



CITY OF DUPONT

DEPARTMENT of Community Development

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PLANNING DIVISION

DIRECTOR'S REBUTTAL RE: JUNE 20, 20205 HEARING ON PIONEER AGGREGATES SOUTH PARCEL MINE EXPANSION PROJECT

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 Rebuttal: July 2, 2025

From: Barb Kincaid, Director of Public Services

Barb Kincaid

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1. **Introduction.** This document is provided in response to issues or questions raised as part of the public hearing for the Pioneer Aggregates South Parcel Project, and/or public comments received as part of the record before and following the public hearing. City staff have considered the comments and believe that the Staff Report is comprehensive and provides the required information, code analysis and conclusions. With the exception of the responses below, the Staff Report stands on its own as a response to comments.
 2. **Testimony Related to Offsite Wetland and Stream Impacts and Potential for No Net Loss.** The Staff Report conditions the project to provide additional information to fully demonstrate compliance with the code requirements, which requires a no net loss analysis, for potential impacts to offsite critical areas. The Hearing Examiner asked if a no net loss determination was achievable. The responses to this question are provided below and were prepared by city consultants on the EIS: (1) Chris Wright, President/Soil and Wetland Scientist for Raedeke Associates, Inc., and (2) Ben Lee, PE, CWRE, Director of Water Resources for Landau, Inc.
 - a. **DMC 25.105.050(2)(a) requires mitigation to achieve no net loss of stream function.** Given the dewatering of the aquifer, and the implementation of the Sequalitchew

Creek Restoration Plan, is a no net loss determination achievable for Sequalitchew Creek?

As described in the FEIS (Sections 3.5 and 3.6), the functions of Sequalitchew Creek include fish habitat as well as the transport of sediment, nutrient, biota, and dissolved gases downstream and into the nearshore habitat. The Proposed Action and Restoration Plan combined are likely to result in reductions in groundwater discharge to the ravine section of the creek and water surface temperature increases in the summer. This is a result of lower ground water levels, reduced groundwater seepage into the creek, and increased inputs of warmer waters (during the summer months) from the upstream Sequalitchew Lake.

Available modeling indicates that resulting periods of lower flow relative to current flows will likely occur about 10% of the time. Episodes of no flow over the 19-year period of evaluation would increase from what is currently 7 days, to a modeled 24 days. Outside of these summer flow rates, the stream will see significantly increased flows throughout the remaining portions of the year. Monthly average flows throughout the year will increase to between 2.5 cfs and 25 cfs, with peak flows up to 65 cfs, compared to current monthly average flows throughout the year between 0.5 cfs and 2.5 cfs, with peak flows of 13.8 cfs.

The anticipated summertime increases in creek temperatures are anticipated to occur at a time that may negatively impact cutthroat trout or other species' spawning and rearing; however, they are not anticipated to result in significant impact to most fish species present or potentially present in the creek system throughout the majority of the year.

Increased flow rates should result in a notable increase in many of the other factors that influence fish habitat and stream functions. Higher flow rates will scour out fine sediments from the lower reaches of the creek in addition to supplying the hydrologic force necessary for formation of in-stream habitat features such as pools, riffles, and undercut banks. Increased flows will also result in substantial increases in dissolved oxygen levels. Lastly, and likely most importantly, the project will restore discharges from the upstream Sequalitchew Lake and wetland complex into Sequalitchew Creek. The wetlands, with their dense vegetation and broad expanses of saturated and inundated areas, represent highly productive terrestrial and aquatic ecosystems. Discharges from these systems will allow nutrients and aquatic organisms to be exported downstream and greatly increase both the primary productivity of the stream and the availability of food sources. All of these changes are beneficial to resident and migratory fish and represent a net increase in stream functions. The positive benefits of the proposed project that occur throughout most of the year appear to outweigh the short-term negative effects experienced during relatively short portions of the summer. The proposed changes are not anticipated to result in a net loss of stream function for Sequalitchew Creek.

The expert analysis provides that no net loss of stream function is achievable, however this cannot fully be determined until the applicant submits additional information.

- b. DMC 25.105.050(1)(d) requires mitigation to achieve equivalent or greater biological functions resulting in no net loss of wetland function. "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 proposal 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.” Given the dewatering of the aquifer, which the EIS states will lower the water levels of nearby wetlands, and the implementation of the Sequalitchew Creek Restoration Plan, is a no net loss determination achievable for the offsite wetlands?

