

SETTLEMENT AND RELEASE AGREEMENT

DATED: April 6, 2004

BY AND BETWEEN

THE NATIONAL WILDLIFE FEDERATION,

AND

THE SEATTLE DISTRICT OF THE U.S. ARMY CORPS OF ENGINEERS,

COSTCO WHOLESALE CORPORATION,

MARK HINTON, AND HINTON DEVELOPMENT CORPORATION

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (hereafter "Agreement") is made and entered into as of April 6, 2004, by and between THE NATIONAL WILDLIFE FEDERATION, (hereafter "NWF") and the SEATTLE DISTRICT, U.S. ARMY CORPS OF ENGINEERS (hereafter "the Corps"), COSTCO WHOLESALE CORPORATION, a Washington corporation (hereafter "Costco"), MARK HINTON and HINTON DEVELOPMENT CORPORATION (hereafter collectively "Hinton"). Together, NWF, the Corps, Costco, and Hinton are collectively referred to in this Agreement as "the Parties."

RECITALS

A. On December 15, 2003, NWF sent Hinton and others a letter notifying them of NWF's intention to file suit under 33 U.S.C. § 1365(b) for alleged violations of the Clean Water Act ("CWA"). The alleged violations described in the letter relate to the dredging and filling of wetlands located at the S.W. intersection of N.E. Anderson Road and N.E. 88th Street in Clark County, Washington (the "Site"). A map depicting the Site is attached to this Agreement as Exhibit "A" and incorporated by reference. A copy of the letter referenced in this paragraph is attached to this Agreement as Exhibit "B" and incorporated by reference.

B. On December 18, 2003, NWF sent a letter to Les Brownlee, Acting Secretary of the Army, as well as to the Environmental Protection Agency ("EPA"), U.S. Department of Justice, and the Washington State Department of Ecology, notifying the Secretary of the Army and EPA of NWF's intent to file suit under 33 U.S.C. § 1365(b) for failure to perform a non-discretionary duty or act under the CWA with regard to the dredging and filling of wetlands located at the Site. A copy of the letter referenced in this paragraph is attached to this Agreement as Exhibit "C" and incorporated by reference.

C. Costco owns a majority of the Site, as depicted on the map attached to this Agreement as Exhibit "D" and incorporated by reference (the "Costco Site"), and Hinton owns other portions of the Site (also depicted on Exhibit "D"). Costco intends to complete construction of a membership warehouse facility on the Costco Site substantially in the configuration depicted on the map attached hereto as Exhibit "D" (the "Costco Project"). Construction of the Costco Project has been delayed pending discussions regarding compliance with the CWA.

D. In July 2001, prior to receiving the letters attached as Exhibits "B" and "C," the Corps issued a "non-jurisdictional" determination with regard to the Site, finding that no Corps' permit was required for dredging and filling wetlands on the Site. A copy of the letter referenced in this paragraph is attached to this Agreement as Exhibit "E" and incorporated by reference (the "Non-Jurisdictional Determination"). Based on the Corps' Non-Jurisdictional Determination and permits obtained from the Washington State Department of Ecology and Clark County that required construction of compensatory mitigation, a portion of the wetlands on the Site were filled.

E. The Corps, Costco, and Hinton deny any fault, wrongdoing, or liability for any and all alleged violations contained in the letters attached to this Agreement as Exhibits "B" and "C" and further deny any fault, wrongdoing, or liability under the CWA for any actions or inactions by the Corps, Costco, or Hinton with regard to activities on the Site.

F. The Parties desire to enter into this Agreement to resolve all issues between the Parties, and to allow Costco and Hinton to pursue the construction and operation of their respective developments on the Site.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, terms and conditions contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties incorporate the foregoing recitals and agree as follows:

Article I

1.1 The Parties agree that this settlement of the matters covered by this Agreement is in the best interests of the Parties and that avoiding litigation is the most appropriate means of resolving these matters. This Agreement settles and resolves the claims against the Parties as described herein.

Article II

2.1 In consideration of NWF's, Costco's and Hinton's entry into this Agreement and other obligations set forth below, the Corps shall:

(a) Within Thirty (30) days from the date of this Agreement, post on the Corps' Seattle District website the following statement:

We view Headwaters, Inc. v. Talent Irrigation District, 243 F.3d 526 (9th Cir. 2001) as binding on the U.S. Army Corps of Engineers, Northwestern Division, in the geographic jurisdiction of the U.S. Court of Appeals for the Ninth Circuit. In that case, the court held that irrigation canals that receive water from natural streams and lakes, and divert water to streams and creeks, are connected as "tributaries" to those other waters. The Ninth Circuit further held that a "stream which contributes its flow to a larger stream or other body of water is a tributary. . . . As tributaries, the canals are 'waters of the United States,' and are subject to the CWA and its permit requirement." Headwaters, 243 F.3d at 533. Moreover, the court held that, "Even tributaries that flow intermittently are 'waters of the United States.'" *Id.* at 534. Corps of Engineers regulations at 33 C.F.R. § 328.3(a)(5) assert CWA jurisdiction over all tributaries to other

jurisdictional waters of the United States. In factual situations where the Headwaters precedent applies, it would supercede any contrary conclusion that might be drawn from previous Corps of Engineers policy statements regarding ditches.

provided, however, that this statement shall not apply to the Corps' Non-Jurisdictional Determination previously issued regarding the Site, and such Non-Jurisdictional Determination regarding the Site shall not be subsequently changed or modified in any way; and provided further that the Corps may revise this statement to reflect any subsequent decisions of the U.S. Supreme Court or the 9th Circuit Court of Appeals modifying the substance of this statement (without modifying the Non-Jurisdictional Determination), but in this event the Corps shall provide to NWF advance notice and opportunity to comment on the intended modification. The website shall also include a link to Corps regulations where the reader can find additional regulatory information.

(b) Beginning no later than Sixty (60) days from the date of this Agreement, the Corps will develop and demonstrate a practice of making non-jurisdictional determinations (NJDs), that would otherwise be available to the public under the Freedom of Information Act, available to the public by posting on the Corps' Seattle District website notices of all prospectively made NJDs (that is, a decision not to assert jurisdiction over property, or a determination that property is not a "water of the U.S." as defined pursuant to the CWA) made by that office after the date of this Agreement, including the location of the property and any file, application or other reference number related to the NJD. Such NJDs shall be posted in a timely manner. The Corps will maintain the practice for at least two years from the date of this Agreement. The Corps shall endeavor to make the posting of non-jurisdictional determinations reliable. At the conclusion of the two year period, the Corps and NWF shall discuss the project and continue the posting if there is mutual agreement to do so.

2.2 In consideration of NWF's entry into this Agreement and other obligations set forth below, Costco and Hinton shall comply with the permits obtained from the Washington State Department of Ecology (Order No. DE 03SEASR-5514 dated May 9, 2003) and Clark County (SEP 2002-00113; WET 2002-00026; HAB 2002-00158; CRA 2002-00007; and EVR 2002-00041) for filling wetlands on the Site, including the construction and maintenance of project mitigation required by these permits. Copies of the permit documents are attached to this Agreement as Exhibit "F". These permits require Hinton to submit monitoring reports regarding the wetland mitigation site to the agencies. Hinton will submit copies of these reports to the NWF and Costco at the same time it submits them to the agencies.

2.3 In consideration of the Corps', Costco's, and Hinton's entry into this Agreement with obligations as set forth herein, NWF releases and discharges the Corps, Costco, and Hinton, and their representatives, heirs, successors, assigns, agents, officers, directors, employees, legal representatives, and attorneys, and each of them, including those who held those positions in the past, of and from any and all claims, debts, liabilities, damages, demands, obligations, penalties, costs, attorneys' fees, actions, and

causes of action for the violations alleged in letters attached to this Agreement as Exhibits "B" and "C", as well as for any and all actions and causes of action related to Corps' jurisdiction over wetlands, streams, and other "waters of the U.S." as defined pursuant to the CWA on the Site.

2.4 In consideration of the Corps', Costco's, and Hinton's entry into this Agreement with obligations set forth herein, NWF agrees that it will not, at any time hereafter, commence, maintain or prosecute any action at law or otherwise or assert any claim against the Corps, Costco, or Hinton, or their representatives, successors, assigns, agents, officers, directors, employees, legal representatives or attorneys, and each of them, including those who held those positions in the past, for any actions, omissions, obligations, claims, liabilities, and demands for the alleged violations contained in the letters attached to this Agreement as Exhibits "B" and "C", as well as for any and all actions and causes of action related to Corps' jurisdiction over wetlands, streams, and other "waters of the U.S." as defined pursuant to the CWA on the Site; and NWF will not encourage or support others to do so and, upon request, NWF will privately discourage others from doing so in correspondence of NWF's choosing.

2.5 The Parties hope there will be no disputes arising out of this Agreement. To that end, each commits to cooperate in good faith and to deal fairly in performing its respective duties under this Agreement in order to accomplish their mutual objectives and avoid disputes. If a claim, dispute, or disagreement relating to the interpretation, application or enforcement of this Agreement or a Party's performance under this Agreement (a "Dispute") arises, the Parties agree to use good faith efforts to resolve all such Disputes by the following procedure. First, in the event that a Party believes that a Dispute exists, that Party shall notify the other Parties in writing of the existence of such Dispute (a "Notice of Dispute") before pursuing any other form of dispute resolution. Upon delivery of a Notice of Dispute, the Parties shall use good faith efforts to negotiate an amicable resolution of the Dispute within thirty (30) business days following delivery of the Notice of Dispute. Second, except for an allegation of Corps noncompliance with this Agreement which is addressed in Section 2.6 below, if such negotiations are unsuccessful, the Parties may thereafter pursue remedies available to them in accordance with this Agreement through the commencement of an action or the institution of other proceedings before a court having appropriate jurisdiction.

2.6 With regard to an allegation of Corps noncompliance with this Agreement, if negotiations under Section 2.5 above are unsuccessful, NWF's sole remedy under this Agreement shall be the right to pursue any and all claims raised against the Corps contained in the letter attached to this Agreement as Exhibit "C." Any legal action to pursue such claims must be filed within two (2) years of the date of this Agreement. The Corps reserves the right to oppose any such challenge on any grounds. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded the Corps by the Clean Water Act or by the general principles of administrative law. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the Corps obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Neither this section nor any other provision of this Agreement shall give

NWF any right to pursue against Hinton or Costco the claims contained in the letter attached to this Agreement as Exhibit "B." It is not NWF's desire to again pursue the claims raised in the letter attached to the Agreement as Exhibit "C" or to jeopardize any investment made at the Site by Costco or Hinton. Therefore, in the unlikely event that NWF brings an action against the Corps pursuant to this section, and if a court determines that the Corps has jurisdiction over the fill activity at the Site, in the spirit of the Agreement, the Parties will not seek a remedy that would require the removal of the fill, the imposition of financial penalties against Costco or Hinton, or the requirement of a permit under CWA Section 404.

Article III MISCELLANEOUS

3.1 Notices. Whenever under the provisions of this Agreement it shall be necessary or desirable for a Party to serve any notice, request, demand, report or other communication on another Party, the same shall be in writing and shall not be effective for any purpose unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission (i) where the transmitting Party includes a cover sheet identifying the name, address and identity of the transmitting Party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including cover page), (ii) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and (iii) where the facsimile transmission is immediately followed by service of the original of the subject item by personal delivery, overnight courier or first-class mail, or (d) by deposit in the United States mail, postage and fees fully prepaid, first class, registered or certified mail, addressed as follows:

NWF:	<i>National Wildlife Federation 1400 16th St. NW, Suite 501 Washington, DC 20036 Attn: James Murphy</i>
Corps:	<i>Chief, Regulatory Branch U.S. Army Corps of Engineers 4735 E. Marginal Way S. Seattle, WA 98134</i>
Costco:	<i>Costco Wholesale 999 Lake Drive Issaquah, WA 98027 Attn: General Counsel</i>
Hinton:	<i>Hinton Development Corp. c/o Mark Hinton 14010-A NE 3rd Court, Suite 106</i>

The party sending any notice shall, on the same date the original notice is served, also serve a copy of said notice on all other Parties to this Agreement in the manner set forth above in this Section 3.1. Any Party may, from time to time, by notice in writing served upon the other Party as aforesaid, designate an additional and/or a different mailing address to which all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, or if served by mail or independent courier shall be deemed delivered on the date mailed or sent as shown by the courier's certification receipt or as shown on the postmark or records of the U.S. Postal Service, and, if served by facsimile transmission, shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

3.2 Construction and Interpretation of Agreement.

(a) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this Agreement.

(b) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine gender and vice versa.

3.3 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same Agreement.

3.4 Entire Agreement; Drafting. This Agreement shall constitute the entire and exclusive agreement between the Parties relating to the matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations and practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. All Parties are drafters of this Agreement. If a court determines that this Agreement is ambiguous and/or that one party was the primary drafter of this Agreement, the court shall not construe this Agreement against the primary drafter.

3.5 Free and Voluntary Act. The Parties agree that they are entering into this Agreement as a free and voluntary act. The Parties represent that they have had adequate time to evaluate this Agreement and that the Parties signed the Agreement only after full reflection and analysis.

3.6 Advice of Counsel. The Parties confirm that in negotiating this Agreement they have received advice from counsel of their choosing and that they have read and understand this Agreement.

3.7 Authority. The Parties represent and warrant that the individuals signing this Agreement on their behalf have full legal authority to do so.

3.8 Successors. All of the covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon the Parties and their respective heirs, executors, administrators, successors, successors in interest, delegates, and assigns. Additionally, with respect to the National Wildlife Federation, this Agreement shall be binding on and inure to the benefit of its officers, directors, and members.

3.9 Changes to Agreement. This Agreement may not be changed orally but only in writing signed by all Parties.

3.10 Non-waiver. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit, or waive a party's rights to enforce compliance thereafter with each and every term and condition of this Agreement.

3.11 Reservation of Rights. This Agreement concerns the Site only. Except as expressly provided in this Agreement, none of the parties waives or relinquishes any legal rights, claims or defenses it might have. Other than on the Site, NWF reserves the right to pursue any and all actions and causes of action against the Corps, Hinton and Costco arising from or related to Corps' jurisdiction over wetlands, streams, and other "waters of the U.S." as defined pursuant to the CWA.

3.12 No Admission or Evidence. This Agreement is a settlement of disputed facts and law and shall not constitute an admission or adjudication with respect to any allegation in the letters attached to this Agreement as Exhibits "B" and "C" or an admission or evidence of any wrongdoing or misconduct on the part of the Corps, Costco, and Hinton.

3.13 Effective Date. This Agreement shall become effective upon its execution by the Parties.

3.14 Time. Time is of the essence of this Agreement.

3.15 Good Faith. The Parties shall carry out the provisions of the Agreement in good faith.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement on the date first written above.

NATIONAL WILDLIFE FEDERATION

**SEATTLE DISTRICT, U.S. ARMY
CORPS OF ENGINEERS**

By: *R. Montgomery Fischer*
R. Montgomery Fischer
Vice President
Water Resources Policy Director

By: _____
Debra M. Lewis
Colonel, Corps of Engineers
District Engineer

**HINTON DEVELOPMENT
CORPORATION**

Mark Hinton

By: _____
Mark Hinton
President

**COSTCO WHOLESALE
CORPORATION**

By: _____
Richard J. Olin
Vice President and General Counsel

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Debra M. Lewis
Colonel, Corps of Engineers
District Engineer

**HINTON DEVELOPMENT
CORPORATION**

Mark Hinton

By: _____
Mark Hinton
President

**COSTCO WHOLESALE
CORPORATION**

By: _____
Richard J. Olin
Vice President and General Counsel

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NATIONAL WILDLIFE FEDERATION

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R. Montgomery Fischer
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Water Resources Policy Director

By: _____
Debra M. Lewis
Colonel, Corps of Engineers
District Engineer



Mark Hinton

**HINTON DEVELOPMENT
CORPORATION**

By: 

Mark Hinton
President

**COSTCO WHOLESALE
CORPORATION**

By: _____
Richard J. Olin
Vice President and General Counsel

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NATIONAL WILDLIFE FEDERATION

**SEATTLE DISTRICT, U.S. ARMY
CORPS OF ENGINEERS**

By: _____
R. Montgomery Fischer
Vice President
Water Resources Policy Director

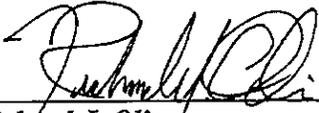
By: _____
Debra M. Lewis
Colonel, Corps of Engineers
District Engineer

**HINTON DEVELOPMENT
CORPORATION**

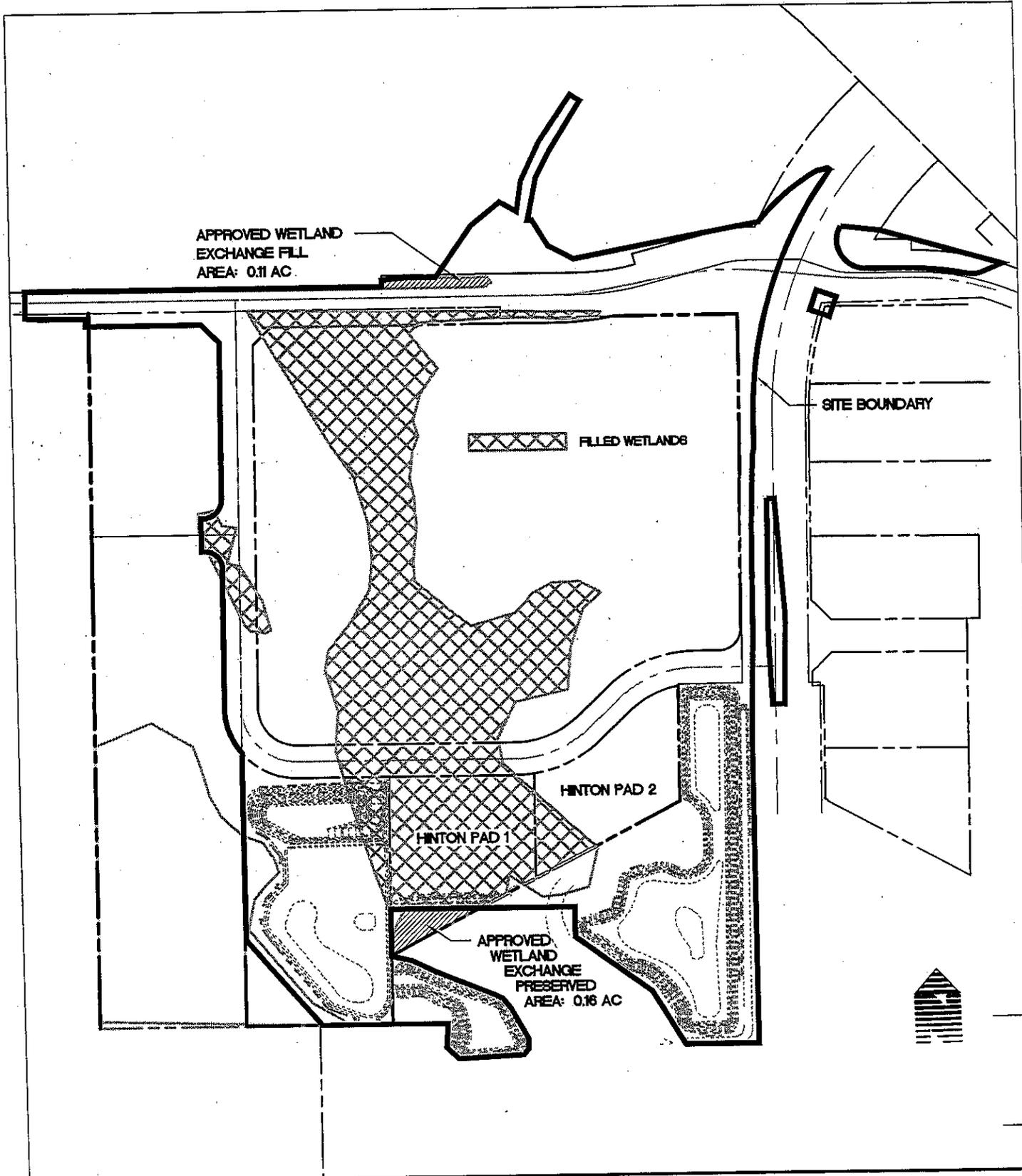
Mark Hinton

By: _____
Mark Hinton
President

**COSTCO WHOLESALE
CORPORATION**

By: 

Richard J. Olin
Vice President and General Counsel



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EXHIBIT A
88TH AND ANDRESEN COSTCO

COSTCO WHOLESALE
CLARK COUNTY, WASHINGTON

PROJECT NO. COS2231.00

DATE: 03/23/04

BY: ELH

SHEET NO. 1 OF 2



NATIONAL WILDLIFE FEDERATION*

People and Nature: Our Future Is in the Balance

Office of Federal and International Affairs

December 15, 2003

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Hinton Development Corporation
Mr. Mark Hinton
14010-A NE 3rd Court
Suite 106
Vancouver, WA 98695-2969

Michael Leavitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Tom Fitzsimmons, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

John Iani, Regional Administrator
Region X U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Re: Notice of Intent to Sue: Clean Water Act Violations at the S.W. Intersection of N.E. Andersen Road and N.E. 88th Street in Clark County, WA.

