

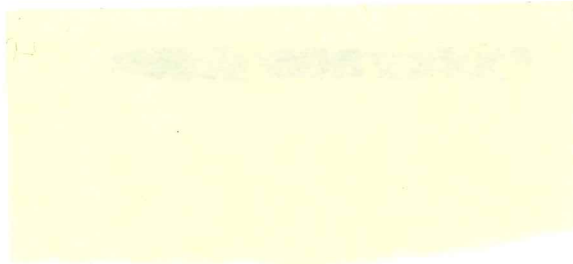
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Dated 9th December 2005

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (1)

and



PRE-EMPTION AGREEMENT

Relating to

Land at Westbrook Manor,

Dorstone Hereforshire.

THIS AGREEMENT is made the

9th

day of

December

2005

BETWEEN:

(1) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Franklin House
4 Commercial Road Hereford HR1 2BB ("the Seller")

and

(2) [REDACTED] and [REDACTED] of [REDACTED]
[REDACTED] ("the Buyer")

Definitions and interpretation

In this Agreement:

- 1.1 **'the Buyer's solicitors'** means MFG Solicitors 20/21 The Tything Worcester WR1 1HD
- 1.2 **'the Completion Date'** means the twentieth working day after the date of service by the Buyer on the Seller of the duplicate Offer Notice with the acceptance statement signed by the Buyer.
- 1.3 **'the Contract Rate'** means the Law Society Rate
- 1.4 **'a Disposal'** means a sale gift exchange transfer grant declaration of trust lease or agreement for lease and every other assurance of the Property or any interest in it by any instrument whether or not for valuable consideration except that any dealing in the Property relating to the grant of an easement for a new gas pipeline shall be expressly excluded.
- 1.5 **'the General Conditions'** means the Standard Conditions of Sale (4th Edition)
- 1.6 **'the Offer Notice'** means the notice signed by and served by the Seller pursuant to clause 4.
- 1.7 **'the Pre-emption'** means the right granted to the Buyer by Clause 2.
- 1.8 **'a Pre-emption Event'** has the meaning given in clause 3.

Pre-emption Event during the Pre-emption Period to buy the freehold interest in the whole of the Property at the Purchase Price.

3. Pre-emption Event

- 3.1 a Pre-emption Event occurs when the Seller decides to make a Disposal:
 - 3.1.1 whether by means of a single transaction or by a number of separate transactions whether or not at the same time.
 - 3.1.2 whether before or after he has negotiated terms for a Disposal to someone other than the Buyer.
- 3.2 If the Disposal is to be carried out by a number of transactions the Pre-emption Event occurs when the decision is made in relation to the first transaction.
- 3.3 The Seller shall not make a Disposal during the Pre-emption Period unless the procedure set out in clause 4 has been carried out.

4. Pre-emption Procedure

- 4.1 The Seller shall give the Offer Notice in duplicate to the Buyer immediately after a Pre-emption Event occurs
- 4.2 The Offer Notice shall be in the form set out in the Second Schedule and shall specify the Purchase Price.
- 4.3 The Pre-emption shall be exercisable by the Buyer signing the statement of acceptance at the foot of the Offer Letter and serving it on the Seller at any time within one month after service of the Offer Notice on the Buyer accompanied by or preceded by payment of the deposit in accordance with clause 5.
- 4.4 On the valid exercise of the Pre-emption the Seller shall sell and the Buyer shall buy the Property at the Purchase Price on the terms of this Agreement.

- 1.9 **'the Pre-emption Period'** means the period of Twenty years from the date of this Agreement.
- 1.10 **'the Property'** means the property described in the First Schedule
- 1.11 **'the Purchase Price'** means the purchase price specified in the Offer Notice which shall be the purchase price at which the Seller offers to sell the Property to the Buyer.
- 1.12 **'the Seller's Solicitors'** means Gabbs of 2 Chancery Lane Hay-on-Wye Hereford HR3 5DJ
- 1.13 where the context so admits the expressions 'the Seller' and 'the Buyer' include their respective successors in title.
- 1.14 words importing one gender shall be construed as importing any other gender.
- 1.15 words importing the singular shall be construed as importing the plural and vice versa.
- 1.16 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa.
- 1.17 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.
- 1.18 the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation
- 1.19 any reference to a clause or paragraph or a schedule is to one in this Agreement so numbered.

