

Request for Modification of Tree Retention Requirements under DMC 25.120.050 for Expansion Area of South Parcel Project

A landmark Tree Inventory Report is included with the application. DMC 25.120 is clearly written to address tree retention under a typical development scenario and includes no provision specific to land designated with a mineral resource overlay (MRO). The tree retention requirements in DMC 25.120.030 are not consistent with mineral extraction permitted within the MRO.

To the extent DMC 25.120.030 is applicable to land and trees within the City's designated Mineral Resource Overlay District, CalPortland requests a modification of those requirements as allowed under SMC 25.120.050 given the special circumstances pertaining to the land or the trees on it, including the unique nature and purpose of the Mineral Resource Overlay District and the enhanced and permanent tree replacement proposed in the Tree Report (Section 6), which goes far beyond what would be proposed if the site were developed in accordance with its underlying zoning designations.

Non-Landmark Trees. Before turning to landmark trees, we note that the Code contains tree retention for non-landmark trees in certain use districts. However, the Mineral Resource Overlay District is not identified as a district where such tree retention is required, as confirmed in the city's Pre-Application Memorandum for this project. See DMC 25.120.030(3); PRE-APPLICATION MEMORANDUM MAY 3, 2019, PAGE 3.

Landmark Trees. With regard to landmark trees, DMC 25.120.030 contains standards for both white oak landmark trees and other (non-oak) landmark trees. The Code calls for retention of all Oregon white oak trees "unless overall neighborhood densities cannot be met" with retention. It also calls for retention of at least half of other (non-oak) landmark trees. It is unclear whether the City intended these retention *requirements* to apply to areas within the Mineral Resource Overlay District. In general, the MRO District is subject to special "performance standards" that take into account the unique nature of mining uses. See DMC 25.60.050. These standards provide that the Site Plan approval process will be used to address "loss of tree cover" when property is mined in accordance with the MRO designation. DMC 25.60.050. It appears that the City's intent was for this general performance standard to govern the matter of tree retention, tree impacts, and mitigation, rather than the specific retention requirements in DMC 25.120.030 that are geared to typical residential and commercial development rather than mineral resource extraction.

If the City nevertheless determines that the Tree Retention Standards in DMC 25.120.030 are applicable, a modification is requested under DMC 25.120.050 for removal of the additional landmark trees beyond the Code-specified number, as identified in Table 1 below. This modification involves the removal and replacement of 13 additional white oaks and 29 non-white oaks within the approximately 188-acre Expansion Area. This is the equivalent of one white oak every 14.5 acres, and one non-white oak for every 5.5 acres.

Table 1
Summary of Landmark Tree Inventory, Retention Requirements, and Tree Retention and Mitigation Plan for the Expansion Area Parcels

	Oregon white oak (<i>Quercus garryana</i>)	Big Leaf Maple (<i>Acer macrophyllum</i>)	Douglas fir (<i>Pseudotsuga menziesii</i>)	Pacific madrone (<i>Arbutus menziesii</i>)	Pacific yew (<i>Taxus brevifolia</i>)	Western red cedar (<i>Thuja plicata</i>)	Total Trees
Total Landmark Trees	13	2	81	1	1	10	108
Trees to be Removed from Expansion Area	13	0	73	1	1	1	89
Total Tree Retention Requirement per DMC 25.120.030(2)	13	1	40.5	0.5	0.5	5	61
Trees to be Retained in Open-Space Adjacent to Expansion Area	0	2	8	0	0	9	19
Landmark Tree impacts to be mitigated for with new tree planting	13	29					42

The City Code allows a modification of the City's tree retention regulations as follows:

Anyone with an ownership interest in land may request a modification from the provisions of [Chapter 25.120] based on special circumstances pertaining to the land or the trees on it."

