2011 DuPont Settlement Agreement

Prepared by negotiators for

The Environmental Caucus

Washington State Department of Ecology

City of DuPont

CalPortland Company

June 2011

Black Hills Audubon Society

- Negotiating the 2011 agreement discussions, were the Environmental Caucus, comprised of the
    - Black Hills, Tahoma and Seattle Chapters of the National Audubon Society,
    - The Nisqually Delta Association,
    - The Washington Environmental Council,
    - People for Puget Sound and the Anderson Island Quality of Life Committee;
- CalPortland Company;
- The City of DuPont, and
- The Washington State Department of Ecology.
- Discussions occurred during more than three years of meetings, including two years of face-to-face talks.

2011 Settlement Does Not

- ✓ Allow any mine-related activity within the Sequalitchew Creek Ravine
- ✓ Remove or alter rights and responsibilities of the 1994 Settlement Agreement
- ✓ Guarantee any new mining will be permitted
- ✓ Change any regulatory requirements
- ✓ Change any public rights to review, comment or appeal permit applications and decisions

We are going to get into the background and what led up to the agreement and the specifics of what is included in the agreement, but for those who have been watching this process for some time, we would like to cut to the chase and talk about what the 2011 Agreement does and does not do.

The 2011 Settlement Agreement Does Not:

- Allow any mine-related activity within the Sequalitchew Creek Ravine
    - The 1994 agreement did not allow mining within 100 feet of the top of the ravine. Under the 2011 Agreement no mine-related activity is allowed in this area. This means the North Sequalitchew Creek Proposal could not occur whether or not you consider construction of its confluence mining or excavation.
    - The 2011 Settlement does not change, amend or supersede the 1994 Agreement
    - The 2011 Agreement provides CalPortland no guarantee of permits to mine outside their current area.
    - It does not change any regulatory requirements or regulatory authority or responsibilities of any regulatory agency.
    - It does not change any of the rights of the public to review, comment or appeal permit applications or decisions.
        - In fact we think this agreement sets up a framework that will provide more opportunities than may have occurred in the past for the public and stakeholders to have input on what happens to the creek and any mining that might be permitted in the future.

2011 AGREEMENT DOES…

- ✓ Establish a process and specific conditions under which Parties agree to support each others interests.
- ✓ Require CalPortland to restart the permit process with preparation of Supplemental Environmental Impact Statement (SEIS) for mining South and North parcels
- ✓ Prohibit dewatering and mining in the South Parcel unless specific monitoring, creek restoration and funding requirements are approved by the Environmental Caucus and permitted
- ✓ Begin with $200,000 fund for stakeholder input and restoration planning process

- Establish a process and specific conditions under which the Parties agree to support each others interests.
  - The agreement establishes a sequence of events with specific conditions and milestones under which the parties agree to support and fund preparing, permitting and implementation of a Sequalitchew Creek Restoration Plan and allow mining.

- Require CalPortland to restart the permit process with preparation of the Supplemental Environmental Impact Statement (SEIS).
  - CalPortland will basically go back in the permit process where they were with their current proposal in 2002 and prepare a new SEIS.

- Prohibit dewatering and mining in the South Parcel unless specific monitoring, creek restoration and funding requirements are approved by the Environmental Caucus and permitted by the regulatory agencies.
  - The 2011 Agreement prohibits dewatering and mining of the South Parcel unless a very specific sequence of events is followed and milestones are met, including decision points regarding restoration activities and funding amounts, and meeting conditions imposed by the 2011 Agreement.

- Require CalPortland to pay $200,000 for a stakeholder process and preparation of Creek Restoration Plan (No Contingencies)
  - No contingencies, means that once the agreement is signed by all parties, CalPortland will pay up to $200,000 to fund the Restoration Planning process no matter what happens with their mine proposals

2011 AGREEMENT DOES… - 2

- ✓ Require CalPortland to set aside 45-acre Open Space Area including nearly a mile of Puget Sound shorelands
- ✓ Require CalPortland to grant a pedestrian trail easement in the 45-acre Open Space Area
- ✓ Preserve all regulatory authority, processes and requirements
- ✓ Allow CalPortland to suspend restoration funding if a permit is appealed, denied or cancelled

- Require CalPortland set aside 45 acres of open space including nearly a mile of shore lands and adjacent uplands for conservation uplands
  - The Agreement requires CalPortland to set aside 45 acres of open space in a conservation easement if they obtain all the permits required to mine their property in the North Parcel.

- Require CalPortland to provide a pedestrian trail easement in the 45-acre Open Space Area
  - CalPortland will also be required to provide a pedestrian trail easement in the 45-acre Open Space Area that provides public access to the trail after reclamation of the North Parcel is completed.

- Preserve all regulatory authority, processes and requirements
  - The agreement reserves all the rights and authorities of the regulatory agencies and does not change any regulatory process or requirements.

