



Hearing Examiner Staff Report and Recommendation

Report Date: May 2, 2019
Hearing Date: May 9, 2019

Application Submittal Date: April 5, 2018
Application Complete Date: April 7, 2018

Project Name: Indigo Topsoil Major Revision
Type of Application: Conditional Use Permit
Permit Number: 18-00520

Project Location

22244 Port Gamble Road NE
Poulsbo, WA 98370
Commissioner District No. 1

Assessor's Account

Assessor Account # 082602-2-037-2009

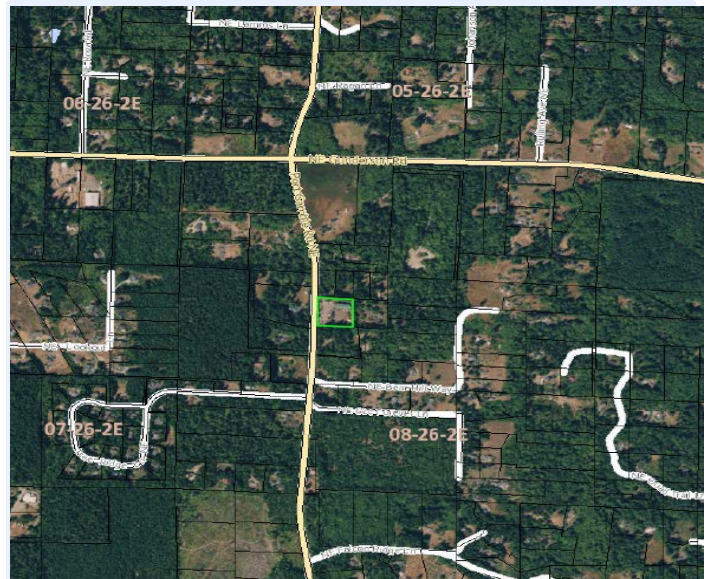
Applicant/Owner of Record

LUCIO LARIOS
8777 NE DELANEY RD
KINGSTON, WA 98346
lucio_larios@yahoo.com

Recommendation Summary

Approved subject to conditions listed under section 13 of this report.

VICINITY MAP



1. Background

The applicant is requesting a major revision to the approved Emu Topsoil Conditional Use Permit (CUP) LU-5264 (Hearing Examiner File 970626-015). The major revision is to operate generally within the previous approved development footprint and revise the existing CUP approval to change the scope of work to limit business hours and expand retail sales to include other landscape materials (Exhibits-5-6). Title 17 of the Kitsap County Code allows for a range limited commercial uses in rural areas, but conditionally approved. Pursuant to KCC 17.410.042 the most similar land use category is #272 Retail Nursery. The expanded retail nursery landscape material sales include composts, several types of topsoil, mulches, bark, rock, drain rock, and landscape rock. The request includes the expansion of the scope of the business to include acceptance of yard debris from nearby residential customers. Customers unload debris from their personal vehicles in the designated area near the northwest corner of the site. When the pile gets to approximately 40-cubic yards, or 14.5 feet high, a dump truck is used to haul off site. The applicant estimates this occurs approximately once a week

or as necessary.

The applicant owns a separate business near Hansville within the Rural Employment Center zone (Local Area of More Intensive Rural Development), which contains the larger nosier equipment, including the topsoil mixer/screener. The retail sales of landscape materials occurs Monday through Friday, 8:00 am to 5:00pm in Summer months, closing at 4:30pm in Winter months, and Saturday 8:00 am to 4:00pm

The original Conditional Use Permit was approved on July 23, 1997 for retail sales of topsoil manufactured by recycling and mixing emu waste from an emu ranch with other soil elements as well as importation of other manure for the same purpose. The soil operation was determined to be a permitted agricultural use. The scope changed from home occupation to a Conditional Use Permit when equipment was later used (dump truck, loader, grinder and screening) which created additional noise and odor to manufacture topsoil. Ron and Gloria Phillips received approval for a Conditional Use Permit to move the topsoil operation to the north side of NE Ecology Road and Hansville Road NE on December 7, 2006. The applicant purchased the property around 2014 to also manufacture topsoil on the site.

