



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 13- 86

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, Green Diamond Resource Company (“Green Diamond”) and the Tribe have a history of working cooperatively on issues that affect the Tribe’s interests; and

WHEREAS, Green Diamond plans to sell various timber lands within Squaxin’s U&A to developers while preserving other tracts for timber or conservation purposes; and

WHEREAS, Green Diamond’s planned developments will require water, the diversion and withdrawals of which could impact fish habitat and the Tribe’s fishing rights; and

WHEREAS, Green Diamond’s planned developments would also impact the Tribe’s hunting and gathering rights; and

WHEREAS, Green Diamond has agreed to take certain actions vis-à-vis Kennedy Creek to avoid interfering with the Tribe’s hunting and gathering rights, in return for the Tribe’s support on applications for water rights transfers, water supply plans and new water rights to support the planned developments; and

WHEREAS, the Tribe believes that entering into the attached Memorandum of Understanding (“MOU”) with Green Diamond will further solidify its relationship with Green Diamond and best protect the Tribe’s hunting, fishing and gathering rights; and

WHEREAS, Green Diamond has requested that the Tribe agree to a limited waiver of sovereign immunity in the MOU;

NOW THEREFORE BE IT RESOLVED, that the Chairman is authorized to sign the attached MOU on behalf of the Tribe; and

BE IT FURTHER RESOLVED, that the Tribe waives its inherent sovereign immunity to the following extent for the MOU:

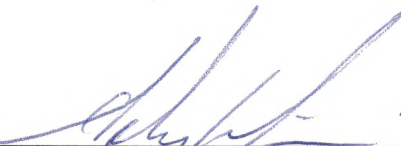
5. The Parties shall first try to resolve disputes at the most informal levels. Notwithstanding any other provisions(s) to the contrary, nothing in this MOU shall be construed as or deemed a waiver of the sovereign immunity of the Tribe except as specifically stated in this Paragraph 5. The Tribe expressly waives its sovereign immunity from suit with respect to the obligations that directly arise out of the MOU, provided that the waiver of sovereign immunity expressed herein is limited: (a) to Green Diamond; (b) to equitable claims for declaratory and/or injunctive relief solely to enforce the Tribe’s obligations in the MOU, and excludes any other claims; and (c) to the jurisdiction of the Washington state courts. The Tribe waives any requirement of exhaustion of remedies in Tribal Court. Both Parties waive any remedy seeking damages under this MOU. This MOU and limited waiver of sovereign immunity expire upon termination of the project entitlement process / transaction for the nine (9) Development Sites as described herein.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 14 day of November, 2013, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by:  For

Peter Kruger Sr., Secretary



Arnold Cooper, Vice Chairman

Memorandum of Understanding Between Squaxin Island Tribe and Green Diamond Resource Company Regarding Green Diamond's Portfolio Lands Strategy and Water Resources in WRIA 14

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this ___ day of _____, 2013, by and between the Squaxin Island Tribe, a federally recognized Indian tribe (the "Tribe"), and Green Diamond Resource Company ("Green Diamond"), a Washington corporation, collectively referred to herein as the "Parties."

WHEREAS, Green Diamond and the Tribe have a history of mutual respect and cooperation regarding Green Diamond's business interests and operations in Mason County and the Tribe's reserved treaty rights and interests in fisheries, water, hunting and gathering, and habitat management issues in Mason County;

WHEREAS, the Tribe is the successor-in-interest to some of the Indian tribes or bands who were parties to the 1854 Treaty of Medicine Creek, and who since time immemorial inhabited the inlets of upper South Puget Sound, including Carr Inlet, which includes the areas and waters throughout Mason County;

WHEREAS, the Tribe retained fishing, water, hunting and gathering rights in the Medicine Creek Treaty of 1854, and currently exercises those rights throughout areas and waters including in Mason County;

WHEREAS, neither Party intends that this MOU will modify, expand, or diminish their property and treaty rights with respect to one another;

WHEREAS, Green Diamond is implementing a landscape-wide land portfolio planning effort on its lands located in Mason County, Washington. This effort targets the conservation of working forest lands and limited development on a portion of Green Diamond's lands in Mason County;

