

Appendix A

October 15, 2024 Hearing Transcript

Dupont West- PLNG2022-031

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Speaker 1 ([00:02:06](#)):

Okay, we're official. Perfect. Alright, for the record, it's October 15th, 2024. I'm Phil Alb, City Hearing Examiner for the city of DuPont. We're holding a hearing this afternoon on site plan application for a warehouse facility out in DuPont. This is planning file PLNG 2022 dash 0 3 1 and a lot of you have probably seen the hearing agenda for today. It's pretty standard hearing format where we start off with a staff presentation. They'll go over the staff report while they're recommending approval. Then we'll move on to applicant comments, a chance for the applicant to speak in favor of their project. Once the applicants are done, then we go to the reason we're having the meeting today, which is to hear from the public. We'll of course hear from both those in attendance personally there in the chamber room as well as those attending virtually. And once all the public comments are done, we go back to staff to answer any questions that were raised.

([00:03:02](#)):

That'd be Ms. Klein, I believe is the planning consultant in charge of this. Is that right? Correct. Ms. Klein, yeah, she'll be going over the project for you today and then the applicant gets final word and I get 10 business days to issue a final decision. I want to thank all of you for coming today and I do apologize. I'm attending virtually 95% of these land use hearings. The only people that show up usually are the applicant and the staff. And so for those kind of hearings it's generally much more cost effective and efficient for everyone to participate virtually. But whenever I have a hearing that involves some public participation, I show up in person. It's just in this one. I was out of town before I realized that some people would be showing up to this one. I certainly read all your comments. I've been to the site, I've been to DuPont several times.

([00:03:50](#)):

I am very familiar with the issues associated with this project of course, because I was the hearing examiner on the last application for this site. And I am pretty familiar with the concerns raised about warehouse development within the city. So before we get to Ms. Kincade, let me get the exhibits in the record. By state law, I'm only allowed to consider evidence that's put into the record today. I'm not allowed to talk to staff about this project or even read about it in the papers. Just so we all have sort of equal access to information and what's being considered. The only information I have on this that I'm allowed to consider is the staff reports and any exhibits that are put into the record. And a project of this size of course has taken a lot of work by the applicant and the staff. We have a pretty extensive exhibit list and I dunno if I can share my screen. I believe I, oh no I can't. Let's see. Do Ms. Kincaid, do you have an exhibit list? You can flash on the screen maybe or I can't seem to share screen. Maybe you can do that.

Speaker 2 ([00:04:58](#)):

Oh, I think we're getting giving you the host rights. Let's see if it works.

Speaker 4 ([00:05:03](#)):

Now

Speaker 2 ([00:05:03](#)):

Share your screen.

Speaker 1 ([00:05:06](#)):

Not yet.

Speaker 2 ([00:05:07](#)):

Let's see. If not, we can do that.

Speaker 1 ([00:05:13](#)):

Oh, got it. Now we'll just

Speaker 2 ([00:05:13](#)):

Take it. We'll just You got it.

Speaker 1 ([00:05:15](#)):

Yeah, lemme see if I got the right one here. Okay,

Speaker 2 ([00:05:21](#)):

There we go.

Speaker 1 ([00:05:22](#)):

Alright. And yeah, you probably all can't see this. I'm just going to go in very general terms over all the documentation. Ms. cda, are these documents available on the city's website or if somebody needed to see any of these documents, how could they get access to them?

Speaker 2 ([00:05:36](#)):

They are available on the city's website.

Speaker 1 ([00:05:39](#)):

Okay. Alright, perfect. Alright, so this is the staff report, excuse me, that Ms. Klein put together that identifies all the reports and things that were done for this project. As you all know, there's a lot of concern about cultural resources. There's a lot of historical significance to this site. So there have been some archeological surveys and reports done. There's been geotechnical analysis done for the geotech aspects of the project. There's traffic report, vicinity reports, transportation concurrency reports about the availability of utilities and also we had a little bit of assessment of whether there were any environmental resources there in terms of trees and wetlands and that kind of thing. So also noise report. That was a big part of this project. And of course we have all your public comments as well. What

I want to ask about public comments, as Ms. Kincaid noted, all the exhibits for this project are available at the city's website.

(00:06:39):

What I'm going to do is I'm going to leave the record open until 5:00 PM tomorrow. And if any of you are concerned or want to make sure that your letter was put in the record today, go ahead and check the exhibit list on the city's website or ask Ms Kincaid if it's there and if it's not and you can show that you had submitted the letter prior to the close of the hearing, we'll be sure to get that in there. If something does come in that the applicant's hadn't seen it, they have a right to respond to that and they'll be given that opportunity. But there's been a lot of correspondence on this project and sometimes things get lost. So just yeah, be sure to check on the city's website to see your letters in there. So that, I just want to ask if anyone needs to see any of these documents or has any objections to entering the record.

(00:07:25):

If you're participating virtually, just click on the virtual hand at the bottom of your screen or forgotten in the audience, wave your hand and say, I need to look at something. Or in terms of objections, this isn't the time to say you disagree with the findings. It's really narrow grounds that you don't find a document relevant to this proceeding or the document is not authentic. In other words, if there's a document in the exhibit list that that says it's a title for a deed for the property and that's not a deed for the property, that kind of thing. So any objections out there, Ms. Kincaid, do you see any?

Speaker 2 (00:08:05):

No objections.

Speaker 1 (00:08:05):

Okay, so I'll go ahead and admit the staff report and exhibits. Let's see. Pretty elaborate nomenclature there. Well, I'll call it the summary of record, the exhibits identified in the summary of record pages 39 through 44 of the staff report. So Ms. Kincaid, you said you had some directions for those attending virtually. I'll pass that over to you at this point.

Speaker 2 (00:08:38):

Thank you. Yeah, we just have a couple of informational stuff about how this virtual hybrid meeting works. We have a zoom link that the folks that are here virtually participating have all clicked onto. If you are not interested in speaking and providing any comment, then you could, we have another way to just watch the meeting through YouTube. So that would just be going to the city of DuPont webpage. And Janet, can you drag that over? And also we want to make sure that folks that are virtually here understand that there won't be any dialogue. I see someone has punched a chat there. We won't be chatting during this proceeding. And how it'll work is when the time comes for the agenda number for the public comment, we have passed around a signup sheet. We'll read off of the signup sheet for those that are physically here. Then we'll go to the folks that are on the zoom link and ask them to provide their comments. And you have to just kind of go one at a time. We'll ask you to unmute and then mute when you're done. So that's all I wanted to make sure if people are having any technical issues and they are just unable to join this Zoom link, just shoot an email. I've got my phone here, I can check to be kincaid@dupontlaw.gov and we'll work with you and help you figure that out.

Speaker 3 (00:10:38):

Thank you. Did you want me to share the website?

Speaker 2 ([00:10:47](#)):

So the YouTube, if you're on Zoom right now and you're thinking you're not, oops, it just went away and you're not going to want to speak today, you could just click off because then we won't call on you if you're there, if you're showing up there on this zoom link, then we're going to call on you, which if you don't want to speak just decline, that's fine, but you'd rather not be called out. Please go to the DuPont, excuse me dupont.gov webpage. There's the landing page, you're just going to scroll all the way down. We're scrolling down and looking for a calendar. There you go. Then if you see that hearing examiner meeting right there, if you just click there, then there is to view the meeting, click here. So you could get out of the zoom and just click there and that'll be streaming this process live on YouTube. And then you won't have to be called on to speak and decline, but not a big deal one way or the other. I just wanted folks to know that's another way to view this meeting that do not wish to participate.

Speaker 1 ([00:11:56](#)):

Okay, thanks Ms. Kincaid. Alright, I think we are ready now to move on to the staff presentation. As I said before, Ms. Klein, a consultant for the city is going to be going over the staff report, the project. Ms. Klein, we've done this a few times. Let me swear you in, just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 5 ([00:12:16](#)):

I do.

Speaker 1 ([00:12:17](#)):

Okay, great. Go ahead.

Speaker 5 ([00:12:21](#)):

And just to confirm, you do have a copy of the staff presentation, the PowerPoint presentation?

Speaker 1 ([00:12:27](#)):

Yes, that's right. And I'll 1,217 pages of the exhibits. So ready to go. Oh,

Speaker 5 ([00:12:33](#)):

I'm talking about the PowerPoint.

Speaker 1 ([00:12:34](#)):

Yeah, I have that too. Yes, for

Speaker 5 ([00:12:35](#)):

Today's.

Speaker 1 ([00:12:36](#)):

Yeah, I do have that.

Speaker 5 ([00:12:37](#)):

You got that too. Okay, great. We'll load that up.

[\(00:13:03\):](#)

Okay, great. As you mentioned, we are here for a public hearing on the DuPont what was formerly DuPont 2 4 3. Now calling it DuPont West. Go to the next page. So we are here today because the proposal is on a site that is more than 15 acres and because of that it requires a type three process with approval by the hearing examiner. It's a type three site plan review process. Next slide. And this graphic here just shows you where the property is located. As you can see, it's in the center of the city and I understand the hearing examiner's very familiar with this site. The middle graphic shows the two lots that represent the proposal. So those two combined comprised about 19.65 acres. There is an intervening parcel to the east that is not a part. It is part of a short plat that was completed that I'll explain.

[\(00:14:18\):](#)

And to the east of that parcel is the Creekside Apartments building. To the north of this property is vacant land that is also zoned MRP. It also has a mineral resources overlay. It's a subject of a future mine application. And then to the south we have Squa Creek and to the west more of the Chu Creek and the open space also to the south you can see across Theology Creek is city hall in the next slide. So yes, this site has a unique history to it. In terms of historical and cultural events, there have been quite a few. There's been quite a few cultural resource surveys that have been completed for the site. There are no what's called Department of Arche Theological and Historic Reservation recorded sites On this property. There is one on the lot that is not a part but not on this property.

[\(00:15:33\):](#)

There is the location of a historic marker. It commemorates the Methodist, the old Methodist church that used to be a mission that used to be on the property. The site also has a history related to contamination. Soil contamination portions of the property have been cleaned up. You could see in the center of the property from the aerial that it's a little bit scrubby in the center of the property, meaning that the mature vegetation's been removed. So because of the contamination, there are restrictive covenants in place that restrict the use of the property to industrial type uses.

[\(00:16:18\):](#)

Well I wanted just to hit on that. The former proposal that was brought to you a few years ago, that proposal was very similar to the one that you're seeing today, but that one was denied in your decision for the permit. And then it was also later it was appealed and it went to court and it was the CIPA determination was invalidated. So some changes have been made to the proposal that we're bringing forth today. So we'll be going through all of that. And then also in 2022, a short plan was completed for the property and create three separate parcels. And you will see from this proposal that the historical marker will not be moved. Next slide. So here's a drawing of that short, flat. It shows you three parcels. The large parcel to the east is the property that will have the warehouse slash office use on it.

[\(00:17:19\):](#)

The center parcel, I believe it's like 135 feet wide. It will be the location of Sequoia Drive as it extends up. So they will be constructing that roadway and then dedicating that roadway. And then after dedication, the westerly portion of that lot will remain. So there'll be about 50 feet in width that will be left of lot two and then lot three to the east is not a part of this proposal. Next slide zoning is manufacturing research park and you can see that it's surrounded by same zoning to the north and also to the east. And we have mixed use village to the south and mixed use district also to the south. And you can see the Creekside apartments there are zoned residential 12. The yellow that you see is an open space zoning.

[\(00:18:23\):](#)

Next slide. So a description of the proposal on that easterly large parcel is the location of a proposed 256,800 square foot office slash warehouse building. And that would include the drive aisles, the truck and vehicular parking areas, land, landscaping, utility extensions and stormwater pond. The proposal also includes the relocation and reconstruction of a portion of the existing Squala Creek Trail and that will be in a revised trail easement. And then as I mentioned, the proposal will retain the existing mission marker that's located in the northeastern portion of the site. It stays in its existing location and then that center parcel lot two is where the roadway will be dedicated and what will remain after that will be a 50 foot wide parcel.

(00:19:27):

So here's a site plan that shows you what we were talking about. It shows you the building and it shows to the south of the building are the dock loading areas. The dock doors and to the south of there there are some trailer parking locations. Moving further east you have a vehicular parking that is between the building and the drive. There's also a small area in the center that is truck or trailer parking. And then to the south you could see the storm pond and then the darker line to the south there is the relocated. It's the Walnut Creek Trail. Currently the trail is being used on private property and it's outside of the actual easement area, so it would be relocated to the south as you see here. You can also see from this site plan the steep topography along the south border and that topography slopes down toward Schu Creek.

(00:20:40):

Next slide. So a little procedural history associated with this application. The application started with a pre-application meeting we had in January of 2023. In February of 2023, we issued a notice of complete application and requested additional information from the applicant. The notice of application was issued on February 23rd and at that time we received 13 public comments that are part of the summary of record. And then recently, August 29th, 2024, we issued the CIPA MDNS. And with that were 38 mitigation measures. No appeals were filed. We did receive during that comment six public comments and three agency comments which I'll summarize.

