

## **BEFORE THE HEARING EXAMINER FOR THE CITY OF DUPONT**

## **RE: DuPont Industrial Park**

## **Site Plan and Tree Reduction**

**File No. PLNG 2018-008, -009, -047**

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

## SUMMARY

The Applicant has requested site plan approval for a 255,000 square foot warehouse at 1700 Center Drive and approval of a Tree Modification to remove two Oregon White Oak trees for that project. The site plan permit is denied because DMC 25.45.030(17) prohibits warehouse use from abutting main streets. It is uncontested that the project site abuts a main road, specifically Sequalitchew Drive. Sequalitchew Drive currently serves as a stub road but will eventually serve as a main access road to the homes located in the Sequalitchew Village. About 150 feet<sup>1</sup> of parking and landscaping will separate the proposed warehouse building from Sequalitchew Drive. However, the massive warehouse building will still remain visible to Dupont residents on their commutes and other daily activities as they drive Sequalitchew Drive to and from their homes. This aesthetic is precisely what DMC 25.45.030(17) was intended to avoid, as the regulation implements Comprehensive Plan Land Use Goal 9.2, which encourages the adoption of regulations to “*...establish limitations on uses adjacent to main streets in order to ensure the small town aesthetic of the City of Dupont is maintained.*” Aligning Dupont’s main streets with massive 255,000 square foot warehouses does not maintain the small town aesthetic of the City of Dupont. Such a scenario is precisely what the City Council intended to avoid in its adoption of

<sup>1</sup> The separation is variously referred to as 150 feet or 200 feet in documents and testimony throughout the record. The 150 foot figure is taken from the Applicant's written response to the SEPA Appellant's Motion for Summary Judgment.

1 DMC 25.45.030(17) and for that reason must be denied. A detailed legal analysis of the meaning of  
2 DMC 25.45.030(17) is outlined in Conclusion of Law No. 5, p. 15-20.

3 Beyond the compliance problem with DMC 25.45.030(17), the project otherwise complies with all  
4 applicable development standards and would be approved. Notably, the State Environmental Policy Act  
5 (“SEPA”) appeal from the Nisqually Delta Association is denied, as the proposal would not create any  
6 probable significant adverse impacts to historical resources. There is no question that the project site is  
7 of high historical significance. The issue for purposes of SEPA review is much narrower than that, as it  
8 is limited to the impacts of moving a historical marker a few hundred feet at the project site. The level  
9 of protection legislatively found acceptable to protect the historical significance of the site was the City’s  
adoption of DMC 25.80.030, which prohibits development within 50 feet of a historical marker  
purportedly identifying the location of the first American building in the Puget Sound Region, an 1839  
building for a Methodist-Episcopal Mission. The Mission building was located on the project site and  
no longer exists.

10 The Applicant proposes to move the marker a few hundred yards within the project site and build the  
11 warehouse at the current location of the marker. The marker is currently located in the middle of a large  
12 parcel of private property. The marker will be relocated to a site off a public trail that will be dedicated  
13 and improved for public use and appreciation/education of the site’s historical significance. The  
14 prevailing archaeological opinion is skeptical that the current location of the marker accurately depicts  
15 the location of the 1839 building. The evidence is fairly conclusive that further site investigation will  
16 not expose any significant artifacts or information about the historical uses of the site. Consequently,  
17 the relevant environmental impact of the proposal is whether moving the marker a few hundred feet from  
what in a worst case analysis could be its accurate location creates probable significant adverse impacts.  
Since cultural/historical impacts are found to be acceptable for development located more than 50 feet  
from the marker, the environmental impacts are further limited to those that deprive the public from  
accessing a marker site that in a worst case analysis could accurately identify the location of the 1839  
Mission building.

18 Whether it is truly “significant” from a SEPA standpoint that due to the relocation of the marker the  
19 public might have to appreciate the historical significance of the Mission building a few hundred feet  
from where it was actually located is a highly subjective and personal determination. State regulations  
20 require that “substantial weight” be given the findings of the Community Development Director in  
determining that the proposal will not create any probable significant adverse impacts. Given the  
21 subjective nature of the pertinent impacts, it must be concluded under the “substantial weight” standard  
22 that the proposal will not create probable significant adverse impacts to the historical and cultural  
23 resources of the site. A detailed analysis of the evidence regarding historical/cultural impacts is in  
Finding of Fact No. 6, p.11.

## 24 TESTIMONY

25 A summary of hearing testimony has been prepared for those interested in the content of testimony  
26 presented at the hearing. A copy of that summary is available from Jeff Wilson, Community  
Development Director, at the City of Dupont City Hall. The summary is for the convenience of

1 interested parties only and is not to be construed as placing any significance on what was or was not  
2 summarized.

3 **EXHIBITS**

4 A. City of DuPont Department of Community Development Staff Report with Attachments,  
5 dated May 8, 2019

6 B. E-mail from Karen Nolan received May 11, 2019 @ 4:36 pm

7 C. E-mail from Alina Pontynen received May 11, 2019 @ 9:11 pm

8 D. E-mail from Lauren Jelle received May 11, 2019 @ 9:39 pm

9 E. E-mail from Libby Fitzgerald received May 12, 2019 @ 6:01 am

10 F. E-mail from Rhonda Ogilvie received May 12, 2019 @ 8:56 am

11 G. E-mail from Christian Young received May 12, 2019 @ 9:02 am

12 H. E-mail from Eric Ogilvie received May 12, 2019 @ 9:19 am

13 I. E-mail from Pam Fisher received May 12, 2019 @ 12:59 pm

14 J. E-mail from Heather Eckstein received May 12, 2019 @ 3:20 pm

15 K. E-mail from Rex Bruce received May 13, 2019 @ 1:09 am

16 L. E-mail from Jennifer Fry McDonald received May 13, 2019 @ 8:50 am

17 M. E-mail (with attachments) from Linda M. Smith received May 13, 2019 @ 11:11 am

18 N. E-mail from Vicki Keys received May 13, 2019 @ 12:02 pm

19 O. E-mail (with attachment) from Krista Novak received May 13, 2019 @ 2:20 pm

20 P. E-mail (with attachments) from Bill Lynn, Applicant's representative, received May 13,  
21 2019 @ 3:29 pm

22 Q. E-mail from Dennis Bernardy received May 13, 2019 @ 5:40 pm

23 R. E-mail from Trina McJunkins received May 13, 2019 @ 8:23 pm

24 S. E-mail from Carol McDowell received May 13, 2019 @ 11:07 p

25 T. E-mail from Kelly Schneider received May 14, 2019 @ 11:03 am

26 U. E-mail (with attachment) from Cary Harlow received May 14, 2019 @ 1:07 pm

V. E-mail (with attachment) from Beth Elliott received May 14, 2019 @ 3:01 pm

W. E-mail (with attachment) from Judy Norris received May 14, 2019 @ 3:01 pm

X. City Staff Report & Recommendation PowerPoint Presentation dated May 15, 2019

1 Y. E-mail from Lynn Okita received May 14, 2019 @ 8:30 pm  
2 Z. E-mail from Montana Crosby received May 14, 2019 @ 9:47 pm  
3 AA. E-mail from Bonnie Landes received May 14, 2019 @ 11:19 pm  
4 BB. E-mail (with attachment) from Bridget King received May 15, 2019 @ 8:36 am  
5 CC. E-mail from Angela Gesacion received May 15, 2019 @ 8:43 am  
6 DD. E-mail from Pamela Foe received May 15, 2019 @ 9:06 am  
7 EE. All email correspondence between the Hearing Examiner and SEPA Parties  
8 FF. Applicants proposed "Revised Conditions of Approval, submitted 5/15/19  
9 GG. Prepared comments submitted by Joe Lewis, received May 15, 2019  
10 HH. Prepared comments and supporting documentation submitted by Maria Gudaitis  
11 II. E-mail from Rick Patterson received May 15, 2019 @ 11:55 am  
12 JJ. E-mail from Mike McJunkins received May 15, 2019 @ 11:59 am  
13 KK. E-Mail from Maria Gudaitis received May 15, 2019 @ 2:38pm re: Testimony Part II  
14 LL. Photos of Buffalo Soldiers from Bridget King received May 15, 2019 during hearing  
15 MM. E-Mail from Maria Gudaitis received May 15, 2019 @ 2:52pm  
16 NN. E-Mail from Mike & Nanette Winkler received May 15, 2019 @ 5:57pm  
17 OO. E-Mail from Dixie Grisham received May 15, 2019 @ 4:01 pm  
18 PP. Written post-hearing closing arguments of SEPA parties.  
19 QQ. Stipulations between City and Applicant, dated May 16, 2019  
20 RR. Appellant May 29, 2019 Noise Study<sup>2</sup>  
21 SS. Applicant June 1, 2019 Noise Study  
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25 <sup>2</sup> The Applicant objected to the admission of this document. Objection is overruled because the Applicant was given  
26 license to present its SEPA arguments in post-hearing briefing, which included new evidence for all parties involved  
in the Applicant's SEPA appeal.

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## FINDINGS OF FACT

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### Procedural:

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5 1. Applicant/Appellants. The Applicant is DuPont Industrial Partners, LLC. The SEPA Appellants  
6 are the Nisqually Delta Association (“NDA”).  
7

8 2. Hearing. A hearing was held on the subject applications on May 15, 2018 at 9:00 am in the City  
9 of Dupont City Council Chambers. The hearing was left open for post-hearing briefing and closing  
10 argument through May 23, 2019. At the request of the parties, this was extended through June 3, 2019  
11 by email order dated May 20, 2019.  
12

13 3. Project Description. The Applicant has requested site plan approval for a 255,000 square foot  
14 warehouse and a Tree Modification for removal of landmark Oregon white oak trees at 1700 Center  
15 Drive. The proposal includes the dedication of public right-of-way to extend Sequalitchew Drive to the  
16 north through the property to connect and provide access to the property north of the subject site. This  
17 will effectively create two parcels, one on each side of the proposed right-of-way. Following dedication,  
18 the east parcel will be approximately 5 acres and the west parcel will be approximately 16.91 acres. The  
19 proposed building and all associated improvements are located on the west side of Sequalitchew Drive  
20 with no improvements planned to the east. The project will include grading, drive aisles and vehicular  
21 parking areas, landscaping, water and sanitary sewer extensions, stormwater collection and infiltration  
22 facility, and franchise utility improvements. Tree removal is proposed, which includes removal of  
23 landmark Oregon white oak trees located within the proposed right-of-way of Sequalitchew Drive and  
24 development footprint.  
25

26 The proposal will also include the relocation of a portion of the existing Sequalitchew Creek  
27 Trail that is currently and temporarily (informally) located on the subject property, to the location of an  
28 existing public trail easement. The new trail segment will be paved and fenced, restricting public access  
29 outside of its path, and dedicated to the City for ongoing ownership and maintenance.  
30

31 The property is the location of a designated historical marker for the 1838 Methodist/Episcopal  
32 Mission; additionally, other important historic and/or cultural events have occurred on or in the vicinity  
33 of the subject site. As part of the development proposal, the Applicant will dedicate approximately 1.53  
34 additional acres or public right-of-way to the City and construct a historical commemorative area  
35 adjacent to the new trail segment for public viewing to recognize and promote the historical and cultural  
36 events which occurred in the vicinity.  
37

38 The property is known to contain contaminated soil above current MTCA Method A cleanup  
39 levels for unrestricted land use which limits the property to commercial and/or industrial use only (parks  
40 are not permitted). It is subject to the terms of a Consent Decree between Washington State Dept. of  
41 Ecology and Weyerhaeuser Company and DuPont Company entered by Thurston County Superior Court  
42 on July 22, 1991 pertaining to cleanup of the contamination on the property. It is also subject to a  
43 Restrictive Covenant which limits the use of the property.  
44

1       4. Conformity to Development Standards<sup>3</sup>. The project conforms to applicable development  
2 standards as follows:

3       A. Drainage. The drainage and conveyance system for the proposed development will be  
4 designed to meet City standards, which require conformance to the 2012 Washington State  
5 Department of Ecology Stormwater Management Manual for Western Washington with 2014  
6 Amendments (2014 Manual). The Applicant has prepared a Preliminary Site Stormwater Site  
7 Plan (Ex. 1, att. (G)(1)(c) that has been reviewed by the City Engineer and found to be in  
8 compliance with stormwater manual standards if certain modifications are incorporated as  
9 required by the conditions of approval to this decision.

