



CITY OF DUPONT

Department of Community Development

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May 3, 2019

Pete Stoltz
Glacier Northwest, DBA CalPortland
P.O. Box 1730
Seattle, WA 98111

RE: Pioneer Aggregates Mine Expansion, PLNG2018-067
Planning Department Pre-application Meeting Comments

Dear Mr. Stoltz:

The following letter summarizes the City's response to your request for a pre-application meeting related to the 177.23-acre expansion of the existing Pioneer Aggregates Mine for an additional 14-year period, increasing the available sand and gravel resources by 30 to 40 million tons. Mining of the South Parcel would involve six primary activities: logging, clearing and topsoil removal, groundwater management, mining, processing & transport, and reclamation. These activities would overlap, with multiple occurring at any one time. The expansion area property is located south of the existing Pioneer Aggregates Mine and covers seven parcels: 0119233011, 0119233014 – 17, 0119262015, and 0119262016.

The materials submitted include the following:

- Pre-application Meeting application form
- Description of proposal
- Mine Expansion Drawings

Subsequent to the meeting you have also provided copies of the August 15, 2013, Site Plan Review and Slope Buffer Reduction Final Decision (LU 12-02), the 2013 FEIS and the 1993 EIS.

Background and History

The original application for the mine was submitted in 1991. It included clearing, mining and reclamation, construction of a processing facility; rehabilitating and using a then-existing dock in Puget Sound (subsequently removed); and constructing an above-ground conveyor system to move material to the processing plant and dock.

In 1993 City Council approved Ordinance 95-521 for shoreline permits, master program amendment, site plan approval, and sensitive area ordinance exception for the Pioneer Aggregates Tatsolo Point barge trans-shipment proposal with conditions. Ecology denied the shoreline CUP. Subsequently, multiple parties appealed and cross appealed the City and Ecology's determinations. A Settlement Agreement was executed in 1994. Parties to the 1994 Settlement included Ecology, the City, Lone Star NW (now CalPortland), WRECO, Nisqually Delta Association, Black Hills Audubon Society, Washington Environmental Council, National Audubon Society, and the Anderson Island Quality of Life Committee.

CalPortland abandoned plans for the wharf and agreed to locate a transshipment facility at Tatsolo Point. These actions were addressed in a Pioneer Aggregates Barge Loading Facility and DuPont Shoreline Master Program Amendment SEIS in 1995. A map and text amendment to the City's SMP addressed the "Tatsolo Point Special Management Unit" and the shoreline environment was re-designated from Urban to Conservancy. The revised master plan was approved by the City, Ecology and mining operations began in 1997.

In 2007 CalPortland (aka Glacier Northwest) submitted an application to permit mining on the 177-acre South Parcel. The proposal would fill the Kettle wetland and create either a new tributary to Sequelitchew Creek or a pipeline for the purposes of dewatering the mine. A final Supplemental EIS was published in May 2007. The City issued its staff report in January 2009. Several parties to the 1994 Settlement Agreement challenged the application and argued the decision violated the 1994 Settlement Agreement. These challenges ultimately resulted in the City taking no final action on the permit application.

In 2009 Nisqually Delta Association invoked the formal dispute resolution process in the 1994 Settlement Agreement in response to the 2007 permit application. To avoid protracted litigation the parties executed, through mediation, a Memorandum of Agreement to establish a process for further study of the watershed. In June 2011 the parties reached a new Settlement Agreement, which established a framework for review and permitting of CalPortland's mining proposals along with a concurrent process for developing a mitigation program to restore and enhance Sequelitchew Creek watershed and protect open space and the Puget Sound Shoreline. The new agreement was executed in January of 2012.

The 2012 Settlement Agreement articulates a phased series of planning, review and permitting actions that would occur over a several-year period for mining the North and South parcels. CalPortland would also preserve a 45-acre open space area along Puget South, west of the mine area, including bluffs and an area for a pedestrian trail, and grant an easement for future public access for a pedestrian trail within the open-space area following closure of the mine. The Agreement established procedures for finalization and recording of the conservation easement following review and agreement by the parties.

The City amended their Comprehensive Plan in 2012 to designate the North and South Parcels as mineral resource lands of long-term significance.

In accordance with the 2012 Settlement Agreement CalPortland applied for permits to mine the North Parcel (142 acres). The mining would occur over a 4 year period. Site Plan approval and approval for reduction of a steep slope buffer was requested.

