

Final Agreement

John Danly
7-22-03

SETTLEMENT AGREEMENT
FOR
LONE STAR NORTHWEST DUPONT PROJECT

December 25, 1994

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**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 PUGET 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,

Section I.A.3 (cont'd.)

proposed Shoreline Master Program amendments, and project-specific revisions as set forth in this Agreement. The non-governmental parties agree not to challenge any of the programmatic or project-specific approvals granted by private, local, state or federal entities, or any of the environmental documents or decisions issued consistent with this Agreement.

4. The governmental entities agree to consider the programmatic and project-specific proposals in good faith and in accordance with the agreed upon process and schedules set forth in this Agreement, and as set forth in Attachment A.

B. DuPont Shoreline Master Program Amendment.

1. The non-governmental parties agree to actively support an amendment to the DuPont Shoreline Master Program which would accomplish the objectives of this Settlement Agreement. The amendment to the DuPont Shoreline Master Program that will be proposed to accomplish these objectives shall be substantially in the form contained in Attachment B attached hereto and incorporated herein by reference ("Proposed DSMP Amendment"). The Proposed DSMP Amendment will be processed strictly in accordance with the provisions of WAC ch. 173-19. The Proposed DSMP Amendment provides for:

a. A map and text amendment to allow location of a sand and gravel barge transshipment facility in the Tatsolo Point area, by establishing a Special Management Unit or other appropriate shoreline designation that permits those uses described in Section II.B.4 below (hereinafter referred to as the "Special Management Unit"). The sand and gravel barge transshipment facility will be used solely for those uses described in Section II.B.4 below.

b. A map amendment to eliminate the existing Urban shoreline designation near the mouth of Sequatchew Creek and to redesignate this area as a Conservancy environment. Elimination of the Urban shoreline designation will occur concurrently with the final approval of the Proposed DSMP Amendment as set forth in Attachment B and immediately

Section I.B.1.b (cont'd.)

prior to the approval of the state and local permits necessary for construction of the sand and gravel barge transshipment facility.

2. The non-governmental parties to this Agreement agree to support the Proposed DSMP Amendment and to work cooperatively towards its adoption by the governmental entities by actions that will include, but are not limited to, letters and testimony in support of the amendment.

3. The City agrees to consider the Proposed DSMP Amendment in good faith, and will submit a final decision to Ecology according to the agreed upon public process and schedules set forth herein and in Attachment A. Ecology and the City will fully comply with the public comment and participation requirements of RCW 34.05 and WAC 173-19.

4. Ecology agrees to consider the City's submittal on the Proposed DSMP Amendment in good faith and according to the agreed upon process and schedules set forth herein and in Attachment A. Ecology will determine whether the City's submittal is consistent with the Shoreline Management Act under Ecology's powers granted to it under the Act.

5. The non-governmental parties agree not to appeal the approval of the Proposed DSMP Amendment if it is approved, provided it is adopted in substantially the form attached hereto as Attachment B.

C. Proposed DuPont Comprehensive Plan Update

1. The City is currently in the process of updating its Comprehensive Plan pursuant to the requirements of Washington's Growth Management Act.

2. Ecology and the non-governmental parties agree not to oppose the following components of a Comprehensive Plan Update:

a. Shoreline provisions which show an intent to eliminate the existing Urban shoreline designation and establish a Special Management Unit in the Tatsolo Point area

Section I.C.2.a (cont'd.)

and which would provide for any other details necessary for the Comprehensive Plan to be consistent with the Proposed DSMP Amendment as set forth in Attachment B.

b. Public Access provisions which include a new public access trail down the north side of Sequalitchew Creek that extends ten feet on either side of the center line of the narrow gauge railway (rather than the south side of the Creek as presently shown in the 1985 Comprehensive Plan) to the mouth of Sequalitchew Creek on the Puget Sound shoreline as set forth in Attachment H. The public access area will be available for passive recreational uses consistent with the Conservancy designation.

c. Land Use provisions consistent with the plan for Hoffman Hill prepared by Peter Calthorpe as set forth in Attachment D attached hereto and incorporated herein by reference, which accommodate WRECO's plans for residential development of Hoffman Hill in the future.

d. Mineral Resource Lands provisions including a mineral resource lands designation, which applies to the lands north of Sequalitchew Creek, as designated as the Pioneer Aggregates' Lease Area, as depicted in Attachment C, and policies which meet the requirements of the Growth Management Act and make these lands available for resource extraction under industrial zoning.

3. The City agrees to consider the proposed Comprehensive Plan Update set forth above in good faith and according to the schedules set forth in Attachment A.

D. Revised Project Applications.

1. WRECO and Lone Star agree to seek permits and approvals for a Revised Project, which shall be defined to mean the Pioneer Aggregates Project as approved by City of DuPont Ordinance Nos. 485 and 486, except as modified to relocate the sand and gravel barge transshipment facility in the Tatsolo Point area, together with related relocation of the access road and conveyor system, and as modified to add or remove conditions. The permits and

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

approvals sought by WRECO and Lone Star pursuant to this paragraph, shall specifically not include an asphalt plant or concrete plant consistent with the specific deletion of such facilities by the City Council in their approval of Ordinance Nos. 485 and 486. A recordable declaration in the form annexed hereto as Attachment K shall be executed, which shall prohibit use of the Pioneer Aggregates Lease Area for an asphalt or concrete plant for a period of 99 years from the date of execution of this Agreement. An illustrative depiction of the Revised Project is contained in Attachment E. The parties agree that the final location of the Revised Project will be within the City of DuPont and further agree that the dock location will be within the range shown in Attachment B as the location for the Special Management Unit, which the parties agree is outside of the Nisqually Delta shoreline of statewide significance. WRECO and Lone Star are agreeing to no other permit modifications, except those specifically referenced herein. The proposed conceptual drawing set forth in Attachment E shows the maximum physical and visual impact to the bluff contemplated by the parties, and Lone Star will develop alternative plans that minimize visual and physical impacts to the bluff, taking into account concerns regarding noise, safety and cost. The parties recognize that project changes may occur through the engineering, survey, SEPA, and permitting process. The non-governmental parties agree to support any reasonable modifications to the proposal which do not: increase environmental impacts of the Revised Project, substantially change the location and size of the Revised Project, substantially change the feasibility of the Revised Project, or substantially increase the costs of the Revised Project. Measures that minimize environmental impacts and costs may be brought to the attention of the Environmental Review Committee created pursuant to Section I.E below, and the parties will, in good faith, consider inclusion of such measures into the Revised Project.

2. The non-governmental parties agree to support Lone Star's and WRECO's efforts to obtain all necessary permits and approvals for the Revised Project and to solicit support for the Revised Project from various interest groups and governmental entities, including but not

Section I.D.2 (cont'd.)

limited to Fort Lewis, the Corps of Engineers and the Nisqually Tribe. The non-governmental parties agree to use their best efforts to obtain all necessary permits for the Revised Project by the milestones set forth in Attachment A. The non-governmental parties also agree that they will not appeal any programmatic approval or permit approval necessary to implement the Revised Project. This agreement not to appeal any approvals shall include and shall apply to any local, state, or federal environmental document or threshold determination.

3. The City agrees to consider any necessary permits for the Revised Project in good faith and according to the agreed upon public process and schedules set forth in Attachment B. If the City approves any permit for the Revised Project, the City agrees not to challenge any permit or approval granted by another governmental agency which is consistent with their approval.

4. Ecology agrees to consider the proposed permits for the Revised Project in good faith and according to the agreed upon public process and schedules set forth in Attachment A. In the event that the City does not approve any necessary permits for the Revised Project, Ecology will review the decision and determine whether an appeal is appropriate under the powers granted to Ecology by the Shoreline Management Act or other authority. If Ecology approves a permit for the Revised Project, Ecology agrees not to challenge any permit or approval granted by another governmental agency for the Revised Project provided those approvals are consistent with this Agreement.

5. The parties agree that limited surface mining and the processing plant construction can commence at Lone Star's option after execution of this Agreement, pursuant to Ordinance No. 485 independent of any shoreline permit or the pending appeals, provided, no material is removed from the site by barge and further provided that the amount of aggregates removed annually does not exceed the volume equivalent to 20% of the total material which was estimated in the Pioneer Aggregates Final EIS to be mined annually (i.e., the amount of material

Section I.D.5 (cont'd.)

that was to be removed by truck). Ecology has determined that for purposes of this Agreement only, such limited mining activity is not dependent upon any use or development occurring in the shoreline, and is an economically independent activity; provided, however, that this determination shall not be used against any party in the event that litigation of the Underlying Actions (defined at III.A.5) is resumed pursuant to Section I.F(2). The limited mining and truck transport is permitted under City Ordinance Nos. 485 and 486, which include the mitigation measures applicable to this activity. If Lone Star exercises this option, they agree to limit the interim truck traffic to essentially the same hours of operation as the facility located in Steilacoom, which is between the hours of 7:00 a.m. and 7:00 p.m. For this limited surface mining, Lone Star shall provide a semi-annual report to the City and Ecology documenting where and how much aggregate has been removed and any progress in the construction of the processing plant.

