



## Notice of Hearing Examiner Decision

11/13/2017

To: Interested Parties and Parties of Record

RE:           Project Name: Silverdale Commercial Building Development  
                  Applicant: JWJ Group LLC  
                                  3599 NW Carlton St. Suite 201  
                                  Silverdale, WA 98383-8307  
                  Application: Conditional Use Permit  
                  Permit Number: 16 05577

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:  
[http://www.kitsapgov.com/dcd/lu\\_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf](http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.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](mailto:Help@Kitsap1.com) or (360) 337-5777.

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Kitsap County Assessor  
Kitsap County DCD  
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**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**In the Matter of Request for Conditional Use Permit  
File No. 16 05577**

**November 6, 2017**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicant requests a Conditional Use Permit (CUP) to construct 12,000 square feet of commercial building space on a 3.03 acre site zoned Rural Commercial. In addition to the added commercial space, the proposal includes associated off-street parking, landscaping, and critical areas mitigation. The Applicant/property owner and site location are:

**Applicant/Property Owner:** JWJ Group LLC, 3599 NW Carlton Street, Suite 201, Silverdale, WA 98383-8307.

**Site Location:** 15232 Silverdale Way NW, Poulsbo, WA (Assessor Nos. 342601-1-085-2001 and 342601-1-090-2004).

**1.2 Administrative Record.** The Hearing Examiner reviewed Exhibits 1-31 before the hearing, which included the Staff Report. At the hearing, the Department of Community Development (DCD) proposed adding a Power Point presentation as Exhibit 32. The blank sign in sheet is Exhibit 33. The Examiner admitted all exhibits.

**1.3 Hearing.** The Hearing Examiner considered the proposal at an open record public hearing on October 26, 2017. DCD, through Jeff Smith, summarized the proposal and relevant code requirements. DCD provided clarification on building size and site access, along with detail on mitigation to ensure project consistency with the surrounding rural area.

DCD summarized the Applicant's minor revisions, which changed the project from two 6,000 square foot buildings to one 4,800 square foot building and one 7,200 square foot building. As DCD found the proposal consistent with applicable requirements, it recommended approval subject to conditions. After being sworn in, the Applicant further addressed the proposal, using an illustrative Power Point presentation to describe the project.

**1.4 Project Background.** The site was originally zoned Highway Commercial. Consistent with that zoning, an earlier iteration of the project was considerably larger. 48,000 square feet of commercial space would have spanned a 6.47 acre site, coupled with a 175 space parking lot. The downsized proposal is about a quarter of the size of what was originally proposed. The two commercial buildings would be single story structures with a 35 foot maximum building height. The exterior building materials are expected to be painted wood siding with a composition shed roof. Commercial tenants are not yet identified, but the Applicant has identified a range of commercial uses permitted within the Rural Commercial

zone.<sup>1</sup> 36 parking spaces are required; the Applicant is providing 46. The parking area is located in the back, to improve project aesthetics. This is coupled with added landscaping and critical area habitat improvements.

**1.5 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application dated December 27, 2016.<sup>2</sup> An Addendum provides additional information about project downsizing. Consistent with SEPA,<sup>3</sup> the impacts from project modification are within the range of alternatives and environmental impacts analyzed in the MDNS prepared for the original larger project, and the addendum does not substantially change that analysis.<sup>4</sup>

**1.6 Public Notice and Comment.** Notice was given for the CUP application and public hearing, through both mailing and publication.<sup>5</sup> Comment was not received objecting to CUP approval, and no public comment was received at the hearing.

**1.7 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.

**1.8 Zoning/Plan Designations and Surrounding Land Uses.** The site is zoned Rural Commercial.<sup>6</sup> Rural Commercial properties are often found at crossroads, where historical development has allowed for smaller lot sizes. These areas also serve neighboring residences with quick shopping that is compatible with neighboring uses. Land uses include businesses that provide a service to rural residents.