As stated above, all of the landmark trees proposed for removal are within the designated Mineral Resource District in the City's Zoning Map and Comprehensive Plan. The South Parcel Project proposed by CalPortland at the DuPont Aggregates mine is consistent with these planned land use designations. The extraction of mineral resources will allow for future development generally consistent with the planned zoning. The trees proposed for removal are in the middle of the mining footprint as shown in attached Figure. It is not possible to access the sand and gravel resources protected by the mineral resource overlay designation without removing these additional trees. This is a special circumstance pertaining to the land and the trees on it.

The process of aggregate mining on this scale takes several years, in contrast to the types of development addressed in the Tree Retention Code (DMC 25.120). This allows the opportunity to propagate large numbers of mature trees during operation of the mine. This is consistent with the segmental reclamation approach that has included planting of trees on the mine slopes over the past 10 years. This approach to reclamation will fully meet the intent of the Tree Retention Code as stated in the purpose.

Requests for modifications are evaluated under DMC 25.120.010. See DMC 25.120.050.

DMC 25.120.010 provides as follows:

(1) The purpose of this chapter is to:

- (a)** Protect natural habitats, air quality, and ground water recharge,
- (b)** Improve the appearance of the community,
- (c)** Provide shade and wind protection,
- (d)** Reduce stormwater discharge, and
- (e)** Conserve water supplies.

(2) This chapter is intended to help achieve these purposes by:

- (a)** Retaining trees, without reducing developmental densities from those indicated in the comprehensive plan.

Mine operations and reclamation will meet this purpose as follows:

- (a) Protect natural habitats, air quality, and ground water recharge.** By creating an almost continuous forested corridor on the mine slopes, natural habitats will be protected in perpetuity by the City of DuPont's Critical Areas Ordinance (DMC 25.105). The reforestation of this corridor has already begun and will continue for many years. CalPortland is required to maintain a reclamation bond with the Washington Department of Natural Resources under the Washington State Surface Mining Reclamation Act (78.44 RCW) until this work is completed. These newly established forests are younger and healthier allowing greater carbon sequestration and ability to remove atmospheric pollution to protect air quality. The entire project will result in 100% infiltration of treated stormwater. This will be enhanced by the filtering of runoff from the forested mine slopes.
- (b) Improve the appearance of the community.** The forested areas will be visible from the developable portion of the mine, creating a nearly continuous forested hill slope around the future, planned Sequelitchew Village development.
- (c) Provide shade and wind protection.** The forested areas are densely planted (10 feet on center), creating a high degree of shade, wind attenuation, and a microclimate effect that will mitigate the heat island of future development.

- (d) Reduce stormwater discharge.** The entire site will be engineered to provide 100% infiltration of stormwater. This water will be treated before infiltration and to the extent practical, clean ground water will be kept segregated from stormwater.
- (e) Conserve water supplies.** The forested mine slopes will not be irrigated and will be planted with native species acclimated to the local climate.
- (f) Allowing tree retention to the extent possible without reducing the development footprint indicated in the Comprehensive Plan and the 2012 Settlement Agreement.** The City's Tree Retention Standards in DMC 25.120.030 are for the purpose of "[r]etaining trees, *without reducing developmental densities from those indicated in the comprehensive plan.*" DMC 25.120.010(2)(a) (emphasis added)." Part of the City's planned development density is sand and gravel mining within the City's designed Mineral Resource Overlay District. The City's tree retention requirements are not intended to preclude the residential densities or mineral resource development planned for in the Comprehensive Plan. Retaining trees, without reducing developmental densities from those indicated in the comprehensive plan is not practicable within the mineral resources overlay. Gravel extraction will require land clearing. These impacts will be fully mitigated by site reclamation in accordance with Washington Department of Natural Resources reclamation permits for the project. The development density for this land as indicated in the City's Mineral Resource Overlay designation and the 2012 Settlement Agreement is mineral extraction of sand and gravel, followed by reclamation for future use. Allowing removal of an additional 13 landmark white oaks and 29 landmark non-oak trees over a 188-acre area--the equivalent of one tree per 4.5 acres--will allow the mineral resource development allowed under the Comprehensive Plan and 2012 Settlement Agreement.