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CITY OF DUPONT

NOTICE OF APPEAL



June 4, 2025

Barbara Kincaid
Director of Community Development
1700 Civic Drive
DuPont, WA 98327

RE: Notice of Appeal, DMC 23.01.210 – Inadequate Final Environmental Impact Statement – File No. SEPA 2021-002

Dear Ms. Kincaid,

This firm represents the Nisqually Indian Tribe ("the Tribe"). This letter constitutes a formal Notice of Appeal of the City of DuPont ("the City's") issuance of a Final Environmental Impact Statement ("FEIS") for CalPortland's proposed Pioneer Aggregates South Parel Project. See DuPont Municipal Code § 23.01.210. A filing fee of \$487.00, accompanies this appeal.

I. Appellant Identification

Name and Mailing Address of Appellant:

Brad Beach on behalf of Nisqually Indian Tribe
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Olympia, WA 98503
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II. Appellant's Legal Residence or Principal Place of Business

Nisqually Indian Tribe
4820 She Nah Num Drive SE
Olympia, WA 98503

III. Decision Being Appealed

*Notice of FEIS availability/determination dated May 22, 2025 (copy attached).
Final Environmental Impact Statement dated May 22, 2025.¹*

IV. Individual Grounds for Appeal

The Nisqually Indian Tribe appeals the FEIS on the following grounds:

Inadequate cultural resource review and analysis. The FEIS fails to adequately identify cultural resources of significance to the Tribe and analyze the proposed mine expansion's potential impacts on those resources.

Failure to consider all cultural resources. The FEIS does not assess, consider, or mitigate impacts to Nisqually cultural resources from the mine expansion. These include previously unrecorded archaeological resources and non-archaeological places of historical, cultural, and spiritual significance to the Tribe and its members.

Inadequate ethnographic and ethnohistoric studies. The FEIS fails to include adequate ethnographic and ethnohistoric research to account for the existence and variety of cultural resources significant to the Tribe.

Failure to mitigate impacts on cultural resources. The FEIS fails to include adequate mitigation measures to address the adverse impacts on cultural resources of significance to the Nisqually Tribe.

Improper geographic scope and failure to consider indirect and cumulative impacts. The FEIS improperly limits its cultural resource analysis to an "area of direct impacts" that is not a recognized concept under the State Environmental Policy Act (SEPA). Rather, SEPA recognizes that a proposal's impacts can be direct, indirect, or cumulative, and requires an EIS to analyze each. See WAC 197-11-060(4)(d), (e); WAC 197-11-792(2)(c). The FEIS fails to account for the full range of potential

¹ Because of its length, the FEIS is incorporated by reference herein. The FEIS is viewable at <https://www.dupontwa.gov/DocumentCenter/View/8843/Pioneer-Aggregates-South-Parcel-Project-Final-EIS---May-22-2025---FULL-DOCUMENT>.

impacts that mining expansion will have on cultural resources. See WAC 197-11-440(6).

V. Factual and Legal Reasons for Appeal

The proposed mine expansion threatens to further desecrate an area of profound importance to the Tribe and its members. The Sequalitchew Ancestral Village Landscape (SAVL) is a Traditional Cultural Property (TCP) made up of numerous historic properties and cultural resources of historical, archaeological, cultural, and spiritual significance to the Tribe and its Members. See Karen Marie Capuder, *Forked Tongues at Sequalitchew: A Critical Indigenist Anthropology of Place in Nisqually Territory* (Ph.D. dissertation, University of Washington 2013).² The landscape, which includes saltwater, shorelands, tidelands, forested uplands, glacial outwash prairies, and a complex network of delicate glacial wetlands and kettle lakes, has supported the Nisqually people for countless generations. The archaeological record offers only a brief glimpse into this extensive history. The City of DuPont was built on this land.

The FEIS fails to analyze probable, significant adverse impacts of the proposed mine expansion on the Tribe's cultural resources. These include the numerous pre-contact and historic era archaeological and ethnographic sites, landscapes, and cultural resources that comprise the SAVL TCP, as well as the unique physical and spiritual character of the landscape and the associated cultural practices and teachings of the Tribe.