Dear Sir/Madam:

Pursuant to the citizen suit provision of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1365(b), the National Wildlife Federation, on behalf of itself and its members, ("NWF") hereby notifies Hinton Development Corporation ("Hinton") of violations of law, described below. The violations of law described in this notice relate to the Hinton's dredging and filling of wetlands located at the S.W. Intersection of N.E. Andersen Road and N.E. 88th Street in Clark County, WA (the "Site") in or around September, October and November of 2003.

Background

This notice concerns activities by Hinton, a for profit corporation incorporated in the State of Washington, to dredge and fill approximately 7.4 acres of wetlands that serve as the headwaters to Curtin Creek in southwest Washington State near Vancouver, Washington. This case concerns a critical question regarding the scope of the Clean Water Act in the wake of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* ("SWANCC"), 531 U.S. 159 (2001). Prior to SWANCC, plans to develop the Site did not move forward. However,

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Hinton Development Corporation
Notice of Intent to Sue
December 15, 2003
Page 2

after SWANCC, efforts to develop the Site were renewed. Facilitating these efforts, the U.S Army Corps of Engineers, Seattle District (the "Seattle District") erroneously declined to assert jurisdiction over a substantial portion of the approximately 8 acres of wetlands at the site. In a letter dated July 20, 2001 to Richard Kramer at the Padden Center, the Seattle District stated that, "Wetlands A/B, D and E [at the Site] are isolated wetlands" and thus "a Department of the Army permit is not required in the isolated wetlands."

The Seattle District's letter notwithstanding, all of the wetlands at the Site that have been filled are covered under the CWA. These wetlands have a clear surface water connection to navigable waters of the United States. The wetlands are adjacent to an agricultural drainage ditch that flows into Curtin Creek. Curtin Creek flows into Salmon Creek, which eventually flows into the Columbia River. During many periods of the year, water can clearly be seen flowing from the wetlands, into the ditch, into Curtin Creek, and eventually into the Columbia River. The hydrologic connection that these wetlands have to Curtin Creek is confirmed by Hinton's own expert. A report put forth by Cascadia Ecological Services, Inc. for the Site describes these wetlands as "flow[ing] to the southeast into a ditch that eventually outlets to Curtin Creek" and admits that the wetlands "contribute[] hydrologic support to Curtin Creek." Cascadia Ecological Services, Inc., *Functional Wetland Assessment Proposed Costco Wholesale Site*, prepared for Hinton Development Corporation, July 15, 2002, at 4. Despite the conclusions of its own expert regarding the hydrology of the Site and a warning from NWF that these wetlands are covered under the CWA and discharging fill into them without a permit would violate the Act, Hinton has never received a permit under the CWA to discharge fill or any other materials into a substantial portion of the wetlands on the Site.

These wetlands are one of the last remaining wetlands and wildlife habitats in this fast developing region. The Site is largely comprised of Semiahoo muck and other soils identified as hydric by Clark County and an expert retained by Hinton. *Map, Soils, Padden Parkway, Phase 3*, Clark County Washington, May 25, 2000; Clark County Soil Survey (USDA 1974); Cascadia Ecological Services, Inc., *Wetland Delineation Report: Proposed Costco Wholesale Site*, prepared for Hinton Development Corporation, May 17, 2002, at 4. In addition to serving as headwaters for Curtin Creek, the wetlands serve as habitat for a diverse array of wildlife including Columbia black-tailed deer, coyotes, raccoons, a host of waterfowl, swamp sparrow, red-winged blackbird, ring-necked pheasant, song sparrow, common flicker, dark-eyed junco and spotted towhee. Owls, red-tailed hawks and other raptors also use the area for hunting. Additionally, different species of amphibians and insects such as dragonflies inhabit the area.

Portions of Curtin Creek and Salmon Creek are home to juvenile steelhead trout and have historically had Coho salmon. Lower Columbia steelhead trout are listed as threatened under the Endangered Species Act. 63 Fed. Reg. 43952 (March 19, 1998). Additionally, both Curtin Creek and Salmon Creek are listed as impaired for salmonid spawning use because of temperature, flow alteration and habitat alteration due in part to urban runoff. Lower Columbia Steelhead Conservation Initiative Area 303d List and 305b Reports, Appendix 5, March 10, 1998, at 13 (available on the world wide web at <http://www.governor.wa.gov/ysto/lscsi/ap5.pdf>).

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Hinton Development Corporation
 Notice of Intent to Sue
 December 15, 2003
 Page 3

The wetlands also provide recharge for Curtin Creek and Salmon Creek, control flooding and provide nutrients and microorganisms that can serve as food for juvenile salmonids. The importance of these wetlands has been documented. Both Curtin Creek and Salmon Creek are "impaired" watersheds because they fail to meet state water quality standards. State of Washington, Final 1998 Section 303(d) List. Salmon Creek is impaired for temperature and turbidity, which is often associated with urban development. Given the recent development in the Curtin Creek watershed, it is quite possible that Curtin Creek, which is currently impaired due to fecal coliform, may also be listed as impaired for temperature, turbidity, sediment or other impairments attributable to urban development when the updated 303(d) list is compiled by the State of Washington. A recent report regarding Salmon Creek states that further loss of wetlands in the Curtin Creek and Salmon Creek watersheds will likely contribute to water quality degradation in Salmon Creek by removing ecologically important water detention and filtering systems. Washington State Department of Ecology, *Salmon Creek Watershed Bacteria and Turbidity Total Maximum Daily Load*, Submittal Report, January 2001, at 8. Additionally, the wetlands on the Site have been designated as "priority habitat and species area" by Clark County. Map, *Priority Habitat, Padden Parkway, Phase 3*. Clark County Washington, May 25, 2000,

The Hinton project will turn this ecosystem into parking lots, a fueling station and retail space. This will likely increase flooding into Curtin Creek, decrease groundwater recharge, and increase the runoff of pollutants into the Curtin Creek watershed, further degrading Curtin Creek, Salmon Creek and ultimately the Columbia River. See Environmental Protection Agency, *Functions and Values of Wetlands*, March 2002. Impervious cover is one of the greatest causes of watershed degradation. See EPA Website, *Stormwater Program: Overview* at (http://cfpub1.epa.gov/nodes/home.cfm?program_id=6) (site visited December 8, 2003). It is often the cumulative effect of activities that destroy small pieces of a great watershed's fabric that eventually ruin profound treasures like the Columbia. See EPA Website, *Watershed Academy Web: Watershed Ecology: The Natural System Concept* at (<http://www.epa.gov/owow/wtr1/watershed/wacademy/acad2000/ecology/ecology9.html>) (site visited December 8, 2003).

This issue was brought to the attention of NWF in August of 2003 by concerned local citizens who use and enjoy the Site and were troubled about its impending destruction. On September 12, 2003, prior to the commencement of any substantial dredge and fill activities at the Site, NWF sent letters to Hinton and the Seattle District expressing its concern over the potential dredge and fill activities proposed at the Site. We did not hear any response from Hinton. Rather, Hinton proceeded with dredge and fill activities at the Site without obtaining proper permits under the CWA.

Clean Water Act Overview

In 1972, Congress enacted the Federal Water Pollution Control Act, commonly known as the Clean Water Act, in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and "eliminate" the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a). In order to achieve this goal, the CWA prohibits the "discharge of

Dec 16 01 05:34p

Hinton Development Corporation
 Notice of Intent to Sue
 December 15, 2003
 Page 4

any pollutant by any person" without compliance with the Act's permit procedures and other requirements. *Id.* § 1311(a).

The CWA specifically addresses activities that may result in the placement of dredged or fill materials into navigable waters. *See* 33 U.S.C. § 1344. Placement of any such material in a navigable water is prohibited without a permit (known as a "Section 404 Permit") from the U.S. Army Corps of Engineers. *Id.* § 1344(a); § 1311(a); 33 C.F.R. § 323.3 (Army permits required for the discharge of fill materials into waters of the United States).

The regulatory scope of the CWA is broad. The *SWANCC* decision narrowly ruled that an abandoned sand and gravel pit with no hydrologic connection to other waters and where the only grounds to assert federal jurisdiction was the pit's use by migratory birds was not covered under the CWA. However, the *SWANCC* decision explicitly upheld the Court's ruling in *Riverside Bayview Homes v. U.S. Army Corps of Engineers*, 474 U.S. 121 (1987), which held that wetlands adjacent to other waters are covered under the CWA, and left intact the Court's ruling in *International Paper v. Ouellette*, 479 U.S. 481 (1987), where the Court stated that, "The [Clean Water] Act applies to ... virtually all bodies of water." 474 U.S. at 492.

Moreover, case law has made clear that *SWANCC* applies only to a narrow subset of waters where the only ground for asserting federal jurisdiction is the water's use by migratory birds. Cases in three circuits have held that wetlands which are adjacent to non-navigable tributaries, including drains and ditches, of navigable waters, even if such drains or ditches are artificially constructed and intermittently flowing, are clearly within the jurisdiction of the CWA. *See, Treacy v. Newdunn*, 344 F.3d 407 (4th Cir., September 10, 2003); *United States v. Rapanos*, 339 F.3d 447 (6th Cir., August 5, 2003); *United States v. Deaton*, 332 F.3d 698 (4th Cir. June 12, 2003); *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001).

Finally, Corps' regulations, which were left intact by *SWANCC*, define "waters of the United States" as:

- (5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section [which identifies all waters used in foreign and interstate commerce and all waters subject to the ebb and flow of the tide, all interstate waters, all other waters which could affect interstate commerce, and all impoundments of waters otherwise defined as waters of the United States], ; . . .
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section [Subsection 6 identifies territorial seas as waters of the United States].

33 C.F.R. § 328.3 (5) and (7). These rules clearly require CWA regulation of the wetlands filled by Hinton.

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Hinton Development Corporation
Notice of Intent to Sue
December 15, 2003
Page 5

The CWA's citizen suit provision is designed to ensure CWA enforcement occurs when other means of enforcement have failed. The CWA citizen suit provision allows citizens to sue private or public entities that place dredged or fill material into wetlands without a permit. 33 U.S.C. § 1365(a)(1) (citizen may bring action against "any person" for violation of "an effluent standard or limitation under this chapter"); *Sun Enterprises v. Train*, 394 F. Supp. 211 (S.D.N.Y. 1975) (court has subject matter jurisdiction over claim that private entity discharged materials into waters of the United States without a § 404 permit even where the Corps has restrictively construed the term "navigable waters" more narrowly than the CWA requires). The continued presence of filled material in a navigable waterway constitutes an ongoing violation of the Act for as long as it remains there. *Sasser v. Administrator, EPA*, 990 F.2d 127, 129 (4th Cir. 1993) ("Each day the pollutant remains in the wetlands without a permit constitutes an additional day of violation.").

Under the CWA, citizens can seek and obtain financial penalties for violations of Section 404's prohibition on placement of dredge or fill material in navigable waters. 33 U.S.C. § 1365(a). The CWA provides that a court can order penalties of up to \$25,000 per day for each violation, after considering factors such as the economic benefit of the violation, the good faith efforts to comply, and the history of similar violations. *Id.* § 1319(d). Additionally, in cases where illegal filling of wetlands has occurred without a permit, the court may order restoration of such wetlands as a remedy for the CWA violation. See e.g. *Borden Ranch Partnership et al. v. United States Army Corps of Engineers*, Civ. S-97-0858 GEB JFM. Final Order (E.D. Ca. March 3, 2000).

Finally, the CWA provides that a court may order an award of litigation costs, including attorneys fees and expert witness fees, to a substantially prevailing party in a citizen suit. *Id.* § 1365(d).

Violations of Law

Hinton violated Sections 301 and 404 of the CWA when it placed dredged or fill materials into the wetlands at the Site without the requisite permits. As described above, these wetlands have a clear surface water hydrologic connection to navigable waters of the United States and are therefore plainly covered under the CWA. The continued presence of that unlawful fill material in these wetlands represents an ongoing violation of the CWA. Unfortunately, fault for this infraction lies as much with the Seattle District as it does with Hinton. Still, Hinton proceeded with dredge and fill activities after receiving a report from a hired expert that clearly articulated the wetlands' surface water connection to Curtin Creek and after warning was given from NWF that fill activities would result in a CWA violation and a citizen suit might ensue.

NWF has contacted the Seattle District on several occasions regarding this matter. The Seattle District to date has not indicated that it intends to revisit its decision. While indicating that the Seattle District made a mistake, a Seattle District official has verbally cited issues of "fairness" as justification for the Seattle District's refusal to assert jurisdiction over these

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Hinton Development Corporation
Notice of Intent to Sue
December 15, 2003
Page 6

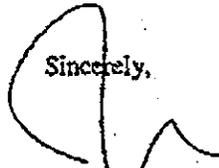
wetlands. The Seattle District also has not filed any civil or criminal action against Hinton nor has it indicated any intent to do so. This sixty day notice will give the Seattle District another opportunity to correct its course of action. NWF is also strongly considering filing an Administrative Procedure Act claim against the Seattle District for its arbitrary and capricious determination in this matter. Finally, as noted above, courts typically consider each day that unlawful fill material remains in a waterway to be a separate violation and thus Hinton has potentially accrued penalties for each day since dredge and fill operations commenced.

Conclusion

NWF signs this letter only after it became clear that neither the Seattle District nor Hinton had any intention of adhering to or properly applying the CWA for this activity. As it has stated repeatedly in private and in public, NWF is committed to ensuring that the CWA is enforced to the broad and proper limits of its jurisdiction. NWF also has been active in ensuring that areas key to salmon restoration, such as the Columbia tributary system, are not illegally compromised by development with improper safeguards and regulation. We believe that development can occur in a manner that preserves precious small headwater and wetland areas, complies with the CWA and allows for smart growth. NWF stands ready to set aside this litigation and work towards a cooperative solution that ensures proper CWA application in this instance. However, NWF is not prepared to let improper interpretations of SWANCC go unchecked. We believe that the best approach in this matter is ensuring that these wetlands receive CWA coverage and suitable mitigation and restoration occur. This is preferable to devoting scarce resources to litigation, and, possibly, extensive penalties and other liabilities. However, this choice is not ours.

If you have any questions or believe any of the foregoing is in error, or would like to discuss these matters further, please contact me at (202) 797-6893.

Sincerely,



James Murphy
Wetlands and Water Resources Counsel
National Wildlife Federation

cc: Michael Lamprecht, U.S. Army Corps of Engineers, Seattle District
Mark Hinton, Registered Agent for Hinton Development Corporation



NATIONAL
WILDLIFE
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NATIONAL WILDLIFE FEDERATION®

People and Nature: Our Future Is in the Balance

Office of Federal and International Affairs

December 18, 2003

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Michael Leavitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Les Brownlee
Acting Secretary of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

John Iani, Regional Administrator Region X U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Tom Fitzsimmons, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Notice of Intent to Sue: Clean Water Act Violations at the S.W. Intersection of N.E. Andersen Road and N.E. 88th Street in Clark County, WA.

Dear Administrator Leavitt and Acting Secretary Brownlee:

Pursuant to the citizen suit provision of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1365(b), the National Wildlife Federation, on behalf of itself and its members, ("NWF") hereby notifies the Secretary of the Army and the Administrator of the Environmental Protection Agency ("EPA") of a failure to perform a nondiscretionary act or duty under the

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 2

CWA, as described below. The failure to perform a nondiscretionary duty as described in this notice relates to the failure of the U.S. Army Corps of Engineers, Seattle District (the "Corps") to assert CWA jurisdiction over the dredging and filling of wetlands located at the S.W. Intersection of N.E. Andersen Road and N.E. 88th Street in Clark County, WA (the "Site") in or around September, October and November of 2003.

Background

This notice concerns activities by Hinton Development Corporation ("Hinton"), a for profit corporation incorporated in the State of Washington, to dredge and fill approximately 7.4 acres of wetlands that serve as the headwaters to Curtin Creek in southwest Washington State near Vancouver, Washington. This case concerns a critical question regarding the scope of the Clean Water Act in the wake of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* ("SWANCC"), 531 U.S. 159 (2001).

The Corps has a nondiscretionary duty under the CWA to regulate dredge and fill material placed in waters of the United States. 33 U.S.C. §1344. The EPA is authorized to block or override such regulatory decisions by the Corps. *Id.* § 1344(c). Despite this duty, the Corps failed to assert jurisdiction over a substantial portion of the approximately 8 acres of wetlands at the Site. In a letter dated July 20, 2001 to Richard Kramer at the Padden Center, the Corps erroneously stated that, "Wetlands A/B, D and E [at the Site] are isolated wetlands" and thus "a Department of the Army permit is not required in the isolated wetlands."

All of the wetlands at the Site that have been filled are waters of the United States and must be regulated by the Corps. 33 U.S.C. §§ 1344, 1362(7); 33 CFR § 328.3(5) and (7). These wetlands have a clear surface water connection to navigable waters of the United States. The wetlands are adjacent to an agricultural drainage ditch that flows into Curtin Creek. Curtin Creek flows into Salmon Creek, which eventually flows into the Columbia River. During many periods of the year, water can clearly be seen flowing from the wetlands, into the ditch, into Curtin Creek, and eventually into the Columbia River. The hydrologic connection that these wetlands have to Curtin Creek is confirmed by Hinton's expert. A report put forth by Cascadia Ecological Services, Inc. for the Site describes these wetlands as "flow[ing] to the southeast into a ditch that eventually outlets to Curtin Creek" and admits that the wetlands "contribute[] hydrologic support to Curtin Creek." Cascadia Ecological Services, Inc., *Functional Wetland Assessment Proposed Costco Wholesale Site*, prepared for Hinton Development Corporation, July 15, 2002, at 4. Despite this clear surface water connection between the wetlands and other waters of the United States, the Corps failed to exercise jurisdiction over the wetlands and the EPA has not acted to reverse the Corps' decision.

These wetlands are one of the last remaining wetlands and wildlife habitats in this fast developing region. The Site is largely comprised of Semiahoo muck and other soils identified as hydric by Clark County and an expert retained by Hinton. Map, *Soils, Padden Parkway, Phase 3*, Clark County Washington, May 25, 2000; Clark County Soil Survey (USDA 1974); Cascadia Ecological Services, Inc., *Wetland Delineation Report: Proposed Costco Wholesale Site*,

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 3

prepared for Hinton Development Corporation, May 17, 2002, at 4. In addition to serving as headwaters for Curtin Creek, the wetlands serve as habitat for a diverse array of wildlife including Columbia black-tailed deer, coyotes, raccoons, a host of waterfowl, swamp sparrow, red-winged blackbird, ring-necked pheasant, song sparrow, common flicker, dark-eyed junco and spotted towhee. Owls, red-tailed hawks and other raptors also use the area for hunting. Additionally, different species of amphibians and insects such as dragonflies inhabit the area.

