

2004-016

Attachment B

WEST POINT SETTLEMENT AGREEMENT

FEBRUARY 19, 1991

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 19th day of February, 1991, by and between the Municipality of Metropolitan Seattle, a metropolitan municipal corporation of the State of Washington, ("Metro"), on the one hand, and Puget Sound Water Quality Defense Fund, a Washington non-profit corporation, ("Defense Fund"), Friends of Discovery Park, a Washington non-profit corporation, ("Friends"), Legal Advocates for Washington, a Washington non-profit corporation, ("LAW"), Washington Environmental Council, a Washington non-profit corporation, ("WEC"), and Magnolia Community Club, a Washington non-profit corporation, ("MCC"), on the other hand, (collectively, "the parties").

RECITALS

1. Metro is required under state and federal law to upgrade its sewage treatment facilities to provide secondary treatment.

2. In July 1986 the Metro Council voted to implement secondary treatment at West Point.

3. Metro applied for and, in late 1988, received from the City of Seattle ("the City") a plan shoreline permit and a plan-level single-family zoning decision approving the siting of secondary treatment facilities at West Point.

4. Defense Fund, Friends, LAW, and WEC appealed the plan shoreline permit to the Washington Shorelines Hearings Board ("the Board"). The Board affirmed the granting of a plan shoreline permit in late 1989. The Board's decision was in turn affirmed by the Washington Court of Appeals, Division II, in November 1990 (Cause No. 13566-3-II). Defense Fund, Friends, LAW, and WEC have filed a motion for reconsideration, which is currently before the Court of Appeals.

5. Defense Fund, Friends, and LAW appealed the City's plan-level zoning decision to King County Superior Court. In October 1989 that court vacated the City's decision and remanded the matter to the City Council for further proceedings.

6. In December 1989 the City Council made a new plan-level single family zoning decision approving the siting of secondary treatment facilities at West Point. Defense Fund, Friends, and LAW sought review of the City's new plan-level decision in King County Superior Court. In July 1990 that court upheld the City's decision. Defense Fund, Friends, and LAW appealed to the

Washington Court of Appeals, Division I (Cause No. 26734-5-I). The appeal is now pending.

7. In October 1988 Metro applied to the City for a project-level shoreline substantial development permit and a project-level zoning permit for the West Point facilities. MCC, represented by Scott Smith, was a party to the City Council's proceedings. On January 14, 1991, the City Council voted to grant Metro the requested permits, subject to numerous conditions. The City's permits are potentially subject to appeal.

8. Metro has applied to the City and to the U. S. Army Corps of Engineers for permits to install a temporary construction dock that will allow barging of bulk materials during construction of the West Point project. Metro has also applied for other permits and approvals that are necessary for construction of the West Point project. These permits and approvals are potentially subject to appeal.

9. The parties agree that the prompt achievement of secondary treatment is vital for the protection of Puget Sound. The parties desire to settle all disputes and differences between them, on terms that ensure that the West Point project meets mitigation objectives and moves forward unimpeded by further challenges or appeals.

WHEREFORE, in consideration of the matters recited above and agreements set forth below, the parties agree as follows:

1. SLUDGE PROCESSING

Sludge processing may occur on-site at West Point, subject to the following:

(a) Metro shall continue the development, implementation and acceleration of the Riedel/SMI process in accordance with Metro Council Resolution No. 5575.

(b) If Metro determines that the Riedel/SMI process is not successful, Metro shall have the option to implement an alternative sludge handling process or processes at West Point, provided such alternative processing system (i) reduces the total area on site occupied by the digesters and other sludge processing facilities; (ii) does not require structures higher than those currently planned for that area; and (iii) serves the goal of minimizing sludge truck traffic.

(c) If the Metro Council decides to replace digesters at West Point with either the Riedel/SMI process or an alternative sludge processing system authorized under subsection 1(b), Metro shall promptly remove those digesters; landscape the area in which they

were located in a manner consistent with the primary function and central purpose of Discovery Park (as defined in the Discovery Park Master Plan), and compatible with the beach and the balance of the Metro site which is open to the public; and dedicate that area to the public.