6. Proposed mitigation measures for the Revised Project are set forth in Section II, below. The non-governmental parties agree to seek no further mitigation measures beyond those provided therein, unless a measure is agreed to by Lone Star through the process set forth in Section I.E(3)(e) and Section I.D(1).

7. In the event that any governmental agency denies or conditions the Revised Project in a manner inconsistent with Section II of this Agreement, Lone Star and WRECO will have the options set forth in Section I.F below.

E. State Environmental Policy Act Compliance.

1. The Comprehensive Plan Update SEPA process will proceed independently through the EIS process presently under way in an effort to adopt the Comprehensive Plan Update according to the Growth Management Act deadline. The EIS for the Comprehensive Plan Update will include environmental analysis of the proposed amendments for the Comprehensive Plan Update set forth in Section I.C above.

2. The Proposed DSMP Amendment set forth in Section I.B shall be evaluated in a Supplemental Environmental Impact Statement (SEIS). The SEIS shall discuss the environmental impacts of the proposed Special Management Unit and the elimination of the current Urban shoreline designation. Ecology will investigate the availability of grant monies that may be available to assist the City in programmatic planning and environmental review.

3. The SEIS for the Proposed DSMP Amendment will also consider the environmental impacts of the Revised Project proposal. With regard to the SEIS, the parties agree to the following:

a. Lead Agencies: Ecology will act as a lead agency responsible for the preparation of the environmental review document. The City shall, at its option, be a co-lead agency.

b. Funding and Scope of Work: Lone Star will be responsible for funding the necessary environmental studies, except to the extent grant money is available to the City for analyzing the Proposed DSMP Amendment. Ecology will use best efforts to complete the environmental review for the Revised Project within reasonable cost limits. The Environmental Review Committee will prepare a proposed scope of work and budgetary goals for the SEIS and submit them to Ecology for its approval within 45 days from the effective date of this Agreement. The SEIS will analyze (1) the Proposed DSMP Amendment and reasonable alternatives to accomplish its objectives, and (2) the elements of the Revised Project not previously analyzed in the Pioneer Aggregates Final EIS, and reasonable alternatives that would accommodate the sand and gravel barge transshipment facility, conveyor, and access road elements on property owned or controlled by WRECO or Lone Star.

c. Milestones: The parties agree to use best efforts and act in good faith to meet the milestones set forth in Attachment A. Remedies for missing certain Key Milestones are set forth in Section III.A.2 below.

d. Staff: Ecology agrees to assign one staff person to facilitate all necessary permits, approvals, and environmental review documents. The staff person should be a full-time employee with Ecology and shall have experience in managing large projects in the south Puget Sound region. The Ecology staff person shall also work on the Master Program amendment, and any other activities, including meeting with other agencies as necessary.

e. Environmental Review Committee: To coordinate the efforts of the parties during the SEPA process, an Environmental Review Committee is established with the following representatives of the parties: Ron Summers (Lone Star), Phil White (WRECO), Janet Dawes (NDA), as well as a representative to be named from Ecology, the City, acting through the City Council, and the Anderson Island QOLC. In the event any named designee cannot serve, the affected party shall name a new representative. The Environmental Review Committee will convene upon request of Ecology when Ecology desires input on an aspect of the SEPA process. The Environmental Review Committee may also consider measures to reduce environmental impacts or costs as set forth in Section I.D(1). The parties will in good faith consider measures recommended by the Committee for changes to the project and Ecology will consider whether the suggested measures warrant inclusion in the SEIS according to the SEPA Rules.

f. Consultants: Ecology shall use best efforts to provide environmental analysis in-house. Where necessary, outside consultants will be selected by Ecology, after consultation with the City and the Environmental Review Committee. Where possible, consultants with previous experience on the Pioneer Aggregates Final EIS will be used, with the exception of a new noise study conducted in accordance with Section I.E.3.g below.

g. Cooperative Noise Compliance:

(i) The existing measured Ldn at the eastern shore of Anderson Island, as measured at the water-side lawn of the Robert Moore residence at Cole Point, as representative of the homes in the area, shall not increase by more than 5 dBA as a

Section I.E.3.g(i) (cont'd.)

result of the Revised Project. This standard shall be referred to as the Noise Standard. In addition, even if the Noise Standard is met, Lone Star will undertake reasonable mitigation measures, excluding modifying operating hours, to reduce noise impacts further below the Noise Standard.

(ii) The parties agree that moving the sand and gravel barge transshipment facility north near Tatsolo Point constitutes mitigation for potential noise impacts of the Revised Project upon the Nisqually NWR and the City of DuPont.

(iii) The parties agree upon the following method as the most efficient, fair and enforceable manner by which to ensure that the Revised Project does not have a significant noise impact: 1) The parties agree to the Noise Standard set forth in subparagraph (i) above as the appropriate noise limit for the Revised Project with regard to Anderson Island; 2) The parties agree that the only additional study necessary to implement this standard is to establish a baseline Ldn at the eastern shore of Anderson Island to serve as a basis for monitoring; 3) The parties agree to use an independent noise consultant to measure the existing Ldn at Cole Point on Anderson Island for use as the baseline; 4) A "Cooperative Noise Compliance Committee" (CNCC) shall be formed to adopt the baseline and develop a Monitoring Program, to be implemented by an entity selected and managed by the CNCC; and 5) Following start up of operations of the Revised Project and implementation of monitoring, the CNCC will reconvene to develop a Mitigation Plan only if monitoring under the Monitoring Program establishes that the Noise Standard has been violated.

(iv) The CNCC shall be comprised of one representative from Lone Star, WRECO, Ecology, the City, NDA, and the Anderson Island QOLC. Any party, at its option, may be represented by a person with experience in noise issues. The CNCC shall work on a consensus basis. The responsibilities of the CNCC shall include overseeing and reviewing the noise consultant's work; adopting the Anderson Island baseline against which the Noise

Section I.E.3.g(iv) (cont'd.)

Standard will apply; identifying mitigation measures, excluding modification of operating hours, to reduce noise impacts further below the Noise Standard; developing a Monitoring Program, using as a basis the draft monitoring plan attached to City of DuPont Ordinance No. 486; reviewing monitoring reports; and, only if the Monitoring Program establishes that violations of the Noise Standard have occurred, developing a Mitigation Plan for the Revised Project, which may include modification of operating hours, to meet the Noise Standard.

(v) The Greenbush Group is accepted by all parties as the Noise Consultant.

(vi) The Monitoring Program to be developed shall provide for independent monitoring and reporting to the CNCC, to be provided on a timeline agreed upon by the CNCC.

(vii) The CNCC may, at its option, commence efforts prior to final acceptance of this Agreement by all parties.

(viii) Ecology shall appoint a contract administrator who shall be responsible for entering into the contract with the consultant selected by the CNCC.

(ix) Funding for the noise consultant contract will be provided for in the SEIS. Lone Star will be responsible for funding noise monitoring under the Monitoring Program.

(x) In the event that the parties cannot agree to any element of the noise program developed herein or by the CNCC, or in the event that the parties cannot agree to a Mitigation Plan following any violation of the Noise Standard established under the Monitoring Program, the parties shall employ the dispute resolution process established in Section III.B.1 of this Agreement.

h. Fiscal Study. Lone Star is committed to contribute its fair share to needed City services that may increase as a result of the Pioneer Aggregates Project

Section I. E.3.h (cont'd.)

being situated in the City of DuPont. The fiscal analysis provided in the Final Environmental Impact Statement dated February 4, 1993 is being reviewed, and a revised report will be included in the project-specific SEPA review for the Revised Project as necessary.

4. The parties agree that preparation of the SEIS is being done because of a proposed Shoreline Master Program Amendment and a proposed Revised Project, and therefore its preparation shall in no way be used to attack the adequacy of the original EIS documents for the Pioneer Aggregates Project.

F. Process Facilitation and Remedies.

1. To facilitate implementation of this Settlement Agreement, including the processing of all necessary permits and approvals, the State will create an Inter-Agency Task Force. The Inter-Agency Task Force will include members from Ecology, Department of Natural Resources, the Washington Department of Wildlife and Fisheries, and any other agency deemed appropriate by Ecology. The Task Force shall use its best efforts to minimize delays, and provide coordination and technical assistance as necessary to facilitate the programmatic and permit review processes.

2. The parties agree not to appeal any programmatic or project-specific approvals granted which are consistent with this Agreement. If all permits and approvals are obtained and no permit appeals are filed, the Revised Project will be built and the Underlying Actions will be dismissed pursuant to Section III.A. If, however, any necessary programmatic or permit-specific approval is not obtained, or any permit is appealed by anyone, then Lone Star and WRECO may opt to continue to pursue the approvals for the Revised Project through the appeals process, but if this is not a satisfactory option to Lone Star and WRECO, they may, at their sole discretion, opt to defend the original permit approvals obtained by Ordinance No. 485 and Ordinance No. 486; provided that WRECO and Lone Star need not abandon one appeal option to

Section I.F.2 (cont'd.)

pursue the other. These litigation options remain open to WRECO and Lone Star until the consolidated shorelines appeals are dismissed pursuant to Section III.A.3 of this Agreement, and the Pierce County appeal is dismissed pursuant to Section III.A.4. In the event Lone Star and WRECO opt to pursue the Revised Project through the appeals process, the non-governmental parties agree to support WRECO and Lone Star in any appeals brought to obtain such permits. In the event Lone Star and WRECO opt to defend and pursue the original City approvals obtained, then the other parties reserve all rights to pursue their opposition to those original approvals.