WHEREAS, since salmon require water in sufficient quantity and quality to sustain them, the Tribe is concerned that low flows resulting from surface water diversions and groundwater withdrawals associated with development will further diminish fish runs;

WHEREAS, the Tribe is also concerned about losing access to and use of these lands for hunting and gathering activities;

WHEREAS, state law and regulations impose restrictions on surface water diversions and groundwater withdrawals, particularly when such actions may impact fish habitat;

WHEREAS, Green Diamond recognizes the Tribe is a co-manager of fisheries, wildlife and watershed resources and seeks to implement environmental mitigation and other conservation measures consistent with the mutual objectives of the Parties;

WHEREAS, Green Diamond began working with The Trust for Public Land in 2010 for potential sale of a conservation easement that is envisioned to restrict development on approximately 22,000 acres of rural residential zoned timberlands generally located between Highway 101 and the community of Belfair (the "Conservation Easement"). These timberlands are generally flat, easily accessible/developable, and in the path of growth pressures coming from Kitsap County. With land values climbing, Green Diamond believes that these acres may convert to rural residential uses over time as those values exceed the value of the land as timberland;

WHEREAS, Green Diamond seeks the Tribe's support and input for both the conservation and development elements of its portfolio planning effort;

NOW, THEREFORE, the Parties agree to the following:

1. Green Diamond submitted the first phase of the multi-phase conservation easement sale effort to the Forest Legacy funding program for consideration in July 2013. The Parties have a mutual interest in surface water and groundwater conservation and specifically limiting the proliferation of exempt wells in Mason County. To that end, the Tribe agrees to support Green Diamond's efforts to create the Conservation Easement described herein.

2. Green Diamond has identified nine (9) sites on its property outside the Shelton UGA (the "Development Sites") where it believes conversion from timberland use to residential development is desirable. (See Exhibit A). Green Diamond would like to position these properties for eventual sale and development as low impact, clustered rural residential subdivisions. Green Diamond understands that in order to achieve the type of clustered subdivisions Green Diamond envisions, water rights must be developed and/or transferred to each Development Site. Green Diamond reached agreement with Mason County PUD #1 in 2012 to transfer inchoate water rights from PUD #1's various water systems in the County to certain Development Sites. Green Diamond and the Tribe have conducted a series of meetings in 2012 and 2013 to discuss the potential impacts of such transfers, and, in some cases, development of new water rights. The Parties agree they have reached a point in these discussions where they can agree to general and specific conditions and document general and specific understandings associated with the Development Sites. These conditions and understandings are as follows:

- A) The Tribe has reviewed several hydrogeologic reports from Green Diamond's consultant, Aspect Consulting, Inc., summarizing the lack of potential adverse impacts to ground and surface water resources caused by the development of Green Diamond's projects at certain Development Sites. The Tribe agrees to communicate their position with regard to these proposed water right transfers or water supply plans to the Washington State Department of Ecology, if consulted, consistent with the agreements and understandings contained in this MOU.
- B) The Tribe does not have specific comments on Green Diamond's plans to develop a water supply to serve future development at the Lake Nahwatzel site as that site is located outside the Tribe's recognized Usual and Accustomed Fishing Grounds (although within its traditional hunting and gathering areas).
- C) The Tribe reviewed hydrogeologic reports provided by Green Diamond that analyze and describe plans to develop water supplies to serve the Alderbrook Phase I and III and Trails End Development Sites. The Parties recognize that existing hydrogeologic data suggests that groundwater underlying the existing and proposed points of withdrawal drains primarily to Hood Canal. Without waiving any argument regarding the extent to which return flows mitigate for consumptive withdrawals, the Tribe does not object to Green Diamond's Alderbrook and Trails End water supply proposals, as described in the Aspect reports listed in Exhibit B.
- D) The Tribe expressed concern about potential negative impacts associated with water right transfers and groundwater withdrawals at the Coon Lake site. Specifically, the Tribe was concerned about potential downstream thermal impacts on Anderson Creek, a tributary to Sherwood Creek, and an important fish bearing stream. Without conceding such impacts are likely, Green Diamond agrees to work with the Tribe to identify funding and create a mutually-approved plan for placement of large woody debris in Anderson Creek to provide fish habitat improvements. Green Diamond will provide large woody material and transportation of that material into the stream bed. Green Diamond will also work with private property owners along Anderson Creek to gain access for the placement of woody debris. Placement of this material will occur prior to development of a well and withdrawal of groundwater for residential use at the Coon Lake site. In the event that the Parties mutually agree that an alternative restoration or enhancement measure is appropriate, the Parties agree they will work cooperatively to develop and implement that alternative restoration or enhancement measure.

