



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000  
March 19, 2007

**REGISTERED MAIL**  
**RB 670 438 214 US**

Cove at Fidalgo Bay, LLC  
Attn: Mr. Ken Knight  
4170 Sunnybank Court  
Chelan, Washington 98816

**RE:** Water Quality Certification Order #4120 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200601022 for Shoreline Stabilization and Beach Enhancement in Fidalgo Bay, City of Anacortes, Skagit County, Washington

Dear Mr. Knight:

On August 21, 2006 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from the Cove at Fidalgo Bay, LLC requesting a Section 401 Water Quality Certification for the Cove at Fidalgo Bay Shoreline Stabilization and Beach Enhancement project. A joint public notice was issued by the U.S. Army Corps of Engineers (Corps) for an individual Section 404 Permit and an individual Section 10 Permit on October 11, 2006 for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on August 21, 2006, and in the public notice (October 11, 2006) 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.

On October 5, 2006, the Cove at Fidalgo Bay, LLC, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Cove at Fidalgo Bay's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Cove at Fidalgo Bay's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



Cove at Fidalgo Bay, LLC  
March 19, 2007  
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If you have any questions, please contact Cynthia Walcker, Federal Project Coordinator at (425) 649-4318, [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers  
Doug Thompson, Washington Department of Fish and Wildlife, Region 4  
Tom Slocum

e-cc: Penny Keys – Ecology, HQ  
Loree' Randall – Ecology, HQ  
Paul Anderson – Ecology, NWRO  
Bob Fritzen – Ecology, BFO

**IN THE MATTER OF GRANTING A ) ORDER #4120**  
**WATER QUALITY ) Corps Reference No. 200601022**  
**CERTIFICATION TO ) Shoreline Stabilization and Beach Enhancement**  
**Cove at Fidalgo Bay, LLC ) in Fidalgo Bay at 4501 Fidalgo Bay Road, City**  
in accordance with 33 U.S.C. 1341 ) of Anacortes, Skagit County, Washington  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Cove at Fidalgo Bay, LLC  
Attn: Mr. Ken Knight  
4170 Sunnybank Court  
Chelan, Washington 98816

On August 21, 2006 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from the Cove at Fidalgo Bay, LLC requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-mentioned project pursuant to the provisions in Chapter 173-225 WAC on October 11, 2006.

The proposed project entails: placing 1,300 cubic yards of washed rounded gravel and coarse sand over 550 linear feet of shoreline from elevation +4.0 feet above Mean Lower Low Water (MLLW) to +12.0 feet above MLLW. The fill will be sloped at roughly a 6:1 slope to mimic typical gravel beach slopes along the west shore of Fidalgo Bay. Additionally, four drift sills will be installed perpendicular to the shoreline and will consist of clusters of large woody debris anchored below the existing beach grade and buried in the gravel fill as depicted on sheet 5 of 12 entitled Proposed Site Plan, dated June 1, 2006. This will provide a soft shore protection area to stabilize the shoreline and additional spawning habitat for surf smelt. Also, concrete debris, riprap, and two sections of a damaged stormwater pipe will be removed from the beach to daylight a Type 4 creek. Furthermore, buried rock scour aprons will be constructed at the outlets of the two remaining storm outfalls. During construction, gravel and sand will be trucked to the site and dumped over the bank. A front end loader, tracked excavator, and bulldozer will then be used to spread the gravel and complete all other tasks on the beach. The nearshore area will be planted with native grasses, shrubs, and trees and will be designed to eventually provide shade for the spawning gravel area.

The project site is located on the western side of Fidalgo Bay in the City of Anacortes, Skagit County, Washington. The site lies in Section 30, Range 2 East, and Township 35 North. The site is bordered on the east by mud and sand flat tideland, on the west by the Tommy Thompson Trail, to the north by naturally occurring forested shoreline (proposed site of future Fidalgo Cove Phase II condominium site), and to the south by an RV park located on Samish Tribal land at Weaverling Spit. The site is located within the Lower Skagit/Samish Water Resource Inventory Area (WRIA 3).

