

When recorded, return to:  
SNOHOMISH COUNTY  
Conservation & Natural Resources, Division of Parks & Recreation  
6705 Puget Park Drive  
Snohomish, WA 98296



## **AQUATIC LANDS LEASE**

### **Lease No. 20-A10988**

Grantor: Washington State Department of Natural Resources  
Grantee(s): Snohomish County  
Legal Description: NW1/4, NE1/4, Section 36, Township 31 North, Range 3 East, W.M.  
Complete Legal Description on Page 37  
Auditor Reference Number: 202007135003  
Assessor's Property Tax Parcel or Account Number: Not Applicable  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 31033600100100

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and SNOHOMISH COUNTY, a government entity ("Tenant").

### **BACKGROUND**

Tenant desires to lease a portion of the aquatic lands commonly known as Port Susan, which are bedlands located in Snohomish County, Washington, from State, and State desires to lease the Property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

## SECTION 1 PROPERTY

### 1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Snohomish County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

### 1.2 Survey and Property Descriptions.

- (a) Tenant warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Property boundaries, the location of the Improvements to be constructed, and the location of the Improvements existing on the Property. Tenant's obligation to provide a true and accurate description of the Property boundaries, the location of the Improvements to be constructed, and the location of the Improvements existing on the Property is a material term of this Lease.
- (b) Tenant's use or occupancy of any state-owned aquatic lands outside the Property boundaries is a material breach of this Lease and State may seek remedies under Section 14 of this Lease in addition to any other remedies afforded by law or equity or otherwise.
- (c) Tenant shall submit an updated record of survey for State's acceptance within three hundred and sixty-five (365) days of the Commencement Date. Upon State's written acceptance of the updated record of survey, the updated record of survey shall supersede the record of survey referenced in Exhibit A.
- (d) Tenant's submission of the updated record of survey shall constitute a warranty that the updated record of survey is a true and accurate description of the Property boundaries and the as-built location of all Improvements on the Property. Tenant's obligation to provide a true and accurate description of the Property boundaries and the as-built location of Improvements on the Property in the updated record of survey is a material term of this Lease.

- (e) At Tenant's expense, and no later than thirty (30) days after receiving State's written acceptance of the updated record of survey, Tenant shall record the updated record of survey in the County in which the Property is located. Tenant shall provide State with recording information, including the date of recordation and the file number, within fifteen (15) days after recording the updated record of survey.
- (f) Tenant warrants that the Property lies only in front of upland property owned or otherwise legally controlled by the Tenant.
- (g) State may require Tenant to obtain a record of survey that describes the Property boundaries and the Improvements to be constructed or already existing on the Property if State determines a record of survey is necessary.
- (h) Tenant shall hold harmless State and will not seek damages from State in the event a subsequent record of survey reveals an error in the legal description provided in Exhibit A.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, Improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

## **SECTION 2 USE**

**2.1 Permitted Use.** Tenant shall use the Property for:

public access wooden pier

(the "Permitted Use"), and for no other purpose. Exhibit B includes additional details about the Permitted Use, the Property, and Improvements, and additional obligations on Tenant. The Permitted Use of this Lease shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

**2.2 Restrictions on Permitted Use and Operations.** The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease or the law.

- (a) Tenant shall not cause or permit:
  - (1) Damage to land or natural resources, except to the extent expressly permitted in Exhibit B,
  - (2) Waste, or

- (3) Deposit of material, unless approved by State in writing. This prohibition includes, but is not limited to, deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) Tenant shall not pressure wash or clean any equipment, machinery, or floating or fixed structures.
- (d) Tenant shall avoid damage caused by propeller wash from vessels.
- (e) Tenant shall not allow vessels to come in contact with underlying bedlands (commonly referred to as “grounding out”) at any time.
- (f) If anchoring, Tenant shall use and shall require use of anchor lines with midline floats.
- (g) Tenant shall not construct new bulkheads or place new hard bank armoring.
- (h) Tenant shall not install fixed breakwaters.
- (i) Tenant shall not construct or install new covered moorage or boat houses.

**2.3 Conformance with Laws.** Tenant shall keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant’s use or occupancy of the Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant’s occupancy of the Property.

**2.5 Residential Uses Prohibited.** Residential uses, as defined by WAC 332-30-106(62), are not permitted on the Property.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is thirty (30) years, beginning on the 1<sup>st</sup> day of August, 2023 (the “Commencement Date”), and ending on the 31<sup>st</sup> day of July, 2053 (the “Termination Date”), unless terminated sooner under the terms of this Lease (the “Term”). Whenever the phrase “termination of this Lease” or “termination of the Lease” is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

**3.2 Renewal of the Lease.** This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant or deny. Tenant must apply for a new lease at least one (1) year prior to the Termination Date.

### 3.3 End of Term.

- (a) Removal of Improvements and Personal Property: Prior to the termination of this Lease, Tenant shall remove Improvements and Personal Property in accordance with Section 7.
- (b) Restoration of Property:
  - (1) Prior to the termination of this Lease, Tenant shall restore the Property to its condition before the installation of any Improvements on the Property.
  - (2) This restoration is to be done at Tenant's expense and to the satisfaction of State. Restoration of the Property is considered to be Work, as described in Section 7 of the Lease. Tenant's plans for restoring the Property shall be submitted to State for prior approval in accordance with Section 7 of this Lease.
  - (3) If Tenant fails to restore the condition of the Property as required by this Paragraph, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.
- (c) Vacation of Property: Upon the termination of this Lease, Tenant shall cease all operations on and use of the Property and surrender the Property to State.

### 3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, and State has not notified Tenant that Tenant must vacate the Property, in the absence of a new lease agreement between State and Tenant, the following terms apply: Tenant's occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, except that either Party may terminate the tenancy on thirty (30) days' written notice. The month-to-month occupancy will not be an extension or renewal of the Term.
  - (1) The monthly rent during the month-to-month tenancy will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
  - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe State all amounts due under RCW 79.02.300 or other applicable laws.

## SECTION 4 RENT

### 4.1 Annual Rent.

- (a) The Annual Rent is based on the use classification of Tenant's Permitted Use of the Property and the square footage of each use classification, as set forth in Exhibit A.
- (b) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Zero Dollars (\$0.00), consisting of Zero Dollars (\$0.00) related to the water-dependent rent.
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.
- (d) Public Use and Access. This Lease allows for free or reduced rent for areas that meet the requirements of RCW 79.105.230 and WAC 332-30-131. If Tenant's use of these areas cease to meet the requirements for free or reduced rent in RCW 79.105.230 and WAC 332-30-131, State will charge Tenant water-dependent rent for using these areas.

**4.2 Payment Place.** Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

**4.3 Adjustment Based on Change in Use Classification.** Neither the use classification, nor the square footage of a use classification, shall be changed without the prior written consent of State. If the use classification or the square footage of a use classification is changed, the Annual Rent shall be adjusted based on the revised use classification or square footage of each use classification.

### 4.4 Rent Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraph 4.5(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Commencement Date.
- (b) Procedures on Failure to make Timely Adjustment. If State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

### 4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.

- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) Rent Cap. State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until State implements the full amount of increase as determined by the statutory rent formula.

## **SECTION 5 OTHER EXPENSES**

**5.1 Utilities.** Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

**5.2 Taxes and Assessments.** Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the Improvements, or Tenant's use and enjoyment of the Property.

**5.3 Right to Contest.** If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

**5.4 Proof of Payment.** If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

**5.5 Failure to Pay.** If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

## **SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Failure to Pay Rent.** If Tenant fails to pay rent when due under this Lease, State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

**6.2 Late Charge.** If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

**6.3 Interest Penalty for Past Due Rent and Other Sums Owed.**

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**6.6 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

**SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**

**7.1 Improvements Defined.**

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. Improvements include, but are not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.



- (d) “Tenant-Owned Improvements” are Improvements authorized by State and (1) made by Tenant, (2) acquired by Tenant from the prior tenant, (3) made by subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.
- (e) “Unauthorized Improvements” are Improvements made on the Property without State’s prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.
- (f) “Improvements Owned by Others” are Improvements owned by others (not including Tenant or a subtenant) with a right to occupy or use the Property.

**7.2 Existing Improvements.** On the Commencement Date, the following Tenant-Owned Improvements are located on the Property: wooden fixed pier structure, 33 creosote-treated piling.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively “Work”).
- (b) Except in an emergency, Tenant shall not conduct Work without State’s prior written consent. Tenant shall obtain State’s prior written consent as follows:
  - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
  - (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if the proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions intended to protect and preserve the Property or adjacent state-owned aquatic lands.
  - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Tenant shall immediately notify State of emergency Work. Upon State’s request, Tenant shall provide State with as-built plans and specifications of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant’s contractor has:

- (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant or Tenant's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
- (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant on the Property during the Term, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

#### **7.4 Standards for Work.**

- (a) Applicability of Standards for Work.
  - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work commences when State approves plans and specifications.
  - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's current standards for Work.
  - (3) If Tenant commences Work five (5) or more years after the Commencement Date, Tenant shall ascertain State's current standards for Work as follows:
    - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with State's current standards for Work on state-owned aquatic lands.
    - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with State's current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work, provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.

- (iii) If State does not timely provide State's current standards upon Tenant's request, the standards for Work under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for State's current standards for Work.
  - (iv) If Tenant fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Tenant shall, at Tenant's sole expense, make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date:
- (1) Tenant shall not install skirting on any overwater structure.
  - (2) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS).
  - (3) Tenant shall use embedded anchors and midline floats on all anchored structures and buoys.
  - (4) Tenant shall install grating on new floats, piers, wharves, fingers, docks, decks, fixed docks, and/or gangways as follows: For floats, fingers, and docks, Tenant shall install unobstructed grating on at least fifty percent (50%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space. For gangways, piers, wharves, decks, and fixed docks, Tenant shall install grating on one hundred percent (100%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space.
  - (5) Tenant shall orient navigation channels and entrances to facilities to avoid dredging.
  - (6) Tenant shall maximize water exchange by locating facility openings to promote flushing and prevent trapping surface debris and oily residue.
  - (7) Tenant shall site new Improvements to avoid impacts to eelgrass. Aquatic vegetation surveys, as described in Exhibit B, shall be conducted prior to installation of new improvements.
  - (8) Where Work is in or within 200 feet of spawning habitat for Pacific Herring (*Culpea harengus*), Tenant shall construct all new or expansions to existing Improvements to avoid:
    - (i) removal of shoreline vegetation within the Property that provides shading to the upper intertidal zone,
    - (ii) changes in typical spawning behavior,

- (iii) destruction or disturbance of spawning substrate or aquatic vegetation used for spawning, and
  - (iv) interruption of existing sediment transport mechanisms such as longshore current or wave energy.
- (9) Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner that minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Tenant shall implement the following measures to achieve this requirement:
- (i) Tenant shall direct light to walkways,
  - (ii) Tenant shall use light shields which prevent light from being emitted upward and prevent glare on the water,
  - (iii) Tenant shall use fixtures that do not emit light upward,
  - (iv) Tenant shall use lights that are “warm-white” or filtered.
- (10) If Tenant is constructing a new or rebuilding an existing boat ramp or launch, Tenant shall construct boat ramps and launches to minimize:
- (i) interruption of longshore current,
  - (ii) the need for shoreline armoring,
  - (iii) interruption of natural hydrology (wave energy, longshore current, or other),
  - (iv) impacts to Pacific Herring (*Culpea harengus*) and eelgrass.
- (11) Tenant shall not allow new floating structures to come in contact with underlying bedlands (commonly referred to as “grounding out”). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to prevent grounding, keeping the bottom of the structure above the level of the substrate.

## **7.5 Tenant-Owned Improvements.**

- (a) Removal of Tenant-Owned Improvements upon termination.
- (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
  - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State’s consent, State may remove all Improvements and Tenant shall pay State’s costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
- (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State of Washington, and regardless of whether Tenant enters into a new Lease for the Property.

- (2) If Tenant enters into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
- (3) If Tenant does not enter into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
  - (i) Tenant shall submit its request to leave Tenant-Owned Improvements to State at least one (1) year before the Termination Date.
  - (ii) State, within ninety (90) days of receiving Tenant's request, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
  - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
  - (1) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall not remove such Tenant-Owned Improvements.
  - (2) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

## **7.6 Unauthorized Improvements.**

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Tenant fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

**7.7 Personal Property.**

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the termination of the Lease. Tenant is liable for damage to the Property and any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the termination of the Lease.
  - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Tenant to State. State shall pay the remainder, if any, to the Tenant. Tenant shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
  - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

**8.2 General Conditions.**

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
  - (1) The Property; and
  - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.

- (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
- (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

**8.3 Current Conditions and Duty to Investigate.**

- (a) State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned aquatic lands.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

**8.4 Use of Hazardous Substances.**

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's Permitted Use or Tenant's use or occupancy of the Property results in violation of law:
  - (1) Tenant shall submit to State any plans for remedying the violations, and
  - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

**8.5 Management of Contamination, if any.**

- (a) Tenant and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
  - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and

- (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

## **8.6 Notification and Reporting.**

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

## **8.7 Indemnification.**

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
  - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.



- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), to the extent permitted by law, Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

### **8.8 Reservation of Rights.**

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

### **8.9 Cleanup.**

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

### **8.10 Sampling by State, Reimbursement, and Split Samples.**

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with such Tests, provided State gave Tenant thirty (30) days' advance notice in nonemergencies and reasonably practical notice in emergencies.

- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

## **SECTION 9 ASSIGNMENT AND SUBLETTING**

**9.1 State Consent Required.** Tenant shall not sell, convey, mortgage, assign, pledge, sublease, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall be at State's sole discretion.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation, and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
  - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
  - (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant. Tenant shall remain liable for the full and complete performance, satisfaction, and compliance with the terms of this Lease.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

**9.2 Rent Payments Following Assignment.** The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

**9.3 Terms of Subleases.**

- (a) Tenant shall submit the terms of all subleases to State for prior approval.

- (b) Tenant shall incorporate the following requirements in all subleases:
- (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
  - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
  - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
  - (4) The sublease must terminate if this Lease terminates for any reason;
  - (5) The sublease must include an acknowledgment that the subtenant has received a copy of this Lease;
  - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than one year of rent;
  - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
  - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
  - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
  - (10) The subtenant's permitted use must be within the scope of the Permitted Use;
  - (11) The sublease must require the subtenant to indemnify, defend, and hold harmless State to the same extent Tenant is required to indemnify, defend, and hold harmless State under this Lease ;
  - (12) The sublease must require the subtenant to meet the Insurance requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;
  - (13) The sublease must require the subtenant to comply with the Financial Security requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement; and
  - (14) If the sublease includes moorage of a vessel, the sublease must require the subtenant to procure marine insurance as set forth in Paragraph 10.2(c)(4) of this Lease.

**9.4 Event of Assignment.** If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. If Tenant is a limited liability company, conveyance of an economic interest of greater than fifty percent (50%) is an assignment of this Lease. Assignments defined in this Paragraph 9.4 require State's consent under Paragraph 9.1.

## SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY

**10.1 Allocation of Responsibility.** Each Party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority. Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances. The following indemnity requirement shall be incorporated into any sublease:

- (1) Subtenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by subtenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (2) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to: bodily injury; sickness; disease; death; and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value to tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.
- (3) State shall not require subtenant to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (4) Subtenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, subtenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (5) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the subtenant or subtenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the subtenant and those acting on its behalf.
- (6) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern subtenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

**10.2 Insurance Terms.****(a) Insurance Required.**

- (1) Tenant certifies that on the Commencement Date of this Lease it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism. If during the Term Tenant's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Lease, Tenant shall procure additional commercial insurance coverage to meet the requirements of this Lease. The requirements in Paragraph 10.2(a)(3) and (4) only apply where the Tenant procures additional commercial insurance to meet the requirements of this Lease.
- (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
- (4) All property insurance, builder's risk insurance, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.
- (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

**(b) Waiver.**

- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
- (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.

- (c) Proof of Insurance.
  - (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference the Lease number.
  - (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
  - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
  - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance required in this Lease within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
  - (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
  - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Tenant.

### 10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
  - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
    - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
  - (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
  - (2) Tenant shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
  - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
    - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.



