

CITY OF DuPONT
WASHINGTON

RESOLUTION NO. 10-382

A RESOLUTION OF THE CITY OF DuPONT, PIERCE COUNTY, WASHINGTON, AUTHORIZING ENTRY INTO A DEVELOPMENT AGREEMENT WITH FIRST INDUSTRIAL REALTY TRUST INC., FOR THE DEVELOPMENT OF FIRST PARK NORTHWEST LANDING

WHEREAS, the City of DuPont and First Industrial Realty Trust Inc., propose to enter into a development agreement under RCW 36.70B for the First Park Northwest Landing development; and

WHEREAS, the City Council held a public hearing on September 22, 2009 to take testimony on the development agreement; and

WHEREAS, the City Council reviewed the agreement on September 22, 2009 and October 13, 2009 and deferred the issue to the Planning Agency for review and recommendation; and

WHEREAS, the Planning Agency reviewed the agreement at their November 9, November 23 and December 14, 2009 meetings. Craig Koeppler, representing DuPont Corporate Park, testified in favor of the development and of the development agreement extending the time to complete the project. Mr. John Bodenhamer, CEO and Executive Director of the Pacific Northwest Golf Association, the Washington State Golf Association and The Home Course, submitted a letter dated December 7, 2009 in support of the agreement.

WHEREAS, the Planning Agency, at the December 14, 2009 meeting, recommended the City Council authorize the Mayor to enter into the development on a 3-1 vote; and

WHEREAS, RCW 36.70B.200 requires a development agreement to be adopted by resolution;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DuPONT, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to enter into the development agreement with First Industrial Realty Trust Inc., a copy which is attached hereto as Exhibit A and by this reference fully incorporated herein, for the First Park Northwest Landing development.

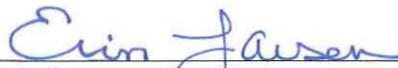
PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 12 DAY OF January 2010.

CITY OF DuPONT

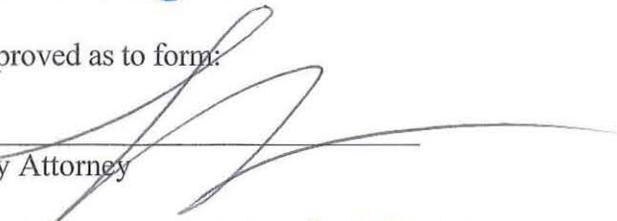


Tamara Jenkins, Mayor

ATTEST/AUTHENTICATED:


Erin Larsen, City Clerk

Approved as to form:


City Attorney

Filed with the City Clerk: 1-27-10
Passed by the City Council: 1-12-10
Date of Publication: N/A
Effective Date: N/A
Resolution No. 10-382

FIRST PARK NORTHWEST LANDING DEVELOPMENT AGREEMENT

THIS AGREEMENT, by and between First Industrial Realty Trust Inc. (“Developer”) and the City of DuPont, a Washington municipal corporation, herein referred to as the City, is entered into under the authority of RCW 36.70B.170-190 authorizing development agreements in the context of developments approved by the City.

WHEREAS, Developer is the owner of 260.74 acres in the City in the area referred to as “First Park Northwest Landing” in the Business Tech Park zone, Chapter 25.40, DuPont City Code, and described in Exhibit A; and

WHEREAS, the City and the Developer have processed a preliminary plat for the development of the property in question, the approval of which has authorized the construction of a significant amount of infrastructure, including sewer and water lines, stormwater facilities, and transportation facilities as part of the recording of a final plat; and

WHEREAS, the terms of plat approval are set forth in the decision of the City of DuPont Hearing Examiner dated April 20, 2009, as supplemented by the decision dated June 12, 2009, copies of which are attached as Exhibit B-1 and B-2, and a map of which is attached as Exhibit C; and

WHEREAS, the Developer and City have completed substantial environmental reviews in connection with the plat of the property, including transportation reports, geological assessments, historical analyses, and other reports listed in the First Park Northwest Landing SEPA Checklist dated October 9, 2008, Mitigation Agreement dated November 25, 2008, and MDNS dated December 23, 2008, providing for impact fees, transportation improvements, and water and sewer infrastructure improvements for the entire project indicating the planned development is consistent with the City of DuPont Comprehensive Plan and development standards; a copy of which Mitigation Agreement and MDNS are attached as Exhibit D (Exhibits B-1, B-2, C, and D are collectively referred to as the “Approval Documents”); and

WHEREAS, the City agrees that the plat has been approved with a development potential identified in the SEPA documents previously referenced and projects within the parameters of the environmental documents, including total transportation (including the mix between trucks and cars), total water usage and total wastewater usage contemplated within the overall demand identified in environmental documents have been considered within the approval granted herein; and

WHEREAS, the City and Developer recognize that a final plat must be recorded for sales and development to occur, and that once a final plat is filed, the property is protected against a change of zoning for a period of five years, a period much shorter than the anticipated build out rate for the full property; and

WHEREAS, the City wants to encourage the Developer to make the investment in infrastructure serving the entire platted property, even though the build out period may be much

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longer than five years, and this Agreement provides the necessary assurance to warrant such investment; and

WHEREAS, the Developer is prepared to make the significant infrastructure development to build out the full plat to final plat approval with the assurances provided herein; and

WHEREAS, the State of Washington authorizes development agreements following the required statutory criteria as set forth in RCW 36.70B.170-200, the pertinent provisions of which provide:

A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. ...A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

NOW THEREFORE, the City and Developer do agree as follows:

1. Preliminary Plat Approval: The preliminary plat approval is the approval given in the Hearing Examiner's decision dated April 20, 2009, together with the supplemental decision dated June 12, 2009, which has identified the standards under which the project is to be constructed.

2. Effective Date: This Development Agreement shall become effective upon the approval by the City Council and execution by the parties. In the event of appeal of this Agreement pursuant to the terms of Chapter 36.70C RCW, the provisions for this Agreement shall remain in force during the pendency of any litigation unless stayed by an appropriate order of the Court.

3. Final Plat Approval:

a. The Developer may submit portions of the preliminary plat for final plat approval provided the portion submitted for approval has all of the on-site and off-site infrastructure constructed necessary to serve the portion of the plat submitted for final approval or has bonded for such completion consistent with the requirements imposed by the terms of the City's Hearing Examiner's decision, MDNS and Mitigation Agreement.

b. The Developer agrees to complete or bond for completion a final plat for the entire property submitted for preliminary plat approval within five years of the anniversary date of the final approval of the preliminary plat, consistent with the requirements imposed by the terms of the City's Hearing Examiner's decision, MDNS, and the Mitigation Agreement. The completion or bonding date referenced is on or before July 12, 2014. Under the terms of the Mitigation Agreement the study has been completed. No additional mitigation is required under Section 2 of the Mitigation Agreement.

4. Plat Modification—Minor Modification—Lot Adjustment: The City agrees that modification of boundary lines within the plat that create lots consistent with the size and setback regulations of the Business Tech Park regulations may be processed as a boundary line adjustment to accommodate a specific user. Where such adjustment does not change the number of lots or propose a use not permitted in the Business Tech Park Zone, the change shall be considered a minor modification and may be processed as a simple boundary line adjustment. The same rules shall apply where one or more lots are consolidated to accommodate a single user. Similarly, the Developer may further create additional lots within existing lots by the process of binding site plan, or short plat within the plat so long as the changes fall within the minimum standards set forth in the zoning code attached, and state law.

5. Zoning and Development Standards: To encourage the Developer to incur the costs of installing infrastructure to service a business park that will not build out within the five years assured by state law, the City exercises its authority under RCW 36.70A.170-190 to fix the following elements, which are approved for construction to current building standards:

a. The City agrees that the properties within the approved final plat may be developed under the standards of the Business Technology Park Zone, DMC Chapter 25.40, a copy of which is attached as Exhibit E, for the duration of this Agreement, provided, however, if any portion of the zone is determined to be unlawful by a court of law, or standards required to be changed by changes in State or Federal legislation, such change may be imposed and added to this Agreement by means of a resolution, adopted by the City Council, stating the precise change to be implemented, the basis for such change, and the effective date of such change.

b. The City agrees that, except as modified in accordance with Section 5a above, the size and location of roads, sewer and water lines, sidewalks and other infrastructure installed consistent with the preliminary plat approval shall be determinative on the development standards for the plat. The filing of any phase final plat shall be accepted and approved by the City for all development within the plat even if the City subsequently modifies road, sewer line, water line, sidewalk, or other standards for building projects within the City or the Business and Technology Park Zone applicable to this plat.

c. The Developer agrees that projects within the plat will be subject to any new environmental rules imposed by state or federal law including but not limited to, water quality, air quality, critical areas, waste, or endangered species and found applicable to the project as provided in Section 5a above.

d. The conditions of approval, dedications and Mitigation Agreement mitigate both the impact of the plat and the anticipated building development for the project and are to be considered pipeline loads or claims on City rights of way, utilities, facilities and services. The City will not impose any additional impact or mitigation fee for facilities covered by the plan conditions of approval, MDNS and Mitigation Agreement. Nothing in this Agreement shall preclude the City from imposing impact fees not covered by the conditions of approval for this development.

6. Allocation of Services:

a. The environmental review and development requirements imposed on the project were based on the total usage of infrastructure and facilities identified in the approval and corresponding MDNS. The Developer has the right to allocate the portion of traffic and utility use to a particular purchaser within the plat at Developer's discretion consistent with the requirements imposed by the terms of the City's Hearing Examiner's decision, MDNS, and Mitigation Agreement. The Developer shall advise the City the specific limits allocated to each property at the time of sale. All remaining unused capacity shall belong to Developer.

b. The Developer shall be solely responsible for future traffic and water studies referenced in the Approval Documents or as specifically agreed to by the parties.

7. Water Rights: Water rights allocations shall be as provided by the Hearing Examiner, as may be specifically agreed to by the parties in writing.

8. Term of Agreement: The parties agree that except as provided in Section 5 above, the standards identified and entitlements granted in any final plat accepted for recording under the terms of this Agreement shall last for a term of 10 years for any lands not developed with buildings within 10 years of final plat approval. This term is agreed by the parties as a term necessary to provide reasonable assurance of regulatory stability to encourage Developer to make the initial infrastructure investment prior to customers being identified and for customers to make a long term commitment to First Park Northwest Landing related development within the City of DuPont.

9. Successors: For so long as First Industrial Realty Trust Inc. owns any property within the Subdivision covered by this Agreement, it shall be considered the "Developer" and be entitled to all rights and privileges of this Agreement. No other property owner shall have the right to alter, amend, or claim rights under this Agreement. In the event First Industrial Realty Trust Inc. transfers title to all of its remaining property within the subdivision, it shall designate the new "Developer" for all purposes under this Agreement and so notify the City in writing of its delegation. Such written notice, once received by the City, shall be conclusive on the identity of the Developer in the event First Industrial Realty Trust Inc. no longer owns any property within the Subdivision.

10. Agreement Binding: This Agreement touches and concerns the land and runs with the land and shall be binding on all successors and assigns. In the event any provision of this Agreement is found unlawful by a final decision after appeal, this Agreement shall remain in effect as to all other provisions, and the parties agree to address the provision held unlawful by modification within the limits specified by the Court to achieve the purposes of the contested provision to the greatest extent allowed by law.

11. Recording: Upon the effective date of this Agreement as provided above, the City shall cause a copy of this Agreement to be recorded with the auditor of Pierce County and a certified copy delivered to the Developer.

Public Hearing required by RCW 36.70B.200 held by the City of DuPont Council on Sept 22, 2009.

Approved by the City Council by ^{Resolution} Ordinance No. 10-382 dated 1/12/10, 2009.

Recorded: N/A, 2009.

CITY OF DUPONT

By: Jamara J. Gentler
Its Mayor, as authorized by City Council
Ordinance No. 10-382
Resolution

Attest:

Elin Jensen
City Clerk

APPROVED AS TO FORM:

[Signature]
DuPont City Attorney

FIRST INDUSTRIAL REALTY TRUST, INC.

[Signature]

By: Gary Danklefsen
Its: Regional Director

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 12 day of January, ²⁰¹⁰2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tamara L. Jenkins, to me known to be the person who signed as Mayor of the City of DuPont, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that She was duly elected, qualified and acting as said officer of the municipal corporation, that She was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

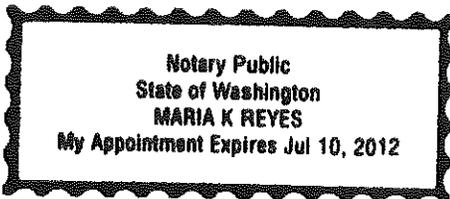


Erin D. Larsen
(Signature of Notary)
Erin D. Larsen
(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State
of WA, residing at Tacoma.
My appointment expires: 2-10-11.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 10th day of September, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gary Danklefsen, to me known to be the person who signed as Regional Director of First Industrial Realty Trust, Inc., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Maria K. Reyes
(Signature of Notary)
MARIA K. REYES
(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State
of Washington residing at Seattle, King Co.
My appointment expires: 7/10/2012

EXHIBIT LIST

Exhibit	Document
A	Legal Description of Land within the Preliminary Plat
B-1	Preliminary Plat Approval—Findings, Conclusions and Decision by the Hearing Examiner dated 4/20/09
B-2	Preliminary Plat Approval—Supplemental Findings, Conclusions and Decision by the Hearing Examiner dated 6/12/09
C	Preliminary Plat Map Approved by the Hearing Examiner
D	Mitigation Agreement dated November 25, 2008 and MDNS dated December 23, 2008
E	Business and Technology Park section of Zoning Code of City of DuPont on the effective date of this Agreement

APPENDIX A

**LEGAL DESCRIPTION FOR
FIRST PARK NORTHWEST LANDING**

Tract Y-1 of Record of Survey for Boundary Line Adjustment recorded October 31, 2007, under Recording No. 200710315001, Records of Pierce County, Washington;

EXCEPT that portion thereof conveyed to the City of DuPont for road purposes by deed recorded October 31, 2007 under Recording No. 200710310594;

AND ALSO EXCEPT that portion thereof defined as Parcel TP, an exempt segregation of property, as depicted on that Record of Survey recorded November 1, 2007 under Recording No. 200711015006;

Situate in the City of DuPont, County of Pierce, State of Washington.

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF DUPONT**

CASE NO: SUB 08-01 and SEPA 08-04. Preliminary subdivision application for First Park Northwest Landing.

APPLICANT: First Industrial Realty Trust, Inc.

SUMMARY OF REQUEST:

The Applicant requests preliminary subdivision approval for a 49-lot subdivision on a 260-acre site to be developed with warehouses, business parks, research and development facilities and offices.

LOCATION OF PROPOSAL:

The site is located west of the intersection of Center Drive and Palisade Boulevard in Pierce County Assessor's Parcel No. 0119263015 in Sec. 35, T19N, R1E.

SUMMARY OF DECISION:

The record in this matter is reopened to allow briefing on the issue of whether this proposal is governed by the 1992 or the 2005 DOE Stormwater Manual, as described in detail below.

The record in this matter is reopened to allow additional evidence and/or briefing on whether affected roadways will operate at an acceptable LOS with this project, as described in detail below.

In all other respects, the proposed preliminary subdivision application is approved, subject to the conditions below.

HEARING AND RECORD:

The hearing on this application was held before the undersigned Hearing Examiner on February 25, 2009. The record was held open for two weeks for possible additional

submissions by the Applicant on the issue of left turn lanes on South Loop Road. The Applicant consented to an extension in the time for submission of the decision.

The following exhibits are admitted as part of the record:

Exhibit 1. Binder entitled "First Park Northwest Landing, Exhibit 1, Preliminary Plat Notebook, dated 10/08". A full sized set of the reduced sized drawings in this binder are also a part of this exhibit.

Exhibit 2. Transportation Impact Analysis by The Transpo Group, September 2008.

Exhibit 3. First Park Northwest Landing Stormwater Master Plan, dated October 2008.

Exhibit 4. Mitigated Determination of Nonsignificance under the State Environmental Policy Act for First Park Northwest Landing, dated December 23, 2008.

Exhibit 5. Letter dated January 6, 2009 from Department of Ecology Southwest Regional Office to Bill McDonald.

Exhibit 6. First Park Northwest Landing Landmark and Specimen Tree Count, dated April 2008.

Exhibit 7. Staff Report by the DuPont Community Development Department for Case No. SUB 08-01 and SEPA 08-04, issued January 21, 2009. Note that the exhibits listed on the last page of this Staff Report are admitted as separate exhibits above

Exhibit 8. Resume for Jennifer Lowe.

Exhibit 9. Resume for Robert "Doc" Hansen.

Exhibit 10. Resume for Laura Cociasu.

Exhibit 11. Letter dated February 23, 2009 from Alexander W. Mackie to Thomas R. Bjorgen

Exhibit 12. E-mail sent December 10, 2008 from Bill Kingman to Wayne Reisenauer, with attachment containing proposed revisions to draft MNDS conditions.

Exhibit 13. Packet of information submitted by Alan Wallace concerning The Home Course.

Exhibit 14. E-mail sent February 25, 2009 from Michael Jimenez to Dom Miller, and e-mail sent February 24, 2009 from Al Wallace to Dominic Miller.

Exhibit 15. Table 2.2-2A and Drawing No. 2.2-2.3 from the DuPont Street Standards.

Exhibit 16. E-mail sent February 25, 2009 from Thomas Bjorgen to parties and staff.

Exhibit 17. E-mail chain with the latest the e-mail sent March 11, 2009 from Bill Kingman to Thomas Bjorgen, with two attached sheets showing rechannelization proposals on South Loop Road.

Exhibit 18. E-mail chain with the latest the e-mail sent March 11, 2009 from Wayne Reisenauer to Thomas Bjorgen.

At the hearing, the following individuals testified under oath:

Bill Kingman
City of DuPont Senior Planner
303 Barksdale Avenue
DuPont, WA 98327

Wayne Reisenauer
Development Manager for Applicant
1111 Third Avenue, Suite 2360
Seattle, WA

Jennifer Lowe
The Transpo Group
11730 118th Avenue NE
Kirkland, WA

Laura Cociasu
ESM Consulting Engineers, L.L.C.
33915 1st Way South
Federal Way, WA

Robert "Doc" Hansen
Robert "Doc" Hansen Consulting Services
P.O. Box 1073
Puyallup, WA

Alan L. Wallace
Williams, Kastner & Gibbs
601 Union Street, Suite 4100
Seattle, WA

Tamara Nack
Gray & Osborne
701 Dexter Avenue North
Seattle, WA

Geralyn Reinart
DuPont Traffic Consultant
159 Denny Way, No. 111
Seattle, WA

Dominic Miller
DuPont City Engineer
Gray & Osborne
2102 Carriage Drive
Olympia, WA

John T. Cooke
Perkins Coie, LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

A. General description of the proposal and the site.

1. The Applicant requests preliminary subdivision approval to divide a 260.74 acre site into 49 lots.¹ The Applicant proposes to develop the lots with uses permitted by the DuPont Municipal Code (DMC), not to exceed a total of 1,200,000 square feet of warehousing, 300,000 square feet of business park, 630,000 square feet of research and development, and 1,180,000 square feet of offices. The subdivision would also include three tracts for private open space, one tract for a sewer pump station, 13,480 lineal feet of public roads, storm drainage systems, underground utilities, and pedestrian trails.

2. The project site is zoned Business and Technology Park and is given the same designation under the Comprehensive Plan.

3. A Mitigated Determination of Nonsignificance (MDNS) under the State

¹ The Staff Report at Ex. 7 and the preliminary plat map at Ex. 1 state the subdivision would have 49 lots. The text of the preliminary plat application states it would have 45 lots. This decision assumes the 49 lots in the plat map controls.

