



Notice of Hearing Examiner Decision

April 11, 2017

To: Interested Parties and Parties of Record

RE: Project Name: SAW ENTERPRISES – Contractor Shop and Storage
 Applicant: SAW ENTERPRISES LLC
 5219 NE FALCON RIDGE LN
 POULSBO, WA 98370
 Application: CONDITIONAL USE PERMIT (CUP)
 Permit Number: 16 05765

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

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

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%20206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, 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: SAW ENTERPRISES LLC sawenterprises@hotmail.com
Owner: WISTRAND STEPHEN & MARILYN sawenterprises@hotmail.com
Engineer: MAP LTD e@map-limited.com
Interested Parties:
None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**In the Matter of Request for Conditional Use Permit
File No. 16 05765**

April 10, 2017

The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision:

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Conditional Use Permit (CUP) to operate a contractor's storage yard. In addition, the Applicants propose a 2,400 square foot shop with an 800 square foot single family residence above. The Applicants/property owners and site location are as follows.

Applicants/Property Owners: Stephen and Marilyn Wistrand, 5219 NE Falcon Ridge Lane, Poulsbo, WA 98370.

Site Location: The site is located at 27583 Hansville Road NE, Kingston, WA 98346 (Assessor No. 212702-4-024-2002).

1.2 Hearing. The Hearing Examiner considered the proposal at an open record public hearing on March 30, 2017. The Department of Community Development (DCD) summarized the proposal and relevant code requirements. As DCD found the proposal consistent with applicable requirements, it recommended approval subject to conditions. The Applicant, Mr. Wistrand, after being sworn in, confirmed general consensus with the staff's summary, and did not raise concerns with the Staff Report's proposed conditions. No person present indicated a wish to submit oral comment.

1.3 Administrative Record. Prior to the hearing, the Hearing Examiner reviewed Exhibits 1-26, which included the Staff Report. At the hearing, DCD proposed adding additional exhibits, including a power point and corrected condition language for proposed Condition 17, as Exhibits 27 and 28, respectively. The Examiner admitted all exhibits.

1.4 SEPA. DCD issued a DNS on February 14, 2017, with the SEPA comment period running concurrent with the Notice of Application.¹ The DNS included the following conditions:

1. The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12.
2. The proposal will also be conditioned to follow the recommendations of Ecological Land Services, INC's Critical Area Report dated November 16, 2016.

No SEPA appeal was filed.

1.5 Public Notice and Comment. Notice was given for the CUP application and public hearing, through both mailing and publication.² Hearing notice was also given by posting notice at the site.³ Written public comment was limited. DCD received one comment from one individual inquiring on whether or not the subject property abutted their property. DCD responded and offered to look up the property to answer the question, but the commenter declined. Also, comment was received on an error in the newspaper publication, but DCD determined the error was minor. The Examiner finds that notice given was adequate for this proposal. No further communication was received.

1.6 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. There were no objections to approval, as long as applicable requirements are met.

1.7 Zoning/Plan Designations and Surrounding Land Uses. The Plan designation is Rural⁴ and the Zoning designation is Rural Residential.⁵ The surrounding properties contain a mix of Rural Residential, Neighborhood Commercial, and Rural Protection zoning. The surrounding NC zoned properties include uses such as a park-and-ride lot and a commercial shopping complex with a mix of retail, professional services and restaurant tenants. The RP and RR zoned lots are largely undeveloped.

1.8 Site. The 7.24-acre, rectangular property extends west away from Hansville Road and is accessed via an unimproved driveway that extends about 200 feet into the forested site. Except for an abandoned shack, the property is undeveloped. The moderately sloping site⁶ contains some wetlands,⁷ and vegetation composed of a relatively even aged stand of deciduous and coniferous trees with thick to sparse understory growth.

¹ Exhibits 11 and 13.

² Exhibit 24, Staff Report, and DCD hearing testimony.

³ Exhibit 24.

⁴ Exhibit 21, Staff Report, and DCD hearing testimony.

⁵ Exhibit 18, Staff Report, and DCD hearing testimony.

⁶ Exhibit 22.

⁷ Exhibit 9.