The intent and function of the rural commercial zone is to permit the location of small-scale commercial retail businesses and personal services which serve a limited service area and rural population outside established UGAs. The rural commercial zone permits small-scale retail, sales and services located along county roads on small parcels that serve the immediate rural residential population. Rural businesses, which serve the immediate rural population, may be located at crossroads of county roads, state routes, and major arterials.<sup>7</sup>

The surrounding area contains a variety of rural uses. Property to the west is zoned Industrial and includes an industrial park. Properties abutting the north and east property lines are zoned Rural Residential (one dwelling unit per five acres) with single-family homes. Property to the south of the Rural Commercial district is zoned Rural Protection (one dwelling unit per 10 acres).

**1.9 Setbacks.** The site plan, dated August 23, 2017, has been revised to reflect a 50-foot setback along the north property line, which abuts the Rural Residential zone. Consistent

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<sup>1</sup> KCC Table 17.410.040(B).

<sup>2</sup> See Exhibit 30.

<sup>3</sup> WAC 197-11-600(4)(c).

<sup>4</sup> Exhibit 25.

<sup>5</sup> Exhibit 30.

<sup>6</sup> Exhibits 26 and 28.

<sup>7</sup> KCC 17.290.010.

with Footnote 26 to KCC Chapter 17.420, the parking lot has been moved further south.<sup>8</sup> The site includes natural vegetation on the east side and landscaping on all other sides for buffer enhancement. The 50-foot buffer will be landscaped to address rural compatibility. Zoning setbacks are otherwise 20 feet, which the project complies with.<sup>9</sup>

**1.10 Physical Characteristics.** The subject property is 3.03 acres in size, irregularly shaped, located east of Silverdale Way NW, south of NW State Highway 308, and west of Levin Road NW. On the site's west half, the ground slopes approximately 40 feet down from west to east. On the site's east half, there are steep slopes down to the stream.

Grass covers over half of the west side, and a portion of the east side is covered with trees and brush. The site contains a tributary stream to Scandia Creek, a Type F- designated salmonid stream. The fish stream runs north to south along the site's east side. Stream buffering is enhanced through a Habitat Management Plan.<sup>10</sup>

A small Category III wetland is located on the site's east side within a portion of undeveloped Levin Road NW right-of-way. The property is within a Category II Aquifer Recharge Area per KCC 19.600 Critical Areas - Aquifer Recharge Areas.

#### **1.11 Conditions – Clarifications.**

The Applicant and DCD jointly requested minor revisions to proposed Conditions 28 and 40, to correct language related to stormwater and a boundary line adjustment. The Examiner also identified minor corrections appropriate for three other conditions.

- Condition 4. The proposed condition did not specify a light pole height, so consistent with other CUPs for similar uses, 20 feet was utilized.
- Condition 16. Fire flow calculations were based on 6,000 square foot structures. Only a minor rewording was made, as the condition as originally written recognized that different sizing arrangements may trigger different fire flow requirements.
- Condition 31. The March 27, 2017, site plan was referenced. The site plan DCD received on August 24, 2017 (Exhibit 23), should be referenced.

#### **1.12 Utility and Public Services.**

- **Water:** Kitsap Public Utility District
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County
- **Police:** Kitsap County Sheriff
- **Fire:** Kitsap Fire District No. 18
- **Schools:** North Kitsap School District No. 400

<sup>8</sup> KCC 17.420.060(A)(26) ("No service road, spur track, or hard stand shall be permitted within required yard areas that abut a residential zone.").

<sup>9</sup> KCC Table 17.420.050(B); see also Exhibit 31 (Staff Report), pp. 3-4.

<sup>10</sup> Exhibit 4 (Habitat Management Plan).

As to sewer, Kitsap County maintains a high-pressure sewer main along the property frontage in the right-of-way of Silverdale Road NW. The sewer line serves the Silverdale Urban Growth Area with the wastewater being conveyed to the Kitsap County Brownsville Sewer Treatment plant. The project site has a sufficient number of previously allocated ERUs (equivalent residential units) allocated to it to provide adequate service.