10      B. Chapter 25.115 Transportation. The City's Traffic Engineering Consultant, Gerilyn  
11 Reinhart, has reviewed the Traffic Impact Analysis submitted with the application and  
12 provided comments dated February 12, 2018, June 6, 2018, December 10, 2018 and January  
13 13, 2019, which have been incorporated in the summary of record and made conditions of  
14 approval or SEPA mitigation measures, where warranted. (Attachment 10e).

15      Chapter 25.115 requires transportation concurrency review for nonexempt development.  
16 The conditions of approval require that the Applicant will be required to apply for and obtain  
17 a Transportation Concurrency certificate, as provided in DMC 25.115, at the time of building  
18 permit application.

19      C. Chapter 25.95 Parking. As detailed in the staff report, DMC 25.95.030 requires 30-90 spaces  
20 for the proposal based upon 90 employees projected for the proposed warehouse use. The  
21 Applicant proposes 215 parking spaces, which exceeds the maximum 90 spaces authorized  
22 for the project. The conditions of approval require that the Applicant address the excess  
23 number of parking spaces by applying for necessary modifications/variances or reducing the  
24 number of stalls.

25      D. Chapter 25.90 Landscaping. The proposal complies with the City's landscaping standards.  
26 DMC Chapter 25.90 regulates landscaping. DMC 25.90.020(2) requires 20% landscaping,  
27 which is 133,903 square feet for the western, developed parcel of the project site. As  
28 conditioned the proposal will provide for 20% landscaping.

29      DMC 25.90.030(2) requires that the interior of surface parking lots with 10 or more stalls be  
30 landscaped with at least one tree per six stalls. The Architectural Site Plan indicates that 215  
31 standard vehicle parking stalls are provided plus 65 trailer stalls. The Landscape Plans  
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<sup>3</sup> Conformity to development standards is usually assessed via conclusions of law. However, site plan review standards are  
34 highly detailed and technical. In the absence of any disagreement over the application or any indication in the record of a  
35 code compliance issue, the examiner will rely upon assurances made by staff that standards are met, based upon the staff's  
36 exercise of professional judgment. Since these determinations of conformity are based upon staff expertise instead of  
37 application of law to fact, the determinations regarding conformance to development standards are treated as findings of fact.

1 (Attachment 8b) do not provide the parking lot tree calculation but the Planting Schedule on  
2 Sheet L2 provides a total of 66 trees over the entire site (it is not clear how many of these are  
3 parking lot trees). A condition of approval requires that the correct number of parking spaces  
4 and corresponding parking lot tree quantities should be corrected on the Landscape Plans and  
demonstrate that at least the minimum is provided per DMC 26.90.030(2). (Condition #12c)

5 DMC 25.90.030(3) requires that a moderate (50% screening) buffer be provided between  
6 parking lots and any adjacent public right-of-way. Sequalitchew Drive and Sequalitchew  
7 Trail are both adjacent public rights of way (the eastern portions of the trail are adjacent to the  
subject property). The vehicle parking area located east of the east/front building façade is  
8 required to be screened by a moderate buffer from Sequalitchew Drive. The two trailer storage  
9 areas located on the east end of the western parcel, which are not the same as vehicle parking  
areas, are required by the conditions of approval to be relocated to the west of the east  
elevation. Depending on their new location, they may be required to be screened from the  
trail.

10 The northeastern parking lot is diagonal in shape, which provides for a triangular shaped  
11 landscape buffer that varies in width from 10 to 150 feet. The landscaping plans provide a  
12 single row of seven 2.5-inch caliper Oregon white oak trees adjacent to the right-of-way with  
the remaining area to be hydro-seeded/lawn. All existing trees in the buffer are shown to be  
13 removed. The plans do not meet the moderate buffer requirements. The existing trees in this  
14 area are required to be retained by the City's tree retention standards and additional trees,  
15 shrubs and groundcover added. The conditions of approval require that the landscape plans  
shall be revised to meet the moderate buffer screening requirement and include the existing  
trees to be retained. (Condition 12d)

16 *Eastern trailer storage area moderate buffer:* This area depicts approximately eight trailer  
17 storage spaces between the vehicle parking area and Sequalitchew Drive. On Sheet L2  
(Attachment 8.b) the trailer storage area is depicted as it is proposed to be hydro seeded so it  
18 is unclear of the intent. The trailer parking area is required to be removed/relocated from the  
19 front of the building (see Section D.1.a(11), above and D.2.b, below) and planted to meet the  
screening requirements. (Condition 12e)

20 *Southeastern trailer storage area moderate buffer:* The southeastern trailer storage/parking  
21 area provides a landscape buffer width of approximately 20 to 55 feet adjacent to  
Sequalitchew Drive. The landscape plan provides only hydro-seeding/lawn in this area. The  
22 plantings do not meet the moderate buffer requirements. The trailer storage area is required to  
be removed/relocated from the front of the building (see Section D.1.a(11), above and D.2.b,  
23 below).

24 The landscape plans depict a stormwater pond south of the southeastern trailer storage area.  
25 The pond is not depicted on the Architectural Site Plan, or the Civil Plans (Civil plans depict  
underground storm chambers) so it is not clear of the intent. If a pond is located within  
26 visibility of the public, it shall be screened with landscaping and fencing. (Condition 12f)

1        **South/Central trailer parking buffer:** The southern perimeter of the property contains trailer  
2 storage/parking areas. No landscape buffer is proposed, however the area is currently heavily  
3 vegetated with mature trees many of which are proposed to be retained. The area is on a bench  
4 and downslope a vertical drop that ranges between approximately 28 to 45 feet from the  
5 southern perimeter of the trailer storage area to the Sequalitchew Creek Trail. The western  
6 end of the trailer storage area will likely be visible from the Trail. Additional screening  
7 vegetation should be added in the open area east of the trailer storage area. (Condition 12g)

8  
9  
10      E. **Chapter 25.45 Project Design/Zoning District Standards.** The proposal is not subject to any  
11 specific set of design standards, but is consistent with design standards applicable to the  
12 manufacturing research park district. DMC 25.45.020(1)(a)(ii) requires the proposal to be  
13 designed for a campus-like setting with architectural detailing. The site plan and building  
14 elevations show general compliance with this standard due to the extensive landscaping  
15 required of the project for site plan design and due to the detailed building elements as  
16 detailed and required in the assessment of DMC 25.45.030.3(5) below.

17  
18      DMC 25.45.030.3(5) requires that blank walls greater than 50 feet in length along the front  
19 and side of a building be softened through various architectural and/or landscaping measures.  
20 The blank wall requirements apply to the south and east elevations which face/ are visible  
21 from the public rights of way of Sequalitchew Trail and Sequalitchew Drive. The west and  
22 north elevations will not be visible to the public and therefore staff takes the position that the  
23 blank wall requirements do not apply to those elevations.

24  
25      *South elevations* - The south elevation of the building is approximately 950 feet in length and  
26 anchored on each end with prominent architectural entries including glazing with 4-inch steel  
channels, storefront doors, and distinctive canopies for weather protection. A total of four  
colors are provided at the building entries. Landscaping at the southeast entry is comprised  
of a mix of shrubs and ground cover and four, 2-inch caliper western red maple trees. The  
grade change at the entry is accommodated with a small berm.

27  
28      The majority of the south elevation is a long expanse of dock doors with blank walls greater  
29 than 50 feet. The lower 2/3 of the building is painted a dark gray and the upper third is a light  
30 gray. The span is broken up at intervals with a vertical trim element that is dark gray and a  
31 small area in blue. The distance between the vertical elements varies between 95 and 158  
32 feet where there is no architecturally distinctive treatment provided. These areas are “blank  
33 walls” and are required to be softened with the menu of landscape design options provided  
34 in DMC 25.45.030(3)(b); however, they are not provided likely due to the prevalence of dock  
35 doors. Therefore, architectural treatments to address the blank walls will be required.

36  
37      Staff sees several options for meeting the blank wall requirements, which are required for the  
38 eastern 200 feet of the building that will be visible from Sequalitchew Creek Trail as follows:

(a) The elevations provided with the original two-building application provided roof modulation and integration of color in vertical bands that served to break up the blank walls. The addition of these architectural elements could be added to the current proposal. Alternatively, color or textural changes within the upper one-third of the building at intervals of 50 feet or less are another architectural treatment option to consider for meeting the blank wall requirements.

(b) Alternatively, there is a potential that the building may not be fully visible from Sequalitchew Creek Trail once other required plantings are provided. Buildings that are not visible from the public right-of-way are not required to meet the blank wall requirements. SEPA Mitigation Measure No. 10 requires additional plantings be provided between the south property line and the 10-foot grading buffer. City code also requires a moderate landscape screening buffer per DMC 25.90.030(3). It is possible that the combination of these two requirements, together with the site topography, will fully screen the building from view from the trail.

In lieu of addressing the blank wall requirements in the eastern 200 feet of the building, the Applicant could prepare a 3D rendering of the site and trail depicting the topography and future building so that the visibility of the building from the trail can be addressed at a preliminary level. Those portions that are determined visible will then be required to either address the blank wall requirements or augment planting to fully screen the building from view.

(c) Another option for assessing the building's visibility from the trail and whether additional architectural or landscaping is required to meet the City's blank wall requirements is to assess the view of the building from the trail when the new trail alignment is constructed. The Applicant and City will walk the new trail segment when it is constructed and conduct a visual inspection to determine the visible areas of the building and the optimal requirements to screen those visible areas from the menu of options described above. (Condition 9)

East Elevations - The east elevation is approximately 360 feet in length and capped on each end with prominent building entries. The entries feature glazing with 4-inch steel channels, storefront doors, and distinctive steel canopies for weather protection. A total of four colors are provided at the building entries. There are no segments of blank walls greater than 50 feet in length. Landscaping is provided with a combination of shrubs and groundcover in 5-foot wide strip. The east elevation is compliant with the blank wall requirements.

F. Chapter 25.105 Critical Areas. The subject property contains the following regulated critical areas:

Fish and Wildlife Habitat Conservation Area - Sequalitchew Creek's 100-foot stream buffer and Priority Habitat Species. The development footprint is located outside of the 100 foot stream buffer.. The property is mapped by Washington Department of

1 Fish and Wildlife as containing Priority Habitat Species for three bat species (all of  
2 DuPont is mapped as containing habitat). In addition, the nearby Sequalitchew Creek  
3 contains Priority Habitat fish species: Coho salmon, Cutthroat trout, Resident coastal  
cutthroat trout, and Summer chum salmon.

4 Geologically Hazardous Areas – Steep slopes are located along the southern and  
5 western perimeters. Portions of the new trail segment are located within and adjacent  
6 to the steep slopes. Additional geotechnical analysis is required to determine if the  
slopes are a landslide hazard or erosion hazard area.

7 Compliance with the City's critical areas ordinance assures no significant impacts to critical  
8 areas. Staff has evaluated the project for consistency with the City's critical area regulations  
9 and has adopted a series of mitigation measures incorporated into the MDNS to ensure  
10 compliance. Staff's findings of consistency with critical area regulations are consistent with  
11 the evidence in the administrative record and there is no evidence to the contrary. It is  
12 determined that the project is consistent with the City's critical area regulations and therefore  
13 the proposal will not significant adversely affect them.

14 G. Chapter 25.75 Commute Trip Reduction. The City's Commute Trip Reduction requirements,  
15 Chapter 25.75 DMC, only apply to employers with 100 or more employees. The Applicant  
16 indicates approximately 90 employees are anticipated.

17 H. Chapter 25.80 Cultural Resources. Chapter 25.80 DMC prohibits construction at or within  
18 50 feet of markers designating cultural resource sites identified in DMC 25.80.020. The  
19 project site has one of those markers designating the site of the Methodist/Episcopal Mission.  
20 The project complies with this requirement as outlined in Conclusion of Law No. 10. The  
21 SEPA MDNS also provides for monitoring during construction by a professional  
22 archaeologist and the Nisqually Tribe and implementation of an Inadvertent Discover Plan  
23 should any new artifacts be found.

24 I. Chapter 25.85 Affordable Housing. Chapter 25.85 DMC, Affordable Housing, is inapplicable  
25 as that chapter only applies to housing projects.