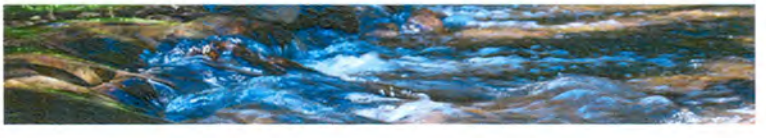
- Allow CalPortland to suspend funding of restoration, permitting and implementation if a permit is appealed, denied or cancelled.
  - We could not have an agreement that doesn't support the interest of all the parties.
  - This provision allowing CalPortland to suspend payments to fund the restoration is a

disincentive for parties interested in the restoration of Sequalitchew Creek to appeal permits for mining.

- This provision protects CalPortland's interests if for some reason they are unable, or choose to abandon, plans to mine the South Parcel.

GOALS

- ✓ Help restore and enhance Sequalitchew Creek
- ✓ Protect open space and Puget Sound shorelands.
- ✓ Supporting responsible mining in the North and South parcels



During the negotiation of the 2011 Settlement Agreement, two clear goals were established at the outset.

- Helping restore and enhance the Sequalitchew Creek watershed along the entire length of the creek, and
- Supporting CalPortland's mining in the North and South parcels of property adjacent to the existing mine. While the two parcels total nearly 400 acres, mining would occur in only 308 acres because of setbacks and slopes required for reclamation purposes.
- A third goal emerged during discussions – protecting 45 acres of open space, almost a mile of Puget Sound shore lands and adjacent upland property and providing easement for public access and a trail along the upland portion of the property adjacent to the North Parcel.

SEQUALITCHEW CREEK BACKGROUND

PS3

- ✓ Watershed modification since mid-1800s
- ✓ Substantial flows during DuPont era
- ✓ Diversion structure installed 1950s
- ✓ Channel cleared until 1990s
- ✓ Channel formed by higher volume flows
- ✓ Moderate flow increase = substantial habitat gain

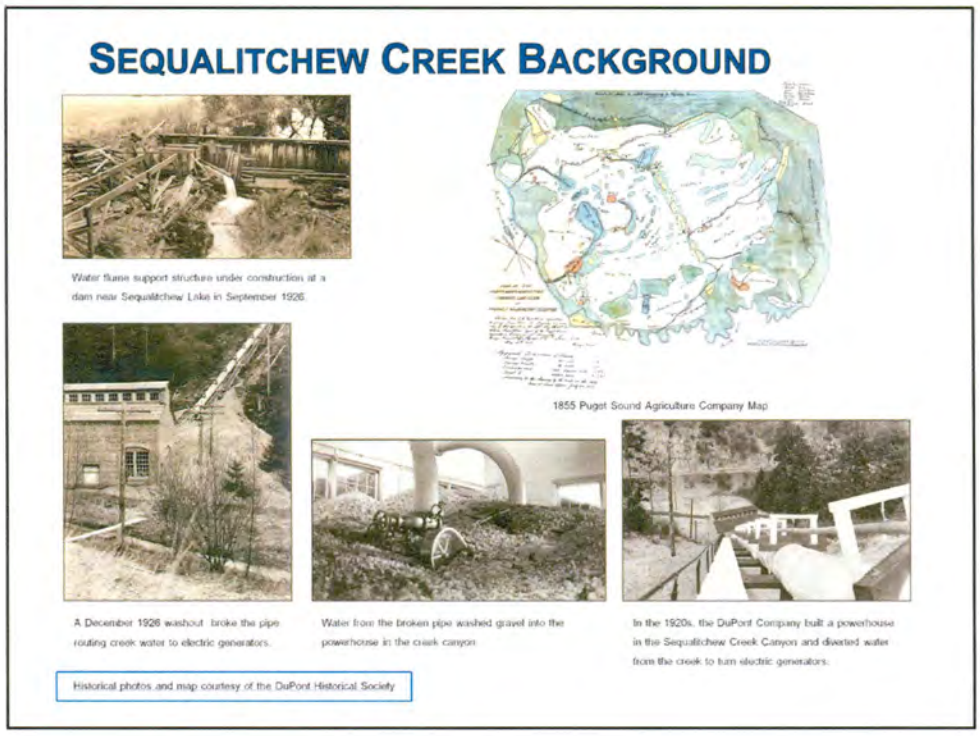
Why does Sequalitchew Creek Need help?