(00:21:41):

And then we issued notice for this public hearing today on September 27th. And several public comments have been received since issuance of the staff report that including this morning. There were several that came in this morning that you have been provided copies of. So as far as the agency comments, we received one from Department of Ecology during the CIPA comment period and it was partially your usual comments about using only clean fill on the site. But they also asked for or recommended that we include in this decision some specific conditions related to cleanup of the site. And that had to do with entering into the voluntary cleanup program and then providing the city with a notice of no further action letter. So those are included as condition 15, we received a comment from Department of Natural Resources that the proposal may require a forest practices permit, which we concurred with.

(00:22:55):

And then Squa tribe commented that they thought the CIPA mitigation measures were appropriate and that they would be interested in participating in the preparation of one of the mitigation measures, which was for interpretive signage to be added to the trail in the next slide. So this is a summary of the public comments that were received at the time we issued the staff report during the notice of application comment period, we received comments about protecting Ology creek safety noise concerns for aesthetic impacts the intensity of the proposed use concern for misalignment between the code and the comprehensive plan, and then other concerns related to environmental impacts. And then in the CIPA comment, we received comments, again, general opposition to the use and misalignment with

code and the comprehensive plan. We also received several comments with concerns about impacts to potential habitat for the endangered western gray squirrel and then comments specific to traffic. So through this staff report I'll be hitting on a lot of those topics and then we'll recap at the end about how those were addressed. Next slide.

[\(00:24:22\):](#)

So the site plan review process is spelled out in code that we are to evaluate the regulations and criteria that are specific to the zoning district in which the property is located plus several other chapters of code. They're all spelled out in there. In addition, we must fully comply with the goals, vision and policies established in the comprehensive plan with specific focus on the applicable village in which it's located, which is SE Quality Village. So you can go to the next slide. I'm not going to, I think there's like 13 pages in the staff report of summary of the comprehensive plan consistency. And we're just going to hit on the highlights with this slide that in the ology village planning area, it states in the comprehend comprehensive plan that it's planned for a mixture of residential types and densities in the northern two thirds of the area and manufacturing and research park uses in the Southern one third in this property in the Southern one third.

[\(00:25:29\):](#)

The comprehensive plan also had several policies that were relevant to this proposal, including preservation and partial relocation of the Squala Creek Trail and establishing a paved trail for pedestrians that links the civic center and Squala village planning areas that relocated trail will be paved in the economic development section, it seeks to add warehousing sector jobs, provides employment opportunities for the region and suitable for employing DuPont residents. And then also in both land use and cultural resources, it describes emphasizing and preserving historic sites so such as the historic marker and it includes retaining the marker in its present location that's in there. And the marker, the marker and buffer in this proposal was going to be dedicated to the city for ongoing preservation. And then we have a CPA mitigation measure to add the interpretive sign to the trail. So all told these combined with the other pages of the staff report demonstrate that the proposal is consistent with the comprehensive plan goals and policies.

[\(00:26:47\):](#)

Next slide. So moving into chapter 25 45, which is the manufacturing research part district, there are a few requirements that the project must follow. And first and foremost, what's the purpose of the district? It's to provide opportunities for employment in modern attractive buildings on well landscape sites that are close to residential areas, thereby potentially reducing travel time to and from work. And then that same section or it's actually oh two oh lists office and warehouse uses specifically as being permitted uses in oh three oh performance standards. It list that there's no minimum lot area or maximum lot coverage requirements in this district. Next slide. So oh three oh performance standards also describes setbacks, front yard setbacks 25 side 15, rear 15, and then a maximum building height of 65 to 70 feet depending on how far the building is from the street. And the proposal is 45 feet and in height and meets the requirements.

Speaker 6 [\(00:28:05\):](#)

Next slide.

Speaker 5 [\(00:28:16\):](#)

There we go. Okay, continuing on. We have blank wall requirements in the performance standards that there shall not be any blank walls greater than 50 feet in length. And if they are, then there's certain

treatments that can be provided. We've reviewed that against code and this applies to where it is visible from a street. And so we found no blank walls present on the proposed building. So that was consistent parking and loading areas generally those are supposed to be located at the rear of buildings or separated from the public rights of way by a moderate screen. And so the parking, loading and trailer storage areas are located in the rear. They're located in the south and they're also located in the front between the building and SE Paul Chief Drive and they require screening therefore. And so when we get to the landscape section, I'll describe how they have accommodated the screening.

(00:29:21):

Landscaping is at least 20% of the lot that shall be covered with landscaping area and they have about 46%. So they've exceeded that minimum. So noise, we were concerned about noise from this proposal both to the creek apartments but also to the trail. And so the applicant was required to submit a noise study, which they did. And then the city hired a specialist to conduct peer review of that noise study and there was a few iterations back and forth while they discussed the methodology and criteria that were being used in that. And the last version of the noise study is included in the summary of record and was deemed acceptable and within the allowable noise ranges established in chapter 9.09. A couple things to know about noise. So the sequ trail we had established was to be modeled as though it was a residential receiving property, which has the lowest acceptable noise levels of all receiving property types. There isn't a park level for us to go by, so we chose the residential. And so it does meet the noise levels to the trail. There is 1:00 AM peak period and it was less than 15 minutes per hour that exceeded that level, but there's a code provision that allows that minutes less than 15 minutes per hour. That's all documented in the record.

(00:31:20):

Further assurances we added a few CPA mitigation measures and those included that requiring trucks entering and leaving the site be equipped with air brake release silencers and broadband backup alarms. And we're requiring that an agreement with the building owner be recorded stating that effect bay doors shall be kept closed when not in use and that within six months of building occupancy we'd like to see an updated noise study to confirm where that's all landing. So again, speaking on trail impacts, this exhibit that you see here was provided by the applicant. It's a line of sight exhibit and it details what would the trail user see of the project. You can see those two dark lines that are on the exhibit. It shows two locations where they modeled that. Let's start with the most westerly location. You can go to the next slide and this is what that looks like on the far left of the screen.

(00:32:37):

You see a person standing on the trail and you could see the topography there and how their line of sight would not of the project of the trucks or the trailer parking areas would not be visible. And what you can't see on this exhibit is that there are also a lot of trees on that slope and the property for that matter. And then the next slide shows just a little bit further to the east, another location and that again shows the person on the trail and the topography and how that property, the property would not be visible.

(00:33:20):

And that is in the record, that's the visual analysis exhibit. So getting back to performance standards in the DMC 25 45 lighting, lighting should be designed to minimize light escapement. The applicant provided a photometric analysis which we examined and that is just the lighting that is onsite. So it provides the light levels along the perimeter. And so we're going to be asking for an update to that. The light levels on the northern property line are just a little bit higher than they should be. And so the other locations, the light spill was close to zero. And then the other concern we had about light was as trucks

are driving toward the property, they would be turning off center drive and they would be turning onto SE quality drive and they would have lights that could impact the Creekside apartments. And so there is an area where there is an existing planter strip that is a little sparse and it could use some infill plantings. And so this is a SEPA mitigation measure to mitigate light impacts from those trucks to the apartment project.

[\(00:34:48\):](#)

Next slide. So lastly in the performance standards is an important one. Warehouses shall not be located abutting a main street including the access road from center drive to Sequi village. And this is directly speaking to Sequi Drive, which is going to be located on lot two and it'll be constructed and then it'll be dedicated and then there will be a remainder parcel of 50 feet wide that would therefore the proposal, the use for the parcel would not be abutting. In addition to that, the warehouse building itself is set back from the future right of way a distance of approximately 300 feet.

[\(00:35:46\):](#)

And again, here's a picture just trying to demonstrate that as you can see, the wall that you drive and remainder a lot to area and the distance of the building. Next, moving on to DMC 25 80, which is the cultural, historic and archeological resources chapter. And this is the one that specifically says, and it calls out in the chapter that the Methodist Episcopal mission is to be protected and this proposal is proposing to remain in this location. The code requires a 50 foot protection buffer around the marker. And in that 50 foot buffer there are not supposed to be any grading, no utilities, et cetera, and they have stayed out of it. We've also provided several SEPA mitigation measures for the protection of cultural historic resources. The applicant, as in all projects in the city when you're disturbing the soil, are required to implement the requirements of the 1989 memorandum of agreement for the discovery of cultural resources. And that's things like implementing an inadvertent discovery plan and inviting the tribes to monitor the soil disturbing activities. And then the addition of an interpretive sign, which we've mentioned on the trail. And then the area of the marker and buffer are to be dedicated to the city for ongoing protection.

[\(00:37:27\):](#)

And this is just to show you again where that is and relationship to the site. It's located on the eastern portion of the property as you can see adjacent to the parking area, there is a trail, sorry, if you could just back up. There is a trail that goes around the marker for visual observation of it, but one of our SEPA mitigation measures was for the trail to wrap around to the parking lot rather than go to the trucks drive aisle there as you can see. And next slide. So moving on to DMC 25 90 landscaping. This is the one we were talking about where you need to have a moderate screening buffer between the parking lots and any adjacent right of way. So that applies to Sequi Drive. We're also applying that to Salala Creek Trail. And so what the applicant has done is they have proposed a three foot tall landscape berm that is between the parking stalls and supply that you drive pretty intensively.

[\(00:38:36\):](#)

We would call that like a full screening buffer. So the trailer storage and parking areas that are located between the building and Sequi Drive will not be visible from the trail. However, the storm water pond and the parking and circulation and building areas, we were concerned that those areas would be visible. And so they've also added a landscape berm south of the stormwater pond to screen those areas that would be potentially visible from the trail. And we have a mitigation measure that they just extend that berm a little bit further west to screen the parking, parking lots with tenant more stall, Shelby landscape, at least one tree per six stalls. They did provide all of that landscaping and landscape violence

and then they also provided a water conservation calculation and an irrigation plan. So they're compliant with the landscaping requirements.

[\(00:39:38\):](#)

And this is just a couple of slides to show you. You can see down in the south center area the large stalls there for trailer parking and you can see the extensive planting just to the north of those stalls. And then the berm is also to the east of those stalls. Then the next slide shows you the stormwater pond and the landscaping around the pond. North of the pond is a berm that extends westerly and then also south of the pond, extensive landscaping and all with the intent to scream trail. So critical areas, this proposal is located adjacent to Sequo Creek, which is to the south. Sequo Creek has a code required 100 foot buffer. That buffer is shown on the plans, but there are no improvements inside of that buffer. So they have stayed out of, they're not doing any work in the Ology Creek buffer. And then as far as other critical areas, there are geotechnical hazard areas because of the steep slopes that we were pointing out before. And there's no work that is within the steep slope or the 50 foot buffer associated with that steep slope with the exception of a small trail segment. And that trail segment is in the buffer and the geotechnical engineer provided a letter saying that that would be feasible at that location without being a hazard.

[\(00:41:30\):](#)

With regard to sensitive habitats and species, the Washington Department of Fish and Wildlife masks this property as containing three bat habitat species or bat species. And so because of that, we had the applicant biologist do a site visit and confirm find if there was any bat habitat on site that is in the record. And they did not find any documented occurrences of the bat habitat. There were public comments that were received on the proposal about concern for impacts to potential western grade gray squirrel habitat. And the code requires that we rely upon fish and wildlife to identify priority habitats and species, which Western gray squirrel would be one of those. And there isn't any of that habitat in the city of DuPont. It appears to all be located on JBLM. So we did not find a need to review that. So tree retention, the prior proposal you may recall, had a request to modify or exceed the code requirements for tree removal and this one meets the code.

[\(00:43:01\):](#)

So there are several provisions of code that we need to review. First of all, there is a requirement that all landmark orga mi oak trees shall be retained as well as any native understory protection zone that is one and a half times the radius of the trees canopy. But then it says unless the tree is located within the proposed street right of way. So they had one Oregon wide oak that is of landmark status that is located in the street right of way. You may recall from the previous proposal they initially the alignment of that right of way initially had it was impacting two oak trees and they revised the radius of the street to be able to avoid one of those trees. So it's now just one. There are a total of six landmark trees, landmark orden, white oak trees. So removing one is within the parameters of what's allowed says up to 30% may be removed.

[\(00:44:09\):](#)

The other requirement is that in the MRP district, landmark trees in the building footprint parking lot or storm retention area may be removed if tree retention is achieved along street boundaries. And when abutting a residential district, so we don't have a residential district, but we do have street boundaries. And so tree is achieved along that remainder lot two as well as the southern perimeter of the property. So the site's not abutting residential and the tree retention is proposed. So moving on, the other requirement is that one and a half trees per acre shall be retained. So the site is 19.65 acres, which would require the retention of 29 trees, not very much. And the applicant submitted a tree retention

plan that documented, went out and visited the site, documented every tree on site and determined their species, their size, their health, et cetera. And that found that a total of 211 trees will be retained with the proposal. So they're exceeding the tree retention by 182 trees.

[\(00:45:31\):](#)

This is a couple of snips that are from that tree report. On the left is the western part of the property and what this shows is in kind a color coating where the healthy landmark trees are, where the unhealthy trees are. And then the yellow ones are the healthy landmark trees to be removed. This doesn't actually call out which are oak or dug fur, for example. You have to go deeper into the report. There's a table that tells you which are, and then on the right side of the screen would be the eastern portion of the property. And you could see there in the road right away, tree number nine, that's the one that is the organ white oak tree that needs to be removed.