1.9 Utility and Public Services.

- **Water:** Kitsap Public Utility District
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire and Rescue
- **Schools:** North Kitsap School District

1.10 Access. Access to the site is off of Hansville Road NE, a county maintained, paved road.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority.

The Hearing Examiner has review authority for this CUP application.⁸ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁹ The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

2.2 Code Requirements Specific to the Proposed CUP in the RR Zone.

2.2.1 Land Use and Zoning.

The Applicants request a CUP to allow them to store and maintain heavy equipment associated with their business, SAW Enterprises, Inc. The Applicants have been in business for over 10 years and offer logging, roadway construction, site work and utilities installation. When working on projects the company's construction equipment generally stays on the job site until construction is complete and then typically goes directly to the next job site. However, in instances where the equipment needs to be stored off of a job site, the Applicants' desire is to do so in compliance with Kitsap County Code (KCC).

The business currently has two excavators, two dump trucks, one tractor-trailer "low-boy," one skidder, and one bulldozer. No fuel storage and no heavy equipment maintenance is proposed. Service trucks may be maintained on-site, but generally on an infrequent basis. Maintenance will be limited to fluid changes and tire changing on one-ton trucks or smaller. Maintenance will be required to take place within the shop. No business vehicle washing is proposed and none will be permitted on site. Employees may park on site and pick up a vehicle and/or equipment for the day's jobs in the morning, go to the job site and return at the end of the workday, Monday through Friday from 7:00 a.m. to 7:00 p.m. In some cases employees may go directly to the job site.

⁸ KCC Sections 17.410.010(C) and 21.04.100.

⁹ KCC 17.550.030(A).

A contractor's storage yard is a non-construction site where "heavy equipment, vehicles, construction equipment or any material commonly used in the erection of any structure, is stored or accumulated."¹⁰ A contractor's storage yard in the RR zone requires a CUP,¹¹ and is subject to various requirements per KCC 17.410.050(A), FN 12. The use must be set back fifty feet from side and rear lot lines and must directly access a county right-of-way determined to be adequate by the county engineer. Access must be provided without causing traffic congestion on local residential streets. Further, "[a]ny such use shall not be materially detrimental to any adjacent (existing or future) residential development due to excessive traffic generation, noise, light or other circumstances. The director may increase setback, buffer and landscaping standards or impose other conditions to address potential impacts."¹²

The proposed contractor's storage yard will be set back a minimum of 50 feet from all property lines.¹³ It is set back from the north and east property lines by more than 150 feet, and from the west property line by more than 600 feet.¹⁴ The subject property accesses directly to Hansville Road NE, a paved county road classified as a major collector. A major collector is more than adequate for the proposed use.

Several requirements are imposed to minimize impacts on neighboring properties. Outdoor contractors' storage yards accessory to a primary residence are limited to not more than ten heavy equipment vehicles or heavy construction equipment. The use must be contained outside of required setbacks within a contained yard or storage building. The storage yard and/or building must be screened from adjacent properties with a screening buffer a minimum of twenty-five feet in width, which provides functional screening of the use. Minimum lot size is one hundred thousand square feet.¹⁵

The proposed contractor's storage yard will be accessory to a primary residence; so is limited to not more than 10 pieces of heavy construction equipment. A vehicle or construction equipment on a trailer is considered one piece of equipment. The business currently has two excavators, two dump trucks, one tractor-trailer "low-boy," one skidder, and one bulldozer.¹⁶ It is expected that the types and/or numbers may change in the future, but will not exceed the limit of 10 total pieces. Many of the listed items are at job sites most of the time and not located on the subject property.

The use will be located outside of required setbacks and is in a contained area due to existing vegetation and required screening buffers. The site plan illustrates how the construction equipment and vehicles may park on the site. There is adequate space to park all equipment and still accommodate two residential stalls and two employee stalls. Employee stalls are marked on the site plan. There is room next to the shop to stack two additional vehicles, and it is expected that most of the time, equipment will be stored at the job site and not on the subject property.

¹⁰ KCC 17.110.195.

¹¹ KCC Table 17.410.040(A), Rural, Resource and Urban Residential Zones.

¹² KCC 17.410.050(A), FN 12.

¹³ Exhibit 15 and Staff Report.

