



CITY OF DUPONT
DEPARTMENT of Community Development
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PLANNING DIVISION
STAFF REPORT & RECOMMENDATION TO THE HEARING EXAMINER

Project: Pioneer Aggregates South Parcel Mine Expansion Project

File Numbers:
PLNG2021-006 (Site Plan Review)
PLNG2021-009 (Tree Modification)
PLNG2021-010 (Critical Areas Permit)
PLNG2021-002 (SEPA)

Date of Report: June 13, 2025

From: Barb Kincaid, Director of Public Services

Barb K

SUMMARY OF REQUEST: City approval for Type III Site Plan Review, Tree Modification and Critical Areas Permit.

PROJECT DESCRIPTION: The proposed *Pioneer Aggregates South Parcel Project* would occur on an approximately 313-acre site located on and to the southeast of the existing Pioneer Aggregates Mine in the City of DuPont. The site includes areas previously undisturbed by mining (termed the “Expansion Area”) and mining deeper within a portion of existing mine, referred to as the “Re- Mine Area.” The Expansion Area is approximately 188 acres and is comprised of three subareas as follows: The Kettle Area is a 10.8-acre previously undisturbed area; the 9.2-acre Buffer Strip is a strip of vegetation that was retained along the inside of the originally permitted mine bordering the South Parcel; and the South Parcel Area, which is 168 acres located southeast of the original mine. The Re-Mine Area consists of 125 acres in the southeastern portion of the existing mine where current mining activities are permitted above current groundwater levels. The Project includes horizontal expansion of mining into the Expansion Area, and vertical expansion of mining (deepening) in the Re-Mine Area.

LOCATION: The proposed South Parcel Project activities will be focused southeast of the existing Pioneer Aggregates Mine in the City of DuPont, southwestern Pierce County, sections 22, 23, and 26, Township 19 North, Range 1 East of the Willamette Meridian. The site is made up of 7 tax parcels: 011926-2015, -2016, 011923-3011, -3014, -3015, -3016, -3017. The existing mine (re-mine) area is comprised of 23 tax parcels: 011922-1007, -1008, -1009, -1010, -1011, -1012, -1013, 1014, -1015, 4004, -4005, -4006, -4007, -4008, -4009; 011923-2008, -2009, -2010, -2011, -2012, -3010, -3012 - 3013.

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SUMMARY OF RECOMMENDATION: Staff recommends approval of the Type III Site Plan Review, Tree Modification, and Critical Areas Permit, subject to conditions listed in Section J.

A. SUMMARY OF RECORD:

See the list of attachments provided in Section K, which includes the submittal plans and documents received for processing the application, public comments, and other documentation during the city review process (Attachments K1-10).

B. FINDINGS OF FACT

1. History

A detailed history of prior applications, agreements and environmental reviews associated with the CalPortland mining operations is provided below. The source of this information is the August 15, 2013, Type III Site Plan Review and Buffer Reduction Decision (LU12-02) for the North Parcel Mine (Attachment K.8.b) with more current history added. Additional detail can be found in on pages 2-8 through 2-11 of the EIS (Attachment K.7).

- a. Applications for the original Pioneer Aggregates Mine (Existing Mine) were submitted to the City of DuPont in 1991. Major elements of the proposal included segmental clearing, mining, and reclamation; construction of a processing facility; rehabilitating and using a then-existing dock in Puget Sound (subsequently removed) to ship the majority of mines aggregates by barge; and constructing an above-ground conveyor system to move material to the processing plan and to the dock. The South Parcel Expansion Area was not included at that time.
- b. In September 1993, following public hearings and a recommendation by the Planning Agency, the DuPont City Council approved the site plan application, shoreline substantial development permit and shoreline conditional use permit subject to extensive conditions of approval and mitigation measures.
- c. The Department of Ecology (ECY) denied the shoreline conditional use permit and several appeals were filed. The parties entered into the 1994 Settlement Agreement, wherein CalPortland abandoned plans to use the old DuPont wharf for commercial shipping of aggregates and agreed to pursue programmatic and permit actions necessary to locate an aggregate transshipment facility in the area of Tatsolo Point. These actions were addressed in the Pioneer Aggregates Barge Loading Facility and DuPont Shoreline Master Program Amendment Supplemental Environmental Impact Statement (1995).
- d. The programmatic actions included a map and text amendment of the City of DuPont Shoreline Master Program (SMP) to incorporate policies, use regulations, and development standards for the “Tatsolo Point Special Management Unit,” which permitted construction and operation of a dock for barge loading and shipping of aggregates. The shoreline environment (on both sides of the old dock) was re-designated from “Urban” to “Conservancy.” An access road for maintenance vehicles would also be

constructed from the processing plant to the dock. No changes in the mining, processing or reclamation elements of the Pioneer Aggregates project were proposed.

- e. Following adoption of the amendment by City Council (Ordinance 95-521), the revised master program was approved by Ecology in December 21, 1995. The City and Ecology also approved a shoreline conditional use permit for the barge-loading facility at Tatslolo Point. Mining operations began in 1997.
- f. Two amendments to the City's Comprehensive Plan were of particular importance to the North Parcel application. In 2001, the City amended the Comprehensive Plan Land Use map and text to reflect changed conditions and new information, and to achieve a better balance of land uses. The amendments included modifications to the Comprehensive Plan's Mineral Resource policies (LU-39 to LU-43) to establish a two-step process for conserving commercially significant mineral resource lands. First, ongoing planning and evaluation would be used to identify lands that contain significant mineral resources. Second, the city would designate newly identified mineral resources on the Comprehensive Plan Land Use map. Designation could occur concurrent with review of a proposed mining application or separately. An addendum to the EIS for the Comprehensive Plan was prepared and published in July 2001. In 2003, CalPortland (then Glacier Northwest) submitted an amendment to the DuPont Comprehensive Plan to designate additional known mineral resource lands of long-term significance in both the North Parcel (approximately 201 acres) and the South Parcel (approximately 177 acres). That amendment was approved by DuPont on July 25, 2012 (Ordinance No. 06-816). An Addendum to the Comprehensive Plan EIS (a non-project action) was published (City of DuPont, 2005) to document the environmental impacts of the Comprehensive Plan amendment.
- g. In December 2007, CalPortland (then Glacier Northwest) submitted applications to the City of DuPont to permit mining of the 177-acre South Parcel, and additional areas within the existing mine. Mining would have involved incremental clearing, mining, and reclamation of the site. The proposal also included removal of a Kettle wetland, removal of smaller seeps wetlands and creation of a new tributary to Sequalitchew Creek (sometimes called North Sequalitchew Creek). Groundwater from the mine site would have been collected in this new tributary, which would have an annual base flow of approximately 8 cubic feet per second (CFS) and would provide approximately 4,000 lineal feet of riparian habitat. The objective was to provide additional fish habitat and improve habitat conditions in Sequalitchew Creek, as well as dewatering the mine. An alternative dewatering approach was also considered, which would construct a pipeline, rather than an open stream channel, to collect and convey groundwater to Sequalitchew Creek. A Final Supplemental EIS for that proposal was published in May 2007. The City issued its staff report on the South Parcel application in January of 2009. Several parties to the 1994 Settlement Agreement challenged the South Parcel application. The city took no final action on the matter.
- h. Several parties to the 1994 Settlement Agreement asserted that the 2007 South Parcel proposal was inconsistent with such agreement and a mediation process was begun. In November 2009, a Memorandum of Understanding (MOU) was executed which identified a process for further study to identify and evaluate alternatives to improve the Sequalitchew Creek watershed. The MOU also outlines a SEPA review process, including public input, for any plans to mine the North Parcel and/or South Parcel. The Sequalitchew Creek Ecosystem & Watershed Restoration Alternatives Final Feasibility Study (Anchor QEA and Aspect Consulting, June 4, 2010), which resulted from the MOU, recommends two options for mining the North and South Parcels, and six alternatives for ecosystem restoration and enhancement. Study and evaluation were ongoing at that time.
- i. In June of 2011, various parties to the 1994 Settlement Agreement executed a Settlement Agreement for the DuPont Mine, Restoration of Sequalitchew Creek Watershed, and Preservation of Puget Sound Shorelands and Adjacent Open Space. The Settlement Agreement established a framework, for review and permitting of CalPortland's mining proposals along with a concurrent process for developing a mitigation program to restore and enhance the Sequalitchew Creek watershed and protect open space and the Puget Sound shoreline (the Sequalitchew Creek Restoration Plan). Signatories included CalPortland (then Glacier NW), Ecology, the City of DuPont, and a coalition of environmental groups consisting of the Nisqually Delta Association, Tahoma Audubon Society, Washington Environmental

Council, People for Puget Sound, Black Hills Audubon Society, Seattle Audubon Society, and Anderson Island Quality of Life Committee. Following an extensive public review process, the City of DuPont approved and signed the Settlement Agreement in January of 2012 (Attachment K.8.a). The Agreement articulates a phased series of planning, review and permitting actions that would occur over a several-year period. Compliance with these actions is a condition of the Environmental Caucus's support for CalPortland's proposals to mine the North and South parcels.

- j. Pursuant to the Settlement Agreement, CalPortland would also preserve a 45-acre open space area along Puget Sound, west of the mine area, including bluffs and an area for a pedestrian trail, and grant an easement for future public access for a pedestrian trail within the open-space area following close of the mine. No mining would occur within this open space area. The Settlement Agreement (Section 3.5) establishes procedures for finalization and recording of the conservation easement following review and agreement by the parties to the Agreement. This area is not located in the South Parcel Expansion Area or the Re-Mine area. The area was deeded to the City of DuPont via conservation easement on February 7, 2014. The area is currently owned by Northwest Aggregates and is designated by the City's Comprehensive Plan as Open Space. The required 15-foot-wide trail easement was recorded on February 10, 2014.
- k. On August 15, 2013, a Type III Site Plan Review and Buffer Reduction application (LU12-02) was approved with Conditions by the Hearing Examiner for the North Parcel Mine (Attachment K.8.b). That proposal was to mine approximately 142 acres of the 201-acre North Parcel. The mining activities were to include clearing, mining, and reclamation in 40-acre increments. Operating hours would be the same as for the existing operation: daytime hours, Monday through Friday, except for the barge loading operation (24 hours per day). Demand for materials, and operating hours, fluctuate both seasonally and with regional economic conditions.

2. Recent History

- a. The 2012 Settlement Agreement (Agreement) describes the required elements of the Sequalitchew Creek Restoration Plan (Restoration Plan), which CalPortland will fund to help restore flows and ecological functions from Sequalitchew Lake through Edmond Marsh into Sequalitchew Creek canyon. On November 1, 2023, the City of DuPont received a complete Site Plan Review and SEPA application from South Puget Sound Salmon Enhancement Group (SPSSEG) for the Sequalitchew Creek Restoration Plan project, which is currently under review as a separate but related project (PLNG 2023-007 and 2023-008) pursuant to the terms of the Settlement Agreement. Cal Portland is not to proceed with the South Parcel Project until the issuance of applicable permits for the Restoration Plan (with expiration of appeal periods). (Condition 2.a)
- b. City Staff have reviewed the staff report analysis that was completed for the 2013 land use decision for the North Mine (LU12-02). This Staff Report restates/reaffirms the conditions of approval in the 2013 decision where applicable to the South Parcel Project.

3. Proposal and Property Details

- a. The Pioneer Aggregates South Parcel Project ("South Parcel Project") includes horizontal expansion of mining into approximately 188 acres previously undisturbed by mining (Expansion Area), and vertical expansion of approximately 125 acres where re-mining will deepen a portion of the existing mine (Re-Mine Area). To expand mining operations, the project includes installation of wells to intercept and pump groundwater to dry out gravels for mining. The method and materials used for mining operations would otherwise remain the same as used at the existing mine. The main activities that would occur on the site include logging, clearing and topsoil removal, groundwater management, stormwater management, mining, processing and transport, and reclamation. The mining process requires equipment including a bulldozer, front-end loaders, portable hoppers, and conveyor belts. The South Parcel Project would extend mining at the current rate for approximately 14 additional years.

The Expansion Area is approximately 188 acres and includes a 10.8-acre kettle wetland area and a 9.2-acre buffer area. The wetland is to be filled and replaced in accordance with DMC replacement ratios. The Re-Mine Area is 125 acres where current mining is permitted above current groundwater levels. The South Parcel Project would occur on lands owned by Weyerhaeuser Company and leased to CalPortland/NW Aggregates.

- b. The City's Comprehensive Plan Future Land Use Map designates the South Parcel Project area as MRP in the southern half and a majority of the northern half is designated as Residential-4 (R-4). The northeast corner of the project area is designated Residential Reserve (RR). The existing mine parcel boundaries incorporate the Community Park (CP) and Open Space District; however, no mining activities are located in these areas. The wetland created as mitigation for filling the Kettle Wetland (located in the Expansion Area) is located in the CP-zoned area of the project limits. (see the Zoning Map in Section D, Figure 3, below). All of the South Parcel Project Area is within the Mineral Resource Overlay.

The proposed project is also in the Sequalitchew Village Planning Area. Adjacent uses include:

North: Existing Pioneer Aggregates mine

East: Industrial/distribution facilities and community garden

South: Vacant land proposed for warehouse use; Sequalitchew Creek, and the Creekside Village residential development

West: Existing Pioneer Aggregates mine and the Puget Sound



Figure 1- South Parcel Project Area and Adjacent Uses

4. Procedural Requirements

- A Notice of Complete Application was issued August 25, 2021. (Attachment K.6.a).
- A Notice of Application (NOA) was issued on August 30, 2021, with public comment period that was open until the conclusion of the SEPA EIS Scoping Period: October 20, 2021 (Attachment K.6.b). The notice of application was published in the News Tribune and posted at City Hall. The site was posted on August 27, 2021. Affidavits of publication and posting are provided in Attachment K.6.c.

- c. Approximately 88 comment letters were received from 43 commenters during the combined NOA/Environmental Impact Statement (EIS) scoping period with 6 letters from public agencies and Tribes. The comments are compiled in Attachment K.9.
- d. The comments received were in general opposition to the proposal as well as concerns related to specific environmental topics that were reviewed and documented as part of the SEPA process. Concerns expressed related to the land use application include compatibility of the proposed mining with surrounding and nearby uses, such as the Creekside Apartments and the Sequalitchew Creek Trail, impacts to public services and infrastructure. One commenter, The Nisqually Delta Association expressed support of the proposal due to its consistency with the 2012 Settlement Agreement.
- e. State Environmental Policy Act (SEPA) review (PLNG2021-002). A Determination of Significance (DS) and Scoping Notice was issued on September 17, 2021 (Attachment K.6.d). Agencies, tribes, and the public were encouraged to review and comment on the proposed projects and its probable environmental impacts during the comment period from September 17, 2021, through October 20, 2021. A public scoping meeting was held on September 30, 2021, to provide the public an opportunity to become more familiar with the proposal and to comment on the scope of the EIS. Copies of the DS/Request were mailed to federal, state, regional and local agencies, and tribes. The DS/Request was published in the Washington State Department of Ecology's SEPA Register and in the Tacoma News Tribune. It was also posted on the city's website and bulletin board. (Attachment K.6.f)
- f. The city reviewed the environmental impacts of the proposal using the DS process in WAC 197-11-360. The EIS evaluated two alternatives: a No Action Alternative (Alternative 1) and the proposed South Parcel project (Alternative 2). On June 14, 2024, the City issued the Draft EIS for a 30-day public comment period. The end of the comment period was July 15, 2024. Comments received during the DEIS comment period were evaluated and addressed in the Final EIS.
- g. The City issued the Final EIS on May 22, 2025, with a 14-day appeal period ending on June 5, 2025. As of this writing, one appeal was filed (Attachment K.10).
- h. The City issued a Notice of Public Hearing (NOH) on June 4, 2025, in accordance with the requirements of DMC 25.175.030(2) (Attachment K.6.h). The NOH was published in the News Tribune, posted at city hall and on the site, and emailed or mailed to all persons/agencies that commented on the proposal. In addition, the NOH was mailed to all property owners located within 300 feet of the proposal (Attachment K.6.h).
- i. The City issued a Revised Notice of Public Hearing on June 12, 2025, to correct the end of the comment date so that it did not fall on a holiday (Attachment K.6.j). The Revised NOH was published in the News Tribune, posted at city hall and on the site, and emailed or mailed to all persons/agencies that commented on the proposal. In addition, the NOH was mailed to all property owners located within 300 feet of the proposal (Attachment K.6.k).
- j. Per DMC 25.150.030 Site Plans, in order to obtain site plan approval, all of the development regulations and criteria specified in the district applicable to the property must be satisfied (DMC 25.60 Mineral Resource Overlay District). Additionally, the applicable regulations must be satisfied in Chapters 25.75 through 25.95 and 25.105 through 25.125 DMC.
- k. In the Decision for the North Parcel Mine (LU 12-02) (see Attachment K.8.b), the Hearing Examiner concluded that some of the site plan review criteria contained in DMC 25.150 were not applicable to the North Parcel mining application. Inapplicable provisions include those addressing commute trip reduction (DMC 25.75); landscaping (DMC 25.90); off-street parking (DMC 25.95); setback street corners (DMC 25.110); signs (DMC 25.115); and wireless communication facilities (DMC 25.125). This Staff Report provides the analysis of the proposal for consistency with the applicable regulations as determined by the Hearing Examiner for the North Mine with the following exception: The proposal shall meet the buffering standards in DMC 25.90 Landscaping based on the adjacent incompatible uses for visual, aesthetic and noise buffering.