26 J. Chapter 25.110 Street Corner Setbacks. Chapter 25.110 DMC imposes height limits on  
27 structures and landscaping that can be placed within the sight triangle of street corners. The  
28 project area does not include any street corners.

K. Chapter 25.116 Sign Code. The Applicant has not proposed any signs for this stage of review.  
29 Signs are regulated by Chapter 25.116 DMC and sign code compliance shall be assessed upon  
30 the submission of a sign permit application, as required by DMC 25.116.140.

L. Chapter 25.120 Tree Retention. Tree retention standards are governed by Chapter 25.120  
31 DMC. Tree retention is a significant issue for the project, since hundreds of trees will be  
32 affected by the development. The Applicant has prepared a tree retention plan as required by

1 the City's tree retention regulations, but the plan was based upon a former iteration of the  
2 project that involved two warehouse buildings instead of one. The currently proposed single  
3 building will be located within the same footprint, so the number of trees removed is  
4 anticipated to be less than that identified in the tree retention plan. Conditions of approval  
5 require the Applicant to update its tree retention plan to account for the changes in building  
6 design pursuant to the requirements of Chapter 25.120 DMC.

7 The current tree retention plan identifies that the project site has 682 healthy significant trees  
8 and that 316 trees will be retained. Of particular relevance in the tree retention plan is that the  
9 Applicant originally proposed to remove three landmark trees, but has since revised its site  
10 plan to retain one of the three landmark trees by moving proposed right of way to retain what  
11 is designated as Tree No. 12 in the tree retention plan. The two remaining trees qualify as  
12 landmark trees because they are Oregon white oak trees with diameters exceeding 24 inches.  
13 See DMC 25.10.120.005.

14 DMC 25.120.030(2) requires all landmark trees to be retained. Those trees can only be  
15 removed through successful application for a Tree Modification pursuant to DMC 25.120.050.  
16 DMC 25.120.030(2) allows landmark trees to be removed if they are within a proposed street  
17 right-of-way which is integral to the neighborhood and cannot reasonably be moved. The  
18 Applicant seeks to remove one of the two trees, designated Tree No. 9, using that exception  
19 for Sequalitchew Drive. The Sequalitchew Drive right-of-way is integral to the neighborhood,  
20 in that it is planned to provide a future connection to the properties to the north, however its  
specific alignment is not permanently or formally established on a City planning document.  
It does not appear that the right-of-way could be adjusted to save Tree No. 9 while providing  
the required curve radius and design requirements per city road design standards. The staff  
report notes that if the Applicant can provide justification for the tree removal that  
demonstrates to the City's satisfaction that the alignment cannot reasonably be modified to  
retain the tree, the removal of Tree No. 9 should be allowed. At the same time, another part  
of the staff report recommends that the request to remove Tree No. 9 be approved without  
mentioning any need for further justification. The Applicant did not address the removal of  
Tree No. 9 at the hearing. Given staff's assessment of the curve radius and the importance of  
Sequalitchew Drive to the area's planned circulation system, the request to remove the tree is  
approved.

21 The second of the two trees requested for removal, Tree No. 65, is located on the southwestern  
22 edge of the trailer storage parking area. The reduction in one or more trailer parking spaces  
23 would be sufficient to save the tree and the Applicant has presented no reason why the loss of  
the removal of the tree is necessary due to special circumstances pertaining to that land or the  
24 trees on it as required by DMC 25.120.050. For this reason, the modification request for Tree  
No. 65 is denied.

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4 M. Chapter 25.125 Wireless Communication Facilities. No wireless communication facilities are  
5 proposed, so Chapter 25.125 DMC, Wireless Communication Facilities, does not apply.  
6

7 5. SEPA Appeals. A SEPA mitigated determination of non-significance (“MDNS”) was issued  
8 for the proposal on February 20, 2019. Two timely appeals were filed against the MDNS. One by  
9 the Applicant on March 6, 2019 and one by the Nisqually Delta Association (Appellants) on March  
10 6, 2019.

11 The Appellants raised several grounds for their appeal in their appeal document. However, they  
12 only pursued two of those grounds, specifically (1) the MDNS failed to analyze and disclose the need  
13 for a forest practices permit; (2) the MDNS failed to adequately address impacts to cultural and  
14 historical resources. None of the other grounds for appeal in the written appeal statement were  
15 pursued any further and for that reason are construed as abandoned. The Appellant’s forest practices  
16 claim was found to not serve as a basis for overturning the MDNS in a summary judgment ruling  
17 dated May 5, 2019. In that same summary judgment proceeding the Appellant asserted that an alleged  
18 violation of DMC 25.45.030(17), which prohibits warehouses from “abutting a main street,” also  
19 constituted a probable significant adverse impact that should have been assessed and mitigated in the  
20 MDNS. The Appellant did not identify this violation as a grounds for reversal in its letter of appeal,  
21 but no party voiced any objection to the argument on that basis until the City finally did so in its  
22 written closing argument after the summary judgment proceeding and after the close of the appeal  
23 hearing. The City’s objection was untimely and deemed waived for that reason.

24 The Applicant’s SEPA appeal challenges several mitigation measures. The City and Applicant  
25 stipulated to the modification of three of those mitigation measures, specifically Conditions 2, 3, 5  
26 and 19. The modifications to 2, 5 and 19 are reasonable and do not materially reduce or detract from  
needed mitigation and are therefore found to be consistent with and necessary to eliminate probable  
significant adverse environmental impacts. The agreed upon mitigation to Condition No. 3 was  
determined to fall short of eliminating noise impacts for the reasons identified in Finding of Fact No.  
5 and for that reason was subject to further revision as outlined in the Decision section of this decision.  
The Applicant did not pursue its arguments against the other mitigation measures identified in its  
appeal except for Condition No. 19 (addressed in the Appellant’s prehearing brief). All other  
mitigation measures except those subject to stipulation and Condition No. 19 are deemed abandoned.

22 6. SEPA Appeal Issues. The findings below address the SEPA issues litigated at the appeal  
23 hearing:

24 A. Cultural/Historical Impact. The proposal will not create significant adverse impacts to  
25 cultural/historical resources. As determined below, the project site has unquestionable  
26 historic and cultural significance. The proposed warehouse will be constructed over a  
large portion of this historic site. However, the evidence also fairly clearly establishes

1 from exhaustive archaeological surveys that there are no more significant artifacts or  
2 other data of historical significance to be found from further investigation of the site.  
3 Historical impacts are limited to the loss of public access to the site. Currently, a marker  
4 located on private property purportedly identifies the location of one of the most  
5 historically significant buildings of the site. The Applicant proposes to move the marker  
6 to another part of the project site to a location of a public trail within a few hundred feet  
7 of the original marker location.

8 The assessment of public harm caused by the modest displacement of a historic marker  
9 that may not even be accurately located is a highly subjective determination. Since  
10 cultural/historical impact is solely a SEPA issue for this project, state regulations require  
11 that substantial weight must be given to the determination of the SEPA responsible  
12 official that impacts are not significantly adverse. Although relocation of the marker is  
13 not ideal from a purely historical perspective, there is ample room for reasonable minds  
14 to differ as to whether the modest relocation should be considered significant. Under  
15 these circumstances, the substantial weight due to the SEPA responsible official's  
16 determination of nonsignificant tips the balance to a determination that the adverse  
17 impacts are not significant.

18 a. Historic/Cultural Significance of Project Site. The project site is of  
19 undisputed historical significance. The first American building in the Puget Sound  
20 Region was built at the site in 1839 for a Methodist-Episcopal Mission. According to  
21 the Appellant, the site served as the locale for a series of firsts in the region, including  
22 the first US settlers in Western Washington, the establishment of the first school for  
23 Native American and Euro-American children in the region, the first marriage of US  
24 citizens west of the Cascades, the first birth of a child to US citizens and the first  
25 Protestant mission to be established in Western Washington.

26 In 1904, a roughly 2,000-member contingent of the 9<sup>th</sup> US Cavalry, known as the  
27 "Buffalo Soldiers," camped in the area, built stables and played a role in the  
28 desegregation of the American military and formation of what became Joint Base  
29 Lewis-McChord.

30 b. Location of Existing "Marker". A marker currently identifies the  
31 location of the Mission building. Although the marker is located at the only physical  
32 evidence found for the Mission building, the prevailing academic opinion is that the  
33 physical evidence is not sufficient to conclusively identify the location of the building.  
34 The accuracy of the marker's location is questionable.

35 All above-ground traces of the Methodist-Episcopal Mission are missing from the  
36 project site. According to the Applicant, the project site has been subject to numerous  
37 land disturbances over many years. Between 1869 and 1906, the land was populated by  
38 American settlers, who used the land for farming and livestock grazing.

1 In 1906, the Dupont Powder Works began operating the property. During the  
2 construction and early operation of the Dupont Powder Works, buildings were  
3 frequently constructed and demolished. Logging and leveling of the land, the  
4 construction of roads and the railway network, the annual clearing and burning of  
underbrush and frequent and violent explosions resulted in extensive land disturbances.

5 In 1927 the Dupont Powder Works placed a plaque on the property commemorating the  
6 first Fourth of July celebration west of the Mississippi, which is understood to have been  
7 celebrated at the Mission.

8 The property was sold to the Weyerhauser Company in 1976. By that time many of the  
9 Dupont Powder Works production buildings were burned prior to Weyerhaeuser taking  
possession. Thereafter, contaminated soil remediation activities resulted in extensive  
soil disturbance.

10 In 1989, archeologist Guy Moura found two brick fragments near the plaque  
11 commemorating the first Fourth of July, as well as several nails and glass fragments,  
12 and what be believed to be hearth and chimney fragments. This led him to believe he  
13 had found the Mission site. At least three subsequent archaeological studies have  
14 questioned whether Mr. Moura had enough evidence to conclude he had found the exact  
location of the Mission building. At the hearing, Mr. Moura maintained his conclusion  
that he had found the accurate location of the Mission building. He also testified that  
the area still likely contained historical artifacts.

15 In 2011, an archaeological study known as the Parus report investigated several issues,  
16 including whether the project site is eligible for listing for the National Register of  
17 Historic Places under Criterion D. A property is not eligible for listing under Criterion  
18 D if the physical remains capable of yielding important information no longer exist at  
19 the site or cannot be found at the site. As to Criterion D, the Parus Report concluded  
20 that “[t]he work further substantiates the opinion that the site 45P166 is not eligible  
21 under Criterion D (data potential).” The conclusions of the Parus report were affirmed  
22 in the registration document certifying the site as eligible because of its association with  
23 historic events under for listing on the National Register of Historic Places the  
24 “Criterion A” registration criteria. However, the site was not found eligible for listing  
25 under Criterion D. See Section 8, NRHP Registration Form, Ex. B to Dimitra Zalarvis-  
26 Chase in Support of Applicant Response.