In June 2013 a Final EIS was published for the North Parcel mining operation. Information was included about the adjacent South Parcel, which the City deemed to be a "similar action" as that term is defined in SEPA rules (WAC 17-11-060(3)(c)). It appears the South Parcel was included to facilitate consideration of cumulative impacts. Per the Hearing Examiner's Decision on the North Parcel, *"Whether or not the EIS is adequate for purposes of reaching a decision on any future application for approvals needed to commence mining operations on the South Parcel is an issue that must be addressed under the laws in effect at such time, and shall be based on the specifics of any proposal that might come forward."*

On August 15, 2013 the City's Hearing Examiner issued approval of Site Plan Review and Slope Buffer Reduction for the North Parcel mining proposal subject to 35 conditions.

A. Planning Department Comments: Contact Jeff Wilson at (253) 912-5393. The following comments are provided from the City's planning department regarding the proposed project:

1. General

- a. The project is located within the Residential Reserve (RR), Residential 4 (R4), Manufacturing and Research (MRP) zoning districts. All seven parcels are located in the Mineral Resource Overlay.

- b. Sheet G-3 incorrectly shows the zoning for the properties. Mineral extraction is not a permitted use in the Open Space (OS) district. Further, the Mineral Resource Overlay boundary does not extend onto the OS-zoned property, therefore mining will not be allowed on OS property. The zoning boundaries shown on Sheet G-3 should be revised to reflect the correct zoning boundaries and limit mining and grading to those areas outside of the Open Space district. Please revise Sheet G-3 to match the City of DuPont official zoning map, which can be found on the City's website at the following location:
- <http://dupontwa.gov/DocumentCenter/View/2624>
- c. Sheet C-1 through C-10 show that portions of the north mine area will be needed to accommodate an infiltration pond, dewater pipeline, and a mitigation wetland. Include these properties as being within the work area on the permit applications.
- d. The expanded mining operation is proposed on land that is within the Mineral Resource Overlay zoning district. Permitted Uses in the Mineral Resource Overlay are provided in DMC 25.60.020, which include: "Mineral extraction together with associated structures and equipment." Therefore the use is permitted outright.
- e. DMC 25.60.050, Performance Standards, states that potential impacts related to traffic, dust control, light emission, visual screening, loss of tree cover, noise emission and protection of environmentally sensitive areas shall be examined. The city recognizes that impacts to other elements of the environment including air and water quality are regulated by the state, regional and federal authorities. Staff anticipates that most of these potential impacts will also be examined and mitigated where appropriate during the SEPA environmental review process.
- f. DMC 25.60.060 provides that Site Plan Approval is required and shall be processed as a Type III approval, which requires a final decision from the City's hearing examiner. It is staff's interpretation that to comply with the performance standards of DMC 25.60.050 the mining proposal will need to meet the intent of these regulations, however, including at a minimum:
- 1) The proposal shall meet the buffering and landscaping standards provided at DMC Chapter 25.90. Buffering and landscaping will also be reviewed during the environmental analysis based on the adjacent uses and noise buffering to ensure impacts are mitigated.
 - 2) It is anticipated that landscape screening of Powerline Road will be required and shall meet the standards provided at DMC 25.70.030(3) and will further need to meet the requirements defined in DMC 25.10.020.060.
 - 3) Your application indicates that no additional parking is needed as there is no change to employee counts. If that should change and the project requires 10 or more parking stalls, landscaping shall be provided within interior surface parking lots under the standards provided at DMC 25.70.030(2). The Applicant shall provide a narrative with the application that details the current parking quantity and number of employees. Should additional parking lots be proposed the City code provisions and standards for parking (Chapter 25.95) and screening DMC 25.70.070(3) will apply.
- g. The site plan provided for the pre-application meeting does not indicate a fence proposed for this project. Fences larger than 6 feet that are located within the building setbacks will require a variance. The approval criteria for variance is found in DMC
- h. DMC 25.120 provides tree retention requirements. There is not a per-acre tree retention requirement for the Mineral Resource Overlay District. The property is also located in Oak Management Mapping Unit MO-14. There are no specific recommendations pertaining to this unit in DMC 25.120.040 or the Oak Management Recommendations report prepared by Jones & Stokes Associates dated December 23, 1996. A tree survey will be required and requirements for retention will be reviewed as part of SEPA environmental review



- i. Per DMC 25.120.030(9), additional tree retention requirements are found in Section I.B.2 of the 1994 Settlement Agreement and along the north side of Sequalitchew Creek may be found in Exhibit A to Ordinance 95-521, page 36, Section 9. This states that a 100 foot buffer from Sequalitchew Creek is required. The undisturbed buffer is measured from the top of the slope to the limits of clearing for the conveyor and shall general follow the alignment shown in the Final EIS, Appendix K. This buffer shall be denoted on the face of the civil and landscape plans.
- j. On December 11, 2018, the City Council adopted Ordinance 18-1054. This ordinance repealed and replaced the sensitive area regulations with new critical area regulations. The proposed project will be required to meet the new critical area ordinance. Any development within a critical area or its buffer shall require a critical area permit. Currently, the critical area ordinance has not been codified online; we have included a hard copy of the ordinance with these comments.

