**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**

# DuPont 2011 Settlement Agreement
# Frequently Asked Questions and Answers

**Q** What led to the Settlement Agreement discussions being held in the first place?

**A** Several parties signed a Settlement Agreement in December 1994 related to CalPortland's (then Lone Star's) then proposed; now existing DuPont sand and gravel mine and barge loading facility. Recent discussions are linked to the 1994 Agreement. CalPortland began taking steps in late 2002 to seek approval for a proposed plan to mine approximately 200 additional acres southeast (South Parcel) of the existing mine. They planned to intercept groundwater flowing through the sand and gravel on the South Parcel and route it into a new manmade tributary to Sequalitchew Creek, which the proposal called North Sequalitchew Creek. The approval process included requesting amendment of the City's Comprehensive Plan to designate additional mineral resource lands and preparation of a Supplemental Environmental Impact Statement (SEIS) completed in 2007 for the proposed project. Both steps included review according to the State Environmental Policy Act (SEPA) and provided opportunities for, and consideration of, public comment. CalPortland submitted applications to the City in January 2009 for permits needed to mine the South Parcel. After convening informal meetings with the parties, and expressing concerns about the proposal described in the applications, the Nisqually Delta Association requested the start of the formal process to resolve a dispute regarding Section II.B.5 of the 1994 Agreement. The parties signed a Memorandum of Understanding (MOU) in November 2009 establishing a process to evaluate the feasibility of alternatives for both mining the South Parcel and restoring Sequalitchew Creek. The parties hosted several stakeholder meetings to exchange information that was incorporated into a feasibility study of various alternatives. A report on the feasibility study was completed in June 2010. Negotiations quickly resumed between the parties and continued into June 2011.

**Q** What organizations were involved in the Settlement Agreement discussions?

**A** Black Hills, Tahoma and Seattle Chapters of the National Audubon Society, the Nisqually Delta Association, the Washington Environmental

**A** Council, People for Puget Sound, the Anderson Island Quality of Life Committee (together known as the Environmental Caucus), CalPortland Company (formerly known as Glacier Northwest and Lone Star Northwest), the Washington State Department of Ecology, and representatives of the City of DuPont.

**Q** When did the discussions begin?

**A** Informal discussion took place in 2008 at the request of the Nisqually Delta Association. Formal discussions began after the Nisqually Delta Association initiated a formal dispute resolution process that is part of the 1994 Settlement Agreement. These discussions began in January 2009 and continued until November 2009 when a Memorandum of Understanding (MOU) was completed. The MOU outlined a process for developing and conducting additional environmental review of revised mine plans and plans to help restore Sequalitchew Creek. A feasibility study was conducted that considered different ways to handle groundwater during mining of the South Parcel and, at the same time, different restoration projects for improving conditions in the creek.

**Q** What were the main goals of the different groups participating in the discussions?

**A** The primary goal was to develop a Settlement Agreement that would result in the restoration and enhancement of Sequalitchew Creek, while allowing mining in the South Parcel. The 2011 Agreement sets up a process that includes stakeholder group participation and provides funding for planning, permitting and implementing restoration of Sequalitchew Creek. The DuPont City Council has yet to, but will soon define the process it will use to consider the 2011 Agreement. Under the terms of the 2011 Agreement, CalPortland is required to step back in the permit process to the point where they began in 2003 on their North Sequalitchew Creek proposal. A new Supplemental Environmental Impact Statement (SEIS) will be prepared. It will consider the potential environmental impacts of mining Designated Mineral Resource Lands both south and north of the existing mine rather than just the South Parcel. No mine-related disturbance is allowed within 100 feet of the top of the Sequalitchew Creek Ravine. This means that under the terms of the 2011 Agreement, there will be no North Sequalitchew Creek. CalPortland will also be required to put a pedestrian trail easement within a conservation easement on 45 acres of Puget Sound shore lands and adjacent open space if permits are issued to mine 142 acres the company owns in the North Parcel. If the 2011 Agreement is approved, CalPortland is committed to provide up to $200,000 to fund coordinating stakeholder participation and preparing a Sequalitchew Creek Restoration Plan. After the Restoration Plan is prepared, and before mining in the South Parcel can begin, CalPortland must commit to providing funding for permitting and implementation of the plan in an amount the Environmental Caucus agrees is sufficient. The terms of the 2011 Agreement prohibit CalPortland from using any permits that allow mining in the South

Parcel unless the agreed funding obligation and all permits and approvals are in place to implement the Restoration Plan, including those needed to complete planned restoration work on Joint Base Lewis-McChord (JBLM). It is important to note however, that if a mining permit is appealed, CalPortland would not be required to fund restoration permitting or implementation until either the appeal is resolved or CalPortland begins mining in the South Parcel. After starting mining in the South Parcel, CalPortland would be required to fund restoration up to the full agreed amount. The projects proposed under the 2011 Agreement, including mining of the North and South parcels and the Restoration Plan, will be subject to the full regulatory review process required under applicable code including public notice, review and comment, legal standards, criteria and appeals.