- The creek and watershed have suffered many alterations and modifications since at least the mid-1800s when wetlands were drained and farmed to provide stores for the Hudson Bay Company.
- The railroad crossed the mouth of the creek shortly after the turn of the century with a trestle that was later replaced with fill and a culvert.
- During the years of the DuPont Company the canyon wall was graded and a narrow gauge railroad was extended down the canyon to a dock near the mouth of the creek.
- Also during the DuPont years, flow was diverted near the head of the canyon into a flume that then ran down the canyon wall in a pipe and into hydroelectric generators that supplied electricity to the DuPont Plant and the City of DuPont.
- In the 1950's a flood control structure at the mouth of Sequalitchew Lake, which forms the headwaters of Sequalitchew Creek, was installed to relieve flooding by diverting excess water during storm events into a diversion canal and out to Puget Sound.
- The channel through Edmond Marsh was cleared periodically until about the mid 1990s to allow fish reared in Sequalitchew Lake to pass through the marsh and Sequalitchew Creek into Puget Sound.
- In more recent times, beaver dams established in the marsh back up the water so that nearly all the surface water is diverted through the diversion canal structure to Puget Sound.
- The result is that a creek channel that was formed by flows of 20 cubic feet per second or more is now typically 2 or 3 cubic feet per second.
- Because the creek flow is small compared to the channel that contains it, the water is shallow and provides very limited habitat for fish.
- Studies of the creek channel show that even moderate increases in flow significantly increase available fish habitat.

Slide 7

PS3 We can insert, more slides and pictures for this if it is helpful.

Map of Farm for Ft. Nisqually
Photo of Power Plant after Flume washout and picture of flume from Historic Society
Photo of Diversion Structure on JBLM
Picture of students for PLU measuring flow in Mid 90s
Photo of wide channel with low flow
Figure showing habitat access before and after flow increase. (Map is from North Seq. Cr. Study)
Pete Stoltz, 6/21/2011



Why does Sequalitchew Creek Need help?

- The creek and watershed have suffered many alterations and modifications since at least the mid-1800s when wetlands were drained and farmed to provide stores for the Hudson Bay Company.
- The railroad crossed the mouth of the creek shortly after the turn of the century with a trestle that was later replaced with fill and a culvert.
- During the years of the DuPont Company the canyon wall was graded and a narrow gauge railroad was extended down the canyon to a dock near the mouth of the creek.
- Also during the DuPont years, flow was diverted near the head of the canyon into a flume that then ran down the canyon wall in a pipe and into hydroelectric generators that supplied electricity to the DuPont Plant and the City of DuPont.

SEQUALITCHEW CREEK BACKGROUND

Fort Lewis built a weir and diversion canal in the 1950s

Why does Sequalitchew Creek Need help?

- In the 1950's a flood control structure at the mouth of Sequalitchew Lake, which forms the headwaters of Sequalitchew Creek, was installed to relieve flooding by diverting excess water during storm events into a diversion canal and out to Puget Sound.
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AGREEMENT BACKGROUND

- ✓ 1994 Settlement Agreement
- ✓ 2002 proposal to mine 200 acres
- ✓ SEIS completed 2007
- ✓ South Parcel permit applications filed January 2009
- ✓ Nisqually Delta Association requests dispute resolution
- ✓ MOU signed November 2009
- ✓ Feasibility Study completed June 2010
- ✓ Settlement negotiations resume - continue into June 2011

- A number of parties signed a 1994 Settlement Agreement related to the existing DuPont sand and gravel mine and barge loading facility.
- In late 2002 CalPortland, then Glacier Northwest, began the process of proposing to mine approximately 200 acres to the southeast of their existing mine – the South Parcel. This proposal called for intercepting shallow groundwater flowing through the sand and gravel and routing it through a new tributary of Sequalitchew Creek called North Sequalitchew Creek.
- The approval process included requesting an amendment of the City's Comprehensive Plan to designate additional mineral resource lands and preparation of a Supplemental Environmental Impact Statement, an SEIS.
- The SEIS was completed in 2007. The process included opportunities for public review and comment and consideration of those comments.
- CalPortland submitted permit applications to the City to mine the South Parcel in January 2009.
- Informal meetings were convened with the parties that signed the 1994 Settlement Agreement after concerns were expressed about the proposal described in the application.
- The Nisqually Delta Association requested a formal process provided for in the 1994 Agreement to resolve a dispute regarding Section II.B.5 of the agreement.
- The parties signed a Memorandum of Understanding (MOU) in November 2009 establishing a process for evaluating the feasibility of alternatives for both mining the South Parcel and restoring Sequalitchew Creek. A number of stakeholder meetings were held to exchange information.
- A report on the feasibility study was completed in June 2010.
- Settlement negotiations resumed in June 2010 and continued into June 2011

2011 AGREEMENT

FIVE REQUIRED ELEMENTS OF RESTORATION PLAN

- ✓ Improve Bell, Hamer to Edmond Marsh connection
- ✓ Improve flow from Seq. Lake to Edmond Marsh
- ✓ Remove flow impediments in Edmond Marsh
- ✓ Help restore flows through dry reach of Sequalitchew Creek
- ✓ Manage beaver using least intrusive methods

- Restoration of gradients so water discharges from Hamer and Bell marshes flow into Edmond Marsh rather than into the diversion canal.

