

TABLE OF CONTENTS

Page No.

RECITALS 1

AGREEMENTS 3

I. PROGRAMMATIC AND PROJECT REVISIONS 3

A. Overview 3

B. DuPont Shoreline Master Program Amendment 5

C. Proposed DuPont Comprehensive Plan Update 6

D. Revised Project Applications 7

E. State Environmental Policy Act Compliance 10

F. Process Facilitation and Remedies 15

II. MITIGATION 16

A. Overview 16

B. Additional Mitigation Measures 17

C. City Fiscal Mitigation Fund 22

D. Environmental Mitigation Funding 23

III. GENERAL TERMS 25

A. Disposition of Existing Litigation and Applications 25

B. Other Terms 27

ATTACHMENTS

- A Critical Path
- B Proposed DSMP
- C Mineral Resource Lands
- D Calthorpe Plan
- E Revised Project Illustration
- F SHB Releases and Stipulation and Order of Dismissal
- G Pierce County Release and Stipulation and Order of Dismissal
- H Public Access Plan
- I Sign Installation Detail
- J Sequatchew Creek Setback
- K Asphalt and Concrete Plant Covenant

SETTLEMENT AGREEMENT
FOR
LONE STAR NORTHWEST DUPONT PROJECT

THIS SETTLEMENT AGREEMENT is dated this 25th day of December, 1994, and executed by and among the WASHINGTON STATE DEPARTMENT OF ECOLOGY ("Ecology"); the CITY OF DUPONT ("City"); LONE STAR NORTHWEST, INC. ("Lone Star"); WEYERHAEUSER REAL ESTATE COMPANY ("WRECO"); the NISQUALLY DELTA ASSOCIATION ("NDA"); the BLACK HILLS AUDUBON SOCIETY; the WASHINGTON ENVIRONMENTAL COUNCIL ("WEC"); the NATIONAL AUDUBON SOCIETY; PEOPLE FOR BUJET SOUND; the TAHOMA AUDUBON SOCIETY; the SEATTLE AUDUBON SOCIETY; and ANDERSON ISLAND QUALITY OF LIFE COMMITTEE ("Anderson Island QOLC").

Recitals

A. Lone Star and WRECO are the proponents of the Pioneer Aggregates Project, which is described in an Environmental Impact Statement issued by the City of DuPont and the State Department of Ecology on February 4, 1993. The originally proposed project involves a sand and gravel mining operation and improvements to an existing dock to accommodate a sand and gravel barge transshipment facility for transport of related construction materials. The project is proposed on lands within the City of DuPont limits, most of which are owned by WRECO and leased by Lone Star. The Nisqually Delta area contains important wetlands, shoreline, and upland habitat and wildlife, and is rich in natural resources including gravel resources.

B. The City approved a Site Plan Approval, Shoreline Substantial Development Permit, and a Shoreline Conditional Use Permit for the Pioneer Aggregates Project on September 2, 1993.

C. On October 15, 1993, Ecology denied the Conditional Use Permit pursuant to RCW 90.58.140(12) and appealed issuance of the Substantial Development Permit to the Shorelines Hearings Board (SHB No. 93-65).

D. On October 15, 1993, the NDA and the Black Hills Audubon Society appealed the City's decision to issue a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to the Shorelines Hearings Board (SHB No. 93-64).

E. In addition, the NDA and Judith Krill and Karl Krill appealed the Site Plan Approval to Pierce County Superior Court (Pierce County Cause No. 93-2-09515-1). Judith Krill and Karl Krill have dismissed their appeal.

F. On October 26, 1993, WRECO and Lone Star appealed Ecology's denial of the Shoreline Conditional Use Permit to the Shoreline Hearings Board (SHB No. 93-69). All of the respective shoreline appeals were consolidated by order of the Shorelines Hearings Board in its Pre-Hearing Order dated December 14, 1993.

G. Long-standing disputes have surrounded the appropriate shoreline designation and permitted uses of the subject shoreline area in the City of DuPont as detailed in the Requests for Review of the various parties. In 1975, the subject portion of the Dupont Shoreline of Statewide Significance surrounding the dock was designated "Urban" under a Master Program approved by the City and Ecology. The use of the shoreline for an industrial-related dock has been disputed in prior court proceedings because of the proximity of the existing dock to the Nisqually National Wildlife Refuge and its location on a shoreline of statewide significance. In 1990, Lone Star submitted permit applications for the Pioneer Aggregates Project which proposed use and rehabilitation of the DuPont dock for a sand and gravel barge transshipment facility. The Lone Star proposal renewed opposition to the Urban shoreline designation, and the subject appeals eventually ensued.

H. In January 1994, the parties retained a professional mediator to facilitate settlement discussions to determine whether a settlement agreement that meets the needs and interests of the various parties could be reached.