Portions of Curtin Creek and Salmon Creek are home to juvenile steelhead trout and have historically had Coho salmon. Lower Columbia steelhead trout are listed as threatened under the Endangered Species Act ("ESA"). 63 Fed. Reg. 43952 (March 19, 1998). Additionally, both Curtin Creek and Salmon Creek are listed as impaired for salmonid spawning use because of temperature, flow alteration and habitat alteration due in part to urban runoff. Lower Columbia Steelhead Conservation Initiative Area 303d List and 305b Reports, Appendix 5, March 10, 1998, at 13 (available on the world wide web at <http://www.governor.wa.gov/gspro/lcsci/ap5.pdf>).

The wetlands also provide recharge for Curtin Creek and Salmon Creek, control flooding and provide nutrients and microorganisms that can serve as food for juvenile salmonids. The importance of these wetlands has been documented. Both Curtin Creek and Salmon Creek are "impaired" watersheds because they fail to meet state water quality standards. State of Washington, Final 1998 Section 303(d) List. Salmon Creek is impaired for temperature and turbidity, which is often associated with urban development. Given the recent development in the Curtin Creek watershed, it is quite possible that Curtin Creek, which is currently impaired due to fecal coliform, may also be listed as impaired for temperature, turbidity, sediment or other impairments attributable to urban development when the updated 303(d) list is compiled by the State of Washington. A recent report regarding Salmon Creek states that further loss of wetlands in the Curtin Creek and Salmon Creek watersheds will likely contribute to water quality degradation in Salmon Creek by removing ecologically important water detention and filtering systems. Washington State Department of Ecology, *Salmon Creek Watershed Bacteria and Turbidity Total Maximum Daily Load*, Submittal Report, January 2001, at 8. Additionally, the wetlands on the Site have been designated as "priority habitat and species area" by Clark County. Map, *Priority Habitat, Padden Parkway, Phase 3*, Clark County Washington, May 25, 2000.

In 2000, the Corps made a commitment to do everything in its power to restore and protect Columbia River basin habitat. Failing to uphold its basic responsibilities under the CWA completely contradicts and undermines this commitment. This failure also places these resources at further risk by potentially denying other regulatory agencies the ability to review the impacts that certain projects might have under the requirements of other law such as the ESA.

The Corps' failure to assert jurisdiction over these wetlands will allow this ecosystem to be turned into parking lots, a fueling station and retail space without CWA protection. This will likely increase flooding into Curtin Creek, decrease groundwater recharge, and increase the runoff of pollutants into the Curtin Creek watershed, further degrading Curtin Creek, Salmon Creek and ultimately the Columbia River. See Environmental Protection Agency, *Functions and Values of Wetlands*, March 2002. Impervious cover is one of the greatest causes of watershed

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 4

degradation. See EPA Website, *Stormwater Program: Overview* at (http://cfpub1.epa.gov/npdes/home.cfm?program_id=6) (site visited December 8, 2003). It is often the cumulative effect of activities that destroy small pieces of a great watershed's fabric that eventually ruin profound treasures like the Columbia. See EPA Website, *Watershed Academy Web: Watershed Ecology: The Natural System Concept* at (<http://www.epa.gov/owow/wtr1/watershed/wacademy/acad2000/ecology/ecology9.html>) (site visited December 8, 2003).

This issue was brought to the attention of NWF in August of 2003 by concerned local citizens who use and enjoy the Site and were troubled about its impending destruction. On September 12, 2003, prior to the commencement of any substantial dredge and fill activities at the Site, NWF sent a letter to the Corps expressing its concern over the potential dredge and fill activities proposed at the Site. NWF has not received any formal response from the Corps and a Corps official has verbally indicated that the Corps is unwilling to reverse its decision to leave these wetlands unprotected by the CWA.

Clean Water Act Overview

In 1972, Congress enacted the Federal Water Pollution Control Act, commonly known as the Clean Water Act, in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and "eliminate" the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a). In order to achieve this goal, the CWA prohibits the "discharge of any pollutant by any person" without compliance with the Act's permit procedures and other requirements. *Id.* § 1311(a).

The CWA places a nondiscretionary duty with the Corps to regulate dredging and filling of waters of the United States. 33 U.S.C. § 1344. To fulfill this duty, the Corps must make reasoned wetland determinations. *National Wildlife Federation v. Hanson*, 859 F.2d 313, 315 (4th Cir. 1988), citing, *Riverside Bayview Homes v. U.S. Army Corps of Engineers*, 474 U.S. 121, 138-139 (1987). EPA is charged with the authority to block or override permit decisions made by the Corps. 33 U.S.C. § 1344(c).

The scope of waters that the Corps is charged to regulate under the CWA is broad. The SWANCC decision narrowly ruled that an abandoned sand and gravel pit with no hydrologic connection to other waters and where the only grounds to assert federal jurisdiction was the pit's use by migratory birds was not covered under the CWA. However, the SWANCC decision explicitly upheld the Court's ruling in *Riverside Bayview Homes, supra*, which held that wetlands adjacent to other waters are covered under the CWA, and left intact the Court's ruling in *International Paper v. Ouellette*, where the Court stated that, "The [Clean Water] Act applies to ... virtually all bodies of water." 474 U.S. 481, 492 (1987).

Case law has left no doubt that SWANCC applies only to a narrow subset of waters where the only ground for asserting federal jurisdiction is the water's use by migratory birds. Cases in three circuits have held that wetlands which are adjacent to non-navigable tributaries, including

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 5

drains and ditches, of navigable waters, even if such drains or ditches are artificially constructed and intermittently flowing, are clearly within the jurisdiction of the CWA. *See, Treacy v. Newdunn*, 344 F.3d 407 (4th Cir., September 10, 2003); *United States v. Rapanos*, 339 F.3d 447 (6th Cir., August 5, 2003); *United States v. Deaton*, 332 F.3d 698 (4th Cir. June 12, 2003); *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001). The Corps must regulate dredge and fill activity in all such waters.

Finally, Corps' regulations, which were left intact by *SWANCC*, define "waters of the United States" as:

- (5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section [which identifies all waters used in foreign and interstate commerce and all waters subject to the ebb and flow of the tide, all interstate waters, all other waters which could affect interstate commerce, and all impoundments of waters otherwise defined as waters of the United States], ; . . .
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section [Subsection 6 identifies territorial seas as waters of the United States].

33 C.F.R. § 328.3 (5) and (7). These rules clearly require the Corps to regulate the wetlands filled by Hinton.

The CWA's citizen suit provision is designed, in part, to allow citizens to compel the EPA and the Corps to perform nondiscretionary duties under the CWA when they have failed to do so. The CWA citizen suit provision allows citizens to sue "the Administrator where there is alleged a failure of the Administrator to perform any act or duty under [the CWA] which is not discretionary with the Administrator." 33 U.S.C. § 1365(a)(2). While the Ninth Circuit Court of Appeals has not yet ruled on this issue, the Fourth Circuit Court of Appeals has clearly decided that Section 505(a)(2) of the CWA permits a citizen suit to be brought against the Corps where the Corps has failed to regulate dredging and filling of waters of the United States. *Hanson*, 859 F.2d at 316 ("Congress cannot have intended to allow citizens to challenge erroneous wetlands determinations when the EPA Administrator makes them but to prohibit such challenges when the Corps makes the determination and the EPA fails to exert its authority over the Corps' determination. Section 1365(a)(2) should be interpreted in conjunction with Civil Procedure Rule 20 (joinder) to allow citizens to sue the Administrator and join the Corps when the Corps abdicates its responsibility to make reasoned wetlands determinations and the Administrator fails to exercise the duty of oversight imposed by section 1344(c).")¹

¹ NWF is aware that a case in the Western District Court in Washington has rejected the ruling in *Hanson* and decided that Section 505(a)(2) of the CWA does allow for citizen suits to be brought against the Corps. *See Cascade Conservation League v. Segale*, 921 F.Supp. 692 (W.D. Wa. 1996). NWF asserts that the holding in *Cascade* is not a correct interpretation of Section 505(a)(2) and that the Fourth Circuit's holding in *Hanson* is the correct interpretation of this provision. Moreover, notwithstanding the decision in *Cascade*, this issue remains an open question in the Ninth Circuit.

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 6

Under the CWA, citizens may seek a court to order the Administrator or the Corps to perform a nondiscretionary act or duty, such as the regulation of dredge and fill activity in waters of the United States. 33 U.S.C. § 1365(a). The CWA also provides that a court may order an award of litigation costs, including attorneys fees and expert witness fees, to a substantially prevailing party in a citizen suit. *Id.* § 1365(d).

Failure to Perform a Nondiscretionary Duty

The Corps' failed to perform a nondiscretionary duty under the CWA when it declined to assert jurisdiction over the wetlands at the Site and regulate the dredge and fill activity conducted there by Hinton. As described above, these wetlands have a clear surface water hydrologic connection to navigable waters of the United States and are therefore plainly covered under the CWA. The failure of the Corps to regulate the dredging and filling of these wetlands constitutes a dereliction of the Corps' duties under Section 404 of the CWA. Moreover, the EPA failed to exert authority over this clearly erroneous decision by the Corps, leaving these wetlands unprotected. *See* 33 U.S.C. § 1344(c).

NWF has contacted the Corps on several occasions regarding this matter. The Corps to date has not indicated that it intends to revisit its decision. While indicating that the Corps made a mistake, a Corps official has verbally cited issues of "fairness" as justification for the Corps' refusal to assert jurisdiction over these wetlands. This is no excuse for failing to perform mandatory regulatory duties that are required by law. The Corps also has not filed any civil or criminal action against Hinton nor has it indicated any intent to do so. This sixty day notice will give the Corps another opportunity to correct its course of action.

In addition to this claim, NWF is also strongly considering filing an Administrative Procedure Act claim against the Corps for its arbitrary and capricious determination in this matter.

Conclusion

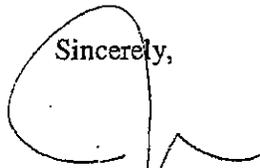
NWF signs this letter only after it became clear that the Corps did not have any intention of properly applying the CWA to this activity. As it has stated repeatedly in private and in public, NWF is committed to ensuring that the CWA is enforced to the broad and proper limits of its jurisdiction. NWF also has been active in ensuring that areas key to salmon restoration, such as the Columbia tributary system, are not illegally compromised by development with improper safeguards and regulation. We believe that development can occur in a manner that preserves precious small headwater and wetland areas, complies with the CWA and allows for smart growth. NWF stands ready to set aside this litigation and work towards a cooperative solution that ensures proper CWA application in this instance. However, NWF is not prepared to let improper interpretations of SWANCC go unchecked. We believe that the best approach in this matter is ensuring that these wetlands receive CWA coverage and suitable mitigation and

Secretary of the Army and Environmental Protection Agency
Notice of Intent to Sue
December 18, 2003
Page 7

restoration occur. This is preferable to devoting scarce resources to litigation, and, possibly, extensive penalties and other liabilities. However, this choice is not ours.

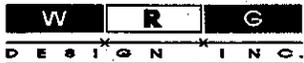
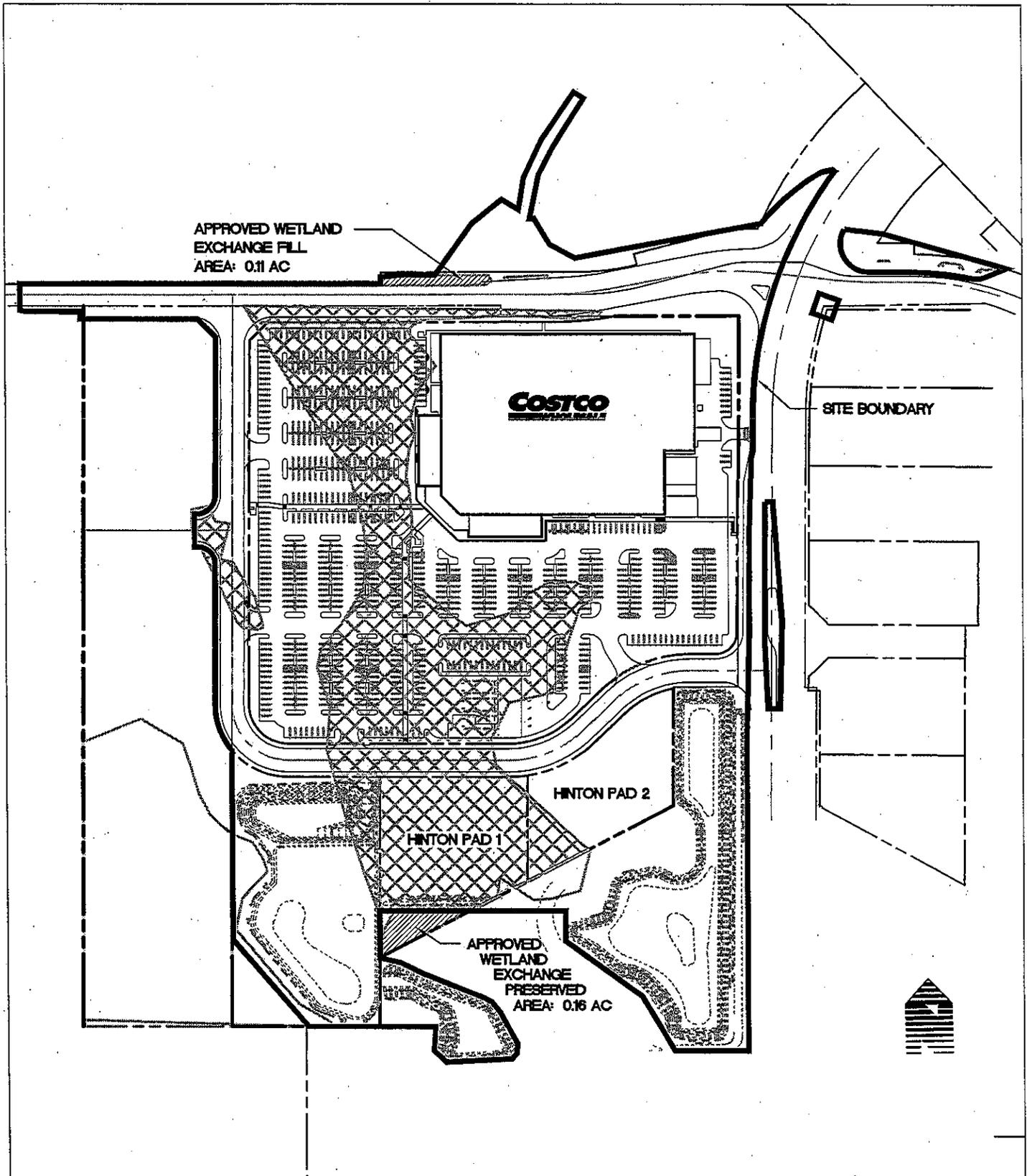
If you have any questions or believe any of the foregoing is in error, or would like to discuss these matters further, please contact me at (202) 797-6893.

Sincerely,



James Murphy
Wetlands and Water Resources Counsel
National Wildlife Federation

cc: Michael Lamprecht, U.S. Army Corps of Engineers, Seattle District
Mark Hinton, Hinton Development Corporation



5415 SW Westgate Dr, Ste 100 Portland, OR 97221
 Tel. 503.419.2500 Fax. 503.419.2600

PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS

EXHIBIT D
88TH AND ANDRESEN COSTCO

COSTCO WHOLESALE
CLARK COUNTY, WASHINGTON

PROJECT NO. COS2231.00

DATE: 03/23/04

BY: ELH

SHEET NO. 2 OF 2

EXHIBIT E



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

JUL 20 2001

Mr. Richard Kramer
Padden Center
Post Office Box 821045
Vancouver, Washington 98682

Reference: 2000-4-01090
Padden Center

Dear Mr. Kramer:

We have reviewed your project site, known as Padden Center, located along the south side of NE 88th Street and west of Andresen Road near Vancouver, Clark County, Washington. Wetlands A/B, D, and E are isolated wetlands. The recent Supreme Court ruling, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (January 9, 2001), determined that isolated wetlands, whose interstate commerce connection is based solely on migratory birds, are not jurisdictional under the Clean Water Act. Because the only interstate commerce connection is migratory birds, a Department of the Army permit is not required in the isolated wetlands shown on the enclosed drawings.

Wetland C is adjacent the Curtin Creek drainage system and is not isolated. Wetland C was part of the mitigation for your proposed project. The planting of trees and shrubs will not require a permit, however, if you propose to do any filling, grading, mechanized land clearing, or soil preparation work in wetland C, you should contact our office to determine permit requirements.

While work in the isolated wetlands may proceed without authorization from the U.S. Army Corps of Engineers (Corps), other local, State and Federal permits may still be necessary. Isolated wetlands are still regulated by the Washington State Department of Ecology. You should contact Ecology's Permit Assistance Center at 800-917-0043 or ecypac@scy.wa.gov for more information on how to obtain State approval for your project.

Isolated wetland jurisdiction is being determined on a case by case basis. Should you propose to do any work in other wetland areas, you should contact our office to

determine what permits may be required. If you have any questions concerning Corps' jurisdiction, please contact Mr. Ron Klump at telephone (360) 750-9046.

Sincerely,



Michael Lamprecht
Enforcement Section

Enclosure

Copy Furnished:

Jim Barnes
The Resource Company, Inc.
1014 W. Franklin Street
Vancouver, Washington 98660

cc:

Permit Assistance Center
ATTN: Isolated wetlands

Environmental Protection Agency

EXHIBIT F

DEPARTMENT OF ECOLOGY
CONSENT ORDER



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

May 9, 2003

HAND DELIVERED

Mr. Richard Kramer
Padden Center
PO Box 821045
Vancouver WA 98682

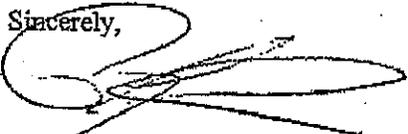
Dear Mr. Kramer:

RE: Order No. DE 03SEASR-5514 Administrative Order for placement of fill in 6.8 acres of wetlands for construction of a new Costco near Vancouver, Clark County, Washington.

The request for an administrative order for proposed work in wetlands in Vancouver County has been reviewed. The State of Washington has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other appropriate requirements of State law.

This approval is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Helen Pressley (360) 407-6926. Written comments can be sent to her at the Department of Ecology, PO Box 47775, Olympia, WA 98504-7775, or at e-mail hpre461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J Lund
Unit Manager
Shorelands and Environmental Assistance Program

PL:hp:dn
Enclosure

cc: Mr. Mark Hinton, Hinton Development Corp.
Mr. Jim Barnes, Cascadia Ecological Services
Brad Murphy, Wetland Resources
Yvonne Oliva, Ecology

DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY)
 Hinton Development Company)
 FOR AN ADMINISTRATIVE ORDER TO) ORDER NO. 03SEASR-5514
 CONDUCT WORK IN AN ISOLATED WETLAND)

To: Mr. Richard Kramer
 Padden Center
 PO Box 821045
 Vancouver WA 98682.

This is an Administrative Order requiring Richard Kramer to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

On January 21, 2003, Richard Kramer submitted a request to impact 6.8 acres of an isolated wetland to for the development of a commercial site in and adjacent to isolated wetlands in Clark County, Washington.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that Richard Kramer (the Applicant) shall comply with the following:

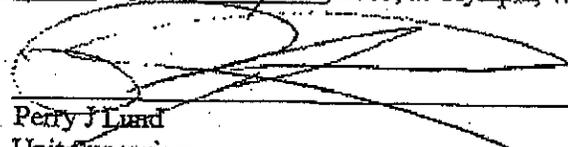
1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA dated January 16, 2003, or as otherwise approved by Ecology.
2. Project mitigation shall be constructed and maintained as described in "Addendum, Wetland/Habitat Mitigation Plan, Proposed Costco Wholesale Property, Clark County, Washington" dated March 23, 2003, by Cascadia Ecological Services and in the engineering drawings dated April 11, 2003.
3. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology.
4. This Order does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are

identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

This Order may be appealed. Your appeal must be filed with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903 within thirty (30) days of your receipt of this Order. At the same time, your appeal must also be served on the Department of Ecology, c/o The Enforcement Officer, P.O. Box 47600, Olympia, Washington 98504-7600; and on the Department of Ecology, SEA Program, Attn: PAC, P.O. Box 47600, Olympia, Washington 98504-7600. Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Chapter 43.21B RCW.