The request was reviewed pursuant to Kitsap County Code (KCC) Title 17 Zoning, KCC Titles 12 Storm Water Drainage and 18 Environment. The Hearing Examiner is the Review Authority for the major revision to the land use activity, pursuant to KCC 17.550.040 and makes a recommendation to the Board per Title 21 Land Use and Development Procedures.

2. Project Request

Lucio Larios is requesting approval of a Conditional Use Permit for a major revision to the previous approved Emu Topsoil Conditional Use Permit to operate a landscape supply business.

3. SEPA (State Environmental Policy Act)

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct an environmental impact review of any action that might have a significant, adverse impact on the environment. The review includes the completion of an Environmental Checklist by the applicant and a review of that checklist by the County. If it is determined that there will be environmental impacts, conditions are imposed upon the applicant to mitigate those impacts below the threshold of "major" environmental impacts. If the impacts cannot be mitigated, an environmental impact statement (EIS) must be prepared. The decision following environmental review, which may result in a Determination of Nonsignificance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project. The SEPA Comment period previously occurred concurrent with the Notice of Application dated

February 13, 2018 (Exhibit 11). A Determination of Nonsignificance (MDNS) was issued on April 17, 2019 (Exhibit 37). SEPA noted the following information/SEPA mitigation conditions have been imposed and are listed under conditions 20-26 at the end of this report:

COMMENTS:

The SEPA comment period previously occurred concurrent with the Notice of Application dated February 23, 2018. Comments were received concerning view buffers, noise from operations, traffic (type and number of vehicles). These comments will be addressed in the staff report as conditions under existing regulations. Many of the concerns are also addressed through the conditions and mitigation requirements of the this SEPA determination.

CONDITIONS:

Pursuant to SEPA substantive authority per KCC 18.04.200(D), including the Comprehensive Plan Policies and Zoning Code development standards for determine impacts, mitigation measures are required to protect rural character and compatibility. The Kitsap County Comprehensive Plan Rural Land Use Goals and Policies, Land Use Goals 13, and 14, direct development, preserve rural character, maintain rural visual compatibility and still foster businesses opportunities in rural areas. The following shall be conditions and mitigation requirements pursuant to KCC Chapters 17.420.030 and 17.550.030:

- 1) 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.
- 2) 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.
- 3) A baseline noise study shall be provided with the Site Development Activity Permit submittal.

MITIGATION:

- 1) 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.

2) 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.

3) 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.

4) 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.

5) 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.

6) 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.

7) Access shall only be allowed off Port Gamble Road NE.

The SEPA appeal period expired May 1, 2019. No appeals were filed; therefore, the SEPA determination is final.

4. Physical Characteristics

The subject property is 2.60 acres in size, square shaped. The property fronts on Port Gamble Road NE along the western property boundary. The perimeter of the property is fenced and planted with evergreens trees along the north and east sides. The property includes an unoccupied 2,634 square foot single-family home, a 7,309-sf large covered material storage building, 512-sf barn/composting shed, an 832-sf office and 525-sf garage. Most of the site is gravel or asphalt paved with landscape bins for retail sales (Exhibit 42).

The parcel topography slopes approximately 8% from the southeast corner to the northwest corner. Kitsap County resource maps indicate the site is at an elevation 20 to 30 feet lower than the abutting property to the east. The Kitsap County Soil survey identifies Poulsbo-Ragnar complex soils on the site. The complex is 45% Ragnar fine sand and 30% Poulsbo gravelly sandy loam, which are moderate to well drained.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential	Standard	Proposed
Minimum Density	NA	NA
Maximum Density	1 dwelling per 5 acres	
Minimum Lot Size	5 acres	2.60 acres
Maximum Lot Size	NA	NA
Minimum Lot Width	140 feet	NA
Minimum Lot Depth	140 feet	NA
Maximum Height	35 feet	<35 feet
Maximum Impervious Surface Coverage	15%	18%
Maximum Lot Coverage	NA	NA

Applicable footnotes:

Staff Comment: The proposal Major Revision for the Conditional Use Permit includes the approved Emu Ranch and Topsoil site plan that has been modified to increase setbacks and increase the quantity of screening buffers within the setbacks (Exhibit 20).