2. **Grant of the Pre-emption**

In consideration of One pound (£1) paid by the Buyer to the Seller (receipt of which is acknowledged) the Seller grants to the Buyer the right following the occurrence of a

- 4.5 If the deposit is not paid in accordance with clause 4.3 the purported exercise of the Pre-emption is ineffective.
- 4.6 The Offer Notice may not be withdrawn or varied before the expiry of the period for acceptance of the offer.
- 4.7 The parties shall do all things necessary to ensure that the exercise of the Pre-emption constitutes an enforceable agreement for sale and purchase in accordance with the Law of Property (Miscellaneous Provisions) Act 1989 Section 2 or any statutory re-enactment or modification of it for the time being in force.

5. Deposit

The Buyer shall on or before exercising the Pre-emption pay a deposit of 10% of the Purchase Price to the Seller's Solicitors as stakeholders by means of cash or telegraphic or other direct transfer banker's draft or a building society cheque or a cheque drawn on a solicitor's clients' account.

6. Failure to exercise the Pre-emption

If the Buyer rejects or fails to accept the offer contained in the Offer Notice the following provisions apply:

- 6.1 The Seller may at any time within six months after the earlier of the date of rejection or of time for acceptance of the offer has expired make a Disposal of the Property or any part of it to a third party at a purchase price or for valuable consideration not less than that specified in the Offer Notice (or in the case of a Disposal of part of the Property at the appropriate proportion) and otherwise on the same terms as are contained or incorporated in the Offer Notice.
- 6.2 If such Disposal is completed the Pre-emption shall cease and be extinguished in relation to the premises comprised in the Disposal.

- 6.3 If the Disposal is of less than the whole of the Property the Pre-emption shall continue in respect of the remainder of the Property until the expiry of the Pre-emption Period.
- 6.4 If the Disposal does not take place within the period specified in clause 6.1 or having taken place is never completed the Pre-emption shall continue in respect of the whole of the Property until the expiry of the Pre-emption Period.
- 6.5 For the purposes of clause 6.4 a Disposal takes place on exchange of contracts for the Disposal if there is one or otherwise on completion of the Disposal.
- 6.6 The Seller shall deliver to the Buyer copies certified by a solicitor to be true copies of:
- 6.6.1 the Disposal contract within seven working days of it being entered into and
 - 6.6.2 the draft assurance to the third party at least seven working days before the intended completion date.

7 Completion

Completion of the sale and purchase and payment of the balance of the Purchase Price shall take place on the Completion Date at the offices of the Seller's Solicitors or where they may direct.

8. Title guarantee

The Seller sells with full title guarantee.

9. Possession

The Property is sold with vacant possession on completion.

10. Title.

Title shall commence with a Conveyance dated 27th March 1920 made between

William Henry Vaughan (1) and the County Council for the Administrative Council of Hereford (2) and the Buyer or the Buyer's Solicitors having been supplied with an abstract of the title prior to the date of this Agreement the Buyer shall be deemed to purchase with full knowledge of the title in all respects and shall not raise any requisitions or make any objection in relation to the title except as to matters or events occurring after the date of this Agreement and except any easement granted by the Seller in respect of a gas pipeline under the Property

11. Matters affecting the Property

The Property is sold subject to the following matters:

- 11.1 all local land charges whether registered or not before the date of this Agreement and all matters capable of registration as local land charges whether or not actually so registered.
- 11.2 all notices served and orders demands proposals or requirements made by any local public or other competent authority whether before or after the date of this Agreement.
- 11.3 all actual or proposed charges notices orders restrictions agreements conditions contraventions or other matters arising under the enactments relating to town and country planning and environmental law.
- 11.4 all easements quasi-easements rights exceptions or other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement.

12. Disclaimer

The Buyer admits:

- 12.1 he has inspected the Property and enters into this Agreement with full knowledge of the actual state and condition of the Property and shall take the Property as it stands.
- 12.2 he enters into this Agreement solely as a result of his own inspection and on the basis of the terms of this Agreement and not in reliance upon any representation or warranty either written or oral or implied made by or on behalf of the Seller (save for any representation or warranty contained in written replies given by the Seller's Solicitors to any preliminary enquiries raised by the Buyer or the Buyer's Solicitors.
- 12.3 This Agreement contains the entire agreement between the parties.