- l. DMC 25.60.060 specifies that expansions of mineral extraction proposals that are 20 percent or greater than the existing mine shall be process as a Type III procedure.
- m. The proposal includes a request to modify the Tree Retention Requirements (DMC Chapter 25.120) through a Type III Tree Modification, and to impact critical areas (DMC 25.105), through a Type III Critical Areas Permit. This Staff Report includes an evaluation of each Type III request for consistency with the city code requirements. Consistency Analyses for Site Plan Review is provided in Section D, Critical Areas Permit in Section E, and Tree Modification in Section F.
- n. The evaluation of the Type III permits was completed by first evaluating the information provided for the project permits and determining if there was consistency with the DMC. In the absence of reaching a conclusion, the evaluation turned to the EIS for additional information. In the absence of finding the additional information in the EIS, the evaluation turned to the terms of the Settlement Agreement and/or the Sequalitchew Creek Restoration Plan for additional information. In the instances where no regulations are provided in the DMC, the analysis defers to the analysis of consistency with the City's Comprehensive Plan. The staff report explains which sources of information were used to reach conclusions and, where necessary provides conditions to reconcile gaps in the information provided.
- o. Throughout this report there are references to certain requirements that must be met prior to the commencement of mining activities. These "mining activities" mean all work required for mineral extraction and the required de-watering within the South Parcel area with the exception of the initial pump testing.

C. CONSISTENCY WITH CITY OF DUPONT COMPREHENSIVE PLAN

The proposal is located in the Sequalitchew Village Planning Area. The future land use map depicts land use designations within the South Parcel Project as being mostly Manufacturing and Research, with a portion in Parks land. The City's Comprehensive Plan describes the Sequalitchew Village as follows:

Sequalitchew Village includes the area of the City bounded by Puget Sound to the north and west, the manufacturing research park and industrial areas to the east and Sequalitchew Creek on the south. This village is planned as a mixture of residential types and densities in the northern two-thirds of the area, and manufacturing and research park uses in the southern one-third. It is named for the creek and canyon which form its southern border. Nearly this entire village is within the mineral resource overlay boundary. Gravel extraction by Glacier Northwest is currently underway in this area and is expected to proceed over a long term. Development is not likely to begin within this area within the foreseeable future. (Page 59)

DMC Chapter 25.175.040, Consistency with Development Regulations, requires evaluation of the proposal's consistency with the city's Comprehensive Plan in the absence of applicable development regulations.

This Section C presents a summary of the few instances where the DMC does not contain applicable regulations for the South Mine proposal. These include Parks Zoning requirements (for which there are none), protection measures for citywide Cultural and Historic Resources, and protection measures for aquifers. In these instances, the relevant Comprehensive Plan goals and policies are excerpted below and used as guidelines to determine consistency with the regulations.

The city is in the process of updating the Comprehensive Plan. At this time there are no known goals or policies that would change the analysis presented below, with one exception: The City is working on strengthening its goals and policies for the protection of cultural and historic resources.

The following goals and policies are evaluated for consistency with the proposal:

1. Land Use Goals and Policies

- a. **LU-3.5:** The Mineral Resource Overlay designation shall be enforced and recognized for a length of time corresponding to the completion of excavation and reclamation within the designated area.
- b. **LU-3.6:** Employ practices that protect the long-term integrity of the natural environment, adjacent land uses, and the long-term **productivity** of resource lands.
- c. **LU-10:** Recognize the value of **mineral** resource extraction while protecting the integrity of the natural environment.
- d. **LU-10.1:** Encourage segmental **reclamation** and reuse of mined areas using established reclamation practices in accordance with approved reclamation plans.
- e. **LU-10.2:** Understand that mining may continue into the future and periodically update, land use mapping, Mineral Resource Overlay designation, phasing schedules, and management plans for extractive operations with approved mining permits.
- f. **LU-10.3:** Ensure mining activities employ best management practices that protect the long-term integrity of the natural environment, water resources, adjacent land uses, and the long-term productivity of the resource lands.
- g. **LU-10.4:** Following the completion of excavation of mineral resources with designated mineral lands, encourage reuse and redevelopment of reclaimed mining areas north of Sequalitchew Creek in a manner consistent with underlying City zoning designations, understanding that any non-mining development shall be consistent with continued mining operations on the balance of the site.

Staff Analysis and Conclusion: The proposal is for a mine expansion that is to be completed and reclaimed in a segmental process, which aligns with the intent of the Mineral Resource Overlay and LU 3.5, LU-3.6, LU-10, LU 10.1, LU10.2, LU-10.3. The proposal has been conditioned for the applicant to apply for the removal of the Mineral Resource Overlay designation following the completion of mining and reclamation activities, consistent with LU-10.4. Policies LU-3.6, LU-10 and LU 10.2 seek a balance of encouraging mining activities while protecting the long-term integrity of the natural environment (Condition 20). An EIS has been prepared, which analyzes the potential impacts of the mining proposal (assuming concurrent implementation of the Sequalitchew Creek Restoration Plan) on various aspects of the natural environment and provides best management practices and measures to mitigate the impacts. The EIS concludes that the mining activities will have significant unavoidable adverse impacts to the natural environment as follows:

Groundwater (Aquifer):

- *The Vashon Aquifer water table would significantly decrease in the vicinity of the South Parcel. Groundwater levels beneath Edmond Marsh, the closest marsh to the site, are predicted to decrease by up to 0.87 feet near its center (at MW-EM-2S) and remain up to 0.84 feet lower following completion of the Proposed Action. At the west end of the marsh (MW-EM-1S), long-term groundwater level declines of up to 8.73 feet could occur.*
- *Groundwater discharge in the Sequalitchew Creek ravine is expected to significantly decrease (by an annual average of up to 83%) at the peak of active dewatering (Step 3) and is expected to provide on average 79% less baseflow to Sequalitchew Creek during the passive phase of dewatering in Step 4 and following completion of mining. Greater percentage decreases in baseflow are expected during the dry season. Impacts to baseflow quantity could be mitigated by the Sequalitchew Creek Restoration Plan, except during low-flow or no-flow periods when surface water outflow from Sequalitchew Lake does not occur which will occur about 10% of the time.*

Surface Water (Streams, Wetlands):

- *Increasing the surface water gradient between Sequalitchew Lake and the top of the ravine to restore the natural flow regime to the Sequalitchew Creek watershed, in combination with lower groundwater levels resulting from mining, would result in water levels in East and West Edmond Marshes being lowered by up to approximately 3 ft compared to existing conditions.*
- *Water levels in isolated lakes and kettle wetlands not directly connected by surface water to the Sequalitchew Creek system would be lowered due to lowered groundwater levels from the Proposed Action. The anticipated decrease in water levels would be approximately 3 ft for Wetland 1D; 2 ft for Pond Lake; 1 ft for Wetlands, #8, #9, #10, and #11; and 0.5 ft for Old Fort Lake. Implementation of the Restoration Plan would likely not mitigate these impacts. These isolated wetlands have significant seasonal variability in water levels and are often dry during the summer. For these reasons, changes that result from changes in groundwater level may be difficult to observe.*
- *Flows in the ravine section of Sequalitchew Creek would likely be lower than under existing conditions an estimated 10% of the time due to the reduction in groundwater seeps and spring discharges to the creek following groundwater lowering. This would have adverse effects on aquatic habitat discussed in Sections 3.5 and 3.6.*
- *Water temperatures in Sequalitchew Creek from April through September would likely be warmer than under existing conditions and could be expected to exceed 16°C (the 7-day average of daily maximum temperatures water quality criterion provided in WAC 173-201A-200) from May to September.*
- *If the contingency mitigation measure of conveying the intercepted groundwater from the eastern slopes of the proposed expansion area to Sequalitchew Creek and/or West Edmond Marsh is feasible and implemented as part of the adaptive management process for the Proposed Action and Restoration Plan Alternative, the flow and temperature impacts to Sequalitchew Creek would likely be at least partially reduced, if not eliminated, and may result in greater overall improvement of conditions within the creek.*
- *Flows in the JBLM Diversion Canal would be reduced with the redirection of Sequalitchew Lake outlet flows to the historically natural drainage course through Sequalitchew Creek. Because the Diversion Canal was originally constructed to convey stormwater flows from JBLM and provide a watercourse for Sequalitchew Lake outlet flows, the reduced flows in the Diversion Canal are not considered an adverse impact.*
- *Because on-site stormwater flows will be managed in a similar manner as existing conditions (i.e., on-site collection, conveyance, and infiltration) and because the removal of the Kettle Wetland will be mitigated by a new constructed wetland, no significant unavoidable adverse impacts to on-site surface waters are anticipated under the Proposed Action and Restoration Plan scenario.*

As described above, the Sequalitchew Creek Restoration Plan and its adaptive management plan, together with the Monitoring and Response Plan and its adaptive management will likely avoid or reduce significant unavoidable impacts in keeping with policies LU-3.6, LU-10 and LU 10.2. However, no mitigation is provided for the significant unavoidable impacts to the surface water bodies located to the south of Sequalitchew Creek (Wetland 1D; Pond Lake; Wetland #8, #9, #10, and #11; and Old Fort Lake). While the EIS finds that the natural seasonal fluctuations in water levels may make it difficult to observe changes to these water bodies, these impacts do not align with Comprehensive Plan policies for protection of the long-term integrity of the natural environment.

It is to be noted/acknowledged that the purpose and intent of the Restoration Plan is to improve fish habitat, which is an important environmental and cultural benefit. However, by doing so, there are potential

unavoidable significant adverse impacts to other elements of the environment. The DMC and Comprehensive Plan do not provide flexibility in determining whether a greater environmental benefit is achieved and/or whether the natural resource (mineral) extraction is of a higher priority than protecting the natural environment. Additionally, the EIS and Sequalitchew Creek Restoration Plan do not reach a conclusion. Therefore, staff concludes that without mitigation for impacts to the wetlands located to the south of Sequalitchew Creek, the proposal does not align with Comprehensive Plan policies LU-3.6, LU-10 and LU 10.2 for the protection of the long-term integrity of the natural environment. The applicant shall prepare critical area report(s) and mitigation plans for city approval to mitigate impacts to the wetlands located south of the Sequalitchew Creek in accordance with DMC 25.105.050. The report and mitigation plan shall be prepared and approved by the City prior to commencement of mining activities.

Another concern or potential impact is related to the long-term, post-mining groundwater levels of the Vashon Aquifer. The EIS assumes that changes within the Vashon Aquifer are predicted to stabilize within approximately 60 days after pumping stops based on model results. However, the EIS predicts the aquifer levels will be lower post mining compared to the existing condition. This type of impact requires implementation of BMPs per LU-10.3 for the protection of water resources.

The applicant shall submit additional information within the Monitoring and Response Plan, which is required to be submitted to the City and approved prior to commencement of mining activities, that describes the Vashon Aquifer groundwater levels in the post-mining condition, potential environmental impacts, and the best management practices to be utilized for the protection of these water resources consistent with Comprehensive Plan policy LU-10.3 (Condition #7).

2. Natural Environment Goals and Policies

- a. **NE-1.1:** Preserve environmentally sensitive areas and those that are valuable natural and aesthetic resources to the city.

Staff Analysis and Conclusion: A Category III Kettle Wetland is located within the Expansion Area and will be unavoidably impacted by the mining proposal as a result of changing the hydrology. The proposal is to replace the wetland with a new created wetland in the southwest portion of the existing mine's bottom. The created wetland will be monitored over a 10-year period and assessed each monitoring period for its success against measurable performance goals. The design and adaptive management plan seek to replace the loss of wetland habitat associated with the Kettle Wetland with a new wetland that is potentially of higher value (Category II vs. Category III). As proposed in the Mitigation Plan, the habitat value of the Kettle Wetland will be preserved within the mine boundaries, meeting the goals of NE 1.1.

The existing Kettle Wetland is located in the center of the mine, on private property where public access is prohibited. It is not visible to the public; therefore, it has no aesthetic resource at this time. The created wetland is to be located on land that is zoned for Community Park. The City has conditioned approval so that upon completion of all mining activities and the 10-year maintenance and monitoring period, the City will obtain ownership of the land, and the public will have access to the area via a new trail network. As conditioned the proposal will improve valuable natural and aesthetic resources, consistent with NE 1.1. (Condition 12)

An evaluation of the impacts of the proposal to the aquifer and offsite sensitive areas is provided in Section C.1 above. Impacts to the sensitive areas located east and south of Sequalitchew Creek would not be consistent with NE-1.1 and requires submittal of a critical areas report and mitigation plan. (Condition 21)

It is unlikely that aesthetic impacts would result, however, through the changes to the offsite areas.

- b. **NE-1.4:** Work with JBLM, the Department of Ecology, Glacier NW, environmental groups, and other affected parties to restore and improve the flow of water through Sequalitchew Creek.

Staff Analysis and Conclusion: This policy is consistent with one of the purposes of the 2012 Settlement Agreement. The parties to the Settlement Agreement, include those named in NE 1.4. In 2023, an application was submitted for the restoration of Sequalitchew Creek (Restoration Plan) by South Puget Sound Salmon Enhancement Group, which is currently under separate review by the City (PLNG2023-007 and -008). JBLM has issued a “JBLM Acknowledgement” of the Restoration Plan and is required to provide a Notice of Consent prior to the onset of mining activities. Glacier NW (the applicant of this proposal) is obligated to provide funding. The Nisqually Delta Association submitted a comment letter in support of the South Parcel Mine Expansion Project and that the proposal is consistent with the Settlement Agreement.

The goals of the Settlement Agreement as stated in Section 1.9 are to:

“... help restore and enhance the Sequalitchew 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 Sequalitchew Creek restoration would occur concurrently, with the restoration funded by CalPortland up to an agreed-upon amount as certain milestones are met...”

The proposal has been conditioned to require the Restoration Plan be prepared, permitted and implemented in compliance with the details of the Settlement Agreement; require permit issuance for the Restoration Plan prior to the onset of any mining activity; that restoration be implemented concurrent with mining activity; and that the Restoration Plan be prepared, that adaptive measures continually monitor and revise the mining activities and Restoration Plan with the goal to achieve prescriptive performance standards. The City has conditioned the proposal to ensure that the monitoring plans and the Restoration Plan be evaluated and implemented in accordance with the requirements of DMC 25.105 Critical Areas. (Condition 2)

As conditioned, the proposal is in compliance with NE 1.4.

- c. **NE 4.1:** Ensure all development meets or exceeds applicable federal, state, regional, and local air quality standards.

The project is conditioned to require the applicant to obtain and provide the City with the applicable US Environmental Protection Agency, Federal Emergency Management Agency, Washington State Department of Ecology, Washington Department of Natural Resources, and Puget Sound Clean Air Agency permits associated with the South Parcel expansion of the mine. (Condition 4)

3. Parks and Recreation Goals and Policies:

A portion of the existing mine property has a “Parks” land use designation and a “Community Park” zoning designation. The replaced/created wetland will be located within this area (see Figure 2, Zoning Map). The DuPont Municipal Code does not contain any regulations related to the Community Park zone. Per DMC 25.175.040, Consistency with Development Regulations, evaluation of the proposal’s consistency with the city’s Comprehensive Plan is required when there is an absence of applicable development regulations. Chapter 7, Parks and Recreation chapter of the Comprehensive Plan, refers the reader to Appendix F for the Parks, Recreation and Open Space (PROS) Plan. The 2014 PROS Plan, however, is provided as Appendix D. The following summarizes the PROS Plan intentions specific to the onsite Parks-designated property, including Parks-related goals and policies.

- a. **Executive Summary**

Long Term Priority – Add a park at the Wilkes Observatory site and one on the north side of Sequalitchew Creek to highlight unique cultural sites and improve community connections to Puget Sound. (Long Term Priority)

Recreation Facilities – Consider providing new recreation opportunities along the Puget Sound. (Long Term Priority)

Natural Areas and Trails – Secure a natural area corridor above Puget Sound connecting from Tract I Park [south of the site] to the Sequalitchew Creek corridor and further to the north. Provide Puget Sound viewpoints and trail access through this corridor and switchback trail. (Long Term Priority)

The CP-zoned area is not shown as an “Existing Park” on the Existing Park exhibit.

b. Goals and Objectives

Goal 3 - Integrate natural resources and open spaces, including Sequalitchew Creek, Edmond Marsh, and Puget Sound, into the park system.

Objective 3B - Coordinate the trail system with natural area preservation areas, responding to environmental conditions and preservation priorities while providing public access where feasible.

Objective 3D - Secure public access between the unnamed overlook trail along the Puget Sound bluff to connect to the Sequalitchew Creek corridor to preserve and protect this significant community resource and to provide access to the Puget Sound.

Goal 5 - Provide a comprehensive network of trails and pathways to improve community walkability, connectivity, and park access.

Objective 5B - Provide a public trail access to unique local points of interest, including trails on the Puget Sound bluff, through the Sequalitchew Creek corridor, and to the historic fort site and Old Fort Lake.

c. Proposed New Park (P20)

DuPont’s current comprehensive plan indicates a park site north of the mouth of Sequalitchew Creek that appears to be adjacent to, but not within, the Parks designated/CP-zoned property (within Open Space land use designation). The PROS Plan describes intent to work with the property owner of the aggregate mining parcels north of the creek to secure land on the north side of the canyon to provide a variety of near and long-term recreation opportunities. The site would secure land to serve eventual residential development in the Sequalitchew Village area of the city as well as protect the natural and recreational values of the creek corridor.

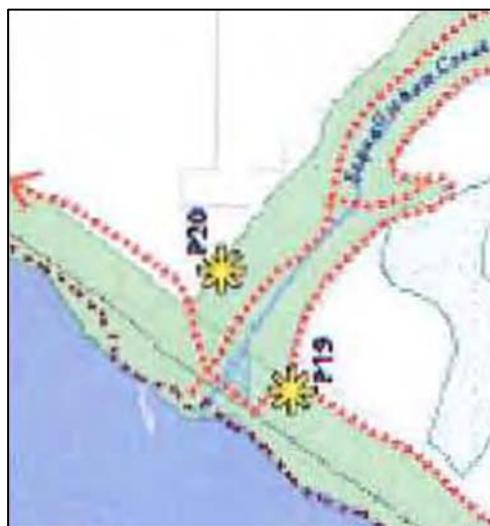


Figure 2 - Proposed Parks & Facilities

- Acquire land along the north edge of the Sequalitchew Creek corridor, focusing on the land near the mouth of the creek.
- Develop facilities and amenities that support the trail and natural open space uses of the creek corridor.
- In the long-term a portion of this land may serve open space and developed park needs of the Sequalitchew Village residential development.
- Vehicular access and trail connection to beach.

