

**SETTLEMENT AGREEMENT
FOR
DUPONT MINE, RESTORATION OF SEQUALITCHEW CREEK WATERSHED, AND
PRESERVATION OF PUGET SOUND SHORELANDS AND ADJACENT OPEN SPACE**

THIS SETTLEMENT AGREEMENT is made by and among the WASHINGTON STATE DEPARTMENT OF ECOLOGY (“Ecology”); the CITY OF DUPONT (“City”); CALPORTLAND COMPANY (“CalPortland”), formerly known as GLACIER NORTHWEST; WPP, LLC; the NISQUALLY DELTA ASSOCIATION; the BLACK HILLS AUDUBON SOCIETY; the WASHINGTON ENVIRONMENTAL COUNCIL; PEOPLE FOR PUGET SOUND; the TAHOMA AUDUBON SOCIETY; the SEATTLE AUDUBON SOCIETY; and ANDERSON ISLAND QUALITY OF LIFE COMMITTEE.

1. RECITALS.

- 1.1. The parties to this Agreement were previously signatories to a 1994 Settlement Agreement dated December 25, 1994 (hereafter, the “1994 Settlement Agreement”), concerning CalPortland’s now existing sand and gravel mining operation and barge-loading facility (together the “Existing Mine”). The 1994 Settlement Agreement established and implemented a framework for cooperative efforts among the parties to protect the Puget Sound shoreline and allow for public access for the citizens of DuPont, while also allowing valuable gravel resources to be available to the Puget Sound region. *See* 1994 Settlement Agreement ¶ J. The 1994 Settlement Agreement also included provisions to protect Sequelitchew Creek. *See* 1994 Settlement Agreement ¶ II.B.5.
- 1.2. In 2006, as part of its annual Comprehensive Plan amendment process to comply with the state Growth Management Act—a process that included public comment and review under the State Environmental Policy Act (SEPA)—the City approved CalPortland’s application to expand the City’s Mineral Resource Overlay to include: (1) an approximately 200-acre area owned by WPP LLC, leased by CalPortland, and located southeast of the Existing Mine, and (2) an approximately 201-acre area owned by CalPortland and located north of the Existing Mine. *See* City of DuPont Ordinance No. 06-816, Exh. 2, attached hereto as **EXHIBIT A**. In this Agreement, the 200-acre area, together with certain adjacent areas in the Existing Mine, is referred to as the “South Parcel”, and the 201-acre area is referred to as the “North Parcel.” *See* Section 2 below.
- 1.3. In 2007, following an additional period for public review and comment, the City issued a Final Environmental Impact Statement under SEPA for CalPortland’s proposed mining of the South Parcel.
- 1.4. The Nisqually Delta Association provided comments regarding the SEPA process, held informal meetings with the Parties, and in January 2009, invoked the formal dispute resolution process in the 1994 Settlement Agreement, with regard to CalPortland’s mining proposal for the South Parcel, as described in CalPortland’s

land use applications to the City and/or the City Staff Report dated January 16, 2009 (City File Nos. CUP 07-01, LU 07-01, SA 07-01).

- 1.5. The parties conducted formal mediation with a professional mediator on May 4 and June 4, 2009. In November 2009, a “Memorandum of Understanding Regarding Supplemental Review Process” for CalPortland’s mining proposal (“MOU”), was executed by Ecology, the City, CalPortland, and members of the Environmental Caucus, setting forth a process the parties would follow in an effort to avoid protracted litigation concerning the 1994 Settlement Agreement. The MOU also identified a process for supplemental review under SEPA of any plans to mine the South Parcel and/or North Parcel.
- 1.6. In accordance with the process set forth in the MOU, including an extensive process for review and comment by stakeholders, Anchor QEA and Aspect Consulting published a final Feasibility Study on March 25, 2010, which identified and evaluated numerous potential alternatives for improving ecosystem functions in the Sequelitchew Creek watershed.
- 1.7. Following completion of the Feasibility Study, settlement negotiations resumed in June 2010 and continued through June 2011, again with the assistance of a professional mediator.
- 1.8. To ensure that potential future mining actions as described in this Agreement are consistent with the purposes of the 1994 Settlement Agreement, to promote the restoration and enhancement of Sequelitchew Creek and its watershed, and to maintain the Puget Sound bluffs and open space, the Parties now enter into the following Agreement.
- 1.9. The goals of this Agreement are to help restore and enhance the Sequelitchew Creek watershed, including flows along the entire length of the Creek, as long desired by the City and conservation groups; to maintain the Puget Sound shorelands and adjacent open space; and to support CalPortland’s mining in the North and South Parcels subject to the various restrictions in this Agreement and compliance with existing laws and regulations. To achieve these goals, the Parties have agreed to a detailed series of mining and restoration actions that will occur in a prescribed sequence over the next several years. As further set forth in this Agreement, it is anticipated that North Parcel mining will start first. It is further anticipated that South Parcel mining and Sequelitchew Creek restoration would occur concurrently, with the restoration funded by CalPortland up to an agreed-upon amount as certain milestones are met. The mining and restoration will occur in the following three phases. *See EXHIBIT B* for additional detail. (NOTE: This Section 1.9 is intended as an overview only; each step is described in further detail in the Agreement. To the extent there is any inconsistency between this Section 1.9 and the more detailed provisions in the Agreement, the more detailed provisions control.)

1.9.1. **Phase One** (Approximately the first year following Effective Date).

A. Restoration Plan.

1. Preparation of Restoration Plan for Sequelitchew Creek. Using funds from CalPortland, the South Puget Sound Salmon

Enhancement Group or other entity approved by the Parties, will prepare a Restoration Plan for Sequelitchew Creek. The parties anticipate that the Restoration Plan will incorporate five specified elements. *See* Section 4.1 below. The Parties will solicit input from local, state, federal, non-profit, and business stakeholders, and will make particular efforts to involve the Nisqually Tribe and Joint Base Lewis-McChord (JBLM). Restoration activities occurring on JBLM property will require both JBLM’s initial approval (“JBLM Acknowledgment” during Phase One) and then final approval (“JBLM Consent” during Phase Two) as defined in Section 2 below.

B. North Parcel Mine Permitting.

1. SEPA Review. With the City as lead agency, a Supplemental Environmental Impact Statement (EIS) will be prepared that analyzes the impacts of mining in the South and North Parcel in the Mineral Resource Overlay. *See* Section 3.1 below. The review process will include a Draft EIS, a period for public review and comment, and then a Final EIS.

2. North Parcel Permit Process. Following issuance of the Final EIS, CalPortland will submit—and the Non-Governmental Parties will support—applications for mining of the North Parcel. *See* Section 3 below. Mining of the North Parcel will not involve any mining of the Puget Sound bluffs or any mining below the groundwater level. The permit process will include a period for public review and comment on CalPortland’s mining proposal.

C. South Parcel Monitoring Plan. CalPortland and the Environmental Caucus will reach agreement on a Monitoring Plan for South Parcel mining. The Monitoring Plan will include a series of actions to allow a comparison of predicted and actual changes in groundwater draw-down levels. *See* Section 7.3 below.

1.9.2. Phase Two (Approximately the second and third year following Effective Date).

A. Restoration Plan.

1. Permitting of Restoration Plan for Sequelitchew Creek. Following JBLM Acknowledgment and issuance of North Parcel permits (and expiration of appeals periods), CalPortland will release agreed-upon funding for the permitting of the Restoration Plan. This permit process will include additional SEPA review, with additional opportunities for public review and comment. It is anticipated that the South Puget Sound Salmon Enhancement Group will take the lead in securing all necessary permits for the Restoration Plan.

B. North Parcel Mining and South Parcel Mine Permitting

1. North Parcel Mining Commences. Following the issuance of applicable permits, CalPortland may proceed with mining of the North Parcel outside the agreed-upon open space area of the North Parcel.

2. South Parcel Permit Process. After CalPortland and the Environmental Caucus agree on a monitoring plan, CalPortland will submit—and the Non-Governmental Parties will support—permits for mining of the South

Parcel. *See* Section 3. The permit process will include a period for public review and comment on CalPortland's South Parcel mining proposal.

1.9.3. **Phase Three** (Following issuance of permits for Restoration Plan and South Parcel Mining)

A. Restoration Plan

1. **Restoration Plan Implementation.** Following issuance of South Parcel permits, CalPortland will release agreed-upon funding for the implementation of the Restoration Plan.

2. **Restoration Plan Maintenance.** Following implementation of the Restoration Plan, CalPortland will release agreed-upon funding for the maintenance of the Restoration Plan.

B. South Parcel Mining

1. **South Parcel Mining.** Following completion of SEPA review, issuance of applicable permits and revisions to existing permits for the South Parcel, and issuance of applicable permits for the Restoration Plan (with expiration of appeal periods) and JBLM Consent, CalPortland may proceed with the following steps:

a. Initial Pump Test. A pump test will be conducted by installing an initial set of approximately ten dewatering wells. The wells will be pumped simultaneously at capacity for approximately 60 days. The pumped water will be collected and re-infiltrated into the mine area.

b. Preparation For Mining. Following the initial test, additional wells will be installed as necessary to dewater the first mine segment. Water will be pumped to Edmond Marsh as directed in Section 4.3.4 below. This phase is expected to take approximately six months before mining commences.

c. Commence Mining of South Parcel. When groundwater conditions are appropriate, mining may commence consistent with the terms of this Agreement and applicable permits.

2. DEFINITIONS.

Agreement means: this Agreement among the Parties.

Effective Date means: the date of signature of the party last in time to sign this Agreement.

Implementation and Implement (or "implementation" or "implement" in relation to the Restoration Plan) means: to install and construct all elements of the Restoration Plan in accordance with approved permits or plans.

Joint Base Lewis-McChord (JBLM) Acknowledgement means: written acknowledgement from JBLM that: (1) it has reviewed the proposed final Restoration Plan; and (2) the elements of that Restoration Plan proposed for JBLM property appear to be reasonable and

adequately incorporate the input that JBLM provided during the preparation of the Restoration Plan.

Joint Base Lewis-McChord (JBLM) Consent means: the required authorizations and approvals from JBLM needed to implement the Restoration Plan elements occurring on JBLM property.

Maintenance (or “maintenance”) means: maintenance of any infrastructure installed or modified as part of the Restoration Plan, except as may occur on JBLM property. Maintenance also includes active beaver management.

Mission Marker means: the current location of the Mission Marker which is at the location depicted and described in **EXHIBIT C**.

Monitoring Plan means: a monitoring plan for South Parcel mining activities, as described in Section 7.3.

Non-Governmental Parties means: CalPortland and the Environmental Caucus.

North Parcel means: the area described as the “North Parcel” in Section 1.2. The portion of the North Parcel proposed for mining under this Agreement is depicted in **EXHIBIT E**.

Parties means: 1) CalPortland, 2) the City of DuPont, 3) the Washington State Department of Ecology, and 4) the Environmental Caucus (which is comprised of Nisqually Delta Association, Washington Environmental Council, People for Puget Sound, Tahoma Audubon Society, Black Hills Audubon Society, Seattle Audubon Society, and Anderson Island Quality of Life Committee). The National Audubon Society, a party to the 1994 Settlement Agreement, is not a party to this Agreement, as it no longer maintains an office or local chapter in Washington State.

Prepare or Preparation (or “prepare” or “preparation” in relation to the Restoration Plan) means: to create and design all elements of the Restoration Plan. The Parties expect the design of the Restoration Plan will be complete enough to provide all the information necessary for permitting, implementation and maintenance cost estimates.

Reclamation Plan means: the reclamation plan required under RCW 78.44.091.

Restoration Plan means: the restoration plan described in Section 4.1 below. Activities that implement elements of the Restoration Plan are not “mining-related activity” as that term is used in this Agreement.

South Parcel means: the approximately 200-acre area southeast of the Existing Mine, as described in Section 1.2, as well as: (1) the approximately 1.8-acre kettle wetland in the Existing Mine; and (2) an approximately 117-acre portion of the Existing Mine. The portion of the South Parcel proposed for mining under this Agreement is depicted in **EXHIBIT D**.

