

**MEMORANDUM OF UNDERSTANDING REGARDING
SUPPLEMENTAL REVIEW PROCESS FOR
GLACIER NW MINING EXPANSION**

THIS MEMORANDUM OF UNDERSTANDING is dated this 30 day of November, 2009, and executed by and among **GLACIER NORTHWEST** ("Glacier"); the **WASHINGTON DEPARTMENT OF ECOLOGY** ("Ecology"); the **CITY OF DuPONT** ("City"); and the **NISQUALLY DELTA ASSOCIATION, THE TAHOMA AUDUBON SOCIETY and WASHINGTON ENVIRONMENTAL COUNCIL** (collectively, the "Environmental Caucus").

RECITALS

- A.** The parties to this Memorandum of Understanding ("MOU") are signatories to a 1994 "Settlement Agreement for Lone Star Northwest DuPont Project" (hereafter, the "Settlement Agreement"), concerning Glacier's sand and gravel mining operation and transshipment facility (together the "Existing Mine").
- B.** In 2006, as part of its annual Comprehensive Plan amendment process, the City expanded its Mineral Resource Overlay to include an approximately 200-acre area southeast of the Existing Mine ("South Parcel") and an approximately 200-acre area north of the Existing Mine ("North Parcel") as depicted on the City of DuPont official land use map.
- C.** In 2007, the City issued a Final Environmental Impact Statement for Glacier's proposed mining of the South Parcel.
- D.** There is currently a dispute between the parties as to whether Glacier's proposed mining operation for the South Parcel, as described in Glacier'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), is consistent with Section II.B.5 of the Settlement Agreement.
- E.** In January 2009, the Nisqually Delta Association invoked the Settlement Agreement's dispute resolution process, and the parties conducted formal mediation with a professional mediator on May 4 and June 4, 2009.
- F.** This MOU reflects the parties' understanding of the process that will be followed in an effort to avoid protracted litigation concerning the 1994 Settlement Agreement. The MOU also sets forth the parties' understanding of the process that will be followed to include the North Parcel in a future Supplemental Environmental Impact Statement.



G. Except for Sections B.2, B.3 and F, it is understood that this MOU is non-binding. Except where this MOU waives and releases claims (Section F), the parties reserve all rights to make any argument or claim in future settlement decisions or litigation.

AGREEMENT

A. Sequence of Additional Review

1. **Feasibility Study.** With input from the parties and stakeholders, Glacier will prepare a Feasibility Study to identify and evaluate opportunities for improving or restoring ecosystem functions in the Sequalitchew Creek watershed. See Section C below.

2. **Settlement Discussions/Mediation.** In light of the Feasibility Study, the parties will continue settlement discussions in an effort to resolve all issues and disputes concerning the proposed mining expansion's consistency with the 1994 Settlement Agreement and other issues of concern to the parties. If agreement is reached, the parties to this MOU anticipate entering into a new settlement agreement. See Section D below.

3. **SEPA Review.** Following the completion of settlement discussions and Glacier's submission of any revised project description, the City of DuPont will proceed with supplemental SEPA review to include: (i) all proposed mining expansion within the City of DuPont's designated mineral resource overlay and described in any revised project description received by the City; and (ii) the dewatering method and mitigation measures for the South Parcel identified in any new Settlement Agreement. See Section E below.

4. **Permit Review.** The City and Ecology anticipate being able to issue permit decisions within the time period set forth in this MOU. To the extent necessary, Glacier will submit a shoreline permit revision application consistent with the new Settlement Agreement and applicable law. See Section F below.

B. Reimbursement for Costs of Additional Review

1. **Environmental Caucus.** Glacier will reimburse the Environmental Caucus for the following costs:

- \$15,000 for the costs expended through the date of this MOU. Payment will be made upon execution of this MOU.
- Up to \$12,500 for the costs associated with Feasibility Study. Payment will be made monthly upon receipt of itemized invoices submitted by the Environmental Caucus.

- Up to \$17,000 for the costs of future settlement discussions. Payment will be made monthly upon receipt of itemized invoices submitted by the Environmental Caucus.

2. **City.** Glacier will reimburse the City for costs related to permit and SEPA environmental review as provided in the DuPont Municipal Code, including but not limited to Section 23.01.180, as it currently exists or may hereafter be amended.

3. **No City Obligation.** The City has no obligation to reimburse any party hereto for any costs incurred by the other parties, whether for actions related to the Settlement Agreement, the mediation, this MOU, any document or process set forth herein, or otherwise.