Staff Analysis and Conclusion: DuPont Municipal Code lacks zoning and development regulations for the portion of the proposal that is located on Parks-designated/CP-zoned land. In the absence of development regulations for CP-zoned land, the City is required to evaluate if the proposal is consistent with the Comprehensive Plan. The proposal intends to develop a 3.56-acre created wetland plus buffer on the CP-zoned land. Evaluation of the PROS plan (a Comprehensive Plan element) finds goals and objectives for the area that allow for sensitive areas, open space areas and developed park or trails areas to co-exist and to be appropriate for the location. To the extent of existing agreements, the proposal is conditioned to require the land be donated to the city following the completion of all mining activities (and completion of the 10-year maintenance and monitoring period). This will allow for the City to control the future public recreational use of the property together with the protection of the natural resources consistent with the goals and objectives of the PROS Plan, including Goal 3 and its objectives. (Condition 12)

The PROS Plan also details objectives for a trail network with viewpoints that is located above Puget Sound that connects from Tract I Park (offsite to the south) further north. The Settlement Agreement requires a conservation easement and trail easement for a trail and open space located along the Puget Sound bluff adjacent to the North Mine project. To the extent of existing agreements, the proposal is conditioned to require a 15-foot-wide trail easement to connect between the Sequalitchew Creek corridor, and/or Puget Sound Shoreline, and the trail easement that was established for the North Mine project (Attachment K.1.d and K.1.e). (Condition 13). This will allow for compliance with the PROS plan for a future trail system along the Puget Sound bluff, such as Goal 5 and its objectives.

4. Cultural Resources and Historic Preservation

The South Parcel Project Area is known to be the location of cultural and historic activities, including those associated with the DuPont Company operations that are not eligible for listing on the National Register of Historic Places (NRHP). The area is also important to the Nisqually Tribe, who considers Sequalitchew Creek a historic district, and the Sequalitchew Ancestral Village Landscape (located on the terrace above Sequalitchew Creek and roughly occupying the same area as the watershed) as eligible Traditional Cultural Places (TCP) and considers both resources to have the potential for listing on the NRHP (Beach 2024).

The DuPont Municipal Code (DMC) does not contain any regulations for the protection of cultural and historic resources that have not previously been designated by the city. Per DMC 25.175.040, Consistency with Development Regulations, evaluation of the proposal's consistency with the city's Comprehensive Plan is required when there is an absence of applicable development regulations. Chapter 6, Cultural Resources and Historic Preservation of the Comprehensive Plan, recognizes the value and importance of the area's cultural and historic resources and provides goals and policies for their protection. The following summarizes Chapter 6 as applicable to the South Parcel project.

a. Guiding Concepts

The following bullet point guided the development of goals, policies, and implementation actions that follow:

- Heritage of the early settlements (American Indian, Hudson Bay, and DuPont Company) is featured with development, not obscured.

b. Goals and Policies

Goal CR-1 Protect cultural resources by continuing to implement regulations that insure [sic] cultural resources will not be destroyed, damaged, or disregarded during the planning and development process.

CR-1.2 - Encourage protection and preservation of cultural resources as well as efforts to promote awareness of the community's natural and historic assets.

CR-1.4 - Encourage identification, protection, preservation and or restoration of cultural resource sites of documented significance as outlined in the:

- Memorandum of Agreement among the Washington State Historical Preservation Office, the Weyerhaeuser Real Estate Company, and the City of DuPont dated August 7, 1989, including any subsequent amendments.
- Memorandum of Agreement among Weyerhaeuser Company, Weyerhaeuser Real Estate Company, city of DuPont, the Nisqually Point Defense Fund, Committee for the Preservation of the Nisqually Mission Historical Site, the Nisqually Delta.

Staff Analysis and Conclusion: *DuPont Municipal Code lacks development regulations for the identification of and protection of cultural and historic resources that are not one of the four existing city-designated cultural sites. The applicant submitted cultural resources reports documenting the history of the area and the existing known archaeological sites. In the EIS process, the City engaged in a scoping process which included the Nisqually Tribe and all affected local and state agencies, including the Washington Dept. of Archaeological and Historic Resources (DAHP), to support the preservation, protection and awareness of any cultural and historic resources on the project site, which is consistent with policy CR-1.2. Ongoing coordination with the Tribes and DAHP is needed for the further identification of, and potentially mitigation of, currently unidentified cultural and historic resources.*

The EIS evaluated the proposal against the potential impacts to cultural and historic resources that includes mitigation measures that are directly consistent with CR-1.4. Full compliance with the EIS and its mitigation measures is a condition of approval for the South Mine project. The proposal is, therefore, consistent with CR-1.4.

It is not known if Sequalitchew Creek and the Sequalitchew Ancestral Village Landscape are eligible for listing in the NRHP. If they are, mining activities could constitute a significant adverse impact to them. In that scenario, DAHP and the affected Tribes should be consulted for guidance regarding appropriate mitigation measures, which would be consistent with CR-1.2 and CR-1.4.

The City is currently updating its Comprehensive Plan with intentions of strengthening the goals and policies of Chapter 6, Cultural Resources and Historic Preservation of the Comprehensive Plan, with further measures for the identification and evaluation of cultural and historic resources citywide. The City has also initiated consultation with the Nisqually Tribe to update the Memorandum of Agreement referenced in CR-1.4, which is applicable citywide.

D. SITE PLAN REVIEW - ANALYSIS AND CONCLUSIONS OF CONSISTENCY WITH DEVELOPMENT REGULATIONS

DMC 25.150 Site Plans describes the purpose, procedure, and review criteria for Site Plan approval. DMC 25.150.030 requires that, in order to obtain approval, all of the development regulations and criteria specified in the district applicable to the property must be satisfied in addition to any general development requirements in Chapters 25.75 through 25.95 and 25.105 through 25.125 DMC. The proposal is located in several Residential

Zoning Districts (regulated by DMC 25.20), the Manufacturing/Research Park District (MRP) (regulated by DMC 25.45); and the Community Park (CP) zoning district (for created wetland); however, all of the affected South Parcel Project area is located within the Mineral Resource Overlay District (MRO) (regulated by DMC 25.60); therefore DMC 25.60 is the applicable zoning district that applies to the South Parcel Mine Expansion proposal. A brief overview of the requirements associated with the underlying zoning districts is provided below, with a comprehensive evaluation provided for the Mineral Resource Overlay District regulations. Although the existing mine parcel boundaries incorporate the Open Space District, no mining activities or operations are located in this area, so an evaluation of these district regulations (DMC 25.55) is not needed or provided.

As stated in Finding B.4.k, above, in the Decision for the North Parcel Mine (LU 12-02) the Hearing Examiner concluded that site plan review criteria contained in DMC 25.150 were not applicable to the North Parcel mining application. Inapplicable provisions include those addressing commute trip reduction (DMC 25.75); landscaping (DMC 25.90; off-street parking (DMC 25.95); setback street corners (DMC 25.110); signs (DMC 25.115); and wireless communication facilities (DMC 25.125). This Staff Report provides the analysis of the proposal for consistency with only the applicable regulations as determined by the Hearing Examiner for the North Mine with the following exception: The proposal shall meet the buffering standards in DMC 25.90 Landscaping based on the adjacent uses for visual, aesthetic and noise buffering.

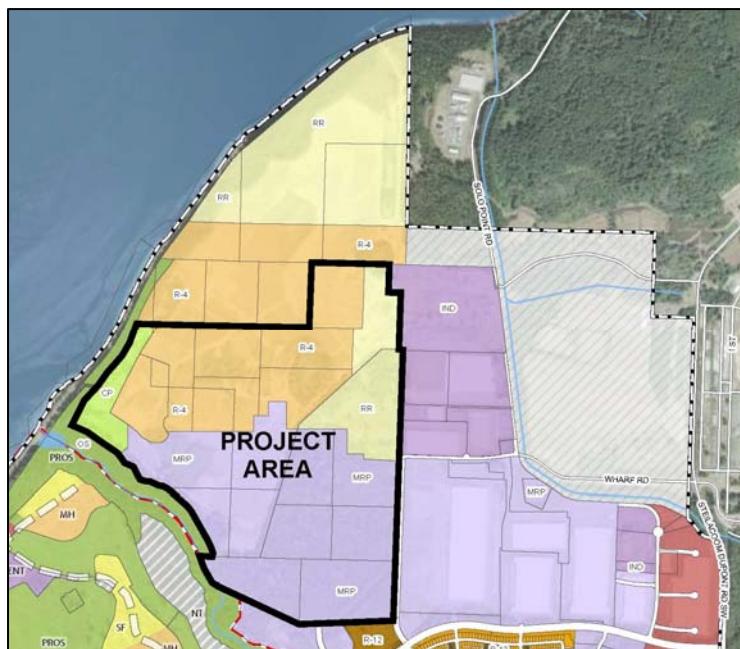


Figure 3 - DuPont Zoning Map

1. DMC 25.20 Residential Districts

The proposal is located in the R-4 and RR Residential Zoning Districts, and residential development is regulated by DMC 25.20. Mining is not listed as permitted or conditional use in the residential districts (however, the proposal is within the Mineral Resource Overlay, which outright permits the use).

Staff Analysis and Conclusion: *The proposal does not include residential development; therefore, DMC section 25.20.020 is not applicable.*

DMC 25.45 Manufacturing/Research Park Districts

Mineral extraction is permitted as a Conditional use within the MRP zone.

Staff Analysis and Conclusion: While the MRP chapter lists mineral extraction as a conditional use, the Mineral Resource Overlay zoning district describes the use as permitted outright together with associated structures and equipment. This code section is not applicable.

2. DMC 25.XX Community Park Districts

The DuPont Municipal Code does not contain any regulations for the Community Park District. A newly created wetland is proposed to be located within the CP-zoned area of the project as mitigation for fill of the Kettle Wetland. Per DMC 25.175.040, Consistency with Development Regulations, evaluation of the proposal's consistency with the city's Comprehensive Plan is required when there is an absence of applicable development regulations. See Section C, above for the Comprehensive Plan Consistency Analysis.

3. DMC 25.60 Mineral Resource Overlay

a. DMC 25.60.010 Purpose

The DuPont comprehensive plan contains policies regarding mineral extraction as a resource land within DuPont and establishes a mineral resource extraction overlay area within Sequalitcew Village in which mineral extraction is allowed. The purpose of the Mineral Resource Overlay requirements are to implement the Growth Management Act (GMA), Chapter 36.70A RCW, the Surface Mining Act, Chapter 78.44 RCW and the DuPont comprehensive plan. This chapter regulates development on and adjacent to the mineral resource overlay in order to conserve mineral resources and ensure compatibility between mineral resource lands and adjacent uses. Additionally, the purpose of this chapter is to assure that the use of lands adjacent to the mineral resource overlay does not interfere with the continued use, in the accustomed manner, of the mineral resource, as required by the State Growth Management Act.

Staff Analysis and Conclusion: The GMA encourages cities to designate natural resource lands of long-term significance and establish regulations to conserve these areas. The Surface Mining Act recognizes mining as an essential activity that is not possible without producing some environmental impacts, however regulations shall be established to prevent or mitigate these impacts.

The City of Dupont designated the project site as a mineral resource overlay district in order to accomplish the above stated purpose, therefore protecting this site and surrounding uses from incompatibility. The proposed use aligns with the purpose of the MRO as the expansion project will allow for continued mining operations. The proposed use, as conditioned and as mitigated in the EIS, is compatible with the area, as it is a permitted use in the MRO and is adjacent to existing mining operations.

b. DMC 25.60.020 Permitted Use

Mineral extraction together with associated structures and equipment.

Staff Analysis and Conclusion: The proposed mineral extraction use and associated structures and equipment are permitted uses. The proposed created wetland is not a type of use that is listed in DMC 25.60.020. Per DMC 25.175.040, Consistency with Development Regulations, evaluation of the proposal's consistency with the city's Comprehensive Plan is required when there is an absence of applicable development regulations. This evaluation is provided in Section C, above. The proposed uses associated with the South Parcel Project proposal are permitted.

c. DMC 25.60.030 Notice and Disclosure Required

Development permits, plats and building permits for land within the mineral resource overlay or land adjacent to or within 500 feet of mineral resource overlay shall include or have attached the disclosure text in DMC [25.60.040](#) on the final development, preliminary and final plat or building permit. The disclosure notice shall apply to the real property upon development, preliminary and final plat or

building permit approval, and may not be applicable thereafter if the mineral resource overlay designation impacting this property is removed.

Staff Analysis and Conclusion: The disclosure text stated in DMC 25.60.040 shall be included on a revised Site Plan in the Mining Plans (Attachment K.4.a) and submitted to the City prior to commencement of mining activities for the mining proposal. (Condition 5.a).

d. DMC 25.60.040 Disclosure Text

The following shall constitute the required mineral resource management disclosure:

“This real property is on, adjacent to, or within 500 feet of designated mineral resource land, on which a variety of mineral resource and commercial activities could occur that may not be compatible with residential development for certain periods of limited duration. These mineral resource activities include, but are not limited to the screening, sorting, piling, and transportation of rock, sand, stone, gravel, or ore, which activities are lawful if conducted in compliance with the Surface Mining Act, Chapter [78.44](#) RCW. This disclosure applies to real property upon any development, preliminary and final plat or building permit approval. This disclosure may not be applicable thereafter if the mineral resource overlay designation impacting this property is removed. Nothing in chapter DMC [25.60](#) shall affect or impair any right to sue for damages.”

Staff Analysis and Conclusion: The above disclosure text, which is provided in DMC 25.60.040, shall be included on a revised Site Plan included in the Mining Plans to be provided to the City prior to the commencement of mining activities. (Condition 5.a)

e. DMC 25.60.050 Performance Standards

Potential impacts related to traffic, dust control, light emission, visual screening, loss of tree cover, noise emission and protection of environmentally sensitive areas shall be examined. The city recognizes impacts to other elements of the environment including air and water quality are regulated by the state, regional and federal authorities.

Staff Analysis and Conclusion: An Environmental Impact Statement (EIS) has been prepared for this project which addresses potential environmental impacts and provides mitigation measures for the topics listed in DMC 25.60.050. A summary of the DuPont Municipal Code requirements, the EIS analysis and mitigation measures, the Sequalitchew Creek Restoration Plan, is included in the evaluation of each performance standard below. See the Final EIS (Attachment K.7) for more detail. Compliance with the EIS mitigation measures is a condition of approval for this project. (Condition 1)

Traffic - The mine expansion will continue the existing mining operations at the same level and is not expected to increase traffic volumes. Trip generation is expected to remain below the peak day estimates that were evaluated in the 2013 FEIS.

Visual Screening – The proposal includes an approximate 125-foot tall and 1,500-foot-long landscaped berm along the south property edge in order to mitigate the visual and noise impacts to incompatible uses (residential uses to the south). See Sheet 11 of the Project Plan Set for the berm and planting plan (Attachment K.4.a). In addition, a mitigation measure in the EIS requires the planting of the slope adjacent to Powerline Road to screen the use from the right of way and the community garden across the right of way. The South Parcel Project will not remove the existing trees/vegetation located along the western property boundary, which screens the mining activity from view from the Puget Sound and nearby islands.

Lighting - Outdoor lighting is anticipated to occur during the mining operations for enhanced visibility. Site topography, retention of existing vegetation along the western boundary, and placement of the proposed berms and landscape screening along the south and Powerline Road will minimize light escapement beyond the site and minimize impacts to incompatible uses (residential uses to the south; community garden to the east). A mitigation measure in the EIS requires the planting of the slope adjacent to Powerline Road to screen the use from the right of way. Potential measures to mitigate

lighting impacts include conversion from incandescent lighting to LED as well as implementing motion activated lighting.

Tree Cover - The mine expansion proposes the removal of all vegetation and trees within the proposed active mine areas. Trees along the west boundary and the south boundary will be retained. The applicant has submitted a Tree Modification Request to allow for the removal of trees that does not conform to the tree retention requirements of DMC 25.120 Tree Retention. A Tree Replacement Plan, approved by the Dept. of Natural Resources, is in place for the existing mine and will continue to be implemented (and updated) with the mine expansion and mine reclamation. A total of 4,450 new trees (comprised of Douglas fir, Oregon white oak and other species) are proposed to be planted as part of the Surface Mine Reclamation Plan for the South Project area, representing a replacement ratio of 50:1. DMC 25.120 does not provide guidance on the set amount of replacement trees needed to mitigate for the loss of trees removed for a mining proposal. DMC 25.120 provides extensive tree protection measures for the trees that are intended to be retained. The proposal is conditioned to provide a Tree Retention Plan depicting tree protection zones for those trees to be retained and provide code-required tree protection measures. As conditioned, and in consideration of the special circumstances applicable to a surface mining proposal, staff concludes that the loss of tree cover are adequately mitigated through the proposed replanting. See Section B.14, below for more details on Tree Retention requirements associated with DMC 25.120, and Section F for the evaluation of the Type III Tree Modification.

Noise emission – Noise has been analyzed as part of the EIS process. The conclusions are that the proposed project would comply with applicable noise limits during daytime hours at all locations. However, the noise levels may exceed allowable limits at the upper floors of the Creekside Apartments that are facing towards the project site if mining activities in Phase 2c occur between 5am to 7am. No cumulative impacts are anticipated, and all impacts would be temporary and at a distance from future potential development that may occur in the vicinity. The submitted site plans depict a noise/visual screening berm along the southern edge of the property, between the project area and the adjacent Creekside Village Residential Development. The City has conditioned the proposal so that no mining will occur for Phase 2c during the hours of 5 am to 7 am. This condition together with the noise/screening berm will ensure that the noise impacts are minimized to allowable limits. (Condition 15)

Environmentally sensitive areas – Environmentally sensitive area impacts were examined through the consistency analysis with DMC 25.105 Critical Areas provided in Section B.10, which used the EIS for supplemental information. A summary of the environmentally sensitive areas examined is as follows:

Wetlands: There are onsite and offsite wetlands that will be either directly or indirectly impacted by the proposal. Impacts to the onsite wetland (Kettle Wetland), which is to be filled, are fully mitigated through replacement of the wetland at a code-required 2:1 ratio. A 10-year maintenance and monitoring plan has been prepared, which will be financially guaranteed, in accordance with the DMC.