[\(00:46:25\):](#)

So that represents our conclusion of the staff report. We've reviewed the code for consistency and both with the zoning code and the goals and vision and the comprehensive plan and determined it to be consistent in the staff report we have 30 or see 40 conditions of approval. And then in the CIPA mitigation measures, there are 38 listed there which will be required for them to implement the project. And it's slide is just a recap of the public comments. And we've hit on, I guess on the protection of Psychology Creek. We do have in the SEPA determination some erosion control measures that will be required to be implemented for the protection of the creek. But as I mentioned, the project is outside of the creek buffers safety noise. We've addressed those and how we have evaluated those aesthetic impacts. This project should not be visible from the trail as you've seen. This project is extensively landscaped where it can be viewed from the trail but also from ology drive. And then we've addressed how it is consistent with the code and the comprehensive plan. And then we've also addressed the Western gray squirrel potential habitat. So that concludes the presentation from the staff.

Speaker 1 [\(00:48:11\):](#)

Okay. Just a few questions. You mentioned that I think there was a landscaping screening along the trail and along Chu Drive. Does that include the portion where you have the lot too as intervening between the drive and the project site?

Speaker 5 [\(00:48:29\):](#)

Maybe we could go back to that slide. I believe that is not a part of lot two, but we can go back a couple of slides. There we go. There you go. Right there. Yes. A portion of that is in lot two, as you can see, there's also some of that is got a hatch symbol. Let me start at the north.

Speaker 1 [\(00:48:54\):](#)

Yeah, I can't tell from that. What's the landscaped and what's not. I was just kind of curious because you said there was a screening along the road. I mean technically this lot isn't along quality road because a lot two intervene. So I was just kind of curious if staff was still requiring the screening along there or not.

Speaker 5 [\(00:49:15\):](#)

The screening does extend into lot two and then there's also some hydro seeding that the applicant's proposing in let to, that's that hatch

Speaker 1 [\(00:49:26\):](#)

That

Speaker 5 ([00:49:26](#)):

You see.

Speaker 1 ([00:49:26](#)):

Okay. Okay. What's the visibility like? And

Speaker 5 ([00:49:29](#)):

The door,

Speaker 1 ([00:49:30](#)):

Oh, go ahead.

Speaker 6 ([00:49:31](#)):

Go ahead.

Speaker 1 ([00:49:32](#)):

What's the visibility like from the road? I mean can you see the warehouse basically when you're driving down that road or I should say when people will be driving down that road?

Speaker 5 ([00:49:42](#)):

Well the road's not constructed.

Speaker 4 ([00:49:45](#)):

Yeah, no, that's why I said when

Speaker 5 ([00:49:47](#)):

We don't have one of those visual analysis of this.

Speaker 6 ([00:49:51](#)):

So

Speaker 5 ([00:49:51](#)):

We can only draw conclusions and with the landscaped area including a three foot burn and it also includes trees as well as shrubs and ground cover we felt that was an adequate screen.

Speaker 1 ([00:50:07](#)):

And then the marker, how would the public access that marker to look at it? Do they have to walk through the parking lot then essentially? Is that the plan?

Speaker 5 ([00:50:19](#)):

Yeah, so that's right off the parking area, the front parking area. And so there is a requirement for a couple of those parking spaces to be reserved. That's in the CIPA

Speaker 1 ([00:50:35](#)):

Measures

Speaker 5 ([00:50:37](#)):

For the public. Who wants to visit that site?

Speaker 1 ([00:50:41](#)):

Is the applicant going to have to grant any express access rights for the public to walk through the parking lot and to get to the marker? I mean I know we have the dedicated parking spaces, but do we, because technically it's a private parking lot, right? So

Speaker 5 ([00:50:57](#)):

It's private property. That's correct. But the marker will be public, right? The marker.

Speaker 1 ([00:51:02](#)):

Right. But they have to go across private property to get to the marker though. So I was just kind of curious if any public access movement is involved to get across the parking lot to get there or is that just going to be implied from the parking spaces I guess?

Speaker 5 ([00:51:19](#)):

Yeah, it's just implied.

Speaker 1 ([00:51:20](#)):

Okay. Okay. Let's see. And then the gray squirrel, that's an kind of interesting issue. I read through the letters. I don't recall. I mean I remember there's a comment letter saying that they're up in the higher branches and you don't normally see them. Do you recall, did anybody specifically say they saw one in the city of DuPont?

Speaker 5 ([00:51:41](#)):

I haven't heard. I got the impression that they were concerned. I mean they would have to be on private property, right. To go out there and look at it

Speaker 1 ([00:51:49](#)):

Or if they saw it adjoining lots or that kind of thing.

Speaker 5 ([00:51:53](#)):

Yeah, none have been observed in the city of DuPont.

Speaker 1 ([00:51:56](#)):

Okay. Okay. And then kind of administrative cleanup thing, the exhibits I got into the record were the ones listed in the staff report. And of course as you said, there were several letters that came in after

and we should get that in the record as well. Do you recall how many total there were? It was like six or something I think.

Speaker 5 ([00:52:16](#)):

Are you talking about the new ones that came

Speaker 1 ([00:52:17](#)):

In? Yeah, the ones that aren't listed in the staff report.

Speaker 5 ([00:52:22](#)):

I recall around four or five, but I also, let me just check a moment.

Speaker 3 ([00:52:33](#)):

There were 8 0 8,

Speaker 4 ([00:52:34](#)):

Okay.

Speaker 3 ([00:52:36](#)):

That came in eight. Were

Speaker 1 ([00:52:39](#)):

All eight forwarded to the applicant?

Speaker 6 ([00:52:44](#)):

Yes.

Speaker 1 ([00:52:45](#)):

Okay. Alright. So I'll just ask right now, in addition to the exhibits I got on the record, we also had eight additional public comment letters. The applicant has seen them. Does anyone need to see those documents or have any objection to putting them in the record? If you do waive your hand if you're in the meeting room so Ms. Kincaid can point you out or if you're attending virtually click on the virtual hand at the bottom of your screen. Ms. Kinka, any takers?

Speaker 2 ([00:53:13](#)):

I don't see any handwriting.

Speaker 1 ([00:53:14](#)):

Okay. And no virtual. So I'll go ahead and admit those eight public comment letters as well. And are those going to be at the public or excuse me, the city's website as well, Ms. Kinka?

Speaker 2 ([00:53:26](#)):

Yes, they will.

Speaker 1 ([00:53:26](#)):

Okay. Yeah, so like I said before, if you want to make sure your public comment letter is in the record, just go ahead and look at the city's website and if it's not there, let Ms. Kincaid know and we'll make arrangements to get it in there and give the applicant a chance to respond to it. So let's see, make sure I got any other, and I think also, just so you know, I mean like I said, I'm limited to the record. One thing I can take what they call judicial notice of without it having to be in the record is any adopted statutes or ordinances as well as court opinions. And I don't believe that the superior court opinion was made part of the exhibit list. Right. Ms. Klein? I think it was just the appellate court decision and my decision on the former warehouse application and it's only the superior court decision that goes into the abutting issue. You know how it didn't meet code the first time? So I just to let people know, I will be taking a close look at the Superior Court's reasoning to the extent they wrote anything about it to make sure that the applicant is being consistent with the abutting requirement this time around. So I think those are all, yes,

Speaker 5 ([00:54:34](#)):

You are correct on what we submitted to you. I believe in the appellate court one there was a summary

Speaker 1 ([00:54:42](#)):

Of the

Speaker 5 ([00:54:44](#)):

Superior court ruling. So yeah, that you're correct.

Speaker 1 ([00:54:46](#)):

Perfect. Alright, I think that covers my questions so far. So at this point let's move on to the applicant who wants to speak on behalf of the applicant at this point.

Speaker 7 ([00:54:57](#)):

Good afternoon, Mr. Examiner, William Lynn for the applicant and like the examiner, I have grown accustomed to doing zoom hearings. I had my wires crossed with the rest of my parties, so they're all there and I'm here. So I apologize in advance for any awkwardness that that causes. I'm going to be very brief. I know you've got people to hear from. We're just going to call two witnesses and I'll introduce them in a minute. But I do want to clarify a couple of things about the process since we were last before you. One related to the abutting property issue and that was really the only reason that you denied the site plan. In fact, finding four on page 18 of the decision you specifically say that, but for that issue, the site plan met all of the requirements of the code. So that was important. We did appeal it the exam, the superior court agreed with you and not with us and that was the end of that issue.

([00:55:55](#)):

So that stands and I can forward the court, the superior court decision if you like. It's very brief. I think it's a perfunctory order. I don't believe he goes into detail, but I could be corrected on that. The second clarification also relates to the prior decision. The court of appeals, or actually the superior court did agree that the monument could not be moved. The rest of us, some of the rest of us had thought that it made more sense to actually relocate and incorporate it into the trail in a park associated with that the court disagreed. And so there is a requirement that the marker be preserved. There is not, however in

that decision or in the city code anything that requires that public access be allowed to that it has since become part of this project. And I'm about to tell you why that's the case.

(00:56:52):

So after the court of appeals condition or decision came out, we met a number of times in person and virtually with the Squa Delta Association, which was the primary appellant last time that they worked in conjunction with other parties. But that was the named entity. We reached an agreement with them that is reflected in the revised site plan that you now see, which includes not just preservation of the public, the mission marker, but also public access to it. There are some other elements to that. I'm going to ask Dan Elli the project engineer to describe those in just a minute there. They frankly now have come to overlap with a lot of what is incorporated in the site plan, but there is a provision for public access and there's a specific statement in our agreement that should the city not accept the dedication of the mission marker as a publicly available marker, that we would grant public access to that through an agreement with them.

(00:58:04):

So there will be public access to that. There's actually a requirement for a specific type of control, pedestrian access, so it'll be a safer public access that might otherwise be the case. So those are incorporated that they agreed as a result of those changes. Not to further appeal or challenge this, I understand that there are other people who do challenge it, but that's how that evolved. The only two witnesses we have to call, we of course have people available including the owner and the buyer, but the only witnesses we intend to call are Dan Belli, the civil engineer from Barb Hasen who's going to briefly talk about the site plan and answer any questions you have. And then Chris Carter is the environmental consultant. It's a little more complicated situation here than I think is revealed. He's had recent contact with the Department of Ecology and I think can shed some light on that issue. That's all we have. I did make a couple of suggested amendments to the conditions of approval. I sent those in on a Word document. I'll discuss those at the end and wrap up anything else we have. So with that, I would ask Mr. Baldelli to take the oath and give his brief testimony.

Speaker 1 (00:59:26):

Okay. Mr. Baldelli, is he up at the podium?

Speaker 8 (00:59:35):

I take the oath.

Speaker 1 (00:59:36):

Yeah, let me swear in. Do you swear I can't see the podium from my vantage point? I wasn't sure you were there yet. Okay. Yeah, just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 8 (00:59:47):

I do.

Speaker 1 (00:59:48):

Okay, great. Go ahead.

Speaker 8 (00:59:50):

Great. Good afternoon. My name is Dan Elli. I'm a principal with Parkhouse and Consulting Engineers. Our firm has been working on this project for quite a few years. We were here the last time with you, Mr. Herring examiner, going through the process. Since then, we have been working hard with the city to revise the site plan, revise the application to address the two biggest concerns. One was the location of the mission marker and the other one was to meet the city's code requirement for providing a buffer or a separate parcel between the project and the public growth that's going to be constructed as part of this project. So those are two of the main changes. Most of the other part of the project, as Lisa and Bill indicated, have not changed. The site plan is primarily the same other than there is a 50 foot buffer around the location of the existing mission marker and there is walkways to that mission marker for public access.

[\(01:01:08\):](#)

And then the other one is we did process a short plat working with the city to provide a separate parcel that separates this project from the future public roadway. Those are the two main changes. Also, I want to thank Lisa and Barbara and the city staff for doing a very thorough review of this project, a very detailed staff report and a very thorough presentation they did most of the workforce. So thank you very much. One of the things that Bill mentioned and Lisa, is that the applicant came to an agreement with the Ali Delta Association who had many concerns about the project. And so the developer worked for months and months with the Quale Delta Association to attempt to mitigate and address all of their concerns as many as they could while still at least having a viable project. So I'll just list a few of the, well, I'll list the main mitigation measures that they had agreed to incorporate into the project. Lisa, can you pull up the site plan or while I list them or is there a way to do that

Speaker 6 [\(01:03:00\):](#)

There? It's, yeah.

Speaker 8 [\(01:03:03\):](#)

Thank you. Okay. On the board is the proposed site plan and as part of that project, the existing trail that kind of runs through the project, it's not a formal trail but it's being used. It's going to be relocated as shown. It's going to be an eight foot paved trail. It's going to start on the east with the new Sequi drive roadway, which will have a sidewalk to, it's going to connect to the walk, it is going to extend to the west kind of around the perimeter of that a hundred foot buffer, but outside of that buffer and then wrap around and then connect back to the existing trail at the property line. As part of that trail, there's going to be a few locations where there's going to be some areas where the Buffalo soldier story with signage can, could be added along the trail there so that as the public walks the trail, there can be some storytelling for the history of the Buffalo soldiers there.