C. **Feasibility Study (Complete by approximately April 20, 2010)**

1. **Purpose.** The purpose of the Feasibility Study will be to identify and evaluate potential alternatives for improving or restoring ecosystem functions in the Sequatchew Creek's watershed. The parties expressly recognize that mine dewatering is one such potential alternative, but that both the potential environmental costs and benefits of such an alternative will be evaluated in the Feasibility Study, as set forth below. Glacier and its consultants will take the lead in preparing the Feasibility Study with participation and input from the Parties to this MOU and other stakeholders as described below.

2. **Steps.** The Feasibility Study will be performed in the following steps and according to the schedule set forth in EXHIBIT A hereto:

(a) **Preliminary Identification of Potential Alternatives.** The parties to this MOU, and representatives of Fort Lewis, the Nisqually Tribe, Washington Department of Fish and Wildlife (WDFW), Washington State Department of Archaeology and Historic Preservation, Puget Sound Partnership, and the Army Corps of Engineers, will meet to develop a list of possible actions that would mitigate the potential impacts of the proposed project by improving, enhancing, or protecting ecosystem functions in the Sequatchew Creek watershed. It is anticipated that the list of possible actions could include: (a) conveying or channeling groundwater from any dewatered mine areas, including the South Parcel, to Sequatchew Creek or other location; (b) improving flows and habitat conditions to upper Sequatchew Creek; (c) improving flow and habitat conditions at the mouth of Sequatchew Creek; or (d) avoiding any changes to existing flows or habitat conditions. During this same meeting, the parties will conduct a "fatal flaw" evaluation and seek to reach consensus about which alternatives appear sufficiently viable to warrant further study ("Preliminary Study Alternatives"). It is anticipated that the Preliminary Study Alternatives will include the mine dewatering alternative described in Glacier's land use applications to the City. The parties will also develop an agreed scope of work for the Preliminary Draft Feasibility Study described in sub-section 2(b) below.

(b) *Preliminary Draft Feasibility Study.* Glacier and its consultants will prepare a preliminary evaluation of Preliminary Study Alternatives in accordance with the agreed scope of work. This evaluation will include a summary of what factors currently limit salmonid populations in Sequalitchew Creek. The evaluation will also provide a cost/benefit analysis that includes each Preliminary Study Alternative's:

- Potential environmental benefits and impacts with regard to Sequalitchew Creek watershed and ecosystem functions;
- Effectiveness;
- Implementation time frame;
- Cost;
- Stakeholder acceptance; and
- Level of uncertainty.

The evaluation will also include a data gaps analysis with recommendations about what additional information would be needed to prepare a more detailed evaluation of the Preliminary Study Alternatives, including both the potential benefits and costs of mine dewatering alternatives. The data gaps analysis will also identify what additional information might be needed to complete a reasonably thorough analysis of the factors limiting the current salmonid populations in Sequalitchew Creek.

(c) *Meeting to Discuss Preliminary Draft.* After a comment period on the Preliminary Draft, parties to the MOU, Fort Lewis, the Nisqually Tribe, and WDFW, will meet to discuss the Preliminary Draft and to select those Preliminary Draft Alternatives that will be evaluated in an additional, more detailed study ("Select Alternatives"). Based on the data gaps analysis in the Preliminary Draft, the parties will develop an agreed scope of work for the further evaluation of the Select Alternatives (including the mine dewatering alternative).

(d) *Second Draft Feasibility Study.* In accordance with the agreed scope of work, the Second Draft Feasibility Study will provide additional information about the Select Alternatives, including additional data and analysis as necessary, and cost/benefit analysis of the factors identified above.

(f) *Meeting to Discuss Second Draft Feasibility Study.* After a comment period on the Second Draft, the parties to the MOU, Fort Lewis, the Nisqually Tribe, WDFW, and the Corps of Engineers, will meet to discuss the Second Draft. The parties will seek to reach consensus about what recommended alternatives will be presented in the Final Feasibility Study and about the scope of work for such Study.

(g) *Final Feasibility Study.* In accordance with the agreed scope of work, the Final Feasibility Study will provide a final, detailed discussion of the potential

project impacts and the recommended alternatives. This Study will be made available to the public and will form a basis for continued settlement discussions as discussed in Section D below. The Study may also inform future SEPA analysis and/or a possible Sequelitchew Creek Restoration Plan.