(d) If neither the Riedel/SMI process nor any alternative meeting the requirements of subsection 1(b) is implemented by December 31, 2005, Metro shall pay to the City, for deposit in the City's Shoreline Park Improvement Fund, \$1,000,000 per acre for the land area which, because of the presence of the digesters, is not available for public access; provided, however, that Metro may elect to make available for permanent public access other land within the footprint defined in subsection 3(a), in which case its payment obligation shall be reduced proportionately. Each parcel of such other land shall be contiguous with an area of existing public access and improved in the manner provided in subsection 1(c).

All funds paid under this subsection shall be dedicated to improvements to Discovery Park consistent with the primary function and central purpose of the park as defined in the Discovery Park Master Plan and, if any funds remain, to the acquisition and improvement of saltwater beaches. Metro shall place one fourth of this amount in an interest-bearing account no later than January 1, 1992. On each of the three succeeding anniversaries of this date, if Metro is proceeding with construction unhampered by legal challenges or appeals of any kind related to permits or approvals for its project, Metro shall place an additional one fourth in the same interest-bearing account. Any payment of principal to the City under this subsection shall be accompanied by payment of the accumulated interest earned thereon. To the extent such payment is not required, the principal plus accumulated interest shall be released for Metro's disposition as soon as a contract is awarded for the alteration or removal of sludge processing facilities, or alternative land is made available for permanent public access.

(e) Metro shall budget at least \$5,000,000 between now and the year 2000 for applied research and development on sewage and sludge processing technologies to reduce the impacts of sewage treatment and solids handling, including sludge truck trips, sludge truck noise, and the footprint of sludge handling facilities at West Point. Such funds shall be in addition to any funds expended in connection with Metro's silvaculture program. Metro shall form an independent advisory committee to participate in the research and development efforts funded under this subsection. This advisory committee shall include one representative from each of the following groups: Legal Advocates for Washington, Friends of Discovery Park, Magnolia Community Club, and Puget Sound Water Quality Defense Fund. The advisory committee shall function as a

subcommittee of the Water Quality Committee and advise it and the Metro Council.

2. PLANT CAPACITY

Metro shall have the right to increase the capacity of the treatment plant above an average wet weather flow ("AWWF") of 133 mgd so long as the plant size limitations of section 3 are met, and so long as the annual discharge of pollutants by weight is no greater than the annual discharge of pollutants by weight which is permitted by applicable water quality standards (30 mg/l for SS and BOD) for the plant operating at 133 mgd (AWWF).

3. PLANT FOOTPRINT AND HEIGHT

(a) The above-ground footprint of the plant shall not exceed 32 acres under any circumstances.

(b) The footprint of the plant shall be limited to the area shown on Drawing 99011, Hearing Examiner Exhibit 390.

(c) The reduction of plant footprint associated with removing the digesters and implementing an alternative sludge processing technology is governed by Section 1 above.

(d) The height of the structures contained on the site shall not exceed the height limitations set forth in Exhibit 1, regardless of the future use of said structures; provided, however, that this limitation does not prohibit the addition of non-obtrusive noise baffling or air emission control facilities.

4. ADDITIONAL CONSTRUCTION ACTIVITIES

Following completion of the construction of the secondary treatment facilities presently proposed by Metro at West Point, no additional exterior construction activities shall take place on the West Point site, except as follows:

(a) Metro may undertake such construction activities as are necessary to implement the Riedel/SMI process or an alternative sludge processing system.

(b) Metro may remove the digesters and any other structures no longer required for sewage treatment purposes, or otherwise reduce the footprint of the plant.

(c) Metro may do any maintenance work required to keep the plant in acceptable operating condition.

(d) Metro may construct additional odor or noise control facilities or equipment.

(e) Metro may improve the project's landscaping and public access amenities.

(f) Metro may make North Beach or South Beach improvements.

(g) Metro may increase the capacity of the plant, subject to the limitations set forth in Sections 2 and 3.