3. NORTH PARCEL.

- 3.1. **SEPA Review.** As contemplated in the 2009 MOU, the Parties will support an environmental compliance process that prepares a single supplemental SEPA document that analyzes impacts of both the North and South Parcel mining (“Mining SEPA Document”). To the extent that elements of the Restoration Plan constitute mitigation of the impacts of mining, the parties agree that the Mining SEPA Document will discuss the Restoration Plan to the extent necessary to comply with state SEPA Rules (Chapter 197-11), including WAC 197-11-440(6). After completion of the Mining SEPA Document, and as part of the permitting process described in Section 4.2.8 below, an additional SEPA document will be prepared to analyze the environmental impacts of the Restoration Plan.
- 3.2. **Permit Applications.** Following execution of this Agreement, and subject to compliance with SEPA and other applicable law, the Non-Governmental Parties will support all necessary permit applications for mining of the North Parcel as depicted in **EXHIBIT E**. The Non-Governmental Parties agree that they will not oppose the issuance of—nor appeal or support the appeal by others of—any permit, decision or approval necessary to mine any portion of the North Parcel as depicted in **EXHIBIT E** and provided in this Agreement. This commitment not to appeal any approvals shall include and shall apply to any local, state, or federal environmental document or threshold determination relating to activities in the North Parcel up to the line and depth indicated in **EXHIBIT E**.
- 3.3. **Review of Reclamation Plan.** At least 30 days prior to submittal of Reclamation Plan for the North Parcel to the Washington Department of Natural Resources (WDNR), CalPortland will provide a copy of the draft Reclamation Plan to the Parties for review and comment as provided below. The Parties may submit comments on the draft Reclamation Plan, and/or request a meeting, within 30 days of receipt of the draft Reclamation Plan. Upon a request to meet and confer, CalPortland will provide the Parties with an opportunity to meet at least 10 days prior to its submission of the Reclamation Plan where the Parties may discuss any concerns or objections to the draft Reclamation Plan.
- 3.4. **Puget Sound Shoreline.** Consistent with Section II.B.5 of the 1994 Settlement Agreement, CalPortland agrees to seek no new or revised permits in the future to mine or engage in other development activity, within the shoreline jurisdiction of the City of DuPont as defined by RCW Chapter 90.58 (i.e. the area up to and 200 feet landward of the ordinary high water mark of Puget Sound); provided, however, the Parties expressly recognize and agree that this Section 3.4 does not apply to CalPortland’s conveyor, mooring buoy, or barge transshipment facility (together the “Transportation Facilities”), all of which are located outside the Open Space Area described in Sections 3.5.1 and 3.5.2 below. Without limiting the generality of the foregoing or changing the terms of the 1994 Agreement with respect to the Transportation Facilities, this Section 3.4 does not restrict CalPortland’s ability to use, operate, repair, maintain, or improve the Transportation Facilities in the future.

3.5. Open Space Area Landward of Shoreline Jurisdiction.

3.5.1. *Mining Boundary.* CalPortland shall not engage in any mining or mining-related or other development activity (other than activity consistent with Sections 3.5.2 and 3.5.3) on that portion of the North Parcel described as the “Open Space Area” on the attached **EXHIBIT E**. The landward boundary line of this Open Space Area is generally equivalent to the 200 foot contour elevation except as otherwise indicated on the exhibit. The line has been marked and surveyed in the field with the concurrence of Ecology, CalPortland, a representative of the City, and the Environmental Caucus. The line will continue to be marked in a conspicuous manner (such as survey stakes) to the satisfaction of the City during any mining-related activity on the North Parcel.

3.5.2. *Future Development Restrictions.* Following issuance of all permits for North Parcel mining (and the expiration of all appeal periods for such permits), CalPortland shall execute a deed restriction, restrictive covenant, or conservation easement on that portion of the North Parcel waterward of the line shown on **EXHIBIT E** and surveyed pursuant to paragraph 1 above (“Open Space Area”). This Open Space Area is approximately 45 acres, and excludes a narrow triangular portion of land (approximately 0.85 acres) owned by the adjacent property owner, as depicted in **EXHIBIT E**. The terms of the recorded document will be consistent with the terms set forth in this Section 3.5, and will be substantially in the form of the document attached hereto as **EXHIBIT F**. The Parties shall agree on the final terms of the recorded document within 90 days after both the issuance of permits for mining of the North Parcel and the expiration of all appeal periods for such permits. CalPortland shall sign the document within 14 days after the parties reach agreement on terms, and the grantee will record the document within 14 days after signing it, except that, if an appeal is filed of permits for North Parcel mining, the recorded document will not be signed and recorded unless and until CalPortland commences mining of the North Parcel.

3.5.2.1. The recorded document shall limit uses in the Open Space Area to preservation and conservation uses only, and shall preclude development of any other kind, except for passive recreation uses such as a pedestrian trail for public access along or above the 175-foot contour elevation (including vehicular access for maintenance and emergency services which shall be via the pedestrian trail).

3.5.2.2. The recorded document shall impose upon all present and future owners of the Open Space Area the obligation to leave undisturbed all trees and other vegetation in the Open Space Area, except as provided in Section 3.5.3, and to the extent necessary to promote forest health, to maintain the pedestrian trail, and to protect public health and safety. The recorded document will not impose any additional financial obligations or responsibilities on CalPortland with respect to Open Space Area beyond what CalPortland already bears; specifically, the document will not impose any obligation on CalPortland to fund conservation or trail amenities in the Open Space Area.

3.5.2.3. The grantee of the recorded document shall be the primary party with the right to enforce the terms of the document, with the City, Ecology and the Environmental Caucus as alternative enforcing parties in the event that the grantee, after 30 days written notice from Ecology or the Environmental Caucus, does not enforce those terms.

3.5.2.4. The Parties agree that this provision sets forth enough detail to constitute an enforceable obligation to create, execute and record the recorded document under the circumstances set forth in this Agreement, and will not contend otherwise.

3.5.3 *Pedestrian Trail Easement.* Following issuance of all permits for North Parcel mining (and the expiration of all appeal periods for such permits), CalPortland shall execute a fifteen (15) foot-wide pedestrian trail easement (which shall also provide for vehicular access for maintenance and emergency services via the pedestrian trail) within the Open Space Area from north to south in the general vicinity of and above the 175-foot contour elevation. This trail easement would not be open to public use until the completion of North Parcel mining and reclamation. The terms of the trail easement will be consistent with the terms set forth in this Section 3.5.3, and will be substantially in the form of the document attached hereto as **EXHIBIT G**. The City and CalPortland shall agree on the final terms of the pedestrian trail easement within 90 days after both the issuance of permits for mining of the North Parcel permits and the expiration of all appeal periods for such permits. CalPortland shall sign the document within 14 days after it reaches agreement with the City on the terms of the easement. The City shall record the document within 14 days after signing it, except that, if an appeal is filed of permits for North Parcel mining, the easement will not be signed and recorded unless and until CalPortland commences mining of the North Parcel.

3.5.4 *Meet and Confer.* If the Parties cannot agree on the terms of the document limiting uses in the Open Space Area, or on the terms of the trail easement, they will meet and confer.

4. SEQUALITCHEW CREEK RESTORATION PLAN AND SOUTH PARCEL MINE.

4.1. Restoration Plan Elements. As described in Section 8 below, CalPortland will provide funding for the preparation, permitting, implementation, and maintenance of a Restoration Plan to help restore flows and ecological functions from Sequalitchew Lake through Edmond Marsh into Sequalitchew Creek canyon. The Restoration Plan will be approved by the Non-Governmental Parties. The Restoration Plan will be consistent with this Settlement Agreement and incorporate the following elements unless otherwise agreed to by the Parties:

4.1.1. Improvement of gradients so water discharges from Hamer and Bell Marshes flow into Edmond Marsh rather than into the diversion canal.

4.1.2. Improvements to create significant flows from Sequalitchew Lake into the Edmond Marsh complex to support a functional creek ecosystem, and provide for the passage of migratory fish in the Sequalitchew Creek system. To

achieve this goal, the Parties will consider, at minimum, modification of the diversion canal flood control structure and gradients.

- 4.1.3. Rehabilitation of Edmond Marsh by removal of sufficient fill and other flow impediments to provide the hydraulic gradients and capacity necessary to achieve and maintain adequate flows through the Marsh.
- 4.1.4. Rehabilitation of Sequatchew Creek below Edmond Marsh to reduce seepage, improve fish habitat, and help restore year-round flows.
- 4.1.5. Active management of beaver activities to maintain the hydraulic gradients that provide flows through Hamer, Bell, and Edmond marshes. For purposes of this section, “active management of beaver activities” means management commencing with the least intrusive method and progressing to more intrusive methods only as necessary to maintain hydraulic gradients and flows, with lethal removal utilized only as a last resort.

The parties recognize that these elements may change during preparation of the Restoration Plan. The Restoration Plan will incorporate the principles of adaptive management. Monitoring, evaluation, and use of all appropriate data will be incorporated during the preparation of the Restoration Plan. Additional surface water monitoring of Edmond Marsh and Sequatchew Creek will continue during and after Restoration Plan Implementation, as recommended in the Restoration Plan.

4.2. Restoration Plan and South Parcel Monitoring Plan Process. As further detailed in this Agreement, the Restoration Plan, along with a Monitoring Plan relating to South Parcel mining, will be prepared, permitted, and implemented in the following steps:

- 4.2.1. Upon execution of this Agreement, Joint Base Lewis-McChord (JBLM) and the Nisqually Tribe will be invited into a process that actively seeks their involvement in the preparation of the Restoration Plan.
- 4.2.2. The Non-Governmental Parties will invite the stakeholder group identified in section 6.2 below, and others if appropriate, to provide input on the anticipated elements of the Restoration Plan described in Section 4.1.
- 4.2.3. The Non-Governmental Parties will prepare a draft Restoration Plan.
- 4.2.4. The Non-Governmental Parties will solicit and consider stakeholder input on the draft Restoration Plan.
- 4.2.5. The Non-Governmental Parties will approve the final Restoration Plan.
- 4.2.6. The Non-Governmental Parties will exercise reasonable efforts to obtain JBLM Acknowledgement within one year of the Effective Date.
- 4.2.7. As further described in Section 7 of this Agreement, the Non-Governmental parties will approve a Monitoring Plan for South Parcel mining, within 45 days after JBLM Acknowledgment of the Restoration Plan.

- 4.2.8. The Non-Governmental Parties or their designated representatives will seek all necessary permits and approvals (not including JBLM Consent) for the Restoration Plan.
- 4.2.9. The Non-Governmental Parties will exercise reasonable efforts to obtain JBLM Consent within two years after JBLM Acknowledgement is obtained.
- 4.2.10. The Restoration Plan will be implemented.
- 4.3. **South Parcel Mine in Relation to Restoration Plan.** Mining of the South Parcel is intended to coincide with implementation of the Restoration Plan. Accordingly, such mining will be linked to the Restoration Plan as follows:
 - 4.3.1. *Applications for Permits.* At any time after the Effective Date, CalPortland may apply for regulatory permits and approvals necessary for well installation, dewatering, and mining activities on the South Parcel. During the permit process, CalPortland will submit to the permitting agencies the Monitoring Plan agreed to by the Non-Governmental Parties. CalPortland agrees that the permits and approvals for South Parcel mining shall include by reference the terms of Section 4.3.2.
 - 4.3.2. *Mining Permits Effective When Restoration Plan Permits and JBLM Consent Obtained.* The Parties acknowledge and agree that permits and approvals for the activity described in Section 1.9.3(B)(1)(b)(i.e., dewatering in preparation for mining) and Section 1.9.3(B)(1)(c)(i.e., mining), shall not be effective until permits, approvals, and JBLM Consent are secured for the Restoration Plan and either: (a) the expiration of all appeal periods for such permits and approvals for the Restoration Plan (other than appeals periods relating to federal permits, if any) with no appeals of the Restoration Plan permits and approvals being filed, or (b) any appeals being finally resolved in a manner that precludes any appeal to a higher court and allows the Restoration Plan to be implemented.

If an appeal of a federal permit for the Restoration Plan is made, and that appeal results in cessation of Implementation of the Restoration Plan, the Parties shall meet and confer to discuss potential amendments to this Agreement in light of the appeal. If the Parties cannot reach an amended Agreement within three months (or such additional time mutually established by the Non-Governmental Parties), and CalPortland is entitled to proceed with South Parcel mining under applicable permits and the terms of this Agreement, CalPortland shall pay into an escrow fund an amount to address the ramifications of the appeal and resulting cessation of Restoration Plan Implementation; the amount will be determined by the Non-Governmental Parties during the process described under Section 8.1 below. In the event of an appeal of a federal permit, portions of this amount may be used by the Environmental Caucus to oppose the appeal to the extent necessary. The other use of these funds will be mutually determined by CalPortland, the Environmental Caucus, Ecology, and the City, provided that in the event of a deadlock, a majority decision of Ecology, the City, and the Environmental Caucus—with input from CalPortland—shall prevail. Until the funds are used, they will be deposited in an interest-bearing account.

