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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

Friends of Grays Harbor and Grays Harbor)
Audubon Society)
)
Plaintiffs,)
vs.)
)
State of Washington, including its agencies)
the Washington State Parks and Recreation)
Commission and Recreation and Conservation)
Office, Westport Golf Inc., City of Westport,)
J.D. Financial Corp, and Mox Chehalis LLC.)
)
Defendants.)
)
)
)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

This action seeks to establish that the State of Washington and its agencies are legally required to protect rare interdunal wetlands on Westport Light State Park, and that its efforts to fill wetlands to build a golf course in the Park are prohibited by covenants running with the land and state laws protecting parklands.

1 1.1 In the early 2000s, a private developer named Mox Chehalis LLC ("Mox Chehalis")
2 sought to build a golf course resort on one of the most unique and ecologically valuable pieces of
3 ocean-front public property in the state. Region 10 of the US Environmental Protection Agency
4 ("EPA") and the State Department of Ecology ("Ecology") both opposed the project due to impacts
5 to a rare interdunal wetlands system on the site.

6 1.2 Massive litigation challenging the project ensued for the next six years, spearheaded
7 by Friends of Grays Harbor ("FOGH") and the Washington Environmental Council.¹ The litigation
8 encompassed more than a half-dozen legal action and appeals – sometimes spanning from
9 environmental hearings boards to the court of appeals -- and embroiling local, state, and federal
10 agencies.

11 1.3 After more than six years of litigation, the parties engaged a retired judge to mediate
12 the case and, in April 2007, signed a comprehensive Global Settlement ("Global Settlement" or
13 "Settlement").

14 1.4 True and correct copies of the Global Settlement and its Appendices A and C are
15 attached hereto as Exhibits 1, 2, and 3.

16 1.5 The heart of the Global Settlement was *permanent protection of the interdunal*
17 *wetlands* on Mox Chehalis' project site (hereafter "Mox Chehalis property" or "site") by (1) agreeing
18 to modify the golf course project to be "zero wetland fill," (2) requiring the property owner to record
19 a covenant to permanently preserve interdunal wetlands on the site, and (3) prohibiting any clearing
20 or tree removal on preserved wetlands on the site. The Global Settlement expressly bound Mox

22 ¹ Washington Environmental Council has since changed its name to Washington Conservation
23 Action.

1 Chehalis, the City of Westport, and their successors and assigns, and was also signed by two state
2 agencies, the Washington State Department of Ecology and the Washington State Environmental &
3 Land Use Hearings Board.

4 1.6 After the Global Settlement fully took effect and became binding on the parties and
5 their successors, two events *strengthened protections* of the interdunal wetlands:

6 1.7 First, in April, 2008, the US Army Corps of Engineers ("Army Corps") required the
7 site's then owner, JD Financial Corp ("JD Financial"), to formalize and record a *second* wetland
8 protection covenant (hereafter "Army Corps Covenant"). The Army Corps required this covenant to
9 resolve allegations that Mox Chehalis had illegally filled wetlands while it owned the property. The
10 Army Corps Covenant is legally distinct from the Global Settlement and its covenant requirement --
11 although all were intended to protect the interdunal wetlands on the Mox Chehalis property.

12 1.8 A true and correct copy of the Army Corps Covenant is attached hereto as Exhibit 4.

13 1.9 Then, in 2015, the State of Washington ("State") purchased the site using a grant from
14 the Washington State Recreational and Conservation Office ("RCO"). A purpose of the acquisition
15 was to protect the interdunal wetlands from the golf course development, and to expand and connect
16 the state parks that were on three sides of the property. With the support of the public,
17 environmentalists including FOGH, and numerous state agencies, the site was saved from private
18 development, brought into the State Parks system, and renamed "Westport Light State Park." That
19 acquisition further protected the interdunal wetlands under the state laws governing state parks and
20 RCO-grant-purchased property.

21 1.10 Once the site was *supposedly* protected as a state park, the Washington State Parks
22 and Recreation Commission ("Parks Commission") reversed course and joined an effort to develop
23

1 an even more destructive golf course project. Whereas the Global Settlement required “zero” wetland
2 fill and would have impacted only 22 acres of wetland buffers, the Parks Commission is pursuing a
3 project that would fill approximately 22.8 acres of wetlands and permanently impact approximately
4 100 acres of wetland buffers. And the golf course’s oceanside footprint has been significantly
5 expanded, increasing the project’s harm to the coastal environment, and expanding the impact on the
6 public’s enjoyment of the state park’s beaches and amenities.

7 1.11 This action seeks to establish that the State of Washington and its agencies are legally
8 required to protect the interdunal wetlands on the site and that its efforts to fill wetlands and build a
9 golf course on the site are contrary to law and contract. Specifically:

- 10 A. Provisions of the Global Settlement constitute covenants running with the land that
11 bind the State of Washington as a successor in interest.
- 12 B. The State is bound by the Global Settlement to pursue only zero-fill golf course
13 designs, to permanently protect interdunal wetlands through legally enforceable deed
14 covenants, and to prohibit tree removal or clearing on preserved wetlands.
- 15 C. The State is subject to the Army Corps Covenant and must protect the interdunal
16 wetlands according to its terms.
- 17 D. State Law prohibits the Parks Commission from converting this RCO-grant-acquired
18 property to the golf course project. The interdunal wetland system, being among the
19 “last contiguous interdunal wetland habitat in this area” and providing critical benefits
20 to habitat, drinking water, and public access, is irreplicable and therefore cannot
21 qualify for conversion.

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1 E. RCW 79A.05.030 prohibits the Parks Commission from granting a concession for the
2 golf course project because it would restrict the public's "free access" to Westport
3 Light State Park and its amenities.

4 1.12 After litigating for years to achieve the Global Settlement and Army Corps Covenant,
5 FOGH has the right to enforce these running covenants on its own behalf and on behalf of the public
6 and the environment. These beneficiaries are being irreparably harmed by the State and Westport's
7 facilitation of a permitting process for a project that is prohibited by the running covenants. They are
8 harmed by being forced to raise and expend resources to oppose such prohibited projects, and are
9 also suffering emotional distress from having to fight to protect these interdunal wetlands *again*, after
10 already spending years to achieve their permanent protection through the running covenants. The
11 Court should temporarily enjoin all environmental review and permitting processes for such projects.

12 1.13 When the State used RCO grants to purchase the site and bring it into the state park
13 system, protections for interdunal wetlands and public access were increased, not decreased. The
14 Parks Commission cannot use its acquisition of the site to eliminate environmental protections that
15 were placed on the property by previous owners, and that by their terms are binding on successors.
16 The Parks Commission's position, that its acquisition can essentially "launder" the property and shirk
17 environmental protections, is contrary to law and public policy. The Parks Commission is subject to
18 those prior contractual protections plus additional protection under state law.

19 II. PARTIES

20 2.1 Plaintiff Friends of Grays Harbor is a broad-based 100% volunteer tax-exempt
21 501(c)(3) citizens group made up of crabbers, fishers, oyster growers and caring citizens. The
22 mission of FOGH is to foster and promote the unique economic, biological, and social benefits of
23

1 Washington's estuaries and ocean coastal environments. The goal of FOGH is to protect the
2 natural environment, human health, and safety in Grays Harbor, maintain the quality of Central and
3 Southwest Washington's coastal environment through science, advocacy, law, activism, and
4 empowerment.

5 2.2 FOGH's members and supporters are being harmed by the Parks Commission's
6 proposal because they are forced to spend resources to protect the interdunal wetlands despite having
7 already contracted for such protections in the Global Settlement. FOGH would be harmed by the
8 project' negative impact on the interdunal area, which qualifies as an Aquatic Resources of National
9 Importance ("ARNI"). The project threatens water quality and quantity, water-user experiences
10 (surfing), beach experiences, clean drinking water, and surface waters. In addition, the proposed golf
11 course presents an economic justice issue by requiring the public to pay a greens fee to enjoy public
12 park property.

13 2.3 The proposed project would harm plaintiffs' members and supporters by negatively
14 impacting Category I interdunal wetlands in Westport Light State Park. The project would imperil
15 unique and rare coastal dune habitat, interrupt quality habitat for a range of avian and wildlife
16 species, impair water quality through pesticide, herbicide, and fertilizer pollution, and limit equitable
17 access to the beach and to Westport Light State Park.

18 2.4 In settling its permit appeals, FOGH negotiated the wetland protections contained in
19 the Global Settlement, including those incorporated into the Army Corps Covenant. FOGH
20 specifically secured protections that would survive a golf course redesign and the sale of the
21 property. FOGH then lobbied for the State to purchase the property with RCO grants to protect the
22 wetlands from a golf course development. The golf course proposal and project threaten these gains.

23

1 2.5 Plaintiff Grays Harbor Audubon Society ("GHAS") is a tax-exempt 501(c)(3)
2 membership organization whose mission is to seek a sustainable balance between human activity and
3 the needs of the environment, and to promote enjoyment of birds and the natural world. GHAS'
4 members and supporters would suffer the same impacts as described for FOGH above.

5 2.6 Plaintiffs and their members and supporters have ongoing aesthetic, economic, health,
6 and recreational interests in protecting the wetlands and habitat on the site; these interests are being
7 harmed by the Parks Commissions' illegal efforts to build a golf course on the site.

8 2.7 The State of Washington owns the property. Various State agencies, including
9 Ecology, RCO, and the Parks Commission, exercise regulatory authority over the property.

10 2.8 Westport Golf, Inc. ("Westport Golf") is an interested party that is seeking a
11 concession to build and operate a golf course on the Westport Light State Park property that is
12 subject to the Global Settlement and the Army Corps Covenant.

13 2.9 The City of Westport ("Westport") is a municipality and a signatory to the Global
14 Settlement.

15 2.10 Mox Chehalis is a now-dissolved corporation previously authorized to do business in
16 Washington State. Mox Chehalis is a party to the Global Settlement.

17 2.11 J.D. Financial was the owner of the property at the time the Army Corp Covenant was
18 placed on the property. JD Financial is related to Mox Chehalis. Both had common ownership and
19 were operated by James Daly. James Daly was the President of JD Financial and the sole governor
20 and manager of Mox Chehalis.

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1 **III. JURISDICTION AND VENUE**

2 3.1 This Court has subject matter jurisdiction over this action under chapter 7.24 RCW
3 and chapter 7.40 RCW.

4 3.2 Venue is proper in Thurston County under RCW 4.92.010.

5 **IV. FACTUAL BACKGROUND**

6 **A. Background environmental conditions**

7 4.1 Westport Light State Park encompasses approximately 560 acres. Of that, 400 acres
8 are wetlands, including 346 acres of wetland mosaic, 26 acres of willow swamp, 21 acres of red alder
9 wetland forest, and five acres of small individual wetlands. Almost all of the wetlands (395 acres) are
10 rated Category I. Those interdunal wetlands are recognized as a special category of wetland because
11 they are a large system, with high habitat scores, which provide critical habitat functions to the
12 ecosystem.

13 4.2 In August 5, 2004, correspondence, Region 10 of the EPA informed the Army Corps,
14 Seattle District, of the importance of these interdunal wetlands:

15 The wetland at this 350 acre site represent a diverse habitat mosaic of interdunal, emergent
16 scrub-shrub, and forested wetlands of over 150 acres, which are adjacent to the Pacific Ocean
17 and Grays Harbor. . . . The site contains some of the last contiguous interdunal wetland
18 habitat in this area and is located at the nexus of two key migratory flyways, critical for
19 support of migratory birds. . . . These interdunal wetlands are not only important as habitat
20 and refuge for numerous migratory bird species, but also support a number of mammals,
21 amphibians, and fish. . . . This system provides overwintering and refuge habitat for coho
22 (Onchorynchus keta), for which the Lower Columbia River population is a candidate species.
23 The internal wetlands also provide important groundwater recharge functions, contributing to
the maintenance of the City of Westport’s sole drinking water supply. **Based on the
importance of these coastal interdunal wetland ecosystems, and their associated
functions and values, EPA has concluded that the proposed project poses a substantial
and unacceptable risk to Aquatic Resources of National Importance (ARNI).** (emphasis
added).

1 4.3 The EPA found that placing a golf course in the interdunal wetland system “poses
2 significant environmental impact, and is the subject of significant controversy,” and recommended
3 preparation of a full federal environmental impact statement and denial of a permit to the project. *Id.*
4 A true and correct copy of this correspondence is attached as Exhibit 5.

5 4.4 When Ecology appealed a permit granted to the golf course project, it similarly
6 concluded “The wetlands on the site are rare, high quality, inter-dunal wetlands that provide habitat
7 for birds, amphibians, small mammals and invertebrates. . . . In addition, the wetlands constitute a
8 recharge area for underground aquifers.” Ecology concluded “The project will have severe impacts to
9 the inter-dunal wetland system in the vicinity without a corresponding public benefit [and] will limit
10 public access to the inter-dunal area”

11 4.5 A true and correct copy of this Notice of Appeal by Ecology, September 4, 2001, SHB
12 No. 01-023, is attached as Exhibit 6.

13 4.6 Interdunal wetlands, like those found at Westport Light State Park, are a rarity on the
14 Pacific coast. Moreover, only approximately ten percent of Washington’s wetlands are rated as
15 Category I.

16 4.7 Westport Light State Park also includes forests, beaches, and extensive sand dunes,
17 some reaching as high as 30 feet. It serves important groundwater recharge functions for the City of
18 Westport’s drinking water supply. Numerous flora and fauna call the park home. The local
19 vegetation makes the park a critical habitat for birds, including migratory birds. Westport Light State
20 Park is a unique natural system that provides essential benefits to humans and wildlife alike.

21 **B. Mox Chehalis proposed a golf course resort on the property.**

22 4.8 Mox Chehalis previously owned the Mox Chehalis property.
23

1 4.9 In the early 2000's, Mox Chehalis sought over a dozen permits to construct a links
2 style golf course and associated resort amenities on the Mox Chehalis property, a shoreline
3 substantial development permit, a site plan approval, a Clean Water Act Section 404 wetland fill
4 permit, and a Clean Water Act Section 401 water discharge permit.

5 **C. Appeals over the Mox Chehalis project were resolved through a Global**
6 **Settlement that prohibited wetland fill and permanently protected wetlands on the site.**

7 4.10 Ecology, FOGH, WEC, and others filed various appeals challenging the permits for
8 the golf course project, often based upon the impacts to the interdunal wetlands on the site. Litigation
9 over these permit appeals lasted more than six years and included multiple local appeals, multiple
10 appeals before the State Environmental and Land Use Hearings Office ("ELUHO"), multiple state
11 superior and appellate courts, and the U.S. District Court.

12 4.11 On April 9, 2007, following an extensive mediation with a retired judge, FOGH,
13 WEC, Mox Chehalis, the City of Westport, the Port of Grays Harbor, Ecology, and ELUHO
14 executed the Global Settlement.

15 4.12 The Global Settlement secured extensive protections for the interdunal wetlands on
16 the site, which were set forth in the Global Settlement and its Appendices. For example:

17 4.13 Mox Chehalis agreed to redesign the golf course project to have zero wetland fill.

18 4.14 Mox Chehalis agreed to place restrictive covenants on the deeds for all wetlands
19 identified as Project Mitigation in order to ensure that the sites are protected in perpetuity.

20 4.15 Mox Chehalis agreed to “not remove trees or clear areas identified by the Wetland
21 Mitigation Plan (Appendix A) as areas for preservation of Wetlands.”

22 4.16 Mox Chehalis agreed to “comply with the requirements set forth in Appendix C,”
23 which included extensive protections for the interdunal wetlands.

1 4.17 The Global Settlement provided several contingencies that could terminate the
2 settlement before it took effect. The parties to the Global Settlement instead let the Global Settlement
3 go into effect.

4 **D. The Global Settlement was intended to be a covenant running with the land**
5 **applying to any future golf course project designs.**

6 4.18 The terms of the Global Settlement show an intent to create a covenant running with
7 the land that would apply to the future golf course design whether it was owned by Mox Chehalis or a
8 future owner of the land.

9 4.19 The Global Settlement states that it "*shall apply and be binding upon* the parties to
10 this Agreement, their members, member organizations, related entities, *successors and assigns.*"
11 Global Settlement, Section 13. (Emphasis added).

12 4.20 The Global Settlement shows that the parties intended to bind future owners of the
13 land. It specifically required Mox Chehalis or its successor to record legally binding covenants
14 protecting the wetlands. Moreover, Appendix A to the Settlement Agreement stated "Mox Chehalis,
15 L.L.C. or subsequent owners will retain ownership of the on-site mitigation sites" to "provide
16 resources to maintain the on-site and off-site mitigation areas to assure that performance goals are
17 met."

18 4.21 At the time the Global Settlement was entered, the parties had not agreed on a final
19 golf course design and intended the Global Settlement to constrain such future design decisions. A
20 primary covenant of Mox Chehalis and its successor in interest was to "modify the project" to be
21 "consistent with" the agreed environmental standards in the settlement.

22 4.22 The Global Settlement shows its application to any future golf course decision. It
23 requires that "Prior to construction of the golf course, a final golf course layout shall be submitted to

1 the City for review and comment.” Settlement Agreement, Appendix C, Section J.1. It states “The
2 final design for the golf course project will not include any filling, or development of wetlands,
3 except that bridges are allowed to span wetlands.” Settlement Agreement, Section 2.c.

4 **E. After Mox Chehalis filled wetlands during construction, the Army Corps
5 required the site’s owner to record a covenant protecting certain wetlands on the site.**

6 4.23 In a letter dated April 4, 2007, the Army Corps advised Mox Chehalis that based on
7 detailed knowledge of the project site and the extensive mosaic of wetlands that exist throughout the
8 project site, the Army Corps believed it would be extremely unlikely that a viable golf course could
9 be constructed without the further filling of wetlands in violation of the Clean Water Act. The Army
10 Corps cautioned Mox Chehalis that legal action may be initiated for wetland filling activities
11 exceeding the limits of the Nationwide Permits in violation of the Clean Water Act.

12 4.24 On April 8, 2008, the Army Corps conducted an inspection of the site that revealed
13 numerous wetland fill violations of the Clean Water Act.

14 4.25 Attached as Exhibit 7 is a true and correct copy of the Army Corps’ April 8, 2008,
15 Investigation Report.

16 4.26 On November 17, 2010, the Mox Chehalis property was transferred to JD Financial,
17 an entity related to the former owner Mox Chehalis.

18 4.27 On December 7, 2010, James Daly as agent for JD Financial made a Declaration of
19 Covenants and Restrictions for the Mox Chehalis Property (“Army Corps Covenant,” attached as
20 Exhibit 4).

21 4.28 The Army Corps Covenant stated that JD Financial was the owner of the property and
22 “desires to create and preserve thereon wetlands and forested habitat to be maintained in accordance
23 with provisions made between the declarant and the Department of Ecology (“DOE”) and the U.S.

1 Army Corps of Engineers (USACE) for the project bearing the Revised Shoreline Management
2 Permit #2007-SW-02407-A and USACE Reference Number 200301009".

3 4.29 By referencing the Revised Shoreline Management Permit #2007-SW-02407-A, the
4 Army Corps Covenant referenced the wetland protections of the Global Settlement, which had been
5 incorporated into Revised Shoreline Management Permit #2007-SW-02407-A.

6 4.30 The Army Corps Covenant states that it is binding on JD Financial and its successors
7 and assigns.

8 4.31 The Army Corps Covenant was recorded in Grays Harbor County, Washington, on
9 December 14, 2010.

10 4.32 On December 20, 2010, Francis Naglich, acting as an agent for JD Financial, sent an
11 email to James Green, an investigator at the Army Corps, with the recorded Army Corps Covenant
12 attached.

13 4.33 In that email, Francis Naglich warranted that the Army Corps Covenant was a deed
14 restriction for Mox Chehalis property.

15 4.34 In that email, Francis Naglich requested a response from the Corps as to whether the
16 deed restriction resolved the wetland violations.

17 4.35 On December 21, 2010, James Green replied to Francis Naglich via email requesting
18 "proof that the document was recorded at the county against the title."

19 4.36 On December 21, 2010, Francis Naglich replied to James Green warranting that a
20 "recording stamp by Grays Harbor County" and a bar code on the bottom of the first page was
21 evidence that the Army Corps Covenant had been recorded at the county against the title. Attached as
22 Exhibit 8 is a true and correct copy of this email string.
23

1 **F. The State obtained RCO grants to purchase the site to connect adjacent parks**
2 **and for habitat protection.**

3 4.37 In April of 2014, the Parks Commission applied to the RCO for an acquisition grant
4 under the RCO's Washington Wildlife and Recreation Program.

5 4.38 Every representation the Parks Commission made during the RCO application process
6 asserted that the purposes of the acquisition were (1) to connect three state park properties in
7 Westport and (2) habitat conservation.

8 4.39 The Parks Commission represented that only a very small portion of the property
9 acquired with the RCO grant would be used for future development, which would consist of cabins,
10 yurts, and campgrounds or overnight lodging.

11 4.40 The Parks Commission represented that the acquisition was important to prevent
12 development of a luxury golf course, referring to that potential golf course development as a “threat.”

13 4.41 On July 10th, 2015, the RCO approved the grant.

14 4.42 In October, 2015, the State of Washington by and through the Recreation and
15 Conservation Funding and RCO and the Parks Commission executed a project agreement for the
16 grant and acquisition of the Mox Chehalis property ("Project Agreement") stating that "[t]he primary
17 goal of the project is to connect these three state park properties and to add a significant amount of
18 new park land including over 2,000 feet of frontage on the Pacific Ocean.” Steve Hahn, the Real
19 Estate Program Manager for the Parks Commission, signed the Project Agreement for the Parks
20 Commission.

21 4.43 The final project report completed by the Parks Commission in 2017 stated that the
22 acquisition's primary purpose is habitat conservation.

1 4.44 The Project Agreement prohibits the Parks Commission from converting the property
2 "to uses other than those purposes for which funds were approved without prior approval of the
3 Recreation and Conservation Funding Board in compliance with applicable statutes, rules, and
4 funding board policies."

5 **G. Prior to closing the purchase, the State had an opportunity for significant due**
6 **diligence on environmental conditions and restrictions.**

7 4.45 On July 22, 2014, JD Financial's real estate agent, Mike Coverdale, sent a willing
8 seller statement to Steve Hahn, stating JD Financial's willingness to sell the Mox Chehalis property
9 to State Parks and that, "We have been in discussion with you over the past year regarding the
10 interest that your department may have in acquiring all or a portion of the property."

11 4.46 On August 8, 2015, the State of Washington, acting by and through the Parks
12 Commission, entered into a Purchase and Sale Agreement with JD Financial for the purchase of the
13 Mox Chehalis property ("2015 PSA").

14 4.47 Attached as Exhibit 9 is a true and correct copy of the 2015 PSA.

15 4.48 Under the 2015 PSA, (1) the State could enter the property "at all reasonable times for
16 the purpose of conducting environmental assessments and investigating the Property;" Seller was
17 required to provide the State with all "Due Diligence Material," including "existing or proposed
18 easements, covenants, restrictions, agreements, or other documents that, to Seller's knowledge, affect
19 title to the real property and that are not disclosed by the Preliminary Commitment," and "All
20 governmental permits and approvals," "notices of violations," or environmental assessments and
21 documents relating to the property. The State had an opportunity to study the due diligence materials,
22 or to terminate the 2015 PSA based upon failure to receive due diligence material. The State also had
23 the opportunity to conduct its own studies relating to the property.

1 **H. Prior to closing the purchase, the State was on notice of the Global Settlement**
2 **and Army Corps Covenant.**

3 4.49 The State, Parks Commission, and/or their agents had actual knowledge of the Army
4 Corps Covenant before the State closed on the purchase of the Mox Chehalis property.

5 4.50 Before the State closed on the purchase of the Mox Chehalis Property, the State, Parks
6 Commission, and/or their agents knew:

- 7 A. Mox Chehalis had been the owner of the Mox Chehalis property;
- 8 B. Mox Chehalis was a party to the Global Settlement;
- 9 C. Mox Chehalis was the applicant of prior permits granted for the golf course project;
- 10 D. Mox Chehalis had begun construction of the golf course project;
- 11 E. Mox Chehalis had committed to wetland preservations on the site through the Global
12 Settlement;
- 13 F. Mox Chehalis had committed to wetland preservations on the site through Revised
14 Shoreline Management Permit #2007-SW-02407-A;
- 15 G. Mox Chehalis had conducted extensive environmental studies about the site, including
16 the interdunal wetlands;
- 17 H. Pursuant to the Global Settlement and Revised Shoreline Management Permit #2007-
18 SW-02407-A, Mox Chehalis had committed to recording a covenant to protect wetlands
19 on the site;
- 20 I. The Army Corps had investigated environmental conditions on the site and found
21 potential wetland violations on the site;
- 22
- 23

1 J. Ecology had investigated environmental conditions on the site and was in the best
2 position to advise the State of Washington on such conditions and existing protections
3 for the wetlands;

4 K. JD Financial was a successor-in-interest to Mox Chehalis after taking over the Mox
5 Chehalis property;

6 L. JD Financial owned the Mox Chehalis property only since approximately November
7 17, 2010;

8 M. JD Financial was bound to the wetland protections contained in the Global Settlement
9 and in the Revised Shoreline Management Permit #2007-SW-02407-A;

10 4.51 During the due diligence period, the Army Corps Covenant was accessible to the
11 public and any title searcher through the Grays Harbor County Auditor's Office Self-Service Record
12 Search.

13 4.52 During the due diligence period, a search for Mox Chehalis in the Grays Harbor
14 County Auditor's Office Self-Service Record Search would have revealed the Army Corps
15 Covenant.

16 4.53 During the due diligence period, the State, Parks Commission, and/or their agent
17 searched for records related to the Mox Chehalis property in the Grays Harbor County Auditor's
18 Office Self-Service Record Search.

19 4.54 During the due diligence period, the State, Parks Commisison, and/or their agent
20 searched for Mox Chehalis in the Grays Harbor County Auditor's Office Self-Service Record Search.

21 4.55 During the due diligence period, the State, Parks Commission, and/or their agent,
22 requested that the Army Corps provide documents about environmental conditions on the site.
23

1 4.56 During the due diligence period, the State, Parks Commission, and/or their agent,
2 requested that the Army Corps provide documents about wetlands on the site.

3 4.57 In response to such requests, the Army Corps provided a copy of the Army Corps
4 Covenant to the State, Parks Commission, and/or their agent.

5 4.58 During the due diligence period, the State, Parks Commission, and/or their agent,
6 requested that Ecology provide documents about wetlands on the site.

7 **I. By purchasing the site, the State became a successor to the Global Settlement and**
8 **the Army Corps Covenant.**

9 4.59 The Global Settlement states that it is binding upon Mox Chehalis' successors. By
10 purchasing the Mox Chehalis property, the State became a successor to Mox Chehalis under the
11 Global Settlement.

12 4.60 The Army Corps Covenant states that it is binding upon JD Financial successors. By
13 purchasing the Mox Chehalis property, the State became a successor to JD Financial under the Army
14 Corps Covenant.

15 **J. After purchasing the site, the Parks Commission changed course and began**
16 **developing a golf course in Westport Light State Park.**

17 4.61 On October 12, 2020, a memorandum of agreement ("MOA") was executed between
18 Westport Golf and the Parks Commission. Attached as Exhibit 10 is a true and correct copy of the
19 MOA.

20 4.62 The MOA establishes that, upon the completion of prescribed planning milestones,
21 the Parks Commission and Westport Golf will negotiate "a long-term concession agreement for the
22 development, management, and operation of a golf course and ancillary facilities at Westport Light
23 State Park."

1 4.63 The MOA further establishes that a separate concessions agreement will be negotiated
2 between the Parks Commission and Westport Golf which will include terms related to “revenue
3 sharing” and “fee structure.”

4 4.64 Since the signing of the MOA, the parties to the MOA have taken significant steps
5 towards developing the proposed golf course. These efforts include the retention of design teams,
6 revisions to site plan development, drafting of a master plan, public outreach, and an ongoing State
7 Environmental Policy Act (“SEPA”) / Environmental Impact Statement (“EIS”) process.

8 4.65 Westport Golf intends to charge membership and use fees for users of the golf course.
9 Fees will vary based on a visitor’s place of residence and membership at the club. Westport Golf
10 intends to utilize a “dynamic pricing” model inspired by Chambers Bay Golf Course.

11 4.66 The proposed golf course at Westport Light State Park would include a links style golf
12 course and associated resort amenities.

13 **K. The Parks Commission denies that it is bound by the wetland protections**
14 **contained in the Global Settlement and Army Corps Covenant.**

15 4.67 On November 22, 2022, the Parks Commission and Westport Golf gave a joint
16 presentation titled “Westport Light State Park *Westport Golf Links* Update.”

17 4.68 In the November 22, 2022, presentation, the Parks Commission included a slide titled
18 “Legal Covenant,” reprinting the first page of the Army Corps Covenant, and a bullet point which
19 read “Not likely legally binding on State Parks.”

20 4.69 The presenter notes for the “Legal Covenant” slide stated that “While doing
21 background research for the baseline studies at the park, we submitted a FOIAQ request to ACOE for
22 any prior documentation on wetland delineations associated with the previous Scotting links style
23 golf course development. This was, of course, prior to our ownership. It was from that effort that we

1 discovered a legal covenant that was placed on the property by the previous owner. A legal covenant
2 is a deed restriction that is applied to a property title that restricts use of the property. The covenant
3 was placed on slightly more than 111 acres of restored wetlands. This legal covenant was basically a
4 consequence, a legal requirement from the ACOE, after the previous developer violated their NWP
5 by filling protected wetlands. The covenant was placed on slightly more than 111 acres of restored
6 wetlands. . . . So what does this mean for the project? We've consulted with the AGs office and
7 understand that because of how this covenant was filed with the Tile company, it is not legally
8 binding on us a property owners. [sic]." The slide Legal Covenant slide stated: "Result of wetland fill
9 violations for previous project" "111.44 Acres of 'Creation or Preservation" and "Not likely legally
10 binding on State Parks."

11 4.70 At the November 16, 2022, Parks Commission's regular work session meeting in
12 Lake Chelan, WA, the Parks Commission gave an update on the Westport Light golf course project
13 and stated that the Army Corps Covenant was "possibly not legally binding."

14 **L. The Parks Commission's golf course project is inconsistent with the Global
15 Settlement and the Army Corps Covenant.**

16 4.71 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
17 or more golf course plans that would do the following on some portion of the 114.44 acres (107 acres
18 of preservation; and 7.44 acres of wetland creation) identified in Exhibits A and B to the Army Corps
19 Covenant:

- 20 A. Fill wetlands;
- 21 B. Disturb or change the natural habitat;
- 22 C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the
23 purpose of constructing or maintaining the golf course project;

- D. Allow commercial activity;
- E. Allow golf course use;
- F. Allow right of passage used in conjunction with a commercial activity;
- G. Allow right of passage used in conjunction with the golf course;
- H. Fill, excavate, dredge, mine, or drill;
- I. Construct or place buildings or structures;

4.90 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would do the following on some portion of the area defined as "Property" in Army Corps Covenant:

- A. Fill wetlands;
- B. Disturb or change the natural habitat;
- C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the purpose of constructing or maintaining the golf course project;
- D. Allow commercial activity;
- E. Allow golf course use;
- F. Allow right of passage used in conjunction with a commercial activity;
- G. Allow right of passage used in conjunction with the golf course;
- H. Fill, excavate, dredge, mine, or drill;
- I. Construct or place buildings or structures;

4.72 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would fill wetlands.

1 4.73 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
2 or more golf course plans that would develop wetlands beyond just spanning with bridges.

3 4.74 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
4 or more golf course plans that would remove trees and/or clear areas in some locations identified for
5 wetlands preservation in the Wetland Mitigation Plan attached as Appendix A to the Global
6 Settlement.

7 4.75 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
8 or more golf course plans that would remove trees and/or clear areas in some locations identified for
9 wetlands preservation in the Wetland Mitigation Plan attached as Appendix A to the Global
10 Settlement.

11 4.76 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
12 or more golf course plans that would disturb some portion of the area identified for project mitigation
13 in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

14 4.77 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
15 or more golf course plans that would do the following to some portion of the area identified for
16 project mitigation in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

- 17 A. Fill wetlands;
- 18 B. Disturb or change the natural habitat;
- 19 C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the
20 purpose of constructing or maintaining the golf course project;
- 21 D. Allow commercial activity;
- 22 E. Allow golf course use;

1 F. Allow right of passage used in conjunction with a commercial activity;

2 G. Allow right of passage used in conjunction with the golf course;

3 H. Fill, excavate, dredge, mine, or drill;

4 I. Construct or place buildings or structures;

5 4.78 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one
6 or more golf course plans that would disturb some portion of the area that the Global Settlement
7 identified for protection by restrictive covenant.

8 **M. The golf course project, being inconsistent with the RCO grant, would constitute**
9 **a conversion of the property.**

10 4.79 In 2015 and 2016, the Parks Commission adopted new real estate policies which
11 proposed the development of Recreation Concession Areas ("RCA") in partnership with private
12 entities. Westport Light State Park was named as one of the pilot sites for this new program.

13 4.80 In 2017, the Parks Commission submitted a conversion request to the Recreation and
14 Conservation Funding Board ("RCFB") for potential conversions at Westport Light State Park and
15 Millersylvania State Park due to each park's new status as an RCA.

16 4.81 The RCFB never made a decision to accept or deny the conversion request.

17 The MOA states WSP will seek approval "that the negotiated concession agreement is
18 consistent with RCFB policy and will not result in conversion of lands purchased with RCFB grant
19 funds."

20 4.82 Between 2017 and 2022, the Parks Commission hired consultants to complete a series
21 of environmental reports for the Westport Light State Park golf course proposal including wetland
22 reports, vegetation surveys, a restoration feasibility study, a hydrologic report, a habitat report and a
23 coastal study report. Under the MOA, the Parks Commission's reports constitute "milestones" in the

1 working relationship between the Parks Commission and Westport Golf that “demonstrate both
2 parties desire to collaboratively develop a Master Plan for Westport Light State Park, and to create
3 financially viable park facilities . . .”

4 4.83 In October of 2022, Westport Golf hired a consultant to conduct an economic and
5 fiscal benefits study for the golf course project.

6 4.84 In March of 2023, the Parks Commission and the City of Westport entered into a Lead
7 Agency Agreement naming the City of Westport the nominal SEPA Lead Agency for the golf course
8 project.

9 4.85 According to the City of Westport’s website, the golf course project is in the EIS
10 drafting stage.

11 4.86 WSP’s plans to grant a concession to Westport Golf would result in a conversion.

12 **N. Conversion is impermissible because the interdunal wetlands on the site are**
13 **irreplaceable.**

14 4.87 The RCFB with the assistance of the Recreation and Conservation Office (RCO),
15 administers grants to support conservation and recreation projects throughout the state and is
16 governed by RCW Chapter 79A.

17 4.88 RCW 79A.15.030 (9) prohibits the conversion of any land acquired with a grant from
18 the RCFB “to a use other than that for which funds were originally approved” without prior approval
19 of the board.

20 4.89 RCW 79A.15.030 (9), furthermore, directs the RCFB to adopt “rules and procedures
21 governing the approval” of conversions.
22
23

1 4.90 In accordance with RCW 79A.15.030 (9), the RCFB adopted “rules and procedures
2 governing the approval” of conversions, which sets out the long-term obligations for acquisition
3 projects funded with money from or through the board.

4 4.91 WAC 286-13-160 (3), furthermore, states that “the board may only approve a
5 conversion when the sponsor:

- 6 (a) Demonstrates the need to convert the project area including all efforts to consider
7 practical alternatives, how they were evaluated, and the reasons they were not pursued;
8 (b) Provides an opportunity for the public to participate in the identification, development and
9 evaluation of the alternatives, including a minimum public comment period of at least thirty
10 days; and
11 (c) Commits to provide another interest in real property to serve as a replacement. The
12 replacement must:
13 (i) Be of reasonably equivalent usefulness and location;
14 (ii) Be administered by the same sponsor unless otherwise approved by the board;
15 (iii) Satisfy need(s) identified in the sponsor's current plan as described in WAC 286-
16 13-035 or other relevant local or statewide plan;
17 (iv) Be eligible in the same grant program account or category from which funds
18 were originally allocated, unless otherwise approved by the board;
19 (v) Be interest in real property of at least equal current market value to the
20 converted property; and
21 (vi) Satisfies the conversion without grant assistance from the board.”

22 4.92 The RCO has published a series of grant manuals which offer guidance to grant
23 applicants and recipients. RCO Grant Manual 7 provides information for RCO grant programs and
projects with long-term obligations, including policies adopted by the RCFB.

4.93 RCO Grant Manual 7 defines the term conversion as follows:

A conversion occurs (1) when facilities acquired, developed, renovated, or restored in the project area change to a use other than that for which funds were approved, without obtaining prior written approval from RCO or the funding board, (2) when property interests are conveyed to a third party not eligible to receive grants in the program from which funding was approved without obtaining prior written approval from RCO or the funding board, or (3) when obligations to operate and maintain the funded property are not complied with after a reasonable opportunity to cure.

1 4.94 The interdunal wetlands and wetland mosaic in Westport Light State Park (a) are rare,
2 (b) serve critical functions and values, as described herein, and (c) have unique legal protections
3 through the Army Corps Covenant and the Global Settlement.

4 4.95 Based upon these and other factors, the interdunal wetlands and wetland mosaic
5 cannot be replaced pursuant to the requirements of WAC 286-13-160 (3)(c).

6 **O. The golf course project would destroy the public's access to Westport Light
7 State Park and therefore constitutes an illegal concession.**

8 4.96 RCW 79.05.030 declares mandatory powers and duties of the Parks Commission.

9 4.97 RCW 79A.05.030(5)(d) states that "No concession shall be granted which will
10 prevent the public from having free access to the scenic attractions of any park or parkway."