The de-watering process of the mining activity will impact the groundwater recharge of offsite wetlands, which is described in the EIS. The Sequalitchew Creek Restoration Plan, together with its adaptive management plan and the required groundwater Monitoring and Response Plan will routinely monitor and adapt processes as results of implementation become available. The applicant is required to submit to the City for approval periodic reports consistent with the monitoring schedule and as needed, initiate adaptive management measures (see Condition #2)

Fish and Wildlife Habitat: Fish and Wildlife Habitat regulated by DMC 25.105.050(2) includes the adjacent Sequalitchew Creek, Priority Habitats and Species and Floodplain. Sequalitchew Creek is located more than 500 feet to the south of the proposed mining activity and its code-required 100-foot buffer will not be directly impacted by the mining proposal. The creek and its ravine will be indirectly impacted with de-watering and implementation of the Sequalitchew Restoration Plan.

According to the Washington Dept. of Fish and Wildlife Priority Habitats and Species mapping, the site has been mapped as containing habitat for three Priority bat species, which may breed in the area (big brown bats (*Eptesicus fuscus*), little brown bats (*Myotis lucifugus*), and Yuma myotis bats (*Myotis yumanensis*)). The submitted information describes the mapping, concludes that it is not likely that the habitat or species are present onsite. A condition of approval will require a site reconnaissance to be completed by a professional biologist to confirm the presence of priority habitat. The findings of the reconnaissance, and if needed a mitigation plan, shall be submitted to the City for review and approval prior commencement of mining activities. (Condition 18)

The site does not contain any federally listed endangered or threatened species. The proposal is intended to improve fish habitat within Sequalitchew Creek through the implementation of the Sequalitchew Creek Restoration Plan.

Floodplain: The applicant submitted a Floodplain Habitat Assessment Report (Attachment K.1.m). A portion of the South Mine Project area is mapped as being within a Special Flood Hazard Area without base flood elevation (Zone A), which is associated with the Kettle Wetland. A second FEMA mapped Special Flood Hazard Area (also Zone A) is approximately 0.3 miles southwest of the Kettle Wetland. This second feature is on dry, excessively drained soils. The second feature has been previously disturbed and cleared of woody vegetation. It provides poor habitat conditions for the species described in the document. Neither of the two Flood Hazard Areas have any surface water connections, the only hydrologic connections are precipitation and in the case of the Kettle wetland, groundwater and another area located in the Existing Mine area. There is also a floodplain area not included in the Report that is associated with Sequalitchew Creek that may be impacted through the de-watering process. The floodplain areas will be impacted by the proposal; therefore, the applicant is required to comply with all FEMA requirements for impacts to the floodplain (Condition 22).

Aquifer Recharge Areas: The proposal is not located within a DMC-regulated aquifer and the DMC does not regulate or restrict mining activity in any aquifer. The EIS describes the underlying Vashon Aquifer, the Olympia Beds and the Sea-level Aquifer and how the de-watering process implemented with the mining activity will lower the water levels within the Vashon Aquifer and waters it is connected to. The Sequalitchew Creek Restoration Plan is intended to mitigate for hydrologic impacts to the connected surface waters of Sequalitchew Creek. The long-term impacts to the aquifer water levels are described in the EIS as being less than the natural condition with some change in flow patterns. The DMC does not provide guidance to assist with the examination of performance standards for aquifer recharge areas. In the absence of regulations, consistency with Comprehensive Plan policies is required. See Section C, above.

Geologic Hazard Areas: DMC 25.105.050(3) regulates geologic hazard areas, including erosion hazards, seismic hazards and landslide hazards. There are none of these hazards located within the area proposed for mining activity. There is a landslide hazard area within the boundaries of the South Mine project parcels that is within the Sequalitchew Creek Ravine. The EIS concluded that there will be no significant unavoidable adverse earth-related impacts to the landslide hazard areas with the proposed implementation of the Sequalitchew Creek Restoration Plan, its adaptive management plan and the Monitoring and Response Plan associated with the de-watering process. The vegetative buffer surrounding the proposed mine area and top of steep slopes is provided together with the requirements of DMC 25.105.070(2) for implementation of Best Management Practices and providing a 100-foot setback from the top of regulated slopes that are greater than 40 percent (within the Sequalitchew Creek ravine).

f. DMC 25.60.060 Site Plan Approval

Site plan approval is required for all mineral extraction proposals and shall be processed as a Type III procedure as set forth in DMC [25.175.010](#).

Staff Analysis and Conclusion: The mineral extraction proposal is being processed as a Type III procedure. Type III procedures require approval of the proposal by the City's hearing examiner

following a public hearing. See Section B.4 for City implementation of the Type III procedural requirements.

Recommendation: Approve Site Plan subject to conditions.

4. DMC 25.75 Commute Trip Reduction

Commute Trip Reduction (CTR) is applicable to new businesses that employ more than 100 persons.

Staff Analysis and Conclusion: *The Commute Trip Reduction regulations are not applicable to the mine proposal.*

5. DMC 25.80 Cultural, Historical and Archaeological Resources

Chapter 25.80 regulates construction within areas of potential historical or cultural resources and allows conditions to be imposed on any plat, site plan or permit to assure that such resources are protected, preserved, or collected. DMC 25.80.020 lists four city-designated cultural resource sites and DMC 25.80.030 prohibits structures, roads, or utilities within 50 feet of cultural resource site markers. DMC 25.80.040 requires every development proposal ensure appropriate measures are taken to protect the designated resource sites. The Chapter does not include any other protection measures for cultural, historic or archaeological resources beyond those specific sites. This section, therefore, evaluates the proposal for its consistency with DMC 25.80, but also, as required in the absence of applicable regulations, by DMC 25.175.040, for consistency with the Cultural Resources and Historic Preservation chapter of the City's Comprehensive Plan. Where appropriate, references are provided to the EIS mitigation measures. The boundaries of the South Mine proposal are also referred to as the Area of Direct Impacts (ADI).

Staff Analysis and Conclusion: *The South Mine property is not located within the vicinity of a City-designated cultural resource site. The closest City-designated site is the Methodist Episcopal Mission Marker, which is located offsite to the south, approximately 189 feet from the proposed mining activity. No impacts to the marker are anticipated.*

The Cultural Resources Desktop Analysis Report prepared by HRA dated May 7, 2025 (HRA CR Report, Attachment K.5.a) provides information on the marker and other known Archaeological sites within the boundaries of the mining proposal. Two sites are related to former operations of the DuPont Company's railroad. They have been determined "not eligible" for listing in the National Register of Historic Places (NRHP). The mining activities will remove one of the sites and may remove the other. Since each of these sites have been determined not eligible for listing in the NRHP, their removal is not considered a significant adverse impact for the SEPA/EIS analysis. Additionally, there are no DMC provisions for their protection.

The Black Powder Area of the DuPont Company Plant is a resource that has also been evaluated over time and remediation activities and development that began in the 1990s have changed it considerably since its original recordation in 1977. The site record for the entirety of this area was recently updated and was determined not eligible for the NRHP, and therefore, the mining activity would not be considered a significant adverse impact for the SEPA/EIS analysis. This area encompasses an area much larger than the South Parcel.

The HRA CR Report describes the importance of the area within the mine boundaries and a one-mile record search radius (the Sequalitchew Creek Watershed) to the Nisqually Tribe. The Sequalitchew Ancestral Village Landscape, as described in the Nisqually Tribe's comment letter (Beach 2024) and summarized in HRA's report, is a potentially NRHP-eligible TCP. The ADI intersects with this watershed-based resource. Although the importance of this resource to the Nisqually is undeniable, limited information is available at this time; its boundary and character-defining features are not currently known, and its potential NRHP eligibility has not been determined. Without more details regarding the boundary and the character-

defining features, it is impossible to assess exactly whether and what direct, indirect, or cumulative physical impacts the project would have on the resource.

The HRA CR Report concludes that because no historically significant cultural resources have been recorded, no significant adverse impacts would occur to recorded resources. The HRA CR Report recommends that the City and the applicant continue consulting and collaborating with the Nisqually Tribe and honor their existing and ongoing commitments. If it is determined that any resources are eligible for listing in the NRHP and that mining activities would constitute a significant adverse impact to them, then DAHP and the affected Tribes should be consulted for guidance regarding appropriate mitigation measures. Those measures may include but are not limited to data recovery and/or interpretation (e.g. displays, exhibits). (Condition #1)

Other mitigation measures provided in the EIS are required as a result of the 2004 Settlement Agreement between Quadrant Corporation, Weyerhaeuser Real Estate Company, the City of DuPont and the Nisqually Tribe, which include providing notification to the Nisqually Indian Tribe in advance of any clearing or topsoil stripping for each mine segment: monitoring of clearing and mining activities by the Nisqually Tribe, and the preparation of a closing report by the tribal Archaeologist. The Nisqually Indian Tribe and DAHP are to be notified if any Native American remains are unearthed. If any archaeological sites are identified that are determined eligible for the NRHP and that mining activities would constitute a significant adverse impact to them, then DAHP and the affected Tribes are to be consulted for guidance. See Section 3.10 of the EIS for an evaluation of cultural resources and proposed mitigation measures (Attachment K.7).

The provisions within DMC 25.80 do not provide any other guidance for the protection of cultural resources that would be applicable to the proposal. Therefore, potential impacts to Cultural, Historical and Archaeological Resources are to be evaluated against the City's Comprehensive Plan goals and policies in accordance with DMC 25.175.040. See Section C, above for that analysis.

6. DMC 25.85 Affordable Housing Incentives Program

Chapter 25.85 provides incentives for affordable housing.

Staff Analysis and Conclusion: *Affordable housing is not a component of this proposal; therefore, Chapter 25.85 is not applicable.*

7. DMC 25.90 Landscaping

The purpose of this chapter is to: protect natural habitats, air quality, and ground water recharge; improve the appearance of the community; provide shade and wind protection; reduce stormwater discharge; and conserve water supplies. In the Decision for the North Parcel Mine (LU 12-02) the Hearing Examiner concluded that some of the site plan review criteria contained in DMC 25.150 were not applicable to the North Parcel mining application. Inapplicable provisions included landscaping (DMC 25.90), therefore, requirements for percentage of landscape areas, street trees and parking lot landscaping are not applicable to a mining proposal in the Mineral Resource Overlay. Due to the proposal's location adjacent to incompatible uses, the proposal shall meet the buffering standards in DMC 25.90.030 Substantive Requirements-Landscaping, for visual, aesthetic and noise buffering and the maintenance and irrigation standards of DMC 25.90.050 to ensure the survival of the plantings.

a. DMC 25.90.030 Substantive requirements – Landscaping

Buffers. Though the comprehensive plan is designed to minimize adjacent, incompatible land uses, such incompatibilities sometimes arise in detailed site planning. In these cases, a buffer (see DMC 25.10.020, B definitions) is required, as follows:

- (a) A moderate buffer shall be provided between parking lots and any adjacent public right-of-way.

(b) In the process of reviewing development proposals, the city will require full, moderate, or light buffers as necessary to mitigate incompatibility, for example between residential and nonresidential development, or between an outdoor storage or trash receptacle area and surrounding high-use areas.

The definition of a full buffer, as provided in DMC 25.10.020.060:

“Buffer-landscape” means a strip of trees, shrubs, and ground cover of sufficient height, width, and density to screen within three years of planting an unsightly or nuisance-generating land use from a more sensitive land use, even in the winter months. The minimum visual screening is 100 percent for full buffers, 50 percent for moderate buffers, and 25 percent for light buffers. Berms, grade separations, walls, and fences may be incorporated to achieve up to 50 percent of the minimum screening.”

Staff Analysis and Conclusion: Eastern boundary landscape buffer - The eastern boundary of the site is located adjacent to this public right of way of Powerline Road and across the road is the community garden. The garden is a use that is incompatible with the mining activity, and therefore requires a landscaped buffer along the eastern perimeter of the South Parcel Expansion Area.

The EIS proposes a vegetated buffer to be maintained along Powerline Road including densely planted trees. As mining progresses, completed segments would become vegetated areas through regrading, replacement of topsoil, and revegetation. All landscaping would be approved by Washington Department of Natural Resources. The timing for the installation of the plantings is assumed to require between 5 to 7 years for the effect of a full screen following initial tree removal. This timeframe is not consistent with the City’s code requirements, which is for buffers to be established within three years and no details are provided regarding the proposed width of the eastern perimeter buffer. City staff recognize that a mining proposal is different and unique from a standard development proposal (see Finding B.4.k for the Hearing Examiner’s limitations on certain code requirements related to mining activity). Staff also recognizes that the eastern slope topography adjacent to Powerline Road will also serve to screen mining activity from the road and garden and that the slope plantings will be completed in accordance with the Reclamation Plan. Staff interprets the EIS mitigation measure for screening the eastern boundary as meeting the City’s landscape code requirement for buffering incompatible uses at this location. (Condition #1)

Southern boundary landscape buffer - The southeastern corner of the site includes an approximately 125-foot-wide by 1,500-foot-long noise/visual screening berm, separating the subject property from the Creekside Apartments adjacent to the south. The planting plan for the berm area is provided on Sheet 11 of the project plans (Attachment K.4.a). The berm will be planted with Douglas fir trees and a mix of shrubs and groundcover. A combination of the proposed buffer (southern berm and landscaping) and the condition for a full screening buffer along Powerline Road, will meet the requirements of DMC 25.90.030(3).

b. DMC 25.90.050 Substantive requirements – Maintenance and Irrigation

To the extent necessary to remain healthy and attractive, all nonnative landscaping shall be watered, weeded, pruned, freed of pests, and replaced if necessary. Shrubs near parking lots or driving lanes shall be cropped to prevent blockage of vision necessary for safe driving. Shrubs shall not be allowed to grow so as to block sidewalks. (Ord. 02-707 § 1)

Staff Analysis and Conclusion: The Berm Planting Plan for the southern berm includes a monitoring plan for the removal of invasive species, annual inspections, removal and replacement of dying or dead plants, and adaptation, depending on an assessment of survival after year two. Financial surety shall be provided for the Berm Planting Maintenance and Monitoring Plan (Condition 14).

The Berm Planting Plan specifies the planting of native species therefore DMC 25.90.050 does not apply.

8. DMC 25.95 Off-Street Parking

DMC 25.95 describes the quantity and design requirements for new parking.

Staff Analysis and Conclusion: The proposal will continue the current mining operations and staffing levels at a similar rate as existing, with an anticipated staffing range of 60 – 100 people depending on market conditions. The existing parking area is located off Wharf Road in the North Mine area. The proposal does not include or require new parking. Therefore, the requirements of DMC 25.95 are not applicable.

9. DMC 25.105 Critical Areas

DMC 25.105.010 describes the purpose and regulates critical areas in conformance with the Washington State Growth Management Act (GMA). The DMC and GMA require that critical areas within the city be protected by minimizing the impact of development of properties within and adjacent to critical areas and their buffers. Regulated critical areas in the city include Wetlands, Fish and Wildlife Habitat Areas (Streams and Priority Habitats and Species, Floodplains), Geotechnical Hazard Areas, and Aquifer Recharge Areas.

An evaluation of each of the types of critical areas located within the South Parcel project area is provided in this section. An assessment of the proposal against the required criterion for approval of the Type III Critical Areas Permit is provided in Section E of this report. Per DMC 25.105.080, development outside a critical area or buffer that may nonetheless adversely affect the critical area or buffer, such as the adjacent Sequalitchew Creek and its Ravine and the offsite (outside) wetland complex that is hydrologically connected to the underlying aquifer, may be conditioned pursuant to the city's substantive authority under the State Environmental Policy Act and DMC 23.01.150. This staff report relies upon the technical information and conclusions in the EIS to supplement the analysis of consistency with DMC 25.105 and where necessary, to condition the project.

The Sequalitchew Creek Restoration Plan is assumed to be a separate but concurrent action that will be completed with the mining proposal and will mitigate for some of the impacts to critical areas associated with the drawdown of the underlying aquifer and the impact to hydrologically connected surface waters.

The applicant submitted the following studies for the evaluation and mitigation of impacts to critical areas in compliance with the requirements of DMC 25.105 Critical Areas. Additional studies were submitted as part of the SEPA environmental review process and were evaluated in the EIS (Attachment K.7). Documents submitted for the Critical Area Permit are listed in Section E:

- Critical Areas Report and Habitat Management Plan (CAR and HMP) prepared by Anchor QEA, LLC dated Feb. 2021, revised May 2025. (Attachment K.5.e)
- Kettle Wetland Delineation Report dated December 2020, revised May 2025 (Appendix A to CAR and HMP) (Attachment K.5.b).
- Wetland Mitigation Plan prepared by Anchor QEA dated March 2024, Revised March 2025 (Attachment K.5.c)
- Geotechnical Engineering Report prepared by Aspect Consulting dated March 2021 (Attachment K.1.j)
- Groundwater Model Update prepared by Aspect Consulting dated June 2017 (Attachment K.1.k)
- Floodplain Habitat Assessment Report prepared by Anchor QEA dated November 2020 (Attachment K.1.m)

a. DMC 25.105.050(1) Wetlands

According to the provided Kettle Wetland Delineation Report, there is a Category III Kettle Wetland located within the Expansion Area of the proposal. The wetland is enclosed, hydrologically connected to

the Vashon aquifer, is 1.78 acres and per DMC 25.105.050(1)(b) requires a 75-foot regulatory buffer. The wetland buffer is currently forested and there are no streams that drain into or out of the wetland. To date mining activity has not impacted the Kettle Wetland or its buffer.

According to the Wetland Mitigation Plan submitted with the proposal, the process of expanding the existing sand and gravel mine operations (i.e., the South Mine Expansion Project), will result in the unavoidable removal of the 1.78-acre Kettle wetland due to hydrologic changes. The proposal includes the elimination of the existing kettle wetland and replacing it with a new 3.56-acre wetland in the southwest portion of the existing mine's bottom. The direct impacts to the Kettle Wetland and the proposed mitigation are to be reviewed against the DMC 25.105.050 for compliance as well as for compliance with the criterion for a Type III Critical Area Permit (see Section E).