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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, 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 not violate 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:**

- A1. For purposes of this Order, the term "Applicant" shall mean Cove at Fidalgo Bay, LLC and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #4120 and Corps Reference #200601022.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 21, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. 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.
- A5. This Order shall be rescinded if the Corps of Engineers does not issue Section 404 and Section 10 permits.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A9. 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.
- A10. 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 or mitigation sites.

- A11. 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.
- A12. 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.

## **B. Water Quality Conditions**

- B1. 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-210 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-210(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.

## **C. Water Quality Monitoring and Reporting Conditions**

- C1. During and immediately after project construction, the Applicant shall visually monitor turbidity discharges at the point of established compliance established in WAC 173-201A-210(1)(e)(i)(D). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or further prevent further water quality turbidity exceedances. The Applicant shall notify Ecology's Northwest Regional Office Federal Permit Coordinator at (425) 649-4318 of the exceedances.
- C2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.

**D. Conditions for Construction Activities**

- D1. The Applicant shall establish a separate off-site contained area for washing down vehicles and equipment. Vehicles will be washed down prior to accessing the beach. Wash water containing sediments, oils, grease, or other hazardous materials will be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D2. Project activities shall be conducted to minimize siltation of the beach area and seabed.
- D3. Use of equipment on the beach shall be held to a minimum and all work shall be done as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) (e.g., a perimeter erosion control silt fence, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site. Silt fence shall be installed parallel to the shoreline at a distance of 20-feet seaward of the limit of grading and on either side of the work area (above the water line) during all work activities. Silt fence will be removed at the end of each work day and before the tide comes back in.
- D4. The project shall be clearly marked/staked prior to construction including all work areas and travel corridors. Sensitive areas including existing vegetation and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked work area corridors.
- D5. The Applicant shall not conduct work when the work area is inundated by tidal waters. All equipment will be removed from the beach prior to inundation from an incoming tide and at the end of each work day.
- D6. No material shall be stockpiled on the beach.
- D7. Beach construction work shall be accomplished using the smallest tracked front-end loader, tracked excavator, and bulldozer to minimize compaction during daylight hours at low tide. Furthermore, construction activities shall not occur within 20-feet of the tide line. Additionally, the selected excavator will have a properly functioning muffler.
- D8. All trenches, depressions, or holes created in the beach area shall be backfilled immediately and shall not come into contact with tidal waters.
- D9. Root wad drift sills consisting of LWD, shall be placed at four locations along the beach as depicted on sheet 5 of 12, *Proposed Site Plan*, dated June 1, 2006. Anchors for the drift logs shall consist of ecology blocks buried three feet below beach grade or concrete cylinders salvaged from the beach. The drift logs will be cabled to the buried ecology

blocks or concrete cylinders with galvanized cable or chain. Additional ballast if required shall consist of riprap and concrete debris salvaged from the beach.

- D10. Each drift sill shall consist of two 24-inch diameter by 10-foot long root wads and on 24-inch diameter by 25-30 foot long anchored below grade and partially buried in the gravel fill as shown on sheet 6 of 12, *Detail of Drift Sills*, dated June 1, 2006. Each wood piece shall be cedar or fir and in good condition.
- D11. All upland drainage outfalls shall be incorporated into the shoreline near beach grade to prevent erosion of the shoreline.
- D12. Scour protection pads shall be constructed at the 21-inch outfall (station 0+53) and the 8-inch outfall (station 4+80) as shown on sheet 5 of 12, *Proposed Site Plan* and Sheet 9 of 12, *Detail – Stormwater Outfall Scour Aprons*. Base of the scour pads shall be set 2-feet below the outfall inverts. Scour pads shall have an approximate 18-inch wide by 12” deep channel at each outlet. Place geotextile (Permeatex 4100 or equivalent) covered with 3-inches of gravel as a base for the rock armor. Backfill, consisting of ¾-inch gravel, shall be placed over the rock to final beach elevation.
- D13. The 21-inch outfall scour pad shall be 6-feet wide by 10-feet long. Rock shall consist of salvaged riprap from the beach with an average dimension of 8 to 12 inches.
- D14. The 8-inch outfall scour apron shall be 3-feet wide by 8-feet long. Rock shall consist of salvaged riprap from the beach with an average dimension of 6 to 10 inches.
- D15. Beach area depressions created during project activities shall be reshaped to preproject beach level upon project completion.
- D16. All construction debris and all manmade debris on the beach, including riprap rocks and concrete rubble identified on sheet 2 of 12, *Existing Site Plan*, shall be removed and disposed of upland such that it cannot enter a waterway or cause water quality degradation to state waters. Abandoned concrete pipes, miscellaneous concrete slabs, and angular rocks in the construction work corridor that have washed into intertidal areas shall be removed from the beach.
- D17. All machinery used on the beach shall be inspected daily for and shall be free of external oil, fuel, hydraulic, or lubricating fluids prior to working on the beach.
- D18. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland in a confined area in order to prevent contamination to any surface water. Fueling areas will be provided with adequate spill containment. Fueling equipment and vehicles within 100 feet of state waters is not allowed.

