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## CITY OF DUPONT

Department of Community Development  
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Telephone: (253) 964-8121  
www.dupontwa.gov

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### Code Interpretation Determination

File No. PLNG2018-023

**Date:** May 11, 2018

**To:** Interpretations File No. 2018-001

**From:** Jeffrey S. Wilson, AICP   
Director

**Subject:** Request for Interpretation by Copper Leaf LLC regarding Uses Allowed within the Mixed Use Village Zone (MUV)

**Date Issued/Posted:** May 11, 2018

**Effective Date:** May 26, 2018 (unless appealed in a timely manner)

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#### Issue Outline:

On April 25, 2018, the Department of Community Development received a letter from Copper Leaf, LLC requesting a formal code interpretation "Request for Interpretation of Uses Allowed for Mixed Use Village zone" (see Attachment 1).

A summary of the request is as follows:

*"Specifically, would a commercial use, even with substantial storage area that included a distribution function, be permitted." (see paragraph # 3 of Attachment 1).*

To provide context to the quest for interpretation, Copper Leaf provided examples of uses related to the interpretation request cited above (see bullet point examples on page 1 & 2 of Attachment 1), and quoted below.

1. Warehouse space that supports retail or office space engaged in the selling/marketing of the company's products from the warehouse. Selling and marketing includes but is not limited to the following: direct sales, indirect sales, digital sales or a combination of any of the above with a warehouse that supports those sales. Examples: Raleigh Bikes, Fastenal Company, Granger Industrial Supply.
2. Light Manufacturing and warehousing of goods that contains office space with accounting and administrative support staffing. Example: Serta Mattress Company.
3. Warehouse space that adjoins a show room displaying products, display areas for merchandise as well as general office support. Example: Bargreen Ellingson.
4. A warehouse that stores product and supports a company's retail stores in and around the surrounding area. Examples: Car Toys, Pro Golf Discount, Batteries Plus.

5. *Local, Regional National or International HQ building that has office support systems located in the building to support the company's business efforts. Examples: Intel and Boeing.*
6. *Data Centers whose primary function is to store and service servers on a company's systems. Examples: Microsoft, Facebook.*
7. *Commercial kitchen operations that store and cook food for nearby restraint or company operations including space for food commissary operations. Examples: Alaska Airlines, Lewis-McChord.*
8. *Freezer/Cooler Buildings that process, store and distribute food products to the local market. Examples: Seattle Cold Storage, Cold Locker.*

The purpose of this interpretation analysis will be to evaluate the examples cited above to determine if they are consistent/inconsistent with the intent of the adopted regulatory language in the recently adopted amendments to the DuPont Municipal Code (DMC), specifically DMC Chapter 25.41 (Mixed Use Village – MUV).

**Relevant Code Sections and Definitions:**

A. 25.05.040 Rules of Interpretation

- (1) Regulations, conditions, or procedural requirements specific to an individual land use permit shall supersede regulations, conditions, or procedural requirements of general application.
- (2) The zoning code shall be consistent with and implement the city's comprehensive plan.
- (3) When a provision of this title conflicts with another provision in this title, the more restrictive provision shall apply.
- (4) When the provisions of this title impose greater restrictions than are imposed by other applicable city, county, regional, state and federal regulations, the provisions of this title shall control.
- (5) Chapter and section headings, captions, illustrations and references to other sections or titles are for reference or explanation only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any section.
- (6) In the case of any ambiguity or differences of meaning or inconsistencies between the text and any illustrations or other graphics, the text throughout this title and the zone classification use tables in the appendix to this title shall control.
- (7) The words "shall" and "should" are mandatory and the word "may" is discretionary.
- (8) Unless the context clearly indicates otherwise, words in the present tense shall include past and future tense; all words and terms used in this title shall have their defined or customary meanings.
- (9) The community development director or his/her designee are hereby authorized to make code interpretations. Where these rules do not clarify a boundary, definition, use standard, or procedure, the director shall make the determination. The director's determination in these instances may be appealed pursuant to DMC 25.175, Administration of Development Regulations.

B. Section 1.2 – Subarea Plant Intent (Old Fort Lake Subarea Plan)

The Old Fort Lake subarea contains tremendous opportunity to provide future employment, commerce, recreation, and housing to accommodate current and future populations. The intent of the subarea plan is to examine the area to better understand its strengths, opportunities, and constraints, and to plan for its growth. Based on analysis and engagement, the subarea plan articulates the future vision and outlines its implementation strategy. This vision will be implemented through the City's Comprehensive Plan, land use controls, capital improvement plans, and economic development initiatives.