**Q** Why were the discussions and negotiations leading to the Settlement Agreement held in private?

**A** Negotiations of this nature, especially when mediators are involved, typically begin with all of the parties signing a standard confidentiality agreement. Private meetings allowed for broad and wide-ranging discussions by all parties of ideas, issues and concerns which may not have occurred in a public forum. The "no-holds-barred" discussions resulted in a Settlement Agreement that all the signing parties support and that achieves the goals of helping restore Sequalitchew Creek, providing public access to open space, protecting open space and Puget Sound bluffs in the North Parcel and allowing access to land designated for mineral resource extraction as envisioned by the Growth Management Act. Doing so provides a local source for needed materials like sand and gravel to build roads, schools, homes, and other construction projects vital to our region.

**Q** Are all the parties that participated in the Settlement Agreement discussions endorsing the agreement and recommending its approval by the City of DuPont?

**A** This new Settlement Agreement is negotiated among parties to the 1994 Agreement. By signing the agreement, all the parties agree to support it and act in good faith to implement its provisions. The City will now go through a public process and determine whether or not to sign the Agreement. The City cannot act until the City Council reviews, takes public input and deliberates. The City will only sign if the City Council votes to accept the Agreement.

**Q** What opportunities will there be for the public to review and comment on the proposed 2011 Agreement as it is considered by the City of DuPont?

**A** The City Council will determine the process for public review and comment on the Settlement Agreement, but preliminary discussions have already indicated there will be opportunities for the public to be briefed along with the DuPont City Council on the content

of the Agreement and the reasons the signing parties support it. Specific opportunities for public comments on the Settlement Agreement will be announced on the City of DuPont website. Citizens also have an opportunity to comment on any items on or off the agenda at the beginning and end of regularly scheduled City Council meetings held on the second and fourth Tuesdays of the month. The tentative schedule calls for the City Council to receive an initial briefing on the 2011 Agreement at a June 30 meeting.

**Q** What happens if the City approves the Settlement Agreement?

**A** The settlement agreement requires CalPortland to pay up to $200,000 for development of a Sequalitchew Creek Restoration Plan. The Restoration Plan will be prepared with input from local, state, federal, non-profit and business stakeholders. Particular emphasis will be placed on involving the Nisqually Tribe and Joint Base Lewis-McChord, as well as regulatory agencies and representatives of interested citizens groups. The public will be notified of the dates meetings of the stakeholder groups are scheduled. Individuals will be welcome to attend and listen during the meeting and provide comment during a portion of the meeting designated for that purpose.

At the same time as the Restoration Plan is being developed, a Supplemental Environmental Impact Statement (SEIS) will be prepared to evaluate the potential effects of the mining proposal for the North and South parcels. Preparation of the SEIS will comply with the requirements of the State Environmental Policy Act (SEPA) and include required opportunities for public comment on the Scope of the SEIS and an opportunity for review and comment on the Draft SEIS. After the public comments have been received and addressed in a Final SEIS, CalPortland will submit applications to mine the North Parcel consistent with the terms agreed to in the Settlement Agreement, and the conclusions of the SEIS. The mining proposal will be subject to the permit review process prescribed by applicable code revisions. After the permit applications are submitted, the City will issue a Notice of Application with a 30-day public review and comment period. During this time, the City will review the applications for compliance of the draft supplement to the SEIS. The City will prepare a staff report to the DuPont Hearing Examiner that considers the proposed project, the applicable regulatory criteria and makes a recommendation to the Hearing Examiner. After the staff report is complete, the City will issue a 30-day Notice of Hearing. The City's Hearing Examiner will hold a public hearing to take testimony from the applicant (CalPortland), staff and public. His decision will be based on the submitted information and decisional criteria and will be made after the hearing closes.

Permit applications to implement the Restoration Plan and applications to mine the South Parcel will be presented and submitted to the appropriate regulatory agencies for permitting after:

1. A Restoration Plan for Sequalitchew Creek is prepared and agreed on; and

2. Joint Base Lewis-McChord (JBLM) acknowledges the Restoration Plan addresses their comments or concerns related to restoration activities that might occur on base property; and

3. CalPortland and the Environmental Caucus have agreed on a groundwater monitoring plan that will be submitted to the regulatory agencies with applications for South Parcel Mining; and

4. CalPortland and the Environmental Caucus agree on a funding amount that CalPortland will provide for restoration permitting and implementation.