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (West)	50 feet.	16-18 feet Front property line (Landscape Materials Rock Bins (EMU Topsoil +/- 5 feet composting mixing site)
Side (North)	20 feet	40-feet (including easement) (EMU Topsoil 0 +feet to easement composting mixing site)
Side (South)	20 feet	Existing house/garage 10-foot setback, landscape material bins 50 feet +/- (EMU Topsoil +/- 5 feet and lawn area)
Rear (East)	20 feet	40 to 46-foot setback) (EMU Topsoil 5 feet young emu pen)

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Two existing single-family dwellings approximately 87 to 100 feet from use	Rural Residential (RR)
South	Existing nearest single-family dwelling approximately 215 feet from property line	Rural Residential (RR)
East	Existing single-family dwelling 142 feet from property line	Rural Residential (RR)
West	Existing single-family dwelling approximately 190 feet	Rural Residential (RR)

Table 4 - Public Utilities and Services

	Provider
Water	Private Well
Power	Puget Sound Energy
Sewer	Onsite Sewage Disposal
Police	Kitsap County Sherriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

5. Access

Vehicle access is from County maintained road, Port Gamble Road NE, which has a functional classification as a local access road. However, the road segment functions like a collector, providing a north-south connection for traffic between NE Gunderson Road and NE Lincoln Road. A 30-foot access easement is located along the north property line, which provides access to properties to the east. A truck access was located off the easement but decommissioned in December 2017 to reduce conflicts with local residential traffic.

6. Site Design

The Conditional Use Permit Major Revision was reviewed for consistency KCC 17.420.030 Design Standards. The standards include landscaping, screening, exterior lighting, access, off-street parking and solid waste. The design standards in the staff report are discussed below.

7. Policies and Regulations Applicable to the Subject Proposal

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an

opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan, adopted June 30, 2016

The following Comprehensive Plan goals and policies are most relevant to this application:

Land Use Goal 14

Foster rural business and business opportunities on designated commercial and industrial lands in the rural area, while balancing protection of rural character.

Land Use Policy 57

Unlimited expansion of commercial and industrial uses in the rural areas is not appropriate. Accordingly, only limited new commercial and industrial uses will be permitted in the rural areas. Such commercial and industrial uses must be consistent with the Growth Management Act and Comprehensive Plan requirements for rural areas, preserve Kitsap County's rural character, and shall not allow urban type uses or services.

Economic Development Goal 1

Promote a healthy and diverse economy that provides for a strong and diverse tax base, encourages business formation, retention, and expansion; creates industrial and professional business and employment opportunities to attract new business to the County.

Economic Development Policy 3

Provide a diverse mix and appropriate range of commercial, industrial and business and uses that will encourage economic activity capable of providing living-wage jobs and reasonably scaled to the needs of the community.

Transportation Policy 15

Coordinate with businesses to minimize through truck traffic on local road network.

The County's development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Code Reference	Subject
Title 12	Storm Water Drainage
Title 13	Water and Sewers
Title 14	Buildings and Construction
Title 17	Zoning
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

8. Documents Consulted in the Analysis

A complete index of exhibits is located in the project file. To date, the index to the record consists of Exhibits 1-46.

Exhibit #	Document	Dated	Date Received
1	Original Hilltop Emu Ranch Staff Report	06/23/97	
2	Hilltop Emu Ranch – Notice of Hearing Examiner Decision	06/24/97	
3	Photos – Emu Ranch		01/22/15
4	EMAILS – Fike_DCD Griffey RE Concerns	12/26/17	
5	Project Application		02/05/18
6	Supplemental Application		02/05/18
7	Concurrency Application		02/05/18
8	SEPA Checklist		02/07/18
9	Landscape Plans		02/07/18
10	Letters of Support – Neighbors (7) & Customers (3)		02/08/18
11	Notice of Application	02/23/18	
12	Photos & Notes Submitted by Fikes (neighbors)		05/21/18
13	EMAILS – Fike_DCD Smith_DCD Griffey RE Complaint Response		05/29/18
14	EMAIL – Bagwell request - Fike Comment		06/18/18
15	EMAILS – Fike_DCD Smith_Health District RE Site Plan Submittal Comment		08/20/18
16	Engineered Drainage Plans		10/03/18
17	Engineered Drainage Report		10/03/18
18	Letter Response to Information Request		10/03/18
19	Project Narrative		10/03/18
20	Site Plan		10/03/18
21	Health District Documentation – Certification, Septic Letter, Email from K Yanda		10/08/18
22	EMAILS – Fike_DCD Smith RE 2 nd Extension Comment		10/14/18
23	EMAILS – Bagwell_Fike Req for Meeting to Review		10/15/18
24	EMAILS – Fike_DCD Griffey RE Debris Complaint		11/02/18
25	EMAILS – Clerk_Parties RE Prehearing Conference Call Request, Invitation, Reschedule	01/31/19	
26	Interested Party Comment – Alescio		02/07/19
27	Interested Party Comment – Fike		02/24/19
28	Pre-Hearing Order	03/01/19	
29	EMAILS – Clerk_Parties RE Mediation Efforts	03/18/19	
30	Letters of Opposition (10)		03/18/19
31	2 nd Pre-Hearing Order	03/19/19	
32	Interested Party Comment – Salo		03/20/19