Environmental Policy Act was issued for this proposal on December 23, 2008. The only comment received was the letter from the Department of Ecology at Ex. 5. No appeals were filed.

4. Development of the subdivision would occur in 13 phases over eight to ten years. Ex. 1, Env. Checklist, p. 6. The proposed development phases are labeled by letters in Ex. 1, Env. Checklist, Fig. 2, although development may not occur in alphabetical order of those letters.

5. The Applicant proposes that all infrastructure needed to serve any phase will be installed before the final plat for that phase is approved. Two differing conditions were proposed to accomplish this, that of the MDNS at Ex. 4, p. 17, Condition 12, and the Staff Report at Ex. 7, p. 15, Condition aa. At the close of the hearing, the Department stated that it agreed with the Applicant that the MDNS condition appropriately ensured adequate infrastructure for each phase. This MDNS condition, at Ex. 4, Condition 12 at pp. 17-18, assures adequate infrastructure while assuring the Applicant flexibility in sequencing the various phases. It is adopted in place of Condition aa at Ex. 7, p. 15.

6. The proposed configuration of the lots in the subdivision and its proposed road network are found in the preliminary plat map at Ex. 7. A possible configuration of buildings and parking areas on the lots is shown by the Conceptual Master Plan at Ex. 1, Tab 2, Env. Checklist, Fig. 3.

7. As also shown by the preliminary plat map and the Conceptual Master Plan, the subdivision virtually surrounds a golf course known as The Home Course. On April 8, 2009 a conditional use permit was issued by the Hearing Examiner for certain improvements on that golf course in File No. CUP 08-01. This permit was conditioned to require measures to protect the proposed North Loop and South Loop Roads from errant golf balls from Holes 2 and 12, respectively.

8. Old Fort Lake and its buffer lie between parts of the proposed subdivision and the golf course.

9. The site of the proposed subdivision is bounded on the south by dense residential development. On the west, the site is bounded by a steep slope extending down to Puget Sound. To the north, the site is bounded largely by part of the existing golf course. The far western portion of the north edge of the subdivision is bounded by a steep slope extending down to Sequelitchew Creek. The proposed Wilkes Observatory Park lies at the northwest corner of the site. To the east, the site is bordered by the DuPont Civic Center campus and on the southeast by Pioneer Middle School, past which lies Center Drive with residential development beyond.

B. Stormwater.

10. The Applicant proposes to build a series of temporary water quality and infiltration facilities to handle runoff from North Loop Road, South Loop Road, the northern portion of West Loop Road, the extension to Palisade Boulevard, and the extension to Wren Road. As lots are developed, the Applicant would build permanent stormwater facilities for runoff from the future buildings and parking areas. As lots are developed, the temporary facilities would be moved or shut down to accommodate lot development. The permanent stormwater facilities built as the lots developed would also treat and infiltrate runoff from the roads that was first handled by the temporary facilities.

11. The Department agrees to the proposed use of temporary and permanent facilities, as long as all requirements of the Stormwater Manual are met. Test. of Miller. This agreement to allow temporary facilities requires the removal of the prohibition of temporary facilities found in Condition 5 a of the MDNS at Ex. 4. Even though no appeal of the MDNS was filed, the allowance of temporary facilities would ensure compliance with all applicable standards, would allow the Applicant desired flexibility in development, and is agreed to by the parties. For these reasons, the proposed use of temporary facilities should be allowed.

12. The stormwater facilities serving the lots would be privately owned. Those serving the public roads would be owned by the City.

13. The Department asks that the stormwater from public roads be treated through different facilities than that generated on the individual lots. The reason for this, Mr. Miller testified, is to avoid the possibility of stormwater from the lots overtaxing the public stormwater facilities serving the roads and to avoid potential liability if a spill on a road was routed to a private stormwater facility. Condition 5 a of the MDNS requires the separate facilities requested by the Department.

14. For the proposed temporary stormwater facilities, the public roads have been divided into the six drainage basins shown on Ex. 1, Tab 5, Map labeled Ex. 2. Runoff from each of these basins would be routed to the temporary water quality and infiltration facilities shown on that map.

15. The temporary water quality facilities for the roadways would be sized to treat the 6-month, 24-hour storm, and the temporary infiltration facilities for the roadways would be sized to handle the 100-year, 24-hour storm.

16. The Stormwater Master Plan, Ex. 3 at Tab 1, lists 13 basins into which the entire project, including lots and roads, will be divided for permanent stormwater facilities. The permanent water quality facilities for the roadways and lots would be one of the types listed at Ex. 3, Tab 4 and would be sized to treat the 6-month, 24-hour storm. The

permanent infiltration facilities for the roadways and lots would be sized to handle the 100-year, 24-hour storm.

17. The Geotechnical Report by GeoEngineers at Ex. 3, Tab 5 concluded that the soils encountered in test pit locations on the site should have adequate permeability and storage capacity to infiltrate stormwater from the site. Based on the GeoEngineers Report, the Applicant used a preliminary infiltration rate of 30 inches per hour in its facilities calculations.

18. The City of DuPont has adopted the 1992 Department of Ecology Stormwater Manual. DMC 22.01.090.

19. The Department believes that at the conceptual level the proposed stormwater system, as conditioned, complies with applicable standards. More detailed reviews of compliance will be carried out at the engineering or grading permit phase.

20. Compliance with all applicable requirements for erosion and sediment control during construction should prevent damage from those sources. This decision is conditioned to require the Applicant to comply with such standards and the Department to enforce those standards.

C. Streets and roads.

21. The Applicant proposes to construct the North Loop Road, the South Loop Road, the northern portion of the West Loop Road, the extension of Palisade Boulevard from Center Drive to the intersection of North and South Loop Roads, and the extension of Wren Road from its present terminus to the intersection of North and South Loop Roads. These streets and roads are all shown in the drawing at Ex. 1.

22. The Applicant also proposes to construct West Loop Road between the western termini of North and South Loop Roads. The route of this portion of West Loop Road would follow one of the three options shown in Ex. 1, Tab 2; Env. Checklist, Fig. 5.

23. The Department states that each of the three options for West Loop Road is acceptable to it, as long as West Loop is a collector road built to DuPont Street Standard Detail 2.2-2.4 if it abuts open space or Standard Detail 2.2-2.3 if it does not.

24. The Department states that the North and South Loop Roads should be classified as Commercial Access Street Business and Technology Park, Wren Road and Palisade Boulevard should be a collector arterial, and West Loop Road should be a Commercial Access Street Business and Technology Park adjacent to the open space or sensitive areas. No objection to these classifications was raised and they are incorporated as conditions below.

25. The Applicant proposes to construct the North Loop Road, South Loop Road, and the northern portion of West Loop Road before the approval of any final plat. The remaining portion of West Loop Road would be built as final plat approval is granted for lots along it.

26. The Applicant proposes to construct intersection improvements at the intersections of Center Drive and Palisade Boulevard, South Loop Road and Ogden Avenue, and South Loop Road and Jensen Avenue. Additional improvements are discussed below in the Findings about traffic impacts.

27. The Department also requested that the Applicant carry out the access and other measures listed by "bullets" on pp. 9 and 10 of the Staff Report and construct the emergency access to the Public Safety Building described on p. 10 of the Staff Report. Of these, the Applicant objected to the requirement to construct exclusive left turn lanes from South Loop Road onto Jensen and Ogden Streets. The Applicant submitted argument, drawings and a supplemental traffic analysis at Ex. 11 for the proposition that these lanes would require an encroachment of the right-of-way onto adjacent property and are not required under left-turn storage guidelines in the Washington Department of Transportation Design Manual, May 2001. Ms. Lowe testified that under these guidelines and at full build-out, the threshold for requiring a left turn lane onto Ogden Avenue is definitely not exceeded, while the situation at Jensen Avenue is on the line of the threshold. Ms. Cociasu testified that the turn lane on South Loop Road would fit at its intersection with Jensen Avenue, since the resulting encroachment would be into property owned by the Applicant. However, the lane would not fit at its intersection with Ogden Avenue, since it would require an encroachment into golf course property.

28. Ms. Nack pointed out on behalf of the City that South Loop Road will be a Commercial Access Street Business and Technology Park and that the design drawing for that classification at Ex. 15 contains turn lanes. She testified that turn lanes may be omitted in certain situations, such as when there is no potential for development on either side, but that those situations were not present at these intersections on South Loop Road. Ms. Reinart testified that the City is concerned about the potential for accidents on South Loop Road if the turn lanes are not installed.

29. At the close of the hearing, the record was left open for further discussions between the Department and the Applicant on these left turn lanes. As a result, the Department and the Applicant reached an agreement to construct left turn lanes from South Loop Road onto Ogden and Jensen Avenues according to the design in the two drawings at the end of Ex. 17 and subject to the two conditions listed in the e-mail sent March 11, 2009 from Tamara Nack to Bill Kingman, part of Ex. 17. The Department's assent is at Ex. 17 and the Applicant's is at Ex. 18. This agreement is consistent with the public interest and is incorporated into the conditions, below.

D. Traffic impacts.

30. The Applicant submitted a Transportation Impact Analysis (TIA) prepared by The Transpo Group, dated September 2008, which is at Ex. 2.

31. The TIA is based on the same assumption of uses and their square footage found in Finding No. 1, above, which is a likely development scenario. Because the actual development mix may vary some, the TIA recommends that as applications for specific developments are filed, the cumulative number of trips projected to be generated by the entire subdivision be checked to make sure that it does not exceed that analysed in the TIA. Ex. 2, p. 1. As long as the cumulative total is equal to or less than that assumed in the TIA, the TIA remains valid. If the cumulative total exceeds that assumed in the TIA, additional analysis will be needed to assure that the actual number of trips generated by the entire proposal will not depress the level of service (LOS) on any local transportation facility below the adopted minimum.

32. Condition 16 of the MDNS at Ex. 4 requires the Applicant to prepare a series of periodic, supplemental TIAs to assure proper mitigation of traffic impacts. This Condition also requires each lot developer in the subdivision to submit an assessment as to whether the proposed project is within the development projections assumed in the previous two-year TIA update. If the project is not within those development projections, Condition 16 then requires additional analysis and potential mitigation.

33. Condition 16 of the MDNS, with one addition, will assure that the analysis of traffic impacts is based on the actual uses in this subdivision. The addition is to specify that if actual uses to be carried out in the subdivision will result in traffic generation higher than that assumed in the TIA, the supplemental TIA required by Condition 16 shall specify those improvements necessary to maintain LOS D at all intersections and street segments, the Department shall have the option of reviewing such proposed improvements, and the Applicant shall install them, subject to any revisions by the Department. The purpose of this addition is to make clear that as between the Department and the Applicant or lot developer, the Department has the final say as to what improvements shall be installed to maintain the acceptable LOS.

34. The TIA obtained traffic counts from 2007 and 2008 to show volumes at those times on affected streets. Those 2007 and 2008 figures were extrapolated to an estimate of 2014 traffic by applying a 2% annual increase and including trips from projects which are in the permitting "pipeline". Those pipeline projects are listed at p. 11 of the TIA. However, traffic along Center Drive was forecast using only projected pipeline trips, since that street does not carry significant regional traffic and its actual load may accurately be gauged by considering pipeline trips alone. Test. of Lowe. The 2% background rate was chosen after discussions with the City traffic consultant. Test. of Lowe.

35. The TIA estimated the traffic to be generated by the proposed subdivision by using trip generation rates for the various proposed land uses found in the Institute of Transportation Engineers (ITE) publication *Trip Generation* 7th Ed. (2003). An estimate of "internal capture" trips was deducted from the projection, since those are trips with both ends in the project site, thus having no external effects. TIA, Ex. 2, p. 18 and test. of Lowe. The estimates of total project traffic are set out in Table 3 of the TIA, Ex. 2, p. 17. In sum, the subdivision is expected to generate approximately 3000 a.m. and p.m. peak hour trips and 22,000 daily trips. Consistently with ITE studies, 7% of project traffic was assumed to be trucks. TIA, p. 18.

36. The TIA projected the distribution of project traffic based on patterns from the City's transportation model and adjustments to reflect trips to and from current development. Ex. 3, p. 17. The distribution pattern was also refined through discussions between the Applicant and the City's traffic consultant. Test of Lowe.

37. As a result of this analysis, 2014 daily traffic volumes on roadways and intersections with this project were projected. TIA table 4 and 5, respectively.

38. The effect of that traffic on the LOS of intersections is shown on Table 6 of the TIA, assuming that the intersection improvements listed on p. 26 are installed. This analysis also assumed a traffic signal would be installed at the intersection of Center Drive and Bronson Place and that a round-about would be built at the intersection of Bob's Hollow Lane and Wren Road. Ex. 3, p. 11.

39. Table 6 projects that with these improvements the LOS on all affected intersections will be at or above the minimum LOS D in 2014 with this project, with two exceptions. The a.m. and p.m. peak LOS at Barksdale Road and the southbound ramp onto I-5 would be at an unacceptable LOS F, and the a.m. and p.m. peak LOS at Barksdale Road and the northbound ramp onto I-5 would be at an unacceptable LOS E.

40. The facilities at the Barksdale/I-5 interchange, both ramps and overpass, are owned by the state. Test. of Lowe. The City cannot improve them without the consent of the state.

41. Condition 14 of the MDNS identifies a number of areas in which the TIA should be modified, including some areas in which additional mitigation is likely necessary. Examples of the latter are a queue length from the Wren Road/Bob's Hollow round-about that will block other intersections and substandard individual turning movements at the intersection of Center Drive and Wilmington. The MDNS requires that the Applicant submit a Revised TIA prior to the issuance of any permits for grading or infrastructure improvements which corrects these matters, including carrying out additional analyses and mitigation. These MDNS conditions are incorporated into this decision, with the additional requirements that additional mitigation be required if necessary to ensure adequate LOS

at intersections and street segments consistently with generally accepted standards.

42. The TIA at pp. 28-29 and the MDNS recognize that some mitigation in addition to that required by the TIA may be necessary, depending on the actual amount of traffic growth on affected streets in the future. The MDNS addresses this uncertainty by requiring through Conditions 15 and 16 that the Applicant install all mitigation identified in the Revised TIA and by requiring the installation of the five measures listed at the beginning of Condition 16 of the MDNS if needed to maintain an acceptable LOS D. To accomplish this, the MDNS requires in Condition 16 that the Applicant submit supplemental TIAs containing the elements required in Condition 16 to the City for review and approval. These are required to be submitted every two years or as a condition of finalizing each plat phase, whichever occurs first. The second to the last paragraph in Condition 16 then describes the process for deciding whether additional mitigation is required of the Applicant.

43. Further, Condition 21 of the MDNS recognizes that backups along intersections on Center Drive may be too long. If that occurs, this Condition requires the Applicant to design and install an interconnected system of traffic lights on Center Drive to maintain LOS D.

44. The process required by the MDNS, especially in Conditions 15 and 16, is a fair and nuanced method of maintaining LOS D in the face of a complex, long-term project with traffic consequences which may not be fully determinable at this time. The City Staff, its consultants, and the Applicant and its consultants should be complimented for their work in devising this process.

45. Turning to the final issue, the bulk of the analysis in the TIA at Ex. 2 dealt with intersection LOS. The only discussion found in the TIA concerning projected volumes on roadway segments is that in Table 4 on p. 22 of the TIA. The TIA does not analyse whether the LOS of affected roadway segments will meet the minimum LOS in 2014 with project traffic.

46. The Hearing Examiner decision of April 8, 2009 issuing a conditional use permit for certain improvements on The Home Course, No. CUP 08-01, examined that project's effect on traffic volumes on Bob's Hollow Lane and McNeil Street. Finding No. 16 of that decision cited a 2004 traffic analysis for The Home Course for the proposition that the maximum daily volume allowable to maintain LOS D on Bob's Hollow west of Center Drive and on McNeil Street was 12,000 average daily trips (ADT). Table 4 of the TIA at Ex. 4 states that in 2014 with this project Bob's Hollow Lane would have an ADT of 13,600, which would significantly exceed the maximum allowed under LOS D under The Home Course decision.

47. In addition, the evidence presented for The Home Course showed that McNeil

Street would have an ADT of 11,320 under the scenario which assumed full build-out of the Consent Decree area (largely the First Industrial subdivision) and its roads. The Home Course decision, Finding No. 16. However, Table 4 of the TIA at Ex. 4 states that in 2014 with this project McNeil Street would have an ADT of only 8200.

48. The traffic projections for The Home Course and this project were executed in different years and project to different years. This certainly may account for some differences. Nevertheless, they are roughly contemporary and attempt to project the volume on McNeil Street under basically the same development assumptions. With that, it is hard to reconcile the projection of 8200 ADT for McNeil Street in Ex. 4 with the projection of 11,320 ADT for the same street in The Home Course case.

49. To assure that the evidence is adequate to decide whether appropriate provisions are made relating to roadway volume, this matter is reopened to allow the Applicant to submit additional evidence on the issue of whether affected roadways will operate at an acceptable LOS with this project. In this submittal, the Applicant should state the maximum ADT or other measurement allowable for LOS D for roadways, should address the evidence noted above that Bob's Hollow Lane would be well over the maximum ADT for LOS D, and should address the apparent discrepancy between the 11,320 ADT projected for McNeil Street by the evidence in The Home Course case and the 8200 ADT projected in Ex. 4, Table 4.

E. Hazardous materials clean-up.

50. The project site is located on part of a larger area on which the DuPont Company manufactured and assembled explosives until the mid-1970s. This area, including the site here at issue, is subject to two Consent Decrees between Weyerhaeuser Company, the DuPont Company and the state Department of Ecology for the clean-up of hazardous wastes and contamination left from DuPont Company activities. Ex. 4, p. 3 and Ex. 1, Tab 2, p. 13.

51. The area on which this subdivision would be located has been cleaned up under the Consent Decrees. A Closure Report by Pioneer Technologies, dated March 2007, indicates successful remediation of the project site under the Consent Decrees. Ex. 4, p. 3.

52. Mr. Reisenauer testified that the site has been cleaned up consistently with legal standards for the uses here proposed.

53. Mr. Kingman testified that no further clean-up activities are required on the project site.

54. The evidence shows that hazardous materials have been cleaned up from the

site in accordance with the Consent Decrees and applicable standards.

55. Residences, schools, day care uses and parks are prohibited by deed restrictions adopted in connection with clean-up of the site. None of these are proposed.

F. Cultural resources.

56. The following sites of historic or cultural significance are located near the project site: the 1833 Fort Nisqually (Historical Site No. 45PI55), a prehistoric shell midden site (Historical Site No. 45PI72), the Fort Nisqually Cemetery (Historical Site No. 45PI404), an area where Native American graves were found (Historical Site No. 45PI712), and Wilkes Observatory (Historical Site No. 45PI67). Ex. 4, p. 6.

57. This proposal will not adversely affect any of these sites. Test. of Kingman. The Applicant will construct the Wilkes Observatory trailhead and improvements with the underlying plat phase.

58. The MDNS, Ex. 4 at p. 17, recognizes that DMC 25.80.030 prohibits all structures, roads and utilities within 50 feet of markers identifying designated cultural resources and requires the Applicant to observe this setback.

59. The MDNS, Ex. 4 at p. 17, also requires the Applicant to coordinate the development of Lot 1 with the Nisqually Tribe due to the proximity of the shell midden site. To ensure the protection of this important site, the prohibition of structures, roads and utilities within 50 feet of designated historical sites should also apply to this shell midden.