3. Public Participation and Review Process.

- The proposed schedule for the Feasibility Study tasks and meetings is attached as EXHIBIT A. Three meetings will be held between December 2009 and April 2010. These include a (1) a meeting to develop a mutually agreeable list of Preliminary Draft Alternatives and an agreed scope of work for the preliminary draft feasibility study; (2) a meeting to develop a mutually agreeable list of Select Alternatives and an agreed scope of work for the second draft feasibility study; and (3) a meeting to identify an mutually agreeable list of recommended alternatives and a scope of work for the final feasibility study.
- Glacier will provide the parties to this MOU with electronic copies of the Preliminary Draft, Second Draft, and Final Feasibility Study immediately upon their completion. At the same time, Glacier will make the documents available on its website, and will provide notice to the parties listed in Exhibit B that the documents are available on Glacier's website. Ecology and the City will also provide copies on their websites.

D. Settlement Discussions/Mediation (January 1, 2010-June 1, 2010)

1. Settlement Issues. The parties recognize that the meetings discussed in Section C above will be an important part of the settlement process. Then, upon completion of the Final Feasibility Study, Glacier will prepare a new project description and parties will seek to resolve issues relating to 1994 Settlement Agreement. Anticipated issues for discussion include:

- Preferred dewatering method for North and South Parcel Mining Operation;
- Mitigation measures relating to project's impact on Sequelitchew Creek and wetlands;
- Mitigation for impacts to the North Parcel;
- Parties' respective roles in potential Sequelitchew Creek Restoration Plan;
- Cultural resources and historic preservation;

- List of required permits (including potential Shoreline Permit revision), and permit application schedule necessary to achieve permit decisions from Ecology and the City by November 1, 2010.

2. **Restoration Plan.** Although the Feasibility Study may help inform a restoration plan, the completion and implementation of a Sequatchew Creek Feasibility Study will not be a precondition of SEPA review or permit process. However, implementation of portions of a Restoration Plan could be part of a mitigation plan for project impacts and/or part of a revised project description.

3. **Completion of Settlement Discussions.** The parties will exercise good-faith efforts to complete settlement discussions, including executing any settlement agreement, by June 1, 2010.

4. **Future Appeals.** The parties recognize and agree that Glacier's rights and obligations in any new settlement agreement will be conditioned upon favorable permit decisions; provided, however, that this section does not obligate or bind the City to grant, condition, or deny any permit application, or to take any other specific action with respect to a permit application. The parties anticipate that any settlement agreement will include limitations on the rights of signatories to appeal permits that are consistent with the terms of the settlement agreement. It is further anticipated that any settlement agreement will explain the signatories' rights and options in the event of a third-party appeal.

E. Additional SEPA Steps

1. **Lead Agency.** The City will be lead agency; it is anticipated that Richard Weinman will continue to be the lead SEPA consultant.

2. **Scoping.** If Glacier submits a revised project description by June 1, 2010, the City will publish a Scoping Notice for Revised Project **by June 30, 2010.**

- Notice will state that SSEIS will include: (1) the North Parcel; and (2) any other new or revised Creek mitigation or enhancement measures that may be incorporated into Glacier's revised project description.
- City will allow a 21-day comment period per WAC 197-11-408 (2)(a)(i).

If no revised project description is submitted, the City has no obligation to undertake additional SEPA environmental review.

3. **Draft SSEIS.** If a revised project description is submitted by June 1, 2010, the City will seek to issue a Draft SSEIS **by September 15, 2010.** City will allow a 30-day comment period per WAC 197-11-455(6).



4. **Final SSEIS.** If a revised project description is submitted by June 1, 2010, the City will seek to issue a Final SSEIS by **December 15, 2010.**

F. Permit Review

- *Date for Permit Issuance.* Assuming that the parties are successful in negotiating a new settlement agreement by June 1, 2010, Glacier will submit complete permit applications following a timeframe that allows permit decisions to be made by the City and Ecology by February 1, 2011. Any new settlement agreement will include a detailed permit process timeline.
- *Extension of City's Time Period for Permit Issuance* Within 30 days of this MOU, Glacier will advise the City in writing that it agrees to an extension of the time period for decision set forth in DMC 25.175.050(8)(c). The extension will cover the time period between the date of the City staff report (January 16, 2009) and June 1, 2010. Further time extensions may be part of any new Settlement Agreement signed by the parties.
- *Waiver and Release of Claims.* Glacier, Ecology, Environmental Caucus and the City, individually for themselves and on behalf of their successors, heirs and assigns, hereby waive and release any and all claims, lawsuits, arguments, and causes of action asserting that this MOU, or the City's decisions to take procedural actions when and in the manner contemplated herein (e.g., delay in processing Glacier's permit applications, review and comment upon the Feasibility Study and its drafts, preparation of supplemental environmental documents, and issuance of permits) violate local, state or federal law. This waiver and release specifically includes but is not limited to claims, lawsuits, and causes of action for damages, declaratory and/or injunctive relief, and/or review pursuant to RCW 36.70C or RCW 34.05; provided, however, that this waiver and release does not include challenges to the substance of any supplemental environmental review or permit decisions.