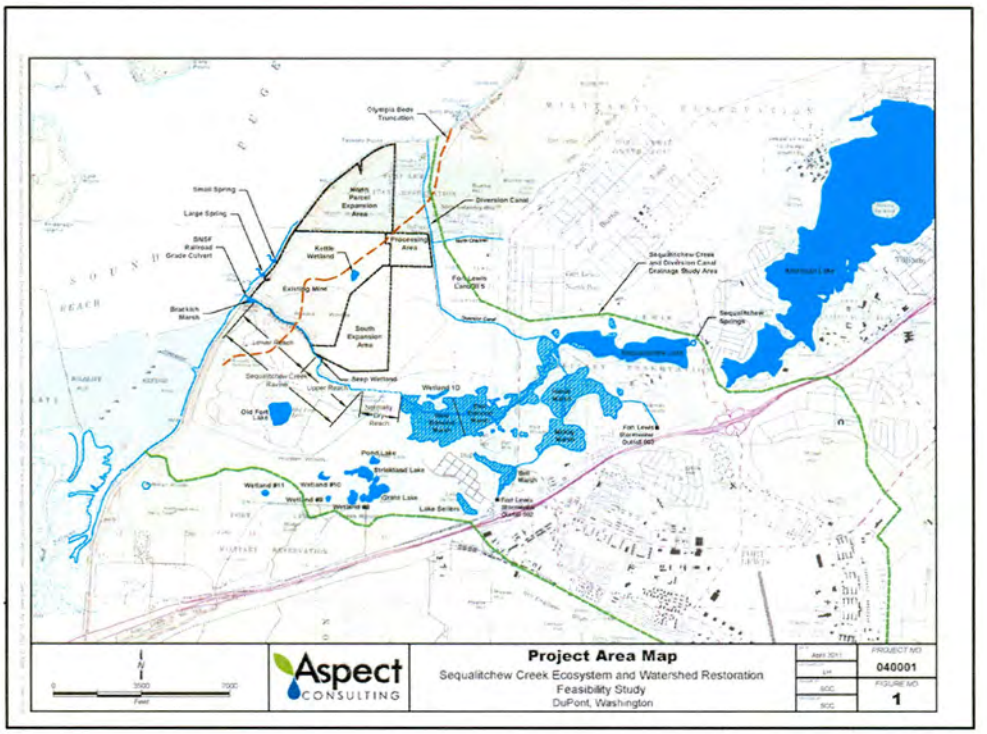
- Modification of the diversion canal flood control structure and gradients so significant flows from Sequalitchew Lake enter the Edmond Marsh complex and thus support the restoration of a functional creek ecosystem, and provide for the passage of migratory fish in Sequalitchew Creek and Edmond Marsh.

- 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 Sequalitchew Creek below Edmond Marsh to reduce seepage, improve fish habitat, and help restore year-round flows.

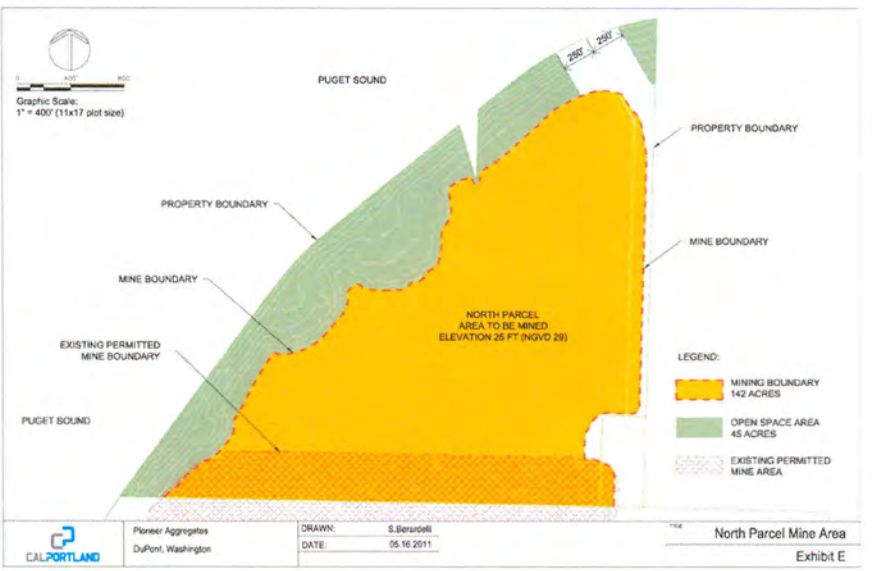
- Active management of beaver activities to maintain the hydraulic gradients that provide flows through Hamer, Bell, and Edmond marshes. For purposes of this section, "active management of beaver activities" means management commencing with the least intrusive method and progressing to more intrusive methods only as necessary to maintain hydraulic gradients and flows, with lethal removal utilized only as a last resort.

- The Restoration Plan will incorporate the principles of adaptive management.