According to the EIS, there are other wetlands that will be impacted by the proposal. There are Category IV seep wetlands in the Sequalitchew Creek Ravine, a wetland complex associated with Edmond Marsh, a Category II wetland. There are also wetlands south of Sequalitchew Creek, including wetland #8, #9, #10 and #11, Pond Lake, and Old Fort Lake. The EIS does not include delineations or categories for these wetlands.

Staff Conclusions and Analysis: The applicant submitted environmental reports for the onsite Kettle Wetland that were prepared in compliance with the requirements of DMC 25.105 for evaluation of the proposal. Environmental reports were submitted evaluating the wetlands located in the Sequalitchew Creek Ravine and to the east for review in the EIS. No reports were submitted evaluating wetlands to the south. In accordance with the requirements of DMC 25.105.050(1), the applicant shall prepare critical areas reports for the wetlands located to the east and south of Sequalitchew Creek that will be impacted by the proposal (Condition #21).

b. DMC 25.105.050(1)(d) Wetland Mitigation

DMC 25.105.050 provides requirements for mitigation and states that it shall achieve equivalent or greater biological functions resulting in no net loss of wetland function. Compensatory Mitigation plans are to be prepared consistent with Ecology Publication No. 06-06-011B and 09-06-032, as amended. A performance bond or other approved financial surety is required before any project permits are issued and the release of the financial security is contingent upon satisfactory completion of the proposed mitigation construction and monitoring by the applicant. The compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either the lost wetland provides minimal functions and the proposed mitigation will provide equal or greater functions; or out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types or salmon habitat.

Staff Conclusions and Analysis: A Wetland Mitigation Plan for the replacement of the Kettle Wetland was provided for the proposal. It was prepared in accordance with the stated Ecology publications and provides measurables intended to achieve no net loss of wetland function. The Wetland Mitigation Plan includes performance standards with defined measurable criteria over a 10-year monitoring period to determine if the goals have been met. The Plan includes a series of Mitigation Goals with Associated Design Objectives, Design Criteria, and Final Performance Standards (Table 5-1). A stated goal is that after 10 years at least 3.56 acres of new Category II or III wetland will be created meeting the vegetation, soils, and hydrology criteria for wetlands. A 100-foot-wide forest sapling buffer around the wetland complex will be provided. An as-built report would be completed following construction and planting and periodic monitoring reports thereafter for city approval. The Wetland Mitigation Plan includes a contingency plan to address problems with implementation. The mitigation plan addresses the function of the created wetland and how it is designed for functional equivalency. The goals, objectives and performance standards have been developed to ensure no net loss of wetland functions as a result of the project. The city will require a 10-year maintenance and monitoring financial security be provided for review and approval prior to commencement of mining activities. (Condition 11.c).

Offsite impacts to wetlands are anticipated. There is an existing aquifer/groundwater within the sands and gravels to be mined in the South Parcel Project area. The proposal will install wells and pump the groundwater in advance of the mining to dry out the gravels for mining. This “de-watering” process is anticipated to alter the hydrology of offsite wetlands, Category IV Seep Wetlands located along the Sequalitchew Creek Trail, and a wetland complex to the east associated with West Edmonds Marsh (see Attachment K.1.k and the EIS in Attachment K.7).

The evaluation of the indirect impact to these offsite wetlands is provided in the EIS prepared for the proposal. The EIS evaluation assumes concurrent implementation of the Sequalitchew Creek Restoration Plan including adaptive management to address changes to the offsite wetlands’ hydrology and habitat. The Restoration Plan is to be evaluated and permitted separately from the South Parcel Project, per the terms of the 2012 Settlement Agreement (Agreement). The sequencing of the mining activities and implementation of the Restoration Plan shall be concurrent and is included as a Condition of Approval (Condition #2).

The Sequalitchew Creek Restoration Plan project is to be reviewed separately from the South Parcel Mine Expansion project; however, no permits for the mining activity will be issued until the Restoration Plan has been approved. (Condition 2).

c. **DMC 25.105.050(1)(d)(iii) Preferences of Mitigation Actions**

Preferences for mitigation actions are provided in order of preference, which are:

- A. Restoration (reestablishment and rehabilitation) of wetlands.
 - i. The goal of reestablishment is returning natural or historic functions to a former wetland.
 - ii. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland.
- B. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative species of noxious weeds. This should be attempted only when there is an adequate source of water, and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
- C. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:
 - i. How the proposed enhancement will increase the wetland’s/buffer’s functions and values;
 - ii. How this increase in function will adequately compensate for the impacts; and
 - iii. How other existing wetland functions and values at the mitigation site will be protected.
- D. Preservation of high quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by a re-establishment or creation. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1 as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

Staff Conclusions and Analysis: According to the Wetland Mitigation Plan for the Kettle Wetland submitted with the proposal (Attachment K.5.c), the process of expanding the existing sand and gravel mine operations (i.e., the South Mine Expansion Project), will result in the unavoidable removal of the 1.78-acre Kettle wetland due to hydrologic changes. Therefore, the first preference for mitigation (restoration of the Kettle Wetland), is not feasible. The proposal includes the elimination of the existing Kettle Wetland and replacing it with a new 3.56-acre wetland in the southwest portion of the existing mine’s bottom. The proposal is to mitigate for the impacts to the Kettle Wetland through the creation of a new wetland (the second preference). The Wetland Mitigation Plan provides the following details:

- *The created wetland will be a depressional wetland system fed by groundwater.*
- *Soils from the existing Kettle Wetland will be excavated and placed above the subgrade in the wetland mitigation complex to help increase the likelihood of successfully replacing all lost wetland functions and values.*
- *Mining will create a series of springs where perched groundwater enters the side of the new mine. The water will be conveyed to the new wetland complex in open channels. This would provide a permanent source of hydrology to the mitigation site and utilize the same source as the impacted wetland.*
- *The wetland complex will consist of a series of ponded depressional outflow wetlands vegetated with several different communities of native wetland species.*
- *The design is intended to result in a wetland complex that creates a mosaic of depressional flow through wetlands connected in series. The series of smaller depressions rather than a single larger depression is to mitigate risk: unanticipated changes in water surface elevation are less likely to affect large areas if each depression is controlled independently.*
- *The Wetland Mitigation Plan describes mitigation sequencing. Avoidance is the first priority in mitigation sequencing. Avoiding impacts to the Kettle Wetland would preclude mining of the South Parcel because the adjacent mining activities would change the groundwater hydrology that feeds the wetland. The Critical Areas Report describes Avoidance as impracticable and inconsistent with the mineral resource designation of the site. Maintaining adequate aggregate supply for the region would necessitate development of a new mine elsewhere, which would come with its own environmental impacts. No available existing sites with similar mineral resources and an existing barge-loading capacity exist on Puget Sound or adjacent waterways that could provide a navigable connection to the locations currently served by the mine. Development of a new mine site and barge-loading facility would result in greater aquatic resources damage than extending the life of the existing mine and providing compensatory mitigation for the impacts to the Kettle Wetland.*

Minimization is the second priority in mitigation sequencing. It is not practicable to minimize impacts because any significant additional mining near the Kettle Wetland will intercept the groundwater and result in a loss of wetland hydrology. The third priority in mitigation sequencing is mitigation, i.e., wetland replacement or creation, which the mitigation plan for the Kettle Wetland achieved, as described above.

Mitigation sequencing for the impacted offsite wetlands is unknown at this time. While the Restoration Plan is referenced in the EIS as a mitigation measure, its general objectives are to achieve year-round surface water flow in Sequalitchew Creek from Sequalitchew Lake to Puget Sound, minimize surface water flow to the Diversion Canal, and improve habitat conditions for native salmonid populations in the Sequalitchew Creek watershed. A condition of approval requires the applicant to submit a mitigation plan for offsite wetlands with a description of impacts and the approach to mitigation sequencing prior to commencement of mining activities (Condition 21.b).

d. DMC 25.105.050(1)(d)(iv) and (v) Location of Compensatory Mitigation

Compensatory mitigation means replacing or rectifying a critical area impact or buffer loss. Compensatory mitigation can include, but is not limited to, restoration or creation of lost or impacted functional values. Enhancement of critical areas may be used for partial compensatory mitigation per the requirements of this chapter. The location of compensatory mitigation shall be within the subdrainage basin and on the site of the development with exceptions for certain conditions. Off-site locations shall also be in the same subdrainage basin and WRIA.

Staff Conclusions and Analysis: *The location of the created wetland is within the same subbasin (Chambers-Clover Subbasin of Water Resource Inventory Area 12) and on the site of the development.*

Details of wetland mitigation for offsite wetland impacts is not clear. For the offsite wetlands, the location of intended measures to improve wetland functions, if needed/proposed, shall be within the same subdrainage basin. A condition of approval requires the applicant to submit a mitigation plan for offsite wetlands with a description of impacts and the approach to mitigation that complies with location requirements of DMC 25.105.050(1)(d)(iv and (vi) prior to commencement of mining activities (Condition 21.b).

e. DMC 25.105.050(1)(d)(vi) Timing of Compensatory Mitigation

Mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development causing the wetland alteration. Construction shall be timed to reduce impacts to existing wildlife and flora.

Staff Conclusions and Analysis:

The Kettle Wetland is located within Segment 1A, which will be mined first. The removal and construction of the replaced wetland shall be completed within two years of the onset of mining segment 1A (Condition 11.b).

Details of wetland mitigation for offsite wetland impacts is not clear. The timing of mitigation shall be addressed in the required mitigation plan in accordance with DMC 25.105.050. (Condition 21.b)

f. DMC 25.105.050(1)(d)(vii) Wetland Mitigation Ratios

For Category III wetlands, the DMC requires wetland creation at a ratio of 2 (creation):1 (altered).

Staff Conclusions and Analysis: *The Kettle Wetland to be impacted is 1.78 acres in size, which would require a 3.56-acre created wetland. The proposal is to create a 3.56-acre wetland, which is consistent with the 2:1 mitigation ratio requirement.*

Details of wetland mitigation for offsite wetland impacts is not clear. The wetland mitigation ratios shall be addressed in the required mitigation plan in accordance with DMC 25.105.050. (Condition 21.b)

g. DMC 25.105.050(1)(e) Wetland Out-of-Kind Mitigation

Out-of-kind mitigation is allowed when the impacts from a proposal can be mitigated in a manner that achieves a higher watershed function. In such instances, a habitat management and restoration plan will be required to address the proposed mitigation benefits and compensatory results of out-of-kind mitigation.

The DMC defines out-of-kind mitigation as a means to compensate for lost or degraded critical areas by creating or enhancing critical areas whose characteristics do not closely approximate those destroyed or degraded by a development activity (DMC 25.105.030.245).

Staff Conclusions and Analysis: *The replaced Kettle Wetland is compensatory mitigation, not out-of-kind mitigation, because the intent is to mimic, and/or increase, the ecological functions of the Kettle Wetland in the created wetland. This is to be accomplished by re-using the soils of the Kettle Wetland in the created wetland.*

Section 3.4 of the EIS states that there are additional wetlands and surface water bodies off-site to the south, east and in the Sequalitchew Creek Ravine, which will likely be impacted by the proposal and the Restoration Plan due to lower groundwater levels. The proposal does not include a plan for out-of-kind mitigation. An out-of-kind mitigation is not required by the DMC but may be proposed by the applicant to adequately address impacts to the watershed functions.

h. DMC 25.105.050(2)(a) Fish and Wildlife Habitat Conservation Areas (Stream and Stream Buffer Alterations)

Sequalitchew Creek is an offsite fish and wildlife habitat area located south of the South Parcel and Re-mine area. Per DMC 25.105.050(2)(c); it requires a 100-foot buffer. The project does not propose work in the Creek or its buffer. The EIS describes a significant, unavoidable adverse impact to the Creek and

buffer as a result of dewatering the aquifer such as decreases in baseflow and groundwater discharge in the Ravine that could be mitigated by the Sequalitchew Creek Restoration Plan. Another anticipated impact is higher temperatures in the Creek.

The DMC states that stream and stream buffer alterations may be allowed if the necessary requirements are determined and approved by the director. The applicant shall notify affected communities and native tribes of proposed alteration(s) prior to any alteration if the stream is in a flood hazard area. The applicant shall submit evidence of such notification to the Federal Emergency Management Agency (FEMA); there shall be no introduction of any plant or wildlife which is not indigenous to the state into any stream or buffer unless authorized by a state or federal permit or approval by the city. Unavoidable impacts to streams and stream functions shall be mitigated to achieve no net loss of stream function. For any stream alteration allowed by this section, the applicant shall demonstrate, based on information provided by a civil engineer and/or a qualified biologist, that:

- (A) The equivalent base flood storage volume and function will be maintained;
- (B) There will be no adverse impact to local ground water;
- (C) There will be no adverse increase in velocity;
- (D) There will be no interbasin transfer of water;
- (E) There will be no adverse hydrologic disruption of surface water flow regimes;
- (F) Requirements set out in the mitigation plan are met;
- (G) The relocation conforms to other applicable laws; and
- (H) All approved stream alteration work will be carried out under the direct supervision of a qualified biologist.

Staff Analysis and Conclusion: Sequalitchew Creek is typed by the Washington State Department of Natural Resources (DNR) as a fish bearing stream and is within a FEMA special flood hazard area. The communities and native tribes have been notified of the project and its elements through several methods. The Tribe and community were notified of the South Mine Project and Sequalitchew Creek Restoration Plan through the Notices of Application, Notices associated with the South Parcel project for the public hearing and EIS. A condition of the project requires the applicant to provide evidence that it has met the FEMA requirements for the impacts to the floodplain (Condition 22).

The alteration is not a direct impact of the South Parcel project but occurs as a significant unavoidable adverse impact in the SEPA EIS (Attachment K.7). The DMC requires that unavoidable impacts be mitigated to achieve no net loss of stream function. DMC 25.105.050(2)(a)(A-H) includes performance measures that are not likely to be achievable and some are inapplicable to this project. The Sequalitchew Creek is degraded from its original condition. However, the Sequalitchew Creek Restoration Plan seeks to improve stream flow and fish habitat to more closely attain historical conditions within the watershed. Per DMC, the director will review the Restoration Plan to determine compliance with the DMC prior to issuing Site Development for the South Parcel Project.

The City was party to the 2012 Settlement Agreement, which provides the details for the preparation of the Sequalitchew Creek Restoration Plan as a mitigation measure for the project. The Settlement Agreement requires (and this project requires through Condition 2) that the Restoration Plan be approved by the City prior to the commencement of mining activity. The Restoration Plan is a separate project and is required to be evaluated for consistency with the DMC 25.105, including the requirement for native vegetation and demonstration of no net loss of stream function (Condition 2.f).

The applicant shall submit a plan to demonstrate no net loss of stream function in Sequalitchew Creek for City approval prior to commencement of mining activities. If replanting is needed for mitigation, then the plan will describe that only indigenous plant and wildlife will be used as mitigation (Condition 2.f).

- i. **DMC 25.105.050(2)(b) Stream enhancement**, rehabilitation, or restoration may be allowed if accomplished according to an approved plan by the director, for its design, implementation, maintenance and monitoring prepared by a civil engineer and a qualified biologist and carried out under the direct supervision of a qualified biologist pursuant to provisions.

Staff Analysis and Conclusion: See above response in (h).

- j. **DMC 25.105.050(2)(c) Mitigation Requirements.**

The following minimum requirements shall be met for the enhancement, rehabilitation, or restoration of a stream:

- (A) All approved stream work shall be carried out under the direct supervision of a qualified biologist;
- (B) Basin analysis shall be performed to determine hydrologic conditions;
- (C) The natural channel dimensions shall be replicated including their depth, width, length and gradient at the original location, and the original horizontal alignment (meander lengths) shall be replaced;
- (D) The bottom shall be restored with identical or similar materials;
- (E) The bank and buffer configuration shall be restored to its original condition;
- (F) The channel, bank and buffer areas shall be replanted with vegetation native to the city which replicates the original vegetation in species, sizes and densities; and
- (G) The original biologic functions of the stream shall be recreated to the extent possible.

The above requirements may be modified if the applicant demonstrates to the satisfaction of the director that a greater biological function can otherwise be obtained. Replacement or enhancement shall be required when a stream or buffer is altered pursuant to an approved development proposal or study meeting the necessary requirements as determined by the director. There shall be no net loss of stream functions on a development proposal site and no impact on stream functions above or below the site due to approved alterations.

Staff Analysis and Conclusions: See above response in (h).

- k. **DMC 25.105.050(2)(d) Performance Standards Applicable to Fish and Wildlife Habitats**

Development activities allowed in fish and wildlife habitat conservation areas shall be consistent with the species located there and shall be regulated additionally by restrictions defined in applicable federal, state and local regulations regarding the species and their habitat. Habitat conservation areas identified in required habitat management plans are to be conserved for the management and maintenance of fish and wildlife habitat. Habitat conservation areas may overlap with other identified critical areas. Likely areas of overlap include critical drainage corridors, geologically hazardous areas, and wetlands. When habitat areas overlap with other critical areas, all the performance standards established for the overlying critical area(s) shall apply. If multiple critical areas overlap in an area, the most restrictive conditions shall apply.

Habitat management plans required under this section shall incorporate mitigation recommendations developed in consideration of the Washington State Department of Fish and Wildlife's Aquatic Habitat Guidelines, the Washington State Department of Ecology's Stormwater Management Manual for the Puget Sound (2012), and Chapter 5 of the Low Impact Development Technical Guidance Manual for the Puget Sound (2012).

Staff Analysis and Conclusions: The goal and intent of the Restoration Plan is to enhance/restore fish habitat in Sequalitchew Creek. The Restoration Plan will be reviewed for compliance with the above requirements prior to commencement of mining activities.