(h) Metro may make improvements which are required by regulatory authorities or necessary or desirable for improvement of water quality; provided, however, that any improvements related to outfalls shall be constructed in such a way as to minimize disruption of public use of North Beach and South Beach.

Any construction undertaken pursuant to this section shall comply with the plant footprint and height limitations of Section 3.

5. EMPLOYEE TRANSPORTATION MANAGEMENT PLAN

Metro shall implement an employee transportation management plan which, at a minimum, contains the provisions set forth in Exhibit 2.

6. OFFSITE MAINTENANCE TRAFFIC PLAN

Metro shall implement a traffic management plan for maintenance facilities and workers which, at a minimum, contains the following provisions:

(a) Metro shall locate and develop an offsite facility for storage of equipment and parts used for Metro's pump stations and other non-West Point facilities.

(b) Metro shall develop a plan for coordinating and scheduling maintenance of its pump stations and non-West Point facilities so as to minimize the number of trips to and from the West Point site by maintenance personnel.

7. TRUCK TRAFFIC

(a) Trucks hauling sludge (or the equivalent product generated by the Riedel/SMI or other sludge processing system) shall operate only during the hours prescribed by the City's project-level permits.

(b) The brakes, tires, lights, exhaust systems, and emergency equipment on trucks used in construction and in the hauling of sludge or hazardous chemicals through the Magnolia community shall be inspected at least quarterly. Any deficiencies found by such

inspections shall be corrected or repaired before the trucks are again used in the Magnolia community.

8. NOISE

(a) Noise produced by the construction of the West Point treatment plant shall not exceed the standards of the currently effective Seattle Noise Ordinance when measured at residences south of the site. Metro agrees not to seek any variance, waiver, or technical correction from the noise standards applicable to such residences.

(b) Noise produced by West Point plant operations shall not exceed the limits set forth in the City's project-level conditions. The plant shall be designed so that noise produced by the operation of fixed mechanical equipment is below the background noise level on the beaches (i.e., mean higher high water).

(c) Metro shall be responsible for compliance with the noise standards applied by the terms of its permits for the project and by the terms of this agreement.

9. LANDSCAPING

(a) If Metro creates any long-term stockpile of soil during construction, that stockpile will be hydroseeded immediately to minimize erosion and minimize its visual impact.

(b) To the extent feasible, landscaping shall be installed concurrently with the construction of the treatment plant improvements.

10. DISCOVERY PARK IMPACT MITIGATION

(a) The parties agree to jointly seek the agreement of the Seattle Parks Department and City Council that a total of \$12 million from the Shoreline Park Improvement Fund established by the City shall be used for improvements to and maintenance of such improvements in Discovery Park. Such improvements shall be consistent with the primary function and central purpose of the park as defined in the Discovery Park Master Plan and shall include enhancements to bald eagle and other wildlife habitat within Discovery Park.

(b) The parties agree to jointly seek the agreement of the Seattle Parks Department and City Council that the funds provided by subsection 10(a) will be administered by the Superintendent of the Seattle Parks Department, with the assistance and advice of an advisory committee consisting of the Manager of Discovery Park and one representative from each of the following groups: Legal

Advocates for Washington, Friends of Discovery Park, Magnolia Community Club, and Puget Sound Water Quality Defense Fund.

11. COMMUNITY IMPACT MITIGATION

(a) Metro shall contribute an additional \$500,000 to the community improvement fund required by plan permit condition 10.B, for improvements in the Magnolia community in addition to those that will be provided under plan permit condition 10.B. This additional contribution shall be paid to the City at the same time that Metro pays the initial installment of the amount required under subsection 11(b). The parties agree to jointly seek the agreement of the City that the funds provided under this subsection will be administered with the assistance and advice of an advisory committee consisting of one representative from each of the following groups: Legal Advocates for Washington, Friends of Discovery Park, Magnolia Community Club, and Puget Sound Water Quality Defense Fund.