Talk a little bit about the following areas:
- Sequalitchew Creek
- Edmond Marsh
- Dry Reach Between Edmond Marsh and Seq. Ravine
- Bell Hamer Marsh
- Sequalitchew Lake
- Diversion Canal
- Existing Mine
- Processing Area
- South Parcel
- North Parcel

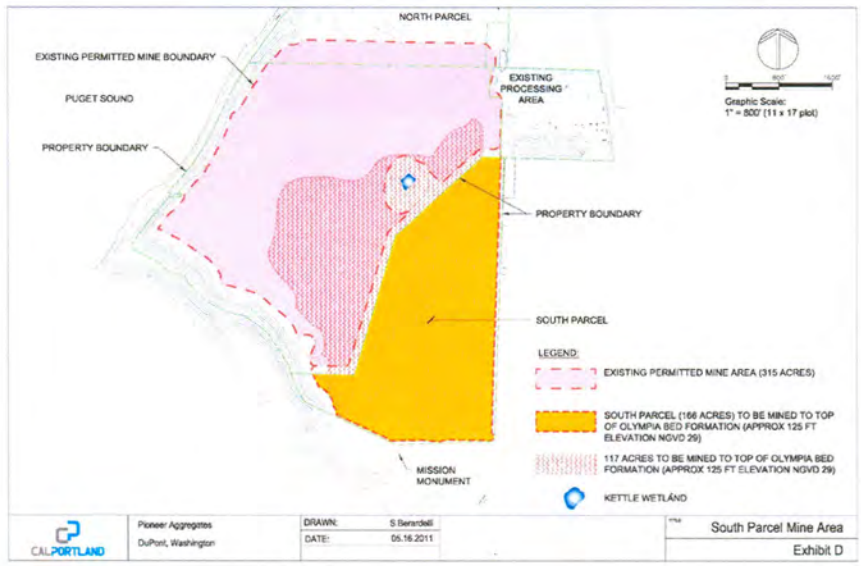
2011 AGREEMENT – NORTH PARCEL



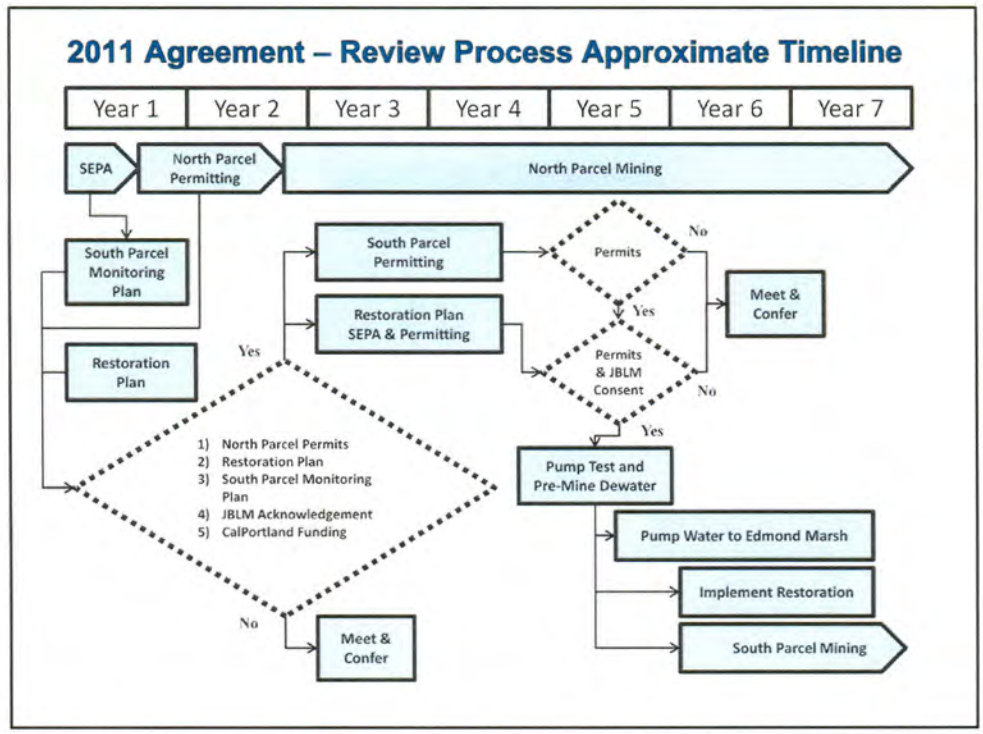
Talk a little bit about the following areas:

- Mine area
- Open Space Area for conservation and pedestrian trail
- Area within existing permitted mine that is part of the North Parcel.
- Barge load out dock and
- Processing plant for orientation

2011 AGREEMENT – SOUTH PARCEL



Talk a little bit about the following areas:
- Sequalitchew Creek
- Existing permitted mine area
- South Parcel mine area
- Area within existing permitted mine where additional material would be removed as part of South parcel mine plan
- Processing plant for orientation
- Mission site?



- North Parcel permits are needed in the first milestone for the restoration to be funded beyond the planning stage.
- North parcel permitting and south parcel permitting are not connected after SEPA.
- Point out where conservation and pedestrian trail easement would be granted.
- Access to pedestrian trail would be granted after north parcel reclamation is complete.
- Be prepared to say how long mining would occur. Of course the answer is . . . It depends.