11 4.98 The proposed golf course will prevent the public from having free access to the park's
12 upland views of the Pacific Ocean. The 18-hole course would run the length of the ocean-facing
13 western edge of Westport Light State Park.

14 4.99 The proposed golf course and amenities will prevent the public from having free
15 access to the park's scenic attractions, such as the interdunal wetlands.

16 4.100 Currently, the public accesses the interior of Westport Light State Park primarily from
17 the dune trail that separates the ocean beach from the rest of the park. From the elevated dune trail,
18 the public has unimpeded views to the interdunal wetland system and informal trail access to the
19 interior of the park. The proposed golf course would extend most of the length of the dune trail,
20 eliminating the public's aesthetic and physical access to most of the park. As a matter of business and
21 public safety, the golf course project would exclude the non-paying public from accessing the park.

22 **V. CAUSE OF ACTION – DECLARATORY RELIEF**

23 5.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

1 5.2 A controversy exists between Plaintiffs and Defendants regarding the following
2 issues:

3 a. Do provisions of the Global Settlement constitute a covenant running with the
4 land that bind the State of Washington as a successor in interest?

5 b. Is the State of Washington bound by the Global Settlement to pursue only
6 zero-fill golf course designs, to permanently protect interdunal wetlands through legally
7 enforceable deed covenants, to prohibit tree removal or clearing on wetlands, and other
8 environmental protections?

9 c. Is the State of Washington subject to the Army Corps Covenant and bound to
10 protect the interdunal wetlands according to its terms?

11 d. Does it violate law and policy for the State of Washington or the Parks
12 Commission to attempt to use the State's purchase of the property to "launder" such property
13 of its environmental protections?

14 e. Does developing a golf course on the site constitute a conversion under RCW
15 79A.15.030, which is prohibited unless the Parks Commission secures prior approval from
16 RCFB in accordance with the specific procedures and mandatory conditions of WAC 286-13-
17 160?

18 f. Does WAC 286-13-160(3)(c)(i) require the RCFB to expressly account for the
19 site's irreplicable and unique characteristics when considering any proposed replacement real
20 property for a conversion?

21 g. Do the site's irreplaceable and unique characteristics prevent approval of a
22 conversion on the site?
23

1 h. Does RCW 79A.05.030 prohibit the Parks Commission from granting a
2 concession for the golf course project because it would prevent the public’s free access to the
3 scenic attractions of the current Westport Light State Park?

4 5.3 The Parks Commission has not publicly acknowledged that it is a successor in interest
5 to the Global Settlement or indicated in any presentation or publication that it is bound by the terms
6 of the Global Settlement.

7 5.4 The Parks Commission denies that it is bound by the Army Corps Covenant.

8 5.5 The Parks Commission has agreed to seek the concurrence of the RCO and the RCFB
9 that a concession agreement for a golf course on the Westport Connection site “will *not* result in
10 conversion of lands purchased with RCFB grant funds.” (emphasis added)

11 5.6 The Parks Commission has not initiated a public comment process regarding a
12 proposed conversion consistent with WAC 286-13-160(3)(b).

13 5.7 Neither the Parks Commission nor Westport Golf have proposed mitigation that would
14 specifically address the requirements in WAC 286-13-160(3)(c) that, among other things, require
15 replacement of converted property with real property of “reasonably equivalent usefulness and
16 location.” Nor does any such replacement property exist.

17 5.8 Neither the Parks Commission nor Westport Golf has acknowledged that the
18 interdunal wetland complex on the site is functionally irreplicable and non-fungible because it is
19 among the “last contiguous interdunal wetland habitat in this area,” providing critical benefits to
20 habitat, drinking water, and public access, and is subject to unique environmental protections
21 including through the Global Settlement and the Army Corps Settlement.

1 5.9 Members of the Plaintiff organizations live near and regularly visit the whole of
2 Westport State Park, including the proposed golf course site.

3 5.10 Members of the Plaintiff organizations currently enjoy the scenery and ecology of the
4 wetlands thanks to the protections that were previously secured under the terms of both the Global
5 Settlement and the Army Corps Covenant. Members also enjoy the knowledge that their previous
6 efforts to secure strong wetland protections for this site ultimately helped facilitate the availability of
7 the site for purchase by the State and helped draw the attention of Parks Commission to this site as
8 one worth purchasing with public funds for the express purpose of habitat conservation.

9 5.11 Members of the Plaintiff organizations currently freely enter, explore, and generally
10 access the uplands and interior wetland complex of Westport Light State Park. Members presently
11 freely enjoy the scenic attractions of the Park. Those scenic attractions include sweeping, unimpaired,
12 and free-roaming views of the ocean and surrounding landscape from multiple portions of the Park's
13 uplands. Those scenic attractions also include inward views of the entire wetland complex as a
14 connected and contiguous whole. Members can currently enjoy all of these attractions without paying
15 a fee to a private concessionaire and without any significant limitations on where or when they may
16 wander to discover the Park's many scenic amenities.

17 5.12 The conflict between Plaintiffs, the Parks Commission, Westport Golf, and the City of
18 Westport is ongoing, well developed, and concrete. The Parks Commission and Westport Golf
19 continue to execute the terms of their MOA, regularly progress toward and meet various milestones
20 indicated in the MOA, and have initiated a formal SEPA process for the proposed golf course. The
21 City of Westport continues to facilitate a SEPA process studying golf course designs that are
22 inconsistent with the running covenants.

23

1 5.13 Members of the Plaintiff organizations have interests that are opposed to the golf
2 course plans of the Parks Commission and Westport Golf. Members have commented in opposition
3 to the proposed golf course and will be harmed by the proposed golf course through, among other
4 things: the violation of both the Global Settlement and the Army Corps Covenant, which were
5 protections previously secured by the Plaintiff organization in service of its mission and with the
6 prior enforcement support of State, municipal, and Federal entities entrusted with wetland
7 protections; the conversion of the site to a purpose other than habitat conservation, which purpose
8 Member organization endorsed publicly at the time of purchase; the loss, to the private concession, of
9 free-roaming access to the outward-facing and inward-facing scenic attractions of the current
10 Westport Light State Park; and the loss of access, via a charge for golf course access, to any scenic
11 attraction along the path of the course that is presently available without cost.

12 5.14 Plaintiffs seek affirmative declarations from this Court on the matters set forth
13 in paragraph 5.2 above.

14 **VI. SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF**

15 6.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

16 6.2 Plaintiffs seek an injunction against the State of Washington, requiring it to:

17 a. Comply with the terms of the Global Settlement, including but not limited to
18 (i) prohibit wetland fill in connection with any golf course proposal on the property; (ii)
19 "[e]stablish a legally binding description of the preservation areas [and] [d]evelop a legally
20 binding conservation easement" on the identified mitigation wetlands; and (iii) prohibit tree
21 removal and clearing on preserved wetlands.

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Exhibit 1

ORIGINAL

THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

FRIENDS OF GRAYS HARBOR and
WASHINGTON ENVIRONMENTAL
COUNCIL,

Appellants,

vs.

MOX CHEHALIS LLC, et al.,

Respondents.

NO. 34113-1-II

SETTLEMENT AGREEMENT

Appellants Friends of Grays Harbor and Washington Environmental Council (collectively referred to as "Appellants") and Respondents City of Westport and Mox Chehalis LLC hereby enter into the following Settlement Agreement of the above-referenced matter.

SETTLEMENT AGREEMENT

1. This Settlement Agreement is entered into in order to resolve disputed matters concerning the pending appeals of permits issued for a master planned resort known as the Links at Half Moon Bay within the City of Westport. The development shall include one hotel, a convention center, a Scottish links style golf course, condominiums and retail buildings as set forth in the Master Plan Ordinance No. 1277 adopted by the City of Westport, and more specifically in the Shorelines Substantial Development Permit and Binding Site Plan approved for the project, as modified by this Settlement Agreement (hereafter "Project").

2. Upon satisfaction of the requirements of the scheduling provisions set forth in Section 6(a) below, Appellants agree to drop the pending appeal before the Court of Appeals and allow the

1 project to move forward without further objection or appeal of any subsequent permit decisions or
2 approvals concerning the Project. Respondent agrees to modify the Project by submitting to the City an
3 amended Master Plan and applications for a revised Shoreline Substantial Development Permit and a
4 revised Binding Site Plan Approval consistent with the following:
5

- 6 a. No condominium buildings shall be located south of Jetty Access Road. No buildings
7 will be built south of Jetty Access Road except for shelters and restrooms currently in the
8 golf course plan, a covered area for the driving range and the new Radar Road building
9 discussed in subsection (2)(c). A maximum of 450 residential units (including hotel and
10 condominium units) will be proposed north of Jetty Access Road. The budget hotel will
11 be removed. The development on the site shall be limited to the Project, plus potentially
12 additional retail development as discussed in Paragraph 11 of this Agreement.
13
- 14 b. Height limits for condominiums and the hotel will be as currently approved by the City.
15 The Hotel will only use the maximum height for a distinguishing feature, such as a tower
16 or other architectural element, including but not limited to a restaurant, to maximize
17 views of the ocean, bay and city. The design is intended to reduce its bulk and scale
18 impacts by providing that a significant portion of the hotel will be of a lower height than
19 the maximum approved by the City.
20
- 21 c. The final design for the golf course project will not include any filling, or development of
22 wetlands, except that bridges are allowed to span wetlands. At least 30 days prior to
23 commencement of construction of the golf course, the applicant shall update the
24 delineation of wetlands and clearly stake the boundaries of wetlands on the site. The City
25 of Westport shall retain a qualified third party to inspect the staked wetland boundaries to
26

1 verify their accuracy. Any disputes shall be resolved by a mutually agreeable third party
2 expert or by other mutually agreeable dispute resolution process. The final staking of
3 wetlands shall remain undisturbed through construction. Wetlands and no spray zones
4 shall be permanently marked at ground level in areas adjacent to the golf course. The
5 existing building at the Radar Road location may be replaced with a small, one-story new
6 building for maintenance, snack bar, and/or comfort station. The driving range will be
7 moved to the current location of the condominiums. The City will adopt and enforce the
8 following conditions to approval of the Site Plan for the Golf course:
9

- 10 i. The golf course, including the driving range, will not include parking at
11 Westhaven State Park. Appropriate signage shall be posted by Mox Chehalis
12 to discourage such use. Mox Chehalis shall develop a shuttle system to bring
13 such users to and from the driving range from parking facilities located north
14 of Jetty Access Road.
- 15 ii. The hitting area of the driving range and/or associated building will be
16 visually screened from the State Park by a combination of berms, dunes and
17 vegetation, as appropriate. The goal is to make the pad/building visually
18 obscured from the State Park parking lot and the existing public trails.
- 19 iii. The driving range shall protect public safety of vehicles and pedestrians on
20 Jetty Access Road by: a) appropriate angling of the driving range; and b)
21 placement of vegetative screening between the road and driving range.
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- 1 iv. Mox Chehalis shall establish a barrier designed to prevent balls from rolling
2 into the wetlands at the end of the driving range, which may consist of a berm
3 and vegetative screening.
4
5 v. Mox Chehalis shall not collect balls in the wetlands by mechanical means.
6
7 vi. Mox Chehalis shall have an ongoing evaluation program for the driving range,
8 including evaluation of the distribution of balls leaving the boundaries of the
9 range, and shall formulate adaptive management strategies to address any
10 problems identified. The City may require Mox Chehalis to implement
11 appropriate adaptive techniques to address such identified problems,
12 including, but not limited to, alteration of berms and vegetative screening, or
13 conversion to an irons-only range.
14 vii. The shelter structure shall be designed to be removable in the event that it is
15 threatened by coastal erosion.
16 viii. No artificial lighting or netting shall be established for the driving range or
17 golf course.
18
19 ix. Mox Chehalis shall conduct an initial survey to establish pre-construction
20 conditions for wildlife habitat and populations and shall periodically update
21 such wildlife surveys. Mox Chehalis shall use adaptive management
22 strategies to remedy any significant adverse impacts caused by the Project.
23
24 x. Mox Chehalis shall require that the golf course provide an ongoing evaluation
25 of wet weather playability of the golf course and modify the golf course or
26 play if deemed necessary.

- 1 d. The Amended Master Plan, revised shoreline substantial development permit and revised
2 binding site plan will reflect the Settlement Agreement and will retain existing mitigation
3 requirements, except for the following: 1) the preservation of the Mar Vista property is
4 not required; and 2) the location of on-site mitigation shall be adjusted to reflect the
5 revised no-fill design. These modifications shall be contained in an updated Wetland
6 Mitigation Plan, dated June, 2006, a draft of which is attached as Appendix A. The City
7 shall require compliance with the revised Wetland Mitigation Plan as a condition of its
8 permit approvals.
- 9
- 10 e. The requirement of the SSDP that Mox Chehalis improve Jetty Access Road past the
11 turnoff to the main resort will be deleted, except that Mox Chehalis will be required to
12 repair any damage done to the road during Project construction.
- 13
- 14 f. Building design of the condominiums, hotel, convention center, retail and clubhouse
15 facilities shall be subject to a public design review process incorporating public notice
16 and opportunity to comment prior to application for Building Permits:
- 17
- 18 1. Mox Chehalis will involve the public in a design review process. Mox
19 Chehalis shall hold two meetings at which its architects provide
20 architectural designs and obtain feedback. The meetings shall be at
21 different design stages. Mox Chehalis and its architects will give serious
22 consideration to meritorious public input.
 - 23 2. Mox Chehalis will work towards an architectural design that is consistent
24 with the themes expressed in the City's comprehensive plan, which
25
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1 minimizes the bulk and scale to the extent possible, varies the rooflines
2 and facades, provides interesting features, and is non-monolithic.

3 The Settlement NRMP, a draft of which is attached as Appendix B, shall include all
4 currently relevant requirements including the corrective measures required by the
5 ELUHB in its October 12, 2005 Order. Even though a Water Quality Certification under
6 the Clean Water Act is unnecessary as a result of the agreement that no filling of wetlands
7 will be proposed for the golf course, nevertheless, Mox Chehalis shall comply with the
8 requirements set forth in Appendix C, which identifies the applicable requirements of the
9 Department of Ecology Section 401 Certification ("401"), including corrections to
10 problems identified by the ELUHB. Such applicable requirements are attached hereto as
11 Appendix C and made a part hereof and shall also be attached and made a part of the
12 settlement NRMP. The requirements as stated in Appendix C shall be controlling to the
13 extent that they may be inconsistent with the description of those requirements in the
14 NRMP. The City shall require compliance with the Settlement NRMP as a condition of
15 its permit approvals. The City shall be responsible for oversight of all monitoring/
16 sampling and reporting required by the Settlement NRMP. All monitoring/sampling and
17 reporting shall be conducted by a qualified consultant approved by the City. Mox
18 Chehalis shall reimburse the City for reasonable consulting costs needed to perform these
19 tasks and to review the same. The City and FOGH shall receive reports and the City shall
20 enforce the requirements of the Settlement NRMP. The Applicant shall have an open
21 books policy, so FOGH and WEC may examine records relating to water quality issues.

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26 g. Applicant shall develop and apply a non-lethal goose control plan.

- 1 h. Mox Chehalis agrees that the golf course will not host tournaments with galleries and
- 2 paying spectators.
- 3 i. Mox Chehalis will develop and implement a signage plan to direct the public to
- 4 Westhaven State Park and identify areas of the resort.
- 5 j. Mox Chehalis will establish and maintain a Junior Golf Program for youth in the
- 6 Westport area.
- 7 k. The City and Mox Chehalis shall negotiate a fair share agreement for school and utility
- 8 impacts arising from the proposal as revised pursuant to this agreement.
- 9 l. Mox Chehalis agrees to use local workers to the extent that the local workforce is able
- 10 and willing to provide needed service, and will uphold union standards for safety and
- 11 quality of work and allow collective bargaining of employees.

14 4. Mox Chehalis will transfer to Smith & Lowney a cash payment of \$150,000. Mox
15 Chehalis shall ensure conveyance of that portion of the Blair Property to Smith & Lowney as further
16 described in Exhibit 1. The Blair Property shall be free from all encumbrances, except for such
17 easements described in Exhibit 1. Mox Chehalis shall provide title insurance on the property transfer.
18 All such funds and a deed to the Blair Property described above shall be placed into escrow within 45
19 days of execution of this Settlement Agreement, except that if necessary Mox Chehalis shall have
20 another 45 days to remove encumbrances on the Blair Property, with escrow costs paid by Mox
21 Chehalis. The moneys and property shall be conveyed upon approval by the City of the permit(s) for
22 the golf course, which are anticipated to include a revised binding site plan and revised shoreline
23 substantial development permit ("golf course permits") and expiration of their appeal periods, unless
24 terminated as provided in Section 6(b).
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1 5. Within one week of the execution of the Settlement Agreement, Mox Chehalis will
2 provide to the Westport Police Department a letter notifying it that the Engvall family is no longer
3 excluded from Mox Chehalis businesses in Westport. A copy shall be provided to Brady Engvall.

4
5 6. Scheduling Provisions:

6 a. Court of Appeals Proceedings:

7 The Parties agree to terminate the currently pending litigation before the Court of Appeals upon
8 approval by the City of Westport of the golf course permits and expiration of their applicable appeal
9 periods, provided no appeal is filed. The Parties agree to immediately seek an order staying Court of
10 Appeals action, No. 34113-1-II, to January 31, 2008, to allow for consideration of the revised binding
11 site plan pursuant to this Settlement Agreement. If the golf course permits are approved by the City and
12 no appeals are filed within the applicable appeal periods, Appellants agree to withdraw the pending
13 appeal within 10 days after expiration of the last appeal period.

14
15 b. Mox Chehalis Right to Terminate:

16 If the golf course permits are denied or any appeals are filed challenging their approval,
17 Respondents may elect to terminate this Settlement Agreement by withdrawing the golf course permit
18 applications and providing written notice to the parties within 30 days after the expiration of the
19 applicable appeal periods. If this Agreement is terminated by Mox Chehalis as provided in this section,
20 escrow shall be instructed that all funds shall be returned to Mox Chehalis and the deed to the Blair
21 Property will not be conveyed and will be returned to the Grantor. Upon such election, the parties shall
22 notify the Court of Appeals and request resumption of the current litigation. Neither execution of this
23 Settlement Agreement, nor any action taken to implement the terms hereof shall in any way prejudice the
24
25
26

1 rights of any party in the event of such termination of this Settlement Agreement and resumption of
2 litigation before the Court of Appeals.

3 If Mox Chehalis decides to terminate the Settlement Agreement, it must withdraw its
4 applications for the golf course permits. Notwithstanding the provisions of the preceding paragraph,
5 Mox Chehalis may also, upon such termination, thereafter resubmit a further application to the City.
6 FOGH and WEC thereafter may fully participate in any proceedings relating to modified land use
7 permits.
8

9 c. Appellants' Right to Termination

10 Appellants may terminate this Agreement and the parties will be returned to their pre-Settlement
11 positions if:
12

- 13 i. The \$150,000 and deed to the Blair Property are not placed into escrow in
14 compliance with section (4). If Appellants terminate under this paragraph, the
15 parties agree that any modified permits including golf course permits issued by the
16 City pursuant to this Agreement shall be automatically cancelled by operation of
17 law, and that Mox Chehalis shall not rely upon them and shall withdraw the
18 applications for such permits. Mox Chehalis may thereafter resubmit such
19 application(s) to the City, allowing FOGH and WEC to fully participate in any
20 proceedings relating to such applications.
21
- 22 ii. Mox Chehalis fails to submit applications for the golf course permits within 90
23 days of the execution of this Settlement Agreement. In the event this Agreement
24 is terminated by Appellants as provided in Section 6(c)(ii), escrow shall be
25 instructed to convey the \$150,000 and the Blair Property to Smith & Lowney.
26

1 d. Review of Application Documents.

2 1. Mox Chehalis has provided to Appellants the most current versions of the
3 Wetland Mitigation Plan (Appendix A) and Settlement NRMP (Appendix B). The
4 parties recognize that certain maps and other provisions may be subject to minor revisions
5 to reflect the requirements of this Settlement Agreement, including the relocation of the
6 condominiums, relocation of the driving range and redesign of buildings to the north of
7 Jetty Access Road, and certain changes are required by this Agreement. The parties will
8 cooperate in good faith to incorporate such changes.

9 e. Mox Chehalis shall not remove trees or clear areas identified by the Wetland Mitigation
10 Plan (Appendix A) as areas for preservation of wetlands. Mox Chehalis further agrees not to implement
11 site work pursuant to their existing permits while applications for revised permits are pending before the
12 City, until such revised permits are issued. Notwithstanding the foregoing, Mox Chehalis may remove
13 existing brush piles and do such work as is necessary to accomplish the requirements of this Settlement
14 Agreement.

15 7. The parties will exercise good faith in the performance of their duties under this
16 Settlement Agreement.

17 8. Dispute Resolution

18 a. For all disputes about 1) the content of permit applications; 2) permit decisions; or
19 3) alleged breaches of this Agreement prior to permits being issued; any party to this
20 Settlement Agreement shall bring such dispute to binding arbitration before the Hon.
21 Daniel Berschauer or another mutually agreeable arbitrator. Any party to this Settlement
22
23
24
25
26

1 Agreement may also use the following arbitration process at its discretion as an
2 alternative to the judicial review provisions set forth in section 8(b) below. Appellants
3 shall pay 33% of the arbitration fee with the remainder being paid by Mox Chehalis. The
4 arbitration process shall be as follows:

- 5
6 1. Appellants shall promptly bring any dispute concerning compliance with the
7 settlements agreements by providing notice of the alleged non-compliance to Mox
8 Chehalis and the City. If the dispute is not resolved between the parties within
9 two business days after receipt of notice thereof, appellants shall file a request to
10 resolve the dispute, together with a list of issues to be resolved, with the arbitrator
11 within three business days from the end of the aforementioned two-day period.
12
- 13 2. If any issue is not resolved between the parties, the party requesting arbitration
14 shall notify the arbitrator within 3 business days, of the issues to be resolved and
15 shall specify the grounds for objections. The arbitrator shall allow such briefing
16 and hearings as the arbitrator deems necessary. If the arbitrator finds a violation of
17 the Settlement Agreement, the Arbitrator shall specify in writing the necessary
18 modifications or remedial steps to be taken. The arbitrator shall make his
19 decision in writing no later than 30 days after receipt of the issues provided for
20 above.
21
22

- 23 b. Judicial Review shall be limited solely to issues arising from the implementation of the
24 following revised permits after issuance by the City: binding site plan approval,
25 shorelines substantial development permit and master plan approval. If the monitoring
26

1 and reporting show impairment to water quality beyond action levels as defined by the
2 Settlement NRMP, FOGH and WEC shall have right to seek enforcement of those
3 sections of the Settlement NRMP triggered by such impairment, including but not limited
4 to the requirement to develop and implement adaptive management, or the reduction of
5 chemical uses. Prior to commencement of judicial review, Appellants must take the
6 following steps:
7

- 8 1. Appellants shall request a meeting with the City and Mox Chehalis to raise any
9 issues of concern with implementation of said permits.
10
- 11 2. If outstanding issues of compliance in implementation remain after the meeting of
12 the parties, Appellants shall provide written notice of their allegations of
13 continued failure of implementation to Mox Chehalis and the City, and shall
14 request enforcement of said permits by the City.
15
- 16 3. The City shall have 14 days to address the enforcement request and shall inform
17 the parties of any enforcement action that is to be taken.
18
- 19 4. If the City fails to fully enforce the permit(s) in question or concludes that no
20 violation has occurred, Appellants may file an action within 60 days thereafter in
21 Grays Harbor County Superior Court to enforce the terms of the permit.
22
- 23 5. A party may bypass the dispute resolution process set forth in this section 8(b)
24 above and proceed directly to Court only for the purpose of obtaining urgent
25 injunctive relief through a temporary restraining order as provided by CR 65,
26 including appropriate financial security, in which case the issuance of the TRO

1 will be followed by compliance with the dispute resolution process set forth in
2 subsection 8(b)(1-4). The parties agree that the Settlement Agreement is
3 enforceable by injunctive relief and that time is of the essence.
4

5 c. Any party who successfully enforces this agreement shall recover its reasonable attorney's
6 fees and costs from the party subject to the enforcement action. If the superior court or
7 arbitrator finds that the appeal was without substantial merit, reasonable attorney's fees
8 and costs shall be awarded to the other parties defending the appeal.
9

10 9. Waiver of Future Appeal Rights.

11 a. Appellants agree not to bring, or to aid or abet any Third Party to bring any Legal
12 Challenge relating to the Project. Appellants' waiver of appeal rights relating to the
13 Project shall include (i) any Amended Master Plan; (ii) any revised Shoreline Substantial
14 Development permit; (iii) any binding site plan; (iv) building permits; or (v) any other
15 land use approval for the Project.
16

17 b. Any alleged breach of this Settlement Agreement may be addressed by any party through
18 the dispute resolution processes set forth in Section 8.

19 10. Retained Appeal Rights

20 Mox Chehalis agrees that notwithstanding the foregoing waiver of appeal rights, if this
21 Settlement Agreement were to be terminated Appellants retain all rights, including but not limited to the
22 following appeal rights:
23
24
25
26

- 1 a. In the event the Settlement Agreement is terminated and the permits for the existing
2 Project remain in effect, Appellants retain the right to pursue the current appeal pending
3 before the Court of Appeals under Docket No. 34113-1-II.
4
5 b. In the event the Settlement Agreement is terminated and Mox Chehalis submits an
6 application for an Amended Master Plan, shorelines permits or binding site plan approval.
7 Appellants may participate in permit review proceedings and appeal any such permit
8 decisions.

9 11. Notwithstanding any other provision herein, this Settlement Agreement shall not apply to
10 development of future Commercial Areas A, B and C as identified in City of Westport
11 Ordinance 1277. The parties recognize that Mox Chehalis is not currently proposing
12 development in these areas as part of the Project, but reserves the right to propose an
13 Amendment to the Master Plan concerning such areas in the future. Application for
14 development of such commercial areas shall not be included in the applications for the
15 Project. Appellants reserve all rights to contest or oppose any such proposal for future
16 development of Commercial Areas A, B and C.
17
18

19 12. DETAILS.

20 This Settlement Agreement may be executed in counterparts or by facsimile. The parties agree
21 that time is of the essence as to the requirements in this Agreement. This Settlement Agreement
22 represents the entire agreement and any amendment hereto must be agreed to by all parties to the
23 Agreement and executed in writing.
24

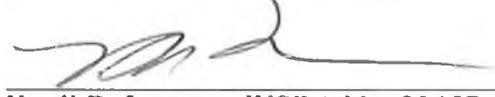
25 13. This Agreement shall apply to and be binding upon the parties to this Agreement, their
26 members, member organizations, related entities, successors and assigns. The undersigned

1 representative of each Party hereby certifies that he or she is fully authorized to enter into this
2 Agreement and to execute and legally bind such party to comply with its terms.

3 14. The Port of Grays Harbor, Department of Ecology and the Environmental and Land Use
4 Hearings Board are named parties in the currently pending appeal before the Washington Court of
5 Appeals. The Port of Grays Harbor, Department of Ecology and the Environmental and Land Use
6 Hearings Board acknowledge the settlement embodied in this Settlement Agreement between the
7 Appellants, Mox Chehalis and City of Westport and by signature of this document consent to the entry
8 of this Settlement Agreement and disposition of the pending appeal as provided herein.
9

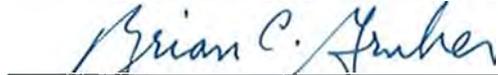
10 DATED THIS 13 day of April, 2007.

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

12  4/11/07

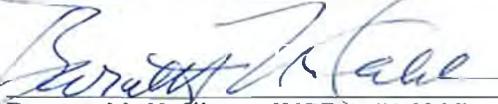
13 Knoll D. Lowney, WSBA No. 23457
14 Attorney for Appellants

15 ZIONTZ, CHESTNUT, VARNELL, BERLEY & SLONIM

16 

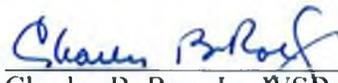
17 Brian C. Gruber, WSBA #32210
18 Attorney for Appellants

19 KALIKOW & GUSA, PLLC

20 

21 Barnett N. Kalikow, WSBA #16907
22 Attorney for Respondent Mox Chehalis LLC

23 PERKINS COIE, LLP

24 

25 Charles B. Roe, Jr., WSBA # 648
26 Attorney for Respondent Mox Chehalis LLC

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10 DEPARTMENT OF ECOLOGY

11 
12 JOAN M. MARCHIORO, WSBA #19250
13 Assistant Attorney General for
14 Department of Ecology

15 STATE OF WASHINGTON
16 DEPARTMENT OF ECOLOGY

17 
18 THOMAS J. YOUNG, WSBA #17366
19 Assistant Attorney General for
20 Department of Ecology

21 STATE OF WASHINGTON
22 ENVIRONMENTAL & LAND USE HEARINGS BOARD

23 
24 BRUCE L. TURCOTT, WSBA #15435
25 Assistant Attorney General
26

EXHIBIT A

The following described property will be conveyed to Smith & Lowney:

The easterly portions of Tax Parcel 161103420010 as shown on the attached map;

The easterly portions of Tax Parcel 791524300000 as shown on the attached map; and

Tax Parcels: 791500400000, 791523800000, 791500600000, 791501200100,

791501700000, 791502600100, 791502700100, 791502702400 and 791006100000,

subject to a 60 foot wide easement for ingress and egress and utilities across parcels

791523800000 and 791500600000.

The following described property will be retained:

The westerly portions of Tax Parcel 161103420010 as shown on the attached map;

The westerly portions of Tax Parcel 791524300000 as shown on the attached map; and

Tax Parcel 791524200100; together with a 60 foot wide easement for ingress and egress

and utilities across parcels 791523800000 and 791500600000.

KD 4/11/07

LANCO Development

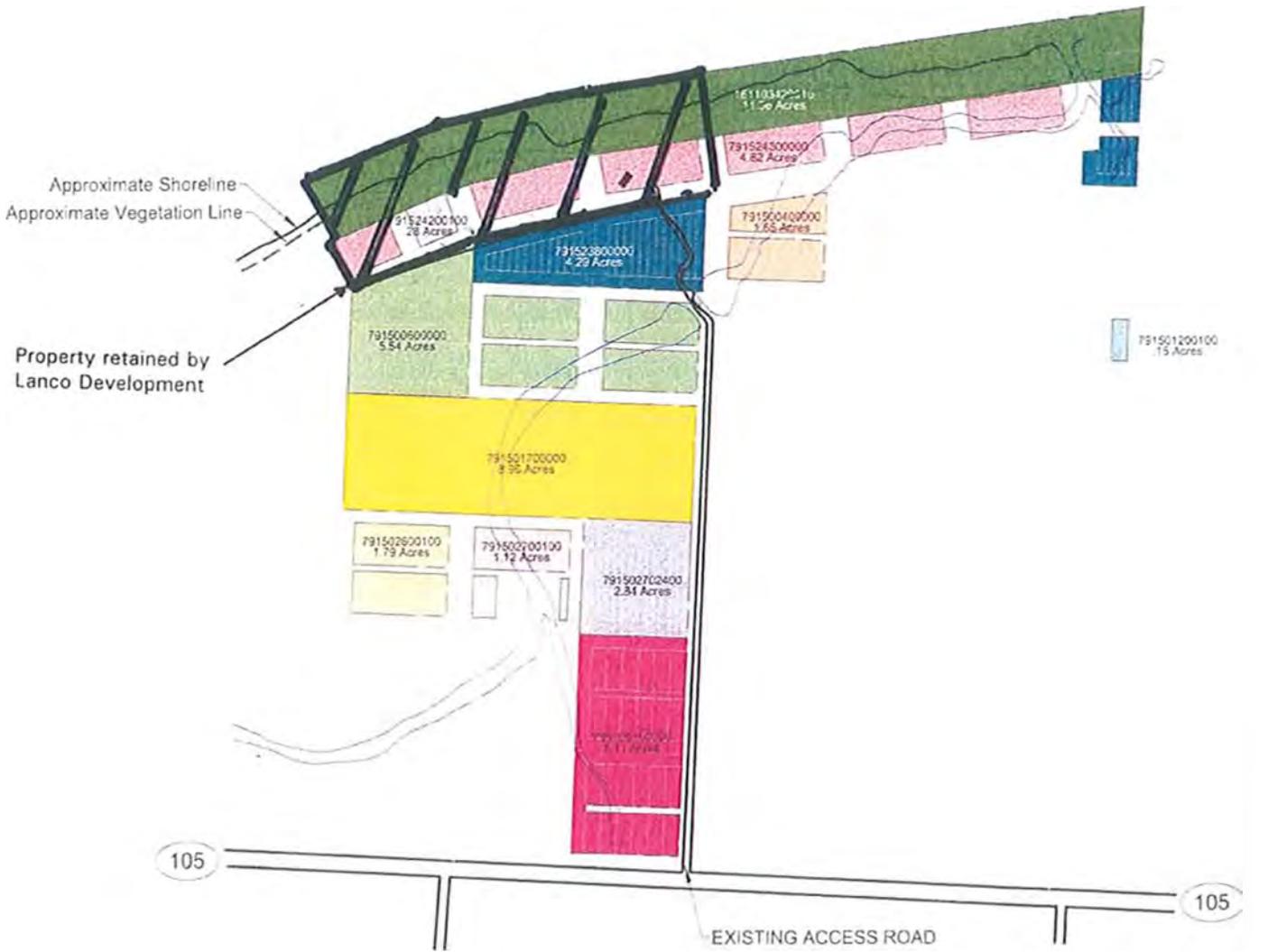
Date: 11/22/2006

Blair Property Grays Harbor, Washington

Color Code	APN	Acres
Green	161103420010	11.36
Red	791006100000	5.11
Orange	791500400000	1.65
Yellow	791500600000	5.54
Light Yellow	791501200100	0.15
Yellow-Green	791501700000	8.96
Light Green	791502600100	1.79
Light Blue	791502700100	1.12
Light Purple	791502702400	2.84
Dark Blue	791523800000	4.29
Light Purple	791524200100	0.28
Pink	791524300000	4.82

Total Acre 47.91

GRAYS HARBOR



AREA PLAN

SCALE: 1" = 500'-0"



KJ 1/11/07

Exhibit 2

1
2
3
4
5
6 THE COURT OF APPEALS
7 DIVISION II
8 OF THE STATE OF WASHINGTON

9 FRIENDS OF GRAYS HARBOR and
10 WASHINGTON ENVIRONMENTAL
11 COUNCIL,

12 Appellants,

13 vs.

14 MOX CHEHALIS LLC, et al.,

15 Respondents.

NO. 34113-1-II

SETTLEMENT AGREEMENT

APPENDIX A

WETLAND MITIGATION PLAN

For the
**Links at Half Moon Bay
Westport Golf and Hotel Destination Resort
Westport, Washington**

Proponent:

**Mox Chehalis, L.L.C.
1001 Cooper Point Road SW, Suite 140-395
Olympia, Washington 98502
(360) 790-3398**

Prepared For:

**HDR, Inc.
626 Columbia Street Northwest, Suite 2A
Olympia, Washington 98501
(360) 352-5090**

Prepared By:

**Ecological Land Services, Inc.
1157 3rd Avenue, Suite 220
Longview, Washington
(360) 578-1371**

June 2006

EXECUTIVE SUMMARY

Mox-Chehalis, L.L.C. (Proponent) has proposed the development of a destination resort on approximately 350 acres of Port of Grays Harbor (Port) property within the city limits of Westport, Washington (Figure 1). The destination resort will include an 18-hole golf course designed in the "Scottish Link" style, which incorporates natural site features such as wetlands, dunes, open waters, and forested areas. Construction of the golf course will unavoidably impact, but not fill, wetland areas on both a short-term (temporary impacts during construction) and a long-term (permanent impacts) basis.

The project will include the development of a luxury hotel (200 rooms), a conference center within the footprint of the luxury hotel, some commercial development, and the golf course and all appurtenances (including club house and golf maintenance building). Also proposed is the development of a second hotel (200 rooms), additional commercial development, and 200 condominium units. The duration of building activities is anticipated to last five years.

The proposed project will impact 18.29 acres of wetland by pruning and vegetation maintenance. No wetland fill or excavation will occur. Previous iterations of the development included nearly 10 acres of wetland fill. In order to avoid all wetland fill and excavation impacts, there is a resulting increase in vegetation mowing and pruning impacts, and in net wetland buffer impacts. It is important to remember that although non-fill related impacts have increased on a per-acre basis, the avoidance of nearly 10 acres of wetland fill results in a significant functional improvement for the wetlands within the project area. Avoidance of all wetland fill translates into retention of two important wetland functions- water quality and hydrological – while partially retaining some habitat functions even if vegetation within the wetland areas is pruned or mowed.

Permanent net wetland buffer impacts from mowing and vegetation maintenance will equal 21.87 acres from the golf course and paths, and 0.27 acres from the condominiums. Mitigation for the wetland impacts due to pruning and mowing will include creation of 5 acres of on-site interdunal wetlands and rehabilitation of 7.00 acres of estuarine wetland, for a total net increase of 12 acres of jurisdictional wetland to compensate for this non-fill associated wetland impact. Mitigation for buffer impacts from the golf course and paths will include restoring, through removal of invasive species, 22.32 acres of on-site upland dunes at a 2:1 ratio, and preservation of approximately 54 acres of on-site wetland at a 5:1 ratio. Mitigation for wetland buffer impacts associated with the condominiums (0.27 acres) will be through enhancement/averaging of 1.13 acres of wetland buffer in the vicinity of the condominiums. Exceptional mitigation, above and beyond the compensation previously described includes preserving approximately 53 acres of on-site wetlands and 14 acres of rare sphagnum bog and forested peat wetland.

Therefore, this project will involve no wetland fill or excavation, and will provide a net increase of 12 acres of jurisdictional wetland, fully mitigate for all wetland buffer impacts, and provide exceptional mitigation of 67 acres of wetland preservation, 14 acres of which are rare high quality wetlands.