**E. Vegetation Planting Plan**

- E1. Post-construction planting will include: 1000 plantings of native beach grass(es) along the landward edge of the fill, 100 native shrubs, and a minimum of 5 substantial (>10 ft tall) western red cedars or big-leaf maple trees east of the existing big leaf maple in order to provide shade to the newly created surf smelt spawning habitat as well as bank stabilization. Page 7-1 of Biological Evaluation "Preserving native shrubs and trees along the shoreline by accessing the shoreline at a disturbed area with non-native lawn turf" and "Sheet 12 of 12, *Planting Plan*, dated June 1, 2006.

**F. Vegetation Monitoring Conditions**

- F1. All restoration plantings associated with this project will be watered twice per week through the end of October for the first two summers following planting in order to promote survival. Any plantings that do not survive through the second summer following planting will be replanted.
- F2. Performance standard: plantings shall achieve 90% or greater survival and invasive species (less than 15%) at Year 3 and Year 5 per Sheet 12 of 12, *Planting Plan*, dated June 1, 2006.
- F3. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- a. Timing: Restoration at the Cove at Fidalgo Bay will occur immediately after project completion or at the earliest planting season following project completion.
  - b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
    - i. Vicinity map showing site access.
    - ii. Drawings that clearly identify in plan view the location of the planted area.
    - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
    - iv. Photographs of the area taken from permanent reference points.
    - v. Locations of photopoints, and sampling sites.
    - vi. A description of any changes to the mitigation plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to **Paul Anderson, Wetland Specialist at Ecology, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452**, within 60 days of completing construction, and in no case later than November 30, 2007.

- c. **Monitoring:** Monitoring of vegetation shall be done every year after the initial planting for a minimum of five (5) years, with monitoring reports submitted to Ecology annually. Monitoring shall include representative photos taken from permanent locations. The mortality of all planted woody species shall be recorded by documenting the survival of each individual planting. **All monitoring reports shall be submitted to Paul Anderson, Wetland Specialist, Washington State Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #4120 and Corps Reference #200601022.

#### **G. Timing Requirements**

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. Work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

#### **H. Reporting and Notification Requirement Conditions**

- H1. The Applicant shall notify Ecology's 401/CZM Federal Project Coordinator at (425) 649-4318 or (425) 649-7000, fax (425) 649-7098, or in writing, referencing Corps Reference #200600052, Order #4120.
  - a. At least seven (7) days in advance of the pre-construction meeting.
  - b. At least three (3) days prior to the start of construction at the project site.
  - c. Within 14 days after completion of construction at the project site.

#### **I. Emergency/Contingency Measures**

- I1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project. This Plan shall be submitted to Ecology for review 30 days prior to beginning construction.
- I2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to an emergency release of petroleum products or any other material into waters of the state.
- I3. 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.

- I4. 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 shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Coordinator at (425) 649-4318 or (425) 649-7000.
  - d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- I5. 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.

#### **J. Appeal Process**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated March 19, 2007 at Bellevue, Washington.



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

**ATTACHMENT A**

**COVE AT FIDALGO BAY, LLC  
Water Quality Certification Order #4120**

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

I have read and understand the conditions of Order #4120 Section 401 Water Quality Certification for the Cove at Fidalgo Bay Project. I have also read and understand all permits, plans, documents, and approvals associated with the Cove at Fidalgo Bay Project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company