13. Incorporation of conditions of sale

The General Conditions shall apply to this Agreement in so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the terms of this Agreement

14. Merger on completion

The provisions of this Agreement shall not merge on completion of the transfer of the Property so far as they remain to be performed.

15. Nature of this agreement

This Agreement is a deed and has been executed by the parties to it as a deed.

16. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party any right to enforce or any benefit of any term of this Agreement.

17. Registration

17.1 The Buyer shall within 21 days of the date hereof register at H.M. Land Registry a notice or at H.M. Land Charges a C (iv) Land Charge failing which this agreement shall be null and void and cease to be effective.

17.2 Following any Disposal when the Buyer fails to exercise this Pre-emption and on expiry of the Pre-emption Period the Buyer shall release the Property or part in respect of a Disposal of part from any notice or C (iv) Land Charge registered.

18. Other Provisions

The assurance of the Property following the exercise of the Pre-emption shall contain the development uplift covenants contained in the Third Schedule.

IN WITNESS where of the parties hereto have signed this instrument as their deed the day and year first before written.

FIRST SCHEDULE

The Property

Freehold land forming part of Westbrook Manor Dorstone Herefordshire shown for the purpose of identification edged red on the plan attached hereto.

SECOND SCHEDULE

Form of Offer Notice

Offer

To: [REDACTED] and [REDACTED] of [REDACTED]

[REDACTED]

From: **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Franklin House
4 Commercial Road Hereford HR1 2BB

Property: Freehold land forming part of Westbrook Manor Dorstone Herefordshire shown for the purpose of identification edged red on the plan attached hereto ("the Property")

This Notice is given in accordance with the terms of the Pre-emption Agreement dated 2005 made between The County of Herefordshire District Council (1) and [redacted] and [redacted] (2) relating to the Property ("the Agreement").

1. As required by clause 4 of the Agreement I **OFFER** to sell the Property to you at the current market price or calculated in accordance with the formula $X = Y \times \text{£}10,000$

where

X = the purchase price in pounds

Y = the area of land the Buyer seeks to purchase in acres

Whichever shall be the higher.

2. The other terms of the sale are contained in the Agreement and are incorporated in this offer.

Dated

Signed.....(Seller)

Acceptance

1. We [redacted] and [redacted] **ACCEPT** the offer to sell the Property contained in the Offer Notice of which this is a duplicate.

2. We have paid the deposit of (£) to

MFG Solicitors of 20/21 The Tything Worcester WR1 1HD

Dated

Signed (Buyer)

THIRD SCHEDULE

1) Positive Covenants by the Transferee

The Transferee shall within 6 months of the date of this Transfer erect and forever after maintain stock proof fencing along the external boundaries of the Property where such boundaries have yet to be established such fencing to comprise pig netting and two strands of barbed wire affixed to tanalised posts.

2) Development Uplift

2.1 Definitions

In this clause:

2.1.1 "the Chargeable Property" means the whole or any part of the Property in respect of which there has been a grant of Planning Permission;

2.1.2 "the Payment" means a payment calculated in accordance with the following formula:

$$50\% \times (A-B-C)$$

where:

A = the open market value of the Chargeable Property.

B = the higher of the open market value of the freehold interest in the Chargeable Property on the relevant payment date on the assumption that the Chargeable Property is currently and will forever after be used for agricultural purposes with no possibility of alternative uses and the acquisition price of the Chargeable Property calculated at £10,000 per acre.

C = any reasonable professional costs and disbursements (and VAT so far as it is irrecoverable by the Transferee as input tax) reasonably and necessarily incurred by the Transferee by the relevant payment date in obtaining the relevant planning permission.

2.1.3 **"the Period"** means 50 years from the date hereof.

2.1.4 **"disposal"** refers to a conveyance or transfer of the freehold interest in the Property or a grant of a lease for a term of 21 years or more relating to the whole or part of the Property under which money or money's worth becomes payable whether immediately or otherwise;

2.1.5 **"Payment Date"** means 28 days after the grant of Planning Permission;

2.1.6 **"Planning Permission"** refers to each and every occasion any outline or detailed planning permission is granted within the Period authorising the development of the whole or part of the Property for any non-agricultural or equestrian purpose;

Payment

2.2 **Obligation to pay**

On any Payment Date during the Period, the Transferee must make the Payment to the Transferor.