I. Through the mediation sessions, a new vision for the DuPont shoreline has emerged which, if implemented, will end the long-standing disputes between various parties to this Agreement and establish a framework for cooperative efforts among the various interest groups. This framework would ensure that the shoreline of statewide significance is preserved and protected in a manner that allows enhanced public access for the citizens of DuPont, while allowing valuable gravel resources to be available to the Puget Sound region. It is the desire of the parties to reach a lasting settlement.

J. In order to avoid protracted litigation and its associated costs, all parties desire to resolve fully all of their disputes regarding the Pioneer Aggregates Project. It is understood that the parties undertake this compromise and settlement of disputed issues of law and fact without admitting any error or liability with respect to their previous actions or legal positions.

K. For purposes of this Agreement, certain terms shall have the following meanings: the term "parties" shall mean the undersigned parties to this Settlement Agreement; the term "non-governmental parties" shall mean all parties, except Ecology and the City.

In consideration of the promises and covenants contained herein, the parties agree as follows:

AGREEMENTS

I. PROGRAMMATIC AND PROJECT REVISIONS

A. Overview.

1. The non-governmental parties agree to propose programmatic and permit actions to implement a new vision for the DuPont shoreline. That vision would serve both public and private interests by protecting the environment and providing a location for water shipment of the aggregate resource found in DuPont. The location of the sand and gravel barge

Section I.A.1 (cont'd.)

transshipment facility would be moved northward near Tatsolo Point, approximately 1.5 miles farther away from the Nisqually National Wildlife Refuge than is the existing dock. WRECO and Lone Star would abandon all plans to use the existing DuPont dock as a commercial shipping facility, and the area would be available to the public for shoreline access and passive recreational uses consistent with a Conservancy designation. In addition to these mitigation measures, additional mitigation would be provided as set forth in Section II below.

2. The parties recognize that a number of programmatic and permit-specific actions will be required to implement the new vision for the DuPont shoreline. Those actions include: the programmatic actions of a Shoreline Master Program amendment and a DuPont Comprehensive Plan Update; revised project applications; and for all actions compliance with the State Environmental Policy Act ("SEPA"). This Agreement sets forth a process by which each of these programmatic and project-specific components will be undertaken.

a. The specific agreements regarding amendments to the Shoreline Master Program are set forth in Section I.B.

b. The specific agreements regarding the City Comprehensive Plan Update are set forth in Section I.C.

c. The specific agreements regarding revisions to project permits are set forth in Section I.D.

d. SEPA compliance provisions are contained in Section I.E.

e. A critical path containing milestones by which certain key actions are to occur is set forth in Attachment A.

3. The non-governmental parties to this Agreement agree to use their best efforts to obtain all programmatic and project-specific approvals necessary to implement this Settlement Agreement, including but not limited to, providing testimony and letters of support on environmental documents and at public hearings on the proposed Comprehensive Plan Update,

3. New Dock. Upon receipt of all necessary permits for the Revised Project, and the expiration of all applicable permit appeal periods with no appeals being filed, Lone Star agrees to construct a new gravel transshipment facility in the Tatsolo Point area. The new gravel dock will be smaller than the existing DuPont dock and will be sized to handle barging of sand, gravel, and related construction materials originating from or for use with materials from the DuPont site in connection with Lone Star's business only, and will not be oversized to handle future uses or any other commodities. The dock structure will not contain any creosote pilings. Grated decking will be used in the near-shore environment.

4. Concurrent and Future Use. WRECO and Lone Star agree that use of the new dock shall be for barge loading of sand, gravel, and related construction materials originating from or for use with materials from the DuPont site and shall be used for no other concurrent purpose while the dock is used as a sand and gravel barge transshipment facility. At the conclusion of mining operations in the City, Lone Star and WRECO agree to limit proposed future uses, if any, of the Special Management Unit to development of no greater size or impacts than the sand and gravel barge transshipment facility built for the Revised Project. The parties recognize and agree that at the conclusion of the 25-year payment period set forth in II.D.(1) below, the parties may seek and negotiate further environmental mitigation funding for environmental impacts due to the sand and gravel barge transshipment facility. The term "related construction materials" as it is used in this paragraph is intended to refer to glass, shredded rubber, or other additives required or recommended by any agency of the State of Washington or the United States to be included in sand or gravel. It shall not be deemed to include asphalt.

5. Shoreline Uses. Lone Star and WRECO agree to limit future use, if any, of the remaining DuPont shoreline outside of the Special Management Unit to non-industrial uses consistent with the Conservancy regulations of the existing DuPont Master Program. The permits obtained by Lone Star do not provide for any mining within 200 feet of Puget Sound or

Section II.B.5 (cont'd.)

Sequalitchew Creek. WRECO and Lone Star agree to seek no permits in the future to mine within the shoreline jurisdiction as defined by RCW Chapter 90.58, or within 100 feet of the top of the bank of Sequalitchew Creek, as shown on Exhibit J, or in a manner that would significantly impact the flow of Sequalitchew Creek. This shall not prohibit excavation for construction of the sand and gravel barge transshipment facility.

C. City Fiscal Mitigation Fund.

1. Lone Star and WRECO will pay \$1,000,000 to the City of DuPont to compensate for any direct or indirect impacts of the Revised Project, including potential negative fiscal impacts of the site plan approval as referenced in Condition No. 99 to Ordinance No. 485, and in Condition No. 52 of Ordinance No. 486.

2. The \$1,000,000 payment to the City by Lone Star and WRECO, referred to at Section II.C.2 above, will be made in a single lump sum at such time as mitigation is due under Section II.A. This payment is not to be deemed to be in lieu of or a substitute for any other mitigation required under Ordinance Nos. 485 or 486. Such payment is not intended to fund or to reimburse the City for the costs of studies required for development approvals, nor for enforcement of the terms of any such approvals for the Revised Project.

3. Lone Star and WRECO will also reimburse the City for the following:

a. The City's reasonable expenses in arriving at this agreement, including legal fees and disbursements of the City attorney and also legal fees and disbursements incurred by the City for independent legal review and consultation;

b. The City's reasonable expenses in connection with the review process for the Revised Project, including all legal fees and disbursements;

c. The City's expenses, if any, incurred in defense of any appeal of any process or permit relating to the Revised Project where the City is a party; provided that this provision shall not apply to such expenses if incurred by the City related to an appeal filed by the

Section III.A.5 (cont'd.)

Actions"), the parties release and forever discharge each other and their officers, directors, shareholders, employees, representatives, agents, successors, and assigns, from any and all causes of action, claims, damages, liabilities, and demands of any nature whatsoever, arising out of or relating in any way to the allegations made in the Underlying Actions or in retaliation for any activities by the parties relating to their opposition to the originally permitted project.

B. Other Terms

Who can raise objection?

1. Dispute Resolution and Enforcement. This Agreement is enforceable by any party to the Agreement. Prior to raising by motion, complaint or other legal proceeding any alleged violation of this Agreement or any alleged failure to perform any obligation imposed hereby, the aggrieved party shall first consult with the other parties consistent with the procedure outlined in Rule 26(i) of the Washington Superior Court Civil Rules, and, in the event the matter cannot be resolved, confirm such consultation in written correspondence to the alleged breaching party. If no agreement can be reached within 10 days from receipt of the letter, the parties will then submit the dispute to Washington Arbitration and Mediation Services or other agreed upon mediator for mediation first, and if that does not resolve the issue, then the parties may submit the dispute to binding arbitration or pursue any other remedies available by law.

2. Authority to Sign. Each of the parties signing this Agreement is legally authorized to enter into the terms and conditions of this Agreement and Stipulation and Orders of Dismissal of proceedings, and is authorized to legally to bind such parties thereto.

3. Agreement Binding. The provisions of this Agreement and the Stipulations and Orders of Dismissal shall apply to and be binding upon the parties hereto and their respective officers, directors, employees, agents, non-governmental attorneys, affiliates, wholly-owned subsidiaries, successors, and assigns.

4. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

5. Modification. This Agreement may be modified only by the express written agreement of all the parties.

6. Counterparts and Effective Date. This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as an original instrument upon the effective date of the Agreement. This Agreement shall become effective as to all parties upon the date of signature of the party last in time to sign. The prior circulated agreement dated June 29, 1994 is replaced by this Agreement and shall have no force or effect.

DEPARTMENT OF ECOLOGY

By: _____
Its: _____

DATED: _____

CITY OF DUPONT

By: Sullivan F. Shubert
Its: Mayor

DATED: 27 Dec 1994

LONE STAR NORTHWEST, INC.

By: James A. Repman
Its: Pres.

DATED: Oct 27, 1994

WEYERHAEUSER REAL ESTATE COMPANY

By: Robert L. Heled
Its: Vice President

DATED: Dec 27, 1994

NISQUALLY DELTA ASSOCIATION

By: _____
Its: _____

DATED: _____

BLACK HILLS AUDUBON SOCIETY

By: _____
Its: _____

DATED: _____

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____
Its: _____

DATED: _____

NATIONAL AUDUBON SOCIETY

By: _____
Its: _____

DATED: _____

PEOPLE FOR PUGET SOUND

By: _____
Its: _____

DATED: _____

TAHOMA AUDUBON SOCIETY

By: _____
Its: _____

DATED: _____

SEATTLE AUDUBON SOCIETY

By: _____
Its: _____

DATED: _____

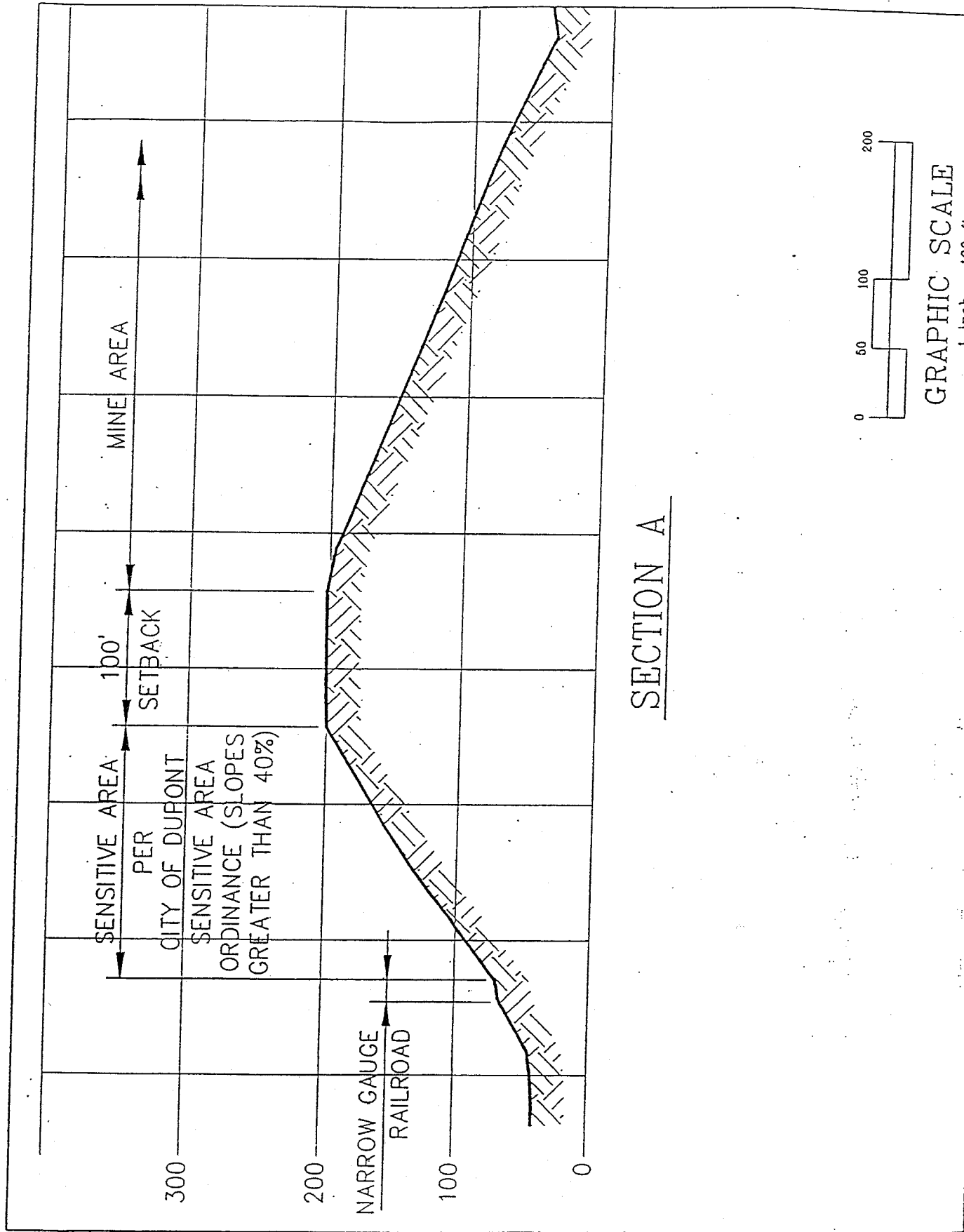
ANDERSON ISLAND
QUALITY OF LIFE COMMITTEE

By: _____
Its: _____

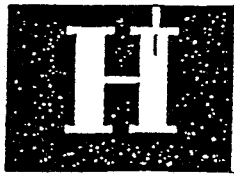
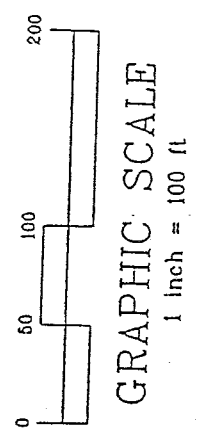
DATED: _____

ATTACHMENT J

SEQUALITCHEW CREEK SETBACK



SECTION A



Harris Group Inc.

PIONEER AGGREGATES
SEQUALITCHEW CREEK
SENSITIVE AREAS
SHEET 5 OF 5