The following table summarizes proposed impacts and mitigation for the proposed project:

TABLE 1. WETLAND IMPACT AND MITIGATION SUMMARY

IMPACT		MITIGATION		
Type	Acres	Method	Location	Acres
Fill	0.0	NA	NA	0.0
Pruning/Mowing	18.29	Creation/Rehabilitation	On-site	5.00
		Rehabilitation	Firecracker Point	7.00
Wetland Buffer Impacts	21.87 golf course/ paths 0.27 condos	Buffer Rehab	On-site	22.32
		Preservation	On-site	54.00
		Enhancement/Averaging	On-site	1.13
		Preservation	Seastrand Bog	14.00
		Preservation	On-Site	53.00
TOTALS	40.43			156.45

A total proposed non-fill wetland and buffer impact of 40.43 acres and a total mitigation of 156.45 acres will result in an approximate mitigation ratio of 3.8 to 1. Previous iterations of the development included nearly 10 acres of wetland fill. In order to avoid all wetland fill and excavation impacts, there is a resulting increase in vegetation mowing and pruning impacts, and in net wetland buffer impacts. It is important to remember that although non-fill related impacts have increased on a per-acre basis, the avoidance of nearly 10 acres of wetland fill results in a significant functional improvement for the wetlands within the project area.

A summary of the mitigation ratios by site follows:

MITIGATION FOR WETLAND PRUNING AND MOWING IMPACTS (18.29 acres)

Wetland vegetation pruning and mowing impacts of 18.29 acres will be mitigated by the on-site creation of 5.0 acres of interdunal wetlands, and 7.0 acres of estuarine wetland rehabilitation, providing a mitigation ratio of 0.66 to 1. This ratio is derived from premise that pruning/mowing impacts do not impact hydrologic and water quality functions, only habitat. Fill impacts for interdunal wetlands are to be mitigated at a 2:1 ratio per Table 1a of *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Publication 06-06-011a)*. As habitat represents approximately one third of wetland function, therefore 0.33 of a 2:1 ratio equals a ratio of 0.66:1.

**TABLE 2. MITIGATION FOR WETLAND PRUNING AND MOWING IMPACTS
(18.29 acres)**

Mitigation Acres	Site/Type	Ratio	Acres of Mitigation Satisfied	Balance (starting- 18.29 acres)
5.00	On-site creation	0.66:1	7.6	10.7
7.00*	Firecracker Pt wetland rehab	0.66:1	10.7	0.0

**TABLE 3. MITIGATION FOR PERMANENT WETLAND BUFFER IMPACTS
(21.87 acres golf course and paths, 0.27 acres at condominiums)**

Mitigation Acres	Site/Type	Ratio	Acres of Mitigation Satisfied	Balance Starting- 21.87+0.27=22.14
22.32	On-site upland dune rehabilitation by removal and suppression of Scot's broom	2:1	11.16	10.98
1.13	Enhancement/rehabilitation of remaining upland dune buffer following condominium construction.	4:1	0.27	10.71
54.00	Preservation of on-site wetlands and uplands	5:1	10.80	0.0

**TABLE 4. EXCEPTIONAL MITIGATION
(Over and Above Required Mitigation)**

Acres	Site/Type	Ratio	Acres of Mitigation Satisfied
53.00	Preservation of on-site wetlands and uplands	10:1	Not Applicable, Exceeds Requirement
14.00	Seastrand bog and forest preservation	8:1 to 10:1	Not Applicable, Exceeds Requirement

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1.0 PROJECT DESCRIPTION

1.1 Project Location

The project is located within the city limits of Westport, Washington in a portion of Sections 1 and 2 of Township 16 North, Range 12 West, W.M. The project is bordered by the Pacific Ocean to the West, Half Moon Bay to the North, Washington State Park's property to the south and Forrest Street to the East (Figure 1, Appendix A).

1.2 Responsible Parties

The project applicant, Mox Chehalis, L.L.C., is responsible for the proposed project including implementing the required mitigation tasks outlined in this mitigation plan. HDR, Inc. is the project engineering/management firm responsible for project implementation including completion of approved mitigation tasks. Ecological Land Services, Inc. (ELS) prepared a wetland delineation report (revised November 2002), this revised mitigation plan, and will assist in implementation of the mitigation tasks.

1.3 Description of Overall Project

The proposed project will create a destination resort including a luxury hotel, convention center, dining facilities, separate condominium-style living units, and a world-class Scottish links style 18-hole golf course. Associated improvements for the golf course will include a driving range, course maintenance facility, a clubhouse, and associated vehicle parking areas. The entire 18-hole golf course and condominium units will be located on the approximately 300-acre parcel located south of the Jetty Access Road. The hotel, convention center, restaurant, parking area, clubhouse, and maintenance facility will be located north of the Jetty Access Road.

To construct the golf course and associated improvements, 18.29 acres of wetland will be routinely pruned or mowed and there will be net wetland buffer impacts of 21.87 acres from the golf course and paths, and 0.27 acres from the condominiums. The total wetland and buffer impacts will equal 40.43. While this is a slight increase over the previous project impact total of 38.75 acres, previous iterations of the development included nearly 10 acres of wetland fill. In order to avoid all wetland fill and excavation impacts, there is a resulting increase in vegetation mowing and pruning impacts, and in net wetland buffer impacts. It is important to remember that although non-fill related impacts have increased on a per-acre basis, the avoidance of nearly 10 acres of wetland fill results in a significant functional improvement for the wetlands within the project area (see Figures 3, 4 of Appendix A).

A total of 156.45 acres of habitat will be created, rehabilitated, or preserved to mitigate for wetland and buffer impacts at the Links at Half Moon Bay site. The following is a summary list of all the proposed mitigation measures:

- A total of 107.00 acres of interdunal upland and wetland habitat will be preserved on-site.
- A total of 4.05 acres of on-site interdunal wetland will be created by excavating existing uplands to an elevation sufficient for the development of wetland hydrology, hydrophytic

vegetation, and hydric soils. The use of excavated surface soils from proposed filled wetlands will be used to facilitate wetland vegetation in the created wetland areas.

- A total of 0.95 acres of wetland will be rehabilitated on-site by removing the old radar road fill and revegetating with native wetland species.
- A total of 7.00 acres of estuarine wetland at Firecracker Point will be rehabilitated by excavating and removing approximately 6 feet of existing dredge spoils, which will enable high tides to inundate the site. The wetland will be planted with native estuarine plant species and allowed to revegetate naturally. Approximately 2.90 acres (minimum 75 feet wide) of upland buffer will be enhanced by removing invasive species and installing native plants.
- A total of 14.00 acres of rare sphagnum bog and forested peat wetland at Seastrand Bog will be permanently preserved with a legal conservation easement or purchased by a land trust or natural resource entity.
- A total of 22.32 acres of upland dunal habitat located on-site will be rehabilitated by removal and suppression of Scot's broom and other invasive species.
- A total of 1.13 acres of wetland buffer adjacent to the condominiums will be enhanced with native shrub and tree plantings to improve habitat and provide screening protection for the wetlands within 50 feet of the condominium footprint.

1.4 Wetland Delineation

The wetland delineation followed the Routine Determination Method according to the U.S. Army Corps of Engineers (COE), *Wetland Delineation Manual* (Environmental Laboratory 1987) and the Washington Department of Ecology (WDOE), *Washington State Wetlands Identification and Delineation Manual* (1997). The Routine Determination Method examines three parameters - vegetation, hydrology, and soils - to determine if wetlands exist in a given area. The presence of hydrology is critical in determining what is wetland. Because hydrologic conditions can change periodically (hourly, daily, or seasonally), however, it is necessary to determine if hydrophytic vegetation and hydric soils exist that would indicate that water is present for long enough duration to support a wetland plant community. By definition, wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in anaerobic soil conditions. Wetlands are regulated as "Waters of the United States" by the COE and locally by the City of Westport according to *Chapter 17.32 Westport Municipal Code (WMC)*. The WDOE and Environmental Protection Agency also provide regulatory oversight on projects within or adjacent to wetland areas.

Due to the size of the project area and the complex nature of the wetlands within the site boundaries, wetland boundaries were delineated by establishing a baseline along the western

edge (north to south) of the project area and extending transects perpendicular (west to east) to the baseline. Vegetation types along each transect were evaluated and documented on field sheets along with soils and hydrology information. Three transects were established (Transect North, Transect Middle, and Transect South) and a total of 28 test plots were documented. Numerous hydrology and soil test holes were excavated throughout the project area to evaluate soil conditions in upland and wetland areas in order to establish wetland boundaries. Given the large number and small size of many of the on-site wetlands, simply establishing transects would have failed to adequately locate and document all of the wetlands at the site. To compensate for the inherent low accuracy of transect samplings, a series of sectors were established throughout the project site boundaries with each sector physically evaluated and wetland boundaries flagged. Each sector was completed before moving on to the next one. Professional surveyors worked directly with the wetland biologists to assure that all flagged wetlands were surveyed. To further assure that all wetlands were surveyed, letter identifiers were given to each individual wetland along with consecutively numbered **WETLAND BOUNDARY** flags. This information was given to the surveyors so they had a mechanism to track their efforts. ELS verified that each wetland was adequately surveyed by comparing the surveyors list of completed boundary surveys with the list of wetlands flagged.

ELS also used aerial photographs and existing reference materials to aid in evaluating wetlands at the project area. The following list includes reference materials used by ELS during evaluation of the on-site wetlands:

- Washington State Department of Natural Resources. Aerial photographs from 1997 and 1999 (Appendix F).
- Adolfson Associates, Inc. *City of Westport Interdunal Wetland Inventory*. February 2000.
- David Evans and Associates, Inc. *Plant Communities and Wildlife Habitat Characterization at the Port of Grays Harbor Westport Site*. June 28, 1991.
- Lou Messmer Biological Consulting. *Preliminary Wetland Determination – Summary Report and Map*. January 24, 2000.

The wetland boundaries on-site (Figure 2, Appendix A) were verified by the COE on November 2, 2000 and January 24, 2001, see verification letter dated April 4, 2001 in Appendix B.

2.0. ECOLOGICAL ASSESSMENT OF WETLANDS to be IMPACTED

2.1 Existing Vegetation

Generally there are six dominant vegetative communities within the project area including:

- European Beach Grass Community (European beach grass, coast strawberry, etc.)
- Emergent Wetland Community (slough sedge)
- Scrub – Shrub Wetland Community (Hooker willow, Douglas spiraea, California wax myrtle)
- Scrub – Shrub Upland Community (Scot’s broom – an exotic invasive species)
- Forested Wetland Community (shore pine, red alder, slough sedge)
- Forested Upland Community (shore pine)

Other minor vegetative communities were observed at the site, therefore only the most dominant are listed. The site has a complex of vegetative communities with the entire site undergoing rapid succession. This includes primary succession, which is the establishment of plants on previously unvegetated land, and secondary succession, which is the invasion of established vegetated areas after established vegetation has been impacted by natural or human disturbances. Disturbances at the site are varied and include fire, wind blown sand deposition, wind erosion, and vehicle rutting from off-road vehicle use.

The project area supports a wide variety of native and non-native plant species in both the wetland and upland areas of the site. The following list includes species observed at the site during wetland delineation activities:

TABLE 4. VEGETATION LIST

<u>Scientific Name</u>	<u>Common Name</u>	<u>Indicator</u>
<i>Achillea millefolium</i>	yarrow	FACU
<i>Ammophila arenaria</i>	European beach grass	FACU
<i>Anaphalis margaritacea</i>	pearly everlasting	NI
<i>Anthoxanthum odoratum</i>	sweet vernalgrass	FACU
<i>Arctostaphylos uva-ursi</i>	kinnikinnick	FACU-
<i>Armeria maritima</i>	sea pink	FAC
<i>Aster subspicatus</i>	Douglas aster	FACW
<i>Blechnum spicant</i>	deer fern	FAC+
<i>Carex macrocephala</i>	large-headed sedge	FAC-
<i>Carex obnupta</i>	slough sedge	OBL
<i>Cytisus scoparius</i>	Scot’s broom	NI
<i>Epilobium ciliatum</i>	Pacific willow-herb	FACW-
<i>Epilobium watsonii</i>	Watson willowherb	FACW-
<i>Fragaria chiloensis</i>	coastal strawberry	NI
<u>Scientific Name</u>	<u>Common Name</u>	<u>Indicator</u>

<i>Goodyera oblongifolia</i>	rattlesnake plantain	FACU-
<i>Holcus lanatus</i>	velvet grass	FAC
<i>Hypochaeris radicata</i>	hairy cats-ear	FACU
<i>Juncus balticus</i>	baltic rush	FACW+
<i>Juncus articulatus</i>	jointed rush	OBL
<i>Juncus ensifolius</i>	dagger leaf rush	FACW
<i>Juncus lesueurii</i>	salt rush	FACW
<i>Lathyrus japonicus</i>	beach pea	FACU-
<i>Lonicera involucrata</i>	black twinberry	FAC+
<i>Lupinus littoralis</i>	seashore lupine	NI
<i>Malus fusca</i>	western crabapple	FACW
<i>Myrica californica</i>	California wax myrtle	FACW
<i>Picea sitchensis</i>	Sitka spruce	FAC
<i>Pinus contorta</i>	shore pine	FAC
<i>Polystichum munitum</i>	sword fern	FACU
<i>Potentilla pacifica</i>	Pacific silverweed	OBL
<i>Pteridium aquilinum</i>	bracken fern	FACU
<i>Rubus discolor</i>	Himalayan blackberry	FACU
<i>Rubus spectabilis</i>	salmonberry	FAC+
<i>Rubus ursinus</i>	trailing blackberry	FACU
<i>Rumex acetosella</i>	sour weed	FACU
<i>Rumex crispus</i>	curly dock	FAC+
<i>Salix hookeriana</i>	hooker willow	FACW
<i>Spiraea douglasii</i>	Douglas spiraea	FACW
<i>Trifolium wormskjoldii</i>	spring-bank clover	FACW+
<i>Vaccinium ovatum</i>	evergreen huckleberry	NI
<i>Vaccinium parvifolium</i>	red huckleberry	FACU
<i>Veronica scutellata</i>	marsh speedwell	OBL

The indicator status for each species refers to the likelihood of that species to be found in wetland areas. The (+) and (-) symbols are used to indicate a species' increased (+) likelihood or decreased (-) likelihood to be found in wetland areas.

- **OBL** (obligate wetland) - occur almost always (estimated probability >99%) under natural conditions in wetlands.
- **FACW** (facultative wetland) - usually occur in wetlands (estimated probability 67%-99%), but occasionally found in non-wetlands.
- **FAC** (facultative) - equally likely to occur in wetlands or non-wetlands (estimated probability 34%-66%).
- **FACU** (facultative upland) - usually occur in non-wetlands (estimated probability 67%-99%), but occasionally found in wetlands (estimated probability 1%-33%).
- **UPL** (obligate upland) - occur almost always (estimated probability >99%) under natural conditions in non-wetlands.
- **NI** (no indicator) - insufficient data to assign to an indicator category.

2.2 Existing Water Regime

Hydrology at the site is influenced by both surface water and groundwater. Hydrology varies throughout the year, with wetland areas typically inundated during the winter months and dry during the summer months. Groundwater is shallow throughout the site and is expected to match with surface water elevations of the larger wetland areas in the center and eastern portions of the site. Surface water at the site flows to the north and east where it enters into ditches that drain into a roadside ditch parallel to the western side of Forrest Avenue. From this point, surface water flows beneath Forrest Avenue via a culvert and enters another ditch system that conveys water to an estuarine marsh at Firecracker Point, ultimately discharging to Grays Harbor near the Westport airport.

Surface water was observed in the wetlands during winter to mid-spring of years 2000-2002 including the large wetland complex in the center of the site and outlying isolated wetland areas. Subsequent visits to the site during June-September of those years revealed wetlands in the west portion of the site as having no standing water. It appears that inundation of the on-site wetlands is typically constant during the winter months, sporadic during the spring/fall months, and absent during the summer months. Surface water was not observed at any time in Wetland "HMB" (Figure 2, Appendix A).

2.3 Existing Soils

Soils at the site are mapped as Beaches (#8), Dune land (#35), Udorthents, level (#147), and Yaquina loamy fine sand (#153) as referenced in the U.S.D.A. Soil Conservation Service, *Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington* (1986). The Beaches and Yaquina soils are recognized as hydric soils on both the State of Washington and Grays Harbor County hydric soils lists (U.S.D.A. Soil Conservation Service 1995). The Dune land and Udorthents soils are not listed on the State of Washington or Grays Harbor County hydric soil lists.

Soils observed at the site are consistent with the fine to medium sands commonly found in coastal dunes along the Oregon and Washington coastal environments. Soils found in dune environments are deposited by wind, and therefore, grain sizes are fine to medium. Soil pits revealed fine to medium sands with a thin organic (duff) layer consisting of decomposed pine needles and grasses. Soils within the wetland areas consist of the same sandy parent material, but have different visual characteristics than the soils found in the upland areas of the site. Typical wetland soils have more red hues or "mottles," which are caused by the reduction of iron during anaerobic (saturated) conditions. Soils in the wetland and upland areas are similar except that the wetland soils have additional hydric indicators such as faint mottling, oxidized root channels, and organic streaking.

Soil colors within the project area were somewhat consistent throughout the site in both uplands and wetland areas. Soil colors were documented at each test plot and listed on field data sheets.

The following summarizes the soil colors observed and recorded within the project area:

Upland Soils

10YR 4/2 dark grayish brown
10YR 4/3 brown
10YR 5/2 grayish brown

Wetland Soils

7.5YR 3/1 very dark gray
10YR 3/1 very dark gray
10YR4/1 dark gray
10YR 4/2 dark grayish brown
10YR 4/4 dark yellowish brown
10YR 5/1 gray
10YR 5/2 grayish brown

Wetland Soils Mottles

5YR 4/4 reddish brown
5YR 4/6 yellowish brown
7.5YR 5/8 strong brown
10YR 4/4 dark yellowish brown
10YR 4/6 strong brown
10YR 5/6 strong brown
10YR 5/8 strong brown

2.4 Existing Fauna

Faunal species observed or suspected to be within the vicinity of the site are documented in *Plant Communities and Wildlife Habitat Characterization at the Port of Grays Harbor Westport Site* (David Evans and Associates, Inc June 28, 1991) and *Draft Environmental Impact Statement – Links at Half Moon Bay Westport Golf and Hotel Destination Resort* (Economic and Engineering Services, Inc. November 1, 2000). In addition to the species listed in this report, the following unique species may occur in the vicinity of the subject site:

- Bald Eagle
- Marbled Murrelet
- Brown Pelican
- Snowy Plover
- Oregon Silver Spot Butterfly

However, no records or observations of these species have been documented at the subject site.

Unique aquatic animal species expected to inhabit Grays Harbor and/or the Pacific Ocean include:

- Coastal Cutthroat Trout
- Coho Salmon
- Leatherback Sea Turtle
- Green Sea Turtle
- Loggerhead Sea Turtle

2.5 Wetland Functions

Assessing the functions of wetlands can be a challenge subject to various interpretations and opinions. Numerous methods (Brinson, Reppert, and Cooke) have been developed to evaluate the inherent “function” of a particular wetland or wetlands within a landscape. No single wetland function assessment method has been developed specifically for interdunal wetlands of the Washington coastal environment, therefore making the assessment of the on-site wetlands difficult. After reviewing all of the functional assessment methodologies and their applicability to the interdunal wetlands at the subject site, the *Wetland and Buffer Functions Semi-Quantitative Assessment Methodology (SAM)* was selected (Cooke Scientific Services 2000). On-site wetlands were combined into two separate groupings to make the overall functional assessment more efficient. Conducting assessments for every individual wetland would be redundant given the mosaic layout of the wetland system. The two groups included (1) Western Isolated Wetlands and (2) Interior Wetland Mosaic. The following assessment of functions of the on-site wetlands is based on the SAM method using on-site observation and best professional judgment.

2.5.1 Flood/Stormwater Control

Flooding in the dune areas is common during the winter and spring months. The on-site wetlands retain floodwaters for long periods, which enables a slow infiltration rate into the shallow groundwater system. Another factor influencing floodwater detention is the permeability of the wetland soils. The soils in the on-site wetland areas consist of fine to medium sand. During dry periods when groundwater levels have dropped, the wetlands facilitate rapid infiltration thereby avoiding off-site surface flow of runoff.

2.5.2 Base Flow/Groundwater Support

The volume of precipitation falling at the site directly influences recharge of shallow groundwater. Surface water in the deeper wetlands is directly tied to the shallow groundwater table that depends upon rainfall volumes. Shallower wetlands at the site are thought to have less influence on groundwater due to their elevation above the groundwater table, small size, and low volume of rainfall retention. Other factors influencing recharge of groundwater from wetlands are evapotranspiration rates, organic matter accumulations on the floor of the wetland, and topographic elevation relative to groundwater elevation.

2.5.3 Erosion/Shoreline Protection

Given the interdunal nature of the on-site wetlands and the proximity of an established foredune or primary dune between the wetlands and the Pacific Ocean, these wetlands do not provide erosion control and shoreline protection.

2.5.4 Water Quality Improvement

Wetlands at the site are directly influenced by rainfall with most (72 percent on the Long Beach Peninsula, which is just south of the Westport Peninsula) of the rainfall directly infiltrating into the native sand soils and subsequently recharging the shallow groundwater system. Wetlands can be effective mechanisms for removing contaminants from surface water. Two primary factors directly influencing the effectiveness of water quality treatment of a particular wetland are the amount of vegetation and concentrations of contaminants in the water. Vegetation acts to slow the infiltration rate and by uptaking contaminants via evapotranspiration. Given the well-vegetated character of the on-site wetlands and the non-contaminated condition of the water entering the wetlands, the on-site wetlands are relatively naturally effective at treating stormwater.

2.5.5 Natural Biological Support

Natural biological support refers to the ability of the wetland areas to provide the necessary components for a productive natural system. Size, connectivity, diversity of vegetation, invasive species presence, and buffer condition are included in the overall function of a wetland system. Wetlands at the site generally provide better than average functions relative to biological support. Complex vegetative structure, connectivity, diverse habitat types, and a low cover of invasive species contribute to the increased function of the on-site wetlands to contribute to biological support. Generally, biological support functions increase from west to east with the area contributing the highest function being the forested wetland areas in the eastern portion of the site.

2.5.6 Overall Habitat Functions

An overall evaluation of habitat functions includes the size of the wetland system, habitat diversity, and the ability of the wetland to function as a sanctuary/refuge for wildlife. Given the relatively large size and good habitat diversity, the on-site wetlands provide above average overall habitat functions. Habitat functions increase from west to east with the best habitat located in the eastern-forested wetland area.

2.5.7 Specific Habitat Functions

Specific habitat functions include available habitat for invertebrates, amphibians, fish, mammals, and birds. Habitat for invertebrates generally occurs in areas with persistent ponded water, much emergent vegetation, and organic soils. Because the on-site wetlands have highly variable surface water elevations and sandy soils, invertebrate habitat is expected to be low.

Amphibian habitat is expected to be average or moderate because of the seasonal inundation of the wetland areas. Good amphibian habitat consists of ponded water with a minimum depth of 1.0 to 2.5 feet persisting from late winter through mid summer. Most of the deeper on-site wetlands retain ponded water adequate for amphibian usage but the shallower isolated wetlands tend to dry up too early in the spring to provide sustained amphibian habitat.

2.5.8 Cultural & Socioeconomic Values

Cultural and socioeconomic values of wetlands are subjective depending upon an individual's opinion of the aesthetic value of a given wetland. A pristine wetland to an avid bird watcher may be an eyesore to the average person who sees a brushy swamp with no apparent value other than mosquito breeding habitat. Economic value of wetlands is hard to calculate as well and usually revolves around tourism, recreation, fisheries, agricultural, and archeological factors that provide a tangible economic benefit to the general public. The on-site wetlands provide high educational opportunities, moderate aesthetic values, low fisheries/agricultural resources, low historical/archeological resources, moderate passive recreational opportunities, and current unrestricted public access.

2.6 Water Quality

Water quality within the wetland system is expected to be within state water quality criteria given the absence of industries, agriculture, septic systems, and other land uses that can have a detrimental effect on surface waters. Groundwater quality beneath the site is of good quality and is currently used by the City of Westport as their potable water source.

2.7 Buffers

Buffers are present around most of the on-site wetlands (50 feet for Category III wetlands and 100 feet for Category II wetlands), except for the wetlands that border city streets along the east and north property boundaries. Generally, the buffers are functional and remain in a natural state, except where transected by sand roads.

2.8 Wetland Rating

Wetlands were described by vegetative classes according to the *Classification of Wetlands and Deepwater Habitats of the U.S.* (Cowardin *et al.* 1979). The majority of the on-site wetlands are rated as Category II and Category III wetlands using the WDOE, *Washington State Wetland Rating System for Western Washington* (1993). Wetlands are rated on a scale from Category I (highest quality) to a Category IV (lowest quality). The Westport Zoning Code (WZC 17.32.070.f.1.A-B) describes Category I and II wetlands as "Category A" wetlands and Category III and IV wetlands as "Category B" wetlands.

According to WZC 17.32.065.b.1, wetland buffers required in the urban shoreline zone are equal to 100 feet for Category A wetlands and 50 feet for Category B wetlands. Exceptions

to wetland buffer requirements are allowed in certain cases within the urban shoreline environment, including for recreation (WZC 17.32.d.1.I).

Interior Wetland Mosaic: The project site has a large upland/wetland complex extending from the north to the south and covering the central and eastern portions of the site. When wetlands are woven together into a mosaic with uplands and the wetlands comprise more than 50% of the landmass, they are rated as a single wetland system; in this case they are rated as Category II (or A) wetlands.

Western One-Third of Site: A series of isolated wetlands and connected wetlands located west of the interior wetland/upland mosaic were rated as Category III (or B) wetlands (Figure 2, Appendix A).

Wetland "HMB": Wetland "HMB" is an isolated wetland located in the northern portion of the project site between the Jetty Access Road and Half Moon Bay. This wetland is mostly located on historic dredge spoils deposited at the site during Westport marina maintenance activities. Vegetation mowing/removal, filling, re-grading, and other activities have occurred in the vicinity of this wetland during dredge spoil placement and subsequent re-grading of the site. This wetland is rated as a Category III (or B) wetland due, in part, from the large occurrence of non-native/invasive species (velvet grass, evergreen blackberries, Scot's broom, and thistle) dominating the wetland area. This wetland will not be impacted by on-site developments and is not included in this mitigation plan.

The Wetland Delineation and Characterization Report of September 2000 rated the majority of on-site wetlands as Category II wetlands. This report includes a change in wetland categorization so that wetlands within the western portion of the site have been converted from Category II to Category III wetlands. This change has had no effect on the type or quantity of proposed wetland impacts or mitigation.

The change did not result in the reduction of wetland buffer impacts, because no buffer impacts were originally quantified in the DEIS. The modified categorization reflected in the current mitigation plan was used to generate a quantity of wetland buffer impacts in order to develop an appropriate buffer mitigation plan, at the direction of the WDOE. In fact, the recognition of buffer impacts in the current plan actually results in a net increase in environmental mitigation. For example, the DEIS proposed 128.41 acres of total mitigation area for 33.25 acres (3.9:1 ratio) of total wetland impacts, including fill, with no mention of buffers. The current mitigation plan proposes 156.45 acres of mitigation for 40.43 acres of non-fill wetland (18.29 acres) and buffer impacts (22.14 acres). Thus the quantification of buffer impacts in the more recent wetland mitigation plan has increased the environmental benefit of the project in terms of proposed mitigation. In addition, no wetland fill or excavation will occur under the current plan. Previous iterations of the development included nearly 10 acres of wetland fill. In order to avoid all wetland fill and excavation impacts, there is a resulting increase in vegetation mowing and pruning impacts, and in net wetland buffer impacts. It is important to remember that although non-fill related impacts

have increased on a per-acre basis, the avoidance of nearly 10 acres of wetland fill results in a significant functional improvement for the wetlands within the project area. Avoidance of all wetland fill translates into retention of two important wetland functions- water quality and hydrological – while partially retaining some habitat functions even if vegetation within the wetland areas is pruned or mowed.

The change of wetland HMB from a Category IV wetland to a Category III wetland will not affect any protection or mitigation requirements for the wetland. Both Category III and IV wetlands are classified as Category B wetlands by *WMC 17.32.065.f.B.*

2.9 Summary of Wetland and Buffer Impacts

The design lay-out of the Links at Half Moon Bay golf course has gone through more than one-half dozen iterations, each one that increasingly avoid direct wetland impacts such as filling, excavating, and pruning of wetland vegetation. The original golf course routing plan from March 2000 identified 30 acres of wetland fill, 19 acres of vegetation pruning impacts, and 2.5 acres of excavation impacts. The most recent and formally proposed design iteration identifies that the wetland fill and excavation impacts have been eliminated and vegetation pruning impacts have increased to 18.29 acres. The latest design has utilized, to the most practical extent, upland areas that occur on the site. Wetland pruning impacts are preferable than fill impacts because several important wetland functions can be retained despite the location of the wetland within the golf fairway. The numerous iterations of the golf course layout have satisfied the requirement to reasonably avoid and minimize wetland impacts. While further reduction of wetland impacts may technically be possible, for example by shifting a fairway a few feet either way, the resulting revision would not yield any significant reduction of impact worthy of the effort expended to obtain it. Therefore, the impacts identified as follows form the basis for the development of a suitable wetland mitigation plan:

Wetland mowing and pruning impacts = 18.29 acres

All wetland impacts are to interdunal Category II and III wetlands, a combination of palustrine emergent, scrub-shrub and forested wetlands.

Wetland buffer impacts in the urban shoreline environment are exempt from mitigation if the proposed activity does not constitute a structure *17.32.065(b) WMC*. Therefore, wetland buffers impacts were not quantified in the original *Wetland Delineation and Characterization Report*, dated September 6, 2000. In negotiations with the WDOE, however, the department requested that the project quantify and mitigate for wetland buffer impacts. Consequently, wetland buffer impacts have been identified on-site by assuming that all Category II wetlands require a 100-foot wide buffer, and all Category III wetlands require a 50-foot wide buffer. To quantify these impacts, area calculations were made of all wetland buffer areas within 50 feet of a fairway adjacent to Category III wetlands, and within 100 feet of a golf fairway adjacent to Category II wetlands. The demarcation line between on-site Category II and III wetlands is shown on the base delineation map (Figure 2,

Appendix A). Total wetland buffer impacts from the non-structure components of the golf course (fairways) were thus identified as 39.48 acres. Wetland buffer averaging, as directed by the WDOE, was then applied to partially offset this total buffer impact. Areas of wetland buffer outside of the standard buffer width, which are not impacted by development, totaled 18.91 acres. Therefore the net permanent wetland buffer impact is 20.57 acres for the fairways and driving range of the golf course. See Figure 4, Appendix A. Other buffer impacts include 1.3 acres for the paved trails and comfort station and 0.27 acres for the condominiums. These impacts are being mitigated by upland dune rehabilitation and averaging/enhancement of the buffer adjacent to the condominiums.

Net permanent wetland buffer impact for the golf course, paths and condominiums = 22.14 acres

2.10 Wetland Buffer Impacts

Irrigation pump station: The irrigation pump station, located in the northern portion of the site, is not within a wetland buffer and is not included in the wetland buffer impact area calculation above.

Irrigation Lake: The irrigation lake lies within the wetland buffer, but it is not considered an activity that will impact the buffer because it will likely help hydrologically support adjacent wetlands and provide a favorable aquatic environment for wildlife and waterfowl feeding and resting. The lake does not create a conflict between the animals and the recreational activity, as did the proposed aqua range, because the irrigation lake is not intended as a driving range. In addition, the irrigation lake is a non-structure appurtenant feature of the golf course, which is a recreational facility and therefore exempt from wetland buffer requirements in the urban shoreline zone. Other created ponds within the golf course area, outside wetlands but within buffer areas, are similarly treated.

Restrooms: The restroom facility, in the southern portion of the site, is within the wetland buffer and this impact has been quantified in the net permanent wetland buffer impact area.

Pathways and Boardwalks: Portions of the pathways throughout the site, involving 1.3 acres, are included in the net permanent wetland buffer impact area calculation. The pathways are designed to be minimally impacting because they will be surfaced with oyster shells and therefore pervious. Boardwalks over wetlands will be similarly minimally impacting, but do not occur within the wetland buffer. Pathways and boardwalks are appurtenant features of the golf course, a recreational facility.

Condominiums: The condominiums located near the northern site boundary will impact wetland buffers by an additional 0.27 acres (Figure 15, Appendix A). The wetland buffer impact is due to encroachment of the buildings and landscaping into the 50-foot buffers of adjacent Category III wetlands. In addition, some grading work will occur within the buffer to construct the buildings, however the majority of any graded areas will be only a temporary impact and will subsequently be enhanced by the planting of screening native shrubs.

Mitigation will involve both enhancement and averaging (addition of other area to the buffer to replace that lost through encroachment).

3.0 MITIGATION APPROACH

3.1 Mitigation Sequencing

Mitigation sequencing is a process that projects must undertake to assure that site developments avoid, minimize, rectify, and reduce impacts to wetlands wherever practical. These steps must be taken prior to utilizing compensatory mitigation for impacts to wetlands. Numerous project designs were evaluated with respect to wetland impacts including different course layouts and location of permanent structures. A “Scottish-Links” course design, which incorporates natural, undisturbed areas into the course, was selected for the inherent reduced impact on the natural environment. Having decided a “Scottish-Links” style of golf course would be the least environmentally damaging of available course styles, a course routing effort was employed to design a course that would have the least amount of impact to the on-site wetlands. The iterations are as follows:

March 17, 2000

TYPE OF IMPACT	WETLANDS IMPACTED (ACRES)
Fill	30.0
Prune	19.0
Excavate	<u>2.5</u>
Total	51.5

July 10, 2000

TYPE OF IMPACT	WETLANDS IMPACTED (ACRES)
Fill	23.0
Prune	20.0
Excavate	<u>3.5</u>
Total	46.5

September 5, 2000

TYPE OF IMPACT	WETLANDS IMPACTED (ACRES)
Fill	11.96
Prune	15.89
Excavate	<u>4.75</u>
Total	32.60

A Draft Environmental Impact Statement was issued on December 1, 2000, under the State of Washington’s SEPA process. After reviewing public comments received during this open comment period, a re-design was completed in February 2001.

February 2001

TYPE OF IMPACT	WETLANDS IMPACTED (ACRES)
Fill	10.56
Prune	13.82
Excavate	<u>4.22</u>
Total	25.60

Following meetings with the WDOE, further reductions in wetland impacts were achieved with subsequent re-design. Between February 2001 and November 2001, the primary change to the proposal was eliminating the aqua range, which represented 3.99 acres of excavation, and replacing it with a dry range. The WDOE viewed the aqua range commensurate with a fill impact because of the monoculture-like component of open water. Additionally, the open water feature of the aqua range created conflicting problems for the golf course because the open water would have likely attracted waterfowl that would have been subject to pummeling by golf balls. Because of the WDOE concerns and the potential waterfowl impacts, the aqua range proposal was replaced with a dry range. Through the combined efforts of the biologists and the golf course architect, along with input from WDOE staff, wetlands were avoided, impacts were minimized, and the overall objective of a Championship Golf Course was achieved. The final routing plan was completed in November 2001.

November 2001

TYPE OF IMPACT	WETLANDS IMPACTED (ACRES)
Fill	9.96
Prune	14.63
Excavate	<u>0.23</u>
Total	24.82

Avoidance: Work within wetland areas has been largely avoided by locating the golf course, hotel, convention center, condominiums, and other development outside of wetland areas. The "Links-Style" golf course design selected is "friendlier" to the environment than other types of golf course designs because this style incorporates the natural environment into its recreational features. In contrast, other golf course designs involve massive cuts/fills and major re-grading throughout the entire course. As a result of the Links-style course, the large upland/wetland complex extending from the north to the south in the eastern portion of the property has been largely avoided. This area has been rated as a Category II wetland by Ecological Land Services, Inc (ELS 2002).

To further avoid wetland and wetland buffer impacts, the jetty access road, if widened, will be extended to the north. Field investigations by ELS confirm that the jetty access road can be widened to the north without impacting any wetlands or wetland buffers.

Minimization: Given the location and magnitude of this project, wetland impacts are unavoidable. Areas of unavoidable wetland impacts were minimized to every extent possible without defeating the project purpose. Many preliminary re-designing efforts were conducted to re-work locations to minimize impacts to wetland areas. The current proposal has eliminated wetland fill and excavation impacts. The proposed project will impact 18.29 acres of wetland by pruning and vegetation maintenance. No wetland fill or excavation will occur. Previous iterations of the development included nearly 10 acres of wetland fill. In order to avoid all wetland fill and excavation impacts, there is a resulting increase in vegetation mowing and pruning impacts, and in net wetland buffer impacts. It is important to remember that although non-fill related impacts have increased on a per-acre basis, the avoidance of nearly 10 acres of wetland fill results in a significant functional improvement for the wetlands within the project area. Avoidance of all wetland fill translates into retention of two important wetland functions- water quality and hydrological – while partially retaining some habitat functions even if vegetation within the wetland areas is pruned or mowed.

For another example, bridges and pathways are designed as a low impact mode of access in wetlands and buffers. Both bridges and pathways help minimize wetland impacts by spanning critical areas and eliminating the need for fill in wetlands and wetland buffers. The pathways will be concentrated in the wetland buffers, and will be constructed with crushed oyster shells to create a pervious walking surface, which further minimizes wetland and wetland buffer impacts.

In addition, the existing access road on the south side will be maintained within its current footprint for seasonal, emergency access during fire season and intertidal access. The access road does not constitute a wetland impact according to *17.32.d.1 WMC* because it is already an existing road.