¹⁴ Staff Report, DCD testimony, and Exhibit 28 (the latter two provide minor corrections on the setback locations).

¹⁵ KCC 17.410.050(A), FN 21.

¹⁶ Exhibit 15 and Staff Report.

The perimeter landscaping generally consists of typical rural forested vegetation. There is at least a 100-foot vegetated perimeter of both coniferous and deciduous trees with thick understory around a majority of the subject property. The buffer along the south property line where the use abuts the proposed developed area is less than on the other sides; however, in all instances it is at least 50 feet.¹⁷ The area directly south of the proposed developed area will be cleared to accommodate construction and will be replanted per the landscaping plan.¹⁸ Thus, the screening buffer will provide functional screening of the use. The subject property is 7.24 acres, or more than three times the minimum required lot area of 100,000 square feet (approximately 2.3 acres).

2.2.2 Critical Areas.

The use is located outside the wetland area and its buffer located on the east half of the property.¹⁹ A large portion of the property lies over a Category II Aquifer Recharge Area; however, a contractor's storage yard of the type proposed here is not an activity that is a potential threat to groundwater.

2.2.3 Water and Sewage Treatment.

The subject property is served by public water and on-site septic system. The Health District has issued an approval for the CUP.²⁰ An approved Building Site Application will be required prior to issuance of building permits for structures.

2.2.4 Stormwater.

The proposal is a Minor Development as defined in KCC Title 12 and will comply with all stormwater requirements. A Site Development Activity Permit will be secured from DCD.

2.2.5 Traffic, Off Street Parking, and Sidewalks

The proposed contractor's storage yard and associated residence will increase traffic generation to the subject property, but it is expected to be less than moderate. The expected Average Daily Trip (ADT) generation for the proposed use is approximately 27. Adequate parking has been proposed for employees who will come to the site to pick up a vehicle and/or equipment prior to heading to a job site.

Given the area's rural nature and site specific characteristics, pedestrian access from the surrounding area is unlikely. Therefore, pedestrian improvements along the property frontage are not required. The sidewalks serving the adjacent commercial developments are on the opposite (east) side of Hansville Road NE.

¹⁷ Exhibits 15 and 28.

¹⁸ Exhibit 15 and Staff Report.

¹⁹ Exhibits 9 and 15.

²⁰ Exhibit 14.

2.2.6 Landscaping.

A minimum of 15% of the site is required to be landscaped.²¹ More than 90% of the property is currently forested or will be enhanced with landscaping. The entire property meets or exceeds the rural character buffer requirement around the perimeter.²² Enhancement along a portion of the south property line in the vicinity of the contractor's storage yard area will be required to replant trees removed for building construction. The Applicants shall plant four rows of conifers spaced in a triangulated pattern 10-foot on center as depicted on the Site and Landscaping Plan.²³

2.2.7 Lighting.

All lighting is required to be directed away from adjoining properties, so that no more than one foot candle of illumination leaves the property's boundaries.²⁴

2.2.8 Signage.

No signage has been proposed for this project. If signage is proposed in future, it will need to comply with KCC 17.510.

2.3 Conditional Use Permit Requirements.

A CUP must comply with the following:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title [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.²⁵

These criteria are met. The Staff Report provided detail on applicable comprehensive plan policies. The policies encourage rural economic development which is mitigated to address environmental impacts and does not require the extension of urban services. Allowing for the storage of construction equipment of the limited nature proposed here is consistent with these policies. It allows for economic activity which is consistent with the rural setting. The use is

²¹ KCC 17.500.025.

²² KCC 17.500.027(B)(2).

²³ Exhibit 15.

²⁴ KCC 17.420.030(C).

²⁵ KCC 17.550.030(A).

one involving small scale heavy equipment storage, a use familiar to a rural farming economy and the present setting. The proposal is also fully mitigated and the well screened site, along with additional landscaping, minimizes aesthetic impacts. The proposal is consistent with the comprehensive plan.

As detailed above, 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. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed and mitigated with appropriate mitigation and/or code requirements.