Initial staff analysis indicates the proposal is located within or adjacent to the following critical areas; two individual wetlands), fish and wildlife habitat conservation areas, and geologically hazardous areas. Critical Area Report that is compliant with DMC 25.105 will be required at the time of application. The following is a summary, but not an exclusive listing of, the critical areas and the associated reports that will be needed as part of the Critical Area Report:

- 1) A wetland report is required and shall be in compliance with DMC 25.105.050.A.
 - a) Per DMC 25.105.050.A.2.c, wetland buffer width averaging may be allowed. If wetland buffer width averaging is pursued, the Critical Area Report will need to include written responses to the DMC 25.105.050.A.2.c criteria.
 - b) Per DMC 25.105.050.A.2.d, wetland buffer reduction may be allowed with enhancements. If wetland buffer reduction is pursued, the Critical Area Report will need to include a Buffer Enhancement Plan and written responses to the DMC 25.105.050.A.2.d criteria.
 - c) The proposed project description includes filling and replacing the kettle wetland located on the existing mine site. Any proposal to fill an isolated or kettle wetland on the property will have to conform to the requirements of DMC 25.105. A Wetland Compensatory Mitigation Plan that is in compliance with DMC 25.105.050.A.4 and addresses all associated criteria will be required for any wetland impacts. The City will not issue grading permits until a copy of the US Army Corps of Engineers (or a Jurisdictional Determination) and Department of Ecology approvals have been received. Also, the City will likely require peer review of the wetland Compensatory Mitigation Plan at the applicant's expense. The wetland fill and mitigation will also be evaluated under the SEPA environmental review process.
- 2) The subject properties are adjacent to a stream (Sequalitchew Creek) and in the breeding area for three WDFW Priority Habitat Species (bats). A Habitat Management Plan is required to be prepared for Terrestrial Habitat and Species in compliance with DMC 25.105.050.B. During the SEPA Environmental Review process consultation with WDFW shall be initiated for the requirements for protection of Priority Habitat Species.
- 3) Per DMC 25.105.050.B.7.a, the stream will require a 100-foot buffer. (Note, see item #9 above, which requires a buffer be established from the top of the slope).
- 4) The proposal includes work in the regulated floodplain associated with the 1.8-acre kettle wetland on the existing mine site. Per DMC 25.105.080.B.9.d, a floodplain assessment will be required. The assessment shall address all items listed in Per DMC 25.105.080.B.9.d.
 - a) Per DMC 25.105.080.B.1.a.ii, the applicant shall notify affected communities and native tribes of proposed alteration(s) prior to any alteration in a flood hazard area. The applicant shall submit evidence of such notification to the Federal Emergency Management Agency.
- 5) The proposal is located in a potential landslide hazard area. A Geotechnical Report is required and shall be prepared in compliance with DMC 25.105.050.C.

- a) If development is within 300 feet of a landslide hazard area, the geological assessment must address the standards in DMC25.105.050.B.2.ii.
- b) A setback from the edge of any landslide hazard area will be required and the width of the setback shall be based on the findings in the geotechnical report. As such, the geotechnical report must address the setback criteria provided in DMC25.105.050.B.3.

3. Settlement Agreements

- a. Please provide a copy of the 2012 Settlement Agreement and a narrative response as to how the proposal has complied with the phased series of planning, review and permitting actions that would occur over a several-year period for mining the North and South parcels. Also provide a copy of the recorded conservation easement for the 45-acre open space area along Puget South, west of the mine area.
- b. Certain provisions of Ordinance 95-521 will apply to the mining of the South Parcel that we have not fully evaluated at this time. We recommend you review the Ordinance prior to submitting applications.

4. SEPA Environmental Review

SEPA Environmental Review will be required for the proposal. It is highly anticipated that a Determination of Significance will be issued and at a minimum a Supplemental EIS will be required. The City is currently in discussions with Dept. of Ecology and Dept. of Natural Resources as agencies with expertise regarding the environmental review process and lead agency.