**1.13 Access/Transportation.** Access is from Silverdale Way NW, which has a Federal functional classification as a rural minor arterial. The Applicant and neighbor to the south have entered into a shared access easement, which has been recorded against the property. The previous project required frontage improvements to mitigate traffic impacts along the property frontage. However, the current proposal is below the threshold for trip volumes to require traffic improvements.<sup>11</sup>

**1.14 Signage.** No new signs were proposed. Any future free standing signs would be set back five feet from the front property line, would not exceed six feet in height, and would be consistent with Ch. 17.510 KCC sign code requirements. *See also* Condition 5.

## **2. CONCLUSIONS OF LAW**

### **2.1 Hearing Examiner Review Authority.**

The Hearing Examiner has review authority for this CUP application.<sup>12</sup> The Hearing Examiner may approve, approve with conditions, or deny a CUP.<sup>13</sup> 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 RC Zone.**

As detailed in the findings, code requirements for this use in the Rural Commercial zone are met. No code requirement was identified which the Applicant would not meet.

### **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,

<sup>11</sup> *See* Exhibit 5 (Traffic Impact Analysis).

<sup>12</sup> KCC 17.410.010 and .040.

<sup>13</sup> KCC 17.550.030(A).

appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>14</sup>

These criteria are met. The Staff Report provides detail on the Comprehensive Plan policies. At this location, these policies encourage small-scale commercial development to support rural uses which do not negatively affect rural service levels or rural character.<sup>15</sup> This limited-scale commercial project, with the required landscaping, critical areas mitigation, adequate utility support, and overall site configuration, is consistent with these policies. With the Applicant significantly scaling back the project, Plan objectives are achieved at this location.

As detailed in the findings, 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.

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, including through the 49 conditions proposed for CUP inclusion. As such, the project responds appropriately to the character of the site and immediate vicinity, and is compatible with neighboring uses. As conditioned and proposed, the project meets all CUP criteria and should be approved.

## DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP, provided the following 49 conditions are adhered to.

### Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing and/or construction.
2. At the time of submittal of the Site Development Activity Permit (SDAP), the Applicant shall submit a final landscape plan consistent with KCC 17.500 Landscaping.
3. The Applicant shall incorporate landscape design features to provide compatibility with the abutting rural residential neighborhood.
4. Artificial outdoor lighting shall be arranged so 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 surrounding properties. Light standards (poles) shall not exceed 20 feet in height.

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<sup>14</sup> KCC 17.550.030(A).

<sup>15</sup> Ex. 31 (Staff Report), p. 5, citing to Land Use Policies 56-59.

5. Signage design and location (including exempt signs) shall comply with KCC 17.510, and be reviewed and approved by DCD prior to installation. A separate sign permit is required for any new business signage for this project. Signage is limited to a maximum of four square feet and shall not be illuminated.

6. 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.

7. Existing native vegetation shall be retained on the site except for areas to be cleared for the construction of the commercial development, as depicted on the proposed site plan (Exhibit 23).

8. 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 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.

9. The recipient of any CUP shall file a Notice of Land Use Binder with the county auditor prior to initiation of any further site work.

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

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

#### **Environmental.**

12. A buffer enhancement plan will be implemented on the development site through the Habitat Management Plan prepared by Alkai Consultants, LLC, as required through KCC Title 19 Critical Areas (Exhibits 1 and 25).

#### **Health.**

13. The existing well on lot 342601-1-090-2004 will need to be abandoned per code by a licensed well driller prior to Sewered Building Clearance issuance. A well decommissioning application will need to be submitted prior to the start of decommissioning.

14. The development shall comply with all applicable Kitsap Public Health District regulations.

#### **Fire.**

15. 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:

- a. Unobstructed width of 20 feet and height of 13 feet 6 inches;
- b. Shall be designed and maintained to support a 60,000 pound fire apparatus and be provided with an all-weather driving surface;
- c. Dead end access roads exceeding 150 feet in length shall be provided with an approved turnaround;
- d. Inside turning radius shall be a minimum of 25 feet;
- e. 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; and
- f. Road shall not be more than 12% grade.