[\(01:04:22\):](#)

That's one of the items that was included in the agreement. Another one was the proposed open storm pond will be landscaped around the perimeter as much as possible to buffer the pond and to also provide additional buffer between the trail and project further to the north. The applicant previously had proposed trailer parking right adjacent to the storm pond just to the north of the storm pond. The applicant agreed to relocate that trailer parking and just provide standard vehicle parking there as another mitigation. Another one was where the 50 foot buffer is to the mission marker. There's two walls of the building there. They have agreed, the applicant has agreed to provide some type of a mural or signage on the face of the building to help tell the story of the history of the mission marker. For people that do walk up and come to see the marker location, they'll be able to read some kind of history of the marker. Another mitigation was along the new Sequi drive that's going to be constructed at the

main entrance to the project. The applicant has agreed to provide a signaled pedestrian crossing across the main driveway to help increase safety or pedestrians crossing that driveway where they will then be able to get to a separate walkway that crosses over to the west and then they can get to where the mission marker is located for visual view of it.

[\(01:06:31\):](#)

Those are the main mitigation measures that were actually negotiated between the developer and the quale delta. And it was an agreement that they came to before the project, before the cpa, the site plan review was completed and they are incorporating all of these items into the project bill. Was there anything else you wanted me to explain,

Speaker 7 [\(01:07:05\):](#)

Sir? Unless the examiner has questions, that's all I had. I think the other witness is Chris Carter who was going to talk about the cleanup that already occurred and what the issue still remains with ecology.

Speaker 1 [\(01:07:20\):](#)

Okay. Alright, great. And I take it Ms. Carter's also at the table. I was assuming the witnesses were going up to the podium. I didn't realize the applicant's swallow lined up there, so I can see them very clearly. Now, Mr. Carter, just raise your right hand. Do you swear affirm to tell the truth, nothing about the truth in this proceeding?

Speaker 9 [\(01:07:36\):](#)

I do.

Speaker 4 [\(01:07:37\):](#)

Okay, great.

Speaker 1 [\(01:07:38\):](#)

Go ahead.

Speaker 9 [\(01:07:40\):](#)

Thank Mr. Hering examiner. My name is Chris Carter. I'm a managing principal with Sound Earth Strategies Environmental Consultant on the project. I've been involved here for a few years. Wanted to make some clarifications on the site cleanup work that's been done out there and some recent conversations that we've had with the Department of Ecology regarding their CPA comments most recently in their September 11th, 2024 letter from Diana Ison. So just a little bit of background, the site itself, the DuPont West has gone through extensive cleanup starting back in 1991 all the way up through about 2006, including a lot of source removal of contaminants including heavy metals, arsenic, and lead. That cleanup was conducted to industrial standards and in 2006, a couple of environmental covenants were placed on the property to allow future development for industrial use on that site that I think everyone here has seen is aware of. And that industrial use is consistent with the development plans here that has been demonstrated. The other covenant is for open space and that identified a strip of land along the south side of the property for open space use including trails. So those are critical to understand that those covenants exist.

[\(01:09:24\):](#)

What ecology has reviewed as part of the SEPA determination, this site is within the Tacoma smelter plume as most of the properties in DuPont lie within an area where there's expected exceedances of lead and arsenic from the Sarco fallout. And so when ecology does the CIPA reviews, they will look at the historical cleanup work that's been done, but they have a sort of default requirement to characterize and potentially clean up arsenic contaminated fallout because this site had already gone through the cleanup and has a formal settlement with the state of Washington. For the standards that have been developed, there's already been cleanup levels established that are industrial level. The Sarco fallout guidance documents the Department of Ecology uses doesn't acknowledge. And so I've called Diane Diana Ison at Ecology to have this discussion and she's actually reviewing internally right now how ecology is going to handle their formal review of this site because the issue is that this site has been approved for industrial cleanup standards, which all of the soil on site already meets that requirement.

[\(01:11:05\):](#)

So it's already in compliance with the industrial standards. And so there shouldn't be a requirement to do cleanup beyond that to say an unrestricted land use or a residential standard that the guidance for the Asarco fallout recommends. And so it's a unique site in that they don't usually have a site that has had the same contaminants that fell under cleanup and consent decree that they deal with as part of the overall Sarco site. So Diana is reviewing that. I just talked with her this morning and has agreed to get some internal guidance on that and let us know how to address that. Where that becomes important for this project is if the site has already been sufficiently characterized and already meets the required cleanup levels. There's really no need to go into a voluntary cleanup program and come up with a remediation plan and seek a no further action determination, which is what she had originally put in her comments.

[\(01:12:17\):](#)

So she's already agreed verbally that there's some clarifications that can provide there that if the data on the site already meets those standards and she gets the internal approval that we wouldn't have to go through that program. So that's in process. Now, regardless of whether ecology does a review through a voluntary cleanup program or not, the mitigations are going to be put in place to protect the public and the workers on the project because those are driven by OSHA standards and just public health standards. And so things like health and safety plans, soil management plans, things like dust control, air monitoring, all of those will be done during the construction project. And we have plans in place right now that are being developed to lay out the guidance for that. And then in addition, any of the public access areas on the site, parking lots and the trail are all going to be capped with hard surfaces, which again, regardless of Ecology's involvement would be the preferred mitigation here anyways to prevent any kind of direct contact exposure to soils that are above residential standards. So just some clarifications there. And the concern here being we may not have to go through that voluntary cleanup program and seek no further action determination. And so we don't want that to be assigned to the permit issuance here if that may not be required.

Speaker 1 [\(01:14:06\):](#)

Yeah, because I'm looking at condition 15 and it does require that you got no further action determination prior to finalizing any development permits. And you're saying that DOE doesn't may find that's even not necessary to go through that whole determination process. I mean, are you saying maybe we need to revise this condition 15 to say that this all can be waived? DOE says it's not necessary. Would that be maybe the way to address this?

Speaker 7 [\(01:14:39\):](#)

Yeah, I think that would be fine.

Speaker 1 ([01:14:41](#)):

Okay. Okay.

Speaker 4 ([01:14:41](#)):

Sounds good.

Speaker 7 ([01:14:43](#)):

And Mr. Examiner, you bill in again for the record, just to put a point on that, that's actually what you did in the prior decision. You added a note to the predecessor condition that was like this, it's on page 25 of your decision. You made a modification to what was then condition 19 that said in lieu of that, those measures, the city will accept a determination by the Department of Ecology as to the process that may occur as to soil management. So I think with a similar addition here, we would have addressed it.

Speaker 1 ([01:15:19](#)):

Okay. Makes sense. Okay, great. Alright, Mr. Lynn, any other other witnesses? You said just two. Okay, so I take it, that's it for the applicant. So finally an hour and 15 minutes in, we're ready to hear from the public. Thank you all for waiting out there. We'll do the in room testimony first. And Ms. Kincaid, do you have a sign in sheet that we can go through maybe to do this?

Speaker 2 ([01:15:50](#)):

Great. Well call names just in the order of this sheet and then the podium right is over there and then you'll need to make sure the microphone is turned on and there'll be a green light. So just press the button if you will. So would you like me, Mr. Examiner, just to read the names?

Speaker 4 ([01:16:09](#)):

Yeah, sure. Go right ahead.

Speaker 2 ([01:16:11](#)):

Okay, so Robin Barrel.

Speaker 10 ([01:16:22](#)):

Hello, I'm Robin Barrow.

Speaker 1 ([01:16:25](#)):

Oh, Ms. Barrow, let me swear you in. I'm also, oh, I'm sorry. Yeah, I should say I'm going to swear all of you in for starters after you state your name. So do you swear firm tell the truth, nothing but the truth in this proceeding?

Speaker 11 ([01:16:36](#)):

I do. Oh,

Speaker 1 ([01:16:36](#)):

Okay. And also if you could spell it for the record just so that if we don't, I don't put any embarrassing misspellings in the decision.

Speaker 10 ([01:16:46](#)):

Robin is R-O-B-I-N

Speaker 4 ([01:16:48](#)):

And

Speaker 10 ([01:16:48](#)):

Barrow is B-A-R-R-O-W.

Speaker 4 ([01:16:51](#)):

Great, thank you.

Speaker 10 ([01:16:52](#)):

My concern today is about the environment and the removal of the tree habitat. I've done a lot of research on the Western gray squirrel. It's a tree squirrel and the largest native squirrel in Washington state. As of November of last year, the Washington State Fish and Wildlife Commission did listed as endangered. The ecosystem throughout the city of DuPont contains necessary trees for the habitat of this endangered squirrel. The primary food source for the squirrel is the legacy tree, the Oregon White Oak. The plot for the warehouse contains the Oregon White Oak Douglas fir, big leaf maple and hazelnut, all which provide food for the western gray squirrel and they nest not in the Oregon white oak, but in the trees that are near them. The plan to remove the hundreds of trees will impact the western gray squirrel's food and nesting habitat. The only area on this side of the Cascade mountain range with mature Oregon white oak is the area in the South Puget Sound slew, including the city of DuPont.

([01:18:00](#)):

This is also the only area on this side of the Cascade Mountain range where the western gray squirrel can be found. Citizens in DuPont have seen, they have photographed and documented the location of the western gray squirrel here in DuPont and have noted it at the Washington State Department of Fish and Wildlife. They have an online location to document when you find a species. The last time a study was done on mapping for the fish and wildlife was in 2010. So they have not had an opportunity since they uplifted the squirrel into the endangered species to map this area as possible habitat. There are examples of developments throughout King, Pierce and Thurston counties of light manufacturing and office designs to include and incorporate the natural environment and lessen the impact of our natural habitats. I ask that the decision be placed on hold until the Department of Fish and Wildlife and the Department of Natural Resources have the opportunity to properly evaluate the area for the nesting habitat of the Western gray squirrel before hundreds of trees are removed in this area. Thank you. Thank you.

Speaker 1 ([01:19:18](#)):

Ms. Burrow. Alright Ms. Kincaid, next

Speaker 2 ([01:19:27](#)):

We have Karen Conrad next on the list.

Speaker 1 ([01:19:38](#)):

Alright, Ms. Conrad, my name

Speaker 3 ([01:19:39](#)):

Is Karen

Speaker 1 ([01:19:41](#)):

And is that C-O-N-R-A? D?

Speaker 2 ([01:19:46](#)):

KON.

Speaker 1 ([01:19:47](#)):

Oh KO. Gotcha. Okay. Let me swear you in this contract. Swear your right hand. Do you swear affirm tell the truth, nothing but the truth in this proceeding?

Speaker 3 ([01:19:55](#)):

I do.

Speaker 1 ([01:19:56](#)):

Great. Go ahead.

Speaker 3 ([01:19:58](#)):

So I would like to preface my commentary based on my own visceral experience with the codes and the legalities and I know those areas supersede what I am about to say. I understand the weight of them, the importance of them, but I also feel that my own viewpoint is worth sharing. I'm going to take it down a level a little below the prefrontal cortex, into the citizens that actually live here. DuPont is a breathing, thriving community that is committed to its own sovereignty. I have not met one person here who is in support of this project. I have not talked to anybody in my wide circles of friends who also are, who are also aware of this project, but in opposition to it. I'm also concerned about some of the inaccuracies that were shared during the applicant's presentation, but this is not the time or the reason to be concerned with that.

([01:21:21](#)):

What I'm most concerned about, and I really think Robin because she has done an immense, spent immense time and leadership in researching the issue with the removal of around 450 trees. And I have seen the Western grave squirrel. There is an area that is rich in environmental support systems and I would also love to talk about I guess the values of the trees themselves. If you take a heritage tree, you only see what's above the tree. You don't see the level of support and connectivity each tree has in order to support that particular ecosystem. Those trees cannot be rebuilt, they cannot be replanted. Such an endeavor was done along are still a DuPont road. There was a warehouse put in. They took

down all of the established trees and planted baby trees. Most of those baby trees have died and are still there posing a fire risk.

(01:22:37):

The understory was replaced with invasive species. So if you go along that road you will see the effect of that replanting landscaping and I do feel that no signage or landscaping or any other hurt from this endeavor will truly mitigate the devastating effect it will have on our community. I am wondering how can you move a stream that was naturally set in that space like, oh, let's go. Why don't we push Mount Rainier to the side? And I say that with Jess, but I also say that with the concern that what is our connection over the environment? How much control do we have over someone else's home? I would like those of you who are applicant to this project to look around the room, just look around.

(01:23:45):

These are the people that live here. This is their home. Imagine if you woke up in the morning and you walked outside and in your backyard there was a boulder and in the background were as asphalt and dirt and dead trees. Our city is under assault. You are not the only applicant who wants a piece of dup on. It seems commonplace now to go to these small towns and eat them up alive, then walk out with your profits and leave the rest to whoever lives there. I've talked to people who want to leave you because they are aware of what the consequences of your action are and feel that this is no longer a welcoming safe community with their children.