- E) The Tribe expressed concern about the Hanks Lake site and the single exempt well proposed to serve that development. While the specific impacts at Hanks Lake may be small, the Tribe's primary concern was associated with the well's contribution to the proliferation and use of exempt wells in the watershed. Green Diamond agrees that if the site is developed, it will ensure that the low impact development and water conservation strategies referenced in subsection J (below) are mandated to minimize potential impacts of groundwater withdrawals and minimize overall consumptive water use. Green Diamond also agrees that if the site is subdivided and developed, the water system created to serve the development will be managed by Mason County PUD No. 1 and water consumption at each connection will be metered.
- F) The Tribe and Green Diamond agree to work cooperatively in 2013-2014 to develop a mutually-approved plan to support the transfer of Mason PUD No. 1 water rights and/or development of a new water right to serve the Mill Creek project. The plan may include, among other provisions, the identification of water supply necessary to serve the proposed development, identification and creation of open space tracts and/or conservation easements, identification of tracts for fee simple purchase for conservation purposes, identification and completion of supporting technical studies, and identification of restoration and/or mitigation measures. As long as the Tribe agrees that the plan sufficiently addresses the still-undetermined impacts, this agreement to develop and implement the plan described above serves as a sufficient basis for the Tribe's support of Green Diamond's efforts to obtain a water right and water system approvals from the State Departments of Ecology and Health for the Mill Creek project.
- G) The Tribe and Green Diamond agree to work cooperatively in 2014 to develop a mutually-approved plan ("Kennedy Creek Plan") for a potential 1,144-acre Kennedy Creek Conservation transaction. (See Exhibit C). The Kennedy Creek Plan may include some or all of the following: fee sale(s), or sale of conservation easement(s) for interests such as development rights, access to and the conducting of hunting and gathering activities, and/or agreed forest practices. As long as the Tribe agrees that the Kennedy Creek Plan sufficiently allows for access to and use of the Kennedy Creek Conservation transaction area for hunting and gathering activities, the Parties' agreement to develop and implement the Kennedy Creek Plan described in this subparagraph secures the Tribe's willingness to support Green Diamond's efforts to

obtain state approvals for those water right transfers, water supply plans and development of new water rights as otherwise described and conditioned in this MOU. In the event that the Kennedy Creek Plan/conservation transaction is not funded or implemented and Green Diamond's alternate development plan for these lands interferes with the Tribe's access to and use of them for hunting and gathering activities, the Tribe may withdraw its support for Green Diamond's water right transfers, water supply plans and new water rights as described in this MOU.

- H) The Tribe reviewed a hydrogeologic report provided by Green Diamond that analyzes and describes plans to develop a water supply to serve the Mason Lake Camp site. The Parties recognize that existing hydrogeologic data suggests that the transfer of portions of groundwater rights currently serving the existing Alderbrook community, to wells anticipated to be completed in the Lower Aquifer, is expected to have similar or less potential hydraulic connection to and impact on flows in Shumocher Creek and Mason Lake. The proposed well(s) serving Mason Lake Camp are also located four miles further downstream in the Shumocher Creek basin than the wells currently serving Alderbrook. Accordingly, the Tribe does not object to Green Diamond's Mason Lake Camp water supply proposal, as described here and in the associated Aspect report.
- I) A single permit exempt well is proposed to serve the Mason Lake Mouth site. The Tribe is generally opposed to the use of permit exempt wells as a source of water supply. However, Green Diamond agrees that if the Mason Lake Mouth site is developed, it will ensure that the low impact development and water conservation strategies referenced in subsection J (below) are mandated to minimize potential impacts of groundwater withdrawals and minimize overall consumptive water use. Green Diamond also agrees that if the site is subdivided and developed, the water system created to serve the development will be managed by Mason County PUD No. 1 and water consumption at each connection will be metered. Accordingly, the Tribe does not object to Green Diamond's Mason Lake Mouth water supply proposal, as described here and in the associated Aspect report listed in Exhibit B.
- J) Green Diamond agrees to ensure that a low impact development and water conservation strategy is implemented at each of the Development Sites. Green Diamond will place controls on the sale of the Development Sites by recording appropriate controls or covenants that run with each site at the time of sale. These measures or controls will take the form of the following:

- (1) Management of stormwater through a land development strategy that emphasizes conservation and use of on-site natural features integrated with stormwater controls to more closely mimic predevelopment hydrologic conditions;
- (2) Conservation of water resources through landscape designs with limited landscaping, use of drought tolerant species and native plants;
- (3) Minimization of erosion, excess runoff and pollution generating impervious surfaces;
- (4) Preservation of forested open space, while accommodating future residential growth; and
- (5) Use of clustered development patterns that have less impact overall across a site.

3. The Parties agree to support the concept of participating in county-wide Coordinated Water System Planning with Mason County, Public Utility Districts, and other large land and water right holders in the County.

4. The Parties acknowledge that future mutually-approved plans and agreements are necessary to implement specific provisions described in this MOU, and upon mutual approval shall be incorporated into this MOU.

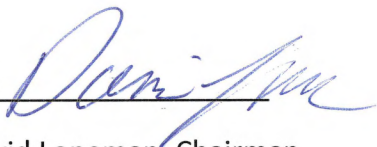
5. The Parties shall first try to resolve disputes at the most informal levels. Notwithstanding any other provisions(s) to the contrary, nothing in this MOU shall be construed as or deemed a waiver of the sovereign immunity of the Tribe except as specifically stated in this Paragraph 5. The Tribe expressly waives its sovereign immunity from suit with respect to the obligations that directly arise out of the MOU, provided that the waiver of sovereign immunity expressed herein is limited: (a) to Green Diamond; (b) to equitable claims for declaratory and/or injunctive relief solely to enforce the Tribe's obligations in the MOU, and excludes any other claims ; and (c) to the jurisdiction of the Washington state courts. The Tribe waives any requirement of exhaustion of remedies in Tribal Court. Both Parties waive any remedy seeking damages under this MOU. This MOU and limited waiver of sovereign immunity expire upon termination of the project entitlement process / transaction for the nine (9) Development Sites as described herein.

6. The MOU shall be governed by the laws of the State of Washington, and shall not be used for interpretation of the Tribe's treaty rights.

7. The Parties reserve all rights except as otherwise expressed in this MOU.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the date and year written above.