C. 25.41.010 – Purpose (Mixed Use Village)

The Mixed Use Village (MUV) is intended to provide a location for a spectrum of future services, recreation, employment, and living options arranged in a mixed-use village. 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 excessive impacts such as noise or emission of significant quantities of dirt, dust, odor, radiation, glare or other pollutants are prohibited. The MUV zoning district is established to implement the Old Fort Lake Subarea Plan and the applicable goals and policies for the Old Fort Lake area as listed in the City of DuPont Subarea Plan. The MUV is applicable to the designated areas delineated in the Comprehensive Plan and the Zoning Map. The MUV includes nine subdistricts that define standards for allowed land uses, development scale, aesthetics, and compatibility. The MUV subdistricts are described as follows:

- (1) MUV-1: This subdistrict is intended to support a mix of uses that includes neighborhood-oriented commercial/restaurant uses, hotel, housing, public/community uses, office, light manufacturing, and research and development.
- (2) MUV-2: This subdistrict is intended to support a mix of uses that includes neighborhood-oriented commercial/restaurant uses, hotel, housing, office, light manufacturing, and research and development.
- (3) MUV-3: This subdistrict is intended to support a mix of uses that includes neighborhood-oriented commercial/restaurant uses, multifamily housing, public/community uses, office, light manufacturing, and research and development.
- (4) MUV-4: This subdistrict is intended to support smaller-scale employment and neighborhood-oriented commercial/restaurant uses. The subdistrict is intended to develop with appropriate buffering and building-scale limitations to ensure compatibility with the nearby residential and school properties.
- (5) MUV-5: This subdistrict is intended to be a primary employment area that allows office, light manufacturing, and research and development.
- (6) MUV-6: This subdistrict is intended to be a primary employment area that allows office, and light manufacturing, research and development. This subdistrict also supports specialty commercial/restaurant uses.
- (7) MUV-7: This subdistrict is intended to support a mix of uses that includes neighborhood-oriented commercial/restaurant uses, community/cultural uses, office, light manufacturing, and research and development.
- (8) MUV-8: This subdistrict is intended to be an employment area with supportive residential that allows office, light manufacturing, research and development, community/cultural uses, and multifamily housing.

- (9) MUV-9: This subdistrict is intended to support active recreation and supporting land uses such as commercial/restaurant, administrative office, and hotels.

D. 25.40.010 Purpose (Business Tech Park District)

1. 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.

E. 25.41.015 – Definitions

1. The definitions in this section only apply to Chapter 25.41 of the DMC.
  - a. *Light Manufacturing:* An indoor facility used for the assembly, fabrication, and conversion of semi-processed material into finished products, where the intensity, scale, and characteristics of the operation are unlikely to negatively impact surrounding land uses. Light manufacturing also includes intermediate services such as machining, welding, grinding, and machine/industrial repair. Examples of light manufacturing uses include, but are not limited to, clothing and fabric manufacturing; food and beverage products, including ice production; electronic, optical, and instrumentation assembly; jewelry production; and manufacturing musical instruments. Outdoor storage or processing of equipment or materials is prohibited.

F. 25.10.020 B definitions

1. “Business” means the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, substance or commodity for livelihood or profit; or the management, occupancy, or maintenance of recreational or amusement enterprises, office buildings, offices, structures or premises by professions and trades or persons rendering services.

G. 25.10.030 C definitions

1. Commercial. See “Business.”

H. 25.10.150 O definitions

1. “Office use” generally refers to a service business, rather than the production, distribution and/or retail sales of goods or commodities. The services provided are generally professional, educational, administrative, financial or governmental in nature.

I. 25.10.230 W Definitions

1. “Warehouse/distribution” means a building or land use in which goods, merchandise or equipment are stored for eventual distribution.

J. “Process” (Merriam - Webster, 2018)

1. a: progress, advance - in the process of time  
b: something going on: proceeding
2. a (1): a natural phenomenon marked by gradual changes that lead toward a particular result ♦ the process of growth (2): a continuing natural or biological activity or function ♦ such life processes as breathing

- b: a series of actions or operations conducting to an end; especially: a continuous operation or treatment especially in manufacture

K. “Retail” (Merriam - Webster, 2018)

- 1. : to sell in small quantities directly to the ultimate consumer

L. “Merchandise” (Merriam - Webster, 2018)

- 1. : the commodities or goods that are bought and sold in business

M. “Data Center” (Wikipedia)

- 1. A data center is a facility used to house computer systems and associated components, such as telecommunications and storage systems. It generally includes redundant [clarification needed] or backup power supplies, redundant data communications connections, environmental controls (e.g. air conditioning, fire suppression) and various security devices. A large data center is an industrial-scale operation using as much electricity as a small town.