II. MITIGATION

A. Overview.

1. Lone Star and WRECO agree to undertake the mitigation measures expressly set forth in this section, provided, however, that all mitigation measures are expressly contingent upon Lone Star's receipt of all necessary permits and approvals to implement all aspects of the Revised Project on acceptable terms and upon the expiration of all appeal periods with no appeals being filed. If a permit appeal is filed in connection with the Revised Project by anyone, then WRECO and Lone Star will have the options set forth in Section I.F(2). If Lone Star and WRECO successfully defend the permits and opt to proceed with the Revised Project, then they will undertake the additional mitigation set forth below, except that contributions to the mitigation fund may be reduced as set forth below.

2. The parties agree that the mitigation measures herein are adequate to mitigate all direct and indirect impacts of the Revised Project. The parties recognize further mitigation measures may be suggested and implemented through the processes set forth in Section I.D(1), I.E(3)(e) and II.B(4).

B. Additional Mitigation Measures.

1. Public Access Plan. WRECO and Lone Star agree to the following public access provisions:

a. WRECO agrees to dedicate to the City an area for public trail access along the existing narrow gauge rail on the north side of Sequelitchew Creek to the Puget Sound shoreline in the vicinity of the existing dock, as shown on Attachment H.

b. Public access will not be provided by Lone Star or WRECO at the new sand and gravel barge transshipment facility; a public access route will be set aside down the north side of Sequelitchew Creek to the Puget Sound Shoreline area in the vicinity of the existing dock. WRECO agrees to remove the existing DuPont dock structure from the aquatic lands upon completion of the construction of the new gravel dock or, at WRECO's option, earlier.

Alternatively, at the request of the State, WRECO will turn over all right, title, and interests in the dock to DNR. WRECO agrees to forego future normal maintenance and repair of the dock structure during the pendency of the permitting and new dock construction process, provided the parties agree not to use any future deterioration of the dock structure against WRECO in the event that appeal proceedings of SHB No. 93-69 are resumed.

c. Lone Star and WRECO, in cooperation with Ecology, agree to place educational signs and native vegetation adjacent to the trail in the location of the salt marsh to educate the public and discourage physical intrusions into the marsh area.

2. Hoffman Hill.

a. WRECO agrees to establish a buffer on Hoffman Hill as shown by the green area on the map in Attachment D, subject to a record survey. The buffer shall be established through the imposition of an easement. At the time development occurs adjacent to the buffer, WRECO will dedicate the buffer to the City. The parties acknowledge that the agreed upon setback and buffer set forth in Attachment D is sufficient to protect bluff stability, as well as to mitigate impacts from Hoffman Hill residential development on bluff habitat and its wildlife, and the resources associated with the viewshed from the Nisqually National Wildlife

Section II.B.2.a (cont'd.)

Refuge. Ecology agrees to consider this mitigation as part of any mitigation package which may be required for the residential development of Hoffman Hill after environmental review.

b. The easement, known as a Native Growth Protection Easement (NGPE), will convey to the public a beneficial interest in the land within the easement. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety, and welfare, including, but not limited to, control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The NGPE imposes upon all present and future owners and occupiers of land subject to the easement the obligation to leave undisturbed all trees and all other vegetation within the easement, provided, that a public access trail consistent with the Calthorpe Plan, including access to the two existing public view points, and appurtenances necessary to use the trail and viewpoints, such as handrails at the view points, may be constructed in the easement. Obligations under the easement are enforceable on behalf of the public by the City of DuPont, and, if the City is provided written notice of an alleged violation and fails to take action within 30 days of such notice, the easement is enforceable by NDA and Ecology. The easement shall provide for liquidated damages in the amount of \$5,000 for each tree cut in excess of 12 inches dbh or for clearing more than 1,500 square feet of brush, and \$2,500 for trimming any tree or for each tree cut smaller than 12 inches dbh or for clearing less than 1,500 square feet of brush. The easement shall also provide that if litigation is necessary to enforce the terms of the easement, the prevailing party shall be entitled to its attorney's fees and costs. Prior to the sale of lots adjacent to the buffer, WRECO shall inform in a conspicuous manner prospective purchasers of the buffer's status as an NGPE and that protection of the NGPE buffer will be enforced by the City. WRECO will obtain written acknowledgment from the purchasers that they have received such notice and that they consent to be subject to the terms of the easement including that the purchaser agrees to give the same notice on the same terms to subsequent purchasers. The notice

Section II.B.2.b (cont'd.)

shall also be filed with the Pierce County Auditor's Office prior to or at closing of the sale. Failure to provide any such notice will result in liquidated damages of \$5,000 against the person required to give such notice. All liquidated and unliquidated damages shall be payable to the City for restoration and improvements to the buffer, provided that when NDA and Ecology enforce the agreement, that party's attorney's fees and costs shall be payable from the damages collected.

c. Permanent survey stakes and signs shall be set delineating the buffer prior to WRECO selling the property or receiving approval for any development or pre-development activity on Hoffman Hill. Before beginning and continuously during the course of any grading, building construction, or other development activity on a lot subject or adjacent to the NGPE, the common boundary between the easement and the area of development activity must be fenced or otherwise continuously marked in a highly visible manner, such as yellow caution tape, to the satisfaction of the City. At the time that roads are constructed on the site, one sign per lot shall be posted, or other physical notice mutually agreed upon by Ecology, NDA, WRECO, and DuPont shall be provided, at the boundary between the buffer and each adjacent private lot alerting subsequent occupiers and users of the land to the existence of the buffer and the need to protect it. The signs shall be similar to the example attached hereto as Attachment I. The message on the sign shall be modified appropriately.

d. Ecology, the City and the nongovernmental parties agree not to seek any buffer proposal for Hoffman Hill that is inconsistent with the Calthorpe Plan shown in Attachment D; provided, however, this shall not apply to environmental impacts from future development which are unrelated to the Nisqually National Wildlife Refuge and which may be disclosed in subsequent environmental review. The parties agree not to propose any plan calling for public acquisition of Hoffman Hill for expansion of the Refuge unless such plan is conditioned on WRECO being a willing seller entitled to full fair market value and upon

Section II.B.2.d (cont'd.)

approval of the City. Nothing contained in this section shall be construed as limiting or prohibiting the City from exercising its rights to acquire by eminent domain, all or any portion of the Hoffman Hill area for a public purpose other than the expansion of the Refuge.

e. Additional Mitigation Provisions Regarding Hoffman Hill.

(i) The public access trail provided for herein shall be designed and constructed by WRECO, its successors or assigns, subject to approval by the City of the plans and specifications therefor;

(ii) The design for the trail shall include reasonable accommodation to meet the requirements of the Americans with Disabilities Act.

(iii) If the City so elects, it may design and construct the trail and charge WRECO the reasonable costs thereby incurred. In such event, WRECO shall have an opportunity for design input and shall be credited in such amount against the costs of any recreational improvements which it might be reasonably required to install as a part of residential platting or development in the City. Any City employee who will be working on the trail project will be required to have credentials for this type of construction project.

(iv) Removal by the City or by WRECO with the City's permission, of trees and undergrowth in conjunction with trail construction or maintenance, or the removal by either party of dangerous trees near the trail or public viewpoints, shall not be deemed a violation of any provision of this Agreement.

(v) The City may by ordinance provide that it shall be a civil offense, enforceable in Municipal Court, for any person to remove, without permission from the City, brush, trees, or other growth from the Native Growth Protection Easement except as provided in the preceding subparagraph iv.

(vi) The design for the trail shall include public access thereto from a public right-of-way.

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 II.C.3.c (cont'd.)

City from an approval received by WRECO or Lone Star from another governmental agency, nor shall it apply to any action brought by Lone Star or WRECO.

d. The fees, expenses and costs referred to in the preceding subparagraphs a through c will be payable whether or not the Revised Project is ultimately approved, and if approved whether or not it is abandoned in whole or part by WRECO or Lone Star.

4. In the event the City does not approve any necessary programmatic approval or permit for the Revised Project, Lone Star and WRECO may proceed as provided in Section I.F above, and shall have no obligation to the City under this Settlement Agreement.

D. Environmental Mitigation Funding.

1. Environmental Mitigation Trust. As a further mitigation measure, Lone Star and WRECO agree to make a grant to an Environmental Mitigation Trust ("EMT"), which will undertake acquisition of real property, development rights and easements as resource protection measures for the Nisqually Delta, in the area described as the Mitigation Landscape Area as defined in Section II.D.2.b. below. The EMT shall be a public or non-profit entity such as the Trust for Public Lands, the Nature Conservancy, or the Nisqually Land Trust, which shall be selected jointly by the NDA and Ecology.

2. Funding. Lone Star and WRECO agree to contribute to the trust designated pursuant to Section II.D.1 above, a grant payable as follows:

a. A down payment will be payable within 30 days after all permits necessary for the Revised Project have been issued, and all appeal periods for those permits have expired with no appeals being filed or alternatively any permits challenged are affirmed following appeal. The down payment shall be in the amount of \$375,000. An additional \$125,000 shall be payable on January 31, 1996, conditioned upon all state and local permits and approvals having been obtained by that date, and further conditioned upon all non-programmatic

Section II.D.2.a (cont'd.)

permit and approval appeals periods having expired by that date with no appeal being filed or all appeals filed being fully resolved in Lone Star's and WRECO's favor by January 31, 1996.

b. The balance will be payable in annual installments of \$50,000 per year for 25 years; provided, however, that if for any reason the aggregate operations have been suspended totally for six months or more, annual payments will be suspended until any portion of the aggregate operation is resumed. The first annual installment will be due upon completion of construction of the sand and gravel barge transshipment facility; for years 2 through 25 of operations of the Revised Project, the annual payment shall be due on June 29 unless the due date is modified pursuant to the suspension proviso in the preceding sentence. Payments in years 6 through 25 shall be adjusted for inflation according to the Producer Price Index for sand and gravel. The base year for inflation adjustments shall be the year that operations of the Revised Project commence. At Ecology's or NDA's option, the sum total of payments for years 21 through 25 may be accelerated to the time of or anytime after the down payment, if that sum total is contributed toward purchase of real property, development rights, or easements, in the Mitigation Landscape Area. The Mitigation Landscape Area shall be defined as:

(i) The Shoreline of Statewide Significance (as defined in the Shoreline Management Act) from Tatsolo Point south to De Wolf Bight, the Nisqually National Wildlife Refuge, and all areas contiguous to these lands, excluding those lands within the City limits of DuPont, and extending no further south or east than the I-5 freeway corridor; provided that land within the current city limits of DuPont may be included to the extent that it can be purchased from a willing seller. No portion of this geographic area shall be included to the extent that it is either urbanized or a disturbed natural environment that is unsuitable for natural habitat and for which a plan and funding for restoration of the habitat has not been identified.

(ii) In the event that the trustee determines that the protection of the natural environment of the Mitigation Landscape Area by purchase of the stated property

Section II.D.2.b(ii) (cont'd.)

interests in the above-stated geographic areas has been completely frustrated or cannot be achieved, the Mitigation Landscape Area may be expanded to include shorelands and adjacent property associated with any river, stream or wetland that is associated with and forms an integral part of the ecology of the Nisqually Delta, subject to the limiting provision applicable to land within the current city limits of DuPont, as set forth in subparagraph (i) above.

c. If any necessary permit is denied or appealed, then Lone Star and WRECO may exercise their options under Section I.F. If they opt to pursue the Revised Project, are successful in obtaining the permits for it through the appellate process, and elect to build the Revised Project, then Lone Star and WRECO will fund the annual payments and the down payment, but will have no obligation to make the conditional January 31, 1996 payment unless all permit appeals or challenges to permit denials are fully resolved in Lone Star and WRECO's favor by January 31, 1996.

III. GENERAL TERMS

A. Disposition of Existing Litigation and Applications.

1. Appeals Stayed. The shoreline appeals (SHB Nos. 93-64, 93-65, and 93-69) and Pierce County appeal (Pierce County Cause No. 93-2-09515-1) shall be stayed and held on inactive status pending the outcome of the programmatic and permit-specific approval processes set forth above. The parties to the appeals will execute a Stipulation and Order of Continuance for the shoreline appeal and Pierce County Superior Court appeal concurrently with the execution of this Settlement Agreement. The parties to the appeals hereby authorize and direct their respective attorneys of record to sign and file the Stipulation and Order of Continuance upon execution of this Settlement Agreement by the parties of record to the appeals.

2. Key Milestones. Certain Key Milestones contained in Attachment A are marked by an asterisk (*). If any Key Milestone in Attachment A is not completed within two weeks of the target date, or if any necessary programmatic or permit-specific approval is not

Section III.A.2 (cont'd.)

obtained consistent with this Agreement, Lone Star and WRECO may exercise their options under Section I.F.2 above.

3. Dismissal of Shoreline Appeals. The parties to this agreement who are parties of record to the shoreline appeals hereby authorize and direct their respective counsel of record to execute and file the Stipulation and Order of Dismissal for Consolidated Cases SHB Nos. 93-64, 93-65, and 93-69 substantially in the form attached hereto as Attachment F, and incorporated herein by this reference, when the following conditions are met: 1) all necessary permits and approvals are obtained for the Revised Project; and 2) the appeal period for the last necessary project-specific approval or permit to issue has run with no programmatic or project-specific appeal having been filed. Lone Star and WRECO further agree that, upon completion of construction of the new dock, they will withdraw the permit applications for use of the existing DuPont dock.

4. Dismissal of Pierce County Appeals. Parties to this agreement who are parties of record to Pierce County Superior Court Cause No. 93-2-09515-1 hereby authorize and direct their respective attorneys of record to execute and file the Stipulation and Order of Dismissal substantially in the form attached hereto as Attachment G, and incorporated herein by this reference, when the following conditions are met: 1) all necessary permits and approvals are obtained for the Revised Project; and 2) the appeal period for the last necessary project-specific approval or permit to issue has run with no programmatic or project-specific appeal having been filed; provided it is agreed that, in the event this litigation is resumed, it shall not be a basis for challenging in any way the construction of the processing plant or mining of the material moved by truck pursuant to Section I.D.5 above.

5. Mutual Release. Effective upon the date of dismissal with prejudice of the last of the following iterated actions to be dismissed, SHB No. 93-64, SHB No. 93-65, SHB No. 93-69, and Pierce County Superior Court Cause No. 93-2-09515-1 (together the "Underlying

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

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: Lillian F. Shubert
Its: Mayor

DATED: 27 Dec 1994

LONE STAR NORTHWEST, INC.

By: James R. Repman
Its: Pres.

DATED: Oct 27, 1994

WEYERHAEUSER REAL ESTATE COMPANY

By: Robert L. Shedd
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 A

CRITICAL PATH

CRITICAL PATH MILESTONES

| <u>Date</u> | <u>Action</u> |
|-------------------|--|
| July 15, 1994 | Amended Applications Submitted |
| July 15, 1994 | Noise Study circulated to CNCC |
| October 15, 1994 | *Pre-Draft SEIS circulated to Environmental Review Committee |
| October 30, 1994 | Comments returned to DOE on pre-draft |
| | <u>Note:</u> Critical Path will be reviewed after receipt of comments to determine if there is a need to revise the schedule. |
| January 1, 1995 | *Draft SEIS published |
| February 1, 1995 | *SEIS comment period ends |
| May 1, 1995 | *Final SEIS published |
| May 30, 1995 | Public Hearing on DSMP, Permits |
| June 15, 1995 | City Planning Commission recommendation on joint proposal |
| July 15, 1995 | *City Council decisions on DSMP; Permits to follow; Notice of Action published |
| | <u>Note:</u> Decision on DSMP will be sent to Ecology per WAC 173-19-062; Applicant may need to waive transmittal time frame for permits |
| December 1, 1995 | *DOE decision on DSMP and shoreline permit |
| December 15, 1995 | DNR decision on Aquatic Lands Lease |
| December 31, 1995 | *Building permits for transshipment facility issued |
| *KEY MILESTONES | |

321495

ATTACHMENT A

ATTACHMENT B

PROPOSED DSMP

FOR SETTLEMENT DISCUSSION PURPOSES ONLY

July 11, 1994

Tatsolo Point Special Management Unit

I. Purpose

The purpose of the Tatsolo Point Special Management Unit is to ensure that the shoreline resources of the Special Management Unit and the shoreline of statewide significance associated with the Nisqually Delta are protected while providing the City of DuPont with a location for access to Puget Sound for appropriate water dependent uses and activities and water related passive recreational uses and activities.

II. Policy

The Special Management Unit is located outside the shoreline of statewide significance. Development within the Special Management Unit should not be visible from anywhere within the Nisqually National Wildlife Refuge.

Uses in the Special Management Unit should be limited to water dependent uses and water related passive recreational uses. Water dependent uses should be limited to those uses associated with public transportation or with sand and gravel barge transshipment. Uses directly associated with the railroad may be allowed, provided that no feasible non-shoreline location is available.

All uses and activities should be designed, developed and conducted in a manner that minimizes the impact to: the natural and human environment; the aesthetic character of the area; and the public use and enjoyment of the area. Appropriate offsetting mitigation should be required for all unavoidable adverse impacts associated with permitted development.

Passive recreational uses and an industrial use may occur concurrently within the Tatsolo Point Special Management Unit. However, only one industrial use utilizing one dock may be permitted and operating within the Tatsolo Point Special Management Unit at any time.

III. Use Regulations

A. Permitted Uses: The following uses and activities are permitted within the Special Management Unit subject to compliance with the development standards contained in Section IV below:

- Passive recreational uses.
- Facilities associated with such passive recreational use, such as parking and restrooms, that are located landward of the ordinary high water mark.
- Fish and wildlife related research activities and developments.
- Fish and wildlife related natural resource enhancement activities and developments.
- Roads and railroads when located landward of the ordinary high water mark.
- Utilities when located landward of the ordinary high water mark.