60. In addition to the above known resources, cultural resources from long-standing Native American use and occupation of the area could be found on the development site. During the extensive clearing and excavation of the site as part of the clean-up under the Consent Decree, the detailed program to protect cultural resources described at Ex. 1, Tab 2, p. 27 was followed. No cultural resources are now known to exist on the project site. Ex. 1, Tab 2, p. 27.

61. The MDNS refers to the 1988 and 1989 agreements between the prior owner of the larger area, the Weyerhaeuser Real Estate Company, and the City and the state Office of Archaeology and Historic Preservation. These agreements are designed to protect and preserve cultural resources which may be found and to provide for the reburial of any Native American remains which may be found. The Environmental Checklist at Ex. 1, Tab 2, p. 27 also refers to an agreement with the Nisqually Tribe on the protection of cultural resources, sites and human remains, which was part of the Consent Decree Area remediation project.

62. Even though discovery of additional cultural resources in the Consent

Decree Area may be unlikely, some may be discovered. To assure that cultural resources and human remains which may be found on the site will be properly and respectfully protected and handled in keeping with the MDNS, this decision specifies that the Applicant is required to comply with the duties imposed on the property owner in these three agreements. The Applicant also states that archaeologists will be used to monitor activities during proposed work if archaeological, cultural or historical artifacts are uncovered or if excavation of virgin soils is required.

63. As conditioned, this proposal properly and adequately protects cultural resources.

G. Trails.

64. The Applicant proposes to construct the trails shown in blue and yellow on Fig. 4 of Ex. 1, Tab 2.

65. The Applicant also proposes to construct the Wilkes Observatory trail and trailhead improvements described at Ex. 1, letter dated October 9, 2008 from Laura Cociasu to Michael Jimenez.

66. The Staff Report at Ex. 7 contains a number of conditions proposed by the Department to ensure the proposed trails and improvements comply with the DuPont Parks, Recreation and Open Space Plan.

67. The Applicant accepted those conditions, except for proposed Condition 18 n at Ex. 7, p. 14, which required Trail T-2 along the Puget Sound bluff to be an eight-foot wide asphalt trail. The Applicant's argument and evidence against this condition is found at Ex. 11, p. 4, et seq. and the testimony of Robert "Doc" Hansen. The Applicant proposed as an alternative that the trail be constructed of 5/8 inch compacted crushed rock.

68. After considering the Applicant's evidence and argument, the Department agreed to rescind the requirement to pave this trail. Construction of this trail using 5/8 inch compacted crushed rock as proposed by the Applicant and in compliance with other applicable conditions proposed by the Department would be consistent with applicable City plans and should be approved. The segment of the trail extending to the Wilkes Observatory, as proposed by the Applicant, would still be paved.

69. With this modification, and subject to the conditions of the MDNS and this decision, the proposed trails will serve this subdivision and the City well and are consistent with applicable plans and standards.

H. Domestic water and sanitary sewer.

70. The subdivision will obtain sanitary sewer service from Pierce County. Pierce County issued a letter dated December 27, 2007, stating that the development is within 300 feet of an existing accessible sanitary sewer which has sufficient capacity to accommodate the development and that the development is required to connect to the sewer system. Ex. 4, p. 15.

71. The MDNS requires the Applicant to obtain Pierce County sewer permits for each plat phase prior to the issuance of any grading permit. Ex. 4, Condition 29.

72. The peak capacity of the DuPont water system is calculated at 5.157 million gallons per day (mgd) for 2008. Of that peak capacity, 1.799 mgd is unused. The portion of this unused peak capacity projected to be utilized by the LID area, approved plats and the Civic Center is 1.196 mgd. The remainder, .603 mgd, is allocated to this subdivision. Ex. 1, Tab 8, letter dated October 6, 2008 from Bill Kingman to Laura Cociasu.

73. This subdivision, when fully built out, is projected to require a peak day water use of .589 mgd, which is within the allocated capacity. Ex. 1, Tab 8, letter dated October 8, 2008 from Laura Cociasu to Bill Kingman.

74. In its letter at Ex. 1, Tab 8, the Department proposed that if the peak day demand of the entire system exceeded 90% of capacity in any year from 2009 to 2018, the City could elect to pursue construction of another water supply well. If that occurs and if the peak day demand of this subdivision exceeds 70% of its capacity of .603 mgd, then, the Department proposes, this subdivision would bear all costs of the new well.

75. The Applicant responded at Ex. 1, Tab 8 by agreeing with the trigger of 90% of total capacity proposed by the Department. The Applicant also agreed that its responsibility to participate in the costs would be triggered by the 70% threshold, although the Applicant would apply the 70% to its projected peak use of .589 mgd, not its capacity of .603 mgd as the Department proposed. Because the Applicant's calculation of the 70% figure results in a lower threshold for its participation and is accepted by the MDNS, it will be followed.

76. The Applicant disagreed with the Department's initial position that if the above thresholds were met, the Applicant would bear all costs of the new well. The Applicant proposed instead that it bear a share of the costs which is proportionate to its remaining demand. Ex. 1, Tab 8, letter dated October 8, 2008 from Laura Cociasu to Bill Kingman.

77. The MDNS, prepared after this exchange of positions, preserves the thresholds just noted with the following modifications: when City peak demand exceeds 80% of the system capacity of 5.157 mgd and when the subdivision's peak day use exceeds 70% of

its total projected use of .589 mgd, the Applicant would provide a supplemental water study with listed elements, and when City peak demand exceeds 90% of the system capacity of 5.157 mgd, the City option of building a new well would be triggered. MDNS, Ex. 4, Conditions 24, 25 and 26. If the City pursues that option, the Applicant would be required to "provide the system identified as necessary", and the City would establish a latecomer's agreement or other financial mechanism to reimburse the Applicant for its costs beyond its proportionate share. MDNS, Ex. 4, Conditions 26 and 28.

I. Fire service.

78. The Applicant and the City entered into a mitigation agreement on December 9, 2008 to mitigate impacts to DuPont Fire and Police services from this subdivision and its associated land uses. MDNS, Ex. 4, p. 13 and test. of Kingman.

79. The April 8, 2009 Hearing Examiner decision approving a conditional use permit for improvements at The Home Course stated at Conclusion No. 10 that the weight of the evidence did not lie with a preponderance on either side of the issue as to whether adequate fire service is available. Conclusion 10 continued by stating:

"On one hand, the MDNS states that an effective response force is not available to respond to emergency service calls to this development. In addition, the evidence showed that the DuPont force is minimal and that service is provided by the Lakewood Fire District to the north. On the other hand, the evidence showed that the fire apparatus found sufficient to provide adequate service in 2004 has been purchased and that the City is opening a new public safety facility on Palisade Drive which would provide adequate fire and emergency services to this proposed development."

To resolve this uncertainty, the Home Course decision required that

"[n]either the restaurant, pavilion, offices nor pro shop may open to the public or to tenants until the appropriate fire and EMS provider has provided a direct, written statement to the Department that adequate fire and EMS services, judged under accepted professional standards, is available for such building and the Department has agreed that fire and EMS service to such building is adequate."

80. Adequate fire service is critical to the approval of any subdivision. Because they are contiguous to each other, any uncertainties about fire service to The Home Course would also apply to this subdivision. To assure adequate service a similar condition is attached to this decision.

81. As conditioned, appropriate provisions for fire service are made for this proposal.

J. Tree retention.

82. The majority of the project site has been cleared and grubbed as part of cleaning up hazardous materials under the Consent Decrees. However, the southeast corner of the site where Palisade Drive will be extended to the future Loop Road intersection remains forested.

83. The site contains 76 landmark trees, four of which are Oregon oak and 72 Douglas fir, and 477 specimen trees, 28 of which are Oregon oak and 449 of which are Douglas fir. Landmark and Specimen Tree Count, Ex. 6, p. 1. The location of the landmark trees is identified at Ex. 6, Map A. Each landmark and specimen tree is also listed in Ex. 6.

84. The Landmark and Specimen Tree Count identified 12 landmark trees, all Douglas fir, which are in or near proposed rights-of-way, and stated that grading for the roads may require the removal of additional landmark trees. Ex. 6, p. 2. The Environmental Checklist stated that with specific development and parking, all trees may need to be removed. Ex. 1, Tab 2, p. 19.

K. Miscellaneous.

85. Proposed landscaping is shown in the project drawings at Ex. 1.

86. The April 8, 2009 Hearing Examiner decision approving a conditional use permit for improvements at The Home Course required the Home Course applicant to carry out certain measures for Holes 2 and 12 to protect adjacent rights-of-way from errant golf balls. These measures will adequately protect the safety of the public using the adjacent Loop Roads.

87. With these requirements in The Home Course decision, it is unnecessary to impose the requirements of MDNS Condition 17 on this Applicant, with one exception. To ensure protection of public safety, the measures required of The Home Course for Holes 2 and 12 should be in place and approved by the City prior to final approval of rights-of-way that abut those golf holes.

88. The project site does not lie on any critical or environmentally sensitive area.

89. Slopes of 40% or greater lie immediately north of lots J-3 and J-4 and immediately west of much of the western edge of the site. MDNS, Ex. 4, p. 2. This decision is conditioned to require compliance with the DuPont Sensitive Area Ordinance, Chap. 25.105 DMC, for any site disturbance within the buffer of a sensitive area.

CONCLUSIONS OF LAW

A. General conclusions.

1. RCW 58.17.110 (1) and (2) set out the basic standards which must be met before preliminary subdivision approval may be granted. They state that

"(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication . . ."

The same requirements are incorporated in DMC 24.03.060.

2. Subdivisions must also be consistent with the DuPont Comprehensive Plan and in compliance with other applicable land use laws, such as the City zoning ordinance.

3. As discussed in the Findings and Conclusions, the evidence is insufficient to show whether affected roadway segments will operate at an acceptable LOS with this project. To ensure that this decision is made on full evidence, the record is reopened to allow the Applicant and other parties to submit supplemental argument and evidence on this issue.

4. As also discussed in the Findings and Conclusions, the issue whether this proposal should be governed by the 1992 or the 2005 DOE Stormwater Manual is fairly raised by the state's 2007 Western Washington Phase II Municipal Stormwater Permit. The record is also reopened to allow briefing on that issue.

5. Apart from these areas in which the record is reopened, the proposed subdivision, as conditioned, is consistent with the Comprehensive Plan, complies with the zoning ordinance, and makes appropriate provisions and serves the public use and interest as required by RCW 58.17.110 and DMC 24.03.060. Following are additional conclusions of law in a number of specific areas which require more detailed consideration.

B. Stormwater.

6. The Department reviewed the proposed stormwater system under the 1992 Department of Ecology Stormwater Manual and other applicable local stormwater regulations. The Department concluded that the proposed stormwater system complies with those standards, as conceptually proposed. More detailed review will occur at subsequent permit stages.

7. Under the evidence, the proposed stormwater system, as conceptually proposed, complies with the 1992 Department of Ecology Stormwater Manual and other applicable local stormwater regulations.

8. In February 2007 the state issued its Western Washington Phase II Municipal Stormwater Permit (Phase II Permit). This is a general permit applicable to small municipal separate storm sewer systems which are City owned or operated. Its purpose is to assure compliance with the federal Clean Water Act and the state Water Pollution Control Act, Chap. 90.48 RCW. DuPont is covered under this Phase II permit, according to the Department of Ecology website.

9. Page 6 of the Phase II Permit states that it authorizes discharges to surface and ground waters and that it regulates the latter under Chap. 90.48 RCW. This, and the listing of DuPont as a covered municipality, makes clear that the permit applies to DuPont, even though it may discharge its stormwater to groundwater.

10. Covered municipalities are required to reduce the discharge of pollutants to the maximum extent permissible and to use all known, available and reasonable methods of prevention, control and treatment. Phase II Permit, p. 8.² Covered municipalities must adopt a Stormwater Management Program with specific elements to comply with the permit. Id. at p. 9. They must also adopt regulations that are equivalent to those set out in

² Citations to the Phase II permit are to the version on the Department of Ecology's website on April 14, 2009.

Appendix I of the permit. Id. at p. 17. Compliance with the 2005 Department of Ecology manual meets this requirement. Id.

11. DuPont issued its Stormwater Management Program under the Phase II permit in March 2008. DuPont website, 4-13-09. That program, at pp. 25-26, states that the City will adopt the 2005 DOE Manual by July 2009.

12. The 1992 DOE Stormwater Manual was in effect in DuPont when the applicant applied for this preliminary plat approval on October 9, 2008. Under Westside Business Park v. Pierce County, 100 Wn. App. 599 (2000), submission of a preliminary plat application vests the applicant under the storm drainage ordinances then in effect. Thus, that case indicates that the Applicant is vested under the 1992 DOE Manual.

13. However, DMC 24.03.060 (b), also in effect when the plat application was filed, states that:

"[a] proposed subdivision and dedication shall not be approved unless the Examiner makes written findings that:

(1) Appropriate provisions are made for the public health, safety, and general welfare for open spaces, drainageways, . . . and all other relevant facts . . . and

(2) The public use and interest will be served by the platting of such subdivision and dedication."

14. This requirement to make appropriate provisions for drainageways reflects RCW 58.17.110 and is in almost all situations satisfied by compliance with the municipality's specific stormwater regulations, in this case the 1992 DOE Manual.

15. Here, though, the City is required by the Phase II Permit to adopt the 2005 DOE Manual to comply with a state law, Chap. 90.48 RCW. The City has represented in its Stormwater Management Plan that it will do so by July 2009. Because that Plan was required by the Phase II Permit, adoption of the 2005 Manual by this July should also be deemed a requirement of that permit. Both the Phase II Permit and the Stormwater Management Plan were in effect when the preliminary plat application was filed.

16. This proposal, I believe, is the largest commercial subdivision in the City's history and is certainly one of the largest, if not the largest, commercial proposal in its history. A rational factual case may be made that "appropriate provisions" for drainage are not made by allowing a proposal of this magnitude to be judged under a 17-year old set of stormwater regulations which has been replaced at least twice by the issuing agency (DOE), when the City is planning on adopting an up-to-date set of regulations in three months under a state permit which was in effect when the plat application was filed. This argument is strengthened when one realizes that some permanent stormwater facilities

may not be built for another ten years.

17. On the other hand, the applicable specific stormwater regulations (the 1992 Manual) are typically viewed as the implementation of the broader requirement of "appropriate provisions", and the Westside decision would hold that this proposal is vested under the 1992 Manual.

18. The Phase II Permit was in effect when the subdivision application was filed. That, together with the imminence of planned adoption of the 2005 Stormwater Manual, the requirement for which was also in effect at plat filing, raises the issue whether this subdivision should be judged under the 2005 Manual. These issues have not yet been discussed and would benefit from briefing before a decision is made. Therefore, the record in this matter should be reopened to allow briefing on the issues just discussed of whether this proposal is governed by the 1992 or the 2005 DOE Stormwater Manual. If the two Manuals are close enough to each other as they apply to this proposal to make this issue one of no real consequence in the handling of stormwater, that point should also be raised.

C. Utilities other than stormwater.

19. The process described in the MDNS and summarized in the Findings above, is a fair and accurate way of deciding when a new well is required and when the Applicant's duty to participate in the costs of that new well and associated system is triggered.

20. When, as in the MDNS, an Applicant is required to bear the entire initial costs of the new well and system, it is important to ensure a reimbursement process that limits its ultimate responsibility to its proportionate share. The evidence did not disclose its basis, but the Applicant and the Department agree that the Applicant's responsibility is triggered only when its use exceeds the 70% level. As found, that is 70% of its total projected peak day use of .589 mgd. This shows apparent agreement that the Applicant's responsibility for the new well is caused by its use above that 70% level. Thus, it seems most proportionate to limit the Applicant's responsibility for the new well and system to a percentage of its total cost which is the same as the percentage of the subdivision's projected use above the 70% level to the capacity of the new well. If either the Applicant or the Department disagrees with this formula for proportionate share, it may request reconsideration.

21. As conditioned, adequate domestic water service will be provided for this subdivision.

22. As conditioned, adequate sanitary sewer service will be provided for this subdivision.

23. As conditioned, this subdivision proposal makes appropriate provisions for utilities.

D. Traffic analysis.

24. RCW 36.70A.070 (6) (b) requires jurisdictions subject to the Growth Management Act, Chap. 36.70A RCW, to adopt ordinances which prohibit growth which would cause the level of service on a "locally owned" transportation facility to decline below the adopted minimum, subject to additional provisions. This shows legislative intent that local government concurrency considerations do not extend to transportation facilities owned by entities other than the local government. As found, the ramps and overpasses at the Barksdale Road/I-5 interchange are owned by the state. Therefore, these are not locally owned and the deficient levels of service on them shown by the Findings should not be a basis for denial or conditioning of this proposal.

25. As described in Finding No. 38, the analysis showing adequate intersection LOS assumes that the intersection improvements listed on p. 26 are installed, that a traffic signal is installed at the intersection of Center Drive and Bronson Place and that a roundabout is built at the intersection of Bob's Hollow Lane and Wren Road. To avoid jeopardizing the validity of the LOS evaluation, this decision is conditioned to require those improvements to be in place at the time determined by the Department. If the timing of their installation is controlled by the MDNS, that timing shall govern. In addition to these improvements, all other measures required by the MDNS, and all measures required through the process set up in the MDNS, shall be carried out.

26. Subject to the conditions below, which include the conditions of the MDNS, and subject to compliance with the processes required in these conditions, the proposed subdivision should make appropriate provisions for streets and roads and should not cause the LOS on any intersection to decline below LOS D.

27. As set out in the Findings, the evidence is insufficient to determine whether the LOS on roadway segments would remain at or above LOS D with this project. This decision is conditioned to allow the Applicant to submit such evidence. After that is done, a supplemental decision on the LOS of roadway segments will be issued.

E. Tree retention.

28. DMC 25.120.030 (2) states

"[a]ll landmark (see DMC 25.10.120 L definitions) Oregon white oak trees shall be retained, along with any native understory within a protection zone one and one-half times the radius of the oak's canopy, unless the landmark oaks are within a proposed street right-of-way which is integral to the neighborhood and

cannot reasonably be moved, or unless overall neighborhood densities cannot be met."

29. In this commercial subdivision, there are no requirements for neighborhood densities. Therefore, under DMC 25.120.030 (2) landmark Oregon white oaks may be removed only if within a proposed street right-of-way which cannot reasonably be moved. Ex. 6, p. 2 states that the only landmark trees in or near proposed rights-of-way are Douglas firs. Therefore, under DMC 25.120.030 (2), no landmark Oregon oaks may be removed from the site.

30. DMC 25.120.030 (2) also requires that all 50% of all non-oak landmark trees be retained. This requirement is met. See Ex. 7, p. 11.

31. In addition to the above requirements, DMC 25.120.030 (3) requires that at least one and one-half trees per acre, calculated over the entire site, be retained, in addition to street trees. However, this requirement does not demand retaining more than 50% of the existing trees, other than oak. At a total area of 260.74 acres, this requires the Applicant to retain at least a total of 391 trees on the site or one-half the existing trees other than oak, whichever is less.

32. DMC 25.120.040 also restricts the removal of Oregon white oaks, whether or not landmark, in designated oak management mapping units. The evidence did not disclose whether or not any of the oaks on the site are in such units. This decision is conditioned to require the Department to advise the Applicant whether any trees remaining on its site are in such a unit. If so, the Applicant shall comply with the requirements of DMC 25.120.040 for such oak management mapping units.

33. DMC 25.120.030 contains requirements for the protection and maintenance of retained trees. The Applicant shall comply with these requirements, including the requirements of DMC 25.120.030 (6) and (7) to prepare and obtain approval of a tree retention plan and to place a note on the plat obligating successor owners to comply with the plan and with the requirements of Chap. 25.120 DMC. To assure protection of retained trees, lessees should also be obligated to act consistently with the plan and with the requirements of Chap. 25.120 DMC.