I know this slide is hard to see, but it's important to look at the center column. It points out all the opportunities for public review and comment on the various elements of the Settlement Agreement during its various phases and the environmental studies and permitting reviews that will be conducted

2011 AGREEMENT – 3 PHASES

PHASE 1	PHASE 2	PHASE 3
Stakeholder facilitation and Restoration Plan preparation	South Parcel permitting	60-day pump test and evaluation
Prepare SEIS for North and South parcel mine plans	Restoration Plan SEPA	Pump to prepare first South Parcel mine segment (±6 months) and evaluate
Prepare South Parcel mine monitoring plan	Restoration Plan permits	Funding for implementation and maintenance released and mining in South Parcel begins
North Parcel permitting	North Parcel mining	

- The plan for helping to restore and enhance the Sequalitchew Creek watershed will take place in three phases as summarized in this slide and explained in more detail in the following slides.
- As you've just seen, public involvement, including the involvement of local DuPont organizations and citizens, begins with the development of the restoration plan and continues throughout the environmental and permitting review processes for the Restoration Plan, as well as the mining proposals.

2011 AGREEMENT

PHASE ONE - PROCESS

- ✓ Stakeholder Facilitation and Restoration Plan Preparation
- ✓ Prepare SEIS for North and South Parcel mine plans
- ✓ South Parcel mine monitoring plan preparation
- ✓ North Parcel permitting

- The South Puget Sound Salmon Enhancement Group, or other approved entity, using funds from CalPortland, will facilitate a stakeholder process with input from local, state, federal, nonprofit and business stakeholders, making particular efforts to involve the Nisqually Tribe and Joint Base Lewis-McChord (JBLM). Based on this process a Sequalitchew Creek Restoration Plan will be prepared. Restoration activities on JBLM property will require initial and final approvals – which is acknowledgement during Phase One and consent during Phase Two.

- The Settlement Agreement specifically calls out and provides for the involvement of local DuPont organizations in the development of the Restoration Plan.

- A Supplemental Environmental Impact Statement will be prepared encompassing the proposed mining plans for both the North and South parcels

- The Environmental Caucus and CalPortland will prepare a monitoring plan for South Parcel mining to ensure that the mining plan is working as proposed

- Permit applications and reviews for North Parcel mining will occur following the completion of the SEIS

2011 AGREEMENT

RESTORATION PLANNING PROCESS

- ✓ Invite stakeholder (Sec. 6.2) participation
- ✓ Compile stakeholder input
- ✓ Prepare DRAFT Restoration Plan
- ✓ Invite stakeholder input on DRAFT Restoration Plan
- ✓ Prepare Final Restoration Plan

- Non-Governmental Parties will invite Joint Base Lewis-McChord (JBLM) and the Nisqually Tribe into a process and actively seek their involvement in the preparation of the Restoration Plan. Other stakeholders may include Washington Department of Fish and Wildlife; Washington Department of Natural Resources; U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Sequalitchew Creek Watershed Council; Chambers-Clover Creek Watershed Council; Puget Sound Partnership; Natural Resource Partners; Quadrant Corporation, and other federal, state, and local agencies and non-governmental stakeholders that have interest in the restoration of the creek.

- The Non-Governmental Parties (Environmental Caucus and CalPortland) will convene a stakeholder group to receive input on the Restoration Plan.
- The Non-Governmental Parties will prepare a draft Restoration Plan.
- The Non-Governmental Parties will solicit and consider stakeholder input on the draft Restoration Plan.
- The Non-Governmental Parties will prepare the final Restoration Plan.

2011 AGREEMENT

PHASE ONE - MILESTONE REQUIREMENTS

- ✓ North Parcel mine permits
- ✓ Restoration Plan approved by NGO Parties
- ✓ South Parcel Monitoring Plan E-Caucus agreement
- ✓ JBLM acknowledgment
- ✓ Agreement on CalPortland funding

- Permits for North Parcel mining will require completion of a SEIS and a separate regulatory review process
- The Non-Governmental Parties will work with South Puget Sound Salmon Enhancement Group or another mutually agreeable party to facilitate the restoration planning and approval process. CalPortland is committed to providing $200,000 in funding for developing the Restoration Plan.
- A Monitoring Plan for South Parcel mining will be developed and approved as sufficient by the Environmental Caucus to ensure that the mining proposal is working as planned
- The Non-Governmental Parties will seek JBLM acknowledgement of the Restoration Plan, particularly the work that will occur on JBLM.
- The Environmental Caucus and CalPortland will reach agreement on the level of CalPortland's funding for implementing the Restoration Plan

