Objections To
US Army Corps of Engineers
Public Notice Of Application
For Section 10 and Section 404 Permit
Mox Chehalis LLC
Reference: 200301009
Destination Resort/ Golf Vacation Area
City of Westport, Grays Harbor County

Prepared and Submitted by
Smith & Lowney PLLC
2317 E. John Street
Seattle, WA 98122
(206) 860-2883

On behalf of the following organizations:

Friends of Grays Harbor (FOGH)
Washington Environmental Council
Wildlife Forever of Grays Harbor
Sierra Club
Washington Wetlands Network (WETNET)
Chehalis River Council
Olympic Forest Coalition
Leavenworth Audubon, Adopt-a-Forest
The Lands Council, Spokane, Washington
Neighborhood-Alliance of Spokane County
Wise Use Movement
Kettle Range Conservation Group (Republic, Washington

Date: July 15, 2004

SMITH & LOWNEY, P.L.L.C.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883, fax (206) 860-4187

July 15, 2004

US Army Corps of Engineers
Seattle District Regulatory Branch
Post Office Box 3755
Seattle Washington 98124-3755
Attn: Jim Green, Project Manager

Dear Mr. Green and interested reviewers:

RE: Proposed Section 404 Permit Application 200301009
"Links at Half Moon Bay", City of Westport, Grays Harbor County, Washington

Enclosed please find the objections by the coalition of the below listed groups and organizations to the Links at Half Moon Bay project:

The specific objections are:

- The project would destroy the largest undeveloped interdunal wetland system in the region. It is especially fragile because it is bordered on three sides by state parks and public recreation lands. The proposed project will destroy the wetland and dune system on the property. While the wetland to be impacted is a Shoreline of Statewide Significance -- and should be designated an Aquatic Resource of National Significance (ARNI) -- the proposal is for a private non-water dependent use. *See Sections 2A-2C, Studies of Cooke, Cullinan, Wiedemann.*

- The Applicant significantly undervalued and undercounted the wetlands that would be impacted. It did this by using incorrect delineation methodology, by delineating connected wetlands as separate, and by ignoring off-site connections between the wetlands. *See Sections 2D, Cooke Study.*

- The project will have negative impacts on some of the most important recreational areas and State Parks in this region. Wetlands and dune systems, and recreational opportunities on adjacent State Parks will be negatively impacted. *See Section 2E, Wiedemann Study.*

- The mitigation is inadequate, relying primarily upon wetland preservation even though the wetlands to be "preserved" are protected by development under existing laws. Some of the Applicant's mitigation will create significant additional impacts to the dune and wetland systems. *See Section 2F, Wiedemann Study.*

- The Applicant proposes to apply tons of fertilizers and pesticides to greens and tees that drain directly into wetlands, which in turn drain into the most fragile and important areas of the Grays Harbor Estuary. Despite the fragile ecosystem, the applicant seeks to have this be the first modern golf course built without a stormwater drainage and treatment system. The applicant's stormwater engineer has no experience with golf courses or estuarine ecosystems,

and the applicant has not even finalized its chemical application plan. The outer Grays Harbor already suffers from eutrophication (depletion of dissolved oxygen due to excess nutrient loading) and the introduction of additional nutrients through the golf course's runoff will exacerbate this problem. Water quality certification cannot be granted based on this situation. *See Section 2G, Attachment 1, Washington Toxics Coalition Study.*

- The Applicant has not attempted to avoid wetland and buffer impacts. There are numerous on-site and off-site alternatives that would decrease impacts. For example, the applicant has devoted the scarce upland areas to condominiums and buildings, thereby increasing the golf course's wetland impacts. There are numerous alternative locations for such buildings, allowing the golf course to be relocated to uplands and decreasing wetland impacts. *See Section 2H.*

- Critical components of the project -- including 200 condominiums, a new road, and a utility corridor -- are proposed less than 200 feet from a rapidly eroding shoreline, violating setback requirements. *See Section 2I.*

- Placing condominiums and other improvements in the path of erosion is contrary to the public interest. Such development would foreclose preferred options for dealing with the erosion emergency experienced in the area of the South Jetty. Specifically, the option of "stepping back" development from the erosion will no longer be possible. We would be left with two bad options -- either hard rock the beach to protect the condominiums, or allow significant property damage. *See Section 2I.*

- A full Environmental Impact Statement (EIS) should be required under the National Environmental Policy Act. The EIS prepared under the State Environmental Policy Act (SEPA) was inadequate. Indeed, the Corps recognized that the SEPA EIS incorrectly analyzed the erosion issue, one of the most critical environmental issues. In addition, the SEPA analysis cannot be relied upon because after the SEPA analysis was completed, significant erosion has occurred in the area of the site. Moreover, the applicant now proposes to drop the stormwater containment/treatment system that the EIS relied upon to protect water quality. Numerous other changes to the project were made. The public controversy over this project and the technical controversy over erosion and water quality also argue for an EIS. *See Section 3.*

- The project also fails to comply with the Coastal Zone Management Act (CZMA). The project violates setback requirements and policies under the Washington's Shoreline Management Act (SMA) and local master program. Moreover, the project is inconsistent with wetland and habitat protection afforded by Washington's Growth Management Act (GMA). The City of Westport has never adopted a critical areas ordinance, even though the deadline for such enactment was a decade ago. *See Section 4, Letter from 1000 Friends.*

This document and the information contained herein will help guide the permitting agency in the decision making process to require the project to be moved to a less sensitive, more environmentally sound location within the region. We incorporate by reference the source documents referred to by these comments and/or submitted herewith.

Sincerely submitted on behalf of:

Friends of Grays Harbor (FOGH)
Washington Environmental Council
Wildlife Forever of Grays Harbor
Sierra Club
Washington Wetlands Network (WETNET)
Chehalis River Council
Olympic Forest Coalition
Leavenworth Audubon, Adopt-a-Forest
The Lands Council, Spokane, Washington
Neighborhood-Alliance of Spokane County
Wise Use Movement
Kettle Range Conservation Group (Republic, Washington)

Many of these organizations will be submitting separate comments to the Corps on this permit application, often including technical evidence and/or declarations of fact. We hereby incorporate by reference all of the comments, declarations and materials submitted by these organizations or by the commenting organization's members and partners.

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6. **Destruction of this resource is contrary to the public interest.**

E. THE APPLICANT HAS FAILED TO PROPERLY DELINEATE OR CATEGORIZE THE WETLANDS.

1. **The Applicant improperly delineated the Half Moon Bay Wetland (Wetland HMB), undercounting its size by 3.5 acres to create room for the luxury hotel.**

2. **The Applicant improperly downgraded many of the impacted wetlands.**

3. **With a proper wetland rating, the condominiums cannot be allowed.**

4. **The Applicant has never mapped the open water components of the wetland system.**

5. **The Applicant has never mapped buffer impacts from greens, tees, cart paths, bridges, driving range, utilities, restroom buildings, or stormwater facilities.**

6. **The Corps should delineate associated wetlands and consider cumulative impacts, including wetland impacts on associated parcels.**

F. THE PROJECT WILL NEGATIVELY IMPACT PUBLIC RECREATION AND RESOURCES.

1. **Westhaven State Park to the north.**

2. **The public beach trail to the west.**

3. **Westport Light State Park to the south.**

4. **Cumulative impacts are created by major development south of Westport Light State Park, in which the Applicant holds interest.**

G. THE PROJECT FAILS TO MITIGATE THE IMPACTS TO AQUATIC RESOURCES.

1. **The functions of the existing wetland system are irreplaceable.**

2. **The on-site wetland creation proposal will not mitigate impacts and in fact will create additional impacts by destroying valuable structures.**

3. **The Applicant proposes out-of-kind and off-site replacement.**

4. **The Applicant's reliance upon "preservation" will result in a significant net loss of wetlands because the areas to be preserved are not even threatened by development.**

5. **Enhancement and preservation do not qualify as mitigation.**

6. **The Applicant illegally proposes buffer width averaging.**

7. **Best Available Science does not support the Applicant's mitigation strategies or predict successful mitigation.**

8. **The undercounting of impacts resulted in inadequate mitigation.**

9. **The Applicant double counts mitigation.**

10. **Best Available Science suggests far greater mitigation ratios.**

H. THE PROJECT THREATENS WATER QUALITY IN THE WETLANDS, IN THE ESTUARY, AND IN WESTPORT'S SOLE SOURCE AQUIFER.

1. **The project will apply tons of fertilizers and pesticides in the vicinity of the wetlands, which flow to a fragile area in the Estuary and sit atop Westport's aquifer.**

2. **Despite the fragile environment, the Applicant admits this will be the first modern golf course built without a stormwater control and treatment system.**

3. **The Estuary is already significantly impaired.**

4. **The golf course will add nutrients to the Estuary and increase eutrophication.**

5. **Clean water is essential to the Grays Harbor Economy.**

I. THERE ARE PRACTICABLE ALTERNATIVES WITH LESS WETLAND IMPACTS

1. **Practical alternatives are presumed to exist.**

2. **There are practicable on-site alternatives with less wetland impacts.**

3. **Condominiums can be relocated.**

4. **A 9-hole golf course would reduce wetland impacts.**

5. **Removing the driving range would reduce wetland impacts.**

6. **There are practical off-site alternatives within the region that would require less wetland impacts.**

J. BUILDING CONDOMINIUMS AND OTHER IMPROVEMENTS DIRECTLY WITHIN THE PATH OF ONGOING EROSION IS CONTRARY TO THE PUBLIC INTEREST.

1. **The Corp and other resource agencies criticized the project because it is built on a site threatened by coastal erosion.**

2 **Erosion last winter brought the receding Half Moon bay shoreline to within 80 feet of the proposed development- a distance than can be eroded in a single season -- violating set back requirements.**

3. **Building in the erosion zone will result in a choice between two poor options: Either the development will be destroyed or the Corps will be forced to protect it through projects with major environmental impacts.**

4. **Building in the erosion zone will foreclose preferred options for addressing erosion.**

5. **The evidence and proceedings in Wildlife Forever v. Colonel Lewis, No. C03-5666 RBL (W.Dist.WA) and the 2004 Breach Fill Maintenance Project will confirm the threat to the project site.**

SECTION 3: CORPS SHOULD REQUIRE A FULL NEPA EIS.

A. THE SEPA PROCESS WAS FLAWED AND LACKED GUARANTEES OF RELIABILITY.

1. **The Corp criticized the DEIS and FEIS for incorrectly analyzing the erosion threat.**

2. **Every resource agency criticized the SEPA documents as inadequate.**

3. **Significant erosion occurred after the FEIS was issued.**

4. **Significant changes were made to the project after the FEIS was completed.**

B. THE PROJECT WILL HAVE SIGNIFICANT IMPACTS ON CRITICAL AREAS.

C. THE PROJECT MUST BE EVALUATED WITH POTENTIAL EROSION CONTROL EFFORTS.

D. THE PROJECT'S EFFECTS ARE HIGHLY CONTROVERSIAL AND UNCERTAIN.

E. THE PROPOSAL WILL LIKELY VIOLATE FEDERAL ENVIRONMENTAL LAWS.

F. ADDITIONAL TECHNICAL INFORMATION IS NECESSARY TO DETERMINE IMPACTS.

SECTION 4: THE PROPOSAL FAILS TO COMPLY WITH THE COASTAL ZONE MANAGEMENT ACT

A. THE PROJECT SITE IS SPECIALLY PROTECTED UNDER THE CZMA.

LIST OF FIGURES

SECTION 1
•INTRODUCTION AND SUMMARY OF ARGUMENTS•

Mox Chehalis LLC, representing an undisclosed group of investors ("Applicant"), proposes to build 200 condominiums, a convention center, two hotels, an 18-hole golf course, and ancillary structures.[1] These are clearly not water dependent uses. This development could be sited in any one of hundreds of upland sites in this region.

Yet the Applicant chose perhaps the worst possible site for the project. The development will dramatically alter one of our State's most precious water resources: one of the largest -- if not the largest -- undeveloped interdunal wetland system in the region. The site is circled on three sides by public recreation lands and two State Parks. The wetland system is habitat for coho salmon, a candidate species under the Endangered Species Act, and is a critical migratory bird stopover.

While this is perhaps one of the most fragile aquatic environments ever proposed for a golf course, this would be the only modern golf course built without a stormwater drainage or treatment system. As a result, there is likelihood that water quality will be impaired by the proposed use of literally tons of fertilizers and pesticides on the golf course in areas that currently are open water wetlands. The Applicant's failed to submit sufficient information to determine the extent of these impacts.

The development is also irresponsible. Despite feasible alternatives, the Applicant proposes to build major buildings and infrastructure only a few feet from a rapidly eroding beach. Without some intervention, this development will be destroyed within the next few years. Placing a major development in the erosion zone threatens both the public interest and private property. Condominium owners could lose their investments and have no recourse against the developers --a limited liability company that has refused to disclose its assets or investors. It is likely that they would seek recourse from public insurance. Alternatively, there would be loud calls to hard rock the shoreline to protect the development, which would destroy the recreational experience of the beach and its critical habitat for numerous threatened, endangered and candidate species.

The existing uses of the site could not be more important to the public. The Westport economy depends upon tourism and fishing. This proposal will seriously degrade the State Parks and the *existing* recreational opportunities in Westport. In addition, the proposal threatens salmon habitat located in on-site wetlands and in the Estuary downstream. Thus, the project threatens the current foundation of the local economy.

While the project's harm is borne by the public, the potential benefits are clearly private. This project is an elite development designed to exclude the majority of the local community. The golf course will have greens fees of $100.[2] According to the Applicant, the golf course is proposed as a central "amenity" to make the resort a success, fill the hotel, and sell the condominiums. The scarce uplands on the site are devoted to non-recreational uses -- including condominiums and luxury hotels -- thereby increasing the wetland impacts of the golf course.

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[1] These comments incorporate by reference all of the documents submitted by the Applicant, including its site plans, the Draft and Final Environmental Impact Statements, SEPA Addendum, and other documents prepared by the Applicant and submitted for consideration.

[2] *See* Links at Half Moon Bay Market Analysis and Report, June 2001.

The organizations that contributed to this comment letter look to the U.S. Army Corps of Engineers to assure that wetland impacts and other important environmental and social issues are not disregarded. The standards under Section 404(b)(1) and the public interest factors cannot support the issuance of the requested permit.

The 404(b)(1) permit guidelines set up strict criteria for the grant of a 404 permit to fill wetlands. These guidelines are binding substantive rules and no Section 404 permit can be issued unless the guidelines are satisfied.

All wetlands are considered to be "special aquatic sites" under the Section 404(b)(1) guidelines. Consequently, they deserve greater protection than other waters because of their significant contribution to "the general overall environmental health or vitality of the entire ecosystem of a region." 40 C.F.R. § 230.3 (q-1).

The Section 404(b)(1) guidelines provide a "practicable alternatives" test, which is designed to assess whether a project that depends on filling can be located elsewhere. The guidelines provide that:

> [N]o discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

40 C.F.R. § 230.10(a).

The guidelines provide a presumption, applicable in this case, that a project involving a proposal to fill that is not water dependent (does not require access or proximity to, or siting within, a wetland), will have practicable, upland alternatives, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a wetland, unless the Applicant can clearly demonstrate otherwise, there is a regulatory presumption that all practicable alternatives to the proposed discharge that do not also involve a discharge to wetlands has less of an adverse impact on the aquatic ecosystem,. 40 C.F.R. § 230.10(a)(3).

Based upon the above analysis, we contend that the proposal must be denied. Moreover, it must be denied because public interest factors favor denial. In any event, because the project will have a major environmental impact, and due to the public and technical controversies, a full NEPA EIS should be required before the permit application is considered.

SECTION 2
• THE PERMIT SHOULD BE DENIED BASED UPON 404(B)(1) AND PUBLIC INTEREST CRITERIA•

A. THE PROJECT CONSISTS OF A PRIVATE, NON-WATER DEPENDENT USE.

It is self-evident that condominiums, golf courses, hotels and convention centers are not water dependent uses and in fact most of such developments are built on upland areas. While such developments may demand higher prices in beautiful locations, they do not require access or proximity to, or siting within, a wetland or coastline.

B. THE PROJECT WILL BE SITED IN ONE OF THE LAST REMAINING UNDEVELOPED DUNE SYSTEMS IN THE STATE.

The sand dune area on the project site and extending to Westport Light State Park is among the largest undeveloped sand dune areas in the state. As of 1974, this site was one of only nine undeveloped sand dune areas in Washington. Ruef, Coastal Sand Dune Study, Pacific and Grays Harbor Counties, Washington, 1974, Washington Department of Ecology. **Ex. 10.** Since that time, many of those areas have been impacted by development, making the project site even more unique.

The Washington State Department of Ecology (Ecology) specifically recognized the value and scarcity of this ecosystem in its 1974 Dune Study -- apparently the most recent study conducted in the State. It found that as of 1974 there remained only 12.5 miles of undeveloped dunal areas of the 2,300 miles of saltwater shoreline in Washington,. *Id.* at 22, 27. The Study found:

> … within the total expanses of the dune masses only nine coherent areas of notable size were left in an undisturbed, pristine condition. …
>
> …However, continued pressure from adjacent new developments and rising demands from the private and public sectors are likely to reduce their integrity to a point beyond which these areas are no longer capable to maintain their natural structure and characteristics.

Ecology Dune Study, at 21-22.

> ***Particular attentions should be paid to the remaining natural areas and their preservation. They constitute limited natural resources and only collectively these key areas are representative of the unequaled biophysical systems and aesthetics of the dune landscape.***

Ecology Dune Study, at 28. The Study recommended that "all responsible authorities coordinate their efforts and undertake appropriate steps to protect the previously identified natural areas to the fullest extent possible. Until their status has been defined and suitable boundaries and management concepts have been formulated, local governments should place a moratorium on substantial development of and physical alteration in those areas." *Id.*

Neither the applicant nor the local government has acknowledged the importance or scarcity of the dunal ecosystem that will be destroyed by the project.

C. THE PROJECT WILL BE SITED IN AN EXTREMELY RARE AND VALUABLE INTERDUNAL WETLAND SYSTEM.

1. The interdunal wetland system is one of the largest in the state.

Ecology's Sand Dune Study, **Ex. 10,** determined that the project site had the widest deflation plain (wetland component) of any undeveloped dune area in the State. Thus, the Ecology Study confirms that the site contains one of the largest -- if not the largest -- interdunal wetland system in the State. *See also Sarah Cooke Declaration.*

The Applicant ignored the scope and importance of this wetland system by considering each wetland separately in its wetland delineation and mitigation reports.