33	Interested Party Comment – D. Fike		03/25/19
34	DCD Request to Reschedule Hearing	04/11/19	
35	Notice of Public Hearing	04/12/19	
36	DCD Chronology of Emu/Indigo Topsoil	04/16/19	
37	SEPA Mitigated Determination of Nonsignificance	04/17/19	
38	Interested Party Comment – C & D Wallace		04/22/19
39	Interested Party Comment – Dorr		04/30/19
40	Interested Party Comment – Fike		05/01/19
41	Interested Party Comment – Maxim		05/02/19
42	Maps	05/02/19	
43	Certification of Public Notice	05/02/19	
44	Stormwater Preliminary Conditions Memo - Vickery	12/11/18	
45	Staff Report	05/02/19	
46	Staff Presentation	05/09/19	
47	Interested Part Comment - A. Smith RE Jurisdiction	04/30/19	

9. Public Outreach and Comments

Pursuant to KCC Title 21 Land Use and Development Procedures, the Department gave proper public notice for the major revision through the Notice of Application with the notification of property owners located up to 800 feet around the site. After the issuance of the Notice of Application, the Department received approximately 12 written responses with 11 in support of the project and one neighbor opposed the major revision to the approved Conditional Use Permit (Exhibit 10). The neighbors David and Judith Fike are opposed the revision and submitted a list of complaints, and photographs prior to the submittal of the application for the major revision (Exhibits-12,14,15,23, 27, 33). The Department received a second round of written comments (8) from North Kitsap residents via form-letters opposed to the project after the Department advertised for the public hearing before the Hearing Examiner (Exhibit 30).

The following is a summary of the comments made in the form letters:

- 1.The operation has increased the noise and has become a nuisance.
- 2.Commenters are concerned about the effect on rural agricultural character of the area.
- 3.The development is inconsistent with agricultural and rural uses.
- 4.Concerns with traffic generated by the business.

Some of the comments were submitted prior to the application being submitted and after the submittal of the Conditional Use Permit. Due to the number of comments the following is a summary from the revised narrative addressing the concerns from the neighbors David and Judith Fike, Candace Wallace, David Wallace, Steve Maxim and other interested parties in North Kitsap:

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1	1) The neighbor voiced complaints about having renters in an existing building that was not approved as an Accessory Dwelling Unit. 2) The neighbor had complaints regarding runoff the site into the Port Gamble Road roadside ditch. 3) The neighbor had concerns with a diesel tank for refueling equipment within an existing storage building. 4) The neighbor complained the topsoil screener that was in use and approved for the EMU Topsoil business. 5) The Neighbor complained about visual impacts on the neighborhood with the topsoil business. 6) The Neighbor complained about the location of the material bins next to the property line. 7) Neighbor complained about exterior lighting at the rear entrance to the office. 8)The neighbor complained about the truck traffic exiting the site onto their property that is an easement on the Indigo property. 9) The neighbor complained about the truck traffic exiting the site while using the Indigo's entrance off Port Gamble Road NE. 10) Neighbor complained noise and vibration caused by the large excavator on-site used to load yard waste into trucks to haul away. 11) The neighbor complained about excessive dust created on-site by activity. 12) The neighbor has complained about noise produced on site by the retail landscape nursery material business. 13) A neighbor complained that an Indigo dump truck used a Jake break.	10, 2,14,15,23,24 27, 30, 33, 38, 40, 41

Issue Ref. No.	Issue	Staff Response
1.	Renter Occupying existing building	The applicant states that Indigo responded by having the renter move out and the building is vacant. The original Conditional Use Permit was approved for Ron Phillips to live on the property. There was no proposal for an Accessory Dwelling Unit with the Emu Ranch. The situation was abated by the applicant.