- (e) **Builder's Risk Insurance.**
  - (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and all subcontractors in the work as insured.
  - (2) Insurance described above must cover or include the following:
    - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
    - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
    - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
    - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
    - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
  - (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
  - (4) Tenant or Tenant's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured.
- (f) **Business Auto Policy Insurance.**
  - (1) Tenant or Tenant's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".
  - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

- (g) Protection and Indemnity Insurance (P&I). For each vessel owned, used, and/or operated on the Property by Tenant or Tenant's contractor(s), Tenant or Tenant's contractor(s) shall procure and maintain P&I insurance with limits of liability not less than Three Hundred Thousand Dollars (\$300,000). The P&I insurance must cover, at a minimum, all claims relating to injuries or damages to persons or property sustained in, on, or about the property; fuel spills; wreck removal; salvage; injuries to passengers and crew of the vessel; and damages to nets and fishing lines. If necessary, Tenant shall procure and maintain commercial umbrella liability insurance covering claims for these risks.
- (h) Hull Insurance. Tenant or Tenant's contractor(s) shall procure and maintain hull insurance for each vessel owned and/or operated by the Tenant or Tenant's contractor(s) on the Property. The coverage amount of each hull insurance policy must be equal to the value of the covered vessel.

#### 10.4 Financial Security.

- (a) On the Commencement Date of this Lease, Tenant is not required to procure and maintain a corporate security bond or other financial security ("Security"). During the Term, State may require Tenant to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1). Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation of the Annual Rent,
    - (ii) As a condition of approval of assignment or sublease of this Lease,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

## **SECTION 11 MAINTENANCE AND REPAIR**

**11.1 State's Repairs.** State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

**11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.**

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

**11.3 Limitations.** The following limitations apply whenever Tenant conducts maintenance, repair, replacement, alterations, or additions. The following limitations also apply whenever Tenant conducts Work on the Property.

- (a) Tenant shall not use or install treated wood on decking, docks, rafts, floats, wharves, piers, fixed docks, gangways, pilings, or any other structure at any location above or below water, except that Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.

## SECTION 12 DAMAGE OR DESTRUCTION

### 12.1 Notice and Repair.

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements in accordance with Section 7 and Tenant's additional obligations in Exhibit B, if any.

**12.2 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

**12.3 Insurance Proceeds.** Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs, reconstruction, replacement, removal, or restoration may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

**12.4 Rent in the Event of Damage or Destruction.** Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

**12.5 Default at the Time of Damage or Destruction.** If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

### 13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**13.2 Effect of Taking.** If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

**13.3 Allocation of Award.**

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

**SECTION 14 DEFAULT AND REMEDIES**

**14.1 Default Defined.** Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease; or
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

**14.2 Tenant's Right to Cure.**

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.. This cure period does not apply where State terminates this Lease under Paragraph 10.2(f) or Paragraph 12.5.
- (c) For nonmonetary defaults not capable of cure within thirty (30) days, Tenant may submit a reasonable alternative cure schedule for State's approval, which State has discretion to grant or deny. The default is not an Event of Default if State approves the alternative cure schedule and Tenant cures the default in accordance with the approved alternative cure schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

**14.3 Remedies.**

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) State's Rights to Cure Tenant's Defaults.
  - (1) If an Event of Default occurs, State may, without terminating this Lease, remedy the default (in whole or in part) on behalf of Tenant at Tenant's expense. Tenant shall pay State all costs, expenses, fees, and damages incurred by State in connection therewith.
  - (2) If Tenant is in default under the terms of the Lease, and State determines that such default poses an imminent threat of injury or damage to persons or property, State may enter the Property and take actions to eliminate, mitigate, or remedy the imminent threat at Tenant's expense. On demand by State, Tenant shall pay State the amount of all costs, expenses, and fees incurred by State in connection therewith.
  - (3) The rights given to State under Paragraph 14.3(b)(1)-(2) shall neither impose a duty on State nor excuse any failure on Tenant's part to comply with any term, covenant, or condition of this Lease.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
  - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
  - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
  - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Tenant's default or threatened default of any provision of this Lease.

## SECTION 15 ENTRY BY STATE

### 15.1 Right to Enter The Property.

- (a) State and persons authorized by State may, without notice to Tenant, enter the Property and any Improvements on the Property at any reasonable hour to inspect the Property and Improvements, to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, to survey habitat and species, enforce the terms of the Lease, or to exercise any right of State under the Lease or the law.
- (b) State and persons authorized by State, may enter the Property and any Improvements at any time without notice in the case of an imminent threat of injury or damage to persons or property or to prevent waste on the Property.

**15.2 Disclaimer.** State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease. The rights given to State under this Section 15 do not impose, nor does State assume by reason thereof, any responsibility for the care, maintenance, or supervision of the Property or any part thereof.

**15.3 Right to Enter Tenant's Land.** Tenant grants State and persons authorized by State permission to cross Tenant's private upland and tideland property to access the Property.

## SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

### 16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

**16.2 Eviction by Third-Party.** If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

## SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Orca-Straits District  
919 North Township Street  
Sedro-Woolley, WA 98284

Tenant: SNOHOMISH COUNTY  
Conservation & Natural Resources, Division of Parks & Recreation  
6705 Puget Park Drive  
Snohomish, WA 98296

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

## SECTION 18 MISCELLANEOUS

**18.1 Authority.** Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

**18.2 Successors and Assigns.** Subject to the limitations set forth in Section 9, this Lease binds and inures to the benefit of the Parties, their successors, and assigns.

**18.3 Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

**18.4 Entire Agreement.** This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.



**18.5 Waiver.**

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

**18.6 Cumulative Remedies.** The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**18.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.

**18.8 Language.** The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

**18.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

**18.11 Statutory Reference.** Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

**18.12 Recordation.** At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

**18.13 Modification.** No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

**18.14 Survival.** Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

**18.15 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

SNOHOMISH COUNTY

Dated: 8/25/2023, 20  

Janae Nelson

By: JANAEL NELSON  
Title: DIRECTOR OF FACILITIES AND FLEET  
Address: 3000 Rockefeller Ave.  
Everett, WA 98201  
Phone: (425) 388-3347

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: 8/29/2023, 20  

Alexandra K. Smith

By: ALEXANDRA K. SMITH  
Title: DEPUTY SUPERVISOR – FOREST RESILIENCE, REGULATION, AND AQUATICS  
Address: 1111 Washington Street SE  
Olympia, WA 98504-7027

Aquatic Lands Lease  
Template approved as to form this  
20th day of July 2022  
Jennifer Clements, Assistant Attorney General



STATE ACKNOWLEDGMENT

Notarized online using audio-video communication.

STATE OF WASHINGTON)

County of Thurston ) ss.  
 )

I certify that I know or have satisfactory evidence that ALEXANDRA K. SMITH is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the DEPUTY SUPERVISOR – FOREST RESILIENCE, REGULATION, AND AQUATICS of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

This notarial act involved the use of communication technology.

Dated: 8/29/2023, 20

(Seal or stamp)

TAMI K KELLOGG  
Notary Public  
State of Washington  
Commission # 153365  
Commission Expires 11/28/2024

Tami Kellogg  
(Signature)

Tami Kellogg  
(Print Name)

Notary Public in and for the State of  
Washington, residing at  
McCleary

My appointment expires 11/28/2024

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY & USE CLASSIFICATIONS**

**Agreement Number 20-A10988**

1. LEGAL DESCRIPTION OF THE PROPERTY:

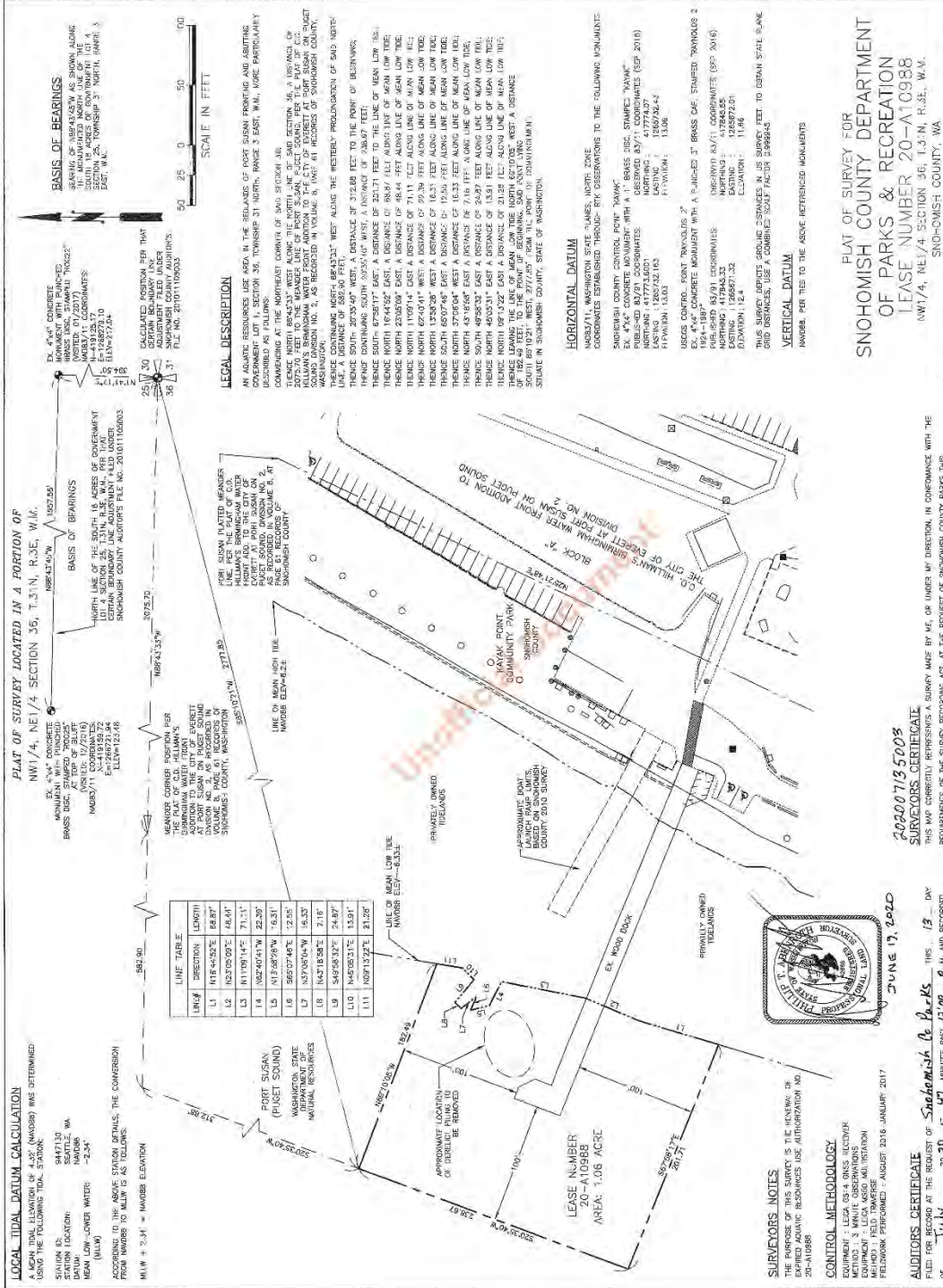
AN AQUATIC RESOURCES USE AREA IN THE BEDLANDS OF PORT SUSAN FRONTING AND ABUTTING GOVERNMENT LOT 1, SECTION 36, TOWNSHIP 31 NORTH, RANGE 3 EAST, W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE NORTH 88°43'33" WEST ALONG THE NORTH LINE OF SAID SECTION 36, A DISTANCE OF 2075.70 FEET TO THE MEANDER LINE OF PORT SUSAN, PUGET SOUND, PER THE PLAT OF C.D. HILLMAN'S BIRMINGHAM WATER FRONT ADDITION TO THE CITY OF EVERETT AT PORT SUSAN ON PUGET SOUND DIVISION NO. 2, AS RECORDED IN VOLUME 8, PAGE 61 RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE CONTINUING NORTH 88°43'33" WEST ALONG THE WESTERLY PROLONGATION OF SAID NORTH LINE, A DISTANCE OF 582.90 FEET, THENCE SOUTH 20°35'40" WEST, A DISTANCE OF 312.88 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 20°35'40" WEST, A DISTANCE OF 238.67 FEET; THENCE SOUTH 67°58'17" EAST, A DISTANCE OF 201.71 FEET TO THE LINE OF MEAN LOW TIDE; THENCE NORTH 16°44'52" EAST, A DISTANCE OF 68.87 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 23°05'09" EAST, A DISTANCE OF 48.44 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 11°09'14" EAST A DISTANCE OF 71.11 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 62°40'41" WEST A DISTANCE OF 22.39 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 13°58'28" WEST A DISTANCE OF 16.31 FEET ALONG LINE OF MEAN LOW TIDE; THENCE SOUTH 65°07'46" EAST A DISTANCE OF 12.55 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 37°06'04" WEST A DISTANCE OF 16.33 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 43°18'58" EAST A DISTANCE OF 7.16 FEET ALONG LINE OF MEAN LOW TIDE; THENCE SOUTH 49°58'32" EAST A DISTANCE OF 24.87 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 45°05'31" EAST A DISTANCE OF 13.91 FEET ALONG LINE OF MEAN LOW TIDE; THENCE NORTH 09°13'22" EAST A DISTANCE OF 21.28 FEET ALONG LINE OF MEAN LOW TIDE; THENCE LEAVING THE LINE OF MEAN LOW TIDE NORTH 69°10'05" WEST A DISTANCE OF 182.49 FEET, TO THE POINT OF BEGINNING, SAID POINT LYING SOUTH 85°10'21" WEST, 2777.85' FROM THE POINT OF COMMENCEMENT.

SITUATE IN SNOHOMISH COUNTY, STATE OF WASHINGTON.

## 2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	<u>0</u>
Water-dependent that is public use and access	<u>46,173.6</u>
Nonwater-dependent	<u>0</u>
Water-oriented subject to water- dependent rental rates	<u>0</u>
Water-oriented subject to nonwater- dependent rental rates	<u>0</u>
<b>Total Square Feet</b>	<u><b>46,173.6</b></u>



**HORIZONTAL DATUM**  
NAD83(11), WASHINGTON STATE PLAINS, NORTH ZONE  
COORDINATES ESTABLISHED THROUGH RTK OBSERVATIONS TO THE FOLLOWING MONUMENTS:  
SNOHOMISH COUNTY CONTROL POINT "YAWK"  
PUBLISHED 8/28/01 COORDINATES  
NORTHING: 417774.07  
EASTING: 113400.15  
ELEVATION: 13.66

**VERTICAL DATUM**  
1984-1987  
NORTHING: 417845.32  
EASTING: 1268971.32  
ELEVATION: 11.96

**PLAT OF SURVEY FOR SNOHOMISH COUNTY DEPARTMENT OF PARKS & RECREATION LEASE NUMBER 20-A10988**  
NW 1/4, NE 1/4 SECTION 36, T.31N. R.3E. W.M.  
SNOHOMISH COUNTY, WA.

**REID MIDDLETON LLC**  
726 1/4th Ave SE, Suite 200  
Everett, Washington 98201  
Phone: 425-741-2000  
Fax: 425-741-2000  
Date: JUN 17, 2020  
Revised By: DAVID IJON  
Checked By: EJA  
Date: 06/19/20  
Scale: 1"=50'

**SURVEYORS CERTIFICATE**  
202007135003  
THIS SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE SURVEYORS CERTIFICATE ACT, AS AMENDED, AND I HAVE THEREBY REVIEWED THE RECORDS OF THE COUNTY RECORDS TO BE HAD IN CONNECTION WITH THIS SURVEY.

**AUDITORS CERTIFICATE**  
JUNE 17, 2020  
THIS RECORD AT THE REQUEST OF Snohomish County HAS BEEN FILED IN THE OFFICE OF THE COUNTY CLERK AND RECORDED IN BOOK 20-A-10988 AND RECORDED UNDER AUDITOR'S FILE NO. 202007135003. RECORDS OF SNOHOMISH COUNTY, WASHINGTON

**SURVEYORS NOTES**  
THE PURPOSE OF THIS SURVEY IS THE DETERMINATION OF THE BOUNDARIES AND AREA OF THE ALIQUOT RESOURCES USE AUTHORIZATION NO. 20-A-10988.

**CONTROL METHODOLOGY**  
EQUIPMENT: LEICA GS4 GNSS RECEIVER  
SOFTWARE: LEICA ADS1000  
METHOD: FIELD TRIANGULATION  
ELEVATION PERFORMANCE: AUGUST 2016-JANUARY 2017

**PHILIP T. HEBERT, PLS 40688**  
SNOHOMISH COUNTY AUDITOR

**Diana Mox**  
DEPUTY COUNTY AUDITOR

## EXHIBIT B

### 1. DESCRIPTION OF PERMITTED USE

**A. Existing Facilities.** Snohomish County has plans to renovate a day use portion of Kayak Point Park, located at the shoreline of Port Susan in Snohomish County. The day use portion of the park includes private county-owned uplands with picnic sheds, parking, and restroom facilities, a public access boat launch located on private tidelands, and a public access fixed pier located on state-owned aquatic bedlands. Port Susan is a bay located between the coast of the Warm Beach area of Snohomish County and Camano Island. This portion of the bedlands is home to eelgrass beds and herring spawning habitat, in addition to other common pacific northwest saltwater species. The park provides important access to state-owned aquatic lands, as well as important habitat for aquatic life.