2.3 **Interest**

If the Payment is not made to the Transferor on the appropriate payment date then the Transferee must pay interest to the Transferor on late payment at a rate of 4% per year above the base lending rate of Lloyds TSB Bank Plc from time to time calculated on the period between the appropriate payment date and the date of actual payment of the Payment and all accrued interest on it.

2.4 Information

2.4.1 Copy documents

The Transferee must provide the Transferor with a copy of any document effecting or relating to a disposal including a contract for the sale or lease of the Property or any part of it within 7 days after the date of such document.

2.4.2 Planning applications

The Transferee must within 7 days after any application for a planning permission has been made inform the Transferor of that application and must supply to the Transferor a copy of each planning permission granted within 7 days of receiving the same.

2.4.3 Proposed actions

The Transferee must at all times keep the Transferor fully and promptly informed of any proposal to apply for planning permission or proposal for a disposal and of the terms of any such application or disposal and must promptly respond to any requests for information or copy documents from the Transferor in connection with a disposal application for planning permission or other issue relating to the Property including any request for confirmation that no disposal or application for planning permission has occurred or is anticipated.

2.5 Continuation of obligations

2.5.1 Direct covenants

The Transferee must not enter into a disposal of any interest in the Property or any part of it without ensuring that the transferee or lessee first enters into a deed of covenant with the Transferor containing the

same obligations and provisions as there are in this Transfer including this clause.

2.5.2 Application

The provisions of this clause are to apply to the whole of the Property. The fact that the Payment may have become payable or the fact that a Payment Date may have occurred in respect of part of the Property is not to expressly or impliedly release the balance of the Property from the provisions of this clause and is not to release the Chargeable Property from the provisions of this Clause should there be further disposals in relation to the Chargeable Property.

2.6 Release

2.6.1 Release of security to permit disposal

If there is a disposal the Transferor must release the restriction referred to at Clause 3 (e) above in all cases to the extent necessary only to permit the relevant disposal in relation to the Chargeable Property if the Transferee:

- 2.6.1.1 makes the Payment if one is due under the terms of this clause together with all interest due in respect of it and
- 2.6.1.2 delivers to the Transferor a deed of covenant duly executed by the Transferee and his successors in title as required by paragraph 7.5.1 of this clause; and
- 2.6.1.3 takes any necessary steps to maintain the restriction on the Chargeable Property.

2.6.2 Release of covenants.

Subject to full compliance with the terms of this clause following a disposal of the freehold interest the person making the disposal and only that person is to be released from any covenants given under this clause in so far as those covenants relate to the Chargeable Property.

2.6.3 Costs

The Transferee must pay the reasonable costs and expenses incurred by the Transferor in connection with the consideration or approval of any disposal or any documents relating to it or any deed as referred to in paragraph 7.5.1

2.7 Disputes

2.7.1 Reference to an expert

If any dispute or difference arises between the Transferee and the Transferor concerning any matter or thing of whatever nature arising out of or in connection with this schedule including any dispute as to valuation under paragraph 1.2 then unless another dispute resolution procedure is specified either party may refer the dispute or difference to the final decision of a person acting as expert agreed between them or failing such agreement appointed on the application of either party to the dispute or difference by the president or vice-president for the time being of the Royal Institution of Chartered Surveyors.

2.7.2 Costs

The fees and expenses of the expert including the costs of his appointment are to be in his award.

2.7.3 Replacement of the expert

If an expert appointed by the president or vice-president of the royal Institution of Chartered Surveyors dies or unduly delays or becomes unwilling or incapable of acting or for any other reason fails to make an award then either party to the dispute or difference may apply to the president or vice-president to discharge the expert and appoint another in his place. If the president or vice-president so decides he may discharge the expert and appoint another in his place and these provisions are to apply. The procedure is to be repeated as many times as are necessary until there is an award.

SIGNED AS A DEED by the said)
EGBERT PIETER SMIT and)
SARAH LOUISE SMIT in the)
presence of :)

[Redacted signature area]

Witness signature.....

[Redacted witness signature]

Witness name.....

[Redacted witness name]

Address.....