2.	Storm Water Runoff	The land use activity did create turbid water leaving the site. As per the County's request, the applicant hired a civil engineer to design and construct storm drainage facilities to eliminate the turbid water leaving the site.
3.	Diesel Tank for Refueling	The County required that the tank be removed to comply with Fire and environmental codes. The applicant responded by having the tank decommissioned and removed.
4.	Topsoil Screener	The topsoil screener was approved with the Emu Ranch Topsoil Conditional Use Permit. The applicant applied for permits for his property within the Rural Employment Center site near Hansville. Topsoil production is a permitted use in that zone and the applicant moved the topsoil screener to Hansville to reduce noise on the subject property as conditioned. The screener is not permitted to move back to the retail sales site on Port Gamble Road NE.
5.	Screening Buffer	In response to the complaint, the applicant planted multiple rows of evergreen trees along the east property line to provide to provide a functional screen. Later a solid wood panel fence was constructed along east property line. Staff believes if the trees are properly irrigated the tree will mature and provide dense screening buffer.
6.	Bins along the adjoining property line	Review of the approved Emu Ranch site plan, the Emu pens were right up to the property line. However, the landscape material bins were moved up to 40-46 feet away from the property east line. Applicant added three more rows of trees.
7.	Exterior Lighting	The County has lighting standards to have lighting directed away from adjoining properties. Not more than one-candle foot of illumination may leave the property boundaries per KCC 17.105.110. The applicant is proposing to retain the light at the rear entrance. The applicant agrees to install shielding if demonstrated that the fence and trees are inadequate.

8.	Indigo Truck Traffic on Shared Driveway	Staff reviewed the recorded short plat (#SP-4149), it appears the property owner Lucio Larios has legal access to the easement on his own property. However, to mitigate impacts the site plan shows that the vehicle access was eliminated on the easement, added fencing, and planted cedar and Douglas Fir trees.
9.	Truck Traffic on Port Gamble Road	The applicant responded to the complaint that the business plan was amended to include the Hansville site where most of the trucks will load up for deliveries to minimize truck traffic. Staff reviewed the permits for the Hansville site and confirm the intent of the operation.
10.	Large Excavator	As noted by the applicant, the 322 caterpillar Excavator with a 312 Caterpillar Excavator, which is smaller and quieter. Staff observed the operation of the new excavator and agree the 312 is much quieter and will reduce noise impacts.
11.	Dust	To reduce dust the applicant bought a water truck to water the site during summer months.
12	Noise	<p>The applicant states the following measures were taken to mitigate noise:</p> <ol style="list-style-type: none"> 1. Replaced machinery with quieter machinery; 2.Reduced business hours of operation from the previous land use approval; 3. Large truck traffic has been reduced. 4. Planting solid screening buffer that will decrease the noise and visual abatement as trees grow; 5. Installation of a fence around the perimeter of the of the site, and 6. Extended buffers to reduce gaps. <p>Staff agrees with neighbors that there has been a variety of impacts. However, there has not been a noise study prepared by noise consultant per KCC 10.28 by the neighbors or the applicant. Many mitigation measures have been implemented to reduce noise, such as the hydraulic dump truck tailgates. The Department has conditioned Indigo through SEPA to prepare to a noise study to establish a base line for noise sources on receiving properties and demonstrate compliance with the KCC 10.28 Noise.</p>

13.	Jake Breaking	The complaint was forwarded to Indigo Topsoil to address with staff.
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10. Analysis

a. Planning/Zoning

Emu Topsoil: When the previous Conditional Use Permit was approved for the Hilltop Emu Ranch and Topsoil the zoning was Rural Medium (1 d/u per 5 acres) per the 1995 Kitsap County Interim Zoning Ordinance and Ordinance #128. Per the Interim Zoning Code, the Department determined a Conditional Use Permit was required to operate the topsoil manufacturing business in conjunction with the existing emu ranch. The Department determined that the land use activity was a "permitted" use but conditionally approved by the Hearing Examiner. The Zoning code allowed for a range of land use activities more intensive than rural residential. per the Kitsap County Hearing Examiner Decision, the approved soil operation was not classified as industrial land use. The Conditional Use Permit stays with the property unless construction has not commenced or permit was revoked, which neither occurred. The approved site plan showed Emu pens up to the east property line and compost mix area up to Port Gamble Road NE and to the access easement. Trees were proposed along the perimeter of the mix area. The original permit was approved for retail sales of topsoil created by recycling and mixing emu waste from an emu ranch with other soil elements as well as importation of other manure for the same purpose. The soil mixing machine hours were limited to 8:00 am to 5:00 pm and retail sales from 7:00 am to 6:00 pm 7 days a week (Exhibits-1, 2, 3).