DECISION

The record in this matter is reopened to allow briefing on the issues raised in Part B of the Conclusions, above, as to whether this proposal, through either its temporary or permanent stormwater facilities, is governed by the 1992 or the 2005 DOE Stormwater Manual. The Applicant should promptly propose a due date for this briefing.

The record in this matter is reopened to allow additional evidence and/or briefing on whether affected roadways will operate at an acceptable LOS with this project. As

described in the Findings, the Applicant should state the maximum ADT or other measurement allowable for LOS D on roadways, should address the evidence noted in the Findings that Bob's Hollow Lane would be well over the maximum ADT for LOS D, and should address the apparent discrepancy noted in the Findings between the 11,320 ADT projected for McNeil Street by the evidence in The Home Course case and the 8200 ADT projected in Ex. 4, Table 4. The Applicant should promptly propose a due date for this submission.

Apart from the Applicant and the Department, the only entity or entities submitting evidence or argument in this proceeding were The Home Course applicant organizations represented by Mr. Wallace. The Applicant, the Department and the organizations represented by Mr. Wallace may each make submissions on the issues on which the record is reopened. Submission deadlines will be set by subsequent order.

In all other respects, the proposed preliminary subdivision application is approved, subject to the following conditions:

- A. Unless specifically modified by this decision, the Applicant shall comply with all conditions in the MDNS at Ex. 4.
- B. Beginning with Section 18 on p. 12 of the Staff Report, Ex. 7,
 - (1) Conditions a through m are incorporated by reference;
 - (2) Condition n is not adopted;
 - (3) Conditions o through z are incorporated by reference;
 - (4) Condition aa is not adopted; its subject is covered by MDNS Condition 12 at Ex. 4, p. 17;
 - (5) The first four bullet points in Condition bb are incorporated by reference;
 - (6) The fifth bullet point in Condition bb is revised to read as follows and is incorporated by reference: "The Applicant shall construct exclusive left turn lanes from South Loop Road onto Ogden and Jensen Avenues according to the design in the two drawings at the end of Ex. 17 and subject to the two conditions listed in the e-mail sent March 11, 2009 from Tamara Nack to Bill Kingman at Ex. 17. "
 - (7) The remaining bullet points in Condition bb are incorporated by reference;

(8) Conditions cc and dd are incorporated by reference.

C. No uses shall be carried out in the subdivision which have been prohibited by deed restrictions adopted in connection with clean-up of the site. This includes but is not necessarily limited to residences, schools, day care uses and parks.

D. All uses carried out in the subdivision shall comply with any applicable restrictions in any Consent Decree or deed restriction related to the clean-up of the site.

E. For the reasons in Finding No. 11, the first and last sentences in Condition 5 a of the MDNS at Ex. 4, prohibiting temporary stormwater facilities, are not given effect.

F. The use of temporary stormwater facilities as proposed by the Applicant is allowed, as long as they comply with the applicable Stormwater Manual and are replaced by permanent facilities as lots develop.

G. The Applicant or lot developer, as applicable, shall comply with all requirements for erosion and sediment control during construction, including but not limited to those in Chap. 22.01 DMC. The Department shall enforce these requirements through the building, grading or other engineering permit process.

H. In addition to the conditions of the MDNS, if the Revised TIA or the supplemental TIAs show that additional mitigation is needed to ensure adequate LOS at intersections, intersection movements or street segments, the Applicant (or lot developer if required by the MDNS) shall install such mitigation as approved by the Department and at the time prescribed by the MDNS or, if not set in the MDNS, at the time set by the Department. This duty is subject to any requirements for cost sharing or distribution in the MDNS.

I. In complying with Condition 16 of the MDNS, if the required assessment by the lot developer shows that the proposed project is not within the development projections assumed in the previous two-year TIA update, the supplemental TIA required by Condition 16 shall specify those improvements necessary to maintain LOS D at all intersections and street segments, the Department shall have the option of reviewing such proposed improvements, and the Applicant shall install them, subject to any revisions by the Department. The purpose of this addition is to make clear that as between the Department and the Applicant or lot developer, the Department has the final say as to what improvements shall be installed to maintain the acceptable LOS.

J. In addition to other requirements, the intersection improvements listed on p. 26

of the TIA shall be installed by the Applicant at the time determined by the Department. In addition, for the reasons set out in Conclusion No. 25, a traffic signal shall be installed at the intersection of Center Drive and Bronson Place and a round-about shall be built at the intersection of Bob's Hollow Lane and Wren Road by the time determined by the Department. If those are not financed or constructed by other means, the Applicant shall install them at its expense. If the timing of the installation of any of these improvements is controlled by the MDNS, that timing shall govern.

K. No structures, roads or utilities shall be constructed within 50 feet of the shell midden site (Historical Site No. 45PI72).

L. Subject to Condition M, below, all work carried out under this approval shall comply with the duties imposed on the property owner or developer under the 1988 and 1989 agreements between the Weyerhaeuser Real Estate Company, the City, and the state Office of Archaeology and Historic Preservation referred to above. All work carried out under this approval shall comply with the provisions of the agreement with the Nisqually Tribe on the protection cultural resources, sites and human remains referred to above, as applicable.

M. The Applicant shall retain archaeologists to monitor activities during proposed work if archaeological, cultural or historical artifacts are uncovered or if excavation of virgin soils is required.

N. The conditions of the MDNS shall govern the process for deciding whether a new City well shall be built and its financing. However, the Applicant's ultimate monetary responsibility for the well and system shall not exceed a percentage of its total cost which is the same as the percentage of the subdivision's projected use above the 70% level to the capacity of the new well, as discussed in the Conclusions, above. If either the Applicant or the Department disagrees with this formula for proportionate share, it may request reconsideration.

O. No final subdivision approval may be granted for any part of this subdivision until the appropriate fire and EMS provider has provided a direct, written statement to the Department that adequate fire and EMS services, judged under accepted professional standards, is available for the planned buildings and uses and the Department has agreed that fire and EMS service to such buildings and uses is adequate.

P. The Applicant need not follow the requirements of MDNS Condition 17, except that final approval of Loop Road rights-of-way abutting Holes 2 and 12 shall not be granted until the measures required of The Home Course to mitigate the potential of errant golf balls on Holes 2 and 12 are in place and approved by the City. If those measures by The Home Course are not completely carried out by that time,

the Department may grant final approval of such rights-of-way if it determines that the mitigation in place will adequately protect public safety.

Q. No landmark Oregon oaks may be removed on the site.

R. The Applicant shall retain at least a total of 391 trees on the site or one-half the existing trees other than oak, whichever is less.

S. The Department shall advise the Applicant whether any trees remaining on its site are in a designated oak management mapping unit. If so, the Applicant shall comply with the requirements of DMC 25.120.040 for such oak management mapping units.

T. The Applicant shall comply with the requirements of DMC 25.120.030, including but not limited to the requirements of DMC 25.120.030 (6) and (7) to prepare and obtain approval of a tree retention plan and to place a note on the plat obligating successor owners to comply with the plan and the requirements of DMC 25.120.030 for the protection and maintenance of trees. The Applicant shall place a requirement in any lease requiring lessees to act consistently with the tree retention plan and with the requirements of DMC 25.120.030 for the protection and maintenance of trees.

U. The Applicant shall comply with the DuPont Sensitive Area Ordinance, Chap. 25.105 DMC, for any site disturbance within the buffer of a sensitive area.

V. As described in the Findings, Trail T-2 along the Puget Sound bluff need not be asphalted. This trail segment may be constructed using 5/8 inch compacted crushed rock as proposed by the Applicant or other surface mutually agreed by the Applicant and the Department. This segment must comply with all other applicable conditions imposed in this decision.

Dated this 20th day of April, 2009.

Thomas R. Bjorgen
Hearing Examiner

**SUPPLEMENTAL FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF DUPONT**

CASE NO: SUB 08-01 and SEPA 08-04. Preliminary subdivision application for First Park Northwest Landing.

APPLICANT: First Industrial Realty Trust, Inc.

SUMMARY OF REQUEST:

The Applicant requests preliminary subdivision approval for a 49-lot subdivision on a 260-acre site to be developed with warehouses, business parks, research and development facilities and offices.

This supplemental decision considers the two issues on which the record was reopened by the Hearing Examiner decision of April 20, 2009: (a) whether this proposal is governed by the 1992 or the 2005 DOE Stormwater Manual, and (b) whether affected roadways will operate at an acceptable level of service (LOS) with this project.

LOCATION OF PROPOSAL:

The site is located west of the intersection of Center Drive and Palisade Boulevard in Pierce County Assessor's Parcel No. 0119263015 in Sec. 35, T19N, R1E.

SUMMARY OF DECISION:

This proposal is governed by the 1992 DOE Stormwater Manual adopted by the City of DuPont.

Affected street segments in the City will have adequate capacity to accommodate traffic from this proposal in 2014 at an acceptable LOS.

Condition J of the April 20, 2009 decision in this matter is revised as set out below.

Subject to the conditions in the decision of April 20, 2009 in this matter, and the revision to Condition J set out immediately above, the preliminary subdivision application for First Park Northwest Landing is approved.

HEARING AND RECORD:

The hearing on this application was held before the undersigned Hearing Examiner on February 25, 2009. The record was held open for two weeks for possible additional submissions by the Applicant on the issue of left turn lanes on South Loop Road. The Applicant consented to an extension in the time for submission of the decision.

The initial decision on preliminary subdivision approval was issued on April 20, 2009. That decision reopened the record on the two issues described above and in all other respects approved the proposed preliminary subdivision application, subject to conditions. The Applicant requested a deadline of May 11, 2009 for submittal of evidence and argument on these two issues on which the record was reopened.

The decision of April 20, 2009 admitted Exhibits 1 through 18 into the record. The following exhibits relating to the two supplemental issues are also admitted into the record:

Exhibit 19. E-mail chain relating to supplemental procedure, with the latest the e-mail sent April 27, 2009 from JT Cooke to Thomas Bjorgen.

Exhibit 20. Applicant's supplemental submittal, consisting of a letter dated May 11, 2009 from Alexander W. Mackie to Thomas R. Bjorgen, a letter dated May 11, 2009 from Laura Cociasu of ESM Consulting Engineers to Tom Bjorgen, with attachments, and a memorandum dated May 11, 2009 from Jennifer Lowe of the Transpo Group to John T. Cooke.

No testimony was taken after the hearing of February 25, 2009.

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following supplemental findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

A. Nature of the supplemental issues.

1. The Applicant requests preliminary subdivision approval to divide a 260.74 acre site into 49 lots. The Applicant proposes to develop the lots with uses permitted by the DuPont Municipal Code (DMC), not to exceed a total of 1,200,000 square feet of warehousing, 300,000 square feet of business park, 630,000 square feet of research and development, and 1,180,000 square feet of offices. The subdivision would also include three tracts for private open space, one tract for a sewer pump station, 13,480 lineal feet of public roads, storm drainage systems, underground utilities, and pedestrian trails.

2. The project site is zoned Business and Technology Park and is given the same designation under the Comprehensive Plan.

3. On April 20, 2009 the DuPont Hearing Examiner issued a decision which reopened the record on two issues and approved the proposed preliminary subdivision application in all other respects, subject to conditions. The two issues on which the record was reopened are described on pp. 23 and 24 of the April 20 decision as follows:

"The record in this matter is reopened to allow briefing on the issues raised in Part B of the Conclusions, above, as to whether this proposal, through either its temporary or permanent stormwater facilities, is governed by the 1992 or the 2005 DOE Stormwater Manual . . .

"The record in this matter is reopened to allow additional evidence and/or briefing on whether affected roadways will operate at an acceptable LOS with this project. As described in the Findings, the Applicant should state the maximum ADT or other measurement allowable for LOS D on roadways, should address the evidence noted in the Findings that Bob's Hollow Lane would be well over the maximum ADT for LOS D, and should address the apparent discrepancy noted in the Findings between the 11,320 ADT projected for McNeil Street by the evidence in The Home Course case and the 8200 ADT projected in Ex. 4, Table 4 . . ."

Each of these issues is discussed below.

B. The first issue: whether the proposal is subject to the 1992 or 2005 DOE Stormwater Manual.

4. The proposed method of handling stormwater from this proposal is described at Findings of Fact 10 through 17 of the April 20, 2009 decision.

5. The City has adopted the 1992 Department of Ecology (DOE) Stormwater Manual as its stormwater regulations. The April 20 decision held at Conclusion No. 7 that at the conceptual level the proposed subdivision complies with the 1992 DOE Manual and other applicable local stormwater regulations.

6. The April 20 decision also noted that in February 2007 the state issued its Western Washington Phase II Municipal Stormwater Permit (Phase II Permit), which is a general permit governing stormwater discharges to surface and ground waters. DuPont's stormwater discharges are subject to this permit. The purpose of the Phase II permit is to assure compliance with the federal Clean Water Act and the state Water Pollution Control Act, Chap. 90.48 RCW. Decision of 4-20-09, Conclusions of Law 8 and 9.

7. The Phase II permit requires DuPont to reduce the discharge of pollutants to the maximum extent permissible and to use all known, available and reasonable methods of prevention, control and treatment. DuPont must adopt a Stormwater Management Program with specific elements to comply with the permit and must adopt regulations that are equivalent to those set out in Appendix I of the permit. Compliance with the 2005 DOE

Stormwater Manual meets this requirement. Dec. of 4-20-09, Conclusion of Law 10.

8. DuPont has complied with the Phase II permit by issuing its Stormwater Management Program under that permit in March 2008. That program, at pp. 25-26, states that the City will adopt the 2005 DOE Manual by July 2009. Dec. of 4-20-09, Conclusion of Law 11.

9. The April 20 decision in this matter discussed the state vested rights doctrine and stated its basis for reopening the record in the following Conclusions 16 through 18:

"16. This proposal, I believe, is the largest commercial subdivision in the City's history and is certainly one of the largest, if not the largest, commercial proposal in its history. A rational factual case may be made that "appropriate provisions" for drainage are not made by allowing a proposal of this magnitude to be judged under a 17-year old set of stormwater regulations which has been replaced at least twice by the issuing agency (DOE), when the City is planning on adopting an up-to-date set of regulations in three months under a state permit which was in effect when the plat application was filed. This argument is strengthened when one realizes that some permanent stormwater facilities may not be built for another ten years.

17. On the other hand, the applicable specific stormwater regulations (the 1992 Manual) are typically viewed as the implementation of the broader requirement of "appropriate provisions", and the Westside decision would hold that this proposal is vested under the 1992 Manual.

18. The Phase II Permit was in effect when the subdivision application was filed. That, together with the imminence of planned adoption of the 2005 Stormwater Manual, the requirement for which was also in effect at plat filing, raises the issue whether this subdivision should be judged under the 2005 Manual. These issues have not yet been discussed and would benefit from briefing before a decision is made. Therefore, the record in this matter should be reopened to allow briefing on the issues just discussed of whether this proposal is governed by the 1992 or the 2005 DOE Stormwater Manual. If the two Manuals are close enough to each other as they apply to this proposal to make this issue one of no real consequence in the handling of stormwater, that point should also be raised."

10. The Applicant responded to this issue through Ex. 20. The letter from Laura Cociasu of ESM Consulting Engineers, part of Ex. 20, stated that she reviewed the differences between the 1992 and 2005 stormwater manuals to determine if there was any material difference in the environmental protection afforded for this project. Ms Cociasu concluded after this review

"that there is no material difference between the two stormwater manuals as applied to this particular site and that stormwater design adequately treats and

disposes of stormwater on this site."

Ex. 20, Cosiasu letter, p. 1.

11. Ms. Cosiasu pointed out that both manuals require treatment of the 6 month 24 hour storm volume. Id. The biggest difference between the two, according to Ex. 20, is that the 1992 Manual calculates that volume as 64% of the 2 year 24 hour storm, while the 2005 Manual states it is 72% of the same storm. Id. Thus, the 2005 Manual requires the capacity to treat a somewhat larger volume of water.

12. The Cosiasu letter states that the site has a high infiltration rate and that the preliminary projected infiltration rate is 30 inches per hour. This, Ms. Cociasu states, will minimize the difference between the treatment storage capacities required by the two manuals. Id. at pp. 1 and 2.

13. The Stormwater Master Plan at Ex. 3 states that water quality treatment will be provided through wetponds, bio-infiltration swales, StormFilter devices, or bioswales. It is clear how a rapid infiltration rate can accommodate more water flowing through the system as a whole, but it is not clear how rapid infiltration will increase the volume a wetpond, filter or bioswale can treat, absent increasing its size.

14. The Preliminary Storm Drainage Report at Table 5 in Ex. 1 shows that the water quality ponds are sized well over that needed to accommodate the 6 month 24 hour storm required by the 1992 Manual. A rough comparison shows that these pond volumes would likely be enough to handle the larger 6 month 24 hour volume calculated under the 2005 Manual. Thus, it appears that the proposed wetponds for the listed basins will be able to treat the larger 2005 Manual volume.

15. On the other hand, the bioswale calculations in the Preliminary Storm Drainage Report suggest that they are just large enough to treat 64% of the 2 year 24 hour storm, which is the smaller standard from the 1992 Manual. This suggests they are not sized to treat the somewhat larger volumes required by the 2005 Manual. On the other hand, the high infiltration rate generally might result in a higher rate of infiltration from these swales, which would effectively increase their capacity.

16. Turning to detention of stormwater, a more rapid infiltration rate would directly reduce the volume needed to detain runoff. Further, the Cociasu letter states that a safety factor has been applied to the infiltration ponds, so they will not discharge to surface waters even in storms above the 100 year 24 hour level. Thus, the Cociasu letter shows that proposed detention volumes would likely exceed the standards of the 1992 Manual.

C. The second issue: whether affected roadways will operate at an acceptable LOS with this project.

17. The April 20 decision in this matter reopened the record to allow additional evidence and/or briefing on whether affected roadways will operate at an acceptable LOS with this project. More specifically, Finding 46 noted that a 2004 traffic analysis for The Home Course¹ proposal stated that the maximum daily volume allowable to maintain LOS D on Bob's Hollow Lane west of Center Drive and on McNeil Street was 12,000 average daily trips (ADT). However, Table 4 of the Traffic Impact Analysis (TIA) at Ex. 4 in this matter states that in 2014 with this project Bob's Hollow Lane would have an ADT of 13,600, which would significantly exceed the maximum allowed under LOS D under The Home Course decision.

18. In addition, Finding 47 of the April 20 decision in this matter stated that the evidence presented for The Home Course showed that McNeil Street would have an ADT of 11,320 under the scenario which assumed full build-out of the Consent Decree area, while Table 4 of the TIA at Ex. 4 in this case states that in 2014 with this project McNeil Street would have an ADT of only 8200.

19. The April 20 decision reopened the matter

"to allow the Applicant to submit additional evidence on the issue of whether affected roadways will operate at an acceptable LOS with this project. In this submittal, the Applicant should state the maximum ADT or other measurement allowable for LOS D for roadways, should address the evidence noted above that Bob's Hollow Lane would be well over the maximum ADT for LOS D, and should address the apparent discrepancy between the 11,320 ADT projected for McNeil Street by the evidence in The Home Course case and the 8200 ADT projected in Ex. 4, Table 4.

Dec. of 4-20-09, Finding 49.

20. Turning first to the issue of projected ADT on Bob's Hollow Lane, the supplemental traffic analysis by the Transpo Group in Ex. 20 reexamines both the capacity of this street and its projected traffic volume. The analysis notes that the segment of Bob's Hollow Lane between Center Drive and Wren Road will have turn lanes at its intersections and at the access to the school. These improvements, according to this analysis, had not been finalized at the time of the 2004 traffic analysis for The Home Course, which resulted in all of Bob's Hollow Lane being assigned a maximum ADT of 12,000. With these turn lanes, the traffic analysis at Ex. 20 states that Bob's Hollow Lane between Center Drive and Wren Road has a maximum capacity of 14,600 under accepted methodologies. This is not disputed by the Department. The maximum capacity of Bob's

¹ The initial decision on The Home Course conditional use permit, No. CUP 08-01, was issued on April 8, 2009. The Supplemental decision in the same case was issued June 1, 2009.

Hollow Lane west of Wren Road remains at 12,000.

21. That portion of Bob's Hollow Lane between Center Drive and Wren Road is designed to provide a secondary access to the First Park development here under consideration, as well as an access to housing developments west of the Wren Road intersection. That portion of Bob's Hollow Lane west of Wren Road is not designed to provide a secondary access to this First Park development.

22. The Transpo Group analysis at Ex. 20 projected future volumes on Bob's Hollow Lane using updated traffic counts from October 2008, as well as the other sources it lists. This analysis projected that in 2014 Bob's Hollow Lane between Center Drive and Wren Road would have an ADT volume of 12,100, well within its maximum capacity of 14,600. The analysis projected that in 2014 Bob's Hollow Lane west of Wren Road would have an ADT volume of 3500, well within its maximum capacity of 12,000. The Transpo Group memorandum at Ex. 20 states that its methodology was applied in consultation with the City's traffic consultant.

23. The evidence submitted through Ex. 20 shows that with traffic from this proposal, Bob's Hollow Lane will operate within its capacity and at an acceptable LOS.

24. The second issue of roadway capacity described above arises from the discrepancy between the 2004 projection for The Home Course showing that McNeil Street would have an ADT of 11,320 and the projection in the TIA at Ex. 4 in this case that in 2014 with this project McNeil Street would have an ADT of only 8200.

25. The Applicant states in the cover letter at Ex. 20 that the 2004 projection for The Home Course assumed that the South Loop Road was not yet built, while the TIA for this project assumed the opening of that road. However, the 2004 ADT projection of 11,320, relied on by the April 20 decision in this case, was the "Task 2" projection, which assumed full build-out of all uses in the Consent Decree area (the proposed First Park development) and construction of the North and South Loop Roads and the street link between their intersection and Center Drive. Thus, the projections of 11,320 and 8200 for McNeil Street each assume the presence of the South Loop Road.

26. As with Bob's Hollow Lane, the analysis by the Transpo Group in Ex. 20 projected 2014 traffic volumes on McNeil Street with this project, using updated traffic counts and the other sources noted above. That analysis projected a 2014 ADT on McNeil Street of 8600, somewhat higher than the 8200 trip ADT projected by the TIA at Ex. 4.

27. Ex. 20 pointed out that a supplemental analysis in The Home Course proceeding projected a revised ADT on McNeil Street of 10,255. This supplemental analysis for The Home Course is at Ex. 37 in that proceeding and is also prepared by Ms. Lowe of the Transpo Group. As pointed out by the Transpo Group study at Ex. 20, the

revised projection of 10,255 ADT for The Home Course assumes that the South Loop Road is not completed. Completion of the South Loop Road will further reduce the 10,255 ADT projected for McNeil Street. The 2014 projection of 8600 ADT for McNeil Street in Ex. 20 assumes the South Loop Road is completed. Thus, completion of the South Loop Road will draw these projections closer together. Although the precise amount of the remaining difference is not known, it becomes too small to serve as a basis for questioning the validity of the 2014 projection of 8600 ADT for McNeil Street in Ex. 20 .

28. The reduction of this original discrepancy rests largely on a substantial reduction in the projected ADT on McNeil Street in The Home Course analyses. As noted, the 2004 projection, assuming completion of the South Loop Road (Task 2), was 11,320 ADT. That was reduced in 2009 to 10,255 ADT without the South Loop Road, resulting in an even smaller figure if one assumes the presence of the South Loop Road. The reason for the reduction in these projections from 2004 to 2009 is set out in Findings 13 through 16 of the Supplemental Decision in The Home Course matter, No. CUP 08-01, dated June 1, 2009. That reason, in short, is that the 2004 projection was based on the City's Comprehensive Plan traffic model and trip generation rates from the Institute of Traffic Engineers (ITE). Finding 13, Supp. Decision in The Home Course, No. CUP 08-01, June 1, 2009. The 2009 projection, on the other hand, was based on actual traffic counts taken in April 2009. *Id.* The latter method is more reliable for two reasons: it is based on actual counts instead of generalized rates, and its data is much more recent. Therefore, the reduction in McNeil Street projections in The Home Course from 2004 to 2009 is well founded in fact.

29. With the dissolution of any significant difference between the ADT projections in this case and The Home Course, the updated projections in Table 1 of the Transpo Group analysis at Ex. 20 answer the question of whether roadway capacity is adequate. That Table shows that all roadway segments analysed except one will have ample remaining capacity in 2014 with this project. The one exception is Center Drive south of Wilmington Drive, which will have a projected ADT volume of 29,400 with a capacity of 30,000.

30. Condition 16 of the Mitigated Determination of Nonsignificance, however, requires the Applicant to prepare supplemental TIAs and other assessments in the future to ensure that traffic and other projections remain valid with the passage of time. See Finding 32 of the April 20, 2009 decision in this matter. Further, Condition H of that decision states that

"if the Revised TIA or the supplemental TIAs show that additional mitigation is needed to ensure adequate LOS at intersections, intersection movements or street segments, the Applicant (or lot developer if required by the MDNS) shall install such mitigation as approved by the Department and at the time prescribed by the MDNS or, if not set in the MDNS, at the time set by the Department. This duty is subject to any requirements for cost sharing or distribution in the MDNS."

31. These safeguards apply to street, as well as intersection LOS. With them, the small margin of capacity on Center Drive south of Wilmington can be accepted. If unforeseen circumstances erode that margin, these measures will require mitigation.

32. The evidence shows that the analysed streets will have adequate capacity to accommodate traffic from this proposal in 2014 at an acceptable LOS.

D. The requirement of a traffic signal at the intersection of Bronson Place and Center Drive.

33. Condition J of the April 20, 2009 decision states:

"In addition to other requirements, the intersection improvements listed on p. 26 of the TIA shall be installed by the Applicant at the time determined by the Department. In addition, for the reasons set out in Conclusion No. 25, a traffic signal shall be installed at the intersection of Center Drive and Bronson Place and a round-about shall be built at the intersection of Bob's Hollow Lane and Wren Road by the time determined by the Department. If those are not financed or constructed by other means, the Applicant shall install them at its expense. If the timing of the installation of any of these improvements is controlled by the MDNS, that timing shall govern."

34. Conclusion No. 25 of the same decision stated the basis for these requirements:

"As described in Finding No. 38, the analysis showing adequate intersection LOS assumes that the intersection improvements listed on p. 26 are installed, that a traffic signal is installed at the intersection of Center Drive and Bronson Place and that a round-about is built at the intersection of Bob's Hollow Lane and Wren Road. To avoid jeopardizing the validity of the LOS evaluation, this decision is conditioned to require those improvements to be in place at the time determined by the Department. If the timing of their installation is controlled by the MDNS, that timing shall govern. In addition to these improvements, all other measures required by the MDNS, and all measures required through the process set up in the MDNS, shall be carried out."

35. Finding No. 38, in turn, states:

"The effect of that traffic on the LOS of intersections is shown on Table 6 of the TIA, assuming that the intersection improvements listed on p. 26 are installed. This analysis also assumed a traffic signal would be installed at the intersection of Center Drive and Bronson Place and that a round-about would be built at the intersection of Bob's Hollow Lane and Wren Road. Ex. 3, p. 11."

This last reference to Ex. 3 is mistaken. It should be to Ex. 2, p. 11, which is part of the TIA.

36. In short, both this Finding and this Conclusion show that the determination of adequate LOS assumes construction of a traffic signal at the intersection of Center Drive and Bronson Place. For that reason, Condition J required the construction of that signal at the time prescribed by the Department or if covered by the MDNS, at the time prescribed by that document.

37. The supplemental memorandum by the Transpo Group at Ex. 20 states that this traffic signal was assumed in the TIA for this proposal, because it is a requirement for the development of DuPont Corporate Park, a development on the west side of the Intel campus. The Transpo Group memorandum states that if the DuPont Corporate Park is not built, there will not be a need for this signal. The memorandum states further that the trips generated by the First Park proposal through this intersection are not the critical movements at the intersection. As noted, the Transpo Group memorandum states that its methodology was applied in consultation with the City's traffic consultant.

38. The DuPont Corporate Park proposal was included in the TIA as a "pipeline" project. Ex. 2, p. 11. At this writing, this project is approved, but not yet built.

39. Whatever the source of the requirement for a light at Center Drive and Bronson Place, the fact remains that the evidence of adequate LOS in the TIA for the First Park project assumes that light will be in place. Thus, without more it must be found that if the light is not present, the TIA does not show adequate LOS at all intersections.

40. As noted, the Transpo Group memorandum at Ex. 20 states that the trips generated by the First Park proposal through this intersection are not the "critical movements" at the intersection. The memorandum does not state, though, whether this means that First Park traffic would pass through the intersection at an acceptable LOS, even if the light is not in place. Without that, it cannot be found on this evidence that First Park traffic would flow at an acceptable LOS even without the light. To the contrary, the TIA's inclusion of the DuPont Corporate Park as a pipeline project and its assumption that the light will be built suggests that the TIA relies on the light to find an adequate LOS at this intersection.

41. Of more concern is the statement by the Transpo Group at Ex. 20 that the light would not be needed if the DuPont Corporate Park project is not built. The fact that Transpo's methodology was applied in consultation with the City's traffic consultant suggests the City agrees with this statement.

42. If the DuPont Corporate Park project is not built, then the traffic light at this intersection would not be needed to assure an adequate LOS with First Park traffic. If

the Corporate Park is built, then the light would be needed to assure an adequate LOS with First Park traffic.

43. Finding No. 31 of the June 16, 2008 decision approving the DuPont Corporate Park, No. LU 07-02, states:

"The MDNS also requires that a traffic signal be installed at the Center Drive/Bronson Avenue intersection when traffic volumes meet signal warrants. This is expected to occur when the second building is constructed on the project site. The MDNS also requires additional curb and gutter construction with the signal."

44. Thus, if the Corporate Park proceeds, the light at Center and Bronson will be installed when traffic volumes meet signal warrants. If the Corporate Park is delayed, then that point may occur earlier than anticipated in this Finding No. 31. In any event, if the Corporate Park goes ahead, the light will be installed when the total volume meets the appropriate warrants. If the Corporate Park does not proceed, then this evidence shows that the light will not be required to ensure that adequate LOSs are maintained with First Park traffic. Therefore, under the current evidence there is no need to include the light at Center and Bronson in Condition J of the First Park decision to assure adequate LOSs.

45. This proposal, however, is projected to be completed in eight to ten years. Over that long a period, the traffic and development assumptions on which this approval is based may change in a way that requires more mitigation to maintain a proper LOS. The MDNS at Ex. 4, Condition 16, recognizes this and requires a series of supplemental TIAs to update traffic information as the proposal progresses. Condition 16 of the MDNS requires also that these supplemental TIAs examine five intersections on Center Drive under the updated information to determine if additional mitigation is needed to maintain LOS D. If it is needed, Condition 16 requires it to be installed before the LOS drops below D.

46. Traffic conditions reasonably could change over this period to require a light at Center Drive and Bronson Place, even if the DuPont Corporate Park is delayed or not built. If this light is removed from Condition J and its construction is required only through the condition in the Corporate Park approval, then some safeguard must be present to assure its installation, if needed, in the absence of the Corporate Park. That can easily be done by adding the intersection of Center Drive and Bronson Place to the list of those requiring supplemental analysis and potential mitigation in Condition 16 of the MDNS.

47. To accomplish these purposes, Condition J should be revised to read as follows:

"J. In addition to other requirements, the intersection improvements listed on p. 26 of the TIA shall be installed by the Applicant at the time determined by the Department. In addition, for the reasons set out in Conclusion No. 25, a round-

about shall be built at the intersection of Bob's Hollow Lane and Wren Road by the time determined by the Department. If this is not financed or constructed by other means, the Applicant shall install it at its expense. If the timing of the installation of any of these improvements is controlled by the MDNS, that timing shall govern. To account for changing circumstances, "Center Drive/Bronson Place" is added to the list of intersections in the first bullet of the second paragraph of Condition 16 of the MDNS at Ex. 4 and to the list of locations in the third paragraph of Condition 16 of the MDNS, requiring supplemental traffic analysis and potential additional mitigation."

CONCLUSIONS OF LAW

A. The first issue: whether the proposal is subject to the 1992 or 2005 DOE Stormwater Manual.

1. Under Westside Business Park v. Pierce County, 100 Wn. App. 599 (2000), submission of a preliminary plat application vests the applicant under the storm drainage ordinances then in effect. The 1992 DOE manual was in effect in the City of DuPont when this plat application was submitted. Therefore, that case indicates that the Applicant is vested under the 1992 Manual.

2. However, DMC 24.03.060 (b) was also in effect when the plat application was filed. That section states that:

"[a] proposed subdivision and dedication shall not be approved unless the Examiner makes written findings that:

(1) Appropriate provisions are made for the public health, safety, and general welfare for open spaces, drainageways, . . . and all other relevant facts . . . and

(2) The public use and interest will be served by the platting of such subdivision and dedication."

3. This requirement to make appropriate provisions for drainageways reflects RCW 58.17.110 and is in almost all situations satisfied by compliance with the municipality's specific stormwater regulations, in this case the 1992 DOE Manual. Here, however, the City is required by the Phase II Permit to adopt the 2005 DOE Manual to comply with a state law, Chap. 90.48 RCW. The City has represented in its Stormwater Management Plan that it will do so by July 2009. Because that Plan was required by the Phase II Permit, adoption of the 2005 Manual by this July should also be deemed a requirement of that permit. This raises the issue of whether the requirement of appropriate provisions under RCW 58.17.110 mandates compliance with the 2005 Manual. Because RCW 58.17.110, DMC 24.03.060 (b), the Phase II Permit, and the

Stormwater Management Plan were all in effect when the preliminary plat application was filed, an argument can be made that application of the 2005 Manual to this project is permitted or compelled by the vested rights doctrine.

4. The Applicant states in Ex. 20 that it views this issue not so much as whether the project vested, but whether the 1992 Manual ensures there will not be more than a moderate impact on the environment. However, the April 20 decision in this matter intended to pose the question under the vested rights doctrine, not as a possible supplemental exercise of authority under the State Environmental Policy Act.

5. The Applicant is correct, though, that the Cociasu letter shows that in almost all respects there is no material difference between the application of the two manuals to this proposal. As shown in the Findings, the only treatment facilities which apparently were designed to treat no more than the 1992 volume are the bioswales. However, the one expert submitting evidence on this issue, Ms. Cociasu, states that the high infiltration rate will minimize the difference between the treatment volumes required by the two manuals. Further, she states in Ex. 20 "that there is no material difference between the two stormwater manuals as applied to this particular site and that stormwater design adequately treats and disposes of stormwater on this site."

6. As summarized above, there is a reasonable argument under the vested rights doctrine that the 2005 Manual should apply to this case. That holding, however, would require a modification of the Westside decision and arguably other case law to reflect the new circumstances presented by this case. I believe a hearing examiner does have authority to make rulings of law to deal with novel circumstances not yet considered by the case law, even if that requires an adjustment of what was thought to be a rule free of exceptions.

7. Such a ruling, though, should be made only on full briefing and, more to the point, only if it makes a difference in the resolution of the case. Here, the evidence as found above shows that the water quality ponds and detention facilities are of a size that would meet or come close to meeting the requirements of the 2005 Manual. The Findings show that the bioswale treatment facilities likely only meet the requirements of the 1992 Manual. As noted, though, Ms. Cociasu stated in Ex. 20 "that there is no material difference between the two stormwater manuals as applied to this particular site" and that the high infiltration rate will minimize what difference may remain. As found, that high infiltration may reduce the need for a prescribed volume in the bioswales.

8. The evidence, in other words, shows that this proposal likely meets the standards of the 2005 Manual. The April 20 decision held that it met the requirements of the 1992 Manual at the conceptual level. A novel legal issue generally should not be invited by or decided on facts on which its resolution would make no difference. Therefore, it is concluded that Westside controls and this proposal is governed by the 1992 DOE Manual adopted by the City of DuPont.

B. The second issue: whether affected roadways will operate at an acceptable LOS with this project.

9. The Findings above show that affected street segments in the City will have adequate capacity to accommodate traffic from this proposal in 2014 at an acceptable LOS.

C. The requirement of a traffic signal at the intersection of Bronson Place and Center Drive.

10. As noted, the record was reopened on the issue of whether affected roadways will operate at an acceptable LOS. The Applicant's request concerning the traffic light at Center and Bronson relates most directly to intersection LOS, but also will have an effect on the roadway LOS or capacity on Center Drive. Thus, this request can reasonably be characterized as falling within the scope of the record reopening.

11. The Applicant gave notice of its requests, including that concerning the Center Drive/Bronson Place light, to the other parties, The Home Course applicant and the DuPont Planning and Economic Development Department. Neither other party responded on this issue. For these reasons, the Applicant's request concerning the intersection of Center Drive and Bronson Place may be considered.

12. For the reasons set out in the Findings, above, Condition J of the April 20, 2009 decision in this matter should be revised to read as follows:

"J. In addition to other requirements, the intersection improvements listed on p. 26 of the TIA shall be installed by the Applicant at the time determined by the Department. In addition, for the reasons set out in Conclusion No. 25, a round-about shall be built at the intersection of Bob's Hollow Lane and Wren Road by the time determined by the Department. If this is not financed or constructed by other means, the Applicant shall install it at its expense. If the timing of the installation of any of these improvements is controlled by the MDNS, that timing shall govern. To account for changing circumstances, "Center Drive/Bronson Place" is added to the list of intersections in the first bullet of the second paragraph of Condition 16 of the MDNS at Ex. 4 and to the list of locations in the third paragraph of Condition 16 of the MDNS, requiring supplemental traffic analysis and potential additional mitigation."

DECISION

This proposal is governed by the 1992 DOE Stormwater Manual adopted by the City of DuPont.

Affected street segments in the City will have adequate capacity to accommodate traffic from this proposal in 2014 at an acceptable LOS.