4.3.3. *Initiation of South Parcel Activities.* Upon JBLM Acknowledgment and securing all necessary regulatory permits and approvals for well installation and initial pump testing described in Section 1.9.3(B)(1)(a), CalPortland may initiate such well installation and testing. Upon obtaining JBLM Consent and securing all necessary regulatory permits and approvals, CalPortland may initiate dewatering and mining if the conditions of Sections 4.3.1 and 4.3.2 are met, subject to the limitations in this Agreement.

4.3.4. *Water Directed to West Edmond Marsh.* CalPortland will direct all water being pumped from dewatering wells in the South Parcel, up to five cfs, to West Edmond Marsh until the earlier of: (1) six years after the date of JBLM Consent, or (2) completion of Implementation of the Restoration Plan. The method and location of discharge, and the volume of water pumped, from the South Parcel to West Edmond Marsh may be refined during the applicable permitting processes for either the South Parcel or Restoration Plan only if required by the applicable regulatory authority.

4.3.5. *Milestones.* If any of the following events do not occur within the stated deadline (“Milestones”), the Parties will meet and confer as provided in Section 5:

4.3.5.1. Permits are not issued for mining in the North Parcel up to the line and depth depicted in **EXHIBIT E** within one year of the Effective Date;

4.3.5.2. The Non-Governmental Parties do not agree to a final Restoration Plan within one year after the Effective Date;

4.3.5.3. JBLM Acknowledgment is not obtained within one year after the Effective Date;

4.3.5.4. The Non-Governmental Parties do not agree to a Monitoring Plan for South Parcel mining within 45 days after JBLM Acknowledgment;

4.3.5.5. All necessary permits and approvals for the Restoration Plan are not obtained within two years after JBLM Acknowledgment or the Restoration Plan permits are significantly different than the permit applications submitted for the Restoration Plan approved by the Non-Governmental Parties and acknowledged by JBLM;

4.3.5.6. JBLM Consent is not obtained within two years after JBLM Acknowledgment; or

4.3.5.7. Permits are not issued for mining in the South Parcel up to the line and depth depicted in **EXHIBIT D** within two years of JBLM Acknowledgment.

4.3.5.8. The deadlines in Section 4.3.5 may be extended by agreement of the Non-Governmental Parties.

4.4. South Parcel Reclamation Plan. No less than 90 days prior to submittal of Reclamation Plan for the South Parcel to the Washington Department of Natural Resources (WDNR), CalPortland will provide a copy of the draft Reclamation Plan to the Parties for review and comment as described below. The Parties may submit comments on the draft Reclamation Plan, and/or request a meeting, with CalPortland

within 45 days of receipt of the draft Reclamation Plan. Upon a request to meet and confer, CalPortland will provide the Parties with an opportunity to meet at least 30 days prior to its submission of the Reclamation Plan where the Parties may discuss any concerns or objections to the draft Reclamation Plan.

4.5. Mitigation of Impacts to Sequalitchew Creek.

- 4.5.1. *Sequalitchew Creek Buffers.* CalPortland's mining plan for the South Parcel will protect the Sequalitchew Creek canyon by providing that there will be no mining or mining-related activity within the 100 feet buffer from the top of the bank of Sequalitchew Creek as depicted in Exhibit J in the 1994 Settlement Agreement.
- 4.5.2. *Permit Conditions.* Any mitigation measures for impacts to Sequalitchew Creek that will accompany various permits and approvals for mining in the South Parcel will be consistent with the Restoration Plan and other requirements of this Agreement. Final mitigation measures for impacts to Sequalitchew Creek will be determined during the permitting process. Nothing in this section shall be construed to affect CalPortland's obligations under this Agreement.
- 4.5.3. *Restoration Plan and Mitigation.* The Non-Governmental Parties agree that CalPortland's commitments under this Agreement with respect to the Restoration Plan shall be deemed adequate mitigation of all direct and indirect impacts of mining on Sequalitchew Creek; however, the Parties also recognize and agree that, by improving the flows and ecological functioning of Sequalitchew Creek compared to its existing condition as of the date of this Agreement, the Implementation of the Restoration Plan is intended to create ecological benefits that constitute more than "mitigation" as defined in WAC 197-110-768 and other similar definitions. The Parties recognize that further mitigation measures may be suggested and implemented through the applicable permit processes under the standards and limitations set forth in applicable law.

4.6. Mitigation for Impacts to Wetlands. Mitigation of impacts to the kettle wetland in the existing mine or any other wetlands will be addressed in the regulatory permit process. CalPortland recognizes and agrees that additional funds, in an amount to be determined under Section 8.1.3, will be available for the Restoration Plan as a result of mining within the kettle wetland. During the course of dewatering and mining, water in the South Parcel will be infiltrated except for the water pumped to West Edmond Marsh as described in Section 4.3.3. Upon completion of mining in the South Parcel, water will be infiltrated into the South Parcel mining site consistent with the Reclamation Plan approved by DNR.

4.7. Mission Marker. The Parties agree that CalPortland will not conduct mining within 189 feet of Mission Marker as defined herein.

4.8. No Appeals of South Parcel Mine Permit Applications. The Non-Governmental Parties will support all applications for permits and revisions to existing permits (including the DNR Surface Mining Reclamation Permit, the NPDES Sand and Gravel Permit, and City permits issued under Ord. No. 95-521) that are necessary to mine the South Parcel, provided that such applications are consistent with this Agreement. The Non-Governmental Parties agree that they will not oppose the

issuance of—nor appeal or support the appeal by others of—any permit, decision or approval necessary to mine any portion of the South Parcel that is consistent with this Agreement. This commitment not to appeal any approvals shall include and shall apply to any local, state, or federal environmental document or threshold determination relating to the South Parcel.

- 4.9 **Discussions About Mouth of Sequelitchew Creek.** Upon invitation by the Environmental Caucus, the City and Ecology will participate in discussions about potential modifications to the Burlington Northern Santa Fe railway, trestle and related tunnel culvert at the mouth of Sequelitchew Creek to improve creek system function. This provision in no way binds the City or Ecology to any particular position or outcome with respect to improving the creek system.

5. MEDIATION PROCESS IF MILESTONES NOT MET.

- 5.1. **Declaration of Impasse.** If any of the Milestones in Section 4.3.5 are not met, CalPortland may declare an impasse.
- 5.2. **Mediation.** If CalPortland declares an impasse under Section 5.1, Parties will meet and confer and schedule at least two sessions with a professional mediator in an effort to resolve their disagreement. If mediation does not result in an agreement, CalPortland may terminate this Agreement by delivering written notice as provided in Section 14. If the Agreement is terminated due to failing to meet either element of the milestone in Section 4.3.5.7 (either failing to secure South Parcel Permits for mining up to the line and depth depicted in **EXHIBIT D** or within two years of JBLM Acknowledgment), Section 8.1.5.2.3 applies.
- 5.3. **Costs.** CalPortland will pay for the costs of the mediator. The reasonable and necessary costs incurred by the Environmental Caucus for an attorney, technical consultant, and designated representative of the Environmental Caucus in connection with efforts under this Section 5 will be reimbursed by CalPortland within 30 days of receiving appropriately itemized invoices.

6. RESTORATION PLAN PROCESS.

In accordance with the funding provisions set forth in Section 8, the preparation, permitting, implementation and maintenance of the Restoration Plan will include the following steps.

- 6.1. **Coordination by SPSSEG.** The Parties, in consultation with JBLM, will develop the Restoration Plan. Meetings may be coordinated, facilitated and organized by the South Puget Sound Salmon Enhancement Group (SPSSEG). The first meeting will be within four weeks of the Effective Date.
- 6.2. **Involvement of Stakeholders.** The Parties will invite stakeholders to provide input as described in Sections 4.2.2 and 4.2.4 above. These stakeholders may include, without limitation: JBLM, the Nisqually Tribe, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Sequelitchew Creek Watershed Council, Chambers-Clover Creek Watershed Council, Puget Sound Partnership, Natural Resource Partners and Quadrant Corporation, and

other federal, state, and local agencies and non-governmental stakeholders that have interest in the restoration of the creek. The Parties will make special effort to include JBLM in the preparation of the restoration plan.

- 6.3 **Meetings and Communications.** Stakeholder meetings will be coordinated, facilitated and organized by the SPSSEG. The first meeting will be within six weeks of the Effective Date. The stakeholder group will be included in regular communication throughout the process. As facilitator, SPSSEG will distribute agendas and meeting notes to the stakeholder group.
 - 6.4 **Approval by Non-Governmental Parties.** SPSSEG will complete, and the Non-Governmental Parties will seek to approve, the final Restoration Plan within one year of the Effective Date.
 - 6.5 **Permitting.** Upon such approval by the Non-Governmental Parties, SPSSEG will pursue permitting for implementation of the Restoration plan.
 - 6.6 **Implementation.** SPSSEG will be the project lead for implementation of the Restoration Plan. SPSSEG will work with co-applicants or subcontractors to complete the project.
 - 6.7 **Maintenance.** During the course of Restoration Plan preparation, the Non-Governmental Parties and the City will determine what parties will be responsible for accomplishing and funding the Maintenance of any infrastructure to be installed or modified as part of implementation of the Restoration Plan, other than infrastructure located on JBLM property. The process for determining the funding for Maintenance is further described in Section 8.1.3 below.
 - 6.8 **Alternatives to SPSSEG Coordination.** In the event the SPSSEG is not able or willing to participate as described above, the Parties shall meet and confer as provided in Section 5. Moreover, the Parties recognize that the reference to SPSSEG may include other contractors or subcontractors that are agreed to by the Non-Governmental Parties.
 - 6.9 **Modification.** By agreement of all the Parties, the Parties may modify the process and schedule outlined in this Section 6.
7. **SOUTH PARCEL DEWATERING AND MONITORING CONDITIONS.** Dewatering of South Parcel prior to and during mining may occur only under the following conditions:
- 7.1. **Discharge to West Edmond Marsh.** Any dewatering water that is discharged into West Edmond Marsh shall be evaluated during the SEPA process for the Restoration Plan and will be subject to the applicable federal, state, and local permits to ensure compliance with local, state, and federal laws.
 - 7.2. **City Approval of Monitoring Plan.** Dewatering of the South Parcel will not occur prior to the City's approval, as part of the permitting process, of a Monitoring Plan to monitor stream flows, marsh levels, and groundwater levels. The Monitoring Plan will be developed as provided in Section 7.3 below.
 - 7.3. **Non-Governmental Parties Agreement on a Monitoring Plan.** CalPortland shall submit a Monitoring Plan to the applicable permitting agencies which will include a

series of monitoring actions to allow a comparison of predicted and actual changes in groundwater draw-down levels, and a process for the Parties to meet and confer if groundwater monitoring results do not meet the criteria provided in the Monitoring Plan. CalPortland will provide a draft Monitoring Plan to the Environmental Caucus within nine months of the Effective Date of this Agreement. The Environmental Caucus will provide comments to CalPortland within 30 days after receiving the draft Monitoring Plan. As detailed in Section 4.2.7 above, CalPortland and the Environmental Caucus will seek to reach agreement on the terms of a Monitoring Plan for South Parcel mining, within 45 days after JBLM Acknowledgment of the Restoration Plan.

- 7.4. CalPortland Funding of Monitoring Plan Review.** CalPortland will pay for the reasonable and necessary work of a technical consultant of the Environmental Caucus in connection with the review and approval of a Monitoring Plan as described in Section 7.3 above, in a total amount not to exceed \$6,000. The technical consultant must be approved by CalPortland and the Environmental Caucus. All payments will be made within 30 days of receipt of an appropriately-itemized invoice.

8. COSTS

- 8.1. Funding of Restoration Plan.** CalPortland will pay up to \$200,000 for the preparation of the Restoration Plan (“Restoration Plan Preparation Fund”). CalPortland will pay an amount for the permitting, implementation and maintenance of the Restoration Plan as set forth below. Except for the initial payment of \$25,000 described in Section 8.1.1 below, all payments related to the preparation, permitting, and implementation of the Restoration Plan will be made within 30 days after the receipt of monthly and appropriately itemized invoices from SPSSEG (or substitute coordinator), unless a Non-Governmental Party objects to an invoice as set forth in Section 8.1.2 below. The process for payment of Maintenance costs will be determined during the 45-day period described in Section 8.1.3.2 below.