As described in the FEIS (Section 3.4), lowered groundwater levels due to groundwater dewatering related to the Proposed Action are anticipated to result in lowered wetland water levels to varying degrees (from 0 to 2 ft) relative to current conditions. In Edmond Marsh, more significant reductions in wetland water levels are anticipated to occur as a result of the Sequalitchew Creek Restoration Plan and its actions related to re-establishing the hydraulic gradient across the marsh system to allow for flow of water from Sequalitchew Lake to the ravine section of Sequalitchew Creek. In areas of Edmond Marsh that will experience the greatest amount of water level reductions, lower surface water elevations have the potential to reduce the overall size of the wetland. The cumulative effect of water level changes in the Edmond Marsh complex, while not known, are more likely to reflect historic conditions prior to the construction of the JBLM Diversion Canal than the current conditions do.

Isolated wetlands (i.e., wetlands not directly hydraulically connected to Sequalitchew Creek by surface water connections) are also anticipated to experience some degree of water level reductions due to lowered groundwater levels from the Proposed Action.

Functions provided by wetlands are evaluated using the Washington State Wetland Rating System. This system evaluates several different characteristics of wetlands in order to assign a numeric value to specific functions determined to be important and capable of being measured. The functions addressed in the wetland rating system are: Water Quality functions such as the ability of the wetland to improve water quality; Hydrologic functions such as the ability of the wetland to reduce flooding and stream degradation; and Habitat functions such as the ability of the wetland to provide important habitat to plant and animal species.

The potential lowering of the water table in the vicinity of the off-site wetlands has very limited ability to alter existing measurable functions within these wetlands. Water quality functions are unlikely to change as no direct alteration is proposed of the wetlands' area, configuration, soil composition, or landscape position. Potential changes in water regime could alter the characteristics of the vegetation communities within the wetlands, resulting in a change of the ability to trap and treat pollutants. However, pollutant-generating features within the surrounding land uses currently exist and the existing wetlands are well buffered to protect this function.

Hydrologic functions of the off-site wetlands likely will remain unchanged as the physical size of the basins containing the wetlands will remain unchanged, the shape and configuration of the wetlands will remain unchanged, and the entire area is not identified as a flood hazard risk.

Habitat functions provided by the wetlands are at the highest risk of change as a result of the proposed action. Lowering of the aquifer could result in changes to the hydrologic regime within each off-site wetland. These changes could limit the wetted area of the wetland during certain times of year and result in a reduced total area of wetland and changes to vegetation communities thus altering the number of, and species composition of plants and animals that occupy these wetlands. It should be noted that the aquifer is not the sole source of hydrology to the wetlands. The wetlands also receive hydrology from direct precipitation, surface water run-off from surrounding areas, and shallow groundwater interflow. At this time, it is not known what percentage of the total water budget of these wetlands is derived from the aquifer, nor is it known what total volume of water is necessary to maintain the wetlands in their current vegetated state.

As there is insufficient information to determine if there will be a net loss of wetland function resulting from the lowering of the aquifer it cannot be stated that no-net loss will be achieved.

The expert analysis provides that no net loss of wetland function is related to habitat, hydrology and water quality. The analysis concludes that there is insufficient information to determine if no net loss of wetland function is achievable specific to habitat functions as it is not known what the total volume of water is necessary to maintain the wetland in their current vegetated state. Additional information, such as a critical area report and mitigation plan prepared in compliance with DMC 25.105.050, is required as conditioned by the project. DMC 25.105.050 provides other tools for mitigation for the replacement of wetland functions lost within the same subbasin, such as out-of-kind mitigation, enhancement and replacement.

3. **Questions Regarding Consistency Analysis and Proposed Permit Conditions.** The Staff Report conditions the project to provide additional information to fully demonstrate compliance with the code requirements. The Hearing Examiner asked why some conditions were predicated on authority other than the Director's substantive SEPA Authority. As set forth below, in order to meet critical area code compliance and to demonstrate consistency with the Comprehensive Plan the Director utilized its authority under the Critical Areas Ordinance and the Land Use Administration of Development Regulations at DMC 25.175.040 for some of the proposed permit conditions.
 - a. **DMC 25.105.050(1) provides in relevant part: "development or alterations in or adjacent to, or in close enough proximity as determined by the director to, wetlands, lakes, and their riparian buffers must incorporate the ARC mitigation sequencing during the planning process."** The Staff Report describes the known significant unavoidable impacts to elements of the surface water environment. SR Pg. 9-10. This included analysis of offsite surface water bodies, specifically wetlands, located south of Sequelitchew Creek, noting that the EIS provides no mitigation measures for any indirect impacts to plant and habitat in