27 Ms. Zalarvais-Chase, an archaeologist testifying on behalf of the Applicant, mentioned  
28 that the Parus Report, in her opinion, reflected that the historical marker may not be  
29 accurately located and that there was not enough evidence to support the conclusions  
30 mentioned by other professionals in this hearing. Ms. Zalarvais-Chase believes that  
31 there is not enough evidence to support the idea that this site is of historical significance.  
32 Ms. Zalarvais-Chase noted that the site had already been exhaustively excavated  
33 meaning that the materials, even if they were there, would already be so seriously

1 diminished that they would not offer significant historical resources.  
2

3       c Proposed Marker Relocation. The Applicant proposes to relocate the  
4 commemorative plaque identified in Finding of Fact No. 4 to a 1.53 acre portion of the  
5 project site that will be dedicated for public use. The current location of the plaque is  
6 on private property and inaccessible to the public. The 1.53 dedicated public area will  
7 be accessible from an existing public trail, the Sequalitchew Creek Trail.  
8

9       d. Impact of Relocation. As identified in Finding of Fact No. 6Ab, the precise  
10 location of the marker is subject to disagreement amongst archaeologists, with the  
11 prevailing opinion appearing to be that there is insufficient evidence available to  
12 conclusively establish whether the marker accurately depicts the location of the Mission  
13 building. Although Mr. Moura, an Appellant archaeologist disagrees, it is also  
14 reasonable to conclude that the site is very unlikely to contain any additional significant  
15 artifacts given the results of several archaeological surveys and studies and the site's  
16 ineligibility for meeting Criterion D for listing on the National Register of Historic  
17 Places. *See Section 8, NRHP Registration Form, Ex. B to Dimitra Zalarvis-Chase in  
18 Support of Applicant Response to Appellant's Motion for Summary Judgment.* Given  
19 these factors, it is apparent that further study of the site will not reveal any further  
20 evidence on the Mission building's location or any other historically significant  
21 information about the project site. WAC 197-11-080(3)(b) requires a "worst case"  
22 analysis of project impacts when the means to acquire information about an impact are  
23 speculative or unknown. Given that there is no reasonably available information to  
24 further substantiate the location of the Mission building, it will be concluded for  
25 purposes of this review that the current location of the marker is accurate.  
26

27       Treating the marker location as accurate, it is still determined that the relocation of  
28 the marker does not create probable significant adverse impacts. As previously noted,  
29 the site does not contain any additional artifacts that would be of historical significance.  
30 Consequently, the impacts of the relocation are limited to public access to the marker  
31 site. There is conflicting evidence in the record from experts and laypeople as to the  
32 significance of accessing the actual location of the Mission building versus viewing it  
33 from a few hundred feet away, with the Mission site under a warehouse. The impacts  
34 to the public are tempered by the fact that the current marker site is on private property  
35 and not open to public access, whereas the proposed relocation will be dedicated to the  
36 public at a site off a popular public trail and the Applicant will add more markers with  
37 historical information. It is also significant that although the project site qualifies as  
38 eligible for registration in the National Register of Historic Places, after all this time it  
39 still has actually been registered. Further, the Washington State Department of  
40 Archaeology and Historic Preservation did not object to relocation of the marker even  
41 though it was consulted on the issue.  
42

43       Given the highly personal and subjective nature of the impact of relocation, it is  
44 determined that the substantial weight due to the SEPA responsible official is  
45

1 determinative. In order to issue his MDNS, the SEPA responsible official had to  
2 determine that the relocation of the marker as proposed and mitigated would not create  
3 any probable significant adverse impacts. The enhanced public accessibility to the  
4 historic Mission site as proposed by the Applicant and the proximity of the relocation  
5 to the historic activities of the project site form a reasonable basis for the SEPA  
6 responsible official's conclusions on this issue.

7 B. Noise. As mitigated, the proposal will not create significant noise impacts. The MDNS as  
8 issued requires noise monitoring and imposition of yet to be determined noise mitigation  
9 measures if noise levels exceed ambient levels of the adjoining Sequalitchew trail. The City  
10 and Applicant subsequently agreed to a revised MDNS Condition No. 3 that simply requires  
11 the project to comply with the City's adopted noise levels, Chapter 9.09 DMC. The SEPA  
12 Appellants contested this revision and submitted a noise study asserting that noises levels  
13 would be annoying and startling to trail users and that some activities would exceed code  
14 adopted noise levels. The Applicant submitted an expert report denying these claims and  
15 also noting that it's impossible to not add to ambient noise levels with any noise making  
16 activity.

17 The City's noise standards generally do set a legislatively acceptable level of noise. From  
18 this it is reasonable to conclude that noise levels below these standards are not significant.  
19 In this respect, the Applicant is correct in its SEPA briefing that RCW 43.21C.240 can be  
20 used to rely upon the City's noise ordinance to mitigate noise impacts. However, RCW  
21 43.21C.240 only authorizes the use of development standards and the like to mitigate  
22 impacts if the City determines those regulations adequately mitigate the impacts. Since  
23 acceptable noise levels are set by the adoption of Chapter 9.09 DMC, it must be surmised  
24 whether there was legislative intent to extend those acceptable levels to situations where  
25 adverse noise levels can be mitigated through reasonable land use conditions of approval.  
26 There is nothing to suggest that the City Council intended its noise ordinance to preclude  
reasonable land use conditions that could reduce noise levels on a permanent basis. The  
Appellant's noise report identified several warehouse noises that can be highly annoying and  
startling to trail users and that can be mitigated as a part of project review. Further, that  
noise study raised the reasonable possibility that project activities could exceed adopted  
noise levels. For these reasons, the SEPA mitigation measure will still impose some  
reasonable noise reduction measures and will also require monitoring to ensure that the  
project complies with Chapter 9.09 DMC noise standards.

27 C. Environmental Clean Up. MDNS Condition No. 19 requires the Applicant to develop a soil  
28 remediation plan, enter into a Voluntary Cleanup Program with Ecology and obtain a "no  
29 further action" letter from Ecology. According to the staff report, excavation and remediation  
30 of contaminated soils has already been completed pursuant to a 1991 Department of Ecology  
31 Consent Decree No. 91-2-01703-1. The Applicant asserts that hazardous waste remediation  
32 is subject to the jurisdiction of the Department of Ecology, who has already taken action to  
33 require remediation of the site via the consent decree. However, staff assert that the site still  
34 has contaminated soils in need of remediation. The Applicant does not dispute the presence

1 of contaminated soils. The Applicant has not presented any evidence or explanation as to  
2 how or whether DOE regulations are designed to provide for safe use of the project site in  
3 the manner proposed by the Applicant. In the absence of any argument or convincing  
4 evidence that MDNS Condition No. 19 should be eliminated, under the substantial weight  
5 SEPA standard it is determined that the contaminated soils of the site are a probable  
significant environmental impact standard the condition will be retained with a minor  
revision agreed upon by the City and Applicant in Ex. QQ.

6 D. Abutting Violation. The Appellants assert that the proposal violates DMC 25.45.030(17) and  
7 for this reason creates a probable significant adverse impact. DMC 25.45.030(17) prohibits  
8 warehouse use from abutting main roads as outlined in the introduction to this Decision. The  
9 proposal is being denied because it fails to comply with DMC 25.45.030(17), so there are no  
probable significant adverse impacts associated with its denial. Should a reviewing court  
find that the proposal complies with DMC 25.45.030(17), there would be no adverse  
environmental impact based upon noncompliance.

## 11 CONCLUSIONS OF LAW

12 1. Authority. DMC 25.175.010 classifies site plan applications for Manufacturing Research Park  
development of more than 15 acres as Type III review. The western parcel of the project site is over 16  
13 acres so Type III review applies to the site plan. DMC 25.120.050 classifies requests for modifications  
14 to Chapter 25.120 DMC tree retention standards as Type III review as well. DMC 25.175.010(2)(b)  
15 provides that the hearing examiner shall hold a hearing and issue a final decision for Type III permit  
applications.

16 2. Zoning/Comprehensive Plan Designations. The Comprehensive Plan Designation is  
17 Manufacturing and Research and it is located in the Sequalitchew Village planning area. The zoning  
district is Manufacturing and Research Park (MRP).

18 3. Review Criteria. DMC 25.150.030 governs the criteria for site plan review. DMC  
19 25.105.070(1)(c) governs wetland buffer reduction criteria. Applicable criteria<sup>4</sup> are quoted below in  
italics and applied through associated conclusions of law.

22  
23 <sup>4</sup> In addition to applying site plan and buffer reduction criteria, the staff report does an analysis of consistency with the City's  
comprehensive plan. The DMC site plan and wetland buffer reduction criteria do not require consistency with the  
comprehensive plan. However, RCW 36.70A.120 requires the City to perform its activities in conformity with its  
comprehensive plan. Arguably, since the City's site plan and wetland buffer reduction criteria are consistent with the City's  
comprehensive, any permitting decision made pursuant to those criteria would also be consistent. To the extent that a separate  
finding of consistency is required by RCW 36.70A.120, it is concluded that the proposal is consistent with the City's  
comprehensive plan for the reasons outlined in the staff report

1       **DMC 25.150.030:** *In order to obtain site plan approval, all of the development regulations and criteria*  
2       *specified in the district applicable to the property must be satisfied in addition to any general*  
3       *development requirements in Chapters 25.75 through 25.95 and 25.105 through 25.125 DMC.*

4       4. Proposal complies with site plan criteria except for DMC 25.45.030(17). Finding of Fact No. 4  
5       assesses compliance with the DMC chapters referenced in the DMC 25.150.030 criterion above and  
6       finds the project conforms to each, except for compliance with “*criteria specified in the district*  
7       *applicable to the property,*” specifically DMC 25.45.030(17), for the reasons identified in Conclusions  
8       of Law No. 5 below. The proposal is consistent with all other applicable Manufacturing/Research  
9       Park zoning standards for the reasons identified in Section D1a of the staff report, p. 14-19 and  
10      Conclusion of Law No. 6 below.

11      5. Proposal Fails to Comply with DMC 25.45.030(17). DMC 25.45.030(17) prohibits warehouse  
12      use from abutting main streets. Sequalitchew Drive is a main road as contemplated in DMC  
13      25.45.030(17) and the proposed warehouse use abuts that road. For these reasons the proposal fails  
14      to comply with DMC 25.45.030(17).

15      It is uncontested that the project site abuts a main road<sup>5</sup>, specifically Sequalitchew Drive.  
16      Sequalitchew Drive currently serves as a stub road but will eventually serve as a main access road to  
17      the homes located in the Sequalitchew Village. About 150 feet of parking and landscaping will  
18      separate the proposed warehouse building from Sequalitchew Drive. However, as acknowledged by  
19      the community development director during the hearing, the massive warehouse building will still  
20      remain visible to Dupont residents on their commutes and other daily activities as they drive  
21      Sequalitchew Drive to and from their homes. This aesthetic is precisely what DMC 25.45.030(17)  
22      was intended to avoid, as the regulation implements Comprehensive Plan Land Use Goal 9.2, which  
23      encourages the adoption of regulations to “...establish limitations on uses adjacent to main streets in  
24      order to ensure the small town aesthetic of the City of Dupont is maintained.” Aligning Dupont’s  
25      main streets with massive 255,000 square foot warehouses does not maintain the small town aesthetic  
26      of the City of Dupont. Such a scenario is precisely what the City Council intended to avoid in its  
27      adoption of DMC 25.45.030(17) and for that reason must be denied.

28      Interpreting DMC 25.45.030(17) has been extraordinarily difficult. Its meaning was partially  
29      addressed in a prior summary judgment ruling, where it was determined that additional information  
30      on legislative intent, past interpretations and aesthetic impacts was necessary to make a reasoned

2       5 As accurately depicted in the Appellant’s motion for summary judgment, p. 15-16: Specifically, the code requires  
3       that “Warehouses shall not be located abutting a main street (DuPont Steilacoom Road, Center Drive or the access  
4       road from Center Drive to Sequalitchew Village).” DMC 25.45.030(17). Under the Comprehensive Plan,  
5       “Sequalitchew Village includes the area of the City bounded by Puget Sound to the north and west, the manufacturing  
6       research park and industrial areas to the east and Sequalitchew Creek on the south.” Comp. Plan at 61. Lot Y is in  
7       Sequalitchew Village. The referenced “access road from Center Drive to Sequalitchew Village,” is now known as  
8       “Sequalitchew Drive.” The road is depicted in the Comprehensive Plan map as a major arterial route planned to extend  
9       to Lot Y and then later to residential properties to be developed north and west of Lot Y.

1 interpretation. As shall be discussed, four interpretations have been presented through the course of  
2 the hearing process and each interpretation has had its shortcomings. Ultimately, it is concluded that  
3 the interpretation advocated by the SEPA Appellants' attorney, Mr. Golding, is the most compelling,  
4 with some modification. Mr. Golding's interpretation is simply that if a lot is developed for  
5 warehouse use, it must be deemed to abut a main road if the lot is contiguous with the main road.  
6 This interpretation most closely follows the plain meaning of the "abutting" standards that apply to  
7 the project, most effectively serves the objectives of Comprehensive Plan Land Use Goal 9.2 (quoted  
8 in the preceding paragraph) and, most important, implements the legislative intent of the City Council.