Numerous studies show the full extent of this wetland system. For example, an Interdunal Wetland Inventory was conducted in this area in 2000 under Coastal Zone Management Act Grant Agreement G9900203. **Ex. 11.**

The Interdunal Wetland Inventory concluded that wetlands on the project site are part of a 237-acre wetland extending south to Westport Light State Park:

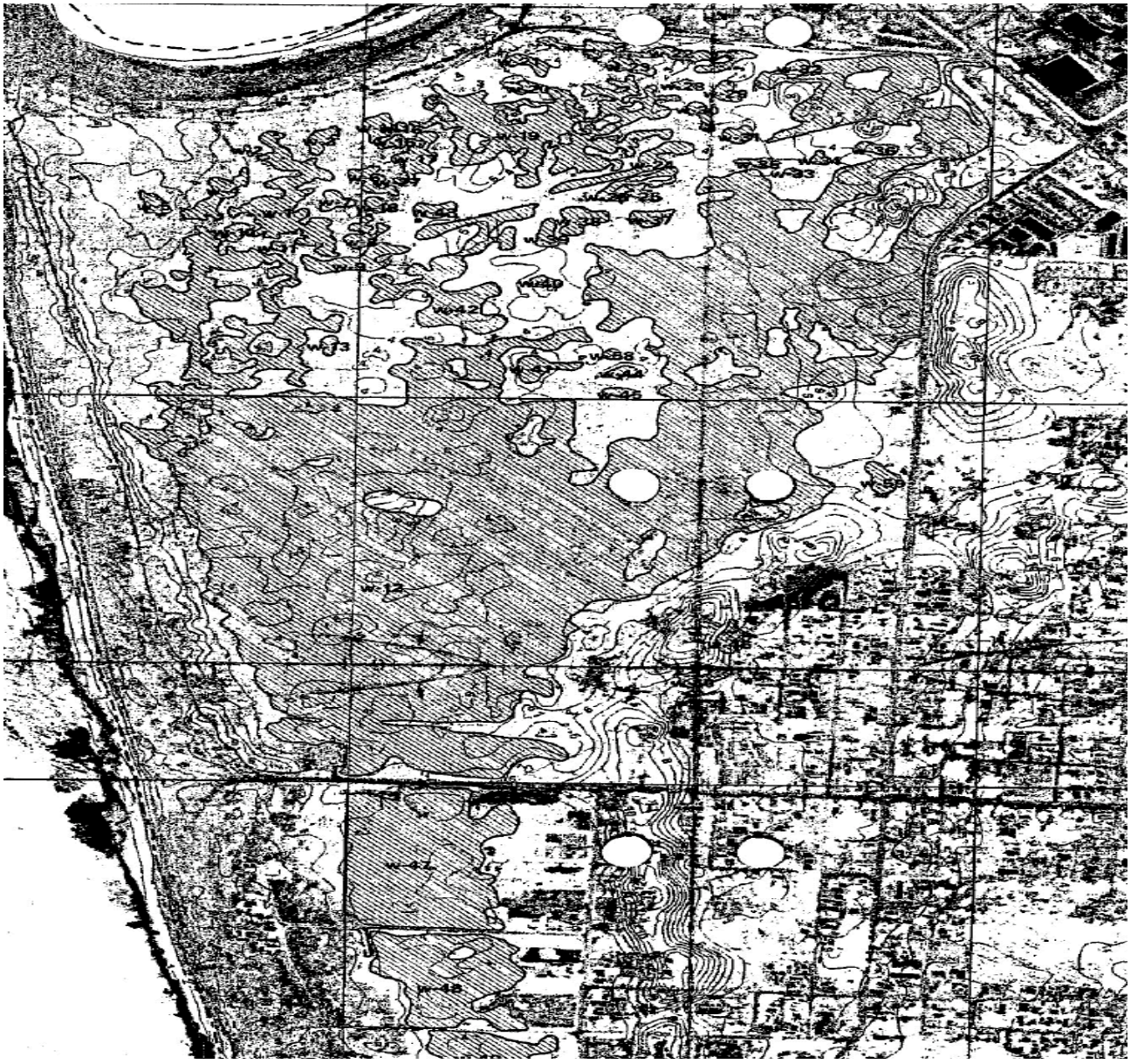
> Wetlands inventoried cover approximately 350 acres, with the majority of the wetland area occurring in one wetland, referred to as Wetland W-12. ***W-12 is a large wetland area (approximately 237 acres) located on the Port of Grays Harbor Property and extending southward into the Westport Light State Park. …***

Interdunal Wetland Inventory, 5-6 (emphasis added).

The findings of the Wetland Inventory are shown on the following map, with the crosshatched sections indicating the wetland areas in this interdunal system. This map would show the wetlands extending north of Jetty Access Road and east of Forrest Avenue except those areas were beyond the geographic scope of the Wetlands Inventory.[3]

[3] For ease of the reader, we are using a negative of the black and white version of the map. A color version is also being submitted.

Figure 1: Interdunal Wetlands Inventory Map



This Inventory is consistent with an inventory prepared by the Applicant's consultant. **Ex. 12.** In 2000, Ecological Land Services, Inc. prepared an inventory of wetlands on the Westport Light State Park. It described the largest wetland on the Park site as follows:

> Area 3 -- Central Wetland -- ***Area 3 is an expansive wetland area (approximately 146-acres on site) extending throughout the central portion of the site and continues off-site to the north onto the Port Property.***

February 16, 2000 Preliminary Wetland Determination (emphasis added).

2. The Applicant and the government have found that this is a very high functioning wetland system.

The Interdunal Wetland Inventory found that the interdunal wetlands on the site "***are important for stormwater and floodwater storage, groundwater recharge, wildlife habitat, water quality improvement and biological support.***" Interdunal Wetland Inventory, at 5-6 (emphasis added).

Similarly, the Applicant's conclusion on the main wetland system on the project site was:

> ***The central wetland area is a high function/value system that appears to provide significant habitat as evidenced by the large numbers of waterfowl, deer tracks, and coyote scat observed during the site*** **visit**. … Large areas of open water ranging from four to 20 inches in depth were also observed throughout this area. Development potential in this area is highly unlikely due to the high value this area provides for wildlife and habitat …

February 16, 2000 Preliminary Wetland Determination (emphasis added). **Ex. 13.**

Moreover, the wetland system's value increases because the system is largely in public hands providing a backdrop for important State Parks. Because the wetland system extends into Westport Light State Park, this wetland system has a greater likelihood of remaining untainted and beneficial over the long term. *See Wiedemann Study.* The project site consists partially of public property belonging to the Port of Grays Harbor. The public also holds an ownership interest in the project site.[4]

The undeveloped wetlands provide passive recreational opportunities from adjacent public lands. To the north is Westhaven State Park. To the south is Westport Light State Park. Along the western edge is a public walkway that overlooks the wetlands on the project site.

The Revised Washington State Wetland Rating System for Western Washington (April 2004 Draft) (The Western Washington Rating System) recognizes that interdunal wetlands "provide critical habitat in the ecosystem. (Wiedemann 1984). This resource is important but constitutes only a small part of the total dune system (Wiedemann 1984)." Western Washington Rating System, at 10. The Rating System recognizes that such wetlands may even qualify for a Category I rating depending upon their habitat values. **Ex. 23.** *See Cooke Declaration.*

3. The wetland system is habitat for candidate fish species and plays a critical role in the migratory bird flyway, which is a resource of hemispheric importance.

The Washington State Department of Fish and Wildlife has on two occasions found Coho salmon in the wetlands on the site.[5] **Ex. 26.** Coho salmon are candidate species for listing under the Federal Endangered Species Act. By virtue of this candidacy, the State of Washington deems Coho to be a priority species.

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[4] The project site has been transferred from the Port of Grays Harbor to the Applicant on contract. A default by the developer will result in repossession of the property by the Port of Grays Harbor.

[5] WDFW's documentation of the first of these sightings is included as an exhibit. The second sighting was by Steve Manlo, employee of Washington Department of Fish and Wildlife during his site visit prior to conducting an informal appeal of the Hydraulic Project Approval for the project.

We have submitted a declaration from Richard Hardy, who observed salmon on the site in early April of this year. **Ex. 27.** The salmon were found on the southern road on the site, very near the proposed location for hole 13. It is clear that salmon in this area have access to the majority of the site and to the Westport Light State Park property. The salmon were found on a road that is inundated by water during the wet season of the year, giving fish access to most of the wetlands on the Links site and Westport Light State Park property. Photos of this inundation are submitted with the declaration of Brady Engvall. *Hardy Declaration.* The Interdunal Wetland Inventory confirms that this location is in "Wetland 12," the largest wetland that extends through the Links site and Park property. **Compare Ex. 27 and Ex. 11.** The Applicant's inventory is consistent with this. **Ex. 12.** The exact extent of fish range can only be determined by mapping open water areas during various times of the year -- a critical task that the Applicant has refused to conduct during the five years it has advocated for this project.

The National Audubon Society has submitted a Study by Timothy Cullinan, which confirms the importance of this site to migratory and other birds. The wetland system on the project site plays an important role in the Grays Harbor migratory bird corridor. *See Declaration of Tim Cullinan.* The extraordinary habitat values of the Grays Harbor estuary have been known to ornithologists for decades. In 1981 the U.S. Army Corps of Engineers sponsored the first formal censuses of migratory birds at Grays Harbor (Herman and Bulger, 1981). This study revealed that as many as one million shorebirds of 24 species use estuarine habitat at Grays Harbor during the peak of spring migration. Results indicated that Grays Harbor is the single most important staging area for migratory shorebirds on the West Coast, south of Alaska.

In 1986 the Western Hemisphere Shorebird Reserve Network designated the Grays Harbor estuary a "site of hemispheric importance" and issued a joint proclamation recognizing the need to conserve the estuary's wildlife resources. Signatories proclaimed their intent to maintain the Grays Harbor shorebird reserve as critical habitat for shorebirds and to maintain and enhance the reserve as a wetland "vital to the maintenance of the Hemisphere's biological diversity." The U.S. Army Corps of Engineers was one of the signatories to that proclamation. *See Cullinan Declaration.*

In the summary of its 1981 report on shorebirds at Grays Harbor (Herman and Bulger 1981, p.49), the U.S. Army Corps of Engineers stated**: *"Plans involving future wetlands alteration in Grays Harbor should take into account demonstrated patterns of wildlife use*.** The balance between wildlife losses and economic development should be considered in historical context; that is, wetland habitat already lost to filling and industry must be part of the overall accounting and planning process. ***The shorebird habitat remaining in Grays Harbor is a unique resource that must be evaluated in more than provincial terms."***

4. The wetland system provides a diverse and unique habitat, and plays a crucial role in protecting water quality in the Estuary and Westport's sole source aquifer.

The Applicant's February 6, 2002, Wetland Mitigation Plan acknowledges that "[t]he mosaic of interdunal wetlands and uplands is a unique landscape and environmental feature that is only found in the most recent (within 60 years) accreted areas of the Pacific Coast." 2/6/02 Wetland Mitigation Plan. This is consistent with the Applicant's admission that many of the impacted wetlands are Category II under Ecology's rating system, which is defined as:

(i) Documented habitat recognized by federal and state agencies for sensitive plant, animal, or fish species; or

(ii) Documented priority habitats and species recognized by state agencies; or

(iii) Wetlands with significant functions which may not be adequately replicated through creation or restoration; or

(iv) Wetlands with significant habitat value; or

(v) Documented wetlands of local significance.

WAC 173-183-710(1)(b).

In its comments on the Draft EIS (DEIS), Washington Department of Fish and Wildlife (WDFW) described the importance of these wetlands:

> The site is predominantly wetlands. … ***It is the largest block of undeveloped single ownership interdunal wetlands in the Westport area. These wetlands are not only critical habitat themselves, but are performing the critical function of infiltration and biofiltration of untreated stormwater from adjacent developments. This property, the vast majority (73%) of which is interdunal and early successional forested wetlands, drains into the extensive saltmarsh bordering the City of Westport, which is a tributary itself to the Elk River estuarine system. This system supports an abundant spawning population of herring, which spawn on saltmarsh vegetation and eelgrass, and which are extremely sensitive to water quality impacts … This species of baitfish comprises critical forage for pacific salmonids, among them the ESA listed Bull Trout found in adjacent Grays Harbor.***
>
> Unfortunately, this project proposes fill of 12 wetland acres, and mowing/maintenance of an additional 18 acres. This is a significant impact in a limited area. We … request that the project proposal be redesigned so that wetland fill is unnecessary.
>
> ***Presently, the wetlands on this site, and many of the uplands, are serving as defacto stormwater detention, infiltration, and treatment system for the City of Westport. … The diverse and well vegetated nature of the wetland complex also acts to remove pollutants….***
>
> ***The project … would drastically change all this; the fill of wetlands would remove detention and treatment area, the installation of impervious surfaces and underdraining of the greens and other frequently flooded golf course areas would dramatically decrease infiltration and increase peak flows into the remaining wetlands, and even if area was excavated sufficient to accommodate the additional flow, this area would be largely dysfunctional for stormwater treatment due to lack of wetland vegetation.*** … There are not any real workable proposals in the project plan to treat any storm water. … The only solution that is sure to address these concerns is a manufactured stormwater collection and treatment system.
> …
> ***The resulting scenario does not benefit fish and wildlife. Wetland ecosystems on the site will be compromised and damaged. Stormwater will be imperfectly detained and treated, leading to contaminated discharge to the adjacent saltmarsh wetlands***. These discharges will likely occur during the winter storm season, when herring eggs are in the saltmarsh (January 15 through March 15) and when juvenile salmonids are migrating (as early as February 15). The loss of these fish will lead both directly and indirectly to a take under the ESA.

Washington Department of Fish and Wildlife, Comments on DEIS. **Ex. 3.**

As the declarations of Simonstad and Hood make clear, impact to estuaries can have a critical impact on the health of anadromous fish in Grays Harbor Estuary:

> From a fish's perspective, estuaries are a mosaic of habitats. At one time or another, a salmon may use saltmarshes, fresh water marshes further upstream, rocky areas, and eelgrass beds. The abundant food sources in these naturally productive areas, as well as the wealth of food produced in the mud flats, are critical to salmon as they build up strength before entering the ocean. ***The loss of any of these habitat types can severely degrade an estuary as a refuge or feeding grounds for salmon (not to mention many other estuarine inhabitants)***.
> …
> ***Because estuaries are the lower-most point of rivers, they are affected by everything that happens upstream. Toxins and sewage in the water-- not only what may be dumped directly into the bay, but anything entering the river at any point in its length-- can adversely affect fish. Pollutants can come from sewage treatment plants, industrial sources, marinas, or run-off of chemicals and silt from homes, farms and forests.*** Removal of vegetation in a river's watershed, though timber-cutting, agricultural clearance, or development actions can greatly alter the duration and timing of peak water flows. This can disrupt the life cycles of creatures in the estuary and effect its overall productivity.
> …
> ***Perhaps most devastating is the loss of fringing marshes, which provide shelter and prey to young fish.*** More than 90% of California's coastal wetlands have been lost to development; coastal wetland loss in Oregon and Washington is estimated to be about 50-60%.

Simenstad and Hood Declaration (emphasis added). **Ex. 28.**

In addition, it should be noted that the wetland system sits above the City of Westport's sole source aquifer. **Ex. 41.** The Applicant has ignored this fact by noting that the golf course itself is largely outside of the wellhead protection area. However, any impact on the project site cannot be limited given that a single wetland -- with open ponding for over 4 months per year -- extends from the site to the center of the aquifer area.

5. The wetland should be deemed an aquatic resource of national importance.

Given the uniqueness and importance of this wetland system, it should be deemed an aquatic resource of national importance. There is no comparable wetland system in the region and certainly none nationally that plays an equal role to the migratory bird flyway, endangered and candidate species, and public recreation. The potential impact to drinking water also supports this designation.

D. THE PROJECT WILL DESTROY THIS CRITICAL AQUATIC RESOURCE.

1. The project proposes over 56 acres of wetland and buffer impacts -- over three acres of impacts for each of the golf course's 18 holes.

- **Over 10 acres of wetland fill.** The wetland impacts in this project are enormous and likely unprecedented for a recreational facility. The Applicant admits that it proposes to fill 10 acres of wetlands -- for a golf course. Over 2.5 acres of wetland fill is required for the practice range, to enable golfers to warm up before teeing off. Using proper delineation techniques, the wetland impacts would be even greater. *See Declaration of Sarah Cooke.* By way of comparison, the entire third runway project -- argued to be a critical piece of the regional transportation system -- required only 20 acres of wetland fill.

- **Over 15 acres of permanent wetland deforestation/devegetation.** In addition, the Applicant proposes to remove vegetation from almost 15 acres of wetlands and to permanently prevent revegetation of that acreage. Much of those wetlands are currently forested. *See* discussion below and Applicant's Wetland Impact Maps, Landscape Plan.

- **.23 acre of excavation to remove course obstacles.** The Applicant proposes to excavate another .23 acres of wetlands, presumably to enhance the playing experience on holes 13 and 17 and the practice range. *See* Wetland Mitigation Plan, Exhibit C.

- **Over 31 acres of buffer impacts just for the fairways, leading to additional wetland impacts.** Finally, the Applicant admits to destroying 31 acres of wetland buffers just for the fairways. Wetland Mitigation Plan, Exhibit C. As discussed below, this is an understatement of impacts, because the Applicant has improperly downgraded the western 1/3 of the wetland mosaic from Category II (requiring 100 foot buffers) to Category III (50 foot buffers). *See Cooke Declaration.* Without buffers, the remaining wetlands will not be protected from the impacts of the golf course and development. Additional wetland impacts are inevitable. The Applicant has not acknowledged or quantified these additional impacts.

- **Buffer impacts for greens, tees, cart paths, practice range, irrigation system, restrooms, and stormwater ponds have never been calculated.** The documents showing 31+ acres of buffer impacts specifically state that these impacts are for fairways only. The Applicant has never calculated the buffer impacts for other features of the golf course, listed above. These additional impacts could be significant.

The applicant's consultants acknowledge what the wetland inventories clearly show: "the majority of the golf course" falls within the buffers. 1/16/02 Memorandum by Audubon International.

2. A large portion of the impacts is to forested interdunal wetlands.

A large portion of the wetland impacts will be in the eastern 1/3 of the site, which the Applicant admits is forested interdunal wetlands. The trees on the site ranging from 20 to 60 feet, according to the Port's study of the property. **Ex. 24** (Port Plant and Wildlife Study). *See also* Wetland Mitigation Plan, Appendix A, Figures 15, WL1, and WL2. The Applicant's Landscape Plan and Wetland Impact Maps show that a large portion of forested wetlands will be permanently mowed. For example, almost two acres of forested wetlands will be deforested and permanently mowed just for Hole 10.