DATED this 9th day of MAY, 2003, at Olympia, Washington.



Perry J. Lund

Unit Supervisor

Shorelands and Environmental Assistance Program

**CLARK COUNTY WETLAND PERMIT
AND RELATED APPROVALS**



P.O. Box 9810
Vancouver, Wa
98666-9810
1408 Franklin Street
Phone: 360-397-2375

APPLICATION SUMMARY

Final Wetland Permit

FWP2003-00020

Status: **APR**
Entered By: **VLK**

Received: 8/11/2003

Decision: 10/6/2003

Final:

Prelim Approved Date:

Team: RURAL	Project Name: COSTCO WHOLESALE COMP PL	Project #: DEV2001-00469
Site Address: 6720 NE 84TH ST VAN 98665		Parcel #: 1061320000
Scope of Work: 1ACRE+	Review Type:	Cross Reference #: PSR2002-00075
		Work Order#: 76255

Sect/Twshp/Range: 06 / 2 / 21	School Imp Fee Dist:
Est. Parcel Area (Acre): 19.37	Transp Imp Fee Dist:
Est. Parcel Area (Sq. Ft.): 0.00	Park Imp Fee Dist:
	Transp Overlay Fee Dist:

Description: 6.8 acre wetland fill on project site to be mitigated off-site	First Line Legal: WRIGHT HD LOTS #2 LOT 9 #3 LOT 10 #29 19.37A
---	--

Applicant: JIM BARNES PO BOX 1502 BATTLE GROUND WA 98604	Owner: SIPERT BETTY
Phone: 360-687-5192	Phone:

Today's Activities:	Activity Date:	Assigned To:	Done By:	Notes:
1.) Print Application Summary	3/25/2004		BHD	Copy of approved permit

CONDITIONS:
 1.) COST RECOVERY OWING - DO NOT FINAL
 2.) COST RECOVERY FEES OWING \$144.94 FOR D REDLINE. DO NOT FINAL.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 2

Comp Plan Designation: General Commercial & Light Industrial

Zoning: CH & ML

Applicable Laws:

Clark County Code Chapters 12.05A (Transportation Standards); 12.41 (Concurrency); 13.08A (Sewer); 13.29 (Stormwater and Erosion Control); 13.36 (Wetlands); 13.40A (Water); 13.51 (Habitat); 13.70 (CARA); 15.12 (Fire); 18.65 (Impact Fees); 18.313 & 18.317 (CH & ML Districts); 18.402A (Site Plan Review); 18.600 (Procedures); Title 20 (SEPA)

Neighborhood Association/Contact:

Andresen/St. Johns, **Contact** – Deborah Hoffman, **Address** – 7318 NE 61st Avenue Vancouver, WA 98661, **Phone** – (360) 699-4043

Time Limits:

The application was submitted on October 4, 2002 and determined to be fully complete on October 25, 2002. The project had three hold periods. The first hold period (requested by the applicant) was from December 10, 2002 to January 9, 2003 for SEPA/wetland issues. The second hold period (requested by the applicant) was from December 16, 2002 to April 4, 2003 for flood storage/stormwater issues. The third hold period (requested by the applicant) was from May 6, 2003 to May 9, 2003 to discuss the final stormwater conditions. The County requirement for issuing a decision within 78 days lapses on May 9, 2003. The State requirement for issuing a decision within 120 calendar days lapses on June 20, 2003.

Vesting:

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference (PAC) is required, the application may earlier contingently vest on the date the fully complete PAC is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report.

The pre-application for the proposal qualified for contingent vesting and a fully complete application was filed within 180 calendar days from the issuance of the pre-application conference report. Therefore, the application is vested on the pre-application submittal date of August 13, 2002. The application vested for transportation concurrency on October 4, 2002.

Public Notice:

Notice of application was mailed to the applicant, the Neighborhood Association, property owners within 300 feet of the site, and agencies on November 8, 2002.

Public Comments:

Clark County has received many written public comments regarding the proposal. The majority of the comment letters were in favor, but some were in opposition of the

Staff Report & Determination
PSR2002-00075 (Costco)
Page 3

proposed Costco. Opposition letters from neighbors and other interested parties had concerns of the proposed wetland filling (habitat impacts) and increased traffic in the area. (see Findings 5, 6, 7 and 9 through 21 for discussion of these issues).

Project Description

The applicant proposes to construct a 148,665 square foot Costco club food store with a 5,200 square foot tire center and fuel station for members. The applicant has indicated in the project narrative that the approximate hours of operation would be 10:00 AM to 8:30 PM Monday through Friday, 9:30 AM to 6:00 PM Saturday, and 10:00 AM to 5:00 Sunday. Delivery hours would generally occur from 5:00 AM to 10:00 AM by appointment only. The submitted site plan identifies two future pad sites in the southern portion of the subject site.

There is a Priority Habitat area in the southern portion of the property and the applicant proposes to fill 6.8 acres of wetland on the site with off-site mitigation (see Findings 5, 6, and 7 for more information).

Major Issues and Analysis

Staff first analyzed the proposal in light of the 16 topics from the Environmental Checklist (see list below). The purpose of this analysis was to identify any potential adverse environmental impacts that may occur without the benefit of protection found within existing ordinances.

- | | |
|---------------------------------|--|
| 1. Earth | 9. Housing |
| 2. Air | 10. Aesthetics |
| 3. Water | 11. Light and Glare |
| 4. Plants | 12. Recreation |
| 5. Animals | 13. Historic and Cultural Preservation |
| 6. Energy and Natural Resources | 14. Transportation |
| 7. Environmental Health | 15. Public Services |
| 8. Land and Shoreline Use | 16. Utilities |

Then staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts will be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

LAND USE:

Finding 1 – Permitted Uses

Split zoning exists on the subject site. Tax Lots 2/9 and 29 (the eastern portion of the site) are located in the CH Zoning District and Tax Lot 3/10 (the western portion of the

Staff Report & Determination
PSR2002-00075 (Costco)
Page 4

site) is located in the ML Zoning District. Pursuant to Clark County Code Table 18.313.020 C2, a general retailer (100,000 – 200,000 square feet) is permitted outright in the CH Zone. Pursuant to MZR2002-00092 (Director's Review) the proposed Costco is allowed in the ML Zoning District as well. This decision requires the proposed fuel station to be located on the CH portion of the subject site.

Finding 2 – Boundary Line Adjustment

The subject site contains three separate tax lots. The applicant proposes to boundary line adjust these three tax lots into three different pad sites. During the fully complete review, staff determined that all three tax lots were legal lots of record. Therefore, the proposed boundary line adjustment can be completed in compliance with platting regulations.

Finding 3 – Site Plan

The applicant has submitted site and landscape plans to identify compliance with lot, setback, parking, landscaping, and other standards of CCC 18.402A. The following are comments regarding the site and landscape plans:

- a. There is a required 20-foot street side building setback along those portions of the site that are zoned ML and the first 10 feet must be landscaped pursuant to CCC 18.402A.050. The submitted plan does not identify any buildings in this setback area. The submitted plan does identify parking in the 20-foot setback area along the ML zoned portions of NE 88th Street and 84th Street. NE 88th Street and 84th Street are considered street sides so parking can occur as long as the first 10 feet is landscaped. The submitted plan only identifies an eight-foot landscape area along NE 84th Street. The 10-foot landscaped buffer width must extend along all road frontages of the subject site. The final site plan should clearly identify the required 10-foot landscaped buffer along all road frontages. (see Condition B-1)
- b. Standard parking spaces must be 20 feet in length with a 24 foot access aisle (vehicle backing area) unless there is an acceptable vehicle overhang or allowed compact spaces are proposed. Vehicles cannot overhang into required setback and buffer areas. It appears that the required parking dimensions are not met for parking rows along NE 64th Avenue and NE 88th Street as well as parking spaces in front of internal landscape islands. The final site plan should identify the required parking dimensions for parking rows along NE 64th Avenue and NE 88th Street as well as parking spaces in front of internal landscape islands (see Condition B-2).

Up to 30% of required parking spaces and all parking spaces in excess of minimum requirements may be compact spaces. The applicant has not identified any compact spaces.

- c. The applicant has done a great job of submitting a landscape plan that complies with the applicable landscape standards of the County Code. Staff notes that the applicant should be aware of any changes to the landscape plan that are needed due to site plan changes resulting from 3a or 3b above.
- d. Pursuant to CCC 18.402A.070 D, three queuing spaces are required for each gasoline pump station. In the pre-application, staff indicated to the applicant that

Staff Report & Determination
PSR2002-00075 (Costco)
Page 5

- three queuing spaces would be required on both sides (north and south) of the gasoline service islands. There is more than 108 feet of queuing area on the south side of the service islands, but an inadequate queuing area on the north side of the service islands. The applicant had indicated (in the November 15, 2002 letter from Alisa Pyszka from WRG) that Costco restricts all traffic one-way-in and one-way-out of the pump stations primarily with a gasoline manager. This manager (employed by Costco) monitors traffic flows and ensures proper positioning of vehicles. Staff finds that with the design of the fueling facility and the gasoline manager, the plan complies with the queuing provisions of CCC 18.402A.070 D. A note on the final site plan is warranted that refers to the continued use of the gasoline manager (see Condition B-3)
- e. The applicant needs to clearly identify the location and the required amount of solid waste and recyclable storage area pursuant to CCC 18.402A.080. Also, solid waste and recycling storage needs to be screened to an F2 standard. The final site/landscape plans should identify the location and the required amount of solid waste and recyclable storage area as well as the required screening for the solid waste and recycling storage. (see Condition B-4)
- f. If the pedestrian route of travel crosses vehicle maneuvering, a crosswalk is required. The standard requires striping as well a different paving type, elevation change, or other acceptable method of the notifying drivers of a crosswalk pursuant to CCC 18.402A.070. The submitted plan identifies a different paving type (concrete), but does not identify the required striping. The final site plan should identify the required striping in addition to the proposed concrete for pedestrian crosswalk (see Condition B-5).
- g. The applicant has provided a site lighting plan which appears to show that lighting from the site will not impact the surrounding area. The applicant should ensure that lighting from the proposed development does not cast significant light or glare off-site on adjacent properties or public roadways. (see Condition E-2)

Finding 4

For all proposed advertisement signs, the applicant shall make application for a separate sign permit site. (see Condition E-3)

HABITAT:

Finding 5

There is a Priority Habitat area on approximately the southern half of the property. The area in question is mapped by the Washington Department of Fish and Wildlife (WDF&W) as a Priority Habitat area (Padden wetlands). Wetlands are a statewide priority for conservation because they contain comparatively high fish and wildlife density and species diversity, are limited in their extent, and are highly vulnerable to habitat alteration. This particular wetland is jurisdictional under both the Habitat Conservation Ordinance (HCO) and the Wetlands Protection Ordinance (WPO).

The applicant proposes reductions in the wetland area on the site. Said reductions are to be mitigated at a pre-determined off-site location. The off-site mitigation is within the same watershed (Curtin Creek watershed) and will seek to restore historic habitat and

Staff Report & Determination
PSR2002-00075 (Costco)
Page 6

hydrological complexity within a sizeable portion of the Curtin Creek watershed. The mitigation involves re-meandering sections of the creek, restoring floodplain and off-channel wetland hydrological connectivity, and planting the area with numerous native trees and shrubs.

The applicant has submitted a conceptual mitigation design in order to comply with CCC Chapter 13.51, the HCO, as well as CCC Chapter 13.36, the WPO. In this case, the standards of the WPO take precedence over the HCO in both avoidance criteria and mitigation. Therefore, the mitigation required under the WPO is more than adequate to cover the standards of the HCO. The applicant's intent is to finalize the mitigation design and permitting prior to Final Wetlands Permit approval. Staff finds that the proposed project and off-site mitigation complies the CCC Chapter 13.51, the Habitat Conservation Ordinance (HCO), provided Condition B-6 is implemented.

WETLANDS:

Finding 6

Wetland and Habitat impacts for the Costco Wholesale project have been reviewed under a separate Wetland and Habitat Permit because the property owner has proposed additional wetland and habitat impacts that are not required for the construction of the Costco project. Refer to the Staff Reports for WET2002-00026 and HAB 2002-00158 and SEP2003-00010 for analysis of the proposed wetland and habitat impacts and mitigation.

Compliance with CCC 13.36, CCC 13.51 and the SEPA Determination for the proposed off-site wetland mitigation will ensure that the project has no significant environmental impacts to wetlands and habitat conservation areas (see SEPA Determination below).

Finding 7

All Wetland and Habitat issues are addressed in the combined Wetland and Habitat Permit issued to Hinton Development Corporation. 6.8 acres of wetland fill and 13.1 acres of off-site wetland mitigation is proposed. Conditions A-1 through A-4 of that decision must be met prior to final site plan approval (see Conditions B-7 and B-8).

ARCHAEOLOGICAL PREDETERMINATION:

Finding 8

The proposal is located within a high probability area for containing cultural resources. The applicant has submitted an archaeological assessment for the site which found no cultural items on the site. The County Archaeologist has reviewed the assessment and recommends that no further action is needed. If any cultural resources are discovered in the course of development construction, the Office of Archaeology and Historic Preservation in Olympia and Heritage Trust of Clark County should be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines (see Condition E-11).

TRANSPORTATION CONCURRENCY:

Finding 9 - Concurrency

County concurrency staff has reviewed the proposed Costco Wholesale, which consists of a 148,665 SF wholesale store and a gas station with 16 fueling positions. The

Staff Report & Determination
PSR2002-00075 (Costco)
Page 7

applicant's traffic study has estimated the weekday PM peak hour trip generation at 465 new trips and 60 diverted trips.

The applicant submitted a traffic study for this proposal in accordance with CCC 12.41.050(A) and is required to meet the standards established in CCC 12.41.080 for corridors and intersections of regional significance. The County's Traffix™ model includes the intersections of regional significance in the area and the County's model was used to evaluate concurrency compliance.

Finding 10 - Site Access

Level of Service (LOS) standards are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at the site accesses to the arterial and collector network. The proposed NE 64th Avenue and NE 84th Street have several driveway accesses. These accesses appear to maintain acceptable LOS with the proposed center left-turn lanes. Movements at the northerly access onto NE 64th Street may be restricted in the future as traffic levels increase, to ensure acceptable operation of the NE 88th Street/NE 64th Avenue intersection. The applicant is advised that turning movements may be restricted along a public roadway for safety and operational reasons at any time.

Finding 11 - Operating LOS at Non-modeled Intersections

The proposed development was subject to concurrency analysis for intersections of regional significance within the County, not contained within the concurrency models. The study reports acceptable operating levels for the following County intersections:

- NE 72nd Avenue/NE 58th Street
- NE 25th Avenue/NE 88th Street
- NE 13th Avenue/NE 88th Street

Finding 12 - Operating LOS designated Corridors

The proposed development was subject to concurrency modeling. The modeling results indicate that the operating levels comply with travel speed and delay standards with the inclusion of the volunteered mitigation as it appears in concept in the February 20, 2003 letter from Kittelson & Associates, INC with attached improvement plan. Key to the modeling analysis is the conversion of the split phasing of the signal timing at NE 88th Street/NE Andresen intersection to protected phasing and an eastbound right-turn overlap phase. The mitigation should be included as a condition of approval. (See Condition D-2, D-4, and D-8)

The applicant should reimburse the County for costs incurred in running the concurrency model. (See condition B-9)

The Salmon Creek Avenue corridor is operating below the adopted standard; therefore, any additional trips to the corridor would require mitigation. Since the Salmon Creek corridor is impacted by trips from Costco, mitigation is required to recommend approval under concurrency. The applicant has volunteered to install a new northbound right turn lane, including associated modifications to the traffic signal system, on NE 20th Avenue at NE 134th Street. This will allow the south leg of the intersection to operate with a northbound left turn lane, two through lanes, and a separate right turn lane. This mitigation

Staff Report & Determination
PSR2002-00075 (Costco)
Page 8

measure is acceptable to the County and mitigates the impact from the proposal such that the mitigation complies with CCC 12.41.060(E). (See condition D-5)

Concurrency Compliance

The proposed development complies with the Concurrency Ordinance CCC 12.41 subject to the mitigation situation described above.

Finding 13 - Safety

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- accident analysis, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 12.05.230. This ordinance states that "nothing in this chapter shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Chapter 12.41 CCC or a *significant* traffic or safety hazard *would be caused or materially aggravated* by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020."

Finding 14 - Traffic Signal Warrants

Traffic Signal Warrants are evaluated at unsignalized intersections to determine if a signal is needed. Traffic signal warrants are met for the intersection of NE 88th Street/NE 64th Avenue. The applicant has volunteered to install a signal at this location. (see Condition D-3)

Signal warrants are not met at any of the remaining subject intersections analyzed in the applicant's traffic study.

Finding 15 - Turn Lane Warrants and Queuing

Turn lane warrants are evaluated to determine if a separate left or right-turn lane is needed on the uncontrolled roadways and at intersections. The traffic study also includes analyses at subject intersections to determine if turn-lane storage is adequate to accommodate the 95th percentile vehicle queues.

The applicant's traffic study proposes a northbound left-turn lane at the NE 84th Street/Andresen Road intersection (proposed). The eastbound left-out movement would be prohibited at this location. The northbound left turn movement was evaluated with existing traffic volumes and existing geometry at the NE 88th Street/NE Andresen intersection. The analysis indicated that the left turn would function adequately in the near-term. However, with the proposed eastbound right turn lane at the NE 88th Street/NE Andresen intersection and background growth, the left turn movement would have considerable delay and queues that extend into northbound through traffic on Andresen or into the southbound left turn lanes at the Padden Parkway/NE Andresen intersection. Traffic modeling indicates that this movement may not operate safely and

Staff Report & Determination
PSR2002-00075 (Costco)
Page 9

effectively in future years. The conclusion is that the northbound left-turn at NE 84th Street/NE Andresen intersection may work in the short term, however this movement will likely be restricted in the future as traffic levels increase. As a result, Clark County retains the right to eliminate this northbound left-turning movement at any time in the future if the movement is adversely impacting traffic operations or safety on Andresen Road/Padden Parkway/NE 88th Street. (see Condition D-6)

Due to the potential for near-term elimination of the northbound left-turn movement at NE 84th Street/NE Andresen intersection, the applicant was required to account for the impact of the diversion of trips to the NE 88th Street/NE Andresen intersection. Analysis shows lane improvements are required at NE 88th Street/NE Andresen intersection. The northbound left-turn bay at the intersection of NE 88th Street/NE Andresen will exceed existing storage capacity substantially with the additional traffic from the proposed development. The intersection meets conditions for an additional northbound left-turn lane and for extension of the existing lane storage. The applicant shall provide these improvements. As a result, the west leg of the NE 88th Street/ NE Andresen intersection requires two westbound receiving lanes. An eastbound right turn lane is also warranted at the intersection. The applicant has volunteered to make these improvements. (see condition D-2 and D-15).

There are storage deficiencies at the Padden Parkway/NE Andresen intersection. Southbound left-turn vehicles will block the southbound through traffic when storage capacity is exceeded at this location. This situation impacts the safety and operation of the Padden Parkway/ NE Andresen intersection. The applicant shall be required to extend the left-turn bays to provide 400 feet vehicle storage for each lane. (see condition D-9).