3.2 Proposed Mitigation Sites

Mitigation for direct wetland/buffer impacts is proposed on-site and in two off-site locations, as summarized below:

TABLE 5. MITIGATION DETAIL BY SITE

MITIGATION SITES	TYPE OF MITIGATION	ACRES
On-site	Wetland Creation	4.05
	Wetland Rehabilitation	0.95
	Wetland/Upland Preservation	107.00
	Upland Rehabilitation	22.32
	Wetland Buffer Enhancement at Condos	1.13
Firecracker Point	Estuarine Wetland Rehabilitation	7.00

	Upland Buffer Enhancement*	2.90*
Seastrand Bog	Forested/Scrub-Shrub Sphagnum Bog Preservation	9.00
	Sphagnum Moss/Native Cranberry Bog Preservation	5.00
	Total	156.45

* Not counted toward total mitigation acreage.

3.3 Goals and Objectives of Mitigation

The goal of this mitigation plan is to create, rehabilitate, and preserve wetland habitat, rehabilitate and preserve interdunal upland habitat, and preserve sphagnum bog habitat to compensate for unavoidable wetland impacts from proposed site developments. Creation of on-site wetlands will involve converting existing upland into viable Class II wetlands with a mosaic of emergent, scrub-shrub, and forested components. Enhancement of wetland buffers adjacent to the condominiums will provide habitat and screening between the wetlands and adjacent development. Rehabilitation of on-site wetlands will involve removing the old radar road fill and installing native wetland species. Rehabilitation of the off-site estuarine wetland at Firecracker Point will involve dredging and installing native estuarine species, and enhancing the buffer. Preservation of high quality sphagnum bog at Seastrand Bog and interdunal habitat on-site will further maintain existing habitat, forage, and shelter for wildlife.

4.0 ON-SITE MITIGATION

4.1 On-Site Ownership

The entire site is currently owned by the Port of Grays Harbor but will be owned by Mox Chehalis, L.L.C. if the proposed golf course project is approved. Maintenance and monitoring responsibilities will transfer to future owners as a part of the purchase agreement.

4.2 On-Site Description

On-site mitigation will include 5.0 acres of wetland creation/rehabilitation, and 107.00 acres of interdunal wetland and upland preservation. There will also be 22.32 acres of upland dune rehabilitation and 1.13 acres of wetland buffer averaging/enhancement adjacent to the condominiums. For a complete description of on-site conditions, please refer to section 3 of this document.

4.3 Ecological Rationale for On-Site Mitigation

The availability of on-site wetland mitigation measures is limited for several reasons:

1. Through the effort to avoid and minimize wetland impacts, golf course fairways have been purposely located in the upland areas. Therefore, these upland areas are not available for wetland creation or other mitigation measures.

2. The layout of the fairways in relation to each other is such that in-between areas consist of overlapping wetland buffers affording little to no room for wetland creation.
3. The 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. The unique quality of the landscape makes it an ideal location for a links style golf course. At the same time, over-utilization of upland areas to create wetlands for mitigation would have the result of creating most or all areas wetland, thereby losing the unique combination of upland dunes adjacent to depressional wetlands. Therefore, dunes in excess of 13 feet elevation above sea level will not be proposed for wetland creation.
4. Any proposed wetland creation areas must be adequately buffered from adjacent development, therefore no such areas can be proposed within 50 feet of a golf course green or tee.
5. Upland dune areas dominated by native plant species and/or that are densely covered with native shrubs and trees are not suited for wetland creation. Disturbing such areas for the sake of creating wetlands does not yield an environmental benefit.

4.4 Proposed On-Site Mitigation

On-site mitigation for wetland and buffer impacts is in three forms (Figures 3 and 4, Appendix A). The first is wetland creation/rehabilitation and upon consideration of the limitations listed above, there are only 5.0 acres of this type available on-site in 23 separate areas. Additional wetland creation/rehabilitation is not available on-site without disrupting additional areas of wetland buffers or upland dune areas with quality native habitat. The largest is the rehabilitation of the radar road area of 0.95 acres. The two smallest areas are wetland creation areas of 0.09 acres. Wetland creation areas are planned in areas dominated by Scot's broom (*Cytisus scoparius*), at elevations under 13 feet above sea level, and lacking significant cover (30 percent or more) of native shrubs and trees. This is to avoid impacts to higher quality upland dune areas. On-site wetland creation/rehabilitation areas will be used to partially mitigate on-site wetland mowing/pruning impacts. Additional mitigation for on-site mowing/pruning impacts requires off-site locations. See Figure 5, Appendix A.

The second on-site mitigation measure is the preservation from future development of 107.00 acres of interdunal upland and wetland habitat. This mitigation measure (54 acres) is to compensate in part for wetland buffer impacts, and the remaining 53 acres is exceptional mitigation over and above what it required.

The third on-site mitigation measure is the rehabilitation of upland dune habitat by removal and suppression of invasive plant species, primarily Scot's broom. This will involve 22.32 acres of upland rehabilitation to partially mitigate the net permanent buffer impact of 21.87 acres from the golf course. An additional 1.13 acres of wetland buffer averaging/enhancement will occur adjacent to the condominiums. Please refer to Objectives D and E in Section 5.5, Performance Standards.

4.5 Performance Standards for On-Site Mitigation

Objective A: Create 4.05 acres of on-site wetland by excavating existing uplands to a depth sufficient to provide hydrology necessary for hydrophytic vegetation to survive and prosper (Figure 3, Appendix A).

- **Performance Standard #1:** By year 1, excavate designated wetland creation areas to the project designed depth of 9 feet msl.
- **Performance Standard #2:** By year 1, install native wetland plant materials as designed.
- **Performance Standard #3:** At the beginning of the first growing season after native plant installation, monitor sites for plant mortality; replant to achieve 100 percent viability.
- **Performance Standard #4:** At the end of the first growing season, replace all dead plants. Total areal cover of native vegetation will be at least 10 percent.
- **Performance Standard #5:** By year 3, total areal cover of native vegetation will be at least 20 percent with an 80 percent survival rate.
- **Performance Standard #6:** By year 5, total areal cover of native vegetation will be at least 40 percent with an 80 percent survival rate.
- **Performance Standard #7:** By year 7, total areal cover of native vegetation will be at least 50 percent with an 80 percent survival rate.
- **Performance Standard #8:** By year 10, total areal cover of native vegetation will be at least 70 percent with an 80 percent survival rate.
- **Performance Standard #9:** For each year of monitoring, total areal cover of undesirable non-native vegetation such as reed canarygrass, Scot's broom, gorse, evergreen blackberry, and Himalayan blackberry will not exceed 10 percent.

Objective B: Rehabilitate 0.95 acres of existing on-site emergent wetlands by removing the old radar road fill and installing native plants.

- Performance Standard #1:** By year 1, excavate the old radar road fill to the project designed depth of 9 feet msl.
- **Performance Standard #2:** By year 1, install native wetland species as designed.
 - **Performance Standard #3:** At the beginning of the first growing season after native plant installation, monitor sites for plant mortality; replant to achieve 100 percent viability.
 - **Performance Standard #4:** At the end of the first growing season, replace all dead plants. Total areal cover of native vegetation will be at least 10 percent.
 - **Performance Standard #5:** By year 3, total areal cover of native vegetation will be at least 20 percent with an 80 percent survival rate.
 - **Performance Standard #6:** By year 5, total areal cover of native vegetation will be at least 40 percent with an 80 percent survival rate.
 - **Performance Standard #7:** By year 7, total areal cover of native vegetation will be at least 50 percent with an 80 percent survival rate.
 - **Performance Standard #8:** By year 10, total areal cover of native vegetation will be at least 70 percent with an 80 percent survival rate.
 - **Performance Standard #9:** For each year of monitoring, total areal cover of undesirable non-native vegetation such as reed canarygrass, Scot's broom, gorse, evergreen blackberry, and Himalayan blackberry will not exceed 10 percent.

Objective C: Rehabilitate 22.32 acres of on-site upland dunes by removing invasive species.

- **Performance Standard #1:** By year 1, remove all Scot's broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #2:** In year 2, remove all Scot's broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #3:** In year 3, remove all Scot's broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #4:** In years 4 through 10, remove all Scot's broom and other invasive species as often as necessary by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #5:** For each year of monitoring, total areal cover of invasive species will not exceed 10 percent.

Objective D: Preserve 107.00 acres of on-site interdunal wetland and upland habitat.

- **Performance Standard #1:** By year 1, develop a legally binding "Conservation Easement" on the preservation area.
- **Performance Standard #2:** By year 1, develop a legally binding description of the preservation area prepared by a professional land surveyor and recorded with the Grays Harbor County auditor.
- **Performance Standard #3:** Conduct long-term maintenance to remove undesirable, non-native species such as reed canarygrass, Scot's broom, gorse, evergreen blackberry, and Himalayan blackberry. For each year of monitoring, total areal cover of invasive species will not exceed 10 percent.

Objective E:

- **Performance Standard #1:** Following construction, there is a minimum buffer of 25 feet between condominiums/landscaping and adjacent wetlands. A total of 1.13 acres of total enhanced buffer area is established as shown in Figure 15.
- **Performance Standard #2:** By year 1, install native upland dune species as designed.
- **Performance Standard #3:** At the beginning of the first growing season after native plant installation, monitor sites for plant mortality; replant to achieve 100 percent viability.
- **Performance Standard #4:** At the end of the first growing season, replace all dead plants.
- **Performance Standard #5:** By years 3,5,7 and 10, minimum survival rate is 80 percent.
- **Performance Standard #6:** For each year of monitoring, total areal cover of undesirable non-native vegetation such as reed canarygrass, Scot's broom, gorse, evergreen blackberry, and Himalayan blackberry will not exceed 10 percent.

4.6 Procedures for On-Site Construction and Revegetation

4.6.1 On-Site Wetland Creation

1. Stake or flag the planned construction zone for wetland creation. Construction will take place in mid-summer to early fall, when the site and adjacent wetlands are dry. Silt fencing and other appropriate erosion control measures will be used to prevent silt from entering adjacent wetland areas.
2. Excavate the wetland creation areas to the project designed depth of 9 feet msl. Created wetlands will be constructed concurrently with construction of the golf course to enable soil from created wetland areas to be incorporated into the fairways, tees, and greens. See Figures 6-8, Appendix A.
3. Install native plants according to revegetation specifications outlined in this mitigation plan.
4. Complete maintenance and monitoring according to the schedule outlined in this mitigation plan.

4.6.2 On-Site Wetland Rehabilitation

1. Stake or flag the planned construction zone for wetland rehabilitation. Construction will take place in mid-summer to early fall, when the site and adjacent wetlands are dry. Silt fencing and other appropriate erosion control measures will be used to prevent silt from entering adjacent wetland area. See Figure 7, Appendix A.
2. Excavate the old radar road fill to approximately 9 feet msl to reestablish wetland hydrology.
3. Install native plants according to revegetation specifications outlined in this mitigation plan.
4. Complete maintenance and monitoring according to the schedule outlined in this mitigation plan.

4.6.3 On-Site Interdunal Preservation

1. Establish a legally binding description of the preservation areas prepared by a professional land surveyor and recorded with the Grays Harbor County auditor.
2. Develop a legally binding conservation easement on the preserved areas.
3. Complete maintenance and monitoring according to the procedures outlined in this mitigation plan.

4.6.4 On-Site Interdunal Upland Rehabilitation and Buffer Enhancement

1. Stake or flag the rehabilitation/enhancement area boundaries.
2. Identify the invasive plants to be removed, namely Scot's broom and gorse. Cut large plants at ground level. Manually pull smaller plants. Repeat for a period of three years and up to ten years. At wetland buffer enhancement area, plant native shrubs/trees and specified. See Figures 7 and 8, Appendix A.
3. Burn the invasive plants in a designated area on the mitigation sites.
4. Use approved herbicide if necessary, following specifications of the Department of Natural Resources for Natural Heritage sites.
5. Maintenance and monitoring will be completed according to the procedures outlined in this mitigation plan.

4.7 Revegetation Specifications for On-Site Mitigation

OBJECTIVE A – ON-SITE WETLAND CREATION (4.05 acres)

Quantity	Common Name	Scientific Name	How Established	Spacing
300	Shore Pine	<i>Pinus contorta</i>	container/bareroot	10 ft
300	Sitka Spruce	<i>Picea sitchensis</i>	container/bare root	10 ft
200	Western Crabapple	<i>Malus fusca</i>	container	10 ft
3,700	Hooker Willow	<i>Salix hookeriana</i>	cuttings	5 ft
200	California Wax Myrtle	<i>Myrica californica</i>	container	5 ft
200	Black Twinberry	<i>Lonicera involucrata</i>	container/bareroot	5 ft
200	Douglas Spiraea	<i>Spiraea douglasii</i>	container/bareroot	5 ft
800	Slough Sedge	<i>Carex obnupta</i>	container	3 ft
800	Dagger Leaf Rush	<i>Juncus ensifolius</i>	container	3 ft
400	Pacific Silverweed	<i>Potentilla anserina</i>	container	3 ft

7,100 (1,651 plants per acre = 5 foot average spacing)

OBJECTIVE B – ON-SITE WETLAND REHABILITATION (0.95 acres)

Quantity	Common Name	Scientific Name	How Established	Spacing
50	Shore Pine	<i>Pinus contorta</i>	container/bareroot	10 ft
50	Sitka Spruce	<i>Picea sitchensis</i>	container/bare root	10 ft
750	Hooker Willow	<i>Salix hookeriana</i>	container	5 ft
200	California Wax Myrtle	<i>Myrica californica</i>	container	5 ft
200	Black Twinberry	<i>Lonicera involucrata</i>	container/bareroot	5 ft

1,250 (1,374 plants per acre = 5.6 foot average spacing)

OBJECTIVE C – ON-SITE WETLAND BUFFER ENHANCEMENT (1.13 acres)

Quantity	Common Name	Scientific Name	How Established	Spacing
123	Shore Pine	<i>Pinus contorta</i>	container/bareroot	14 ft
123	Black Twinberry	<i>Lonicera involucrata</i>	container/bareroot	14 ft
246				

Notes: container = 1-2 gallon container

bare root = 1-5 year old plants
cuttings = 2 foot minimum length, 0.25 inch minimum diameter

4.8 Constraints for On-Site Mitigation

Mox Chehalis, L.L.C. or subsequent owners will retain ownership of the on-site mitigation sites. They will provide resources to maintain the on-site and off-site mitigation areas to assure that performance goals are met. Other potential constraints to a successful mitigation include browsing on installed plantings by deer, beaver damage to plantings, and the girdling of plant stems by rodents. Damage by animals will be controlled on an as-needed basis by installing fencing around plantings and wrapping plant stems with metal foil or wire. Mowing will also be implemented to reduce the height of grass surrounding the plantings thereby decreasing the cover for rodents.

5.0 OFF-SITE WETLAND MITIGATION SEARCH PARAMETERS

The previous section dealing with On-Site Mitigation identified a series of mitigation measures that will be implemented on-site to compensate for wetland and buffer impacts. The on-site mitigation measures are not sufficient to mitigate all of the wetland and buffer impacts. Therefore, a search of off-site mitigation properties commenced in the fall of 2001 and was completed in January 2002. The following off-site search parameters were used to generate a list of potential mitigation sites:

- Availability for purchase or lease
- Proximity to the impact site, with a preference for the Grayland Plains coastal sub-cell
- Ease of creation, rehabilitation, enhancement or preservation
- The extent to which the site is ecologically rare
- The relative abundance of similar wetlands
- Size
- Neighboring land uses
- The extent to which it is threatened by imminent development
- Compatibility with shoreline zoning and ease of environmental permitting
- Its use or potential for use by endangered or threatened fish and wildlife species
- The ability to preserve and protect the site from future impacts
- Position in the watershed
- Cost

The off-site wetland mitigation search found 22 potential mitigation sites, located as far south as Willapa Bay, as far north as Iron Springs on the North Beach sub-cell, and as far east as opposite Grays Harbor from Aberdeen at Newkah Creek. The WDOE was informed of the various sites being considered and conducted site visits as well to several of the properties. The final selection of three proposed off-site mitigation locations was reviewed and conceptually approved by the WDOE.

6.0 FIRECRACKER POINT MITIGATION SITE

6.1 Ownership of Firecracker Point

The site is owned by the Port of Grays Harbor. The Port of Grays Harbor is currently developing a long-term master plan for the Firecracker Point area, which will include a number of potential uses such as light industrial, commercial, or other uses associated with fishing or boat building. The site is currently a undeveloped dredge spoil site.

6.2 Site Description of Firecracker Point

Location: Firecracker Point is located on Point Chehalis, southeast of the Westport marina and north of the airport (Figure 9, Appendix A). The area is bordered by Grays Harbor to the east, Montesano Street to the west, estuarine wetland to the south, and U.S. Coast Guard Station to the north. The site is immediately downstream of the project site. See hydrology discussion in this report.

Historic Conditions: In the 1940s, much of the area currently encompassing the Westport marina and core downtown area was undeveloped sand dunes, except for a small coast guard dock and roads to access the south jetty. Past ditching and filling of the Firecracker Point area and the development of the marina has resulted in a significant loss of estuarine wetland in the vicinity of northern Westport.

In 1999, the COE utilized Firecracker Point as a mitigation site for impacts to wetlands during reconstruction of the south jetty near Half Moon Bay. Approximately 3.7 acres of existing dredge spoil material was removed from Firecracker Point in an effort to rehabilitate high salt/brackish marsh vegetation communities. Excavation consisted of mechanically removing the dredge spoils to a depth of approximately 10 feet MLLW and placing the spoils on adjacent upland area. It appears that a vegetative buffer was not required as part of this mitigation project. It also appears that a portion of the excavated area was not excavated to a depth sufficient to allow native high salt/brackish marsh plant species to become established. Recent visits to the mitigation area indicate that Scot's broom and European beachgrass are growing within a portion of the area designated for tufted hairgrass and silverweed.

Present Conditions: Firecracker Point is primarily an artificially created upland resulting from the deposit of dredge spoils from various projects including development of the marina and routine maintenance dredging of nearby ship channels.

6.3 Ecological Rationale for Firecracker Point Mitigation

Firecracker Point was selected as an appropriate off-site mitigation site for the following ecological reasons:

1. The mitigation site is located downgradient of the wetland impact site. Even though the wetland to be rehabilitated (estuarine emergent) is out-of-kind relative to the type of wetlands being impacted (palustrine interdunal emergent, scrub-shrub and forested), its

- hydrologic connection is significant. A ditch conveys surface water from the impact site and empties into Grays Harbor at the estuarine wetland southeast of Firecracker Point.
2. The site provides an excellent opportunity to rehabilitate estuarine wetlands by removing existing dredge spoils that cover historic wetlands. Simple removal of spoils facilitates full wetland rehabilitation. This has been proven by a previous rehabilitation undertaken by the COE.
 3. The site is large enough to accommodate seven acres of wetland rehabilitation along with a 75 foot wide enhanced wetland buffer.
 4. Wetland rehabilitation is possible with minimal environmental disturbance. Spoils removed will be used at the golf course site to provide necessary fill.
 5. The estuarine wetland is a Category I wetland, whereas the on-site wetlands are Category II and III wetlands.
 6. The mitigation site is in close proximity, 0.5 miles, to the impact site and is within the same coastal sub-cell as the mitigation site.
 7. Estuarine wetlands, while not rare in Grays Harbor, are at a relatively static level and have not significantly increased or decreased in area coverage within the Harbor. Historically, estuarine wetland areas decreased rapidly prior to the 1970's due to dike and drainage work. Many of these wetlands may never be rehabilitated while others could potentially be rehabilitated. Estuarine wetlands provide significant function as nurseries for fish & wildlife, shoreline protection, and pollution control. Therefore, any opportunity to rehabilitate estuarine wetlands within Grays Harbor is environmentally significant and is worth pursuing.
 8. In contrast to the historical decrease of functioning estuarine wetlands, the interdunal wetlands that are found on the golf course site have increased significantly since 1940 due to accretion of sand onto the beach. For example, the 1999 shoreline at Mar Vista is nearly one mile west of the shoreline in 1940. More than 50% of this accreted area has developed into interdunal wetlands of varying stages of succession. Based on air photo interpretation of the Grayland Plains coastal sub-cell, there are currently more than 1,500 acres of interdunal wetlands that have formed over the past 60 years. Furthermore, less than 10% of these wetlands have been impacted by development, which is primarily single family residences along the coast and driveways that provide access to them. Therefore it is appropriate in this situation to compensate, at least in part, for impacts to interdunal wetlands which are relatively in abundance by increasing an out-of-kind wetland type (estuarine wetland) that has experienced historical decreases.

In summary, despite of providing out-of-kind wetland mitigation, the ecological significance of restoring estuarine wetlands at Firecracker Point makes it an appropriate off-site mitigation area.

6.4 Proposed Mitigation for Firecracker Point

Mitigation for impacts to wetlands at the Links at Half Moon Bay development site would include the rehabilitation of approximately 7.00 acres of estuarine wetland that has been historically filled with dredge spoils. A minimum 75-foot wide vegetated buffer (approximately 2.90 acres) will be established between the rehabilitation area and future

upland developments (Figure 11, Appendix A). The enhanced buffer will involve grading, Scot's broom removal, and a moderately dense planting of native trees and shrubs. The buffer enhancement acreage will not be counted toward the total mitigation for impacts to on-site wetlands.

Rehabilitation will include removing approximately 60,000 cubic yards of dredge spoil material to a depth conducive to allowing winter and spring high tides from Grays Harbor to inundate the area. Approximately 6 feet of spoil material will need to be removed to reach an elevation to achieve high salt/brackish marsh conditions. Based on past fill removal activities in 1999 by the COE, over-excavating by at least 0.5 foot (vertical) will assure that expected swelling of exposed native silty soils will not result in an elevation above expected high water during winter and spring tides.

The removed earthen material will be incorporated into the construction of the proposed golf course near Half Moon Bay. Most of the excavated site will revegetate with native estuarine species and will not require dense plantings. The buffer area will be vegetated with shore pine and wax myrtle and an aggressive eradication program will remove existing stands of invasive Scot's broom.

The goal of this mitigation effort is to rehabilitate a high salt/brackish marsh to an area that has been filled with dredge spoils. The success of this type of mitigation is expected to be high as long as the excavation is to a depth conducive to the survival of native plant species adapted to high salt/brackish conditions, i.e. tuft hairgrass, silverweed. Given the proximity of Firecracker Point to existing high quality Category I estuarine wetlands and mudflats, success of the proposed rehabilitation plan will likely be high and provide additional acreage to existing high quality wetlands adjacent to Grays Harbor.

The rehabilitation area will be surveyed by a professional land surveyor and described using a metes and bounds method of land description. The survey will be recorded with the Grays Harbor County auditor. The rehabilitation site boundaries will be demarcated with permanent signs inscribed with NATURAL AREA PRESERVE or similar description.

A legal conservation easement will be drafted by legal counsel and recorded on the warranty deed for the property. The rehabilitation area will likely remain under the ownership of the Port of Grays Harbor. A legal conservation easement will prohibit future development in the preservation area in perpetuity.

Prohibited activities in the preservation area will include land clearing, ditching, farming, road building, structures, firewood cutting, native plant collecting, and other destructive activities that may degrade the natural condition of the area. The conservation easement will also prohibit third party and public access to the area without permission from the Port of Grays Harbor.

6.5 Performance Standards for Firecracker Point

Objective A: Rehabilitate 7.00 acres of estuarine wetlands at Firecracker Point by removing dredge spoil materials and installing native plants.

- ***Performance Standard #1:*** By year 1, excavate approximately 60,000 cubic yards of existing dredge spoil materials to reach the native silty soils.
- ***Performance Standard #2:*** By year 1, develop a legally binding “Conservation Easement” on the rehabilitation area.
- ***Performance Standard #3:*** By year 1, develop a legally binding description of the preservation area prepared by a professional land surveyor and recorded with the Grays Harbor County auditor.
- ***Performance Standard #4:*** By year 1, survey and demarcate the rehabilitation area boundaries by placing permanent markers at each corner and at minimum 100 foot center between corners. Corner markers will consist of metal rods driven to the ground surface and topped with plastic caps stamped by a professional land surveyor. Other line markers will consist of metal posts driven a minimum of 2 feet below the ground surface and extending a minimum of 3 feet above the ground surface.
- ***Performance Standard #5:*** By year 1, survey the rehabilitation area and upland buffer to generate vertical survey data necessary for determining the excavation depth.
- ***Performance Standard #6:*** At the beginning of the first growing season after native plant installation, monitor sites for plant mortality; replant to achieve 100 percent viability.
- ***Performance Standard #7:*** At the end of the first growing season, replace all dead plants. Total areal cover of native vegetation will be at least 10 percent.
- ***Performance Standard #8:*** By year 3, total areal cover of native vegetation will be at least 20 percent with an 80 percent survival rate.
- ***Performance Standard #9:*** By year 5, total areal cover of native vegetation will be at least 40 percent with an 80 percent survival rate.
- ***Performance Standard #10:*** By year 7, total areal cover of native vegetation will be at least 50 percent with an 80 percent survival rate.
- ***Performance Standard #11:*** By year 10, total areal cover of native vegetation will be at least 70 percent with an 80 percent survival rate.
- ***Performance Standard #12:*** For each year of monitoring, total areal cover of undesirable non-native vegetation such as reed canarygrass, Scot’s broom, gorse, evergreen blackberry, and Himalayan blackberry will not exceed 10 percent.

Objective B: Enhance the upland buffer by removing invasive species and installing native plants.

- ***Performance Standard #1:*** By year 1, enhance the upland buffer by grading.
- ***Performance Standard #2:*** By year 1, remove all Scot’s broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.
- ***Performance Standard #3:*** By year 1, install native species in the upland buffer as designed.
- ***Performance Standard #4:*** In year 2, remove all Scot’s broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.

- **Performance Standard #5:** In year 3, remove all Scot's broom and other invasive species by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #6:** In years 4 through 10, remove all Scot's broom and other invasive species as often as necessary by manually pulling small plants and cutting larger plants at ground level.
- **Performance Standard #7:** For each year of monitoring, total areal cover of invasive species will not exceed 10 percent.

6.6 Procedures for Construction and Revegetation of Firecracker Point

6.6.1 Firecracker Point Wetland Rehabilitation and Buffer Enhancement

1. Stake or flag the planned construction zone for wetland rehabilitation. Survey the area to establish vertical survey data necessary for excavation. Silt fencing and other appropriate erosion control measures will be used as necessary.
2. Excavate approximately 60,000 cubic yards of dredge spoil material to enable high tides to inundate the wetland. The site will need to be over-excavated at least 0.5 feet to assure that expected swelling from exposed native silty soils will not result in an elevation above expected high water during winter floods.
3. Grade the upland buffer and remove invasive species.
4. Install native plants to the wetland and buffer according to the revegetation specifications outlined in this mitigation plan.
5. Complete maintenance and monitoring according to the procedures outlined in this mitigation plan.

6.6.2 Firecracker Point Wetland and Buffer Preservation

1. Establish a legally binding description of the rehabilitated area, including the buffer area, prepared by a professional land surveyor and recorded with the Grays Harbor County auditor.
2. Develop a legally binding conservation easement on the rehabilitated area and buffer area.
3. Complete maintenance and monitoring according to the procedures outlined in this mitigation plan.

6.7 Revegetation Specifications for Firecracker Point

OBJECTIVE A – FIRECRACKER POINT WETLAND REHABILITATION (7.0 acre)

Quantity	Common Name	Scientific Name	How Established	Spacing
700	Tufted Hairgrass	<i>Deschampsia caespitosa</i>	plugs	12 ft
700	Pacific Silverweed	<i>Potentilla anserina</i>	plugs	12 ft
<u>700</u>	Pickleweed	<i>Salicornia virginica</i>	plugs	12 ft

2,100 (300 plugs per acre = 12 foot average spacing)

OBJECTIVE B – FIRECRACKER POINT BUFFER ENHANCEMENT (2.9 acre)

Quantity	Common Name	Scientific Name	How Established	Spacing
850	Shore Pine	<i>Deschampsia caespitosa</i>	container/bareroot	10 ft
<u>425</u>	California Wax Myrtle	<i>Myrica californica</i>	container	10 ft

1,275 (440 plants per acre = 10 foot average spacing)

Notes: container = 1-2 gallon container
bare root = 1-5 year old plants
plugs = 4 to 6-inch height; clumps of multiple plants

6.8 Constraints for Firecracker Point

The Port of Grays Harbor or subsequent owners will retain ownership of Firecracker Point. Other potential constraints to a successful mitigation include browsing on installed plantings by deer, beaver damage to plantings, and the girdling of plant stems by rodents. Damage by animals will be controlled on an as-needed basis by installing fencing around plantings and wrapping plant stems with metal foil or wire. Mowing will also be implemented to reduce the height of grass surrounding the plantings thereby decreasing the cover for rodents.

7.0 SEASTRAND BOG MITIGATION SITE

7.1 Ownership of Seastrand Bog

The site is privately owned by the Cottrell Family of Grayland, Washington.

7.2 Site Description of Seastrand Bog

Location: Seastrand Bog is located in Grayland, south of Westport (Figure 12, Appendix A). The Grayland area is bordered by Willapa Bay to the south, Grays Harbor to the north, the Pacific Ocean to the west, and timberlands to the east.

Historic Conditions: The Seastrand Bog area has been severely altered since the early 1900s by timber harvesting, land clearing, livestock grazing, and cranberry bog development. Assuming that a larger majority of the mapped Orcas Peat (#108) and Seastrand Peat & Muck (#132 & #133) soils were originally well-developed native sphagnum bog communities, approximately 2,100 acres of the Grayland interior was native sphagnum bog prior to human development. With the establishment of numerous drainage ditches, including Pacific County Drainage Ditch #1 to aid the development of cranberry farming, the

historic Seastrand Bog has been reduced to a small fraction of its original size. All of the surface water and groundwater entering the area via Miller Creek, Storm Creek, Seastrand Creek, and Whiskey Creek has been restricted to ditches eventually leading to Pacific County Drainage Ditch #1. These actions have robbed the native bog of hydrology necessary for a viable sphagnum moss dominated vegetative community. Drainage activities have resulted in the establishment of coniferous trees on once open sphagnum moss bog area. Evidence of 80 to 100 year old trees in the forested areas of the remaining unaltered Seastrand Bog area coincides with ditching activities 90 to 100 years ago when cranberry farming and associated ditching started.

Present Conditions: Seastrand Bog is at present day a minor remnant of an expansive native sphagnum bog system located in the Grayland area of Washington (Figure 11, Appendix A). Based on aerial interpretation of photos from 1942, 1972, 1974, 1976, 1993 and 1999, approximately 58 contiguous acres of the Seastrand Bog at the mouth of Seastrand Creek has been relatively unaltered by human activities. Approximately 9 acres of the 58 acres is dominated by sphagnum moss and native cranberry, a vegetative association almost extinct in the State of Washington. Several other isolated island remnants of the historic Seastrand Bog are scattered throughout the Grayland interior but have been impacted by ditching/clearing and are surrounded by intensely farmed cranberry bogs and/or residences thereby drastically reducing their functions and values.

Existing land uses surrounding Seastrand Bog includes active commercial cranberry beds to the north, south, and west with commercial timberlands to the east. The commercial timberland has been logged at least two separate times since the Grayland area was settled, but a well established mature forest buffer remains between the active timberlands and Seastrand Bog. Included in this buffer is a fair amount of old growth forest containing numerous snags, downed logs, large green trees, understory vegetation, and duff layer. Given the current buffers for bogs (minimum 50 feet, maximum 200 feet) under the Forest Practices Rules (*Chapter 222 WAC*), it is unlikely that the timber in the remaining forested buffer area will be harvested. Also given the young age of the timber outside the buffer area, timber harvesting is unlikely for many years.

Human encroachment into Seastrand Bog continues, with the most recent permitted cranberry bed expansion occurring in 1998 on an area along the southern extents of the bog. Although difficult to permit in the current regulatory framework, expansion of cranberry beds into the remaining Seastrand Bog area is possible, as is ongoing firewood removal and other activities not requiring regulatory oversight.

In 2001, the Cottrell Family purchased a sizable portion of the remaining 58-acre Seastrand Bog at the mouth of Seastrand Creek. The Cottrell Family has been actively farming in the Grayland area since 1911 and continues to be one of the top five cranberry producers in the Grayland area. Having lived the continuing boom and bust cycles of cranberry farming, the current low prices are just another situation that career cranberry farmers, like the Cottrell Family, deal with. Recognizing that the remaining native Seastrand Bog area is biologically

unique, they have considered the option of preserving this area. However, recognizing the need to produce cranberries to keep the family-owned enterprise financially solvent, the Cottrell's have not ruled out the possibility of developing a portion of the remnant Seastrand Bog into cranberry beds. The Cottrell's currently own approximately 14.0 acres of the 58.0-acre Seastand Bog (24%) including approximately 5.0 acres of the 9.0 acre sphagnum moss/native cranberry area (55%).

7.3 Ecological Rationale for Seastrand Bog Mitigation

Seastrand Bog was selected as an appropriate off-site mitigation site for the following ecological reasons:

1. Even though the wetland to be preserved (palustrine sphagnum peat, scrub-shrub and forested) is out-of-kind relative to the type of wetlands being impacted (palustrine interdunal emergent, scrub-shrub and forested) the preservation site is within the same Grayland Plains coastal sub-cell as the impact site.
2. The site is large enough to provide 14.0 acres of wetland preservation of a rare ecological site which accounts for nearly 28% of the total Seastrand Bog area and 55% of the total remaining sphagnum-dominated bog area within Seastrand.
3. The peat bog wetland is a Category I wetland, whereas the on-site wetlands are Category II and III wetlands
4. The mitigation site is in moderate proximity, 9.0 miles, to the impact site and is within the same coastal sub-cell as the mitigation site.
5. The Seastrand Bog is a rare regional wetland plant community, part of the remnant of original Seastrand Bog. Prior to development of the Grayland cranberry farms, the sphagnum bog dominated portion of Seastrand Bog may have been over 2,000 acres in size, and currently there is less than a dozen acres left. This is less than one percent of the original land area.
6. The Seastrand Bog is highly sensitive to some forms of disturbance. Cranberry conversion is perhaps the most drastic and permanent alteration of the native bog's ecological system. Other impacts such as drainage have the effect of encouraging coniferous tree growth, which in turn, suppresses the scrub-shrub and sphagnum-dominated plant community. Timber harvest, road building and grading are also potential impacts. Once impacted, a sphagnum bog is unlikely to recover to a sphagnum-dominated plant community, unless possibly kept free of disturbance and drainage for an extended period of time (several decades). Even if kept free of disturbance, it is relatively uncertain that a peat bog could be rehabilitated.
7. If preserved, this action may encourage other landowners with remnant Seastrand Bog to preserve their rare wetland environment, thereby enlarging the conservation area. Therefore, an opportunity to preserve rare Seastrand Bog is environmentally significant and is worth pursuing.
8. In contrast to the dramatic historical decrease of the Seastrand peat bog, the interdunal wetlands that are found on the golf course site have increased significantly since 1940 due to accretion of sand onto the beach. For example, the 1999 shoreline at Mar Vista is nearly one mile west of the shoreline in 1940. More than 50% of this accreted area has

developed into interdunal wetlands of varying stages of succession. Based on air photo interpretation of the Grayland Plains coastal sub-cell, there are currently more than 1,500 acres of interdunal wetlands that have formed over the past 60 years. Furthermore, less than 10% of these wetlands have been impacted by development (including those at the impact site). The majority of these impacts are from single family residences along the coast and the driveways that provide access to them. Therefore it is appropriate in this situation to compensate, at least in part, for impacts to interdunal wetlands which are relatively in abundance by preserving a rare out-of-kind wetland type (sphagnum bog) that has experienced dramatic historical decreases.

In summary, despite providing out-of-kind wetland mitigation, the ecological significance of preserving sphagnum peat bog wetlands at Seastrand Bog makes it an appropriate off-site mitigation area.

7.4 Proposed Mitigation for Seastrand Bog

Mitigation for wetland impacts from the golf course site would include preservation of the entire unaltered Seastrand Bog area currently owned by the Cottrell Family. This would include a total area of 14.0 acres consisting of 9.0 acres of forested/scrub-shrub and 5.0 acres of sphagnum moss/native cranberry dominated area, a remnant of an expansive natural bog system that once covered 2,100 acres. Deducted from this may be a small area on the western side of the forested area where the Cottrell's desire to place a shed for storage of cranberry harvesting equipment. The property will require professional survey to determine the accurate size.

The preservation area will be surveyed by a professional land surveyor and described using a metes and bounds method of land description. The survey will be recorded with the Pacific County auditor. The preservation site boundaries will be demarcated with permanent signs inscribed with NATURAL AREA PRESERVE or similar description.

A legal conservation easement will be drafted by legal counsel and recorded on the warranty deed for the property. The preservation area may be purchased outright from the Cottrell Family and given over for management to a natural resource entity, land trust, or conservation organization. The Cottrell Family may also retain ownership. In order to encourage adjacent owners of the Seastrand Bog to provide conservation easements on their property, it may be preferable that the Cottrell Family retain ownership and protect the land through a conservation easement. Once the Cottrell portion has been placed under a conservation easement, the other four landowners may have an interest in placing their Seastrand Bog acreage under a similar conservation easement. The legal conservation easement will prohibit future development in the preservation area in perpetuity.

Prohibited activities in the preservation area will include land clearing, new ditching, farming, road building, building of structures, timber harvest, firewood cutting, collection of native plants, and other activities that may degrade the natural condition of the area. The Cottrell Family will retain several rights to the preservation area including the maintenance

of unrestricted water flow of the ditches supplying water to their cranberry beds. Also permitted will be hunting, fishing, trapping, and passive recreational activities. The conservation easement will also prohibit third party and public access to the area without permission from the Cottrell Family.