3. The Existing/Proposed Grade Section included with the public notice shows that virtually the entire wetland system will be graded.

The Public Notice (sheet 9 of 23) contains a section comparing existing grade of the site to the proposed grade. It suggests that virtually no part of the site will remain at its present elevation. The entire wetland system will be graded, undoubtedly destroying its present functions

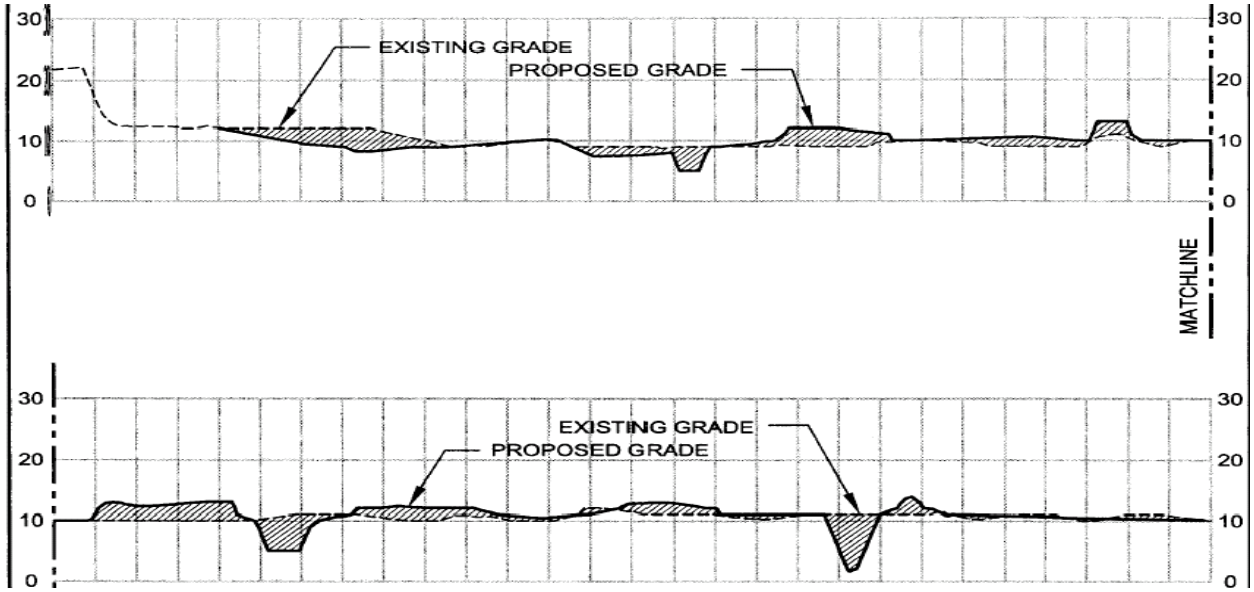

Figure 2: Existing/Proposed grade section from Public Notice.

4. Ecology's Dune Study recognized that this type of development will degrade the fragile dune ecosystem.

A study by Dr. Alfred Wiedemann, one of the leading experts in dune ecology, is being submitted with these comments. He concludes that the development will destroy the wetland system on site and will likely have negative impacts on the systems on the Westport Light State Park site. This is consistent with Ecology's Dune Study, which recognized the fragility of this rare ecosystem:

> "The multitude of factors which act upon and shape the coastal dune region form a delicate balance which is easily affected by and causes a sensitive reaction of that environment to a number of human activities. Especially their openness makes large portions of the dunes vulnerable; their appearance is altered substantially through all but a few types of development. …Activities that have largely contributed to this trend are:
>
> a. ***Extensive drainage efforts and large-scale developments of a residential and semi-commercial type. Striking examples of this interference exists in the Ocean Shores and Surfside Estate areas. In the latter case, a lowering of the water table through large open drainage channels within the deflation plain resulted in a complete eradication of practically all species typical of this geomorphic-plant unit. Extensive bare surfaces formed that caused renewed sand movement and a progressive invasion and takeover by the beach grass community. Leveling of the backdune portions and placement of excavation***

material furthered these changes and, with respect to soil stability, morphology, and natural plant succession, the area is today totally barren and, from a practical point of view, altered permanently. …

c. Leveling of and sand removal in vegetative areas. Such activities result in scars and may lead to blowouts, especially when carried out in the beginning of the growing seasons. ***Changes in soil profiles and topography, even within seemingly shallow lifts, will disrupt zonal plant distribution.***

d. ***Filling in the deflation plain and, thus, altering the hydrologic characteristics of these depressions which are essential to maintain the respective plant communities***. …

f. ***Extensive foot paths and vehicular trail systems*** which criss-cross seemingly uncontrolled, large open stretches … This adds to the diminishment of natural areas which so far have not yet been affected by other types of development.

g. Poor design and layout of individual structures as well as substantial subdivisions and park facilities. The ***desolate appearance of some developments completely detracts from the serenity and scenic beauty of dune systems***."

Ecology Dune Study, at 19-21 (bold added; underline in original). **Ex. 10.**

As Dr. Wiedemann concludes:

Based upon my experience in dune ecology, the proposed development would destroy the present functions and values of the dune and wetland systems on the project site and would impact to an unknown extend the remaining parts of the wetland system and downstream habitat and water quality.

See Wiedemann Study.

5. The Applicant proposes to alter the delicate hydrological balance upon which the wetland system depends.

The extensive filling proposed for the golf course will undoubtedly affect the hydrology of the wetland system, yet the Applicant has not modeled the current hydrologic system or the impacts of the golf course. The Final EIS explained that "***Developed areas throughout the golf course will introduce varying levels of compaction with resulting changes in the characteristic of surface water runoff and absorption***."

The Applicant's stormwater engineer, Mr. Howie, admitted in a public hearing that stormwater flow will be altered by (1) "improving the imperviousness of the ground so water can go into the ground slightly faster after the golf course is built than before so that would result in less water running to the southeast" and; (2) likely using the golf course topography to impound surface water. September 10, 2003 Public Hearing Transcript. **Ex. 14.** Mr. Howie stated that runoff to wetlands to the southeast -- those on the Westport Light State Park property and above the Wellhead Protection Zone -- will receive less runoff during storm events. *Id.*

The Applicant has not studied the affect of these hydrological changes on the wetland system, or on the City of Westport's sole source aquifer that lies beneath the wetlands. However,

Ecology's Dune Study recognized that the hydrologic system of interdunal wetlands is complex and fragile.

> "During the wet season the extensive open water surfaces [of interdunal wetlands] are highly susceptible to contamination and spreading of pollutants."
>
> ***Substantial physical alteration of this delicate natural [hydrological] balance, which on an accumulative basis would have to include small scale and private development activities, will influence water levels and quality. This in turn has serious effects, often more than local and from a biological point of view adverse, on the resident plant communities, wildlife, soil stability, which are some of the biophysical characteristics of this [deflation plain] unit.***

Ecology Dune Study, at 14 **Ex. 10** (emphasis added). The Ecology dune study found that filling wetlands could sufficiently alter hydrology to impact plant associations,[6] as could any actions that alter the hydrology, either through causing increase or decrease in the water regime.

6. Destruction of this resource is contrary to the public interest.

Given the uniqueness and importance of this wetland system, the Corps must find that its destruction is contrary to the public interest. Numerous public interest factors will be negatively impacted, including: fish and wildlife habitat, priority species, migratory birds, recreation, public lands, wetlands, rare ecosystems, and drinking water security.

E. THE APPLICANT HAS FAILED TO PROPERLY DELINEATE OR CATEGORIZE THE WETLANDS.

1. The Applicant improperly delineated the Half Moon Bay Wetland (Wetland HMB) undercounting its size by 3.5 Acres to create room for the luxury hotel.

In August 1998, the Corps of Engineers delineated and mapped Wetland HMB as part of the Point Chehalis Revetment Extension Project. **Ex. 15.** The Interagency Mitigation Agreement entered into by all of the resource agencies and the City of Westport on March 6, 1999, provided that only 1.4 acres of the wetland were to be impacted, while the remaining 4.6 acres of the wetland would be protected. **Ex. 16.** This requirement was included in the Water Quality Certification. **Ex. 17.** The Interagency Mitigation Agreement and all later documents produced by the Corps have mapped Wetland HMB based upon the 1998 delineation. *See e.g.,* **Ex. 16, Ex. 22.**

The Applicant's 2000 Delineation Report was prepared less than two years after the Corps' delineation. **Ex. 13.** In the intervening period, the Corps had completed the Point Chehalis Revetment Extension project. **Ex. 18, 20.** The Corps documented its installation of a clay barrier to avoid draining the remaining 4.6 acres of Wetland HMB.[7] **Ex. 21.**

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[6] "***The reduction of low-lying, level surfaces through placement of fill material up to several feet high for construction and access purposes reduces the flood plain functions of those zones.*** In response to given amounts and distribution of precipitation during the rainy season, the decrease of the surface area for natural surface water storage is likely to cause a rise of water levels in the remaining portions of low areas which would prolong the time period during which impoundment occurs. Again ***plant associations may change or disappear."***

Ecology Dune Study, at 20 (emphasis added). **Ex. 10.**

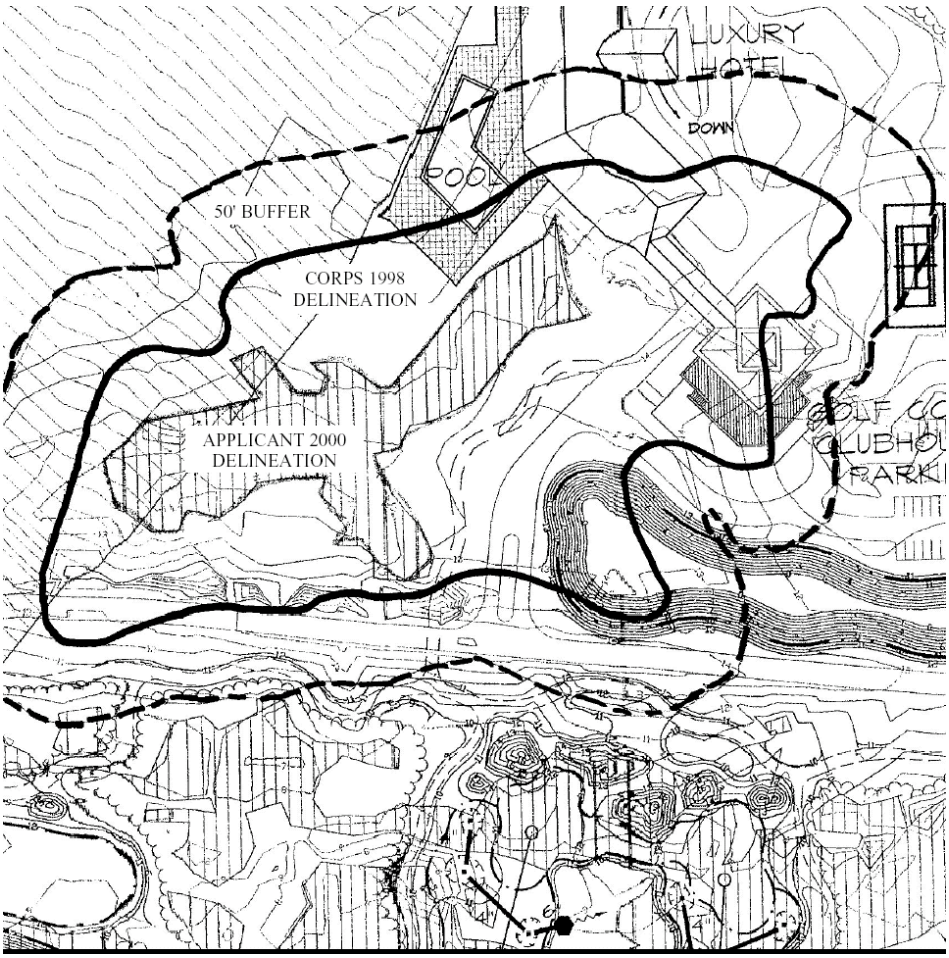
[7] *See also* **Ex. 19.** U.S. Fish & Wildlife Service letter to Col. Rigby, Sept. 24, 1998 (confirming that project would incorporate measures to "prevent the remaining 6-acre wetland complex from being affected hydrologically by the revetment").

Given the recent major disturbance to Wetland HMB, the Applicant's 2000 Delineation Report should have relied upon the two-year old Corps delineation to determine the pre-disturbance wetland boundaries. *Declaration of Sarah Cooke*. The rating sheets prepared for the 2000 Delineation Report should have characterized Wetland HMB as "significantly disturbed." *Id.*

Had the Applicant followed correct methodology, Wetland HMB should have been delineated as approximately 4.6 acres, taking into account the pre-disturbance wetland boundaries and the 1.4 acres that were legally filled and mitigated. *Id.* Instead, the Applicant made no reference to the Corps' recent delineation or the recent major disturbance to this wetland. The Applicant delineated the wetland as approximately 1.15 acres.

The Applicant proposes to build its convention center/ luxury hotel within the boundaries of Wetland HMB as delineated by the Corps, as shown in the following exhibit:

Figure 3. Corps 1998 delineation of Wetland HMB (with 50' buffers) overlaid onto portion of Applicant's site plan showing luxury hotel, clubhouse and Applicant's 2000 delineation of Wetland HMB.

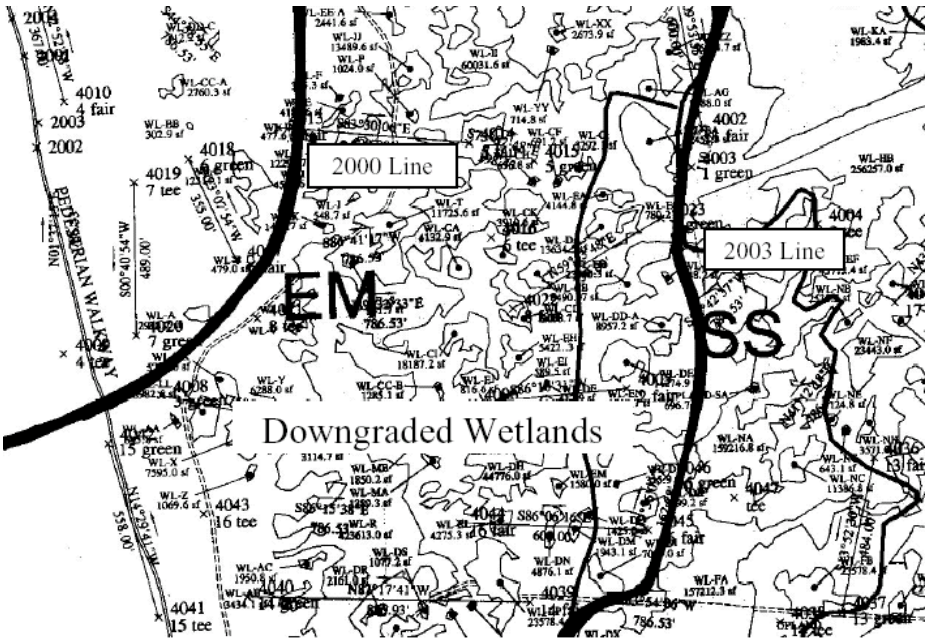


2. The Applicant improperly downgraded many of the impacted wetlands.

The Applicant also used improper methodology in downgrading the western 1/3 of the wetland mosaic on the property to Category III. Whereas the 2000 Delineation Report properly classified the entire wetland mosaic on the project site as Class II, the Applicant later downgraded

the western 1/3 of this wetland mosaic to Class III. The Applicant failed to follow proper methodology in doing so. *Declaration of Sarah Cooke.*

Figure 4: Exhibit showing Applicant's downgrading of wetlands from 2000 Delineation to 2003 Delineation:

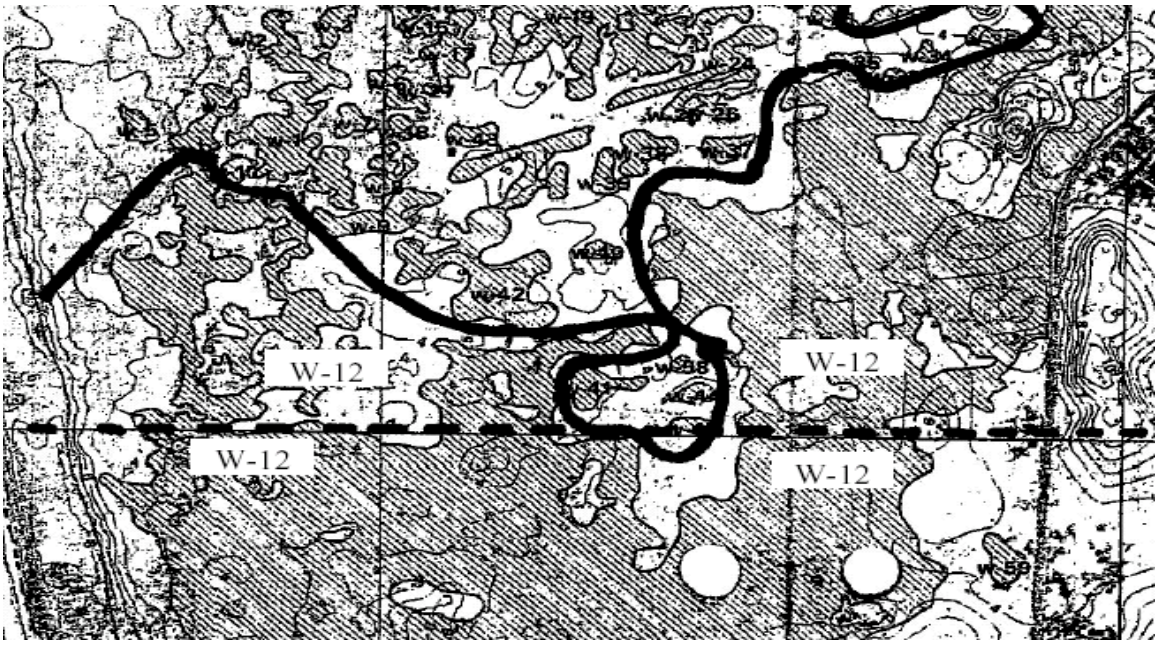


The 2000 Wetland Delineation correctly treated the entire wetland system (with the exception of six isolated wetlands A, B, C, BB, CC, and DD) as a single wetland mosaic. **Ex. 13.** The 2000 Delineation noted that "The project has a large upland/wetland complex extending from the north to the south and covering the central and eastern portion of the site. When wetlands are woven together into a mosaic with uplands and comprising more than 50% of the landmass, they are rated as a single wetland system; in this case they are rated as Category II wetlands." 2000 Wetland Delineation, at 14. A single Field Data Form was prepared for the entire mosaic.