The statement that "impacts to cultural values, practices or non-human beings associated with these resources area are unknown, cannot be quantified or assessed in an EIS, and *are beyond the scope of SEPA*," FEIS p. 4-42, is egregiously false. Cultural resources are "elements of the environment" that SEPA requires an EIS to address. WAC 197-11-444. While SEPA does not define "cultural resources," the SEPA Checklist asks a project proponent to identify and describe "any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers," as well as "any landmarks, features, or other evidence of Indian or historic use or occupation" and "any material evidence, artifacts, or areas of cultural importance on or near the site." WAC 197-11-960, Question B.13.

All of these elements are present in the SAVL TCP. The SAVL TCP and each of its constituent TCPs are, by definition, *physical places on the landscape*, each with distinct boundaries. Among the cultural beliefs, customs, and practices rooted in their history and central to the maintenance of their cultural identity that render the SAVL

² Dr. Capuder's dissertation is available at <https://digital.lib.washington.edu/server/api/core/bitstreams/0a4b4460-51e4-4615-a78a-25629958a706/content>.

TCP and the TCPs of which it is constituted eligible for listing on the National Register of Historic Places (NRHP) (36 CFR pt. 60) are the values, practices, and interactions with non-human beings associated with this landscape. Both tribal and nontribal third-party cultural resource professionals routinely undertake assessments of such values.

SEPA mandates analysis of “unquantified environmental amenities and values,” RCW 43.21C.030(2), including cultural resources. The City’s FEIS is not supported by adequate cultural resources studies. The cultural resource studies reflected in the FEIS focused on previously recorded historic and archaeological resources, neglecting the ethnographic elements the Tribe has identified. Further, the FEIS relies solely on a “desktop analysis” rather than a robust cultural resource survey that includes documentation and analysis of TCPs.

The Tribe submitted a comment letter on the Draft EIS on July 17, 2024, and an additional comment letter proposing potential mitigation measures on December 23, 2024. The FEIS responses to the Tribe’s comments reflect a fundamental misunderstanding of the legal framework for protecting cultural resources. For example, the City writes off “impacts to spiritual aspects or associations of the physical environment” as “not deducible” because they cannot be quantified. It further asserts that spiritual and religious practices “are not ‘elements of the environment’ for discussion in an EIS.” To the contrary, “spiritual aspects and associations of the physical environment” are, in fact, among the criteria for determining eligibility of TCPs for the NRHP and the Washington Heritage Register (WHR). Whether the “aspects and associations” that render these elements significant and eligible for listing are spiritual or mundane, SEPA requires the EIS to consider them.

The FEIS comment responses “recognize[] that the Tribe possesses unique information about Tribal customs, beliefs and practices that is not available elsewhere, including state and federal databases.” However, the FEIS impermissibly places the burden of providing such information on the Tribe itself. (“As of this writing, the Nisqually Indian Tribe has not provided any documentation of the TCPs, including any evaluations, maps or reports depicting their locations and boundaries” (FEIS, p. 3.10-8).) As the SEPA lead agency, the City has the responsibility to gather sufficient information to analyze the impacts of the proposed mine expansion. RCW 43.21C.030; WAC 197-11-080(1) (“If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.”). The limited nature of the cultural resources studies and analysis of impacts to cultural resources do not provide sufficient information for the City to make a reasoned choice among alternatives.

Accordingly, the FEIS does not adequately address the significant adverse impacts of the proposed project on the Nisqually Indian Tribe’s Treaty rights, cultural resources,

and natural environment. It also fails to propose adequate mitigation measures to address such impacts. See RCW 43.21C.031, WAC 197-11-440(5), (6).

Finally, the impacts of mine expansion are cumulative to previous degradations to the SAVL TCP. These began with the transformation of the prairies by Hudson's Bay Company and subsequent American settlers through animal husbandry, agriculture, and fire suppression; they continued with the construction, environmental contamination, and remediation from DuPont Power Works; the initiation and continuation of mining activities; and the sprawling development of Northwest Landing. The FEIS fails to adequately consider such cumulative impacts. WAC 197-11-792(2)(c).