Indigo Topsoil Major Revision: The applicant is requesting a major revision to the approved Emu Topsoil Conditional Use Permit (CUP) LU-5264 (Hearing Examiner File 970626-015). The major revision is to operate generally in the previous approved development footprint and revise the existing CUP approval to change the scope of work, limit business hours, expand retail sales to include other landscape materials such as mulch, sand, gravel and small rock. Indigo Topsoil is proposing 8:00 am to 5:00 pm Monday thru Friday, Saturday 8:00 to 4:00 pm and closed on Sundays (Exhibits-5,6, 20).

Per the KCC 17.410 .042 Zoning Use Table, the proposed sale of landscape material is most consistent with #272 Retail Nursery. Like the Emu Topsoil, the use is permitted but conditionally approved. The use cannot be denied based on neighbor opposition. Under current code, pursuant to KCC 17.550 the Kitsap County Hearing Examiner has the authority to review the proposal and issue a decision to approve with conditions or deny.

b. Lighting

The County lighting standards requires lighting to be directed away from adjoining properties. Not more than one-candle foot of illumination may leave the property boundaries per KCC 17.105.110.

c. Off-Street Parking

When comparing Indigo Topsoil other listed uses in the 17.490.030 Minimum Parking Required, the business is categorized as retail sales-low traffic generator. There is not a high volume of customer turnover, or medium amount of turnover. The topsoil business is most like the land use category with retail stores generating relatively little automobile traffic. Parking is normally calculated based gross floor area of the office or building floor area.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Retail Sales-little/low automobile traffic	1 per 400 square feet of gross floor area	832 square foot office building = 2.32 off-street parking spaces plus 1 for each heavy equipment and 1 per employee	6 off -street parking spaces for customers and employees, 3 onsite parking spaces for company dump trucks
Total			9 spaces

d. Signage

The existing signage is a double sided 14 square foot painted plywood unlit sign. New signage is subject to standards in KCC 17.510 Sign Code. The current sign is consistent with monument sign standards. In the Rural Residential zone, the maximum monument sign size is 50 square feet per sign face.

e. Landscaping

Land Use proposals are required to be consistent with KCC 17.500 Landscaping. As stated above, the approved site plan showed Emu pens up to the east property line and compost mix area up to Port Gamble Road NE and to the access easement. The applicant has planted evergreen trees and constructed fencing along the easement at the north property and an area 40 to 46 feet wide along the east property line. The applicant moved the material bins along the east property line, which increased the area to plant additional trees to create a better screening buffer. The proposal has been conditioned to plant similar vegetation along the south and west property lines (Exhibits 9, 20).

Table 6 - Landscaping Table

	Required	Proposed
Required Landscaping (Sq. Ft.) 15% of Site	16,884 square feet 15%	20,025 square feet 18%
Required Buffer(s) 17.500.027		
North	Separation Buffer	Separation Buffer
South	Separation Buffer	Separation Buffer
East	Separation Buffer	Separation Buffer
West	Roadside and Setback buffer	Roadside and Setback Buffer
Street Trees	NA	NA

f. Frontage Improvements

NA

g. Design Districts/Requirements

NA

h. Development Engineering/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 winter of 2017, heavy rainfall, the small detention pond was discharging turbid stormwater to the roadside ditch along Port Gamble Road NE. The Department of Community Development required work to eliminate turbid stormwater discharge without requiring a Site Development Activity Permit, to resolve this emergency-situation. Resolution of this problem included construction of a Bioretention Cell to replace the pond, and construction of infiltration trenches. The County will require a Site Development Permit to provide a design for the previously constructed bioretention cell and infiltration trenches. Development Services and Engineering has reviewed and approved the concept in the storm drainage report and the supplemental report on December 11, 2019 (Exhibit-44).