The proposal is compatible with surrounding existing and planned uses. The use is consistent with rural activities requiring the use of heavy equipment. Further, due to the parcel's size, the requirement setbacks, and vegetative screening, impacts on neighbors, if any, are expected to be minimal. Conditions are imposed to ensure all code requirements are met, and impacts are adequately addressed. As a result, the use is consistent with the existing character, appearance, quality of development, and physical characteristics of the property and immediate vicinity. As conditioned and proposed, the contractor's storage yard and shop meet all CUP criteria.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP, provided the following 31 conditions are adhered to.

Planning/Zoning.

1. 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 and 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 Applicants' expense. The Applicants shall provide recorded copies of the Binder to the Department immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.
2. Storage or parking of heavy equipment vehicles and heavy construction equipment on the subject property is limited to not more than 10.
3. Washing of business vehicles is prohibited on site.

4. Changing vehicle and equipment fluids shall take place within the shop only, and is limited to vehicles of one ton or less.
5. Outside storage of business vehicles and equipment is limited to the areas shown on the revised site plan (Exhibit 15).
6. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
7. Enhancement along a portion of the south property line in the vicinity of the contractor's storage yard area is required to replant trees removed for building construction. The Applicants shall plant four rows of conifers spaced in a triangulated pattern 10-foot on center as depicted on the Site and Landscaping Plan (Exhibit 15).
8. Landscaping shall be installed and maintained in conformance with the requirements of 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.
9. Artificial outdoor light shall be arranged so that the lighting is fully recessed or fully shielded from side view and directed downward and away from surrounding properties. No more than one foot candle of illumination shall leave the property boundary. Lighting shall be the minimum necessary for safety purposes and be compatible with the rural character of the area. Light standards (poles) shall not exceed 20 feet in height.
10. Any and all signage design and location (including exempt signs) shall comply with KCC 17.510, and be reviewed and approved by DCD prior to installation. Signage may require a separate permit.
11. The uses of the subject property are limited to the uses proposed by the Applicants and any other uses will be subject to further review pursuant to the requirements of KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
12. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 05765). 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.
13. 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 approval, the Applicants represent 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 Applicants agree to promptly bring such development or activities into compliance.

14. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

15. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within 90 days of the Notice of Decision date or the resolution of any appeals.

Development Engineering.

16. 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 plan acceptance.

17. The information provided demonstrates this proposal is a Minor Development as defined in KCC Title 12 and will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.

18. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed fully complete, December 29, 2016. 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.

19. The design of the infiltration facilities shall be in accordance with Section 7.3.4 of the Kitsap County Stormwater Design Manual.

20. The infiltration facilities shall remain off line 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. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

21. During construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection(s) to verify that the actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report(s), properly stamped and sealed, to Development Engineering.

22. If the project proposal is modified from that shown on the submitted site plan dated December 29, 2016 and revised March 9, 2017, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads.

23. The Applicants shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of KCC. The KCPW 1601 form reserves road capacity for the project.

24. 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.

25. The Applicants shall 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 KCC and in accordance with Kitsap County Road Standards Figure 4-1.

26. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of the site access and Hansville Road NE. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the Kitsap County Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.

27. 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.

Solid Waste.

28. Prior to SDAP approval, Waste Management shall be contacted at (360) 674-3166 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 its requirements for this project have been met.

29. The Applicants 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 six-yard dumpster.

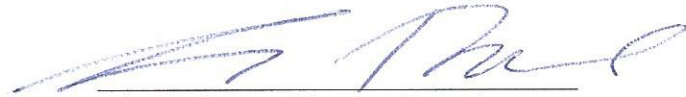
Environmental.

30. Permit approval is subject to Chapter 19.150.170 of KCC, which states that Critical Area Ordinance (CAO), 150-foot wetland buffer as determined by Critical Area Report by Ecological Land Services, INC dated November 16, 2016, shall remain undisturbed natural vegetation. Refuse shall not be placed in buffers.

Fire.

31. Fences and gates require co-approval by the Fire Code Official and the local Fire District. If approved, each fence or gate shall provide a clear width of 20 feet when open. Gates may be chained and locked only if they are equipped with a Rapid Access padlock. Electric gates shall be provided with a Rapid Access key-operated switch. Authorization/purchase forms may be obtained from the local Fire District. All gates that cross access roadways shall be signed "NO PARKING TOW AWAY ZONE".

THIS DECISION is entered this 10 day of April, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond