



Notice of Hearing Examiner Decision

07/16/2019

To: Interested Parties and Parties of Record

RE: Project Name: Indigo Topsoil – CUP Revision Major &
SEPA APPEAL (of 18-00520 Indigo Topsoil CUP-REV
MAJOR)
Applicant: LUCIO LARIOS
8777 NE DELANEY RD
KINGSTON, WA 98346
Application: Conditional Use Permit – Revision Major (CUP-REV
MAJOR) & Administrative Appeal (ADMIN APPEAL)
Permit Number: 18-00520 & 19-01906

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

The Decision of the Hearing Examiner is final, unless appealed timely, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: Lucio Larios, lucio_larios@yahoo.com
Representative: Kenneth Bagwell, kbagwell@kbagwell-law.com
Engineer: Kelsey Laughlin, kelsey@seaboldeng.com
Parties of Record (to the Appeal) / Interested Parties (to the CUP-REV MAJOR):
SMITH, AARON, aaron@amsmithlaw.com
MAXIM, STEVEN, sbmaxim@embarqmail.com
FIKE, DAVID, dsfike@embarqmail.com

FIKE, JUDITH, jfike@embarqmail.com; 22254 PORT GAMBLE RD NE POULSBO, WA 98370

Kitsap County Health District, MS-30

Kitsap County Public Works Dept., MS-26

Parks

Navy

DSE

Kitsap County Prosecutors

Kitsap County Assessors

DCD Director

Kitsap Sun

North Kitsap Fire District

Puget Sound Energy

Water Purveyor

Sewer Purveyor

Point No Point Treaty Council

Suquamish Tribe

WA Dept. of Fish & Wildlife

WA State Dept. of Ecology-SEPA

DCD Staff Planner: Jeff N. Smith

Interested Parties:

WALLACE, DAVID & CANDACE, wallacecandace@hotmail.com

DORR, DICKSON JOSEPH & KATHLEEN, beardorr@hotmail.com

HECHT, LARRY & MARY, larry.hecht@yahoo.com

GUYER, BETH, bwakingupinvegas@gmail.com

AGENBROAD, BRETT & MARIA, agenbroadbrett@gmail.com

STARK, MARTY, marty-TFI@hotmail.com

BOYD, TERESA, TERESABOYD1963@GMAIL.COM

PEARSON, ALFREDO, aj.clarkconst@gmail.com

CASTLEMAN, SYLVIA, pianojazz71@comcast.net

ALESCIO, DICK, dick@alescioandassociatesinc.com

JAMES, TOM & CARLA, 6230 NE GUNDERSON RD POULSBO, WA 98370

JENSEN, JEFFREY & LILLY, 22031 PORT GAMBLE RD NE, POULSBO, WA 98370

ABRAHAM, TERRANCE 22971 PORT GAMBLE RD NE, POULSBO, WA 98370

ABRAHAM, KACEY, 2034 NW SWANLUND ST POULSBO, WA 98370

MATHISEN, HERMAN, 21102 PORT GAMBLE RD NE, POULSBO, WA 98370

PETERSON, JANICE, 21600 PORT GAMBLE RD NE, POULSBO, WA 98370

BERRY, GREG & NINA, 23884 JEFFERSON BEACH RD NE KINGSTON, WA 98346

FIKE, DONALD & JUNE, 6133 DEMARS LN SE PORT ORCHARD, WA 98367

STEDMAN, CATHERINE, 22600 PORT GAMBLE RD NE POULSBO, WA 98370

GREGG, CARA & JESSE, 2421 NE REDFORD ST POULSBO, WA 98370

TALLON, PATRICK & ALELA, 862 NE HAUGEN ST POULSBO, WA 98370

KASPERSON, LEIF & CARA, 22265 PORT GAMBLE RD NE POULSBO, WA 98370

STEINMAN, F., 22290 PORT GAMBLE RD NE POULSBO, WA 98370

RUNKLE, RALPH, 22268 PORT GAMBLE RD NE POULSBO, WA 98370

POSS, BARBARA, 6262 NE GUNDERSON RD POULSBO, WA 98370

BUMPUS, DONALD & PENNY, 22290 PORT GAMBLE RD POULSBO, WA 98370

HIMMLER, KLAUS & LAGERQUIST, MELINDA, PO BOX 22 HANSVILLE, WA 98340

SALO, CELENE & DAVID, PO BOX 1862 POULSBO, WA 98370

DCD File

KITSAP COUNTY HEARING EXAMINER

Indigo Topsoil Conditional Use Permit Major Revision and SEPA Decision DCD File No. 18-00520 (Prior CUP No. 970626-015/LU-5264) SEPA Appeal File No. 19-01906

July 15, 2019

1. FINDINGS OF FACT

1.1 Proposal. Request for Major Revision to a previously issued Conditional Use Permit to operate a landscape supply business. The original use included the use of heavy equipment for topsoil production; that aspect of the business will be removed.

Applicant/Property Owner. Lucio Larios, 8777 NE Delaney Road, Kingston, WA 98346.

Location. 22244 Port Gamble Road NE, Poulsbo, 98370, Assessor's Account No. 082602-2-037-2009.

1.2 Site. 2.6 acres property fronting Port Gamble Road NE on the west. Six foot fencing and trees will be placed along the site's perimeter, with buffering at 40 or more feet on the east side, and on a portion of the south side.¹ Most of the site is gravel or asphalt paved with landscape bins for retail sales.² Existing structures include:

- Unoccupied 2,634 square foot single-family home;
- 7,309-square foot covered material storage building;
- 512 square-foot barn/composting shed;
- 832 square-foot office; and,
- 525 square-foot garage.

About 20 to 30 feet lower than the adjacent property to the east, the site has moderate to well drained soils, and no critical areas. Though within a Critical Aquifer Recharge Area-II, a hydrogeological report is not required for this use.³

1.3 Surrounding Uses/Zoning

North (RR)	Two single-family homes about 87-100 feet from the use
South (RR)	Single-family home about 215 feet from the property line
East (RR)	Single-family home 142 feet from property line ⁴
West (RR)	Single family home about 190 feet away ⁵

¹ Exhibit 19 (Revised Indigo Topsoil Project Narrative), pgs. 1-2.