(01:24:46):

So I'm not going to go over all the reasons why I think this is because Robin shared them so beautifully, but I do want to ask you a question. Who is the person or persons that get hit? Who are the people that are going to sell after you leave to your home? What's going to be left behind? What legacy are you going to leave us? We don't want. You have chosen a very sacred and beautiful part of our community to build a process of empathy that I feel doesn't have any owners and you drive down center, you'll see what that looks like. Now I saw what it looked like when those huge warehouses weren't there. It was a thriving forest. Now true set up. Our land is designated for warehouse huge, but come on guys, really there are warehouses that are not even being used that are lying vacant. We don't need another building. We don't need your health or your work. Go somewhere else here that is already set up for such building it. Please don't destroy the G shame. One last quote. No matter how deep my foot print may be, is it a muddy

Speaker 1 (01:26:40):

Right this kincade. Next,

Speaker 2 (01:26:46):

Mr. Examiner, the next person on the list is Michael Burka. Did I say that? Is it Birch or is it burka? BURC.

Speaker 1 (01:26:57):

And then Ms. Kincade who'd be after her just so that that next person's ready to start walking up as soon as the next speaker's finished.

Speaker 2 (01:27:05):

Okay, great. You want to just submit a written comment Mr. Birch? Okay. Okay. Judy Norris please.

Speaker 1 (01:27:16):

Okay, and Ms. Kate, who's going to be name Ms. Kinta who's going to be after Ms. Norris

Speaker 2 ([01:27:22](#)):

And after that is Beth Elliot. So yeah,

Speaker 1 ([01:27:25](#)):

Norris

Speaker 2 ([01:27:25](#)):

And then Beth Elliot.

Speaker 1 ([01:27:26](#)):

That's Ms. Elliot, if you could just start walking up as soon as Ms. Norris is done. And Ms. Norris, let me swear you in. Just raise your right hand. Yes. Do you swear affirm to tell the truth nothing but the truth Ms. Proceeding

Speaker 12 ([01:27:38](#)):

Always I do.

Speaker 1 ([01:27:39](#)):

Great. Okay, go ahead.

Speaker 12 ([01:27:42](#)):

Okay. Good afternoon Mr. Ulbrich. The current application for up 256,800 square foot warehouse on the same property as the 2019 proposal still involves a massive distribution warehouse on a abutting, a main road Sequa drive. Despite being rejected by both you and Pierce County Superior Court, the developer has created a separate parcel with a 50 foot buffer from Sequa Drive and reoriented the warehouse now placing it 250 feet from the road setback. Ms. Klein could not answer the question as to visibility from SE quality drive. Of course not. How can one hide a 65 foot, 256,800 foot square warehouse during the public comment period? I submitted my argument to the planning department that the warehouse still violates DMC 25.40 0.030 as you ruled in 2019. I strongly disagreed with the planning director's assertion in the staff report that the slight orientation means the warehouse no longer a butts Sequa drive.

([01:29:04](#)):

I'm sure its address will be blah blah blah. Sequa Drive. In June, 2019 when you denied the permit stating that it was uncontested that the project site of butts and main road specifically driver, you noted that this road will eventually serve as a primary access route to homes in the Squa Village Residential Reserve. This remains true. You emphasize that the massive warehouse would remain visible to DuPont residence commuting along to quality drive and this visibility is exactly, I'm quoting you what DMC 25 45 0 3 L was designed to prevent. You also cited comprehensive plan land use Goal 9.2 which stresses the need to limit uses adjacent to main streets to maintain DuPont's small town aesthetic. Your conclusion was that such a scenario is precisely what the city council intended to avoid when adopting this code and LU 9.2 council intent as I have found out in successful appeals is paramount in court rulings.

([01:30:22](#)):

Fast forward to today, this warehouse still abut to quality drive and these minor changes in attempt to create a buffer in a 200 foot three foot burn buffer, which sounds ridiculous for a 65 foot building will not change the fact that this warehouse would be visible from the road. You cannot hide a massive structure like this as one drives down center drive. You can see Amazon off center drive and that is way far off of Center drive. The intent of this code preventing abutting warehouses is clear they cannot abut a main road and we must uphold that principle in its entirety. The project should be denied on the same grounds as it was in 2019. It violates our code and comp plan. There's further evidence that supports my argument that an industrial warehouse is not allowed use on this property, which is in DuPont's manufacturing and research part.

[\(01:31:27\):](#)

It is not in the industrial area where we have our distribution warehouses. While this sub area is zoned for industrial uses, it is not permitted to house a freestanding warehouse distribution facility. Our 2015 comprehensive plan on page 71 LU 9.33 limits use along the access road from Center Drive to Sequoia Village to those allowed in the business and tech park. According to DMC 25 40 20 permitted uses in the business tech part do not include freestanding warehouse distribution facilities by calling this office slash warehouse with 256,800 square feet with 43 tractor trailer parking spaces and over 50 loading docks, this clearly meets the definition of a warehouse distribution facility as described in DNC 25 point 0.2, 30.010. The developer's own traffic report acknowledges the heavy truck traffic expected consistent with such a facility. This is not an office warehouse, it's a distribution warehouse and it belongs in DuPont's designated and industrial area, not here.

[\(01:32:56\):](#)

I respectfully urge you to deny this application once again for failure to comply with our city codes and comprehensive plan. The project needs to be redesigned to meet DuPont's standards and as I have seen the Western grace world. I'm an avid hiker and a naturalist and we have the exact same kind of tree habitat as JBLM. The fact that fish and wildlife has not been out here in this area since 2010 does not mean that squirrel is here and it is very disingenuous to say that they are not here. I know the difference between a Douglas squirrel and an eastern gray squirrel. Thank you for your time.

Speaker 1 [\(01:33:44\):](#)

Thank you Ms. Norris. Okay, Ms. KCA, who is the next speaker again and then the speaker after that

Speaker 2 [\(01:33:49\):](#)

Following? Following Beth Elliot Is Sean A?

Speaker 1 [\(01:33:54\):](#)

Okay. Ms. Elliot, let me swear you in. Raise your right hand. Do you swear affirm and tell the truth nothing but the truth in this proceeding?

Speaker 13 [\(01:34:01\):](#)

I do.

Speaker 1 [\(01:34:02\):](#)

Okay, great. Go ahead.

Speaker 13 [\(01:34:04\):](#)

Alright, thank you. So good afternoon Mr. Berg and thank you for being our hearing examiner and I'm here today speaking as a concerned citizen and not as a DuPont City Council member. I am flummoxed as to how this project could have gotten so far. Again, the 2015 DuPont comprehensive plan and our municipal code clearly state a warehouse is prohibited in this area. This area is permitted per industrial use. However, it is not permitted to house a freestanding warehouse distribution facility, which I believe that's what this is. Our comp plan code states on page 71, land use 9.3 limit uses that front on the access extending from center drive to the residential areas in Squa Village to those uses permitted in the business technology park and the business technology park code permitted uses states all uses that are permitted in the commercial office and manufacturing research park districts except freestanding warehouse distribution facilities are not permitted and the definition in our code for warehouse distribution says warehouse distribution means a building or land use in which goods, merchandise and equipment is stored for eventual distribution.

[\(01:35:45\):](#)

Furthermore, land use 9.4 states limit heavy industrial uses to the two existing industrial areas west of JBLM and between the former Intel and DuPont Silicon Road. As these are likely to attract uses that require more input, more material inputs, processes, finished projects, and therefore likely to produce greater volume of traffic. The proponents of this proposal are using, I believe, deceptive techniques by creating a short plan to circumvent the intent of our DMC and comprehensive plan. Adding a green space of 50 feet and putting a parking lot with lots of trailer stalls in front of this distribution warehouse will do nothing to limit the amount of tractor trailer traffic on this access road to the future SE quality village. Furthermore, I refute the staff analysis and conclusion regarding the allowed uses in Chapter 25 Home four manufacturing research park. This is not an office warehouse, this is a distribution warehouse.

[\(01:37:00\):](#)

The building is 256,800 square feet and the office space is only 12,000 feet, which is less than 5% of the entire building. Let's call a spade a spade. This is a distribution warehouse. The proposed warehouse contains 43 tractor trailer parking spaces and over 50 loading docks. Again, it's 256,800 square feet and there's a 6,000 square foot office in the front and a 6,000 square foot office in the back. I can only think that this is for incoming and outgoing truck traffic. In addition, according to D DMC 25 10 80 0 3 oh, the definition of heavy industrial says heavy industrial needs and industrial land use such as chemical processing or machinery manufacturing, which has environmental impacts which may require regulation. Example, heavy truck traffic, noise and vibration. After looking at this proposed warehouse, the traffic impact analysis by Heath and associates shows there are numerous occurrences of heavy truck traffic on a daily basis. You don't have a warehouse with over 50 loading docks and 43 tractor trailer spaces and no heavy traffic. I believe this should be considered a heavy industrial use and we have an industrial section of the city in which this proposal belongs. I believe this facility should not be allowed if our codes and our comprehensive plan are followed. Thank you. Thank

Speaker 4 [\(01:38:46\):](#)

You.

Speaker 1 [\(01:38:47\):](#)

Alright, who is next? Ms.

Speaker 2 [\(01:38:51\):](#)

Penny Call will be up after Mr. Art Petty EYs.

Speaker 1 ([01:38:54](#)):

Okay. Mr. A, how do you spell your last name for the record?

Speaker 14 ([01:38:59](#)):

A-R-E-N-T.

Speaker 1 ([01:39:00](#)):

Okay. Mr A let you swear in. Do you swear or affirm tell the truth or nothing but the truth in this proceeding?

Speaker 14 ([01:39:06](#)):

You got it buddy.

Speaker 1 ([01:39:07](#)):

Alright, great. Go ahead.

Speaker 14 ([01:39:11](#)):

Hi, my name is Sean Aaron. I'm the board president of the Clover Creek Restoration Alliance, a 501C3 nonprofit and a resident of Tacoma. I want to just underline a reason I'm here. The reason I think a lot of people are here is that we're in a reactive state because the county and the city has no plan to restore Qua Creek and has no plan to restore water and salmon in this watershed. So we're constantly hit by these developments that are completely out of line with those goals. So this property is in fact a warehouse on a main road. I think that's pretty obvious. They're going to come in and take out more native trees and replace them with tiny landscape trees. They do this all over the county, seen it before. This is in fact Western Grace rural habitat, well within the historic range property contains dairy oaks. It's right next to JBLM where populations have been better documented and there's a wildlife corridor from JBLM called Chu Creek need to actually do a survey. And you're saying there's no bat habitat here. I've seen bats pull out of these woods with my own eyes.

([01:40:27](#)):

Another question is why is the Methodist church marker being protected and not the historical landscape of Sequal Village? Do we know whether any of these trees have been culturally modified and are they not a part of this historic area? This is a continuation of the destruction of the heritage of this place. Starting with intel on the damn golf course in 1985, we ponds code rightfully called for a 200 foot buffer before eliminating its Equality Creek shoreline status. So why did this creek, which was once full of salmon of all sizes be reduced to the trickle it is today? It's because of greed driven development like this. It's because JBLM stipends water from Squa Lake and warehouses and gravel mines through the rest. So I'd ask you, do we have any responsibility to comply with federal law? How about the Endangered Species Act? We're watching salmon runs decline every year and a southern resident orca calf starving in Puget Sound.

([01:41:31](#)):

There's no real plan to restore Ology Creek and its salmon run. And between this and the gravel mine, the creek will die. This is criminal. You have no right to kill a creek. You have no right. I am continually struck by the undemocratic nature of these hearing examiner processes. The community doesn't want these things, so we bring in a lawyer. I know you're doing your best, but how is this community participation? Why don't we put this through a vote? How is it that the land that we all live on is

completely decided by whoever has the most money? Who wants to jump through the hoops? It's not right. We need a plan to turn things around. We need to plan to get salmon back into the creek and we need to comply with the real need to do so. We need to comply with the Endangered Species Act and I believe DuPont is out of line with the federal law. Thank you.

Speaker 4 ([01:42:31](#)):

Thank you sir. Alright, Ms. Next

Speaker 2 ([01:42:36](#)):

Kenny Coffee is declining. Zach, Zach, is that okay? Sean? I'm sorry if I pronounced your name and after Sean is Eric, go goer.

Speaker 1 ([01:42:56](#)):

Okay sir, how do you spell your last name?

Speaker 15 ([01:42:59](#)):

R-E-N-N-I-N-G.

Speaker 1 ([01:43:01](#)):

Okay, sir. Lemme swear in. Do you swear, affirm and tell the truth, nothing about the truth, this proceeding?

Speaker 15 ([01:43:06](#)):

I do.

Speaker 1 ([01:43:07](#)):

Great. Thank you.