i. Environmental

The Kitsap County resource maps do not show significant critical areas on the property. However, the property is located within a Critical Aquifer Recharge Area-II that includes permeable soils. Based on the current operation the proposal would not require a hydrogeological per KCC Table 19.600.620. (Exhibit-42)

j. Access, Traffic and Roads

Port Gamble Road NE is composed of approximately two 11-foot travels lanes and three to five-foot gravel shoulders consistent with the rural level of service. The

Indigo Topsoil business serves the rural area north of Poulsbo in North Kitsap and customers within the City of Poulsbo. The business creates a low volume of peak hour trips, so the Traffic Impact Analysis was not required. Staff determined there are not impacts on the local road network. 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 will be required to improve the road approach to include an asphalt apron with a 35-foot turning radius. 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). For access, Development Services and Engineering issued a Preliminary Conditions Memorandum, dated December 11, 2018 (Exhibit-xx).

k. Fire Safety

The Fire Marshal's Office has reviewed the request and conditioned the project to maintain fire apparatus access requirements throughout the site.

l. Solid Waste

Development Services and Engineering has conditioned the proposal to coordinate with Waste Management and install a solid waste enclosure.

m. Water/Sewer

NA

n. Kitsap Public Health District

Kitsap Public Health District will require a Commercial Building Clearance prior to the Site Development Activity Permit.

11. Review Authority

The Hearing Examiner has review authority for this Conditional Use Permit application under KCC, Sections 17.550.020 and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing Examiner may approve, approve with conditions, or deny a Conditional Use Permit. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.

12. Findings

1. The proposal is consistent with the Comprehensive Plan.

Staff Response: The proposed use is consistent with the Comprehensive Plan and Title 17 Zoning Code. The Comprehensive Plan and the Zoning Code allows for a range of more intensive land use land uses in the rural residential, which are permitted but conditionally approved.

2. The proposal complies or will comply with requirements of KCC Title 17 and complies with or will comply with all of the other applicable provisions of Kitsap County Code and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report.
3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity.

Staff Response: In response to neighbor's complaints the applicant has implemented a range mitigation measures to improve compatibility beyond the approval of the Emu Topsoil operation. With the reduction of noise, reduced hours of operation, moving more intensive element to the Hansville site, the business should not be detrimental to existing and future permitted uses in the area.

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.

Staff Response: The applicant increased setbacks, planted landscaping, removed the soil sifter, reduced the hours of operation which improved the rural compatibility in comparison to the approved Emu Ranch and Topsoil production business (Exhibit 20).

13. Recommendation

Based upon the analysis above and the decision criteria found in KCC 17.550.030.A, the Department of Community Development recommends that the Conditional Use Permit request for Indigo Topsoil - Major Revision be approved, subject to the following ## conditions:

a. 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.

b. 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 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.
- c. 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.
- d. 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.

e. 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.

f. 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.

g. Kitsap Public Health District

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

Report prepared by:



Jeff Smith, Staff Planner / Project Lead

5/3/2019_____
Date

Report approved by:



Shaw Alire, Department Manager / Supervisor

5/3/2019_____
Date

Attachments:

Attachment A – Site Plan

Attachment B – Comparison of Site Plans

Attachment C – Zoning Map, etc.

CC: Lucio Larios /lucio_larios@yahoo.com

Seabold Engineering, kelsey@seaboldeng.com

Interested Parties:

FIKE DONALD V & JUNE K

ABRAHAM TERRANCE R & KACEY

Peterson, Janice

Jensen, Jeffrey & Lilly

JAMES, TOM & CARLA

MATHISEN, HERMAN S

STEDMAN CATHERINE J

POSS BARBARA

GREGG CARA E & JESSE D

CASTLEMAN SYLVIA

WALLACE DAVID L & CANDACE C

Pearson, Alfredo

Alescio, Dick

BUMPUS DONALD G & PENNY L

Wise, Paul

Runkle, Ralph

STEINMAN F

ASPERSON LEIF C & CARA M

TALLON PATRICK & ALELA

MAXIM STEVEN B

DORR DICKSON JOSEPH & KATHLEEN L

Bagwell, Kenneth (Attorney)