Historically, the upland property was settled by loggers, and later used for farming until the early 1900's. Originally, the site was part of the ancestral lands of the Snohomish peoples. In the 1920's, the farm was developed into a resort which provided beachfront recreational opportunities, camping, and cabins. The original owners sold the resort to Richfield Oil Company (now ARCO), who in turn sold the property to Snohomish County. Under Snohomish County's ownership, the park continues a legacy of recreational opportunities and public access to state-owned aquatic lands. The park has been under an Aquatic Lands Lease with DNR since May of 1977. This lease is a reauthorization of Lease No. 20-010988, which went into holdover status on April 30<sup>th</sup>, 2007.

**B. Proposed Work.** Tenant has submitted to State plans and specifications for the Proposed Work, which are attached as Attachment 1 to this Exhibit B (Proposed Work). State grants its consent to the Proposed Work. Tenant shall conform the Proposed Work to the plans and specifications. Tenant's Proposed Work is considered Work and subject to the terms and conditions of this Lease. If the Proposed Work is not commenced within five years of the Commencement Date of the Lease, or if Tenant is required to renew, extend, modify, or obtain a new regulatory permit for the Proposed Work, Tenant shall obtain State's prior written consent before conducting the Proposed Work pursuant to Section 7.3 of the Lease. Attachment 1 to this Exhibit B shows removal of seven derelict creosote-treated piling, repair work on wooden fixed-pier including replacement of creosote-treated wood piling with inert steel piling, repair work on bent and bracing materials on the structure, replacement of fixed pier decking with 100% steel grating, and installation of embedded anchor buoys to mark eelgrass bed locations.



**C. Permits for Proposed Work.** Tenant has secured the following permits for the Proposed Work:

- Hydraulic Project Approval No. 2022-4-62+02, issued by the Washington State Department of Fish & Wildlife, dated March 1<sup>st</sup>, 2022 through January 26<sup>th</sup>, 2027
- Certification of Consistency with the Washington State Coastal Zone Management Program, issued by Washington State Department of Ecology, dated February 4<sup>th</sup>, 2022
- NWS-2019-650-WRD issued by United States Army Corps of Engineers, dated April 16<sup>th</sup>, 2023 through April 19<sup>th</sup>, 2026
- Water Quality Certification Order No 20085, issued by Washington State Department of Ecology, dated February 3<sup>rd</sup>, 2022
- Shoreline Substantial Development Permit, Conditional Use, and Shoreline Variance Permits No.'s 19-112874SHOR, 19-112876SHOR, and 19-112877SHOR, issued by Washington State Department of Ecology, dated December 9<sup>th</sup>, 2021
- Flood Hazard Permit No. 21118695FHZ, issued by Snohomish County Planning & Development Services, dated May 9<sup>th</sup>, 2023 through November 9<sup>th</sup>, 2024
- Land Disturbing Activities Permit No. 21118694LDA, issued by Snohomish County Planning and Development Services, dated May 9<sup>th</sup>, 2023 through May 9<sup>th</sup>, 2026
- SEPA Determination of Nonsignificance, issued by Snohomish County Planning and Development Services, dated August 4<sup>th</sup>, 2021

## 2. ADDITIONAL OBLIGATIONS

Except for the Proposed Work authorized in Section 1.B. of this Exhibit B, State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Paragraph 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

- A. By February 16<sup>th</sup>, 2024, Tenant shall post visible signage that includes all national and state emergency reporting numbers for oil and chemical spills.
- B. By February 16<sup>th</sup>, 2024, Tenant shall remove the seven existing derelict creosote-treated wood piling from northeastern side of the fixed pier as shown in Attachment 1 to this Exhibit B.

- C. By February 16<sup>th</sup>, 2024, Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner that minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Tenant shall implement the following measures to achieve this requirement:
- (i) Tenant shall direct light to walkways,
  - (ii) Tenant shall use light shields that prevent light from being emitted upward and prevent glare on the water,
  - (iii) Tenant shall use fixtures that do not emit light upward,
  - (iv) Tenant shall use lights that are “warm-white” or filtered.
- D. By February 16<sup>th</sup>, 2024, Tenant shall renovate or replace the existing fixed pier identified in Attachment 1 to this Exhibit B as follows:
- (ii) For the fixed pier, Tenant shall install grating on one hundred percent (100%) of the surface area; grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space.
- E. By July 1<sup>st</sup>, 2028, Tenant shall replace existing treated wood piling, as shown in Attachment 1 to this Exhibit B, with non-toxic materials such as untreated wood, steel, concrete, fiberglass or recycled plastic, Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood to replace above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- F. Tenant shall monitor eelgrass and submit reports to State as specified in Attachment 2 to this Exhibit B.
- (ii) Tenant shall implement the plan to avoid and minimize impacts in conjunction with any Work conducted on the Property.
  - (ii) If success criteria defined in Section 3.2 of the approved monitoring plan is not met, Tenant shall develop and submit to State for approval a plan to mitigate impacts resulted from the Permitted Use and any Work no later than ninety (90) days after submitting the survey to State.

Aquatic Lands Lease  
Template approved as to form this  
20th day of July, 2022  
Jennifer Clements, Assistant Attorney General

## ATTACHMENT 1 Kayak Point Project Design Plans

S36 T31N R03E

**DRAWINGS PREPARED BY:**

- J. A. BRENNAN ASSOCIATES, PLLC
- REID MIDDLETON, INC.

**IN ASSOCIATION WITH:**

- RAEDEKE ASSOCIATES, INC.
- COASTAL GEOLOGICAL SERVICES, INC.
- ROLLUDA ARCHITECTS, INC.
- SHANNON & WILSON, INC.
- STANTEC

**DRAWING INDEX:**

1. COVER SHEET AND VICINITY MAP
2. EXISTING CONDITIONS PLAN - SOUTH
3. EXISTING CONDITIONS PLAN - NORTH
4. SITE PREP AND DEMO PLAN - SOUTH
5. SITE PREP AND DEMO PLAN - NORTH
6. GRADING & LAYOUT PLAN - SOUTH
7. GRADING & LAYOUT PLAN - NORTH
8. SITE SECTIONS - SOUTH
9. SITE SECTIONS - NORTH
10. PLANTING PLAN - SOUTH
11. PLANTING PLAN - NORTH
12. PLANTING LIST
13. TEMPORARY CONSTRUCTION BARGE PLAN

- EN-1. PLAN - BOAT RAMP REPLACEMENT WITH ELEVATED RAMP  
 EN-2. SECTION - BOAT RAMP  
 EN-3. PLAN & SECTION - DEBRIS DEFLECTOR  
 EN-4. PLAN - EXISTING PIER PILE REMOVAL, GRATING AND PIER PILE REPLACEMENT  
 EN-5. COMPARISON OF EXISTING VS NEW CONSTRUCTION ACTIVITY BY AREA



LOCATION MAP  
NOT TO SCALE



VICINITY MAP  
NOT TO SCALE

FOR PERMITTING USE ONLY  
NOT FOR CONSTRUCTION

REVISED TO INCLUDE THE HIGH TIDE LINE (HTL)

Updated January 25, 2023

**REFERENCE:** NWS-2019-650-WRD  
**APPLICANT:** SNOHOMISH COUNTY PARKS  
**ADJACENT PROPERTY OWNERS:**  
 1. SNOHOMISH COUNTY PARKS  
 2. WA DNR AQUATIC LAND PARCELS  
 3. STRIEBY, KENNETH A & JANE A  
 4. MU, JAMES Z & TANG, LIHUA  
 5. CALKINS, GUY & STEPHANIE  
 6. PREWITT, LARRY

SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK

LOCATION: 48° 8.2' N; 122° 22' W

**COVER SHEET AND VICINITY MAP**

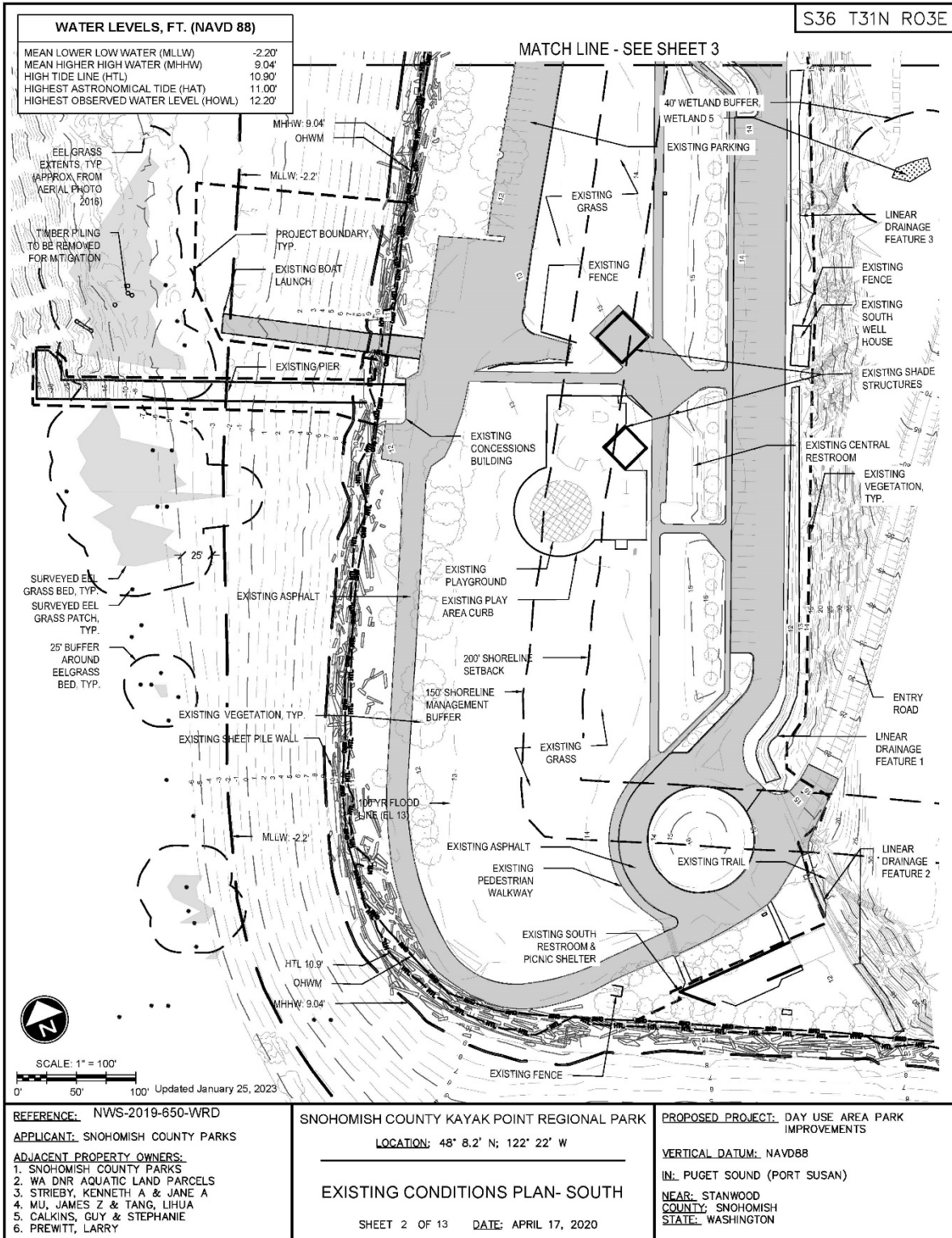
SHEET 1 OF 13 DATE: APRIL 17, 2020

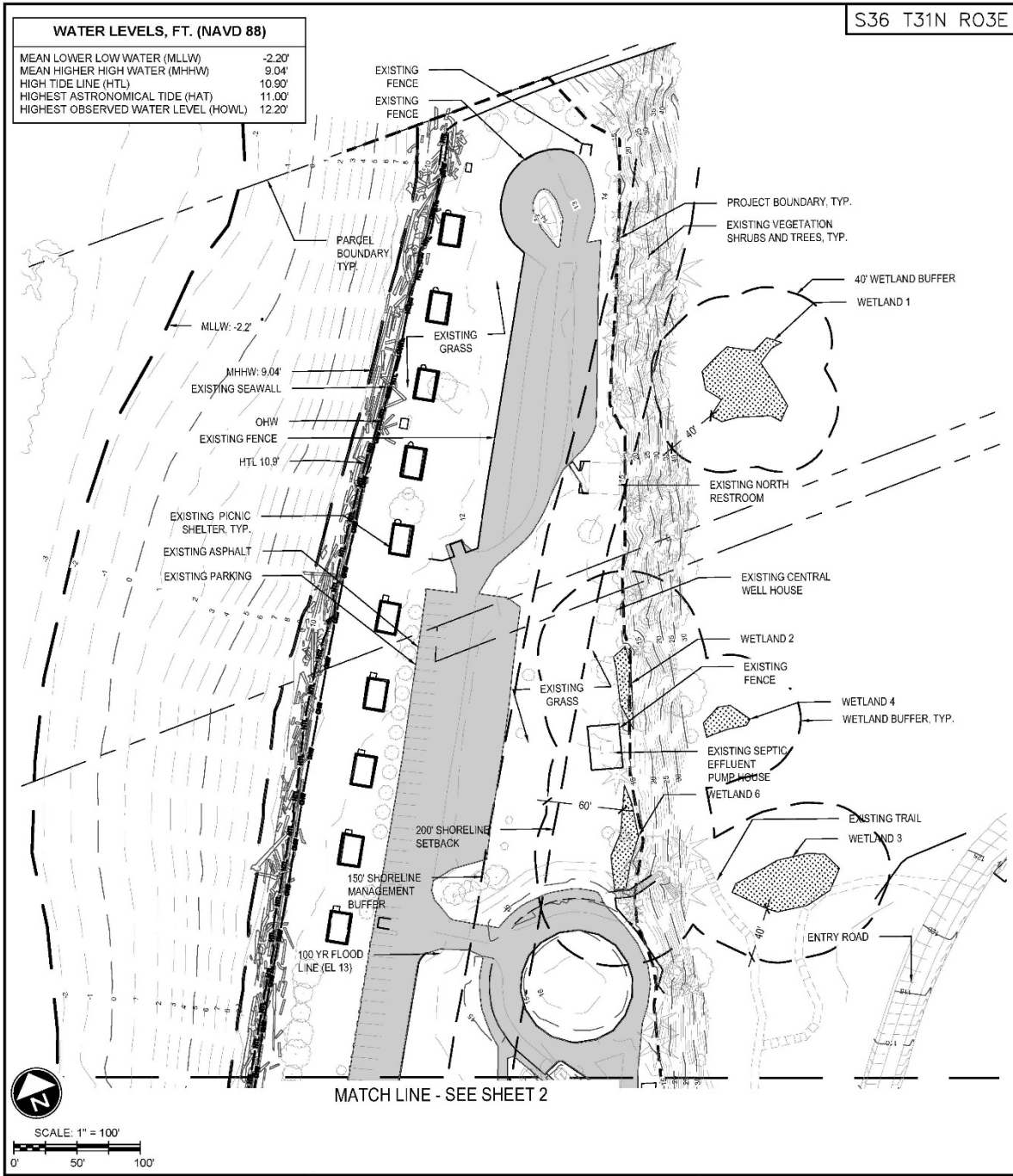
**PROPOSED PROJECT:** DAY USE AREA PARK IMPROVEMENTS

**VERTICAL DATUM:** NAVD88

**(IN: PUGET SOUND (PORT SUSAN))**

**NEAR:** STANWOOD  
**COUNTY:** SNOHOMISH  
**STATE:** WASHINGTON



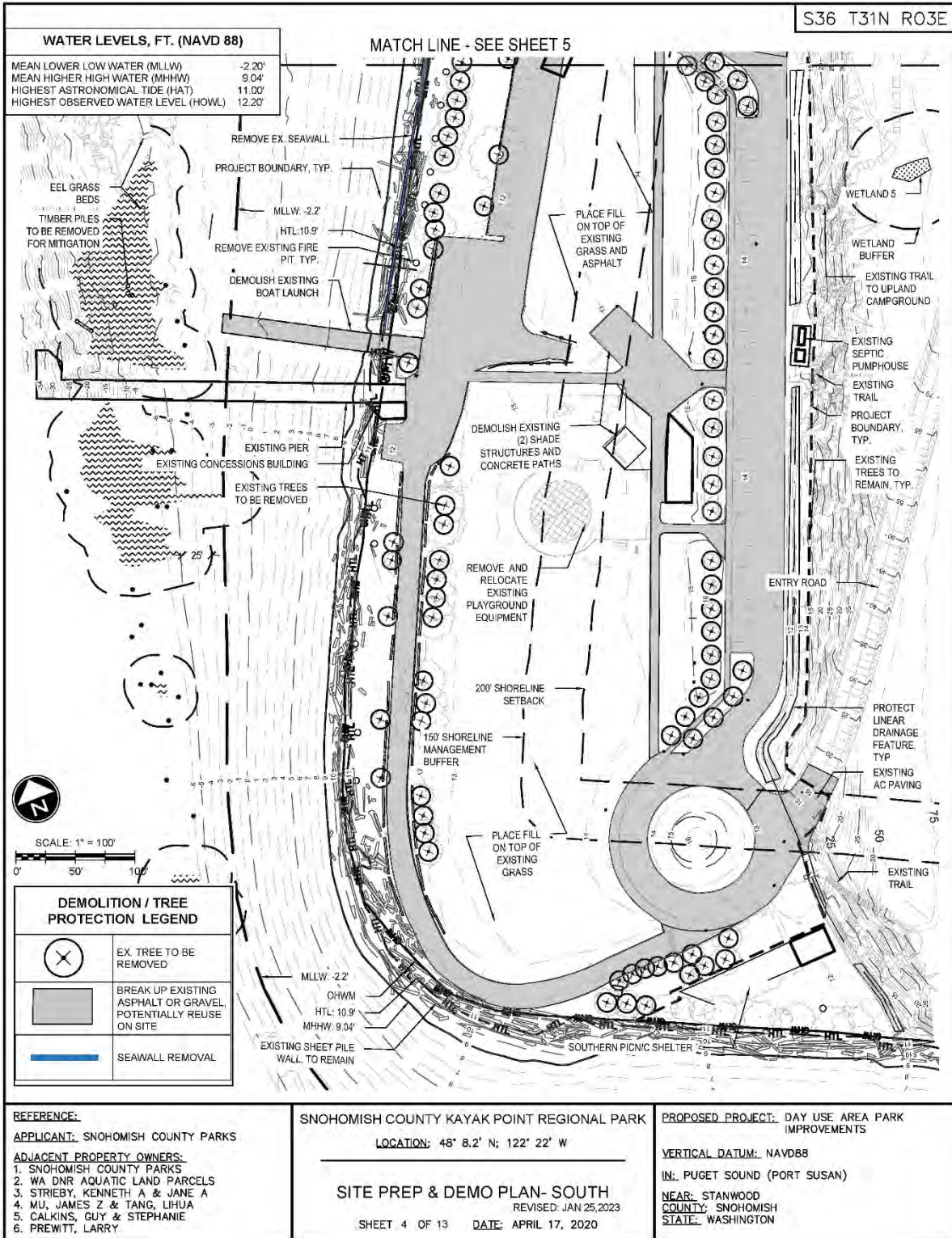


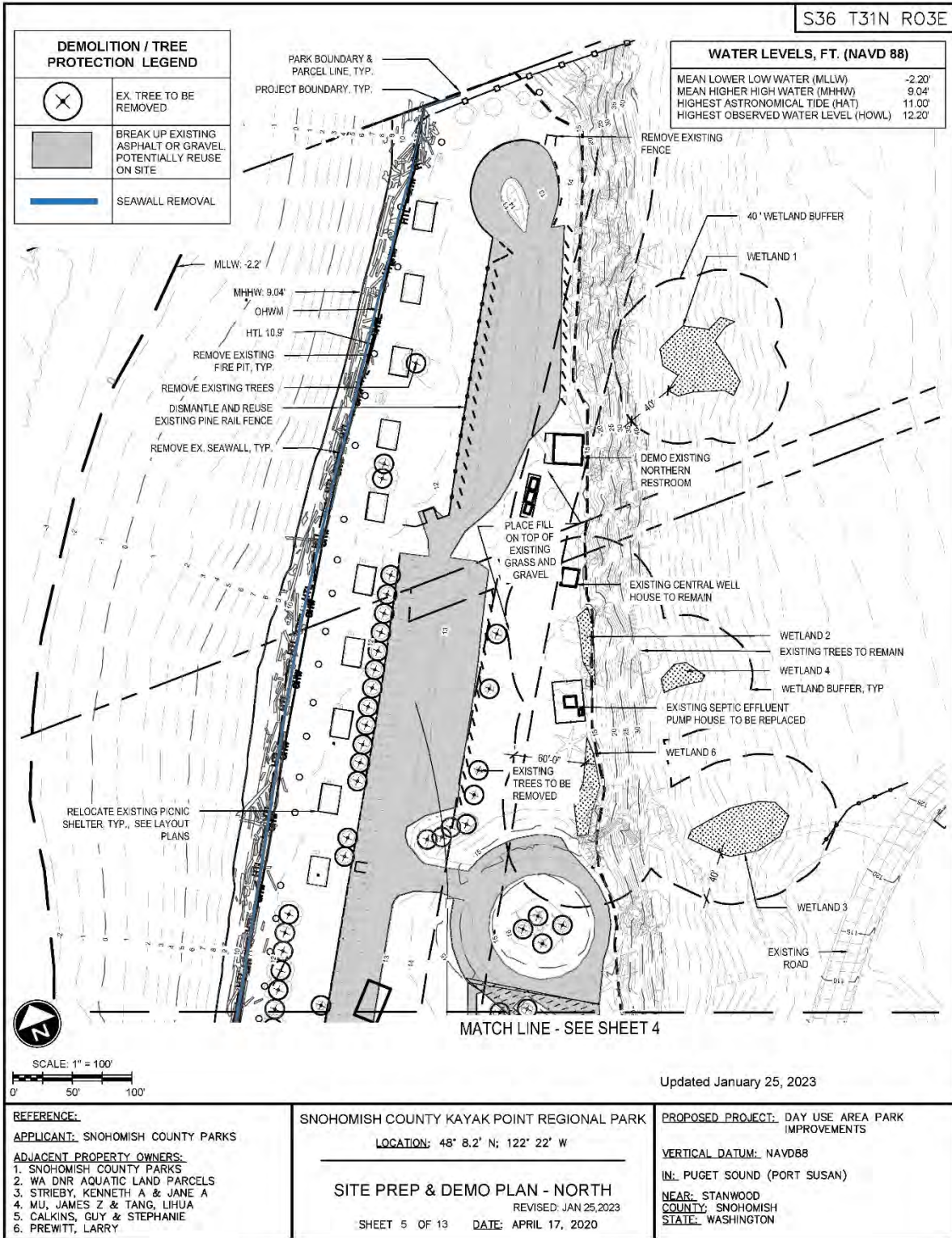
**REFERENCE:** NWS-2019-650-WRD  
**APPLICANT:** SNOHOMISH COUNTY PARKS  
**ADJACENT PROPERTY OWNERS:**  
 1. SNOHOMISH COUNTY PARKS  
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**SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK**  
**LOCATION:** 48° 8.2' N; 122° 22' W  
**EXISTING CONDITIONS PLAN- NORTH**  
 Updated January 25, 2023  
 SHEET 3 OF 13 DATE: APRIL 17, 2020

**PROPOSED PROJECT:** DAY USE AREA PARK IMPROVEMENTS  
**VERTICAL DATUM:** NAVD88  
**IN:** PUGET SOUND (PORT SUSAN)  
**NEAR:** STANWOOD  
**COUNTY:** SNOHOMISH  
**STATE:** WASHINGTON





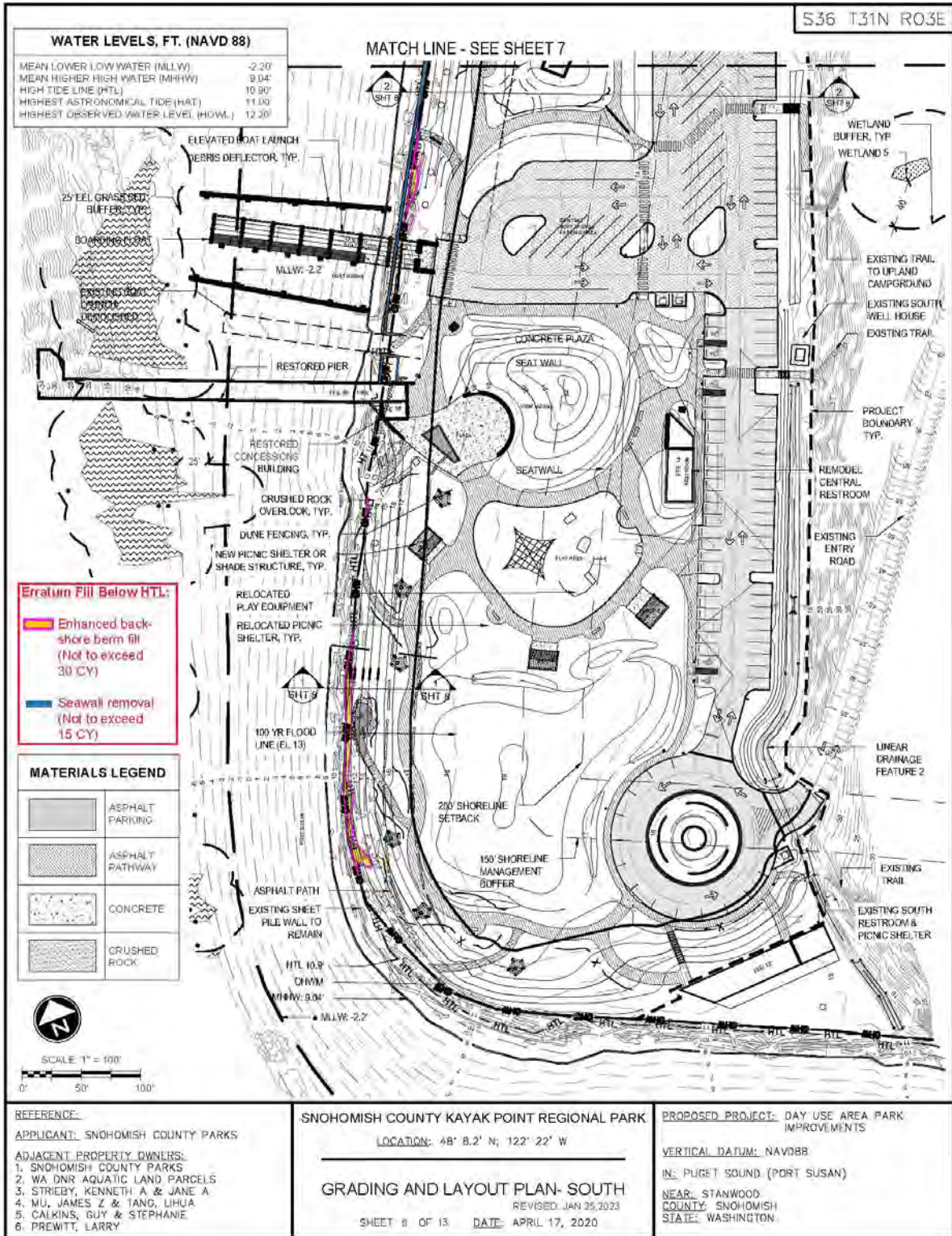


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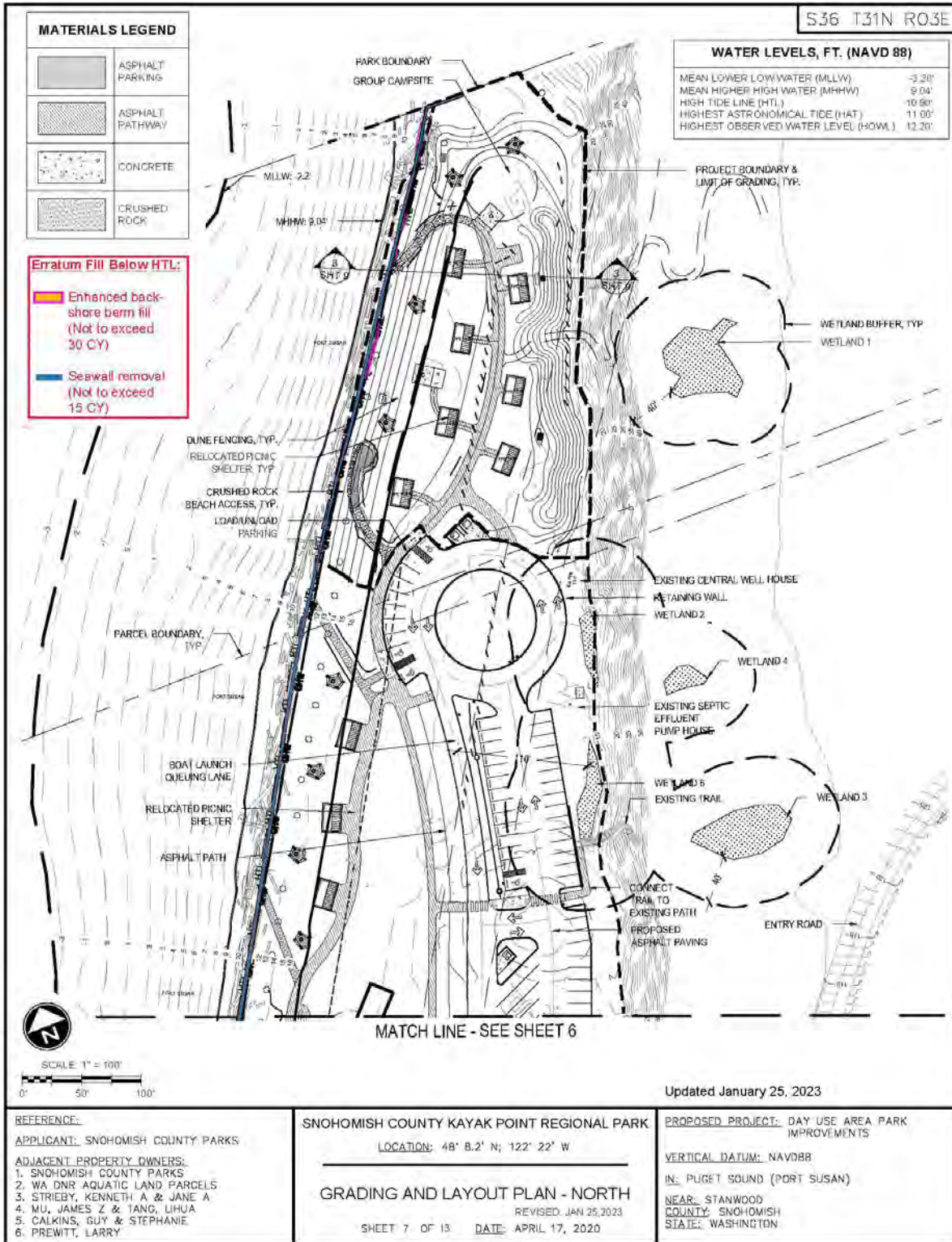
**SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK**  
**LOCATION:** 48° 8.2' N; 122° 22' W  
**SITE PREP & DEMO PLAN - NORTH**  
 REVISED: JAN 25, 2023  
 SHEET 5 OF 13 DATE: APRIL 17, 2020

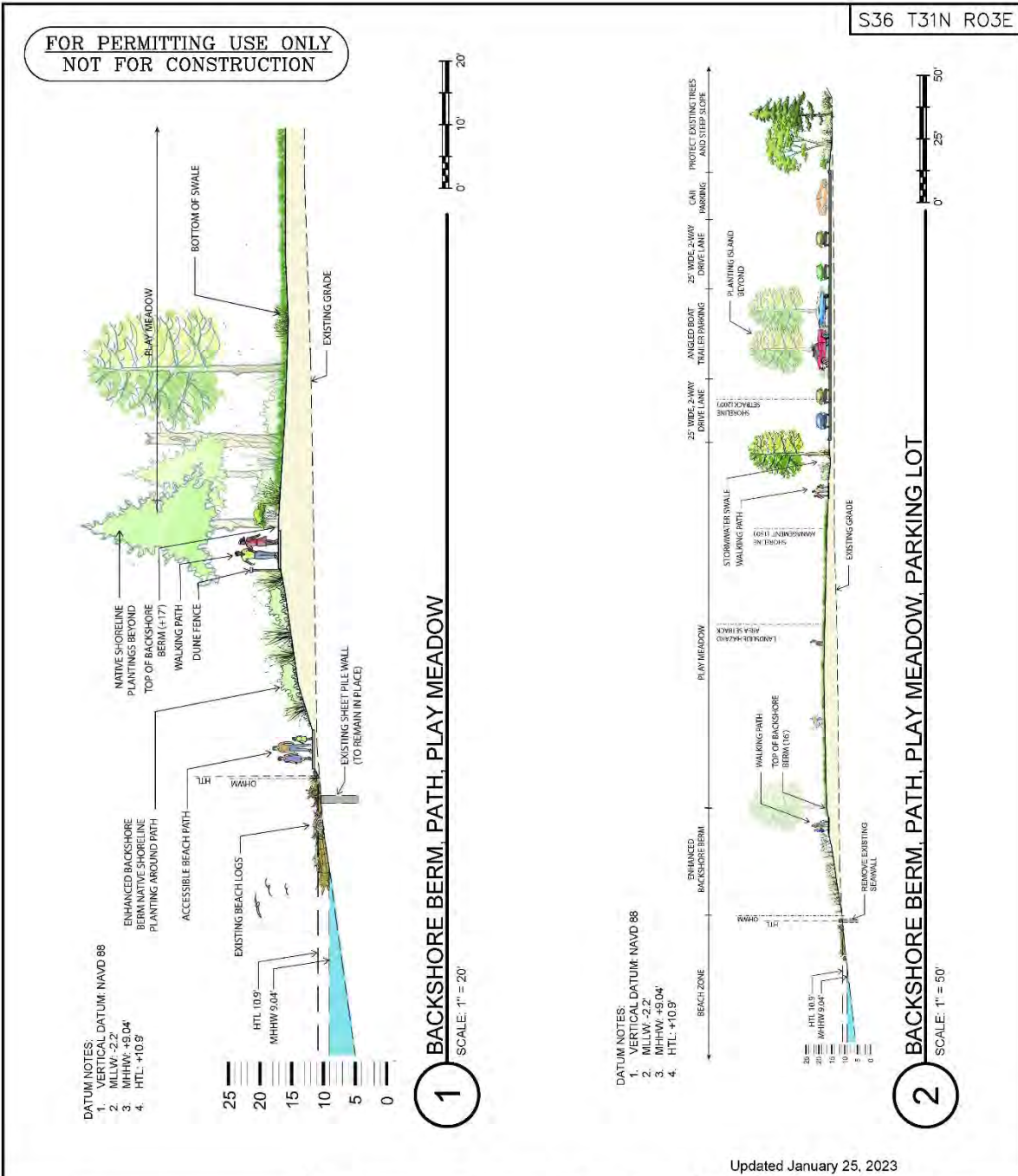
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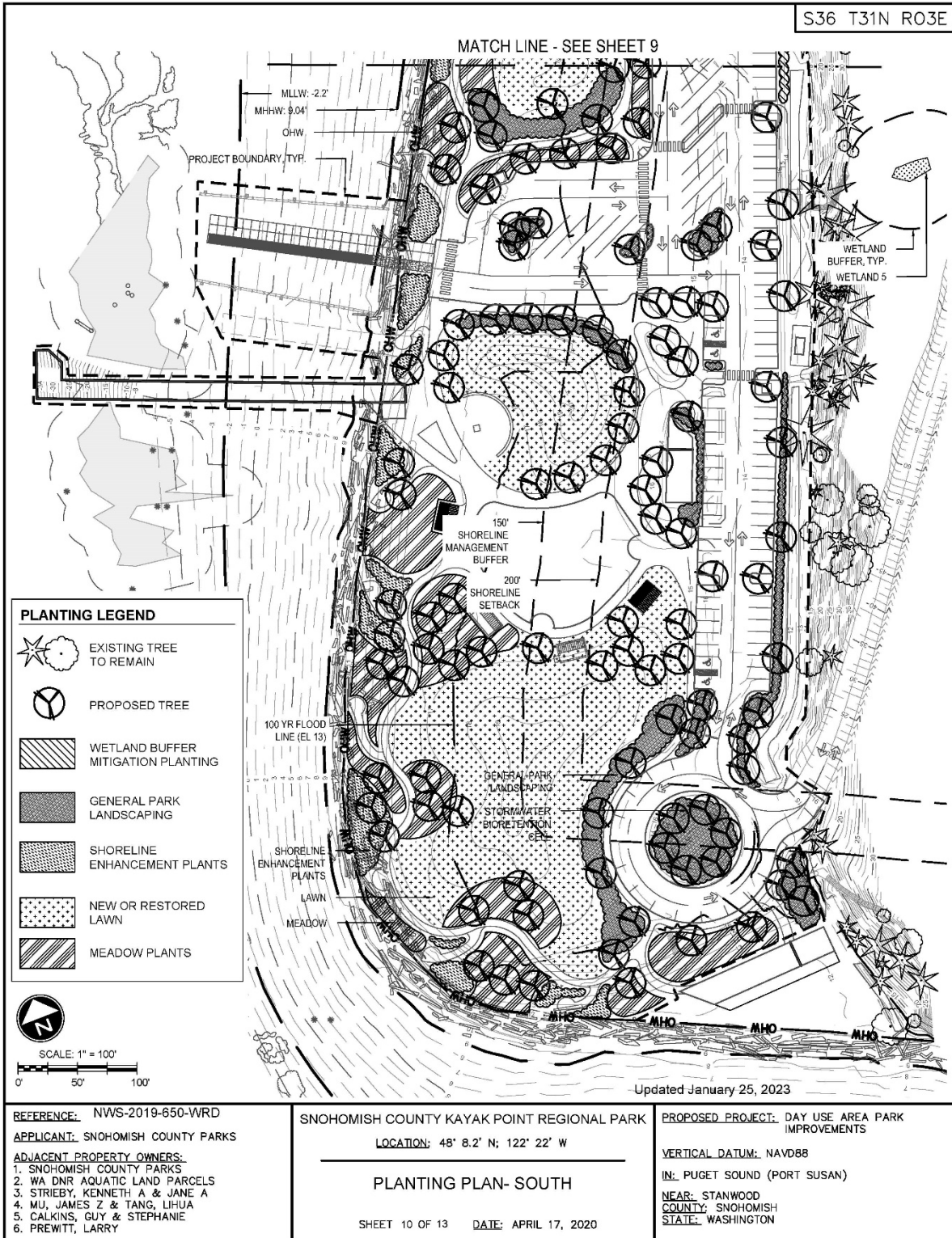


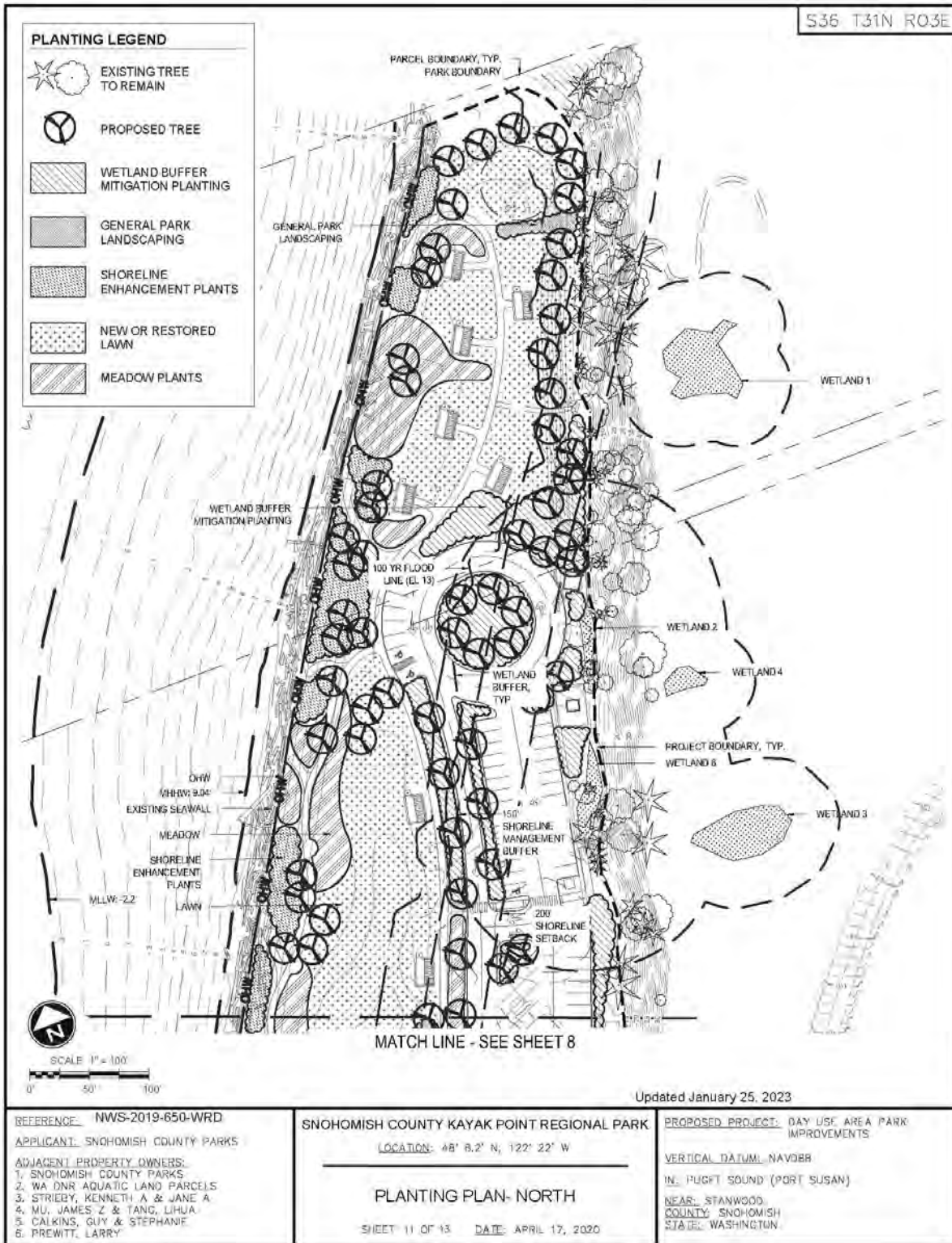
Updated January 25, 2023

<p><b>REFERENCE:</b></p> <p><b>APPLICANT:</b> SNOHOMISH COUNTY PARKS</p> <p><b>ADJACENT PROPERTY OWNERS:</b></p> <ol style="list-style-type: none"> <li>1. SNOHOMISH COUNTY PARKS</li> <li>2. WA DNR AQUATIC LAND PARCELS</li> <li>3. STRIEBY, KENNETH A &amp; JANE A</li> <li>4. MU, JAMES Z &amp; TANG, LIHUA</li> <li>5. CALKINS, GUY &amp; STEPHANIE</li> <li>6. PREWITT, LARRY</li> </ol>	<p>SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK</p> <p><b>LOCATION:</b> 48° 8.2' N; 122° 22' W</p> <hr/> <p><b>SITE SECTIONS - SOUTH</b></p> <p>REVISED: JAN 25, 2023</p> <p>SHEET 8 OF 13    DATE: APRIL 17, 2020</p>	<p><b>PROPOSED PROJECT:</b> DAY USE AREA PARK IMPROVEMENTS</p> <p><b>VERTICAL DATUM:</b> NAVD88</p> <p><b>IN:</b> PUGET SOUND (PORT SUSAN)</p> <p><b>NEAR:</b> STANWOOD</p> <p><b>COUNTY:</b> SNOHOMISH</p> <p><b>STATE:</b> WASHINGTON</p>
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S36 T31N R03E

**MITIGATION AND HABITAT ENHANCEMENT PLANT LIST**

**CONIFEROUS TREES**

SCIENTIFIC NAME	COMMON NAME	SIZE
ABIES GRANDIS	GRAND FIR	5 GAL
PICEA SITCHENSIS	SITKA SPRUCE	6" - 8"
PINUS CONTORTA VAR. CONTORTA	SHORE PINE	1 GAL
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	6" - 8"
THUJA PLICATA	WESTERN RED CEDAR	1 GAL

**DECIDUOUS TREES**

SCIENTIFIC NAME	COMMON NAME	SIZE
ALNUS RUBRA	RED ALDER	1 GAL
BETULA Papyrifera	CHMDE BIRCH	2 GAL
CORNUS NUTTALLI 'EDDIE'S WHITE WONDER'	EDDIE'S WHITE WONDER DOGWOOD	1 GAL
CRATAEGUS DOUGLASII	BLACK HAWTHORN	1 GAL
FRAXINUS LATIFOLIA	OREGON ASH	1 GAL
SALIX HOOKERIANA	HOOKER'S WILLOW	1 GAL
POPULUS BALSAMIFERA	COTTONWOOD	1 GAL

**LARGE SHRUBS**

SCIENTIFIC NAME	COMMON NAME	SIZE
AMBLANCHIER ALNIFOLIA	WESTERN SERVICEBERRY	1 GAL
CORNUS SERICEA	REDTWIG DOGWOOD	1 GAL
HOLDISCUS DISCOLOR	OCEANSPIRAY	1 GAL
LONICERA INVOLUCRATA	BLACK TWNBERRY	1 GAL
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	1 GAL
MYRICA GALE	SWEET GALE	1 GAL
PHILADELPHUS LEWISII	PACIFIC WAX MYRTLE	1 GAL
PHYSOCARPUS CARTATUS	PACIFIC NINESBARK	5 GAL
RIBES SANGUINEUM	RED FLOWERING CURRANT	1 GAL
ROSA GYMNOCARPA	BALDHIP ROSE	1 GAL
SPIRAEA DOUGLASII	HARDHACK	1 GAL
VIBURNUM EDULE	HIGHSUSH CRANBERRY	1 GAL

**SMALL SHRUBS & HERBACEOUS**

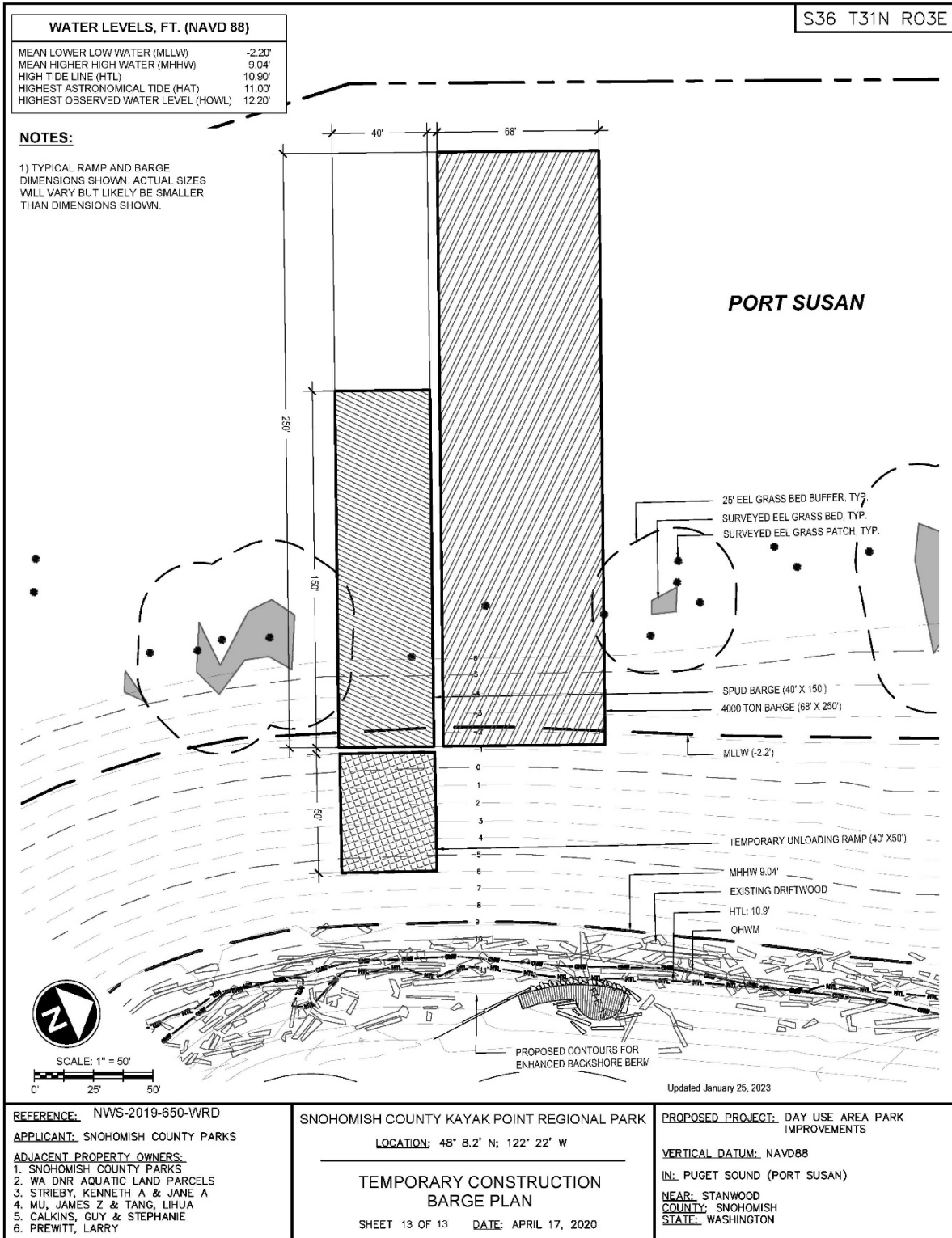
SCIENTIFIC NAME	COMMON NAME	SIZE
AGROSTIS EXERATA	SRIKE BENTGRASS	4" POT
ARMERIA MARITIMA	SEA THRIFT	4" POT
ASTER SUBSPICATUS	DOUGLAS ASTER	4" POT
ATHYRIUM FELIX-FEMINA	LADY FERN	1 GAL
BROMUS CARINATUS	CALIFORNIA BROME	4" POT
DESCHAMPSIA CAESPITOSA	TUFTED HAIRGRASS	1 GAL
ELYMUS MOLLI	DUNEGRASS	1 GAL
FESTUCA IDAHOENSIS ROMERII	ROEMER'S FESCUE	1 GAL
FRAGARIA CHILOENSIS	BEACH STRAWBERRY	1 GAL
FESTUCA IDAHOENSIS ROMERII	ROEMER'S FESCUE	1 GAL
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	1 GAL
GEIOTHERA ELATA HOOKERI	HOOKER'S EVENING PRIMROSE	1 GAL
POLYSTICHUM MUNITUM	SWORD FERN	1 GAL
ROSA GYMNOCARPA	BALDHIP ROSE	1 GAL
ROSA NUTKANA	NOOTKA ROSE	1 GAL
ROSA BISOCARPA	CLUSTERED WILDOSE	1 GAL
SEDUM SPATHULIFOLIUM	BROADLEAVED STONECROP	1 GAL
SYMPHORICARPUS ALBUS	SNOWBERRY	1 GAL
TRIFOLIUM FRAGIFERUM	STRAWBERRY CLOVER	4" POT
XEROPHYLLUM TENAX	BEARGRASS	4" POT