**Analysis:**

The MUV is a new zoning classification recently adopted into DuPont Municipal Code (DMC) on March 27, 2018 under Ordinance 18-1034. The new zoning designation was created to implement the adopted Comprehensive Plan Subarea Plan for the Fort Lake Business and Technology Park, creating the new Old Fort Lake subarea. The former “Business Tech Park District” (BTP) zoning in place for the Fort Lake Business and Technology Park comprehensive plan was replaced with the new MUV zoning designation.

The intent of the adoption of the new MUV regulations was to expand the permitted uses in the zoning regulations for this new zoning designation while fundamentally retaining the majority of land uses permitted within the Business Tech Park District (BTP) designation.

Therefore the review of the request for interpretation of permitted uses within the new MUV land use regulations must be taken in context stated purpose of the MUV (25.41.010) and the purpose of the former BTP (25.40.010) zoning designation.

The requested interpretation cites eight (8) examples of uses for determination of consistency with the new MUV regulations. The following is a restatement of these 8 uses with an analysis of each use example for consistency with the stated regulation and purpose of DMC 25.41.

1. *Warehouse space that supports retail or office space engaged in the selling/marketing of the company’s products from the warehouse. Selling and marketing includes but is not limited to the following: direct sales, indirect sales, digital sales or a combination of any of the above with a warehouse that supports those sales. Examples: Raleigh Bikes, Fastenal Company, Granger Industrial Supply.*
  - a. Analysis: Based on the description, the primary uses include a retail/commercial component within a building which also provides warehouse space to store goods which are being sold on site. Pursuant to DMC Table 25.41.020(a), “retail trade” is listed as either a “permitted” or an “accessory” use throughout the entire MUV zoning district. Merriam – Webster defines “retail” as “to sell in small quantities directly to the ultimate consumer.” The uses example provided in this instance qualifies as a “retail trade.”
2. *Light Manufacturing and warehousing of goods that contains office space with accounting and administrative support staffing. Example: Serta Mattress Company.*
  - a. Analysis: The activity described provides for a manufacturing activity which is consistent with the adopted definition of “Light Manufacturing” pursuant to

25.41.015(1)(a) (see above) and is consistent with the permitted uses allowed within the MUV district.

3. *Warehouse space that adjoins a show room displaying products, display areas for merchandise as well as general office support. Example: Bargreen Ellingson.*
  - a. Analysis: Based on the description, the primary uses of provides a showroom or display area for merchandise for the purpose of sales to customers. This is another form of “retail trade” which is a permitted use within the MUV zoning district. Additionally, the proposed use as described includes office space to support the retail trade aspect of the use. “Office” use is also a permitted use within the MUV zoning district.
4. *A warehouse that stores product and supports a company’s retail stores in and around the surrounding area. Examples: Car Toys, Pro Golf Discount, Batteries Plus.*
  - a. Analysis: The activity described would be a land use activity in which goods, merchandise or equipment are stored for eventual distribution. This activity would fit within the definition of “warehouse/distribution” in DMC 25.10.230 (see above) and **therefore would be a prohibited** use pursuant to DMC 25.41.020(2)(g).
5. *Local, Regional National or International HQ building that has office support systems located in the building to support the company’s business efforts. Examples: Intel and Boeing.*
  - a. Analysis: Based on the brief activity described it would appear that the use described would be considered an “office use” activity defined pursuant to DMC 25.10.150 (see above), and as such would be permitted within the MUV zoning district.
6. *Data Centers whose primary function is to store and service servers on a company’s systems. Examples: Microsoft, Facebook.*
  - a. Analysis: The use described in this example appears to be consistent with the “service business” use permitted within the MUV zoning district. “Service business” is not currently a defined term in the DMC. However as stated at the beginning of the Analysis section of this document, the intent of the adoption of the new MUV zoning district to implement the new Old Fort Lake subarea plan was to create a plan and companion zoning regulations which expanded land use opportunities while still restricting uses which were not deemed compatible with the subarea and the surrounding land uses (i.e. “Warehouse/Distribution”) as well as retaining the uses which were previously permitted. Therefore, to determine the types of uses which would qualify under “Service business” we look to the examples provided within DMC25.40.020(1) which provides a list of permitted uses within the BTP zoning district as well as other companion zoning districts which are referenced. A “data center” by definition (see above) is consistent with the types of permitted uses within the BTP zoning district (DMC 25.40.020(1)) and therefore is consistent with the intent of the development of the MUV and use district to retain existing permitted in the BTP zone.
7. *Commercial kitchen operations that store and cook food for nearby restraint or company operations including space for food commissary operations. Examples: Alaska Airlines, Lewis-McChord.*
  - a. Analysis: As describe, the proposed use is at a minimum consistent with “light manufacturing” activities permitted within the MUV zoning district. The proposed use described provide of the operations of a commercial kitchen which processes raw ingredients into a finish food product which is then distributed.