The intersection of NE 88th Street/NE 64th Avenue meets conditions for a westbound left turn lane. A single lane of at least 250 feet of vehicle storage space can accommodate the queues. An eastbound right turn lane is also required. The applicant has volunteered to install these turn lanes. (see condition D-3)

Upon completion in late summer of 2003 of the west extension of Padden Parkway, the westbound approach to the NE Andresen Road/Padden Parkway intersection will be striped to provide two left-turn lanes, two through lanes and one right-turn lane. The proposed development requires an additional right turn lane at the intersection to accommodate the increase in traffic. The applicant has volunteered to provide this improvement and it should be a condition of approval. (see condition D-7)

The applicant has volunteered to provide a southbound right-turn lane on NE Andresen Road at NE 84th Street. Staff does not object to this improvement. To comply with the mitigation requirements, the applicant shall submit engineering plans to document the lane improvements and all related features, prior to final building permits. (see Condition C-1)

Staff Report & Determination
PSR2002-00075 (Costco)
Page 10

The costs for engineering plan review and construction inspection for roadway safety and capacity improvements associated with this project approval shall be borne by the applicant. The Applicant shall enter into a reimbursable work order with the Department of Community Development for payment of these costs at the time of final engineering plan approval. (see Condition C-2)

In addition, the applicant shall submit a signing and striping plan and a reimbursable work order, authorizing County Road Operations to perform the required work. The Department of Public Works must approve this reimbursable work order prior to final site plan approval. (see Condition C-3)

Finding 16 - Historical Accident Situation

The applicant's traffic study analyzed the accident history at regionally significant intersections; however, all of the historical accident rates at these intersections are below 1.0 accidents per million entering vehicles. Therefore, mitigation by the applicant is not required.

CITY OF VANCOUVER TRANSPORTATION CONCURRENCY:

Finding 17 - City Concurrence

As part of the inter-local government agreement signed with the County on July 21, 1998, the City of Vancouver Concurrence staff has reviewed the proposed Costco Wholesale, which consists of a 148,665 SF wholesale store and a gas station with 16 fueling positions. The applicant's traffic study has estimated the weekday PM peak hour trip generation at 465 trips classified as primary trips.

The applicant submitted a traffic study for this proposal in compliance with the interlocal agreement and the City's VMC 119.5 and VMC 11.90. The project is required to meet the standards established in the interlocal agreement, VMC 119.5 and VMC 11.90 for corridors and intersections of regional significance.

Finding 18 - NE 49th Street/NE 112th Avenue Intersection

Based on the City's records, the intersection has failing critical movements. The proposed development will add approximately 30 PM peak trips to the intersection. The intersection of NE 112th Avenue & NE 49th Street's improvement is listed in the City's Six Year Transportation Improvement Plans (6-Year TIP) as a not funded project. Based on the estimated proportionate share calculation, the development's portion of cost contribution to meet the RCW 82.02.020 is \$6,000.00.

Conclusion: Based on the submitted information and the City's records of the intersection of NE 112th Avenue & NE 49th Street, it does not have the capacity to accommodate the additional trips from the new development. To meet the City's VMC 11.90.020 and RCW 82.02.020 requirements the applicant should pay their proportionate share toward mitigation for the intersection. Therefore, the applicant's proportionate share is \$6,000.00 based on the preliminary cost estimate of \$200.00/PM peak trip prior to the issuance of occupancy permit. (see Condition D-10)

Staff Report & Determination
PSR2002-00075 (Costco)
Page 11

Finding 19 – NE 40th Street/NE Andresen Road Intersection

Based on the City's records and the submitted information by the applicant, the intersection has failing critical movements. The proposed development will add approximately 70 PM peak trips to the intersection.

The intersection of NE 40th Street/NE Andresen Road improvement is listed in the City's Six-Year Transportation Improvement Plans (6-Year TIP) as a not funded project. To meet the RCW 82.02.020 guidelines the applicant would be required to pay their proportionate share toward the intersection improvements

Conclusion: Based on the submitted information and City's records of the intersection of NE 40th Street/NE Andresen Road the intersection does not have the capacity to accommodate the additional trips from the new development. To meet the City's VMC 11.90.020 and RCW 82.02.020 requirements the applicant should pay their proportionate share toward mitigation for the intersection. The City has calculated the project's proportionate share for the NE 40th Street/NE Andresen Road intersection to be \$14,000.00 (based on the \$200/PM peak trip - 70 PM *\$200/PM = \$14,000.00). See Condition D-11

Finding 20 - Modeling Reimbursement

The City will incur a modeling expense for evaluating the impact of the proposed development on the transportation corridors. This expense should be reimbursed to the County. The following are the operational model corridors impacted by the development and appropriate fees based on the submitted trip distribution - The fee is based on the \$30.00/PM peak entering the corridor (see Condition B-10):

- Fourth Plain Corridor Concurrency Model fee is \$420.00
- 112th Avenue Corridor Concurrency Model fee is \$700.00

Finding 21 - Development Inspection for off-site improvements

The City incurs additional inspection costs for mitigation required for off-site improvements. The applicant should be required to reimburse the City's costs for the inspections for these off-site improvements.

Conclusion

Upon review of the traffic impacts and the mitigation volunteered by the applicant, the proposed development complies with the City Concurrency VMC 11.95 and traffic impact per VMC 11.90.

TRANSPORTATION:

Finding 22 - Circulation Plan

NE Andresen road abutting the development on the east and NE 88th Street abutting the property on the north are the primary north-south and east-west circulation roads in the area. Extension of NE 84th Street and NE 64th Avenue through the site in compliance with the adopted 'NE 88th Street Neighborhood Circulation Plan' will provide for circulation within the site and connectivity with the existing roadway system in the vicinity of the proposed development. The westerly extension of an east-west circulator road through the adjacent property to the west (Parcel #106128-000) is proposed with

Staff Report & Determination
PSR2002-00075 (Costco)
Page 12

the approved short plat (PLD2002-00034). Therefore, the proposed roadway extensions and the existing roadway system provide adequate cross-circulation in compliance with Section CCC 12.05A.110.

Finding 23 - Roads

NE Andresen Road, abutting the proposed development on the east, is classified as a 4-lane primary arterial road with center-turn lane and bike lanes (Pr-4cb). The minimum frontage improvements along this road in accordance with CCC12.05A, Standard Drawing #4, include:

- A minimum half-width right of way of 50 feet
- A minimum partial-width roadway of 35 feet
- Curb/gutter, Landscaping, and minimum detached sidewalk width of 6 feet

NE 88th Street, abutting the proposed development on the north, is classified as a 2-lane collector road with center-turn lane and bike lanes (C-2cb). The minimum frontage improvements along this road in accordance with CCC12.05A, Standard Drawing #11, include:

- A minimum half-width right of way of 35 feet
- A minimum partial-width roadway of 23 feet
- Curb/gutter, Landscaping, and minimum detached sidewalk width of 6 feet

NE 84th Street to be extended through the project, is proposed as a primary urban industrial road. The minimum improvements along this road in accordance with CCC12.05A, Standard Drawing #21, include:

- A minimum right of way of 60 feet
- A minimum roadway of 42 feet
- Curb/gutter and minimum sidewalk width of 6 feet

NE 64th Avenue to be extended through the project, is proposed as a primary urban industrial road. The minimum frontage improvements along this road in accordance with CCC12.05A, Standard Drawing #21 and the provisions of Section CCC12.05A.620 (3), include:

- A minimum half-width right-of-way of 30 feet
- A minimum partial-width roadway of 32 feet (See Section CCC12.05A.620(3))
- Curb/gutter and minimum sidewalk width of 6 feet

The project proposes to construct full improvements along NE 64th Avenue. Staff understands that an agreement for the dedication of the required ROW and improvements are worked out with the owner(s) of the property to the west (Parcel #106128-000). The applicant shall submit documents to show that the proposed improvements within the adjacent parcel will be permitted by the owner of this property. (see Condition A-1)

Public Works Concurrency staff, based on the review of the traffic analysis, has concluded that additional turn-lanes will be required along NE Andresen road, NE 88th Street, NE 84th Street, and NE 64th Avenue; and at the intersections of these roads.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 13

The applicant shall dedicate the required right-of-way (ROW) and frontage improvements as approved by Clark County Public Works Staff. (see Finding 15)

Finding 24 - Access

The project proposes to access the store, fueling station, and the parking lot from NE 84th Street and NE 64th Avenue via five access driveways. The project shall construct these driveway approaches in accordance with the Transportation Standard Drawing #38, CCC12.05A. (see Condition A-2)

Finding 25 - Intersection Design

The proposed public road intersections shall be designed in accordance with Section CCC 12.05A.240. The design and construction of the required intersection improvements shall be approved by Clark County Engineering Services and Public Works Staff. (see Finding 15)

In accordance with CCC Table CCC12.05A.120-1, the minimum curb-return radii of 45 feet and minimum ROW radius chords of 25 feet for the intersections of NE 84th Street/NE Andresen Avenue and NE 64th Avenue/NE 88th Street will be required. The proposed curb return radii(s) at the intersections of NE 84th Street/Andresen Road and NE 64th Avenue/NE 88th Street shall be designed to facilitate truck-turning movements. (see Condition A-3)

Finding 26 - Sight Distances

Prior to final site plan approval, the applicant shall submit evidence (verified by a licensed engineer in the State of Washington) that the sight distance triangles for all the access points and all intersections, the intersection of NE 84th Street/NE 64th Avenue in particular, comply with the provisions of Section CCC12.05A.250. The sight distances shall remain unobstructed after completion of the project. (see Condition B-11)

Finding 27 - Pedestrian/Bicycle Circulation

Pedestrian circulation facilities in compliance with the Americans with Disabilities Act are required in accordance with Section CCC 12.05A.400. The development plans show the proposed sidewalks along NE Andresen Road, NE 84th Street, NE 88th Street, and NE 64th Avenue. The site plan shows internal pedestrian circulation and crosswalks as required. Improvements along NE Andresen Road and NE 88th Street will allow for installation of bike lanes. Therefore, the proposed pedestrian/bicycle circulation can comply with the provisions of Section CCC 12.05A.400. (see Finding 28)

Finding 28 - Road Modification

a. **Approval Criterion** - If the development cannot comply with the Transportation Standards, modifications may be granted in accordance with the procedures and conditions set out in CCC 12.05A.660. The request shall meet one (or more) of four specific criteria described in Section CCC 12.05A.660. The narrative submitted with the road modification indicates the request complies with the CCC12.05A.660 (1)(a)(iii):

- *An alternative design is proposed which will provide a plan equal to or superior to these standards.*

Staff Report & Determination
PSR2002-00075 (Costco)
Page 14

b. **Modification Requests** - The applicant has requested the following road modifications:

- Approval of a 100-foot centerline radius for the intersection of NE 84th Street and NE 64th Avenue in lieu of the required radius for the primary industrial roads in compliance with CCC Table 12.05A.120-5.
- Approval of 25-foot curb-return radii at the intersections of the driveways along NE 84th Street and NE 64th Avenue.

c. **Applicant's comments** - "Providing a 100-foot radius at the NE 64th Avenue/NE 84th Street intersection will allow the county to retain the option of extending NE 64th Avenue (to the south) in the future. Furthermore, the proposed NE 84th Street will most likely serve as access road to adjacent property in foreseeable future. The road will operate at low speed (25 MPH) with 200-foot centerline radius. Hence, the proposed 100-foot radius at NE 64th Avenue/NE 84th Street intersection is consistent with the anticipated operational characteristics and provides efficient and safe operation of the facility. The truck turn model (WB67) included in Exhibit B demonstrates the safe operation of the intersection per County standards. For these reasons, we recommend that County grant roadway modification for the proposed alignment."

"To enhance the pedestrian friendly character of the proposed site plan while also providing safe and efficient vehicular access, Costco is proposing a 25-foot driveway approach radius as an alternative standard."

d. **Staff's Evaluation** - In accordance with CCC Table 12.05A.120-5, a minimum centerline radius of 575 feet is required for "Primary Industrial" roadways. The proposed extension of NE 84th Street complies with the "NE 88th Street Neighborhood Circulation Plan". Connecting NE 84th Street and NE 64th Avenue is consistent with the provisions of the circulation plan, Section CCC12.05A.110. However, further extension of this roadway to the west of Costco site in the proposed location is not feasible due to the existing wetlands to the west. The applicant has provided information that indicates the proposed 100-foot centerline radius is adequate for the truck-turning radius. Staff finds that NE 84th Street and NE 64th Avenue will operate at a low speed since the primary functions of these roads are to provide access to Costco site and the industrial development within the parcel to the west. Due to the required alignment, and the anticipated travel speed of 25 mph, the proposed facility can accommodate a smaller radius at a certain super-elevation. The applicant has submitted a schematic showing that the trucks can safely make their turns around the 100-foot radius horizontal curve. Therefore, staff concludes that the proposed centerline radius will be adequate if the sight distance and room for safe truck turning radius are available.

Staff does not agree with the applicant that the proposed design for the driveway approaches is equal or superior to the County standard driveway approach Type 3 as shown in the Transportation Standard Drawing #38. The County standard driveway approach will provide additional safety for the pedestrians, it is ADA compliant, and provides a clear separation between the private driveway and the public street. (see Finding 23)

Staff Report & Determination
PSR2002-00075 (Costco)
Page 15

- e. **Staff Recommendations** - Based on the findings and the provisions of the Transportation Standards, staff recommends **Approval** of the first requested modification since the criterion as described in Section CCC 12.05A.660(1)(a)(iii) is met. Staff recommends **Denial** of the second requested modification because it does not meet the criterion described in Section CCC 12.05A.660(1)(a)(iii).

The Engineering Services Team Leader, with the delegated authority from the County Engineer, has accepted the staff's recommendations.

Conclusion:

Based upon the findings, development site characteristics, the proposed transportation plan, and the requirements of the County's transportation standards, staff concludes that the proposed preliminary development plan is feasible, subject to conditions.

STORMWATER:

Finding 29 - Applicability

Stormwater and Erosion Control Ordinance CCC 13.29, adopted July 28, 2000, applies to development activities that result in 2,000 square feet or more of new impervious area within the urban area and all land disturbing activities, except those exempted in Section 13.29.210.

The project will create more than 2,000 square feet of new impervious surface and it is a land disturbing activity not exempted in section 13.29.210. Therefore, this development shall comply with the stormwater quality and quantity control requirements of Stormwater and Erosion Control Ordinance, CCC 13.29.

Finding 30 - Stormwater Proposal

In compliance with CCC13.29.305 (A)(2), the stormwater quality control facility shall provide for treatment of 70% of the runoff from the pollution-generating surfaces within the site and the offsite area draining to the site. In accordance with CCC13.29.310 (C)(4), to achieve quantity control, the detention system shall be sized to detain and release runoff at the rates equal to half of the pre-developed 2-year storm peak runoff rate; and not exceeding 10-year and the 100-year pre-developed peak runoff rates.

The project proposes two alternate designs for stormwater facilities in order to mitigate the flood storage lost because of the proposed fill within the site.

Alternate 'A'

The project proposes an onsite wet pond to provide water quantity and quality control for the stormwater runoff from the impervious surfaces created by the project. As indicated in the preliminary stormwater report, a portion of the proposed detention pond volume will be excavated below the orifice to act as pre-settling basin and permanent pool. In addition, onsite facilities consisting of two onsite "extended detention galleries" will be constructed to route all of the roof drainage into these facilities. The alternate 'A' stormwater facilities are to be privately owned and maintained by the Costco Wholesale.

Alternate 'B' proposes to create a regional flood storage/detention facility that utilizes the natural features of the existing wetland within the drainage basin. This option would provide storage attenuation of the proposed Costco site as shown on the Exhibit FS2.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 16

The new ponding area consists of creating an earth berm up to an elevation of 258 feet that would provide an additional 9.6 acre-feet of storage within the existing wetlands. Water quality control will be achieved within an onsite facility. The alternate 'B' stormwater facilities are to be privately owned and maintained by the Costco Wholesale. The maintenance of the flood storage area is proposed to be the responsibility of the individual property owners as a condition within the easement documents. The proposed control structure is proposed to be maintained by the County. As indicated in a report submitted by the applicant on March 21, 2003, the proposed option 'B' will require agreements from the impacted property owners including the County. (see Condition A-4)

The report indicates that in addition to construction of the facilities, a separate storm drain improvement plan will be prepared to address the flood storage capacity within the Curtin Creek drainage channel. Furthermore, in order to manage the release rates and maintain wetland hydrology benefits, a control structure at the entrance to the existing 36-inch culvert crossing under Andresen Road will be constructed and the Curtin Creek drainage channel downstream from the site will be improved. (see Finding 31)

Engineering Services staff finds that a regional stormwater facility proposed as the alternate plan 'B' will best serve this project, the County NE 88th Street improvement project, and several other developments near the Costco site. However, construction of a regional facility involves several undetermined factors. The applicant's consultant has indicated that the project is on a fast track and they would like construction to begin as soon as possible. Obtaining the required permits from the approval authorities, other than Clark County, and establishing easement agreements consented by the other property owners may be a time consuming process. Therefore, the applicant should consider this in their development plans.

Finding 31 - Site Conditions and Stormwater Issues:

The site (with slopes of 0% to 5%) contains open field, grass, shrubs, trees, and existing buildings. Portions of the site are within wetland and priority habitat buffer areas. The amount of proposed impervious surface areas created by the development site and the frontage improvements within the 21.35-acre development site will be approximately 16.97 acres.

The stormwater runoff from the offsite contributory areas consisting of 4 acres of impervious surface within 50- acres total site area will be bypassed through a proposed 36-inch culvert that extends from NE 84th Street on the north to the wetland on the south of the proposed site. The project proposes a 15-foot wide storm easement. In accordance with the provisions of Section CCC13.29 (D)(12)(a), a minimum easement width of 20 feet shall be provided for this conveyance system. (see Condition B-12)

The preliminary stormwater report indicates that with alternate 'A', the net impact 0.72-inch rise in the 100-year, 24-hour storm event peak water level and the storm discharge from the onsite detention facility will increase the surrounding water elevation by 0.36 inches. The applicant argues that the impact to the area's flood storage capacity or conveyance capacity is negligible within the drainage basin's 329 acres. In accordance with the provisions of Section CCC 13.29.310(A)(7), no development within an urban

Staff Report & Determination
PSR2002-00075 (Costco)
Page 17

growth area shall be allowed to materially increase or concentrate stormwater runoff onto an adjacent property or block drainage from adjacent lots. Therefore, the proposed stormwater facilities shall be sized to produce no-net increase in 100-year, 24-hour storm event peak water level within the flood storage area and no adverse impacts on the upstream or downstream of the proposed development. (see Condition A-5)

USDA, SCS mapping shows the site to be underlain by Hillsboro and Semiahmoo soils (consisting of 41% H1B and 59% Sr), CCC 13.29, does not list these soils as suitable for infiltration. The project may not consider infiltration in sizing the proposed "Extended Detention Galleries", unless further evidence is shown that some infiltration within the site is possible. (see Condition A-6)

If stormwater alternate plan 'B' is pursued, prior to approval of the engineering plans the applicant shall secure all the necessary easements from the affected property owners and obtain the required permits from the involved jurisdictions. (see Condition A-7)

In accordance with CCC Section 13.29.305 (G), installation of API or CSP type oil/water separators for the proposed fueling station and SC type oil/water separators for the food preparation function will be required to ensure that the potential leaks are prevented from contaminating the groundwater. Contaminated runoff shall be first directed to oil/water separators prior to water quality treatment, detention, and discharge. (see Condition A-8)

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in 13.29.200. This project is subject to the erosion control ordinance.