Condition J of the April 20, 2009 decision in this matter is revised to read as follows:

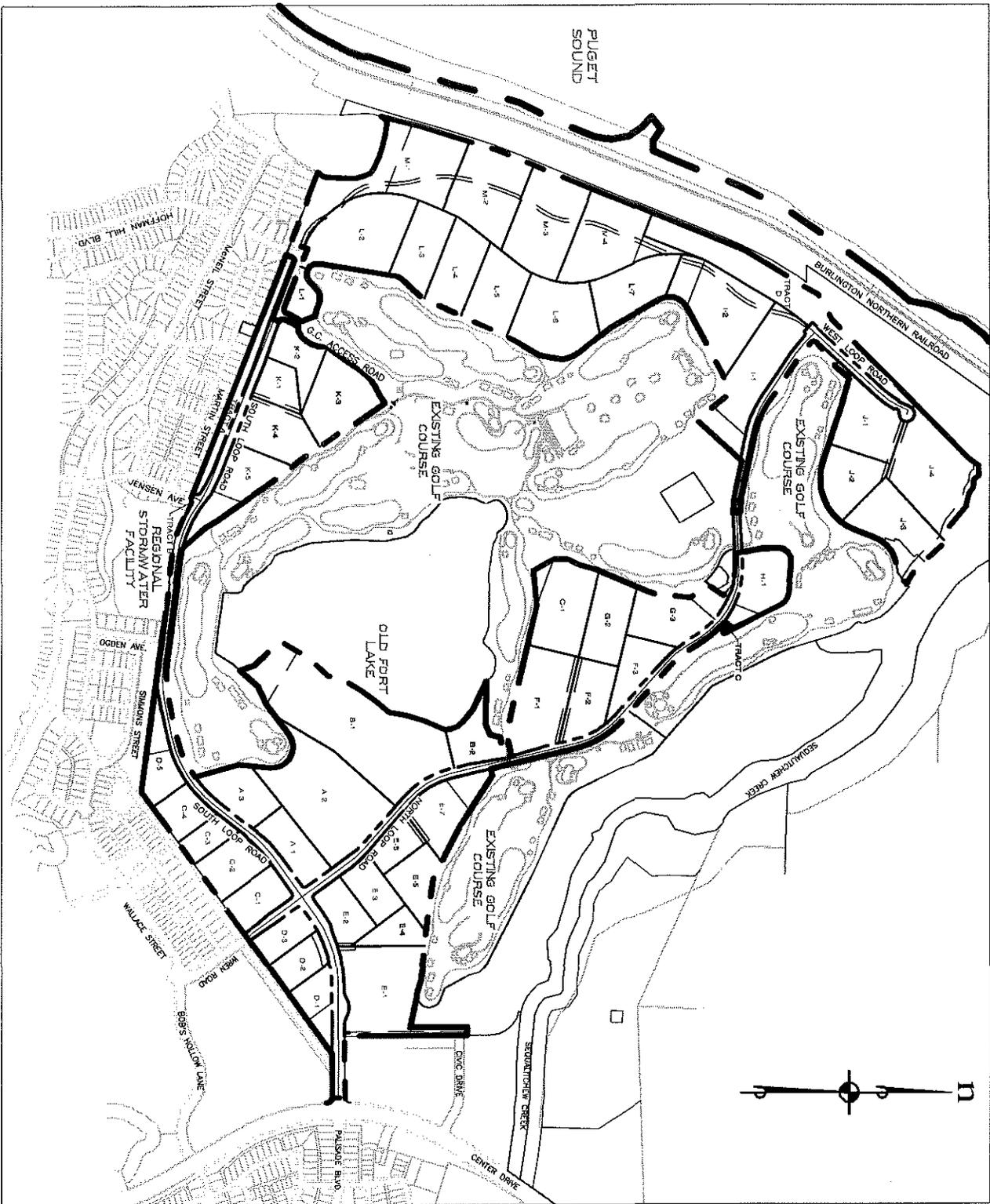
"J. In addition to other requirements, the intersection improvements listed on p. 26 of the TIA shall be installed by the Applicant at the time determined by the Department. In addition, for the reasons set out in Conclusion No. 25, a round-about shall be built at the intersection of Bob's Hollow Lane and Wren Road by the time determined by the Department. If this is not financed or constructed by other means, the Applicant shall install it at its expense. If the timing of the installation of any of these improvements is controlled by the MDNS, that timing shall govern. To account for changing circumstances, "Center Drive/Bronson Place" is added to the list of intersections in the first bullet of the second paragraph of Condition 16 of the MDNS at Ex. 4 and to the list of locations in the third paragraph of Condition 16 of the MDNS, requiring supplemental traffic analysis and potential additional mitigation."

Subject to the conditions in the decision of April 20, 2009 in this matter, and the revision to Condition J set out immediately above, the preliminary subdivision application for First Park Northwest Landing is approved.

Dated this 12th day of June, 2009.

Thomas R. Bjorgen
Hearing Examiner

PRELIMINARY PLAT EXHIBIT 1" = 1000'



CONSULTING ENGINEERS LLC
 33915 1st Way South #200
 Federal Way, WA 98003

FEDERAL WAY (253) 838-6113
 BOTHELL (425) 415-6144
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Civil Engineering
 Public Works

Land Surveying
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Land Planning
 Landscape Architecture

JOB NO. 1449-001-007
 DRAWING NAME : EN-70
 DATE : 2009-08-26
 DRAWN : LGC
 SHEET 1 OF 1

EXHIBIT C

**FIRST PARK NWL
MITIGATION AGREEMENT**

THIS AGREEMENT (hereinafter "Agreement") is entered into by and between the CITY OF DUPONT (hereinafter the "City") and FIRST INDUSTRIAL REALTY TRUST, Inc. (hereinafter "Applicant"), as of the last date of execution by the parties set forth below.

WHEREAS, Applicant is proposing to construct a development on an approximately 260.7 acre site ("Site"), zoned Business Tech Park, known as First Park NWL ("Project"); and

WHEREAS, the City will issue a Mitigated Determination of Non-Significance for the Project, City File No. SEPA 08-04 ("MDNS"), following execution of this agreement; and

WHEREAS, to mitigate public safety impacts to the City's Fire and Police Departments as identified in the MDNS, Applicant agrees to enter into a voluntary mitigation agreement; and

WHEREAS, the City has adopted an Impact Fee Ordinance, Title 26, City of DuPont Municipal Code, for the purpose of assessing developers' fire impact fees for capital improvements necessary to serve new growth within the City. However, this fee does not cover non-capital expenditures; and

WHEREAS, the City is currently re-evaluating the cost of service for police and fire caused by residential and commercial development; and

WHEREAS, to mitigate the environmental impacts associated with City Police and Fire risks associated with the Project and to resolve the processing of the subject land use applications and permits, Applicant has agreed to enter into a voluntary mitigation agreement.

NOW, THEREFORE, in consideration of the following mutual promises and covenants, the Parties agree as follows:

Section 1. Payment of Fire Impact Fees. Applicant agrees to pay the City's fire impact fee in effect at the time of building permit issuance.

Section 2. Payment of Additional Mitigation Fees. As a condition of the MDNS, the Applicant will pay for a study ("Impact Study") to be completed by a consultant mutually approved by the City and the Applicant that analyzes the total Project's impacts on the City's police and fire services. If the Impact Study demonstrates that the Project poses additional impacts on the provision of police and fire services, beyond those mitigated by the City's fire impact fee, Applicant agrees to pay the City an additional fee ("Mitigation Fee"), as calculated in the Impact Study. Consistent with WAC 187-11-660, the Mitigation Fee shall not exceed an amount that is proportionate to the specific impacts attributable to the Project, after taking into account the Fire Impact Fee required under Section 1 and the projected City revenues attributable to the Project. The fee shall be assessed on a per acre basis at the time of approval of building permit. If the results of the study conclude additional mitigation is due for development of the project, those terms will be contained in a development agreement to be executed by the parties. First Park will be obligated to

 ORIGINAL

EXHIBIT D

notify parcel builders of the requirement for additional mitigation at the time of building permit issuance.

Section 3. Binding Nature of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors, devisees, assigns and all persons now or hereafter holding or having all or any part of the interest of a party to this Agreement.

Section 4. Attorneys' Fees. In any action between the parties to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees and costs.

Section 5. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall lie in Pierce County Superior Court.

Section 6. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter hereof. There are no other representations, agreements, arrangements, or understandings, verbal or written, between and among the parties relating to the subject matter of this Agreement. No amendment or modification to this Agreement shall be valid or effective unless made in writing and executed by the parties after the effective date of this Agreement.

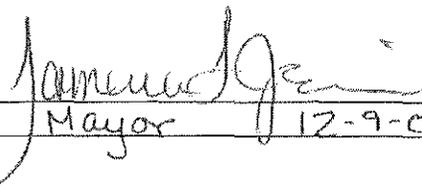
Section 7. Counterpart Originals. This Agreement may be executed in multiple counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a party shall have the same force and effect as if that party had signed all other counterparts.

Dated this 25th day of November, 2008.

**FIRST INDUSTRIAL REALTY TRUST,
INC.:**

By 
Its Regional Director

CITY OF DUPONT

By 
Its Mayor 12-9-08

City of DuPont
State Environmental Policy Act (SEPA)
Mitigated Determination of Non-Significance (MDNS)

First Park Northwest Landing
City File No. SEPA 08-04

Description of Proposal

Develop 260 acres of land with 49 developable lots for non-residential uses, three tracts for private open space, one tract for a sewer pump station, 13,480 lineal feet of public roads, storm drainage systems, underground utilities, pedestrian trails, and

Develop 49 lots within said plat with uses permitted by the DuPont Municipal Code not to exceed a total of 1,200,000 sq. ft. of warehousing, 300,000 sq. ft. of business park, 630,000 sq. ft. of research and development, and 1,180,000 sq. ft. of office. Full build-out of the plat and subsequent developments are projected to take approximately 10 years from date of preliminary plat approval.

Proponent

ESM Consulting Engineers LLC, Federal Way, Washington, agent for First Industrial Realty-Trust, Inc., Seattle, Washington.

Location of Proposal

The site is located 1.5 miles west of Interstate 5 and west of the intersection of Center Drive and Palisade Boulevard in the Old Fort Lake Business and Technology Park planning area, DuPont, Washington, Section 35, Township 19 North, Range 1 East, W.M., Parcel No. 0119263015.

Lead Agency

City of DuPont.

Findings

1. The Applicant submitted the following documents:
 - Environmental Checklist dated October 9, 2008
 - Geotechnical report prepared by GeoEngineers dated April 2, 2008
 - Soil Remediation Closure Report prepared by Pioneer Technologies Corporation dated March 2007
 - Stormwater Master Plan prepared by ESM Consulting Engineers dated October 9, 2008
 - Landmark and Specimen Tree Count prepared by Lusignan Forestry Inc., dated April 1, 2008
 - Development Agreement
 - Transportation Impact Analysis prepared by The Transpo Group dated September 2008
 - Mitigation Agreement
 - Pierce Count Sewer Availability Letter dated December 27, 2007

- Preliminary plat drawings
2. Onsite slopes are generally 1 to 10 percent grade. Slopes of approximately 15 to 25 percent are located west of the site. Slopes greater than 40 percent are located along the northwest corner of the site immediately north of Lots J-3 and J-4. Slopes greater than 40 percent are classified as environmentally sensitive per DMC 25.105.070(2). Sheet PP-5 shows a 50 foot buffer from the top of the steep slope, consistent with DuPont Municipal Code (DMC) 25.105.070.

New public trails are proposed consistent with the DuPont Parks, Recreation and Open Space Plan adopted April 10, 2007. Sections of an existing trail located along the Puget Sound Bluff abutting the subject property may be upgraded with the plat. Specific trail locations have not been finalized. If trail work is proposed or required within 50 feet of the top of the Puget Sound steep slope sensitive area, a separate environmental review and Type III application is required pursuant to DMC 25.105.050(2)(b) prior to start of the trail work.

Construction plan for the Wilkes Observatory have not been finalized. If construction of the Wilkes Observatory is within 50 feet of the top of the Puget Sound steep slope sensitive area, a separate environmental review and Type III application is required pursuant to DMC 25.105.050(2)(b) prior to start of the trail work.

3. US Department of Agriculture Soil Conservation Service map data indicate the site is underlain with level Spanaway gravelly sandy loam, formed in glacial outwash. The subject site was cleared of arsenic, lead, copper, explosives, motor oil and fuel oil pursuant to the First Consent Decree (No. 91 2 01703 1) and Second Consent Decree (No. 03 2 10484 7) effective July, 1991 and August 2003, respectively, between the lead agency, Washington State Department of Ecology and Weyerhaeuser Company and the principle responsible parties, E.I. duPont de Nemours and Company, Inc. There are no known indications or history of unstable soils on the site.
4. GeoEngineers prepared a geotechnical report for the site dated April 2, 2008. The report states the site consists of Modified Land, Vashon Recessional Outwash, and Steilacoom Gravel. 18 test pits were dug to a depth ranging from 8 to 15 feet. No groundwater seepage was observed in any of the pits. Two borings were performed to confirm field classifications. The report recommends the 2005 Pierce County Method infiltration rates (30 inches per hour) be used for preliminary stormwater design.
5. Mass grading will occur in the developable portions of the site for construction of roads and utilities. Due to the completed environmental remediation work, no surface strippings are anticipated. Cut and fill quantities are estimated at approximately 47,000 cubic yards of cut and 67,000 cubic yards of fill, with a net fill of 20,000 cubic yards. A DuPont Haul Route permit and a temporary erosion

and sedimentation control plan will be required with each civil construction permit. Best management practices will be implemented as required by the City.

6. Air emissions will occur from construction equipment during construction and vehicles during occupancy of the buildings. The project should fully implement applicable US Environmental Protection Agency, Washington State Department of Ecology and Puget Sound Clean Air Agency standards and requirements governing air quality with construction and occupancy of the buildings.
7. The Applicant submitted a Closure Report prepared by Pioneer Technologies Corporation dated March 2007 regarding successful remediation of the subject site for arsenic, lead, copper, explosives, motor oil and fuel oil pursuant to the First Consent Decree (No. 91 2 01703 1) and Second Consent Decree (No. 03 2 10484 7) effective July, 1991 and August 2003, respectively, between the lead agency, Washington State Department of Ecology and Weyerhaeuser Company and the principle responsible parties, E.I. duPont de Nemours and Company, Inc. Final remediation activities were conducted in accordance with the requirement identified in the Model Toxics Control Act Chapter 70.105D RCW and Cleanup Regulation Chapter 173-340 WAC.
8. The site is not within a 100-year floodplain. The site is located in Zone C per Federal Emergency Management Agency Flood Insurance Rate Map Panel Number 530 245 0003-B. Zone C is an area of minimal flooding.
9. DuPont records do not indicate any water bodies, wetlands or streams are located on the site. Old Fort Lake is approximately 100 feet from the site. Groundwater diversions or discharges are not proposed.
10. ESM Consulting Engineers submitted a Stormwater Master Plan for the subject site dated October 9, 2008. The storm system will be designed to DuPont standards (1992 Department of Ecology Stormwater Design Manual).

A 6-basin temporary stormwater drainage system is proposed. This system includes a network of catch basins and underground pipes that collect stormwater runoff from roadways and landscape strips and convey the runoff to temporary water quality ponds. Water quality treatment will be provided by temporary bioswales or water quality ponds. These temporary water quality facilities are designed to have the capacity to accommodate the 100-year 24 hour storm events.

A 13-basin permanent stormwater drainage system is proposed. Each permanent drainage section will be constructed with development of the individual lots within that drainage basin. The permanent system includes a network of catch basins and underground pipes that collect stormwater runoff from parking areas, landscaping, and roads and convey the runoff to the permanent water quality and infiltration facilities. Water quality treatment will be provided by wetponds, bio-infiltration swales, passive flow-through stormwater

filtration systems, or bioswales. Infiltration facilities will consist of ponds or vaults. The permanent facilities will be designed to have the capacity to accommodate the 100 year 24-hour storm event.

DuPont examined the Stormwater Master Plan and recommends:

- a. All stormwater treatment and infiltration facilities constructed for this project shall be permanent facilities. It appears that all stormwater runoff associated with this project is from rights-of-way. These facilities are to be owned and maintained by the City of DuPont and shall be separate from those that treat runoff from private property. The language identifying the facilities associated with this project as temporary shall be removed.
- b. Section 1.0 must include a tabulation of the land cover areas within each subbasin of the project. This must be provided for both the existing and developed conditions. The tabulation should include account for all area tributary to each of the proposed facilities.
- c. Section 2.0 must provide a summary of all remediation activities and include any conditions required. Applicable sections of the Final Closure Report, as referenced, should be provided as an Appendix.
- d. In lieu of acceptable infiltration tests, the maximum design infiltration rate allowed by the 1992 DOE Manual is 20 inches/hour. A maximum design infiltration rate of 30 inches/hour may be utilized if confirmed through infiltration testing in accordance with past practices utilized for City Projects.
- e. As part of the upstream analysis, the applicable, approved stormwater reports associated with the overflow pipe extending into this area must be referenced.
- f. An off-site analysis must be provided. Page III-3-26 of the 1992 DOE Manual states, "An overflow route must be identified in the event that the basin capacity is exceeded," and Minimum Requirement #8, on Page 1-2-13 of the 1992 DOE Manual states, "All development projects shall conduct an analysis of off-site water quality impacts resulting from the project and shall mitigate these impacts. The analysis shall extend a minimum of one-fourth of a mile downstream from the project."
- g. Section III-3.6.3 of the 1992 DOE Manual states "A minimum of one soils log shall be required for each 5,000 square feet of infiltration area and in no case less than three soils logs per basin." As the minimum bottom elevation of the infiltration facility is required to be at least three feet above the seasonal high groundwater elevation, each soil log must extend a minimum of three feet below the proposed bottom elevation of the infiltration facility. It appears that a maximum of one soils log has been provided for any facility and no soils logs have been provided for two of the facilities. Only one of the logs has extended to three feet below the proposed bottom of a facility. The geotechnical report shall be revised to

meet the requirements for soil logs within the proposed infiltration facilities.

- h. The geotechnical report shall be revised to provide the estimated seasonal high groundwater table at the location of each proposed facility, not just the water table encountered on the day of the investigation.
11. The Applicant submitted a Landmark and Specimen Tree Count (Count) prepared by Lusignan Forestry Inc., dated April 1, 2008. The Count states the site contains 76 Landmark class trees (4 Oregon oak, 72 Douglas fir) and 477 specimen class trees (28 Oregon oak, 449 Douglas fir) on the subject property. Twelve Landmark class trees (all Douglas fir) are located in proposed rights-of-ways.

Within the preliminary plat, one hundred percent (4 trees) of the Landmark class Oak trees will be retained, which is consistent with the 100 percent retention requirement of DMC 25.120.030(2). Eighty-three (83) percent (60 trees) of the 72 existing Landmark class Douglas fir (non-Oregon white oak) trees will be retained, which is consistent with the 50 percent retention requirement of DMC 25.120.030(2). Twelve Landmark class Douglas fir trees will be removed for construction of plat roads, which is allowed by DMC 25.120.030(2).

Each lot-specific land use development application will be examined for compliance with DMC 25.120, Tree Retention.

12. Washington State Department of Fish and Wildlife Habitats and Species Maps and report dated April 12, 2004 indicate no federal or state threatened or endangered plant or animal species are located within the subject site.
13. Construction noise will occur between the hours of 7 am and 10 pm. Operation noise will occur from vehicles. The nearest residences are approximately 100 feet south of the subject site. Compliance with DMC 9.09 regarding construction noise will be verified with plat and lot construction.
14. Lot-specific land use development applications have not been submitted. Each lot-specific land use development application will be examined for compliance with DMC 9.09, Sound and Vibration; 9.16, Nuisances; 25.40, Business Tech Park; DMC 25.75, Commute Trip Reduction; DMC 25.80, Cultural, Historical and Archaeological Resources; DMC 25.90, Landscaping, DMC 25.95, Off Street Parking; DMC 25.100, Recycling; DMC 25.110 Setback – Streetcorner; DMC 25.115, Signs; DMC 25.120, Tree Retention; Letter to Greg Moore from John Darling dated April 5, 2007 regarding land use code clarification, and other relevant city policies and regulations, at time of submittal.
15. The 260.74 acre preliminary plat proposes 49 developable lots totaling 229.07 acres, 20.48 acres of public roads, three tracts (Tracts A, B and D totaling 11.07 acres) for private open space, one tract (Tract C totaling 0.12 acres) for

a sewer pump station and 1.15 acres of steep slope buffer on the north line of Lots J-3 and J-4 abutting Sequelitchew Creek Canyon.

The preliminary plat is consistent with the DuPont Comprehensive Plan discussion for the underlying Old Fort Lake planning area that states 299 acres is available for development and 26 acres is available for roads. Each proposed land use will be examined for compliance with DMC 25.40, Business Tech Park District.