8. *Freezer/Cooler Buildings that process, store and distribute food products to the local market. Examples: Seattle Cold Storage, Cold Locker.*

- a. Analysis: The use defined describes activities which take a raw food product and takes steps to “process” that raw food product into a finished product which is then stored and distributed to local markets. In the food processing environment, this is very similar and consistent with the intent of the “light manufacturing” which is allowed within the MUV land use district pursuant DMC 25341.015 and 020; provided that the activity does not include the specifically prohibited under DMC 25.41.020(2)(c) of “Fish processing and other animal rendering operations.”

Finally, all use proposals, site plan applications and similar are assessed on a case-by-case basis. This interpretation is not a substitute for nor can it stand in lieu of a formal use proposal, site plan application, permit application, variance application or any other land use process.

**THEREFORE, THE FOLLOWING INTERPRETATION IS HEREBY ISSUED:**

**BASED ON THE ANALYSIS ABOVE, THE FOLLOWING USES/ACTIVITIES ARE DEEMED TO BE PERMITTED ACTIVITIES WITHIN THE MIXED USE VILLAGE ZONING DISTRICT SUBJECT TO THE PERFORMANCE STANDARDS AND USE REQUIREMENTS UNDER DMC 25.41.**

1. **WAREHOUSE SPACE THAT SUPPORTS RETAIL OR OFFICE SPACE ENGAGED IN THE SELLING/MARKETING OF THE COMPANY’S PRODUCTS FROM THE WAREHOUSE. SELLING AND MARKETING INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING: DIRECT SALES, INDIRECT SALES, DIGITAL SALES OR A COMBINATION OF ANY OF THE ABOVE WITH A WAREHOUSE THAT SUPPORTS THOSE SALES. EXAMPLES: RALEIGH BIKES, FASTENAL COMPANY, GRANGER INDUSTRIAL SUPPLY.**
2. **LIGHT MANUFACTURING AND WAREHOUSING OF GOODS THAT CONTAINS OFFICE SPACE WITH ACCOUNTING AND ADMINISTRATIVE SUPPORT STAFFING. EXAMPLE: SERTA MATTRESS COMPANY.**
3. **WAREHOUSE SPACE THAT ADJOINS A SHOW ROOM DISPLAYING PRODUCTS, DISPLAY AREAS FOR MERCHANDISE AS WELL AS GENERAL OFFICE SUPPORT. EXAMPLE: BARGREEN ELLINGSON.**
4. **LOCAL, REGIONAL NATIONAL OR INTERNATIONAL HQ BUILDING THAT HAS OFFICE SUPPORT SYSTEMS LOCATED IN THE BUILDING TO SUPPORT THE COMPANY’S BUSINESS EFFORTS. EXAMPLES: INTEL AND BOEING.**
5. **DATA CENTERS WHOSE PRIMARY FUNCTION IS TO STORE AND SERVICE SERVERS ON A COMPANY’S SYSTEMS. EXAMPLES: MICROSOFT, FACEBOOK.**
6. **COMMERCIAL KITCHEN OPERATIONS THAT STORE AND COOK FOOD FOR NEARBY RESTRAINT OR COMPANY OPERATIONS INCLUDING SPACE FOR FOOD COMMISSARY OPERATIONS. EXAMPLES: ALASKA AIRLINES, LEWIS-MCCHORD.**
7. **FREEZER/COOLER BUILDINGS THAT PROCESS, STORE AND DISTRIBUTE FOOD PRODUCTS TO THE LOCAL MARKET. EXAMPLES: SEATTLE COLD STORAGE, COLD LOCKER.**

**Appeal Procedures:**

Pursuant to Dupont Municipal Code (DMC) Section 25.175.010(3), the director of community development, or designee, may issue written interpretation for any section of DMC Titles 23, Environment, 24, Subdivisions. Or 25, Land Use Code, at any such time as the code is silent regarding an issue, duplicative or conflicts within itself. Such interpretation shall be processed as a Type I action and may be appealed to the hearing examiner pursuant to DMC Section 25.175.060.(4).