SQUAXIN ISLAND TRIBE

By: 
David Lopeman, Chairman

GREEN DIAMOND RESOURCE COMPANY

By: _____
William R. Brown, President

Attachments

Conservation/ Development Area Map

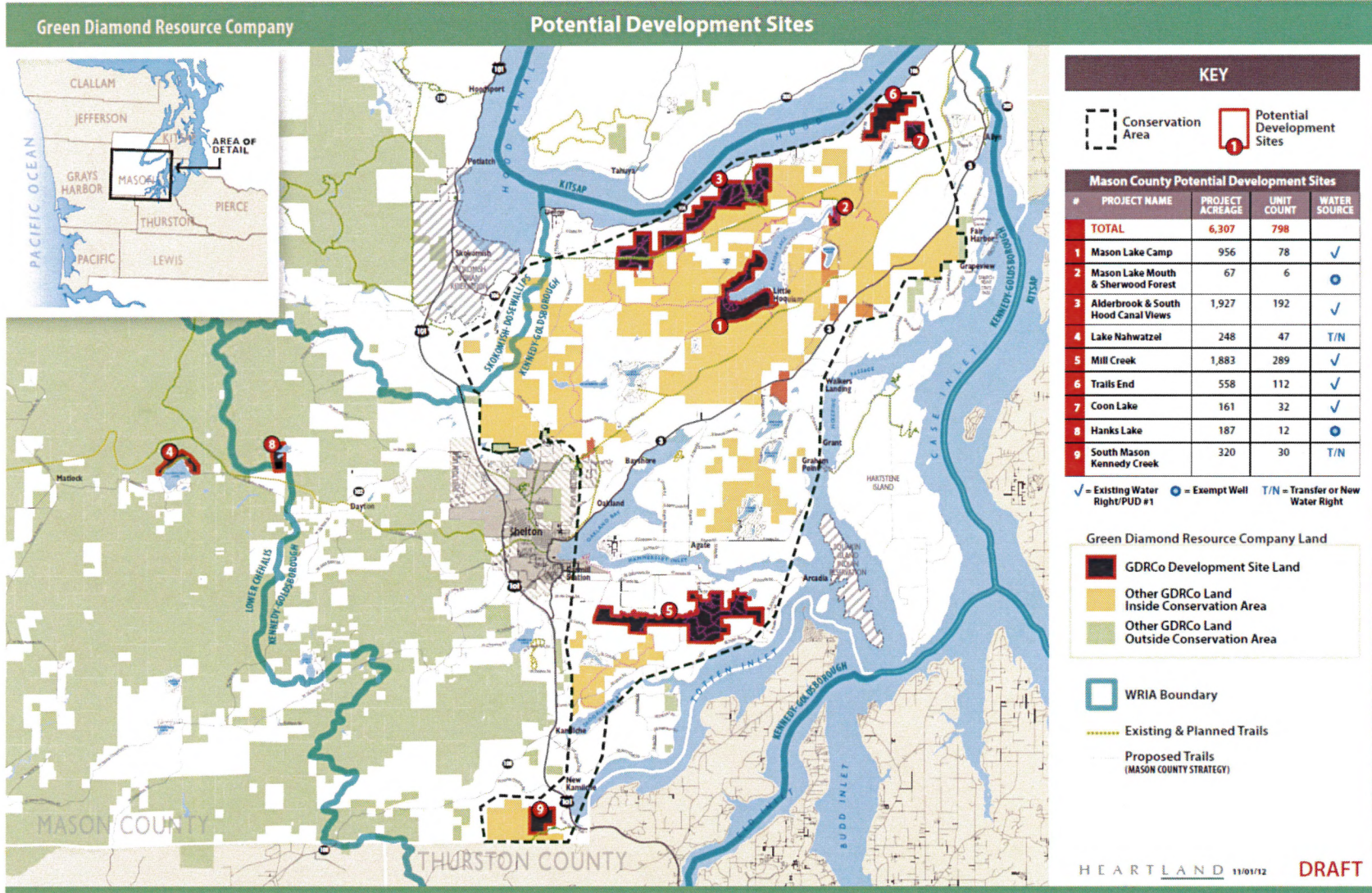



EXHIBIT B

Aspect Consulting Hydrogeologic Studies Prepared for Green Diamond Resource Company

- Hydrogeologic Evaluation of Alderbrook Property Development, February 6, 2013
- Hydrogeologic Evaluation of Trails End Property Development, February 6, 2013
- Hydrogeologic Evaluation of the Mason Lake Camp and Mason Lake Mouth Property Developments, March 3, 2013
- Hydrogeologic Evaluation of Lake Nahwatzel Property Development, March 29, 2013
- Hydrogeologic Evaluation of Hanks Lake Property Development, March 29, 2013
- Hydrogeologic Evaluation of South Mason/Kennedy Creek Property Development, May 3, 2013
- Hydrogeologic Evaluation of Coon Lake Property Development, March 8, 2013
- Drawdown Evaluation of Coon Lake Property Development, April 2, 2013
- Hydrogeologic Evaluation of Mill Creek Property Development, May 3, 2013

Kennedy Creek Conservation Project

-  Kennedy Creek Development Rights Sale (Easement) = 315 acres
-  Fee Conservation Land Sale = 829 Acres total

Approximately 1,144 Acres Total. 829 acres fee land sale and 315 acres of development rights sale (not fee land)

0 0.25 0.5 1 Miles

7-15-2013