16. Fire flow in the amount of 2,000 gpm @ 20 psi for a minimum of two hours is required for the project. This calculation was based on the proposed building of 6,000 square feet and constructed of Type V-B construction. Any changes to the structure require a recalculation of fire flow. IFC 507.3 Amended by Kitsap County.

17. A minimum of two hydrants are required and should be placed no more than 400 feet from each other, up to 600 feet if protected by a fire sprinkler system for commercial building. One hydrant shall be within 50 feet of the fire department connection (FDC). IFC 507.5.1.1 Amended by Kitsap County.

#### **Development Engineering.**

18. 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.

#### **Stormwater.**

19. The information provided demonstrates this proposal is a Major Development as defined in KCC Title 12 and as such will require an SDAP from Development Services and Engineering.

20. 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 complete, December 19, 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.

21. Any project that includes off-site improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation, or intersection channelization shall provide stormwater mitigation in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, December 19, 2016.

22. The site plan indicates that greater than one acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Josh Klimek at 360-407-7451, email [joshklimek@ecy.wa.gov](mailto:joshklimek@ecy.wa.gov). This permit is required prior to issuance of the SDAP.

23. 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.

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

25. 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.

26. 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.

27. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

28. If the project's final design includes the construction of a detention vault, a building permit issued by DCD is required. A Structural Engineer, registered in the State of Washington, shall prepare the construction drawings. In addition, a geotechnical engineering analysis of the vault design is required. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential

slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

29. 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.

30. The impervious area accounted for in the overall drainage facilities installed shall be indicated on the face of the final construction drawings. Additional impervious surfaces created beyond the amount accounted for in the overall drainage facilities shall be mitigated at the time of building permit application, in accordance with KCC Title 12.

31. If the project proposal is modified from that shown on the submitted site plan dated August 24, 2017, Development Services and Engineering will require additional review and potentially new conditions.

#### **Traffic and Roads.**

32. The Applicant 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.

33. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction.

34. 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 face of 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.

35. The Applicant 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 KCC. Existing approaches may need to be improved to meet current standards.

36. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Silverdale Way NW and the site access. 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.

37. 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.

#### **Survey.**

38. At the time of SDAP submittal, the Applicant shall provide a copy of the access and utility easement agreement between parcels 085, 089, and 090.

39. At the time of SDAP submittal, the Applicant shall provide documentation that the easement per Boundary Line Adjustment AFN# 200901020178 has been extinguished.

40. The boundary line cannot run through the buildings so the two parcels either need to be combined or a Boundary Line Adjustment will need to be prepared and recorded, provided the proposed buildings can meet the building setback requirements. Documentation shall be submitted with the SDAP submittal.

#### **Wastewater.**

41. Kitsap County sanitary sewer is available for the project. The Applicant must submit an Application to Construct Sanitary Sewer.

42. Kitsap County sanitary sewer is available for the project. The Applicant must submit a complete set of sewer plans, profiles, and specifications designed in accordance with KCPW - Sewer Utility Division Standards and Regulations.

43. This project is currently outside the Urban Growth Area. There are up to a total of five ERUs available for this project and parcel 342601-1-089-2007, adjacent to the south. KCPW Sewer Utility Division will require proof that current ownership agrees with the division of the allowed ERUs prior to allowing connection to County sewer.

#### **Solid Waste.**

44. 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 its requirements for this project have been met.

45. 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. The provided area must accommodate a minimum six-yard dumpster.

46. The SDAP submittal shall show 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.

47. If using a compactor, liquid wastes generated as a result of compaction must not discharge into the stormwater system per BKCBH Ordinance No. 1996-11, Section IV.2.a.

**Other.**

48. Construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge, require a separate building permit with an engineered design. This note shall be placed on the face of the final construction drawings.

49. Rock and retaining walls shall meet all applicable setback requirements of KCSDM 11.4.4.

THIS DECISION is entered November 6, 2017.

  
Kitsap County Hearing Examiner  
Susan Elizabeth Drummond