7.5 Performance Standards for Seastrand Bog

Objective A: Preserve 14.00 acres of forest/scrub-shrub and sphagnum moss/native cranberry bog at Seastrand Bog.

- **Performance Standard #1:** By year 1, develop a legally binding “Conservation Easement” on the preservation area.
- **Performance Standard #2:** By year 1, develop a legally binding description of the preservation area prepared by a professional land surveyor and recorded with the Pacific County auditor.
- **Performance Standard #3:** By year 1, survey and demarcate the preservation area boundaries by placing permanent markers at each corner and at minimum 100 foot centers between corners. Corner markers will consist of metal rods driven to ground surface and topped with a plastic cap stamped by a professional land surveyor. Other line markers will consist of metal posts driven a minimum 2 feet below ground surface and extending a minimum 3 feet above ground surface.
- **Performance Standard #4:** Conduct long-term maintenance to remove undesirable, non-native species such as reed canarygrass, Scot’s broom, gorse, evergreen blackberry, and Himalayan blackberry. Each year of monitoring, total areal cover of invasive species will not exceed 10 percent.

7.6 Procedures for Construction and Revegetation of Seastrand Bog

1. Professionally survey and demarcate the preservation area boundaries.
2. Establish a legally binding description of the preservation areas prepared by a professional land surveyor and recorded with the Grays Harbor County auditor.
3. Develop a legally binding conservation easement on the preserved areas.
4. Complete maintenance and monitoring according to the procedures outlined in this mitigation plan.

7.7 Constraints for Seastrand Bog

Seastrand Bog may be purchased outright by a non-profit organization, land trust, or natural resource entity approved by the WDOE; alternatively, the Cottrell Family may retain ownership. The Cottrell Family will retain several rights to the preservation area, including water rights to their cranberry beds.

8.0 MAINTENANCE AND MONITORING

Maintenance will involve removing invasive plant species, such as gorse, Scot’s broom, evergreen blackberry, and Himalayan blackberry that are likely to re-invade the mitigation

sites. Rehabilitated interdunal uplands on-site and at Firecracker Point buffer will require an aggressive eradication program to eliminate invasive species. Removal of invasive species from these mitigation sites will occur a minimum of three times during the growing season in May, July, and August for the first three years. During years 4 through 10, invasive species will be eradicated as often as necessary to meet the performance standard of no greater than 10 percent areal cover of invasive species. The other mitigation sites will be monitored for invasive species, which will be eradicated as necessary to meet the performance standards of no greater than 10 percent areal cover invasive species.

Periodic watering and fertilization of installed plantings will be conducted on an as needed basis.

Monitoring of all mitigation sites will be performed for a 10-year period following project construction, in years 1, 2, 3, 5, 7 and 10. Monitoring reports will be submitted to the City of Westport and COE by October 31 of each monitored year. The goal of the monitoring of all mitigation sites will be to determine if the previously stated performance standards are being met. Rehabilitated interdunal upland habitat and preserved sites will be monitored once annually. These mitigation sites will be monitored for invasive species, off-road vehicle damage, and vandals. The actively created or rehabilitated wetlands will be monitored twice annually, one visit during the rainy season (December or January) to observe hydrologic conditions and one during the growing season, in mid June. These sites will have a more objective monitoring program, which is detailed below.

During the first annual monitoring and maintenance event, representative sample plot locations will be selected and permanently marked with labeled steel posts. Sample plot locations will be placed on a base map and included in the annual monitoring reports.

8.1 Vegetation

Vegetative monitoring will be conducted within the on-site created and rehabilitated wetlands, planted buffer areas adjacent to the condominiums, and at the Firecracker Point rehabilitated wetland. The following will be included in each of the sample plot locations:

1. Percent areal cover for herbaceous species (3.28 feet quadrat) using ocular estimation.
2. Percent areal cover for sapling/shrub species (10-foot radius) using ocular estimation.
3. Percent areal cover of tree species (30 foot radius) using direct measurement basal area.
4. Species occurrence including non-native, invasive species.
5. Average height and survival of each species, including non-native, invasive species.
6. Ocular estimation of standing (snags) and downed woody debris (> 6 inch diameter).
7. Photo document vegetative changes over time.

8.2 Water Regime

Hydrologic monitoring will be conducted within the on-site created and rehabilitated wetlands and the Firecracker Point rehabilitated wetland. The following will be included in each of the sample plot locations:

1. Depth of water in the soil pit.
2. Record inundation by observing location of drift lines and watermarks.
3. Recording staff gauges if present.
4. Record areas of concern, either to wet or to dry.
5. Photo document hydrological conditions over time.

8.3 Soils

Soil monitoring will track the development of hydric conditions in wetland and upland areas. Soil monitoring will be conducted within the on-site created and rehabilitated wetlands and the Firecracker Point rehabilitated wetland. The following will be included in each of the sample plot locations:

1. Soil color using Munsell Soil Chart
2. pH
3. Soil particle size
4. Redoximorphic features
5. Organic content
6. Depth to saturation

8.4 Fauna

General observations, documentation and photos will be taken of wildlife during site visits to the on-site created and rehabilitated wetlands and the Firecracker Point rehabilitated wetland. Invertebrate, amphibian, reptile, avian, and mammal observations will be recorded and documented in the annual monitoring reports.

8.5 Development of Habitat Structure

Habitat structure monitoring will be conducted within the on-site created and rehabilitated wetlands and the Firecracker Point rehabilitated wetland. The following will be included in each of the sample plot locations:

1. Existing tree structure including live and dead trees.
2. Ocular estimation of standing (snags) and downed woody debris (> 6 inch diameter).
3. Canopy cover.
4. Qualitative observations of wildlife use of the mitigation site.

8.6 Water Quality

Visual observations will be made of surface water in the wetland areas during the monitoring at the on-site created and rehabilitated wetlands and the Firecracker Point rehabilitated wetland. Observations will be documented in the annual monitoring reports.

8.7 Buffers

Buffer areas will be evaluated for effectiveness in protecting wetland areas from runoff and pedestrian encroachment. Observations will be documented in the annual monitoring reports.

9.0 SITE PROTECTION

The entire Links at Half Moon Bay site will be under 24-hour on-site security to assure that site is protected from vandals and other unauthorized visitors. Vehicular access will be strictly regulated to assure that the site is protected from off-road vehicle damage.

10.0 CONTINGENCY

Minor corrective measures, such as replanting failed plants, will be undertaken as part of routine maintenance. If the mitigation site fails to meet the goals and objectives, additional maintenance, monitoring, and contingency measures will be implemented to correct the failure. Contingency measures may include, but are not limited to, removing invasive species from within the mitigation site or adjacent to the sites, increasing plant densities, controlling animal damage, and increasing watering/fertilization. All major contingency measures will be undertaken only after consulting with the City of Westport, COE, and WDOE.

If mitigation areas are failing or the performance criteria is not met, steps will be taken to rectify the situation in a timely manner. The following steps will be implemented when an area is identified as failing or potentially failing:

1. Identify the cause(s) of the failure or potential failure.
2. Identify the extent of the failure or potential failure.
3. Implement corrective actions such as replanting, and erosion control.
4. Implement an aggressive monitoring and maintenance program for the affected area.
5. Document the activities and include this data in the annual monitoring and maintenance reports.
6. In the event that a routine corrective action will not correct the problem, immediately consult with the City of Westport, WDOE, and COE.
7. Recommendations from resource agency staff will be evaluated and implemented in a timely manner.
8. A short and long-term aggressive monitoring and maintenance program will be implemented for the corrected problem area.

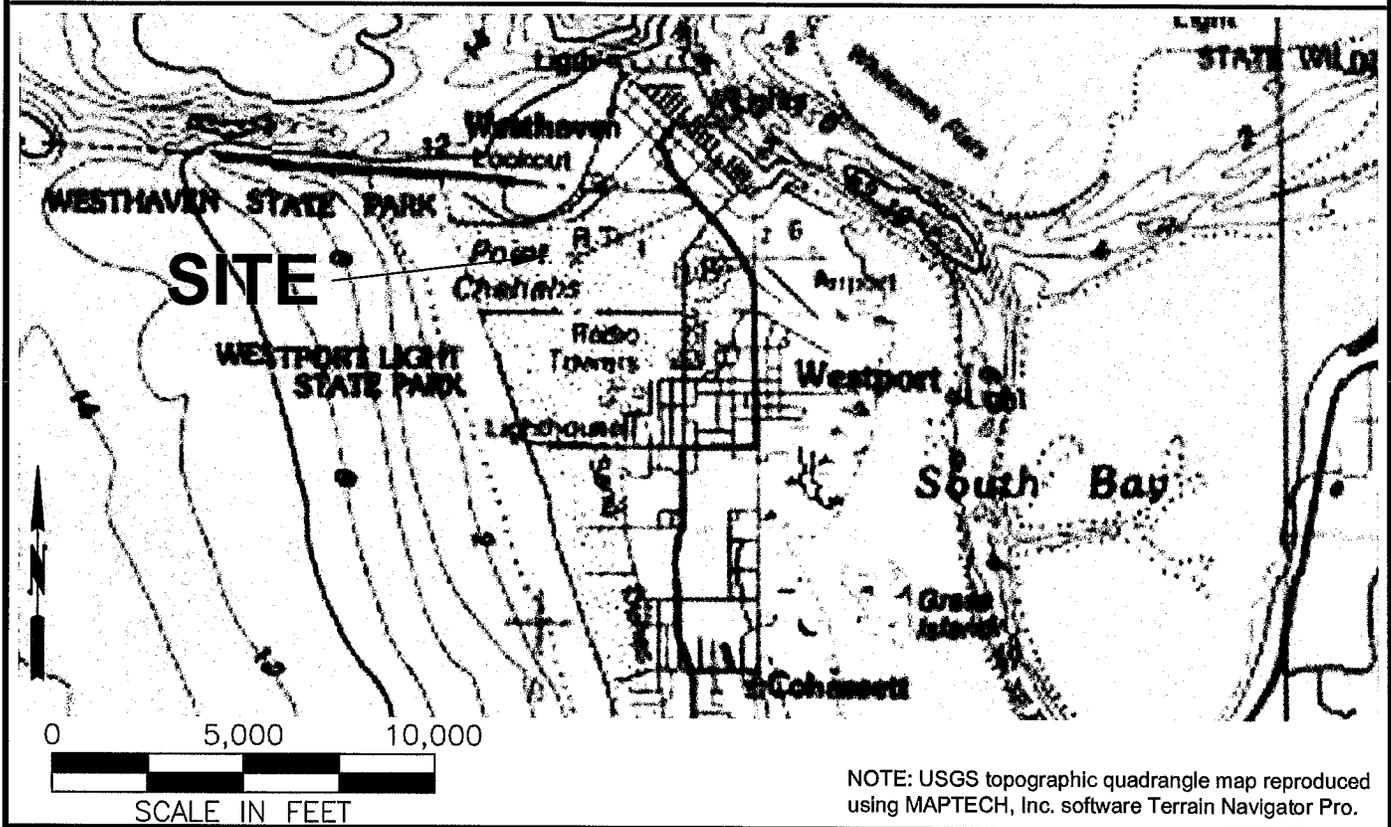
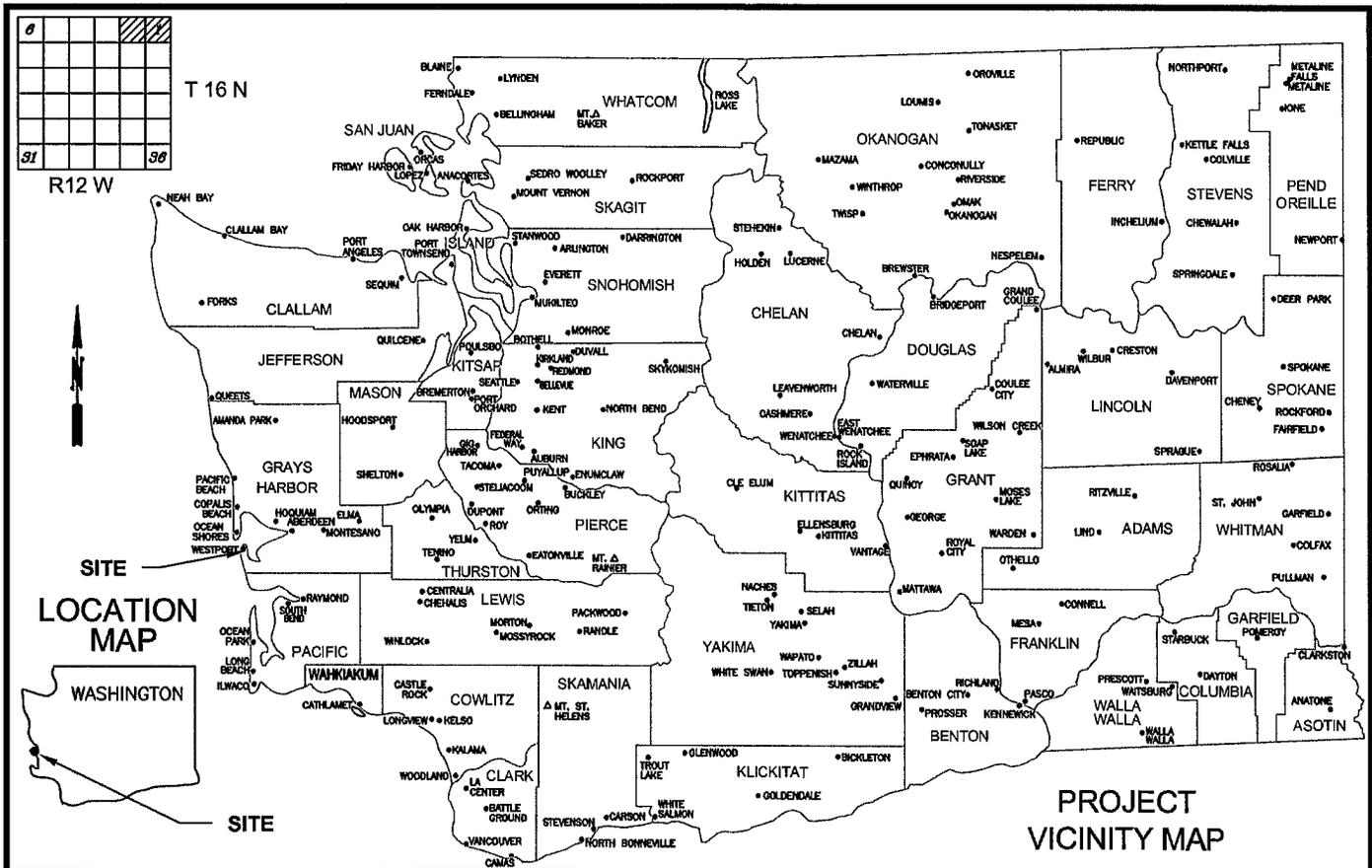
Funding for corrective actions for the mitigation sites will be the sole responsibility of the current golf course owners and will come from the facility monitoring and maintenance fund. These funds will be incorporated in the annual ground maintenance budget.

11.0 REFERENCES

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APPENDIX A – FIGURES

FIGURE 1	VICINITY MAP
FIGURE 2	WETLAND DELINEATION AND CATEGORIZATION MAP
FIGURE 3	FAIRWAYS AND WETLANDS
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FIGURE 14	LOCATION OF POTENTIAL OFF-SITE MITIGATION AREAS- B
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FIGURE 16	WETLAND BUFFER AVERAGING/ENHANCEMENT PLAN FOR HOTEL



NOTE: USGS topographic quadrangle map reproduced using MAPTECH, Inc. software Terrain Navigator Pro.

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DATE 06-08-06
 DWN. MMM
 APPR. FN
 PROJ.# 573.04

Figure 1
SITE LOCATION MAP
 Wetland Mitigation Plan
 Links at Half Moon Bay
 Mox Chehalis, L.L.C.
 Westport, Washington

Exhibit 3

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THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

FRIENDS OF GRAYS HARBOR and
WASHINGTON ENVIRONMENTAL
COUNCIL,

Appellants,

vs.

MOX CHEHALIS LLC, et al.,

Respondents.

NO. 34113-1-II

SETTLEMENT AGREEMENT

APPENDIX C

LAW, LYMAN, DANIEL,
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APPENDIX C

A. Water Quality Standards:

Water quality criteria contained in WAC 173-201A-030(1) AND WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. Nothing herein authorizes temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing herein shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Duration:

These conditions shall be valid during construction and the long-term operation of the project.

C. Notification and Reporting Requirements:

1. Notification shall be made to the City of Westport through Randy D. Lewis, City Administrator, City of Westport, P.O. Box 505, Westport, WA 98595, phone: (360) 268-0131, fax: (360) 268-0921 for the following activities:
 - a. at least thirty (30) days prior to the pre-construction meeting to review environmental permits and conditions;
 - b. at least ten (10) days prior to starting construction of each Phase of the project and each of the mitigation sites identified in the Westland Mitigation Plan; and
 - c. within seven (7) days after completion of construction of each of the projects identified in Condition C.1.c.

NOTE: The required notifications shall include the Applicant's name, project name, project location, the name of contractor and any subcontractor, contract and contact's phone number.

2. The Applicant shall ensure that all appropriate Project Engineer(s) and the Lead Contractor(s) at the project site and/or mitigation sites have read and understand relevant conditions listed herein and all permits, approvals, and documents referenced herein and agree to abide by such conditions.
 - a. The Applicant shall provide to the City a signed statement, from each Project Engineer and Lead Contractor that they have read and understand the conditions of this Appendix and the above-referenced permits, plans, documents and approvals.
 - b. These statements shall be provided to the City no less than seven (7) days before each Project Engineer or Lead contractor begins work at the project and mitigation sites.

3. All reports, plans, or other information required to be submitted herein shall be submitted in triplicate to the City of Westport.
4. Documents required to be submitted to the City for review and/or approval shall be submitted to the City by the time specified herein. Failure to submit documents by the required time may result in enforcement action. The Applicant may, on a case-by-case basis, submit a written request for an extension of the specified submittal deadline for a document. The City will consider the reasonableness of the request for an extension and may grant an extension for a period of time it deems appropriate. The City will provide any such extension to the Applicant in writing only.

No document, report or plan required shall be deemed approved until the Applicant receives written verification of approval from the City.

D. Wetland Mitigation and Monitoring:

1. Mitigation for this project shall be completed as described in the Wetland Mitigation Plan for the Links at Half Moon Bay Westport Golf and Hotel Destination Resort dated June, 2006, with the following additions and clarifications to the extent not already incorporated therein:
 - a. Invasive plant species cover will be monitored during all monitoring years.
 - b. All performance standards addressing cover of non-native plants shall read: "Cover of non-native invasive species will be no greater than 10% in any year in newly planted or enhanced areas."
 - c. Contingency measures and additional monitoring of the mitigation areas shall be required by the City if wetland monitoring reveals that vegetation establishment or wildlife use of the wetland is not sufficient to meet the success standards. Additional monitoring may be required beyond the ten (10) year period if mitigation success is not achieved within the ten (10) year monitoring period.
 - d. The wetland mitigation planting plan shall be field inspected by a qualified wetland consulting firm during construction and planting to ensure proper installation.
 - e. The boundaries of the mitigation area and buffers shall be permanently marked with stakes at least every 100 feet or with construction fencing. The marking shall include signage that clearly indicates that mowing and fertilizer/pesticide applications are prohibited within mitigation areas.
 - f. The City shall be notified a minimum of three days in advance of filed monitoring work by the Applicant. The City or its designees shall be allowed access to all mitigation sites for the entire monitoring period.
2. The Applicant shall place restrictive covenants on the deeds for all of the wetlands identified as Project Mitigation above in order to ensure that the

sites are protected in perpetuity. The Applicant shall record the restrictive covenants no later than sixty (60) days after required for construction of the project.

- a. Any changes to the restrictive covenants shall require written approval by the City.
 - b. Violation of any term of the restrictive covenants shall be enforceable by the City.
3. The Applicant must provide proof of ownership for the off-site mitigation prior to construction of the project.
 4. Monitoring of all wetland mitigation sites shall be conducted as specified in the Wetland Mitigation Plan for Links at Half Moon Bay, dated February 6, 2002, with the following additions and clarifications:
 - a. Monitoring shall be completed at least yearly for a ten (10) year period with initial monitoring starting after the first growing season after installation of plants. If at any point during the monitoring period the results of monitoring show that the success criteria established in the plan are not being met, the City may require corrective action, additional monitoring, and additional mitigation.
 - b. The Applicant shall prepare and submit annual monitoring reports to the City no later than December 31st of each year following the first year of the mitigation site work. Each year's monitoring report shall include photographic documentation of the project taken from permanent reference points. The Applicant shall identify and incorporate permanent reference points into the Final mitigation plan.
 - c. As-Built Report: An as-built report documenting the final design of all wetland mitigation sites shall be prepared when the initial planting is completed. The report shall include the following:
 - final site topography;
 - photographs of the area taken from established permanent reference points;
 - a planting plan showing species, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
 - habitat features (snags, large woody debris, etc.) and their locations;
 - drawings in the report shall clearly identify the boundaries of the project;
 - locations of sampling and monitoring sites; and

- any changes to the plan that occurred during construction.

The As-Built Report shall include detailed plans showing locations of all monitoring transects and locations. All vegetation sampling and analysis shall employ statistically valid sampling and analysis procedures during each of the monitoring events. Monitoring reports shall show all sampling locations, discuss trends and changes, discuss success in achieving performance standards or other implementation problems, and set forth a time line for their resolution. Supporting data and calculations shall be maintained by the contractor and made available to the City upon request.

- d. The As-Built Report shall be sent to the City within sixty (60) days of completing the mitigation site.
 - e. Any proposed changes to the wetland mitigation and monitoring protocol established in the final mitigation plan must be approved in writing by the City prior to implementation of any changes.
5. Prior to the commencement of any construction on the site the Applicant shall submit to the City for its review and written approval a final wetland mitigation and monitoring plan which includes any changes or additions required by this Appendix.

E. Conditions for Construction Activities:

1. During construction the Applicant shall comply with all stormwater requirements within the Stormwater General Permit for Construction Activity Permit No. SO3-005523 dated March 5, 2004 for this project or with the conditions of any individual stormwater discharge permit Ecology may issue for this project.
2. Direct discharge of construction stormwater to waters of the State (including wetlands) is prohibited. All stormwater from disturbed areas must be treated and managed on-site.
3. The project shall be clearly marked/staked prior to commencing any construction activities. Clearing limits, travel, corridors and stockpile sites shall be clearly marked. Sensitive areas to be protected from disturbance shall be delineated and marked with brightly colored construction fence, so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing that identifies sensitive areas boundaries (wetlands, streams, riparian corridors, buffers, etc.). Equipment shall enter and operate only within the delineated clearing limits, corridors and stockpile areas.
4. The Applicant shall follow and implement all specifications for erosion and sediment control specified in the projects Stormwater Pollution Plan (SWPPP) dated March 4, 2004. Some adjustments to planned erosion and sediment control may be allowed in order to meet the water quality standards.
5. Any new diversion ditch or channel, pond, trap, impoundment or other

detention or retention BMP constructed at the site for treatment of stormwater shall be designed, constructed, and maintained to contain and provide treatment for the peak flow for the ten (10) year 24 hour precipitation event estimated from data published by the National Oceanic and Atmospheric Administration.

6. The erosion control devices shall be in place before starting construction and shall be maintained, so as to be effective throughout construction.
7. The Applicant shall periodically inspect and maintain all erosion control structures. Inspections shall be conducted no less than every seven (7) years from the start of the project to final site stabilization. Daily inspections of sedimentation ponds shall occur during wet seasons. Additional inspections shall be conducted after rainfall events greater than 0.5 inches per 24-hour period, to ensure erosion control measures are in working condition. These inspections shall be conducted within 24 hours after the event. Any damaged structures shall be repaired immediately. If it is determined during the inspection that additional measures are needed to control stormwater and erosion, such measures shall be implemented immediately. Inspections shall be documented in writing and shall be available for the City's review upon request.
8. The Applicant shall establish and maintain a designated area for washing down equipment and vehicles so that wash waters are managed. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into State waters except as authorized by an NPDES permit or State waste discharge permit.
9. Vehicles shall be cleaned of mud, rock, and other material before entering a paved public highway so that tracking of sediment onto the highway does not occur.
10. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
11. Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly to waters of the state. Turbid water shall be pumped to a treatment facility to allow the fine materials to settle and then discharge as per the NPDES permit requirements, or transferred offsite to a treatment facility.

F. Construction Stormwater Monitoring and Reporting Requirements:

1. At least three months prior to beginning construction the Applicant shall gather water quality baseline data for the perimeter of the project site.
2. During construction the Applicant shall monitor any off site stormwater discharges according to the following:

- a. Turbidity and pH:
 - i) The Applicant shall monitor turbidity and pH in any off-site surface water discharges from construction sites within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period. The storm events shall be measured by an on-site rain gauge. The monitoring method shall be by a portable turbidimeter and a pH meter following the maintenance, operating and calibration procedures in the instrument's instruction manual. Alternatively, a grab sample shall be analyzed by a laboratory accredited under the provisions of Accreditation of Environmental Laboratories, Chapter 173-50 WAC.
 - ii) During each of the above monitoring events the turbidimeter and pH meter shall also be used for the measurement of turbidity and pH upstream of the point of discharge to the receiving water, the point of discharge and 100 feet downstream of the discharge in the receiving water.
- b. If monitoring indicates a need for additional BMPs, the Applicant shall propose and implement additional BMPs, including treatment BMPs, necessary to meet the State water quality standards. Any proposed changes are subject to review and written approval by The City.
- c. Monitoring results for construction stormwater discharges shall be submitted every other month to the City. Monitoring shall be reviewed for compliance with WAC 173-201A.
- d. In addition to the above, the Applicant shall submit a final monitoring plan for stormwater discharges from all construction projects including the mitigation sites. The monitoring plan shall be submitted to the City for review and written approval at least thirty (30) days prior to the start of construction.

G. Operational Stormwater Requirements:

1. All stormwater discharges from the project shall be in compliance with State of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC and ground water quality standards (Chapter 172-200).
 - a. The Applicant shall design, construct, operate, and maintain stormwater treatment facilities to ensure that discharges will not result in exceedances of State water quality criteria in receiving waters (including wetlands). All runoff from impervious surfaces (except cart paths) shall be treated using all known available and reasonable treatment (AKART), at the time of final design.
 - i) The Applicant shall design the stormwater treatment facilities in accordance with Ecology's stormwater manual that is in effect at the time of final design, or equivalent manuals provided by Ecology; or

- ii) The applicant may propose other BMPs for stormwater treatment if it can be demonstrated that they will result in stormwater discharges that meet the state water quality standards. Any proposed changes are subject to review and approval by the City.
2. The Applicant shall submit the final stormwater treatment facility designs to the City for review and written approval sixty (60) days prior to the start of construction of the facilities. During final design the Applicant shall evaluate the likelihood that stormwater facilities will intercept groundwater and make modifications to the designs so as to either prevent the interception of groundwater or increase facility sizing to accommodate the groundwater. If facility sizes increase the Applicant shall evaluate potential impacts to wetlands and other waters of the state and mitigate for those impacts.
3. Sixty (60) days prior to the completion of the stormwater treatment facility the Applicant shall submit to the City for review and written approval a Stormwater Facilities Operation and Maintenance Plan which address maintenance, operation and monitoring of all stormwater facilities. The plan shall address management of accumulated sediments in the infiltration ponds. For the purpose of meeting this condition the Applicant may submit other existing documents or updates of other existing documents that meet this requirement.

H. Operational Stormwater Monitoring and Reporting Requirements:

1. After construction, the Applicant shall monitor stormwater runoff to determine the success of the stormwater treatment systems. Water quality monitoring and visual observations shall be conducted for the first two years of operation, and shall be conducted at least monthly during storm events or during active runoff into the stormwater treatment system(s). If during or after the initial monitoring effort, results of monitoring show a pattern of system overloading and/or discharges to the emergency overflow, additional monitoring will be required.
2. The Applicant shall submit a Stormwater Monitoring plan to the City for review and approval 60 days prior to the project becoming operational. This plan shall include monitoring the performance of the BMPs, infiltration ponds and a contingency plan if the infiltration ponds fail to infiltrate.
3. Results from the stormwater sampling and analysis shall be sent to the City within 30 days of each sampling event.

If the monitoring results show that the water quality standards and the designed treatment systems performance standards are not being met, the City may determine the project to be in violation, and additional treatment conditions and/or mitigation may be required.

I. Domestic Wastewater:

1. The operation of the Westport Sewage treatment plant to adequately treat the additional loading generated by the Links of Half Moon Bay has a bearing on the approval of a 401 certification for the project. While the Westport treatment plant is currently below its nominal capacity for flow and organic loading, the facility has had difficulty operating its existing facilities to meet its NPDES discharge permit requirements. These difficulties are related to treatment plant design limitations as well as operational practices. Because of these issues, the City of Westport is under an administrative order (#DE 1035) from Ecology to make both operational and facility improvements to the plant. Grays Harbor is currently listed under the 303(d) List as a water quality limited water body due to high fecal coliform counts.

In its current state, the Westport wastewater treatment plant may not be able to adequately treat the additional loading from the hotel/residential units at the Links at Half Moon Bay. Therefore, connection of the hotel/residential units at the Links at Half Moon Bay is prohibited until the plant design and operational issues identified by order #DE 1035 are addressed in full. Following the implementation of all the necessary improvements to the Westport wastewater treatment plant to accommodate the additional wastewater load from the hotel/residential units at the Links at Half Moon Bay, this certification will be amended to authorize the connection of the hotel/residential units to the Westport wastewater treatment plant.

J. Golf Course Management Conditions:

1. Prior to construction of the golf course, a final golf course layout shall be submitted to the City for review and comment.
2. The golf course shall only operate after obtaining and maintaining Audubon International (Audubon) certification under their Signature Program at the minimum of their Silver Level. The Applicant shall submit to the City a current copy of the Audubon's certification. The application of any fertilizers, herbicides and insecticides shall be prohibited in the event the Audubon certification is suspended or denied.
3. The management of the golf course shall be implemented as described in the Audubon International's Natural Resource Management Plan (NRMP), dated June, 2006, with the following additions and clarifications to the extent not already incorporated therein:
 - a. Monitor groundwater quality. The NRMP proposes to use three monitoring wells: GW-1, GW-2, and GW-3 (5-15). The Applicant shall expand the groundwater monitoring network to include monitoring wells OW-13 and OW-10 provided these wells are suitably constructed to provide representative groundwater samples. If the construction of these wells is inadequate to provide representative groundwater samples, new monitoring wells shall be installed at these locations and included in the monitoring network.

- b. The Applicant shall increase the sampling events to bi-monthly sampling (every two months) for a minimum of one year prior to construction.
 - c. The Applicant shall monitor for total dissolved solids (T.S.) in addition to the parameters listed in the NRMP Table 5-4.
 - d. The Applicant shall calculate Response Thresholds in the NRMP Table 5-8 for nitrate-N, total phosphorus, and chloride using the procedures to calculate Enforcement Limits as described in the Implementation Guidance for the Ground Water Quality Standards. This requires that background groundwater quality and its variance be defined for each parameter.
 - e. The Applicant shall include Nitrate-N in the soil monitoring program described in pages 3-12 through 3-20 of the NRMP.
 - f. Prior to the operation of the golf course, and prior to the introduction of any new or revised pesticide, the Applicant shall submit to the City for its review and written approval a final plan for monitoring the movement into groundwater and adjacent surface water, including wetlands, of each pesticide to be used on the golf course. The first two applications of each pesticide will have to be monitored at a minimum of three separate greens or fairways.
 - g. The Applicant will discontinue the use of any pesticide whose concentration in groundwater exceeds human health standards or whose concentration in the surface water of adjacent wetlands exceeds the acute or chronic toxicity criteria set by the U.S. Environmental Protection Agency.
4. Notwithstanding and in addition to the foregoing, the final NRMP shall be modified, pursuant to the final order of the ELUHB, by:
- a. Protecting water quality by extending the limited spray zone to the full extent of the golf course.
 - b. Protecting water quality by identifying pesticides authorized for use on the course prior to their application.
 - c. Protecting water quality by establishing restrictions on the application of pesticides close in time to anticipated rainfall events or course irrigation.
 - d. Protecting water quality by establishing written and scientifically supportable standards for pesticides in the surface and groundwater prior to their use.
 - e. Protecting water quality by requiring a monitoring plan for review and approval of the Department of Ecology prior to use of pesticides or fertilizers on the golf course that will assure with reasonable certainty the following: 1) adequate rigor to provide scientifically necessary information to detect, avoid, and respond to

any water quality problems; 2) the existence, nature, and extent of contaminants entering surface and groundwater on, and adjacent to, the site; 3) protocols for testing surface water to identify the increased level of pollutants that may be found in the first runoffs after the beginning of a storm event; 4) clear standards for each pesticide against which the results are to be compared to trigger a response; and 5) defined and adequate remedial actions. Mox Chehalis shall conform its monitoring plan to the changes suggested by Ecology, and shall comply therewith. In the event that the Department of Ecology refuses in writing to review and approve such monitoring plan, the role of Ecology can be performed by a qualified third-party consultant hired by the City of Westport.

- f. Protecting water quality by requiring a defined and adequate response to any water quality issue revealed during the monitoring or adaptive management process.
- g. Mox Chehalis will develop a model of the ground water table based on available on-site data to identify seasonal high water levels underlying the golf course. Mox Chehalis shall prohibit application of pesticides and fertilizers at times and locations when the water table does not have a minimum separation of 3 feet from the elevation of the golf course.

K. Emergency/Contingency Requirements:

- 1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project, and shall have spill cleanup materials available on site.
- 2. Any work not in compliance with the provisions that causes distress or death of fish, or any discharge of oil, fuel, or chemicals into State waters, or onto land with a potential for entry into State waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify the City and Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (360) 407-6300 and to the Department of Health, Shellfish.
 - d. Submit a detailed written report to Ecology within five days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
 - e. The Applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall

be held in refrigeration or on ice until the Applicant is instructed by Ecology on their disposition.

3. In the event of a discharge of oil, fuel, or chemicals into State waters, or onto land with a potential for entry into State waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into State waters.
5. If at any time during work the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify the Ecology's SWRO Regional Spill Response Office at (360) 407-6300.
6. Prior to the commencement of any construction, the Applicant shall present the City for review and approval a plan to make known to future owners and residents within the project that possible future coastal erosion could adversely impact their properties and possessions. The Applicant shall be required to record on titles and on condominium declarations a notice advising future owners of such erosion risk.

L. General Conditions:

1. The Applicant shall have a designee on-site, or on-call and readily accessible to the site, at all times while construction activities are occurring that may affect the quality of ground and surface waters of the State, including all periods of construction activities.
2. The Applicant's designee shall have adequate authority to ensure proper implementation of the Erosion and Sediment Control (ESC) Plan, as well as immediate corrective actions necessary to implement a portion of the ESC Plan or to prevent pollution to waters of the State, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this directive.
3. The Applicant shall provide access to the project site and all mitigation sites by City and Ecology or other appropriate agency personnel for site inspections, monitoring, necessary data collection, or to ensure these conditions are being met.
4. Copies of these conditions and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and City personnel.

Exhibit 4

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR THE

Mox Chehalis, LLC Property in Westport, WA

THIS DECLARATION made this 7th day of December, 2010,
by James Daly, 29308 132nd Ave. SE, Auburn, WA 98092 ("Declarant").

RECITALS

1. WHEREAS, Declarant is the owner of the real property described in Exhibits "A" and "B" attached hereto and by this reference incorporated herein as the "Property", and desires to create and preserve thereon wetlands and forested habitat to be maintained in accordance with the provisions made between the declarant and the Department of Ecology (DOE) and the U.S. Army Corps of Engineers (USACE) for project bearing the Revised Shoreline Management Permit #2007-SW-02407-A and USACE Reference Number 200301009 ("Departments");
2. WHEREAS, Declarant desires to provide for the preservation and creation of the wetland values and preservation of forested habitat of the Property and for the maintenance and management of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the Property.

NOW, THEREFORE, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and other encumbrances hereinafter set forth in this Declaration.

ARTICLE 1 DEFINITIONS

1.1 "Declaration" shall mean the covenants, restrictions, and all other provisions set forth in the Declaration of Covenants and Restrictions.

1.2 "Declarant" shall mean and refer to James Daly, his successors or assigns.

1.3 "Permit" shall mean the final document approved by the Departments that formally establish the wetland mitigation and forested habitat preservation areas and stipulates the terms and conditions of its construction, operation and long-term management.

1.4 "Property" shall mean and refer to all real property subject to this Declaration, as more particularly set forth in Exhibits "A" and "B" as 114.44 acres total consisting of 107 acres of preservation and 7.44 acres of wetland creation.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located within the City limits of Westport, and within Grays Harbor County, Washington, and further located in a portion of Sections 1 and 2 of Township 16 North, Range 12 West, W.M., bordered by the Pacific Ocean to the West, Half Moon Bay and Jetty Access Road to the North, Washington State Park's property to the south and Forrest Avenue to the East. The 114.44 acre Property (conservation area) consists of:

- **7.44 acres of wetland creation** onsite between the fairways and within the historic location of "Radar Road".
- **107 acres of preservation** onsite (94 acres of forested wetland and 13 acres of forested uplands outside of the active golf course) as depicted on the attached "Exhibit B".

Further, the Property identified by this declaration is located within a 350 acre property owned by Mox Chehalis, LLC and is defined as depicted in "Exhibits A and B".

ARTICLE 3

GENERAL PLAN OF DEVELOPMENT

Declarant currently manages the site for the purposes of golf course development and wetland mitigation. Current management is in accordance with USACE Reference Number 200301009. This declaration also applies to any future changes in use of the property.