In its 2003 Delineation Report, the Applicant bisected this mosaic, and rated the wetland system as two separate mosaics. This was improper methodology under the rating system. There is only a single wetland mosaic on this site and it cannot be treated as two, even if the western portion of the mosaic demonstrates an earlier stage of succession. *Cooke Declaration.* The 2003 Delineation Report does not state that any new delineation or fieldwork was conducted as part of the downgrading of the western 1/3 of the wetland mosaic.

There are several other reasons why the 2003 Delineation Report was incorrect in downgrading the western 1/3 of the wetland mosaic. First, the Applicant should not have downgraded the 9.7 acres of wetland it labels Wetland "R" in the southwest corner of the project site. All available information shows that this is not a separate wetland, but rather is an arm of the largest wetland on the property. Both the City of Westport the Applicant inventoried wetlands in Westport Light State Park and these inventories show that wetlands on the western 1/3 of the project, including Wetland "R," are connected to wetlands on the eastern 2/3 of the project site. The Westport Interdunal Wetlands Inventory, for example, clearly shows that Wetland "R," Wetland FA and Wetland FK connect just south of the project property boundary; it correctly calls this a single wetland. **Ex. 11.** The Applicant's delineation cites this study but then improperly treats the western portion of the wetland as isolated. **Ex. 13.**

Figure 5: Interdunal Wetland Inventory Map marked to show extent that Wetland-12 extends from Westport Light State Park onto project site. (Approximate property line shown in dashed black line; W-12 boundary shown in solid blue line)



Similarly, the Applicant's wetlands inventory of the Westport Light State Park recognized that the large wetland on the Westport Light State Park site crossed onto the project site on both the southwest and southeast corners of site. **Ex. 12.** That inventory found a "Y" shaped wetland (shown with diagonal lines below) on the Park property that connects the wetlands on the east and west of the Links site. The Applicant's wetland experts prepared the delineation for both the project site and the Park property in the same year, so they should have acknowledged this hydrologic connection.

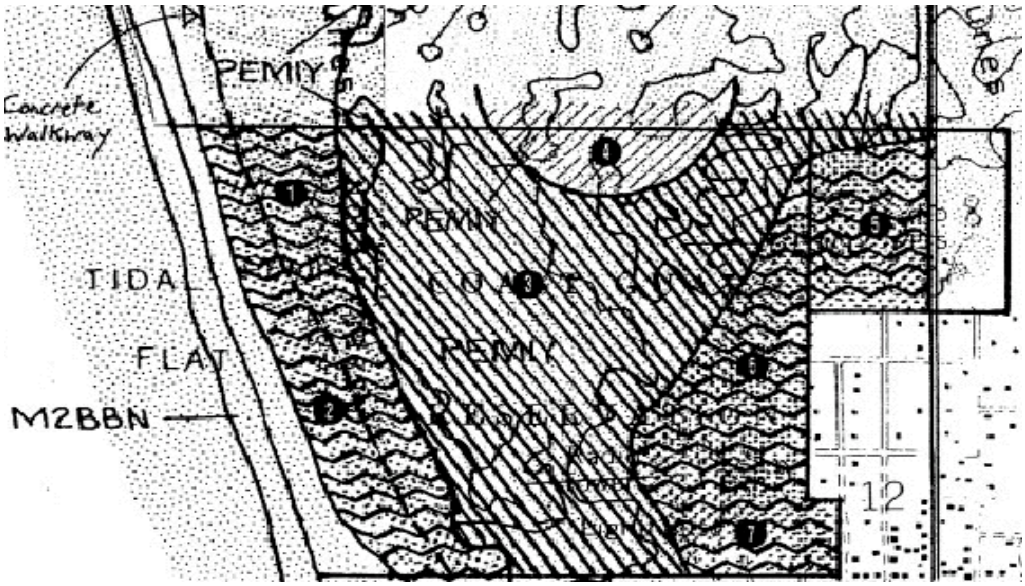


Figure 6: Applicant's inventory of wetlands on Westport Light State Park site determined that one "Y" shaped wetland crossed over into the project site.

The Applicant's study described this "Y" shaped wetland (also called "Unit 3" or the "Central Wetland") as "***[A]n expansive wetland area (approximately 146-acres on site) extending throughout the central portion of [the State Park] and continues off-site to the north onto the Port Property***." Ecological Land Services, Inc., Feb. 16, 2000 (emphasis added).

The downgrading of the larger wetlands on the western portion of the property violates best available science, which has been incorporated into the latest draft of the Washington State Wetland Rating System for Western Washington, Ecology Publication # 04-060-014 (April 2004). **Ex. 23.** Members of the technical review team included the Applicant's wetland scientist, Francis Naglich. Mr. Naglich took the lead on developing the rating system for interdunal wetlands. *Cooke Declaration.*

The new rating system rates interdunal wetlands above 1 acre as Category II wetlands. Three of the downgraded wetlands are over 1 acre in size: WL "OO" (72,519 sf), WL "II" (60,031 sf) and WL "R" (423,613 sf). Thus, these wetlands should be classified as Category II based upon the new rating system and best available science. The new rating system, like the previous version, suggests that the entire mosaic should be classified as a single unit.

The new rating system states that "Interdunal wetlands greater than 1 acre are Category II because they provide critical habitat in this ecosystem. This resource is important but constitutes only a small part of the total dune system. No methods have been developed to characterize how well interdunal wetlands function, so these wetlands cannot be rated by a score." Western Washington Rating System, at 10.

3. With a proper wetland rating, the condominiums cannot be allowed.

If the wetlands on the 1/3 of the property had been properly categorized, they would have been given a Category II, and they would deserve a 100' buffer. The condominium buildings are within this buffer. In some cases the condominiums are less than 50' from the wetlands. These condominiums should not be allowed. Indeed, two of the western wetlands bordering the condominiums are over one acre, so should be designated as Category II based upon the new wetland rating system. Given their size and proximity to proposed structures, these large wetlands should have been individually rated before any attempt to downgrade their rating.

Notably, the Westport City Council passed an ordinance that states that 100' buffers are required for the wetlands around the condominiums, but this ordinance was ignored. **Ex. 32.**

4. The Applicant has never mapped open water components of the wetland system.

The Applicant acknowledges that many of the wetlands on the site are inundated and experience ponding and open water over four months of the year. Aerial photos such as the one below show open water in the location of the proposed condominiums and throughout the site.

Figure 7: Aerial photo showing open water in condominium location and throughout golf course site.

Additional photos are on the submitted CD Rom and others are attached to the Declaration of Brady Engvall. **Ex. 30.** These open water wetlands contain some of the most valuable habitat, including coho habitat, and are the most fragile. **Ex. 24.** Yet, the Applicant has never mapped the open water components of the site nor considered or disclosed the open water areas to be filled, crossed or otherwise impacted. Such a study is clearly necessary to determine the scope of the wetland impacts and to form a basis for mitigation. *See Washington Toxics Coalition Study.*

5. The Applicant has never mapped buffer impacts from greens, tees, cart paths, bridges, driving range, utilities, restroom buildings, or stormwater facilities.

The Applicant determined that there would be 31+ acres of wetland impacts from the "fairways only". *See* Appendix C to Wetland Mitigation Plan. The 31+ number came from the "fairway buffer calculations." The Applicant has never mapped, disclosed, or proposed to mitigate buffer impacts from other facilities on the golf course.

6. The Corps should delineate associated wetlands and consider cumulative impacts, including wetland impacts on associated parcels.

Given the failure of the Applicant to adequately evaluate the aquatic resources, or the likely impacts of the project on them, the Corps should conduct such an evaluation before approving the project. Clearly the wetlands on the site are too important to be sacrificed. In addition, a full understanding of the wetlands is required to determine whether the likely impacts would extend to wetlands on the Westport Light State Park or impact Westport's aquifer. *See Washington Toxics Coalition Study, Wiedemann Study.*

F. THE PROJECT WILL NEGATIVELY IMPACT PUBLIC RECREATION AND RESOURCES.

The project site is bordered on three sides by important recreational lands, which would be negatively impacted by the project. *See Wiedemann Study*. These lands would be negatively impacted as follows:

1. Westhaven State Park to the north. The proposed buildings will loom over the public beach. The Applicant's addendum attempts to hide this aesthetic impact by modeling aesthetic impacts only from points where the primary dune minimizes the building's visibility. However, from most vantage points the building will be completely out of scale with the natural surrounding. Currently the highest building in the City is 35 feet. *See Grunbaum Declaration.* The condominiums will be 65 feet and the resort buildings can be as high as 84 feet. Also, people walking the public trail along the shoreline will have their views dramatically altered. A study prepared by FOGH indicates that the proposed buildings will cast a shadow on public lands. **Ex. 38.**

2. The public beach trail to the west. A public trail connects Westhaven State Park and Westport Light State Park. Currently this trail overlooks the undeveloped interdunal wetland system to the east and the ocean to the west. If this development is built, this valuable trail will overlook private condominiums and a private golf course. *See Wiedemann Study.*

3. Westport Light State Park to the south. The public trail discussed above is a central amenity of this Park. The current views from this public trail in the Park will be dramatically altered as a private resort replaces the current natural scenery. In addition, the wetland system that is the dominant landscape feature in the Park will be threatened by changes to the hydrological regime and pollution. The habitat value of the Park will also be decreased as incompatible land uses encroach. *See Wiedemann Study.*

4. Cumulative impacts are created by major development south of Westport Light State Park, in which the Applicant holds an interest.

Only a few years ago Westport Light State Park had undeveloped shoreline to the south and to the north. The Westport by the Sea Condominium complex has dramatically altered the dune area to the south. It is no longer possible to see the beach looking south from the southern portion of public trail on the Park property or from the parking lot for Westport Light State Park. Cumulative impacts should be considered.

The wetland system and undeveloped open space are the reason these parks are among the most visited in the State. The destruction of the wetlands and incompatible land uses will significantly degrade the parks.

G. THE PROJECT FAILS TO MITIGATE THE IMPACTS TO AQUATIC RESOURCES.

1. The functions of the existing wetland system are irreplaceable.

The interdunal wetland system cannot be replaced except over generations. The Applicant has not undertaken any significant study of the functioning of this wetland system, and has not even acknowledged the geographic extent of the system. Given the critical functions of this system, discussed above, the Applicant cannot claim the ability to replace this system's functions through mitigation. Below are a few examples of the problems with the Applicant's mitigation plan.

2. The on-site wetland creation proposal will not mitigate impacts and in fact will create additional impacts by destroying valuable dune structures.

The Applicant proposes to "create" five acres of new wetlands on site by excavating the uplands down to the level of adjacent wetlands. Ecology recently reviewed this same type of mitigation project and concluded that excavating dunes down to wetland elevation is a poor design for mitigation and "***did not contribute to success***" of mitigation. See Wetland Mitigation Evaluation Study, Phase 2: Evaluating Success #46-- Project Study (Ecology Publication 02-06-009). Ecology determined that such design "did not replicate the upland/wetland mosaic naturally found in this area and the more mature secondary and tertiary dunal systems that were lost." *Id.*

Notably, both US Fish and Wildlife Service (USFW) and Ecology criticized this mitigation design. The USFW commented that "the wetlands, including the dune formations and upland vegetation, perform important physical and biological functions. These include: a regionally rare habitat mosaic, a noise, visual and spatial buffer to wildlife from nearby human disturbances; foraging cover; and potential reproductive habitat for wildlife; surface water collection and filtration; and reservoirs for freshwater." *Id.*

Ecology could not have said it better in its comments: "… ***the dune environment includes a mosaic of dunes and swales and it is unrealistic to think that we can improve upon this system by removing sand from the dunes down to the level of the swales. In this setting, the upland dunes are as important as the swales and one should not be sacrificed as compensation for the other.*** In the future, it is unlikely that Ecology would accept this type of mitigation for wetland impacts in dune areas." *Id.*

Dr. Wiedemann concurs that "I am familiar with the Applicant's proposal to mitigate impacts to the interdunal wetlands by excavating adjacent dunes. The Applicant should not receive any mitigation project for such a proposal. … both dune and wetlands are critically important to the habitat and structure of dune ecology. Impacts to the dunes inevitably decrease the functions of the system and negatively impact the adjacent wetlands. Rather than mitigating impacts, this type of action would reduce upland habitat and likely impair water quality." *Wiedemann Study.*

3. The applicant proposes out-of-kind and off-site replacement.

The Applicant makes no efforts to replace the type of wetland system that will be lost or its functions and values. For example:

- The Applicant proposes to destroy wetlands it deems to be Category II (on eastern 2/3 of site) and replace them with wetlands it deems Category III (on western 1/3 of site).

- The Applicant is destroying forested wetland but will not replace forested wetlands in its mitigation.

- There will be a significant net loss of interdunal wetlands. The only replacement interdunal wetlands would be obtained by destroying adjacent dunes -- a design that resource agencies have criticized and which has been found to not contribute to success.

- The mitigation projects are largely off-site and will not benefit the impacted systems. For example, they will not mitigate the existing wetland's flood control or water

quality functions. They neither drain to the Estuary or towards Westport's aquifer, the systems that the wetlands currently benefit.

- There will be a net loss of interdunal and wetland habitat in the vicinity of the Grays Harbor Estuary, negatively impacting migratory birds using Grays Harbor as a stopover. *See Cullinan Declaration.*

- There will be a net loss of habitat for Coho salmon, a candidate and priority species.

4. The Applicant's reliance upon "preservation" will result in a significant net loss of wetlands because the areas to be preserved are not even threatened by development.

The Applicant proposes to rely primarily upon "preservation" for mitigation. However, because the Applicant will be destroying over 56 acres of wetlands and buffers, this mitigation will result in a net loss of wetlands. Notably, many of the mitigation areas are devoid of interdunal wetlands.

Moreover, there is no reason to believe that the wetlands and dune areas to be preserved are not sufficiently protected by existing laws. For example:

- The 107 acres of forested Type II wetlands on the site are already protected by virtue of numerous State and Local environmental laws. There is no credible argument that these wetlands are threatened by development. Applicant's consultants acknowledged this area could not be developed.

- The Applicant cannot show that the bog mitigation site is threatened by development. The owner of the site has publicly stated that he would not allow development of the site, and numerous environmental laws would preclude such development.

- The Applicant does not propose to preserve the entire Mar Vista area, but instead states that development will be limited to the eastern portion of the site. However, the zoning of these lots and the development pattern in the area make it highly unlikely that any more intensive development would occur even without "preservation."

5. Enhancement and preservation do not qualify as mitigation.

Under Westport's Master Program, preservation and enhancement of pristine wetlands does not qualify for mitigation credits:

> If a wetland area is filled … wetland mitigation shall be required. ***This may include a substitution or increase of wetland area, or it may be a restoration of wetland functions and values at an existing wetland in accordance with best science available at the time.*** A mitigation plan shall be prepared that describes how the proposed mitigation will replace the function and values of the altered wetland. The replacement ratios below assume that the replacement wetland will be similar in type and structure to the wetland being altered.

WMC 17.32.065(5) (emphasis added). **Ex. 89.** Here, the mitigation plan relies upon preservation and enhancement, and has not even made the required *best available science* showing in order to rely upon restoration.

6. The Applicant illegally proposes buffer width averaging.

The applicant's Mitigation Plan proposes to use "buffer width averaging" to reduce its buffer impacts from 31 acres to 13.66 acres. However, the project does not qualify for buffer width averaging under Westport's Master Program:

> (A) Buffer Averaging / Enhancement. ***Wetland buffers may be reduced in certain instances.*** The wetland buffer shall be "averaged" with other areas surrounding the wetland, so that the total wetland buffer averages out to become the required width, ***and all areas of the wetland buffer shall be enhanced to enable optimal wetland function, if all of the following requirements are met.***
>
> 1. Averaging will not impair or reduce the habitat, water quality purity and enhancement, stormwater detention, ground water recharge, shoreline protection, erosion protection, and other functions of the wetland and buffer.
>
> 2. The total area of the buffer on the subject property is not less than the buffer, which would be required if averaging were not allowed.
>
> 3. No part of the width of the buffer is less than fifty percent of the required width or twenty-five feet, whichever is greater.

WMC 17.32.065(5)(A)(emphasis added). **Ex. 89.**

a. Buffer averaging on this project does not protect resources.

The applicant cannot credibly claim that the use of buffer averaging on this project "will not impair" natural resource protection. This is especially true here, where the applicant proposes a net loss of buffers, significant deforestation/devegetation, and no buffers around many of the wetlands. *See Declarations of Brid Nowlan.* **Ex. 31.**

According to Ecology's recommendations, minimum buffers should be 100 to 200 feet. Department of Ecology, *Wetland Buffers, Use and Effectiveness*, February 1992, at 15. **Ex. 35.** Moreover, Ecology recommends that "In western Washington, wetlands with important wildlife functions should have 200-300 foot buffers based on land use," "[b]uffer widths effective at preventing significant water quality impacts to wetlands are generally 100 feet or greater, and buffers from 50 to 150 feet are necessary to prevent wetland impacts from trampling. Department of Ecology, *How Ecology Regulates Wetlands*, April 1998**,** at13-14. **Ex. 36.** Ecology has said that golf courses should <u>not</u> be allowed in buffers. **Ex. 37.** These documents should be read in the context of the clear threat to wetlands posed by golf courses due to their high chemical use and construction impacts. *See Washington Toxics Coalition Comments.*

Given the heavy chemical use on the golf course and the danger of trampling, the proposed significant reduction of buffers -- in many cases, their elimination -- cannot protect resources.

b. The Applicant does not preserve 100% of the required buffers on site as required.

To use averaging, the buffers remaining on site after averaging must be the same as that required without averaging. 17.32.065(5)(A)(2). The Applicant admits that it does not comply with this requirement, and therefore admits that the site will have a net buffer loss of 13.66 acres, just from "fairway buffer impacts, " which the Applicant proposes to mitigate off-site. *See* Public Notice 200301009. This net buffer impact would be significantly greater if the 100-foot buffers are used, since much of the buffers credited in the averaging were "outside of standard buffer width" only because the applicant incorrectly used a 50-foot buffer. **Ex. 33.**

c. The Applicant proposes buffers below the 50% required, and in many cases proposes to leave no buffers.

To use buffer averaging, no part of the width of the buffer on Category II wetlands can be less than 25 feet, or 50 feet for Class II wetlands. 17.32.065(5)(A)(3). Here, the applicant will be leaving no buffer in many areas, including in the extensive areas where filling is proposed. The FEIS admits what the maps clearly show: "buffers will be non-existent where fairways cross wetlands." Indeed, the buffers are nonexistent in numerous areas of the site.