those waterbodies south of Sequalitchew Creek. *Id.*¹ The EIS concludes that, as related to indirect plant and habitat impacts of the proposed action to these offsite waterbodies: “the wetland hydrology of aquatic resources identified as nearby wetlands, except for the Seep Wetlands (Sequalitchew Creek Ravine, Pond Lake, and Wetland 1D) could also be affected by changes in the groundwater levels, but any effects are anticipated to be minor. The indirect effects of the Proposed Action on the Seep Wetlands are anticipated to have a greater potential for impact.” EIS Pg. 3.6-14. These potential impacts are further complicated by the Sequalitchew Creek Restoration Plan (“Restoration Plan”). SR Pg. 10-11. While the intent of the Restoration Plan is to improve (aquatic) fish habitat, this also has the potential to result in significant unavoidable impacts. SR Pg. 10-11; EIS Pg. 3.6-12-15, *see also* EIS 1-12-13 (cumulative impacts). Ultimately, though, neither the EIS nor the Sequalitchew Creek Restoration Plan reaches a final conclusion as to how significant any of these offsite waterbody impacts to plants and habitat may ultimately be. *Id.*

The substantial evidence indicates a level of variability and incompleteness of the data indicating potential for greater or lesser impacts to these aqueous plant and animal habitats in the identified waterbodies and any such impacts, without mitigation, would not align with the Comprehensive Plan or the Critical Areas Ordinance. Per DMC 25.105.050(1) the Director has discretion to determine if wetlands are in close enough proximity to the proposed project to require compliance with the Critical Area Ordinance. The south wetlands described above are critical areas regulated under DMC 25.105.050(1). The EIS concluded these systems are hydrologically interrelated and will be effected to varying degrees by the proposed project EIS Pg. 3.6-14-16. In addition, the south wetlands are not geographically remote from the project site and are in close enough physical proximity to include the potential for impacts directly related to the mining activities roughly adjacent to the south wetlands. EIS Pg. 3.3-5; 3.3-8. Accordingly, the Director has determined these critical areas are in close enough proximity to the proposed project to justify the mitigation requirements of the critical areas ordinance and has included conditions to develop a Critical Areas Report and prepare mitigations, including a Habitat Management Plan, to address significant impacts to any of the south wetland areas, prior to commencement of mining activities. SR Pg. 11, 45 (Condition 21).

Additionally, some public testimony expressed dismay at the inclusion of the EIS assessment at Pg. 3.6-14, revolving around the belief that the use of the word “minor” for some anticipated impacts to aqueous plants and habitat in the south wetlands trivializes those impacts or relaxes conditions to mitigate for these impacts.² This concern is unfounded. On the contrary, because the EIS

¹ The Staff Report erratum admitted into the record is an appendix to the Staff Report which listed corrected errors, including the correction to SR page 10 to include the actual conclusions of the EIS at Pg. 3.6-14.

² In a similar vein, some public testimony was concerned the SR somehow modified or amended the EIS. The EIS is one of many records and reports that are relied on in reaching the conclusions in the SR. SR Pg.

demonstrated wide variability of potential impacts within the south wetland critical areas, it substantiates the Director's proposed conditions to study those impacts and prepare mitigations for them.

- b. **DMC 25.175.040 provides in relevant part: “(1) Determination of consistency . . . (c) Project Review. Project review by the director and appropriate city staff shall identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, or other measures to mitigate a proposal’s probable adverse environmental impacts.”** The Director is required to review a proposed land use action for consistency with the City’s comprehensive plan in the absence of applicable development regulations. DMC 25.175.040. The DMC also authorizes the Director to impose conditions on a proposed project relating to the character of the project or to mitigate environmental impacts separate from the SEPA substantive authority.

The Director Identified impacts from the proposed project that absent conditions requiring mitigation would not be consistent with the comprehensive plan with no development regulations to control for them. SR Pg. 8. These areas were identified as “Parks Zoning requirements (for which there are none), protection measures for citywide Cultural and Historic Resources, and protection measures for aquifers.” Id. In these areas, in order to mitigate for potential impacts and to ensure consistency with the comprehensive plan the Director conditioned them pursuant to her authority in DMC 25.175.040(1)(c).”

4. **Comments concerning Cultural and Historic Resources and Nisqually Tribe.**

All questions and comments pertaining to the Nisqually Tribe’s Cultural and Historic Resources concerns will be addressed by the City at the appeal hearing.

48-50. The EIS is a stand-alone document that cannot be modified by a staff report’s interpretation or citation to the information in it.