² Exhibit 42.

³ KCC Table 19.600.620; Ex. 42.

⁴ The Staff Report uses the figure 142. Property owner testimony placed it at about 200 feet.

1.4 Project Scope. In 1997, the County issued Emu Topsoil a CUP to operate a landscape supply and topsoil production business. The new business owner is requesting a CUP revision to operate generally within the approved development footprint. He is reducing use scope to eliminate topsoil manufacture and limit business hours, and expanding retail sales to include additional landscape materials.⁶

The original operation, which extended from property line to property line, included retail sales of topsoil manufactured by recycling and mixing emu waste from an emu ranch with other soil elements and imported manure.⁷ With the revised CUP, topsoil manufacture is eliminated, but retail sales remain. Sales are of soils and gravel, and there will be temporary storage of yard debris.⁸ Using a small loader, limited soil components will be mixed.⁹ The Applicant will not be using the large soil mixing and screening equipment, and will not be engaging in "topsoil production." "[T]he applicant agreed .. to not return the large soil mixing and soil screening equipment back to the site. ... [T]he soil screener and soil mixer machines had a significantly higher impact (noise and dust)."¹⁰

1.5 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential, allowing one unit per five acres. The County Code allows for a range of limited, conditionally approved commercial uses in rural areas. Kitsap County Department of Community Development ("DCD"), determined the most similar land use category was retail nursery, which unlike a permitted outright bulk nursery, requires a conditional use permit.¹¹

1.6 Notice. Hearing notice was posted, published, and mailed, and application notice mailed and published.¹² Mailed notice was to property owners within 800 feet of site boundaries. Pre-hearing comment was reviewed and responded to.¹³ No concerns on notice were raised.

1.7 Administrative Record. The CUP documents included DCD's staff report and power point, application details, including technical analysis, and public comment. To provide added time for comment, the CUP record was kept open through July 1, 2019. One additional comment was received, as well as a clarification question from the SEPA Appellants' counsel on use scope, followed by DCD and Applicant responses. The clarification materials relate to the

⁵ Ex. 45 (Staff Report), pg. 6.

⁶ Exs. 5, 6, and 19.

⁷ The soil operation was a permitted agricultural use, but required a CUP when heavy equipment was later used (dump truck, loader, grinder and screening). Ex. 45 (Staff Report), pg. 2.

⁸ Customers unload debris near the site's northwest corner. When the pile approaches about 40-cubic yards, or 14.5 feet in height, a dump truck hauls it off site. This occurs about once or week, or as necessary. Material sales include composts, topsoils, mulches, bark, rock, drain rock, and landscape rock. The applicant owns a separate business near Hansville which contains the larger, and noisier equipment, including the topsoil mixer/screener.

⁹ Ex. 58 (Applicant's Clarification, Scope of Use).

¹⁰ Ex. 58 (Applicant's Clarification, Scope of Use); Ex. 58(DCD's Clarification, Scope of Use). Topsoil production is a specific land use category that allows stump grinders or other large equipment for topsoil production. With the larger machinery, impacts are greater, as are code requirements. KCC 17.410.050(A)(22), 17.410.042(544).

¹¹ KCC 17.410.042(272).

¹² Exs. 11 (Notice of Application), 35 (Notice of Public Hearing), 43 (Certification of Public Notice), and 45 (Staff Report), pgs. 9-13 (documenting public outreach).

¹³ Ex. 45 (Staff Report), pgs. 9-13 (documenting public outreach).

SEPA appeal, so are admitted (as a single exhibit) as part of the combined CUP/SEPA record, comprised of CUP Exhibits 1-59 and SEPA Exhibits A1-A12.¹⁴ The Examiner confirmed with counsel that while not all of the CUP record relates to SEPA, there is overlap, so the records should be combined.

1.8 State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). DCD issued a Mitigated Determination of Nonsignificance, or MDNS, which included these conditions:

- The proposal will be conditioned for stormwater control pursuant to KCC Title 12. (Stormwater Management). A Site Development Activity Permit will be required and provide design for the previously constructed bioretention cell and infiltration trenches, as well as design for any additional stormwater features. This includes, but not limited to, Development Services and Engineering Preliminary Conditions Memorandum, dated December 11, 2018.
- A revised landscape plan is required to be submitted with the application for a Site Development Activity Permit. This landscape plan will provide for functional screening around the perimeter of the subject property as required by KCC 17.500 to help address rural compatibility.
- A baseline noise study shall be provided with the Site Development Activity Permit submittal.
- Yard debris piles on-site are limited to 40 cubic yards and 14.5 feet in height. The pile shall be setback a minimum 10-feet from lot lines, may not be stored under or within 5 feet of any overhangs, eaves, or combustible walls. The yard debris shall also not be stored under high voltage transmission lines.
- Heavier, bulky landscape rock material (8" diameter or greater) is to remain only in the storage bins at or near Port Gamble Road NE and are only to be loaded by hand to help prevent a nuisance per 17.105.110.
- Noise from machinery shall be mitigated by the use of hydraulic tailgates, loader pads, and use of a 312 Caterpillar Excavator (or equivalent in noise and emissions output). Noise levels shall comply with Kitsap County Code 10.28 at all times.
- If non-compliance with KCC 10.28 (Kitsap County Noise Ordinance) is demonstrated following permit approval, the applicant shall hire a professional noise consultant to prepare an alternative plan that ensures compliance with County Code. Such plan shall be submitted for DCD review and approval and implemented within 45-days of County review.

¹⁴ Appellants submitted photos as Ex. A12. An Ecology publication was referred to, but not proposed for admission. On the CUP exhibits, Ex. 59 is the sign in sheet.

- No manure or on-site composting is permitted. Topsoil mixing may not be done at this site through use of a screener or similar large machinery to prevent noise impacts on the neighborhood.
- Material refilling via truck deliveries is limited to Monday- Friday from 10am to 3pm. Retail hours are limited to Monday-Friday 8am to 5pm (4:30 pm in winter) and Saturdays 8am to 4pm.
- Access shall only be allowed off Port Gamble Road NE.¹⁵

Long time neighbors Mr. and Ms. Fike, and Mr. Maxim, appealed.¹⁶ The appeal raised issues related to noise, light, traffic, dust, and visual impacts. At the hearing, Mr. Smith represented the Appellants, Ms. Zippell represented DCD, and Mr. Bagwell represented the Applicant. The three appellants each testified as a lay witness. On the SEPA Appeal, DCD called Mr. Heacock, the County's SEPA Coordinator, who prepared DCD's SEPA Memo.¹⁷ He has worked on County SEPA matters for about 11 years, and is familiar with current property use and the former topsoil production operation.

1.9 Hearing. An open record public hearing was held on June 27, 2019, following a Hearing Examiner site visit. On the CUP, DCD, through Mr. Smith, summarized the proposal. The Applicant, through Mr. Larios, provided additional detail. He explained he has been in business for a considerable period. The Appellants' complaints started about a year and a half ago. Everything complained about has been addressed. This has been an exhausting process, made difficult as racism may be an issue.¹⁸ He noted that other than the three appellants, neighbors surrounding the business have been supportive. Several citizens testified, as summarized below.¹⁹

Ms. Stark, an Indigo Topsoil employee, testified in support. She has worked for Mr. Larios for six years, with the operation in place for over five years. The business has done everything it can do and has many customers who are strong supporters.

Ms. Larios, an Indigo Topsoil employee of about five years, emphasized the positive customer reviews, and how the property has been improved and all issues addressed.

Mr. Maxim (also a SEPA Appellant) submitted additional written comment, and presented opposition testimony. He discussed the earlier business, and the family who lived on site, raised emus, and used manure as an amendment. The business was closed due to financial issues. When the business changed hands, he believed it expanded, and exceeded the scope of the existing CUP. He does not believe buffer requirements are met, and provided added detail on dust, traffic, drainage/stormwater, and wetlands protection.

¹⁵ Ex. 37 (MDNS).

¹⁶ Mr. and Ms. Fike live on adjacent property. Mr. Maxim's residence is separated by two vegetated properties.

¹⁷ Ex. A11.

¹⁸ Ex. 13 (March 8, 2018 e-mail comment from an appellant) ("I think Lucio has reached his limit of me taking photos of his violations at his Indigo business. It now appears the "Mexicans" are building a wall...").

¹⁹ This is only a summary. The recording is available through the County website.

Mr. Himmeler has run a landscape business for 20 years and is an Indigo Topsoil customer. The original operation was horrific. The new owners have made the place nicer, have provided local employment and should be treated fairly. He supports the project, which is a valuable business for the community.

Ms. Lagerquist spoke in support. The business brings a wonderful aspect to the community. She has visited soil yards throughout the state. This one is very organized and has great traffic flow. By providing a yard waste composting service, the County is not faced with the burning of brush piles, which impacts air quality.

Mr. Tallon has lived next to the site since before Emu Topsoil operation. He is extremely upset about the code enforcement matter, particularly when the present use is compared with the former operation. The former property owner violated every condition of his permit, and operated at all hours. There was noise, stench, smoke, broken down trucks, and dust. The complaints about the present operation only started after Ms. Fike retired. He stated the appellants have threatened to shoot his dog, shoot coyotes, and are racially motivated, among other problems. He is tired of the money being wasted on this. The current owners are wonderful neighbors.

Mr. Hecht testified. He did not have issues with the previous operation. With the Indigo project, traffic/trucks disposing of yard waste starts early in the am, stops, resumes around noon, and then again at 4:30. There is a traffic/truck increase since Indigo opened. He said there was no noticeable increase in activity during the first year of opening, then it increased. The earlier operation had a home atmosphere, which is now gone.

Mr. Runkle has no complaints with the present owners. He lives two houses up. The present business owners are wonderful people to work with, and he has worked with them on several projects. The owner has visited his property several times on projects. He has not seen an increase in noise or traffic. There has always been a lot of traffic on Port Gamble Road. When he did have a complaint, the owner addressed it right away (trucks were exiting onto his driveway, so a fence was installed). He has the report of the 48 items the owner was asked to address, and he addressed each one to meet County requirements. He supports the business 100%. It would be a shame if someone ran them out. He would love to see the business stay. It provides a service for the community, employs people, and they are great neighbors.

Mr. Salo lives up the road about half a mile. He wanted to know if the use is approved would it open up the whole area to this type of business coming in? He has lived here for 30 years. The traffic has increased significantly. No one has been hit yet, but he feels that will happen.

Mr. Fike (also a SEPA Appellant), lives adjacent to the site on the east. Three minutes was not enough, so he read the last portion of his comment, but submitted his complete written comment. He had wanted to speak in detail on the Comprehensive Plan as he does not believe the CUP revision is consistent, but instead focused on his closing statement. He summarized key reasons the revision is not consistent with the Plan, which is further detailed in his written testimony. His wife retired in 2011; he retired in November 2014. He said it has been a

nightmare living next to Indigo. He has no plans to travel or move. He and his wife bought a seven acre parcel on their residence's south side as a retirement project. Their focus is on keeping the area rural, reforesting their property back to cedar and firs, and they have put in trails. Their plans are on hold and they cannot enjoy gardening in the yard. The only day of the week they enjoy is Sunday, when Indigo is closed.

Ms. Fike (also a SEPA Appellant) has lived over 30 years at the same location. They moved in 1988 to their home on 2.5 acres hoping for an ultimate retirement in a peaceful neighborhood setting. She dealt with industrial equipment/noise at the shipyard where she worked and was happy to leave that behind. Ms. Fike has lived in a rural residential setting all her life. She described growing up, and her memories of her grandparents farm. She also depicted the economic troubles of the former property owner who lost his land and business as he over-extended himself. The land was vacant for over a year or more until it was sold to Mr. Larios. Then the problems started, which she summarized (excavation; tree/emus shed removal; the dirt separator was finally moved).

Mr. Smith (counsel for the SEPA Appellants) submitted comment, which supplements earlier comment he had submitted on his client's behalf. Regarding earlier comment, he clarified his client's position. It is not that the Examiner would not have authority to make a CUP revision but there is no CUP to revise. On the other issue, he does not believe the County has properly analyzed the code to authorize the use as conditional as only an allowed use can be granted a CUP. There is code authority for a retail nursery CUP, but the proposed use is not a retail nursery. No analysis was presented on how that use classification determination was made. The code provides for findings the Department must make to create a most similar use designation. He understand the code cannot account for all uses, but the Director must make 17.100.040 findings. Without them, the Examiner lacks authority to issue a CUP.

Mr. Berry has been a customer of both Emu and Indigo. He was concerned given the fairness. He asked, what if I had purchased property would I be in this situation? On the land use at this location; that ship sailed years ago. This is just another attempt to change things now after years of operations, site improvements, and accommodation. Now, to pull the rug out is ridiculous. He agrees with the gentleman in the back (who had testified earlier in strong terms); this is a waste of time. Two things are going on. That is all. An expansion of materials and time restrictions. This is like having an approved restaurant that then adds menu items. That is less than what was approved; it is not a major land use change. He referenced other companies, such as Olympic Organics and Verns, which are all doing the same thing. He then asked are we penalizing Indigo because his business succeeded, and Emu did not? Had Emu succeeded, we would not be here.

Mr. Bagwell (counsel for the Applicant), addressed the legal comment provided. The CUP was approved in 1997 was never revoked. It was never vacated. There has been no action to do away with it. Under County Code, that CUP stays in effect; runs with the land and there is a place in the code for revising it. As to the findings referenced, the CUP requires the exact type of findings as the similar use analysis. This is a red herring argument. The activity, the use, has always been treated as allowed by code and the Applicant is following the proper steps to revise the existing permit.

1.10 Hours of Operation. Retail sales of landscape materials is Monday to Friday, 8:00 am to 5:00pm in Summer months, and 4:30pm in Winter months, and Saturdays 8:00 am to 4:00pm. Proposed daily hours are being followed.²⁰

1.11 Landscaping. 15% of the site, or 16,884 square feet, must be landscaped.²¹ 20,025 square feet is provided. Evergreen trees and fencing are along the easement at the north property line and within 40 to 46 foot wide buffer along the east property line. The Applicant moved the material bins on the east side, which increased the area to plant additional trees to create a better screening buffer. Similar vegetation is along the south and west property lines.²²

1.12 Mitigation Measures Implemented in Response to Appellant Concerns. The Applicant made several changes to the site and how it operates to address the Appellants' concerns, as summarized below.

- **Stormwater.** Infiltration trenches and bioretention cell installed to eliminate stormwater runoff.
- **Diesel Tank.** Tank was inspected, decommissioned and removed.
- **Topsoil Screener (Noise).** Removed.
- **Visual Impacts.** Planted Thuja Plicata Excelsa, Cedar trees and Psuedotsuga Menziesii, Douglas Fir along the west property line. Following further complaint, a six foot cedar fence was also installed.
- **Material Bins Along East Property Line.** Structural engineer retained to design ecology block walls for the material bins and moved the bins away from the property line to create a 40 foot vegetated buffer. Also, three more rows of evergreen trees were planted along the property line, besides the existing row of evergreen trees and cedar fence.
- **Truck Traffic on the Shared Driveway (Easement on North Side).** Eliminated existing vehicular access used for 22 years. Road now bordered by a six foot cedar fence and is planted with Cedar and Douglas Fir trees.
- **Truck Traffic.** Indigo revised its business plan to include a second business location where the majority of the trucks will load up for deliveries to minimize truck traffic.
- **Large Excavator (Noise).** Indigo replaced the 322 Caterpillar Excavator with the much quieter 312 Caterpillar Excavator.
- **Dust.** Indigo purchased a water truck to water the site in summer months when dust can be an issue.
- **Noise.** Indigo replaced machinery with quieter machinery; limited business hours of operation; limited large truck traffic; planted a solid screen buffer that will increase the noise and visual abatement as the trees grow; installed a fence around the site perimeter; extended buffers; the mixer/screener Emu Ranch used was removed; and the yard waste

²⁰ See e.g., Exhibit 52 (Public Comment, Custom View Landscaping) ("They have refused to load my truck because it was 4:58 in the afternoon and they didn't want to make noise after closing at 5 for the neighbor. ... [W]hen Emu Topsoil was there I didn't hear any complaining from neighbors when I was getting loaded ... after 5 PM."). See Finding 1.8 identifying additional hour of operation restrictions.

²¹ KCC 17.500.025.

²² Exs. 9, 19, and 20.

pile was moved to the northwest corner. Also, most large rock was moved the site's west side; the large rock on the east side is not purchased often. When picked up, rock is hand loaded onto the loader and loaded into the customer's truck.²³

1.13 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance.

- The Fire Marshal's Office conditioned the project to maintain fire apparatus access requirements throughout the site.
- Kitsap Public Health District will require a Commercial Building Clearance before the Site Development Activity Permit.
- Development Services and Engineering has conditioned the proposal to coordinate with Waste Management and install a solid waste enclosure.²⁴

1.14 Utility and Public Services.

- **Water:** Private Well
- **Power:** Puget Sound Energy
- **Sewer:** Onsite Sewage Disposal
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District No. 400²⁵

1.15 Access. Access is from County maintained Port Gamble Road NE. It has two 11-foot travel lanes and three to five-foot gravel shoulders consistent with the rural level of service. Classified as a local access road, it functions like a collector, connecting traffic between NE Gunderson Road and NE Lincoln Road. A 30-foot access easement is on the north property line, which provides access to properties to the east. A truck access was located off the easement but was decommissioned in December 2017 to reduce conflicts with local residential traffic.

The business creates a low volume of peak hour trips, so a traffic impact analysis was not required. However, the project was conditioned to install a road approach to protect the edge of the pavement on Port Gamble Road NE. Through the Site Development Activity Permit the Applicant must improve the road approach to include an asphalt apron with a 35-foot turning radius.²⁶

1.16 Parking. For parking, the business is categorized as retail sales-low traffic generator, as it does not involve high or medium volume customer turnover. Nine spaces is sufficient and is consistent with KCC requirements.²⁷

²³ Ex.19 (Revised Indigo Topsoil Project Narrative), pgs. 2-4; Ex. 45 (Staff Report), pgs. 9-13.

²⁴ Ex. 45 (Staff Report), pg. 16.

²⁵ Ex. 45 (Staff Report), pg. 6.

²⁶ Ex. 45 (Staff Report), pg. 16.

²⁷ Ex. 45 (Staff Report), pg. 14; KCC 17.490.030.

1.17 Signage. The existing sign is a double sided 14 square foot painted plywood unlit sign, which complies with code limits on monument signs of 50 square feet.²⁸

1.18 Stormwater. An existing storm drainage system of pipes and catch basins collect stormwater runoff from the gravel and asphalt pavement areas and convey it to a small pond in the northwest corner. During the 2017 winter, with its heavy rainfall, the small detention pond was discharging turbid stormwater to the roadside ditch along Port Gamble Road NE. DCD imposed measures to resolve the situation, which included Bioretention Cell construction to replace the pond, and infiltration trench construction. The County will require a Site Development Activity Permit, although Development Services and Engineering has reviewed and approved the concept in the storm drainage report, as supplemented.²⁹

1.19 Conditions. DCD proposed 34 conditions. The Applicant confirmed it had no objection to the proposed conditions. To ensure code compliance and mitigate the project consistent with these findings, these conditions should be imposed without substantive revision.

2. SUPPLEMENTAL FINDINGS OF FACT, SEPA

2.1 Light. County lighting standards require lighting to be directed away from adjoining properties. Not more than one-candle foot of illumination may leave the property boundaries.³⁰ With one or two small security lights (one at the house and one at the office),³¹ exterior lighting is limited and will be shielded if screening (fencing/landscaping) proves inadequate.³² One of the Appellants, who lives adjacent to the site, testified as to concerns about impacts from “possible future lighting,” although SEPA does not require DCD to address speculative impacts. The witness also recognized that the lighting at her home is “similar.”³³

2.2 Visual Impacts. Landscaping, fencing, and buffering is required. 15% of the site will be landscaped, with 40 or more feet of buffering along the east property line (adjacent to Mr. and Ms. Fike) and along a portion of the south property line.³⁴ Similar vegetation is required along the south and west property lines.³⁵

The 40 plus foot buffering on the east side, and a portion of the south side, is a little smaller than the Appellants' proposed 50 foot buffer would be on this portion of the site,³⁶ and there was no such buffer with the previous operation, where manure stockpiles, collected from local farms, had limited or no functional screening buffers. Ms. Fike explained that the previous operation went to her fence line, and emus are “fence runners,” so deposited the manure used for topsoil production along the property line.

²⁸ Ch. 17.510 KCC.

²⁹ Ex. 44; Ex. 45 (Staff Report), pg. 15.

³⁰ KCC 17.105.110.

³¹ Testimony, Ms. Fike.

³² Ex. 45 (Staff Report), pg. 11.

³³ Testimony, Ms. Fike.

³⁴ Ex. 45 (Staff Report), pgs. 11 and 14.

³⁵ Ex. 45 (Staff Report), pg. 14, *see also* Exs. 9 (landscape plans) and 20 (site plan).

³⁶ Testimony, Mr. Maxim.

Regarding functional screening of on-site activities, the revised operation is a significant improvement. Mr. Heacock described buffering on the north, and clarified the yard waste pile must be ten feet from the access road. (The MDNS uses the term property line, but the access road is where the measurement is intended to be from.). Buffering includes a fence, block wall, and vegetation (which will grow), to address aesthetic issues. These measures also buffer noise and light impacts.

Mr. Heacock has been doing County SEPA review for about 11 years. The project has functional screening for visual impacts, which is typically how an operation like this is addressed. He noted his familiarity with the Emu Topsoil operation as before working with the County, he worked with Kitsap Conservation District. That project had excessive impacts to anyone living around it. It was not a "tidy operation." Mr. Heacock has been to the site and walked it. The existing operation has changed significantly since its first iteration. The Applicant has been extraordinarily cooperative, doing everything DCD asked to address concerns.

2.3 Noise. Heavy equipment will be operated on site, but conditions are imposed on its operation, operating hours are in the permit conditions, compliance with the County Noise Code is required, and the Applicant has since downsized the excavator, removing the heaviest and most intensive machinery to another location.³⁷ Measures have been taken to limit noise from rock loading.³⁸ There are concrete "ecology block" walls which also provide screening for noise impacts. The yard debris collection area is now located further away from the residence to the east. It was moved around a building corner so is now further from the Fike's home. One of the Appellants testified this had helped mitigate noise.³⁹

Mr. Heacock testified that with its trucks, shakers, screens, and heavy machinery, the emu operation was extremely noisy. One of the Appellants indicated she had lived at her property for over 30 years, including during the Emu Ranch period. She did not recall having noise concerns, although the evidence substantiates that noise was a significant issue with the previous use.

2.4 Traffic. Kitsap County Public Works, Roads Division assessed traffic impacts. A traffic impact analysis was not required as there would be no intersection impacts on the rural road from the operation.⁴⁰ DCD did originally request a traffic study, but it was found unnecessary after the Applicant modified the proposal to eliminate the side road entrance and

³⁷ Ex. 45 (Staff Report), pg. 12; and Ex. 19 (Revised Indigo Topsoil Project Narrative), pg. 3.