B. Conditional Uses: The following uses and activities may be allowed only upon approval of a conditional use permit subject to compliance with the conditions of Section IV below:

- Facilities associated with passive recreational use that are located waterward of the ordinary high water mark.
- Aquaculture facilities and uses except when such facilities are for fish and wildlife related research and/or enhancement as provided in the Subsection A above.
- Utilities when located waterward of the ordinary high water mark.
- Roads and railroads when located waterward of the ordinary high water mark.
- Facilities for the loading and unloading of passengers and/or vehicles carried by ferry.
- Train station provided that the facility is located landward of the ordinary high water mark.

- Facilities for the barge shipment of sand and gravel, including such uses as a pier, a dock, mooring dolphins, mooring buoys for barge staging, a barge loader, a conveyor, necessary utilities, and an access road.
- Necessary accessory or ancillary uses of a commercial or industrial nature associated with a listed permitted or conditional use where the need for a shoreline location is fully demonstrated.
- Necessary shoreline stabilization activities associated with existing or proposed uses.
- Maintenance dredging may only be authorized provided that it is fully demonstrated that there is no feasible alternative that will have less environmental impact than the proposed dredging.
- Industrial facilities that are fully demonstrated to have less adverse impact to the natural and human environment than a sand and gravel barge transshipment facility that may be permitted within the Special Management Unit.

C. Prohibited Uses: The following uses are expressly prohibited in the Tatsolo Point Special Management Unit:

- All uses and activities not specifically listed above as permitted or conditional use.
- More than one industrial use within the Special Management Unit.
- More than one industrial dock within the Special Management Unit.

IV. Development Standards

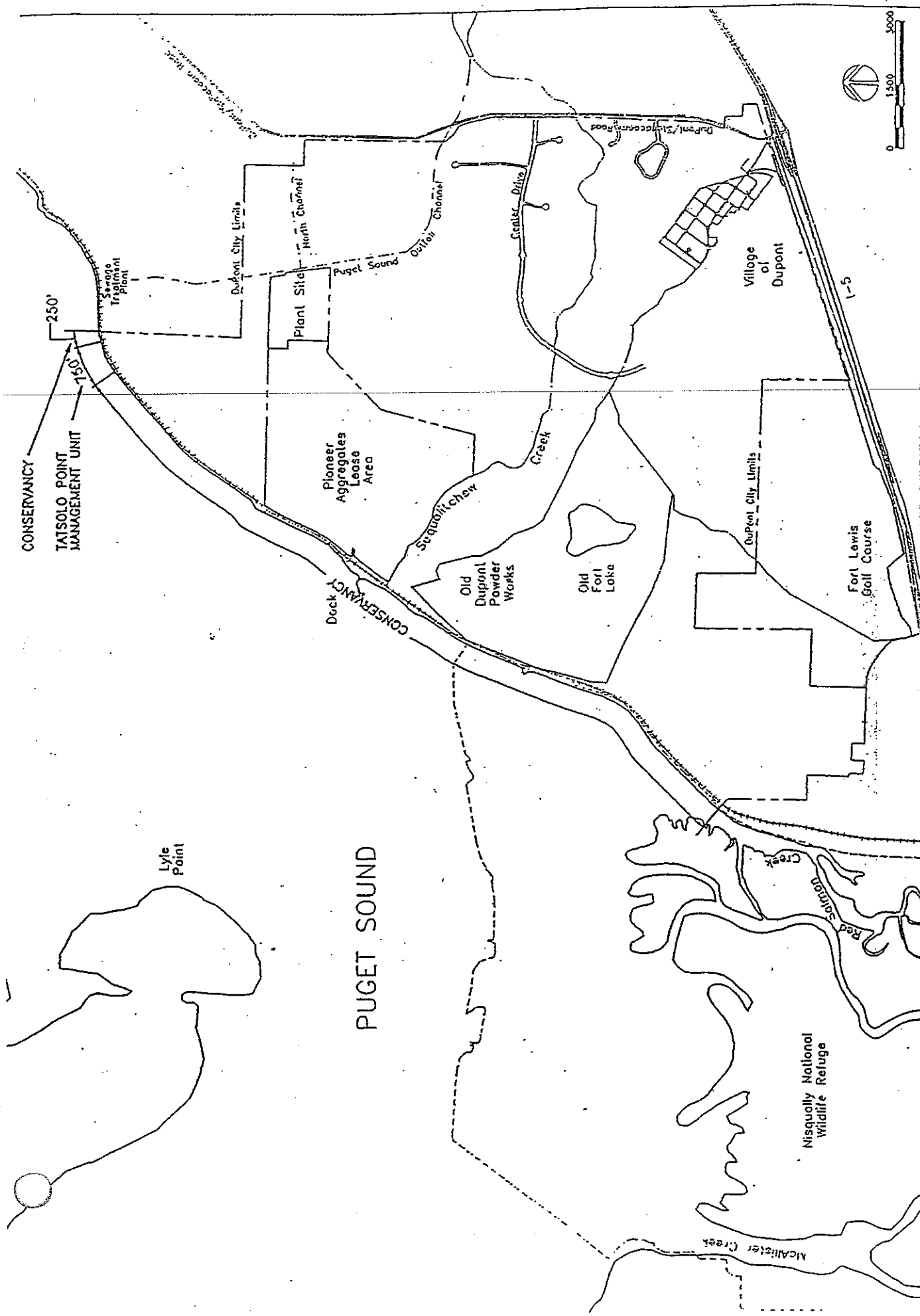
In order to ensure that all uses and activities within the Special Management Unit minimize adverse impacts to the natural and human environment; the aesthetic character of the area; and the public use and enjoyment of the area, the following regulations and development standards apply:

- The footprint, shadow and disturbed area caused by a development or associated construction shall be the minimum necessary to accomplish the authorized use, and shall not be oversized to accommodate speculative future uses.

- All structures shall be designed and constructed to blend visually with the background as viewed from the water, unless the applicant fully demonstrates a need otherwise. Development shall to the maximum extent practicable avoid visibility from the Nisqually National Wildlife Refuge and shall minimize any unavoidable impacts to visibility from the Refuge while accomplishing the intended purpose of the permitted development.
 - No dock may extend waterward more than 255 feet from the ordinary high water mark.
-
- The height of all structures shall be the minimum necessary to accomplish the permitted activity. Height shall be measured from mean higher high water if the structure is over water and from above average grade level if over land. Unless the applicant fully demonstrates a need otherwise, the following height limitations apply:
 - a. Any dock and associated structure: 35 feet
 - b. Any barge loading tower: 65 feet
 - c. Any conveyor structure: maximum 35 feet above the railroad tracks.
 - Lighting shall be the minimum necessary for the permitted purpose. Lighting shall be designed and constructed to minimize lighting of the shoreline, upland, and water areas and to minimize visibility from shoreline, upland, and water areas. Lighting shall meet applicable safety standards.
 - Alteration and disturbance of the existing bathymetry, land contours, and upland and aquatic vegetation within shoreline jurisdiction shall be minimized.
 - Any industrial use or activity shall be located to minimize interference with tribal fishing.
 - Obstruction and interference with recreational and commercial navigation and use of the water and shoreline areas shall be minimized.

- Dredging for the creation of berthing areas is prohibited. Berths shall be located to minimize the potential for maintenance dredging. Maintenance dredging may be authorized only by conditional use permit provided that the applicant fully demonstrates that there is no feasible alternative that will have less environmental impact than the proposed dredging.
- Shoreline stabilization activities shall only be authorized when the applicant fully demonstrates that: the stabilization design and method used is compatible with and uses the natural shore processes and conditions present on the site to the greatest extent possible; and that the materials used are compatible with the natural conditions of the site.
- No aquatic or upland vegetation within shoreline jurisdiction shall be disturbed or removed nor any land form altered except as authorized by the specific terms of a shoreline permit.
- Compensatory mitigation shall be provided for all identified adverse impacts to the human and natural environment. This shall include mitigation for impacts caused by the ongoing operation of any use or activity and potential impacts caused by accidents.