- 8.1.1. *Initial Payment.* \$25,000 of the Restoration Plan Preparation Fund will be paid by CalPortland to SPSSEG within 30 days after the Effective Date.
- 8.1.2. *Administration of Payments.* The selection, scope of work, and budgets of all consultants, including SPSSEG, will be jointly approved by the Non-Governmental Parties. Any payments made to SPSSEG (or substitute coordinator) under the terms of this Agreement, including the payment set forth in Section 8.1.1, shall be held in an interest-bearing account until the funds are used for payment of costs. All Parties shall be entitled to information concerning that account, including account balance and expenditures from the account, upon request. If any Non-Governmental Party makes a well-founded objection to all or a part of any invoice from SPSSEG, the Non-Governmental Parties shall seek to resolve the dispute within 15 days after an objection is raised. CalPortland will make payment within 30 days after any disputed invoice is resolved.
- 8.1.3. *Permitting, Implementation, and Maintenance Funding.* The Non-Governmental Parties shall determine the amount of CalPortland’s payment for the permitting, implementation, and maintenance of the Restoration Plan, as follows.

- 8.1.3.1. The Non-Governmental Parties will determine whether CalPortland will pay for all or a portion of permitting and implementation costs; the Non-Governmental Parties together with the City will determine whether CalPortland will pay for all or a portion of Maintenance costs. The Parties reserve all rights as to what portion of the permitting, implementation and maintenance costs are paid by CalPortland.
- 8.1.3.2. Within 45 days after the later of either (a) approval of the Restoration Plan or (b) all necessary permits to initiate mining in the North Parcel are issued, the Non-Governmental Parties shall determine the amount CalPortland will pay for the permitting and implementation of the Restoration Plan, and the Non-Governmental Parties and the City will determine the amount CalPortland will pay for Maintenance. Both the Non-Governmental Parties (i.e., CalPortland and the Environmental Caucus) must agree to the funding amount for permitting and implementation, and the Non-Governmental Parties and the City must agree to the funding amount for maintenance. If these parties cannot reach unanimous agreement on these amounts within this period, they shall schedule at least two sessions with a professional mediator, which two sessions will be paid for by CalPortland, in an effort to resolve their disagreement. If mediation does not result in an agreement on funding amounts, then either Non-Governmental Party may terminate this Agreement, and any unspent money in the Restoration Plan Preparation Fund will be refunded to CalPortland.
- 8.1.3.3. As part of the process described in Section 8.1.3.2, the Non-Governmental Parties will designate an amount for permitting (“Restoration Plan Permitting Fund”) and an amount for implementation (“Restoration Plan Implementation Fund”), and the Non-Governmental Parties and the City will designate an amount for maintenance (“Restoration Plan Maintenance Fund”). During the 45-day period described in Section 8.1.3.2, the Non-Governmental Parties will determine how any unspent amounts from either the Restoration Plan Preparation Fund or the Permitting Plan Implementation Fund will be applied.
- 8.1.4. *Condition Precedent for Payment from the Restoration Plan Permitting Fund.* Payment from the Restoration Plan Permitting Fund is expressly contingent upon: (1) approval by the Environmental Caucus of a Monitoring Plan for South Parcel mining, as set forth in Sections 4.2.7 and 7.3 above; and (2) CalPortland’s first receiving all necessary permits and approvals to initiate mining of the North Parcel up to the line and depth depicted in **EXHIBIT E**, and upon either: (a) the expiration of all appeals periods with no appeals being filed or (b) if an appeal is filed, the resolution of the appeal in a manner that allows CalPortland to mine up to the line and depth depicted in **EXHIBIT E**. If an appeal is filed by anyone, then the Parties shall meet and confer to discuss potential amendments to this Agreement in light of the appeal. If after three months, the Parties cannot reach agreement on the terms of an amended Agreement, CalPortland may terminate this Agreement, in which case all unspent money in the Restoration Plan Preparation Fund shall be immediately refunded to CalPortland.

8.1.5. *Condition Precedent for Payment from Restoration Plan Implementation Fund.* Payment from the Restoration Plan Implementation Fund is expressly contingent upon CalPortland's first receiving all necessary permits and approvals to initiate mining of the South Parcel up to the line and depth depicted in **EXHIBIT D**, and all such permits and approvals having become "effective" as defined in Section 4.3.2 above.

8.1.5.1. Assuming the condition precedent set forth above is met, payments from the Restoration Plan Implementation Fund will be released upon the earlier of: (1) the expiration of all appeal periods for the non-federal permits needed to commence mining in the South Parcel; or (2) the commencement of mining (*i.e.*, removing and conveying sand and gravel from the South Parcel). If permits and approvals are obtained for mining in an area less than the line and depth depicted in **EXHIBIT D**, then payments for the Restoration Plan Implementation Fund will not be released unless and until the commencement of mining as defined in this Section 8.1.5.1.

8.1.5.2. If an appeal is filed by anyone of any permit or approval needed to initiate mining in the South Parcel and CalPortland has not commenced mining (as defined in Section 8.1.5.1), then the parties will proceed as follows:

8.1.5.2.1. CalPortland is no longer obligated to make any further payments from the Restoration Plan Permitting Fund or release any payments from the Restoration Plan Implementation Fund, unless and until either: (1) the appeal is finally resolved in a manner that precludes any appeal to a higher court and allows CalPortland to mine the South Parcel as contemplated in this Agreement, or (2) CalPortland begins removing and conveying sand and gravel from the South Parcel.

8.1.5.2.2. The Parties will meet and confer to discuss potential amendments to this Agreement in light of the appeal. If after three months, the Parties cannot reach agreement on the terms of an amended Agreement and CalPortland has not commenced mining as defined above, CalPortland may terminate this Agreement subject to Paragraph 8.1.5.2.3 below, in which case any unspent money in the Restoration Plan Permitting or Implementation Funds shall be immediately refunded to CalPortland.

8.1.5.2.3. Notwithstanding CalPortland's termination of this Agreement under Section 8.1.5.2.2, if after termination CalPortland wishes to commence mining (as defined in Section 8.1.5.1 above) of the South Parcel, then it shall notify the Environmental Caucus before taking post-termination action to proceed towards mining, at which time: (1) the Non-Governmental Parties will abide by the terms of Section 4.8 above; (2) the Parties shall abide by the terms of this Agreement, including without limitation Sections 4.3 through 4.9 above; (3) CalPortland shall immediately release the equivalent of the Restoration Plan Permitting and Implementation Funds refunded under Section 8.1.5.2.2; and (4) CalPortland shall make payments from the Restoration Plan Permitting,

Implementation and Maintenance Funds as provided in this Section 8.1, within 30 days of such notice.

8.1.5.3. Whether or not there is an appeal, CalPortland's obligations to release payments from the Restoration Plan Implementation Fund shall terminate if at any time prior to the point it commences mining as defined above, CalPortland notifies the other Parties in writing that it does not wish to pursue mining of the South Parcel. Within 60 days after CalPortland provides any such notification, the Parties will meet and confer to discuss potential revisions to this Agreement. Unless an amended agreement is reached between the Parties, CalPortland will not engage in mining-related activities in the South Parcel under any permits in existence at the time CalPortland provides notification that it does not wish to pursue mining of the South Parcel.

8.1.6. *No Reimbursement to CalPortland*_CalPortland shall not be reimbursed for any of its activities related to preparation, permitting, implementation and maintenance from the funding set forth in this Section 8.

8.2. Funding for the Environmental Caucus

8.2.1. *Settlement Costs*. Within 30 days after the Environmental Caucus provides appropriately itemized invoices, CalPortland will reimburse the Environmental Caucus for all unpaid Agreement costs in accordance with the "Agreement to Pay Costs of Environmental Caucus" dated December 13, 2010. Additionally, CalPortland shall pay up to \$3,000 for costs related to creation of the recorded documents referred to in Section 3.5 above within 30 days of receipt of appropriately-itemized invoices.

8.2.2. *Costs for Restoration Plan Funding Discussions*. Upon reaching agreement under Section 8.1.3 above regarding the amount CalPortland will pay for Restoration Plan Permitting, Implementation and Maintenance, CalPortland will reimburse the Environmental Caucus for the reasonable and necessary costs of a technical consultant, attorney and a designated representative of the Environmental Caucus, incurred in connection with determining the amount to be paid by CalPortland for such permitting, implementation and maintenance, provided the Environmental Caucus provides CalPortland with appropriately itemized invoices. If after 45 days the amount to be paid for Restoration Plan Permitting, Implementation and Maintenance by CalPortland has not been determined, CalPortland will pay 50 percent of the costs described above.

8.2.3. *Restoration Plan Costs*. Reasonable and necessary costs incurred by the Environmental Caucus for an attorney, technical consultant, and designated representative in connection with the preparation, permitting, and implementation of the Restoration Plan will be reimbursed through the funding described in all parts of Section 8.1.

8.2.4. *Potential Meet and Confer Costs*. The reasonable and necessary costs incurred by the Environmental Caucus for an attorney, technical consultant, and designated representative of the Environmental Caucus in connection with the "meet and confer" process described in Sections 4.3.2, 8.1.3.2, 8.1.4, 8.1.5.2.2, and 8.1.5.3

will be reimbursed by CalPortland within 30 days of CalPortland and the Environmental Caucus agreeing on the terms of an amended Agreement and receipt of appropriately itemized invoices. If after 45 days there is no amended Agreement, CalPortland will pay 50 percent of the costs described above.

8.3 Funding for City

8.3.1 *Settlement Costs.* Within 30 days of the Effective Date of this Agreement and receipt of appropriately itemized invoices, CalPortland will reimburse the City for all reasonable and necessary legal fees incurred by the City related to this Agreement.

8.3.2 *Restoration Plan Preparation and Permitting Costs.* CalPortland shall reimburse the City all reasonable and necessary legal fees incurred by the City in connection with the Preparation of the Restoration Plan. This reimbursement shall be in addition to the Restoration Plan Preparation Fund described in Section 8.1 above. Permitting costs for the Restoration Plan will be paid from the Restoration Plan Permitting Fund in an amount consistent with the fee schedule adopted by the DuPont City Council in Resolution No. 10-396 (or as hereafter amended by the City Council).

8.3.3 *Costs for Restoration Plan Maintenance Funding Discussions.* Upon reaching agreement under Section 8.1.3.2 above regarding the amount CalPortland will pay for the Maintenance fund, CalPortland will reimburse the City for the reasonable and necessary legal fees incurred by the City in connection with determining the amount to be paid by CalPortland for such maintenance, provided the City provides CalPortland with appropriately itemized invoices. This reimbursement shall be in addition to the Restoration Plan funding described in Section 8.1 above.

8.3.4 *North and South Parcel Permitting Costs.* In relation to the City's review of permit applications for mining of the North and South parcels, CalPortland shall pay the City fees and costs in accordance with the fee schedule adopted by the DuPont City council in Resolution No. 10-396 (or as hereafter amended by the City Council).

9. RELATIONSHIP TO 1994 SETTLEMENT AGREEMENT. Except as otherwise provided in this Agreement, the 1994 Settlement Agreement remains in effect and is not modified by this Agreement. The Parties agree and acknowledge that the actions described in this Agreement build on and are consistent with the purposes of the 1994 Settlement Agreement by, among other things, increasing stream flows and ecosystem function in the Sequalitchew Creek watershed. However, to the extent this Agreement is inconsistent with the 1994 Settlement, this Agreement controls.

10. MODIFICATION. This Agreement may be modified only by written agreement of all Parties.

11. OBLIGATIONS UNDER THE AGREEMENT.

11.1. Obligation to support. The Parties agree to support the provisions of this Agreement.

11.2. Good Faith. The Parties will act in good faith to implement the provisions of this Agreement.

12. RESERVATION OF AUTHORITIES. Nothing in this Agreement is intended to, or shall be construed to, limit the authority of the Governmental Parties to fulfill their statutory or regulatory responsibilities under applicable law. Based on existing information and analysis, the Governmental Parties believe they can issue permits consistent with this Agreement. However, the Governmental Parties reserve their right to issue permits with new or different conditions based either on changes in applicable law or new information or analysis arising from SEPA review, public comment, or otherwise during the permitting process. In the event the Governmental Parties issue permits that are materially inconsistent with this Agreement, the Parties shall meet and confer to determine whether this Agreement should be amended or terminated. If agreement cannot be reached, any Party may terminate this Agreement and appeal the permits, pursuant to applicable law.