³⁸ Ex. 18 (Correspondence from Applicant's Counsel), pg. 2 ("Large rocks are hand loaded into a small front-end loader and then gently loaded into the bed of a customer's truck or their trailer. ... [T]he Applicant does not need to re-supply large rock very often. It might be several months in between re-supply loads. Video has been provided showing this process.").

³⁹ Ms. Fike, Testimony. The Ex.A12 photograph referenced in testimony illustrates the former, not present location of the yard waste pile. The photographs are from February, March, Summer, and August, of 2018.

⁴⁰ Ex. 45 (Staff Report), pgs. 12-13 and 15-16; Testimony, Mr. Heacock.

move the topsoil production component to their Kingston facility on Ecology Road.⁴¹ The Appellants did not present their own traffic analysis.

The Appellants were concerned about the Port Gamble Road and Port Gamble Road/Gunderson intersection, and believe Indigo Topsoil adds to the problem. Although the use has been in operation for several years, there was no evidence of any accident at the intersection related to an Indigo Topsoil vehicle, an issue one of the Appellants was specifically questioned on.⁴² Also, the Appellants had seen no Indigo Topsoil vehicles speed. The concern, as clarified in testimony, was that a speeder may hit an Indigo Topsoil vehicle; trucks turning into the site will create a back up of vehicles, and drivers will become impatient, and create an unsafe situation. Appellants have not been involved in any accidents with Indigo vehicles, but were concerned other vehicles may not slow and allow for turning. There are speed limits in place, and it is up to drivers to follow them. Indigo does not enforce traffic laws.⁴³

2.5 Dust and Dirt Impacts. The Applicant bought a water truck to reduce dust impacts. Watering will be coupled with best management practices to reduce dust impacts. A paved commercial road approach will be installed at the ingress egress point on Port Gamble Road NE. This will create a collection point for any dust abatement, wash water or dirt impacts which could potentially be directed toward Port Gamble Road. The project is also reviewed at the Site Development Activity Permit Stage, with additional conditions imposed as needed. The proposal produces less dust than the prior operation. Topsoil production involves more dust, and is not a part of this project. The revised CUP reduces the scope of the original project, including for dust impacts.⁴⁴

3. CONCLUSIONS OF LAW

3.1 CUP Review Authority.

3.1.1 The Hearing Examiner has review authority over major CUP revisions.⁴⁵ The Hearing Examiner may approve, approve with conditions, or deny a request for a revised CUP.

3.1.2 The Examiner is reviewing a permit which has not been revoked. As it has not been revoked, the original CUP remains in place until it is revised. The revised CUP governs the use.

⁴¹ Ex. 18 (Correspondence from Applicant's Counsel), pg. 3 ("Applicant has provided data showing the number of trips to the site for April of 2018. This ... month was chosen because it represents the Applicant's busiest month. Even with the large number of trips to the site in April, traffic on Port Gamble Road was not negatively impacted.").

⁴² Testimony, Mr. Fike.

⁴³ Mr. Fike, in his testimony, detailed the lack of accidents involving Indigo Topsoil. Other dump trucks use this road. Ex. 45 (Staff Report), pg. 16 ("During a site visit, staff observed four to five large dump trucks not owned by Indigo traveling past the business with one using unmuffled compression braking (jake braking)").

⁴⁴ Testimony, Mr. Heacock. The prior operation had agreements with every horse facility in central and north Kitsap as initially the business did not charge for it. Most farms had a five yard dump truck, and would bring in the stall waste (manure, mulch, straw, etc.).

⁴⁵ See KCC 17.410.010(C), 21.04.100 (Permit Type 19), and 17.550.020.

3.1.3 The use authorized through the original permit encompasses the use proposed. The original use was considerably more intensive, and had greater impacts, as it involved topsoil production and was implemented with less mitigation. Consistent with narrowed scope of the use, which eliminated "topsoil production," DCD interpreted the zoning code as conditionally allowing the proposed use as a "nursery, retail" use.

3.1.4 The criteria for determining what is a similar use mirror those made for issuing a major CUP revision.

- The proposed use shall meet the intent of, and be consistent with the goals, objectives and policies of the Kitsap County Comprehensive Plan;
- The proposed use shall meet the stated purpose and general intent of the Comprehensive Plan land use designation and zoning classification in which the use is proposed to be located;
- The proposed use shall not adversely impact the public health, safety and general welfare of the residents of the county; and
- The proposed use shall share characteristics in common with, and not be of greater intensity, density or generate more environmental impact than, those uses listed in the land use zone in which it is to be located.⁴⁶

For CUP purposes, DCD found the proposed use consistent with the Comprehensive Plan, meeting the Plan's intent regarding the Rural Residential land use designation and zoning classification.⁴⁷ With its no material detriment findings, DCD effectively determined the use will not adversely impact the public health, safety and welfare.⁴⁸ DCD also found the use adequately mitigated and recommended approval,⁴⁹ with retail nursery as the proper classification.⁵⁰ The Examiner likewise concludes the use is consistent with the Comprehensive Plan and meets Plan and zoning intent for this location. The project does not adversely impact the public health, safety, and welfare, and it shares characteristics with, and is not of greater impact than other uses listed in the RR zone, which permits wholesale nurseries outright, and golf courses, mining operations, and topsoil production conditionally.

3.1.5 The Examiner's CUP authority provides for assessing whether the proposed use meets specific criteria. These criteria mirror the use classification criteria. Thus, even if not separately addressed, an improperly classified use would be rejected through the CUP process. For all these reasons, the use is properly classified. That is in addition to being a previously authorized use.

3.1.6 The Applicant agreed to mitigate the project and reduced its scope. As the project was reduced in scope during the County's CUP review process, it may be that conditions

⁴⁶ KCC 17.100.040. A classification determination is not appealable. To secure an appealable decision, a formal interpretation must be requested and appealed. KCC 21.04.040(C). That did not occur here.

⁴⁷ Ex. 45 (Staff Report), pgs. 6-7 (identifying Comprehensive Plan policies/goals) and pg. 16 (finding Plan consistency).