ARTICLE 4

USE RESTRICTIONS AND MANAGEMENT RESPONSIBILITIES

The areas identified as Property shall be managed for wetland mitigation and forested habitat preservation purposes in accordance with the agreement identified under the DOE Revised Shoreline Management Permit #2007-SW-02407-A and the USACE Reference Number 200301009. Declarant and all future owners and users of the Property are subject to any and all easements, covenants and restrictions of record affecting the Property.

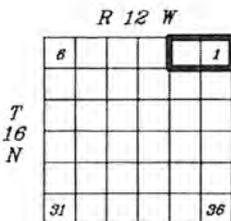
1. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation in the Property except for maintenance activities and activities designed to achieve mitigation performance standards as detailed in the mitigation plan approved under the DOE Revised Shoreline Management Permit #2007-SW-02407-A nor any disturbance or change in the natural habitat of the Property.
2. There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
3. No domestic animals shall be allowed on the Property except for properly controlled service animals as needed by persons with disabilities.
4. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any dumping of ashes,

4/13/2007 4:12 PM S:\Grays Harbor-WA\County-Projects\1532-Mox Chehalis, LLC\1532.02-Conservation Covenant Violation Consultation\1532.02-Figures\VICINITY.dwg Jennifer Johnston

WASHINGTON



LOCATION MAP

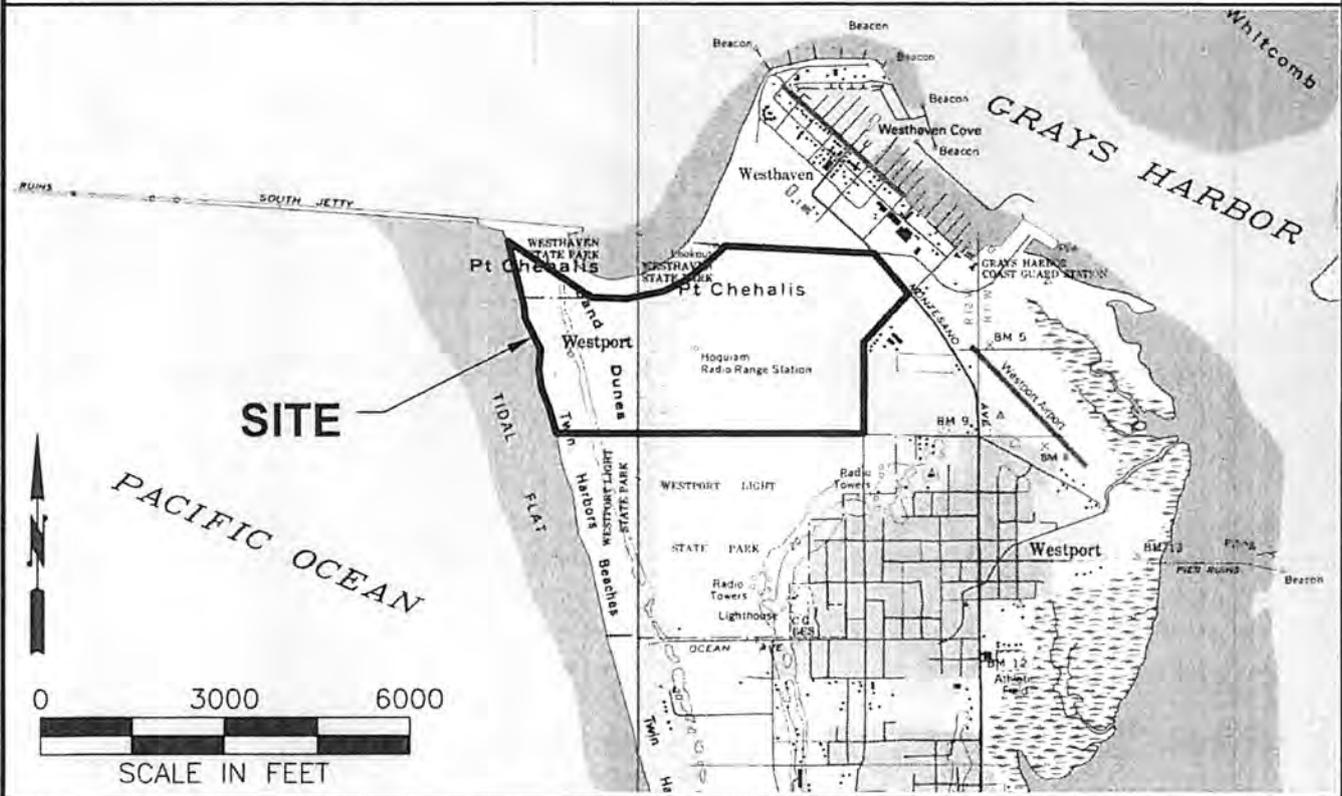


SITE

PROJECT VICINITY MAP

NOTE:

USGS topographic quadrangle map reproduced using MAPTECH Inc., Terrain Navigator Pro software.



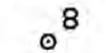
ECOLOGICAL LAND SERVICES, INC.

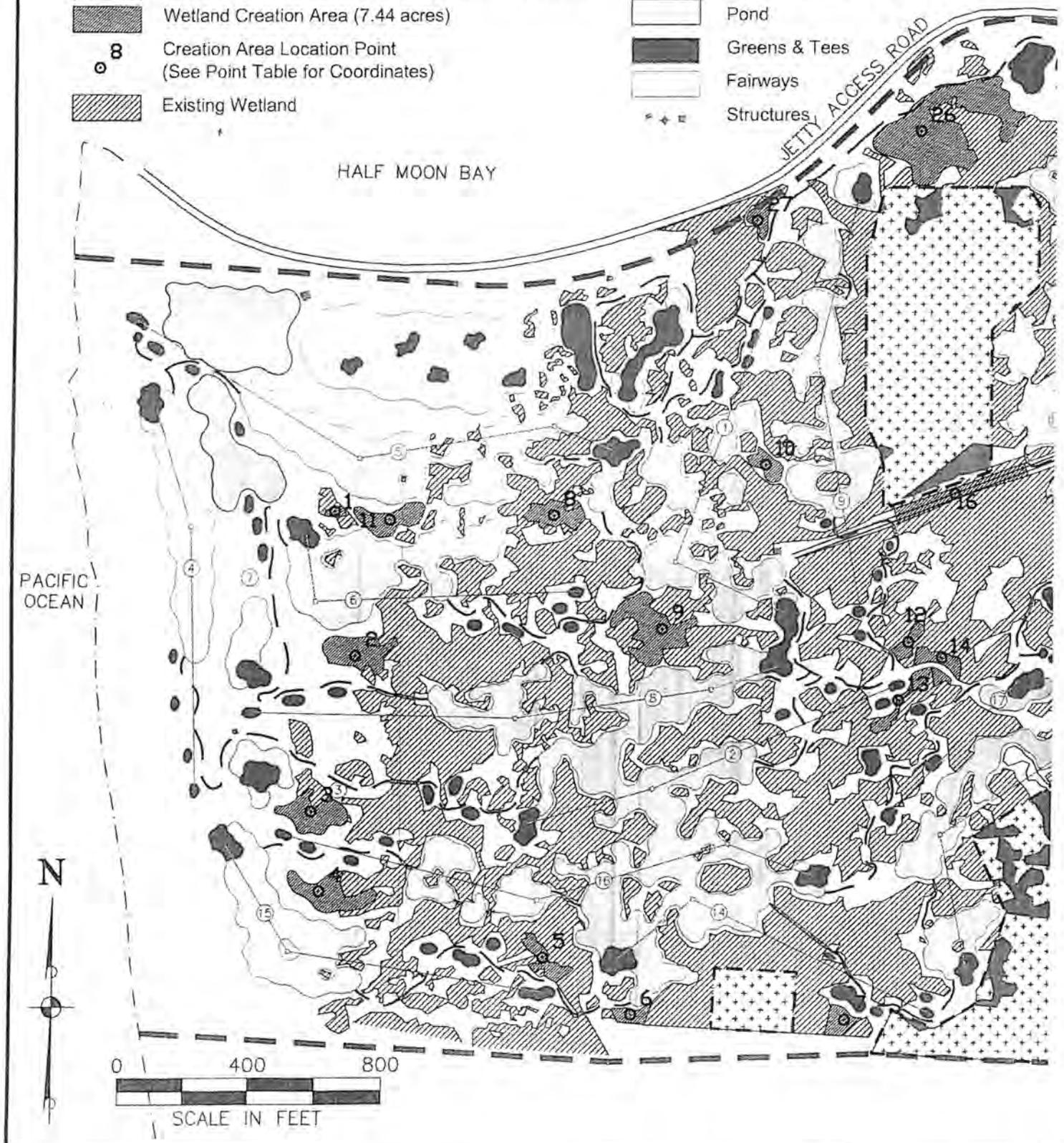
1157 3rd Ave., Suite 220 Longview, WA 98632
(360) 578-1371 Fax: (360) 414-9305

DATE: 12/10/10
DWN: MMM
REQ. BY: FN
PRJ. MGR: FN
CHK: MMM
APPR:
PROJ.#: 1532.01

EXHIBIT A
Links at Half Moon Bay
Mox Chehalis, LLC
Grays Harbor County, Washington
Sections 1 & 2, Township 16N, Range 12W, W.M.

LEGEND:

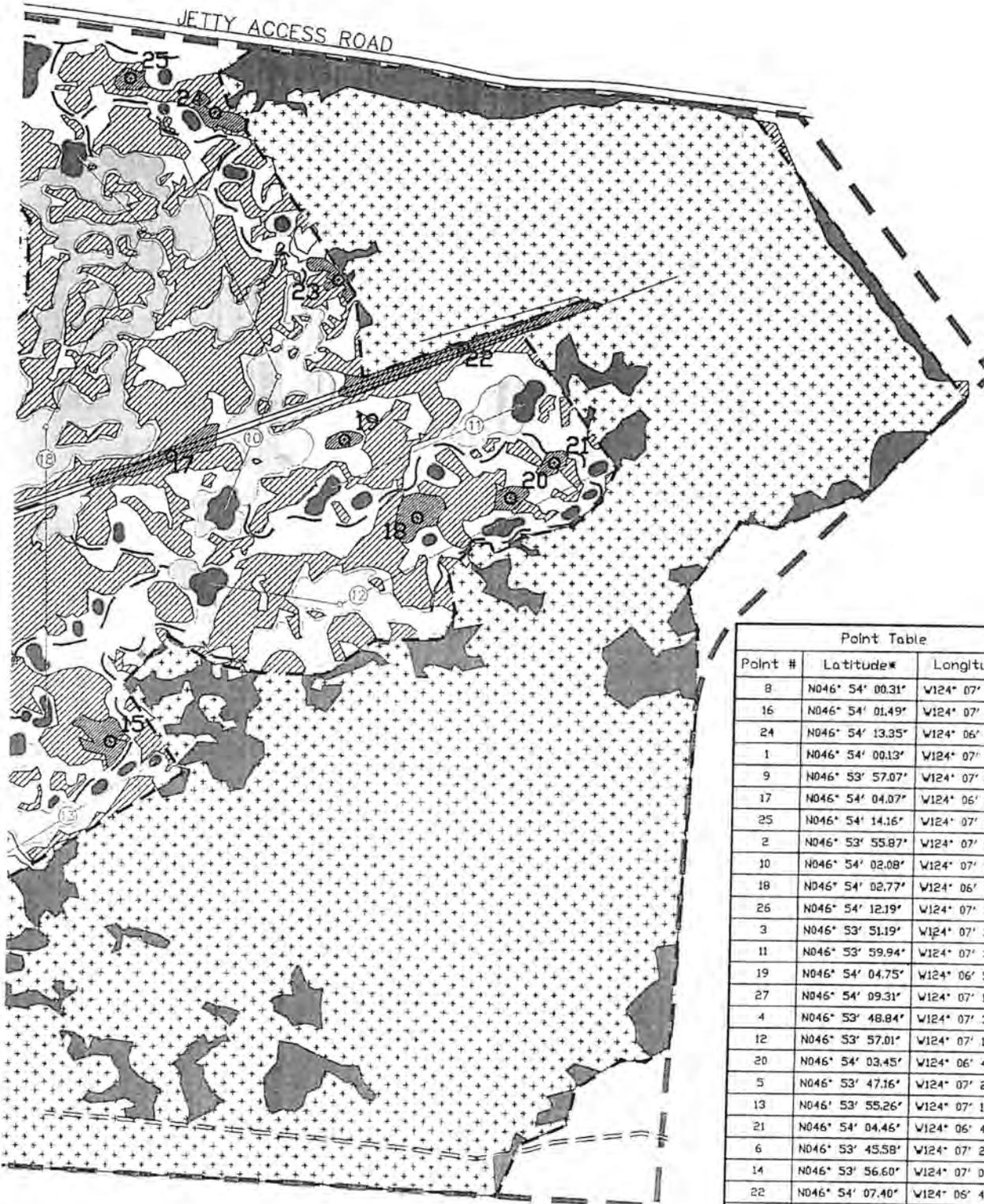
- | | | | |
|---|---|--|--------------------------|
|  | Preservation Area Boundary (107 acres) |  | Site Boundary |
|  | Existing Forested Wetland for Preservation (94 acres) |  | Study Area Boundary |
|  | Existing Forested Upland for Preservation (13 acres) |  | Existing Vegetation Line |
|  | Wetland Creation Area (7.44 acres) |  | Pond |
|  | Creation Area Location Point
(See Point Table for Coordinates) |  | Greens & Tees |
|  | Existing Wetland |  | Fairways |
| | |  | Structures |



NOTES:

1. Base map provided by HDR One Company, June, 2007.
2. Site boundary size and location are approximate.

- ① Hole Number & Centerline
- Golf Cart Trail
- Golf Cart Bridge Crossing



Point Table		
Point #	Latitude*	Longitude*
8	N046° 54' 00.31"	W124° 07' 26.14"
16	N046° 54' 01.49"	W124° 07' 08.67"
24	N046° 54' 13.35"	W124° 06' 58.47"
1	N046° 54' 00.13"	W124° 07' 35.74"
9	N046° 53' 57.07"	W124° 07' 21.17"
17	N046° 54' 04.07"	W124° 06' 59.30"
25	N046° 54' 14.16"	W124° 07' 02.01"
2	N046° 53' 55.87"	W124° 07' 34.53"
10	N046° 54' 02.08"	W124° 07' 17.00"
18	N046° 54' 02.77"	W124° 06' 49.37"
26	N046° 54' 12.19"	W124° 07' 11.00"
3	N046° 53' 51.19"	W124° 07' 36.07"
11	N046° 53' 59.94"	W124° 07' 33.35"
19	N046° 54' 04.75"	W124° 06' 52.49"
27	N046° 54' 09.31"	W124° 07' 17.93"
4	N046° 53' 48.84"	W124° 07' 35.54"
12	N046° 53' 57.01"	W124° 07' 10.38"
20	N046° 54' 03.45"	W124° 06' 45.74"
5	N046° 53' 47.16"	W124° 07' 25.58"
13	N046° 53' 55.26"	W124° 07' 10.69"
21	N046° 54' 04.46"	W124° 06' 44.12"
6	N046° 53' 45.58"	W124° 07' 21.64"
14	N046° 53' 56.60"	W124° 07' 08.87"
22	N046° 54' 07.40"	W124° 06' 47.99"
7	N046° 53' 45.70"	W124° 07' 12.27"
15	N046° 53' 56.31"	W124° 07' 00.98"
23	N046° 54' 09.04"	W124° 06' 53.17"

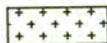
*NAD 27 Washington State
Planes South Zone US Foot

EXHIBIT B
Links at Half Moon Bay
Mox Chehalis, LLC
Grays Harbor County, Washington
Sections 1 & 2, Township 16N, Range 12W, W.M.

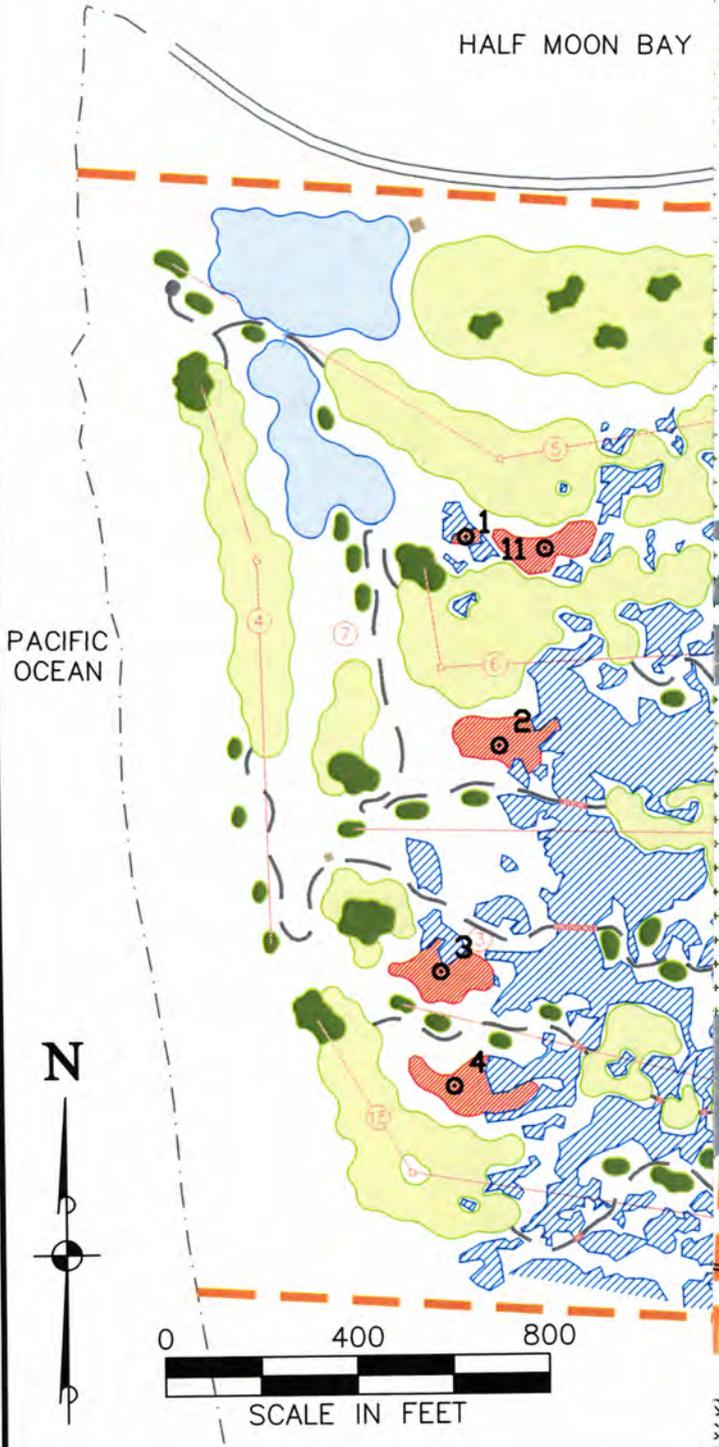
DATE: 12/10/10
DWN: JKJ/BCB
REQ. BY: FN
PRJ. MGR: FN
CHK: MMM
APPR:
PROJ#: 1532.02

ECOLOGICAL LAND SERVICES, INC.
1157 3rd Ave., Suite 220 Longview, WA 98632
(360) 578-1371 Fax: (360) 414-9305

LEGEND:

-  Preservation Area Boundary (107 acres)
-  Existing Forested Wetland for Preservation
-  Existing Forested Upland for Preservation
-  Wetland Creation Area (7.44 acres)
-  Creation Area Location Point
(See Point Table for Coordinates)
-  Existing Wetland

...d by HDR One Company, June, 2007.
... and location are approximate.



Point Table		
Point #	Latitude*	Longitude*
8	N046° 54' 00.31"	W124° 07' 26.14"
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1	N046° 54' 00.13"	W124° 07' 35.74"
9	N046° 53' 57.07"	W124° 07' 21.17"
17	N046° 54' 04.07"	W124° 06' 59.30"
25	N046° 54' 14.16"	W124° 07' 02.01"
2	N046° 53' 55.87"	W124° 07' 34.53"
10	N046° 54' 02.08"	W124° 07' 17.00"
18	N046° 54' 02.77"	W124° 06' 49.37"
26	N046° 54' 12.19"	W124° 07' 11.00"
3	N046° 53' 51.19"	W124° 07' 36.07"
11	N046° 53' 59.94"	W124° 07' 33.35"
19	N046° 54' 04.75"	W124° 06' 52.49"
27	N046° 54' 09.31"	W124° 07' 17.93"
4	N046° 53' 48.84"	W124° 07' 35.54"
12	N046° 53' 57.01"	W124° 07' 10.38"
20	N046° 54' 03.45"	W124° 06' 45.74"
5	N046° 53' 47.16"	W124° 07' 25.58"
13	N046° 53' 55.26"	W124° 07' 10.69"
21	N046° 54' 04.46"	W124° 06' 44.12"
6	N046° 53' 45.58"	W124° 07' 21.64"
14	N046° 53' 56.60"	W124° 07' 08.87"
22	N046° 54' 07.40"	W124° 06' 47.99"
7	N046° 53' 45.70"	W124° 07' 12.27"
15	N046° 53' 56.31"	W124° 07' 00.98"
23	N046° 54' 09.04"	W124° 06' 53.17"

EXHIBIT B
Links at Half Moon Bay
Mox Chehalis, LLC
Grays Harbor County, Washington
Sections 1 & 2, Township 16N, Range 12W, W.M.

DATE: 4/11/07
DWN: JKJ/BCB
REQ. BY: FN
PRJ. MGR: FN
CHK: MMM
APPR:
PROJ.#: 1532.02

ECOLOGICAL LAND SERVICES, INC.
1157 3rd Ave., Suite 220 Longview, WA 98632
(360) 578-1371 Fax: (360) 414-9305



Exhibit 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: ECO-083

[Sent on August 5, 2004]

Colonel Debra M. Lewis, District Engineer
Seattle District, Corps of Engineers
P.O. Box 3755
Seattle, Washington 98124-3755
(Attn: Jim Green, Project Manager)

RE: Public Notice 200301009, Mox Chehalis, LLC (Links at Half Moon Bay), June15 - July 15, 2004, extended to August 5, 2004.

Dear Colonel Lewis:

This letter is in response to the referenced public notice, which proposes direct impacts from placement of fill material into 9.98 acres of adjacent interdunal wetlands, indirect impacts to 14.63 acres of wetlands from vegetation clearing, and 0.27 acres of impact from excavation. An additional 13.93 acres of direct wetland buffer losses are identified on the public notice. The 14.63 acres of impacts from vegetation clearing and excavation are called "non-jurisdictional" activities. The purpose of the proposed work is to construct a destination resort that would include hotels, a conference center, an 18-hole golf course, condominiums, and supporting commercial development.

The U.S. Environmental Protection Agency (EPA) has significant concerns about this project proposal. EPA has three main areas of concern: (1) impacts to *Aquatic Resources of National Importance* (ARNI), (2) compliance with the Clean Water Act (CWA) Section 404(b)(1) guidelines, and (3) the need for a federal environmental impact statement (EIS) under the National Environmental Policy Act (NEPA). It is EPA's goal to work with the Corps, the applicant and resource agencies to address these issues.

Impacts to Aquatic Resources of National Importance

The wetlands at this 350 acre site represent a diverse habitat mosaic of interdunal emergent, scrub-shrub, and forest wetlands of over 150 acres, which are adjacent to the Pacific Ocean and Grays Harbor. The site is situated in the coastal zone at Half Moon Bay, on "Point Chehalis" at

Half Moon Bay, Pacific Ocean's coast and on the southwestern arm of Grays Harbor. This area has been the subject of ongoing coastal erosion (refer to EPA August 21, 2003, comment letter on Public Notice CENWS-OD-TS-NS-21). The site contains some of the last contiguous interdunal wetland habitat in this area and is located at the nexus of two key migratory flyways, critical for the support of a number of migratory birds. Grays Harbor lies within one of eleven *Globally Important Bird Areas* designated in Washington State, and is one of fourteen internationally significant North American sites within the *Western Hemisphere Shorebird Reserve Network*.

These interdunal wetlands are not only important as habitat and refuge for numerous migratory bird species, but also support a number of mammals, amphibians, and fish. The wetlands are hydrologically connected to Grays Harbor by way of a system of drainage canals. This system provides overwintering and refuge habitat for coho (*Onchorynchus keta*), of which the Lower Colubia River population is a candidate species. The interdunal wetlands also provide important groundwater recharge functions, contributing to the maintenance of the City of Westport's sole source drinking water supply. Based on the importance of these coastal interdunal wetland ecosystems, and their associated functions and values, EPA has concluded that the proposed project poses a substantial and unacceptable risk to *Aquatic Resources of National Importance* (ARNI). The bases for impacts to an ARNI are detailed in Enclosure 1.

404(b)(1) Guidelines Compliance Issues

EPA can not conclude that this project complies with the CWA Section 404 (b)(1) guidelines as currently proposed. This determination is based on our analysis of the project relative to environmental criteria established at 40 CFR Part 230.10(a-d). EPA believes that (a) insufficient information has been provided to demonstrate that there are no practicable, less environmentally damaging alternatives to achieve the purpose(s) of this non-water dependent project, (b) the project will contribute to adverse impacts on water quality, (c) the project poses significant adverse impacts to the aquatic environment, and (d) the proposed compensatory mitigation does not adequately replace the lost functions and values of impacts to the interdunal wetlands. Please refer to Enclosure 1 for our detailed comments and concerns regarding 404(b)(1) Guidelines' compliance.

Need for Federal Environmental Impact Statement (EIS)

Prior to making a decision on this permit, EPA recommends that a full NEPA EIS be developed to fully scope and evaluate the purpose and need for this project relative to its impacts to the human environment. We believe this project poses significant environmental impacts, and is the subject of significant controversy. Issues of concern to the public include (but are not limited to):

- Restriction of access to the coastal zone and privatization of public use areas
- Privatization of the road currently leased by the Army Corps of Engineers to Westhaven State Park
- Fragmentation and degradation of ecologically important interdunal wetlands
- Development that will lead to increased shoreline armoring in a highly active coastal zone
- Impacts to water quality and groundwater recharge
- Impacts to local fisheries and shellfish industries
- Impacts to local and statewide recreational users (including surfers, birders, naturalists, etc.)
- Impacts to cultural resources and traditional use areas

Accordingly, EPA strongly recommends that the Corps fully evaluate this project through a full NEPA EIS process.

Summary

EPA is formally notifying the Corps -- pursuant to Section IV, paragraph 3(a) of the 1992 CWA Section 404(q) Memorandum of Agreement between our agencies--that the proposed project may result in substantial and unacceptable impacts to *Aquatic Resources of National Importance*, that significant impacts are likely to occur that warrant the preparation of a federal EIS, and that the project is not in compliance with the CWA Section 404(b)(1) Guidelines. EPA recommends that the Corps not issue a permit for the project as proposed. For further coordination on this project, please feel free to contact me or have your staff contact Ms. Linda Storm, Wetland Ecologist, at (206) 553-6384 or storm.linda@epa.gov.

Sincerely,

/S/

Michelle Pirzadeh, Director
Office of Ecosystems and Communities

Enclosure

cc: Mox Chehalis, LLC
Economic & Engineering Services, Inc.
Nancy Brennan-Dubbs, USFWS
Matt Lungenberg/Tom Hooper, NMFS
Roman Iyer, Chehalis Confederated Tribes
Guy McMinds, Quinault Tribe

Perry Lund, Ecology
Key McMurray, Montesano, WDFW
Craig Zora, WDNR
Susanna Boyer, WDPR

Exhibit 6

1
2
3
4
5
6
7 **SHORELINES HEARINGS BOARD**
8 **STATE OF WASHINGTON**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Appellant,

12 v.

13 CITY OF WESTPORT and MOX
14 CHEHALIS, L.L.C.,

15 Respondents.

SHB No. 01-023

NOTICE OF APPEAL

16 **I. APPEALING PARTY**

17 The State of Washington, Department of Ecology (Ecology) by and through its
18 attorneys Christine O. Gregoire, Attorney General, and Thomas J. Young, Assistant Attorney
19 General, appeals the City of Westport's grant of a substantial development permit, dated
20 August 9, 2001, to Mox Chehalis, L.L.C. for construction of a project known as the Links at
21 Half Moon Bay. A copy of the permit, permit data sheet, permit application, and Planning
22 Commission Findings and Conclusions are attached hereto.

23 **II. FACTS SUPPORTING APPEAL**

24 1. The property that is the subject of this appeal is located in the City of Westport,
25 Washington in Section 1, Township 16 North Range 12 West. The property is bounded by the
26

NOTICE OF APPEAL

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6740

COPY

1 Pacific Ocean on the west, Half Moon Bay and the Westport Marina District on the north,
2 Forrest Street on the east and Washington State Parks property on the south.

3 2. Portions of the property are located within 200 feet of the ordinary high water
4 mark of Half Moon Bay and the Pacific Ocean and portions are located within the 100 year
5 floodplain of Grays Harbor. The property also contains numerous high quality wetlands that
6 are in hydraulic continuity with the Pacific Ocean. The Pacific Ocean and Half Moon Bay are
7 shorelines of statewide significance.

8 3. The City of Westport's permit data sheet describes the project as:

9 Development of a destination resort consisting of a 200 room luxury hotel with
10 a footprint of 40,000 square feet, a second 200 room budget hotel with a
11 footprint of 40,000 square feet, a convention center with a footprint of 31,000
12 square feet, an 18 hole Scottish Links style golf course with clubhouse and
13 maintenance facilities, and up to 400 condominium units in 40 - 10 unit
14 buildings with a footprint of 2,800 each.

15 Permit data sheet, p. 2.

16 4. According to the Final Environmental Impact Statement (FEIS), the project will
17 impact over 30 acres of wetlands on the site, including 12 acres of fill, 16 acres of "mowing",
18 4.5 acres of excavation and 2 acres of temporary construction impacts.

19 5. The wetlands on the site are rare, high quality, inter-dunal wetlands that provide
20 habitat for birds, amphibians, small mammals and invertebrates. The applicant's conceptual
21 wetland mitigation plan describes the habitat values of the wetlands as follows:

22 Wetlands at the site generally provide better than average functions relative to
23 biological support. Complex vegetative structure, connectivity, diverse habitat types,
24 and a low cover of invasive species contribute to the increased function of the on-site
25 wetlands to contribute to biological support. Generally, biological support functions
26 increase from west to east with the area contributing the highest value being the
forested wetland areas in the eastern portion of the site.

Conceptual Wetland Mitigation Plan, p. 12. In addition, the wetlands constitute a recharge
area for underground aquifers.

1 6. According to Ecology's Coastal Erosion Study, the ocean beaches in the
2 vicinity of the project are eroding. The project involves construction of structures located
3 close to the beach and future erosion control measures likely will be necessary to protect them.

4 7. The property is designated urban under the City of Westport Shoreline Master
5 Program (SMP). Wetland fill within the urban environment is generally prohibited, with three
6 exceptions allowed under a conditional use permit. The SMP also states:

7 Other in-water landfills and landfills waterward of the line of ordinary high
8 water or the edge of the associated wetland shall not be permitted unless the
9 landfill is both necessary for a water dependent use and the proposed fill sites
are not within the marsh south of the existing airport.

10 SMP, Section 17.32.055.

11 8. The SMP defines shoreline jurisdiction to include the 100 year flood plain in the
12 area of the project. SMP, Section 17.32.020.

13 9. On or about July 25, 2001, the City of Westport Planning Commission issued its
14 decision approving a shoreline substantial development permit and conditional use permit for
15 the project. The permit includes 17 conditions, including the requirement that the applicant
16 submit a final Natural Resources Management Plan, a final golf course layout, a final Wetland
17 Mitigation Plan, a final Stormwater Treatment Plan, and a plan to notify future owners and
18 residents within the project of possible future erosion.

19 III. GROUNDS FOR APPEAL

20 1. The project description in the permit and the analysis of environmental impacts
21 in the accompanying documents are too vague to permit meaningful review. For example, the
22 exact location and number of structures is uncertain, as the FUIS indicates:

23 Phase I will include the development of one hotel structure with an estimated
24 200 to 400 rooms. The range of room capacity is due to the fact that there may
25 only be one hotel structure, versus two separate structures for the final
26 build-out. The applicant is keeping the option available to determine later
whether or not one structure containing all the proposed room capacity is more
feasible than two separate structures that would provide the estimated full room
capacity of 400. In addition, Phase I contains the convention center. Again, the
convention center may be designed within the hotel complex or may be situated
adjacent to the hotel on a separate building pad. This will also be determined

1 during the design and permitting processes. Phase 1 will also include the
2 construction of the 18-hole golf course and associated clubhouse and
3 maintenance facilities.

4 FEIS, p. 3-1.

5 2. The impacts to the on-site wetlands are not fully described. The mitigation plan
6 and stormwater management proposals contain insufficient detail. The amount of impervious
7 surface is unclear. The ordinary high water mark of Half Moon Bay on the site plans, which
8 was determined without input from Ecology, appears to be erroneous.

9 3. The stormwater management proposal is inadequate. No formal stormwater
10 management plan has yet been submitted. The applicant proposes to construct stormwater
11 detention ponds in the wetlands area but it is unclear how these ponds will function because the
12 ground is saturated to the surface in many areas where the ponds are proposed. The applicant
13 apparently proposes to use the surrounding wetlands as stormwater detention, which is
14 unacceptable under SMP 17.32.065(2) and 17.32.050(13)(H).

15 4. The mitigation plan is inadequate. Claimed mitigation appears to include
16 stormwater management ponds that cannot properly be claimed as mitigation. The proposed
17 mitigation is inadequate to ensure preservation of wetlands functions and values in violation of
18 SMP 17.32.065(5). The scope of the project and the impact on wetlands appears far greater
19 than will be compensated for under the applicant's proposed mitigation plan. Details regarding
20 the applicant's clearing and grading plans and planting plans have not been provided. The
21 proposed use is not a water dependent use and consequently upland alternatives should be
22 evaluated to avoid or minimize impacts to wetlands.

23 5. The SMP requires 100 foot buffers around Class A wetlands and 50 foot buffers
24 around Class B wetlands. SMP, Section 17.32.065. Most of the wetlands on the site are Class
25 A or B, yet no buffers are required in many instances. Inadequate buffers are provided for
26 existing wetlands and wetlands claimed as mitigation. The permit allows buffer averaging
although compliance with the conditions in SMP 17.32.065(5)(A) has not been demonstrated.

1 6. The project generally is inconsistent with the policies and provisions of the
2 Shoreline Management Act and the SMP. The project will cause severe impacts to the inter-
3 dunal wetlands system in the vicinity without a corresponding public benefit. The project
4 likely will require erosion protection measures in the future, the impacts of which have not
5 been described or taken into account.

6 7. Use of pesticides and herbicides on the site may impair water quality. The
7 applicant relies on certification by Audubon International to reduce pollution from herbicides
8 and pesticides, but this certification has not yet been obtained.

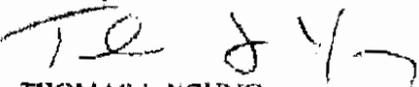
9 8. The project will block currently unimpeded views of the ocean. Many citizens
10 commented during the SEPA process that the site is used for passive recreation and aesthetic
11 enjoyment. The project will limit public access to the inter-dunal area without providing any
12 significant new opportunities for access, in violation of SMP 17.32.060.

13 **IV. RELIEF REQUESTED**

14 Ecology requests that the substantial development permit issued to Mox Chehalis,
15 L.L.C. for the Links at Half Moon Bay project described above be vacated and the application
16 returned to the City of Westport for reconsideration.

17 DATED this 4 day of September, 2001.

18
19 CHRISTINE O. GREGOIRE
Attorney General

20 
21 THOMAS J. YOUNG
22 WSBA # 17366
Assistant Attorney General

23 Attorneys for Respondent
24 State of Washington
25 Department of Ecology
26 (360) 586-4608

Exhibit 7

INVESTIGATION REPORT and CONCLUSIONS

Reference Number: 200301009

Field Investigation: 8 April 2008

Reference Name: Mox Chehalis, LLC

Investigators: Jim Green, Joe Brock, Gail Terzi

Method of Inspection: Onsite From Adjacent Property Boat

Description of Prior Permit Activity: Mox Chehalis, LLC submitted a permit application (File No. 2000-01251) on 18 September 2000 to construct a destination resort including hotels, conference center, golf course, condominiums, and supporting commercial development. The project would be located on a site 250-300 acres in size adjacent to the Pacific Ocean at Westport, Washington.

Wetlands on the project site were delineated between February and August 2000. The site contains 167 wetland areas interspersed in a mosaic pattern throughout the site. A total of 148 acres of wetlands were delineated on the site. The wetlands were confirmed by Corps staff in a *Jurisdictional Determination and Wetland Summary* dated 2 April 2001 and a letter dated 4 April 2001 to the owner of the property at the time, the Port of Grays Harbor.

The initial project proposal included the filling of 11.96 acres of wetlands, the clearing of 15.89 acres of wetlands, and the excavation of 0.26 acres of wetlands on the site primarily for construction of the proposed golf course. A revised application was submitted on 26 April 2001 and included the filling of 10.56 acres of wetlands, the clearing of 13.82 acres of wetlands, and the excavation of 4.22 acres of wetlands, again, primarily for construction of the proposed golf course.

The revised application encountered considerable local opposition during the Shoreline permit process conducted by the City of Westport with many citizens in the area and an organized environmental group opposing the project. The local Shoreline Permit process resulted in extensive litigation. In a letter dated January 29, 2003, the Corps canceled the revised permit application pending resolution of the litigation. Mox Chehalis, LLC was advised that cancellation did not preclude the application from being resubmitted at a later date when litigation involving local permits was resolved.

While working on a Settlement Agreement with local groups opposing the project, Mox Chehalis submitted a new permit application to the Corps on 18 August 2003 (File No. 200301009). This new application was similar to the original application but changed the impacts to wetlands. The revised proposal now included the filling of 9.98 acres of wetlands, the clearing of 14.63 acres of wetlands, and the excavation of 0.23 acres of wetlands. In addition, approximately 13.66 acres of wetland buffer impacts would occur from construction of the golf course and cart paths and 0.27 acres from the condominiums.