13. DISPUTE RESOLUTION. 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 the 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.

14. NOTICES. Notices under this Agreement must be delivered personally or by certified U.S. mail to the following addresses or such other addresses as each party may from time to time designate by written notice to the other:

City of DuPont
City Administrator
1700 Civic Drive
DuPont, WA 98327

Wash. Dep't of Ecology
Southwest Regional Director
300 Desmond Drive SE
Lacey, WA 98503

CalPortland Company
General Manager/Northwest Division
5975 E. Marginal Way S.
Seattle, WA 98134

with a copy to:

Senior Vice President/Materials Group
2025 E. Financial Way
Glendora, California 91741

Nisqually Delta Association
PO Box 7444
Olympia, WA 98507

Black Hills Audubon Society
President
PO Box 2524
Olympia, WA 98507-2524

Washington Environmental Council
Executive Director
1401 Third Ave., Suite 1400
Seattle, WA 98101

People for Puget Sound
Director of Programs
120 E Union Ave., Suite 204
Olympia, WA 98501

Tahoma Audubon Society
Executive Director
2917 Morrison Road West
University Place, WA 98466

Seattle Audubon Society
Executive Director
8050 35th Ave NE
Seattle, WA 98115

Anderson Island Quality of Life Committee
c/o Dave McGoldrick
820 A Street, Suite A
Tacoma, WA 98401

- 15. AUTHORITY TO SIGN.** Each of the parties signing this Agreement is legally authorized to enter into the terms and conditions of this Agreement, and is authorized to legally bind such parties thereto.

16. AGREEMENT BINDING.

The provisions of this Agreement touch and concern the North and South Parcels, constitute covenants running with the land, and 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.

17. COUNTERPARTS.

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 this Agreement.

18. EFFECTIVE DATE.

This Agreement shall become effective as to all parties upon the date of signature of the party last in time to sign.

19. TERMINATION.

Except for sections 5.2 and 8.1.5.2.3, none of the provisions in this Agreement shall be enforceable upon its termination; provided however, if North Parcel permits have been issued and either North Parcel mining has commenced or all appeal periods for North Parcel permits for mining have expired by the time of termination, then Section 3.5 shall be enforceable notwithstanding termination.

20. RECORDING.

This Agreement, or a memorandum documenting the existence of this Agreement and how it can be obtained, will be recorded with the Pierce County Auditor within 10 days of the Effective Date.

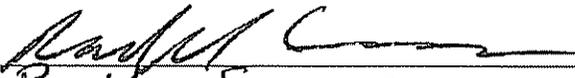
WASHINGTON STATE DEPARTMENT OF ECOLOGY

By: 
 Name: Ted Sturbevant
 Title: Director
 Date: 6-22-11

CITY OF DUPONT

By: _____
Name: _____
Title: _____
Date: _____

CALPORTLAND COMPANY

By: 
Name: Ronald Summers
Title: Sr VP
Date: 24 June 2011

WPP, LLC

By: _____
Name: _____
Title: _____
Date: _____

NISQUALLY DELTA ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____

BLACK HILLS AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

CITY OF DUPONT

By: _____
Name: _____
Title: _____
Date: _____

CALPORTLAND COMPANY

By: _____
Name: _____
Title: _____
Date: _____

WPP, LLC
By *NRP (OPERATING) LLC, ITS Sole Member*
By: *[Signature]*
Name: *KEVIN F. WALL*
Title: *EXECUTIVE VP - OPERATIONS*
Date: *6/24/2011*

NISQUALLY DELTA ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____

BLACK HILLS AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

CITY OF DUPONT

By: _____
Name: _____
Title: _____
Date: _____

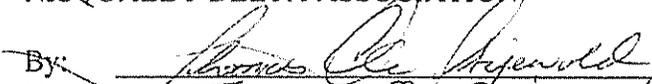
CALPORTLAND COMPANY

By: _____
Name: _____
Title: _____
Date: _____

WPP, LLC

By: _____
Name: _____
Title: _____
Date: _____

NISQUALLY DELTA ASSOCIATION

By: 
Name: Thomas O. Skjerve
Title: PRESIDENT
Date: June 23, 2011

BLACK HILLS AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

CITY OF DUPONT

By: _____
Name: _____
Title: _____
Date: _____

CALPORTLAND COMPANY

By: _____
Name: _____
Title: _____
Date: _____

WPP, LLC

By: _____
Name: _____
Title: _____
Date: _____

NISQUALLY DELTA ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____

BLACK HILLS AUDUBON SOCIETY

By: Samuel Merrill
Name: Samuel Merrill
Title: President
Date: June 20, 2011

WASHINGTON ENVIRONMENTAL COUNCIL

By: *Alan M. Broom*
Name: *Alan M. Broom*
Title: *Policy Director*
Date: *June 23, 2011*

PEOPLE FOR PUGET SOUND

By: _____
Name: _____
Title: _____
Date: _____

TAHOMA AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

SEATTLE AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

ANDERSON ISLAND QUALITY OF LIFE COMMITTEE

By: _____
Name: _____
Title: _____
Date: _____

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____
Name: _____
Title: _____
Date: _____

PEOPLE FOR PUGET SOUND

By: G. Thomas Bancroft
Name: G. Thomas Bancroft
Title: Executive Director
Date: 23 June 2011

TAHOMA AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

SEATTLE AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

ANDERSON ISLAND QUALITY OF LIFE COMMITTEE

By: _____
Name: _____
Title: _____
Date: _____

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____
Name: _____
Title: _____
Date: _____

PEOPLE FOR PUGET SOUND

By: _____
Name: _____
Title: _____
Date: _____

TAHOMA AUDUBON SOCIETY

By: *Marjorie Shea*
Name: *Marjorie Shea*
Title: *President, Board of Directors*
Date: *June 19, 2011*

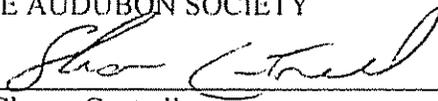
SEATTLE AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

ANDERSON ISLAND QUALITY OF LIFE COMMITTEE

By: _____
Name: _____
Title: _____
Date: _____

SEATTLE AUDUBON SOCIETY

By: 
Name: Shawn Cantrell
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____
Name: _____
Title: _____
Date: _____

PEOPLE FOR PUGET SOUND

By: _____
Name: _____
Title: _____
Date: _____

TAHOMA AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

SEATTLE AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

ANDERSON ISLAND QUALITY OF LIFE COMMITTEE

By: David M. Goldrick
Name: David M. Goldrick
Title: President
Date: 6/22/11

**EXHIBITS TO SETTLEMENT AGREEMENT FOR
DUPONT MINE, RESTORATION OF SEQUALITCHEW
CREEK WATERSHED, AND PRESERVATION OF
DUPONT SHORELANDS AND OPEN SPACE**

EXHIBIT A

CITY OF DUPONT
WASHINGTON
ORDINANCE NO. 06-816

AN ORDINANCE OF THE CITY OF DUPONT, WASHINGTON, AMENDING THE COMPREHENSIVE PLAN, LAND USE REGULATIONS AND ZONING MAP WITH RESPECT TO THE CIVIC CENTER AREA; THE MINERAL RESOURCE OVERLAY; AND THE FORT LAKE BUSINESS AND TECHNOLOGY PARK; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of DuPont began work on its annual Comprehensive Plan Amendment Cycle in April 2005 to add polices to the above cited portions of the DuPont Comprehensive Plan in conformance with requirements of the Washington State GMA; and

WHEREAS, all proposed amendments have been found to be consistent with each other and are consistent with the current Comprehensive Plan; and

WHEREAS, the Growth Management Act requires each jurisdiction to establish public participation procedures whereby amendment to the Comprehensive Plan are considered by the City of DuPont; and

WHEREAS, the City held two community workshops on the proposed amendments, and

WHEREAS, the DuPont Planning Agency held seven public hearings on the proposed amendments; and

WHEREAS, the DuPont Planning Agency conducted three area wide site visits; and

WHEREAS, the Planning Agency, after due consideration submitted recommendations to the City Council on each of the proposed amendments, and

WHEREAS, the City Council held a public hearing on the proposed amendments on July 11, 2006; and

WHEREAS, the proposed amendments are in the best interest of the citizens of the City of DuPont; and

WHEREAS, at the conclusion of its review and deliberation on July 25, 2006, the City Council approved the amendments to the Comprehensive Plan as shown in the attached exhibits 1-3 incorporated by this reference.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DUPONT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings and Conclusions The Exhibits 1 through 3, are hereby adopted by reference in their entirety as the findings and conclusions of the City Council

Section 2. Area Rezone Adopted and Maps. The DuPont Comprehensive Plan is hereby amended as shown in Exhibit 1 to designate 4.86 acres of land from Residential-12 to Mixed Use to match the westerly portion of the three lots zoned Mixed Use near the Civic Center Site

Section 3. Mineral Overlay Element Amended and Maps. The Mineral Overlay Element of the City of DuPont Comprehensive Plan is hereby amended as shown in Exhibit 2

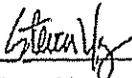
Section 4. The Old Fort Lake and Technology Park Element Amended and Maps. The Old Fort Lake Business and Technology Park Element of the City of DuPont Comprehensive Plan is hereby amended as shown in Exhibit 3 and DMC Title 25 shall be updated accordingly, as shown in Exhibits 3 A and B.

Section 5. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances

Section 6. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

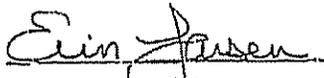
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
25th DAY OF July, 2006

CITY OF DUPONT

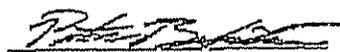


Steve Young, Mayor

ATTEST/AUTHENTICATED:


Erin Larsen, City Clerk

Approved as to form:


Shelley Kerslake, City Attorney

MINERAL RESOURCE OVERLAY

EXHIBIT 2

1. A notice of application on May 20, 2005 to amend the City's Comprehensive Plan and Zoning Map by adding 401 acres of land to the Mineral Resource Overlay Zone.
2. The Growth Management Act, RCW Chapter 36.70A, authorizes amendments or revisions of the Comprehensive Plan to be made annually
3. An environmental review of the proposed Comprehensive Plan amendments has been conducted in accordance with the requirements of the State Environmental Policy Act ("SEPA"), and a SEPA threshold determination requiring an EIS Addendum and notice of adoption was issued on October 11, 2005.
4. The public process for the proposed amendments has provided for early and continuous public participation opportunities as follows: (1) the Planning Agency and City Council reviewed the application pursuant to Chapter 25.170 of the DuPont Municipal Code, (2) the City held a community workshop to discuss the amendment on June 16, 2005, (3) the Planning Agency held a public hearing on June 27, November 28, 2005 and January 23, 2006, (4) the Planning Agency conducted a special meeting field trip of the Glacier NW operations area on August 1, 2005.
5. At the conclusion of the above referenced public processes the Planning Agency after deliberation at its meeting on January 23, 2006 made a recommendation to the City Council regarding the proposed amendments.
6. The proposed amendments will further and be consistent with the goals, objectives and policies of the City's Comprehensive Plan, including the County-Wide Planning Policies for Pierce County; and Vision 2020.
7. The Staff Report dated December 1, 2005 attached hereto shall serve as the City Council's findings of fact

THE DORRONT VISION - A model municipality created by the planning and land use committee of Dorronville, a place that has a vision of the future and the Southern lifestyle with a positive approach to its future.

| LAND USE AREAS | |
|----------------|---------------|
| [Symbol] | RESIDENTIAL |
| [Symbol] | COMMERCIAL |
| [Symbol] | INDUSTRIAL |
| [Symbol] | OFFICE |
| [Symbol] | RECREATION |
| [Symbol] | UNDEVELOPED |
| [Symbol] | WATERWAYS |
| [Symbol] | ROADS |
| [Symbol] | RAILROADS |
| [Symbol] | UTILITIES |
| [Symbol] | ENVIRONMENTAL |
| [Symbol] | WATERWAYS |
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| [Symbol] | ENVIRONMENTAL |
| [Symbol] | WATERWAYS |
| [Symbol] | RAILROADS |
| [Symbol] | UTILITIES |
| [Symbol] | ENVIRONMENTAL |