⁴⁸ Ex. 45 (Staff Report), pg. 17 ("the business should not be detrimental to existing and future permitted uses in the area"), with the Report further detailing the project's reduced scope and conditions addressing its impacts.

⁴⁹ Ex. 45 (Staff Report), pg. 13, and generally 1-23.

⁵⁰ Ex. 45 (Staff Report), pg. 13, and generally 1-23.

have changed such that a major CUP revision is no longer required. However, as one was requested, this issue need not be addressed.

3.2 SEPA.

3.2.1 Standard of Review. An MDNS may be issued when environmental impacts are reduced to below a level of probable significance. The County SEPA official determined that the MDNS would reduce likely adverse impacts to a moderate level, so an EIS was not required. Significant is defined as "a reasonable likelihood of more than a moderate adverse impact on environmental quality."⁵¹ SEPA does not require that all adverse impact be eliminated, but seeks a balance.⁵² The MDNS is entitled to substantial weight⁵³ and "[c]ommunity displeasure cannot be the basis of a permit denial."⁵⁴ An appellant carries the burden of proof, and MDNS reversal must be based on clear error.

3.2.2 Generally. Appellants did not meet their burden of proof to demonstrate DCD erred in determining project impacts lacked probable significance. The Applicant took significant steps to reshape its project to alleviate impacts, including reducing the scope of operations, moving the noisiest equipment off site, installing fencing, and developing landscaping and buffering. Counsel for the parties all agreed that the appropriate lens to view SEPA impacts was to consider the impacts in relation to background conditions, or as conditions existed with the earlier use.⁵⁵ With that lens, impacts are dramatically reduced. But, even if not viewed in comparison with the earlier operation, DCD appropriately considered project impacts, and did not err in determining impacts are mitigated to below probable significance, through conditions, changes in project scope, and the KCC.

3.2.3 Traffic. On traffic, the Appellants did not substantiate how the number of vehicles entering and exiting the site would significantly increase congestion on the intersection of concern, or significantly increase wait times for turning into the site. The Appellants raised safety concerns about this turn. Although the business has been in operation for some time, evidence of accidents associated with the operation was not produced. Appellants were concerned with speeders, but that is an enforcement concern, not an Applicant responsibility. County Public Works reviewed the proposal, and once it was modified to remove an access point, and the operations for the heavier equipment were moved off-site, Public Works determined code requirements were met, and a traffic analysis was not required.

3.2.4 Noise. The Applicant reduced use intensity, including removing the noisiest equipment and moving the location of the yard waste pile. Also, the Applicant committed to several conditions including a noise study if that becomes necessary, and compliance with the County's noise code (Ch. 10.28 KCC). This is coupled with the fencing, buffering, and landscaping measures. The Appellants did not substantiate probable decible level increases and how they were not adequately mitigated.

⁵¹ WAC 197-11-794(1).

⁵² *Maranatha Mining Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985(1990).

⁵³ KCC 21.04.290(E)(7).

⁵⁴ *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. at 804.

⁵⁵ WAC 197-11-794(2) (significance involves an assessment of context).

3.2.5 Visual/Light. Buffering and landscaping are required, along with fencing. Overall, site aesthetics are improved over existing conditions. With the Applicant's voluntary mitigation, coupled with project conditions, and KCC compliance, the Appellants did not document how the improvements create aesthetic impacts of probable significance. This is also the case for light impacts. The security lighting is similar to the lighting the Appellants next door maintain, and SEPA does not require an assessment of speculative impacts. Regardless, mitigation, buffering, and landscaping, provide mitigation and if insufficient, lighting will be shielded.

3.2.6 Dust and Dirt Impacts. The project addresses its dust impacts through the road approach improvements, landscaping, purchasing a water truck, and through the KCC, which requires further review through the Site Development Activity Permit. Appellants were unable to overcome their burden of proof and substantiate that significant impacts from dust are probable.

3.3 Conditional Use Permit. A CUP must comply with:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.⁵⁶

These criteria are met. The project is consistent with the Comprehensive Plan, which provides for rural economic development, including limited commercial development. The use allows a failed business, which has been successfully turned around by a new property owner, to continue, but with modifications to limit use scope and impact.

The use is appropriately located in this rural area. The larger soil and rock quantities available at the site, as opposed to small, commercially bagged soils and gravel more typically sold in urban areas, is consistent with the assigned land use designation. Nearby rural property owners testified on the value of this business to support their land management projects. If the use were not allowed, it is not clear what urban sites would be available and appropriate for the use, given the large quantities of soils and gravel stored on site, along with yard waste materials. The use has a strong connection with this rural area, through its customer base, as well as through the use's long standing presence at this location, which pre-dates the present owner. In addition, the use has also been scaled back and further mitigated.

⁵⁶ KCC 17.550.030(A).

There is an assumption sometimes that rural uses have no impact. Yet, agricultural and other rural uses can and do make intensive use of the land, as the past Emu operation exemplifies. And, while the heavier machinery has been moved off-site, tractors and heavy machinery is standard for farming uses. Even so, the new owner has narrowed the scope of the use, and mitigated it in a way which did not occur with the past use. The project is consistent with the Plan. The Examiner concurs with the Staff Report analysis, in which Comprehensive Plan consistency was found.

The Plan is implemented through the zoning code, which provides for this use through conditional use permitting. The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No relevant code provision was identified which would not be complied with. As "topsoil production" is not at the site, the 40 foot buffer is sufficient, and the project is code compliant, as the Findings address.

The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. Measures have been taken to reduce the project's scope, and move the heaviest machinery off site. This mitigation was coupled with perimeter fencing, landscaping, and buffering, along with hours of operation and other measures to ensure the project avoids material detriment. As the findings detail, impacts with any potential for material detriment have been identified and addressed with tailored mitigation and/or code requirements.