Proposed public roads within the plat will connect to existing public roads including Hoffman Hill Boulevard, Jensen Avenue, Ogden Avenue, Wren Road and Center Drive. Three locational options are proposed for the public road section between Lot L-2 to Lot I-1 in order to preserve maximum development options for this area.

16. Approximately 1,500 to 2,000 employees will work in the development at full-buildout per the submitted Traffic Impact Analysis. Compliance with State Commute Trip Reduction Act for any business with more than 100 employees will be verified with each lot-specific development. No residents will reside in the development.
17. The Applicant and DuPont are negotiating a Development Agreement to address an issue regarding the five-year time limit for preliminary plat approval stated by RCW 58.17.140 and the projected 10-year build-out period of the plat. In summary, the Agreement will establish final plat phasing, plat modification, applicable zoning and development standards, allocation of services and terms of the agreement. The agreement will be forwarded to the DuPont City Council for acceptance as soon as it is available.
18. DuPont records indicate 4 historic or cultural sites are located near the subject site including the 1833 Fort Nisqually Site (Historical Site Number 45PI155), the Fort Nisqually Cemetery (Historical Site Number 45PI404), Shell Midden (Historical Site Number 45PI72), area where Native American graves were found (Historical Site Number 45PI712) and Wilkes Observatory (Historic Site Number 45PI67).

All historic or cultural sites will remain in their present condition except the Wilkes Observatory, which will be improved, consistent with the DuPont Parks, Recreation and Open Space Plan adopted April 10, 2007, with asphalt trail, restroom, trash can, trail map kiosk, rough grass at present grades, and low split-rail cedar perimeter fence.

DuPont Municipal Code 25.80.030 prohibits structures, roads or utilities within 50 feet of the historical markers identifying cultural resources, including the 1833 Fort Nisqually site and the Wilkes Observatory site, as designated under DMC 25.890.020. Construction plans shall show the 1833 Fort Nisqually and Wilkes Observatory markers and 50 foot setback requirement.

Construction plans for Lot M-1 should be coordinated with the Nisqually Indian Tribe due to proximity of the Shell Midden.

The Wilkes Observatory area was not cleared as part of the Consent Decree clean up action because it was outside the cleanup area. It is possible that not all cultural artifacts have been found.

Separately, Weyerhaeuser Real Estate Company, Washington State Historic Preservation Officer and the City of DuPont entered into a Memorandum of Agreement regarding a cultural resource management program August 7, 1989. A separate Memorandum of Agreement, dated October 20, 1988, was entered into between WRECO and the Nisqually Tribe to provide for the establishment of a cemetery for reburial of Native American remains.

19. The Transpo Group prepared a Traffic Impact Analysis (TIA) for the preliminary plat dated September 2008. The analysis estimates the project will be completed in 2014. The development scenario consists of up to 1,200,000 sf. of warehouse use, 1,180,000 sf. of office space, 630,000 sf. of Research and Development and 300,000 sf. of business park use for a total of up to 3,310,000 sf. of development. In total, the development will generate 21,980 daily trips with 2,957 trips during the AM peak and 2,868 trips during the PM peak hour. The TIA makes several conclusions including:
 - a. The project will make modifications to several intersections in order to accommodate the increase in volume related to the project. Those include modifications to signal timing and phasing at several intersections and added turn lanes and re-channelization at other intersections.
 - b. The intersection of McNeil Street/Center Drive may require additional mitigation to bring operating conditions up to LOS D. An additional westbound left-turn-lane would accomplish this. The intersection should be monitored in the future to determine if such mitigation will be needed.
 - c. A two-way center left-turn lane along Loop Road on the project site is not warranted based on the low traffic volumes on minor streets and the 35 mph proposed speed limit.
 - d. Driveway access on-site will be placed to serve individual or multiple buildings and parking lots and will be aligned to allow for good circulation. Driveways will be placed at least 300 feet apart, unless additional analysis indicates that closer placement is not detrimental to circulation on Loop Road.
 - e. Only one driveway will be placed on either side of Palisade Boulevard between Center Drive and Loop Road and possibly be restricted to right

in/right out only turning movements to eliminate potential turning conflicts.

- f. The developer will encourage vehicles to use Center Drive for site access by providing directional signage, as well as post "no cut through traffic" signs at secondary site access roads along South Loop Road.
- g. Internal pedestrian and bicycle facilities will be provided to encourage non-motorized travel within the site.

DuPont examined the TIA, SEPA Checklist and plans and recommends:

- a. The plat will be constructed and finalized in phases. Prior to the City finalizing a plat phase, the adjacent roadway and utility that provides access and utility services to Center Drive shall be constructed and accepted by the City. Construction plans for each plat phase shall terminate with a temporary cul-de-sac that shall be removed by the adjacent plat phase, when constructed. The first final plat phase shall include the improvements to the Center Drive and Palisade Blvd intersection. The plat phase adjacent to the entrance to the golf course shall not be constructed or finalized until the roadway and utility connecting Center Drive to the golf course access is constructed and accepted by the City.

When the South Loop Road and the North Loop Road are constructed a temporary 20' wide asphalt road, within a thirty foot wide emergency services easement, connecting the North Loop and South Loop Road, shall be constructed. The North Loop Road terminus shall be a cul-de-sac in conformance with the City standards. The cul-de-sac and temporary 20' wide asphalt road may be removed when West Loop Road, between South Loop Road and North Loop Road, is installed. If North Loop Road is constructed out to West Loop Road, then the West Loop Road emergency access road shall be constructed prior to issuance of any building permit on Lots G, H, I or J.

- b. Three road options, Option A, B, and C, for an area abutting the Puget Sound bluff are indicated in the SEPA checklist. A road design table was not submitted for Road Option A, B, or C, and information addressing the safety envelop was not submitted. Development of this area should comply with the DuPont Street Standard Detail 2.2-2.4 if the road abuts open space and DuPont Street Standard Detail 2.2-2.3 if the road does not abut open space.
- c. A Revised TIA shall be submitted to and approved by the City prior to the City issuing any permits for grading and infrastructure improvements associated with First Park NWL. The Revised TIA shall be revised to address the following:

- The intersection control criteria and requirements for the West Loop/North Loop intersection.
- The Oaks Plat assumed 2.1 million square feet of development; the First Park NWL TIA assumes 3.3 million square feet of development. The Oaks plat classified Wren Road as a collector arterial with an estimated ADT of 3,220 and the Bob's Hollow Lane as a collector arterial with an estimated ADT of 9,325. The traffic impacts on Wren Road and Bob's Hollow Lane shall be further addressed in the TIA and mitigation measures proposed that address the traffic impacts. In the First Park NWL TIA, the project volumes on Wren Road exceed 12,000 ADT. The existing section of Wren Road and Bobs Hollow Lane were not designed for this volume of traffic and are anticipated to require off-site improvements. The TIA shall address the ability of Wren Road and Bob's Hollow Lane to handle the estimated traffic volume for the current street standard.
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- The TIA shall be revised to address comments submitted by Pierce County and WSDOT, following submittal to the City of DuPont.
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 - The overall LOS at Center Drive/Wilmington is acceptable at build-out. However, four movements are projected at LOS "E" or "F". The Applicant shall demonstrate measures to provide better LOS conditions for these affected movements such as revised signal timing or channelization revisions.
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 - Protected left-turn phasing needs to be provided for both north and south movements at Palisade/Loop Road.
 - An eastbound left-turn lane shall be coded at Center Drive/Bronson.
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 - Detailed trip assignment for the residential area west of Center Drive shall be provided. This information shall be provided down to the 25 trip threshold. The intersections of South Loop Road/Hoffman Hill Boulevard and Hoffman Hill/McNeil shall be included in the analysis.
- d. The Applicant shall submit plans for each intersection that the TIA indicates mitigation is required, including Center Drive/Palisade Blvd, Center Drive/Wilmington, Center Drive/Bob's Hollow, Center Drive/McNeil, and the Bob's Hollow/Wren Road intersections. The plans shall show channelization, queue length, existing right of way and improvements, proposed right of way and improvements and relocation of existing signal poles. Submittal of the plans, City review and approval shall occur prior to the issuance of any permits for grading or infrastructure improvements. The Applicant shall be responsible to acquire any required right of way, and design and construct the improvements, including new signal poles.
- e. All off site street improvements identified in the Revised TIA that have been revised to address the items noted above and approved by the City shall be installed by the Applicant. The minimum offsite improvements include improvements at the following intersections: Center Drive/Palisade

Blvd, Center Drive/Wilmington, Center Drive/Bob's Hollow, Center Drive/McNeil, and the Bob's Hollow/Wren Road. All mitigation identified in the Revised TIA, which is approved by the City, shall be installed by the plat Applicant and accepted by the City prior to the approval of the first final plat phase, except the following:

- Installation of an additional left turn lane at McNeil Street and Center Drive and/or three through lane configuration on Center Drive.
- Installation of a second northbound left turn lane on Center Drive at Palisade.
- Signal interconnect system (pending resolution of Item J below regarding projected queues along Center Drive).
- Second northbound left-turn lane on Center Drive at Bobs Hollow and second westbound receiving lane on Bobs Hollow Drive.
- Second northbound left turn lane on DuPont/Steilacoom Road at Center Drive.

The plat Applicant shall install the above five mitigation measures prior to the level of service exceeding D when the need for them is triggered by development within the plat. It is the plat Applicant's intent to final the plat in 13 phases. As a method of monitoring the LOS and the need to install the traffic mitigation projects the plat Applicant shall submit to the City, for review and approval, a TIA every two years or a as condition of the finalizing each plat phase, whichever occurs first. The TIA shall document:

- The traffic volumes (ADT, a.m. peak, and p.m. peak at Center Drive/Wilmington, Center Drive/McNeil Street, Center Drive/Bob's Hollow Lane, Center Drive/Palisade and Center Drive/DuPont/Steilacoom Road.
- Identify which lots are developed and occupied within First Park NWL final plats and included within existing volumes.
- Identify undeveloped lots within First Park NWL finalized plats and projected traffic generation and distribution based on previously city approved TIA's.
- Pipeline trips provided by the City.
- Indicate the traffic generation and distribution for the proposed plat to be finalized.

The TIA shall analyze the a.m. and p.m. peak for the existing LOS and future LOS (three years from date of the TIA) at the following locations: Center Drive/Wilmington, Center Drive/McNeil Street, Center Drive/Bob's Hollow Lane, Center Drive/Palisade and Center Drive/DuPont/Steilacoom Road. If the LOS of any leg of the intersections is below D with development to the plat, existing or within three years from the date of the TIA, then the TIA shall indicate the mitigation measures to maintain the City's adopted level service of D. The City shall review the plan. If the TIA indicates mitigation measures are required within three years, then the Applicant and the city shall develop a design and construction schedule

for the required mitigation. The mitigation improvements shall be installed prior to the LOS dropping below D.

Each lot developer within the First Park NWL Plat shall submit an assessment as to whether the proposed project is within the development projections assumed in the previous two year TIA update. As long as the accumulative trip generation characteristics and trip distribution assumptions are within the threshold established in the previous two year TIA, no further TIA is required. If however, the assessments indicated that the trip generating characteristics are greater than was assumed in the previous two year TIA, then the application will require a supplemental TIA to the City-approved revised TIA with their respective land use application in accordance with the City's Street Standards. If a lot developer's supplemental TIA indicates one of the mitigation improvements is required, then the plat Applicant shall install the improvement prior to the lot development receiving an occupancy permit.

- f. The Applicant, and abutting Home Course, shall submit documentation to the City regarding the Home Course's safety envelope design requirements to achieve safety envelopes at all locations where a public right of way is adjacent to the golf course. Said documentation shall be submitted to the City and approved prior to issuing the first permit for any grading and/or infrastructure improvements within the plat and be used to verify, to the City's satisfaction, that the golf course does not pose a safety hazard to pedestrians and vehicles using the rights-of-way. Mitigation, if necessary, shall be in place and approved by the City prior to final plat approval of any rights-of-ways that abut an identified hazard area.
- g. Street lighting within the plat shall be designed in accordance with IES Roadway Lighting, RP-8-00, Reaffirmed 2005, and Table 3. Lighting shall meet the criteria for a collector with medium pedestrian conflict.
- h. The Applicant shall install a 20 foot wide asphalt road within the 30 foot wide emergency services access easement that is along the east line of Lot E-1.
- i. The plat shall provide the minimum 65 feet right of way width for Commercial Access Street Business and Technology Park Street classification in the vicinity of Station 316+70 and Station 341+00 on North Loop Road. A variance will be considered if the Applicant provides documentation from Home Course that indicates the safety envelope criteria, how the safety envelope criteria was established (what agency), and whether the safety envelope may be mitigated with fencing or vegetation. If the safety envelope can be mitigated with fencing or vegetation, then the Applicant shall provide the minimum 65 foot right of way and safety envelope mitigation. The safety envelope criteria and safety envelope mitigation alternatives shall be submitted to the City and

approved prior to issuing the first permit for any grading and/or infrastructure improvements within the plat.

- j. Projected queues along Center Drive indicate back-ups between intersections south of Bobs Hollow with volume to capacity ratios at 1.0 or higher in the peak direction for the through movements. The amount of through traffic along Center Drive and the associated excessively long queues indicate the need to assess for all traffic signals along Center Drive. This assessment shall be included in the Revised TIA. If the assessment indicates the overall operation of the corridor is improved by decreased volume to capacity ratios and queues and improved side street levels of service at intersections at or exceeding an overall LOS D threshold or with two or more critical movements exceeding LOS D, then the Applicant shall be responsible for the design, installation and initial set-up (timing patterns) for the interconnected system. The design and installation shall be approved by the City and WSDOT. This work shall be installed and accepted by the City prior to the approval of the first final plat phase.
 - k. A traffic signal shall be installed at Palisade/Loop Road intersection and shall be installed in the first final plat phase.
 - l. Advanced school warning signs shall be installed on Wren Road in accordance with the MUTCD when Wren Road is connected to the plat. The warning signs shall include a flashing beacon speed limit sign as required by the City.
20. Emergency services will be provided by DuPont Fire and Police Departments. The preliminary plat and subsequent land use applications should not increase the need for health care or school services. No residents will reside within the plat or subsequent developments.

The Applicant and City of DuPont entered into a Mitigation Agreement December 9, 2008 to mitigate environmental impacts to DuPont Police and Fire services associated with the preliminary plat and subsequent land use applications.

21. Water service will be provided by the City of DuPont. At the time that the City exceeds 80% of its current peak day demand or 5.157 million gallons per day (or 4.125 million gallons per day), and the peak day water demand of the First Park Northwest Landing plat area, including private property and public right-of-way, exceeds 0.412 million gallons per day, the Developer shall provide a supplemental water study to identify the amount of water remaining in the Developer's initial allocation, to estimate the demand for the remaining development and to explain the options available to secure the additional needed water which may include, but are not limited to:

- a. Transfer of water rights from another source,
- b. Drilling a new well to accommodate First Park development needs only,
- c. Drilling a new well to accommodate the needs of First Park and surrounding areas, or
- d. Such other alternatives which satisfies legal and environmental requirements for the provisions of timely and sufficient potable water service.

The water study shall be submitted to the City within 6 months of notification by the City that the peak water use condition has been met.

22. The water study, if required, shall identify the logical service area for the new well and the percent of the well allocated to the First Park Northwest Landing remaining development, and the framework for a potential latecomer agreement which would reasonably provide recapture of any over sizing costs given water use projections at the time. Should a well be required, the costs to be included in the latecomer agreement shall specifically include:
- a. The costs of the referenced water study,
 - b. All costs of securing water rights and permits for the well, including engineering, technical SEPA and review costs,
 - c. Construction costs for the well and connecting controls,
 - d. Plumbing to connect it to the City system,
 - e. Any required mitigation, preconstruction, and postconstruction interest actually incurred, and
 - f. Any other costs allowed by statute, through the date of the adoption of the latecomer ordinance putting the latecomer agreement in place.
23. If the City Water system peak day demand in any year from 2009 to 2018 exceeds 90% of the current peak capacity of 5.157 million gallons per day (or 4.641 million gallons per day), and if the City elects to pursue development and construction of a new municipal water supply well as a result of the water study referenced above, the City shall then advise First Park Northwest Landing to provide the system identified as necessary. The well will be constructed as a City Public Works Project and the development and construction schedule for the project will be established by the City in coordination with the Washing State Department of Ecology. To partially offset First Park Northwest Landing's prorata responsibility for costs associated with the well project, a "latecomers" reimbursement process as outlined above, or other financial mechanism will be used. Any connection charges that have been adopted by the City and have been designated to provide funding for the well project may be used.

24. At the time First Park Northwest Landing utilizes 589,110 gallons per day, the City has no obligation to issue any additional development permits until the additional water as identified by the report referenced above is available for use.
25. All water use measurements, allocations and calculations shall be determined through methodology utilized by the City at the sole discretion of the City. The City shall make such determinations consistent with its water comprehensive planning efforts and in accordance with applicable Washington State Department of Health guidelines.
26. Sewer service will be provided by Pierce County. Pierce County issued a letter dated December 27, 2007 stating the development is within 300 feet of an existing accessible sanitary sewer which has sufficient capacity to accommodate the subject development and the subject development is required to connect to sanitary sewer. Relevant Pierce County sewer permits should be obtained prior to issuance of DuPont civil construction permits.
27. Electricity and gas will be provided by Puget Sound Energy. Telephone and cable TV will be provided by the respective provider. All utilities will be provided to the site via underground services.

Conclusions

The lead agency for this proposal has determined that the proposed action will not have a probable significant adverse impact on the environment, and an environmental impact statement is not required under RCW 43.21C.030(2)(c) provided the following mitigation measures are implemented concurrent with the project. This decision was reached after review of a completed environmental checklist and other information on file, all of which is available to the public on request.

Mitigation Measures

As required by the City of DuPont, the following mitigation measures shall be implemented concurrent with the project in order to mitigate for an identified potential adverse impacts resulting from construction of the project.

1. Specific pedestrian trail locations have not been finalized. If trail construction is within 50 feet of the top of the Puget Sound steep slope sensitive area, then a separate environmental review and Type III application shall be submitted pursuant to DMC 25.105.050(2)(b) prior to start of the trail work.
2. Construction plans for the Wilkes Observatory has not been finalized. If construction is within 50 feet of the top of the Puget Sound steep slope sensitive area, then a separate environmental review and Type III application shall be submitted pursuant to DMC 25.105.050(2)(b) prior to start of the trail work.
3. The April 2, 2008 geotechnical report shall be fully implemented, as required by the City of DuPont.

