

July 10, 2025

Hearing Examiner Phil Olbrechts
City of Dupont
DuPont WA, 98327

Re: *Pioneer Aggregates South Parcel Mine Project (PLNG 2021-006, -009, -010, -002)
Applicant Rebuttal Letter*

Dear Hearing Examiner Olbrechts:

On behalf of Glacier Northwest, Inc., dba CalPortland, this rebuttal letter addresses various points raised by the public in hearing comments (written and verbal), and offers comments about certain aspects of the City's Staff Report and Hearing Presentation. We hope these points and clarifications will assist you in preparing your decision on CalPortland's three permit applications.

A. Environmental Benefits of Project

Before turning to the applicable criteria for the three permit applications at issue, we think it is important to address the general anxieties and concerns raised in written and public comments.

Although public comments objected in general terms to alleged adverse environmental impacts, it is undisputed that *all* mitigation measures identified in the FEIS to mitigate any significant environmental impacts are incorporated under Condition 1. Notably, other than the Tribe's appeal, no appeal was filed claiming that the FEIS—issued after nearly four years of SEPA review—failed to identify or adequately mitigate significant adverse impacts.

As Mr. Stoltz testified, CalPortland has worked hard to develop a project that not only mitigates impacts but improves the site and the Sequalitchew Creek watershed as a whole compared to existing conditions. *See* Stoltz Testimony (attached as ATTACHMENT 1 hereto). We summarize some of those benefits here, and briefly respond to certain public concerns raised about these benefits.

1. Restoration of Sequalitchew Creek

Sequalitchew Creek is the largest stream in the City of DuPont. Historically the creek carried a flow of water from Sequalitchew Lake through Edmond Marsh to Puget Sound sufficient to support a thriving salmon population. However, in the words of a technical consultant working for the Environmental Caucus (defined below), the creek has since been “decapitated from its headwaters.” The flow in the creek is severely diminished as a result of

modifications made at the mouth of Sequalitchew Lake (primarily a diversion weir and canal), structural fill, and beaver activity. For the past several decades a large portion of the creek channel has remained dry and the flow of water reaching Puget Sound is a small fraction of historic flows, and are insufficient to sustain any salmon runs. *See* FEIS Figure at 3.5-14 (PDF 209), included as Exhibits to Stoltz Testimony (ATTACHMENT 1).¹

The restoration of Sequalitchew Creek is the centerpiece of the 2012 Settlement Agreement between CalPortland, the City, the Washington Department of Ecology, and seven environmental groups now collectively referred to as the “Environmental Caucus.” The restoration is a product of an extensive process prescribed by the Settlement Agreement and negotiated with the Environmental Caucus that included stakeholder input (including the Nisqually Tribe), coordination with JBLM, and detailed technical analysis and careful planning. The purpose of the combined restoration activities is, among other things, to restore historic creek flows suitable to again sustain salmon.

The FEIS notes how mining alone, without the Restoration Plan, would adversely impact the already severely diminished Creek flow. However, the Restoration Plan—which will be entirely funded by CalPortland—will dramatically increase flows in Sequalitchew Creek—from the current average of 1.6 CFS to 12.9 CFS. FEIS at 3.4-23 (PDF 188), 3.5-14 (PDF 209), 3.6-20 (PDF 234), 4-24 (PDF 353). The Environmental Caucus agreed to the restoration and funding plans allowing the proposed mine project to proceed only after determining that those plans support the statement in the Settlement Agreement that the implementation of the Restoration Plan would “create ecological benefits that constitute *more than mitigation*.” *See* Settlement Agreement (available upon request), Par. 4.5.3.

These benefits are somewhat obscured by isolated remarks in the Staff Report and the City’s Hearing Presentation that Sequalitchew Creek will experience higher temperatures and possibly longer dry periods than under current conditions. Without a fuller picture, these statements may cause the public to miss the Restoration Plan’s overwhelmingly positive impacts described in the FEIS. Mr. Stoltz’s testimony (ATTACHMENT 1), along now with the City’s Rebuttal Letter, provide the needed context:

- *Temperature.* The water temperature in Sequalitchew Creek Ravine is artificially low currently because surface water does not flow down the creek and the severely diminished flow in that portion of the creek originates almost entirely from groundwater seeps. When the historic connection between Sequalitchew Lake to Puget Sound is restored, groundwater will contribute a relatively small portion of the total creek flow and water temperature in the lower reaches of the creek will fluctuate with the temperature of the water flowing from Sequalitchew Lake, as it did historically. *See* FEIS, App. B (Earth & Water Resources Report)

¹ For your convenience, this letter also provides citations to the FEIS by PDF number in the event you are reviewing the City’s electronic copy of the FEIS, which totals 2,429 PDF pages.

at 83 (PDF 565). Importantly, the temperature graph in the FEIS, included with Mr. Stoltz's testimony, shows that Creek temperatures will be suitable for salmon during the months when chum salmon runs would occur. *Id.* at Fig. 41 (PDF 640)(attached to Stoltz Testimony).

- *Creek Flows.* For 90% of the days of the year, average Creek flows will be substantially greater than under existing conditions. For the other 10% of the days of the year, flows could be less than existing, including additional dry periods. But the average *monthly* flow for *all months of the year* will improve, and for the other times of the year, including the period when salmon would be present, there is a several-fold predicted flow increase compared to existing conditions. *Id.* at Fig. 39 (PDF 638)(attached to Stoltz Testimony). Again, estimated average annual flows will be 12.9 cubic feet per second (CFS) compared to the current average of 1.6 CFS. FEIS at 3.4-23 (PDF 188). The increased flows resulting from restoration will also have sufficient energy needed to restore the natural processes that form pools and riffles in the streambed. These stream features, nearly absent from the stream system today, provide the type of habitat needed for the restoration of successful chum salmon runs and create habitat features like pools that are especially important to other fish species during low flow periods.²

The FEIS's analysis of the cumulative impacts of mining and restoration describes these benefits in further detail. The upshot is that the minor impacts of mining alone are more than offset by the massive improvement in Creek functioning compared to existing conditions. Permits for the Restoration Plan are a prerequisite to any mineral extraction activities, and once permitted, implementation of the part of the Plan activities occurring within the City will be entirely funded by CalPortland.

Some public commenters question whether CalPortland would deliver on its financial commitment, but an adequate funding package is a contractual commitment of the Settlement Agreement. Others questioned whether other restoration opportunities are available at lower cost without funding from CalPortland, but no alternative plan with funding is proposed. Sequalitchew Creek has remained in its current highly degraded condition for more than 25 years. It has been public knowledge that the mine project combined with a plan to restore flows to Sequalitchew Creek has been in place since at least 2006. Other interested individuals and organizations have had ample time to develop and fund a plan to restore the creek independent of the mine project. There are no other plans or sources of funding proposed at the present time, and the FEIS concludes that any alternative funding is "unlikely." FEIS at ii (PDF 7).

² FIES at 3.5-11 (PDF 206) ("The increase in hydrology and stream energy would increase aquatic ecosystem productivity and create and maintain habitat diversity, particularly for target species such as chum salmon and cutthroat trout in the system.")

2. Further Clean-Up of Environmental Contamination

In addition to facilitating the restoration of Sequalitchew Creek, the current mining proposal will also include much-needed additional clean-up activities within the project area. The top 6-8 inches of soil within the new mine area contain contamination—primarily arsenic—as a result of the former DuPont Works (munitions) facility and Asarco's former copper smelter in Tacoma.³ Some remediation occurred in the 1990s, but only to industrial levels. FEIS at 2-18 (PDF 75). As a result, allowable uses at the site are limited by a restrictive covenant, and would not include residential or commercial uses, or even the type of recreational uses mentioned by several members of the public at the hearing. *Id.*

A straightforward clean-up process is available that would bring the site to a condition suitable for *all* possible future uses. But that process entails a fairly massive amount of earthwork to remediate the contaminated soils. Especially with residential and commercial developers already facing economic headwinds, the remediation costs would be prohibitively expensive. The interim use of mining is an ideal solution. Once the mining and reclamation are complete over the approximately next 14 years, FEIS at 2-15 (PDF 72), the site will be cleaned up and available for whatever uses the City and citizens of Dupont, with input from the landowner, deem suitable when they update their Comprehensive Plan and development regulations.

3. Environmental Benefits of Mining at this Site.

Sand and gravel, plus cement and water, are the essential ingredients of concrete. Without adequate supplies of sand and gravel, the region's ability to provide the materials needed for housing and infrastructure grinds to a halt, especially in regions of continued population growth such as Puget Sound. For that reason, the Growth Management Act requires jurisdictions to designate and protect mineral lands in their comprehensive plans, and then adopt development regulations to allow mining within designated sites. The City has followed that mandate, with the South Parcel a designated mining site for nearly 20 years now. *See Staff Report (page 3).*

We note three components of the Pioneer Aggregates site that confer distinctive environmental advantages (among others), as noted in Mr. Stoltz's testimony (ATTACHMENT 1) and unrefuted in public testimony. *First*, the quality of sand and gravel at this site is suitable for manufacturing particularly strong concrete; this in turn substantially reduces the amount of cement and reinforcement bar needed and associated greenhouse gas emissions associated

³ For further background on the Asarco-related contamination, see Ecology's publication titled "Frequently Asked Questions: Tacoma Smelter Plume" (September 2014), available [here](#). See page 2: "Q: Will the Tacoma Smelter Plume ever be completely cleaned up? A: No, the state does not have enough resources to clean up all the Asarco contamination. Arsenic and lead can remain in surface soils for thousands of years. The only feasible cleanup methods are removing it, covering it, or diluting it by mixing it with clean soil."

with any given project. *Second*, by expanding and deepening the existing site, the project optimizes the extraction of mineral resources from within the existing mine footprint and extends the useful life of existing processing and barge-loading facilities and eliminates the need to open new truck-based sites at far-flung rural locations a large distance from the urban areas where the material is needed. *Third*, and perhaps most critically, CalPortland will continue to transport 80% of the materials by barge. One typical barge moves the amount of material it would otherwise require 186 dump trucks with trailers to transport along already-congested roads and highways in Puget Sound—the equivalent of 372 round trips. Mr. Stoltz noted that barge transport is nearly 10 times more efficient than truck transport and results in a substantial reduction in GHG emissions and reduces the emission of harmful particulates like PM10 and PM2.5.

The region's need for sand and gravel—and the multiple benefits of extraction at this particular site—are reflected in the City's Mineral Resource Overlay designation for the site, but were largely unacknowledged in public comments.

We turn now to the relevant permits and review criteria.

B. Compliance with Site Plan Approval Criteria

The City Code contains two sets of Site Plan Approval criteria—those specific to mining (Chapter 25.60 DMC), and those applicable to all uses (Chapter 25.150 DMC).

1. Mining Site Plan Approval Criteria (DMC 25.60)

The criteria specific to mining require an “examination” of “[p]otential impacts to traffic, dust control, light emission, visual screening, loss of tree cover, noise emission, and protection of environmentally sensitive areas.” DMC 25.60.050. In the course of a nearly 4-year SEPA review process (in addition to prior reviews), the FEIS examined all these areas, identified impacts, and proposed conditions, all of which are incorporated as conditions of the permit. The adequacy of the EIS review of these issues is not challenged.