The mitigation incorporated into the project (including landscaping, buffering, fencing, etc.), ensure the project is compatible with surrounding uses. The business has incorporated a large array of measures to respond appropriately to the nature of uses in the immediate vicinity. Virtually every concern raised by the neighboring Appellants were addressed, as documented in the record, and discussed above. The project was reduced in scale and mitigated so it fits in with the character of the area. As the project meets the CUP criteria, it should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law:

1. Denies the SEPA Appeal and upholds the MDNS; and,
2. Approves the requested CUP, provided the below 34 conditions are adhered to.

Planning/Zoning

1. All required permit shall be obtained prior to commencement of land clearing, construction and or /occupancy.

2. A Final Landscape Plan will be required to be submitted consistent with KCC 17.500 Landscaping, during civil site plan review, which depicts Screening Buffers along the south and west property lines with a method for irrigation until established. A solid wood panel fence may be required in these areas until the vegetation provides a functional screen. Include on the landscape plan the area designated for pallets of flagstone southwest corner.

3. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to requirements of the Kitsap County (KCC). Unless in conflict with the conditions stated and /or any regulations, all terms and specifications shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for extensive or other utilization of the property. The applicant shall comply with mitigation measures outlined in the MDNS, dated April 17, 2019.

4. Landscaping shall be installed and maintained in conformance with the requirements of Kitsap County Code (KCC) 17.500. Landscaping shall be installed and inspected prior to requesting a final inspection or guaranteed by means of an assignment of funds or bonded in the amount of 150 percent of the cost of installation.

5. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of an agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.

6. This Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.

7. The decision set forth herein is based upon representations made and exhibits contained in the project application 18-00520. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

8. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

9. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

Development Engineering

10. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

11. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering; the Site Development Activity Permit shall provide design for the previously constructed bioretention cell and infiltration trenches, as well as design for any additional stormwater features.

12. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Conditional Use Permit Revision application was deemed complete, February 8, 2018. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

13. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology. This approval must be completed prior to issuance of the SDAP.

14. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as an Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The applicant shall contact Ecology to determine if the facility is regulated under the UIC program.

15. The design of the infiltration facilities will be in accordance with Volume II, Chapter 5 of the Kitsap County Stormwater Design Manual.

16. The infiltration facilities shall remain offline until the drainage areas are stabilized, and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.

17. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

18. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.

19. If the project proposal is modified from that shown on the submitted site plan dated October 2, 2018, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

20. Yard debris piles on-site are limited to 40 cubic yards and 14.5 feet in height. The pile shall be setback a minimum 10-feet from lot lines, may not be stored under or within 5 feet of any overhangs, eaves, or combustible walls. The yard debris shall also not be stored under high voltage transmission lines.

21. Heavier, bulky landscape rock material (8" diameter or greater) is to remain only in the storage bins at or near Port Gamble Road NE and are only to be loaded by hand to help prevent a nuisance per 17.105.110.

22. Noise from machinery shall be mitigated by the use of hydraulic tailgates, loader pads, and use of a 312 Caterpillar Excavator (or equivalent in noise and emissions output). Noise levels shall comply with Kitsap County Code 10.28 at all times.

23. If non-compliance with KCC 10.28 (Kitsap County Noise Ordinance) is demonstrated following permit approval, the applicant shall hire a professional noise consultant to prepare an alternative plan that ensures compliance with County Code. Such plan shall be submitted for DCD review and approval and implemented within 45-days of County review.

24. No manure or on-site composting is permitted. Topsoil mixing may not be done at this site through use of a screener or similar large machinery to prevent noise impacts on the neighborhood.

25. Material refilling via truck deliveries is limited to Monday- Friday from 10am to 3pm. Retail hours are limited to Monday-Friday 8am to 5pm (4:30 pm in winter) and Saturdays 8am to 4pm.

26. Access shall only be allowed off Port Gamble Road NE.

Traffic and Roads

27. The property owners shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the accepted construction plans. In addition, Development Services and Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.

28. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter

11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

29. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

Fire Safety

30. Fire apparatus access roads are required and must be maintained. Any proposed revision to these roads must be submitted to, reviewed and approved by the Kitsap County Fire Marshal's Office. IFC 503 Amended by Kitsap County. Access roads shall comply with the following:

1. Unobstructed width of 20 feet and height of 13 feet 6 inches.
2. Shall be designed and maintained to support a 60,000-pound fire apparatus and be provided with an all-weather driving surface.
3. Dead end access roads exceeding 150 feet in length shall be provided with an approved turnaround.
4. Inside turning radius shall be a minimum of 35 feet (commercial).
5. Access roads shall extend to within 150 feet of all portions of the exterior walls of the first story of the structure as measured by an approved route around the exterior of the structure or facility.
6. Road shall not be more than 12% grade.

Solid Waste

31. Prior to SDAP approval, Waste Management (360) 674-3166 shall be contacted for information on implementing the solid waste/recycling storage requirements influenced by the service provider (e.g. dumpster size and location) for the project. Pay particular attention to the access requirements of collection trucks. Documentation shall be provided from the solid waste/recycling service provider that their requirements for this project have been met.

32. The SDAP submittal shall show solid waste dumpster location, method for securing the enclosure gates in an open position and pad sizes on the civil plans submitted for approval. Details of the enclosure, including interior dimensions, building materials and lighting must be included with the civil plans prior to final approval. These details may be architectural drawings attached to the civil plans. Provided area must accommodate a minimum 6-yard dumpster.

33. The SDAP submittal shall show that at least 150 square feet of exterior recyclable materials storage space for the project. Describe collection containers and show their locations, method for securing the enclosure gates in an open position and pad dimensions on the civil plans submitted for approval. Details of the enclosure, including interior dimensions, building materials and lighting must be included with the civil plans prior to final approval. These details may be architectural drawings attached to the civil plans.

Kitsap Public Health District

34. Kitsap Public Health District requires a Commercial Building Clearance prior to the submitting the Site Development Activity Permit.

Entered July 15, 2019.

A handwritten signature in black ink, appearing to read 'SE Drummond', written over a horizontal line.

Kitsap County Hearing Examiner
Susan Elizabeth Drummond