The revised work was subject of Seattle District Public Notice No. 200301009 dated 15 June 2004. During the initial phases of the permit process, Corps staff met and corresponded with the Applicant's agent numerous times. The Applicant was advised on several occasions that the project would have to be evaluated using the EPA Section 404(B)(1) Guidelines. The Corps repeatedly requested information pertaining to project alternatives as required by the Guidelines. While some information was provided, much of the requested information was never provided. The Applicant was unwilling or unable to provide critical information required by the Corps to determine compliance with the 404(B)(1) Guidelines. In addition, the Corps requested information in order to complete the Endangered Species Act coordination with the U.S. Fish and Wildlife Service (see 3 May 2006 letter). This information also was not provided. Ultimately, the application was canceled on 3 May 2006 due to Mox Chehalis, LLC's failure to submit information required to continue with the processing of the application. In a 3 May 2006 letter, the Corps advised Mox Chehalis, LLC not to commence construction of the project without a permit.

Despite the Corp's letter dated 3 May 2006 advising Mox Chehalis, LLC not to commence construction of the project without a permit, **work on the project commenced sometime in 2006.** Based on a subsequent 22 June 2007 SEPA EIS Addendum for the project and a 29 June 2007 letter from the City of Westport, the project had been modified and consisted of a golf course without the filling of wetlands.

The site was inspected by Corps staff in December 2006. Large swaths of forested areas of the site had been cut to create fairways for the golf course. This work was non-jurisdictional because it did not constitute the placement of fill material. **However, the inspection revealed that fill material had been placed into jurisdictional wetlands adjacent to Grays Harbor, Pacific Ocean.** The wetland filling activities involved filling the low areas of an existing road at three separate locations to improve access to the interior of the site and the stockpiling of wood chips from the cutting of trees and the grinding of stumps on the site. The amount of fill placed in wetlands was estimated to be approximately 0.08 of an acre in size. Because of the minor nature of the violation and the fact that the work did not exceed the limits of the Corp's current Nationwide Permit 18, the Corps decided to take no legal action at the time and authorized the work using NWP 18 (see 4 April 2007 letter).

Most importantly, in the 4 April 2007 letter, the Corps advised that based on detailed knowledge of the project site and the extensive mosaic of wetlands that exist throughout the project site, we believed it would be extremely unlikely that a viable golf course could be constructed without the further filling of wetlands. Mox Chehalis, LLC was "cautioned that legal action may be initiated against the parties responsible for any further wetland filling activities that exceed the limits of the Nationwide Permits. Any such violation of Federal law would be considered knowing and willful."

Description of Work: The Corps received two reports that work was continuing. These reports were provided by Corps personnel working in the area. As a result of the reports of ongoing work, an inspection of the Mox Chehalis, LLC project site was conducted on 8 April 2008. Jim Green, Joe Brock, and Gail Terzi of the Corps inspected the site. Also in attendance at the site were Mr. Francis Naglich of Ecological Land Services, Inc., Mr. Randy Lewis of the City of Westport, and Mr. Jarl Priest of Lanco Development Company.

Because the project site is 250-300 acres in size, only a small portion of the site was inspected on 8 April 2008. The inspection took place on the northern end of the site on Holes 1, 10, and 18. The wetland delineation map from the approved 6 September 2006, *Wetland Delineation and Characterization Report* was used during the inspection. In addition, Mr. Naglich provided a color copy of a project site map entitled *Wetland Creation and Upland Dune Rehabilitation Map* dated 9 July 2007. The 9 July 2007 map was generally consistent with the 6 September 2006 map, The 9 July 2007 map was more inclusive of wetland areas because small upland area from the previous delineation were now mapped as wetland.

The inspection revealed that fairways had been carved out of the forested portions of the site and silt curtains were installed throughout much of the site. For most of the inspected area, the silt fence had been installed at the immediate edge of delineated wetland boundary. As a result, for many of the wetland areas the shape of the mapped wetland was consistent with the wetland area as outlined by the silt curtains. However, in some cases, the silt curtains had blown down due to storms and in other locations, the silt curtains were not properly located to protect wetlands from being filled. Much of the area not defined by silt curtains was filled with 2 to 3 feet of sand fill.

The site inspection progressed via a construction road from Jetty Access Road to the vicinity of the T-box for Fairway 10. At this location, the construction access road had been constructed over a section of Wetland WL-FK (see site photos 1 and 2). The inspection then progressed south through the vicinity of Fairway 18 to the location of the abandoned road grade that bisects the site. The wetlands defined with silt curtains were generally consistent with wetland delineation map from the 6 September 2006 wetland report. However, numerous unauthorized encroachments into the delineated wetlands were observed. At some locations, roads had been constructed across the wetlands or fill had been allowed to enter the wetlands due to the poor maintenance of the silt curtains/construction fencing or the lack of any silt curtain to identify wetland areas. In Wetland WL-AV a road had been constructed over the wetland (see site photo 5). At Wetland WL-KC-B fill had been placed over a long narrow strip of one edge of the wetland. The unauthorized fill placed in Wetland WL-KC-B was representative of the numerous violations that had occurred at the site. The individual wetland fills were small, but the indirect wetland impacts associated with the violations was extensive.

At the location where the abandoned road grade bisects Fairway 18 the inspection progressed east to Fairway 10 and then northerly back to the T-box for Fairway 10. The wetlands in Fairway 10 were also outlined by silt curtain to include the very distinct hook-shaped Wetland WL-KI. However, in this area the silt curtain-outline wetlands were inconsistent with the delineation map from the 6 September 2006 delineation report and additional areas of unauthorized fill in

wetlands had occurred. The northern portion of Fairway 1 was also inspected. Fairway 1 has three in-line terraced T-box locations. This area also had silt curtain placed immediately on the delineated wetland edges.

According to the construction representative from Lanco, Mr. Priest, all of the sand fill material placed was obtained onsite by excavation and grading. In the area of the proposed driving range, a large excavation occurred and was the source of much of the material utilized onsite. Numerous other excavations occurred throughout the site as a source of sand fill material. These excavated sites contained standing water at the time of the inspection.

Numerous soils pits dug by Corps staff along the edges of the sand fill areas revealed the presence of hydric soils and compacted vegetation (carex). Locations of fill within wetlands per the 6 September 2006 wetland delineation report were verified by the presence of hydrophytic vegetation and hydric soils beneath the fill material. In many areas, particularly at locations of road crossings and cart paths, silt fencing was not installed at all and emergent wetlands were filled. Based on visual observations and soil pits dug by Corps staff, sand fill material was placed in delineated emergent wetlands at many locations in the areas inspected. The precise acreage of wetlands filled would be difficult to quantify without aerial photographs and an overlay of the confirmed wetland delineation but based on field observations, the fill is estimated to far exceed the limits authorized by any Nationwide permit. Aerial photographs would need to be taken to determine the full extent of the alleged violation at the site.

Wetland Summary:

a. Soils: Soils on the site are mapped as *Duneland* and *Yaquina loamy fine sand*. *Duneland* soil is a very deep, excessively drained land type consisting of a ridge of dunes near the ocean shore, an interdune area, and a ridge of dunes inward from the ocean shore. Soil pits dug onsite verified the presence of *duneland* soils. The soil pits revealed sandy soils, typical of *Duneland* Soils, with moderate saturation near the surface.

The other soil on the project site is *Yaquina loamy fine sand*. The onsite inspection did not cover the area mapped as *Yaquina loamy fine sand*. However, this is a very deep, somewhat poorly drained soil in depressional areas between stabilized sand dunes. *Yaquina loamy fine sand* is classified as a hydric soil in the State of Washington. Effective rooting depth is limited by a seasonal high water table that ranges from a depth of 24 inches to the surface from

November to April. Runoff is very slow. Most vegetation in this soil unit is woodland. Common forest understory species include salmonberry, sedges, salal, cascara buckthorn, and skunkcabbage.

b. Hydrology: Work on the project site included extensive excavation with the sandy soil being used as fill material on the low areas of the site where fairways were being constructed. The excavated areas were left with extensive ponding due to the high water table typically found in ocean dunal areas. Soil pits dug onsite revealed moist to saturated soils in the identified wetland areas.

c. Vegetation: Much of the site has been cleared but previously contained shore pine, carex obnupta, and other dunal vegetation. Areas of the fairways that had been cleared revealed shore pine trees cutoff approximately 1-foot above ground level. Much of the unfilled areas contained carex and various dunal grasses. Soil pits dug in suspected wetland fill areas revealed the presence of carex underneath.

Other Information: During the Corps' onsite investigation on 8 April 2008, the wetland biologist for Ecological Land Services, Inc., Mr. Francis Naglich, advised Corps staff that he was present only approximately one day every two weeks during the filling activities. In addition, Mr. Naglich advised that after the forested areas of the site had been carved out through the site, additional wetlands were discovered that were not part of the original delineation confirmed by the Corps.

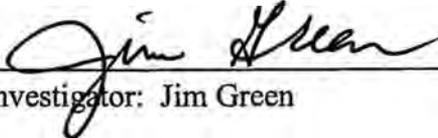
Corps staff advised Mr. Priest of the Corp's letter dated 4 April 2007 advising that it would be extremely unlikely that Mox Chehalis, LLC could construct a viable golf course without the further filling of wetlands and that they were cautioned that legal action may be initiated against the parties responsible for any further wetland filling activities that exceeded the limits of the Corps' Nationwide Permits. Mr. Priest was advised that a letter would be sent by the Corps to Mox Chehalis, LLC concerning the ongoing work and alleged violation.

CONCLUSIONS

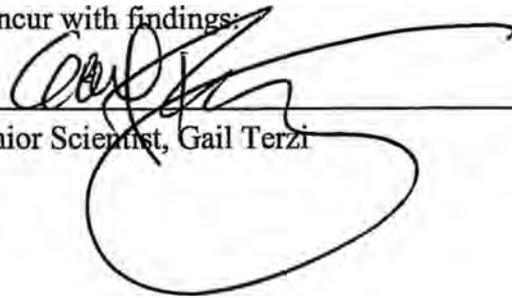
X This work appears to be in violation of the Clean Water Act because:

X The work includes filling activities in jurisdictional wetlands and exceeds the limits of any NWP, Regional General Permit, or exemption. An individual permit is required and none was obtained before the work commenced.

Attachments: Sketch Photos Calculations Other None


Investigator: Jim Green

24 June 2008
Date

Concur with findings:

Senior Scientist, Gail Terzi

25 June 2008
Date

Exhibit 8

Green, James D NWS

From: Francis Naglich [Francis@eco-land.com]
Sent: Tuesday, December 21, 2010 1:40 PM
To: Green, James D NWS
Subject: RE: MOX CHEHALIS.pdf

Jim- I know it does not jump out at anyone, but on the bottom of the first page there is a recording stamp by Grays Harbor County with date, time and number of pages along with a bar code. This is the customary recording stamp that all auditor's offices now use.
Thanks,

Francis Naglich, MES | President, Wetland Biologist
1157 3rd Avenue, Suite 220 | Longview, WA 98632
P: 360-578-1371 ext. 128 | F: 360-414-9305 | M: 360-431-3990 www.eco-land.com | francis@eco-land.com

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-----Original Message-----

From: Green, James D NWS [<mailto:James.D.Green@usace.army.mil>]
Sent: Tuesday, December 21, 2010 1:25 PM
To: Francis Naglich
Subject: RE: MOX CHEHALIS.pdf

Francis: Thanks for your email. The one remaining issue I have is the fact that the attached notarized document is simply proof that Mr. Daly signed the document on his own free will. It does not provide proof that the document was recorded at the county against the title. Do you have anything to verify that it was indeed recorded?

Thanks. Have a good holiday season. Jim

-----Original Message-----

From: Francis Naglich [<mailto:Francis@eco-land.com>]
Sent: Monday, December 20, 2010 10:25 AM
To: Green, James D NWS
Subject: FW: MOX CHEHALIS.pdf

Jim,

Happy Holidays! Attached is the recorded deed restriction for Mox-Chehalis "Links" site in Westport. Let me know if you have any questions. If this resolves the violation, please send me a copy of any correspondence stating such. Thanks Much!

Francis Naglich, MES | President, Wetland Biologist
1157 3rd Avenue, Suite 220 | Longview, WA 98632

P: 360-578-1371 ext. 128 | F: 360-414-9305 | M: 360-431-3990

www.eco-land.com <<http://www.eco-land.com/>> | francis@eco-land.com <<mailto:kari@eco-land.com>>

[cid:image001.jpg@01C96115.36DB77D0](#)

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From: Maureen Muller
Sent: Monday, December 20, 2010 10:07 AM
To: Francis Naglich
Subject: MOX CHEHALIS.pdf

Hi Francis,

Attached is the file you requested.

Maureen Muller | Graphics Supervisor, Principal

1157 3rd Avenue, Suite 220 | Longview, WA 98632

P: 360-578-1371 ext. 103 | F: 360-414-9305

www.eco-land.com <<http://www.eco-land.com/>> | maureenm@eco-land.com

[cid:image001.jpg@01C956C6.E9E93D20](#)

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Green, James D NWS

From: Francis Naglich [Francis@eco-land.com]
Sent: Monday, December 20, 2010 10:25 AM
To: Green, James D NWS
Subject: FW: MOX CHEHALIS.pdf
Attachments: MOX CHEHALIS.pdf; image001.jpg

Jim,

Happy Holidays! Attached is the recorded deed restriction for Mox-Chehalis "Links" site in Westport. Let me know if you have any questions. If this resolves the violation, please send me a copy of any correspondence stating such. Thanks Much!

Francis Naglich, MES | President, Wetland Biologist

1157 3rd Avenue, Suite 220 | Longview, WA 98632

P: 360-578-1371 ext. 128 | F: 360-414-9305 | M: 360-431-3990

www.eco-land.com <<http://www.eco-land.com/>> | francis@eco-land.com <<mailto:kari@eco-land.com>>

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From: Maureen Muller
Sent: Monday, December 20, 2010 10:07 AM
To: Francis Naglich
Subject: MOX CHEHALIS.pdf

Hi Francis,

Attached is the file you requested.

Maureen Muller | Graphics Supervisor, Principal

1157 3rd Avenue, Suite 220 | Longview, WA 98632

P: 360-578-1371 ext. 103 | F: 360-414-9305

www.eco-land.com <<http://www.eco-land.com/>> | maureenm@eco-land.com

[cid:image001.jpg@01C956C6.E9E93D20](#)

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Exhibit 9

State of Washington, Parks and Recreation Commission
Real Estate Purchase & Sale Agreement

THIS AGREEMENT is made as of the 8th day of AUGUST, 2015, by and between the STATE OF WASHINGTON, acting by and through the WASHINGTON STATE PARKS AND RECREATION COMMISSION (hereinafter referred to as "State") and JD FINANCIAL CORP, a Washington corporation (hereinafter referred to as "Seller").

Acting under those authorities granted to State in chapter 79A.05 RCW, and in consideration of the mutual covenants set forth in this Agreement, the mutual receipt and sufficiency of which are acknowledged, and subject to all terms of this Agreement, Seller agrees to sell to State and State agrees to purchase from Seller the real estate located in Grays Harbor County, state of Washington, all subject to the terms and conditions of this Agreement, together with the following:

1. PROPERTY

Seller shall sell and convey to State, and State shall purchase and accept from Seller, that certain real property located in Grays Harbor County, Washington, located in Section 1, Township 16 North, Range 12 West, the legal description of which is set forth on Exhibit "A" and additionally shown through Exhibit "B" (map) attached hereto and incorporated by this reference herein, being a portion of Parcel #616120143001, together with the following:

- (a) All rights, licenses, privileges, reversions and easements pertinent to the real property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real estate as well as all development rights, air rights, water rights, water and water stock, and associated tidelands and shore lands;
- (b) All improvements, if any, located upon or within said real property;
- (c) All easements, rights-of-way, appurtenances and other rights used in connection with said real property, including but not limited to rights to adjacent streets, roads, alleys and rights-of-way;
- (d) All intangible personal property owned by Seller and used in the ownership, financing, operation or maintenance of the land, improvements, rights and interests described in clauses (a)-(c) above, or any portion of any of them. The intangible personal property includes, but is not limited to, licenses, permits, certificates and franchises issued by any federal, state or local authorities relating to the use, maintenance, occupancy or operation of the real property, reports and studies, utility and zoning studies, traffic studies and wetland studies, plans and specifications, correspondence surveys, and any other documented information relating exclusively to the real property, Seller's interest in all tenant leases and service contracts covering the real property, including any and all security deposits and prepaid rents thereunder, and any and all escrow accounts, insurance policies, deposits, instruments and business records pertaining to the use, maintenance, occupancy or operation of the real property.

The parcel of land, together with the improvements, rights and interests described above, are collectively referred to herein as the "Property."

2. PURCHASE PRICE

2.1 Amount. The purchase price ("Purchase Price") to be paid for the Property shall be a sum equal to the amount as determined by a qualified third party appraiser AND confirmed by a qualified review appraiser.

State and Seller recognize and agree to utilize the standard appraisal procedures reported through the Uniform Standards of Professional Appraisal Practice (USPAP) and to follow appropriate guidelines as required by the Recreation and Conversation Office (RCO).

State shall review and approve the appraisal report prior to awarding the review appraisal. State shall review and approve the reviewed appraisal report prior to completing the Offer of Purchase at Estimated Just Compensation (Offer), an example of which is attached hereto as Exhibit "C". Upon receipt by State of Seller's acknowledgement of Offer, which is required by State's funding source, State shall prepare and submit to Seller an addendum to this Agreement by which State and Seller shall agree to the Purchase price and to proceed to closing. Seller reserves the right to reject any Purchase Offer presented by State.

2.2 Payment. Purchase Price shall be paid into escrow by a State warrant payable to the Escrow Company on the Closing Date as defined below.

3. CLOSING

3.1 Closing Date. "Closing," "Closing Date" or "Date of Closing" as those terms are used herein, shall mean the date upon which all documents are recorded and monies paid to complete the purchase contemplated herein. The Date of Closing shall be as soon as practicable to facilitate an orderly closing but no later than December 15, 2015; provided, that the Date of Closing may be extended upon mutual written agreement between State and Seller through an amendment to this Agreement. *MSH*

3.2 Escrow. This transaction shall be closed in escrow at Chicago Title Company, 719 Sleater-Kinney Rd SW #108, Lacey, WA 98503, (360) 456-7878 ("Escrow Company") which shall be arranged by State within ten (10) days of execution of an addendum to this Agreement agreeing to the Purchase Price. The parties shall deposit the necessary documents and funds in escrow sufficiently in advance of the Closing Date to facilitate an orderly closing. State and Seller shall each pay one-half of the Escrow Company's fee.

3.3 Closing and Closing Costs. Prior to or on the Closing Date, Seller and State shall deposit the following documents and funds in escrow, and the Escrow Company shall close the escrow in accordance with the instructions of State and Seller consistent with this Agreement.

- 3.4 Seller Obligations. Seller shall deposit the following:
- (a) Duly executed and acknowledged Statutory Warranty Deed conveying the Property to State and a Real Estate Excise Tax Affidavit;
 - (b) Duly executed escrow instructions, as required of Seller to close this transaction in accordance with this Agreement;
 - (c) If Seller is a corporation or partnership, a certified resolution authorizing the execution of all documents delivered at the Closing;
 - (d) Pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, a non-foreign affidavit, stating that Seller is not a foreign person and providing Seller's United States taxpayer identification number. If Seller is not able to certify that it is not a "foreign person," State is authorized to withhold a portion of the purchase price at closing for U.S. Income Tax purposes; and
 - (e) Such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by Seller and State to be necessary to fully consummate the transaction contemplated hereby.

3.5 State Obligations. State shall deposit the following:

- (a) The Purchase Price; and
- (b) Such other funds and documents, including without limitation, executing escrow instructions as are required of State to close the purchase in accordance with this transaction.

- 3.6 Prorations. Seller shall pay any assessments charged against the Property in full prior to or at Closing. Seller shall pay all real estate taxes and personal property taxes, if any, through the Date of Closing. In the event Seller has prepaid any real estate taxes, Seller may seek a refund from the appropriate county official. State shall have no obligation to refund or pay any such amount to Seller. Seller shall pay any excise tax necessary to transfer title.

4. CONVEYANCE, TITLE INSURANCE AND POSSESSION.

- 4.1 Form of Deed. On the Closing Date, Seller shall convey title to the Property to State by Statutory Warranty Deed, free and clear of all assessments, monetary liens or encumbrances securing the payment of money, and subject only to any other encumbrances or defects accepted by State in writing.

4.2 Preliminary Commitment for Title.

- (a) Within thirty (30) days after the date this Agreement is executed by Seller, State shall obtain a preliminary commitment for an ALTA Owner's Standard Coverage Policy of title insurance from an insurer acceptable to State covering the Property continued down to date, together with legible copies of documents for all exceptions shown therein (hereafter Preliminary Commitment). The Preliminary

Commitment shall show Seller's title to the Property to be good, marketable and insurable. The Preliminary Commitment shall be issued by Chicago Title Company, 719 Sleater-Kinney Rd SW #108, Lacey, WA 98503, (360) 456-7878 ("Title Company").

(b) Within ~~forty five (45)~~ ^{Fifteen (15)} days of its receipt of the Preliminary Commitment or execution of this Agreement whichever is later, State shall notify Seller in writing of any exceptions thereto which are wholly or conditionally acceptable to State (hereafter "Title Notice"). Following giving of Title Notice, if additional encumbrances affecting the Property arise, State shall have twenty (20) days from receipt thereof to review and approve these additional items. Failure of State to so approve in writing any exception to Seller's title shown in the Preliminary Commitment or arising thereafter shall be deemed to be a disapproval of such exception and at State's option, shall cause this Agreement to terminate.

4.3 Policy Condition of Closing. Seller shall, prior to or at the Closing Date, at its sole cost and expense, undertake (by the exercise of its reasonable efforts and with due diligence) to remove, eliminate or modify any exceptions not acceptable to State. Closing shall be conditioned upon Title Company issuing its ALTA Owner's Standard Coverage Policy insuring fee title to the Property in the name of State in the amount of the Purchase Price, subject only to (i) the printed form exceptions contained in the ALTA Owner's policy and (ii) such special exceptions accepted by State.

4.4 Use of Purchase Price. Monetary encumbrances to be discharged by Seller will be paid from Seller's funds at the date of closing.

4.5 Cost of Policy. Seller shall be responsible for the cost of the Title Insurance Policy. State shall be responsible for requesting and for paying the cost of any additional endorsements, co-insurance policies and reinsurance certificates issued by Title Company at State's request.

4.6 Possession. State shall be entitled to possession of the Property on the Closing Date, but State shall have a right of entry pursuant to Section 5 below.

5. STATE'S RIGHT AFTER ACCEPTANCE.

5.1 Inspection. After the date of this Agreement, Seller shall permit State and/or its designated agents to enter upon the Property at all reasonable times for the purpose of conducting environmental assessments and investigating the Property and the physical condition thereof, including, without limitation, soil and water conditions, and the condition of improvements, if any, upon the Property.

Such tests and inspections are to be performed in a manner not disruptive to tenants or to the operation of the property. Inspections by State, if any, shall not be construed as estopping actions upon any warranty made herein.

5.2 Due Diligence; State Studies.

- (a) Due Diligence. Within fifteen (15) days of the date of this Agreement, Seller shall deliver to State true copies of all materials specified in this Section 5.2 that exist and that are in Seller's actual possession or that Seller knows exist and to which Seller has access (collectively, the "Due Diligence Materials").

The Due Diligence Study shall conclusively deemed satisfied unless on or before twenty one (21) days from delivery of diligence material by Seller, Listing Broker receives from State, notice of disapproval in which event this agreement shall terminate.

5/18
MWS

If Seller thereafter discovers any additional items that should have been included among the Due Diligence Materials, Seller shall promptly deliver them to State. Due Diligence Materials will include:

1. Copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Seller's knowledge, affect title to the real property and that are not disclosed by the Preliminary Commitment;
2. All surveys, plats or plans relating to the real property;
3. All leases for the real property, or any portion thereof;
4. All existing service contracts pertaining to items such as janitorial, trash removal, maintenance, snow removal, laundry service, extermination and similar services;
5. All labor contracts affecting the real property;
6. All agreements for the rental of equipment used in connection with the normal operation of the Property;
7. All warranties and guarantees affecting any portion of the Property;
8. Notice of any existing or threatened litigation affecting or relating to the Property and copies of any pleadings with respect to the litigation;
9. (i) All governmental permits and approvals obtained or held by Seller and relating to (A) the construction, operation, use or occupancy of any part of the real property or (B) zoning, land-use, subdivision, environmental, building and construction laws and regulations restricting, regulating or otherwise affecting the use, occupancy, or enjoyment of the real property (collectively, "Permits") and
(ii) any notices of violation of any Permits, or of any of the laws and regulations described in this Section 5.2(a)(9);
10. (i) All environmental assessment reports with respect to the real property that were performed or are being performed by or for Seller,
(ii) any raw data that relates to the environmental condition of the real property,
(iii) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of hazardous wastes or material (as defined in Section 7.5) on, in or under the real property, and
(iv) any other information material to the environmental condition or potential contamination of the real property and;
11. All documents described in Section 1(d) not otherwise included herein.

Seller authorizes State to speak with any person preparing the Due Diligence Materials with respect to the contents thereof. State shall not be responsible for any cost associated with the Due Diligence Materials.

(b) State Studies. State shall have the right to prepare, or have prepared, appraisals, market and engineering studies, soils tests, feasibility studies, surveys, resurveys or survey updates, environmental investigations and such other tests, studies or investigations (all of which are collectively referred to as the ("State's Studies")) with respect to the Property. State shall be solely responsible for costs of all State's Studies.

(c) Termination. If the State determines at its sole discretion that the Due Diligence Materials or State's Studies indicate the Property is not suitable for the intended use by State or the Property presents risk of liability unacceptable to State, State may terminate this Agreement without further obligation. Upon such termination, any monies deposited by State pursuant to this Agreement, together with all interest earned thereon, shall be promptly returned to State.

5.3 Subsequent Acts. Between the date of this Agreement and the Closing Date, Seller shall maintain the Property and keep the Property in condition at least as good as on the date of this Agreement. Seller shall not remove any timber, harvestable crop, improvements, minerals, sand, gravel, or other item from the Property or grant any legal right to any third party whatsoever without receiving written prior approval from State. Through execution of this Agreement, Seller agrees to not physically improve the Property without receiving prior written approval from State.

6. CONTINGENCIES.

6.1 Conditions. State's obligations under this Agreement are subject to and contingent upon the following:

- (a) The truth and accuracy as of the Closing Date of all representations and warranties of Seller set forth in this Agreement or in any instrument or document delivered by Seller to State.
- (b) The delivery by Seller to State on or prior to the Closing Date of all documents and instruments required by the terms of this Agreement.
- (c) The performance on or prior to Closing by Seller of all acts required under this Agreement.
- (d) The absence at Closing of any violation of any federal, state or local law, rule, regulation or ordinance affecting the use, occupancy or condition of the Property.
- (e) The absence at Closing of any failure to comply with the order of any court, government authority or agency pertaining to the Property or the use, occupancy or condition of the Property.

- (f) Conveyance of acceptable title as provided in Section 4.
- (g) The absence at Closing of any proceeding or threat of any proceeding to condemn all or any part of the Property by a proceeding in eminent domain.
- (h) The availability of funds from State's funding source being made available for State's acquisition of the Subject property.
- (i) County approval of necessary boundary line adjustment/segregation.

6.2 Waiver. If any condition specified in Section 6.1 is not met at Closing, State may waive such condition in writing, or State may terminate this Agreement without any further liability. Upon such termination, any monies deposited by State pursuant to this Agreement, together with all interest earned thereon shall be promptly returned to State.

7. REPRESENTATIONS AND WARRANTIES.

Seller makes the following representations and warranties to State. Each of these representations and warranties is material and is relied upon by State. Each of the representations and warranties shall be deemed accurate through Closing and shall survive Closing.

7.1 Title. Title to the Real Property is vested in Seller.

7.2 No Liabilities. There exists upon the Property no condition, which is in violation of any statute, ordinance, regulation or administrative or judicial order or holding, whether or not appearing in the public records, which affects the Property.

7.3 Correctness. The accuracy and truthfulness of all information furnished by Seller to State with respect to the Property.

7.4 Litigation. To the best of Seller's knowledge, there is no pending or threatened litigation affecting the Property or any portion thereof, including but not limited to alleged violation of federal, state or local environmental laws. Neither Seller nor its predecessors have received any notice relating to a breach or suspected breach of any environmental laws.

7.5 Condition of Property. To the best of Seller's knowledge, Seller represents and warrants the following: there are no apparent or latent defects in the Property; the Property does not contain any underground storage tanks, surface impoundment's, asbestos or asbestos-containing material, or polychlorinated biphenyls (PCBs) or PCB-containing materials, past or present refuse dump sites, chemical storage sites, areas of heavily stained soil, or sites of known hazardous material releases other than those indicated and described by exhibit attached hereto; and the Property is free from the presence of hazardous waste or materials and no hazardous waste or materials have been generated, stored, released, disposed of, or transported over, on or within the Property. The term "hazardous waste or materials" includes any substance, waste or

material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. >9601, et seq., and the Model Toxics Control Act, RCW 70.105D. Seller has no undisclosed knowledge of any fact or condition that would materially impair the market value of the Property, would materially increase the cost of operating the Property or would be inconsistent with the terms of this Agreement.

- 7.6 Authorization. Seller has the right and authority to enter into this Agreement and all documents contemplated by this Agreement, to make the representations and warranties set forth herein and to perform this Agreement in accordance with its terms. Neither the execution of this Agreement nor its performance by Seller will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement or other undertaking whatever.

This agreement is subject to the underlying lienholder (Port of Grays Harbor) granting a "partial deed release" to allow the sale to be executed. Seller has preliminary approval for such release.

*SLA
Mud*

- 7.7 Land Use. To the best of Seller's knowledge, the Property is now, or will be as of the Closing Date, in compliance in all material respects with all applicable zoning, land use, building, construction, subdivision and other local, state and federal laws, ordinances and regulations and with all existing covenants, conditions, restrictions and easements. The Property has an established zoning classification, and the Property has lawful unrestricted access directly to a public street.
- 7.8 Seller has not received notice of any special assessment or condemnation proceedings affecting the Property.
- 7.9 Seller is a Corporation duly organized and validly existing under the laws of the state of Washington. This Agreement and all documents executed by Seller that are to be delivered to State at closing are, or at the time of Closing will be, (i) duly authorized, executed and delivered by Seller, (ii) legal, valid and binding obligations of Seller, (iii) sufficient to convey title (if they purport to do so), and (iv) in compliance with all provisions of all agreements and judicial orders to which Seller is a party or to which Seller or all or any portion of the Property is subject.
- 7.10 Other than the Property, there are no items, tangible or intangible, real or personal, owned by Seller or any affiliate of seller, now or at any time used in conjunction with the Property or any portion thereof.
- 7.11 Seller has received no notice of any failure of Seller to comply with any applicable governmental requirements in respect of the use, occupation and construction of the Property, including but not limited to, environmental, fire, health, safety, zoning, subdivision and other land use requirements that have not been corrected to the satisfaction of the appropriate governmental authority, and Seller has received no notice of, and has no knowledge of, any violations or investigation relating to any such governmental requirement.

7.12 Seller has received no notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way or easements that may affect Seller in respect to the Property or may affect the Property or any portion thereof and no such default or breach now exists.

8. INDEMNITY AND HOLD HARMLESS.

Seller agrees to indemnify, defend, and hold harmless State, from all liabilities, losses, claims, demands, damages, assessments, costs and expenses of every kind (hereafter "Liabilities") resulting from, or relating to the breach by Seller of any of its warranties, representations or covenants contained in this Agreement.

9. DESTRUCTION OR CONDEMNATION.

Seller shall bear the risk of loss prior to Closing. If, on or before the Closing Date, either the Property is materially damaged, or condemnation proceedings are commenced with respect to the Property, State shall have the right, at its sole election, by giving notice to Seller, either to terminate this Agreement or to purchase the Property in accordance with this Agreement. If State elects to terminate this Agreement, all rights and obligations of Seller and State shall terminate. If State elects to purchase the Property in accordance with this Agreement, State shall be entitled to all insurance proceeds or condemnation awards payable by reason of such damage or condemnation. In the event there is no insurance or inadequate insurance to cover the damage, State shall be entitled to a reduction in the Purchase Price equal to the fair market value of the Property destroyed or damaged. Seller shall immediately give notice to State upon the occurrence of any damage to the improvements on the Property or the initiation of any condemnation proceedings affecting the Property. The term "material damage" as used in this section shall mean any damage or destruction, which cannot be repaired or replaced within ninety (90) days.

10. SURVIVAL.

The representations, warranties, indemnification and obligations (to the extent such obligations are not fully performed at closing) contained herein are intended to be operative after delivery of Seller's deed to the Property in order to be fully effective and shall be deemed not to have merged in the deed.

11. MISCELLANEOUS.

11.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties. All prior and contemporaneous negotiations, understandings and agreements, whether oral or written, are merged herein.

11.2 Binding Nature. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto.

11.3 Washington Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the state of Washington. Venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

- 11.4 Time of the Essence. Time is of the essence of this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.
- 11.5 Captions. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.
- 11.6 Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.
- 11.7 Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed an original.
- 11.8 Date of Agreement. The date of this Agreement shall be the date on which the last party executes this Agreement. Said date shall be inserted on the first page hereof when such date is determined.
- 11.9 Good Faith. Both parties shall act reasonably and in good faith in order to consummate this transaction, and Seller shall neither sell nor dispose of any of the Property nor cause or suffer the creation of any matter of record, or defect in the title to the Property for the purpose of avoiding its obligation to close.
- 11.10 Default. If Seller defaults under this Agreement (including a breach of any representation, warranty or covenant), State will be entitled (a) in addition to all other remedies available at law or in equity, to seek specific performance of Seller's obligations under this Agreement or (b) to terminate this Agreement by written notice to Seller and Escrow Agent. If State terminates this Agreement, the escrow will be terminated, the entire Deposit must immediately be returned to State, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement except that Seller shall pay any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.
- 11.11 Attorneys' Fees and Costs. Each party will be responsible for their own attorney fees and court costs in the event of a dispute arising out of this Agreement.
- 11.12 Assignability. Seller shall not assign this Agreement without the prior written consent of State except as provided hereafter.
- 11.13 Seller may wish to gain certain tax benefits available to Seller under I.R.C. > 1031 by using a qualified intermediary to facilitate a delayed exchange for the Property to be conveyed under this Agreement. The qualified intermediary shall be released from any

obligations under this Agreement. Seller shall remain fully liable to perform all obligations under this Agreement, including but not limited to Seller's representations, warranties and indemnification regarding the Property. Seller shall convey the Property directly to State. The success or failure of the anticipated tax consequences from the I.R.C. > 1031 delayed exchange shall not be deemed a term, condition, or contingency of this Agreement, nor shall such tax consequences be deemed a legal excuse for nonperformance by Seller.

- 11.14 Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or receipt after deposit in the United States first class mail addressed as follows:

To Sellers Representative:

Mike Coverdale, Broker
Windermere Real Estate
0601 ~~2571~~ Westhaven Drive Box ^{SA} 2369
Westport, WA 98595
Direct: (360) 581-3399
Office: (360) 268-1234
westportmike@windermere.com

To State:

Washington State Parks and Recreation Commission
Attn: Real Estate Program
PO Box 42650
Olympia, WA 98504-2650
Phone: (360) 902-8500
Fax: (360) 586-0207

The foregoing addresses may be changed by written notice.

- 11.15 Advice of Counsel. Seller acknowledges that it has had an opportunity to seek independent legal advice regarding the transaction.
- 11.16 Acceptance. Seller must execute this Agreement, and an original delivered to State, at the address set forth in this Agreement, on or before 4:00 p.m. on August 14, 2015, to be considered by State. This Agreement shall not be binding upon State until signed by an authorized representative of State.
- 11.17 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

12. REAL ESTATE COMMISSION

Seller shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of Seller.

SELLER:

JD FINANCIAL CORP

Date: August 8, 2015

Sign: Morris W. Skagen

Print Name: Morris W. Skagen

Title: President

**Note: Because Washington is a community property state, if the property being sold is community property, then BOTH husband AND wife should sign as sellers.

STATE:

STATE OF WASHINGTON

STATE PARKS & RECREATION COMMISSION

Date: 8/12, 2015

By: Steve Hahn

~~Peter Herzog, Assistant Director~~

Steve Hahn, Real Estate Program Manager

*Standard Purchase and Sale Agreement
Approved as to Form on January 14, 2014
By Jim Schwartz, Assistant Attorney General,
State of Washington*

ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

On this 18th day of August, 2015, personally appeared before me Morris W. Skogen to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Carmen Joy Ingebugtzen
Notary Public in and for the State of
Washington, residing at Kent
My appointment expires 06/10/16

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this 17th day of August, 2015 personally appeared before me Steve Ham, to me known to be the Program mgr. of the State of Washington, State Parks and Recreation Commission who executed the within and foregoing instrument on behalf of the state of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the state of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



[Signature]
Notary Public in and for the State of
Washington, residing at Olympia.
My appointment expires 01-01-16.