The requirement to preserve at least 25 foot buffers means that an Applicant cannot fill wetlands and use buffer width averaging. This makes since because filling and reducing buffers would create a double impact to the wetland. Buffer averaging is designed to allow a structure to sometimes be built closer to the wetland than the full buffer width; it is not designed to reduce mitigation when a structure is placed *within* the wetland.

d. The Applicant does not enhance all buffers as required.

To use buffer averaging, all the areas within the averaged buffers must be enhanced and preserved. WMC 17.32.065(5)(A)(when averaging "all areas of the wetland buffer shall be enhanced to enable optimal wetland function"). The Applicant's Mitigation Plan indicates no plans to enhance all buffers as required.

7. Best Available Science does not support the Applicant's mitigation strategies or predict successful mitigation.

Ecology's Best Available Science document recognizes that mitigation projects in Washington has not been anywhere close to 100% effective.

> ***How is compensatory wetland mitigation doing in Washington?****
> Five studies of compensatory wetland mitigation have focused on projects in Washington State during the past decade. … ***The results suggest that compensatory mitigation in Washington is neither fully successful nor completely unsuccessful. Most studies found that less than half of wetland compensation projects are fully effective***. In the most recent and comprehensive evaluation of compensation projects, Johnson et al. (2002) found that 13% of compensatory wetland mitigation projects were fully successful and 33% were moderately successful. In western Washington, Storm and Stellini (1994) determined that 24% of compensation projects functioned well. In King County, Mockler et al. (1998) indicated that 3% of projects replaced lost wetland functions …

Freshwater Wetlands in Washington State, A Synthesis of Science, Aug 2003 Draft, Chapter 6 ("BAS Document")

Restoration. The BAS Document found that "there is a substantial lack of data with which to evaluate the effectiveness of restoration as a mitigation technique. In Washington, Johnson et al. (2000) found that one of three restoration projects was in full compliance. Johnson et al. (2002) found that one of two restoration projects established the required acreage of wetland and was fully successful." *BAS Document*, at 6.5.1.

Creation. The BAS Document found that "The results on the effectiveness of creation are mixed. Though projects in Washington have poor compliance, other aspects of effectiveness are relatively good. However, other states found poor effectiveness for created wetlands. The data therefore suggest that further study is warranted." *Id.*

Even high mitigation ratios do not assure success. The BAS Document notes that "None of the studies found the required ratios had been realized. In fact, Balzano et al. (2002) determined that forested compensation wetlands achieved only 1/100th of an acre for every acre lost despite the fact that over 2 acres of forested wetland were required." *Id.* at 6.6.2.

Enhancement. The BAS Document also expressed concerns with "enhancement."

"Because enhancement involves altering an existing wetland to compensate for the loss of other wetlands, the scientific literature mentions three main concerns regarding its use:

- ***Enhancement fails to replace lost wetland area*** (Shaich and Franklin 1995, Morgan and Roberts 1999). For this reason, the state of Michigan does not allow the use of enhancement for compensatory mitigation …

- ***Enhancement may fail to replace wetland functions***, since "a positive change in one wetland function may negatively affect other wetland functions (Kruczynski 1990, Lewis 1990)" (Gwin et al. 1999). In addition, "there commonly is disagreement about whether or not the practice implemented actually enhances conditions at a site" (Morgan and Roberts 1999).

- ***Enhancement may result in a conversion of HGM and/or Cowardin classes***, typically producing a compensation wetland without natural analogues (Shaich and Franklin 1995, Gwin et al. 1999, Johnson et al. 2002). When enhancement is used for compensation in such cases:

  > ***a single Section 404 decision results in the destruction of the wetland for which the permit was issued, along with the conversion of a second wetland to a different, often atypical, HGM type. This 'double whammy' means that exchange [enhancement] explicitly does not fulfill the objective function*** (Gwin et al. 1999).

BAS Document, at 6.5.3 (emphasis added).

The BAS Document found cited studies of Washington enhancement projects finding that "***none of the enhanced compensation wetlands were fully successful, while 89% were minimally or not successful***. (Johnson et al. 2000, 2002)." *Id* .

Preservation. The BAS Document notes that "preservation does not produce any new wetland acreage; for that reason, some concerns have been raised regarding its use as compensation for permitted wetland loss:

- ***Preservation results in a net loss of wetland acreage***.
- ***Preserved wetlands are generally not large enough to protect ecosystems and biodiversity over the long term*** (Whigham 1999).
- Preserved areas may not be checked by regulatory agencies to verify that they contain the specified acreage of wetland. For example, Morgan and Roberts (1999) observed that one of the larger preserved wetlands in their study was predominantly upland and "did not meet the criteria for being considered a jurisdictional wetland."

BAS Document, at 6.5.4.

8. The undercounting of impacts resulted in inadequate mitigation.

As discussed in Section E, above, the Applicant has undercounted wetland and buffer impacts. This in turn contributed to inadequate compensatory mitigation.

9. The Applicant double counts mitigation.

The Applicant proposes to mitigate for wetland destruction with preservation of interdunal habitat at Mar Vista. Then, the Applicant proposes to mitigate for destruction of wetland buffers through removing scotch broom from this mitigation site. Even if this type of mitigation was adequate and legal -- which it is not -- this is double counting.

10. Best Available Science suggests far greater mitigation ratios.

The Applicant generally proposes to replace wetlands at less than a 1:1 ratio. The BAS Document notes that "[A] simple 1:1 replacement ratio generally is no longer considered appropriate (Castelle et al. 1992, King et al. 1993, National Research Council 2001) for the following reasons: … Risk of failure [and] Temporal loss." *Id.* at 6.6.1.

It is clear that the Applicant's Mitigation Plan is not based upon best available science and will result in a substantial net loss of wetland functions and values.

H THE PROJECT THREATENS WATER QUALITY IN THE WETLANDS, IN THE ESTUARY, AND IN WESTPORT'S SOLE SOURCE AQUIFER.

Submitted with these comments is a Study of the project prepared by the Washington Toxics Coalition. That Study shows that the project will have unacceptable impacts to water quality. Based upon those comments and the analysis below, the authors of these comments believe that this project will result in a substantial loss of beneficial uses and therefore, cannot meet the criteria for water quality certification. Pending a decision by the Department of Ecology on the water quality certification and review by the Environmental Hearings Office, the Corps should assume inadequate assurance for water quality.

At this time, the Applicant has failed to meet its burden of showing how a golf course can be built in the center of an open water wetland complex, with over 56 acres of wetland and buffer impacts, without sacrificing water quality and beneficial uses. The Applicant has not even mapped

open water components of the wetlands or modeled the current or proposed hydrologic regime to determine the fate and transport of pesticides and fertilizers to be used on the course. Also, the Applicant has not even conducted "digital terrain modeling," which is available to model the flow of storm water over a golf course site during various conditions. **Ex. 60.**

The Applicant also has not disclosed exactly what fertilizers and pesticides will be used and when and where they will be applied. Its Natural Resources Management Plan is wholly insufficient to protect water quality. *See Washington Toxics Coalition Study.*

1. The project will apply tons of fertilizers and pesticides in the vicinity of the wetlands, which flow to a fragile area in the Estuary and sit atop Westport's aquifer.

The Applicant admits that it will apply literally tons of fertilizers and pesticides on the golf course every year. As the applicant's consultant noted, virtually the entire golf course is in wetlands or wetland buffers.

As the Washington State Department of Fish and Wildlife noted in its comments, the site "***drains into the extensive saltmarsh bordering the City of Westport, which is a tributary itself to the Elk River estuarine system. This system supports an abundant spawning population of herring, which spawn on saltmarsh vegetation and eelgrass, and which are extremely sensitive to water quality impacts … This species of baitfish comprises critical forage for pacific salmonids, among them the ESA listed Bull Trout found in adjacent Grays Harbor. "*** **Ex. 3.**

Ecology's Sand Dune Study acknowledged that "During the wet season the extensive open water surfaces [of interdunal wetlands] are highly susceptible to contamination and spreading of pollutants." (*Ruef 1974)*

2. Despite the fragile environment, the Applicant admits this will be the first modern golf course built without a stormwater control and treatment system.

WDFW commented on water quality concerns during the SEPA process, noting that "The only solution that is sure to address these [stormwater] concerns is a manufactured stormwater collection and treatment system." The applicant repeatedly promised such a system during the SEPA process.[8]

The DEIS stated that for tees and greens "***It is also important that surface and subsurface drainage pass through filtration areas so that water resources are protected. For these reasons, the greens will be constructed based on a United States Golf Association method as detailed in "USGA Recommendations for a Method of Putting Green Construction"*** (USGA Green Section Record, 1993) … ***The entire putting green is underdrained by a series of perforated pipes …directed to water quality basins for detention, buffer areas for filtration or through specially constructed filtration units. …Successful construction of a USGA green requires these specifications to be rigidly followed***."

[8] In the DEIS and FEIS, the Applicant promised a Stormwater Management Plan "designed in accordance with standard engineering methods," that "Storm water will be treated … prior to infiltration or discharge" and that "stormwater features will be constructed on -site in areas where stormwater runoff is anticipated to occur."

The FEIS stated that "***The general approach [for protecting wetlands] is to transport water quickly off the playing areas of the golf course to slight low points where a drain is to be constructed underground. This drain will flow into a stormwater treatment feature (bioswale, pond, infiltration basin). From there, the water will either infiltrate or be discharged into adjacent land areas, including wetlands***." (emphasis added). In the DEIS, Audubon International advised the Applicant that it is necessary to direct stormwater from greens through "surface and subsurface drainage" "to provide the foundation for enhancement of habitat and wildlife on the property."

The Applicant abandoned its promises and the revised project now says that there will be "[n]o stormwater controls (hard piping) for the golf course." Elsewhere the applicant stated that the modification "[e]liminated the stormwater collection system within golf course, water to infiltrate as it presently does." **Ex. 68.** This is a serious and illegal reduction in protection for water resources.[9]

The Applicant's golf course designer Rick Robbins admitted that "***this would probably be the first golf course in my experience and in my colleagues' through the American Society of Golf Course Architects, of which I'm a full member, in the last 20 years with no pipeline. It's a very unique exercise***." Transcript, September 10, 2003 Public Hearing. **Ex. 14.** The Applicant's storwmater engineer, Mr. Howie, admitted that there is no precedent for a modern golf course without a stormwater system. **Ex. 14.**

Mr. Howie also admitted that this is the first golf course project he has worked on and that he has not consulted with other stormwater engineers who have worked on golf courses. *Id.* He also admitted that he has no understanding of the fragility of the estuarine wetlands downstream, the danger of eutrophication in the wetlands, or the level of nitrogen loading they can safely accept. *Id.*

3. The Estuary is Already Significantly Impaired.

The Grays Harbor Estuary is listed under 303(d) of the Clean Water Act as water quality impaired. **Ex. 43.** In addition, according to NOAA's 1999 National Estuarine Eutrophication Study, Grays Harbor expresses serious symptoms of eutrophication, including "high" symptoms of macroalgae, and "moderate" symptoms of chlorophyll a and toxic algae blooms. **Ex. 42.** Grays Harbor was designated as having "moderate" eutrophic conditions, meaning "level of expression of eutrophic conditions is substantial." The Study found that eutrophic conditions in Grays Harbor were likely to "worsen" by 2020. *Id.*

Eutrophic conditions impair both fishing and shellfishing. *Id.* at 41. The Study noted that "reduction in nutrient inputs would significantly improve water-quality conditions." *Id.* at 39. Indeed, the "moderate" eutrophic conditions in Grays Harbor argue for reduction in nutrient inputs. *Id.*

The Washington State Department of Health has noted in its comments on the project that it has already closed an area near the mouth of Grays Harbor to shellfish harvesting, and additional pollutant loading may require it to increase the closure area. Dept. of Health Comments on Links DEIS, October 4, 2002. **Ex. 6.**

4. The golf course will add nutrients to the Estuary and increase eutrophication.

Countless studies have recognized that golf course runoff contains excess nutrients and therefore can contribute to eutrophication when entering an estuarine environment. These studies show that wide buffers may reduce but will not eliminate excess nutrients from golf course runoff. A few of these studies are submitted with these comments. **Ex. 46.**

5. Clean water is essential to the Grays Harbor economy.

Significant portions of the Grays Harbor economy is dependent upon clean water and any further degradation of the water quality should not be permitted. **Ex. 61, 62.** The industries dependent upon clean water in the Estuary include:

- The oyster industry.
- The crabbing industry.
- The fishing industry.
- The tourist industry.

Numerous declarations and documents have been submitted by members of Grays Harbor's aquaculture industry quantifying the value of the resources to be impacted. We hereby incorporate those documents by reference. Additionally, it has been noted by government authorities that:

> The importance of fish and shellfish farming to Washington's seafood industry is shown by the fact that fewer than 200 oyster, salmon and clam farms produce 16 percent of the wholesales value of the state's local seafood harvest (Natural Resources Consultants, 1986). Most of the aquaculture operations are in Puget Sound or Grays Harbor and Willapa Harbor.

Olympic Coast National Marine Sanctuary EIS, at II-97. **Ex. 61.** The following statistics show the importance of the estuary to the economy:

- Grays Harbor and Willapa Bay account for over half of all oysters harvested along the entire US West Coast.
- Harvest in these estuaries sometimes represent nearly one-fifth of nationwide oyster harvests.
- More than three-quarters of the state's Dungeness crab catch are taken in the Grays Harbor area and along the Coast.

I. THERE ARE PRACTICABLE ALTERNATIVES WITH LESS WETLAND IMPACTS

1. Practical alternatives are presumed to exist.

40 C.F.R. 230.10(a)(3) provides the presumption that there are alternatives without wetland impacts for all non-water dependent projects. This presumption is especially relevant here, where the proposed project could literally be sited in any one of many sites in the region.

2. There are practicable on-site alternatives with less wetland impacts.

The applicant claims only that "It is *unlikely* the project can be built while disturbing only 2 acres of wetlands". FEIS, Letter 22, p. 7 (emphasis added). However, wetland and buffer impacts could be substantially reduced.

- **Condominiums can be relocated.** The Applicant has produced plans for relocating the condominium location to the uplands north of the Jetty Access Road. **Ex. 63.** This would allow the golf course to extend to the scarce uplands on the site, thereby reducing the wetland impacts. For example, if the driving range were relocated to the current condominium site, over 2 acres of forested wetlands would be saved.

- **A 9-hole golf course would reduce wetland impacts.** In Washington State, a full 40% of public and semi-private golf courses are 9-hole courses. *See Declaration of Evan Leonard.* **Ex. 64.** The Applicant has acknowledged that 9-holes would be sufficient to meet the needs of the local golfing public. Indeed, a 9-hole course may be sufficient for a successful resort. When FOGH asked for the "research" studies the applicant was relying upon to justify the need for an 18-hole resort, the Applicant admitted that "it is unknown if there are studies particularly addressing this issue."

- **Removing the driving range would reduce wetland impacts.** Well over two acres of wetlands could be saved if the driving range proposal was removed from the plan. This is just another example of how the design of this golf course is being driven by the need to market the golf course and condominiums without regard to environmental concerns.

3. There are practical off-site alternatives within the region that would require less wetland impacts.

There are numerous off-site locations for condominiums, convention centers, and golf courses. With these comments we have provided the location of just a few of the large parcels that are available. **Exc. 66.**

The site plan demonstrates that much of the upland areas of the site have been devoted to buildings, thereby moving the golf course further into the wetlands. There are numerous alternative locations for the condominiums, convention center and hotels. For example, the Applicant is a joint owner of the condominium complex south of Westport Light State Park, a site that is accessible to the golf course. Westport is underdeveloped and there are numerous adjacent sites that could accommodate these buildings and be accessible to the golf course. By acquiring adjacent upland parcels for part of the development, wetland impacts can be reduced.

J. BUILDING CONDOMINIUMS AND OTHER IMPROVEMENTS DIRECTLY WITHIN THE PATH OF ONGOING EROSION IS CONTRARY TO THE PUBLIC INTEREST.

The Applicant proposes a number of structures directly adjacent to a rapidly eroding shoreline. The site plan shows a new road, a sewer system and utility corridor, and a stormwater pond being build less than 100 feet from the eroding shoreline. **Ex. 92, 91** (garage). A 400-car garage and condominiums building are proposed less than 200 feet from the eroding shoreline.

The erosion emergency facing the Links site is immediate and substantial. Last winter's storm eroded the shoreline directly in front of the proposed condominiums. The public trail that parallels the beach between Half Moon Bay and Jetty Access Road was destroyed only a short distance from the site of the proposed new road, sewage system and condominiums.

The following picture from October was taken just before the public trail was destroyed.

Figure 8: Photo of the doomed public trail, just west of the project site.

The City of Westport declared an emergency, **Ex. 110,** and took emergency action to try and save the infrastructure north of the Links site. **Ex. 108.** The following photo shows these futile efforts.

Figure 9: Photos of Westport's emergency shoreline armoring just west of project site, looking east. Cars to right are in Westhaven State Park parking lot. Erosion in front of condominium site is shown just beyond seawall construction site.

Figure 10. Erosion destroys the new seawall, looking west.

Responding to Westport's call for help, the Corps proposed to place 25,000 cubic yards of rock on the Half Moon Bay beach as an interim measure to stabilize the shoreline. **Ex. 102A.** Commentors Wildlife Forever of Grays Harbor and Arthur Grunbaum filed suit in Federal District Court in Tacoma (No. C03-5666 RBL), and successfully stopped this project. **Ex. 95 et seq.**

However, the City of Westport and the Port argued that without emergency action erosion would destroy Jetty Access Road, the parking lot and restrooms for Westhaven State Park, and what remained of the public trail. ***See* Ex. 95 et seq.** The City argued that ***"the threat to the public trail, the Jetty Access Road and Westhaven State Park is imminent. … If the court forecloses additional erosion control… the loss of the trail, bathroom, roadway and parking lot would result in these structures being washed into Half Moon Bay"*** **Ex. 95**, p. 4, 11.

The City's erosion experts Dr. Philip Osborne testified:

> As of December 12, 2003, distances from the existing park infrastructure to the erosional scarp above the shoreline are as follows:
>
> a. Distance to footpath: 0 feet
> b. Distance to roadway: 36 feet
> c. Distance to public restrooms and change-rooms: 60 feet.
>
> ***Without any remedial measures to stabilize the current location of the shoreline, the sidewalk and road could be breached during one moderate storm.*** There is a high likelihood that more than one such storm will happen this winter [03-04].

Ex. 96 (emphasis added). He concluded that "***It is my opinion that erosion is an imminent treat to the concrete public trail, asphalt road (including jetty access road and points of access to the jetty), utility lines located in the roadway, the parking lot, and the buildings containing bathrooms and changing rooms at Westhaven State Park."*** **Ex. 99,** p. 4. Notably, the utility lines in jeopardy leave Jetty Access Road at the parking lot intersection, so it is clear that Dr. Osborne was testifying of an erosion threat very near the condominium location.

