

TO: All Council Members

FROM: Gordon Karg, City Attorney; Jeff Wilson, City Planner

RE: Status of 2011 Agreement

Procedural Background

In 1994 an agreement was reached which allowed a proposed gravel mine, to be operated by Cal-Portland,¹ and a loading barge dock to be permitted and built within City limits while addressing the ecological and legal concerns of the involved parties. The “1994 Agreement” is the end result of these efforts and sets out the terms and conditions agreed upon regarding the initial mining project. The parties to the 1994 Agreement are: the City; Cal-Portland; the Washington State Department of Ecology (Ecology); Nisqually Delta Association (NDA); the Black Hills Audubon Society; Washington Environmental Council (WEC); the National Audubon Society; People for Puget Sound; the Tahoma Audubon Society; the Seattle Audubon Society; and Anderson Island Quality of Life Committee.²

In 2006 Cal-Portland sought to expand its operation into areas to the north and southeast of the then current mine, referred to as the North Parcel and a South Parcel. The City approved Cal-Portland’s application to expand the City’s Mineral Resource Overlay. In 2007 the City issued a Final Environmental Impact Statement for mining of the South Parcel, pursuant to SEPA requirements. The NDA objected to this expansion under the terms of the 1994 Agreement and invoked its mediation clause. Ultimately, this led to the 2011 Agreement.

The requirements for planning, permitting and restoration of the Sequelitchew creek, and for permitting and mining of the North and South Parcels are set out in the 2011 Agreement in three phases.

Phases and Current Status

1. Phase One:

- a. Preparation of a creek restoration plan funded by Cal-Portland. Planning began by putting together a “Core Group” which included the City, the Environmental Caucus, Cal-Portland, the Nisqually Tribe, Ecology, JBLM, Pierce County, and the Sequelitchew Creek Watershed Council.
- b. The Core Group met multiple times and conducted public hearings and meetings during a year long process. The result was the issuance of the Core Group Recommendation on January 28, 2014. The Recommendation lays out a framework for and expectations of the final restoration plan.
 - i. The Recommendation provides that the City will have to amend its critical areas ordinances (CAO) in order to allow any restoration plan to be put into effect as the current CAO’s prohibit any alteration of a Category 1 Wetland, such as Edmonds

¹ Cal-Portland (formerly Glacier Northwest) is the successor in interest to Lone Star and WRECO, the parties that who originally sought to open the gravel mine.

² The non-governmental, environmental parties are jointly referred to in this brief and the relevant settlement agreements as the **Environmental Caucus**. Cal-Portland and the Environmental Caucus are similarly referred to jointly as the **Non-Governmental parties**.

Marsh. **It is anticipated that such an amendment will be called for and funded in the final restoration plan.**

- c. 2011 Agreement provides that only the Non-Governmental parties have final approval of the creek restoration plan. **The final approved restoration plan is anticipated by 2017.**
- d. North Parcel Mine permitting. The City completed SEPA review of the North Parcel in 2013. North Parcel Mine permitting was completed and mining has commenced.
- e. The 2011 Agreement also requires the Non-Governmental parties reach a “monitoring plan” for the South Parcel that will “allow a comparison of predicted and actual changes in groundwater draw-down levels” as mining the South Parcel requires dewatering an underlying aquifer and pumping the water into Edmonds Marsh. The City is not a party to this negotiation. The plan must be agreed upon prior to Cal-Portland seeking permits for South Parcel mining. Cal-Portland anticipates agreement will be reached in time to begin South Parcel permitting in the time frames described in this brief.

2. Phase Two:

- a. Cal-Portland will release funding for the permitting of the creek restoration after approval of the final creek restoration plan.
- b. Cal-Portland is under no obligation, per the 2011 Agreement, to apply for mining permits, or engage in mining the South Parcel. However, the intent of the parties is to have South Parcel Permitting and Restoration Permitting take place and conclude at roughly the same time. **Our understanding is that it is Cal-Portland’s intent to seek permitting for South parcel mining as soon as a restoration plan and monitoring plan are agreed upon; permitting for the restoration plan would be conducted simultaneously.**
- c. The restoration permitting will require additional SEPA review. It is anticipated the City will be the lead agency for SEPA review for restoration permitting.

3. Phase Three:

- a. Cal-Portland will release funding for implementation of the creek restoration plan, upon Cal-Portland receiving all permits and approvals to mine the South parcel; permits and approvals for South Parcel mining become effective only when the permits and approvals are issued for the Creek Restoration plan.
- b. Cal-Portland has confirmed that they intend to begin South Parcel Mining as soon as they can acquire all necessary permits and meet the terms of the 2011 Agreement.
- c. It is the intent of the Core Group that implementation of the creek restoration plan will take place approximately the same time South Parcel mining begins, as anticipated by the 2011 Agreement which provides “mining of the South Parcel is intended to coincide with implementation of the Restoration Plan.” **Currently, it is approximated that restoration implementation will begin in 2018 or early 2019, contingent upon agreement on a restoration plan by the non-governmental parties.**
- d. After the implementation of the creek restoration plan, Cal-Portland will release agreed upon funding for maintenance of the completed restoration.