EXHIBIT A
Legal Description

A portion of:

That portion of Government Lots 1, 2, and 3 and the Northeast Quarter of the Southeast Quarter TOGETHER WITH the Accretions in Section 1, Township 16 North, Range 12 West of the Willamette Meridian, described as follows:

Commencing at the Southeast corner of said Section 1;

Thence North $87^{\circ}40'57''$ West along the South line of said Section 1, a distance of 1,881.06 feet to the Westerly margin of North Forrest Street and the true point of beginning;

Thence North $02^{\circ}17'32''$ East along said Westerly margin a distance of 889.32 feet;

Thence North $02^{\circ}19'07''$ East continuing along said Westerly margin a distance of 340.60 feet to the start of a curve to the right with a radius of 629.25 feet and the radius point bears South $87^{\circ}40'54''$ East;

Thence Northeasterly along said curve and continuing along said Westerly margin through a central angle of $08^{\circ}04'20''$ an arc distance of 88.65 feet;

Thence North $87^{\circ}06'17''$ West continuing along said Westerly margin a distance of 10.84 feet to the start of a curve to the right with a radius of 640.00 feet and the radius point bears South $79^{\circ}44'10''$ East;

Thence Northeasterly along said curve and continuing along said Westerly margin through a central angle of $34^{\circ}06'43''$ an arc distance of 381.03 feet;

Thence North $44^{\circ}22'34''$ East continuing along said margin a distance of 849.80 feet to the Southwesterly margin of State Route 105 as built, and shown on that certain survey by Bluhm and Associates, dated September 22, 2003 under Job #00-168;

Thence North $38^{\circ}23'54''$ West along said Southwesterly margin a distance of 1,086.41 feet to a curve to the left with a radius of 1,576.88 feet and the radius point bears South $51^{\circ}36'06''$;

Thence Northwesterly along said curve and Southwesterly margin through a central angle of $08^{\circ}08'44''$ and arc a distance of 224.18 feet;

Thence North $46^{\circ}32'38''$ West continuing along said Southwesterly margin a distance of 394.69 feet to the Southeasterly line of Tax 18 described in Deed filed under Auditor's File No. 881027060, records of Grays Harbor County;

Thence South $44^{\circ}20'02''$ West along said Southeasterly line of Tax Lot 18 a distance of 373.27 feet to the Southwesterly margin of Collins Street;

Thence North $45^{\circ}39'58''$ West along said Southwesterly margin a distance of 964.12 feet to the Northwesterly margin of Harbor Street;

Thence North $44^{\circ}20'02''$ East along said Northwesterly margin a distance of 730.00 feet of the Southwesterly margin of Harms Street;

Thence North $45^{\circ}39'58''$ West along said Southwesterly margin of Harms Street a distance of 990.23 feet to the line of mean high water;

Thence South $14^{\circ}18'24''$ West along said line of mean high water a distance of 367.77 feet;

Thence South $11^{\circ}43'48''$ West continuing along said line of mean high water a distance of 467.93 feet;

Thence South $31^{\circ}34'58''$ West continuing along said line of mean high water a distance of 603.55 feet;

Thence South 45°11'07" West continuing along said line of mean high water a distance of 613.92 feet to the North line of the South Jetty right-of-way;
Thence South 82°52'41" East along said North line a distance of 420.00 feet;
Thence South 07°07'19" West a distance of 100.00 feet to the South line of the South Jetty right of way and the Southeasterly line of Half Moon Bay State Park;
Thence South 48°18'26" West along said Southeasterly line of the Half Moon Bay State Park and distance of 719.95 feet to a curve to the right with a radius of 1,437.29 feet and the radius point bears North 41°41'34" West;
Thence Southwesterly along said curve and the Southeasterly line of Half Moon Bay State Park through a central angle of 44°38'45" an arc distance of 1,119.96 feet;
Thence North 87°02'49" West along said Southeasterly line of Half Moon Bay State Park a distance of 1,205.95 feet to the line of mean high water of the Pacific Ocean;
Thence Southeasterly along said line of mean high water of the Pacific Ocean a distance of 2,210 feet more or less to said South line of Section 1;
Thence South 87°40'57" East along said South line of Section 1 a distance of 4,523.54 feet to the true point of beginning;

ALSO:

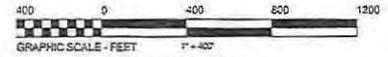
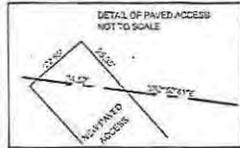
Commencing at the initial point of the Plat of the First Addition to Westhaven, as recorded in Volume 8, page 134, records of Grays Harbor County, Washington;
Thence South 41°28' West a distance of 100.00 feet;
Thence South 48°32" East a distance of 2,026.00 feet;
Thence South 41°28' West a distance of 960.20 feet;
Thence continue South 41°28'00" West a distance of 302.38 feet to the true point of beginning;
Thence North 41°20'00" West a distance of 1,197.46 feet to a point on the Southerly line of the South Jetty Haul Road;
Thence North 86°45'48" West long said Southerly line a distance of 112.30 feet;
Thence South 41°20'00" East a distance of 1,286.44 feet;
Thence North 41°28'00" East a distance of 80.70 feet to the true point of beginning.

Excepting that portion contained in South Jetty Haul Road as described in Quit Claim Deed recorded September 2, 1986 as Auditor's File No. 860902159, records of Grays Harbor County.

Situate in the county of Grays Harbor, state of Washington.

A PORTION OF
 GOV'T LOT 1, NE1/4 SE1/4, SE1/4 SE1/4,
 GOV'T LOT 2, AND GOV'T LOT 3
 SECTION 1 TOWNSHIP 16 NORTH, RANGE 12 WEST, W.M.
 GRAYS HARBOR COUNTY, WASHINGTON

METHOD OF SURVEY
 CONTROL USING A TRIMBLE 4000 GPS RECEIVER
 FIELD TRAVERSE USING A TOPCON GTS-112 50' MAGNETIC TOTAL STATION



BASED ON BARNING GRID NORTH
 ALL DISTANCES SHOWN ON RECORD OF SURVEY
 ARE GROUND DISTANCES
 METRIC ANGLE AT "WES 154° 42' 58.00"

NAT. OCEANIC SURVEY
 ALUM. HIGH "WCA-1"
 N. 51°03'00" E.
 E. 734055.628

NAT. OCEANIC SURVEY
 ALUM. HIGH "WES"
 N. 89°00'00" E.
 E. 734055.537

1200.00
 N 07°02'40"W
 110.24

102.47
 1200.00
 N 07°02'40"W

110.24
 110.24
 N 07°02'40"W

102.47
 102.47
 N 07°02'40"W

110.24
 110.24
 N 07°02'40"W

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA
C-1	1096.00	87.71	7.14399
C-2	115.00	2.40	0.20207
C-3	100.00	10.00	1.10715
C-4	100.00	10.00	1.10715
C-5	100.00	10.00	1.10715
C-6	100.00	10.00	1.10715
C-7	100.00	10.00	1.10715
C-8	100.00	10.00	1.10715
C-9	100.00	10.00	1.10715
C-10	100.00	10.00	1.10715
C-11	100.00	10.00	1.10715
C-12	100.00	10.00	1.10715
C-13	100.00	10.00	1.10715
C-14	100.00	10.00	1.10715
C-15	100.00	10.00	1.10715

LINE CALL TABLE

COURSE	BEARING	LENGTH
L-1	S 89°00'00" E	11.00
L-2	N 07°02'40" W	11.00
L-3	S 89°00'00" E	11.00
L-4	N 07°02'40" W	11.00
L-5	S 89°00'00" E	11.00
L-6	N 07°02'40" W	11.00
L-7	S 89°00'00" E	11.00
L-8	N 07°02'40" W	11.00
L-9	S 89°00'00" E	11.00
L-10	N 07°02'40" W	11.00
L-11	S 89°00'00" E	11.00
L-12	N 07°02'40" W	11.00
L-13	S 89°00'00" E	11.00
L-14	N 07°02'40" W	11.00
L-15	S 89°00'00" E	11.00
L-16	N 07°02'40" W	11.00
L-17	S 89°00'00" E	11.00
L-18	N 07°02'40" W	11.00
L-19	S 89°00'00" E	11.00
L-20	N 07°02'40" W	11.00
L-21	S 89°00'00" E	11.00
L-22	N 07°02'40" W	11.00
L-23	S 89°00'00" E	11.00
L-24	N 07°02'40" W	11.00
L-25	S 89°00'00" E	11.00
L-26	N 07°02'40" W	11.00
L-27	S 89°00'00" E	11.00
L-28	N 07°02'40" W	11.00
L-29	S 89°00'00" E	11.00
L-30	N 07°02'40" W	11.00
L-31	S 89°00'00" E	11.00
L-32	N 07°02'40" W	11.00
L-33	S 89°00'00" E	11.00
L-34	N 07°02'40" W	11.00
L-35	S 89°00'00" E	11.00
L-36	N 07°02'40" W	11.00
L-37	S 89°00'00" E	11.00
L-38	N 07°02'40" W	11.00
L-39	S 89°00'00" E	11.00
L-40	N 07°02'40" W	11.00
L-41	S 89°00'00" E	11.00
L-42	N 07°02'40" W	11.00
L-43	S 89°00'00" E	11.00
L-44	N 07°02'40" W	11.00
L-45	S 89°00'00" E	11.00
L-46	N 07°02'40" W	11.00
L-47	S 89°00'00" E	11.00
L-48	N 07°02'40" W	11.00
L-49	S 89°00'00" E	11.00
L-50	N 07°02'40" W	11.00
L-51	S 89°00'00" E	11.00
L-52	N 07°02'40" W	11.00
L-53	S 89°00'00" E	11.00
L-54	N 07°02'40" W	11.00
L-55	S 89°00'00" E	11.00
L-56	N 07°02'40" W	11.00
L-57	S 89°00'00" E	11.00
L-58	N 07°02'40" W	11.00
L-59	S 89°00'00" E	11.00
L-60	N 07°02'40" W	11.00
L-61	S 89°00'00" E	11.00
L-62	N 07°02'40" W	11.00
L-63	S 89°00'00" E	11.00
L-64	N 07°02'40" W	11.00
L-65	S 89°00'00" E	11.00
L-66	N 07°02'40" W	11.00
L-67	S 89°00'00" E	11.00
L-68	N 07°02'40" W	11.00
L-69	S 89°00'00" E	11.00
L-70	N 07°02'40" W	11.00
L-71	S 89°00'00" E	11.00
L-72	N 07°02'40" W	11.00
L-73	S 89°00'00" E	11.00
L-74	N 07°02'40" W	11.00
L-75	S 89°00'00" E	11.00
L-76	N 07°02'40" W	11.00
L-77	S 89°00'00" E	11.00
L-78	N 07°02'40" W	11.00
L-79	S 89°00'00" E	11.00
L-80	N 07°02'40" W	11.00
L-81	S 89°00'00" E	11.00
L-82	N 07°02'40" W	11.00
L-83	S 89°00'00" E	11.00
L-84	N 07°02'40" W	11.00
L-85	S 89°00'00" E	11.00
L-86	N 07°02'40" W	11.00
L-87	S 89°00'00" E	11.00
L-88	N 07°02'40" W	11.00
L-89	S 89°00'00" E	11.00
L-90	N 07°02'40" W	11.00
L-91	S 89°00'00" E	11.00
L-92	N 07°02'40" W	11.00
L-93	S 89°00'00" E	11.00
L-94	N 07°02'40" W	11.00
L-95	S 89°00'00" E	11.00
L-96	N 07°02'40" W	11.00
L-97	S 89°00'00" E	11.00
L-98	N 07°02'40" W	11.00
L-99	S 89°00'00" E	11.00
L-100	N 07°02'40" W	11.00

PEDESTRIAN WALKWAY CALL TABLE

COURSE	BEARING	DISTANCE
P-1	S 89°00'00" E	11.00
P-2	N 07°02'40" W	11.00
P-3	S 89°00'00" E	11.00
P-4	N 07°02'40" W	11.00
P-5	S 89°00'00" E	11.00
P-6	N 07°02'40" W	11.00
P-7	S 89°00'00" E	11.00
P-8	N 07°02'40" W	11.00
P-9	S 89°00'00" E	11.00
P-10	N 07°02'40" W	11.00
P-11	S 89°00'00" E	11.00
P-12	N 07°02'40" W	11.00
P-13	S 89°00'00" E	11.00
P-14	N 07°02'40" W	11.00
P-15	S 89°00'00" E	11.00
P-16	N 07°02'40" W	11.00
P-17	S 89°00'00" E	11.00
P-18	N 07°02'40" W	11.00
P-19	S 89°00'00" E	11.00
P-20	N 07°02'40" W	11.00
P-21	S 89°00'00" E	11.00
P-22	N 07°02'40" W	11.00
P-23	S 89°00'00" E	11.00
P-24	N 07°02'40" W	11.00
P-25	S 89°00'00" E	11.00
P-26	N 07°02'40" W	11.00
P-27	S 89°00'00" E	11.00
P-28	N 07°02'40" W	11.00
P-29	S 89°00'00" E	11.00
P-30	N 07°02'40" W	11.00
P-31	S 89°00'00" E	11.00
P-32	N 07°02'40" W	11.00
P-33	S 89°00'00" E	11.00
P-34	N 07°02'40" W	11.00
P-35	S 89°00'00" E	11.00
P-36	N 07°02'40" W	11.00
P-37	S 89°00'00" E	11.00
P-38	N 07°02'40" W	11.00
P-39	S 89°00'00" E	11.00
P-40	N 07°02'40" W	11.00
P-41	S 89°00'00" E	11.00
P-42	N 07°02'40" W	11.00
P-43	S 89°00'00" E	11.00
P-44	N 07°02'40" W	11.00
P-45	S 89°00'00" E	11.00
P-46	N 07°02'40" W	11.00
P-47	S 89°00'00" E	11.00
P-48	N 07°02'40" W	11.00
P-49	S 89°00'00" E	11.00
P-50	N 07°02'40" W	11.00
P-51	S 89°00'00" E	11.00
P-52	N 07°02'40" W	11.00
P-53	S 89°00'00" E	11.00
P-54	N 07°02'40" W	11.00
P-55	S 89°00'00" E	11.00
P-56	N 07°02'40" W	11.00
P-57	S 89°00'00" E	11.00
P-58	N 07°02'40" W	11.00
P-59	S 89°00'00" E	11.00
P-60	N 07°02'40" W	11.00
P-61	S 89°00'00" E	11.00
P-62	N 07°02'40" W	11.00
P-63	S 89°00'00" E	11.00
P-64	N 07°02'40" W	11.00
P-65	S 89°00'00" E	11.00
P-66	N 07°02'40" W	11.00
P-67	S 89°00'00" E	11.00
P-68	N 07°02'40" W	11.00
P-69	S 89°00'00" E	11.00
P-70	N 07°02'40" W	11.00
P-71	S 89°00'00" E	11.00
P-72	N 07°02'40" W	11.00
P-73	S 89°00'00" E	11.00
P-74	N 07°02'40" W	11.00
P-75	S 89°00'00" E	11.00
P-76	N 07°02'40" W	11.00
P-77	S 89°00'00" E	11.00
P-78	N 07°02'40" W	11.00
P-79	S 89°00'00" E	11.00
P-80	N 07°02'40" W	11.00
P-81	S 89°00'00" E	11.00
P-82	N 07°02'40" W	11.00
P-83	S 89°00'00" E	11.00
P-84	N 07°02'40" W	11.00
P-85	S 89°00'00" E	11.00
P-86	N 07°02'40" W	11.00
P-87	S 89°00'00" E	11.00
P-88	N 07°02'40" W	11.00
P-89	S 89°00'00" E	11.00
P-90	N 07°02'40" W	11.00
P-91	S 89°00'00" E	11.00
P-92	N 07°02'40" W	11.00
P-93	S 89°00'00" E	11.00
P-94	N 07°02'40" W	11.00
P-95	S 89°00'00" E	11.00
P-96	N 07°02'40" W	11.00
P-97	S 89°00'00" E	11.00
P-98	N 07°02'40" W	11.00
P-99	S 89°00'00" E	11.00
P-100	N 07°02'40" W	11.00

NETTY ACCESS ROAD CALL TABLE

COURSE	BEARING	DISTANCE
N-1	S 89°00'00" E	11.00
N-2	N 07°02'40" W	11.00
N-3	S 89°00'00" E	11.00
N-4	N 07°02'40" W	11.00
N-5	S 89°00'00" E	11.00
N-6	N 07°02'40" W	11.00
N-7	S 89°00'00" E	11.00
N-8	N 07°02'40" W	11.00
N-9	S 89°00'00" E	11.00
N-10	N 07°02'40" W	11.00
N-11	S 89°00'00" E	11.00
N-12	N 07°02'40" W	11.00
N-13	S 89°00'00" E	11.00
N-14	N 07°02'40" W	11.00
N-15	S 89°00'00" E	11.00
N-16	N 07°02'40" W	11.00
N-17	S 89°00'00" E	11.00
N-18	N 07°02'40" W	11.00
N-19	S 89°00'00" E	11.00
N-20	N 07°02'40" W	11.00
N-21	S 89°00'00" E	11.00
N-22	N 07°02'40" W	11.00
N-23	S 89°00'00" E	11.00
N-24	N 07°02'40" W	11.00
N-25	S 89°00'00" E	11.00
N-26	N 07°02'40" W	11.00
N-27	S 89°00'00" E	11.00
N-28	N 07°02'40" W	11.00
N-29	S 89°00'00" E	11.00
N-30	N 07°02'40" W	11.00
N-31	S 89°00'00" E	11.00
N-32	N 07°02'40" W	11.00
N-33	S 89°00'00" E	11.00
N-34	N 07°02'40" W	11.00
N-35	S 89°00'00" E	11.00
N-36	N 07°02'40" W	11.00
N-37	S 89°00'00" E	11.00
N-38	N 07°02'40" W	11.00
N-39	S 89°00'00" E	11.00
N-40	N 07°02'40" W	11.00
N-41	S 89°00'00" E	11.00
N-42	N 07°02'40" W	11.00
N-43	S 89°00'00" E	11.00
N-44	N 07°02'40" W	11.00
N-45	S 89°00'00" E	11.00
N-46	N 07°02'40" W	11.00
N-47	S 89°00'00" E	11.00
N-48	N 07°02'40" W	11.00
N-49	S 89°00'00" E	

EXHIBIT C

Just Compensation and Relocation Notice (Sample)

[insert date]

[insert name of landowner or representative]
[insert address]
[insert city], [insert state] [insert zip code]

Subject: [insert park name] State Park, [insert property name] Property
Just Compensation and Relocation Notice

Dear [Mr./Mrs./Ms.] [insert landowner or representatives last name],

This notice is to advise you of the compensation for your property located at [insert property location] near [insert park name] State Park. In compliance with state and federal law, the just compensation for [select one: fee interest/conservation easement/lease/or insert other] in the property is [spell out reviewed appraised value] (\$[insert numerical reviewed appraised value]) as determined by an appraisal dated [insert date of appraisal] completed by [insert appraisal firm], which was confirmed by a review appraisal dated [insert date of review appraisal] completed by [insert review appraisal firm].

By signing this notice, you acknowledge that you were made aware of the just compensation of the property under consideration and provided an opportunity to identify any potential people who may be eligible for relation assistance. This does not obligate you to sell your property or any rights in it.

Owner signature: _____ Date: _____

Please provide below the name and address of anyone living on the property other than the owner(s) or any business(es) using the property:

Name: _____
Address: _____

Please retain this letter for your records and return a completed copy to me by [insert due date] at:
Washington State Parks and Recreation Commission
Property Management Program
PO Box 42650
Olympia, WA 98504-2650

If you have any questions or wish to discuss, please contact me at (360) 902-[insert last four digits of phone number] or [insert email address]@parks.wa.gov.

Sincerely,

[insert name of signatory], [insert signatory title]

c: Steve Hahn, Property Management Program Manager
Ken Graham, Property Management Program Coordinator
File No. [insert file number]

Exhibit 10

MEMORANDUM OF AGREEMENT BETWEEN
WASHINGTON STATE
STATE PARKS AND RECREATION COMMISSION AND
WESTPORT GOLF INC.

WHEREAS, the State of Washington, acting by and through the Washington State Parks (State Parks) owns and operates Westport Light State Park, a largely undeveloped approximately 600-acre park located in the City of Westport;

WHEREAS, in 2016, after thoughtful consideration and an extensive planning process, the Washington State Parks and Recreation Commission (Commission) approved the modification to the Westport State Park Classification and Management Plan to establish a Recreation Concession Area (RCA) for approximately 34 acres within the park;

WHEREAS, the purpose of an RCA is to create an avenue through which to encourage private investment in state parks amenities and supplement State Parks' financial capacity to develop public amenities. It is not the intent of the Commission to privatize the state parks.

WHEREAS, in order to encourage creative proposals from RCA partners, in March 2015 the Commission approved guidelines for evaluating proposed recreational uses in designated RCAs;

WHEREAS, Westport Golf INC., a limited liability company, or its successor in interest, is interested in partnering with State Parks to develop a Scottish links style golf facility within the park in exchange for a long-term concession agreement to operate and maintain it and its associated facilities;

WHEREAS, Westport Golf INC. and its associates have been designing, building and operating golf course facilities since 1997;

WHEREAS, any mention of Westport Golf INC., in this document is understood to refer to Westport Golf INC. and its associated consultants and supporting organizations, as well as a corporate entity, Westport Golf, Inc., into which Westport Golf INC. intends to convert under Washington law;

WHEREAS, significant development of Westport Light State Park requires development of a long-range master plan for adoption by the Commission. Approval of a master plan should consider regional recreation needs and the implications of park development on the environment and on local economic development;

WHEREAS, Westport Light State Park has unquantified environmental and cultural resources that require additional investigation to best inform development and approval of a master plan;

WHEREAS, as partners in this MOA, State Parks and Westport Golf INC. recognize that a successful master planning process will effectively balance recreational needs with economic opportunities while also enhancing the existing environmental condition within the park;

WHEREAS, State Parks and Westport Golf INC. acknowledge the value of collaborative decision making and the importance of a thorough, open, and transparent public planning process that seeks public involvement and thoughtfully incorporates public feedback;

WHEREAS, State Parks and Westport Golf INC. envision Westport Light State Park as a full-service, year-round destination providing a diverse array of meaningful experiences for people of all ages, backgrounds, skills, and recreational interests. The parties wish to work collaboratively on the development of a master plan and agree the planning process should include exploring a full suite of development and restoration options and incorporating the most appropriate into a unified plan;

WHEREAS, State Parks and Westport Golf INC. recognize that achieving the envisioned state park will require significant up-front financial investment in planning, environmental analysis, design, public process and decision-making;

WHEREAS, Westport Golf INC. understands the extent of up-front costs and is willing to commit sufficient financial resources to complete the tasks outlined in this agreement;

WHEREAS, State Parks and Westport Golf INC. also recognize that the City of Westport is a critical partner in developing Westport Light State Park and should be invited to actively participate throughout the planning, environmental review, and decision-making process;

WHEREAS, milestones have been identified for State Parks and Westport Golf INC. to achieve towards development of Westport Light State Park, and which are the basis of this Memorandum of Agreement (MOA);

NOW, THEREFORE, State Parks, acting under the authority of RCW Chapter 79A.05 and Commission delegated authority 25-07-1 dated November 21, 2019, and Commission Policy 55-06-1 Less than Fee Simple Real Estate Transactions and Non-recreational Uses of Parklands dated March 22, 2018, and Westport Golf INC. hereby agree as follows:

Document's Purpose

The Parties intend and deem this MOA to be a nonbinding document. The purpose of the MOA is to memorialize a mutually agreed to plan that if successful and in the parties best interest will result in a separate long-term Concession contract that at a high-level will authorize Westport Golf INC. the authority to construct a Scottish links style golf course, transfer said golf course to State Parks, and then allow Westport Golf INC. to manage and maintain these facilities with a percentage of the revenue generated allocated to State Parks.

Working Relationship

State Parks and Westport Golf INC. will enter into this MOA in good faith, recognizing the process will evolve with the need to adapt as circumstances change. The scope of Westport Golf INC.'s goal is ambitious but manageable based on their experience and expertise.

Westport Light State Park is an important public resource that requires unique and special consideration and State Parks staff has specific experience leading both public planning processes and the requisite ecological and environmental assessments necessary to adequately inform the process.

The business, site, and demographic conditions are unique, and State Parks and Westport Golf INC. should embrace adaptation and refinement as a legitimate operating principle. Currently established goals will likely need to be amended to reflect shifting circumstances and trends. Flexibility, creativity, and mutual respect will be the touchstones.

Milestones

State Parks and Westport Golf INC. enter into this MOA to identify and achieve mutually agreed upon roles, responsibilities and milestones, as outlined in **Exhibit A, Partnership Roles and Responsibilities and Exhibit B, Master Plan Development and Environmental Review Process and Milestones**. This will enable each party to fairly assess each other's capabilities and willingness to create a long-term partnership in support of the vision for Westport Light State Park.

The milestones demonstrate both parties' desire and ability to collaboratively develop a Master Plan for Westport Light State Park, and to create financially viable park facilities serving people of all abilities and backgrounds.

State Parks and Westport Golf INC. understand and agree that the milestones are a demonstration of the ability to work collaboratively to preserve and sustain the extraordinary resource that is Westport Light State Park. Both parties will work to complete their respective milestones by July 31, 2023, or as otherwise agreed. This outcome, if successful, will lead directly into negotiating a long-term concession agreement.

State Parks and Westport Golf INC. understand and agree that Westport Golf INC., as the designated corporation in this undertaking, may enlist the support of a wide array of financial partners and organizations that have the expertise and resources to complete and implement the milestones.

For any work that requires State Parks to procure services such as hydrological study, wetland delineation, etc., State Parks will secure from Westport Golf INC. a separate signed contract obligating Westport Golf INC. to reimburse State Parks for the costs associated with those contracts and such work will not commence until signed contracts are in place. In addition, State Parks will secure from Westport Golf INC. a separate signed contract obligating Westport

Golf INC. to reimburse State Parks for staffing costs directly associated with the State Parks Environmental Program Manager’s involvement and participation in the EIS process and review.

Amendment of this Agreement

State Parks and Westport INC. recognize that a host of specific business, environmental, land use, or other challenges may arise that may not be specifically cited in the agreed-upon milestones. State Parks and Westport Golf INC. agree to systematically identify and address these challenges and, where appropriate, incorporate them into the milestone process. Accordingly, this MOA may be amended by mutual agreement of State Parks and Westport Golf INC.. Such amendments shall not be binding unless they are in writing and signed by State Parks and Westport Golf INC..

Progress Reporting

State Parks and Westport Golf INC. agree to regularly inform the Commission, State Park staff and their exclusive bargaining representative (Washington Federation of State Employees), the staffs and boards of Westport Golf INC., interested tribal governments, partner organizations, and the public at large on the progress towards achieving the milestones herein.

Long-Term Concession Agreement

Upon successfully completing the milestones outlined in Exhibit B, State Parks and Westport Golf INC., will enter into negotiation of a long-term Concession Agreement for the development, management and operation of golf course and ancillary facilities at Westport Light State Park. Through a separate Concessions agreement, Westport Golf INC. will construct a Scottish links style golf course and related amenities and transfer those facilities to State Parks in exchange for a long-term agreement to operate and maintain these facilities. Concession fees paid by Westport Golf INC. to State Parks will generally be based on a percentage of gross income earned through operation of the concession. The agreement will include, but is not limited to, the following:

Operations and management of the golf course and associated facilities;

- a. Terms of the financial agreement;
- b. Revenue sharing;
- c. Fee structure;
- d. Stewardship plan;
- e. Business development plan;
- f. Operations management plan, and;
- g. Recreation and Conservation Office requirements, etc.;
- h. State approved Standard Terms and Conditions.

Necessary State Agency Review and Approval

State Parks staff will seek the following approvals:

1. Concurrence of the Recreation and Conservation Office and if required, through the Recreation and Conservation Funding Board (RCFB), that the negotiated concession agreement is consistent with RCFB policy and will not result in conversion of lands purchased with RCFB grant funds.
2. Adoption of the master plan prepared for Westport Light State Park by the Commission.
3. Authorization to enter into a long-term concession agreement with Westport Golf INC. as negotiated by the State Parks and authorized by the Commission.

Funding and Financing

Westport Golf INC. will demonstrate the ability to fund and/or finance the costs associated with development and operation of a Scottish Links-style golf course and ancillary facilities to the satisfaction of State Parks.

No Assumption of Liabilities

By executing this MOA, State Parks and Westport Golf INC. do not assume any obligations or liabilities of the other party, and each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

WESTPORT GOLF, INC..


Signature

President
Title

10/12/2020
Date

WASHINGTON STATE PARKS AND RECREATION COMMISSION


Signature

Director
Title

August 7, 2020
Date

EXHIBIT A

Partnership Roles and Responsibilities

Master Planning and Environmental Review

Part 1 - Pre-scoping

WASHINGTON STATE PARKS will:

1. Seek appropriate environmental professionals and develop/manage contracts for the following analyses within the Westport Light State Park:
 - a. Hydrological study- Estimate \$35K-40K. The cost will vary depending on how much existing information (topography, ground cover, soils, etc.) exists;
 - b. Wetland delineation- Estimate \$40K-\$60K. This study would include the wetlands in the 604-acre park. The price would vary depending on if a “wetland mosaic” approach can be used for mapping forested wetlands. The work includes field work, wetland ratings, mapping, and a report that could be used for permitting;
 - c. Vegetation survey- Estimate \$15K. This survey may be completed after the wetland delineation is complete so wetlands are already mapped, but must be done within the appropriate phenological window to identify greater than 95% of the species at the site;
 - d. Habitat assessment- A habitat assessment quantifies habitat quality and function and will help to establish an environmental baseline. This assessment will inform the habitat opportunities and constraints analysis and ultimately the EIS. Estimate \$10K;
 - e. Coastal Study- Estimate \$27K. This study includes sea level rise and erosion analysis, evaluating shoreline protection alternatives, and writing a technical memo/report;
 - f. Cultural resource study- \$2K. State Parks archaeologist to compile known information about Westport Light State Park. Upon completion and State Parks approval of the master plan for Westport Light State Park a Cultural Resources Survey will be required. The estimated cost is less than \$50K;
 - g. Habitat opportunities and constraints analysis- Estimate 69K;
 - h. Market analysis for regional recreational lodging needs (State Parks contribution).

WESTPORT GOLF, INC. will:

1. Finance the above contracts except for the Market Analysis;
2. Conduct local economic development analysis of the City of Westport and surrounding area specifically considering needs analysis for a Scottish links style golf course, and;
3. Run cost/benefit analysis and determine whether to proceed to the next step in the process.

Part 2 - Master Plan Development, Public Process, and Environmental Review

The master plan development, the associated public process and environmental review process steps and milestones are outlined in **Exhibit B, Master Plan Development and Environmental Review Process and Milestones**.

WASHINGTON STATE PARKS will:

1. Collaborate with Westport Golf INC. and the City of Westport in the master planning development process and;
2. Lead and conduct the environmental review.

WESTPORT GOLF INC. will:

1. Fund and work collaboratively with park staff and the City of Westport on the Master Plan Development and Environmental Review Process (**Exhibit B**);
2. Work collaboratively with park staff and the City of Westport to develop draft designs;
3. Work collaboratively and support park staff in environmental review and fund State Parks' staff time for environmental review and management.

EXHIBIT B

MASTER PLAN DEVELOPMENT AND ENVIRONMENTAL REVIEW PROCESS & MILESTONES

Project Team: Westport Golf INC. (and consultants), HQ Parks Planner, SW Region Manager, Environmental Program Manager (and consultants), and the City of Westport.

Review Team: Parks Development Assistant Director, Business Development Program Manager, Partnership, Planning and Real Estate Program Manager, HQ Parks Planner; Stewardship Program Manager, Natural Resources Program Manager, SW Region Manager, Area Manager, SW Region Capital Program Manager, SW Region Planner, SW Region Engineer, City of Westport.

Business Team: Parks Business Development Manager and Business Development staff.

Purpose: State Parks is considering a request from Westport Golf INC. to design and build a Scottish links style golf course at Westport Light State Park.

Milestone 1: Information gathering – (Park Natural Resources, Stewardship Program, Westport Golf, INC.)- (Approximately 8-12 months)

The first step in developing a Master Plan will be establishing an environmental and cultural resource baseline. This information will be used to inform the design process and ultimately inform the environmental impact statement. State Parks will solicit and contract environmental professionals for the analyses. Timeline considerations include consultant contracting, staff scheduling, and work windows for ecological assessments.

Products:

- a. Hydrological study
- b. Wetland delineation
- c. Vegetation survey
- d. Habitat assessment
- e. Coastal Study
- f. Cultural resource study
- g. Habitat opportunities and constraints analysis
- h. Market Analysis

Information Gathering – Market Analysis (Business Team)- (Approximately 3-4 months)

Concurrent to the environmental base line assessment, a market analysis will establish Parks' regional lodging needs. The purpose of this will be to inform the master plan draft design specific to the region's recreation demand. This work is essential to conduct prior to plan development to ensure Parks lodging needs have been considered in master plan process. Timeline considerations are mainly staff scheduling.

Product: Market analysis for regional recreational lodging needs.

Milestone 2: Site Opportunity and Constraints Development (Westport Golf INC./Review Team) – (Approximately 3-4 months)

With the compilation of the park’s natural resource baseline information, market analysis, and other relevant park information, Westport Golf INC. and Review Team will work to develop an integrated opportunities and constraints analysis to best inform the development of the Master Plan by balancing the restoration, recreation and economic opportunities within the park.

Conduct Public Meeting/Outreach to have the public weigh in on the opportunities and constraints development.

Product- Integrated Opportunities and Constraints Analysis

Milestone 3: Master Plan Development (Westport Golf INC./Review Team) – (Approximately 8-12 months)

The master plan will be drafted by Westport Golf INC. and its’ consultants collaboratively with input from the Project Team. The plan development will be kicked off with the steps listed within this section.

The scope of the master plan will include, but is not limited to, facilities and structures such as an 18 hole golf course, short golf course, club house, vehicular and pedestrian circulation, restroom facilities, wayfinding signage, shelters in addition to identifying areas of the property that might be appropriate for development for overnight accommodations such as camping and cabins or other recreational opportunities identified.

Other key aspects of golf course development included in the master plan will address stewardship/restoration of the property’s natural systems, business opportunities, staffing and operations.

1. Kickoff/Review Team Meeting #1 (Westport Golf INC./Review Team). The purpose of this meeting will be to discuss the pre-scoping analysis and how it will be used to inform the preliminary draft as well as identify any other opportunities and constraints known about the park. Westport Golf INC. will consolidate the information discussed in the kickoff meeting with the information gathered in the pre-scoping analysis and draft an opportunity and constraints document and preliminary draft of the master plan. Westport Golf INC. will disseminate the draft to the Parks Review Team.
2. Kickoff/Review Team Meeting #2 (Westport Golf INC./Review Team). This meeting will be to provide feedback to Westport Golf INC. on the preliminary draft and to strategize stakeholder outreach leading up to the first public meeting. Products of this meeting will be a revised preliminary draft ready to take to the public and meeting stakeholder schedule.
3. Stakeholder Outreach. State Parks, City of Westport and Westport Golf INC. will schedule meetings with the Tribal government/s and key stakeholders to present them the information gathered during the pre-scoping analysis and seek feedback on the preliminary draft.

4. Kickoff/Review Team Meeting #3 (Westport Golf INC./Review Team). At this meeting Westport Golf INC. and State Parks Review team will review stakeholder input, the comment matrix and the updated draft plan. The team will then coordinate the first upcoming public meeting. Westport Golf INC. will update and finalize the preliminary draft, secure a public meeting location, and prepare a draft public meeting presentation and provide materials prior to this meeting.
5. Public Meeting #1. The purpose of this meeting is the following:
 - (1) Inform the public what has been learned through the pre-scoping analysis
 - (2) Present to the public the preliminary draft Master Plan
 - (3) Seek input from the public as to what is missing/feedback on plan/questions/concerns
 - (4) Lay out expectations for the remainder of the process/environmental review

Milestone 4: Master Plan Development- Initiate Environmental Review (Approximately 8-12 months)

6. Kickoff/Review Team Meeting #4 (Westport Golf INC./Review Team). Westport Golf INC. will compile feedback from the public meeting and update the comment matrix. The purpose of this meeting will be for the team to discuss the public feedback, consider changes to the preliminary draft, define objectives and strategize the public process moving into the environmental review phase of the plan development. Products include a final preliminary draft, scoping objectives for the EIS, and a timeline for the EIS process including a date for the scoping meeting.
7. Public Scoping Meeting. Prior to this meeting State Parks staff will issue a formal threshold determination to initiate SEPA review. The purpose of this meeting will be twofold: 1) present the final preliminary draft as the preferred alternative, to the public and seek feedback; 2) Narrow the scope of the review to only those elements with potential significant environmental impacts. Seeking public input on these potential environmental impacts, alternatives, or mitigation opportunities and explore in the DEIS. With this information Westport Golf INC. will develop a scoping summary that includes the following:
 - (1) Master Plan Objectives
 - (2) Range of Alternatives for consideration
 - (3) Comment Matrix
8. Commission Authorization to Proceed. Park Staff will present scoping summary to Commission along with timeline for environmental review and seek direction on the range of alternatives.
9. Draft EIS. State Parks will lead development of the draft EIS. The DEIS will analyze a range of alternatives including the preliminary draft, no action alternative and two

others. Westport Golf INC. and the Review Team will edit the draft before circulating it to the public.

10. DEIS Public Meeting. State Parks will lead a public meeting to discuss the DEIS with the public, explain the analysis and seek comments and feedback. Park staff will take this feedback and finalize the EIS.

Milestone 5: Master Plan Development- Commission Adoption (Approximately 4-6 months)

11. Commission Report. Park staff will present the findings of the EIS and a timeline for the drafting of the Concession Agreement.
12. Commission Requested Action. Park staff will present the staff recommended Master Plan for approval.
13. Concession Agreement. State Parks and Westport Golf INC. will collaborate to draft a Concession Agreement.
14. Commission Requested Action. Park staff will present primary details of the Concession Agreement to the Commission and request that the Commission delegate authority to the Director to sign the Agreement upon its completion.