The City's attorney testified that "As of December 18, 2003, the scarp is approximately 75 feet from the edge of Jetty Access Road at the entrance to the Westhaven State Park parking lot." **Ex. 98**, p. 2. This is just a short ways from the proposed condominiums. *See Site Plan.*

Ultimately, the Court allowed the Corps to take an interim measure of placing 27000 cubic yards of sand on the beach to prevent further destruction of infrastructure. **Ex. 93, 94.**

1. The Corps and other resource agencies criticized the Links project because it is built on a site threatened by coastal erosion.

The U.S. Army Corps of Engineers, the Department of Ecology, Department of Parks and Recreation, and Department of Fish & Wildlife all criticized the Links Project because it is sited in an area threatened by coastal erosion. ***See* Exs. 1-9.** It is clear that both the "South Beach" to the west and Half Moon Bay to the north have suffered extreme erosion in recent years and are in a long term erosion trend. *See* **Exs. 93-138.**

State and Federal agencies with expertise on the erosion threat in this area have concluded that erosion on both the South Beach and Half Moon Bay is continuing to threaten the Links site. Moreover, in the most comprehensive study of the erosion threat in the area,[10] the Corps confirmed this long-term erosion trend on both Half Moon Bay and the South Beach.[11]

In criticizing the Links project due to the erosion threat, the Corps noted that the national experts on erosion have rejected conclusion of shoreline stability. It wrote "***The Corps study confirmed that "continued erosion of the shoreline adjacent to the South Jetty, if left unchecked, would result in the formation of a permanent breach between the South Jetty and the adjacent South Beach." The "planned location of the [Links] development is within the expected erosion zone if a breach reforms."*** **Ex. 1.**

The Corps predicts that if it does nothing to address the erosion problem, the site proposed for the condominium complex and golf course will be washed into the sea in the next 50 years. ***Every single scenario studied by the Corps showed significant erosion impacting the project site***. Indeed, the Corps has found that beach nourishment is insufficient to halt the erosion threatening the Links site. **Ex. 138,** p. 4.

Additionally, Ecology, which also employs coastal engineers that have extensively studied the site, concluded that "[b]ased on current scientific knowledge, over time, erosion or flooding of this area cannot be ruled out. … The sustainability of such development in such vulnerable areas needs to be carefully considered against the relevant statutory policies and regulations before concluding it would be in the best interest of the citizens of the state to allow such development." **Ex. 7.**

Similarly, Department of Fish & Wildlife concluded that "The [Links] site is located in an area of recent and ongoing erosion. … Most of the development is proposed to occur in the predicted erosion area. Any development is therefore at great risk from erosion that will inevitably occur during the life of the project." **Ex. 3.**

Even the City of Westport's consultants Pacific International Engineering admitted that "***constructed features shown on the [Links] site plan are within the zone in which the shoreline could recede by episodic storm erosion***." **Ex. 133.** Their consultant Parametrix similarly warned that "***We hope they are fully aware of the possible severe wind, rain, coastal erosion, earthquake damage, and other possible effects of the environment on their project."*** **Ex. 132.**

Consistent with the predictions of the resource agencies, erosion continues on both the South Beach and the Half Moon Bay shoreline in the area of the Links site. During the winter of 2001-2002, this erosion was so severe that on November 28, 2001, the City of Westport declared an emergency stating that in just five weeks "***the sand spit adjacent to the South Jetty has lost approximately 80 feet on the Half Moon Bay side, and 40 feet from the ocean side.*** … ***We at the City of Westport consider this an emergency situation that requires immediate action to prevent a breach in that area."*** **Ex. 110.** The Corps again heeded the crisis calls of the City by

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[10] *See* U.S. Army Corps of Engineers, Evaluation Report, Long Term Maintenance of the South Jetty at Grays Harbor, Washington (June 1997)("Evaluation Report").

[11] The Corps found that "-30 to -40 feet/year may be a reasonable long term (10-50 year) average rate of recession for the shoreline immediately south of the South Jetty." Evaluation Report, at 14. It found that "Although the average long term recession rate along the Half Moon Bay shoreline is -5 to -10 feet/year, the rate of erosion appears to vary widely." *Id.* at 15. In 1993-94, erosion was approximately -70 feet/year. *Id.*

placing 125,000 cubic yards of fill on the South Beach shoreline just northwest of the Links site, and 40,000 cubic yards of gravels on the Half Moon Bay shoreline just north of the Links site.

In addition, during that season "***Significant erosion also spread laterally for the first time along Half Moon Bay" parallel to the Jetty Access Road*** north of the Links project and even took out the Corps jetty access road.

Ecology's coastal engineers wrote: "***[B]each erosion along the Half Moon Bay and the ocean coast is serious again. This erosion should not be a surprise, in fact it is fully anticipated. The temporary benefit of sand accumulation resulting from the 97-98 El Nino is over, and the beach is returning to its long-term erosion trend***." Ecology's scientists publicly stated that this area "is essentially in an erosion mode, and there's no expectation that it's going to change. … we basically have a net loss of sand along those beaches." **Ex. 111.**

In response to this emergency, Westport has been forced to acknowledge the ongoing erosion threat. Westport's administrator, Randy Lewis, stated: "***Basically erosion is going to continue. What we're attempting to do is manage it to where we can keep ahead of it and prevent it from doing damage to critical facilities. We're not so arrogant that we're going to say we can stand up and put a halt to mother nature***." *Id.* Even the applicant admits that efforts to prevent erosion along the south beach will be futile. *Id.*

2. Erosion last winter brought the receding Half Moon Bay shoreline to within 80 feet of the proposed development – a distance that can be eroded in a single season -- violating setback requirements.

The declarations of Buzz Baldwin and Arthur Grunbaum confirm that the storms of last winter have eroded the beach directly in front of the proposed Jetty Road expansion, utility corridor, and condominiums. There is only 80 feet between the eroding shoreline and these proposed improvements. *See Declarations of Buzz Baldwin, Arthur Grunbaum.* Specifically, the top of the dune is now only 77 feet from the edge of the proposed stormwater pond, 90 feet from the new road, sewage system and utility corridor, and 187 to the condominiums. The studies of historic erosion events confirm that this distance can be eroded in a single bad season.

The Westport Master Program has a building setback of 200 feet from the top of the dune (marram grass line). **Ex. 89.** This regulation is violated, placing this development and public health and safety at risk. *See Baldwin Declaration, Cooke Declaration.* Notably, erosion has at least once before caused a major sewage spill in Half Moon Bay. Building a new sewage system less than 100 feet from the eroding beach jeopardizes public and aquatic health.

3. Building in the erosion zone will result in a choice between two poor options: Either the development will be destroyed or the Corps will be forced to protect it through projects with major environment impacts.

a. The Corps has stated that it cannot be relied upon to fight erosion in this area over the long term.

The Corps specifically warned the City not to rely upon the Corps to protect the Links project site, or even to continue with its beach nourishment program. The Corps' Links comments stated:

> With the exception of periodic beach nourishment directly fronting Point Chehalis revetment extension in the vicinity of the proposed budget and luxury hotels, ***the Seattle District Corps of Engineers has no plans or authority to place dredged sand to maintain the existing South Beach or Half Moon Bay shorelines. The South Beach shoreline immediately south of the South Jetty, and the unprotected Half Moon Bay shoreline … continue to erode."***

Corps DEIS Comments (emphasis added). **Ex. 1, 2.**

The Corps warned that "***The flood hazard analysis for the portion of the project that is adjacent to the South Beach should assume that the shoreline will continue to erode, eliminating the flood protection that is currently provided by the primary dune***." Moreover, the Corps cautioned that even the resort buildings would be flooded, since adjacent properties have experienced "severe overtopping that has resulted in extensive backshore flooding and damage." The Corps stated that the FEIS' prediction of relative stability on the shore was "incorrect:"

> ***Studies carried out by the Corps of Engineers (1967, 1991, 1997) indicate that the retreat of the South Beach shoreline is a long term phenomenon and likely to continue.*** The erosion analysis should consider that the recession of the South Beach shoreline probably will continue past the year 2020 and result in a reopening of the breach adjacent to the South Jetty. **Ex. 1, 2.**

Ecology agreed that "There is no guarantee that the Corps of Engineers will continue to dredge Grays Harbor and this activity is one over which the applicant has no control." **Ex. 7.** The Corps has stated it has no authority to stabilize the shoreline in this area. **Ex. 129, 130.**

b. Permitting development directly behind the eroding shoreline will likely force the Corps to try to maintain the Half Moon Bay and South Beach shorelines for the next century.

If the Applicant is allowed to build a multi-million dollar development within the erosion zone, there will be immediate and loud cries to protect it from the inevitable erosion threat. This will add critical momentum to the Jetty Extension project or an alternative coastal armoring proposal.[12] ***See*** **Exs. 112-117.** At the very least, increasingly expensive annual beach nourishment would be required. All of these options would create significant environmental impacts.

Significant aquatic and recreation resources would be jeopardized by long-term erosion control. With over 536,000 visitors annually, Westhaven State Park on Half Moon Bay is one of the most popular coastal access points in the State. Grunbaum Dec. ¶ 3, **Ex. 30**. It is the closest point of coastal access from Seattle. The Half Moon Bay shoreline is used for walking, surfing, kayaking, swimming, and other beach activities. *Id.*

In addition to this important human activity resource, Half Moon Bay also provides habitat for a variety of fish species, including smelt, Pacific herring, starry flounder, shiner perch, sand lance, northern anchovy, Pacific sanddab, lingcod, redtail surfperch, sand sole, threespine stickleback, and Pacific staghorn sculpin. 2003 EA, p. 12. Salmonids, including chinook, coho, and chum salmon

[12] For example, Westport's consultants PIE have proposed rock revetment running parallel to the shoreline along the South Beach to protect the Links site from erosion. In 1998, the same year the PIE Draft Report predicted shoreline stability, PIE also recommended to construct a new "set-back dune at *future stable location* of South Beach shoreline." PIE predicted the "future stable location of the South Beach shoreline" to be directly where the condominiums are now proposed.

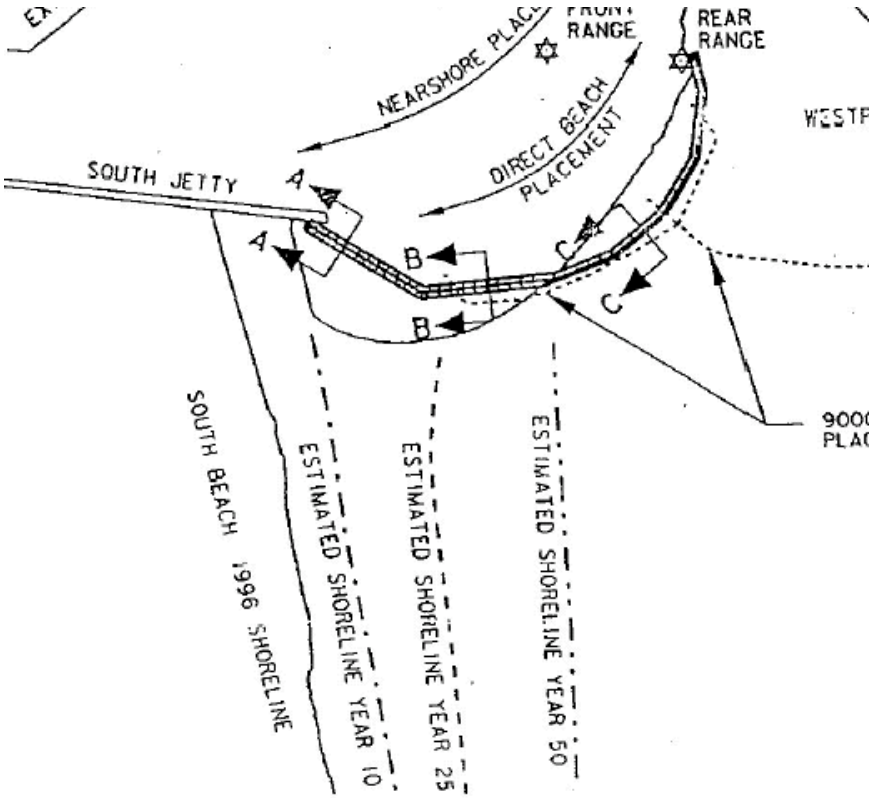
along with steelhead, bull trout, and cutthroat trout, also utilize Half Moon Bay and for some Half Moon Bay is designated as Essential Fish Habitat. 2003 EA, p. 15. The commercially important Dungeness crab is found in Half Moon Bay. *Id.* Grays Harbor including the Half Moon Bay shoreline is also a major shorebird staging area, and a critical part of the shorebird migration. *Id.*

The Washington State Department of Fish and Wildlife has found that "During their spring migration, juvenile salmonids utilize the intertidal and shallow subtidal areas of Half Moon Bay for rearing and escape from predators." January 12, 1995 letter to Corp. Negative changes to rearing habitat in Half Moon Bay could "result in a marked cumulative decrease in salmonid survival in Grays Harbor. Salmonids impacted would include wild coastal Coho," *Id.*, which is a candidate for listing under the Federal Endangered Species Act. 60 FR 38011-38030.

i. Permitting the Links Project would lend momentum to existing proposals to armor the entire Half Moon Bay shoreline, causing significant environmental impacts.

In 1998, the Corps concluded a study of long-term options for dealing with erosion in the vicinity of the South Jetty. The Corps advocated for a solution that would connect the South Jetty to the City of Westport though an extension of the South Jetty. The project would have placed a large rock structure -- similar to the South Jetty -- along the entire beach Half Moon Bay. Notably, under the preferred plan the Links site would be allowed to continue eroding on the South Beach. The beach was predicted to recede beyond the land now proposed for the Condominiums. **Exs. 112-117.**

Figure 11: Plan for protecting Half Moon Bay shoreline, including beach nourishment, still would destroy Links site.



Numerous resource agencies criticized this project because it would create significant environmental impacts. **Ex. 114.** Such a proposal would ultimately lead to the loss of the sloped portion of the beach, losing one of the most recreated coastal beaches in the state, and would destroy the habitat in Half Moon Bay. *Id.*

The Corps heeded the criticism and tabled the Jetty Extension project. The Corps constructed only the eastern portion of the project, known as the Point Chehalis Revetment Extension. However, they continued to call the Jetty Extension Phase 2 of the project. The final project was described as ***armoring the entire Half Moon Bay shoreline.***

By allowing development in the imminent path of erosion, the Corps will be permitting a situation that will lead either to the destruction of property or the armoring of the Half Moon Bay shoreline.

Armoring of the coast to protect the Links development would ultimately destroy the public beach as the beach eventually erodes up to the seawall. The result is the complete loss of the public beach. The public right of way and pathway directly seaward of the Links site illustrates this point. It will be the first thing to be destroyed by the anticipated continued erosion of the South Beach. In the past, when erosion threatened such public facilities, they were moved landward. This will be impossible if a private development is permitted directly behind the pathway. ***See Exs. 118-121.***

This inevitable impact is illustrated by the response to erosion taking place in Ocean Shores. Ocean Shores allowed a condominium complex to be built in the erosion zone. The response has been millions of dollars of public investment in erosion control. Also, several erosion control devices were placed in front of the condominiums and, as expected, they have significantly degraded the quality of the beach environment. **Ex. 121.** In 2004, when the Corps chose to use sand rather than rock to slow erosion in Half Moon Bay, the Corps admitted that coastal armoring in Half Moon Bay would cause significant impacts. **Ex. 93, 94.**

ii. Even long-term beach nourishment to maintain shoreline position would be increasingly expensive for the federal government and would cause significant environmental harm.

The Applicant has stated that the Corps can use annual beach nourishment to maintain the shoreline of South Beach and Half Moon Bay to protect the Links project. The Corps' study found that this was not feasible in the long run. Even if it were feasible, annual beach nourishment would have a significant environmental impact over the long term. The Corps and the scientific and regulatory community recognize the significant impact that can be caused by beach nourishment projects. Recent studies from the East Coast, where beach nourishment is more common, have found that after nourishment"…***the habitat value of the intertidal beach was lost to vertebrate consumers for at least the spring and summer, if not longer. … The sedimentological differences persisted long enough that there was no detectible recover between projects spaced a year apart.*** Impacts on benthic microfauna were dramatic and long lasting. … Consequently, ***this project resulted in reduction of habitat value of the intertidal beach for most surf fishes and shorebirds through reduced prey abundance and body size, a compound impact on production and trophic transfer.***"[13] Information on this topic should be found in the record for Wildlife Forever v. Colonel Lewis, No C03-5666 RBL (W.Dist.Wa). An

[13] *See e.g.,* Peterson and Manning, How beach nourishment affects the habitat value of intertidal beach prey for surf fish and shorebirds and why uncertainty still exists. Plaintiffs' submission in Wildlife Forever v. Colonel Lewis is hereby incorporated by reference.

open letter from 70 Ph.D. scientists asked for higher environmental standards for beach nourishment projects, noting their environmental impacts and the lack of peer reviewed literature on such impacts.

The U.S. Fish and Wildlife Service has determined that beach nourishment projects impact both fish and birds through impacts to benthic populations. "Surf-zone, nearshore and offshore fish are lethally and sub-lethally impacted by beach nourishment in the short-term and long-term." The Study found that beach nourishment created turbidity that inhibited feeding of some fish species. The Service also noted long term impacts to migratory, nesting and overwintering shorebirds that feed on intertidal invertebrates.

The Office of Ocean & Coastal Resources Management of the National Oceanographic and Atmospheric Administration has concurred that "A wide range of impacts are possible during the process of either mining offshore sand sources or depositing the sand on an erosional beach." These impacts include impacts to protected species and fish and wildlife resources and water quality.[14]

Similarly, the Environmental Protection Agency in areas more experienced with beach nourishment has expressed concern for cumulative impacts of beach nourishment."

The studies discussed above show that beach nourishment and impacts to benthic resources can translate into reduced habitat for surf fish and shorebirds. Both of these are critical resources in Half Moon Bay. The EA recognizes that salmonids, surf smelt, sand lance, and shorebirds utilize Half Moon Bay. The Corps' Nov. 2003 EA stated that sand lance or surf smelt spawning may occur within Half Moon Bay. 2003 EA at 18. No study on the impact of sand placement on these populations has been undertaken. The Corps admits that it cannot know the significance of the project's impact on birds, including the listed snowy plover. "*Since little data is available, the significance of these impacts is unknown.*" Nov. 2003 EA, at 19 (emphasis added.)