9  
10 The goal in construing zoning ordinances is to determine legislative purpose and intent. 8 E.  
11 McQuillin, The Law of Municipal Corporations, § 25.77 at 244-46 (Revised 3d ed.2010); HJS Dev.,  
12 Inc. v. Pierce County, 148 Wn.2d 451, 472 (2003). When the meaning of an ordinance is plain on its  
13 face, the plain language of that provision must be given effect. Dept. of Ecology v. Campbell &  
14 Gwinn LLC, 146 Wn.2d 1 (2002). Mr. Golding's interpretation meets that plain meaning standard.  
15 As previously noted, DMC 25.45.030(17) prohibits warehouse use from "abutting" main streets.  
16 DMC 25.10.20.010 defines "*warehouse/distribution*" as "*a building or land use in which goods,  
merchandise or equipment is stored for eventual distribution.*" (emphasis added). DMC  
17 25.10.210.015 defines "*use*" to mean the nature of the occupancy, the type of activity, or the character  
and form of improvements to which land is devoted or may be devoted. DMC 25.10.010.005 defines  
"abut" as "contiguous with or touching property lines or right-of-way." The Applicant's western  
parcel, to the extent it fronts a main road, is devoted to warehouse use – the space is composed of the  
warehouse building, its parking and associated landscaping. That warehouse use, i.e. the parcel upon  
which it's located, "abuts" Sequalitchew Drive because the lot is contiguous with the right of way of  
Sequalitchew Drive. In short, applying the plain meaning of DMC 25.45.030(17) and pertinent  
definitions directly and plainly leads to the conclusion that the Applicant is proposing a "warehouse"  
that abuts a main road. Further, for the reasons identified in the second paragraph of this Conclusion  
of Law, this plain meaning interpretation is fully consistent with the comprehensive plan policy the  
regulation is designed to implement as well as the Council's intent in adopting the regulation.

18 The weak link in Mr. Golding's interpretation is applying the "*warehouse/distribution*" definition to  
19 "*warehouses*" in DMC 25.45.030(17). The full term "*warehouse/distribution*" is only used in two  
20 places in Dupont's zoning code, specifically the permitted use sections of the Mixed Use Village  
zone, DMC 25.41.020(2)(g) and the Business Tech Park Zone, DMC 25.40.020(1). The term  
"*warehouse and distribution*" is used in the permitted use sections for the Community Business  
District, DMC 25.27.020(16) and the Industrial District, DMC 25.50.020(1)(f). Given that the full  
"*warehouse/distribution*" term is only used in code sections expressly and specifically addressing  
21 uses as opposed to buildings, there is a good argument to be made that the term "*warehouse*" in  
isolation doesn't implicate the "*warehouse/distribution*" term. However, construing "*warehouse*"  
22 as including "*warehouse use*" provides for a construction that implements legislative intent in a non-  
ambiguous manner. Given that preservation of small town aesthetics is the basis for DMC  
23 25.45.030(17), excluding the improvements associated with warehouse use undermines that purpose.  
A warehouse that is separated from a main road by acres of parking is just as inimical to small town  
24 character as the proximity of massive warehouse building walls. Although certainly not perfect, as  
is evident from the discussion below, Mr. Goldings interpretation most closely and effectively

1 implements legislative intent compared to the other types of interpretations that could be made of  
2 DMC 25.45.030(17).

3 The most important alternative interpretation to consider in this regard is the City staff interpretation.  
4 This is because deference must be given to staff interpretations of ambiguous ordinances if staff can  
5 establish their interpretation was a matter of preexisting policy. *Ellensburg Cement Products, Inc.*  
6 v. *Kittitas County*, 179 Wash.2d 737 (2014). During the hearing staff arguably established that they  
7 were consistently following past interpretations of DMC 25.45.030(17), but even if such deference is  
8 due, that deference is superseded by the failure of the interpretation to conform to legislative intent  
9 as evidenced by nonconformance to more compelling rules of statutory construction. As to the  
interpretation itself, staff construes “warehouse” in DMC 25.45.030(17) as limited to a warehouse  
building, not warehouse use. Staff then applies the DMC 25.10.010.005 definition of “abut” to  
conclude that a warehouse building is only in violation of DMC 25.45.030(17) if the building is  
contiguous with the right of way of a main road.

10 City staff endeavored to establish that its interpretation of DMC 25.45.030(17) was due deference as  
11 a matter of existing policy by giving examples at the hearing of several warehouse buildings in the  
12 City of Dupont that have been constructed as close or closer to main roads than the proposal under  
consideration. Staff did not identify whether the warehouses were approved before or after the  
adoption of DMC 25.45.030(17) and whether any variances were involved. However, a declaration  
13 from Dan Balmelli, dated April 19, 2019, shows two warehouses designed in the last year are closer  
to a main road than the proposal under consideration, which would be after the adoption of DMC  
14 25.45.030(17). From the general staff testimony and the declaration of Mr. Balmelli, it is determined  
15 that staff have consistently construed DMC 25.45.030(17) as only applying to warehouse buildings.

16 Although deference must be given to staff’s interpretation, that deference does not overcome the  
17 inescapable conclusion that the interpretation violates legislative intent. Primarily, this conclusion is  
18 based upon the fact that the staff interpretation essentially repeals DMC 25.45.030(17) by rendering  
it completely useless. Statutes should be construed so that no clause, sentence, or word is made  
19 superfluous, void, or insignificant; however, in special cases the court can ignore statutory language  
that appears to be surplusage when necessary for a proper understanding of the provision. *State v.*  
20 *Evergreen Freedom Foundation*, 1 Wash.App.2d 288, 299 (2018). Staff posited at the hearing that  
under the DMC 25.10.010.005 “abutting” definition a warehouse building must actually be  
21 contiguous with the right of way of a main road in order to violate DMC 25.45.030(17). DMC  
25.45.030(17) only applies to the MRP District, Chapter 25.45 DMC. That district imposes setbacks  
22 to property lines ranging from 15 to 25 feet. See DMC 25.45.030(3). For a warehouse to be  
contiguous to a right of way line in the MRP District, it would need a variance to the applicable  
23 setback. In the extraordinary circumstance where site constraints would justify a warehouse building  
to be built all the way up to a property line via a variance, it would likely also qualify for a variance  
24 to DMC 25.45.030(17). Practically speaking, it is extremely unlikely that there would ever be any  
set of circumstances where DMC 25.45.030(17) would operate to prevent a developer from placing a  
warehouse next to a main road – that restriction is already accomplished by the City’s setback  
25 standards. Staff acknowledged at hearing that under their interpretation DMC 25.45.030(17) doesn’t  
accomplish anything. In short, staff’s interpretation renders DMC 25.45.030(17) entirely

1 meaningless and superfluous. In practical effect, the staff interpretation serves to repeal DMC  
2 25.45.030(17). If the goal of statutory construction is to ascertain legislative intent, no interpretation  
3 that effectively repeals a legislative enactment, absent a statutory conflict, is supportable regardless  
of any required deference.

4 In addition to Mr. Golding's interpretation, the SEPA Appellants presented an alternative construction  
5 of DMC 25.45.030(17) formulated by an architect with considerable experience in conforming project  
drawings to code requirements, Michael Naucus. Mr. Naucus took the position that a building "abuts"  
6 the road closest to it. Mr. Naucus asserted this was based upon the common understanding of the  
term "abut" in land use codes by land use professionals, but did not give any examples of codes that  
7 use the "abut" term in any sense similar to that of DMC 25.45.030(17). Taking judicial notice of code  
adopted by other Washington cities and counties, one is hard pressed to find any other municipal  
8 codes that restrict specific land uses from "abutting" roads. What is fairly evident from Mr. Naucus'  
9 testimony is that he was equating "abutting" requirements with "frontage" requirements. While there  
10 are certainly similarities between the concepts in terms of aesthetic impacts, they do not serve  
precisely the same objectives. Practical applications of the Naucus interpretation can lead to results  
11 wholly inconsistent with legislative intent. As previously noted, the purpose of DMC 25.45.030(17)  
12 is to maintain the small town aesthetic. Under Mr. Naucus' interpretation, a thousand foot long  
13 warehouse that is 200 feet wide would be authorized to abut a main road along its 1000 foot length if  
its 200 foot side was closer to another road than its 1000 foot side. Whether or not a massive  
14 warehouse would be allowed along a main road would depend entirely upon the fortuitous  
circumstance of whether or not other roads were in closer proximity to the building. Such a random  
15 application of DMC 25.45.030(17) does not serve the aesthetic objectives of the DMC 25.45.030(17)  
as well as the interpretation presented by Mr. Golding.

16 The fourth and final interpretation presented by the parties to the hearing was the Applicant's common  
sense approach, simply pointing out that the proposed warehouse cannot be construed as "abutting"  
17 Sequalitchew Drive because it is separated from the road by 150 feet composed of "rows of parking  
spaces, two drive lanes, and a large landscaping area." Applicant's Opposition to Appellant's Motion  
18 for Summary Judgment, p. 14. The Applicant provides no code definition or even dictionary  
definition of "abut" to support its argument. Apparently, the Applicant simply takes the position that  
19 some indeterminate amount of separation between a warehouse and a main road, which is exceeded  
by the proposal, is sufficient to disqualify the use as "abutting." Such a facile "you know it when you  
see it" standard makes it very difficult to apply DMC 25.45.030(17) in a manner that is both  
20 predictable and consistent with legislative intent. As to predictability, the Applicant offers no  
suggestion as to what minimum separation is necessary to avoid "abutting" a main road, and certainly  
21 no set number is in any way ascertainable from the language of DMC 25.45.030(17) itself. Nor is the  
amount of separation necessary readily apparent when applying legislative intent, i.e. maintaining  
22 small town character. City staff testified that even with the 150- foot separation and excessive  
landscaping, the warehouse building would still probably be visible from Sequalitchew Drive. Staff's  
23 testimony is consistent with the landscaping required for the proposal, which is 50 percent screening.  
See DMC 25.90.030(3) and 25.10.020. Having to view warehouses separated by acres of parking and  
24 some 50% screening is just as inimical to small town character as warehouses located on road frontage  
25  
26

1 setbacks. Given the lack of code basis, ambiguity<sup>6</sup> and aesthetically adverse impacts associated with  
2 the Applicant's interpretation, it does not provide a compelling rational for finding compliance with  
3 DMC 25.45.030(17).

4 The Applicant argues that if "warehouse" in DMC 25.45.030(17) is construed to include the use as a  
5 whole that such a construction will also act as a de facto repeal of the provision because all lots in the  
6 Manufacturing and Research Park Zoning District abut main roads. If this assertion is correct, it still  
7 wouldn't act as a de facto repeal. As acknowledged by the community development director during  
8 the hearing, existing lots fronting main roads can be divided into two or more lots with a permitted  
9 use constructed on the lots fronting the main roads and warehouses located in the back. This is  
10 precisely the scenario encouraged by DMC 25.45.030(17). Further, some site features can very well  
11 qualify as separate uses even without creation of separate lots. If those site features are not a required  
12 amenity of the proposed use and are large enough to be reasonably construed as a separate use of the  
13 property, they would qualify to separate a proposed warehouse use from a main road. The historical  
14 viewing area proposed for this project is a prime example. If that view area were extended across the  
15 entire frontage of the western parcel, that would qualify as a different use that would separate the  
16 warehouse use from the main road. Similarly, large undeveloped areas that would qualify as vacant  
17 land could also qualify as a separate use. In contrast, the excess landscaping proposed by the  
18 Applicant probably wouldn't qualify as a separate use since it is simply a modest extension of a  
19 required site amenity that does little to maintain small town aesthetics.

20 On a final minor point, the City in its written closing argument asserted that it was not established  
21 that the proposed use was in fact a warehouse. This is a fairly surprising position to take given that  
22 the proposal was listed as an "office/warehouse" building in the land use application, Att. 1a and was  
23 advertised as an office/warehouse in the Notice of Application and the staff report. The traffic and  
24 parking analysis was based upon the use being entirely devoted to warehouse use. See Att. 2f (traffic  
25 study basing traffic counts in ITE warehouse land use designation); staff report p. 24-25 (parking  
26 requirements based upon number of employees, which applies to warehouse use, not office use). The  
color renderings presented by the Applicant, Att. 2c and 2d, depict at least 80% of the building length  
with the loading dock doors. The proposal is clearly for a building that is primarily devoted to  
warehouse use. If the Applicant was intending a building who's primary use was office, it would  
have to be completely re-evaluated.

20       6. Historical Markers Can Be Moved Under DMC 25.80.030. The Applicant was  
21 authorized to move the Mission historical markers as referenced under DMC 25.80.030 given the  
22 circumstances of this project.