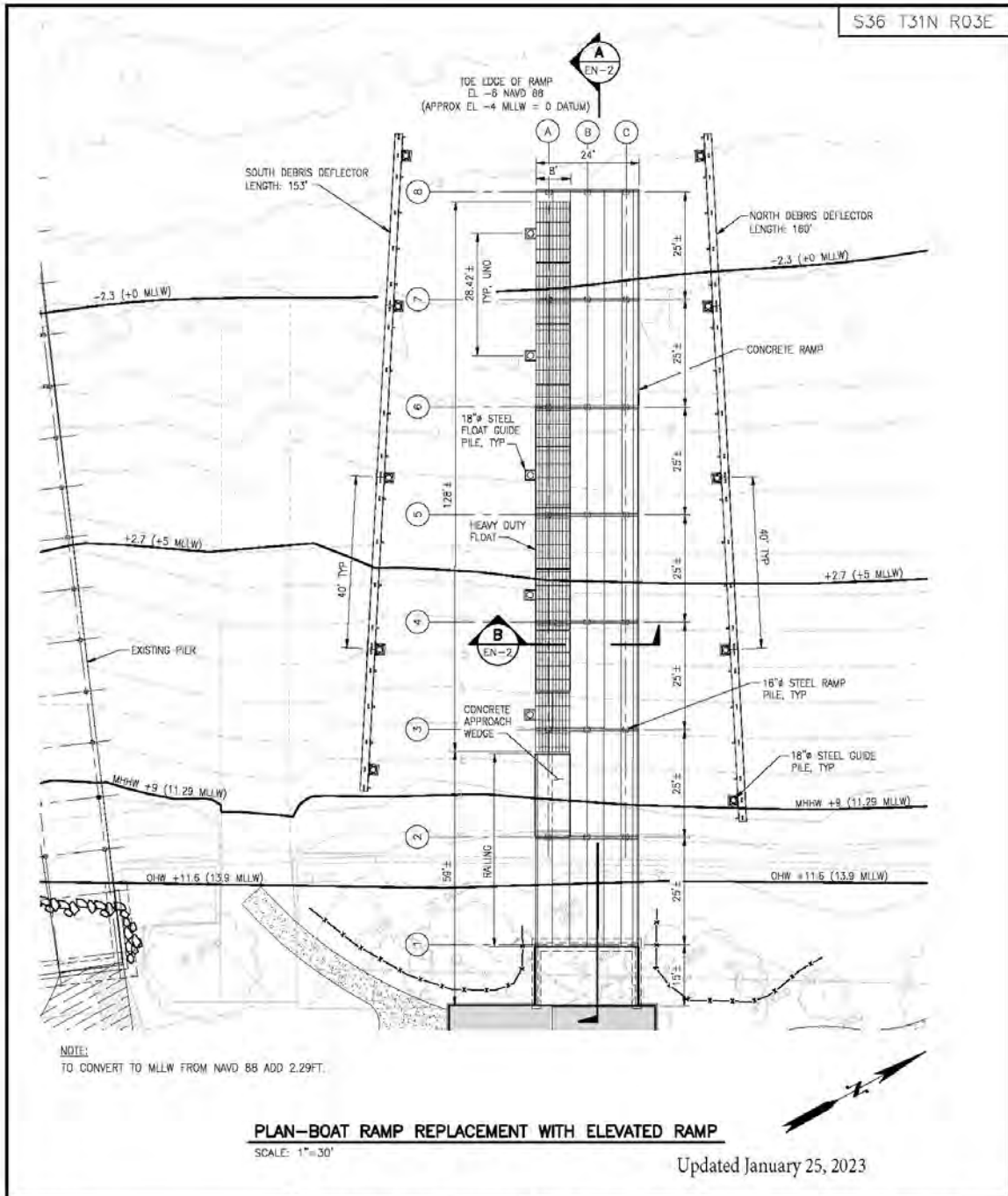
Updated January 25, 2023

REFERENCE: NWS-2019-650-WRD  
 APPLICANT: SNOHOMISH COUNTY PARKS  
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SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK  
 LOCATION: 48° 8.2' N; 122° 22' W  
 PLANTING LIST  
 SHEET 12 OF 13 DATE: APRIL 17, 2020

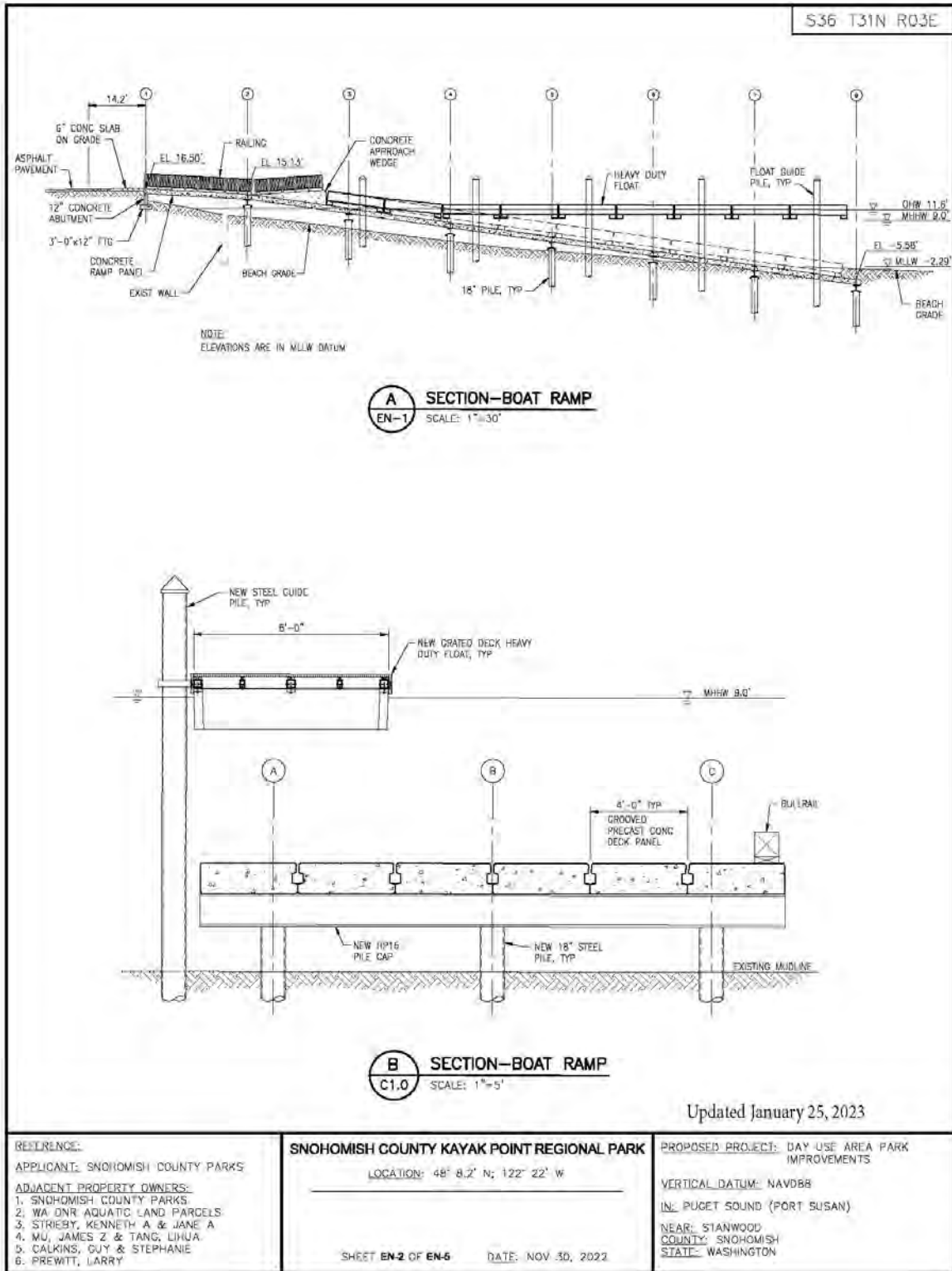
PROPOSED PROJECT: DAY USE AREA PARK IMPROVEMENTS  
 VERTICAL DATUM: NAVD88  
 IN: PUGET SOUND (PORT SUSAN)  
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 STATE: WASHINGTON

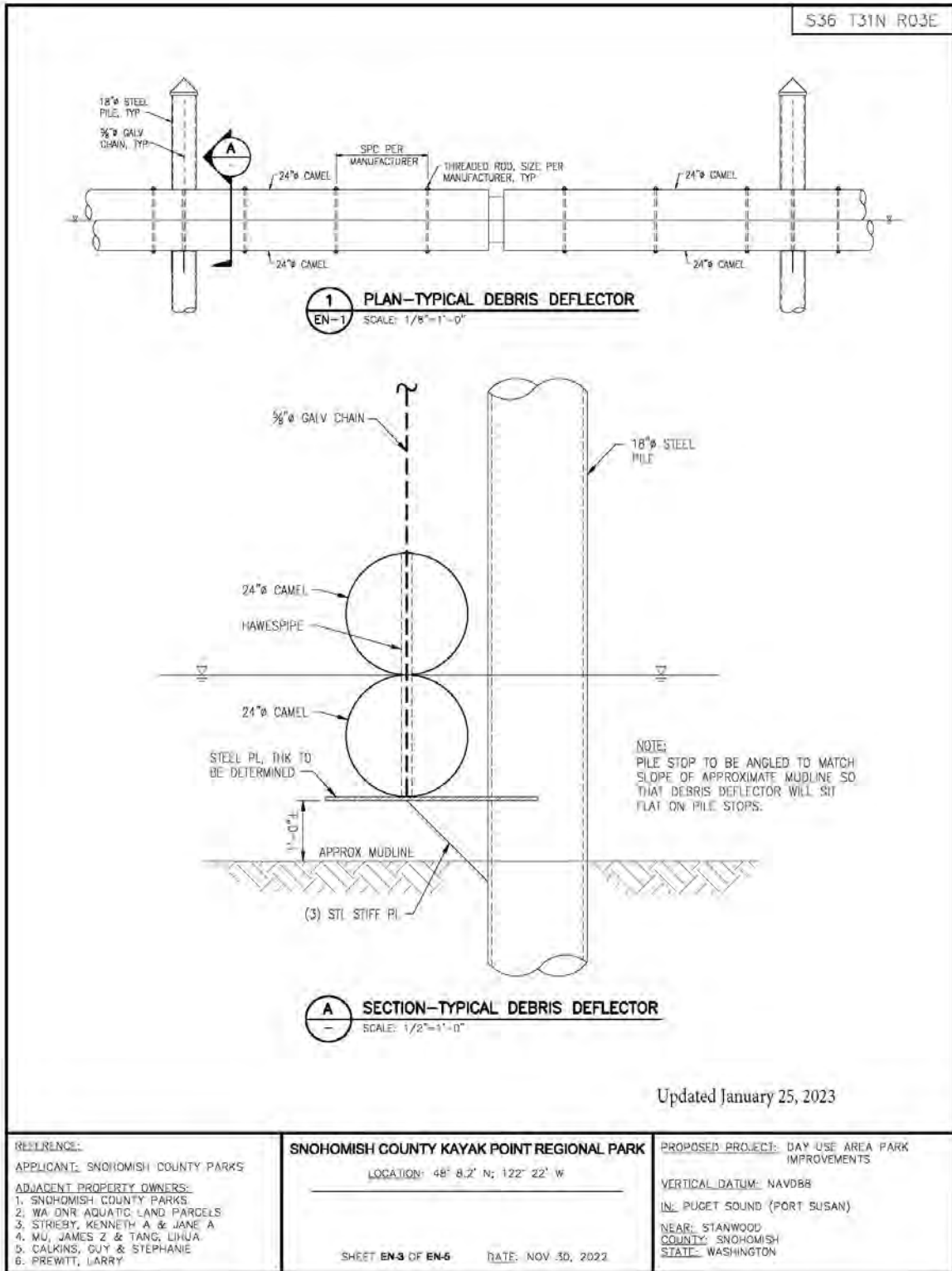


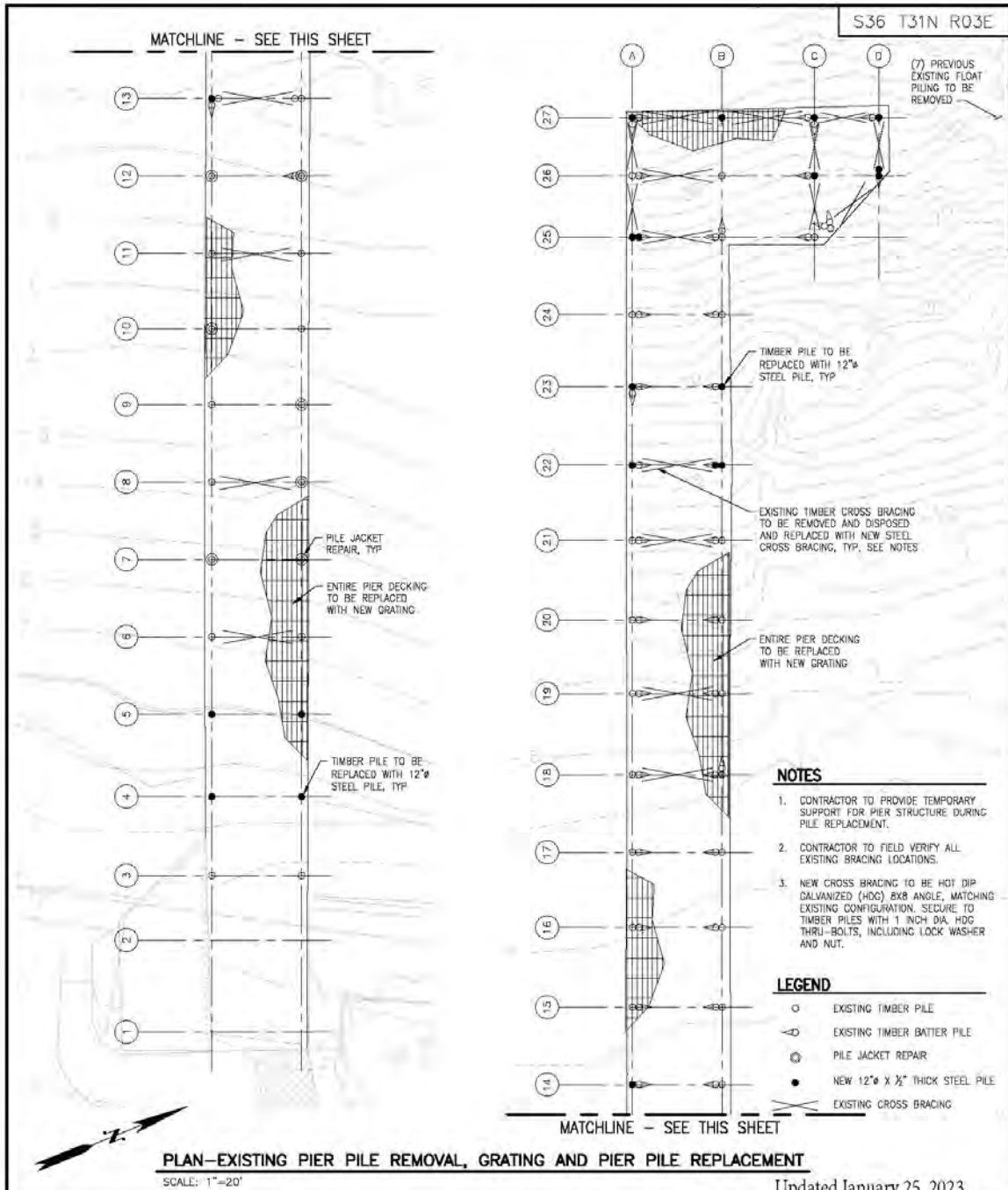


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**PLAN-EXISTING PIER PILE REMOVAL, GRATING AND PIER PILE REPLACEMENT**