- l. **DMC 250105.050(2)(i) Floodplain**

The applicant submitted a Floodplain Habitat Assessment Report (Attachment K.1.m). A portion of the South Mine Project area is mapped as being within a Special Flood Hazard Area without base flood elevation (Zone A), which is associated with the Kettle Wetland. A second FEMA mapped Special Flood Hazard Area (also Zone A) is approximately 0.3 miles southwest of the Kettle Wetland. This second feature is on dry, excessively drained soils. The second feature has been previously disturbed and cleared of woody vegetation. It provides poor habitat conditions for the species described in the document. Neither of the two Flood Hazard Areas have any surface water connections, the only hydrologic connections are precipitation and in the case of the Kettle wetland, groundwater and another area located in the Existing Mine area. There is also a floodplain associated with Sequalitchew Creek. The floodplain areas will be impacted by the proposal. DMC 25.105.050(2)(i) requires the following:

- (i) Report Required. A habitat management plan shall be required for:
 -(iv) Unless otherwise exempt under this chapter, a permit application to develop in the regulatory floodplain shall include an assessment of the impact of the project on federal, state or locally protected species and habitat, water quality and aquatic and riparian habitat. The assessment shall be:
 - (A) A biological evaluation or biological assessment developed per [50 CFR 402.12](#) to initiate federal interagency consultation under Endangered Species Act Section 7(a)(2); or
 - (B) Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or
 - (C) Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or
 - (D) An assessment prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region X, 2013. The assessment shall determine if the project would adversely affect:
 - (I) Species that are federal, state or local listed as threatened or endangered;
 - (II) The primary constituent elements for critical habitat, when designated;
 - (III) Essential fish habitat designated by the National Marine Fisheries Service;
 - (IV) Fish and wildlife habitat conservation areas;
 - (V) Other protected areas and elements necessary for species conservation.

Staff Analysis and Conclusions: The report concludes that the proposal will have no effect on habitat or ESA-listed species. No information has been provided, including within the EIS, related to FEMA requirements for work within or changes to the floodplain areas. The report does not describe/discuss the floodplain associated with Sequalitchew Creek. The applicant shall complete all assessments required by FEMA for work within or changes to the floodplain areas, including, if required, providing compensatory storage. Alternatively, and if appropriate, the applicant shall process a Letter of Map Revision (LOMR) with FEMA (see Condition #22).

- m. **DMC 25.105.050(2)(e) Fish and Wildlife Habitat Conservation Areas (Terrestrial Habitats and Species)**

DMC 25.105.050(2)(e) regulates Terrestrial Habitats and Species, which includes endangered, threatened, or sensitive species and for breeding or nesting of priority species. This code section also provides performance standards for mitigation. The South Parcel Expansion Area has been mapped by Washington Department of Fish and Wildlife (WDFW) as containing Priority Habitat suitable for big brown bats (*Eptesicus fuscus*), little brown bats (*Myotis lucifugus*), and Yuma myotis bats (*Myotis yumanensis*), which may breed in the area.

Staff Conclusions and Analysis: *The Critical Area Report and Habitat Management Plan provides that, after consultation with WDFW, there are no documented roosting concentrations of the Priority Habitat bat species in the project area. There is no indication in the report, however, that a site-specific reconnaissance has been performed to confirm. The project biologist shall complete a site reconnaissance documenting the presence, or lack thereof, of the Priority Habitat bat species. If found, a habitat management plan shall be updated that incorporates mitigation measures developed in consultation with WDFW recommendations (Condition 18).*

n. DMC 25.105.050(3) Geotechnical Hazard Areas

DMC 25.105.050(3) defines and regulates geologically hazardous areas, which include landslide hazard areas and erosion hazard areas.

Staff Analysis and Conclusion: *The applicant submitted a Geotechnical Engineering Report prepared by Aspect Consulting dated March 2021 that found that there were no Geologically Hazardous Areas within the proposed Expansion Area or Re-mine area and no soils on slopes greater than 40 percent that pose a risk of settlement, movement, or liquefaction. The 100-foot setback from the top of slopes greater than 40 percent within the Sequalitchew Creek ravine will be maintained and erosion control measures implemented consistent with DuPont code and stormwater manual requirements. The recommendations of the geotechnical engineer as provided in the Aspect Geotechnical Engineering Report dated March 2021 shall be followed (Condition 3).*

The Sequalitchew Creek Ravine contains steep slopes between 30%-75%, which is within the South Parcel property boundary but is outside of the proposed mine expansion area and an area where no work will be performed. The north slope of the Ravine qualifies as a landslide hazard area, steep slope and seismic hazard area under the DMC criteria. It is identified by the DNR as susceptible to shallow landslides. The EIS evaluated the potential impacts to the ravine slopes including those related to changes in hydrology and vegetation and concluded that no significant impacts were likely. The EIS describes that the result of the de-watering to slope seeps may reduce slope failure and landslide potential. The impacts to vegetation in the ravine slopes as a result of reduction in hydrology, however, should be monitored to ensure the slope remains stable over time. The Monitoring and Response Plan shall include monitoring of the vegetation and slope stability within the ravine slopes to address this concern. It shall be submitted for City approval prior to commencement of mining activities for the mining activity (Condition 23).

o. DMC 25.105.050(4) Aquifer Recharge Area

Aquifer recharge areas are porous geologic formations which store surface water that has percolated into the soil (ground water). Per DMC 25.105.050(4), the Red Salmon Springs Aquifer and the Outwash/Lakewood Glacier Aquifer are used as drinking water sources for the city of DuPont. The DMC provides protection measure to maintain the quality of potable groundwater by preventing contamination. Certain types of development in Aquifer recharge areas are regulated, including any development that is not connected to sanitary sewers (on-site sewage treatment is prohibited). A hydrogeologic assessment is required for the uses that are regulated, which the code lists as hazardous substance processing or handling, landfills, junkyards, and golf courses. Performance standards are provided for the regulated uses to minimize contamination.

Staff Conclusions and Analysis: *The applicant submitted a Groundwater Model Update prepared by Aspect Consulting dated June 2017. According to the report, the South Parcel Expansion area lies within the Vashon Outwash Aquifer that has a hydraulic connection between surface water and*

groundwater through the wetland complex within the upper Sequalitchew Creek drainage and in the middle reaches of Sequalitchew Creek. There is also a deeper, regionally extensive Sea Level Aquifer, with very limited hydraulic connection to the Vashon Aquifer. The underlying aquifers are not hydrologically connected to the two drinking water sources for the city.

Mining is not one of the listed uses that is “regulated” by DMC 25.105.040(4), or that requires a hydrogeologic assessment and the anticipated drawdown to the aquifer that is a part of this proposal is likewise not regulated by the DMC. Therefore, staff have evaluated the proposal for consistency against the city’s Comprehensive Plan goals and policies (See Section C). The existing and future hydrogeologic conditions of the aquifer were analyzed in the EIS (Attachment K.7).

The EIS determined that the aquifer levels (post mining condition) will stabilize over time, albeit with lower levels. Model results indicated that stabilization occurs within approximately 60 days after pumping stops. However, the EIS predicts the aquifer levels will be lower post mining compared to the existing condition. In the absence of best management practices, this type of impact does not align with Comprehensive Plan policy LU-10.3 for the protection of water resources.

The applicant shall submit additional information within the Monitoring and Response Plan, which is required to be submitted to the City and approved prior to commencement of mining activities, that describes the Vashon Aquifer groundwater levels in the post-mining condition, its potential environmental impacts, and the proposed best management practices for the protection of these water resources consistent with Comprehensive Plan policy LU-10.3 (Condition 7)

p. DMC 25.105.080(4) Critical Area Permit

DMC requires that any development proposal within a critical area or its buffer shall require a critical area permit, and the permit shall be processed following a Type III procedure.

Staff Analysis and Conclusion: See Section E for an evaluation of the proposal for consistency with the Critical Area Permit requirements.

10. DMC 25.110 Street Corner Setbacks

On corner lots no building, structure, parking, sign, berm, planting, or other sight-obscuring object, other than traffic signs and utility poles, shall be erected, placed, or allowed to grow between the heights of three feet and eight feet above the street surface within the vision clearance triangle. The vision clearance triangle (see Figure 1) is that area enclosed on two sides by the intersecting public right-of-way lines and on the third by an imaginary line connecting those points on said right-of-way lines that are 30 feet from their point of intersection.

Staff Analysis and Conclusion: The proposed project is not located on a corner lot, therefore section DMC 25.110 is not applicable.

11. DMC 25.115 Transportation Concurrency Review

Transportation Concurrency Review requires a concurrency test with regard to transportation impacts. Projects requiring site plan review, or which generate 50 or more average vehicle trips are also required to undergo Transportation Concurrency Review. Any proposed development that creates no additional impacts on any transportation facility is exempt from Transportation Concurrency Review.

Staff Analysis and Conclusion: A Traffic Impact Assessment was provided and concluded that the mine expansion will not result in increased levels of trip generation and will remain below the peak day estimates evaluated in the 2013 FEIS. Pursuant to DMC 25.115.050(1), therefore concurrency review will not be required.

12. DMC 25.116 Sign Code

DMC 25.116 requires an application for sign permit.

Staff Analysis and Conclusion: A sign permit application was not submitted with the Site Plan Review application.

13. DMC 25.120 Tree Retention

DMC 25.120.010 The purpose of this chapter is to protect natural habitats, air quality, and ground water recharge; improve the appearance of the community; provide shade and wind protection; reduce stormwater discharge; and conserve water supplies. This chapter is intended to help achieve these purposes by retaining trees, without reducing developmental densities from those indicated in the comprehensive plan. This chapter shall apply to all new development projects that require a site plan approval, subdivision, or short plat.

- a. **DMC 25.120.030 (2)** requires all landmark Oregon white oak trees shall be retained, along with any native understory within a protection zone one and one-half times the radius of the oak's canopy, unless the landmark oaks are within a proposed street right-of-way which is integral to the neighborhood and cannot reasonably be moved, or unless overall neighborhood densities cannot be met. In such cases, up to 30 percent of the landmark oak trees may be removed, when consistent with the standards in the table of DMC 25.120.040(1). At least half of all other (non-oak) landmark trees shall be retained.

Staff Analysis and Conclusion: According to the Landmark Tree Inventory Report (Tree Report, see Attachment K.4.b) prepared by Anchor QEA (August 2021), landmark trees were inventoried within all the tax parcels where work is proposed (South Parcel Expansion Area and the existing mine Re-Mine Area). They are accounted for separately because authorization for tree removal from the Re-mine area was approved in 2013 under the land use permit for the existing mine LU 12-02. The Tree Report noted that most of the trees within the study area that met the landmark size criteria could not be deemed landmark because they are unhealthy, damaged, or otherwise poorly formed caused by insect damage, brown cubical rot, wind damage and crowding under the closed canopy. The Tree Inventory Report included a Tree Pathology Report prepared by Weyerhaeuser's Forest Pathologist dated August 16, 2019. There are 141 healthy landmark trees in the combined Expansion and Re-Mine areas. All trees within the mining limits are to be removed in order to mine within the proposed Expansion area boundaries.

Within the Expansion Area there are 108 healthy landmark trees, which includes 13 landmark Oregon white oak (OWO) trees. All of the OWO and 19 of the other non-oak landmark trees are proposed to be removed for the South Parcel Project, which is not compliant with the requirements of DMC 25.120.030(2) and therefore requires a Type III Tree Modification per DMC 25.120.150. The applicant submitted a request for a Tree Modification. See Tree Modification in Section F, below.

- b. **DMC 25.120.030(3)** requires the following minimum number of trees (other than street trees) per acre, expressed as an average over the entire neighborhood plan, site plan, subdivision, or short plat, shall be retained; provided, that nothing in the following shall require the retention of more than half of the existing trees, other than oak. In the industrial district and manufacturing/research park district, landmark trees which are in the building footprint, parking lot or storm retention area may be removed; provided, that tree retention is achieved along street boundaries and when abutting a residential district:
 - i. Business and technology, and manufacturing/research: one and one half
 - ii. Commercial, office, mixed, civic, and schools: three

Staff Analysis and Conclusion: DMC 25.120.030(3) does not provide a minimum number of trees per acre requirement within the Mineral Resource Overlay district. Staff concludes that the total tree retention requirement is not therefore, appropriate for a mining type use.

c. **DMC 25.120.030(4)** When the application before the city contains oak management mapping units, trees retained therein shall count toward meeting the above requirement.

Staff Analysis and Conclusion: The project is within an area that contains oak management mapping unit MO-14, which does not have any specific protection regulations per DMC 25.120.040. The Tree Report provides that there is one healthy landmark OWO tree in the MO-14 area that will need to be removed. This tree is included in the total count of landmark trees to be removed. The removal of this landmark OWO is documented in the Type III Tree Modification. See Modification, below.

d. **DMC 25.120.030(5)** requires no clearing, grading, trenching, cutting, impervious surfacing, or other construction shall be allowed within the drip line of any tree to be retained, or within one and one-half times the radius of the canopy in the case of oak trees to be retained, nor shall grades be lowered or raised so near as to jeopardize said trees; unless there is no other alternative and the intrusion is the minimum possible as determined by the administrator. Temporary barriers shall be installed around trees requiring protection during construction.

Staff Analysis and Conclusion: Trees are proposed to be retained in the forested buffer along the south boundary. These trees will need to be protected to ensure they are not damaged by the mining operations. Tree protection fencing shall be installed around the drip line of the tree, or within one and one-half times the radius of the canopy in the case of oak trees, in accordance with DMC 25.120.030(5). (Condition 17)

e. **DMC 25.120.030(6)** requires that all landscape plans depict the location, size, and species of all landmark, historic, and specimen trees that are to be retained and how they will be protected during development.

Staff Analysis and Conclusion: No landmark trees are proposed to be retained within the mining limits of the project area. Figure 2 of the Landmark Tree Inventory Report dated August 2021 (Attachment K.4.b) provides the locations of the type, size, health all trees surveyed within the South Parcel Project areas. The Berm Planting Plan (Sheet 11 of the Plan Set, Attachment K.4.a) provides location, size, and species for all trees that are proposed to be planted within the berm at the southeastern corner. The Berm Planting Plan depicts the trees adjacent to the berm that are to be retained, but does not depict the species, TPZ (Tree Protection Zone) or tree protection measures provided in DMC 25.120.030(5). The location, size, and species of all landmark, historic, and specimen trees within the boundaries of the South Parcel Project that are to be retained, together with the tree protection measures for those trees, shall be provided on a Tree Protection Plan to be submitted to the City for review and approval prior to commencement of mining activities. (Condition 5.c)

f. **DMC 25.120.030(7)** requires a note be placed on the plat or site plan as follows: "This plat is also subject to an approved tree retention plan which requires that certain trees be preserved. That plan, which is binding on all owners, is on file with the City Planning Department."

Staff Analysis and Conclusion: – This statement is currently not shown on the provided Berm Planting Plan or Site Plan. The Site Plan shall be amended to include this statement and submitted to the City for approval prior to commencement of mining activities. (Condition 5.d)

g. **DMC 25.120.040** Oak management mapping units, requires certain Oregon white oak groves to be mapped and provides specific requirements for each mapping unit.

Staff Analysis and Conclusion: The proposal is within an area mapped for Oak Management Mapping Unit MO-14, however, there are no Oregon white "oak groves" within the unit and the regulations do not have any specific protection regulations per DMC 25.120.040. The Landmark Tree Inventory Report provides that the area was thinned and many of the larger trees were removed between 1990 and 2002. There is one OWO tree within this unit that will be removed. See Section F for Tree Modification, below.

h. **Modifications - DMC 25.120.050.** See Section F below, Tree Modification Request.

14. DMC 25.125 Wireless Communication Facilities

Chapter 25.125 provides standards for wireless communications facilities.

Staff Analysis and Conclusion: The proposal does not propose new wireless communication facilities. Chapter 25.125 is not applicable.

15. DMC 25.150 Site Plan Approval

DMC 25.20.060 (12) requires site plan approval as set forth in DMC 25.150 as a Type III procedure. Per DMC 25.150.030, in order to obtain site plan approval, all of the development regulations and criteria specified in the district applicable to the property must be satisfied in addition to any general development requirements in Chapters 25.75 through 25.95 and 25.105 through 25.125 DMC. This staff report outlines the proposal's consistency with the cited regulations.

Staff Analysis and Conclusion: Approve Site Plan with Conditions.

E. CRITICAL AREAS PERMIT – CONSISTENCY ANALYSIS

DMC 15.105.080 requires that any development proposal within a critical area or its buffer shall require a critical area permit, unless it qualifies for an exemption or exception under DMC 25.105.070. Development outside a critical area or buffer than may nonetheless adversely affect the critical area or buffer may be conditioned pursuant to the city's substantive authority under the State Environmental Policy Act and DMC 23.01.150 (SEPA).

Staff Analysis and Consistency: There is one critical area to be evaluated under the critical area permit criterion: the Kettle Wetland to be filled and replaced with a new created wetland.

1. DMC 25.105.080(1) Submittal Requirements

Per DMC 25.105.080(1), nonexempt development within or adjacent to a critical area shall be processed following a Type III procedure as set forth in DMC 25.175.010.

Staff Analysis and Consistency: The proposal is being evaluated following the Type III procedures, which requires the noticing requirements summarized in Section B.4., and which requires approval by the Hearing Examiner following a public hearing.

2. DMC 105.080(2) Submittal Requirements

A complete critical area development application shall contain the information contained in this section in addition to the information required by DMC 25.175.020 in addition to any specific submittal requirements of this chapter.

Staff Analysis and Consistency: The applicant submitted a complete Critical Area Permit application. It included a Land Use Application Form (Attachment K.2.b), a response to the criterion for approval, the Kettle Wetland Delineation Report (Attachment K.5.b) and Mitigation Plan (Attachment K.5.c).

3. DMC 25.105.080(3) Permit Submittal Requirements

The requirements for a critical area permit include a preapplication consultation, initial review, access for site inspection, and critical area report(s).

Staff Analysis and Consistency: A preapplication consultation was held for the proposal (PLNG 2019-002). The initial review of the South Mine Expansion Project concluded that there were impacts to critical areas and that a critical area permit was required. The applicant provided the City with access to the site and a site inspection occurred. The applicant submitted the critical area reports detailed above.