23  
24       6 Appling a construction based upon a common sense understanding of what constitutes "abut" can lead to multiple  
25 reasonable interpretations of how much separation from a main road is necessary to satisfy DMC 25.45.030(17),  
26 serving as a basis for its invalidation as unconstitutionally vague. *See, Anderson v. Issaquah*, 70 Wn. App. 64 (1993)  
(an ordinance violates due process if its terms are so vague that persons of common intelligence must necessarily  
guess at its meaning and differ as to its application).

1 DMC 25.80.030 provides as follows:

2       *No structures, roads or utilities are permitted within 50 feet of the markers identifying*  
3       *cultural resource sites designated under DMC 25.80.020.*

4 The issue presented in this case is what the Council had in mind if “the marker” were moved to another  
5 location. Most likely, the City Council never considered this possibility. When the Council adopted  
6 DMC 25.80.030 it was simply thinking of the location at which the markers were located at the time  
7 of adoption. However, the fact that the City Council may have understood the markers to remain in  
8 the same location does not mean they intended that the markers had to remain in the same location. If  
9 the latter were correct, the Council would have replaced “the markers” with verbiage similar to “the  
10 location of the markers.” In point of fact, if NDA had subsequently presented the City Council with  
11 the idea of relocating the marker to a more accurate location, the City Council likely would have not  
12 found it necessary to amend DMC 25.80.030, since the 50 foot buffer was based upon the marker itself,  
13 not the location of the marker. The same rational should apply to a developer, even if the motivation  
14 for the relocation may not be as aligned with the public interest as those of NDA.

15 Given that DMC 25.80.030 is ambiguous as to whether and where a marker can be relocated,  
16 resort must be made to some case law maxims of zoning code construction. Zoning ordinances should  
17 be liberally construed to accomplish their plain purpose and intent; at the same time, since such  
18 ordinances are in derogation of the common law right to use property so as to realize its highest utility,  
19 they should not be extended by implication to cases not clearly within the scope of the purpose and  
20 intent manifest in their language. *Development Services of America, Inc. v. City of Seattle*, 18 Wn.2d  
21 369 (1987).

22 Applying the maxim laid out in the *Development Services* case, the purpose of DMC 25.80.030  
23 must first be ascertained and then be applied liberally to the marker at issue, while at the same time  
24 avoiding the placement of any burdens upon the Applicant that are not necessary to further that purpose.  
25 Fortunately, the purpose of DMC 25.80.030 is expressly identified in DMC 25.80.010, which provides  
26 that the purpose of Chapter 25.80 DMC is to

18       *“encourage identification, protection, preservation and/or restoration of cultural resource*  
19       *sites. Important cultural resource sites are identified so that they may be incorporated into*  
20       *open space areas and connected to the recreational trail system.”*

21 There are three important conclusions to be made from this provision: (1) accuracy in location is  
22 important, as only an accurate placement of a marker will assure that the 50 foot buffer adopted by the  
23 council will serve the functions of identification, protection, preservation and/or restoration; (2) use of the term  
24 “encourage” instead of more mandatory language such as “mandating” exhibits an intent to be  
25 somewhat flexible in how the objectives of Chapter 25.80 DMC are to be met.

26 Given the three factors above, the proposed relocation is well designed to meet the objectives of  
27 DMC 25.80.030. The proposed relocation site is likely close to the original location and will be  
28 publicly accessible via integration into a public trail. Under a worst case analysis, if the marker is  
29 currently located in the correct location, its relocation is still associated with the overall historical  
30 activities of the site and persons who access the marker will know they are close or within an area of

1 historical significance. The Applicant also proposes to integrate the relocated marker into the  
2 Sequalitchew trail system, which is a significant improvement for public accessibility over the current  
3 location in the middle of a large private parcel. Finally, the fact that DMC 25.80.010 only “encourages”  
4 meeting its recited objectives is likely a tacit understanding that the private property rights of the  
5 Applicant must play a factor in assessing the reasonableness of historic preservation efforts. Placing a  
publicly accessible historic marker on the borders of a private parcel as opposed to its center results in  
significantly lower encroachment of private property rights.

6 7. White Oak Retention. DMC 25.120.050 authorizes modification requests to the tree retention  
7 requirements of Chapter 25.120 DMC. Such modifications may be approved “*based on special  
circumstances pertaining to that land or the trees on it.*” For the reasons identified in Finding of Fact  
8 No. 4L, the Applicant has identified no special circumstances for removing Tree No. 65 and for that  
9 reason the request is denied. Special circumstances were present for the removal of Tree No. 9 (in  
order to accommodate the curve radius necessary for Sequalitchew Drive) and that request is  
approved.

10 11. SEPA Appeal. The relevant inquiry for purposes of assessing whether the City correctly issued  
11 a DNS is whether the project as proposed has a probable significant environmental impact. See WAC  
12 197-11-330(1)(b). WAC 197-11-782 defines “probable” as follows:

13 ‘*Probable*’ means likely or reasonably likely to occur, as in ‘*a reasonable probability of more  
than a moderate effect on the quality of the environment*’ (see WAC 197-11-794). *Probable* is  
14 used to distinguish likely impacts from those that merely have a possibility of occurring, but are  
15 remote or speculative. This is not meant as a strict statistical probability test.

16 If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there  
17 are no probable significant adverse environmental impacts. In the alternative, an environmental  
18 impact statement would be required for the project. In assessing the validity of a MDNS, the  
determination made by the City’s SEPA Responsible Official shall be entitled to substantial weight.  
WAC 197-11-680(3)(a)(viii).

19 The MDNS correctly assess the presence of probable significant adverse environmental impacts for  
20 the reasons found in Finding of Fact No. 6 and for that reason the MDNS is sustained, the SEPA  
21 appeal is denied and there is no reason for further mitigation or the preparation of an environmental  
impact statement.

## 22 DECISION

23 The Type III Site Plan Review is denied because the proposed warehouse use abuts a main road in  
24 violation of DMC 25.45.030(17).

25 The Applicant’s request to remove Landmark Tree No. 9 is approved and Tree No. 65 is denied for the  
26 reasons identified in Conclusion of Law No. 7.

1  
2 As to the SEPA appeal, the MDNS issued for the proposal is sustained subject to MDNS conditions  
3 No. 2a, 3, 5a and 19 revised as follows:

4 Condition No. 2a: The new trail alignment shall be constructed and open for use prior to any  
5 site work that would interfere with the existing trail.

6 Condition No. 3: Noise levels shall not exceed the maximum allowed in DMC 9.09. As a  
7 receiving property, the open space/recreational property shall be treated as a Class A EDNA  
8 (residential) and noise levels from the Applicant's property shall not exceed the permissible  
9 Class A EDNA noise levels in DMC 9.09.040(b) as measured from the trail or public-access  
10 area of the historical commemorative area. The Applicant shall conduct a noise monitoring  
11 study pre-approved by City staff to monitor compliance over the first year of operations and  
12 shall institute noise mitigation measures as reasonably directed by City staff to remedy any  
13 noncompliance. The Applicant shall institute reasonable measures to reduce noise impacts to  
14 trail users including limiting use and sound levels of rear back up beepers to the minimum  
15 reasonably necessary and required by applicable law and safety standards; keeping bay doors  
16 closed as reasonably necessary to keep loud noise from reaching trail users and conducting loud  
17 noise generating activities within the warehouse building to the extent reasonably practicable.

18 Condition 5a: Applicant will provide four parking spaces along Sequalitchew Drive, with one  
19 of the spaces meeting ADA requirements for public use for trail commemorative plaza parking.  
20 Location of parking spaces must be denoted on any plans. Plans for and configuration of  
21 parking spaces must be approved by the City prior to issuance of any site development or  
22 construction permits.

23 Condition 19 – add the following sentence to the end of the condition: In lieu of the mitigation  
24 described in 19 a-c, the City will accept a determination by the Department of Ecology as to  
25 the process that may occur as to soil management.

26 If a reviewing court should find the proposal in compliance with DMC 25.45.030(17), the proposal  
27 should be approved subject to the following conditions of approval:

1. The SEPA MDNS issued on February 20, 2019 (Attachment 9d) is incorporated herein by  
2 reference and all SEPA Mitigation Measures included in the MDNS are hereby adopted in  
3 full and included as Conditions of Approval, subject to the revisions of MDNS Conditions  
4 3, 5a, and 19 as outlined above.
2. No development proposal is provided for the eastern residual parcel created by the  
3 dedication of Sequalitchew Drive. The area shall remain intact in its existing condition.

1       No clearing, grading, tree removal or other land disturbing activity shall occur in this area  
2       until such time a development proposal is submitted, reviewed and approved by the City.  
3       Minor tree removal may be allowed due to the alignment of Sequalitchew Drive when the  
4       Applicant demonstrates that there is no alternative. Removal of the narrow gauge railroad  
5       track on that parcel may only occur after consultation with DAHP and the DuPont  
6       Historical Society.

7       3. A sign permit will be required that meets the requirements of DMC 25.116.

8       4. Per DMC 25.45.030.3(13), air emissions shall meet applicable regulations of the Puget  
9       Sound Air Pollution Control Authority, and no visible, frequent, smoke, dust, or gases shall  
10      be emitted.

11      5. All existing trees within the tree retention areas shall be retained on an ongoing basis unless  
12      deemed unsafe or unhealthy by an arborist and with City Community Development  
13      Director approval. The tree retention areas shall be depicted and legally described in an  
14      easement to be recorded with the Pierce County Auditor. All tree protection requirements  
15      provided in DMC 25.120 and the WFC Tree Report shall be included in the easement. Any  
16      unhealthy or unsafe trees that are removed are to be replaced.

17      6. Construction of the development proposal must commence within 24 months from the date  
18      of the City's final decision on the site plan, otherwise the site plan approval expires.

19      7. Per DMC 25.75, at the time an individual business meets or exceeds 100 employees, the  
20      County Commute Trip Reduction (CTR) Department is to be notified within 30 days. The  
21      employer shall make a good faith effort, as defined in RCW 70.94.534(2) and DMC  
22      Chapter 25.75, to develop and implement a CTR program that will encourage their  
23      employees to reduce vehicle miles traveled per employee and single occupancy vehicle  
24      trips. The requirements of the CTR program are provided in DMC Chapter 25.75.

25      8. Trucks and vehicles are prohibited from parking on all public rights of way while waiting  
26      to access the property, unless temporary approval is granted by the City.

27      9. Revisions are required to the south elevation of the building or south side of the site to  
28      address the City's blank wall requirements in DMC 25.45.030(5). There are several  
29      options to address the blank walls, as follows:

30           a. Additional architectural treatments may be provided to the south elevation from  
31           building segments B – E as shown on Sheet A3.3 of the Architectural Plans  
32           (Attachment XX). Options include roof modulation and integration of color in  
33           vertical bands; or adding color or textural changes within the upper one-third of the

1 building at intervals of 50 feet or less. The Applicant may propose other  
2 architectural treatments to reduce the areas of blank walls to 50 feet or less.

3 b. As an alternative to (a), the Applicant may provide a 3D rendering of the building  
4 and site topography to further assess visibility of the building from the trail and  
5 focus the blank wall requirements to a more defined/visible area. The areas where  
6 the building may be visible from the trail shall either be augmented with  
7 architectural elements as described in (a), or with additional screening landscaping  
8 between the trail and the building.

9 c. As an alternative to (a) and (b), or potentially subsequent to (b), the Applicant and  
10 City shall meet at the site after the new trail segment has been constructed to assess  
11 building visibility from the trail. Balloons may need to be floated in the location  
12 of the south elevation to assess the location, mass and scale of the building. The  
13 ability to see/view the building from the trail shall be assessed as well as optimal  
14 locations for new vegetation to be added as required per SEPA Mitigation Measure  
15 No. 10. If it is determined that as a result of the additional vegetation that the south  
16 elevation will not be visible from the trail, the additional blank wall treatments  
17 listed in (a) or screening landscaping as described in DMC 25.45.030(5) will not be  
18 required.

#### 19 **Prior to issuance of Site Development Permits**

##### 20 10. Geotechnical Report Requirements:

21 a. The 2011 Geotechnical Report was completed in accordance with the 2005  
22 Washington State Department of Ecology Stormwater Management Manual. The  
23 City of DuPont has adopted the 2012 Washington State Department of Ecology  
24 Stormwater Management Manual, amended 2014. The May 11, 2018 memo shall  
25 be updated to identify the City's current stormwater manual and to update any  
26 stormwater recommendations from the 2011 report.