SCALE: 1"=20'

Updated January 25, 2023

<p><b>REFERENCE:</b>                  APPLICANT: SNOHOMISH COUNTY PARKS                  ADJACENT PROPERTY OWNERS:                  1. SNOHOMISH COUNTY PARKS                  2. WA DNR AQUATIC LAND PARCELS                  3. STREIBY, KENNETH A &amp; JANE A                  4. MU, JAMES Z &amp; TANG, LIHUA                  5. CALKINS, GUY &amp; STEPHANIE                  6. PREWITT, LARRY</p>	<p><b>SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK</b>                  LOCATION: 48° 8.2' N; 122° 22' W                  SHEET EN-4 OF EN-6      DATE: NOV 30, 2022</p>	<p><b>PROPOSED PROJECT:</b> DAY USE AREA PARK IMPROVEMENTS                  VERTICAL DATUM: NAVD88                  IN: PUGET SOUND (PORT SUSAN)                  NEAR: STANWOOD                  COUNTY: SNOHOMISH                  STATE: WASHINGTON</p>
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**Comparison of Existing vs. New Construction Activity by Area.**

Construction Activity	Existing Area (ft² below MHHW)	Proposed New Area (ft² below MHHW)	Net Change (ft² below MHHW)	Existing Area (ft² below OHW)	Proposed New Area (ft² below OHW)	Net Change (ft² below OHW)
Concrete Boat Ramp & Piling	1980	3422	1442	2246	3720	1474
Concrete Wedge	0	25	25	0	183	183
Boarding Float	0	1080	See Note 3	0	1080	See Note 3
Boarding Float Piling (5 Steel)	0	9	9	0	9	9
Debris Deflector	0	550	550	0	566	566
Debris Deflector Piling (10 Steel)	0	18	18	0	18	18
<b>Subtotal</b>	<b>1980</b>	<b>4024<sup>3</sup></b>	<b>2044<sup>4</sup></b>	<b>2246</b>	<b>4496<sup>3</sup></b>	<b>2250<sup>4</sup></b>
Existing Pier Damaged Pile Replacement (20 Steel) & Previous Float Piling Removal (7 Timber)	22	16	-6	22	16	-6
Pier Cross Bracing	253	253	0	253	253	0
Pier Decking	4760	2856 <sup>2</sup>	-1904	5130	3078 <sup>2</sup>	-2052
<b>Subtotal</b>	<b>5035</b>	<b>3125</b>	<b>-1910</b>	<b>5405</b>	<b>3347</b>	<b>-2058</b>
<b>TOTAL</b>	<b>7015</b>	<b>7149<sup>3</sup></b>	<b>134<sup>4</sup></b>	<b>7651</b>	<b>7843<sup>3</sup></b>	<b>192<sup>4</sup></b>

Notes:  
 1 MHHW (Mean Higher High Water = 11.29 feet MLLW); OHW (Ordinary High Water = 13.9 feet MLLW)  
 2 Pier Decking for Proposed New Area Incl. 40% reduction for grated decking open area (ex: area below MHHW = 4,760 sf x 0.6 = 2,856 sf).  
 3 Proposed new area total does not count boat ramp boarding floats (1,080 sf) since they are completely above the new concrete boat ramp area.  
 4 Proposed net change total does not count boat ramp boarding floats (1,080 sf) since they are completely above the new concrete boat ramp.

Updated January 25, 2023

S36 T31N-R03E

**REFERENCE:**  
 APPLICANT: SNOHOMISH COUNTY PARKS  
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**SNOHOMISH COUNTY KAYAK POINT REGIONAL PARK**  
 LOCATION: 48° 8.2' N; 122° 22' W  
 SHEET EN-5 OF EN-6      DATE: NOV. 30, 2022

**PROPOSED PROJECT:** DAY USE AREA PARK IMPROVEMENTS  
 VERTICAL DATUM: NAVD83  
 (N. PUGET SOUND (PORT SUSAN))  
 NEAR: STANWOOD  
 COUNTY: SNOHOMISH  
 STATE: WASHINGTON

**ATTACHMENT 2 Kayak Point Eelgrass Monitoring Plan**

**Kayak Point Park Day Use Area  
Improvements Project**

**Eelgrass Monitoring Plan**

**June 2, 2023**

**Prepared for:**  
**Snohomish County Department of Conservation and Natural Resources**  
**Parks and Recreation Division**  
**c/o Carol Ohlfs, Principal Park Planner**  
**6705 Puget Park Drive**  
**Snohomish, WA 98296**



**MARINE SURVEYS & ASSESSMENTS**  
2601 Washington Street  
Port Townsend WA 98368  
360-385-4073  
[info@msaenvironmental.com](mailto:info@msaenvironmental.com)

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## **1 Background**

### **1.1 Project Overview**

The Kayak Point Park Day Use Area Improvements project is intended to improve recreational amenities at the County's most popular saltwater park while protecting the park from anticipated sea level rise and providing habitat and environmental enhancements. The work will be completed in two phases and will include upland work such as backshore berm enhancement and elevation of park areas to improve resilience to sea level rise. In-water project elements that may impact and/or enhance known eelgrass beds include:

- A new single lane elevated boat launch which will replace the existing concrete slab on-grade boat launch.
- Installation of debris deflectors for the new boat ramp.
- Repairs to the existing fishing pier which will replace creosote pilings with steel piles and replace solid decking with grated, light permeable material.
- Temporary construction impacts from installation of the boat launch, debris deflectors, and pier updates, as well as barge delivery of materials for the project.

The County has a State Lands Lease with Washington Department of Natural Resources (DNR) for the Kayak Point fishing pier which is currently going through the renewal process (Lease Number 20-A10988). As part of the lease agreement, the County assures DNR of their commitment to protecting the environment, including marine habitats around Kayak Point Park. This Eelgrass Monitoring Plan is intended to guide Snohomish County Parks and Recreation (Parks) and DNR in mutual understanding of the protection measures that will be undertaken for eelgrass habitat in the waters around Kayak Point Park during active construction and for a period of ongoing monitoring post-construction. This plan also provides adaptive management steps for Parks to implement to address impacts to eelgrass beds due to boat launch activities at the park.

### **1.2 Project Location**

Section 36, Township 31N, Range 03E

Parcel ID: 31033600100100

Latitude: 48.13663, Longitude: -122.36804

A vicinity map of the project parcel can be seen in Figure 1 below.



Figure 1. Vicinity map of project parcel



### 1.3 Project Description and Impacts

Detailed drawings and specifications of the proposed boat ramp, deflectors, and pier work can be found in site plans developed by Parks' design consultant team, led by J.A. Brennan Associates.

#### 1.3.1 Avoidance and Minimization of In-water Impacts

##### Boat Launch

Current boat launching and boat prop wash at the site may also affect the distribution of eelgrass in the vicinity of these features. It has been noted that boaters waiting to get to the ramp at low tide circle in front of the boat launch and the propellers cut some of the eelgrass (J. Brennan, personal communication, July 19, 2019 via Raedeke Associates).

The design and configuration of the proposed boat launch are intended to minimize impacts to beach substrate and avoid impacts to eelgrass from propeller wash immediately waterward of the end of the launch. The proposed boat launch and boarding float will allow for more efficient loading/unloading and will not require regular sand clearing, unlike the existing on-grade boat ramp. The proposed boat launch is located and configured to avoid direct impacts to eelgrass beds and provide at least a 25-ft setback from mapped eelgrass occurrence.

Minimization strategies implemented for boat launch renovation include:

- Proposing an elevated launch minimizes the impact on the forage fish spawning elevations by allowing shoreline drift underneath the structure.
- Installing a 1-lane boat launch with integrated boarding float instead of a 2-lane/2-float launch minimized the footprint of the structure overall.
- Moving the structure to the north to minimize the impact on existing eelgrass beds.



- Installing a boarding float minimizes the amount of time boaters will need to idle in the eelgrass zone and reduce launching from the beach.

#### **Fishing Pier**

The presence and shadow of the existing pier at the site may affect the distribution of eelgrass nearby. The timber pier decking is near the end of its useful life and will be replaced with grated decking for the benefit of light passage for eelgrass growth and other habitat benefits beneath the deck. This replacement will be completed using hand tools. The area of decking replaced with light permeable grating within the eelgrass zone totals approximately 4,800 ft<sup>2</sup>; assuming approximately 40% more light will get through the grated decking, the proposed decking would cover approximately 2,900 ft<sup>2</sup>, for a net reduction in shading of 1,900 ft<sup>2</sup> (Raedeke Associates 2020).

Fourteen (14) creosote-treated timber piles under the pier in the SOAL will be removed via vibratory (preferred method) or direct pull, and replaced with 12-inch-diameter steel piles. The steel piles will be installed via a vibratory hammer; an impact hammer will be used for proofing only if necessary. Seven (7) creosote-treated timber piles associated with the previous floating dock will also be removed. Pile removal and installation will follow the requirements under the "Pile Removal, Driving" section in the Hydraulic Project Approval (HPA) issued by Washington Department of Fish and Wildlife (WDFW) on March 1, 2022 (Permit Number: 2022-4-62+02) as well as those outlined in DNR's Best Management Practices for Pile Removal & Disposal (2017).

#### **Temporary Construction Material Barging**

A memo prepared by Coastal Geologic Services (CGS 2021) outlines the barge access plan for the proposed work. To summarize, a barge will be used to transport most of the primary material for the proposed upland fill work in the Day Use Area (28,307 yd<sup>3</sup> total for Phase 1 and Phase 2) and sediment for the backshore berm enhancement (8,089 yd<sup>3</sup>). To avoid impacts to eelgrass beds along the shoreline, a barge landing site is proposed approximately 350 ft south of the pier and another landing site is proposed at the existing concrete boat ramp (Figures 2).

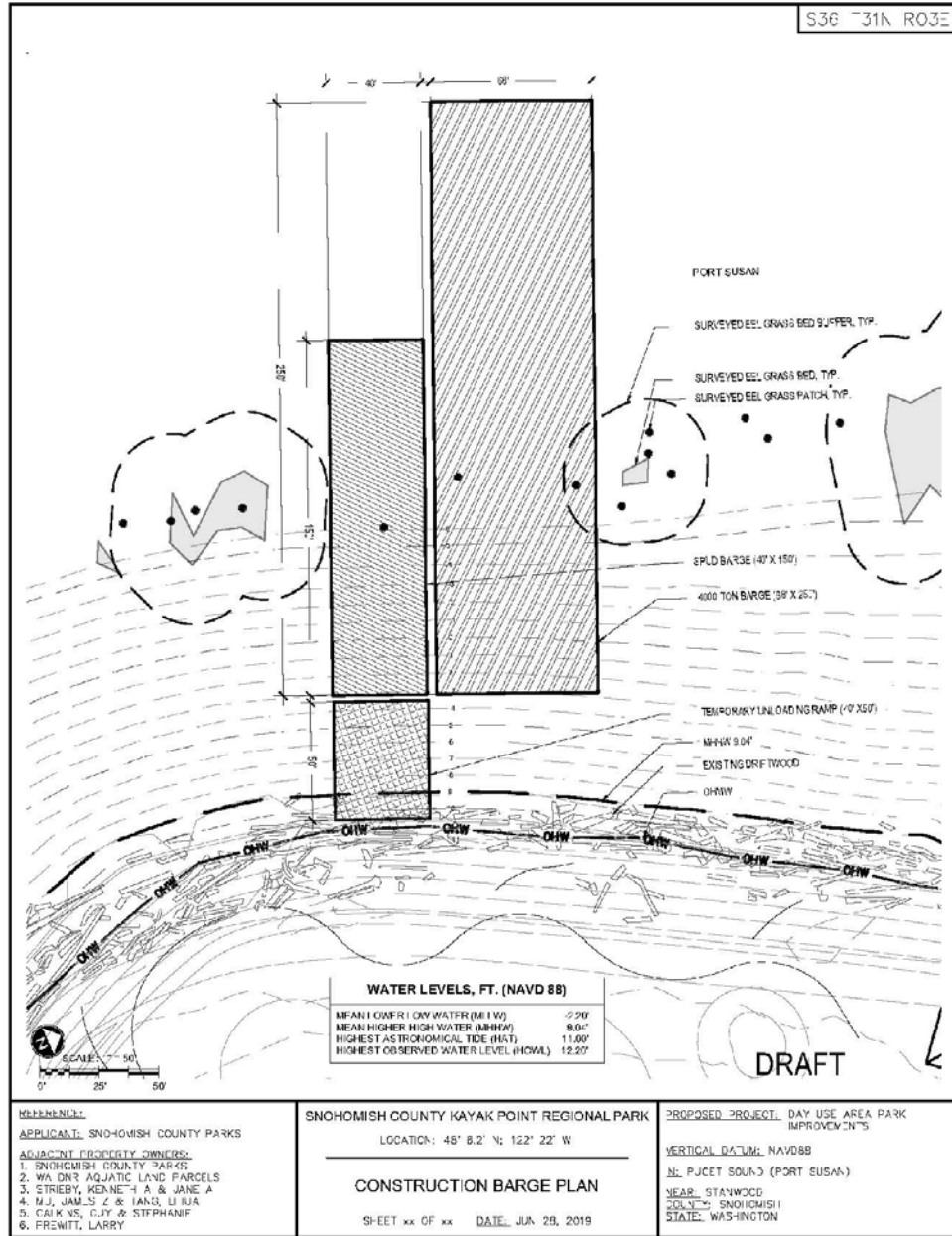
CGS states in the 2021 memo that there will be a 40-ft-wide by approximately 150-ft-long spud barge, which will likely have a hinged ramp (assumed to be up to 40-ft-wide) to facilitate offloading material onto the upper beach. A larger barge would be next to the spud barge and is estimated to measure up to 68-ft-wide by 250-ft-long. Both barges would ideally fit between two adjacent eelgrass beds at the proposed barge landing site south of the pier, maintaining a 25-ft buffer from the eelgrass as much as possible (Figure 3).

The barge landing area would be marked with fixed markers on the beach for alignment, and the eelgrass beds would be marked with buoys anchored with helical screw anchors for minimal impact.

Barging construction processes will follow all permit conditions. The material barge and most of the spud barge would not ground during offloading. The designated landing site to the south is on a steeper sloped section of the beach with relatively deep waters adjacent to the intertidal area. The spud barge will likely be touching only higher on the beach and limited to 25-ft-wide area. If conveyor offloading is used, the barge bow will likely not have to touch the beach, or only lightly touch in a more limited area. Barge unload time will be dependent on the equipment used but is expected to occur within six hours in most cases.