(b) On the day that this agreement is signed, Metro shall place \$500,000 in an interest-bearing account. Metro shall distribute the funds in this account as follows: On the day that on-site construction begins under the site preparation contract, Metro shall pay to the order of the Reed McClure Client Trust Fund the sum of \$250,000, with interest accumulated thereon. Metro shall thereafter make a further payment to the Reed McClure Client Trust Fund of \$250,000, with interest accumulated thereon; provided, however, that prior to any such payment, Defense Fund, Friends, and LAW shall have submitted to Metro evidence showing that their legal expenses related to the West Point project are not less than \$500,000. This evidence shall be in a form sufficient to support a court award of attorneys' fees (including the date, attorney, subject matter, time, and charge for each time entry).

Defense Fund, Friends, and LAW shall be solely responsible for the application or distribution of funds paid under this subsection; provided, however, that no part of such funds may be used to support, directly or indirectly, any lobbying or litigation in any forum in which Metro is an adverse party.

(c) It shall be a condition of Metro's obligation to make any payment under subsection 11(b) that there has been, subsequent to February 1, 1991, no legal challenge or delay, obstruction or appeal of any kind by any person (whether or not a party to this agreement, but excluding bidders and persons under contract to Metro) related to any permit or approval needed for construction and operation of secondary treatment facilities at West Point, including but not limited to construction dock permits and project-level permits; provided, however, that if a third party brings a legal challenge which is resolved promptly with no impact whatever upon the schedule for project construction, Metro shall pay the

amount set forth in subsection 11(b), minus (for each such challenge) the smaller of the cost to Metro of resolving that challenge or \$5000.

12. SUCCESSORS AND ASSIGNS

All terms and conditions of this agreement will be binding upon the successors and assigns of the parties.

13. PENDING LITIGATION AND APPEALS

(a) All parties shall execute, and Metro shall cause to be filed, stipulated orders or other appropriate pleadings that result in the dismissal (with prejudice and without fees or costs) of all pending litigation and appeals, whether in Superior Court, the Court of Appeals, the Supreme Court, or any other administrative or judicial body, relating in any way to the West Point project.

(b) All parties shall support Metro's project-level permits and permits to construct a barging facility for the construction of the secondary treatment plant. If Metro receives permits for a temporary barge dock, Metro shall use barging for, among other things, transporting aggregate to an on-site concrete batch plant, and Metro shall relay promptly to the City's Traffic Management Team any notice from the batch plant operator that it intends to bring more than 15 trucks to the site per day. If Metro does not receive permits for a temporary barge dock, Metro agrees not to assert untimeliness as a basis for dismissing an appeal by MCC of Metro's project-level shoreline substantial development permit.

(c) Subject only to their right (i) to enforce the terms of this agreement and (ii) to communicate with the City Department of Construction and Land Use regarding Metro's compliance with the City's project-level conditions, the parties shall not oppose or impede in any way issuance of any permits or approvals required for construction and operation of Metro's West Point project. Each party (other than Metro) shall execute a release and covenant not to sue of the form attached as Exhibit 3.

(d) This agreement shall be void in the event construction of Metro's West Point secondary treatment project is delayed by any legal challenge to or appeal of any permit or approval, other than an appeal filed by Metro or by a person acting on its behalf.

14. EAGLE HABITAT

Metro shall comply with all conditions of the bald eagle site management plan developed by the Washington Department of Wildlife and the biological opinion of the U. S. Fish and Wildlife Service which relate to the West Point project.

15. COMPLAINT OFFICE

Metro shall establish and operate, on a trial basis, a part-time complaint desk or office within the Magnolia community. If justified by the level of use, Metro will make this service available through the period of construction.

16. MISCELLANEOUS

(a) This document is the complete and final expression of the parties' agreement with respect to the terms of their settlement. All prior discussions and negotiations are merged herein and superseded hereby.

(b) This agreement has been drafted jointly, with the assistance and upon the advice of the parties' respective counsel.

(c) The parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party. The parties have not created for any third party any right to enforce this Agreement.

(d) Each corporate party warrants that the person signing this agreement and the attached release and covenant not to sue on its behalf has authority to sign and to bind the corporation.