The public comments do not challenge the City's review of traffic, dust control, light emission, or visual screening.

At the hearing, you asked about the potential noise impacts to residential uses. The answer is provided in FEIS App. K (Noise Study) at 7-8 (PDF 1690-1691). It notes that the only potential exceedance would be during Phase 2C when the upper floors at Creekside Apartments facing the site may experience noise exceedances between 5:00-7:00 AM due to the use of dozers. The Staff Report includes Condition 15 to address this issue.

Comments about loss of tree cover and impacts to critical areas are addressed in Sections D and F below, respectively.

2. General Site Plan Approval Criteria (DMC 25.150)

General site plan approval requires satisfaction of the development standards set forth in DMC 25.75-.95 and .105-.125. *See* Staff Report at 15; DMC 25.150.030. Consistent with the Hearing Examiner Decision for the North Parcel (available upon request), the Staff Report evaluated the relevant DMC provisions and found compliance. Other than DMC 25.105 (discussed below in Section F), the public commenters did not challenge compliance with any of the DMC provisions relevant to site plan approval review. Although the Nisqually Tribe challenges the FEIS adequacy, it does not challenge compliance with DMC 25.80 (cultural resources).

C. Compliance with Critical Areas Alteration Permit Criteria

It is undisputed that the isolated kettle wetland in the middle of the project areas is the only onsite critical area affected by the project. Due to its location, avoidance of wetland removal is not possible, and leaving it in place—as an isolated wetland surrounded by sand and gravel excavation—would have no ecological benefit, as discussed in the Critical Areas Report. The preferred outcome from both a resource utilization and environmental standpoint is to remove the wetland, and provide the robust mitigation proposed in the Critical Areas Report in compliance with City critical area regulations.

The Staff Report explains how all applicable criteria for a Critical Areas Alteration Permit are met. No contrary expert evidence was presented at the hearing or in public comment.

D. Compliance with Tree Retention Modification Criteria

It is undisputed that CalPortland cannot effectuate the site's Mineral Resource Overlay designation without modifications to the City's tree retention regulations. The analysis in the FEIS and Staff Report explain the robust planting ratios that will mitigate adverse impacts, and how the project qualifies for a tree modification.

The project will involve the removal of 13 landmark Oregon white oaks—the equivalent of one white oak per 14.4 acres of the 188 acres that would be cleared for mining. FEIS at 3.6-13 (PDF 227). A comment was made about the ecological importance of these white oaks. However, the FEIS concluded that with the proposed mitigation measures (including tree replacement ratios of 50:1, *see* Staff Report at 40), adverse impacts are not considered significant. FEIS at 3.6-27 (PDF 241). No challenge to the adequacy or accuracy of that FEIS conclusion has been made. No commenters explained how all or even some of the trees necessarily logged for mining (and mitigated with tree planting) could be retained without essentially precluding the mining use specifically allowed at this site under zoning regulations in place for nearly 20 years.

E. City's Analysis of Comprehensive Plan Policies

In addition to evaluating the project for compliance with Site Plan, Critical Areas Permit, and Tree Modification criteria, the Staff Report contains an extended discussion of “consistency review” under DMC 25.175.040(1)(b), with a focus on certain Comprehensive Plan policies.

We agree with the conclusion in Section C of the Staff Report that the proposed project is consistent with City’s Comprehensive Plan policies. However, we do not believe it was necessary for the City to consider those policies at all as a part of this project review. Under the framework of the Growth Management Act, the purpose of comprehensive plan policies is to guide the implementation of development regulations. *See, e.g.*, WAC 365-196-800 (development regulations are “specific controls placed on development or land use activities,” and “implement” comprehensive plans). Those development regulations govern land use project review, not the comprehensive plan policies. *See, e.g.*, *Woods v. Kittitas Cty.*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007) (“A comprehensive plan does not directly regulate site-specific land use decisions. Instead, local development regulations, including zoning regulations, directly constrain individual land use decisions.”)

RCW 36.70B.030(2) and .040, as implemented in DMC 25.175.040(1)(b), may allow review of comprehensive plan policies in certain limited instances. But those instances, as listed in DMC 25.175.040(1)(b)(i)-(v), are not applicable here. First, the City’s development regulations already address allowable uses at the site. Second, the level of development in terms of density is not an issue here. Third, the availability or funding of public infrastructure does not here trigger comprehensive plan policy review. With respect to the last topic identified in DMC 25.175.040(1)(b)—character of development—that provision should be read in the context of RCW 36.70B.030. The statute indicates that the “character of the proposed development” is reviewed under a City’s *development regulations or SEPA*, not comprehensive plan policies. RCW 36.70B.030(5). The term “character” is broad and undefined. Applying general comprehensive plan policies to such a vague term creates considerable uncertainty and unpredictability. That is why the state statute points to development regulations as the vehicle for this aspect of project review.

For these reasons, DMC 25.175.040(1)(b) does not provide a basis for the Staff Report to apply an additional layer of standards in the form of comprehensive plan policies to the project.

As noted during the hearing, the City does have authority to consider Comprehensive Plan policies when determining whether to exercise its SEPA substantive authority under DMC 23.01.150(d)(5)(i). But in that case, any such exercise of authority is constrained by other factors listed in DMC 23.05.150, including that any mitigation measures must be reasonable, capable of being accomplished, and necessary to mitigate a specific significant impact identified in the FEIS. The City Staff Report did not undertake that type of review when applying City Comprehensive Plan policies discussed in Section C of the Staff Report.

One specific example of the problems with applying comprehensive plan policies is the way the Staff Report applies the Parks and Recreational Goals and Policies (pages 12-14), to impose Conditions 12-13. The Staff Report cites the absence of zoning regulations for the Community Park (CP) zone as a basis to review comprehensive plan policies. However, any underlying zoning regulations would be irrelevant to this project review anyway, because it is the Mineral Resource Overlay regulations (DMC Chapter 25.60) that apply here, not the zoning regulations of the underlying district, as the Staff Report correctly notes on page 16 (“[A]ll of the affected South Parcel project area is located within the Mineral Resource Overlay . . . Therefore, DMC 25.60 is the applicable zoning district that applies to the South Parcel Mine Expansion proposal”).

The proposed Conditions 12-13 that result from the City’s application of these Comprehensive Plan policies require a land dedication and trail easement, raising significant problems under RCW 82.02.020 and other laws in the absence of a clear study of nexus and proportionality. Conditions 12-13 seek to avoid that problem by limiting the Conditions to situations where the “existing agreements” already require such a dedication or easement. CalPortland and the landowner have researched their files and find no existing agreements that require such a dedication/easement, and the City Staff Report cites none. To avoid unwarranted expectations, CalPortland asks that Conditions 12 and 13 be excluded as conditions of final approval. If the City wishes to pursue these dedications, they can be discussed outside the permit process as separate agreements.

Given their importance to public commenters, CalPortland does not object to the other two conditions that emerged from the City’s consideration of comprehensive plan policies: Condition 7 (Vashon Aquifer) and Condition 21 (offsite wetlands), with the modifications noted in Section I below. However, to the extent public commenters seek additional mitigation (or a remand) based on Comprehensive Plan policies, those requests should be declined as outside the appropriate scope of project review.

The City’s application of comprehensive plan policies to cultural resources is further discussed in Section G below.

F. City’s Analysis of Indirect Impacts to Sequalitchew Creek and Wetlands

As noted in Section C above, the only *onsite* critical area affected by the project is the kettle wetland. Turning to potential impacts to *offsite* wetlands and Sequalitchew Creek, a critical distinction must be noted at the outset, as correctly stated in the Staff Report (page 24): while development *within a critical area or buffer* is reviewed under the critical areas regulations and requires a critical areas alteration permit, “[d]evelopment *outside 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 [the City’s SEPA regulations].” DMC 25.105.080.

With this distinction in mind, we turn to the City's analysis of indirect impacts to Sequalitchew Creek and certain offsite wetlands.

1. City's Analysis of Sequalitchew Creek

In accordance with the 2012 Settlement Agreement, the project maintains a 100-foot buffer from the top of Sequalitchew Creek. The Creek buffer under City zoning regulations is 100 feet from the *ordinary high-water mark*, DMC 25.105.020(g)—a lesser buffer than 100 feet from top of bank. CalPortland's applications propose no “alteration” of the Creek or buffer as that term is specifically defined in the City's critical areas regulations. *See* DMC 25.105.030.005 (defining “alteration” as an action “*within* critical areas or their buffers”).

Given that the project involves no “alteration” of Sequalitchew Creek, some aspects of the discussion of DMC 25.105.050(2)(a) in the Staff Report (pages 28-29) should be clarified. DMC 25.105.020(2)(a) expressly applies to “alterations” of a stream or stream buffer. No alteration is proposed here, and this sub-section is therefore inapplicable to the mining project. To the extent the *Restoration Plan*—a separate action going through its own permit process— involves an alteration, it may be subject to these provisions. But it does not apply to CalPortland's project.

To the extent the project will have an *indirect, offsite impact* to Sequalitchew Creek, that impact is reviewed under SEPA. DMC 25.105.080 (cited and quoted above). The FEIS furnishes that review and, under the City's SEPA substantive authority, contains numerous mitigation measures with respect to offsite impacts to the Creek. The primary mitigation measure is the Restoration Plan and that Plan is going through a separate permit process.

We therefore request that you clarify in your Decision that although DMC 25.105.050(2)(a) may apply to the Restoration Plan if it entails an “alteration” as defined above, it does not apply to the Applicant's project.

The Staff Report rightly concludes that other subsections of DMC 25.105.050(2)—specifically, (b), (c), (d), and (e)—are inapplicable to this project, though may be relevant to Restoration Plan permitting. Turning to subsection (i), the Staff Report finds compliance subject to Condition 22. Although the inclusion of Sequalitchew Creek in Condition 22 is questionable given that CalPortland is not undertaking any “development activities” within or “alterations” to the Creek or Creek buffer, CalPortland can accept this Condition with the modifications requested under Section I below.

Finally, we note that, perhaps inadvertently, Condition 21 of the Staff Report requires a Habitat Management Plan “in accordance with the requirements of SMC 25.105.050(2).” No specific sub-section in .050(2) is cited to support this requirement. The Staff Report correctly notes that any HMP required under DMC 25.105.050(2)(d) would be assessed as part of the separate Restoration Plan permitting. Condition 18 already provides that an HMP would be needed if further reconnaissance identifies the presence of priority habitat species; this follows

from DMC 25.105.050(2)(e). An HMP is warranted under DMC 25.105.050(2)(i) if a project creates certain impacts, but none of those impacts are present here, and the Staff Report's discussion of that sub-section (page 31) does not require an HMP.⁴ Accordingly, CalPortland requests a revision to Condition 21 to strike the reference to an HMP. *See* Section I below.

2. City's Analysis of Offsite Wetlands

Some public commenters expressed concerns about potential impacts to offsite wetlands. Those wetlands are Wetland 1-D, Pond Lake, and Wetlands 8-11. Their location is depicted in Figure 27 of FEIS Appendix B (PDF 626). We offer the following response to clarify the potential impacts and to place those impacts in the proper regulatory framework for purposes of determining an appropriate monitoring plan.