G. Public Outreach.

1. **Feasibility Study.** Parties, stakeholders, and the public will be notified of and participate in the Feasibility Study as described in Section C above.

2. **SEPA.** The City will provide for public comment on scoping and draft EIS as described in Section E above. In addition the City will provide a copy of the SEPA distribution list to the Environmental Caucus at least 14 days prior to issuance of the scoping notice, the Draft EIS and the Final EIS.



3. **Glacier Website.** Glacier will update its website to include: (a) public documents; (b) EIS documents, including scoping notice, Draft EIS and Final EIS; and (c) project permit applications and permit decisions submitted or obtained after the date of this MOU.

4. **Distribution of MOU.** All parties will coordinate on an announcement describing the creation and expected outcome of this MOU. Ecology will coordinate the announcement.

5. **Distribution of any Revised or New Settlement Agreement.** All parties will coordinate on an announcement describing any revised or new settlement agreement.



DATED this 30 day of NOVEMBER, 2009.

GLACIER NORTHWEST

By [Signature]
Name: MARK LEATHAM
Title: VP/GM

THE CITY OF DuPONT, WASHINGTON

By _____
Name: _____
Title: _____

THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

By _____
Name: _____
Title: _____

THE NISQUALLY DELTA ASSOCIATION

By _____
Name: _____
Title: _____

THE TAHOMA AUDUBON SOCIETY

By _____
Name: _____
Title: _____

THE WASHINGTON ENVIRONMENTAL COUNCIL

By _____
Name: _____
Title: _____

[Signature]

DATED this ____ day of _____, 2009.

GLACIER NORTHWEST

By _____
Name: _____
Title: _____

THE CITY OF DuPONT, WASHINGTON

By Tamara L. Jenkins
Name: Tamara L. Jenkins
Title: Mayor 11-10-09

THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

By Sally Toteff
Name: Sally Toteff
Title: Regional Director, Department of Ecology 12/3/09

THE NISQUALLY DELTA ASSOCIATION

By Thomas S. Sjervold
Name: Thomas Sjervold
Title: President December 3, 2009

THE TAHOMA AUDUBON SOCIETY

By Boyan Flind 12/3/09
Name: Boyan Flind
Title: Executive Director

THE WASHINGTON ENVIRONMENTAL COUNCIL

By _____
Name: _____
Title: _____

DATED this _____ day of _____, 2009.

GLACIER NORTHWEST

By _____
Name: _____
Title: _____

THE CITY OF DuPONT, WASHINGTON

By _____
Name: _____
Title: _____

THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

By _____
Name: _____
Title: _____

THE NISQUALLY DELTA ASSOCIATION

By _____
Name: _____
Title: _____

THE TAHOMA AUDUBON SOCIETY

By _____
Name: _____
Title: _____

THE WASHINGTON ENVIRONMENTAL COUNCIL

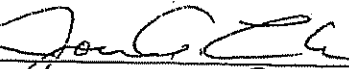
By 
Name: Joan A. Crooks
Title: Executive Director

Exhibit A

Schedule for Sequalitchew Creek

Feasibility Study

Task	Calendar Days from Date of MOU	Calendar Days from Preceding Milestone
All parties provide list of potential Preliminary Study Alternatives to other parties.	7 days	7days from executing the MOU
Meet to identify Preliminary Study Alternatives (meeting at City of DuPont) and scope of work	14 days	7 days
Complete Preliminary Draft Feasibility Study and send to MOU parties and stakeholders	59 days	45 days
Deadline for comments on Preliminary Draft Feasibility Study	74 days	15 days
Summarize comments, prepare agenda, and distribute to stakeholders	76 days	2 days
Meeting to identify Select Alternatives	78 days	2 days
Complete Second Draft Feasibility Study and send to MOU parties and stakeholders	99 days	21 days
Deadline for comments on Second Draft Feasibility Study	114 days	15 days
Summarize comments, prepare agenda, and distribute to stakeholders	116 days	2 days
Meeting to identify Recommended Alternatives	118 days	2 days
Complete Final Feasibility and make available to the public	148 days	30 days

Exhibit B

List of stakeholders :

- DNR
- WDFW
- Department of Archaeology and Historic Preservation
- Puget Sound Partnership
- EPA
- Corps of Engineers
- Chambers/Clover Creek Watershed Group
- Fort Lewis