We do know that NOAA fisheries found that the proposed action may adversely affect the Essential Fish Habitat ("EFH") of numerous species, including the candidate species Coho salmon. November 6, 2003 letter.

The 2003 EA admitted that the Corps has not studied the impacts of Half Moon Bay erosion control projects on benthic invertebrates, which are at the base of the food chain. The EA also admits that it cannot know the significance of the project's impact on birds, including the listed snowy plover. "Indirect habitat effects will occur, with shorebirds such as plovers most likely to be affected due to loss of foraging habitat. Turnstones, which forage among cobble and rock, could benefit. *Since little data is available, the significance of these impacts is unknown.*" 2003 EA, p. 19 (emphasis added). The EA agreed with the comment "More information and/or analysis is needed on the presence and effects of the project on fish and wildlife, particularly forage fish, shorebird, and shellfish." 2003 EA, Response to Comment 21.

4. Building in the erosion zone will foreclose preferred options for addressing erosion

Currently, the Corps has many options available for dealing with erosion. **Ex. 122** (9/30/03 list of 14 alternatives). NOAA recommended that in order to minimize the impacts to fish species, the Corps should "consider taking no action and allow the area to erode naturally."

[14] Beach Nourishment, Potential Impacts of Nourishment Projects, NOAA Coastal Services Center.

One of the options currently being considered by the Corps is to allow nature to take its course. **Ex. 122-127.** The Corps is currently studying the ramifications of that option and others. **Ex. 128.**

Building in the erosion zone will make a no-action alternative politically difficult, if not impossible. All of the non-armoring options will result in continued recession of the South Beach and Half Moon Bay shoreline (destroying the Links site).

In 1999, the Governor's Coastal Erosion Task Force, of which Plaintiff Arthur Grunbaum was a member, made its recommendation on how to respond to erosion. The present project is contrary to the recommendations of the Governor's Task Force, which include the call for long-term analysis and the avoidance of hard solutions such as placement of rock on the beach. **Ex. 125.** As discussed below, our Coastal Zone Management Program also favors keeping development out of the path of erosion.

In considering whether to build directly behind the eroding shoreline, the Corps must consider how that project would impact its choice of alternatives to deal with erosion. The option of allowing erosion to continue would be foreclosed if the Corps allows the Applicant to build infrastructure only a few feet from the eroding shoreline. Allowing major development only a few feet from a rapidly eroding shoreline is contrary to the public interest and cannot be permitted.

5. The evidence and proceedings in Wildlife Forever v. Colonel Lewis, No. C03-5666 RBL (W.Dist.WA) and the 2004 Breach Fill Maintenance Project will confirm the threat to the project site

In considering the proposed project, the Corps should consider all available information on the erosion situation in Half Moon Bay and South Beach as well as on the Corps' previous actions within the past decade. These actions have been discussed in the Dec. 2003 EA and its accompanying cumulative impact analysis.[15]

Mr. Hiram Arden of the navigation section has compiled a record of the previous decisions on interim erosion control measures in Half Moon Bay. The documents in the record on those projects is hereby incorporated by reference. Please contact Mr. Arden to review the records on those projects and past and ongoing Corps investigations relating to erosion impacting the project site.

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[15] The Corps should also consider all scientific data it has developed and/or possesses on the erosion situation in Half Moon Bay. This includes the research and analysis prepared by the Corps' Coastal and Hydraulics Laboratory (CHL) and U.S. Army Engineer Research and Development Center (ERDC). For example, in a meeting held in Seattle on October 1, 2003, Dr. Nicolas C. Kraus of CHL made a presentation before the assembled group of a computer model of a breach at Half Moon Bay. Someone from the audience made the comment that if that were allowed it would jeopardize the navigational channel. Dr. Kraus counter with the statement "that's what we thought at first", but the model shows that this would not be the case. He commented that the navigational channel was too deep and well established. He stated that the breach channel would have little or no effect. This analysis and presentation should be made part of this record. This is also true of the work of Patrick Naher and other presenters at meetings relating to erosion in Half Moon Bay. Among the many documents that should be considered are the South Jetty Sediment Processes Study, April 2003, and South Beach Shoreline Change Analysis, prepared by the Southwestern Coastal Communities, August 2003. These are incorporated by reference.

We are submitting numerous documents that generally discuss the erosion situation in Half Moon Bay and the Links at Half Moon Bay project. Please make these documents part of the official record for this action.

SECTION 3
• THE CORPS SHOULD REQUIRE A FULL NEPA EIS. •

NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major federal actions significantly affecting the quality of the human environment," 42 U.S.C. § 4332(C), including situations where several separate actions may have a cumulatively significant impact on the environment. 50 C.F.R. § 1508.27(b)(7).[16]

The Council on Environmental Quality ("CEQ"), an agency within the Executive Office of the President, promulgated regulations implementing NEPA. *See* 40 C.F.R. §§ 1500-1508. If the environmental consequences of a proposed action are initially unclear, an agency can prepare an Environmental Assessment ("EA"). 40 C.F.R. § 1501.4. However, if the EA shows that the proposed action "may" result in a significant impact, the agency must prepare an EIS before proceeding with the action. *Id.* An EA must provide sufficient evidence and analysis to support the agency's determination whether a proposed action will significantly affect the environment. *Id.*

To determine whether a proposed action is "significant" and thus requires preparation of an EIS, the agency must consider several factors. The presence of any one of these factors should result in an agency decision to prepare an EIS. *LaFlamme v. FERC*, 852 F.2d 389, 398 (9th Cir. 1988). It must consider whether the action involves "ecologically critical areas," 40 C.F.R. at § 1508.27(b)(3); "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," *id.* at § 1508.27(b)(4); "[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks," *id.* at § 1508.27(b)(5); "[t]he degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration," *id.* at § 1508.27(b)(6); "the degree to which the action is related to other actions with . . . cumulatively significant impacts," *id.* at § 1508.27(b)(7); "[t]he degree to which the action may adversely affect an endangered or threatened species," id. at § 1508.27(b)(9); and whether "the action threatens a violation of Federal . . . law or requirements imposed for the protection of the environment." *Id.* at § 1508.27(b)(10) (emphasis added).

NEPA requires that agencies undertake a cumulative impacts analysis when determining whether an EIS is required. *Sierra Club v. U.S. Forest Service*, 843 F.2d 1190, 1194 (9th Cir. 1988).

If an agency decides not to prepare an EIS, it must prepare a finding of no significant impact ("FONSI"), which explains the agency's reasons for its decision. 40 C.F.R. § 1508.13. NEPA further provides that agencies "shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E).

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[16] This statement, known as an Environmental Impact Statement ("EIS"), must describe (1) the "environmental impact of the proposed action," (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented," (3) alternatives to the proposed action, (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," and (5) any "irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332.

A. THE SEPA PROCESS WAS FLAWED AND LACKED GUARANTEES OF RELIABILITY.

Although the Applicant has prepared a DEIS and FEIS under SEPA, that process cannot be relied upon for the Corps' present decision making for the reasons discussed in this section.

1. The Corps criticized the DEIS and FEIS for incorrectly analyzing the erosion threat.

The Corps in particular criticized the EIS's treatment of erosion because it looked only at the question of whether the development would cause erosion. The Corps submitted comment letters on both the DEIS and the FEIS. In its DEIS comments the Corps stated that "***[W]e strongly recommend a reconsideration of coastal erosion and backshore flooding and the realities of their prevention and mitigation potential."*** **Ex. 1.**

Rather than following the Corps' recommendation, the Applicant stated in the FEIS that analysis of the potential erosion on the project is not appropriate in the EIS. The Corps strongly criticized this conclusion.

> [T]he point of our and other's comments in this regard is that the "impact of the environment on the project" (say a tsunami) could result in very notable secondary and tertiary project effects on physical, socioeconomic and biological environments which would not occur with the area undeveloped. ***The project puts these environments in harm's way. Thus, the question is not so much what risks the applicant is willing to incur, but the potential costs to the public ad public resources in his having done so. These issues, of course, <u>are</u> the point of the NEPA and SEPA process.***

Comment letter of Mark Ziminske, April 2001 (emphasis added). **Ex. 2.** The Applicant has never completed this analysis.

2. Every resource agency criticized the SEPA documents as inadequate.

We have attached comment letters from the Department of Ecology, Washington State Department of Fish and Wildlife, the Washington State Department of Health, and the Washington State Parks Department. **Ex. 1- 9.** Each agency criticized the SEPA documents as being inadequate. However, the Applicant never improved the document or issued a Supplemental EIS. Instead, the Applicant later issued a "SEPA Addendum" a process that is supposed to be used only for insignificant changes or new information since it provides no opportunity for public or agency comment. *See* WAC 197-11-600(3).

3. Significant erosion occurred after the FEIS was issued.

The Applicant's DEIS and FEIS discounted the risk of continued erosion, despite the contrary opinion of all resource agencies. After the FEIS was issued, the Applicant's position became untenable. The Half Moon Bay shoreline significantly eroded every winter since the FEIS was issued. On an annual basis, the City of Westport has declared an erosion emergency and the Corps has taken "interim" measures to stabilize the shoreline. The Corps' 2003 and 2004 EA's and the submittals from the City of Westport in *Wildlife Forever v. Colonel Lewis*, No. C03-5666 RBL

(W.Dist.WA) conclusively show this. In addition, photos of the erosion have been submitted on a disk accompanying this submittal.

4. Significant changes were made to the project after the FEIS was completed.

The public and agencies only were given an opportunity to comment on the proposal as described in the DEIS. The comments were included and responded to in the FEIS. After the public process was completed, the Applicant made major changes to the project. **Ex. 68.** In addition, the new erosion emergencies constituted a significant change in circumstances.

- **Condominium buildings adjacent to the State Park have increased from 10 units to 50 units, and increased in height.** We have submitted a graphic that shows that the condominiums have dramatically increased in size since the EIS was completed. **Ex. 69.** Revisions to the project have increased the size on the condominium-buildings from 10 units to 50 units, and increased the height from 60 feet to 65 feet. The condominiums were also concentrated in the northwest portion of the site, where erosion is the greatest threat.

- **The luxury hotel and resort, directly adjacent to the shoreline, increased in height from 72 feet to 84 feet.** This increase in height will block more views, increase the project's dominance over the public shoreline, and further destroy the aesthetic of the State Park.

- **The proposal no longer contains the stormwater system that was the central component of the water quality mitigation, and stormwater is now directed to the Estuary.** As discussed, the SEPA documents relied upon a stormwater system for water quality protection. This feature was removed after the SEPA process was completed. *See Washington Toxics Coalition Study.* **Ex. 68.** Also, subsequent to the SEPA process the Applicant changed the routing of stormwater runoff from the ocean to the Estuary.

- **New construction was proposed in the erosion zone, including an expanded Jetty Access Road and a major utility corridor.** After the SEPA process was completed, the Applicant proposed a major reconstruction of Jetty Access Road. This road is only a few feet from the erosion emergency experienced last winter. In addition, the Applicant proposes to place a new utility corridor directly underneath this road and a stormwater system only a 77 feet from the eroding shoreline. *See Baldwin Declaration.*

- **Four shelters and restrooms have been added.** For the first time, the revised plan proposes four shelters on the golf course. Two of these shelters are equipped with restroom facilities. *Id.* These structures were not disclosed in the DEIS.

- **A practice range requiring 2.55 acres of wetland fill is now proposed.** The original project proposed an "aqua range" creating a water amenity not requiring any wetland fill. Now, the revised project proposes a practice range requiring filling of 111,336 square feet of wetlands -- 2.55 acres.

- **The applicant admitted over 31 acres of buffer impacts.** The applicant jealously guarded information about buffer impacts throughout the SEPA process. After the FEIS was issued, the Applicant admitted that there would be significant buffer impacts.

- **Mitigation was moved offsite.** Throughout the FEIS, the applicant insisted that all mitigation of wetland impacts would be done on site.[17] Now, the applicant proposes to do wetland mitigation off-site, including at Firecracker Point, a Port property designated as a snowy plover recovery site. Under the WSMP, WMC 17.32.080, information on off site mitigation was required with the application and was to be part of the local permitting process.

B. THE PROJECT WILL HAVE SIGNIFICANT IMPACTS ON CRITICAL AREAS.

We trust that these comments demonstrate that the project may have significant environmental impacts with regard to a host of issues, including wetlands, water quality, fish and bird habitat, public recreation, and drinking water. A NEPA EIS is required to evaluate these impacts to critical areas. 40 C.F.R. at § 1508.27(b)(3). The impact to threatened species is a further consideration. *Id.* at § 1508.27(b)(9).

C. THE PROJECT MUST BE EVALUATED WITH POTENTIAL EROSION CONTROL EFFORTS.

A NEPA EIS is necessary because permitting the Links project would likely force the Corps to maintain the Half Moon Bay and South Beach shoreline for the life of the project. Thus, the decision may "may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration." *Id.* at § 1508.27(b)(6).

The Corps currently considers a "no action" alternative to be a viable long-term option for dealing with erosion in Half Moon Bay. **Ex. 122-127.** An EIS must be conducted before foreclosing the "no action" alternative, given the major environmental impacts of maintaining the shoreline in the long term. The Corps has promised that its "long-term planning effort" to determine how to deal with erosion would involve interested parties, undergo peer review, and evaluate the basic dynamics of erosion in Half Moon Bay. 2003 EA. [18] The Corps has ongoing studies on the erosion issue and potential alternatives. **Ex. 128.** The Links decision cannot be approved before this "long term planning effort" and associated NEPA process are completed.

D. THE PROJECT'S EFFECTS ARE HIGHLY CONTROVERSIAL AND UNCERTAIN.

An EIS should be prepared because the effects on the quality of the human environment are highly controversial, 40 C.F.R. at § 1508.27(b)(4); and the possible effects on the human environment are highly uncertain or involve unique or unknown risks." *Id.* at § 1508.27(b)(5). This project is a subject of significant statewide controversy.

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[17] FEIS ("All mitigation for impacts to on-site wetlands are expected to be mitigated within the boundaries of the site, which is the preferred strategy of the Corps."); ("Mitigation for all impacts to wetlands will be mitigated through measures limited to areas within the site boundaries. Off-site mitigation will not likely occur, as it is not part of the mitigation strategy outlined in the conceptual mitigation plan.")

[18] The 2003 EA acknowledges that "For the past ten years individual projects in the Grays Harbor region have been evaluated in short-term, individual environmental assessments. There has been no cumulative impact study of past, present, and future planned projects in the Grays Harbor area, including Half Moon Bay." 2003 EA, at i. To a concern that "this piecemeal approach resulted in cumulatively significant effects that have not been evaluated in a NEPA EIS," the Corps responded "We have the same concerns regarding the cumulative impacts of Corps projects in an around Half Moon Bay, and agree that over the past 10 years NEPA evaluations have been conducted individually, not considering cumulative impacts." 2003 EA, Response to Comment 19. The Corps stated "that over the past several years Seattle District has responded to erosion in a crisis-management mode." 2003 EA, Response to Comment 25-27.

We have submitted copies of the comment letters submitted in opposition to this project. **Ex. 70-86.** Major environmental groups and countless citizens have recognized the problems with this project. Litigation has been ongoing for several years in Thurston County Superior Court and before Washington's Environmental Hearings Boards.

There are major scientific controversies ranging on a number of topics. Most importantly, there is a decade-long controversy of the speed of erosion in the area and appropriate ways of dealing with it. The Applicant and the City have repeatedly changed their minds on these topics, disagreeing with the Corps' projection of continued erosion only when it fits their purposes. For example, during the winters when the City wants the Corps to protect the beach erosion is deemed an emergency. The Applicant times all permit applications to be considered during the summer, at which time the Applicant and the City claim that erosion is under control. The Corps' correspondence on the Links' SEPA process and documents submitted with these comments repeatedly show this dynamic.

In addition, there is a major controversy over whether a golf course can be built in an open water wetland, without any stormwater system without impacting water quality. There is no precedent for golf course without stormwater controls, or that's built in such a fragile environment. The declaration of Washington Toxics Coalition describes the uncertainty as to water quality impacts.

E. THE PROPOSAL WILL LIKELY VIOLATE FEDERAL ENVIRONMENTAL LAWS.

As discussed in other sections of this submittal and in the accompanying 401 comments, the project threatens a violation of Federal law and other requirements imposed for the protection of the environment." 40 C.F.R. at § 1508.27(b)(10). Specifically, the project violates the Clean Water Act, the Coastal Zone Management Act, and the National. Environmental Policy Act.

F. ADDITIONAL TECHNICAL INFORMATION IS NECESSARY TO DETERMINE IMPACTS.

A scoping process is necessary to determine the appropriate issues to be evaluated in a NEPA EIS. At a minimum, the Corps needs to develop the following information on to evaluate the project:

- Hydrologic study and modeling of current and proposed hydrologic systems including runoff and infiltration.

- A regional dune study should be required to determine the scarcity of dune ecosystems and interdunal wetlands. It is likely that these resources are even scarcer than when the last study was completed in 1975.

- A delineation of on and off-site wetlands should be required by a reliable third party.

- The Corps' study of long-term erosion trends and management alternatives should be completed before taking action that could foreclose important alternatives.

- A study of interdunal wetland functions and values should be conducted.

SECTION 4
•THE PROPOSAL FAILS TO COMPLY WITH THE COASTAL ZONE MANAGEMENT ACT•

The first policy of the Coastal Zone Management Act (CZMA) states "It is the national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." The Links project runs completely counter to this policy.

A. THE PROJECT SITE IS SPECIALLY PROTECTED UNDER THE CZMA.

The CZMA document recognizes numerous coastal areas of special concern and which deserve special protection. The project site falls into many of these categories:

- **Grays Harbor** is an "Area of Particular Concern." Managing Washington's Coast, Washington's Coastal Zone Management Program, Publication 00-06-029, ("CZMA Document") at 47. It echoes this brief in discussing the importance of the estuary to fish and wildlife and its critical importance to migratory birds.

- The CZMA Document also recognizes the importance of **Pacific Ocean Dune Areas**, noting that the dune are in Grays Harbor and Pacific Counties is one of the most attractive features in the state, drawing many visitors to its beaches and sport fishing areas." CZMA Document, at 49.

- **State Parks** are recognized for their scarcity and importance for active and passive recreation. Ironically, **a picture of the project site is shown at this section of the CZMA document.**

The CZMA Document lists several human activities and impacts to Washington's coastal zone, including the following:

- **Development** is noted as a major cause of shoreline degradation.

- **Shoreline modification and armoring** is recognized as destroying habitat and recreational opportunities. "[I]n the long term, armoring may increase erosion of the adjacent beach, exacerbating the original problem. … Armoring is linked to a number of physical changes in shore processes that eventually result in a reduction in beach height and width. … When the effects finally become noticeable, it can be difficult or impossible to repair the damage to the beach.