4. The project shall fully implement applicable US Environmental Protection Agency, Washington State Department of Ecology and Puget Sound Clean Air Agency standards and requirements governing air quality with construction and occupancy of the buildings.
5. The Stormwater Master Plan shall be revised as noted below and resubmitted prior to issuance of grading permit.
 - a. All stormwater treatment and infiltration facilities constructed for this project shall be permanent facilities. It appears that all stormwater runoff associated with this project is from rights-of-way. These facilities are to be owned and maintained by the City of DuPont and shall be separate from those that treat runoff from private property. The language identifying the facilities associated with this project as temporary shall be removed.
 - b. Section 1.0 must include a tabulation of the land cover areas within each subbasin of the project. This must be provided for both the existing and developed conditions. The tabulation should include account for all area tributary to each of the proposed facilities.
 - c. Section 2.0 must provide a summary of all remediation activities and include any conditions required. Applicable sections of the Final Closure Report, as referenced, should be provided as an Appendix.
 - d. In lieu of acceptable infiltration tests, the maximum design infiltration rate allowed by the 1992 DOE Manual is 20 inches/hour. A maximum design infiltration rate of 30 inches/hour may be utilized if confirmed through infiltration testing in accordance with past practices utilized for City Projects.
 - e. As part of the upstream analysis, the applicable, approved stormwater reports associated with the overflow pipe extending into this area must be referenced.
 - f. An off-site analysis must be provided. Page III-3-26 of the 1992 DOE Manual states, "An overflow route must be identified in the event that the basin capacity is exceeded," and Minimum Requirement #8, on Page 1-2-13 of the 1992 DOE Manual states, "All development projects shall conduct an analysis of off-site water quality impacts resulting from the project and shall mitigate these impacts. The analysis shall extend a minimum of one-fourth of a mile downstream from the project."
 - g. Section III-3.6.3 of the 1992 DOE Manual states "A minimum of one soils log shall be required for each 5,000 square feet of infiltration area and in no case less than three soils logs per basin." As the minimum bottom elevation of the infiltration facility is required to be at least three feet above the seasonal high groundwater elevation, each soil log must extend a minimum of three feet below the proposed bottom elevation of the infiltration facility. It appears that a maximum of one soils log has been

provided for any facility and no soils logs have been provided for two of the facilities. Only one of the logs has extended to three feet below the proposed bottom of a facility. The geotechnical report shall be revised to meet the requirements for soil logs within the proposed infiltration facilities.

- h. The geotechnical report shall be revised to provide the estimated seasonal high groundwater table at the location of each proposed facility, not just the water table encountered on the day of the investigation.
6. Compliance with DMC 9.09 regarding construction noise shall be verified with plat and lot construction.
7. Each lot-specific land use development application will be examined for compliance with DMC 9.09, Sound and Vibration; 9.16, Nuisances; 25.40, Business Tech Park; DMC 25.75, Commute Trip Reduction; DMC 25.80, Cultural, Historical and Archaeological Resources; DMC 25.90, Landscaping, DMC 25.95, Off Street Parking; DMC 25.100, Recycling; DMC 25.110 Setback – Streetcorner; DMC 25.115, Signs; DMC 25.120, Tree Retention; Letter to Greg Moore from John Darling dated April 5, 2007 regarding land use code clarification, and other relevant city policies and regulations, at time of submittal.
8. The Developer shall enter into a Development Agreement with the City to address an issue regarding the five-year time limit for preliminary plat approval stated by RCW 58.17.140 and the projected 10-year build-out period of the plat prior to issuance of a grading permit.
9. DuPont Municipal Code 25.80.030 prohibits structures, roads or utilities within 50 feet of the markers identifying cultural resources, including the 1833 Fort Nisqually site and the Wilkes Observatory site, as designated under DMC 25.890.020. Construction plans shall show the applicable cultural resource marker and related 50 foot setback requirement.
10. Development of Lot M-1 shall be coordinated with the Nisqually Indian Tribe due to proximity of the Shell Midden. A letter from the Nisqually Indian Tribe shall be submitted to the City with submittal of construction plans for Lot M-1 to verify coordination.
11. The Applicant shall fully implement the Memorandum of Agreement between Weyerhaeuser Real Estate Company (WRECO), Washington State Historic Preservation Officer and the City of DuPont regarding a cultural resource management program dated August 7, 1989 and a separate Memorandum of Agreement between WRECO and the Nisqually Tribe to provide for the establishment of a cemetery for reburial of Native American remains dated October 20, 1988.
12. The plat will be constructed and finalized in phases. Prior to the City finalizing a plat phase, the adjacent roadway and utility that provides access and utility

services to Center Drive shall be constructed and accepted by the City. Construction plans for each plat phase shall terminate with a temporary cul-de-sac that shall be removed by the adjacent plat phase, when constructed. The first final plat phase shall include the improvements to the Center Drive and Palisade Blvd intersection. The plat phase adjacent to the entrance to the golf course shall not be constructed or finalized until the roadway and utility connecting Center Drive to the golf course access is constructed and accepted by the City.

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- Installation of an additional left turn lane at McNeil Street and Center Drive and/or three through lane configuration on Center Drive.
 - Installation of a second northbound left turn lane on Center Drive at Palisade.
 - Signal interconnect system (pending resolution of Mitigation Measure #21 below regarding projected queues along Center Drive).
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The TIA shall analyze the a.m. and p.m. peak for the existing LOS and future LOS (three years from date of the TIA) at the following locations: Center Drive/Wilmington, Center Drive/McNeil Street, Center Drive/Bob's Hollow Lane, Center Drive/Palisade and Center Drive/DuPont/Steilacoom Road. If the LOS of any leg of the intersections is below D with development to the plat, existing or within three years from the date of the TIA, then the TIA shall indicate the mitigation measures to maintain the City's adopted level service of D. The City shall review the plan. If the TIA indicates mitigation measures are required within three years, then the Applicant and the city shall develop a design and construction schedule for the required mitigation. The mitigation improvements shall be installed prior to the LOS dropping below D.

Each lot developer within the First Park NWL Plat shall submit an assessment as to whether the proposed project is within the development projections assumed in the previous two year TIA update. As long as the accumulative trip generation characteristics and trip distribution assumptions are within the threshold established in the previous two year TIA, no further TIA is required. If however, the assessments indicated that the trip generating characteristics are greater than was assumed in the previous two year TIA, then the application will require a supplemental TIA to the City-approved revised TIA with their respective land use application in accordance with the City's Street Standards. If a lot developer's supplemental TIA indicates one of the mitigation improvements is required, then the plat Applicant shall install the improvement prior to the lot development receiving an occupancy permit.

17. The Applicant, and abutting Home Course, shall submit documentation to the City regarding the Home Course's safety envelope design requirements to achieve safety envelopes at all locations where a public right of way is adjacent to the golf course. Said documentation shall be submitted to the City and approved prior to issuing the first permit for any grading and/or infrastructure

improvements within the plat and be used to verify, to the City's satisfaction, that the golf course does not pose a safety hazard to pedestrians and vehicles using the rights-of-way. Mitigation, if necessary, shall be in place and approved by the City prior to final plat approval of any rights-of-ways that abut an identified hazard area.

18. Street lighting within the plat shall be designed in accordance with IES Roadway Lighting, RP-8-00, Reaffirmed 2005, and Table 3. Lighting shall meet the criteria for a collector with medium pedestrian conflict.
19. The Applicant shall install a 20 foot wide asphalt road within the 30 foot wide emergency services access easement that is along the east line of Lot E-1.
20. The plat shall provide the minimum 65 feet right of way width for Commercial Access Street Business and Technology Park Street classification in the vicinity of Station 316+70 and Station 341+00 on North Loop Road. A variance will be considered if the Applicant provides documentation from Home Course that indicates the safety envelope criteria, how the safety envelope criteria was established (what agency), and whether the safety envelope may be mitigated with fencing or vegetation. If the safety envelope can be mitigated with fencing or vegetation, then the Applicant shall provide the minimum 65 foot right of way and safety envelope mitigation. The safety envelope criteria and safety envelope mitigation alternatives shall be submitted to the City and approved prior to issuing the first permit for any grading and/or infrastructure improvements within the plat.
21. Projected queues along Center Drive indicate back-ups between intersections south of Bobs Hollow with volume to capacity ratios at 1.0 or higher in the peak direction for the through movements. The amount of through traffic along Center Drive and the associated excessively long queues indicate the need to assess for all traffic signals along Center Drive. This assessment shall be included in the Revised TIA. If the assessment indicates the overall operation of the corridor is improved by decreased volume to capacity ratios and queues and improved side street levels of service at intersections at or exceeding an overall LOS D threshold or with two or more critical movements exceeding LOS D, then the Applicant shall be responsible for the design, installation and initial set-up (timing patterns) for the interconnected system. The design and installation shall be approved by the City and WSDOT. This work shall be installed and accepted by the City prior to the approval of the first final plat phase.
22. A traffic signal shall be installed at Palisade/Loop Road intersection and shall be installed in the first final plat phase.
23. Advanced school warning signs shall be installed on Wren Road in accordance with the MUTCD when Wren Road is connected to the plat. The warning signs shall include a flashing beacon speed limit sign as required by the City.

24. Water service will be provided by the City of DuPont. At the time that the City exceeds 80% of its current peak day demand or 5.157 million gallons per day (or 4.125 million gallons per day), and the peak day water demand of the First Park Northwest Landing plat area, including private property and public right-of-way, exceeds 0.412 million gallons per day, the Developer shall provide a supplemental water study to identify the amount of water remaining in the Developer's initial allocation, to estimate the demand for the remaining development and to explain the options available to secure the additional needed water which may include, but are not limited to:
- a. Transfer of water rights from another source,
 - b. Drilling a new well to accommodate First Park development needs only,
 - c. Drilling a new well to accommodate the needs of First Park and surrounding areas, or
 - d. Such other alternatives which satisfies legal and environmental requirements for the provisions of timely and sufficient potable water service.

The water study shall be submitted to the City within 6 months of notification by the City that the peak water use condition has been met.

25. The water study, if required, shall identify the logical service area for the new well and the percent of the well allocated to the First Park Northwest Landing remaining development, and the framework for a potential latecomer agreement which would reasonably provide recapture of any over sizing costs given water use projections at the time. Should a well be required, the costs to be included in the latecomer agreement shall specifically include:
- a. The costs of the referenced water study,
 - b. All costs of securing water rights and permits for the well, including engineering, technical SEPA and review costs,
 - c. Construction costs for the well and connecting controls,
 - d. Plumbing to connect it to the City system,
 - e. Any required mitigation, preconstruction, and postconstruction interest actually incurred, and
 - f. Any other costs allowed by statute, through the date of the adoption of the latecomer ordinance putting the latecomer agreement in place.
26. If the City Water system peak day demand in any year from 2009 to 2018 exceeds 90% of the current peak capacity of 5.157 million gallons per day (or 4.641 million gallons per day), and if the City elects to pursue development and construction of a new municipal water supply well as a result of the water study

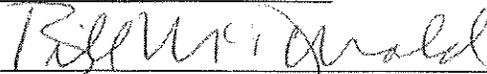
referenced above, the City shall then advise First Park Northwest Landing to provide the system identified as necessary. The well will be constructed as a City Public Works Project and the development and construction schedule for the project will be established by the City in coordination with the Washing State Department of Ecology. To partially offset First Park Northwest Landing's prorata responsibility for costs associated with the well project, a "latecomers" reimbursement process as outlined above, or other financial mechanism will be used. Any connection charges that have been adopted by the City and have been designated to provide funding for the well project may be used.

27. At the time First Park Northwest Landing utilizes 589,110 gallons per day, the City has no obligation to issue any additional development permits until the additional water as identified by the report referenced above is available for use.
28. All water use measurements, allocations and calculations shall be determined through methodology utilized by the City at the sole discretion of the City. The City shall make such determinations consistent with its water comprehensive planning efforts and in accordance with applicable Washington State Department of Health guidelines.
29. The Applicant shall obtain Pierce County Sewer permits for each plat phase prior to issuance of a grading permit.

Comment Period

This MDNS is issued December 23, 2008, under WAC 197-11-340(2). The lead agency will not act on this proposal for 14 days from December 23, 2008. Comments must be received by the City of DuPont no later than 5:00 pm, January 6, 2009. Appeals must be filed with DuPont Hearing Examiner between 8:00 a.m., January 7, 2009, and 5:00 p.m., January 20, 2009, in the manner more specifically set forth in DMC 25.175.060.

SEPA Responsible Official



Bill McDonald, City Administrator

December 23, 2008

(Date)

**Chapter 25.40
BUSINESS TECH PARK DISTRICT**

Sections:

- 25.40.010 Purpose.
- 25.40.020 Permitted uses.
- 25.40.030 Conditional uses.
- 25.40.040 Prohibited uses.
- 25.40.050 Performance standards.
- 25.40.060 Site plan approval.

25.40.010 Purpose.

The business tech park district is intended to provide location for a range of business park uses, including office, commercial, light manufacturing and research. This district is intended to provide area for those uses that desire to conduct business in an atmosphere of prestige location in which environmental amenities are protected through a high level of development standards. Light manufacturing uses with significant adverse impacts such as excessive noise or emission of significant quantities of dirt, dust, odor, radiation, glare or other pollutants are prohibited. (Ord. 06-816 § 4; Ord. 02-707 § 1)

25.40.020 Permitted uses.

(1) All uses that are permitted in the commercial, office and manufacturing/research park districts, except those listed in DMC 25.40.040.

(a) This district is intended to permit a range of office, commercial, light manufacturing and research uses that:

(i) Do not create significant noise, risk of explosion, radioactive release, or air or water pollution;

(ii) Are designed for a campus-like setting with architectural detailing as required by Section 25.40.050(5).

(b) In addition to the specified uses permitted in the commercial, office and manufacturing/research park districts, this district permits research, research industry-oriented service providers and other compatible uses including, but not limited to:

(i) Software engineering;

(ii) Electronic components and board systems engineering, development, and application;

(iii) Biotechnology laboratories;

(iv) Communications services;

(v) Personnel services;

(vi) Child day care center;

(vii) Attached wireless communication facility;

(viii) Utility facility;

(ix) Similar land uses.

(c) Total supporting retail and service uses in the business tech park is limited to an overall maximum of 60,000 square feet of freestanding floor area, with no more than 10,000 square feet of retail or service floor area concentrated in any single area.

(2) Accessory Uses. This district permits the following uses as an accessory to permitted uses listed in this chapter: Uses which meet the development standards in the purpose section of this chapter and provide a service to the employees or the public of any permitted use, are contained in the main building of said permitted uses, and, in the case of accessory retail uses, consume no more than 10 percent of the total floor area of said permitted use. The procedures and criteria of Chapter 25.130 DMC shall not apply to the establishment of permitted accessory uses in the BTP district. (Ord. 07-855 § 1;

EXHIBIT E

Ord. 06-816 § 4; Ord. 02-707 § 1)

25.40.030 Conditional uses.

(1) All conditional uses in the commercial, office and manufacturing/research park districts, except those listed in DMC 25.40.040.

(2) In addition to the conditional uses in the commercial, office and manufacturing/research park districts, the conditional uses in this district include but are not limited to:

- (a) School (limited to technical or adult educational facilities);
- (b) Freestanding wireless communication facility;
- (c) Golf course;
- (d) Similar land use. (Ord. 06-816 § 4)

25.40.040 Prohibited uses.

(1) The following permitted or conditional uses in the commercial district are prohibited in the business tech park district:

- (a) Service stations;
- (b) Residential, even as an accessory use;
- (c) Adult family home;
- (d) Family day care;
- (e) Schools (not including technical or adult educational facilities).

(2) The following permitted or conditional uses in the office district are prohibited in the business tech park district:

- (a) Schools (not including technical or adult educational facilities);
- (b) Non-office public use.

(3) The following permitted or conditional uses in the manufacturing/research park district are prohibited in the business tech park district:

- (a) Mineral extraction;
- (b) Single tenant retail outlet over five acres;
- (c) Amusement park;
- (d) Schools (not including technical or adult educational facilities);
- (e) Senior housing. (Ord. 06-816 § 4)

25.40.050 Performance standards.

All uses in the business tech park district shall be regulated by the following performance standards:

- (1) Lot Area. There is no minimum lot area for lots in this district.
- (2) Lot Coverage. There is no maximum lot area coverage except as needed to meet setback and landscaping requirements.
- (3) Building Setbacks.
 - (a) Front. No structure shall be closer than 25 feet to any front property line. Any building wall over 40 feet high shall be set back at least an additional one foot for each foot in height over 25 feet;
 - (b) Side. No structure shall be closer than 25 feet to any side property line. Any building wall over 40 feet high shall be set back at least an additional one foot for each foot in height over 40 feet;
 - (c) Rear. No structure shall be closer than 25 feet to any rear property line. Any building wall over 40 feet high shall be set back at least an additional one foot for each foot in height over 40 feet.
- (4) Building height shall not exceed 65 feet in height. Mechanical equipment and its screening shall not be included in height calculation.
- (5) Blank walls greater than 50 feet in length along the front and sides of a building shall be softened either by planting large caliper trees of 10 through 14 feet tall adjacent to the building, by wood trellises on the building, or by similar means. Entrances shall be emphasized with architecturally distinctive elements such as a covered walk, gabled roof,

landscaping, or similar means. Earth-berming at the base of the facade is encouraged for large-scale structures. Building designs for multiphase campuses are encouraged to be of similar character. The fronts of adjacent buildings on the same lot shall not be so similar in design that they are determined by the director to be virtually identical in terms of building design. Differing materials, window sizes, trim detail, entry location and treatment, and front wall modulations are examples of methods of creating differentiation between building design.

(6) Parking and loading areas shall be provided as required by Chapter 25.95 DMC. Parking and loading areas shall be located at the rear of buildings or separated from public rights-of-way by a moderate screen (see Chapter 25.90 DMC, Landscaping).

(7) Landscaping. Landscaping shall be provided as required by Chapter 25.90 DMC.

(8) Exterior Mechanical Devices. All HVAC equipment, pumps, heaters and other mechanical devices shall be fully screened from view from all public rights-of-way. Vents, mechanical penthouses, elevator equipment and similar appurtenances that extend above the roofline must be surrounded by a solid sight-obscuring screen that meets the following criteria:

(a) The screen must be integrated into the architecture of the building.

(b) The screen must obscure the view of the appurtenances from adjacent streets and properties.

(c) Exemptions. The following shall be exempted from the provisions of this section:

(i) Rod, wire and dish antennas are exempt from the requirements of this section, if the screening would interfere with the effective operation of the antenna.

(ii) A painted appurtenance is exempt from the requirements of this section if the director of community development determines that painting will be as effective in minimizing rooftop clutter as would a solid sight-obscuring screen.

(9) Outdoor storage (supplies, materials, or products not contained in a structure) shall not cover more than two percent of the total site area and shall be screened from streets and adjoining properties by a 100 percent sight-obscuring wall or fence.

(10) Trash Enclosures. Trash enclosures shall be provided as required by Chapter 25.100 DMC.

(11) Signage. Signage shall comply with the requirements of Chapter 25.115 DMC.

(12) Noise levels shall not exceed the maximum allowed in Chapter 9.09 DMC (Sound and Vibration) for Class B (commercial) environmental designations.

(13) Air emissions shall meet applicable regulations of the Puget Sound Air Pollution Control Authority, and no visible, frequent smoke, dust, or gases shall be emitted.

(14) Emission of offensive gases or vapors shall not be permitted to exceed the odor threshold as measured at any point along the lot or lots on which the use or structure is located.

(15) Outdoor lighting shall be designed to minimize light escapement beyond the site.

(16) Hazardous Substance or Waste Storage. No more than 20,000 pounds of hazardous substances or hazardous wastes may be stored on-site, and no hazardous substances or wastes may be stored on-site except that which is delivered for on-site operations or produced on-site. Nothing in this section shall preclude storage of diesel fuel stored on-site for emergency generators. (Ord. 07-854 § 1; Ord. 06-816 § 4; Ord. 02-707 § 1. Formerly 25.40.030.)

25.40.060 Site plan approval.

Site plan approval is required for all development projects. Development projects on sites of 15 acres or less and expansions of permitted projects involving 15 acres or less of a new development shall be processed with a Type II procedure. Development projects and expansions larger than 15 acres shall be processed with a Type III procedure. Processes for all procedures are set forth in DMC 25.175.010. (Ord. 06-816 § 4; Ord. 02-707 § 1. Formerly 25.40.040.)

This page of the DuPont Municipal Code is current through Ordinance 08-872, passed December 6, 2008.
Disclaimer: The City Clerk's Office has the official version of the DuPont Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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