[Redacted witness address]

.....

[Redacted address line]

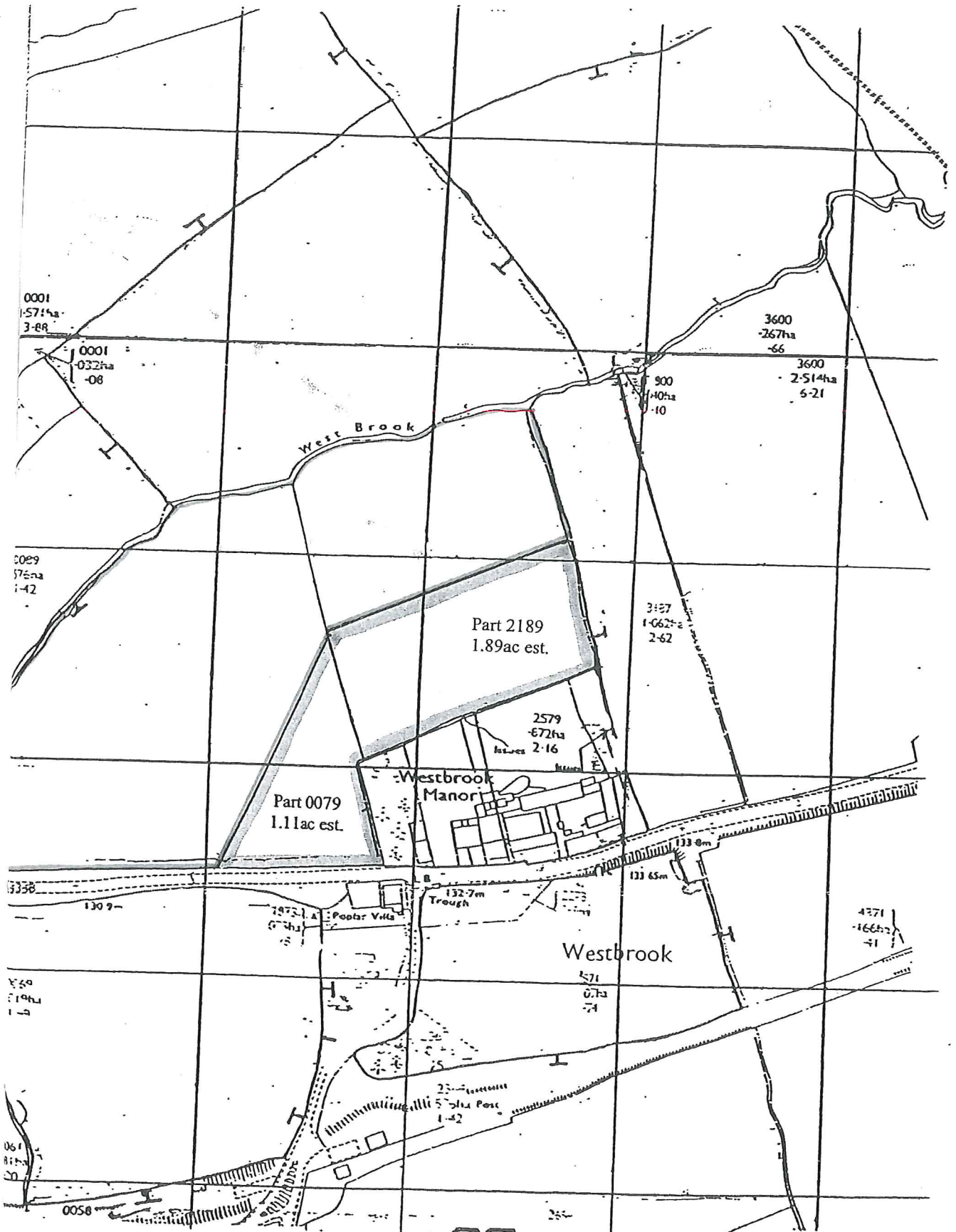
THE COMMON SEAL of **THE COUNTY OF
HEREFORDSHIRE DISTRICT COUNCIL** was
hereunto affixed **BY ORDER.**

Authorised Officer.

Plan of 3 acres adjoining Westbrook Manor, Dorstone.

Scale 1: 2500

Date: 09/08/2005



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