Speaker 15 ([01:43:11](#)):

I am also from Tacoma, part of the Climate Alliance of the South Sound, a citizen run organization to protect our environment. When I heard about this hearing four days ago, I immediately organized my friends to go to the site DuPont West to perform a biodiversity survey. I saw a lot of public comments mentioning the habitat of the western gray squirrel and footnotes by the staff saying that this was according to the WDFW, outside of the western gray squirrel habitat range, which just can't be true. So we went, we identified all over the site, at least 52 species of plants, animal and fungi, and that was just in the afternoon. This is likely not representative of the nightlife that this site has. I'd like to read off some of them. The Oregon White Oak, one of which we found had a trunk diameter four feet off the ground of greater than 18 inches. Snow berries, native blackberries, western hemlocks, a tree that cannot grow on its own. They can only grow beneath the canopy of established trees like Douglas Firs. This is akin to point defiance. They're everywhere there.

([01:44:34](#)):

Douglas firs, of course, red breasted nut hatches, brown creepers, chestnut backed chickadees, red crossbill, California scrub Jays, ULA mushrooms, madone licorice burns, spare fer, sorry. It's a type of lichen, dendrite moss, curly, everlasting huff ball, mushrooms, studded redheaded ants, red huckleberry

western red cedar, western gray squirrel. We saw sitting on a branch on a Douglas fir and a ray of sunshine that sat there and let us look at it for as long as we cared to as though it wanted us to see. It's very special. Mars, I can't read my own handwriting sometimes Marzana species, mahonia species, big leaf maple grasshoppers, red alder, species of wasps, sword fern, bracken thorn, northern flickers, golden crown kinglets, American crows, salmon berries, twin flour, pacific tree frogs, Sierra dome weavers, irania species, earth star mushrooms, banana slugs, French cup mushrooms, crackled, top mushrooms, sulfur, tough mushrooms, horsetail, elderberries, American robins, lady burns, chipmunks, metals, black cap, chickies, Pacific Yu frogs, cloak mushrooms, and the woolly aphid. And that's just the stuff that we were able to identify.

(01:46:19):

There's obviously western gray squirrels in this area. If the WDFW is the ultimate source on this, then your code needs to be updated and they need to come out here and do another survey because all seats are there in addition. Oh, so that's why I believe that this violate, this project violates DMC 25.105. In addition, the preservation of cultural heritage sites. When we went to do this survey, we were looking for that site and we thought we found it. It's a massive, massive Douglas fir called ate and we know that because it's painted on a plank nailed to the tree, it has a painting, hand painting just beneath it and an offering at the base. This tree has likely been culturally modified to point towards indigenous sites such as longhouses or burial sites. And this tree deserves protection by the city where the tree sits Right now, it's right where the northeast corner of the warehouse would be built. It would be destroyed. This tree is older than my grandparents, my grandparents', grandparents. Most likely this tree should be evaluated by appropriate native representatives to determine its significance as a cultural heritage marker. That is all I have to say. Thank you.

Speaker 1 (01:47:48):

Thank you, sir. Ms. Kincaid.

Speaker 2 (01:47:55):

Eric, the next You are or you are not. Okay, thank you. So, oh boy. Pasqua. I'm not sure how to pronounce the, okay. Thank you. And then Gemini is after is the next speaker.

Speaker 16 (01:48:19):

My name is Iffa, spelled A IFE. My last name Pasqua, P-A-S-Q-U-A-L-E.

Speaker 1 (01:48:28):

Okay. Ms. Pasquale, let me swear in. Just raise your right hand. Do you swear, affirm and tell the truth? Nothing but the truth in this proceeding?

Speaker 16 (01:48:35):

I do.

Speaker 1 (01:48:36):

Great. Go ahead.

Speaker 16 (01:48:39):

I had like to thank everyone here today who has shared and spoken. I live in Tacoma. The people of DuPont know their needs. They know what they need for their community to be healthy and I urge you to listen to them. There's nothing I can say here that would add on to the awesome things that people have already shared. But I would like to tell you a little bit about where I live in South Tacoma. A very similar project is taking place, a mega warehouse construction. And it has also been given a determination of mitigated non-significant. And I would like to tell you how it is significant in my life, how it impacts me and my family, my loved ones, my community. It is significant and I believe this construction is significant too.

[\(01:49:36\):](#)

So this warehouse that I live near, it's just a few blocks away and on my way, I live four blocks from our local South Tacoma library and on my way to the, I have pictures on my phone if you'd like to see trucks bringing in cement and gravel and construction equipment will block traffic for five blocks at a time. This is along the South Tacoma Business District. This impacts our local businesses. This impacts my neighbors and these trucks go past preschools, daycares, apartment complexes, and when I'm trying to walk to the library, these trucks park on the crosswalk. I have to walk into the street where the intersection is just to get to the library. I have to yell to when I'm walking down the street with a friend, I have to yell to them so that they can hear me talking over the noise of these trucks.

[\(01:50:42\):](#)

And the warehouse isn't even completed yet. This is just for reconstruction and this impacts our air quality. This is also within the Sarco plume. There's huge dust, clouds of toxic dirt flowing into our neighborhoods. And it is as another similarity with this construction is being built on top of an aquifer. If DuPont is anything like Tacoma, we get a lot of our drinking water from Mount d Tacoma, which is drying up. We see less and less snow pack every single year. The Green River is dwindling and we are going to rely more and more on our aquifers for drinking water. And by compacting and paving over them, you are taking away the people's right to fresh, clean water. I would also like to point out that this is squa land and I think that they should be more properly consulted. Maybe I saw in the document you've handed out, they have agreed to mitigation, which means that they are already asking you to do the least amount of damage possible to their land that we are on now.

[\(01:52:04\):](#)

And the best way to mitigate damage is to not do construction. So please, I urge you, listen to the people in your city that you've promised to protect and take care of so that they can live happy, healthy lives. Where I'm from in South Tacoma, there is an average of 25 years lower life expectancy than those in North Tacoma. This is due to racial composition and environmental destruction. South Tacoma is considered an ecological sacrifice zone and I don't want to see that happen to the people of DuPont. So again, I urge you, do not let this pass. There are no permits yet. Given this is not a done deal, you can do the right thing. Please do not build this warehouse. Thank you.

Speaker 1 [\(01:52:58\):](#)

Thank you. Ms. Kkay

Speaker 17 [\(01:53:08\):](#)

Gemini Knoll, G-E-M-I-N-I, Knoll, G-N-U-L-L.

Speaker 1 [\(01:53:15\):](#)

Okay, lemme swear you in. Ms. Knoll, do you swear or affirm to tell the truth? Nothing but the truth. Ms. Proceeding?

Speaker 17 ([01:53:21](#)):

Yeah.

Speaker 1 ([01:53:21](#)):

Okay.

Speaker 17 ([01:53:21](#)):

That's right. Yes.

Speaker 1 ([01:53:22](#)):

Okay, go ahead.

Speaker 17 ([01:53:25](#)):

Okay, so my name's Gemini Knoll. I'm also from Tacoma. I'm a proud member of the Osage Nation and a member of the Climate Alliance of the South Sound. And there's a lot to say here. Listening to this today and hearing about how much attention and detail was put into preserving the mission monument. It's really hard to hear, really hard to hear. I'm not qually, I'm Osage, so I can't speak on behalf of the Quale, but to me that mission is a marker of the beginning of the genocide right now. Nowhere mentioned what I read. Does it ever talk about how this land used to be the for Quale, the one that they moved to the park in Tacoma, which thank you. Right? And no mention of that anywhere. I think that you talked about working with an quale on the wording of that monument, and I'm looking forward to seeing what that says because it feels like adequate attention is not being given to the indigenous history of this land, this particular property, but that has less legal bearing.

([01:54:37](#)):

What I do think has legal bearing is the bold decision. For those that aren't familiar, the bold decision says that indigenous people, specifically the Naali and the Puy Allah, people have a right to salmon and to their traditional ways of life as laid out by the Medicine Creek Treaty and damaging this creek would be in direct violation of that bold decision. So I think that should be taken into consideration in addition to everything other people said. I also want to speak about my own personal experience. I also live in Tacoma and my mom was killed by a car, by a truck crossing the street in front of her house. It was not the only traffic related death in my family. My second cousin's little baby son, six years old, died, was hit by a car, a truck with his parents crossing the street in front of his parents.

([01:55:37](#)):

These traffic and trucks kill people. These are not neutral decisions. And driving in here, I drove past the apartment complex that will be impacted by the traffic from this warehouse if it's constructed. And you know what? That apartment complex has a playground. It's got a playground. There are families and children who live in that that will be having semi trucks and pollution driving past them every single day. And if the trucks don't kill them, the pollution will. I am a published research scientist. I got a degree in chemistry with minors in math and physics that, but you don't need that stuff. But know how dangerous diesel pollution is and living that close to so many trucks is going to harm the people in those apartment complexes. And I got some experience living in apartment complexes, right? I know that the people who live there are not wealthy do white folks, right? It is marginalized people is people of color. They are

going to bear the brunt of this project as indigenous people already do. Right? So I hope that resonates with some of you and thank you for your time today.

Speaker 1 ([01:56:47](#)):

Thank you Ms. Kincaid.

Speaker 2 ([01:56:52](#)):

We'll move to the folks that are virtually, we've called off everybody on the list.

Speaker 1 ([01:56:58](#)):

Okay, well lemme start off just we'll get the ones who really want to speak first. If you want to say something, click on the virtual hand at the bottom of your screen. We'll pick you up first and then we'll ask if anyone else is left out there. Any takers there? Participants? Alright. Let's see. Mr. Ludwig, did you want to say, and Ms. Kincaid, how do they unmute themselves if they want to speak? Is that something you can do on your end?

Speaker 2 ([01:57:21](#)):

I'm sorry, would you repeat that? Oh,

Speaker 1 ([01:57:23](#)):

How do they unmute themselves if they want to speak? I see Ms.

Speaker 2 ([01:57:26](#)):

Oh yes, they can unmute themselves. We can also unmute.

Speaker 1 ([01:57:29](#)):

How do they unmute themselves? I see Ms. Ling would like to speak. We'll give her a chance to talk. Go ahead Ms. Kim. Let me swear you in real quick. Can you hear me?

Speaker 18 ([01:57:39](#)):

Yes, I

Speaker 1 ([01:57:39](#)):

Can. Okay.

Speaker 18 ([01:57:40](#)):

Can you see me?

Speaker 1 ([01:57:41](#)):

Yep. Can see you. Okay. Just raise your right hand.

Speaker 18 ([01:57:44](#)):

Well, I'm on my front porch and it may get noisy here. I couldn't come down here today to where you are, but my friend Karen let me know that this was a very important meeting and the more I looked into it, the more I realized she was absolutely right.

Speaker 1 ([01:57:59](#)):

Okay. Ms. Cameron, let me swear you in so we can make your testimony official. Just raise your right hand. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 18 ([01:58:08](#)):

I do.

Speaker 1 ([01:58:08](#)):

And your last name is spelled K-I-M-M-E-R-L-I-N-G, is that right?

Speaker 18 ([01:58:12](#)):

That's correct.

Speaker 1 ([01:58:13](#)):

Okay, good. Now finally, you can go ahead.

Speaker 18 ([01:58:15](#)):

Okay. Well, a lot has been said by people that have very strong opinions, and I'm a very strong opinion too, so there's not much I can add to what EPA and Gemini and Sean Re and Sean Aaron and that first wonderful woman said, so I'm going to sing you a song instead. That represents what a lot of us, I'm a raging granny, so I can do that, but please do not go ahead with this project. It doesn't make sense. It's against nature. We're facing climate catastrophe and to pave over an aquifer to put all this heavy construction withers, there's people living, is just unconscionable. I have to put the phone down while I sing my song, so bear with me. And this represents a lot of raging grannies that couldn't make it here today. You're welcome to sing along for the chorus Bear paving our green space to build mega warehouse lots, thousands of diesel trucks a day and 20 acres of parking spots. Here's your course. Don't at all. Excuse me. Don't at all. We seem to go that the city's passed this down, past this on the down low. They're hating our green space to build mega warehouse lots. Oh no DuPont. Oh, not for DuPont Hill chop heritage trees to build a concrete feed island. No more heritage trees or wetlands or aquifer. Don't it always seem to go that the cities passed this on the download. They're paving our green space to build a mega warehouse. Oh no. D DuPont, not for DuPont. Hang on.

([02:00:19](#)):

It may be humorous, but I'm serious. They want to move the trail and the neighbors are in distress. Council changed the ordinance. We won't put up with this mess. Hey, bill Verin and Avenue 55, those are the people responsible for this. Just pack up your stuff and go. We don't want your warehouse. Answer is no, don't at all. We seem to go that the city's passed this on the Dow low. They're paving our green space to build mega warehouse lots. Oh no. DuPont not for DuPont buyers plugs and droughts. Our planet is in distress council. Okay? Giant warehouse, but we can't allow this mess. I'm not going to sing it. Of course, again, hundreds more trucks on the new road, everything and robotic workers, they don't even have to pay. Give us a break. This isn't about new jobs, this is just about greed. And we know when we are being robbed.