Existing Mineral Resources Overlay
 Proposed Mineral Resources Overlay

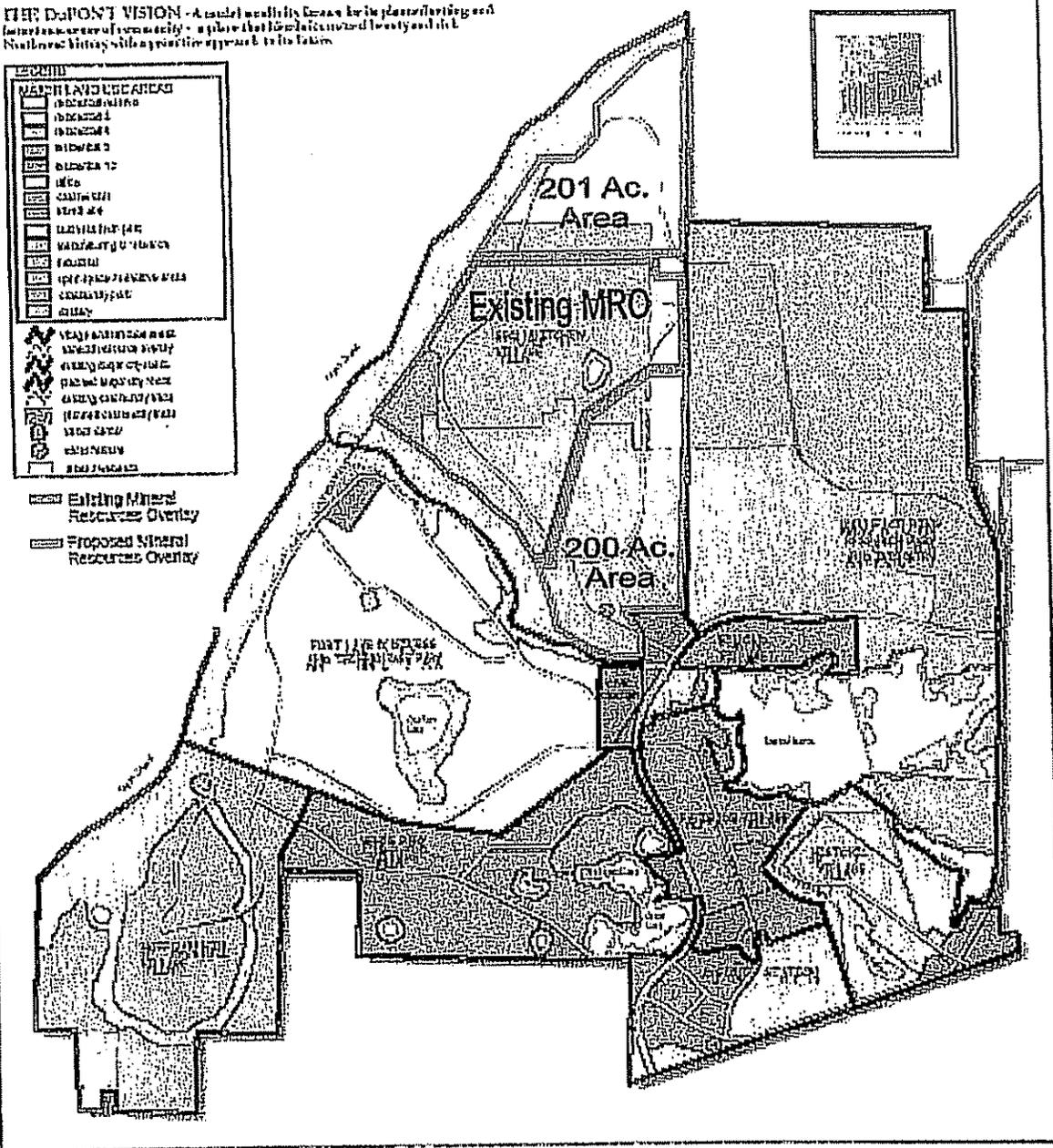


Figure 1
 Proposed Mineral Resources Overlay

EXHIBIT B

Process and Approximate Timeline

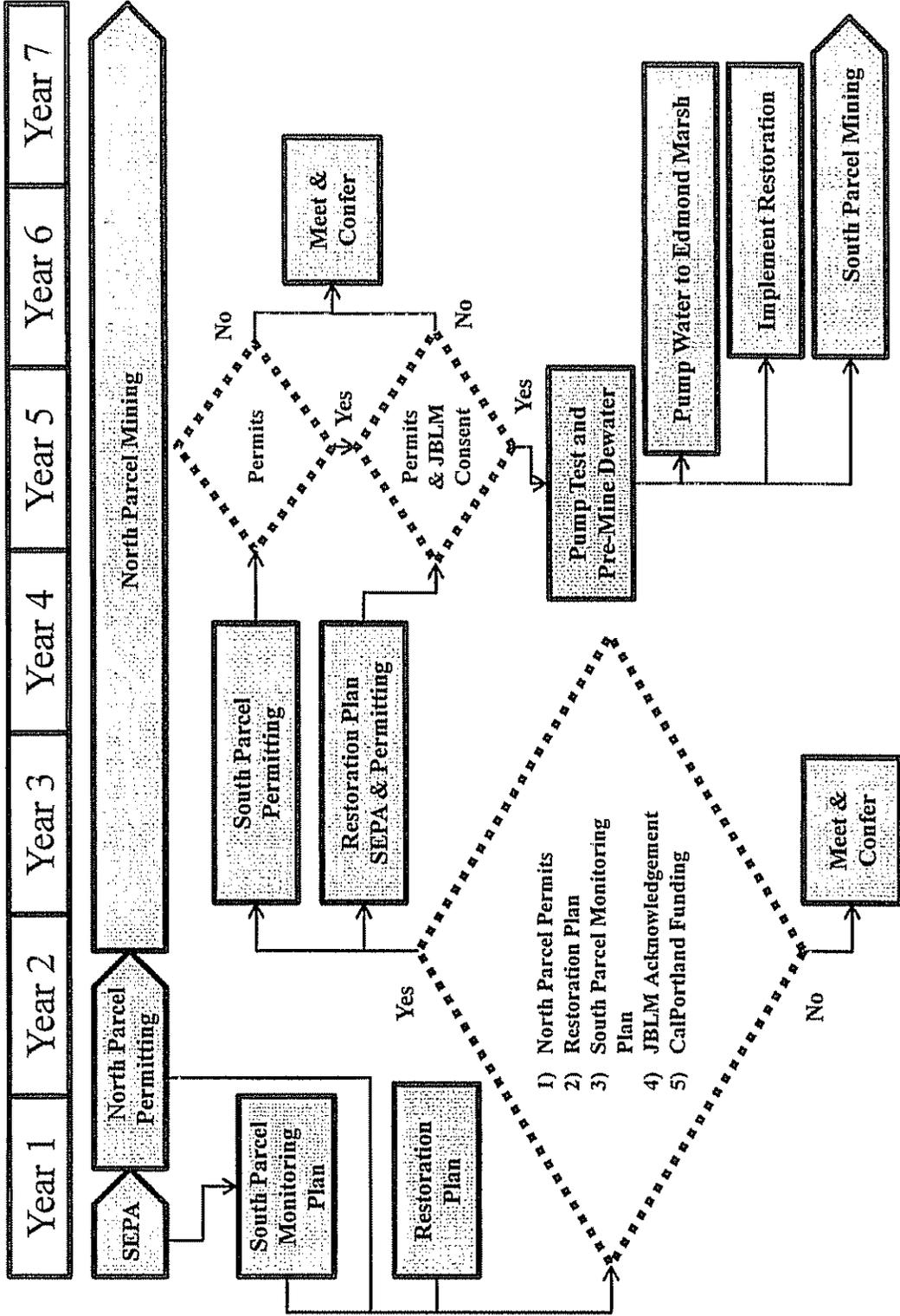
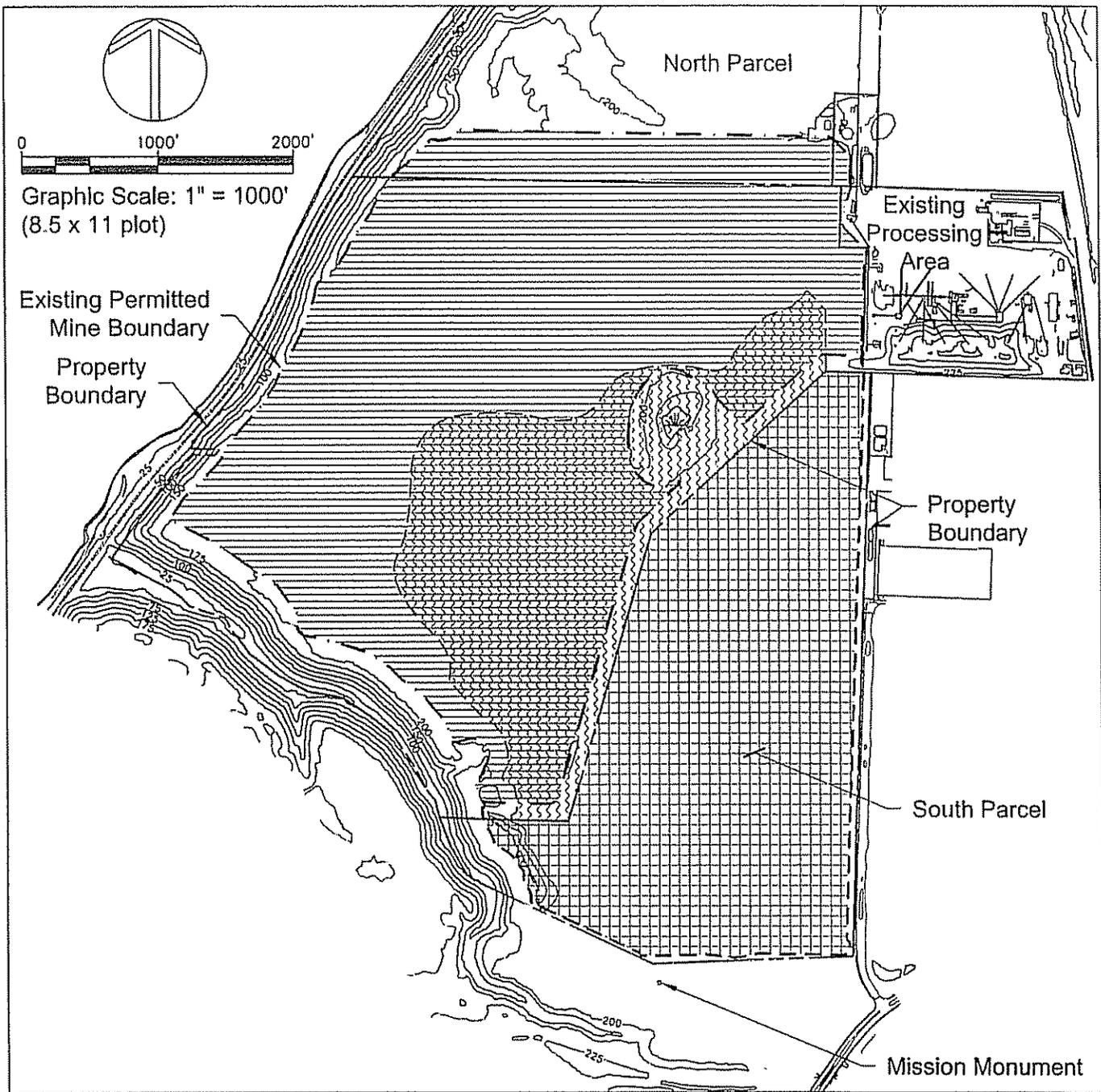


EXHIBIT C

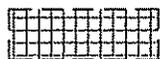
EXHIBIT D



Legend:



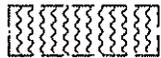
Existing Permitted Mine Area (315 Acres)



South Parcel (166 Acres) to be mined to top of Olympia Bed Formation (Approx 125 Elev NGVD 29)



Kettle Wetland



117 Acres to be mined to top of Olympia Bed Formation (Approx 125 ft Elevation NGVD 29)



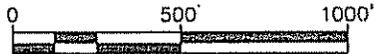
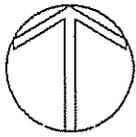
Pioneer Aggregates
DuPont, Washington

TITLE

South Parcel Mine Area

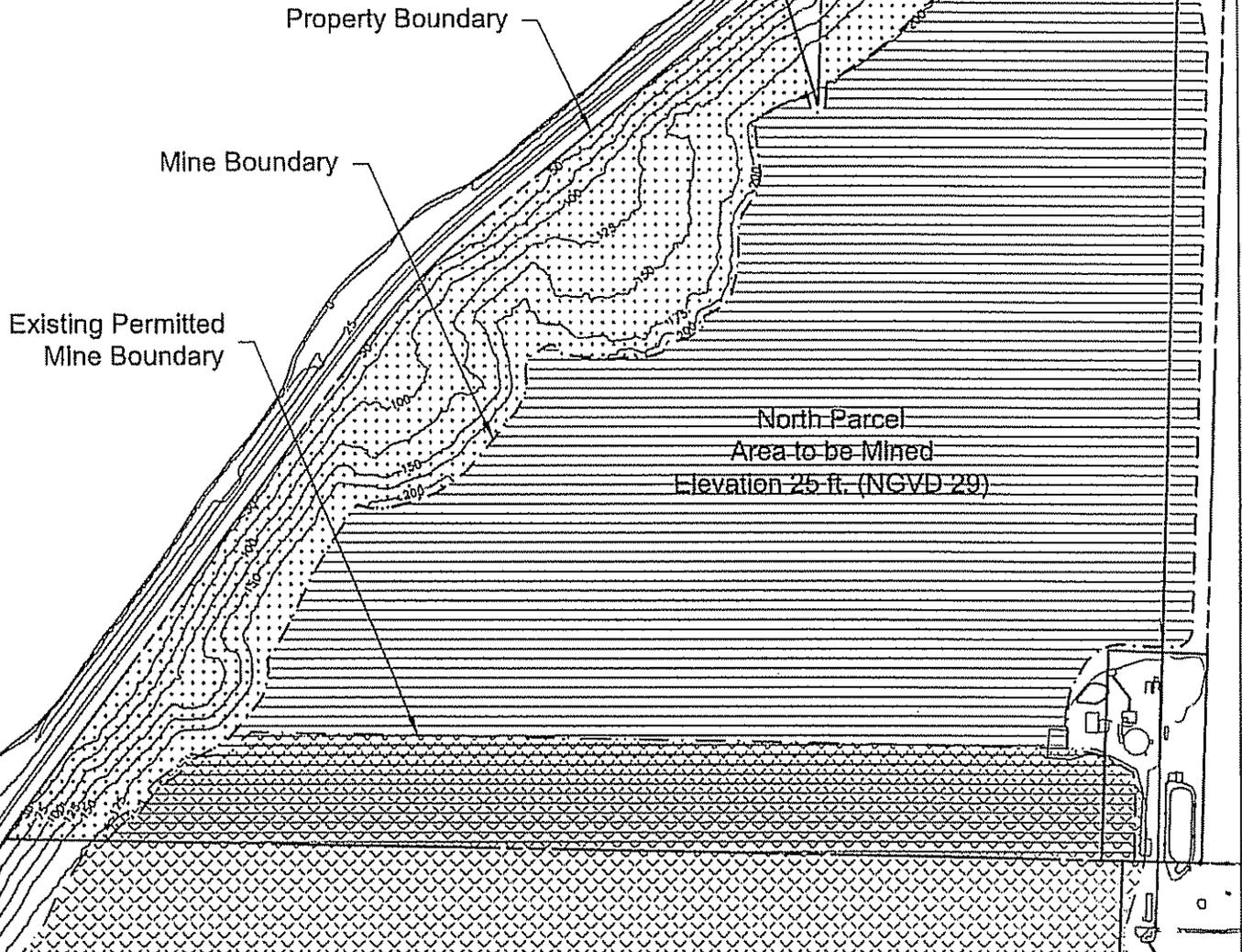
Exhibit D

EXHIBIT E

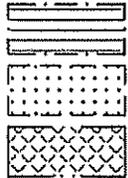


Graphic Scale:
1" = 500' (8.5x11 plot size)

Puget Sound



Legend:



- Mining Boundary (142 Acres)
- Open Space Area (45 Acres)
- Existing Permitted Mine Area



Pioneer Aggregates
DuPont, Washington

TITLE

North Parcel Mine Area

Exhibit E

EXHIBIT F

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this ____ day of _____, 2011 by and between CalPortland Company ("Grantor") and _____ ("Grantee").

I. RECITALS

A. Grantor is the owner in fee simple of that certain real property (hereinafter the "Protected Property") in the City of DuPont, Washington, more particularly described in EXHIBIT A, which is attached hereto and incorporated herein by this reference.

B. Grantee is an entity authorized under RCW 64.04.130 to hold a conservation easement.

C. The Protected Property in its present natural condition possesses natural, scenic, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantee, the people of the City of DuPont, and the people of the State of Washington. The people of the State of Washington have recognized the benefit of providing for preservation and protection of Conservation Values by enacting RCW 64.04.130 to provide for and encourage the limitation and restriction of development and use of real property through conservation easements.

D. Grantor and Grantee are parties to a Settlement Agreement dated December 25, 1994 and a related Settlement Agreement with an effective date of _____ 2011, along with the Washington Department of Ecology, the Nisqually Delta Association, the Black Hills Audubon Society, the Washington Environmental Council, People for Puget Sound, the Tahoma Audubon Society, the Seattle Audubon Society, and Anderson Island Quality of Life Committee (the "Environmental Caucus"). Following review under the State Environmental Policy Act, the City issued Grantor a permit on ____ ("Permit"), to conduct surface mining on property immediately east of the Protected Property. This conservation easement is executed pursuant to and in fulfillment of paragraph 3.5.2 of the 2011 Settlement Agreement, and Condition ____ of the Permit.

E. The Parties agree that the specific Conservation Values of the Protected Property are documented in an _____ on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective Information baseline for monitoring compliance with the terms of this grant. Grantor and Grantee further agree that, within six (6) months of the execution hereof, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated herein by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or validity of any other provision hereof.

F. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained as set forth herein.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").

B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 subject only to the mutual covenants and terms, conditions, and restrictions hereinafter set forth, and for no other consideration whatsoever.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, open space, and/or forested condition, preserving in their current natural state wetland, shoreline and tidelands, riparian, and upland features and other natural communities, and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to such activities that are consistent with this purpose, provided that nothing herein is intended to limit or restrict otherwise legal use of the the property or facilities Grantor owns adjacent to the Protected Property.

IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

A. Identification and Protection. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property;

B. Access.

1. To quarterly enter upon the Protected Property at a mutually agreeable time and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Easement.

2 To enter upon the Protected Property at such other mutually agreeable times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Grantee shall provide prior written notice to Grantor of the reasons it wishes to enter upon the Protected Property.

C. Scientific/Educational Use. For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational, scientific, and biological purposes to observe and study on the Protected Property; provided that any such persons or groups make prior arrangements with the Grantor, agree to provide the Grantor with copies of any data or reports resulting from such research, and agree to abide by any restrictions on access set forth by the Grantor.

D. Injunction and Restoration. To enjoin any activity on, or use of, the Protected Property which is inconsistent with this Conservation Easement, including trespasses by members of the public, and to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section IX.

E. Pedestrian Trail. To construct a pedestrian trail for public and vehicular access as set forth in paragraph 3.5.3 of the 2011 Settlement Agreement. The precise location of the pedestrian trail shall be set forth in a separate easement document.

F. Assignment. To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XIV herein.

V. PROHIBITED USES

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as necessarily incident to the uses permitted in Section VI below, including the allowance for the pedestrian trail set forth in that section VI:

B. Subdivision. The legal or "de facto" subdivision of the Protected Property.

C. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, docks, floats and parking lots) on the Protected Property except for the pedestrian trail as set forth herein.

D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod except for the pedestrian trail as set forth herein

E. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters of the Protected Property.

F. Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses.

G. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as deemed necessary for construction of the pedestrian trail by Grantee or to preserve or protect the Conservation Values of the Protected Property, such as the removal of invasive exotic (non-native) plant species, or to conduct educational or research activities consistent with the purpose of the Easement.

H. Waste Disposal. The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly offensive, or hazardous waste or material on the Protected Property.

I. Utilities. The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities on the Protected Property.

J. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.

K. Hunting. Hunting or trapping.

L. Mining. The exploration for, or development and extraction of minerals and hydrocarbons on or below the surface of the Protected Property.

M. Wildlife Disruption. Activities on the Protected Property that disrupt wildlife breeding and nesting activities on the Protected Property.

N. Domestic Animals. The keeping of domestic animals on the Protected Property.

O. Introduced Vegetation. The introduction of nonnative plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation, except as deemed necessary by the Grantee to enhance the Conservation Values of the Protected Property.

P. Harvesting of Native Plants. The gathering, picking, taking, or harvesting of native plants on the Protected Property.

Q. Motorized Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles, the launching or

beaching of motorized watercraft, or the operation of other sources of excessive noise pollution on the Protected Property.

VI. PERMITTED USES

A. General. Grantor reserves for itself and its heirs, successors, and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the Easement and which is not prohibited herein, subject to the Notice and Approval conditions set forth in Section VII of this Conservation Easement. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its heirs, successors, and assigns, the following uses and activities:

B. Recreational. To conduct passive recreational activities such as nature enjoyment, bird watching, educational walks, etc. on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact plant and wildlife habitat on the Protected Property. No motorized vehicles or other activities that could disrupt the wildlife or destroy essential habitat are allowed in the Protected Property.

C. Pedestrian Trail. Grantor shall grant to Grantee by separate conveyance an easement to construct and maintain a pedestrian trail on the Protected Property, 15 feet wide, for use by the public and for vehicular access for maintenance purposes, consistent with paragraph 3.5.3 of the 2011 Settlement Agreement.

D. Signage. To place signs on the Protected Property to state the conditions of access to the Protected Property, history of the Protected Property, and interpretive information, provided that such signs are located to preserve, as much as possible, the undisturbed Conservation Values of the Protected Property.

E. Emergencies. To undertake other activities as deemed by the Grantor necessary to protect public health or safety on the Protected Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided to the maximum extent possible.

VII. NOTICE AND APPROVAL

A. Notice. Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain permitted activities provided in Section VI(B), (C), and (D). Notice shall also be provided to the Department of Ecology and the Environmental Caucus. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted uses and activities is to afford Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than forty-five (45) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity

in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

B. Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt Grantor's written request for approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement. Grantee's approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity. If Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

C. Grantee's Failure to Approve Within the Required Time. Where Grantee's approval is required, and if Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may assume Grantee's approval of the permitted use or activity in question.

D. Addresses for Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed to as follows:

To Grantor:

To Grantee:

Department of Ecology:

Environmental Caucus:

or to such other address as either party from time to time shall designate by written notices to the other.

VIII. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation or arbitration by request made in writing upon the other. Within forty-five (45) days of the receipt of such a request the parties shall select a mediation service or a single arbitrator to hear the matter. The matter shall be settled in accordance with the Washington State mediation or arbitration statute then in effect, and the settlement agreement or an arbitration award may be entered in any court having jurisdiction thereof. The parties agree not to proceed with the disputed use or activity pending resolution of the dispute.

IX. GRANTEE'S REMEDIES

A. Notice of Failure. If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity of the Grantor inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured.

B. Grantor's Failure to Respond. If Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
3. Fails to continue diligently to cure such violation until finally cured;

Grantee may bring an action as provided in subsection C.

C. Grantee's Action. Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. Immediate Action Required. If Grantee, in its sole discretion determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Nature of Remedy. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief with respect to the Protected Property, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor or those of its heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity or use. If Grantor prevails in any judicial proceeding initiated by Grantee to enforce the terms of the Easement, Grantor's reasonable cost of suit, including attorney's fees, shall be borne by Grantee.

G. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by the Grantee to exercise its rights under this easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any Grantee's right under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property or property on adjacent property resulting from such causes.

I. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor.

J. Enforcement by Parties to the 2011 Settlement Agreement. Pursuant to paragraph 3.5.2 of the 2011 Settlement Agreement, the Department of Ecology or the Environmental Caucus may enforce the terms of this easement in the same manner as Grantee, in the event Grantee fails to enforce this easement within 30 days of written notice that a violation is occurring.

X. ACCESS BY PUBLIC

Access by the general public to the Protected Property shall be limited to use of the pedestrian trail during daylight hours and may not unreasonably interfere with the Conservation Values of the Protected Property or Grantor's use of the adjacent property for mining, processing or transport as authorized under the Permit or other governmental permits and approvals.