Figure 3. Proposed barge landing area south of pier (credit: CGS 2021)



#### 1.4 Existing Eelgrass Conditions

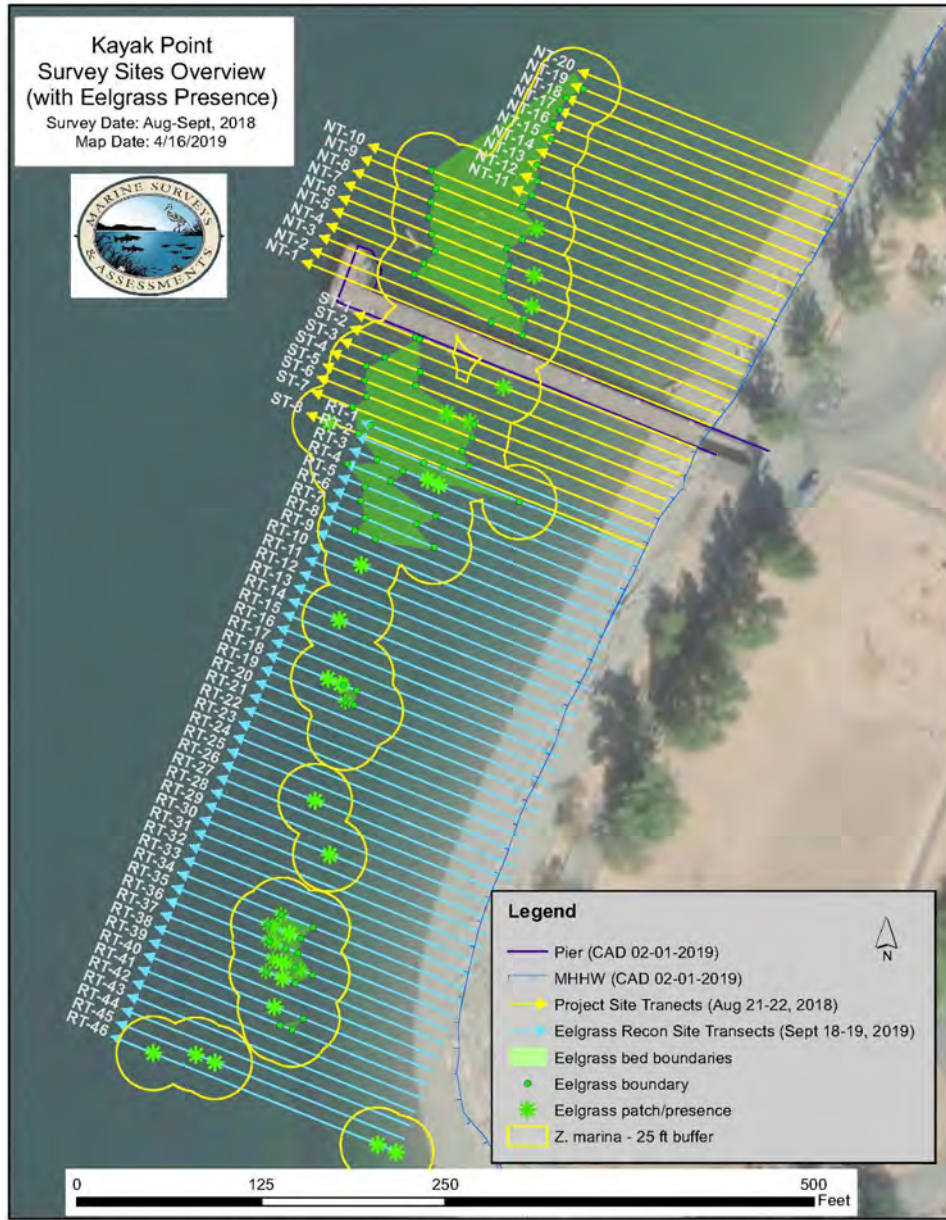
Eelgrass (*Zostera marina*) is present in continuous beds and in patchy distribution with some gaps throughout the entire length of the Kayak Point Park beach. Very little macroalgae was otherwise observed during site visits.

To document the occurrence of eelgrass in the vicinity of the existing facilities, proposed improvements, and potential barge landing areas, Snohomish County Parks hired Marine Survey & Assessments (MSA) to complete a detailed dive survey in August-September of 2018. Presence/absence of eelgrass was mapped along each transect. In addition, quadrats for eelgrass density estimates were done following 2008 WDFW Eelgrass/Macroalgae Habitat Interim Survey Guidelines. Quadrats began at a random point along each transect after the first sign of eelgrass and then quadrats were continued along the transect every 20 ft until the end of the transect.

MSA's dive survey documented a dense, contiguous *Z. marina* eelgrass bed begins at about 130-190 ft from the MHHW to the north and south of the pier, roughly between the -1 ft MLLW and -10 ft MLLW elevations with outlier shoots observed as deep as -18 ft MLLW in places. Small patches occur outside the bed closer to shore and are notated on the map in Figure 4 below. The reconnaissance area south of the pier was observed having smaller beds of eelgrass rather than one large contiguous bed. No *Zostera japonica* eelgrass was observed.

As shown on the Snohomish County Marine Vegetation Monitoring interactive map, eelgrass surveys conducted from 2019-2022 by DNR as part of the Submerged Vegetation Monitoring Program also documented areas of *Zostera marina* within the project area. The shoreline around Kayak Point Park is part of an area that has experienced an overall increase in eelgrass (Christiaen et al 2022).

Figure 4. Map of 2018 dive survey results



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community  
 \*The depths shown are for reference only and can have an error of +/- one foot and should not be used for engineering purposes.



## 2 Monitoring Approach

The goal of this monitoring plan is to use density comparisons over the course of five years of monitoring to detect impacts to existing eelgrass beds and ensure no net loss of eelgrass occurs from the proposed boat launch. If adverse impacts to eelgrass beds are documented, adaptive management can then be implemented to reduce or eliminate these impacts to the greatest extent feasible. The monitoring process will consist of three phases: (1) baseline condition establishment, (2) construction monitoring, and (3) long-term monitoring of the impact and reference areas over the course of five years.

### 2.1 Permit Requirements for Eelgrass Protection

The HPA issued by WDFW (dated March 1, 2022) includes the following permit conditions related to eelgrass protection:

- 40. Design and locate the boat ramp to minimize adverse impacts to saltwater habitats of special concern, and avoid impacts to macroalgae and eelgrass.
- 64. You must conduct an advanced eelgrass/macroalgae survey of the area within 200 ft of the proposed barge landing site, including travel lane, and include the survey results in the barge landing plan. The plan must demonstrate how impacts to eelgrass/macroalgae will be avoided. The survey must be conducted between June 1 and October 1 and as temporally close as possible to the date of the proposed landing.

The issued Washington Department of Ecology Section 401 Water Quality Certification (WQC Order No. 20085) permit includes the following permit conditions related to eelgrass protection:

- 26. Barge grounding will be limited to the extent practicable, and barge landing for import of fill material shall be restricted to the designated site in order to minimize potential direct or indirect impacts to eelgrass and forage fish spawning habitat.
- 29. Eelgrass beds near the in-water work and barge access and landing areas shall be marked with buoys prior to start of in-water construction in order to minimize impacts to eelgrass from barges and other work vessels.
- 30. Spudding shall not be allowed in eelgrass areas or special aquatic sites.

### 2.2 Impact Areas

#### 2.2.1 Advanced Survey for Barge Landing Site

Phase 1 of the construction project is projected to start July 15, 2023. To comply with WDFW's HPA conditions, the County has contracted with MSA to complete an advanced eelgrass/macroalgae survey prior to July 15 that will encompass a 200 ft buffer (which will include the travel lane) around the perimeter of the footprint of the barge landing site 350 ft south of the pier. The survey will follow WDFW's Eelgrass/Macroalgae Habitat Interim Survey Guidelines (2008).

During this survey, MSA divers will also place small buoys (using helical screw anchors) around the outer edges of the eelgrass beds to alert the contractor of eelgrass presence when bringing the barges to the beach. The contractor will verify these buoy location markers on site.

### **2.2.2 Baseline Survey for New Boat Launch**

As requested by DNR via email correspondence with Ben Cooksey on 11/8/2021, Snohomish County Parks proposes to monitor the eelgrass bed in a 50 ft by 50 ft area off the toe of the new boat launch in order to evaluate the health and distribution of the eelgrass habitat adjacent to the new boat launch.

Prior to July 15, MSA will perform an advanced eelgrass/macroalgae survey in this 50 ft by 50 ft area at the toe of the new boat launch to record eelgrass presence and establish a baseline density. This will inform future monitoring efforts described in Section 3 below.

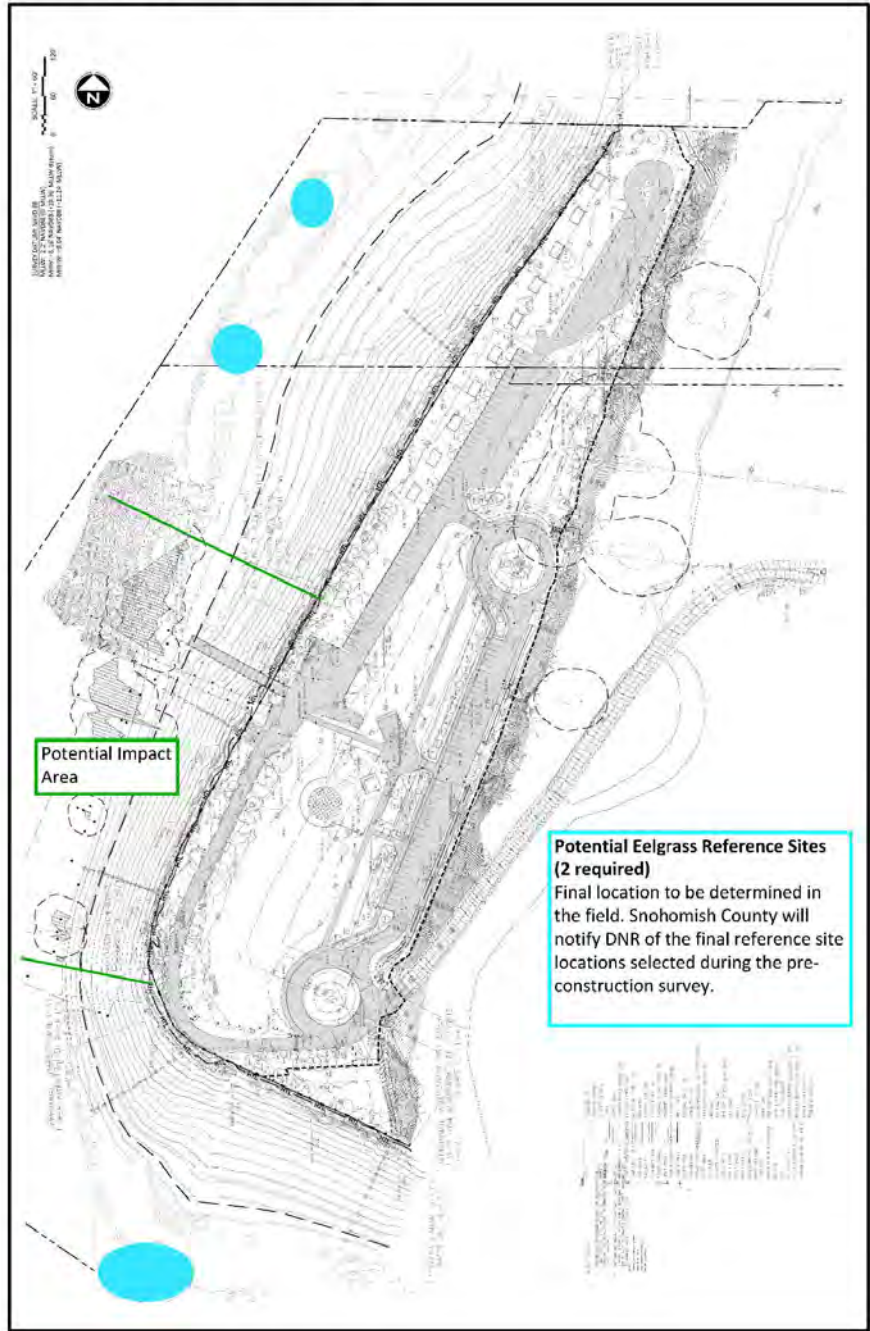
During this survey, MSA divers will also place small buoys (using helical screw anchors) around the outer edges of the eelgrass bed near the proposed boat launch.

### **2.3 Reference Area**

Requirements for assessing success outlined in the 2008 WDFW Eelgrass/Macroalgae Habitat Interim Survey Guidelines require a reference (i.e. control) area. Due to the variability of eelgrass density over space and time, measuring eelgrass success requires the use of a reference area to account for regional differences that may occur through environmental factors. For this site, DNR recommends two reference areas to capture a more thorough set of data.

While on site to perform the baseline surveys described above, MSA will also identify two suitable, nearby reference areas that are similar to the boat launch impact area in physical characteristics (eelgrass presence, tidal elevation, and substrate type), but outside of the project area so as not to be affected by the proposed work. Areas to the north and south with known eelgrass presence will be assessed for suitability (Figure 5). These reference areas will also measure 50 ft by 50 ft. An advanced eelgrass/macroalgae will be performed within the selected reference areas to document baseline eelgrass conditions, including shoot counts to establish a baseline density to inform future monitoring efforts described in Section 3 below.

Figure 5. Map of potential reference areas





## 2.4 Construction Monitoring

Construction monitoring serves to ensure proper site protection of existing eelgrass beds. Parks' contractor will use the baseline eelgrass surveys of the area to add any additional buoys to mark the extents of the eelgrass beds prior to construction. The owner's representative would be present on-site daily to ensure that construction activities are conducted per the approved plans and permit requirements. The owner's representative will resolve problems that arise during construction, thus lessening problems that might occur later during the long-term monitoring phase and will be the primary contact to alert permitting agencies if any issues arise. An owner's representative will also be present on site during all pile work activities to ensure the work is conducted per the approved plans and permit requirements.

## 3 Monitoring of Eelgrass by New Boat Launch

### 3.1 Long Term Monitoring Methods

Monitoring duration is proposed over the course of five years, based on recommendations from "Eelgrass (*Zostera marina L.*) Restoration in the Pacific Northwest: Recommendations to improve project success" (Thom et al 2008). Frequency of monitoring is not specified in the recommendations. The proposed monitoring survey schedule is as follows:

- Baseline surveys in the boat launch impact area and two reference areas will occur before construction (i.e. in June or early July of 2023)
- A post-construction survey (Year 0) is proposed for the impact and reference areas at the end of the in-water construction work, anticipated to be October 15, 2023. Snohomish County will notify DNR once all in-water impact-generating activities (barge landing, pile work, etc.) are completed to assess appropriate timing for the initial post-construction survey to happen. If work finishes too late in the year for an accurate eelgrass survey, then the initial post-construction survey will happen in early summer of 2024 (June or July) to maintain consistency with the baseline survey date(s).
- Post-construction survey (Year 1) in early summer or late summer/early fall (depending on date of initial post-construction survey) of 2024 for the impact and reference areas.
- Post-construction survey (Year 3) in early summer or late summer/early fall (depending on date of initial post-construction survey) of 2026 for the impact and reference areas.
- Post-construction survey (Year 5) in early summer or late summer/early fall of 2028 for the impact and reference areas.

During monitoring surveys, the number of eelgrass shoots/m<sup>2</sup> will be counted to allow for comparisons between the monitoring surveys results at these sites with the pre-construction baseline survey data.

### 3.2 Success Criteria

Monitoring for impacts within the 50 ft x 50 ft area off of the toe of the new boat launch will track changes in area of eelgrass coverage and density. At Year 5, a reduction of over 20% in area or density within the impact area (above any reductions at the reference area) will be considered a negative impact to eelgrass.

### 3.3 Calculation Methods

For this project, the reference area will be carefully chosen to match the characteristics of the impact area with similar depths, substrate, and existing vegetation. Data from this reference area will be used to

identify potential trends from environmental factors that may be having landscape-scale effects to the eelgrass in the impact area.

To evaluate the goal of no net loss of eelgrass, BACI (before-after-control-impact) analysis is proposed. This assessment uses data from the paired control (reference) and impact plots and measures the difference (D) between the impact plot (XI) after-before *versus* the reference (control) (XC) after-before.

For each post-treatment sampling event, the difference will be calculated thus:

$$D = (XIA - XIB) - (XCA - XCB)$$

Where,

XIA = mean density at Impact site After  
 XIB = mean density at Impact site Before  
 XCA = mean density at Control site After  
 XCB = mean density at Control site Before

The baseline densities for *Z. marina* in the new boat launch impact and reference areas will be compared to post-construction Years 1, 3, and 5 to identify trends and determine if no net loss of eelgrass is achieved.

Changes measured at the reference area will be used to track increases and decreases at the impact area in case there are changes to *Z. marina* density that are occurring in the area at a local or landscape scale due to environmental factors.

### 3.4 Reporting

Each monitoring survey will be followed by a written report within 90 days which will then be submitted to DNR, WDFW, and other interested parties. Reports will describe the survey, and present the results, analysis, and raw data (mapped and tabular).

## 4 Contingency Plan

If, after five years of monitoring, 80% survival of eelgrass within the impact area is not achieved when compared to the reference area, then an advanced eelgrass survey will be done within a similar sized area where the on-grade boat ramp was removed to determine if eelgrass has successfully colonized that area enough to offset the 20% decline in the impact area of the new boat launch.

DNR requires any mitigation actions implemented due to damage to resources on state-owned aquatic lands (SOAL) must occur on SOAL as well. If success criteria is not met and mitigation actions must be taken, then Snohomish County will submit a Mitigation Plan to DNR for review.

### 4.1 Adaptive Management Plan

If habitat impacts are identified during monitoring, Snohomish County will work to implement a series of management and/or mitigation measures to protect the eelgrass beds and encourage regrowth. If the monitoring plan shows impacts to eelgrass from the Kayak Point boat launch, then the County would provide a management and/or mitigation plan for DNR and WDFW to review and approve.

Adaptive management actions to be implemented by Parks include some or all the following, adapted to the local conditions and to be approved by Tribes, Snohomish County, WDFW, and DNR before implementation:

- Planting of eelgrass or removal of derelict structures located on SOAL
- Signage/public education
- Closing the boat launch (for outgoing vessels) when water is at shallower depths and seagrasses are vulnerable to prop scour

## 5 References

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