The lead agency will likely advertise for a SEPA consultant to lead the preparation of the environmental documents. The lead agency will meet with you separately to discuss scoping and schedule, establishing the process for scoping the impacts as well as selecting a consultant for preparation of the SEPA documents, in consultation with the applicant.

5. Application Requirements

- a. Submittal Requirements for Site Plan Review are listed on the City's Land Use Application form located here:

<http://wa-dupont.civicplus.com/index.aspx?nid=140>

Also submit the following:

- 1) Detailed narrative description of the proposal.
- 2) A copy of the 2012 Settlement Agreement (SA). Include a narrative description as to how the proposal has complied with the phased series of planning, review and permitting actions that would occur over a several-year period for mining the North and South parcels.
- 3) A copy of the recorded conservation easement (requirement of the 2012 Settlement Agreement).
- 4) A written letter with the name and address of the financially responsible party.
- 5) Tree Retention Plan, including tree survey.
- 6) Narrative describing the existing and proposed parking and employee count per DMC 25.95.
- 7) Documentation of soil contamination (or not), "No Further Action" letter from Ecology will be required prior to issuance of grading permits.
- 8) Mailing list and self-addressed and stamped envelopes for all owners of property within 300 feet of the subject property.
- 9) An electronic copy of all submittal requirements.

- b. Submittal Requirements for Critical Area Permit is provided in DMC 25.105.080. Currently, there is no application form for a Critical Area Permit. Please use the general Land Use Application Form, which can be obtained from the City website. The following required reports are the minimum requirements as known at this time. We understand that some of these reports will be prepared in conjunction with the SEPA environmental review process.
 - 1) Provide a narrative at the time of application that addresses the permit review criteria provided in DMC 25.105.080.D.1. This can be included within the Critical Areas Report.
 - 2) Wetland Report and Compensatory Mitigation Plan.
 - 3) Habitat Management Plan for Terrestrial Habitat and Species per DMC 25.105.050.B.
 - 4) Geotechnical Report.
 - 5) Geo-hydrologic Report.
 - 6) Traffic Study.
 - 7) A floodplain assessment and evidence that FEMA has been notified of work within the regulated floodplain (DMC 25.105.080.B.1.a.ii).
- c. If the City is lead agency or co-lead agency, an application for SEPA Environmental Review is required. The City will provide a separate scoping letter detailing the requirements and fees. The consultant costs associated with EIS preparation and review will be passed on to the applicant. (see section A.4 below)

4. Permit Fees (based on initial permit requirements)

- a. Type III Site Plan Review application fee is \$3,000.
- b. The Critical Areas Review application, is \$3,000 plus \$1,500 for review of each professional study.
- c. The City fee for the Supplemental EIS (if lead or co-lead agency) is \$5,000.
- d. In addition you will be charged for consultant costs, fire department review fees, hearing examiner cost, and 10 percent overhead charges.

5. Approval Process Overview

The Type III approval process is summarized below.

- a) Staff will review the application for completeness and issue a Notice of Complete Application within 28 days. It is important that you provide each of the items identified above at the time of application.
- b) Staff will issue Notice of Application with a 14-day Comment period. You will be responsible for posting the site with the Notice.
- c) The application will be reviewed for consistency with the DMC. A Staff Report will be prepared with recommended Conditions of Approval.
- d) After issuance of the Final Supplemental or full EIS, staff will issue a Notice of Hearing.
- e) Within 14 days of the hearing a Decision will be issued. Type III Decisions are appealable to Pierce County Superior Court.

B. Building Department Comments: Contact Bill Anderson at (253) 912-5216 or banderson@dupontwa.gov.

C. Fire Department Comments: Contact Mike Turner at (253) 666-2760 or mturner@dupontwa.gov.

D. Engineering and Water Department Comments: Contact Dominic Miller of Gray & Osborne at (360) 292-7481, Ext 1504 or dmiller@g-o.com.

In conclusion, this is an incredibly complex proposal that has a long history of permits, environmental review and agreements. While we believe we have evaluated the proposal to the extent possible without all available documents, it is possible that additional requirements may be discovered as we review the application. If you have any questions, please call me at 253.912.5393, or email me at jwilson@dupontwa.gov.

Sincerely,



Jeffrey S. Wilson, AICP
Director of Community Development
City of DuPont

Cc: File No. PLNG2018-067
City of DuPont TRC members

Per DMC 25.175.020(1)(e), neither the discussions at the pre-application meeting nor the information provided herein shall bind the director in any manner or prevent the director's future application or enforcement of all applicable codes, ordinances, and regulations.