(e) This agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(f) This agreement may be executed in counterparts or in any number of duplicate originals. Each counterpart shall be regarded for all purposes as a complete agreement, and all counterparts and duplicate originals shall constitute one and the same instrument.

SIGNED AND SEALED as of the date and year first written above.

PUGET SOUND WATER QUALITY
DEFENSE FUND

BY _____

Its _____

MUNICIPALITY OF METROPOLITAN
SEATTLE

BY Mark E. [Signature]

Its EXECUTIVE DIRECTOR

LEGAL ADVOCATES FOR WASHINGTON

FRIENDS OF DISCOVERY PARK

By _____

By Winston M. Byrum

Its _____

Its President

WASHINGTON ENVIRONMENTAL COUNCIL

MAGNOLIA COMMUNITY CLUB

By N. Gahler Madenwald

By Louise Johnston

Its President

Its President

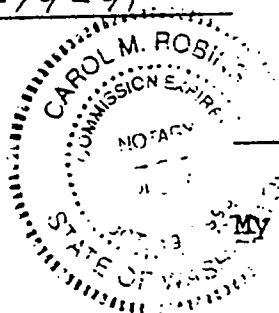
STATE OF WASHINGTON)

COUNTY OF KING)

ss.

I certify that I know or have satisfactory evidence that JOAN K. THOMAS signed this instrument, and on oath stated that (~~he~~/she) was authorized to execute the instrument and acknowledged it as the PRESIDENT of Puget Sound Water Quality Defense Fund, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-19-91



Carol M. Robb
NOTARY PUBLIC

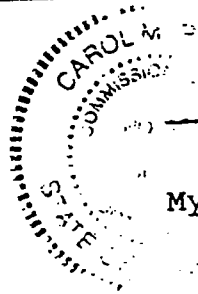
My appointment expires 10-19-93

(seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that ELIZABETH M. BERGGREN signed this instrument, and on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the PRESIDENT of Friends of Discovery Park, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-19-91



Carol M. Robinson
NOTARY PUBLIC

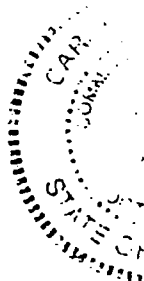
My appointment expires 10-19-93

(seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that MARK BLOOME signed this instrument, and on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the CHAIRMAN OF THE BOARD of Legal Advocates for Washington, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-19-91



Carol M. Robinson
NOTARY PUBLIC

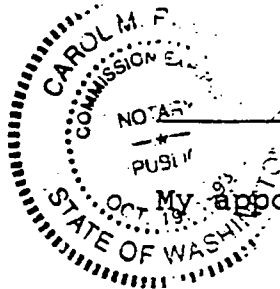
My appointment expires 10-19-93

(seal)

STATE OF WASHINGTON)
) SS.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that A. DARLENE MADENWALD signed this instrument, and on oath stated that (~~he~~/she) was authorized to execute the instrument and acknowledged it as the PRESIDENT of Washington Environmental Council, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-19-91



Carol M. F.
 NOTARY PUBLIC

My appointment expires 10-19-93

(seal)

STATE OF WASHINGTON)
) SS.
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that U. J. J. J. J. signed this instrument, and on oath stated that (~~he~~/she) was authorized to execute the instrument and acknowledged it as the President of Magnolia Community Club, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: February 11 1991

U. J. J. J. J.
 NOTARY PUBLIC

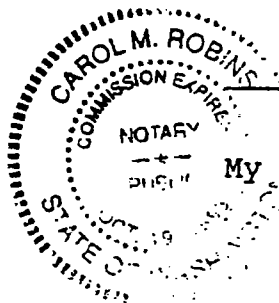
My appointment expires _____

(seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Richard L. [unclear] signed this instrument, and on oath stated that (he/~~she~~) was authorized to execute the instrument and acknowledged it as the Executive Director of Municipality of Metropolitan Seattle, a metropolitan municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2-19-91



Carol M. Robins
NOTARY PUBLIC

My appointment expires 10-19-93

(seal)