(02:01:40):

We think about our children and climate change all the time. Don't pave over the aquifer. This scheme is just a damn crime. Don't you think it's time for us to stand up to city councils Now? Don't let 'em pay paradise and put up a damn warehouse. Don't let 'em pay paradise and put up a damn warehouse. That's my testimony. But I also want to include Sean, Sean, efa, Gemini, Karen Conrad, and all of the people who testified against this. Each one of us that showed up in person or online represent a lot of other people that have very strong feelings about this. So please take that into account. Do an adequate cipa. Thank you.

Speaker 1 (02:02:41):

Thank you Ms. Cameron. I mean, yeah, I think that's probably some of the most memorable testimony I've ever had. I've done over 2000 hearings and that's the first song I've gotten, so thank you. I really appreciate that. Thank you.

Speaker 6 (02:02:51):

Alright, bye-Bye.

Speaker 1 (02:02:52):

Goodbye. Alright, next is Jamie Cortez. Ms. Cortez, it looks like I can hear you. So is your last name spelled T-O-R-T-E-S? Is that correct? Okay, let me swear in. Just raise your right hand. Do you swear affirm tell the truth, nothing but the truth in this proceeding?

Speaker 11 (02:03:11):

That's right.

Speaker 1 (02:03:12):

Okay, great. Go ahead.

Speaker 11 (02:03:15):

Just want to say thank you for all the comments, all the people that Marilyn just mentioned, and I want to point out, when speaking about the previously submitted public comments, that traffic was listed as an aesthetic concern. As Gemini highlighted, this is not just an anesthetic concern, this is an actual safety concern. And of course the noise pollution as well. It's right next to that walking trail plus that housing development. So trucks would also have to pass those people walking to school where the school is right nearby. I'm sure a lot of those kids probably walk. It's just a short walk. And then there's also multiple crosswalks that are right outside that school, along that main road that would turn off into the proposed warehouse site. And I want to speak from my expertise about the noise pollution as a nervous system regulation disruption. So our nervous systems are connected to so many organs in our bodies.

(02:04:17):

They help make sure that everything is running as should be. Our rest and digest system is able to work, and so with so many kids and just people in general living in that nearby apartment complex, this is going to disrupt their level of sleep, which vastly disrupts their level health, overall health. It'll impact the kids' learning and emotional regulation. I could go on and on, but those are just some of the main points that I wanted to highlight there. And I also wanted to talk about the cultural site. When we visited

this area, we thought that the cultural site mentioned in the documents was about the hete tree. I sent a picture of this tree to my friend who is Duwamish, and they immediately recognized that as a culturally modified tree. And so it's really a shame that this isn't being uplifted as a cultural site.

[\(02:05:19\):](#)

Instead, it's the mission which signifies the genocide of the quale peoples and the indigenous peoples of this land. I also wanted to point out and speak to some other folks that mentioned that another warehouse site is not needed. That there is vacant warehouse site already available within 10 miles of DuPont. There's just shy of half a million square feet of available warehouse space. We have faced this similar issue in South Tacoma where there's almost, there's almost 2 million square feet of available warehouse and it's just a bad business decision. I have a business degree and I would not be expanding into this kind of endeavor when there's already so much of available warehouse space. That's not to me a smart business decision. And I can see that the developers on this call are visibly uncomfortable as they should be. The public is speaking out against this because we know that it will harm our health. We know that for sure. We've seen it time and time again. We've also seen other similar projects, flood nearby areas of residents and those people don't have that insurance coverage because they didn't believe they were in a flood zone. So this is going to impact us in so many different ways that people will continue to push back. It will be uncomfortable for you every step along the way and as it should be because you are sacrificing our health for your dollars and your profits and we will not allow that. Thank you.

Speaker 1 [\(02:06:56\):](#)

Okay, thanks Mr. Cortez. Alright, let's see. Any more takers on Mr. Ludwig? Did you want to say anything or Walt? I think that's it, right? Ms. Kincaid?

Speaker 2 [\(02:07:13\):](#)

Yes. Unless we want to extend anyone that maybe didn't sign up and

Speaker 1 [\(02:07:19\):](#)

Oh well certainly if anyone in the audience who didn't sign up to speak you raise your hand if you want to say something.

Speaker 2 [\(02:07:25\):](#)

I do see two hands raised.

Speaker 1 [\(02:07:27\):](#)

Okay. People haven't spoken. Sure. Let 'em out.

Speaker 19 [\(02:07:33\):](#)

My name is Krista Novat. K-R-I-S-T-A-N-O-V-A-K.

Speaker 1 [\(02:07:37\):](#)

Okay. Lemme swear in. Do you swear firm tell the truth, nothing but the truth in this proceeding. Okay, great. Go ahead. Yes.

Speaker 19 [\(02:07:45\):](#)

Gosh, when I approached I just let out this big sigh because I feel like we've been here before. This is like, oh my gosh, I want to hit my head against the wall. Sorry. I'm going to touch on a couple things that other people did. I think other people did a great job of showing how this is completely against our code. It is up against a road. Doesn't matter how you paint it. We used to say put lipstick on it. It's still ugly and it's still a warehouse. It doesn't matter what way you turn it, it doesn't matter if you add 50 feet buffer that you're going to build up later anyway. It's still up against the road. I think the points about the western gray squirrel are fantastic. I think if there has been an analysis of it done, it's not a thorough one.

[\(02:08:32\):](#)

And that tree that keeps getting mentioned, I really want to get with one of you and get a walk out there because I want to know where that is. And I'm sure these gentlemen do too. And the gentleman on the video, the one thing I can't really understand either or why you would want to put a warehouse aside from money, why would you want to put a warehouse in a residential area? And that's not just you, but that's our city. With all due respect, I can't understand why we would approve this project and give a thumbs up to it. We have the Creek site apartments as been mentioned. That is one of the only areas in our town where young families can come live, be part of our school district, be in this wonderful community. And as was mentioned, right on that road is a playground.

[\(02:09:24\):](#)

I mean that is a family creek site, apartment pool. Young families come there. It is affordable housing in a time when everyone needs to be concentrating on affordable housing. What we're doing is we are making that a completely unlivable space. If I had a middle schooler who had to walk to school across sequela to road every day where big Mack trucks are coming in, heck no, I couldn't live there. The prices there are going to go down. It's going to become an undesirable location and it will no longer be an affordable housing. Well, it will be, but it won't be a nice place to live. I'm really concerned with why we would jeopardize some of our only affordable housing in the town just to let a warehouse come, a warehouse that might sit empty like other warehouses. Some of the other things I'm concerned with are the noise and the pollution, and I couldn't find it in this big document, but on the screen I swear something was put up that six months after it's built, they'll determine the noise level something.

[\(02:10:34\):](#)

So I might've misread that, but it was something about six months later there'll be an analysis of noise and that's disturbing. Once there's a warehouse there, there's no going back. If there's 40, 50 bays for a truck, 82 wheelers to come in, that's noise. No matter what, you can't do anything about it. It's already been built. So I think there's too many things going on. I appreciate the updates that were attempted to make this a more palatable project, but I highly recommend this project get the rubber stamp of not the river stamp, but the stamp of no. And that this warehouse needs to go somewhere where it belongs and it does not belong on this lot. It does not belong near our residential areas. Creekside Apartments, Edmunds Village already hear the beeping, the trucks and the noise from the mine and Amazon. Why would we add that and make that area more miserable to live in? Thank you.

Speaker 1 [\(02:11:37\):](#)

Thank you. Ms. Kade. You said there's one more speaker. Alright sir, what's your last name for the record?

Speaker 20 [\(02:11:49\):](#)

T-H-A-Y-E-R.

Speaker 1 ([02:11:51](#)):

Okay,

Speaker 20 ([02:11:51](#)):

Sir. Lemme swear you in. Right across the street.

Speaker 1 ([02:11:55](#)):

Okay. Do you swear affirm tell the truth, nothing about the truth in this proceeding?

Speaker 20 ([02:11:59](#)):

Always. I do.

Speaker 1 ([02:12:00](#)):

Okay, go ahead.

Speaker 20 ([02:12:04](#)):

Just a couple of notes that have already been touched on that. I just want to reemphasize. How's was a geography major in college? Habitat is not something you could define by a highway or a fence. Habitat defining a habitat is like designating a no peeing corner and a ca habitat's where the animals live. Not over there, not over here, whatever they are. Okay. So study for habitat needs to be done on a regular basis because it's constantly changing. Second, I was in the army for 22 years, no plans to survives the first contact intact when the construction on this begins. If it begins and those are backs into a tree that not supposed to be knocked down or a tanker truck spills, gallons of diesel in the parking lot, there's no turning around from this. Once somebody says yes, go ahead and build it. What happens, happens.

([02:12:58](#)):

I put to the city or the council after the trees are cut down after the animals are displaced, after the pavement is in place, what is our recourse? In the case of noise and light violations, what do we do? The warehouse is there. And lastly, it bothers me as an individual that as a resident owning property here in DuPont, that we do not have a legal say in this. All we have is to come up here and make comments on our personal opinions, on our experiences and on our desires. There's no vote that we can do. That's all I have. Thank you.

Speaker 1 ([02:13:36](#)):

Thank you, sir. Okay. Ms. kca, is that everybody?

Speaker 2 ([02:13:41](#)):

We have another person coming

Speaker 1 ([02:13:43](#)):

Up. Okay, sir, what's your last name for the record?

Speaker 21 ([02:13:48](#)):

My name's Mike Brown.

Speaker 1 ([02:13:49](#)):

Okay. Mr. Brown.

Speaker 21 ([02:13:50](#)):

K-E-B-R-O-W.

Speaker 1 ([02:13:52](#)):

Yeah. Could figure that one out. Do you swear Affirm tell the truth, nothing but the truth in this proceeding?

Speaker 21 ([02:13:58](#)):

I do.

Speaker 1 ([02:13:58](#)):

Okay, great. Go ahead.

Speaker 21 ([02:14:00](#)):

I wasn't going to get involved in this. I tried to stay out of it, but I've lived here for 22 years and part of the reason why I lived here is because I found this to be a kind of a unique community in the way it was designed to have a complimentary residential commercial business and green space areas. And one of the things about DuPont, I'm a runner and I came here a lot because of the trails around DuPont and the green spaces in that area. At that part of it, the thing about DuPont is that it has a unique environment, but the crown jewel I think of that environment is the Squa Creek trail.

([02:14:53](#)):

I go there frequently, I walk down to the sound and I spent a lot of time on that trail. But the thing about the trail is that I always find people there. It's huge. It's part of the activity of living in DuPont and it's educational. It's a place where families go. It's a place where people go to be with nature, but it is also a micro rainforest that we can learn from going down through there. So I spent a lot of time there and I think as I say, it's a crown jewel. The other thing about it is it's not just residents that Houston, when I have visitors come to town, that's one place I want to take it. I want to take 'em to this Quality Creek trail because I think that's something unique. It's not only that I take people there, I find that people come there from out of town to go down the SEC Wall Creek Trail.

([02:15:53](#)):

It's not just a facility for residents. It's something that the region appreciates. So you can't tell me that putting a 256,000 square foot warehouse is not going to change the aspect of that crown jewel that we had. Another part about my life, I'm a retired manufacturing manager. I worked in the PUL and paper industry. I'm not an environmentalist, although I believe in environmental concerns. I'm not a person that spends my time being one with environmental concerns. I respect that, but that's not me. I'm a manufacturer. I've managed warehouses, I've managed distribution warehouses, I've managed just about every type of warehouse. There is a warehouse with 200, with 50 plus truck doors is a distribution warehouse. There's a saying that you can put lipstick on a pig, it's still okay. 50 some doors is in the business is going to be at some time or another in the distribution business, you don't build that many doors and not have a number of trucks coming in and out of the place. So I can't, aside from my concerns about the trail, I look at the location of this warehouse and people have already mentioned this, but I can't imagine why anybody would tolerate putting a place with 50 some truck doors next to

adjacent to a residential complex, which is the creekside is, and having the road go right through that complex to the facility. So it's not something that makes any sense to me. So anyway, I wanted to say a couple of words and support the folks that have spoken before me and throw in my 2 cents.

Speaker 1 ([02:18:20](#)):

Thank you, sir. Appreciate your testimony. Okay, Ms. Kincaid, anybody else?

Speaker 2 ([02:18:28](#)):

I believe that's all of it.

Speaker 1 ([02:18:30](#)):

Okay. Yeah, I think we're cutting in their dinner time for people. So that's pretty good timing. Let's move it on then to Ms. Klein for any concluding comments, rebuttal information,

Speaker 5 ([02:18:46](#)):

A couple of things to follow up on. One was related to testimony from Ms. Elliot who was talking about some goals and policies in the comprehensive plan. And those were actually in the business and technology park section of the comprehensive plan. So that could cause some confusion. So I want to make sure that this is in the manufacturing research park area. So in the DMC 25 45 allowed uses, distribution uses are also permitted. The applicant presented the proposal as a warehouse slash office. But just to note that we have the performance standards in 25 45, the applicant has said that this is a speculative building, so they don't have a user lined up yet. And so there's some of the performance standards that are listed there that we have made conditions of approval. So when a building permit comes in, they need to make sure that the particular use meets those performance standards. Things such as handling of hazardous materials, for example, would not be allowed in this district. And there's several others. Otherwise, did you want to speak to the tribe?