As noted in the FEIS, the City's Rebuttal Letter (pages 2-3), and in John Small's testimony at the hearing, and his attached Technical Memo, it is critical to distinguish between potential impacts to wetland *water levels* and impacts to wetland *functioning*. Impacts to water levels are anticipated to a certain extent. *See* FEIS App. B (Earth & Water Resources Report) at 70 (PDF 552). But those changes are generally within natural fluctuation levels and reflect conservative assumptions in the modeling so that the actual changes in water levels are expected to be less than the modeled changes.

Moreover—and this is the critical point—changes in water levels do not necessarily mean an adverse change in ecological functioning. The anticipated changes in water levels here would result in only minor impacts to plants and animals and wetland functioning. *See* FEIS at 3.6-14 (PDF 228); Errata Sheet at 2; City Rebuttal Letter at 3 (“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.”). The attached memo from John Small of Anchor QEA further explains why more than minor impacts to overall wetland functioning are not expected. *See* ATTACHMENT 2. The Memo concludes that effects on the offsite wetlands are expected to be minor because changes in soil conditions are unlikely, and any changes in hydrology and vegetation are likely to be masked by natural variability. *Id.* at 3. In addition, the methods used to evaluate wetland functions consider multiple factors that would not change, and even if predicted changes in groundwater do result in observable changes in wetland hydrology and vegetation, those changes are unlikely to materially affect the aggregated scores used to evaluate wetland function. *Id.*

⁴ The potential impact described in DMC 25.105.050.2(i)(i) is covered by Condition 18. Subsections .050.2(i)-(iii) are inapplicable, and the specific requirement in .050.2(i)(iv) is a floodplain assessment, which the Applicant provided as part of the permit application materials.

A last offsite wetland—Edmond Marsh—is a special case. While its water levels would be affected by mine dewatering, it will also be affected—and on balance improved compared to existing conditions—by the increased flows from Sequalitchew Lake through the marsh to Sequalitchew Creek resulting from the Restoration Plan. These increased flows will reduce the size of the Marsh (by design) but this is closer to its natural condition.⁵ The Marsh’s overall functioning will increase as a connection between the Marsh and Puget Sound via the Creek is re-established.⁶

Indirect project impacts to offsite wetlands are reviewed under SEPA, DMC 25.105.080 (cited above), and any significant impacts are mitigated through the “ARC” sequencing (avoid, reduce, compensate), DMC 25.105.050(1).⁷ The FEIS found no significant impacts to wetland functioning that would warrant further mitigation under SEPA. Out of an abundance of caution, Condition 21 requires a critical areas report relating to these offsite wetlands. CalPortland does not object to this Condition with the modifications requested and explained in Section I below.

G. Cultural Resources

Under the City’s *specific* site plan approval requirements for mining in the Mineral Resource Overlay, the City applies the performance standards in DMC 25.60.050. Cultural resources are not among the performance standards in DMC 25.60.050. Thus, the Tribe’s claims are not relevant to compliance with that Code section.

Under the City’s *general* site plan approval requirements, the City does review for compliance with DMC 25.80. The Staff Report correctly concluded that the project meets the requirements and standards in DMC 25.80 (Staff Report at 21), and the Tribe’s comments do not claim otherwise.

Thus, there is no dispute that the project is fully Code-compliant with respect to cultural resources. The City does have substantive SEPA authority to mitigate significant impacts. The City has done so by incorporating the FEIS’s mitigation measures relating to cultural resources as a condition of Site Plan Approval. *See* FEIS at 1-38, 39 (PDF 54-55); Staff

⁵ *See* FEIS at 3.6-20 (PDF 234).

⁶ FEIS at 3.5-11 (PDF 206) (“Restoration would affect the conditions [of Edmond Marsh] sufficiently to allow establishment of emergent vegetation in the western extent of the complex where inundation would persist through more of the growing season, providing excellent rearing habitat for juvenile coho salmon and cutthroat trout. These effects would increase the size, diversity, and complexity of available fish habitat types.”)

⁷ The ARC language in DMC 25.105.050(1) must be read in light of the general principle in DMC 25.105.080 that impacts to offsite critical areas are reviewed under the City’s SEPA substantive authority—i.e., to mitigate “specific probable *significant* adverse environmental impacts.” DMC 23.01.150(b)(1).

Report at 41 (Condition 1). To the extent the Tribe claims the EIS should have identified additional mitigation, that will be the subject of the Tribe's EIS adequacy appeal.

As we explain in Section E above, DMC 25.175.040 does not provide a basis for applying the Comprehensive Plan policies to this project. In its comment letter, the Tribe instead cites DMC 25.175.050(5)—a Code section not cited in the City Staff Report—to suggest that project review entails an assessment of all comprehensive plan policies. *See Bellon Letter* (6/20/25). However, that Code section simply points to any “applicable” elements of a comprehensive plan. Based on clear Washington case law, the presumption is that comprehensive plan policies are inapplicable. For multiple reasons that presumption holds here, and Goal CR-1 and its related Policies CR-1.2 and CR-1.4, are inapplicable.

First, applicability is governed by DMC 25.175.040(1)(b), which sets forth the limited circumstances when the City will consider comprehensive plan policies in project review. As explained in Section E above, comprehensive plan review is not applicable to this project under that Code section. Thus, there is no basis to consider CR-1.2 or CR-1.4. It is essential that DMC 25.175.050(5) not be read in isolation so as to render DMC 25.175.040(1)(b) superfluous. If the City intended to apply *all* comprehensive plan policies to all projects, it would not have adopted DMC 25.175.040(1)(b) and its strict limiting language on comprehensive plan applicability. Reading the two together—with DMC 25.175.040(1)(b) determining applicability—it is clear that the City’s Comprehensive Plan policies and goals are inapplicable, in accordance with the basic presumption of case law and GMA planning principles.

Second, site plan review is subject to the specific “review criteria” in DMC 25.150.030 and the performance standards in DMC 25.60, and neither of them refer to comprehensive plan policies. Instead, in accordance with GMA planning principles, DMC 25.150.030 refers to specific *development regulations* only, including DMC 25.80 relating to cultural resources. If the City had intended CR-1.2 and CR-1.4 to apply to project review, they would have been mentioned in the City’s site plan “review criteria” in DMC 25.150.030.

Third, the context of Goal CR-1 and Policies CR-1.2 and CR-1.4 further confirms their inapplicability. By its express terms, Goal CR-1 is intended to guide the implementation of *development regulations*, and CR-1.2 and CR-1.4 then form the basis of the “Purpose” statement in the development regulations in DMC 25.80.010. This again confirms their basic purpose to guide development regulation, not project review. The Comprehensive Plan lists a series of “implementation actions” for the listed policies, including CR-1.2 and CR-1.4. *See COMPREHENSIVE PLAN* at 104. Not one of these implementing actions even hints at the possibility that the policies would be implemented through project-specific development permit review.

Fourth, the broad language of CR-1.2 and CR-1.4 makes them especially unsuitable for project review. Neither Policy CR-1.2 nor CR-1.4 are requirements. Instead, they identify certain broadly stated efforts that should be “encouraged.” It is impossible to see how such

general “encouragement” language could possibly create an objective or predictable standard. If applied to project review, an applicant would be left to guess at what they even encourage much less require. In this way, the policies contain the type of vague and undefined language that Washington courts have deemed void for vagueness if applied to project review. *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993).

Fifth, and finally, another concern with reliance on Comprehensive Plan Goals and Policies in project permit review is the reality that goals and policies in comprehensive plans are often in tension with one another. Solely focusing on certain comprehensive plan policies will inevitably create a tension with other policies—such as the emphasis on Economic Goals and Policies compared to the emphasis on the Natural Environment Goals and Policies. Deciding how to balance and prioritize the various broad policies and goals of a comprehensive plan in light of GMA obligations is part of the *legislative process* as the legislative body adopts implementing development regulations.

In this case, the City found “consistency” between the project as conditioned and Policies CR-1.2 and 1.4 (Staff Report at 15), and no additional mitigation was imposed beyond what’s already required under the FEIS’s recommended mitigation measures. *See* FEIS at 3.10-11 – 12 (PDF 304-305). To be clear, however, there is no legal basis to use these policies to impose additional mitigation measures or deny the project as the Tribe requests.

If despite these arguments, you deem CR-1.2 and 1.4 applicable, we ask that you affirm the City Staff Report’s determination of consistency:

CR-1.2: While it’s again entirely unclear how the broad language in this Policy would apply to project review, the “encouraging of protection and preservation of cultural resources” here is amply demonstrated by, among other things: the preparation of a 45-page Cultural Resources Report (plus an additional 30 pages of references and figures), FEIS App. M (Confidential); the Report’s careful inventory of 63 prior studies and evaluations, and identification of 83 archaeological sites and cultural isolates, FEIS at 3.10-1 (PDF 294); the substantial expansion of the Area of Direct Impacts in direct response to the request from the Tribe, *id.*; the FEIS’s further discussion of archaeological sites near the South Parcel, *see generally* FEIS Chapter 3.10; and the FEIS’s list of mitigation measures—all incorporated as conditions of the recommended approval. The FEIS notes that no “Traditional Cultural Places” (TCPs) were identified in the WISAARD for the ADI or additional 1-mile research buffer. FEIS at 3.10-7 (PDF 300). The FEIS acknowledges the Nisqually Tribe’s view that the project area is within an undefined “Sequalitchew Ancestral Village Landscape” TCP. The FEIS identifies steps that will be taken if the Department of Archaeology and Historic Preservation (DAHP) makes a determination of eligibility for listing in the National Register of Historic Places. FEIS at 3.3.10-7-3.10-12 (PDF 300- 305). In light of these mitigation measures, the FEIS concludes that no likely adverse significant impacts are anticipated. All of this more than demonstrates compliance and consistency with a policy of “encouraging” cultural resource protection/preservation. Note that nothing in the Policy suggests that it

overrides other Comprehensive Plan goals and priorities, or should be interpreted to stop uses specifically allowed in the City's development regulations.

CR-1.4: This Policy again simply “encourages” identification, protection, preservation, or restoration of “cultural resource sites of documented significance.” After the extensive reviews noted above—and as detailed in the FEIS Chapter 3.10 and the Cultural Resources Report—the FEIS concludes that “no historically significant cultural resource sites have been identified within the site to date; therefore, no indirect or cumulative impacts would occur to known resources.” FEIS at 3.10-11 (PDF 304). To the extent the Tribe claims deficiencies in the project’s cultural resources research or TCP review, those claims mirror their EIS adequacy arguments, and can be addressed at the hearing.

As noted in the City’s rebuttal letter (page 6), other issues, questions and comments regarding cultural and historic resources will be addressed at the forthcoming hearing given the considerable overlap between the Tribe’s adequacy appeal and their CR-1.2/1.4 consistency arguments.

H. Responses to Form Public Comment Letter and Other Comments

Numerous public commenters submitted a form letter or other comments that raised the following concerns.

Alleged 83% “Creek Flow” Loss. This comment confuses the predicted decrease in groundwater discharge with an actual decrease in Creek flows. As explained above, the decrease in groundwater discharge will cause a small decrease in already minimal existing Creek flows. The Restoration Plan will more than compensate for that decrease, as detailed in Section A.1 above.