Finding 32 - Critical Aquifer Recharge Areas

Based on the County GIS, this property is within the critical aquifer recharge area (CARA), Category II. In accordance with CCC13.70.320, the proposed fueling station within this site is allowed with a CARA permit. The applicant has submitted a CARA permit application (CRA2002-0007) and the review will be completed as part of the final site plan approval process. (see Condition B-13)

Finding 33 - Floodplain Permit

In accordance with the provisions of CCC18.327, the proposed improvements within the Curtain Creek drainage channel require a floodplain permit. The applicant has submitted a floodplain permit application (FLP2003-00014) for the proposed improvement within the channel. Prior to approval of the engineering plans for the stormwater alternate plan 'B', the applicant shall obtain the floodplain permit and the required county, state, and federal permits. (see Condition A-9)

Conclusion:

Based upon the findings, development site characteristics, the proposed transportation plan, the proposed stormwater plan, and the requirements of the County's transportation standards and stormwater ordinance, staff concludes that the proposed preliminary development plan is feasible subject to conditions.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 18

FIRE PROTECTION:

Finding 34

The site is located in Clark County Fire District 5. If there are any questions regarding the following review, please contact Tom Scott (in the Fire Marshal's Office) at (360) 397-2375, extension 3323:

- a. Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (see Condition C-4)
- b. Fire flow in the amount of 2,000 gallons per minute supplied for two hours duration is required for this application. The applicant has submitted a utility review from Clark Public Utilities indicating that existing fire flow is adequate to the site. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to the commencement of combustible building construction. Fire hydrants are required for this application and the hydrants proposed are not adequate. The applicant should provide one additional fire hydrant meeting spacing requirements on the north side of the building. Fire hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief (see Conditions B-14 and C-5)
- c. The roadways and maneuvering areas as indicated in the application adequately provide required fire apparatus access. The applicant shall demonstrate fire apparatus access roads with an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus. The indicated provisions for fire apparatus turnarounds are not adequate. The applicant should provide an acceptable turnaround at the north end of the access road on the east side of the building. (see Condition D-12 and B-14)
- d. Approved automatic fire sprinkler and fire alarm systems are required for buildings in this application. Such systems require separate reviews, permits and approvals issued by the fire marshal's office. Buildings provided with automatic fire sprinkler systems shall be provided with a minimum of two fire hydrants. One fire hydrant shall be within 100 feet of approved fire department connections to the sprinkler systems. Fire department connections shall be remote a minimum distance equal to the height of the building. (see Condition D-13)
- e. High piled combustible storage shall comply with article 81 of the 1997 Edition of the Uniform Fire Code and will require a separate review and permit from the Clark County Fire Marshal's Office. (see Condition E-12)
- f. The Motor Vehicle fuel dispensing station shall comply with Articles 79 and 52 of the 1997 Edition of the Uniform Fire Code. Installation of dispensing pumps, product piping, and tanks will require a separate review and permit from the Clark County Fire Marshal's Office. (see Condition D-14)

UTILITIES:

Finding 35

The applicant has submitted utility reviews from the Hazel Dell Sewer District and City of Vancouver (for public water) indicating that public water and sewer are available to

Staff Report & Determination
PSR2002-00075 (Costco)
Page 19

the subject site. Proof of connection to both public water & sewer will be required prior to issuance of occupancy permit complying with all requirements of the purveyor (see Condition E-10).

HEALTH DISTRICT:

Finding 36

If any septic systems or wells are discovered on the subject site, the applicant must follow abandonment/decommissioned procedures in accordance with the requirements of the Health District (see Conditions E-10)

IMPACT FEES:

Finding 37

Traffic Impact Fees (TIF) apply to the proposed office and the site is within the Hazel Dell Transportation Subarea. **Required TIF is \$529,104.70 for the proposed Costco building** based on a 148,665 square foot building and ITE Code 861. **Required TIF is \$153,087.54 for the fueling station** based on the proposed trip generation. Fees are collected at the time of building permit issuance. If the application is more than three years following the site plan approval, the Impact Fees will be recalculated according to the then current ordinance. If you have questions regarding the TIF, please contact Richard Gamble at 397-6118, Ext. 4384 (see Condition C-6).

SEPA DETERMINATION and DECISION

The likely SEPA determination of Non-Significance (DNS) in the Notice of Development Review Application issued on November 8, 2002 is hereby final.

Based upon the proposed plan (dated March 3, 2003), and the findings and conclusions stated above, the Development Services Manager hereby **APPROVES** this request, subject to the following conditions of approval:

Conditions of Approval

A. Conditions that must be met prior to Final Construction Plan Approval:

- A-1 The applicant shall submit documents to show that the proposed improvements within the adjacent parcel (Parcel #106128-000) will be permitted by the owner/s of this property building (see Finding 23).
- A-2 The final plans shall identify the proposed driveway approaches along NE 84th Street and NE 64th Avenue in accordance with the Transportation Standard Drawing #38, CCC12.05A (see Finding 24).
- A-3 The proposed curb return radii/s at the intersections of NE 84th Street/Andresen Road and NE 64th Avenue/NE 88th Street shall be in compliance with CCC Table

Staff Report & Determination
PSR2002-00075 (Costco)
Page 20

- CCC12.05A.120-1 and designed to facilitate truck-turning movements (see Finding 25).
- A-4 Prior to approval of the engineering plans for stormwater alternate plan 'B', the applicant shall provide agreement documents from the owners of the impacted properties for the earth berm south of the section of Padden Parkway currently under construction. Costco and Clark County Public Works (after approval from the Board of County Commissioners) will establish a development agreement to complete the improvements associated with the regional stormwater detention facility (see Finding 30).
- A-5 The proposed stormwater facilities shall be sized to produce no-net increase in 100-year, 24-hour storm event peak water level within the flood storage area and no adverse impacts on the upstream or downstream of the proposed development (see Finding 31).
- A-6 In sizing the proposed "Extended Detention Galleries", infiltration shall not be considered unless further evidence is shown that some infiltration within the site is possible (see Finding 31).
- A-7 If stormwater alternate plan 'B' is pursued, prior to approval of the engineering plans the applicant shall secure all the necessary easements from the affected property owners and obtain the required permits from the involved jurisdictions (see Finding 31).
- A-8 In accordance with CCC Section 13.29.305 (G), the applicant shall identify on the final construction plans the installation of API or CSP type oil/water separators for the proposed fueling station and SC type oil/water separators for the food preparation function (see Finding 31).
- A-9 Prior to approval of the engineering plans for the stormwater alternate plan 'B', the applicant shall obtain the floodplain permit and the required county, state, and federal permits (see Finding 31).

B. Conditions that must be met prior to Final Site Plan Approval:

- B-1 The final site plan shall clearly identify the required 10-foot landscaped buffer along all road frontages (see Finding 3a).
- B-2 The final site plan shall identify the required parking dimensions for parking rows along NE 64th Avenue and NE 88th Street as well as parking spaces in front of internal landscape islands (see Finding 3b).
- B-3 A note shall be placed on the final site plan that references the continued use of the gasoline manager who will ensure the proper positioning of vehicles and restrict all traffic to one-way-in and one-way-out of the gas pumps (see Finding 3d).

Staff Report & Determination
PSR2002-00075 (Costco)
Page 21

- B-4 The final site/landscape plans shall identify the location and the required amount of solid waste and recyclable storage area as well as the required screening for the solid waste and recycling storage. (see Finding 3e).
- B-5 The final site plan shall identify striping in addition to the proposed concrete for pedestrian crosswalks throughout the site (see Finding 3f).
- B-6 Prior to Final Wetlands Permit approval, the applicant shall submit a copy of the final habitat/wetland mitigation plan to the county Habitat Biologist for review and approval (see Finding 5).
- B-7 The applicant shall comply with conditions A-1 through A-4 in WET2002-00026 and HAB2002-0158.
- B-8 A note shall be placed on the final site plan that "Clark County Wetland Protection Ordinance (Clark County Code Chapter 13.36) requires wetlands and wetland buffers to be maintained in a natural state. Refer to the Conservation Covenant (Ref # ___) recorded with the Clark County Auditor for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this Site Plan."
- B-9 The applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$5,000. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works. (see Finding 12)
- B-10 The applicant shall reimburse the City for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,120.00. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works. (see Finding 20)
- B-11 Prior to the final site plan approval, the applicant shall submit evidence verified by a licensed engineer in the State of Washington that the sight distance triangles for all the access points and all the intersections comply with the provisions of Section CCC12.05A.250. The sight distances shall remain unobstructed after completion of the project. (see Finding 26)
- B-12 In accordance with the provisions of Section CCC13.29 (D)(12)(a), a minimum easement width of 20 feet shall be provided for the 36-inch bypass stormwater conveyance system. (see Finding 31)
- B-13 The applicant shall obtain final approval of the CARA permit in compliance with Section CCC 13.70. (see Finding 32)
- B-14 The final site plan shall identify one additional fire hydrant meeting spacing requirements on the north side of the building. The applicant shall provide an

Staff Report & Determination
PSR2002-00075 (Costco)
Page 22

acceptable turnaround at the north end of the access road on the east side of the building (see Finding 34b and 34c).

C. Conditions that must be met prior to issuance of Building Permits

- C-1 The applicant shall submit engineering plans to the County Public Works Department for roadway intersection improvements and all required related features. Prior to issuance of a building permit, the applicant shall obtain approval from the County of the submitted plans. (see Finding 15)
- C-2 The costs for engineering plan review and construction inspection for the safety and capacity improvements associated with this project approval shall be borne by the applicant. The applicant shall enter into a reimbursable work order with the Department of Community Development for payment of these costs at the time of final engineering plan approval. (see Finding 15)
- C-3 The applicant shall submit a signing and striping plan and a reimbursable work order, authorizing County Road Operations to perform the required signing and striping within the County right-of-way. This plan and work order shall be approved by the Department of Public Works Transportation prior to the issuance of building permits. (see Finding 15)
- C-4 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- C-5 Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to the commencement of combustible building construction. Required hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief. (see Finding 34b)
- C-6 A Traffic Impact Fee of **\$529,104.70** for the proposed Costco building. A Traffic Impact Fee of **\$153,087.54** for the proposed fueling station. If the application is more than three years following the site plan approval, the Impact Fees will be recalculated according to the then current ordinance. (see Finding 36)

D. Conditions that must be met prior to issuance of Occupancy Permits

- D-1 Construction of the proposal including roadway, landscaping, screening, stormwater facilities, parking (striping), paving, and other improvements as shown on final site, landscape, and engineering plans is required.
- D-2 The applicant shall ensure construction of an additional northbound left-turn lane and extend storage for the existing left-turn lane at NE Andresen Road/NE 88th Street intersection. Therefore, the applicant shall install dual westbound receiving lanes of at least 300 feet in length on NE 88th Street. The dual northbound left-turn lanes shall provide a minimum of 300 feet of storage and

Staff Report & Determination
PSR2002-00075 (Costco)
Page 23

- include all related features. The improvement and related features shall be complete prior to the issuance of any occupancy permit for the proposed Costco or as modified by the Director of Public Works, such as through a development agreement intended to facilitate construction of the County's preferred alignment of 88th Street without delaying the construction schedule for the Costco store. (see Finding 12)
- D-3 The applicant shall ensure construction of a traffic signal and all related features at the intersection of NE 64th Avenue/NE 88th Street. Geometry at the intersection will include an eastbound right-turn lane, northbound right-turn lane, northbound left turn lane, and westbound left turn lane. The signal and related improvements shall be operational prior to the issuance of any occupancy permit for the Costco Wholesale or as modified by the Director of Public Works. (see Finding 14 and 15)
- D-4 The applicant shall ensure construction of intersection improvements at the NE Andresen Road/NE 88th Street intersection to improve sight distance to allow east-west left-turn protected signal phasing. The improvement and related features shall be complete prior to the issuance of any occupancy permit for the proposed Costco or as modified by the Director of Public Works, such as through a development agreement intended to facilitate construction of the County's preferred alignment of 88th Street without delaying the construction schedule for the Costco store. (see Finding 12 and 15)
- D-5 The applicant shall ensure construction of a new and separate northbound right turn lane at the intersection of NE 20th Avenue and NE 134th Street, along with all related features, by submitting a fee in lieu of construction of the improvements according to the terms of the Salmon Creek Development Agreement with the County, or as modified by the Director of Public Works (see Finding 12).
- D-6 The applicant is permitted to install a northbound left-turn lane at the intersection of NE 84th Street/Andresen Road. The County may eliminate the turn lane in the future according to this condition of approval if, in the County's sole determination, the movement is causing a commonly-accepted industry safety or operational standard to be exceeded on Andresen Road/Padden Parkway/NE 88th Street. The County's action directed at eliminating the movement will be subject to notification of adjacent property owners. (see Finding 15)
- D-7 The applicant shall ensure construction of a second westbound right-turn lane at the intersection of NE Andresen Road/Padden Parkway, such that the westbound approach provides two left, two through, and two right turn lanes. The improvement and related features shall be complete prior to the issuance of any occupancy permit for the Costco Wholesale or as modified by the Director of Public Works. (see Finding 15)
- D-8 The applicant shall ensure construction of a second eastbound through lane from the intersection of NE 64th Avenue/NE 88th Street, east to the right-turn lane at NE Andresen Road/NE 88th Street. The improvement and related features shall be

Staff Report & Determination
PSR2002-00075 (Costco)
Page 24

- complete prior to the issuance of any occupancy permit for the Costco Wholesale or as modified by the Director of Public Works, such as through a development agreement intended to facilitate construction of the County's preferred alignment of 88th Street without delaying the construction schedule for the Costco store. (see Finding 12)
- D-9 The applicant shall construct southbound left-turn lane storage improvements at the NE Andresen Road/Padden Parkway intersection to provide a minimum of 400 feet of storage for each lane. The improvement and related features shall be complete prior to the issuance of any occupancy permit for the Costco Wholesale or as modified by the Director of Public Works. (see Finding 15)
- D-10 The applicant shall pay their proportionate share in the amount of \$6,000.00 toward improvements of a traffic signal and all related features at the intersection of NE 49th Street/NE 112th Avenue intersection Avenue prior to the issuance of any occupancy permit, or as modified by the Director of Public Works. (see Finding 18)
- D-11 The applicant shall pay \$14,000.00 (proportionate share toward improvements of a traffic signal and all related features at the intersection of NE 40th Street/NE Andresen Road), or as modified by the Director of Public Works (see Finding 19)
- D-12 The applicant shall demonstrate fire apparatus access roads with an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus. (see Finding 34c)
- D-13 Approved automatic fire sprinkler and fire alarm systems are required for the proposed building and such systems require separate reviews, permits and approvals issued by the fire marshal's office. Buildings provided with automatic fire sprinkler systems shall be provided with a minimum of two fire hydrants. One fire hydrant shall be within 100 feet of approved fire department connections to the sprinkler systems. Fire department connections shall be remote a minimum distance equal to height of the building. (see Finding 34d).
- D-14 Motor Vehicle fuel dispensing station shall comply with Articles 79 and 52 of the 1997 Edition of the Uniform Fire Code. Installation of dispensing pumps, product piping, and tanks will require a separate review and permit from the Clark County Fire Marshal's Office (see Finding 34f)
- D-15 The applicant shall ensure construction of a separate, eastbound right-turn lane at the intersection of NE Andresen Road/NE 88th Street to provide a minimum of 400 feet of storage. The improvement and related features shall be complete prior to the issuance of any occupancy permit for the Costco Wholesale or as modified by the Director of Public Works. (see Finding 15)

E. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Staff Report & Determination
PSR2002-00075 (Costco)
Page 25

E-1 Site Plans and other land use approvals:

- a. Within 5 years of preliminary plan approval, a Fully Complete application for a building permit shall be submitted.
- b. Prior to issuance of an approved occupancy for site plan, the applicant shall submit information (per CCC 18.402A.050H) verifying that the required site landscaping has been installed in accordance with the approved landscape plan(s).

E-2 Lighting:

No outdoor lighting (from the subject site) may glare onto adjacent properties or roadways.

E-3 Signs:

For all proposed advertisement signs, the applicant shall make application for a separate sign permit site.

E-4 Wetlands:

The requirements of CCC Section 13.36.250 shall apply even if no impacts are proposed. These requirements include:

- a. Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence).
- b. Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and posting of approved signage on each lot or every 100-ft of the boundary, whichever is less.
- c. Recording a conservation covenant with the County Auditor that runs with the land and requires that the wetlands and buffers remain in natural state.
- d. Showing the wetland and buffer boundaries on the face of the Final Site Plan and including a note that refers to the Separately recorded conservation covenant.

E-5 Pre-Construction Conference:

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

E-6 Erosion Control:

- a. Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 13.29.
- b. Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- c. Erosion control facilities shall not be removed without County approval.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 26

E-7 Excavation and Grading:

- a. Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- b. Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

E-8 Stormwater:

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 13.29.

E-9 Transportation:

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 12.05A.

E-10 Health District:

- a. Applicant shall comply with the requirements of the Clark County Health Department (CCHD). If any wells or on-site septic systems are discovered during site development, the applicant must follow abandonment and decommissioning procedures as required by the CCHD including written confirmation of legal abandonment prior to occupancy.
- b. For water systems provided by a purveyor, the applicant may be required to provide evidence of an adequate water supply. Such evidence (normally in the form of a letter from the purveyor) shall be submitted to and approved by the CCHD prior to final approval.

E-11 Cultural Resources:

If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Heritage Trust of Clark County should be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines.

E-12 Fire:

High piled combustible storage shall comply with article 81 of the 1997 Edition of the Uniform Fire Code and will require a separate review and permit from the Clark County Fire Marshal's Office.

Note: The Development Services Manager reserves the right to develop a complete written report and findings of fact regarding this decision, if appealed.

An appeal of any aspect of this decision, including the SEPA determination and any required mitigation measures, may be appealed to the County Hearing Examiner only by a party of record. A "Party of Record" includes the applicant and those individuals who submitted written testimony to the Development Service Manager within the designated comment period.

Staff Report & Determination
PSR2002-00075 (Costco)
Page 27

The appeal shall be filed with the Department of Community Development within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record. This decision was mailed on May 9, 2003. Therefore any appeal must be received in this office by 4:30 PM, May 23, 2003.

APPEAL FILING DEADLINE

Date: May 23, 2003

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 18.600.100 (A) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. A check in the amount of **\$1,009** (made payable to the Department of Community Development).

The appeal request and fee shall be submitted to the Department of Community Development, Customer Service Center, between 8:00 AM and 4:30PM Monday through Friday, at the address listed below.

Attachments:

- Copy of Proposed Preliminary Plan

A copy of the approved preliminary plan, SEPA Checklist and Clark County Code are available for review at:

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011**

A copy of the Clark County Code is also available on our Web Page at:
Web Page at: <http://www.clark.wa.gov>

Project Overview

The applicant proposed to fill 6.8 acres of Category 4 wetlands to construct a Costco store and create two additional retail pads. The wetlands also meet the Washington Department of Fish and Wildlife definition of Priority Habitat, therefore a Preliminary Wetland Permit and Habitat Permit are required. These permits are combined in this decision. Several other cases reviewed by the County are associated with this decision but are addressed in other staff reports. These cases are as follows:

- PSR2002-00075, SEP2002-00113, CRA2002-00007, and EVR2002-00041; These are the Preliminary Site Plan Review, SEPA Determination, Critical Aquifer Recharge Area Permit, and Road Modification for the proposed Costco Wholesale project. The decision on these cases can be found in a single staff report.
- SEP2003-00010; The SEPA Determination for the proposed off-site wetland mitigation as approved in this decision.
- GRD2003-00004; The Grading Permit for the proposed off-site wetland mitigation as approved in this decision.

Staff Analysis

Staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts will be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Major Issues:

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

CRITICAL AREAS:

A discussion of major SEPA issues and affected SEPA elements associated with the proposed Critical Areas impacts and proposed mitigation measures can be found in the SEPA Determinations issued for this project (SEP2002-00113 and SEP20032-00010).

Wetland Protection (CCC 13.36)

Finding 1 - The wetlands on the project site were reviewed under a previous wetland predetermination (WET2001-00043). Staff concurs with the wetland boundaries shown on the Preliminary Site Plan (Exhibit 1) and the Preliminary Enhancement/Mitigation Plan (Exhibit 2). The site contains three Category 4 wetlands. Wetland B (as labeled on Sheet 5, Exhibit 2) is less than 10,000 sq. ft. and is exempt per CCC 13.36.130 (1). The other wetlands require 50 ft. Type D buffers.