Speaker 2 ([02:20:25](#)):

Yeah. So I need to be sworn in though, Mr. Examiner.

Speaker 1 ([02:20:28](#)):

Okay.

Speaker 2 ([02:20:28](#)):

I had a couple of things.

Speaker 1 ([02:20:29](#)):

Sure. Do you swear affirm to tell the truth, nothing but the truth in this proceeding?

Speaker 2 ([02:20:34](#)):

I do.

Speaker 1 ([02:20:34](#)):

Okay, great. Go ahead.

Speaker 2 ([02:20:36](#)):

So I did want to just mention that last night we did have an email from Porsche LE from the Department of Fish and Wildlife, DFW. And in that email I have forwarded a copy to you and to the applicant. The request is actually to, apparently she was not able to do her review of when the notice of application during the comment period for the CPA MDNS. She was just requesting for there to be a consideration for perhaps the record to be left for her to do her review and submit her letter at the end of the week. So I just wanted to make sure that that was something that we received last night and forwarded to the applicant and to you.

Speaker 1 ([02:21:25](#)):

And from what I recall, she was about the trees. Right. Was it trees specifically? She mentioned in her request to do additional review,

Speaker 2 ([02:21:34](#)):

Yes.

Speaker 1 ([02:21:35](#)):

Yeah. Okay. Alright. Okay.

Speaker 2 ([02:21:38](#)):

And then just the other thing is the city has been working with the SQU tribe and you heard the applicant talking about the SQU Delta Association. I just wanted to make sure that there was, because one of our folks that provided some comment tonight, I don't want there to be confusion. There is obviously the NDA or Qua Delta Association there or not the Quale tribe and the African has been working with that organization and that is not something that the city has been party to, but we have been working with the Ms. Waldi tribe throughout this process. So I just want to, to make sure that that was clarified for anyone that might've be confused about those two entities. Thank you.

Speaker 1 ([02:22:27](#)):

Well, I had a question from staff there. A couple of people commented about a culturally significant tree on the property. Is that referenced in the archeological surveys at all or do you have any information on that?

Speaker 2 ([02:22:40](#)):

It is not, and we have again reached out to the QU tribe about that. I know that they've been on site and they have looked at it, but they did not provide any sort of comment about that tree. They are, we just haven't received anything. But there is a tree there that it appears to be a culturally modified tree. Although we haven't had any expert that have provided that to the city. And I'm not an expert, I don't know, but we have had tribe out there to look at it and they

Speaker 1 ([02:23:19](#)):

Okay. Specifically that tree, you're saying they specifically looked at that tree and

Speaker 6 ([02:23:24](#)):

Specifically they have

Speaker 1 ([02:23:24](#)):

Looked at that tree? Yes. Okay. Alright. Perfect. Okay, thank you. Okay, then I think we can move on to applicant's for final comment.

Speaker 7 ([02:23:33](#)):

Thank you, Mr. Examiner. And if there's anybody else on my team who feels compelled to speak, they can. But a couple things. So one, I did propose a couple of minor changes to conditions of approval. I've emailed that to both Ms. Kinka and Ms. K client. I also emailed a copy of the Superior Court decision, should you want to look at that? I know you can find it. Thank you. That would make it available On the WDFW comment, I mean WDFW has had this under review for some time. I assume that they're one of the agencies that gets comments. It's just concerning to see that they haven't, that at least one person isn't aware of whatever opportunity they've had. The concern I have about leaving the record open is that number one, CIPA is closed. So I don't know what the authority would be to impose additional requirements, but two, we wouldn't have an opportunity to respond to that and just to have something come up this late and that this far out of the normal comment and response period would be of concern to us.

([02:24:40](#)):

And then the last thing I wanted to say is a careful response to the people who I think expect a response and talk about how uncomfortable the applicant's team looks. It is not because they feel embarrassed or there's been any shortage of work done on this project. The frustration is having to listen to people who obviously haven't read the record, which is at least 1200 pages long just in this hearing with another 1200 before that who obviously haven't read the archeological studies that go back decades who aren't aware of the cleanup that's been going on on the site since the 1990s, all aimed at an industrial use. And yet they want to talk about how this is in the midst of a residential area. They don't understand the fact that one of the owners of the property currently is the same person who built the Creekside apartments.

([02:25:37](#)):

And at that time, that was exactly what was allowed on that property. And he built it knowing full well that this is what was going to happen on this property. The fact that all these agencies have undergone years of study on this, not just thinking about it, but reading expert reports prepared independently, reviewing those with their own independent experts and coming to conclusions. I mean, just listening to Ms. Klein's staff report should reassure everyone that this process has a lot of integrity, that a lot of thought's been given to it, that the city has adopted standards that date back decades for in some cases that this property, the trail that people have expressed concern about will not have a view of this site and that the noise requirements have all been met. It is just frustrating to listen to that and knowing on the one hand that there is a good answer to everything, but also knowing that this examiner has limited time to hear this case and knows all of what I've just said for the last five minutes. So it's really not necessary. But at some point I feel like I've got to advocate for the process and the integrity of the process. And so my last remarks should be addressed to that and not necessarily to anything that you need to specifically consider, but I feel like at some point I need to get it out my chest. And there it's

Speaker 1 ([02:27:03](#)):

Okay. Mr. Lin, on the Department of Wildlife request for additional comment, you mentioned that SEPA's finished, but I mean the Siteline Celeste to comply with the critical areas ordinance and the tree retention standards. So it would seem that WDFW could have pertinent comments that still could be addressed in terms of site plan review.

Speaker 7 ([02:27:25](#)):

And that's where I guess I would fall back on the fact that there was a notice of application file before there was a notice of this hearing. People seem to have found out about it more from the newspaper than the normal. Right, right. I'm assuming W DFW had received those comments, if I'm incorrect in that.

Speaker 1 ([02:27:46](#)):

Yeah, and I don't like it either. I know that Washington State law requires us to be very efficient and get these decisions out in an expedited timeframe, all that kind of thing. But obviously this is an agency that has a lot of expertise on the issues they want to address and trees and I don't know, when they talk about trees, they may be talking about squirrel habitat. It is a concern of many people. So yeah, like I said, I don't like having to extend the review timeframe, but I think I'm going to have to, just to make sure we get all the pertinent comments, I'll give 'em until Thursday at five to provide comments. The thing is, if the new information comes in, the public has the right to respond to it, as of course does the applicant. So Ms. Kincaid, what I'm going to do is, I mean I'm just giving them a couple days because they should have brought this up earlier, but if they can get their comments in by five, could you post them on the website, Ms. Cade, and we'll let the public respond through next Tuesday, and then applicant, you can take as much time as you need. You're the ones who have a rights to have this done expeditiously. You can take as much time as you need to respond to those written comments. Can you do that, Ms. Kincaid?

Speaker 6 ([02:29:04](#)):

Yes.

Speaker 1 ([02:29:04](#)):

Okay. Alright. As I said, they talked about trees and trees could extend to squirrel habitat. I don't know, I'd be interested to hear what their perspective is on whether this area. So

Speaker 2 ([02:29:16](#)):

Just to clarify, Mr. Examiner, we're going to, if the WDFW can send something in by Thursday at 5:00 PM it's in the record.

Speaker 1 ([02:29:26](#)):

Yeah. Then you'll post that on the website, preferably by noon the next morning, shall we say, the public. Then you'll have an opportunity to suspend present responsive comments by Tuesday of next week, which is, lemme pull that up on my calendar the 22nd of October. And then the applicant by state law we're required to come up with these decisions and within 120 days of a complete application, I have to come out with a decision 10 days after the record is closed. So there's always a sense of urgency here, but if the applicant decides to take two weeks to respond, I'm not going to have a problem with that because they're the ones that have the right to have an expedited decision. So

Speaker 7 ([02:30:06](#)):

We'll be quick.

Speaker 1 ([02:30:07](#)):

Yeah, sounds good. Yeah, and I'll of course issue the decision 10 days from when I get the applicant's final response on that. So with that, I'm closing the record except for the WDFW comments and I'll make some quick comments at this point. This is going to be one of my harder ones. I can tell this is going to be a really difficult decision to navigate. I want to start off with kind of a fundamental point, I think because a lot of people who aren't accustomed to working with the land use permitting process are understandably a little confused about why the democratic process doesn't play a larger role in here. I mean, for starters, I can tell you if I were to write a decision that basically said, I know that the code allows this, it's zone for warehouse use, it's permitted in the zoning code, but I'm going to deny it because there isn't a single person in the city of DuPont that wants this project here.

[\(02:31:00\):](#)

This would be probably the easiest case Mr. Lin has ever taken to court. He would just go straight to court and point out the zoning code authorizes these warehouses we're entitled to it. The court would agree without any hesitation, the court would then award a damages claim against the city of hundreds of thousands or millions of dollars and tell the city that it has to approve it. That's the law, that's the way it's set up. The democratic process comes in and establishing the laws that tell people what they can do with their property. But once those laws are in place, the state and federal constitutions kick in, which say that if laws say you can do something with your property, you're allowed to do it. And you can't change that because of popular sentiment against it. The biggest liability claims in the state of Washington have been issued against cities and counties that vowed the political pressure and approved things that they weren't supposed to or rather denied projects that they were required to approve.

[\(02:31:54\):](#)

Thurston County did that with a gravel pit where they had to pay \$12 million because their coat said it should be allowed, but they denied it anyway. The city of Buran, because they didn't want more affordable, or I shouldn't say affordable, more apartment complexes subjected a project to years and years of delay just because they didn't want it. And they also ended up paying another \$12 million to that developer. Nobody wanted that apartment complex in Buren, and nobody certainly wanted another gravel pit in Thurston County or a bigger one. I think maybe it was an expansion, but the law ties your hands there. So we have to follow the law. And I have to say, I really am impressed and thankful that, I mean the DuPont residents, a lot of, you're very well informed about what the law requires here. You've made really good arguments and your efforts have made a difference in the past and they could very well make a difference in this case.

[\(02:32:49\):](#)

As Ms. Norris said, and this is exactly what I was thinking, intent is paramount in this. And when you think about that law that says you can't have the warehouse of budding a major street, did the city council when they adopted this law have in mind that if you put in a 50 foot strip between via road and the use that that's not considered abutting anymore? That's an interesting question that I'll have to grapple with. I mean, it's not the clearest of laws. I mean, you could say the intent there was you should have some intervening use in a 50 foot strip is really no use. I mean, unless you consider vacant use to be a use. So has that lo and followed here? I think that's going to be probably, again, the major issue of this case. The marker issue. I think that was interesting.

[\(02:33:37\):](#)

I can't disagree with, I think the court of appeals made a good decision on that. Keep the marker where it is. From a practical functional standpoint, I kind of have to agree with the applicant. I remember the evidence in that case. The evidence was the location wasn't very clear and it was just kind of approximate and it would've maybe served the public better if it was right next to the trail where people

could enjoy it. But this is, like I said, ultimately the law takes precedence and the marker law says keep the marker there, or it could be interpreted that way. So we go that way. And that's the way I'll be looking at that of a budding language as well is have we meant the intent and the way that this is written. So yeah, a lot of good arguments and all that. But ultimately, like I said, those of you who are wondering why can these things be allowed, the code says a warehouse can be built there.

[\(02:34:26\):](#)

So it obviously has to be very seriously considered and there has to be a good reason based on the code as to why it shouldn't be there. So I don't know why DuPont has allowed so many warehouses in the city, but it has in its zoning code. And if you want to be heard on that issue, it's to change the zoning code. And when I say the democratic process too, of course we have different levels of democracy. We have that to state, local, and even the federal level. And they're all having input as to what you can put in your zoning code. So the city council doesn't always get to have the final say as to what's required. I think a classic example are essential public facilities where cities are essentially forced to accommodate uses that are unpopular, like airports and landfills and halfway houses for sex offenders and things like that.

[\(02:35:15\):](#)

You have to put that in your zoning code. And it's been several decades since I looked at it, but it was really unclear. But there has been case law that says that all cities that are big enough should have some area where you have industrial uses and you have warehouses and that kind of thing. And so maybe the council actually didn't want warehouses, but they were required by law to allow them somewhere and they thought this was the best spot. So this is what we have, but the developer has the right to rely upon the fact that the zoning code says warehouses are allowed there and we need to focus on the laws to figure out if it's consistent with all the other requirements. And that's my job. And that's why the state has a hearing examiner system because a lot of times the city councils do bend political pressure and end up costing their taxpayers a bunch of money because they couldn't follow the code.

[\(02:36:03\):](#)

So it's a tough spot, unfortunately. But as I said, I think the fact that you all have been so well informed on this really makes a big difference. And if there's any way to get what you want, you've done about it the right way. And that was by studying the code and making arguments based on the code. So I really appreciate real, like I said, really good comments today. I have a lot to look over. I'm going to have all this transcribed and I have a tough job ahead of me. So anyway, thank you all for sitting through a very long hearing and hope you have a good dinner and we're adjourned for today. Thank you.