221847



PIONEER AGGREGATES
WASHINGTON

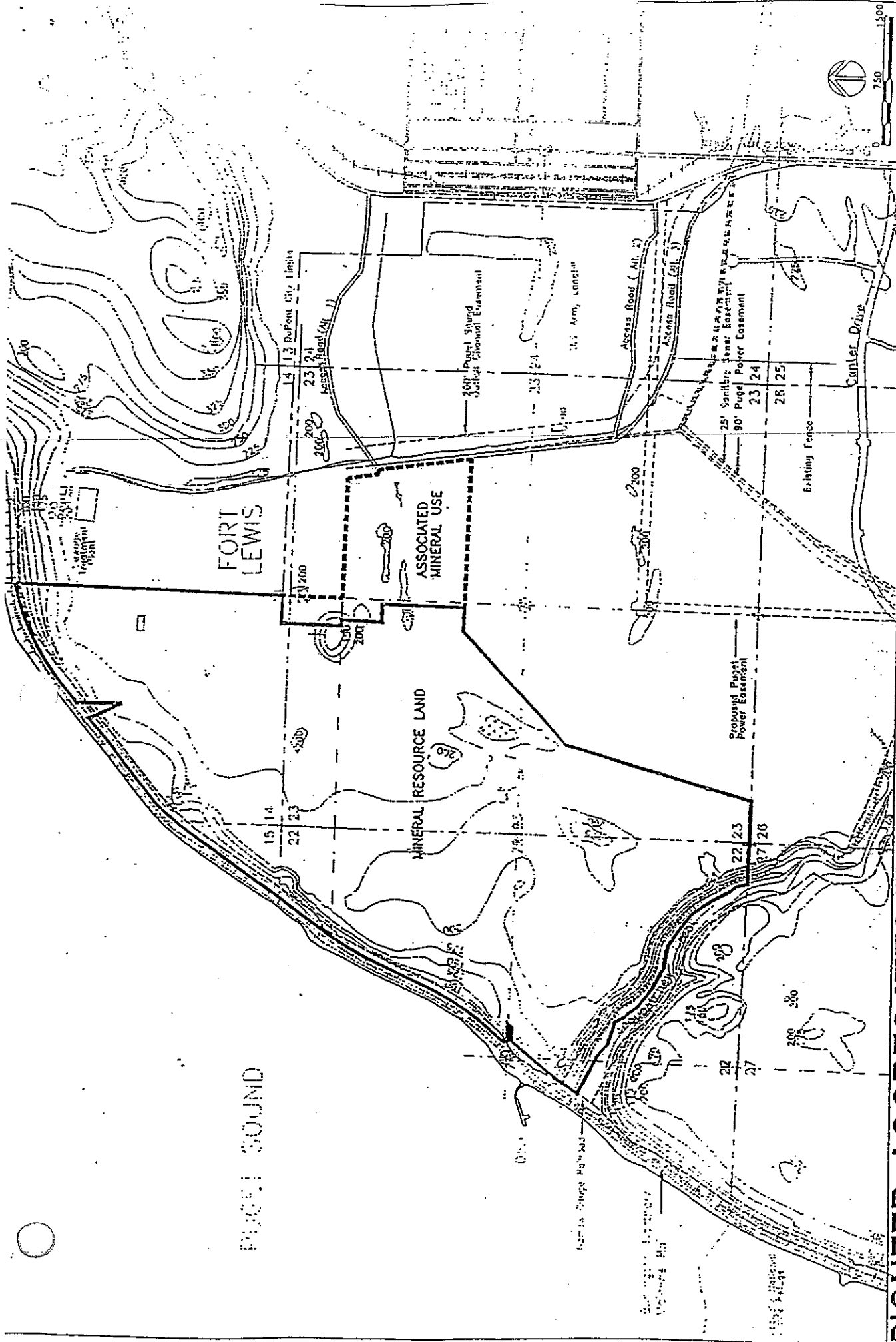
LEGEND:

- LEASE AREA
- DUPONT CITY LIMITS
- ROADS
- NISQUALLY NATIONAL WILDLIFE REFUGE BOUNDARY

Shoreline Redesignation from Urban to Conservancy

ATTACHMENT C

MINERAL RESOURCE LANDS



PIONEER AGGREGATES DUPONT, WASHINGTON

- LEGEND:
- DUPONT CITY LIMITS
 - - - ROADS
 - LEASE LINE
 - MINERAL RESOURCE LAND
 - ASSOCIATED MINERAL USE
- 200' SETBACK FROM PUGET SOUND AND CENTER LINE OF SEQUALTCHEW CREEK

Mineral Resource Land

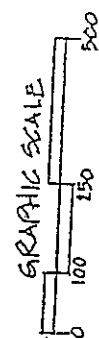
ATTACHMENT D

CALTHORPE PLAN



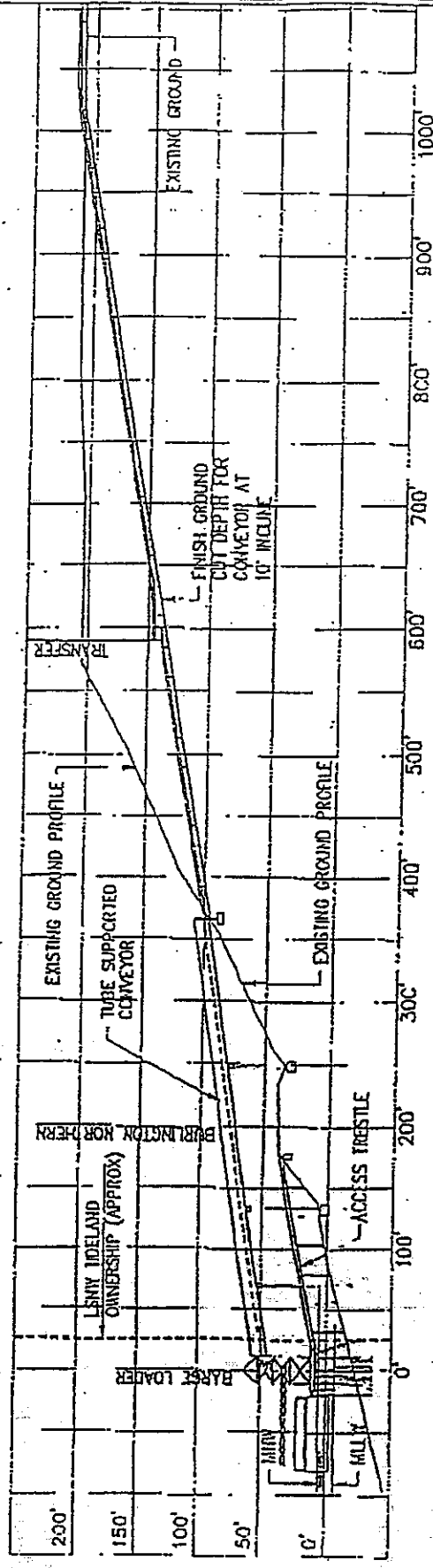
ATTACHMENT E

REVISED PROJECT ILLUSTRATION



NOTE: CONCEPTUAL PLAN ONLY. LOCATION AND GENERAL ARRANGEMENT ARE SUBJECT TO CHANGE WITH DETAIL DESIGN.

Harris Group Inc. A Size 11" X 17" FSD. 44



SCALE: 1"=80'

SFB 05-03-94

SK-1313-DOCKPR3

CONCEPTUAL DOCK LAYOUT VERTICAL PROFILE

Harris Group Inc.



ATTACHMENT F

SHB RELEASES AND STIPULATION AND ORDER OF DISMISSAL

BEFORE THE SHORELINES HEARINGS BOARD

STATE OF WASHINGTON

NISQUALLY DELTA ASSOCIATION
and BLACK HILLS AUDUBON
SOCIETY,

Appellants,

vs.

CITY OF DUPONT; LONE STAR
NORTHWEST, INC.; and WEYERHAEUSER
REAL ESTATE COMPANY,

Respondents.

SHB NO. 93-64

STIPULATION AND AGREED
ORDER OF DISMISSAL WITH
PREJUDICE

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Appellant,

vs.

LONE STAR NORTHWEST, INC.; CITY
OF DUPONT; and WEYERHAEUSER REAL
ESTATE COMPANY,

Respondents.

SHB NO. 93-65

LONE STAR NORTHWEST, INC.; and
WEYERHAEUSER REAL ESTATE COMPANY,

Appellants,

vs.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

SHB. NO. 93-69

STIPULATION

The parties to this action, through their attorneys of record,
stipulate as follows:

STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 1

Law Offices

HILLIS CLARK MARTIN & PETERSON
A Professional Service Corporation

1 1. All claims that were asserted in this consolidated action
2 have been settled, resolved or compromised per the terms of the
3 Settlement Agreement attached hereto and incorporated herein by
4 reference.

5 2. An order may be entered dismissing the action with
6 prejudice and without costs or attorneys' fees to any party.

7
8 HILLIS CLARK
9 MARTIN & PETERSON, P.S.

10 By
11 T. Ryan Durkan
12 WSBA No. 11805
13 Attorneys for Defendants
14 Lone Star Northwest, and
15 Weyerhaeuser Real Estate Co.

