Development Services – Natural Resources. During this meeting the following must be identified:*
  - a. *Updated bathymetric survey and civil drawings*
  - b. *Survey results of forage fish spawn, eelgrass and other macro algae locations*
  - c. *Copy of the signed contract shall be provided*
  - d. *Location of off-site spoil delivery and proof of permits*
  - e. *Laydown areas*
  - f. *Construction entry/exit*
  - g. *Copy of Stormwater Pollution Protection Plan*
  - h. *Copy of Spill Prevention, Control and Countermeasure Plan (SPCC Plan)*
  - i. *Haul Route Agreement with Whatcom County Public Works, if required.*

### **During Dredge Operations**

32. *During dredge operations, barges associated with the dredging operation will be moved within the project area with minimal power necessary to position barges to minimize propeller scour of marine vegetation outside of the dredge project area.*
33. *Prop wash will not be directed toward eelgrass beds that are mapped near the project area.*
34. *Barge anchors, spuds, and cables will not be placed in the eelgrass bed that is mapped near the harbor entrance or in fringe salt marsh along the Sandy Point Canal, Cape Horn (North Cape) or South Cape.*
35. *The contractor will have a prepared Spill Prevention, Control and Countermeasure Plan (SPCC Plan) that addresses specific actions to prevent petroleum products from being discharged into surface waters. The contractor will also have oil-absorbent materials on site to be used in the event of a petroleum product spill and measures to avoid petroleum products or other deleterious materials from entering surface waters will be taken. This plan will also describe procedures to fuel equipment in a temporary fueling area.*
36. *Excavation will begin inside of the harbor entrance and progress toward the outside. This will minimize increased turbidity outside of the harbor.*
37. *Applicant shall follow all conservation measures as required in the NOAA NMFS Biological Opinion dated March 13, 2020 or as amended.*
38. *Turbidity monitoring of dredging operations will follow protocol established by the CAAR specifically Attachments 3B of the consolidated Blue Coast/Fairbanks Environmental report titled, "Sandy Point Harbor Entrance Dredging Response to NOAR: July 16, 2020, cover dated November 10, 2020.*

## **Post Dredge Operations**

39. *Within six months of project completion an as-built document with the following is required:*
  - a. *Bathymetric survey will be completed and submitted with other geomorphic and biological and habitat post survey reports*
  - b. *Eelgrass beds will be completed and submitted with other geomorphic and biological and habitat post survey reports*
  - c. *Post-dredge survey of intertidal clams will be completed in the dredge area. The protocol will follow the same methods used during pre-dredge clam survey.*
40. *All temporary dredge material storage areas and barge landing areas shall be rectified by replanting native vegetation and placing logs back in the area after the project is complete. Documentation of rectification shall be submitted with the as-built report, and with yearly monitoring reports.*
41. *Applicant shall follow all monitoring protocols of the geomorphic and biological and habitat monitoring of the affected areas as described in Attachments 3A and 3B of the consolidated Blue Coast/Fairbanks Environmental report titled, "Sandy Point Harbor Entrance Dredging Response to NOAR: July 16, 2020, cover dated November 10, 2020.*
42. *During the summer growing season from June 1 to September 30 of years 1,2,3,5,7 and 10, reports shall be submitted that are authored by a qualified marine geomorphologist and marine habitat biologist that address the following:*
  - a. *Mapping of the eelgrass bed and marine vegetation according to approved protocols;*
  - b. *Intertidal clam inventory according to approved protocols (this inventory will also serve as a habitat indicator of ecological functions of the marine nearshore habitat;*
  - c. *Qualitative assessment of the south shoreline of South Cape;*
  - d. *Photo point documentation of the intertidal zones*
  - e. *An assessment of how laydown and barge area plantings are performing*
43. *If, during any monitoring year, impacts are observed, then a mitigation plan shall be submitted according to the impact. The mitigation plan shall be authored by a qualified professional for the habitat or geologic assessment involved. The mitigation plan shall be complete to the requirements of WCC 16.16.260 and include a mitigation bond estimate for the required rectification, maintenance and monitoring plus 125%. The mitigation plan shall also adhere to mitigation contingency plans outlined in the consolidated Blue Coast/Fairbanks Environmental report titled, "Sandy Point Harbor Entrance Dredging Response to NOAR: July 16, 2020, cover dated November 10, 2020.*
44. *If clam density in the dredged area is not recovering and is below 50 percent of the pre-dredge population level at Year 5, then juvenile clams purchased from a commercial vendor may be seeded in the affected area to enhance the population of native littleneck and butter clams. Any clams purchased for restoration purposes shall be created from local, native populations.*



45. *If mitigation is required for eelgrass population impacts, then eelgrass planting and transplanted methodology proposed for eelgrass and macroalgae shall be based on methodology that is proven successful in the Salish Sea.*
46. *A separate bond will be required if mitigation measures are necessary at the time of adaptive management reports, if it is shown that additional mitigation is required to rectify unforeseen impacts that result from this project to critical areas*

### **Zoning Conditions**

47. *Maximum permissible environmental noise shall meet requirements of WAC 173-60. Work may occur outside normal 7:00am to 10:00pm construction work hours due to external environmental factors; tide heights. A zoning variance will be required prior to construction outside of normal construction hours or if construction noise will exceed thresholds in WAC 173-60.*
  48. *The applicant or contractor must request a variance in writing from the noise standards in accordance with WAC 173-60. Note - This process is not the variance process in Title 22.*
  49. *The request shall contain the dates and times requested to vary from WAC 173-60 noise standards.*
  50. *The applicant or contractor will be required to use best management practices to reduce impacts to residents these will include but are not limited to items specified on the approved civil drawings.*
  51. *The applicant will be required to notify all residents in the affected area two weeks prior to operations requiring the variance. The affected area is the distance required to attenuate dredge operations to the background levels identified in WAC 173-60-040.*
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