Finding 2 - The wetlands on the mitigation site were reviewed under a previous wetland pre-determination (WET2002-00022). Staff concurs with the wetland boundaries shown on the Preliminary Enhancement/Mitigation Plan (Exhibit 2). The site contains Category 4 wetlands with Type D buffers.

Finding 3 - The applicant proposes to fill 6.8 acres of wetlands on the site. These impacts will be mitigated off-site within the Curtin Creek Basin at 11106 NE 87th Ave. The mitigation involves the meandering of a straightened section of Curtin Creek and reconnection of the creek to its floodplain and the enhancement of adjacent riparian areas and wetlands. The Revised Enhancement/Mitigation Plan (page 1, Exhibit 3) does not properly account for the mitigation credit generated in compliance with CCC 13.36.420. The applicant credits some upland enhancement that does not meet the requirements of mitigation under CCC 13.36, but does not credit creation of the meandering stream channel within existing wetlands.

Staff finds that the mitigation consists of the following:

Mitigation Type	Wetland Rating	Ratio	Area (ac.)	Credit (ac.)
Enhanced Replacement	Category 2	0.6:1	1.3	2.17
Hydrologic Enhancement	Category 2	2:1	4.6	2.30
Habitat Enhancement	Category 2	2:1	3.9	1.95
Channel Enhancement	Category 2	2:1	2.4	1.20
Upland Planting	N/A	N/A	0.9	0
Totals:			13.1	7.6

The proposed mitigation has been designed to meet site specific requirements set by the Washington Department of Ecology (Exhibit 4) and has subsequently been approved by DOE (Exhibit 5).

The Final Enhancement/Mitigation plan must be revised to properly credit the proposed wetland mitigation in compliance with CCC 13.36.420 (see condition #A-1).

Finding 4 - The proposed stormwater pond is partially located within a Type D wetland buffer (Figure 3, Exhibit 2). Proposed slope grading within the buffer appears to be steeper than 4:1 and, therefore, does not comply with the requirements of CCC 13.36.415 (4), therefore the design of the portion of the facility within the wetland buffer must be revised (see condition #A-2).

Finding 5 - Costco has proposed alternative off-site stormwater mitigation measures in order to address concerns that the on-site facilities proposed may not be adequate to meet the requirements of CCC 13.29. The proposed off-site improvements may require construction of new facilities and modification of existing facilities within wetlands and Curtin Creek. If these

offsite measures are found to be required in the future, additional permits will be required. These may include (but not limited to) SEPA, Wetland, Habitat, and Grading permits. All required permits must be issued prior to construction of off-site improvements (see condition #A-3).

Finding 6 - The off-site mitigation must be constructed prior to or concurrently with the proposed wetland fill on the project site in accordance with CCC 13.36.420 and all required permits, including an Administrative Order from the Washington Department of Ecology must be approved prior to construction (see Condition #B-1).

Habitat Conservation (CCC 13.51)

Finding 1 - There is a Priority Habitat area on approximately the southern half of the property. The area in question is mapped by the Washington Department of Fish and Wildlife (WDF&W) as a Priority Habitat area (Padden wetlands). Wetlands are a statewide priority for conservation because they contain comparatively high fish and wildlife density and species diversity, are limited in their extent, and are highly vulnerable to habitat alteration. This particular wetland is jurisdictional under both the Habitat Conservation Ordinance (HCO) and the Wetlands Protection Ordinance (WPO).

Finding 2 - The applicant proposes reductions in the wetland area on the site. Said reductions are to be mitigated at a pre-determined off-site location. The off-site mitigation is within the same watershed (Curtin Creek watershed) and will seek to restore historic habitat and hydrological complexity within a sizeable portion of the Curtin Creek watershed. The mitigation involves re-meandering sections of the creek, restoring floodplain and off-channel wetland hydrological connectivity, and planting the area with numerous native trees and shrubs.

Finding 3 - The applicant has submitted a conceptual mitigation design in order to comply with CCC Chapter 13.51, the HCO, as well as CCC Chapter 13.36, the WPO (Exhibit 3). In this case, the standards of the WPO take precedence over the HCO in both avoidance criteria and mitigation. Therefore, the mitigation required under the WPO is more than adequate to cover the standards of the HCO. The applicant's intent is to finalize the mitigation design and permitting prior to Final Wetlands Permit approval. Staff finds that the proposed project and off-site mitigation complies the CCC Chapter 13.51, the Habitat Conservation Ordinance (HCO), provided the following conditions are implemented:

1. Prior to Final Wetlands Permit approval, the applicant shall submit a copy of the final habitat/wetland mitigation plan to the county Habitat Biologist for review and approval (see Condition #A-4).

Based upon the proposed plan (identified as Exhibits 2 and 3), and the findings and conclusions stated above, the Development Services Manager hereby **APPROVES** this request, subject to the following conditions of approval:

A. Conditions that must be met prior to Engineering Construction Plan Approval

- A-1 The Final Enhancement/Mitigation plan shall be revised to properly credit the proposed wetland mitigation in compliance with CCC 13.36.420 (see Wetland Finding #3);
- A-2 The portions of the stormwater facilities within the wetland buffer shall be revised to comply with CCC 13.36.415 (4) (see Wetland Finding #4);
- A-3 All required permits shall be obtained for any proposed off-site stormwater improvements (see Wetland Finding #5);
- A-4 Prior to Final Wetland Permit approval, the applicant shall submit a copy of the final habitat/wetland mitigation plan to the county Habitat Biologist for review and approval (see Habitat Finding #3).

B. Conditions that must be met prior to construction

- B-1 All required permits for the off-site mitigation, including an Administrative Order from the Washington Department of Ecology shall be approved. Copies of State and Federal permits shall be provided to the County Wetland Biologist (see Wetland Finding #6);

C. Standard Conditions

- C-1 Final Wetland Permit approval shall be required prior to Engineering Construction Plan approval;
- C-2 The requirements of CCC Section 13.36.250 shall apply to the wetland mitigation site and any wetlands and wetland buffers retained on the development site. These requirements include:
 - A. Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence);
 - B. Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and

Attachments:

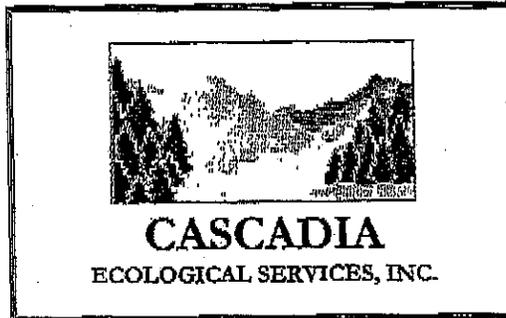
- Copy of Proposed Preliminary Enhancement/Mitigation Plans

A copy of the approved preliminary plan, SEPA Checklist and Clark County Code are available for review at:

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA. 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011**

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WETLAND MITIGATION PLAN



ADDENDUM

**WETLAND/HABITAT MITIGATION PLAN
PROPOSED COSTCO WHOLESALE PROPERTY
CLARK COUNTY, WASHINGTON**

**PREPARED FOR:
HINTON DEVELOPMENT CORPORATION
14010-A N.E. 3RD COURT
SUITE 106
VANCOUVER, WA 98685
(360) 546-1220**

**PREPARED BY:
CASCADIA ECOLOGICAL SERVICES, INC.
P.O. BOX 1502
BATTLE GROUND, WA
98604
(360) 687-5192**

MARCH 23, 2003

*Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

TABLE OF CONTENTS

1.0 Background	1
2.0 Impact Assessment and Mitigation Ratio Discussion	1
3.0 Wildlife Enhancement	1-2
4.0 Curtin Creek Relocation	2
5.0 Project Implementation	2
6.0 Mitigation Planting Specifications	2-5
7.0 Project Schedule	5
8.0 Best Management Practices	5
9.0 Performance Standards	5-6
10.0 Monitoring and Maintenance Plans	7
11.0 Integrated Pest Management	7-8
12.0 Contingency Plans	8

FIGURES AND EXHIBITS

Table 1 – Proposed Costco Wholesale Off-Site Wetland Mitigation Property Site Summary

Table 2 – Mitigation Ratio Calculations

Table 3 – Planting Areas

Table 4 – Maintenance and Contingency Requirements

*Addendum (3-23-03) - Costco Wetland/Habitat Mitigation Plan - Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

**TABLE 1. PROPOSED COSTCO WHOLESALE OFF-SITE WETLAND
MITIGATION PROPERTY
SITE SUMMARY**

Site Location	11106 NE 87 th Avenue, Vancouver, WA 98662
Applicant / Owner	Hinton Development Corporation / Betty J. Sipert
County	Clark County
Legal Description	NE ¼ of Section 32, T03N, R02 WM
Latitude / Longitude	N45°42.086' / W122°35.032'
Zoning	ML
Total Lot Size	22 Acres
USGS Topographic Map	Orchards Quadrangle, Washington, 7.5 Minute (1995)
Topography	Sloping 0 to 10%
Elevation	Sloping from 208 feet msl at N.E. 87 th Ave. to 196 msl at Curtin Creek
Drainage Basin	Curtin Creek
Nearest Water	Salmon Creek
Land Form	Valley bottom
Soil Map Unit(s)	Cove silty clay loam, thin solum, 0 to 3 percent slopes (CwA) McBee silt loam, coarse variant, 0 to 3 percent slopes (MLA) Semiahmoo muck (Sr)
NWI Maps	Orchards Quadrangle, Washington, 7.5 Minute (1995)
NWI Classification	(PSSC) Palustrine Scrub-Shrub Seasonally Flooded (PFO/SSC) Palustrine Forested / Scrub-Shrub Seasonally Flooded (PEMA) Palustrine Emergent Temporarily Flooded
Proposed Land Use	Wetland mitigation
Current Land Use	Unused Platted Land / Residential
Adjacent Land Use	Unused Platted Land / Residential

*Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

1.0 Background

This revised wetland/habitat mitigation plan addendum addresses changes to the January 14, 2003 plan submittal as requested by the Washington Department of Ecology (DOE) in March 2003.

Several meetings were conducted during March 2003 with DOE staff and subsequently with Clark County staff during which the stream configuration and design which was shown in the previous plan submittal was discussed. As a result of the meetings and at the request of the DOE, changes to the proposed stream configuration were made and are addressed in this addendum. This addendum only addresses changes to the January 14, 2003 plan submittal.

2.0 Impact Assessment and Mitigation Ratio Discussion

The proposed project will result in the filling of 6.8 acres of wetlands on the development site. Clark County has classified all of the wetlands that are proposed to be filled as Category 4 wetlands. As a result of the proposed wetland creation and enhancement activities in the Category 4 wetlands at the mitigation site, their category will increase to a Category 2. This will result from hydrologic and habitat enhancement of the existing Category 4 wetland areas as allowed in the *Clark County Wetland Protection Ordinance*.

The total proposed fill on the mitigation site is 1,557.6 cubic yards. All of the fill will occur in the area of the old stream channel. As shown below, the overall wetland mitigation will result in a net surplus of 0.04 acres.

Table 2. Mitigation Ratio Calculations

Proposed Mitigation Area	Wetland Fill Credit
Hydrologic Enhancement Area (199,940 sq. ft. /4.58 ac.)	2.29 acres (2:1 Ratio)
Habitat Enhancement Area (210,394 sq. ft. /4.83 ac.)	2.41 acres (2:1 Ratio)
Created Wetlands (56,496 sq. ft. /1.29 ac.)	2.14 acres (0.6:1 Ratio)
Total Wetland Fill Credit	6.84 acres

$$\begin{aligned}
 &4.58 \text{ acres} / 2 (2:1) = 2.29 \text{ acres} \\
 &+ 4.83 \text{ acres} / 2 (2:1) = 2.41 \text{ acres} \\
 &+ 1.29 \times 1.66 (0.6:1 \text{ or } 1/0.6) = 2.14 \\
 &= 6.84 \text{ acres} \\
 &\quad - 6.8 \text{ acres (wetland impact)} \\
 &0.04 \text{ acres}
 \end{aligned}$$

3.0 Wildlife Enhancement

To maximize wildlife function, numerous habitat features will be implemented into the mitigation plan. The new stream design includes wetland benches along its length through the project area which will flood during high flows and maintain emergent wetlands during the growing season. These shallow water wetlands will provide increased utilization by waterfowl and amphibians. This water pattern will also support more fauna and invertebrate populations. All suitable woody vegetation of various size, shape, species and condition will

*Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

be salvaged and relocated from the development impact site and be placed sporadically within the wetland enhancement and creation areas as directed by CES during construction. Small woody stem vegetation will be planted in mass throughout the mitigation area to develop habitat for egg laying amphibians. The interspersion between the erect vegetation and the open water will be high. Vegetation will be planted to develop different levels of height to provide diverse utilization of habitat species. CES will direct the salvage and replanting on-site of any large shrubs or trees that could be impacted during construction.

Plant species richness and establishment of a diverse wetland water regime, will dramatically increase the wildlife function and usability for this site.

4.0 Curtin Creek Relocation

The relocation of Curtin Creek from its present channelized condition to a meandering stream with diverse channel and flow conditions will require excavation of a new stream bed through the upland and wetland areas along the entire length of the mitigation site (Sheet 2). As requested by the DOE, the stream corridor width will be widened from that shown in the previously submitted plan.

5.0 Project Implementation

To achieve the stream relocation excavation of the new channel will begin just to the north of the south property line. Most of the spoils from the channel excavation will be used to fill the old channel after the flow has been allowed to enter the new channel. The fill will be compacted, as it is placed in layers of no greater than 18". Additional spoils will be removed from the site as specified in Best Management Practices section of this plan.

After the new stream excavation has been completed, the jurisdictional authorities will review the project and upon approval the outlet and inlet will be excavated to allow stream flow to enter the new channel. This will be done gradually through the use of a coffer dam at the upstream portion of the project. This dam will be slowly reduced to minimize any sediment flush as the channel fills.

6.0 Mitigation Planting Specifications

Plant graded and otherwise disturbed emergent wetland creation areas with the following seed mixtures (Sheet 2 – Wetland Mitigation Areas):

Wetland Prairie Mix (Created wetlands)
 Meadow barley (*Hordeum brachyantherum*) – 25%
 Timber oatgrass (*Danthonia intermedia*) – 25%
 Western mangrass (*Glyceria occidentalis*) – 15%
 Tufted hairgrass (*Deschampsia cespitosa*) – 7%
 Blue eyed grass (*Sisyrinchium idahoense*) – 6%
 Camas (*Camassia quamish*) – 5%
 Native red fescue (*Festuca rubra rubra*) – 5%
 Slough sedge (*Carex obnupta*) – 5%
 American sloughgrass (*Beckmannia syzigachne*) – 3%
 Creeping spike rush (*Eleocharis palustris*) – 2%
 Aspen daisy (*Erigeron speciosus*) – 2%
 (Recommended application rate is 6 to 15 lbs. per acre)

Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Minton Development Corporation
 Cascadia Ecological Services, Inc.
 March 23, 2003

Table 3. Planting Areas

Hydrologic Enhancement Area (199,940 sq. ft.)

Planting density: 5 trees and 10 shrubs / 1,000 sq. ft. or 210 trees and 436 shrubs / acre

Tree Species	Plant Form	Minimum Size	Minimum Spacing	Required Number
Black cottonwood (<i>Populus balsamifera</i>)	Cuttings	6'	6'	1000
Total				1000
Shrub Species	Plant Form	Minimum Size	Minimum Spacing	Required Number
Sirka willow (<i>Salix sitchensis</i>)	Cuttings	6'	3-4'	1000
Hooker willow (<i>Salix hookeriana</i>)	Cuttings	6'	3-4'	200
Pacific red willow (<i>Salix lasiandra</i>)	Cuttings	6'	3-4'	200
Scouler's willow (<i>Salix scouleriana</i>)	Cuttings	6'	3-4'	100
Columbia river willow (<i>Salix fluviatilis</i>)	Cuttings	6'	3-4'	200
Creek dogwood (<i>Cornus sericea var. occidentalis</i>)	Cuttings	6'	3-4'	300
Total				2000

Habitat Enhancement Area (210,394 sq. ft.)

Planting density: 5 trees and 10 shrubs / 1,000 sq. ft. or 210 trees and 436 shrubs / acre

Tree Species	Plant Form	Minimum Size	Minimum Spacing	Required Number
Oregon ash (<i>Fraxinus latifolia</i>)	Bare Root	5-6'	6'	252
Black cottonwood (<i>Populus balsamifera</i>)	Cuttings	6'	6'	800
Total				1052
Shrub Species	Plant Form	Minimum Size	Minimum Spacing	Required Number
Sirka willow (<i>Salix sitchensis</i>)	Cuttings	6'	3-4'	600
Hooker willow (<i>Salix hookeriana</i>)	Cuttings	6'	3-4'	113
Pacific red willow (<i>Salix lasiandra</i>)	Cuttings	6'	3-4'	113
Scouler's willow (<i>Salix scouleriana</i>)	Cuttings	6'	3-4'	113
Columbia river willow (<i>Salix fluviatilis</i>)	Cuttings	6'	3-4'	113
Creek dogwood (<i>Cornus sericea var. occidentalis</i>)	Cuttings	6'	3-4'	500
Twinberry (<i>Lonicera involucrata</i>)	Bare Root	3-4'	3-4'	184
Ninebark (<i>Physocarpus capitatus</i>)	Bare Root	3-4'	3-4'	184
Nootka rose (<i>Rosa nutkana</i>)	Bare Root	3-4'	3-4'	184
Total				2104

*Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

Created Wetlands (56,496 sq. ft.)

Planting density: 5 trees and 10 shrubs / 1,000 sq. ft. or 210 trees and 436 shrubs / acre

<i>Tree Species</i>	<i>Plant Form</i>	<i>Minimum Size</i>	<i>Minimum Spacing</i>	<i>Required Number</i>
Oregon ash (<i>Fraxinus latifolia</i>)	Bare Root	5-6'	6'	83
Black cottonwood (<i>Populus balsamifera</i>)	Cuttings	6'	6'	200
Total				283
<i>Shrub Species</i>	<i>Plant Form</i>	<i>Minimum Size</i>	<i>Minimum Spacing</i>	<i>Required Number</i>
Sitka willow (<i>Salix sitchensis</i>)	Cuttings	6'	3-4'	150
Hooker willow (<i>Salix hookeriana</i>)	Cuttings	6'	3-4'	33
Pacific red willow (<i>Salix lasiandra</i>)	Cuttings	6'	3-4'	33
Scouler's willow (<i>Salix scouleriana</i>)	Cuttings	6'	3-4'	33
Columbia river willow (<i>Salix fluviatilis</i>)	Cuttings	6'	3-4'	33
Creek dogwood (<i>Cornus sericea var. occidentalis</i>)	Cuttings	6'	3-4'	100
Twainberry (<i>Lonicera involucrata</i>)	Bare Root	3-4'	3-4'	60
Ninebark (<i>Physocarpus capitatus</i>)	Bare Root	3-4'	3-4'	60
Nootka rose (<i>Rosa nutkana</i>)	Bare Root	3-4'	3-4'	65
Total				565

Source of Plant Materials. All plant materials will be obtained from nurseries specializing in native Pacific Northwest plant materials, preferably from the southwest Washington or Willamette Valley area.

Planting Time. Plant bare-root shrubs and trees between mid-November and early-March, when plants are dormant. If planting is conducted outside this time period, use containerized plant stock with extra watering to ensure that plants become adequately established. Seed mixture application shall occur in early fall or late spring during periods of adequate rainfall to ensure establishment.