Decrease in Vashon Aquifer Levels. Mine dewatering will necessarily lower the Vashon Aquifer water table. The question is whether any adverse impacts would likely result from this lowering, and whether those impacts are mitigated. The two possible impacts of concern would be impacts to the City’s drinking water aquifers or adverse impacts to surface water. On the first, the FEIS explains that the City’s separate drinking water aquifer will not be affected by the changes in water levels to the Vashon Aquifer. On the second, the required mitigation measure of the permitting and implementation of the Restoration Plan—and associated monitoring—will ensure that adverse impacts are mitigated.

Offsite Isolated Wetlands. While the Restoration Plan does not directly benefit offsite wetlands, the FEIS concludes that impacts to those offsite wetlands are expected to be minor. John Small’s hearing testimony, his attached memo (ATTACHMENT 2), and the comments in the City’s rebuttal letter all provide further explanation and support for this conclusion. Under Condition 21, the wetlands will be monitored to ensure no unexpected impacts to wetland functioning go unmitigated.

Creek Temperatures. As explained in Section A.1 above, the increase in Creek temperatures is the result of re-establishing and improving the surface water flow from Sequalitchew Lake to the Creek ravine. The resulting temperatures will be more “natural” than existing conditions. Current low flows are “the limiting factor” for salmon and cutthroat trout spawning and rearing in the ravine. FEIS at 3.5-13 (PDF 208). The increase in surface flows needed for viable salmon habitat necessarily increases temperature, but compared to existing conditions, there will still be an overall “increase [in] aquatic system productivity and create and maintain habitat diversity, particularly for target species such as chum salmon and cutthroat trout in the system.” FEIS at 3.5-11 (PDF 206).

Seep Wetlands. The FEIS predicts a wetland reduction of only 0.13 acres as an indirect impact of hydrological changes to seep wetlands. FEIS at 3.6-16 (PDF 230). The EIS concluded that this impact would be “mitigated by the creation of a larger complex of seep wetlands on the eastern slope of the reclaimed mine, resulting in a net impact that is considered insignificant.” FEIS at 3.6-27 (PDF 241).

Cultural Resources. See Section G above.

Sequalitchew Creek Trail. The FEIS concluded that the proposed mining activities—protected by a 100-foot buffer from the top of the bank—will not adversely impact users of the Sequalitchew Creek trail. FEIS at 4-47 (PDF 376). To the extent Creek flows contribute to the experience of trail users, Creek flows on average will increase as summarized above.

Alleged Flaws in the FEIS. Some comments raise various questions about the adequacy of the model used in the EIS, or other technical assumptions. However, the avenue to raise those objections would have been an appeal of the adequacy of the EIS and no appeal was filed. Moreover, their comments were addressed in detail in the FEIS. *See generally*, FEIS Section 4.4; *see also* FEIS at 4-118 (PDF 447-448)(response to K. Reidinger) and 4-119 (PDF 450-451)(response to D. Russell).

We have attempted in this letter to address all public comments that appeared to warrant a response, as well as to the comments and questions you raised during the hearing. If you have further questions during your review—or if there are other public comments where a response would be helpful to you—we would be happy to respond promptly in whatever timeframe you deem appropriate.

I. Requested Revisions to Conditions

Below is a list of requested revisions to the recommended Conditions in the Staff Report, with a brief rationale for the requested revisions.

Conditions 12 and 13: We request that these conditions not be made a part of Hearing Examiner approval for the reasons discussed in Section E above.

Condition 15: We request the following revisions to this condition:

Mining activities shall comply with the State and City noise standards contained in WAC 173-60-040 and DMC Chapter 9.09. ~~Mining activities~~ [Mineral extraction](#) 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.

Reason for Modification: The term “mining activity” is too broad if construed to include the initial stages of pump testing and dewatering which necessarily occur 24 hours per day. As noted in Section B.1 above, the sounds of concern are mineral “extraction” within the area of Phase 2C, specifically dozers. FEIS App. K (Noise Study) at 7-8 (PDF 1690-1691); FEIS at 3.7-11 (PDF 252). The City’s Staff Presentation on this point used the term “mineral extraction,” *see* Slide No. 37. To avoid any confusion, that language should be simply carried forward into this condition.

Condition 18: We request the following revisions to this condition:

The project biologist shall complete a site reconnaissance documenting the presence, or lack thereof, of the [following](#) WDFW-~~mapped~~listed Priority ~~Habitat~~ Species: [roosting concentrations of](#) 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.

Reason for Modification: This change simply clarifies that the focus of site reconnaissance will be “roosting concentrations” of the noted species in accordance with the Staff Report and FEIS. Roosting concentrations is how the Staff Report and WDFW define “priority species” for these bat populations as opposed to individual bats. *See* FEIS at 3.6-11 (PDF 225)(referencing “roosting concentrations”); Staff Report at 32 (referencing “roosting concentrations”); [WDFW Priority Habitat and Species List](#) (updated June 2023) at 198 (listing “roosting concentrations” of these species as Priority Species). As a technical matter, the reference to priority *habitat* in the Staff Report and this Condition should be changed to priority *species*, as that is how roosting concentrations are listed in the WDFW Priorities list. But the import of this condition is unchanged: if evidence of roosting concentrations is found after further site reconnaissance, an HMP will be prepared.

Condition 21: We request the following revisions:

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), [DMC 25.105.080](#), [and DMC 23.01.150](#), the applicant shall prepare a ~~mitigation monitoring and response~~ plan for city approval to [monitor and, if necessary, to](#) mitigate [any significant adverse](#) 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 monitoring and response~~ plan shall be prepared and approved prior to commencement of mining activities.

Reasons for Modification: The reasons for these revision are, in the order shown: (1) the first reference to 25.105.050(2) should be struck since only .050(1) applies to wetlands; (2) the reference to Edmond (not “Edmonds”) Marsh should be deleted because the Marsh will be significantly affected (and rehabilitated) through the Restoration Plan, *see* FEIS at 3.4-20 and Section F.2 above, and therefore it would be more appropriate for any needed monitoring to occur as part of that separate permit process; (3) the requested additional references to the DMCs and the significance threshold accord with the SEPA framework that applies to offsite wetlands; (4) given the FEIS’s determination that impacts to offsite impacts are anticipated to be minor (as confirmed in the attached John Small Memo and the City’s response letter), a “monitoring and response” plan would be the more appropriate term here rather than a “mitigation” plan; and (5) as noted in Section F.1 above, the reference to a Habitat Management Plan should be deleted since there is no basis for such a Plan with this proposal.

Condition 22: We request the following revisions:

The applicant shall complete all FEMA-required assessments [for work within or changes to the floodplain areas, including, if required, and map revisions for the changes to the onsite and Sequalitchew Creek floodplain areas.](#) ~~This may include providing compensatory storage, and/or Alternatively, and if appropriate, the applicant shall provide the City with information to enable submittal of processing~~ a Letter of Map Revision (LOMR) with FEMA.

Reason for Modification: This clarifying revision is simply intended to match the language in the Staff Report (page 31) and the Staff Hearing Presentation (Slide 43) regarding these FEMA steps, and to conform with 44 CFR Part 65 regarding who is entitled to submit data supporting flood plain map revisions and when.

Hearing Examiner Phil Olbrechts
July 10, 2025
Page 18 of 18

Thank you for your consideration of these points as you prepare your Decision.

Very truly yours,

Hillis Clark Martin & Peterson P.S.

A handwritten signature in blue ink that reads "Stephen H. Roos".

By Stephen H. Roos

ATTACHMENTS:

Attachment 1 – Stoltz Testimony with Exhibits
Attachment 2 – John Small Technical Memo

ATTACHMENT 1 TO APPLICANT'S REBUTTAL LETTER

Pioneer Aggregates South Parcel Mine Project
(PLNG 2021-006, -009, -010, -002)

TESTIMONY OF PETE STOLTZ (WITH EXHIBITS)

AT 6/20/25 HEARING

Good morning. My name is Pete Stoltz I am a Senior Manager of Permitting & Government Affairs for Glacier Northwest which is a CalPortland Company. I have been leading the effort to permit this project since Glacier issued an employee number, a pager, and a flip phone to me in 2002.

Prior to joining Glacier, I worked as an environmental consultant for about 10 years. I conducted field work and prepared technical reports during that time, in support various projects across the region. I would like to use the next 15 minutes or so to share what I have learned about this company, this industry, and this project, over the past 23 years.

HISTORY

The history of what we call Pioneer Aggregates began in Steilacoom during the 1890's, where they started loading barges with gravel to supply the region with construction aggregates. This operation continued in Steilacoom for more than 100 years before the mine was reclaimed into the nationally-recognized Chambers Bay public golf course and park.

In 1997, the Pioneer Aggregates operation started in DuPont where it continued to be a major source of construction aggregates to the Puget Sound Region. [EXHIBIT 1]. This figure, shows how the mine has progressed Since 1997. Mining began in the Southwest corner of the property and moved north. The second phase, what we call the North Parcel was permitted in 2013 and that is where we mine at the present time. Now we are seeking to permit the third and final phase of mining in DuPont, which involves expanding the mine

into 188 acres that have not been mined previously, and returning to approximately 125 acres in a portion of the existing mine where we can access more material by going deeper.

This site is an especially important resource to our region for two primary reasons. 1) Access to barge transportation, and 2) rock quality.

BARGE TRANSPORT

The Pioneer Aggregates facility is one of only two mining operations in Puget Sound capable of loading barges. The other operation is located along a shallow waterway near Shelton, where barge transit is limited since it is dependent on tides.

Barges vary in size, but a typical barge transporting gravel from the DuPont location to Seattle hauls about as much material as 186 dump trucks with trailers, eliminating 372 truck trips. Barging is nearly 10 times more efficient than trucking, and about twice as efficient as rail transport.

80 % of the material mined here in DuPont is transported by barge, eliminating thousands of truck trips from our region's roadways each year.

Our region grew up around barge transportation of aggregates, and many customers do not have the ability to receive aggregates by truck or rail.

QUALITY

The sand and gravel from this site is known in the industry for its quality. The rock is very strong and resists abrasion. These qualities are important for construction materials like

concrete. Concrete is essentially aggregate that is glued together with cement. The aggregate gives concrete its compressive strength and durability.

When you have stronger concrete, you can construct buildings with smaller support columns so that less cement, less aggregate, and less reinforcing is needed.

NO CHANGES

Expanding the mine in the South Parcel will allow the Pioneer Aggregates operation to continue to supply material to the region and operate, essentially as it has for the past nearly 3 decades. This means that no changes are needed to the location of the barging operations. The operation will continue to serve the same Puget Sound market area with efficiently barges, and the local area with trucks. The quality of the aggregate will continue to allow for overall reduced use of construction materials. Processing operations will not need to be relocated. There has never been, and there is no need for blasting at this site, and none is proposed as part of this expansion.

ICONIC PROJECTS

Material from the Pioneer Aggregates operation has been used to construct iconic structures in our region like the Space Needle and the Tacoma Narrows Bridge. It has been used to construct essential public infrastructure, like sewage treatment plants, stormwater management systems and countless miles of I-5, as well as the I-90, 520 and Hood canal floating bridges. It has also been used to construct fish habitat, nourish beaches and remediate contaminated soil and sediment across our region.

POPULATION CORRELATION

The demand for aggregates is nearly perfectly correlated with population. With the region's historic and projected growth, the demand for these materials has grown over time and will continue to grow with our region's population into the future.

GMA - MRO

The legislature recognized the need for aggregates when they wrote the growth management act (or GMA). The GMA requires local jurisdictions to designate mineral resource lands of long-term significance. Unfortunately, the designation of new resources is not keeping up with demand for material and the number of aggregate mines in our region is decreasing over time and, not all land is capable of providing aggregate (whether of high quality or not).

The City of DuPont met their GMA obligations by applying a Mineral Resource Overlay designation to both the North Parcel and South Parcel. Mining is a permitted use, subject to a site plan approval. As explained in the Staff Report, the South Parcel meets all site plan approval criteria for mining.

GEOLOGY

Some information about the geology of the area may help show why the aggregate here is special, what and where we propose to mine, some of the anticipated impacts of mining, and the benefits the mine and creek restoration, can bring to the area.

[EXHIBIT 2]. This cross section of the mine area showing what the glaciers left after successively advancing and retreating across this region. Layers of sand and gravel, are separated by layers of silt and clay, that were deposited during non-glacial periods. The sand and gravel layers are water permeable, and form aquifers. The silt and clay layers are not water permeable, and form aquitards.

VASHON

The top layer shown in two tones of yellow, is the Vashon Aquifer. The hatched area over white shows the location of the existing mine, and the hatching over the yellow area is the portion of the Vashon Aquifer where mining is proposed for this project.

OLYMPIA BEDS

The gray layer represents a compacted layer of silt and clay that forms an aquitard. Geologists call this layer the Olympia bed formation.

The third layer, below the Olympia Beds, is made up of sand and gravel. Geologists call this layer the Flett Creek formation, or the sea level aquifer. No mining is proposed in the Olympia Beds or in the sea level aquifer.

GROUNDWATER

The existing groundwater elevation or water table, is represented in this figure by the blue lines with inverted triangles. As you can see, the groundwater elevation slopes off quickly near the end of the Olympia beds, within the mine. Geologists call the edge of the Olympia Beds the Kitsap Cutoff.

All the mining that has occurred previously at DuPont, has been above the groundwater elevation, and except for the portion of the existing mine we are calling the re-mine area, west of the Kitsap Cutoff.

DEWATERING

Because of the higher groundwater table in the South Parcel, we will install a series of wells and pumps to dry out the gravel so it can be mined. A detailed discussion of the dewatering process is included in the South Parcel Monitoring Plan, which is included as Appendix E to the FEIS.

The blue dotted line in the cross section, represents the groundwater elevation when the gravel is being extracted, and after reclamation of the mine.

EXHAUSTIVE EVALUATION

Impacts from lowering the groundwater in this way were exhaustively evaluated on five separate rounds of review.

- A Final EIS was issued by the City in 2007, that evaluated the impact of mining in the South Parcel associated with a proposed North Sequalitchew Creek Project.
- Between June 2011, when the parties to the 2011 Settlement Agreement reached tentative agreement, and February 2012, when the DuPont City Council Authorized the Mayor to sign the settlement agreement, the DuPont City Council held several hearings, invited expert panels, and accepted public comment.

- During the process leading up to the development of the Sequalticew Creek Restoration Plan, the multi-party environmental caucus requested a cumulative impacts assessment because they wanted to be sure, that the cumulative effect of Mining plus Creek Restoration would clearly result in a substantial net benefit to the Creek.
- During the SEPA Process for the North Parcel EIS, the South Parcel project was evaluated as a separate but similar action.
- Finally, the project was carefully evaluated by a new team of reviewers, during the nearly four-year process leading up to the FINAL EIS for this South Parcel project.

EXISTING SEQUALTICHEW CREEK FLOW

Under current conditions, the flow of water in Sequalticew creek is substantially less than what it has been historically and what is required to provide habitat for salmon. A consultant for the environmental Groups that are parties to the 2011 settlement agreement described the creek as having been “decapitated” by the alterations that have occurred upstream, unrelated to mining activities.

SETTLEMENT AGREEMENT

The parties to the 2011 Agreement included multiple environmental groups, the Washington Department of Ecology, and the City. As called for in the agreement, we have worked in close coordination with the environmental groups to develop a Restoration Plan that will rehabilitate the Creek. As a result, this project presents a unique opportunity to effect significant beneficial changes to Sequalticew Creek, and the watershed, that would

not happen without this project. The creek restoration project is intended to restore historic Creek flows, and reintroduce a sustainable population of native Chum Salmon. This restoration and associated monitoring are all being funded by Glacier, in continuing collaboration with the environmental groups. As a sign of our continuing strong relationship with the environmental groups that signed the agreement, I'm pleased to note that their lead representative from the the Nisqually Delta Association, provided a letter of support of our mining project, during the public comment period on our current applications. [EXHIBIT 5]

BENEFITS – CREEK FLOW

To help illustrate the benefits of the restoration plan, I would like to direct you to graphs provided in the FEIS section 3-5 at page 3-5.14. [EXHIBIT 3]. These graphs compare flows under existing and proposed/restored conditions. The Top graph compares flows in the dry or loosing reach, where the creek crosses under center drive. The bottom graph compares existing and predicted flows at the Sequalitchew Creek Ravine. In both cases, the cumulative impact of mining and restoration is predicted to increase flows in the creek, between 5 and 20 times its current rate. These increases are especially important to create habitat for Winter-Run Chum salmon, where there is none now.

TEMPERATURE

You heard some comments in the City's presentation, and you may hear from members of the public, that water temperatures will increase in the Creek as a result of the Creek Restoration Plan. These are true statements, however, as with many aspects of our project

it is important to understand this issue in context. A temperature of less than 16 degrees C is optimal for salmon. The water temperature is predicted to exceed 16C in the ravine between April and September, after the flow connection is restored to its historic headwaters in Sequalitchew Lake. This change is depicted in - EXHIBIT 4 – Which is Figure 41 of the Earth and Water Resources Report, Found in Appendix B to the FEIS. There are four things that are important to understand regarding this change.

- 1) Timing matters in this regard. The restoration is targeting the return of Winter-run Chum salmon, and they are expected to occupy the creek from October to February when temperatures will be cooler than the current condition, as shown in the gray box on the left side of the graph.
- 2) The increased flow described previously will help mitigate the temperature change in two ways. First, the added water will create pools in front and behind large woody debris in the creek where fish can find refuge. Second, Water will flow in and out of the gravel along the creek bank, helping to moderate the temperature in the creek.
- 3) Turning back to Exhibit 3, It is also important to recognize that the relative low flow in the creek at the present time is groundwater, shown by the light blue line, and the relative large flows in the restored condition are from surface water, shown by the dark blue line. This change in temperature a result of restoring the flow of water from the Creek's historic headwaters, and represent historic conditions. All water from the mine with continue to be managed within the mine area.
- 4) Lack of water is the key limiting factor preventing salmon from using the creek channel under current condition i

In addition to Creek enhancement, there are other benefits to this project that don't get the attention they deserve in the application materials.

MORE MATERIAL

First, by accessing additional material in the portion of the existing mine we call the re-mine area, we can extend the life of the existing facility without disturbing any new areas.

CLEAN-UP

Second, the project allows clean-up of a portion of the project area contaminated from prior historic uses, unaffiliated with mining. In its current condition, the property is limited to industrial uses. The area will not be further cleaned up without significant human intervention, such as mining. We have a Department of Ecology approved cleanup action plan to remediate surface soil contamination present in surface soils from the South Parcel, as described in the Staff Report, and required by staff proposed condition 24. Following mine reclamation, the restrictive covenant, which restricts uses on the south parcel property, can be lifted. The City could then amend the zoning designation, to make best use of the property including housing and commercial uses. This sequence of allowing access to sand and gravel as an efficient interim use, and achieving clean-up at the same time to facilitate a broad range of potential post-mining uses, is, in our view, an optimal use of this area within the City of DuPont.

BUFFER

Third, the project will entail a much larger protected buffer from Sequalitchew Creek than would be the cases with other development at the site. Under the no action alternative considered in the EIS, this property is likely to be developed in accordance with the current zoning and municipal code requirements. In other words, structures like warehouses allowed in the underlying zone could be built within 50 feet of the steep slopes leading to Sequalitchew Creek, or even closer if a Geotech engineer reviews the project and determines that an even smaller setback would be protective of the steep slopes.

The 2011 settlement agreement prohibits mine-related activity within 100 ft of the top of bank of the Sequalitchew Creek Ravine. This means the buffer around Sequalitchew Creek will be at least 50 feet wider than would be permitted under the no action alternative. In addition, the inner slopes of the mine will be forested open space, with a 50 ft setback from the toe slope within the reclaimed mine. Combined, the open space corridor on the north side of Sequalitchew Creek will be substantially wider, by nearly 100 feet in most places, than would be allowed with future development under the no action alternative. The wider open space corridor will benefit the Creek, trail users, and wildlife, that live and move around the City.

PROUD OF WORK

I have worked with a dedicated team of professionals for a long time to get to this point in the process. I am very proud of our work. We have listened to commentary, criticism and critique, from agencies, organized stakeholders, and individuals. We have evaluated and

re-evaluated every aspect of this proposal. We have been flexible, creative, innovative and honest. We are proud of this project and the numerous benefits it will achieve.

FINAL POINT

I have one final point.

The Puget Sound Regional Council's Vision for 2050 predicts that the region will add another 1.5 million people, increasing the population of our region by about 35%, between 2020 and 2050. The correlation between aggregate demand and population has been demonstrated to be nearly perfect.

Thank you for your careful consideration.

**EXHIBITS TO APPLICANT REPRESENTATIVE PETE STOLTZ'S
HEARING PRESENTATION**

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: June 20, 2025

Index of Exhibits

Exhibit No.	Description
1	Plan View showing mine phases
2	Geologic Cross-Section
3	Existing and Predicted Creek Flow
4	Predicted Effects on Stream Temperature in Sequalitchew Creek
5	Nisqually Delta Association comment letter dated November 4, 2021 (in Attachment 9.a to Combined Summary of Record, pages 1048-50 of pdf file)

EXHIBIT 1

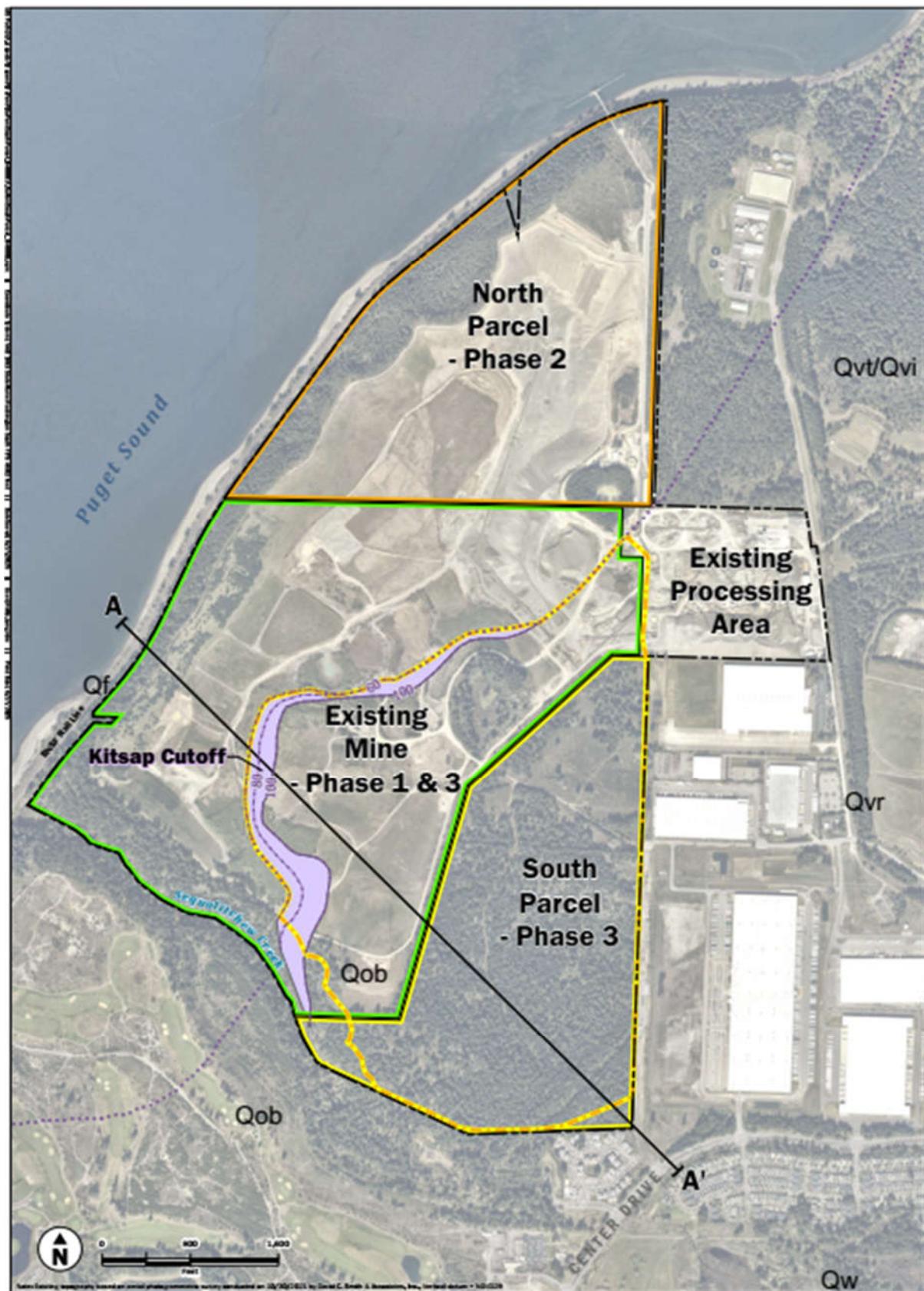


EXHIBIT 2

A
West

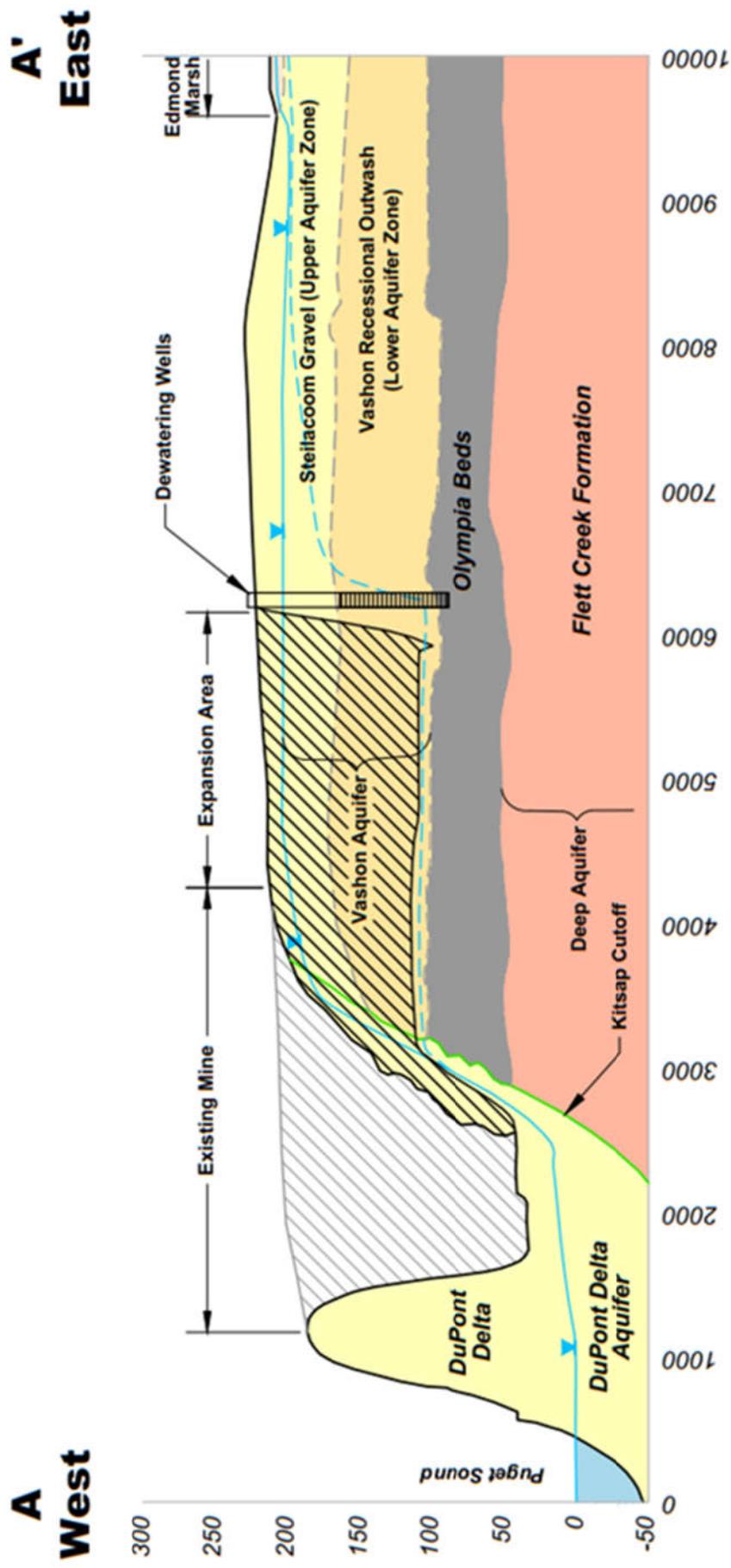
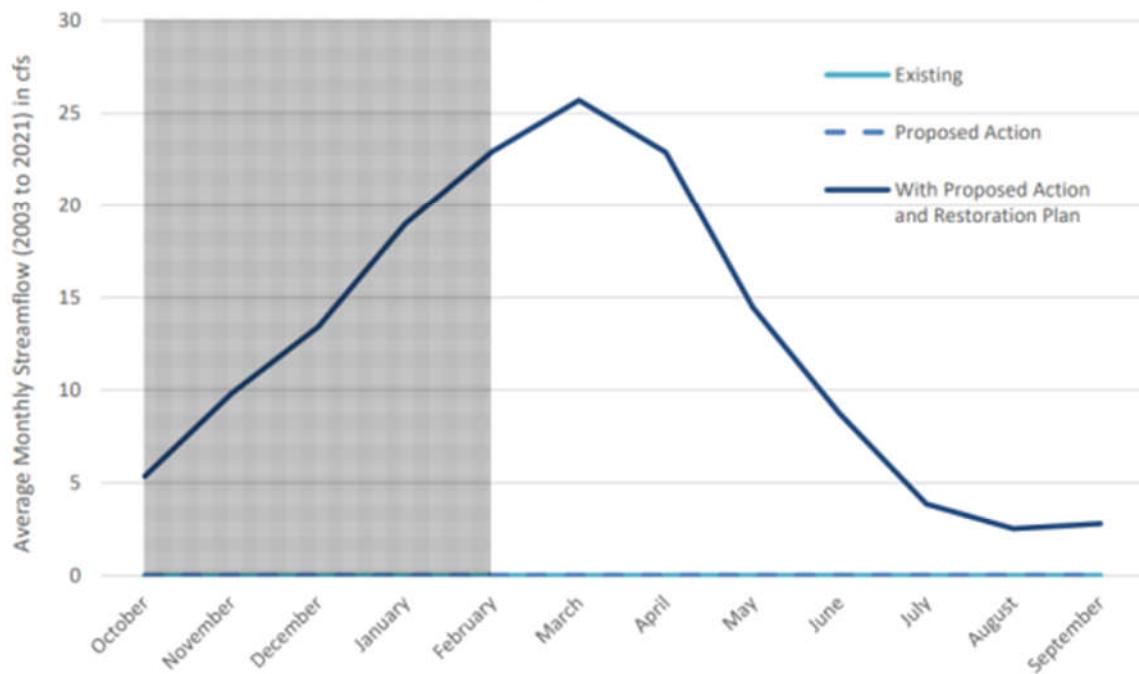


EXHIBIT 3

Dry Reach



Upper Sequalitchew Creek Ravine at Mid-Ravine Gage

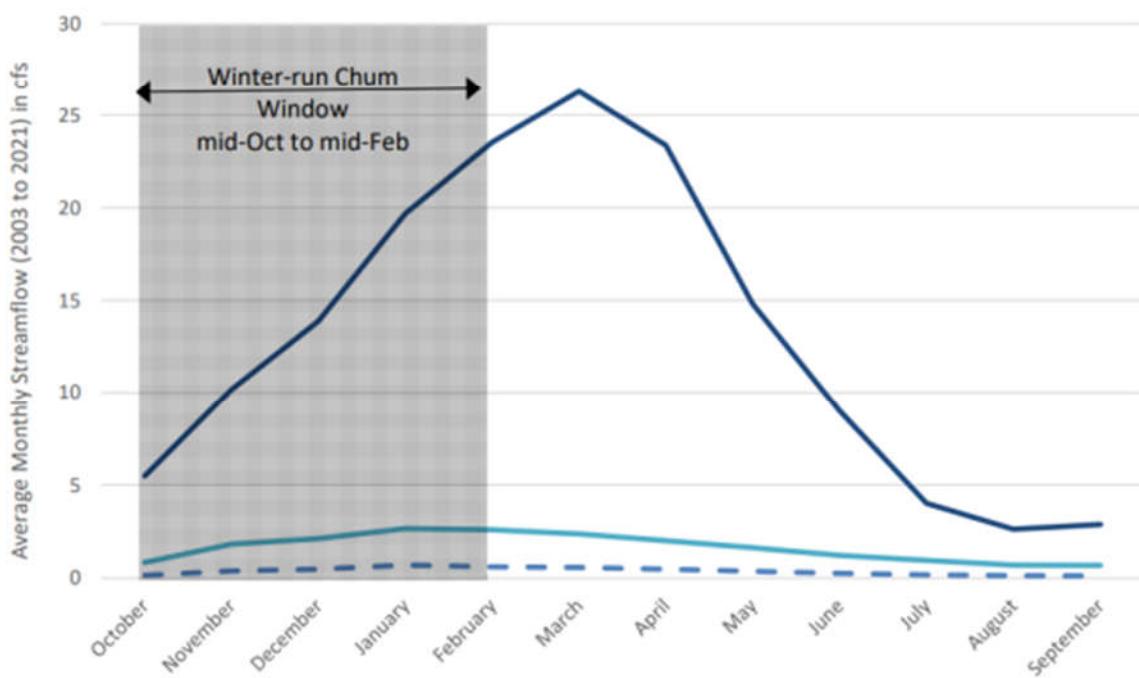
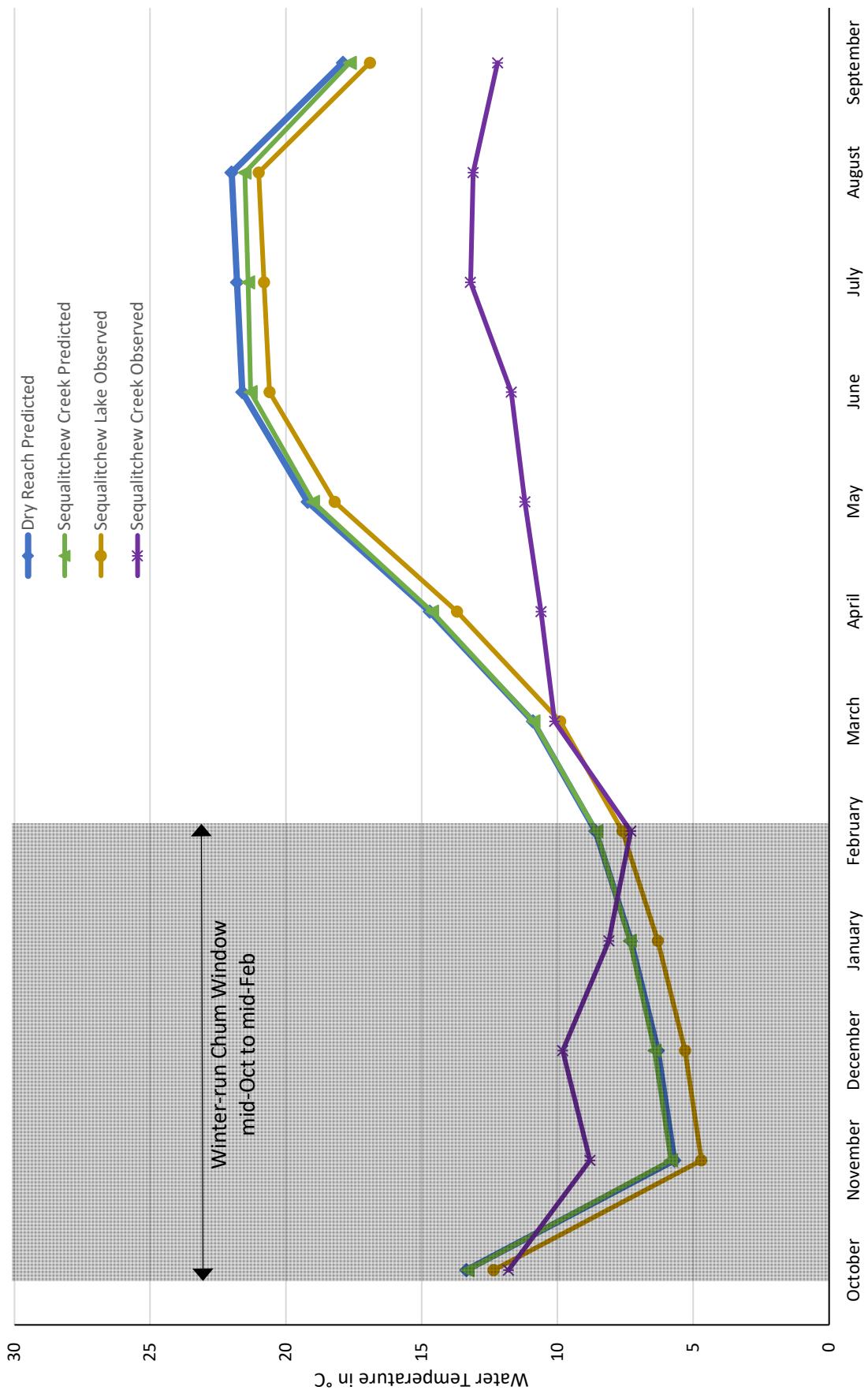


EXHIBIT 4



Aspect Consulting
10/28/2022
S:\Ca\Portland\DuPont\South Parcel\Report Drafts\Earth and Water Resources Report 2021\Analysis\WQCales-12.xlsx

Figure 41
Predicted Effects on Stream Temperature in Sequallitchew Creek
 Pioneer Aggregates South Parcel Project

EXHIBIT 5

November 4, 2021

Barb Kincaid, AICP
Community Development Director and City SEPA Official
City of DuPont
1700 Civic Drive
DuPont, WA 98327
bkincaid@dupontwa.gov

Re: CalPortland South Parcel Project

PLNG2021-006 (Site Plan Review), PLNG2021-009 (Tree Modification), PLNG2021-010
(Critical Areas Permit) and SEPA2021-002 (SEPA)

Dear Ms. Kincaid:

The Nisqually Delta Association (NDA) is writing to express its support for CalPortland's applications to conduct sand and gravel mining activities within what is known as the "South Parcel," located within the area zoned Mineral Resource District in the City of DuPont, so long as consistent with the 2012 Settlement Agreement described below. In addition to expressing support for the applications, the NDA explains below that the South Parcel mining permits should be granted with the detailed monitoring plan for South Parcel mining submitted by CalPortland as part of its permit applications, and that the South Parcel permits are, according to the Settlement Agreement, legally effective upon the issuance of the Restoration Plan permits.

By way of background, the NDA and other members of the Environmental Caucus, along with the City of Dupont, CalPortland and the Washington Department of Ecology, are signatories to the *2012 Settlement Agreement for DuPont Mine, Restoration of the Sequalitchew Creek Watershed, and Preservation of Puget Sound Shorelands and Adjacent Open Space*. This Agreement was the culmination of over two years of settlement discussions, which included a public review process facilitated by the City of DuPont prior to entering the agreement and a Feasibility Study that evaluated alternatives for both mining of the South Parcel and restoration of Sequalitchew Creek. The Feasibility Study recognized that flows in Sequalitchew Creek have been adversely affected and significantly reduced by a variety of activities over the years, in particular the creation of a diversion canal by the U.S. Army Corps of Engineers in the 1950s. It also acknowledged that mining of the South Parcel will entail the temporary dewatering of the South Parcel to allow the removal of sand and gravel and a permanent reduction in groundwater levels, which without mitigation would likely have an indirect adverse impact on Creek flows.

Based on the Feasibility Study, the 2012 Settlement Agreement conceptually identified a series of restoration activities to address both the historic impacts to Sequalitchew Creek and the potential additional impacts that would result from the dewatering and mining of the South Parcel. The Agreement provided that these restoration activities would be refined through a stakeholder process facilitated by the South Puget Sound Salmon Enhancement Group and described in further detail, after additional study, in a Restoration Plan jointly developed and approved by CalPortland and the Environmental Caucus. The Agreement recognized that the

flow increases resulting from the Restoration Plan would be expected to more than mitigate for the impacts of dewatering and permanent sand and gravel removal, and are expected to result in a substantial improvement compared to existing Creek conditions.

In the nearly ten years since the Settlement Agreement was executed, the parties have worked diligently to implement its various terms. This included the development of a detailed Restoration Plan that we anticipate will be permitted and implemented over the next few years, in parallel with the permitting and implementation of South Parcel mining. A secure funding plan is also now in place for the Restoration Plan permitting and implementation. Furthermore, recognizing that an effective restoration plan will require the cooperation of Joint Base Lewis-McChord (JBLM), which operates the diversion canal that serves to reduce flows in the Creek, the parties to the 2012 Settlement Agreement have also entered into a Memorandum of Understanding with JBLM in an attempt to ensure that the activities it is already planning to allow additional flows from Sequalitchew Lake to Sequalitchew Creek will occur in parallel with the restoration activities that will occur within City limits, as detailed in the Restoration Plan. CalPortland has been a steady and reliable partner in all of these efforts.

With this background in mind, we have reviewed the applications CalPortland has submitted for the mining of the South Parcel. We believe the scope, limitations, methods, and adaptive management safeguards for mining accord with the terms of the 2012 Settlement Agreement. Moreover, the Monitoring Plan submitted to the City is the plan that the NDA and all other members of the Environmental Caucus reviewed and approved after lengthy technical discussions between the parties and our respective technical consultants.

The NDA and other members of the Environmental Caucus considered alternative opportunities for restoration and invested great care in consideration before entering agreements and approving the Restoration and Monitoring Plans. We are confident that the benefits of the restoration will more than compensate for the impact of the mining project on Sequalitchew Creek. Accordingly, Nisqually Delta Association wishes to register its support for the mining applications submitted by CalPortland. We look forward to the City's timely completion of the Environmental Impact Statement (as called for in the Settlement Agreement), and the issuance of permits as part of the implementation of our Settlement Agreement.

As noted above, the intention of the parties was that the permits for the South Parcel mining and Restoration Plan were to coincide. Therefore, the parties agreed in Sections 4.3.1 and 4.3.2 of the 2012 Settlement Agreement that the permits for the mining would not be effective until JBLM Consent is obtained (as defined in the Settlement Agreement and further clarified in the 2021 Funding Agreement between CalPortland and the Environmental Caucus) and the permits for the Restoration Plan were effective. NDA requests that those terms be included expressly in the South Parcel mining permits, as agreed to by all parties, including the City.

Finally, NDA is very proud of the above-referenced Monitoring Plan that was developed with the help of its experts and volunteers, and which has been submitted by CalPortland as part of its permit application. Section 7.3 of the 2012 Settlement Agreement specifies that the Monitoring Plan will “*...include a series of monitoring actions to allow a comparison of predicted and actual changes in groundwater draw-down levels, and a process for the Parties to*

meet and confer if groundwater monitoring results do not meet the criteria provided in the Monitoring Plan." The Monitoring Plan submitted by CalPortland was developed to meet that requirement. NDA urges the City to adopt the plan as submitted such that it must be followed as one of the permit conditions.

Thank you for this opportunity to comment. If you have any questions about the Settlement Agreement or its implementation, please feel free to contact our legal counsel, Brian Chestnut at (206) 448 1230.

