

ENVIRONMENTAL CAUCUS

Nisqually Delta Association

Washington Environmental Council

People for Puget Sound

Tahoma Audubon Society

Black Hills Audubon Society

Seattle Audubon Society

Anderson Island Quality of Life Committee

CALPORTLAND COMPANY

WASHINGTON DEPARTMENT OF ECOLOGY

Summary of Settlement Agreement for DuPont Mine, Sequalitchew Creek Watershed Restoration, Preservation of Shorelands, Open Space

The 2011 Settlement Agreement provides:

- Funding for developing a plan to help restore flows from Sequalitchew Lake, through Edmond Marsh and into Sequalitchew Creek regardless of whether any mine permits are issued. Multiple stakeholders, including DuPont citizen organizations, will be involved in this planning.
- Funding for permitting and implementing restoration of Sequalitchew Creek if certain milestones are achieved. Among these are approval of the Settlement Agreement, completion of a Supplemental Environmental Impact Statement (SEIS) and agreement on a monitoring plan to be developed by CalPortland and the Environmental Caucus.
- Permanent protection of 45 acres of open space, including nearly a mile of Puget Sound shorelands and adjacent upland property.
- An easement for approximately one mile of pedestrian trail.
- All local regulatory authority and processes will remain in place.
- Continued access to mineral lands designated by the City of DuPont Comprehensive Plan, thus ensuring a vital source of high-quality building materials needed for the region’s economic recovery and to regain lost jobs.
- Mutual agreement among the parties that might otherwise engage in lengthy and costly litigation.

It’s important to note that the 2011 Settlement Agreement prohibits CalPortland from implementing the previously proposed North Sequalitchew Creek Project. According to the terms of the new Settlement Agreement, CalPortland will develop an alternative mine proposal that preserves the bluff along the Sequalitchew Creek ravine. This new alternative proposal will start at the beginning of the permit process with preparation of a new SEIS and permit applications, as well as undergoing a complete regulatory process, which will include several opportunities for public review and comment on the new proposal.

The 2011 Settlement Agreement does not guarantee CalPortland Company will receive the necessary permits to begin any mining. Rather it describes a sequence of events and several conditions under which three goals important to each of the signing parties’ wide range of interests can be accomplished:

- Help restore and enhance the Sequalitchew Creek watershed, including flows along the entire length of the creek;
- Maintain Puget Sound shorelands, bluffs and adjacent open space; and

- Outlines a process and new conditions CalPortland can follow to seek permits to mine the North and South parcels (see attached figures), including abiding by the terms of the Settlement Agreement and all applicable local, state and federal permitting requirements.

To achieve these goals, the parties agree to a detailed series of mining and restoration actions to take place over approximately the next six years.

If the 2011 Settlement Agreement is approved, CalPortland agrees to fund the development of a plan for helping restore flows from Sequalitchew Lake through the Edmond Marsh complex to Sequalitchew Creek. The agreement lays out the process for developing the plan that includes several important stakeholders including Joint Base Lewis-McChord, the Nisqually Tribe, local, state and federal agencies, environmental organizations and local citizen groups, including the Sequalitchew Creek Watershed Council. The agreement requires CalPortland to provide funding of up to \$200,000 for the preparation of a restoration plan for Sequalitchew Creek, regardless of whether any permits are ever issued for additional mining in the North or South Parcels.

In addition, a complete new Supplemental Environmental Impact Statement (SEIS) must be prepared to evaluate the potential environmental impact of mining in both the North and South Parcels according to requirements in the State Environmental Policy Act (SEPA), and CalPortland will apply for permits to mine and reclaim the North Parcel while the Sequalitchew Creek Restoration Plan is being prepared. Proposed mining and reclamation in the North Parcel will be confined to an area away from Sequalitchew Creek, and will not include any dewatering or removal of gravel below the elevation of the water table.

Milestones are built into the Settlement Agreement that must be met to ensure that mining cannot proceed in the South Parcel without the necessary plans, permits and funding in place to help restore and maintain conditions in Sequalitchew Creek. It is also important to note that the agreement limits CalPortland's obligation to fund the restoration if permits for mining are denied or appealed or CalPortland chooses not to mine in the South Parcel for other reasons.

The following summary highlights the key steps for each activity.

North Parcel Mining and Reclamation

Mining in the North Parcel would be very similar to the mining that has been done in the current permitted mine. All work would be above the water table. The North parcel is approximately 200 acres of which approximately 155 acres could be mined under the terms of the 2011 Settlement Agreement. A conservation easement would be placed on 45 acres along the shore and adjacent uplands of Puget Sound to conserve it for open space (see attached figure). This space would also include an easement granted to the City of DuPont for a pedestrian trail that could be constructed and made available to the public after the North Parcel is reclaimed.

Of the 155 acres proposed for mining in the North Parcel, approximately 13 acres are within the existing permitted mine area. This parcel would be mined to the elevation of the current mine floor rather than forming the northern slope of the permitted area of the existing mine.

With the City as lead agency, a Supplemental Environmental Impact Statement (SEIS) will be prepared that analyzes the impacts of mining in the South and North parcels in the Mineral Resource Overlay area designated for this purpose in the DuPont Comprehensive Plan. The review process will include an opportunity for the public to comment on the scope of review for the SEIS, a Draft SEIS, a period for public review and comment, and then a Final SEIS.

Once the Final SEIS has been issued and a SEPA determination is made, the City may review permit applications for North Parcel mining and reclamation. The Environmental Caucus has agreed to support the North Parcel mining and reclamation proposal provided it is consistent with the Settlement Agreement.

If the necessary permits are issued and all conditions in the permits and the 2011 Settlement Agreement are met, CalPortland will continue mining from the existing permitted mine area into the North Parcel.

South Parcel Mining and Reclamation:

The South Parcel mining area is approximately 166 acres. Under current conditions, groundwater moves in a generally northwestern direction towards Puget Sound through the sand and gravel in the South Parcel and then under the existing mine. The proposal to mine the South Parcel calls for installation of multiple wells along the eastern boundary of the South Parcel. These wells will be used to intercept the water before it flows into the gravels in the South Parcel and prevent gravel in the South Parcel and an area under the existing mine from becoming re-saturated with groundwater so it can be safely removed and processed.

Because the sand and gravel mining and reclamation will occur in segments, the wells would be turned on incrementally as mining begins in each segment and turned off incrementally after mining in each segment is complete and reclamation begins. After the sand and gravel is removed and the wells turned off, water will flow out of the sloped and reclaimed bank on the eastern side of the property and flow northwest towards Puget Sound, as it does today, only through a wetland on the surface rather than in the ground. The water will be routed from the wetland to a pond in the northwest portion of the existing mine. From the pond it will soak into (infiltrate) a deeper gravel formation and join the groundwater flow from the deeper, Salmon Springs Aquifer as it does currently. That water then flows into Puget Sound.

Removal of the gravel in the South Parcel is predicted to slightly lower the groundwater level in a limited area to its east. Predicted changes in groundwater elevation and potential effects of those changes resulting from mining of the South Parcel will be carefully evaluated and presented in the Supplemental Environmental Impact Statement.

The 2011 Settlement Agreement includes provisions to ensure that monitoring, data interpretation, problem identification and response procedures are in place to detect and appropriately respond to differences between actual observed changes in groundwater conditions, as well as those predicted and evaluated in the SEIS and considered during the permit process. The Agreement requires CalPortland to submit the detailed monitoring plan to the Environmental Caucus before it can be submitted in support of the permit applications to mine the South Parcel.

The Agreement allows CalPortland to submit applications for South Parcel mining and reclamation any time after the agreement is signed by all the parties. However, the permit applications will not be complete until after the Final SEIS is complete and adopted by the City and the Environmental Caucus agrees that the detailed monitoring plan is complete and can be submitted to the permitting agencies. Importantly, the agreement prohibits CalPortland from acting on any permit issued for mining in the South Parcel until all necessary permits and authorizations are in hand and the Sequalitchew Creek Restoration Plan can be implemented.

CalPortland will need to complete several preparatory steps before mining the South Parcel. These preparatory steps also provide additional opportunities to test the predictions used to evaluate the South Parcel mine and reclamation plan and compare them to actual observations of groundwater conditions before any mining occurs in the South Parcel. The additional preparatory steps are:

- **Install wells and conduct an initial pump test** – The pump test will be conducted using approximately 10 wells. The wells will pump simultaneously at capacity for approximately 60 days. The pumped water will be collected and re-infiltrated into the existing mine area. No mining will be conducted during the 60-day pump test. If the test observations show that groundwater conditions are not as predicted and the mining project cannot go forward, the wells could be turned off and any changes in groundwater conditions that occurred during the pump test would be reversed.
- **Preparation for Mining** - Following the initial pump test, provided the test observations support proceeding with South Parcel mining, additional wells will be installed as necessary to intercept groundwater flowing into the gravel in the first mine segment. This first set of wells will need to pump water for approximately six months so that the sand and gravel in the first mine segment will no longer be saturated with water. According to the terms of the Settlement Agreement, CalPortland will direct a portion of the water pumped from these wells to West Edmond Marsh, as provided in the Creek Restoration Plan. Clean, cool groundwater from the wells will increase flows from the west end of the marsh, into the Sequalitchew Creek ravine to Puget Sound. No mining will occur in the South Parcel during this six-month preparation phase. If groundwater observations during this time reveal that actual conditions differ from those used to predict and evaluate the South Parcel mine proposal during the permit process, corrective actions would be taken. Corrective actions could include turning the well pumps off reversing changes that occurred before any mining occurs.

- **Mining of South Parcel** - When groundwater levels are appropriate, the monitoring plan is in place and the wells are working as planned, mining could commence in the first segment of the south parcel consistent with the terms of the agreement and applicable permits. As mining progresses into the South Parcel, additional wells will be installed and used to intercept groundwater flowing into the next segment of the mine. Ground water conditions will continue to be monitored closely and compared to predicted conditions as wells are added and mining progresses incrementally into the South Parcel. Conversely, as mining is completed and each mine segment is reclaimed, wells will be turned off allowing reclaimed slopes and vegetation to become established.

Restoration Plan for Sequelitchew Creek

Upon the effective date of the agreement (when it is signed) CalPortland will be committed to provide up to \$200,000 to fund preparation of a restoration plan for Sequelitchew Creek.

- The South Puget Sound Salmon Enhancement Group, or another similar group approved by the parties, will facilitate preparation of a restoration plan. Preparation of the plan will include a process that invites input from a variety of stakeholders including regulatory and resource agencies, citizen groups, JBLM and the Nisqually Tribe. Under the terms of the agreement, CalPortland and the Environmental Caucus will approve the final plan, mutually agree to the amount CalPortland will pay to permit and implement the plan, and seek the necessary permits and approvals.

The agreement prescribes five elements to be included in the Restoration Plan unless otherwise changed and agreed upon by the parties that signed the Settlement Agreement:

- Restoration of gradients so water discharges from Hamer and Bell marshes flow into Edmond Marsh rather than into the diversion canal.
- Improvements to create significant flows from Sequelitchew Lake into the Edmond Marsh complex to support a functional creek ecosystem, and provide for the passage of migratory fish in the Sequelitchew Creek system. To achieve this goal, the Parties will consider, at a minimum, modification of the diversion canal flood control structure and gradients.
- Rehabilitation of Edmond Marsh by removal of sufficient fill and other flow impediments to provide the hydraulic gradients and capacity necessary to achieve and maintain adequate flows through the marsh.
- Rehabilitation of Sequelitchew Creek below Edmond Marsh to reduce seepage, improve fish habitat and help restore year-round flows.
- Active management of beaver activities to maintain the hydraulic gradients that provide flows through Hamer, Bell and Edmond marshes... “(A)ctive management of beaver activities” means management commencing with the least intrusive method and progressing to more intrusive methods only as necessary to maintain hydraulic gradients and flows, with lethal removal utilized only as a last resort.

The parties recognize that these elements may change during preparation of the Restoration Plan. The Restoration Plan will incorporate the principles of adaptive management. Monitoring, evaluation, and use of all appropriate data will be incorporated during the preparation of the Restoration Plan. Additional surface water monitoring of Edmond Marsh and Sequatchew Creek will continue during and after Restoration Plan Implementation, as recommended in the Restoration Plan.