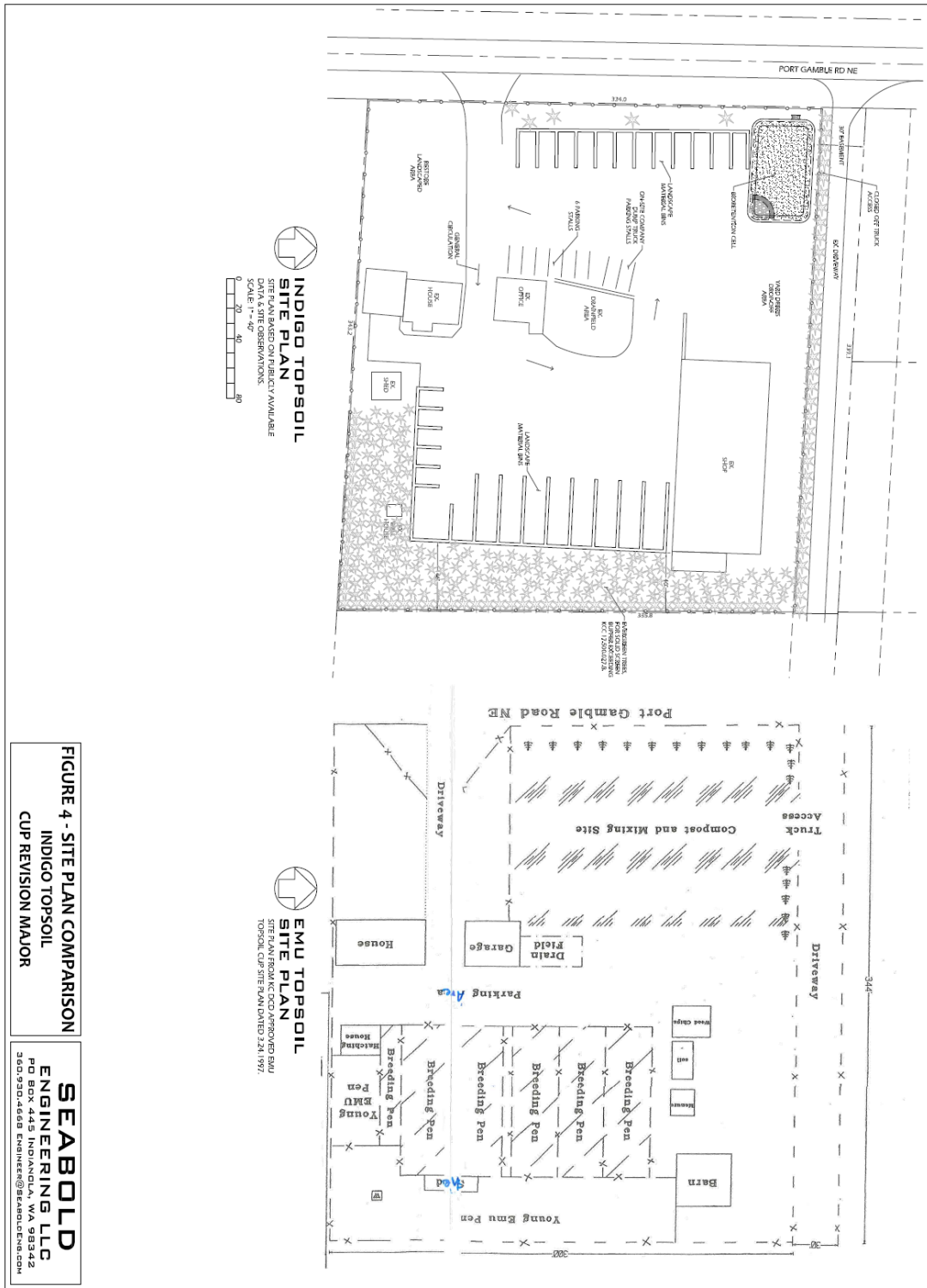
Smith, Aaron (Attorney)

Kitsap County Health District, MS-30

Kitsap County Public Works Dept., MS-26

DCD Staff Planner: Jeff Smith

Comparison Exhibit



Zoning Map



Comments

Parcel No: 082602-2-037-2009 TaxPayer: LARIOS LUCIO & MARIA C Site Address: 22244 PORT GAMBLE RD NE

" This map is not a substitute for field survey " Map Scale: 1 inch = 200 feet

Kitap Co. Parcel Search Application



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