Specific permit requirements will not be known until the Restoration Plan is prepared and compared to the regulatory requirements. In any case, under the 2011 Agreement, the permits for South Parcel mining will not be effective until all permits and approvals are in place for implementation of the restoration plan, including any authorizations required from JBLM needed to complete planned elements of the restoration on JBLM property.

Even after all the permits are approved to allow the South Parcel mine plan to proceed, CalPortland will need to complete additional steps and satisfy several criteria before mining can begin.

1. CalPortland will install approximately 10 dewatering wells and conduct a pump test. This pump test will provide an opportunity to observe changes in groundwater around the wells as the water is pumped from the wells to the mine floor where it will infiltrate (soak in). The observations will be evaluated to confirm that changes are consistent with and support the information used to predict the groundwater drawdown for the mine project. Observations from the pump test will need to fall within requirements defined in the monitoring plan reviewed by the Environmental Caucus and incorporated into conditions of the mine permits. If the pump test results fall outside those requirements, there will be an opportunity for the regulatory agencies to conduct additional analysis and impose additional requirements as appropriate based on the observations. At this point in the project, the well pumps could be turned off and all the water levels would return to normal levels. These wells and the pump tests will have no impact on the water supply for the City of DuPont.

2. Provided observations from the pump test meet the necessary criteria, CalPortland will install and start pumping water from the additional wells needed to remove the water from the first segment of material that will be mined. This pumping process is expected to take approximately six months during which time groundwater and surface water in the area will be frequently monitored to verify all parameters are within the expected range of conditions. No mining will occur in the South Parcel until this six-month

process is complete and all the required monitoring observations are within the established criteria for the project.

3. If all the monitoring parameters are within the established criteria after the pump test and initial six-month pumping period are complete, CalPortland may begin mining material from the South Parcel. The 2011 Agreement requires CalPortland to continue funding the Sequalitchew Creek restoration up to the full amount agreed to earlier in the process once mining begins in the South Parcel. CalPortland will not be required to continue funding the restoration plan if they decided to abandon plans to mine the South Parcel prior to actually mining material from the South Parcel. At any time up until mining begins, the well pumps could be turned off and the groundwater would rapidly return to previous conditions.

4. Monitoring will continue throughout the time mining occurs in the South Parcel to ensure that groundwater conditions remain stable and within the criteria established for the project.

Installation of additional wells and pumping would continue incrementally as mining progresses into the South Parcel. Frequent monitoring of surface and groundwater conditions will be performed and evaluated to confirm that observed changes are consistent with changes predicted when the permits were issued and take corrective action as needed.

**Q** Does approval of the Settlement Agreement mean that a mining proposal is approved?

**A** No. The mining proposal for both the North and South parcels must undergo additional environmental study, including preparation of an SEIS, and permitting. Opportunities for public review and comment are included during both preparation of the SEIS and the permitting processes. The mining proposal for the South Parcel will be evaluated in the SEIS as will the North Parcel so that all the potential cumulative effects of the proposed future projects are evaluated. The permit applications to mine the North and South parcels will go through the permit review process separately. The North Parcel permit applications will be submitted for review when the SEIS is completed. Permit applications for the South Parcel will be submitted separately when a Restoration Plan has been approved and a funding amount for permitting and implementing the restoration has been agreed upon. The permits for the South Parcel will undergo regulatory review at the same time as permits are reviewed for the Restoration Plan. The permit process for mining of the North Parcel, mining of the South Parcel and implementation of the Restoration Plan will require separate permits, separate public comment periods and separate opportunities to testify before the City's Hearing Examiner. Terms of the settlement only allow permits for the South Parcel to be used if the Sequalitchew Creek Restoration Plan is permitted and ready for implementation.

**Q** What opportunities will there be for the public to review and comment during the development and implementation of the Restoration Plan for Sequalitchew Creek?

**A** The DuPont City Council will establish the process for its review and consideration of the Settlement Agreement, which precedes the development and review of the Restoration Plan. Specific opportunities for public comments on the settlement agreement will be announced on the City of DuPont website. Citizens also have an opportunity to comment on any items on or off the agenda at the beginning and end of regularly scheduled City Council meetings held on the second and fourth Tuesdays of the month. If the Settlement Agreement is approved, the process to develop the Restoration Plan will begin with meetings open to the public where local, state, federal, non-profit and business stakeholders are invited to participate. Particular emphasis will be placed on involving the Nisqually Tribe and Joint Base Lewis-McChord, as well as regulatory agencies and interested citizens groups in developing the restoration plan. During these meetings there will be a designated time when individual citizens will have an opportunity to comment to the group.

**Q** What opportunities will there be for the public to review and comment during the mining proposal environmental study and permitting process?

**A** The State Environmental Policy Act requires public comments be sought during several phases of the development of a Supplemental Environmental Impact Statement (SEIS). Comments on the Draft SEIS are included with responses describing how they were considered and incorporated into the final SEIS. There are also opportunities for public review and comment during the permitting phase of the project, including a 30-day comment period after a Notice of Application is issued by the City; another 30-day period to provide comments to the City Hearing Examiner after a staff report has been prepared; and opportunities to testify at a public hearing before the City's Hearings Examiner who will consider the information presented, including the City Staff Report and public comments, and apply the City Code before issuing any conditional use or sensitive area permit decision on behalf of the City. . There will be a separate permit process and therefore separate public comment opportunities and hearings before permit decisions are made for the North Parcel mine proposal, the South Parcel mining proposal and probably the Restoration Plan (depending on what is in the plan). All of the opportunities for public comment will be announced to notify the public what is available for review and comment and the time frame for providing comments.

**Q** What will be done to ensure that the Restoration Plan is working?

**A** For more than two decades, various organizations have contemplated restoration of Sequalitchew Creek but were unable to assemble sufficient funding and stakeholder interest to complete the restoration process. The Settlement Agreement provides stakeholders with an invitation to participate in a process and a reliable source of funding to coordinate, plan, permit and implement restoration.

The interest, involvement and support from a broad range of stakeholders will ensure successful restoration. The restoration plan will follow the principles of adaptive management, meaning it will provide the framework for identifying and responding to unforeseen or changing conditions over time. Broad stakeholder interest and involvement will ensure the restoration is sustained well after the restoration is complete.

**Q** What happens if the City rejects the Settlement Agreement?

**A** If the City Council decides against signing, there is a process built into the 2011 Agreement that calls for the parties to reconvene discussions. The nature of these discussions would depend on issues or concerns raised by the City and the likelihood that a revised Settlement Agreement would be approved by the City Council. The staff representing the City during the negotiations has kept the City Council briefed throughout the negotiations, and other parties to the agreement have responded to the requests made by the City's representatives, like the pedestrian trail easement along the Open Space Area in the North Parcel, and the inclusion of the Sequalitchew Creek Watershed Council in the list of invited stakeholders. The parties involved in the negotiations were aware of the concerns of the city and its residents, and worked hard to address those concerns in the 2011 Agreement to be presented to the City Council.

**Q** Why allow mining at all?

**A** There is a supply of some of the highest quality sand and gravel in the U.S. in the South Parcel mining area adjacent to the existing mine. There is no other source of this high-quality material available adjacent to Puget Sound where safe, economical and environmentally friendly barge transportation is available. The per capita consumption of aggregate (sand, gravel, rock) in this area is estimated to be between 12 and 14 tons per year. This works out to about 75 pounds per person per day. This material is needed for construction and maintenance of roads, buildings, bridges and transit systems as well as shingles, septic tanks and utility vaults. The correlation between population and aggregate demand is nearly perfect. As population grows in this region so will the demand for this resource. It makes sense to expand this existing facility where the quality of the resource is tested, and the infrastructure to process and transport it is in place, rather than creating a new facility at another location. Sand and gravel is heavy and it requires a lot of energy to move

it. Because the facility at DuPont is located near the water, the material can be loaded on barges and transported to customers in the Puget Sound region. Transporting 6,000 tons of material by barge replaces about 186 trucks on the road decreasing roadway wear, traffic and is about four times more efficient than truck transportation. The sand and gravel mine at DuPont provides this region with a reliable high-quality source of needed material using a clean, efficient mode of transportation, so that we can continue to build and maintain the facilities and infrastructure that make our cities attractive to the people and businesses for which our region is known. Just as importantly, the combined goals of the Settlement Agreement also mean that, for the first time in 25 years, there is a real opportunity to cooperatively develop an innovative plan to restore Sequalitchew Creek that involves the required broad range of stakeholders, community groups, regulatory agencies, land owners and residents, as well as an identified source of funding.

**Q** Why is the Settlement Agreement needed to restore the creek?

**A** Effectively restoring Sequalitchew Creek will take the cooperative efforts of a broad range of stakeholders, community groups, regulatory agencies, land owners and residents. It will require developing a plan that can undergo environmental review and permitting and that can be implemented. This requires bringing together all of these sometimes disparate groups and individuals, with competing demands on their time and resources. To get their participation, a project needs levels of participation, organization and financial backing to assure success and warrant being preferred over other competing priorities. This will require a developing a plan for restoring the creek that is feasible, that can actually be implemented, and that has a very high likelihood of success. Without this agreement to establish a formal framework within which this plan will be developed, reviewed, permitted, implemented and importantly, funded, it is unlikely that the creek could be restored. Ambitious plans, good ideas and best intentions have been expressed to improve and restore the creek over the last 25 years. This agreement is made under unique circumstances that align the interests of various stakeholders towards a common goal of improving Sequalitchew Creek.