2011 AGREEMENT

PHASE TWO PROCESS

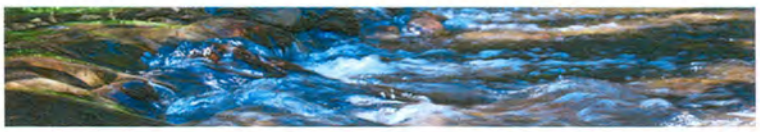
- ✓ South Parcel permitting
- ✓ Restoration Plan SEPA Review
- ✓ Restoration Plan permitting
- ✓ North Parcel Mining

- The full permitting review for South Parcel mining will occur at the same time as the environmental review for the Restoration Plan
- The full permitting for the Restoration Plan will follow its environmental review
- North Parcel mining will have already been permitted and commenced since it does not involve groundwater issues

2011 AGREEMENT

PHASE TWO – MILESTONES

- ✓ Restoration Plan permits
- ✓ JBLM Consent for restoration work on JBLM
- ✓ South Parcel mining permits
- ✓ Permit appeals expired or resolved



- Important milestones that must be achieved before mining can begin in the South Parcel include:
  - The granting of permits for the Restoration Plan
  - JBLM consent for work to be done on the base
  - Permits being granted for mining the South Parcel
  - Any permit appeals being resolved or expiring

2011 AGREEMENT

PHASE THREE – PROCESS AND MILESTONES

1. 60-day pump test and evaluate
2. Pump to prepare first South Parcel mine segment (±6 months) and evaluate.
3. Funding for implementation and maintenance released and mining in South Parcel begins.

- The Non-Governmental Parties will work with South Puget Sound Salmon Enhancement Group or another mutually agreeable party to facilitate the restoration planning, permitting and implementation.
- The Non-Governmental Parties will seek JBLM Acknowledgement.
- The Non-Governmental parties will approve a detailed Monitoring Plan for South Parcel mining, within 45 days after JBLM Acknowledgment of the Restoration Plan.
- The Non-Governmental Parties or their designated representatives will seek all necessary permits and approvals (not including JBLM Consent) for the Restoration Plan.
- The Non-Governmental Parties will then seek JBLM Consent. The Non-Governmental Parties will exercise reasonable efforts to obtain JBLM Consent within two years after JBLM Acknowledgement is obtained.

2011 AGREEMENT

PHASE THREE – FIRST MILESTONE - 60-DAY PUMP TEST

- ✓ If
  - Test results are consistent with modeling and assumptions used for environmental evaluation
- ✓ Then
  - Install additional wells and pump to prepare first segment for mining
- ✓ Or else
  - Take corrective action specified in monitoring plan.
  - No mining has occurred – pre-project conditions will return if the pumping stops

If

Test Results are consistent with modeling and assumptions used for Environmental Evaluation

Then

Install additional wells and pumps to prepare 1st segment for mining

Else

Take Corrective Action specified in monitoring plan.
No mining has occurred and preproject conditions will return if the pumping stops

2011 AGREEMENT

PHASE THREE – SECOND MILESTONE - PREPARE FIRST SEGMENT

Monitor while intercepting water flowing into gravel in first mine segment (± 6 Months)

- ✓ If
  - Test Results are consistent with modeling and assumptions used for Environmental Evaluation
- ✓ Then
  - Continue with south parcel mine plan
- ✓ Or else
  - Take Corrective Action specified in monitoring plan.
  - No mining has occurred and pre-project conditions will return if the pumping stops

Monitor while pumping wells to intercept water flowing into gravel in first mine segment.

If

Test Results are consistent with modeling and assumptions used for Environmental Evaluation

Then

Continue with south parcel mine plan

Else

Take Corrective Action specified in monitoring plan.
No mining has occurred and pre-project conditions will return if the pumping stops

2011 AGREEMENT

PHASE THREE – THIRD MILESTONE - PREPARE FIRST SEGMENT

- ✓ CalPortland releases funding for implementation of Restoration Plan
- ✓ CalPortland begins mining first segment of South Parcel (furthest from Sequalitchew Creek)
- ✓ After South Parcel mining begins CalPortland must
  - Provide the full agreed funding amount for restoration and maintenance
  - Continue mining and reclamation in incremental segments
  - Continue monitoring and reporting and revise mining plan if appropriate