XI. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

A. Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind, related to the ownership, upkeep, and maintenance of the Protected Property, except for the pedestrian trail, including the maintenance of adequate comprehensive general liability insurance coverage. Such insurance shall include Grantee's interest and name Grantee as an additional insured and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

B. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by payment shall bear interest until paid by the Grantor at the maximum rate allowed by law.

C. Indemnification. **[Note: Additional indemnification terms , and potential applicability of recreational use immunity under RCW 4.24.200, will be negotiated after the scope and purpose of the easement are finalized.]** Except with regard to the pedestrian trail, Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments including, without limitation, reasonable attorney's fees (collectively, "Claims"), arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, except that Grantor has no duty to indemnify, defend, and hold the Indemnified Parties harmless to the extent that Claims arise out of the willful or negligent act of any Indemnified Party;

XII. SUBSEQUENT TRANSFER

A. Condemnation. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

B. Subsequent Transfers. Grantor agrees (1) to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the

transfer of any interest of at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or his or her representative. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be valid for purposes of the 2011 Settlement Agreement unless agreed to by all the Parties to that Agreement; and provided further that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Pierce County, Washington, and any other jurisdiction in which such recording is required.

XIV. ASSIGNMENTS

A. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

B. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested and fall upon the following named entities to the extent that they shall accept this Easement, in the following order:

1. [Note: As part of negotiation of final terms of Conservation Easement, Parties will identify a potential successor entity authorized to hold a conservation easement under RCW 64.04.130.]

2. Such other entity, with purposes similar to the constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 or corresponding provision of any future statute;

provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such

organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code (or corresponding provision of any future statute) and with due regard to the purposes of this Easement.

XV. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Pierce County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVI. GENERAL PROVISIONS

A. Controlling Law. The laws of the State of Washington shall govern the interpretation and performance of this Easement.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34.RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which, are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII herein.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. "Grantor" - "Grantee". The term "Grantor" and "Grantee," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its successors and assigns.

G. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

J. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

K. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

XVII. SCHEDULE OF EXHIBITS

Exhibit A. Legal Description of Property Subject to Easement.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.
IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day
of _____, _____.

CalPortland, Grantor

Signature: _____

By _____

Its _____

_[Name of Grantee] does hereby accept the above Grant Deed of Conservation Easement.

Date:

Grantee

Signature: _____

By _____

Its _____

STATE OF WASHINGTON
COUNTY OF PIERCE

I certify that I know of have satisfactory evidence that

Is the person(s) acknowledge that (he/she/they) signed this
Instrument on oath state that (he/she/they) was (were)
authorized to execute the instrument and acknowledged it
as the _____ of

_____ to be the free and
voluntary act of such party for the uses and purposes
mentioned in the instrument GIVEN under my hand and
official seal this _____ day of _____,

Notary public in and for the State of Washington, residing
At _____ My

Appointment expires: _____

(SEAL OR STAMP)

STATE OF WASHINGTON
COUNTY OF PIERCE

I certify that I know of have satisfactory evidence that

Is the person(s) acknowledge that (he/she/they) signed this
Instrument on oath state that (he/she/they) was (were)
authorized to execute the instrument and acknowledged it
as the _____ of

_____ to be the free and
voluntary act of such party for the uses and purposes
mentioned in the instrument GIVEN under my hand and
official seal this _____ day of _____,

Notary public in and for the State of Washington, residing
At _____ My

Appointment expires: _____

(SEAL OR STAMP)

EXHIBIT

A.

Legal Description of Property Subject to Easement.

EXHIBIT G

After Recording Return to:

City of DuPont
Attention: City Clerk
1700 Civic Drive
DuPont, WA 98327

PUBLIC ACCESS TRAIL EASEMENT

Grantor: CalPortland Company

Grantee: City of DuPont, a Washington municipal corporation

Legal Description:

Portions of Sections _____
in T19N, R1E, W.M. Additional Legal is on Exhibit A
attached to document

Reference Number(s) of Related Documents(s): N/A

Assessor's Tax Parcel ID No(s):

This PUBLIC ACCESS TRAIL EASEMENT AGREEMENT (the "Agreement") is dated as of _____, _____, by CalPortland Company ("Grantor") and the City of DuPont, a Washington municipal corporation ("Grantee")

RECITALS

A. Grantor is the fee owner of the real property described in Exhibit A attached hereto (the "Burdened Property"). Grantor has obtained the necessary permits and approvals to conduct mining and related activities on approximately 142 acres of the Burdened Property ("Mine Area"), as depicted in Exhibit B. Grantor has entered into a Conservation Easement with [Name of Grantee] for approximately 45 acres of the Burdened Property ("Open Space Area"), as also depicted in Exhibit B.

B. Grantor's predecessor in interest entered into a Settlement Agreement dated December 25, 1994 for Lone State Northwest DuPont Project among the Washington State Department of Ecology, Grantee, Lone Star Northwest, Inc, Weyerhaeuser Real Estate Company, the Nisqually Delta Association, the Black Hills Audubon Society, the Washington Environmental Council, the National Audubon Society, People for Puget Sound, the Tacoma Audubon Society, the Seattle Audubon Society and the Anderson Quality of Life Committee (the "Settlement Agreement"). When Grantor submitted a permit application to mine additional property near the Burdened Property, the other parties to the 1994 Settlement Agreement objected, and invoked a mediation process provided under that Agreement.

C. At the conclusion of the mediation process, the parties to the 1994 Settlement Agreement entered into a new, 2011 Settlement Agreement, which addressed the process for consideration of Grantor's applications to mine the Burdened Property and other nearby property. A condition of the 2011 Settlement Agreement, and Condition ____ of the permit granted by Grantee on [date] for mining of the Burdened Property's Mine Area ("Mining Permit"), requires Grantor to execute a public trail easement over the Burdened Property in the general vicinity of and above the 175-foot contour elevation of the Open Space Area. This trail easement would not be open to public use until the completion of mining and reclamation of the Mine Area.

D. To fulfill the requirements in the 2011 Settlement Agreement and the Mining Permit for a public access trail over a portion of the Open Space Area of the Burdened Property, Grantor desires to grant an easement to Grantee for the purposes and on the terms and conditions described herein.

AGREEMENT

1. Grant of Easement. Grantor transfers, grants, quitclaims and conveys to Grantee a nonexclusive easement in gross for public access (the "Easement") across and over

the Open Space Area of the Burdened Property in the location described in Exhibit C attached hereto (the "Easement Area"), which is depicted on Exhibit D attached hereto.

2. Purpose of Easement. Grantee, its employees, agents and contractors, shall have the right to use the Easement Area to provide a public access trail (the "Trail") above and along the Puget Sound shoreline area and to maintain the Trail (as hereinafter defined) located within the Easement Area. Grantee, its employees, agents and contractors, and members of the public, shall have the right to use the Easement Area for a public access trail subject to the terms and conditions hereof. All use of the Easement Area and the Trail shall be limited to walking, bicycling, and passive recreational uses. Motorized vehicles, including motorbikes and off-road vehicles, shall be prohibited in the Easement Area (other than vehicles used by Grantee, its employees, agents and contractors, to maintain the Trail or provide emergency assistance to Trail users). No horses or pack animals shall be permitted in the Easement Area. Camping and fires shall not be permitted within the Easement Area. Members of the public may not use the Easement Area for access or any purpose until Grantor has completed all mining activities permitted by Grantee for the Burdened Property, and all tasks required under the reclamation permit issued for the Burdened Property by the Washington Department of Natural Resources ("DNR") pursuant to RCW 78.44.081 have been completed by Grantor, its successor(s) in interest or DNR, as applicable. Grantee may not begin Trail construction until the earlier of receipt of Grantor's written permission to commence Trail construction, or the completion of reclamation as outlined above.

3. Construction/Maintenance/Repair of the Trail. Except as provided in Section 4 below, Grantee shall be responsible for any necessary construction and/or surfacing of the Trail, and for any required maintenance or repairs thereto, including but not limited to re-surfacing, installation of drainage culverts beneath the Trail, removal of wash or slide materials on the trail surface, vegetation management, and/or removal of brush and fallen trees.

4. Grantor's Use of Easement Area. Grantor reserves the right to use the Easement Area for any purpose not inconsistent with the rights granted by this Agreement. If such use by Grantor results in the need for maintenance or repair of the Trail, Grantor shall be responsible for such and shall promptly perform or cause to be performed such maintenance or repair at Grantor's sole cost.

5. Term. The rights granted by this Agreement shall continue in perpetuity.

6. Recreational Use Immunity. Grantor and Grantee intend that, to the fullest extent possible under Washington's Recreational Use Statutes, RCW 4.24.200-.210, Grantor and Grantee shall not be liable for injuries to the other, and neither Grantor nor Grantee shall be liable for injuries to any member of the public, where such injuries are incurred as a result of use of the Trail or Easement Area by Grantor, Grantee, their respective officers, employees, agents or contractors, or member of the public consistent with RCW 4.24.200 -

210 In the event that Grantor and Grantee are named in a claim, suit or cause of action for injuries or damages arising out of use of the Trail, Grantor and Grantee shall cooperate in defense thereof by exchanging information, documents and/or evidence as necessary.

7. Settlement Agreement. Grantee accepts the Easement granted herein and agrees that it satisfies the conditions set forth in Section 3.5.3 of the 2011 Settlement Agreement as those sections concern the Burdened Property.

8. Notice. Any notice permitted or required to be given by either party to this Agreement shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid, by reputable overnight delivery service, or by personal delivery, as follows:

If to Grantor:

With a copy to

If to Grantee: Attn:
The City of DuPont
1700 Civic Drive
DuPont, WA 98327303
Attn: City Administrator

or to such other address or to such other person's attention of which notice was given in accordance with this section. Notice shall be deemed effective upon three (3) days after being properly delivered as described above.

9. Attorneys' Fees and Costs. If either party shall bring an action to enforce the terms of this Agreement, in any such action the prevailing party shall be entitled to an award of its reasonable attorneys' fees and reasonable costs. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal or in any proceedings under any present or future federal bankruptcy, forfeiture or state receivership or similar law.

10. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by Washington law. Jurisdiction and venue for any action to interpret or enforce this Agreement shall be in the Superior Court of the State of Washington in and for Pierce County.

11. Binding Effect; Successors and Assigns. Grantee shall not have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and

interests arising herein without the written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Without limiting the generality of the foregoing, the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns and shall be deemed to run with the land. This Agreement may be amended or modified only by written instrument, executed and acknowledged by the parties hereto or their successors or assigns, recorded with the Recording Department of the Pierce County Auditor.

12. Headings. The headings used herein are for convenience only and are not to be used in interpreting this Agreement.

13. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements with respect to the matters described herein.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

GRANTOR:

CALPORTLAND COMPANY,
a _____ company
By:

By: _____
Name: _____
Title: _____

GRANTEE:

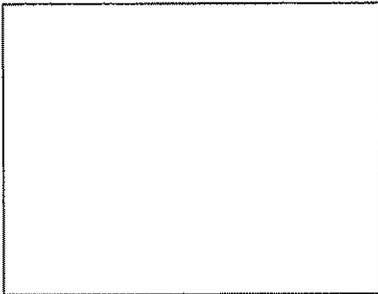
City of DuPont,
a Washington municipal corporation

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of CalPortland Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



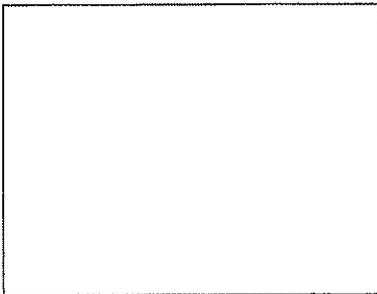
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the City of DuPont, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Exhibit A

BURDENED PROPERTY

The Burdened property shall be that portion of Section ____, Township 19N, Range 1E W.M located in Pierce County Washington and further identified as Parcels _____ in the records of the Pierce County Assessor Treasurer.

Exhibit B

[Insert depiction of the Mining Area and Open Space Area within the Burdened Property]

Exhibit C

EASEMENT AREA – LEGAL DESCRIPTION

A trail corridor of a minimum width of fifteen (15) feet, and a minimum of seven and one-half (7.5) feet on each side of the following-described center line:

Beginning at

Exhibit D

[Insert depiction of the Easement Area]