27 b. The 2011 Geotechnical Report was completed prior to the adoption of an updated  
28 DMC Chapter 25.105. The report shall be updated meeting the requirements of  
29 DMC 25.105.050(3) and the SEPA MDNS.

30 c. On-site infiltration tests are required for validation of the design infiltration rate.

##### 31 11. Tree Retention Plan Revisions. The WFC Tree Retention Report and the Barghausen Tree 32 Retention Removal and Replacement Plans shall be updated to incorporate the following 33 revisions:

34 a. The WFC Tree Retention Report shall be updated to include the recent site plan.  
35 The narrative and table in Attachment 3 shall be consistent.

1

2 b. Tree retention is required along street boundaries per DMC 25.120.030(2). On the  
3 western parcel existing trees shall be retained in the landscape area between  
4 Sequalitchew Drive and the vehicle parking area. All trees within the eastern parcel  
5 shall be retained until a development proposal is provided and approved for that  
6 parcel. Minor tree removal on the eastern parcel may be allowed subject to City  
7 approval for the Sequalitchew Drive alignment.

8 c. Tree #12 and #65 shall be retained. Tree cluster #9 may be removed if it is  
9 demonstrated that the right of way cannot reasonably be moved to retain the tree.

10 d. The Barghausen Tree Plans and the WFC Tree Report shall be consistent in tree  
11 types, tree removal and retention, and matching tree identification numbers. The  
12 WFC Tree Report shall confirm in writing that they have reviewed the revised  
13 Barghausen Tree Plans and find them consistent with the revised WFC Tree Report.

14 e. Per DMC 25.120.030(7), a note shall be added to the Barghausen Tree Plans as  
15 follows: "This plan is subject to an approved tree retention plan which requires that  
16 certain trees be preserved. That plan, which is binding on all owners, is on file with  
17 the City Planning Department".

18 f. Per DMC 25.120.030(8), a note shall be added to the Barghausen Tree Plans as  
19 follows: "Retained trees are not to be removed unless the City administrator  
20 determines in writing that they have become hazardous or diseased or threaten to  
21 damage public or private property. Whoever removes a street tree or required tree  
22 shall replace it with a tree approved by the city." The tree retention areas shall be  
23 depicted and legally described in an easement to be recorded with the Pierce County  
24 Auditor. All tree protection requirements provided in DMC 25.120 and the WFC  
25 Tree Report shall be included in the easement.

26 g. The Oak Preserve protection measures listed in DMC 25.120.040(3) – (10) shall be  
12 added to the Barghausen Tree Plans and described in the Tree Retention Easement.

12. Landscape Plan Revisions:

21 a. The trash enclosure shall be screened with moderate buffer plantings per DMC  
22 25.90.030(3)(b).

23 b. Provide the landscape area calculation demonstrating that at least 20 percent of the  
24 site will be landscaped per DMC 25.90.020(2)(c). The 20 percent shall be provided  
25 for each final lot configuration.

26 c. Provide the correct number of parking spaces and required parking lot trees on the  
12 plans demonstrating compliance with DMC 25.90.030(2).

12 d. The landscape area between the eastern vehicle parking lot and Sequalitchew Drive  
21 shall be landscaped to meet the moderate landscape buffer requirements of DMC  
22 25.90.030(3). Additional shrubs, trees and groundcover are required to infill the

1 area around the existing trees, which are to remain. The Applicant shall provide  
2 the City with a revised landscape plan that provides the tree retention and  
3 supplemental plantings for City review. The City will then determine if additional  
4 plantings are required.

- 5 e. No trailer storage is allowed east of the front/east building elevation. The eastern  
6 trailer storage area depicted on the landscape plans (north of the drive aisle) shall  
7 be removed and replaced with landscaping that meets the requirements of a  
8 moderate landscape screen per DMC 25.90.030(3).
- 9 f. The southeastern trailer storage area shall be replaced with moderate buffer  
10 landscaping. If the intent is to provide a stormwater pond in the area, it shall be  
11 fenced and screened with landscaping.
- 12 g. Additional screening vegetation shall be added in the area depicted on Figure 1 in  
13 Section D.1.d.3, to screen the southern trailer storage area from the trail.
- 14 h. Irrigation plans shall be provided. Irrigation water use, in accordance with DMC  
15 25.90.040 shall be identified on the Landscape Plans. Irrigation meter sizes and  
16 locations shall be labeled on the Landscape Plans.
- 17 i. Any removed parking spaces shall be replaced with plantings, the type and quantity  
18 shall be determined by staff based on the location of the removed spaces.
- 19 j. Tree #12 and #65 shall be retained with no clearing or grading within the tree  
20 protection radius. Tree cluster #9 may be removed.
- 21 k. Tree retention is required along street boundaries per DMC 25.120.030(2). On the  
22 western parcel existing trees shall be retained in the landscape area between  
23 Sequalitchew Drive and the vehicle parking area. All trees within the eastern parcel  
24 shall be retained until a development proposal is provided and approved for that  
25 parcel. Minor tree removal on the eastern parcel may be allowed subject to City  
26 approval for the Sequalitchew Drive alignment.
- 1 l. Add the City code-required tree protection measures to the civil and landscape site  
2 development permit plans. They are provided in DMC 25.120.030(5) and DMC  
3 25.120.040(3) – (10). Also include the tree protection measures provide in the  
4 WFC Tree Retention Plan Report.
- 5 m. Trees shall be located outside of utility easements and alignments.
- 6 n. Add the 25-foot buffer that is depicted on the civil plans along the eastern property  
7 boundary (adjacent to residential area) to the landscape plans.
- 8 o. The Oak Preserve protection measures listed in DMC 25.120.040(3) – (10) shall be  
9 added to the Barghausen Tree Plans.

10 13. Civil Plan Revisions:

- 11 a. DMC 25.80.030 requires that no structures, roads, or utilities are permitted within  
12 50 feet of the markers identifying cultural resource sites designated under DMC  
13 25.80.020. This pertains to the relocation of the Methodist/Episcopal Mission  
14 marker which is to be relocated within the historical commemorative area. The  
15 final design plans for the dedication area shall provide a 50-foot radius from the  
16

1 marker demonstrating that no structures, roads or utilities are located within it in  
2 compliance with DMC 25.80.030.

3 b. Provide the parking calculation on the civil and architectural plans. The calculation  
4 shall be based on DMC 25.95.030, which requires a minimum of 0.3 and maximum  
5 of 1 parking space per worker at maximum shift. If the number of employees at  
6 maximum shift requires a different quantity of parking spaces, the parking shall be  
7 modified accordingly or the Applicant shall apply for a variance from DMC  
8 25.95.030 per DMC Chapter 25.160 and demonstrate the variance criteria can be  
9 met. The parking spaces provided to serve the historic commemorative area are  
10 not to be included in the parking area calculation for the proposal.

11 c. The site plan shall include supplemental exhibits to demonstrate that the City Fire  
12 Department's large apparatus can navigate the site (lane width, radius), including  
13 access to FDCs and hydrants. The Fire Department will confirm the adequacy of  
14 vehicle access points.

15 d. The functional classification for the proposed Sequalitchew Drive extension is an  
16 arterial. The road cross-section shall meet City Public Works Standards and should  
17 match the existing road cross-section.

18 e. A pedestrian crossing of Sequalitchew Drive shall be included near the proposed  
19 trail head/historic commemorative area.

20 f. Parking aisle and stall design shall meet the requirements of DMC 25.95.050.

21 g. High occupancy vehicle spaces shall be provided on the plans per DMC 25.95.060.

22 h. Loading areas shall meet the design requirements of DMC 25.95.070.

23 i. The site plan shall be modified to retain Tree #12 and #65 with no clearing or  
24 grading within their tree protection radius. Tree cluster #9 may be removed if it is  
25 demonstrated that the right of way cannot reasonably be moved to retain the tree.  
26 Provide an exhibit demonstrating how the alignment could be modified to retain  
the tree while meeting the City's road standards.

j. Tree retention is required along street boundaries per DMC 25.120.030(2). On the  
western parcel the existing trees shall be retained in the landscape area between  
Sequalitchew Drive and the vehicle parking area. Walls may be required for tree  
retention, however, they can be no greater than six feet in height within setbacks  
and shall not encroach within the tree protection radius. Where there are no trees,  
the area may be graded.

k. Add the City code-required tree protection measures to the civil and landscape site  
development permit plans. They are provided in DMC 25.120.030(5) and DMC  
25.120.040(3) – (10). Also include the tree protection measures provide in the  
WFC Tree Retention Plan Report.

l. The civil construction drawings shall contain the following note: "This project is  
subject to an approved tree retention plan which requires that certain trees be  
preserved. That plan, which is binding on all owners, is on file with the City  
Planning Department." To further inform future lot owners, a copy of the approved  
tree retention plan shall be provided each owner at closing on each lot.

- m. All comments on the civil engineering design plans dated August 13, 2018 detailed in the Gray & Osborne comment letter dated August 20, 2018 shall be addressed (Attachment 10.a).
- n. The site plan should reflect all easements, site restrictions, and encumbrances from the short plat and any other recorded documents. Proposed site improvements, within the easements on the project sites, shall comply with the conditions of said easements.
- o. Label the 15-foot-wide water easements dedicated to the City. The easements shall be dedicated to the City following construction and prior to final acceptance of this project.
- p. The Applicant should identify the proposed land subdivision for creation of the lots and dedication of the Sequalitchee Drive right-of-way to the City. The proposed lots and tracts should be labeled.

#### 14. Conditions for the protection of Critical Areas:

- a. If new trail construction is located within the 100-foot Sequalitchew Creek stream buffer, a Critical Areas Report shall be prepared meeting the requirements of DMC 25.105.050(2) and the SEPA MDNS. The City will review the report and determine if it meets the criteria for an exception per DMC 25.105.070(2) or if it requires a Critical Area Permit. If it is determined that a Critical Area Permit is required, the Critical Area Permit shall be submitted and approved prior to issuance of site development permits.
- b. The Applicant shall evaluate the potential for relocation of the trail to an area outside the critical area and buffer, but within the proposed right-of-way dedication area. If relocation is not feasible, provide the City with a response to the criteria listed in DMC 25.105.070(2)(a).
- c. If any component of the development proposal is located in a Geologic Hazard Area, as determined by the revised Geotechnical Report prepared in accordance with DMC 25.105.050(3), the potential impacts and recommendations of the geotechnical engineer shall be provided. The City will review the report and determine if it meets the criteria for an exception per DMC 25.105.070(2) or if it requires a Critical Area Permit.
- d. Habitat Management Plan for Marine and Terrestrial Priority Habitat Species shall be prepared meeting the requirements of DMC 25.105.050(2)(e) and (f) prior to issuance of site development permits. The City will review the report and determine if it meets the criteria for an exception per DMC 25.105.070(2) or if a Critical Area Permit is required.
- e. The Applicant shall file for record with Pierce County a notice in form approved by the City providing notice of the presence of any critical area or buffer. The owner shall submit proof to the city that the notice has been filed for record within 30 days after the approval of a development permit.