Should anyone wish to appeal this interpretation, a written appeal, accompanied by the required appeal fee (see City of DuPont fee handout) must be submitted within 14 after the date of the final decision (days of the date of issuance/posting of this interpretation).

**The deadline for filing an appeal of this interpretation is: 5:00 p.m. on MAY 25, 2018.**

A written appeal must contain the following:

1. The appellant's name, address and phone number;
2. A statement describing the appellant's standing to appeal;
3. Identification of the application that is the subject of the appeal;
4. The appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
5. The specific relief sought;
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

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CC: Interpretations File No. 2018-001

Attachments:

1. Request for Interpretation of Uses Allowed for Mixed Use Village zone, submitted by Copper Leaf, LLC, dated April 23, 2018

Notice:

- 1) Posted at DuPont City Hall
- 2) Published on the City of DuPont Department of Community Development webpage

Copper Leaf, LLC  
17837 First Avenue South  
Normandy Park, Washington 98148

RECEIVED

APR 25 2018

Initial: \_\_\_\_\_

April 23, 2018

Jeffrey S. Wilson  
Community Planning Director  
City of DuPont  
1700 Civic Drive  
DuPont Washington

**Re: Request for Interpretation of Uses Allowed for Mixed Use Village zone**

Dear Mr. Wilson:

Thank you for your help in working with the Planning Commission and City Council regarding the Comprehensive Plan and re-zoning of the property. Questions have arisen during our participation in this process and we have questions regarding pure warehouse/distribution uses under the newly adopted Land Use Code Chapter 25.41 for Mixed Use Village.

A large number of Pierce County businesses have large storage areas that are used to support their on-going business operations, including warehouse/distribution. Whether those uses are allowed or prohibited is unclear to us. Therefore, we are respectfully requesting a formal interpretation as to permitted and non-permitted uses.

Specifically, would a commercial use, even with substantial storage area that includes a distribution function, be permitted?

Below are examples of companies doing business in the Puget Sound region that have large storage areas that support their on-going business operations. We would like to know if these uses would be allowed in the City of Dupont based upon Land Use Code Chapter 25.41 for Mixed Use Village and other appropriate statutes, ordinances and regulations:

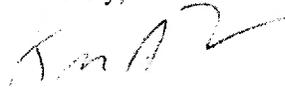
- Warehouse space that supports retail or office space engaged in the selling/marketing of the company's products from the warehouse. "Selling and marketing" includes but is not limited to the following: direct sales, indirect sales, digital sales or a combination of any of the above with a warehouse that supports those sales. Examples: Raleigh Bikes, Fastenal Company, Granger Industrial Supply.
- Light manufacturing and warehousing of goods that contains office space with accounting and administrative support staffing. Example: Serta Mattress Company.

- Warehouse space that adjoins a show room displaying products, display areas for merchandise as well as general office support. Example: Bargreen Ellingson.
- A warehouse that stores product and supports a company's retail stores in and around the surrounding area. Examples: Car Toys, Pro Golf Discount, Batteries Plus.
- Local, Regional, National or International HQ building that has office support systems located in the building to support the company's business efforts. Examples: Intel and Boeing.
- Data Centers whose primary function is to store and service servers on a company's systems. Examples: Microsoft, Facebook.
- Commercial kitchen operations that store and cook food for nearby restaurant or company operations including space for food commissary operations. Examples: Alaska Airlines, Lewis McChord.
- Freezer/Cooler Buildings that process, store and distribute food products to the local market. Examples: Seattle Cold Storage, Cold Locker.

Based on Gary Danklefsen's meeting with you on April 11, 2018, it is my understanding that you agreed to process this request upon receipt of the \$1,500 process fee. Enclosed please find the enclosed check for \$1,500.

Please let me know if you have any questions or need anything else from Copper Leaf, LLC. We look forward to your interpretation.

Sincerely,



Kristofer Larson  
Copper Leaf, LLC  
Corporate Counsel  
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206-713-2084