Planting Guidelines. For bare-root stock, excavate a hole large enough in diameter to accommodate the plant roots without restriction. Plants will be held in place with the top of the root mass at ground level. Topsoil will be backfilled around the roots and lightly tamped to remove any air pockets in the soil. For containerized plants, excavate a hole, 1 ½ times the size of the containerized root mass and plant as above. Cuttings shall be planted using a planting bar. Two-thirds of the cutting should be below the soil surface. Ground scarification and/or mowing of invasive vegetation will be completed prior to or during planting. Plants in areas of reed canarygrass will be planted in a manner that allows for mechanical mowing and possible herbicide control.

Future maintenance shall consist of scarification (by hand or mechanical means) to keep the 1-foot diameter area around the plantings free of herbaceous vegetation until they are well established. Supplemental watering (3-4 times during the summer season) may be required to ensure plant survival and mitigation success. Irrigation needs will be determined during the subsequent project monitoring periods.

*Addendum (3-23-03) - Costco Wetland/Habitat Mitigation Plan - Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

Seed shall be mixed at a ratio of 4:1 with a 16-16-16 fertilizer and broadcasted evenly over the planting zones.

7.0 Project Schedule

Relocation of Curtin Creek will be completed after the risk of heavy rainfall. Excavation of the dry creek channel will likely occur in August of 2003. The opening of the stream to the flow of Curtin Creek will be in accordance with the Hydraulics Project Approval issued by Washington Department of Fish and Wildlife but is expected to be in August prior to August 31, 2003.

Planting of the enhancement and creation areas will be completed during the 2003-04 planting season (November 2003 to March 2004) upon acceptance of this plan by the reviewing agencies. All plantings will be monitored during the first growing season following the initial planting (2004), and then for the next nine growing seasons.

8.0 Best Management Practices

Sediment and erosion control measures will be in place and will include but are not limited to silt fencing and straw mulch cover in all excavated or otherwise disturbed soil areas. Temporary stockpiling of spoils will occur in an upland location and will be covered if rainfall persists during project implementation. Seeding or hydroseeding of all disturbed soils will take place at project completion or no later than September 15.

A coffer or check dam will be installed at the mouth of the new channel prior to opening the new channel to flow from Curtin Creek. This dam will consist of sand bags and ecology block structures, sealed with plastic sheeting. The level of the dam will be gradually reduced over a two to three day period. Flow should be minimal during the release period but temporary sediment check dams may be used in the new channel to reduce the amount of sediment-laden waters entering Curtin Creek.

All bank slopes will be hydroseeded and or sprayed with soil matrix material to quickly stabilize the exposed areas and reduce potential runoff.

9.0 Performance Standards

The performance standards are used to evaluate whether the project's goals and objectives are being met. These standards are listed below for each component.

1) Performance Standard: Vegetation

The survival rates for herbaceous and woody species and desired recruitment species within the mitigation area will be as follows:

- a) Year 1: 100% survival of planted woody species and desired recruitment species.
- b) Years 2,3,5,7, and 10: 80% survival of planted woody species and desired recruitment species.

*Addendum (3-23-03) – Coast Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

2) Performance Standard: Plant Species Composition

It is expected that the plant species best adapted to the site conditions within the mitigation areas will exhibit the highest survival rates within additional numbers of those plant species occurring over the course of the monitoring period and after through natural recruitment. Therefore, the overall species composition within the mitigation area may change over time.

3) Performance Standard: Invasive Plant Species

Because the project site currently contains significant areas of reed canarygrass (*Phalaris arundinacea*) it is likely that these plant species will continue to present a management problem within the wetland mitigation and habitat enhancement areas. To increase survivability in areas dominated by reed canary grass, a combination of methods will be used to achieve the required performance measures.

The goal for invasive species control is to achieve the plant survival rates given in the performance standards and not to eliminate reed canarygrass. CES will meet these goals by using larger plant stock and cuttings that will become established above the height of the reed canarygrass during the first few growing seasons and through intensive mechanical control.

4) Performance Standard: Wetland Hydrology

During the time period of March 1 to October 31, or the growing season, the hydrology within the wetland mitigation areas shall range at minimum from saturated at the surface to ponded or flooded for 30 consecutive days.

5) Performance Standard: Trash and debris within created and enhanced wetland areas

Any trash or debris which exceeds 1 ft³/100ft² (equal to the volume of a standard size office garbage can) shall be removed from the wetland mitigation areas. In general, there should be no evidence of dumping.

6) Performance Standard: Erosion

Eroded damage greater than 2 inches deep where the cause of damage is still present or where there is potential for continued erosion will be stabilized with appropriate erosion control BMP's (e.g., seeding, mulching, riprap).

*Addendum (3-23-03) -- Costo Wetland/Habitat Mitigation Plan -- Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

10.0 Monitoring and Maintenance Plans

The following actions will be implemented as part of the monitoring and maintenance plan on this site:

1. The initial and all successive year plantings will be supervised by CES to ensure that correct planting procedures are followed and that plantings are done according to the planting scheme.
2. Monitoring of all planted areas shall begin once the mitigation site is established and shall continue at least once each year during years 2,3,5,7 and 10 for a total of six years (as required by the Washington Department of Ecology and Corps of Engineers). CES will monitor the mitigation site during the late spring or summer time period. A report documenting the monitoring results will be submitted by CES to Clark County, the Corps of Engineers, and the Washington Department of Ecology during the years specified. This report will identify deficiencies in the enhancement progress and any contingency measures that will be taken to correct those deficiencies. Photographs taken from established photo-stations will be included with these reports.
3. Monitoring will be achieved using fixed vegetation sampling stations within areas representative of the plant communities being established. These monitoring stations would be used for the duration of the monitoring program. At each monitoring station, fixed-point photos will be taken annually to document the condition of the enhanced areas.
4. To ensure planting success, the Applicant will be responsible for performing minor maintenance over the monitoring period. This will include the selective removal of undesirable plant species such as blackberry or reed canarygrass that may be hindering the growth and establishment of the favored plant stands. Undesirable plant species will be removed by hand or in accordance with the recommendations of the local Weed Control Board. An area, 1-foot in diameter surrounding each planted woody species, will be kept free of competing vegetation. This can be accomplished by scarifying the area by hand, through the use of weed-control rings, or by mechanical means.
5. Maintenance of the mitigation area may include a temporary above ground irrigation system capable of watering the entire wetland mitigation area if monitoring results deem it necessary.
6. CES shall supervise any maintenance that is required within the permit area.

11.0 Integrated Pest Management

Invasive plant species which are most prevalent on the site include Canada thistle and reed canarygrass. Both of these plant species may be controlled through intensive mechanical means such as mowing or cutting and with approved aquatic herbicides. Control of these or any other invasive plant species on the site with the use of herbicides must be coordinated with CES and the Clark County Weed Control Board. Only persons possessing a valid

*Addendum (3-23-03) – Costco Wetland/Habitat Mitigation Plan – Hinton Development Corporation
Cascadia Ecological Services, Inc.
March 23, 2003*

aquatic herbicide applicators license shall administer herbicide applications in the aquatic areas of the site.

12.0 Contingency Plans

Contingency plans are designed to identify potential courses of action, and any corrective measures to be taken when monitoring indicates project goals are not being met. Table 3 summarizes the maintenance and contingency requirements for this project. In general, the contingency measures for this site are as follows:

1. Replacement Plantings—Replacement plantings will be made throughout the monitoring period if monitoring reveals that unacceptable plant mortality has occurred. Woody species will be re-planted to the original number of plants proposed in the accepted mitigation plan annually throughout the duration of the monitoring and maintenance period.
2. Planting Plan Modifications—Modifications to the planting plan (i.e., plant species and densities) will be made if monitoring identifies problems with the original planting scheme. For example, if annual monitoring identifies that plant mortality is attributed to an inappropriate hydrologic regime, the replacement plantings should be made using a more suitable plant species.

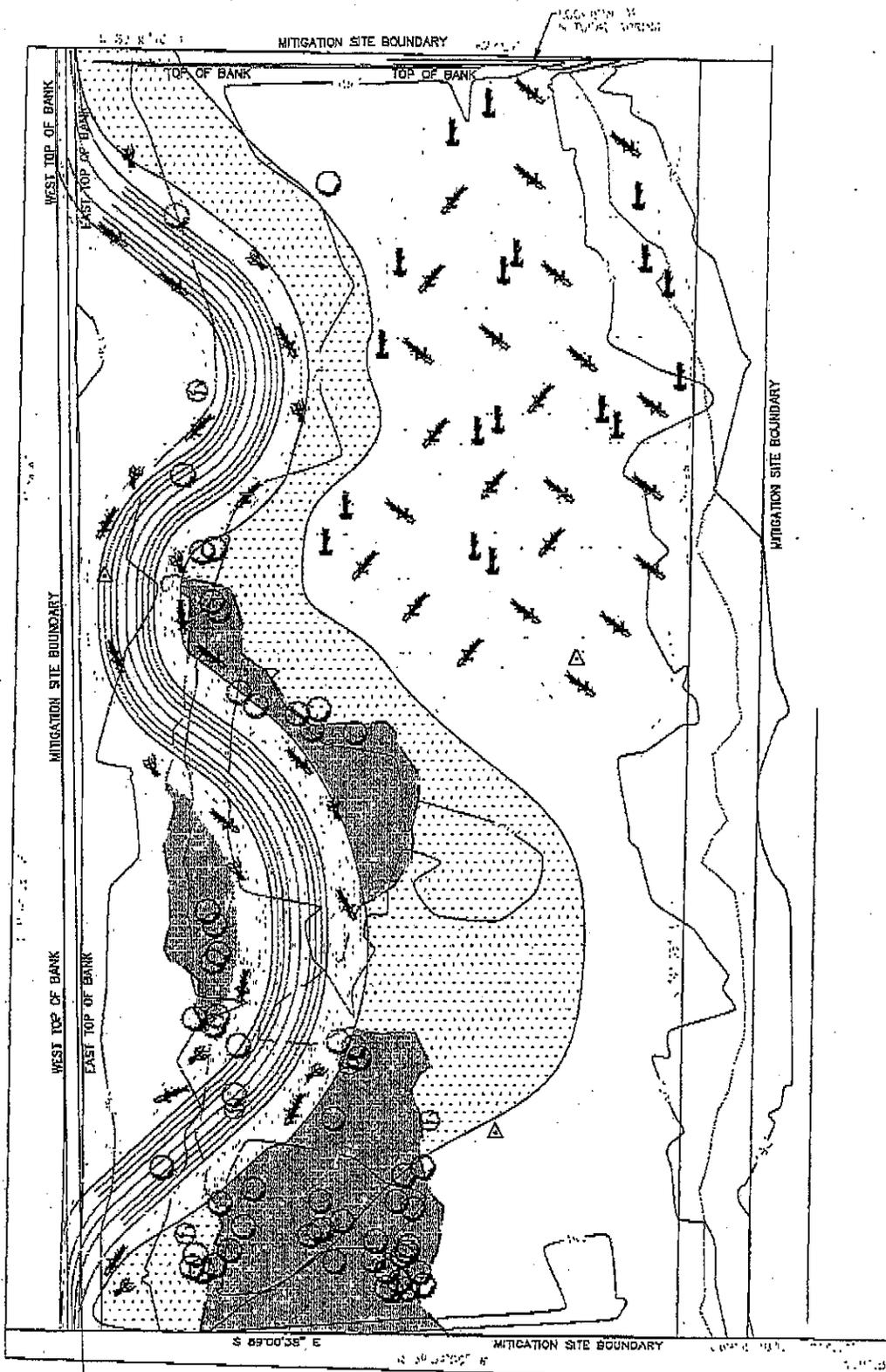
Any recommended changes to the planting scheme will be documented in the annual monitoring report. The addition of any new plant species, not already included in this mitigation plan, must be approved by Clark County.

3. Soil Erosion—any areas demonstrating soil erosion problems will be restored as soon as possible. If there does not appear to be a problem with the original design, the eroded areas will be restored by replacing any lost topsoil and replanted according to the original planting scheme.
4. The plant communities included in this mitigation plan contain a variety of species representing a wide range of hydrologic regimes (facultative upland to facultative wetland). It is expected that as the plant community evolves, the individual species will become established in the appropriate hydrologic regime. This may result in a plant distribution that varies slightly from the planting scheme detailed in this plan. This should not be viewed as a failure unless these variations result in unacceptable plant mortality or otherwise jeopardize the overall wetland functions and values. If monitoring identifies that the site is persistently wetter or drier than expected, and this variation is causing unacceptable plant mortality, then changes in the planting scheme will be made as described above (i.e., Planting Plan Modifications).

*Appendix (3-23-03) - Cato Wetland/Habitat Mitigation Plan - Hinton Development Corporation
Cascadia Ecological Services, Inc
March 23, 2003*

Table 4. Maintenance and Contingency Requirements

Performance Category	Performance Standard	Monitoring Measure	Monitoring Schedule	Contingency
Wetland hydrology in created wetland areas	Total area of created wetland shall be at least 56,496 square feet.	During the time period of March 1 to October 31, or the growing season, the hydrology of the wetland mitigation areas shall range at minimum from saturated at the surface to ponded or flooded for 30 consecutive days.	February to April of first 3 years with normal rainfall.	Recontour area to lower soil surface.
Survivorship of planted species.	Survivorship shall be 100%.	Comprehensive count of failed plantings	Year 1	Replace failed plantings.
	Survivorship shall be 80% for any given species.	Comprehensive count of failed plantings	Years 2,3,5,7, & 10	Replace failed plantings.
Cover by proposed plant community, including volunteers	Cover will be >20% for tree species, >40% for all woody species.	Visual Estimate	Year 5	Install additional plantings.
Trash and debris	Any trash or debris which exceeds 1 cu/100sq ft (equal to the volume of a standard size office garbage can). In general, there should be no evidence of dumping.	Visual Estimate	All years monitored	Remove trash and debris from mitigation area.
Erosion	Eroded damage >2 inches deep where cause of damage is still present or where there is potential for continued erosion.	Visual Estimate	All years monitored	Eroded areas should be stabilized with appropriate erosion control BMP's (e.g., seeding, mulching, riprap).



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SHEET 2 (REVISED 3-22-05)
 WETLAND MITIGATION
 AREAS (NE 87th AVE SITE)
 PROJECT: COSTCO WHOLESALE
 WETLAND MITIGATION
 SCALE: 1" = 120'

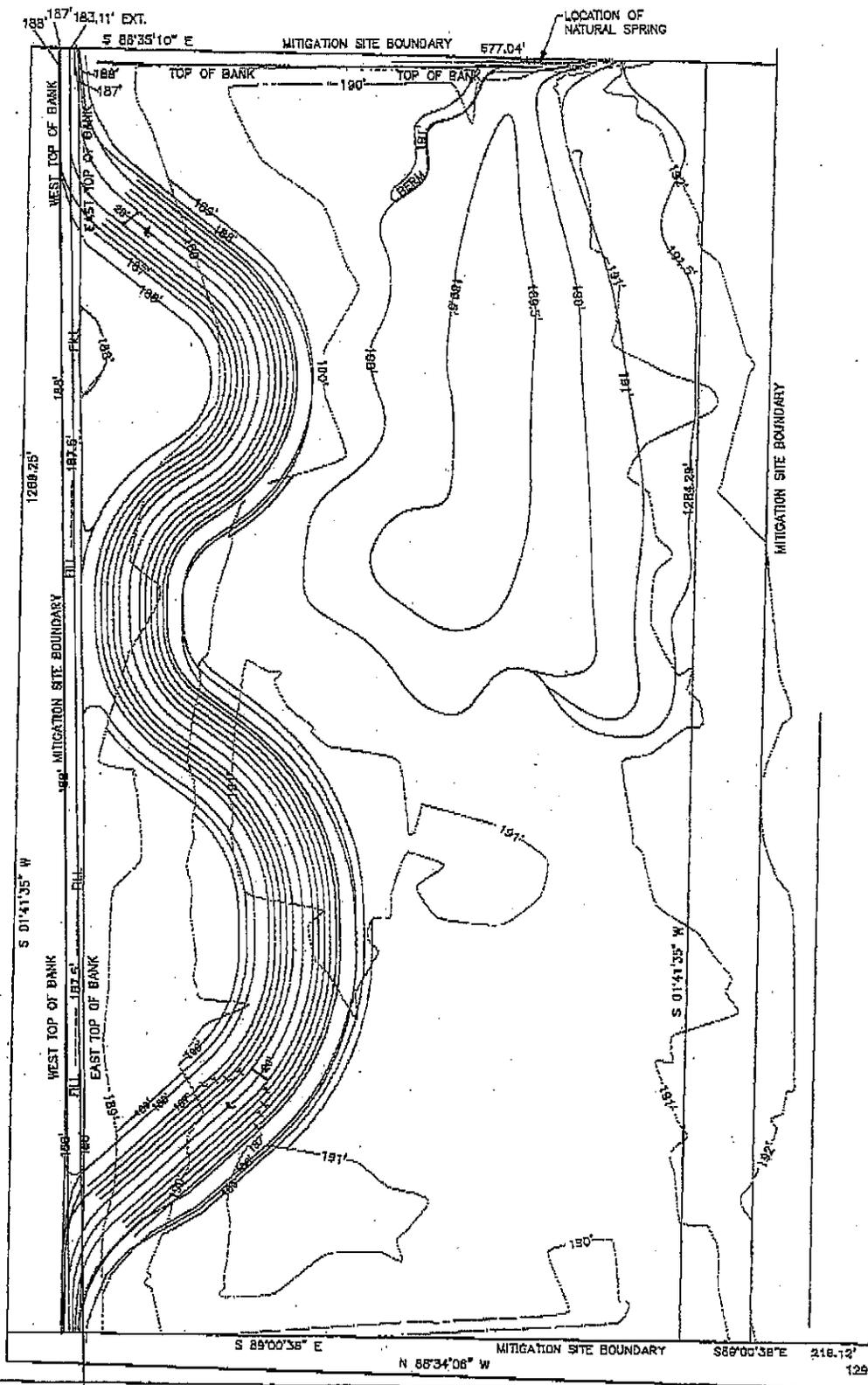
- ROOTWAD (AVE. DIAMETER: 24" TO 30") OR OTHER LARGE WOODY DEBRIS PLACED FOR BANK STABILIZATION AND FISH HABITAT ENHANCEMENT
- DOWNED LARGE WOODY DEBRIS FROM COSTCO PROJECT SITE (AVE. LENGTH 6' TO 20'; VARIED DIAMETER)
- IMPORTED SNAG FROM COSTCO PROJECT SITE (AVE. LENGTH 6' TO 20'; VARIED DIAMETER)

- HYDROLOGIC ENHANCEMENT AREA
 188,940 SQ. FT.
 (4.28 AC)
 2.23 AC CREDIT @ 2:1 RATIO
- HABITAT ENHANCEMENT AREA
 210,394 SQ. FT.
 (4.83 AC)
 2.41 AC CREDIT @ 2:1 RATIO

- EXISTING UPLAND
 137,567 SQ. FT.
 (3.18 AC)
- CREATED WETLANDS
 58,468 SQ. FT.
 (1.33 AC)
 2.14 AC CREDIT @ 0.6:1

NOTE: ALL SUITABLE PIECES OF LARGE WOODY DEBRIS FROM THE PROJECT SITE WILL BE IMPORTED TO AND PLACED IN THE MITIGATION AREA AS SHOWN. EXACT NUMBERS AND LOCATIONS FOR HABITAT ENHANCEMENT WILL BE DETERMINED BY THE PROJECT BIOLOGIST DURING THE CONSTRUCTION OF THE PROJECT.

EXISTING TREES AND SHRUBS IN THE WETLAND CREATION AREAS WILL BE SALVAGED AND REPLANTED ON-SITE AS PRACTICABLE



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SECRET 3 (REVISED 3-22-03)
 EXISTING AND PROPOSED
 TOPOGRAPHIC ELEVATION CONTOURS
 PROJECT: COSTCO WHOLESALE
 WETLAND MITIGATION
 SCALE: 1" = 120'

-  EXISTING TOPOGRAPHIC ELEVATION CONTOURS
-  PROPOSED TOPOGRAPHIC ELEVATION CONTOURS