16 By
17 Rebecca E. Todd
18 WSBA No. 20713
19 Asst. Attorney General
20 Department of Ecology

21 BRICKLIN & GENDLER

22 By
23 David A. Bricklin
24 WSBA No. 7583
25 Attorneys for Nisqually Delta Ass'n and
Black Hills Audubon Society

1 PRESTON, THORGRIMSON,
2 SHIDLER, GATES & ELLIS

3 By _____
4 James J. Mason
5 WSBA No. 718
6 Attorneys for Defendant
7 City of DuPont

8 ORDER

9 Having reviewed the foregoing stipulation of the parties, the
10 pleadings filed herein, and having determined that the parties have
11 agreed to a settlement of the claims raised in this action, It Is
12 Ordered:

13 This action is dismissed with prejudice and without an award
14 of costs or attorneys' fees to any party.

15 Done at _____, Washington, this ____ day of _____,
16 1994.

17 HONORABLE WILLIAM A. HARRISON
18 Administrative Appeals Judge

19
20 SHORELINES HEARINGS BOARD

21
22 ROBERT V. JENSEN, Chairman

23
24 RICHARD C. KELLEY, Member

25
STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 3

Law Offices

HILLIS CLARK MARTIN & PETERSON
A Professional Service Corporation

1
2 GORDON F. CRANDALL, Member
3

4 BOBBI KREBS-MCMULLEN, Member
5

6 JAMES A. TUPPER, Member
7

8 Presented by:

9 HILLIS CLARK
10 MARTIN & PETERSON, P.S.
11

12 By
13 T. Ryan Durkan
14 WSBA No. 11805
15 Attorneys for Defendants
16 Lone Star Northwest, and
17 Weyerhaeuser Real Estate Co.
18

19 Notice of Presentation Waived:
20

21 By
22 Rebecca E. Todd
23 WSBA No. 20713
24 Asst. Attorney General
25 Department of Ecology

26 BRICKLIN & GENDLER

27 By
28 David A. Bricklin
29 WSBA No. 7583
30 Attorneys for Nisqually Delta Ass'n and
31 Black Hills Audubon Society

32 STIPULATION AND AGREED ORDER
33 OF DISMISSAL WITH PREJUDICE - 4

Law Offices

- HILLIS CLARK MARTIN & PETERSON -
A Professional Service Corporation

1
2 PRESTON, THORGRIMSON,
3 SHIDLER, GATES & ELLIS
4

5 By _____

6 James J. Mason
7 WSBA No. 718
8 Attorneys for Defendant
9 City of DuPont
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ATTACHMENT G

PIERCE COUNTY RELEASES AND STIPULATION
AND ORDER OF DISMISSAL

1
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3
4
5 IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

6 NISQUALLY DELTA ASSOCIATION,)
7 JUDITH A. KRILL, and KARL E.)
8 KRILL)

9 Plaintiffs,)

10 v.)

11 CITY OF DUPONT, a Washington)
12 municipal corporation;)
13 LONE STAR NORTHWEST, INC., a)
14 Washington corporation; and,)
15 WEYERHAEUSER REAL ESTATE)
16 COMPANY, a Washington)
17 corporation; OREGON CITY)
18 LEASING COMPANY, an Oregon)
19 corporation; and, STATE OF)
20 WASHINGTON, DEPARTMENT OF)
21 NATURAL RESOURCES,)

22 Defendants.)
23
24
25

NO. 93 2 09515 1

STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE

18 STIPULATION

19 The parties to this action, through their attorneys of record,
20 stipulate as follows:

21 1. All claims asserted in this action have been fully
22 settled, resolved or compromised.
23
24
25

STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 1

Law Offices

• HILLIS CLARK MARTIN & PETERSON •

A Professional Service Corporation

2. An order may be entered dismissing plaintiffs' complaint with prejudice and without an award of costs or attorneys' fees to any party.

HILLIS CLARK
MARTIN & PETERSON, P.S.

By
T. Ryan Durkan
WSBA No. 11805
Attorneys for Defendants
Lone Star, Weyerhaeuser Real Estate Co.,
and Oregon City Leasing

Dated: _____

BRICKLIN & GENDLER

By
David A. Bricklin
WSBA No. 7583
Attorneys for Plaintiffs

Dated: _____

PRESTON THORGRIMSON, SHIDLER
GATES & ELLIS

By
James J. Mason
WSBA No. 718
Attorneys for Defendant
City of DuPont

Dated: _____

STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 2

Law Offices

HILLIS CLARK MARTIN & PETERSON
A Professional Service Corporation

1
2 ORDER

3 Based on the foregoing stipulation of the parties, it is
4 hereby:

5 ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint be
6 and the same is hereby dismissed with prejudice and without an
7 award of costs or attorneys' fees to any party.

8 DATED this _____ day of _____, 1994.

9
10 JUDGE/COURT COMMISSIONER

11 Presented by:

12 HILLIS CLARK
13 MARTIN & PETERSON, P.S.

14
15 By _____
16 T. Ryan Durkan
17 WSBA No. 11805
18 Attorneys for Defendants
19 Lone Star, Weyerhaeuser, and
20 Oregon City Leasing

21 Notice of Presentation Waived:

22 BRICKLIN & GENDLER

23 By _____
24 David A. Bricklin
25 WSBA No. 7583
Attorneys for Plaintiffs

STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 3

Law Offices

HILLIS CLARK MARTIN & PETERSON

A Professional Service Corporation

1
2 PRESTON THORGRIMSON, SHIDLER
3 GATES & ELLIS

4 By _____
5 James J. Mason
6 WSBA No. 718
7 Attorneys for Defendant
8 City of DuPont
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STIPULATION AND AGREED ORDER
OF DISMISSAL WITH PREJUDICE - 4

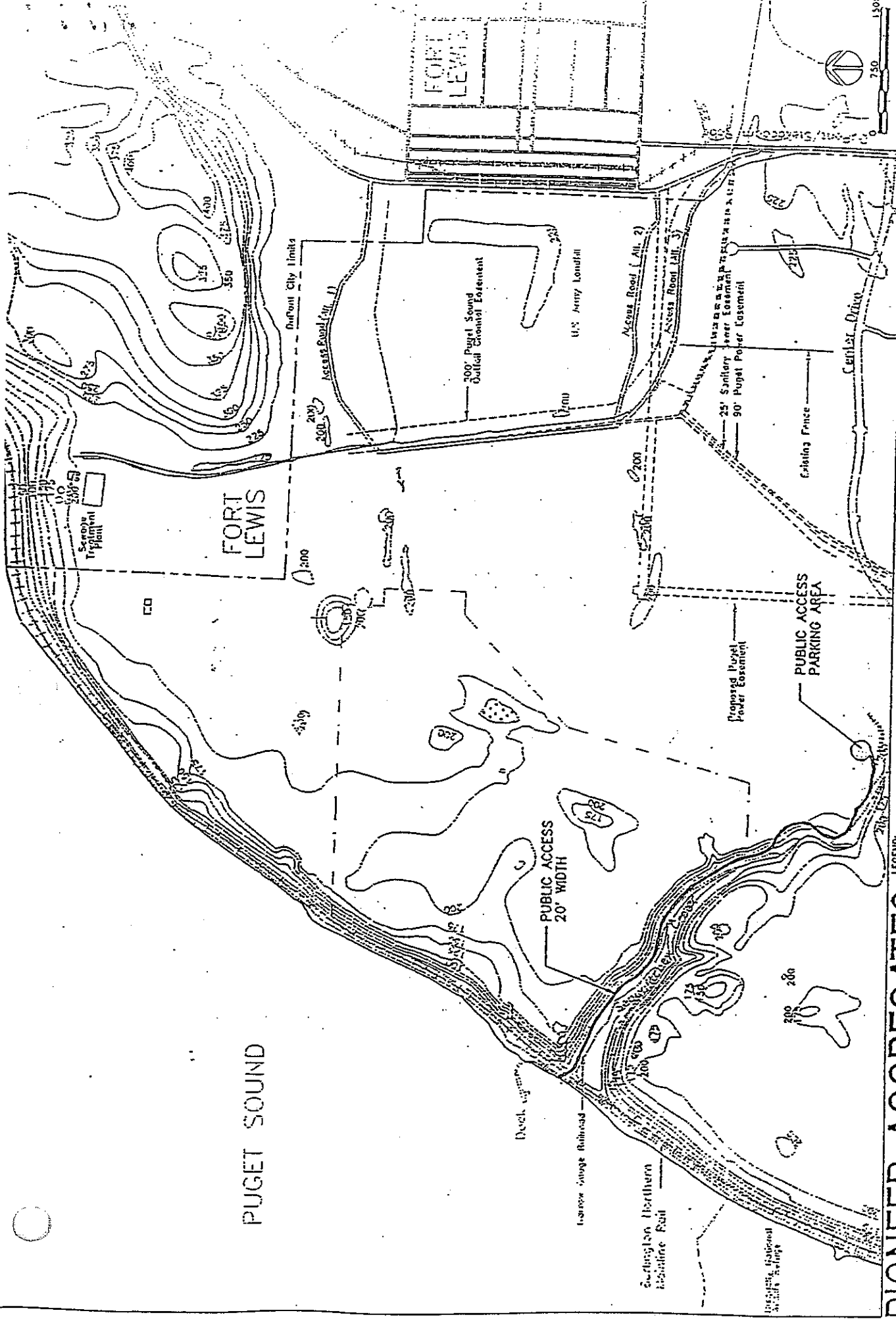
Law Offices

• HILLIS CLARK MARTIN & PETERSON •

A Professional Service Corporation

ATTACHMENT H

PUBLIC ACCESS PLAN



PIONEER AGGREGATES
WASHINGTON

LEGEND:
 --- DU PONT CITY LIMITS
 --- ROADS
 --- LEASE LINE
 ○ SIZE AND LOCATION OF PARKING AREA
 MAY VARY BASED ON SITE CONDITIONS.

Public Access

ATTACHMENT I

SIGN INSTALLATION DETAIL

ATTACH SIGN TO
POST WITH TWO
5/16 GALVANIZED
LAG BOLTS WITH
WASHERS



5' TO GRADE

← PRE-PRINTED
PLASTIC SIGN

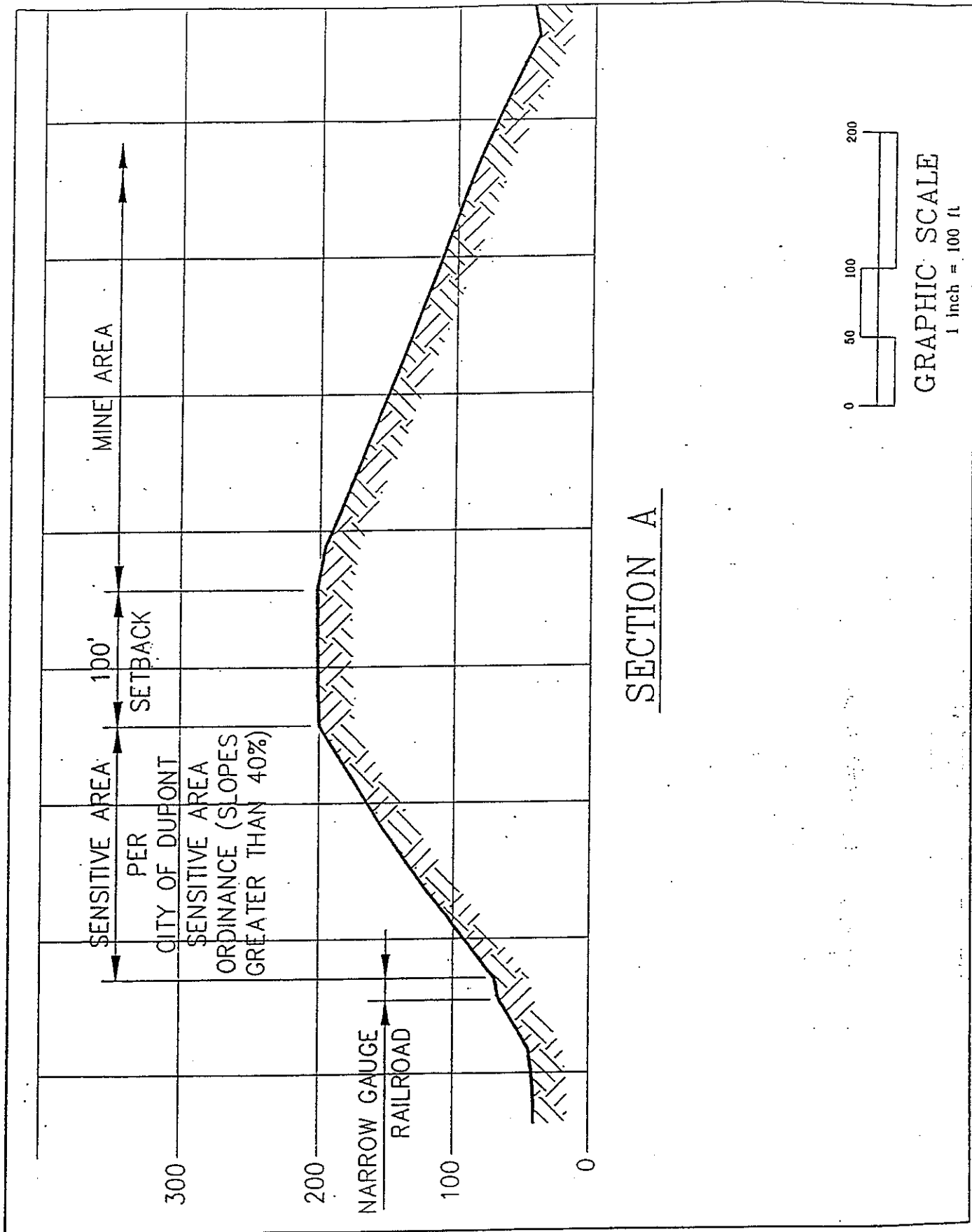
← 8"-4X4 CEDAR OR
PRESSURE-TREATED
POST SET 3' INTO
HOLE

KING COUNTY WETLAND/STREAM SIGN INSTALLATION DETAIL

- The Wetland/Stream sign shall be posted at the boundary between the Sensitive Area Buffer, Setback Area or Setback Tract and the Building Setback Area.
- One sign shall be posted per lot for every 150-feet of Sensitive Area

ATTACHMENT J

SEQUALITCHEW CREEK SETBACK



SECTION A



Harris Group Inc.

PIONEER AGGREGATES
SEQUALITCHEW CREEK
SENSITIVE AREAS
SHEET 5 OF 5

ATTACHMENT K

ASPHALT AND CONCRETE PLANT COVENANT

THIS SPACE PROVIDED
FOR RECORDER'S USE:

2. Duration. For ninety-nine years, this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the City of DuPont to the extent provided by law. This Declaration is binding upon the Declarant's legal representatives, heirs, successors, and assigns. Every purchaser or grantee of any interest (including, without limitation, a security interest) in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration is binding upon their use of the Property for the duration of the ninety-nine year period described above.

EXECUTED the day and year first above written.

WEYERHAEUSER REAL ESTATE COMPANY

By _____
Its _____

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 1994, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____, to me known to be the _____ and _____, respectively, of WEYERHAEUSER REAL ESTATE COMPANY, a Washington corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

Name _____
 NOTARY PUBLIC in and for the
 State of Washington, residing
 at _____.
 My commission expires _____.

EXHIBIT A TO DECLARATION RESTRICTING PROPERTY
LEGAL DESCRIPTION OF DECLARANT'S PROPERTY

THAT portion of Sections 22 and 23, Township 19 North, Range 1 East, W.M., Pierce County, Washington, more particularly described as follows:

BEGINNING at the Southeast corner of said Section 22;

THENCE along the South line of said Section 22,
N 87°49'38" W, 457.99 feet to the centerline of Sequalitchew
Creek;

THENCE along said centerline, the following bearings and
distances:

N 13°28'38" W, 129.14 feet;
N 41°18'14" W, 71.97 feet;
N 29°10'44" W, 239.19 feet;
N 34°50'25" W, 282.11 feet;
N 51°48'54" W, 221.02 feet;
N 55°46'05" W, 226.00 feet;
N 79°32'49" W, 267.29 feet;
N 62°09'45" W, 257.03 feet;
N 52°28'56" W, 257.90 feet;
N 36°30'27" W, 150.34 feet;
N 45°47'01" W, 43.05 feet;
N 29°18'46" W, 131.07 feet;
N 74°09'12" W, 73.54 feet;
N 70°33'10" W, 201.30 feet;
N 42°11'19" W, 83.69 feet;
N 52°39'53" W, 105.03 feet;

N 62°16'24" W, 483.82 feet to the Southeasterly Right-of-Way margin of the Burlington Northern Railroad;

THENCE Northeasterly along said Southeasterly Right-of-Way margin, the following bearings and distances:

N 35°15'30" E, 259.82 feet to a point of curvature;

Northeasterly 489.60 feet along the arc of a tangent curve to the right, having a radius of 4197.28 feet, through a central angle of 06°41'00" to a point of tangency;

N 41°56'30" E, 227.65 feet;

S 87°57'48" E, 156.43 feet;

N 41°56'30" E, 59.37 feet;

N 87°57'48" W, 215.01 feet;

N 02°02'12" E, 34.39 feet;

N 41°56'30" E, 188.14 feet to a point of spiral curvature;

N 41°22'48" E, along the spiral chord, 168.96 feet to a point of curvature;

Northeasterly 654.07 feet along the arc of said curve to the left, having a radius of 2897.93 feet, the radius point of which bears N 49°44'18" W, through a central angle of 12°55'55" to a point of spiral curvature;

N 26°12'42" E, along the spiral chord, 168.96 feet to a tangency;

N 25°39'00" E, 484.70 feet to a point of curvature;

Northeasterly 650.18 feet along the arc of a tangent curve to the right, having a radius of 4264.28 feet; through a central angle of $08^{\circ}44'09''$ to a point lying 600 feet South (when measured at right angles from) the North line of said Section 22;

THENCE along a line parallel with and 600 feet South of said North line, S $88^{\circ}53'04''$ E, 1253.64 feet to the East line of said Section 22;

THENCE along a line parallel with and 600 feet South of the North line of said Section 23, S $88^{\circ}53'04''$ E, 2388.86 feet;

THENCE S $02^{\circ}06'11''$ W, 450.07 feet;

THENCE S $88^{\circ}53'04''$ E, 200.03 feet;

THENCE S $02^{\circ}06'11''$ W, 921.50 feet;

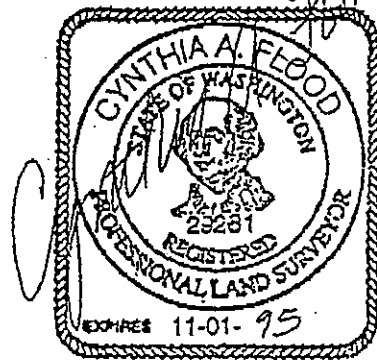
THENCE N $88^{\circ}24'40''$ W, 272.74 feet;

THENCE S $47^{\circ}45'56''$ W, 1770.31 feet;

THENCE S $16^{\circ}28'48''$ W, 2207.74 feet;

THENCE N $88^{\circ}47'45''$ W, 500.26 feet to the POINT OF BEGINNING.

See attached Exhibit "X".



[illegible]