4. DMC 25.105.080(4) Permit Review Criteria

a. Per DMC 25.105.080(4), an application for a critical areas permit may be approved, approved with conditions, or denied based on the proposal's ability to comply with all the criteria. The criterion and the proposal's compliance are described below:

- i. The proposal minimizes the impact on critical areas in accordance with mitigation as defined in the chapter;

Staff Analysis and Conclusions: The applicant has demonstrated that the project is not feasible without the removal and replacement of the Kettle wetland. The project is located within an existing mining site that is regulated under the Washington State Surface Mining Act. The proposal is to replace the Category III Kettle Wetland with a (potentially) higher Category wetland mosaic (Category II) and a larger 100-foot buffer. The proposal is consistent with the wetland replacement requirements of the DMC, including the mitigation ratio (2:1). The proposal meets this criterion.

- ii. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

Staff Analysis and Conclusions: By following the mitigation sequence in DMC 25.105, the project's impacts to the Kettle Wetland do not pose a threat to the public health, safety, or welfare. The project is located on private property where no public access is allowed (per the Federal Mine and Safety Act of 1977 and other federal, state, and local requirements that ensure public safety in and around active mines). Public health, welfare and safety for mining impacts such as fugitive dust and noise will be within established regulatory standards and were found not to be significant in the Project SEPA EIS.

- iii. The proposal is consistent with the general purposes of this chapter and the public interest;

Staff Analysis and Conclusions: The general purpose of DMC Chapter 25.105, Critical Areas is to preserve, restore, and protect critical areas in compliance with the GMA, by establishing protection standards for minimizing impacts to critical areas. This chapter also serves to protect public health by preventing adverse environmental impacts.

The EIS analyzes anticipated environmental impacts and provides proposed mitigation measures to minimize impacts. The proposal includes vegetative buffers in compliance with DMC Chapter 25.105 for on-site critical areas and will aim to replicate the existing function and value of the Kettle Wetland in the new replaced wetland.

DMC Chapter 25.105 also encourages improvements to surface water bodies and watercourses. The proposal is conditioned to implement the Sequalitchew Creek Restoration Plan (Restoration Plan), which includes restoring and enhancing the streamflow and ecological functions of Sequalitchew Lake through Edmond Marsh and into the Sequalitchew Creek ravine, per the terms of the 2012 Settlement Agreement. (Condition 2)

The proposal protects critical area functions by meeting the requirements of DMC 25.105, by providing a replaced wetland that will be maintained for 10 years and preserved in perpetuity for future generations. The result will be no net loss of wetland function, value, or area as demonstrated by the Wetland Mitigation Plan. As conditioned the proposal is consistent with the general purposes of DMC 25.105 and the proposed mitigation is of benefit to the public interest.

- iv. Any alterations permitted to the critical area are mitigated in accordance with the mitigation requirements and standards of this chapter;

Staff Analysis and Conclusions: As described in this Section, the proposed alterations to the existing Kettle Wetland, will be mitigated in accordance with DMC 25.105, the Wetland Mitigation Plan, which includes a 10-year maintenance and monitoring plan and measures for adaptive management of the created wetland. (Condition 11).

- v. The proposal protects the critical area functions and values consistent with the best available science; and

Staff Analysis and Conclusions: To ensure the project achieves wetland mitigation goals, the Wetland Mitigation Plan includes a Performance Standards section for measuring success of implementation, including the design objective, design criteria, and final performance standards. Monitoring would occur for a minimum of 10 years and until performance standards are met. Wetland function and value assessments utilized the 2014 Ecology Wetland Rating system and the regulations of DMC 25.105.050(a). The Mitigation Plan was prepared using Best Available Science. The proposal is conditioned to provide financial guarantee of the mitigation and monitoring plan. (Condition 11.c)

- vi. The proposal is consistent with other applicable regulations and standards. The granting of a critical areas permit should not be construed as approval of any other required underlying permit or approval for the development proposal.

Staff Analysis and Conclusions: As conditioned, the proposal will comply with all applicable regulations and standards, as outlined throughout this staff report.

5. DMC 25.105.080(b) Conditional Approval.

Per DMC 25.105.080(b), The city may condition the underlying permit or approval for any alteration or development within or adjacent to a critical area or its buffer. Additional conditions may be placed on the proposal if it is in close enough proximity to and likely to affect a critical area or its buffer as determined by the director. Additional conditions will be established as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter. Any conditions of approval of the critical areas permit shall be attached to the underlying permit or approval.

Staff Analysis and Conclusions: Impacts to the Kettle Wetland and the associated Mitigation Plan are conditioned to ensure long term success (Condition 11).

Per DMC 25.105.050.080, any development proposal outside of a critical area or buffer that may nonetheless adversely affect the critical area or buffer may be conditioned pursuant to the city's substantive authority under the State Environmental Policy Act and DMC 23.01.150. Per DMC 23.01.150, Substantive Authority, the City may attach conditions to a permit or approval for a proposal so long as:

- Such conditions are necessary to mitigate specific probable significant adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- Such conditions are in writing; and
- The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- The City has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
- Such conditions are based on one or more policies in subsection (d) of this section and cited in the license or other decision document.

The proposal is conditioned to comply with the terms of the 2012 Settlement Agreement for the preparation, review, and implementation of the Sequalitchew Creek Restoration Plan. In addition, the Restoration Plan shall be prepared and evaluated for compliance with DMC 25.105, Critical Areas.

This condition will ensure the offsite critical area and buffer impacts are mitigated in accordance with DMC 25.105 Critical Areas and DMC 23.01.150 Substantive Authority (Condition 11).

a. **DMC 25.105.080(c) Burden of Proof.**

Per DMC 25.105.080(c) The applicant has the burden of proof that a proposal complies with the standards set forth in this chapter.

Staff Analysis and Conclusions: The applicant has provided a Kettle Wetland Delineation Report, and a Mitigation Plan prepared by a qualified professional. The mitigation plan includes a 10-year maintenance and monitoring period with performance standards. The consultant also provided a response to the Critical Area Permit Criteria (Attachment K.5.d). The city will require financial security guaranteeing the success of the wetland creation (Condition 11.c).

b. **DMC 25.105.080(d), Completion of the Critical Area Review.**

The city's issuance of a critical areas permit pursuant to this chapter shall be final, concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

Staff Analysis and Conclusions: Approval of the critical areas permit will occur concurrent with the approval of Site Plan Review and Tree Modification, all of which are Type III processes requiring a decision by the City's Hearing Examiner.

6. DMC 25.105.100 Notice and Financial Securities

This code section requires a Notice recorded on title of the presence of any critical areas or buffers and Performance and maintenance/monitoring security in a form and amount that is sufficient to guarantee satisfactory workmanship, includes a maintenance and monitoring estimates to guarantee satisfactory functioning of the replaced wetland and survival of the plantings over a ten-year time period.

Staff Analysis and Conclusions: The proposal shall be conditioned to require notice on title of the replaced wetland. The replaced wetland will be required to be monitored for a period of ten years to ensure survivability of wetland plantings at an acceptable rate. Prior to commencement of mining activities, a maintenance and monitoring bond shall be provided to the City to ensure satisfactory functioning and survival. (Condition 11.c and d)

F. TREE MODIFICATION – CONSISTENCY ANALYSIS

1. DMC 25.120.050 Modifications

Anyone with an ownership interest in land may request a modification from the provisions of this chapter based on special circumstances pertaining to that land or the trees on it. Such requests shall be addressed, in writing, with full documentation and justification, to the administrator, who shall grant or deny based on DMC [25.120.010](#). Such request shall be processed with a Type III procedure per DMC [25.175.010](#)(4).

The provisions in DMC 25.120.010 are as follows:

- (a) Protect natural habitats, air quality, and ground water recharge;
- (b) Improve the appearance of the community;
- (c) Provide shade and wind protection;
- (d) Reduce stormwater discharge; and
- (e) Conserve water supplies

Staff Analysis and Conclusion: A request for modification of tree retention requirements has been submitted as a part of this proposal. The applicant submitted the following with their application:

- *Landmark Tree Inventory Report, dated 8/2021 (Attachment K.4.b)*

- *Request for Modification of Tree Retention Requirements under DMC 25.120.050 for Expansion Area of South Parcel Project" received by City in 8/2021 (Attachments K.3.e)*

This proposal addresses removal of trees in the Expansion Area. The Re-mine Area in the proposal previously received an approval for removal of the trees as part of the original mine permit. In the Expansion Area, the proposal requires the removal of 89 landmark trees and will retain 19 landmark trees. The total landmark trees required to be retained for the proposal per DMC 25.120.030(2) is 61 trees. The proposal will retain 42 trees, which is 19 trees fewer than the requirement and requires a Type III Tree Modification.

To mitigate the impacts to trees proposed to be removed, a total of 4,450 new tree seedlings (comprised of Douglas fir, Oregon white oak and other species) are proposed to be planted representing a ratio of 50:1.

The applicant's narrative response provides a full response to each of the above provisions. However, staff interpretation is that special circumstances are applicable to this proposal. The proposed project is within the City-designated Mineral Resource Overlay, which is intended for mineral extraction in accordance with the Growth Management Act and the Surface Mining Act by designating commercially viable mineral resources where they occur and allowing for extraction of resources from those areas (DMC 25.60.010). The current tree retention requirements would not allow for the mine expansion to be feasible without a Type III Tree Modification.

CalPortland will plant trees on the slopes of the existing mine as part of their ongoing mine reclamation program and in compliance with the Surface Mine Reclamation Act (RCW 78.44). Tree planting success (survival) is one component of the reclamation plan that is reviewed, approved, and inspected for compliance by the DNR. Implementation of the reclamation plan is assured by a financial guarantee provided to the DNR by the CalPortland in the form of a bond.

A typical mitigation plan might require a developer to plant trees for mitigation in a single season and monitor their success for 3 to 5 years. CalPortland will have planted the replacement trees on the reclaimed slopes of the project area and will monitor and ensure their success with a reclamation bond held by DNR during that time. In 2020 CalPortland began testing plantings of Oregon white oak and will continue to include Oregon white oak in the mix of trees planted in the future to ensure that at least 650 (50 X 13) white oaks are planted. As the reclaimed areas mature, a native understory of herbaceous and woody species will also propagate from seed and rhizomes naturally occurring in the redistributed topsoil. Reclaimed slopes along the western boundary of the site are designed in a sinuous fashion to mimic and blend with the native topography that parallels Puget Sound.

CalPortland is bound to comply with the tree planting associated with DNR Reclamation Plan (Condition 10). The City will also require the applicant ensure the survivability of the plantings by preparing a Tree Mitigation Plan that includes details for the maintenance and monitoring of the plantings, with specific performance standards to be met over the life of the mining activity and reclamation plan. The Tree Mitigation Plan shall be submitted to the City for review and approval prior to commencement of mining activities. The City will require financial surety of the maintenance (such as replacement) and monitoring required in the Plan (Condition 9).

Staff finds that the proposal for tree removal is justified and that the replanting will provide acceptable mitigation.

G. FIRE DEPARTMENT REVIEW

The City Fire Marshal has reviewed the application and provided one condition of approval requiring a fire access plan. See Condition 19.

H. CONCLUSIONS

1. Site Plan Review

In accordance with the criteria in DMC 25.175.040, staff has evaluated the project and finds that, subject to the recommended conditions, the proposal is consistent the DMC and existing ordinances concerning public utilities, traffic, facilities, and services, and provides access, landscaping, screening, building placement, parking lot layout, and protection of sensitive areas, subject to the recommended conditions of approval provided in Section I, below. As demonstrated in the Consistency Analysis, the proposal meets the criteria, as conditioned, for Site Plan approval. Staff recommend that the Site Plan Approval shall not be effective until the City has reviewed and approved the additional information requested. The City will provide the applicant with a letter confirming the required review and approvals have been completed to the satisfaction of the city to include a confirmation that mining activities may commence (Condition #38).

2. Critical Areas Permit

In accordance with the criteria in DMC 25.105.080(4), staff has evaluated the project and finds that, subject to the recommended conditions, the proposal is consistent the DMC, minimizes the impact on critical areas through the creation of new wetland; it does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; it is consistent with the general purposes of DMC 25.105 and the public interest; the permitted alterations are mitigated in accordance with DMC 25.105; it protects the critical area functions and values consistent with the best available science; and is consistent with other applicable regulations and standards. Approval of the critical areas permit should not be construed as approval of any other required underlying permit or approval for the development proposal. As demonstrated in the Consistency Analysis and as conditioned, the proposal meets the criteria for approval of a Critical Area Permit.

3. Tree Modification

As a mining proposal on land that is located in a Mineral Resources Overlay, the proposal has special circumstances pertaining to it and the trees on it. The request for a Tree Modification, as conditioned, meets the Modification requirements of DMC 25.120.050.

I. RECOMMENDATION

Based on the findings and conclusions in this report, Staff recommends approval of the Site Plan, Critical Areas Permit and Tree Modification subject to the conditions provided in Section J.

J. RECOMMENDED CONDITIONS

1. The South Parcel Mine Final Environmental Impact Statement (FEIS) (2025) is incorporated herein by reference. All “proposed and other possible” mitigation measures shall be complied with. As

needed, all other “contingency measures” shall be complied with depending on the results of the periodic monitoring plans.

2. The **Sequalitchew Creek Restoration Plan** (Restoration Plan) is a separate but related project (PLNG 2023-007 and -008). The details of the Restoration Plan, including required elements, sequencing of implementation, and monitoring that are provided within the 2012 Settlement Agreement shall be followed together with the following conditions:
 - a. The South Parcel project shall not commence mining activities until the Restoration Plan has received all permit approvals and JBLM consent is obtained with expiration of appeal periods. The South Parcel initial pump testing may begin upon approval of The South Parcel project Type III permits.
 - b. The Monitoring Plan, as described in Section 7 of the Settlement Agreement, shall be reviewed and approved by the City. The City will contract for its review with a third-party expert. The applicant shall be responsible for the peer review cost, including subsequent revisions and updates.
 - c. The Restoration Plan shall be implemented concurrent with the mining activity.
 - d. The monitoring and reporting requirements for the implementation of the Restoration Plan shall be consistent with the South Parcel project Notification Schedule.
 - e. The City shall be notified and party to any proposed adaptive management measures that are presented to the Environmental Caucus (as defined in the Settlement Agreement). Implementation of any adaptive measures requires City approval.
 - f. The Restoration Plan and its critical area studies and mitigation plans, shall be prepared, evaluated and implemented in accordance with the requirements of DMC 25.105 Critical Areas, and DMC 23.01.150 Substantive Authority including the requirement for use of native vegetation and demonstration of no net loss of stream function.
3. The recommendations of the Geotechnical Engineer, as provided in the Geotechnical Engineering Report prepared by Aspect Consulting dated March 8, 2021 (or as updated), shall be followed.
4. The project will require permits from federal, state, regional agencies, including Puget Sound Clean Air Agency. These will likely include an Air Quality Permit, Reclamation Permit, NPDES Permit, Forest Practices Permit. Copies of the required permits shall be provided to the City prior to commencement of mining activities.
5. The **Mining Plans** shall be revised to address the modifications and additional details required by the City as provided in these conditions of approval. The revised plans shall be reviewed and approved by the City prior to the commencement of mining activities. The revised mining plans shall be modified as follows:
 - a. The disclosure text stipulated in DMC 25.60.040 shall be included on a revised Site Plan to be provided to the City prior to commencement of mining activities.
 - b. The final landscape plan shall include irrigation and water conservation techniques for the southern landscaped berm as described in DMC 25.90.040.
 - c. Per DMC 25.120.030(6), the location, size and species of all landmark, historic and specimen trees to be retained, together with the tree protection measures for those trees, shall be provided on a Tree Protection Plan prior to the commencement of any mining activities.

- d. Per DMC 25.120.030(7), the following note shall be added to the Site Plan and provided to the City prior to commencement of any mining activities: "This plat is also subject to an approved tree retention plan which requires that certain trees be preserved. That plan, which is binding on all owners, is on file with the City Planning Department."
- e. Include all parcel numbers listed in the Staff Report on the cover sheet.

6. The South Parcel Monitoring Plan (Appendix F of the EIS) shall be submitted to the City for review and approval prior to the commencement of mining activities. Each subsequent modification of the Monitoring Plan (as needed) shall also be submitted for review and approval prior to proceeding with the next step in the mining process.

7. The applicant shall submit additional information within the Monitoring and Response Plan that describes the Vashon Aquifer groundwater levels in the post-mining condition, its potential environmental impacts, and the proposed best management practices for the protection of these water resources consistent with Comprehensive Plan policy LU-10.3. It shall be submitted for approval prior to the commencement of mining activities.

8. An approved City of DuPont Tree Removal Permit shall be submitted with approval required prior to the commencement of mining activities.

9. The city will also require the applicant ensure the survivability of the tree replacement plantings by preparing a Tree Mitigation Plan that includes details for the maintenance and monitoring of the plantings, with specific performance standards to be met over the life of the mining activity and reclamation plan. The Tree Mitigation Plan shall be submitted to the City for review and approval prior to commencement of mining activities. The City will require financial surety of the maintenance (such as replacement) and monitoring required in the Plan.

10. Tree planting, monitoring and maintenance of plantings shall occur consistent with the DNR Reclamation Plan.

11. The following mitigation measures pertain to the impacts and mitigation for fill of the **Kettle Wetland**:

- a. The details for the Kettle Wetland replacement and creation shall be followed in accordance with the Kettle Wetland Mitigation Plan, prepared by Anchor QEA dated March 2025, including the maintenance and monitoring plan.
- b. The created wetland shall be substantially completed concurrent with the Segment 1A mining operations. The as-built drawings shall be submitted within two years of the onset of mining within Segment 1A.
- c. Financial surety shall be provided for the 10-year maintenance and monitoring required for the replacement wetland. The surety shall be provided prior to commencement of mining activities.
- d. A Notice on Title of the presence of the replaced Kettle Wetland shall be recorded upon completion of the installation of the created wetland. A copy of the draft Notice shall be provided for the director's review and approval prior to recording.
- e. The wetland mitigation site perimeter shall be fenced with a split rail fence and critical area signage installed every 100 feet. The fencing and signage shall be placed upon conclusion of the 10-year maintenance and monitoring period.