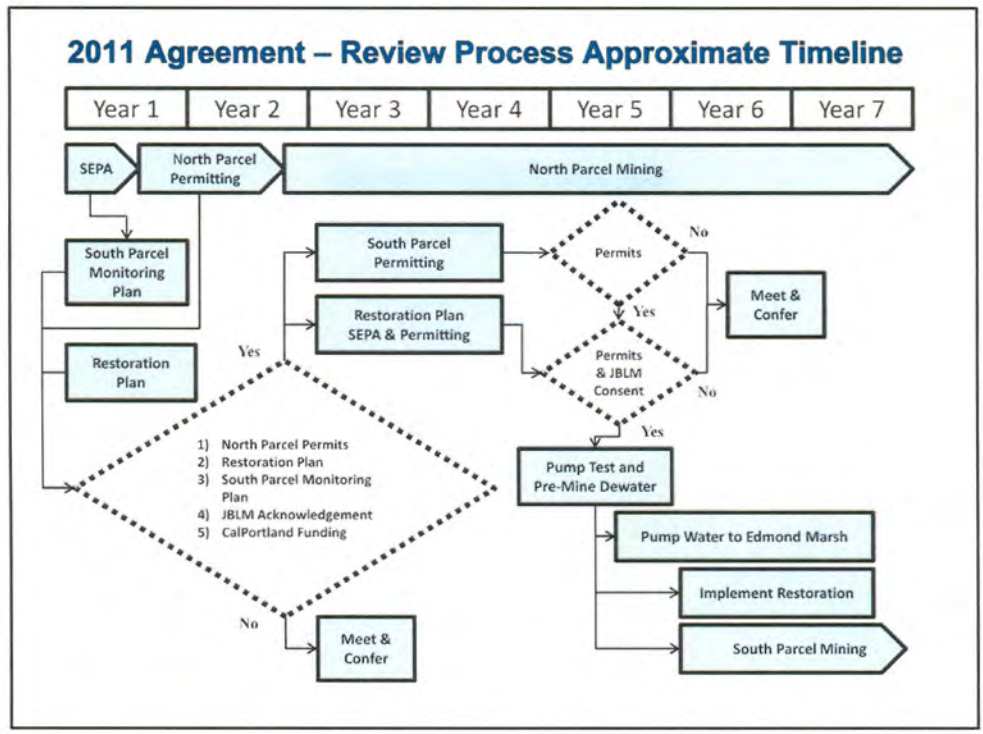
CalPortland releases funding for implementation of Restoration Plan

CalPortland begins mining first segment of South Parcel (furthest from Sequalitchew Creek)

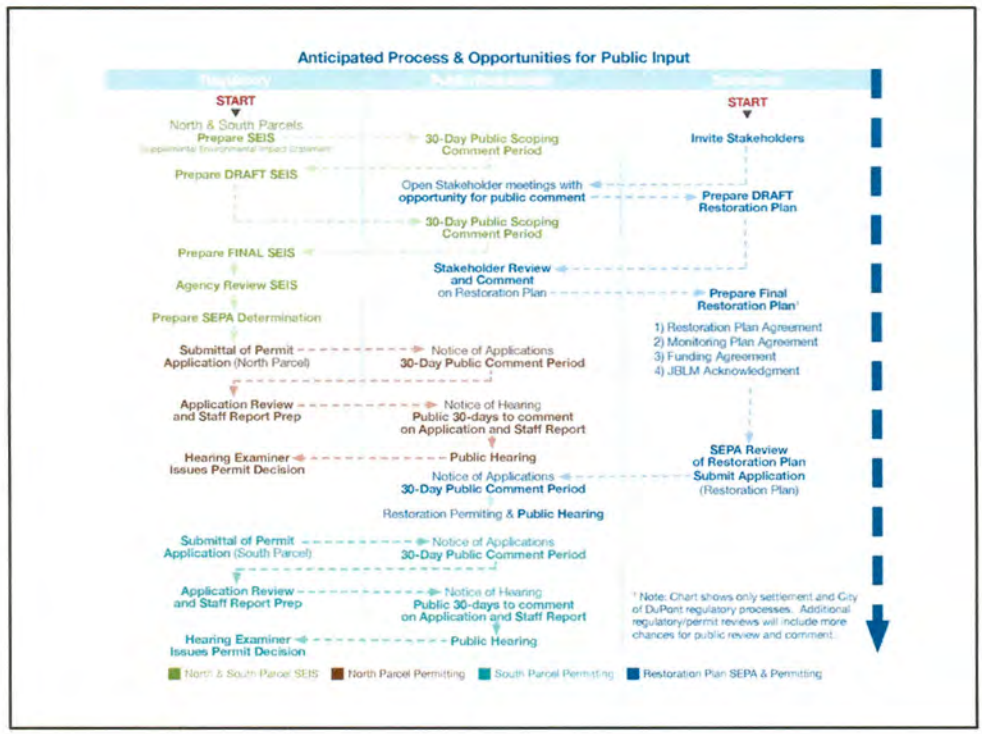
After South Parcel mining begins CalPortland must

Provide the full agreed funding amount for Restoration

Continue mining, reclamation and monitoring in incremental segments



- Milestones for South Parcel mining to occur
  - SEPA – Supplemental Environmental Impact Statement
  - Restoration Plan
  - South Parcel Monitoring Plan
  - JBLM Acknowledgment
  - CalPortland funding
  - Permitting process for South Parcel mining
  - Restoration Plan SEPA Environmental Review and Permitting
  - Permits for Restoration Plan
  - JBLM Consent for Restoration Plan
  - Pump Test and Pre-Mining dewatering test
  - Pump Water to Edmond Marsh
  - Implement Restoration Plan
  - Begin South Parcel mining



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