Sincerely,



Ed Kenney
Ed Kenney
President

ATTACHMENT 2 TO APPLICANT'S REBUTTAL LETTER

Pioneer Aggregates South Parcel Mine Project
(PLNG 2021-006, -009, -010, -002)

TECHNICAL MEMORANDUM FROM JOHN SMALL

Memorandum

July 10, 2025

To: Hearing Examiner Phil Olbrechts
From: John Small, Anchor QEA
cc: Barbara Kincaid, City of DuPont; Pete Stoltz, CalPortland

Re: Potential Impacts and Mitigation to Nearby Wetlands

The purpose of this memorandum is to expand on the findings of the Pioneer Aggregates South Parcel Project FEIS that,

"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 groundwater levels, but any effects are anticipated to be minor." (FEIS Page 3.6-14)

This determination is based on the effect of the proposed action on hydrologic conditions for these wetlands described in Section 4.2.3.4 of the Earth and Water Resources Report included as Appendix B to the FEIS (PDF Page 552). The report describes the potential changes in water levels that could occur at the nearby wetlands, based on changes in groundwater levels predicted as a result of the proposed mine project, and how those changes compare to the natural fluctuations in groundwater levels that have been observed over time. The report concludes that

"Because of the large natural fluctuation (in groundwater levels [sic]), the analysis indicates the predicted change will be effectively masked by natural variability."

This memorandum focuses on Pond Lake, Wetlands #8 through #11, and Old Fort Lake which are referred to collectively as the south wetlands and Wetland 1-D. This memorandum describes criteria used to determine the location of the wetland boundary, size of wetland, and the overall wetland functions. It also describes how potential changes in water levels might impact these criteria and how those impacts might be mitigated.

Wetland Size and Location of Wetland Boundaries

Three factors are used to determine the size and location of wetlands, Soil, Hydrology and Vegetation.

SOILS

Wetlands soil, also known as hydric soil, is saturated, flooded, or ponded long enough during the growing season to develop aerobic conditions that favor the growth and regeneration of wetland vegetation (hydrophytes). The boundary between hydric and non-hydric soil is the most temporally stable of the three parameters which define wetland boundaries. Hydric soils are identified by

characteristics which persist for decades or centuries even when wetland hydrology is lost completely.

The depressional topography and compacted low permeability silt/clay soils in the south wetlands will continue to trap and hold rainfall resulting in ponding and saturated soil conditions and will prevent detectable changes in wetland soil characteristics. Any change that does occur would be at the higher elevations at the wetland boundary, but a detectable change in the soil characteristics is unlikely to manifest for many decades.

HYDROLOGY

The Washington State Wetland Delineation Manual defines wetland hydrology as:

"Areas which are inundated and/or saturated to the surface for a consecutive number of days for more than 12.5 percent of the growing season* are wetlands, provided the soil and vegetation parameters are met. Areas inundated or saturated to the surface for a consecutive number of days between 5 percent and 12.5 percent of the growing season in most years (see Table 3) may or may not be wetlands."

Numerous factors (e.g., precipitation, stratigraphy, topography, soil permeability, human disturbance, and plant cover) influence the wetness (hydrology) of an area (Ecology 1997). As discussed in the FEIS the hydrology of the nearby wetlands is expected to track closely with groundwater conditions. This could change the hydrology at and near the wetland boundaries which are currently located on the relatively steep slopes around the flat kettle bottoms. This will limit the impact that lower groundwater levels have on the total size of each wetland. The number of consecutive days during which areas are inundated or saturated to the surface in most years might change. However, because of the large natural fluctuation in groundwater levels, changes related to mining will be effectively masked by natural variability (which can be 8-feet between winter and summer), making any mining related changes difficult if not impossible to distinguish from existing conditions.

VEGETATION

The Delineation Manual defines hydrophytic (wetland) vegetation as:

"... the sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present."

Under the proposed action, the nearby wetland areas are expected to continue to experience inundation and/or saturation with a frequency and duration to exert a controlling influence on the plant species present. The distribution, species composition, and Cowardin class of hydrophytic vegetation present within the nearby wetland areas may change in response to minor changes in the

frequency and duration of saturation and/or inundation over time, and in fact it is common to see distinctly different distribution of herbaceous plant species in wet years versus dry years

Because soil conditions are not likely and changes and hydrologic conditions and vegetation are likely to be masked by natural variability, changes to the south wetlands that result from mine related activities are likely to be minor and perhaps too subtle to measure.

WETLAND FUNCTION

Wetland function can be evaluated using the established Washington State Wetland Rating System (Hruby and Yahnke 2023) which is designed to evaluate the potential of a wetland to provide water quality, hydrologic, and habitat functions and based on that evaluation assign a Wetland Category from 1 to 4. The system works by asking a series of multiple-choice questions. The response to each question is assigned points. Tabulated points are compared to a range of values to assign the wetland a rating of high, medium or low for various characteristics. The ratings of multiple characteristics are combined to calculate a score for each of the three wetland functions (water quality, hydrologic, and habitat) and ultimately to determine the wetland category of wetlands.

Table 1 presents an analysis of how the project could potentially effect the response to each of the applicable questions from the functional assessment. The table shows that the response to most of the questions will not change based on predicted changes in groundwater hydrology from the proposed project.

Review of the rating forms reveals that even if responses to questions regarding seasonal ponding or inundation (D1.4) or depth of storage (D4.2) change, those changes are unlikely to change the hydrology rating of site potential or the aggregated score for water quality or hydrologic function.

Changes to responses regarding the number of Cowardin Classes (H1.1) and plant species richness (H1.3) are more difficult to predict and could result in either a slight increase or a decrease in the habitat score and are unlikely to change the rating of site potential or the overall score for habitat based on ratings.

Because the impact on the south wetlands from mine related activities is limited to potential changes in hydrologic conditions the only potential impact from the project on south wetland functions are to the small subset of wetland rating questions which are directly or indirectly resultant of the hydrologic conditions. Considering groundwater levels as low as the 95% confidence level it is still unlikely that wetland functions would be altered enough to change any of the south wetlands from Category 3 to Category 4.

MONITORING AND MITIGATING RESPONSES

Pond Lake is the closest south wetland to the South Parcel Project and as a result changes in wetland hydrology and any follow on changes to soils or vegetation are likely to be observed in Pond Lake before changes would be detectable at Wetlands #8 through #11 and Old Fort Lake. Surface water levels and vegetation transects have been monitored at Pond Lake for approximately 20 years. Continued monitoring and comparison of future observations to this well-established baseline can be used to distinguish natural interannual variation in herbaceous species cover and wetland hydrology from project impacts, if they occur.

If changes to wetland hydrology or vegetation attributable to the mine operation are great enough to reduce wetland function, a variety of responses could be used that would replace any lost function. These range from controlling invasive species and establishing native plants in order to increase species richness and diversity in the nearby wetlands. In the event wetland size is reduced there is opportunity for adding acreage to the compensatory wetland being constructed on the mine floor or to purchase wetland mitigation credits from the Pierce County In-Lieu Fee program which has credits available for unavoidable impacts to freshwater wetlands within the same (Chambers-Clover) watershed.

WETLAND 1-D

Wetland 1-D is different from the south wetlands. The hydrology of Wetland 1-D is closely associated with the Edmond Marsh complex.. The water level in Wetland 1-D closely tracks the water level in Edmond Marsh, and while no surface connection currently exists the two have a strong hydrologic relationship and may have once been part of the same wetland. The restoration project is likely to have more influence on Wetland 1-D than mining due to this hydrologic connection. Furthermore, Wetland 1-D also receives stormwater flow from the surrounding residential area. The contribution of this source of hydrology will not be affected by either mining or restoration. In summary, Wetland 1-D is less likely than the south wetlands to be affected by any aspect of the project, and those effects would be minor and difficult to detect.

Like Pond Lake, surface water levels and vegetation transects have been monitored at Wetland 1-D for approximately 20 years. Monitoring can continue into the future and results compared to well established baseline data and observed changes in groundwater. If changes are observed attributable to mine related activities actions can be taken to minimize functional losses such controlling invasive species and planting native wetland plants, and compensatory mitigation can be implemented on site or by purchasing credits from a wetland bank within the watershed as appropriate.

Table 1

Potential Project Effects on Wetland Function as adapted from Hruby and Yahnke 2023

Depressional Wetlands (Pond Lake, Wetlands 8, 9, 10, and 11)			
Water Quality Functions			
Question	Summary	Potential Impact	Reason
D 1.1	Depressional wetland outflow	None	Kettles don't have outflow/ outlets
D 1.2	True clay or true organic soils	None	Soils will not change
D 1.3	Presence of ungrazed plants	None	Already at 100% except for Pond Lake ¹
D 1.4	Seasonal ponding or inundation	Possible	Kettles are flat/ but could cease ponding
D 2.1	Stormwater input to wetland	None	Project discharges stormwater within mine
D 2.2	150' buffer generates pollutants	None	Project more than 150' from south wetlands
D 2.3	250' buffer contains septic systems	None	Project does not include septic systems
D 2.4	Other sources of pollutants	None	Project is not a source of pollutants
D 3.1	Discharge to 303(d) waterbody	None	Kettles don't have outflow/ outlets
D 3.2	Basin with 303(d)	None	Sequalitchew Creek not on 303(d) list
D 3.3	TMDL in effect	None	No TMDL in effect

Hydrologic Functions			
Question	Summary	Potential Impact	Reason
D 4.1	Depressional wetland with no outlet	None	Kettles don't have outflow/ outlets
D 4.2	Depth of storage	Probable	Reduction of 0 to 3.3 feet predicted
D 4.3	Contribution to storage in watershed	None	Areas of wetlands and basing won't change
D 5.1	Wetland receives stormwater	None	No project effect
D 5.2	150' buffer produces excess runoff	None	No project effect
D 5.3	Contributing basin land uses	None	No project effect
D 6.1	Flooding in sub-basin	None	No project effect
D 6.2	Flood storage or conveyance	None	No project effect

Lake Fringe Wetlands (Old Fort Lake)			
Water Quality Functions			
Question	Summary	Potential Impact	Reason
L 1.1	Width of vegetated fringe	Possible	Would increase not decrease if change occurs
L 1.2	Characteristics of vegetation	Possible	Would increase not decrease if change occurs
L 2.1	Powerboat use in lake	None	No project effect
L 2.2	150' buffer generates pollutants	None	No project effect
L 2.3	Algae problem or eutrophic conditions	None	No project effect
L 3.1	Lake is on 303(d) list	None	Old Fort Lake not listed
L 3.2	Sub-basin with 303(d) listing	None	Sub-basin not on 303(d) list
L 3.3	TMDL in effect	None	No TMDL in effect

Hydrologic Functions			
Question	Summary	Potential Impact	Reason
L 4.1	Width of vegetated fringe	Possible	Would increase not decrease if change occurs
L 5.1	Powerboat use in lake	None	No project effect
L 5.2	Fetch greater than 1 mile	None	No project effect
L 6.1	Potential for impact from erosion	None	No project effect

All Wetlands			
Habitat Functions			
Question	Summary	Potential Impact	Reason
H 1.1	Number of Cowardin classes	Probable	Effects uncertain (more woody, less aquatic)
H 1.2	Hydroperiod	Possible	Reduction of up to 1 point possible
H 1.3	Plant Species Richness	Possible	Speculative to predict impacts of Project
H 1.4	Interspersion of Habitats	Possible	Unlikely to change score
H 1.5	Special Habitat Features	None	No project effect
H 2.1	Access to habitat within 1 km	None	No project effect
H 2.2	Total habitat is within 1 km	None	No project effect
H 2.3	Landuse within 1 km	None	No project effect
H 3.1	Habitat for listed species	None	No project effect

Notes: See attached rating sheet for additional explanation.