VI. Nature and Intent of Relief Sought

All appropriate relief, including, but not limited to: Withdrawal of the City of DuPont's issued FEIS under File No. SEPA 2021-002; further evaluation of the environmental impacts of the Proposed Action in an FEIS addendum or Supplemental EIS; and appropriate additional mitigation conditions to address the probable, significant adverse impacts of the mine expansion on the Tribe's cultural resources.

VII. Verification

I, Brad Beach, have read this appeal and believe the contents to be true to the best of my knowledge, information, and belief.

Appellant Signature: Bradley Beach **Date:** 6/04/2025
Brad Beach on behalf of Nisqually Indian Tribe

Attorney Signature: Maia Bellon **Date:** 06/04/2025
Maia Bellon, WSBA No. 24777
Attorney for Appellant

Attachments

FEIS Notice of Availability
\$487.00 filing fee payment



CITY OF DUPONT
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NOTICE OF AVAILABILITY OF FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

Notice is hereby given under WAC 197-11-460 and 197-11-510 that the City of DuPont is issuing the Final Environmental Impact Statement (Final EIS) for the proposed ***Pioneer Aggregates South Parcel Project***.

Project Name: Pioneer Aggregates South Parcel Project

Proponent: CalPortland

Lead Agency: City of DuPont Public Services Department

File Number: SEPA 2021-002

Final EIS Issuance Date: May 22, 2025

Description of the Proposal: The proposed *Pioneer Aggregates South Parcel Project* would occur on an approximately 313-acre site located on and to the southeast of the existing Pioneer Aggregates Mine in the City of DuPont, southwestern Pierce County, sections 22, 23, and 26, Township 19 North, Range 1 East of the Willamette Meridian. The site includes areas previously undisturbed by mining (termed the "Expansion Area") and mining deeper within a portion of existing mine, referred to as the "Re-Mine Area". The Expansion Area is approximately 188 acres and is comprised of three subareas as follows: The Kettle Area is a 10.8-acre previously undisturbed area; the 9.2-acre Buffer Strip is a strip of vegetation that was retained along the inside of the originally permitted mine bordering the South Parcel; and, the South Parcel Area is 168 acres located southeast of the original mine. The Re-Mine Area consists of 125 acres in the southeastern portion of the existing mine where current mining activities are permitted above current groundwater levels.

A Draft Environmental Impact Statement (DEIS) was prepared and issued on June 14, 2024 with a 30-day comment period. Agencies, affected tribes, and members of the public were invited to comment on the DEIS through July 14, 2024. The DEIS process was provided pursuant to the Washington Administrative Code (WAC) 197-11-455. Information regarding the EIS process can be reviewed on the city's website at: <https://www.dupontwa.gov/577/Pioneer-Aggregates-South-Parcel-Project>

The DEIS analyzed the probable significant adverse environmental impacts associated with one alternative and one no action alternative, including:

- **Alternative 1 (Proposed Action)** – Horizontal expansion of mining into approximately 188 acres previously undisturbed by mining (Expansion Area) and vertical deepening of approximately 125 acres of the existing mine; and,
- **Alternative 2 – No Action Alternative.**

Mitigation: The Final EIS has identified impacts and mitigation measures for Alternative 1 (Proposed Action).

Availability of the FEIS and Background Materials: The Draft EIS and Final EIS may be viewed on the city's website at <https://www.dupontwa.gov/719/Pioneer-Aggregates-South-Parcel-Project>

Appeal and Noticing: This notice of availability is provided in accordance with WAC 197-11-460. The City will not take action on the proposal for 7 days following the issuance date of this notice. The adequacy of this Final EIS may be appealed to the DuPont Hearing Examiner in accordance with the DuPont Municipal Code (DMC) 23.01.210. Timely appeals shall be delivered, with the appropriate appeal fee, to the SEPA Lead Agency by mail or by personal delivery before 5pm within 14-days of the issuance of this Final EIS, on or before June 5, 2025. Information for filing an appeal may be found on the city's website at this location:

<https://www.codepublishing.com/WA/DuPont/#!/DuPont23/DuPont2301.html#23.01.210>

or by contacting the SEPA Lead Agency Contact.

SEPA Lead Agency Contact: Barb Kincaid, Public Services Director and SEPA Responsible Official, bkincaid@dupontwa.gov