- f. The perimeter of the created wetland and buffer shall be posted with two interpretive signs describing the wetland feature and the habitat it provides. The sign locations shall be placed be approved by the Director and placed prior to the conclusion of the 10-year maintenance and monitoring period.
- 12. To the extent of existing agreements, the owner shall grant to the City the Community Park-zoned land following the completion of all mining activities (and completion of the 10-year maintenance and monitoring period for the created wetland). A Notice on Title documenting this commitment shall be created and recorded prior to commencement of mining activities so that it runs with the land and will be formalized following the completion of the mining activities. Prior to dedication, the owner shall complete a Boundary Line Adjustment to match the CP-zoning boundaries with the tax parcel boundaries to create a conveyable parcel for the dedication.
- 13. To the extent of existing agreements, the owner shall grant to the City a 15-foot-wide trail easement that extends in a north-south direction, is located on the higher elevations of the bluff, to future trail connections/easements. The precise location of the 15-foot-wide Easement Area will be determined by the City following completion of mining activities (and completion of the 10-year maintenance and monitoring period required for the created wetland). The easement shall connect to the south to the Sequalitchew Creek corridor and/or the Puget Sound shoreline. The easement shall connect to the north to the trail associated with the Public Access Trail Easement dated February 10, 2014, and will encumber Open Space-designated tax parcels 0119221008 and 0119221007. A Notice on Title shall be created and recorded prior to issuance of the City-required Tree Removal Permit documenting this requirement so that it runs with the land and will be formalized following the completion of the mining activities.
- 14. Monitoring of the southern landscape berm plantings shall be performed in accordance with the Berm Planting Plan provided on Sheet 11 of the project plans. Financial surety shall be provided for the Berm Planting Maintenance and Monitoring Plan.
- 15. Mining activities shall comply with the State and City noise standards contained in WAC 173-60-040 and DMC Chapter 9.09. Mining activities within the area of Phase 2C shall not be allowed during the hours of 5 a.m. and 7 a.m. to mitigate noise impacts to the nearby residential neighbors.
- 16. Tree removal shall be limited to the trees and areas identified in the Landmark Tree Inventory Report dated August 2021.
- 17. Per DMC 25.120.030(5), tree protection fencing shall be installed prior to any ground disturbing activities around the drip line of the trees to be retained along the south boundary. For oak trees, the protection fencing shall be located to provide a protection zone of one and one-half times the radius of the oak tree canopy.
- 18. The project biologist shall complete a site reconnaissance documenting the presence, or lack thereof, of the WDFW-mapped Priority Habitat species (big brown bats (*Eptesicus fuscus*), little brown bats (*Myotis lucifugus*), and Yuma myotis bats (*Myotis yumanensis*)). If found, the habitat management plan shall be updated to incorporate the findings and include mitigation measures

developed in consultation with WDFW recommendations. The findings and/or revised habitat management plan shall be approved by the City prior to the commencement of mining activities.

19. During logging and clearing phases, a fire access plan shall be in place. The plan shall be provided for approval by the Fire Marshall prior to commencement of mining activities.
20. Upon the completion of all mining activities and restoration of the mining areas in compliance with the Reclamation Plan(s), the applicant shall submit an application for, and pay all required fees for processing, for removal of the Mineral Resource Overlay from the City's Comprehensive Plan map and Zoning map.
21. The following conditions will ensure the offsite critical area and buffer impacts are mitigated in accordance with DMC 25.105 Critical Areas and DMC 23.01.150 Substantive Authority:
 - a. A Critical Area Report for the offsite wetlands shall be prepared and submitted meeting the requirements of DMC 25.105.050(1) and 25.105.050(2). This includes the wetland located to the east (Wetland 1-D and Edmonds Marsh) and south of Sequalitchew Creek (Wetlands #8, #9, #10, #11, Pond Lake and Old Fort Lake).
 - b. In accordance with the requirements of DMC 25.105.050(1), the applicant shall prepare a mitigation plan for city approval to mitigate indirect impacts to the offsite wetlands in accordance with DMC 25.105.050. A Habitat Management Plan shall be prepared and submitted in accordance with the requirements of DMC 25.105.050(2). The mitigation plan shall be prepared and approved prior to commencement of mining activities.
22. The applicant shall complete all FEMA-required assessments and map revisions for the changes to the onsite and Sequalitchew Creek floodplain areas. This may include providing compensatory storage and/or processing a Letter of Map Revision (LOMR) with FEMA.
23. The impacts to vegetation in the ravine slopes as a result of reduction in hydrology should be monitored to ensure the slope remains stable over time. The Monitoring and Response Plan shall include monitoring of the vegetation and slope stability within the ravine slopes to address this concern. It shall be submitted for City approval prior to commencement of mining activities.
24. The Dept. of Ecology issued an Opinion Letter dated Feb. 2, 2021 regarding the Proposed Cleanup of the South Parcel due to its association with the Asarco Tacoma Smelter Site. The letter states that Ecology has concluded that upon completion of the proposed cleanup, no further remedial action will likely be necessary. Glacier will conduct the soil cleanup in conjunction with its mining operations. Glacier shall complete the cleanup in accordance with the details provided by Ecology in the Opinion Letter, including reporting on the progress of the cleanup annually. Prior to the removal of restrictive covenant restrictions, a No Further Action (NFA) letter must be obtained for the Property through Ecology's Voluntary Cleanup Program (VCP). After obtaining the NFA letter, the legal property owner, Weyerhaeuser, must make a request to Ecology for the removal of the land use restrictions for the cleaned-up portions of Parcel 1 and Parcel 2 following a 30-day public comment period. Prior to obtaining a NFA determination with Ecology Glacier will:
 - a. Characterize the SCoA and the Mine Setback Area for Tacoma Smelter Plume contamination. The RI calculated the background levels of arsenic sampling outside of the Former DuPont works Site in nearby undisturbed areas at 32 mg/kg. Not considering the TSP contamination as

one of the potential sources of elevated arsenic and lead levels, the RI established the soil cleanup level for open areas for arsenic at 32 mg/kg.

- b. The SCOA and the Mine Setback Area need to be characterized for the Tacoma Smelter Plume contamination adhering to Chapter 10 (Natural Areas) of the MR Guidance. If sampling shows elevated arsenic or lead, Glacier will develop a remediation plan in coordination with Ecology. The remediation plan may include the use of the Net Environmental Benefit Analysis and institutional controls, such as restrictive covenants, signs, and fences in place of active remediation if deemed the best option.
- c. Provide Ecology with a final cleanup report, summarizing all the cleanup on the Property, including the Mine Setback Area and the SCOA.

25. If needed, the applicant shall obtain an Agreed Order (AO) specifying requirements and conditions associated with mitigation of the Kettle Wetland. The applicant will forward a copy of the AO to the City before any ground disturbance occurs within the Kettle Wetland or its buffer. The applicant shall comply with the requirements of the AO with Ecology.

26. All conditions associated with the original mine approvals (Ord. 95-521) and City permits for the North Mine (LU12-02) remain in effect for the South Parcel Project. Those conditions that are applicable to the South Mine Project are restated here as follows.

27. The applicant shall pay the costs of all plans, reports and monitoring programs required by these conditions of approval and for the time required by City staff and their peer review consultants to review such plans, reports and programs.

28. The applicant shall comply with all the requirements of the NPDES Sand and Gravel General Permit and applicable City regulations including:

- a. Preparation and implementation of a Stormwater Pollution Prevention Plan and Erosion and Sediment Control plan and implementation of best management practices. These plans shall be submitted to the City for review and approval.
- b. Monitoring of stormwater, compliance with effluent limits, and implementation of stormwater best management practices.
- c. Appropriate erosion control facilities and procedures shall be implemented consistent with the requirements of the NPDES Sand and Gravel General Permit and the approved reclamation plan. (Condition 3 of Ord 95-521 and Cond. 8 of North Parcel)
- d. Adopting and implementing spill control and cleanup procedures. Use of materials that could generate contaminants will be handled in accordance with best management practices and the site-specific spill prevention and response plan.
- e. The mine's stormwater management system shall be designed consistent with City and Dept. of Ecology requirements. The applicant shall submit detailed engineering drawings to the City for review and approval prior to commencement of mining activities.
- f. Stormwater shall be infiltrated in stormwater ponds located on the mine floor. Maintain a vertical separation of 5 feet between the pond bottom and the seasonal high groundwater table, consistent with Dept. of Ecology standards for infiltration ponds. The stormwater ponds shall be constructed, operated and maintained consistent with Dept. of Ecology and City standards.

- g. Runoff in the mine area shall be treated using two-celled wetponds constructed upstream of the infiltration ponds. The wetponds shall be constructed, operated and maintained consistent with Dept. of Ecology and City standards.
- h. The South Parcel Project will also involve infiltration of groundwater collected at the toe of the eastern mine slopes, and managed by infiltration in a dedicated facility, separate from any stormwater infiltration ponds. The groundwater infiltration pond shall be designed for the long-term infiltration of groundwater. Stormwater inputs to the groundwater infiltration pond will be minimized to the extent feasible, but may include stormwater from slopes above the groundwater collection system. A portion of the collected groundwater may also be directed through the mitigation wetland prior to infiltration. A vertical separation of 5 feet between the bottom of the groundwater infiltration pond and the seasonal high groundwater table, will be maintained consistent with Dept. of Ecology standards for infiltration ponds.

29. Concurrent clearing, mining and reclamation shall occur in maximum 40-acre increments. Mining shall follow the mining plan including mining areas and sequence of mining. Reclamation of the site shall progress in increments and must include regrading, replacement of topsoil, and revegetation of the site as shown in the Pioneer Aggregates Mine Reclamation Plan approved by the Washington Dept. of Natural Resources.

30. The applicant shall continue to implement its current operational best management practices to reduce air emissions, including but not limited to washing truck tires/wheels with a water-based cleaner before exiting the site, and washing and sweeping the haul road. The applicant shall operate the existing wheel wash in compliance with City and Dept. of Ecology requirements.

31. The applicant shall comply with the PSCAA Regulation I, Section 9.15 regarding fugitive dust emissions, and shall implement reasonable precautions to prevent visible emissions as identified in that regulation.

32. The existing Dept. of Ecology approved well monitoring program for the supply well at the processing plan shall continue to apply to the South Parcel Project.

33. The existing Dept. of Ecology-approved water quality monitoring program shall continue to apply to the South Parcel Project.

34. A water clarifying process shall continue to be implemented to help reduce water consumed in processing through recycling.

35. To reduce the potential for groundwater contamination, the design of areas used for fueling, maintenance and washing equipment or vehicles shall include pavement aprons, retention systems and oil-water separators. A specified area for washing trucks shall be designated and shall be designed so as to contain wash water and prevent it from infiltrating to groundwater. Water-based cleaners shall be used.

36. Earthwork for excavation and reclamation shall be in accordance with the U.S. Mine Safety and Health Act and the Washington Surface Mining Act. Reclaimed slopes shall be no greater than 2:1 (a ratio of 2 horizontal to 1 vertical). Working slopes shall be at the angle of repose.

37. All references to mining activity within this report mean all work required for mineral extraction, including the required de-watering, with the exception of the initial pump testing.
38. Site Plan Approval shall not be effective until the City has reviewed and approved the requested additional information, and the city has provided the applicant with a letter confirming the required approvals and the requirements have been met and that mining may commence.

K. ATTACHMENTS (SUMMARY OF RECORD)

1. The following additional plans and documents were submitted for City review on May 24, 2021. If a plan was later revised, earlier versions are not included in the Summary of Record (i.e., only the final version is included):
 - a. Preliminary Stormwater Management Report prepared by Aspect Consulting dated February 23, 2021
 - b. Conditions Matrix
 - c. Description of Proposal dated January 29, 2021
 - d. Conservation Easement for North Parcel Open Space dated February 7, 2014
 - e. Public Access Trail Easement for North Parcel Open Space dated February 10, 2014
 - f. Parking Memo dated November 17, 2020
 - g. South Parcel VCP Application Package dated September 3, 2020
 - h. South Parcel Cleanup Action Plan prepared by Aspect Consulting dated April 22, 2020
 - i. Opinion on Proposed Cleanup Letter from the Toxics Cleanup Program dated February 2, 2020
 - j. Geotechnical Engineering Report prepared by Aspect Consulting dated March 8, 2021
 - k. Hydrologic Model Report prepared by Aspect Consulting dated June 2017
 - l. Traffic Impact Assessment prepared by Heffron Transportation, Inc. dated January 26, 2021
 - m. FEMA Habitat Assessment and Mitigation Report prepared by Anchor QEA dated November 2020
 - n. Payment Check for Site Plan dated May 7, 2021
 - o. Pre-App Review Letter dated May 3, 2019
2. The following plans and documents were submitted for City review on June 4, 2021. If a plan was later revised, earlier versions are not included in the Summary of Record (i.e., only the final version is included):
 - a. Cover Letter dated June 4, 2021
 - b. Land Use Application
 - c. Financial Responsibility Form dated June 4, 2021
 - d. Landscape Plan Approval

3. The following additional plans and documents were submitted for City review in August 2021. If a plan was later revised, earlier versions are not included in the Summary of Record (i.e., only the final version is included):
 - a. Cover Letter Response to NOI Application dated August 11, 2021
 - b. Agent Authorization Affidavit dated August 29, 2018
 - c. Owner Authorization dated July 28, 2021
 - d. Adjacent Property Owners List prepared by Anchor QEA dated August 11, 2021
 - e. Request for Modification of Tree Retention Requirements
 - f. North Parcel Reclamation Permit Application – dated June 18, 2013
 - g. North Parcel Reclamation Permit Application – revised dated September 4, 2013
4. The following additional plans and documents were submitted for City review in January 2023. If a plan was later revised, earlier versions are not included in the Summary of Record (i.e., only the final version is included):
 - a. South Parcel Project Plans and Landscape Plans dated June 2022
 - b. Landmark Tree Inventory Report prepared by Anchor QEA dated August 2021
 - c. Land Use Application Comment Response Letter dated January 18, 2023
5. The following additional plans and documents were submitted for review in May 2025. If a plan was later revised, earlier versions are not included in the Summary of Record (i.e., only the final version is included):
 - a. Intentionally blank
 - b. Kettle Wetland Delineation Report prepared by Anchor QEA updated May 2025
 - c. Wetland Mitigation Plan prepared by Anchor QEA revised March 2025
 - d. CAO Compliance Memo prepared by Anchor QEA dated May 8, 2025
 - e. Critical Areas Report prepared by Anchor QEA dated May 2025
6. The following Notices were issued by the City during application review:
 - a. Notice of Complete Application dated August 25, 2021
 - b. Notice of Application dated August 30, 2021
 - c. Affidavit of posting and publication for Notice of Application dated August 27, 2021
 - d. SEPA DS issued on September 17, 2021
 - e. DEIS Notice of Availability dated June 14, 2024
 - f. SEPA EIS Notice of Availability dated May 22, 2025
 - g. Intentionally blank
 - h. Notice of Public Hearing dated June 4, 2025
 - i. Affidavits of publication and posting for Notice of Public Hearing
 - j. Revised Notice of Public Hearing
 - k. Affidavits of publication and posting for Revised Notice of Public Hearing

7. A full copy of the Final EIS issued on May 22, 2025 is located at the following link:
<https://www.dupontwa.gov/577/Pioneer-Aggregates-South-Parcel-Project>
8. The following documents are important historical documents affecting the proposal:
 - a. Settlement Agreement, January 2012
 - b. Type III Site Plan Review and Buffer Reduction application (LU12-02) for the North Parcel Mine approved on August 15, 2013
 - c. Ordinance 95-521 dated September 26, 1995 for original mine approval
9. The following public and agency comments were received during the Notice of Application comment period. Note that the comment period coincided with the EIS Scoping process so all of the comments on both land use notice and SEPA scoping are provided:
 - a. List of public commenters responding to Notice of Application and each comment
 - b. List of Agency commenters responding to Notice of Application and each comment
 - c. The EIS scoping comment tally dated 10-26-21.
 - d. The DS Scoping Summary.
10. SEPA EIS Appeal Letter from Cascadia Law Group dated June 4, 2025.

L. PARTIES OF RECORD

1. Applicant Representative: Pete Stoltz
2. Commenters on the proposal/Interested Parties:

Don Russell
Sam Thayer
Krystal Kyer
Hannah Thornton
William Britton – JBLM
Nicole Damer Surface Mine Reclamation Specialist Washington Geological Survey- DNR
Maria Gudaitis
Kate Walsh
Renee Buck
Scott Stugelmeyer
Sam Thayer
Denny Glenn
Don Russell
Lee Chase
Robin Barrow
Todd Merritt
Vicki Keys
Judy Norris

Beth Elliott
Kazuko Donahue
Mike Brown
Christi Glenn
Shawna Gasak
Penny & Roy Coffey
Mike & Nanette Winkler
Maame Bassaw
Karen Nolan
Heather Muir
Amy Marlow
Ronald Forbes
Elizabeth Bundt
Jessica Hillsberry
William Noland
Beth Elliott
Judy Norris
Michael Winkler
Karen Nolan
Todd Merritt
Maria Gudaitis
M.C. (Kate) Walsh
Renee Buck
Scott Stugelmeyer
Cary Harlow
Barbara Aschendorf
Lara Behnert
Krista Novak
Cara Mitchell
Susannah David
Ed Kenney, The Nisqually Delta Assoc.
Nicole Damer, Department of Natural Resources
Maggie C, Puget Sound Clean Air Agency
Krystal Kyer, Pierce County

cc: File No. PLNG2021-006
 Gus Lim, City Engineer
 Ray Shipman Building Department
 Brad Martin, City of DuPont Fire Chief
 Lisa Klein, AHBL, Inc. (representing the City of DuPont)