- **Land Conversion** is recognized as contributing to the loss of forest lands.

Id. at 69 *et seq.*

Finally, the CZMA Document addresses erosion on Washington's Southwest Pacific Coast. It notes that this coastline has turned from an accretion phase to an erosion phase and warns:

> ***The area where the Pacific Ocean meets the land is dynamic and ever changing. Beach erosion and lateral sand shifts are natural processes in response to natural***

> ***conditions. Changes in sand deposits are not a problem until parking lots, streets, utilities, and buildings are constructed next to beaches.*** For example, in Ocean Shores during the 1960's, the newly accreted land was quickly developed for residential and resort purposes. Ever since, this land has been laced with roads and houses, essentially denuding the sand dunes of their protective cover, making them more susceptible to erosion and reducing the area of usable habitat for other species.

CZMA Document, at 88 (emphasis added).

B. THE PROJECT IS CONTRARY TO THE STATE'S SECTION 309 PROGRAM OBJECTIVES.

The following §309 program objectives are violated by the project:

- **Public access.** The project has the potential to reduce the quantity and quality of public access to the shoreline, even though the CZMA program has determined that "The relative amount and quality of public [coastal] access in Washington is not keeping pace with population growth or desire of some user groups." Washington Coastal Zone Management Program, Section 309 Assessment and Strategy, 2001 Final Report (2001 CZM309). The project jeopardizes the most used coastal access in the State.

- **Coastal hazards.** Section 309 Programmatic Objectives include the follows:

1. Direct future public and private development and redevelopment away from hazardous areas …

2. Preserve and restore the protective functions of natural shoreline features such as beaches, dunes, and wetlands.

2001 CZM309, at 12. The 309 Study recognized the harmful impacts of protecting the shoreline from coastal hazards. *Id*. It concluded:

> Coastal hazards, along with issues associated with the environmental consequences of hazard mitigation, remain the most pertinent issue affecting the long-term development of Washington's shoreline. This assessment area is inextricably linked to the issue of secondary and cumulative impacts of growth, because it relates to both the direct modification to the shoreline and the proximity to the shore at which development occurs.

Id. at 20. This issue was given a high priority in the 309 study. *Id*.

- **Wetlands.** The project is contrary to the CZMA protections for wetlands, which includes protecting and preserving existing levels of wetlands, as measured by acreage and function. The CZMA relies in part on the requirement that local government adopt critical areas ordinances to protect wetlands. The City of Westport is over 10 years late in adopting a critical area ordinance under the Growth Management Act. Between 1997 and 2001, protection of wetlands was elevated from a "low" to a "high" priority under the 309 program.

C. THE PROJECT VIOLATES THE SMA AND SMMP.

Several organizations have appealed shorelines permits granted to the project and those appeals and others are currently pending before the Environmental Hearings Office.

These comments have identified numerous areas in which the project is inconsistent with enforceable components of the State's Coastal Zone Management Program. These include the following:

- **Recent erosion has brought the receding shoreline to within 200 feet of the proposed condominiums and other improvements, violating setback requirements.** The Westport Shoreline Master Program requires 200 feet between the top of the dunes (marram grass line) and any proposed structures. Significant erosion has brought the shoreline to well within 200 feet of proposed structures. *See Baldwin Declaration, Cooke Declaration.*

- **The local Master Program prohibits the wetland fill and allows only low-density development in accreted oceanfront land.** The Shoreline Master Program does not allow fill in the accreted oceanfront lands. The Applicant's experts have admitted that the golf course is proposed on accreted oceanfront land. **Ex. 88.** Wetland fill is prohibited. In addition, the Master Program allows only "low density" development in the dune areas. **Ex. 87.** The condominium complex, in contrast, will be by far the highest density development in the City of Westport.

- **Wetland regulations are violated.** As discussed above, the Applicant violates numerous regulations relating to wetland buffers and mitigation. In addition, wetland fill is not allowed in the urban environmental zone except where necessary for public use needs. The Applicant and the City agreed that the golf course qualified as a public use and therefore no wetland or buffer restrictions applied, whatsoever. **Ex. 34.** This interpretation is absurd and certainly should be overturned on appeal. As discussed, there is no need that could justify 56+ acres of wetland and buffer impacts and there exists opportunities to reduce impacts.

- **The project is inconsistent with the Shoreline Management Act.** The Shorelines Management Act does not allow precious aquatic resources of obvious statewide importance to be sacrificed for a non-water dependent use.

- **The project is inconsistent with the Growth Management Act.** The Growth Management Act required the City of Westport to adopt a Critical Areas Ordinance protecting wetlands by March 1, 1992. RCW 36.70A.060(2). The City of Westport has never adopted a CAO protecting wetlands. A few years past, the City submitted a draft CAO to the Department of Ecology. It was rejected in part because Ecology disagreed that golf courses should be allowed in wetland buffers. It also rejected the City's attempts to water down fill and buffer restrictions. Rather than revise the CAO, the City has attempted to squeeze this project through the void. This is contrary to the Legislature's mandate to protect critical areas including wetlands. *See Letter from 1000 Friends of Washington.*

SECTION 5
•PUBLIC NOTICE WAS INADEQUATE•.

The public notice suffered from major errors. First, the public notice incorrectly stated that the project would cause 13.9 acres of buffer impacts. The Applicant actually proposes over 31 acres of buffer impacts. Second, the public notice states that 14.63 acres of wetland will be impacted by "vegetation clearing," but fails to state that these wetlands will be permanently cleared of vegetation, thereby preventing the succession of vegetation that is critical to the dunal environment. Third, the public notice fails to acknowledge that Coho salmon, a candidate species under the Endangered

Species Act, have been found in the wetlands on the project site. Fourth, the public notice includes an incorrect delineation of the marram grass line, and therefore exaggerates the distance between the eroding shoreline and the proposed buildings. *See Declaration of Sarah Cooke.* Finally, the section of mitigation discusses "preservation" of certain areas, falsely suggesting that these areas are in jeopardy of being developed.

SECTION 6
•CONCLUSION•

For the reasons stated in this submittal and in the accompanying declarations, evidence, and Studies, the organizations submitting this letter request that the Corps deny the permit application. Alternatively, a full EIS should be prepared under the Corps NEPA authority.

Attachment 1: 401 Comments

SMITH & LOWNEY, P.L.L.C.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883, fax (206) 860-4187

July 15, 2004

Federal Permit Coordinator
Department of Ecology
SEA Program
Post Office Box 47600
Olympia, WA 98504-7600

Subject: Comment on Water Quality Certification
Coastal Zone Management Program Consistency
Links at Half Moon Bay
Corps Public Notice 200301009

This comment letter is to be read in conjunction with the accompanying comments on the Section 404 permit, the National Environmental Policies Act, and the Coastal Zone Management Act ("Coalition 404 Comments"). This comment letter is submitted on behalf of the organizations contributing to the Coalition 404 Comments and their members, many of who reside work, and recreate in and around the proposed development site.

Over the past several years, these organizations have worked to bring attention to and solve the environmental problems related to the proposed development of the Links project on one of the largest undeveloped, interdunal wetland systems in the Pacific Northwest. It is our opinion that the Department cannot issue a § 401 certification for the reasons discussed below and in the accompanying comments. We ask the Department of Ecology to deny the 401 Certification and the CZMA Consistency Determination.

The Coalition 404 Comments are hereby incorporated by reference. In addition, we incorporate by reference the report submitted by Washington Toxics Coalition on the project, which finds that the project will likely have unacceptable impacts on water quality. We also incorporate the Declarations of Sarah Cooke, Tim Cullinan, Richard Hardy, and others who submitted comments on the topic of water quality.

I. PROJECT BACKGROUND

The project is described in the applicant's Joint Aquatic Resources Permit Application ("JARPA") and revised JARPA, as well as in the Coalition 404 Comments. .

II. STANDARD

Water quality standards are the foundation of the water quality-based control program mandated by the Clean Water Act. A § 401 certification means that the State has reasonable assurance that there will be compliance with water quality laws. *See* 33 U.S.C. § 1341(a);

Airport Communities Coalition v. State of Washington, PCHB No. 01-160 *142 (Aug. 12, 2002). A § 401 certification is based upon both federal and state water quality laws. *See* 33 U.S.C. § 1341. The Clean Water Act and Washington's regulations and water quality standards require the Department to evaluate the cumulative effect from past, present, and reasonably foreseeable human activities in causing pollution.

The § 401 certification is a one-time opportunity for the State to assure water quality standards. Id. at *20. Thus, to obtain § 401 certification, the applicant bears the heavy burden of showing sufficient evidence to support the certification and persuade the Department that certification is appropriate in light of the facts. *See id*. at *134.

Here, the applicant has failed to carry either the production or persuasion burdens. The proposed project does not conform to the Federal Clean Water Act, Washington's water quality standards, or Washington's rules. The Department of Ecology is strongly urged to deny certification. We invite you to review our submission to the Army Corps of Engineers including exhibits.

III. DISCUSSION

A. The Proposed Project Violates the Federal Clean Water Act

The applicant must show that all Clean Water Act standards will be met before the Department may issue this certification. *See* 33 U.S.C. § 1341. Citizens have raised significant issues regarding the applicant's ability to meet CWA standards under § 404. *See* Coalition 404 Comments, Comment Letter of Washington Toxics Coalition. Because the Department cannot certify that there is a reasonable assurance that actions related to § 404 certification meet applicable water quality standards, it should not issue this certification.

In addition, under Section 401 of the CWA, the applicant must demonstrate compliance with "Sections 301, 302, 303, 306 and 307 of the Clean Water Act," which relate to both effluent standards for discrete discharges and state-created water quality standards for receiving waters. Under Section 402(p) of the CWA, as interpreted by the United States Environmental Protection Agency (*see* 40 C.F.R. § 122.26) and the Washington Department of Ecology, discharges of stormwater from the proposed facility to Grays Harbor Estuary must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

The applicant has not obtained coverage for these stormwater discharges under any general permit issued by Ecology or any other NPDES permit, these discharges are illegal under Section 301(a) of the CWA. *See also*, 40 C.F.R. § 122.44(d)(1)(requiring NPDES permits to contain limits necessary to protect water quality standards). Here, there would be significant discharges to waters during construction and on an ongoing basis after the project is built. While many of these discharges are non-point, the applicant proposes numerous point source discharges as well.

Notably, the primary means for achieving water quality standards for stormwater discharges is through implementing site-specific Best Management Practices ("BMPs"). *See id*. For golf courses, BMPs include stormwater treatment for heavily managed areas including tees and greens. The Applicant admits that this will be the first modern golf course built without such a stormwater system.

Because the applicant has taken none of the required measures with regard to stormwater discharge or stormwater management as required by the Clean Water Act, the Department cannot have any reasonable assurance that there is compliance with water quality laws and should not grant § 401 certification.

B. The Proposed Project Violates Washington Water Quality Standards for Surface Water.

States are required to establish water quality standards that meet the goals of the CWA. *See* 40 C.F.R. § 131. Washington State law prohibits approval of activities that will cause or contribute to both short and long term violations of water quality standards. More specifically, in Washington, numeric and narrative water quality criteria, designated uses, and an anti–degradation policy, protect all surface waters. S*ee* RCW 90.54.020(3), WAC 173-201A-010(1)(a). The numeric criteria are specific to waterbody class and include fecal coliform organisms, dissolved oxygen, total dissolved gas, temperature, pH, and turbidity. *See* WAC 173-201A-040. Narrative criteria are particularly important for wetlands since many wetland impacts cannot be fully addressed by numeric criteria.

Here, because the applicant's proposal will detrimentally impact water quality in violation of beneficial use and anti-degradation regulations, the Department should not issue § 401 certification.

1. Project Violates Characteristic and Beneficial Use Regulations:

Water quality protection for wetlands, or any waterbody, extends protection to all beneficial uses of a waterbody. *See* RCW 90.48.020, WAC 173-201A-070 (antidegradation policy prohibits any degradation of existing beneficial uses of waters of the state). "Beneficial uses" has a broad meaning and incorporates any attribute of a waterbody that contributes to the economic, social, or natural environment. For wetlands, functions and values are roughly equivalent to its beneficial uses. Applying the water quality standards for wetland protection requires that beneficial uses be properly identified and protected.

The impacted wetlands are part of a larger interdunal wetland network extending south along the Pacific Ocean and dominating Westport Light State Park directly south of the site. The applicant's wetland delineation and characterization report classified the impacted wetlands as category II under Ecology's rating system, which is defined as:

(i) Documented habitat recognized by federal and state agencies for sensitive plant, animal, or fish species; or

(ii) Documented priority habitats and species recognized by state agencies; or

(iii) Wetlands with significant functions which may not be adequately replicated through creation or restoration; or

(iv) Wetlands with significant habitat value; or

(v) Documented wetlands of local significance.

WAC 173-183-710(1)(b).

The site plan plainly demonstrates that 13 of the 18 golf holes and the practice range require wetland fill or wetland excavation. In addition, certain wetlands will be permanently pruned, preventing the normal development of plant communities. Combined, the applicant acknowledges the following wetland impacts:

- Wetland filling impacts = 9.96 acres
- Wetland pruning impacts = 14.63 acres
- Wetland excavation impacts = 0.23 acres
- Wetland buffer impacts = 31.27

Total wetland/buffer impacts = 56.09 acres

The characteristic uses of the wetlands here are detrimentally impacted by the proposed development. *See* Coalition 404 Comments.

Water quality standards extend beyond those designated characteristic uses and include all beneficial uses. The wetlands' beneficial uses for water supply, stock watering, fish/shellfish, wildlife, recreation, commerce/navigation, aesthetics, groundwater exchange, stormwater attenuation, and shoreline stabilization will be detrimentally impacted by the proposed development.

Water quality standards, including both characteristic and beneficial uses, for Grays Harbor Estuary are also detrimentally impacted by the proposed development.

2. Project Violates Washington's Anti–Degradation Regulations:

The proposed project cannot meet anti–degradation standards. *See* WAC 173-201A-070.[19] Washington's anti–degradation policies include provisions for full protection of existing uses (functional), maintenance of water quality of high-quality waters, a prohibition against lowering water quality in outstanding resource waters and utilization of AKART, and the directive to protect and maintain beneficial and characteristic uses (such as fish, shellfish, wildlife habitat, recreation) as required by state water quality standards. In addition, Washington's anti–degradation policy addresses fill activities in wetlands by ensuring no significant degradation occurs as a result of the fill activity. *See* WAC 173-201A-070. As the Department of Ecology's has explained, compliance with the anti-degradation requirements is paramount:

The primary means for protecting water quality in wetlands is through implementing the antidegradation section of the water quality standards. The antidegredation policy in the water quality standards establishes the bottom line for water quality protection in Washington's waters. Existing beneficial uses shall be maintained and protected and no further degradation, which would interfere with or become injurious to existing beneficial uses shall be allowed.

DOE, *Water Quality Guidelines for Wetlands* (April 1996). Because the applicant's proposal fails to meet anti-degradation requirements with regard to the wetlands and Grays Harbor Estuary, the Department must not issue § 401 certification.

A. Wetlands

[19] RCW 90.48 RCW and 40 CFR § 131.12 guide the anti–degradation policy.

In the context of wetlands, the anti-degradation policy mandates that impacts be avoided, minimized, and compensated. *See* WAC 173-201A-070. Here, the proposed wetland mitigation is wholly deficient. *See* Coalition 404 Comments. In addition, the proposed development will cause various detrimental impacts and irreparable harm to the wetlands including to plants, wildlife, coastal resources, and the entire ecosystem.

B. Grays Harbor Estuary

Grays Harbor Estuary already violates water quality standards for fecal coliform. *See* Washington State Department of Ecology 303(d) list (2002). It is also impacted by eutrophication, a problem that is expected to get worse in the next decade. According to the Department of Health, an area at the mouth of Grays Harbor is closed to shellfish harvesting and that area could increase in size. The Links project will exacerbate existing violations of water quality standards including but not limited to those violations set out in Washington's 303(d)(1) list of water quality limited waters.

Both federal and state law require the development of a Total Maximum Daily Load (TMDL) to control activities and reduce pollution to water quality limited streams in order to restore the waterbody to water quality standards. CWA §303(d)(1)(C)&(D). This water quality certification should not be granted without the completion of the TMDL Study.

C. The Proposed Project Violates Washington Water Quality Standards for Ground Water Quality Standards

WAC 173-200 applies to all ground water in Washington. The goal of this chapter is to maintain the highest quality of the state's ground waters and protect existing and future beneficial uses of the ground water through the reduction or elimination of the discharge of contaminants to the state's ground waters. The provisions in the groundwater chapter specifically include the requirement to use Best Management Practices. In addition, the anti–degradation policy, discussed above, applies to groundwater. *See* WAC 173-200-030.

The proposed site has a very shallow ground water table, with groundwater levels near or at the surface during large parts of the year. The wetland that is impacted by the project extends directly over the City Wellhead Protection Zone. The Department of Ecology's Dune Study recognized that interdunal wetlands easily transmit pollutants. Here, the Applicant has not even mapped the open water components of the wetlands system or modeled existing or proposed hydrologic conditions. Because groundwater contamination from pesticides and fertilizers is a significant concern, the Department must not issue § 401 certification.

D. Other State Permits

The applicant is not in compliance with local permit requirements including those related to the State Environmental Protection Act ("SEPA") and the Coastal Zone Management Program. All activities that the Applicant plans to undertake which are reasonably related to the same project must be included in the same project application. *See* 33 C.F.R. § 325.1(2). Here, there are many outstanding issues related to various permits. Accordingly, the Department should not grant § 401 certification.

E. Insufficient Information to Certify the Links Project

The applicant has not provided the Department with sufficient information on which to make a determination that the proposed project will not cause a violation of water quality

standards that protect beneficial uses. Because there is insufficient information on which to evaluate the certification request, the Department should not grant § 401 certification.

F. Coastal Zone Management Act

See Coalition 404 Comments.

G. SEPA

The Department should require a Supplemental Environmental Impact Statement under the State Environmental Policies Act. The arguments on the inadequacy of the SEPA process are stated in the NEPA discussion in the Coalition 404 Comments. In particular, an SEIS is necessary to evaluate the proposal to eliminate the stormwater system from the golf course plan. The DEIS and FEIS relied upon this feature to protect water quality. This substantial change, as well as the others, cannot be included in an EIS Addendum.

H. Conclusion

We trust that the Department of Ecology will carefully consider our comments and its own concerns, as expressed in the comments submitted on the DEIS, in deciding the fate of these approvals. We should not gamble on this important natural treasure.

Sincerely,
SMITH & LOWNEY, P.L.L.C.

By _*KL*_____
Knoll D. Lowney