15. The following conditions pertain to the Trash Enclosure:

- 1
- 2       a. Provide the design and dimension details to the building or civil plans depicting
- 3            compliance with DMC 25.100.050.
- 4       b. The location of the trash enclosure was revised since submittal of the LeMay
- 5            approval letter. Provide approval from the service provider of the new location.
- 6       c. Per DMC 25.100.050(3), the trash enclosure shall be sized for both general refuse
- 7            and recycling bins. Trash enclosures shall be surfaced with concrete with a
- 8            concrete apron and at the same grade as the service vehicle access. Refuse
- 9            enclosures shall be sized to provide space for the storage of recycled materials,
- 10           compost, and solid waste in conformance with WAC 51-50-009.
- 11       d. The trash enclosure shall be screened per the requirements of DMC
- 12           25.90.030(3)(b).
- 13
- 14       16. All walls and fences located within the building setback area shall be less than 6 feet in
- 15           height.
- 16
- 17       17. The submitted Water Availability Form is incomplete. The form shall identify the
- 18           proposed peak water demand for the domestic and irrigation water uses.
- 19
- 20       18. Per DMC 13.05.100, Emergency Vehicle Access Standards Section H (Dead End Road
- 21           Access). An approved area for turning around fire apparatus shall be required at the end of
- 22           Sequalitche Dr.
- 23
- 24       19. Per DMC 13.05.100, Emergency Vehicle Access Standards Section I (Gates). Number one
- 25           thru six shall be followed if gates are installed.
- 26
- 27       20. The project activities shall comply with the requirements of the Washington State
- 28           Department of Ecology National Pollutant Discharge Elimination System (NPDES)
- 29           General Permit for stormwater discharges associated with construction activity will be
- 30           required for this project prior to issuance of a grading permit.
- 31
- 32       21. In accordance with Section 2.21 Street Frontage Improvements, all commercial and
- 33           residential developments, plats, or short plats shall install frontage improvements at the
- 34           time of construction as required by the City. Such improvements include curb and gutter,
- 35           sidewalk, street, storm drainage, street lighting systems, utility relocations, landscaping
- 36           and irrigation (2.21.1) and all frontage improvements shall be made across the full frontage
- 37           of property from centerline to right-of-way line (2.21.2). For purposes of this short plat,
- 38           the proposed 85-foot wide right-of-way is classified as an arterial with features and
- 39           dimensions as defined in the City's Public Work Standards.
- 40
- 41       22. A parking lot lighting plan, which includes a photometric exhibit showing the lighting
- 42           levels within the parking lot, will be required to demonstrate that parking areas are lit in
- 43           accordance with City code requirements and lighting shall not escape property boundaries.
- 44           The Applicant should note that DMC 25.70.070 allows 25-foot-tall lighting fixtures in

1 parking lots, except at entries and for parking adjacent to buildings, where lighting remains  
2 restricted to 15 feet in height.

3 23. The parking lot shall be designed in accordance with DMC 25.70.030 and Ordinance No.  
4 03-752, which includes, but limited to, screening as approved by the City. The minimum  
5 stall widths shall be 8.75 feet (basic) and 9 feet (parallel to an access aisle). Add the  
6 dimensions to the parking lots on all sides of Building 'A' and to the west side of Building  
7 'B' to demonstrate compliance.  
8 24. An analysis of sight distance triangles to verify that safe stopping and turning movements  
9 to and from the site at all points of access to the site shall be provided.  
10 25. The City's Stormwater System Development Charge (SDC) will apply to this project. The  
11 Stormwater SDC is \$1,000 per 1,900 square feet of impervious surface.  
12 26. The submitted Pierce County Utilities information appears acceptable for Land Use  
13 Application approval. Documentation of Pierce County Public Works and Utilities  
14 approval of the Sanitary Sewer Plans for this project will be required prior to issuance of a  
15 construction permit.  
16 27. All comments on the December 23, 2017 Stormwater Site Plan that are provided in the  
17 Gray & Osborne comment letter dated August 20, 2018 (Attachment 10a) shall be  
18 addressed.  
19

### 20 **Prior to issuance of Building Permits**

21 28. The Applicant shall submit the proposed uses with each building permit and/or tenant  
22 improvement application to ensure consistency with the performance standards in DMC  
23 25.45. Each application for building permit shall be reviewed independently to ensure that  
24 the use does not create significant noise, a risk of explosion or radioactive release, or air or  
25 water pollution, per DMC 25.45.020(1)(a)(i) or DMC 25.45.030(12) – (16).  
26 29. Staff will review each building permit application to ensure the use will comply with the  
noise limitations established in Chapter 9.09.  
30. Revisions are required to the south elevation of the building or south side of the site to  
address the City's blank wall requirements in DMC 25.45.030(5). There are several  
options to address the blank walls, as follows:  
a. Additional architectural treatments may be provided to the south elevation from  
building segments B – E as shown on Sheet A3.3 of the Architectural Plans  
(Attachment XX). Options include roof modulation and integration of color in  
vertical bands; or adding color or textural changes within the upper one-third of the  
building at intervals of 50 feet or less.

- b. As an alternative to (a), the Applicant may provide a 3D rendering of the building and site topography to further assess visibility of the building from the trail and focus the blank wall requirements to a smaller area. The areas where the building may be visible from the trail shall either be augmented with architectural elements as described in (a), or with additional screening landscaping between the trail and the building.
- c. As an alternative to (a) and (b), or potentially subsequent to (b), the Applicant and City shall meet at the site after the new trail segment has been constructed to assess building visibility from the trail. Balloons may need to be floated in the location of the south elevation to assess the location, mass and scale of the building. The ability to see/view the building from the trail shall be assessed as well as optimal locations for new vegetation to be added as required per SEPA Mitigation Measure No. 10. If it is determined that as a result of the additional vegetation that the south elevation will not be visible from the trail, the additional blank wall treatments listed in (a) or screening landscaping as described in DMC 25.45.030(5) will not be required.

31. No exterior mechanical equipment are depicted on the plans. If added, all HVAC, equipment, pumps, heaters and other mechanical devices shall be fully screened from view from all public rights-of-way, including Sequalitchew Drive and the Sequalitchew Creek Trail.

32. No outdoor storage areas are depicted on the plans. If added, no more than 2 percent of the total site area may be covered with outdoor storage. Outdoor storage shall be screened from the street by a 100 percent sight obscuring fence or wall.

33. The project will be required to apply for and obtain a Transportation Concurrency certificate, as provided in DMC 25.115, at the time of building permit application.

34. An automatic fire sprinkler system shall be installed. The system shall comply with NFPA 13 Standard for Automatic Fire Sprinkler System. Three (3) sets of plans, hydraulic calculations, and material specification sheets for all equipment used in the system shall be submitted by a State of Washington Licensed Contractor for review, approval and permits issued prior to commencing work. Separate Permit Required.

35. If a fire pump is required. The system shall comply with NFPA 20. Three (3) sets of plans and material specification sheets for all equipment used in the system shall be submitted by a State of Washington Licensed Contractor for review, approval and permits issued prior to commencing work. Separate Permit Required.

36. An automatic fire alarm system shall be installed. The system shall comply with NFPA 72 Standard for Fire Alarm System. Three (3) sets of plans, material specifications sheet for all equipment used in the system shall be submitted by a State of Washington Licensed

1 Contractor for review, approval and permits issued prior to commencing work. Separate  
2 Permit Required.

3 37. A Knox key box system shall be required. Knox applications may be picked up at the  
4 DuPont Fire Department located at 1780 Civic Drive DuPont, WA 98327. A key shall be  
required to be placed in the Knox key box.

5 38. Fire extinguishers are required to be installed as directed by City of DuPont Fire  
6 Department. Prior to installation, the client is directed to request a fire inspection to  
7 confirm the locations of the fire extinguishers.

8 39. The proposed structures must be designed to meet the requirements of the building  
9 construction codes in effect at the time of building permit submittal. The following codes  
10 are currently enforced by the City of DuPont: the 2015 International Building Code, the  
11 2015 International Residential Code, the 2015 International Fire Code, the 2015  
12 International Mechanical Code, the 2015 International Fuel Gas Code, the 2015 Uniform  
13 Plumbing Code (each as amended and adopted by the State of Washington); and the 2015  
14 Washington State Energy Code.

15 40. The project (or each project) will be required to receive all land use and civil construction  
16 approvals prior to issuance of building permits for the proposed structures.

17 41. All applicable Fire Impact and Storm System Development Charge fees assessed for the  
18 proposed development will be required to be paid prior to the issuance of building permit(s)  
19 associated with the proposed project.

20 42. Also prior to issuance of a building permit for the structure, the Applicant shall provide a  
21 copy of Pierce County Sewer Service Permits for City record. This permit (and  
22 authorization to connect to sewer service) is/may be independent from any sewer system  
23 extension that may also apply to the project. All sewer connection and permitting  
24 requirements must be coordinated with the utility purveyor. Please note that Pierce County  
25 Sewer Utility requires a pre-treatment review and approval be completed prior to their  
26 issuance of sewer extension or sewer service connection permit(s). Each subsequent  
tenant, for multi-tenant buildings, must also complete a separate pre-treatment review and  
provide copy of sewer service permitting, where applicable, prior to obtaining a building  
permit for associated improvements.

43. Fire Suppression and Fire Alarm permits associated with the structure(s) must be obtained  
through DuPont Fire Department prior to initiating any such work. All alarms systems will  
be required to obtain an alarm registration permit with the city, prior to full activation of  
the alarm system for operation; forms may be obtained at city hall.

1       44. Fire flow requirements and requirements for on –site hydrants and site access provisions  
2       will be determined by the DuPont Fire Chief or designee. Such requirements may be  
3       subject to additional review and requirements as future submittals come forward.

4       45. Addressing for building(s) within the project area will be assigned as the project scope  
5       progresses, and may be obtained from the building department as needed. Please note that  
6       in establishing and providing this information, the department will need to verify a clear  
7       scope and layout for the proposal – as minor adjustments to primary access points, inter-  
8       relation of use(s) of the buildings, or changes in building frontage may affect preliminary  
9       addressing assignment(s).

10      46. In conformance with IBC Section 427, new buildings serving Group B, Group R-1 hotel  
11      and motel only, and Group R-2 occupancies, served by 20 or more parking spaces, shall  
12      provide a minimum of 5% of the parking spaces with electric vehicle charging  
13      infrastructure in compliance with IBC Sections 427.3, 427.4 and 427.5.

14      47. Accessible parking spaces shall be provided in compliance with IBC Section 1106.  
15      Quantity of required stalls shall conform with Table 1106.1, except as required by IBC  
16      Sections 1106.2 through 1106.4 and locations as specified in Section 1106.6 as amended  
17      by the Washington State Building Code Council.

18      48. The Applicant shall furnish meter sizing calculations for domestic and fire water services.  
19      The sprinkler system design, including confirmation of the provided sizing for the fire line  
20      components shall be reviewed and approved by the City Building Department and Fire  
21      Department as part of the building permit process. Each fire line connection to a City water  
22      main will require a double detector check valve assembly (DDCVA) in an underground  
23      vault and a Fire Department Connection (FDC) within 50 feet of a fire hydrant. The double  
24      detector check valve assemblies (DDCVA) shall be located in underground vaults outside  
25      of the building to allow direct access by City staff.

26      49. The City Fire Department shall confirm that the number and location of existing and  
27      proposed fire hydrants on or near the project site are adequate for purposes of providing  
28      the required fire flow for the proposed building.

29      **During Construction**

30      50. A certified arborist shall monitor construction activities in the vicinity of the tree protection  
31      areas. The City may elect to also require the City arborist to monitor construction in these  
32      areas. The Applicant will be responsible for payment of the fees should the City arborist  
33      also be onsite to monitor construction activities.

34      **Prior to the issuance of a Certificate of Occupancy**

35      51. Prior to Fire Department approval for occupancy, an underground fire line shall be  
36      installed. The system shall comply with NFPA 24 Standard for Installation of Private Fire

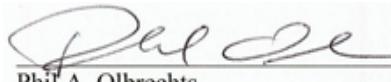
1 Service Mains. Three (3) sets of plans, material specifications sheets for all equipment  
2 used in the system shall be submitted by a State of Washington Licensed Contractor for  
3 review, approval, and permits issued prior to commencing work. The FDC shall be a  
4 minimum of 50 feet or 1&1/2 times the height of the structure away from the building. The  
FDC shall be within 50 feet of a hydrant and be 5 inch with a locking cap. (Fire Department  
approval for location) Separate Permit required.

5 52. All new building shall have approved emergency responder radio coverage per section 510  
6 of the 2015 International Fire Code.

7 53. Following construction, a City of DuPont Agreement for Inspection and Maintenance of  
8 Privately Maintained Storm Drainage Facilities will be required for any onsite storm water  
system.

9 54. This project is subject to the Geographic Information System (GIS) requirements as stated  
10 in the City of DuPont Municipal Code, Chapter 24.10, and Ordinance No. 97-559.

11 Decision issued June 17, 2019.

12   
13 Phil A. Olbrechts

14 Hearing Examiner  
15  
16  
17 **Appeal Right and Valuation Notices**  
18 DMC 25.175.010 provides that this decision, as a Type III decision, is final, subject to appeal to Pierce  
19 County Superior Court. Appeals are governed by Chapter 36.70C RCW.  
20 Affected property owners may request a change in valuation for property tax purposes notwithstanding  
21 any program of revaluation.  
22  
23  
24  
25  
26