



## Notice of Decision

for  
Ace Metal Recycling Center  
Conditional Use Permit

The City of Mukilteo has issued a Notice of Decision for a Conditional Use Permit as required by Regulatory Reform Act (RCW 36.70B.130) and Mukilteo Municipal Code (MMC 17.13.080), and has APPROVED the following project:

**Project Name:** Ace Metal Recycling Center Covered Storage Area

**Proponent:** Bill Spidell on behalf of Ace Metal Recycling Center

**Project Number:** CUP-2018-003

**Description of Proposal:** Construction of a new 420 square foot non-enclosed building to cover part of an existing paved outdoor storage area. The United States District Court Western District of Washington at Seattle mandates this cover as part of a settlement for a stormwater violation lawsuit brought forth by Puget Soundkeeper Alliance. The purpose of the covered storage area is to protect the open bins, which are filled with various metals. The covered storage area reduces any potential contamination from rainwater and any potential discharge into stormwater system. This covered storage area must be built in conjunction with installation of a stormwater filter system that has been reviewed and approved by the Department of Ecology and the City of Mukilteo.

**Project Location:** EVERGREEN MANOR NO 3 BLK 000 D-00 - TR 52 commonly known as 11110 Mukilteo Speedway, Mukilteo, Washington.

<b>Project Decision:</b>	Approved
<b>Notice of Decision Date:</b>	Monday, March 18, 2019
<b>End of Appeal Period:</b>	Monday, April 8, 2019
<b>Project Permit Expiration Date:</b>	March 18, 2021

## **Project Decision**

A public hearing was held before the Hearing Examiner on February 26, 2019, for a Conditional Use Permit Application. After considering comments by the public, City staff, and outside agencies, the Hearing Examiner approved the project with conditions based on and subject to the attached Findings of Fact, Conclusions and Decision.

The Conditional Use Permit shall be valid for two (2) years from the date of this Notice of Decision. If a building permit, as permitted by the Conditional Use Permit, is not obtained within this period, the project permit shall become null and void, and a new Conditional Use Permit will be required.

Any violation of the Conditions of Approval shall be considered a violation of the project permit and shall be subject to the City's code enforcement procedures.

## **Appeals**

A Party of Record must file an appeal of this decision within twenty-one (21) calendar days from issuance of this Notice of Decision. Appeals must be delivered to the Snohomish County Superior Court by **Monday, April 8, 2019**, at 3000 Rockefeller Ave., Everett, WA 98201.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the Snohomish County Assessor's Office at 425.388.3433.

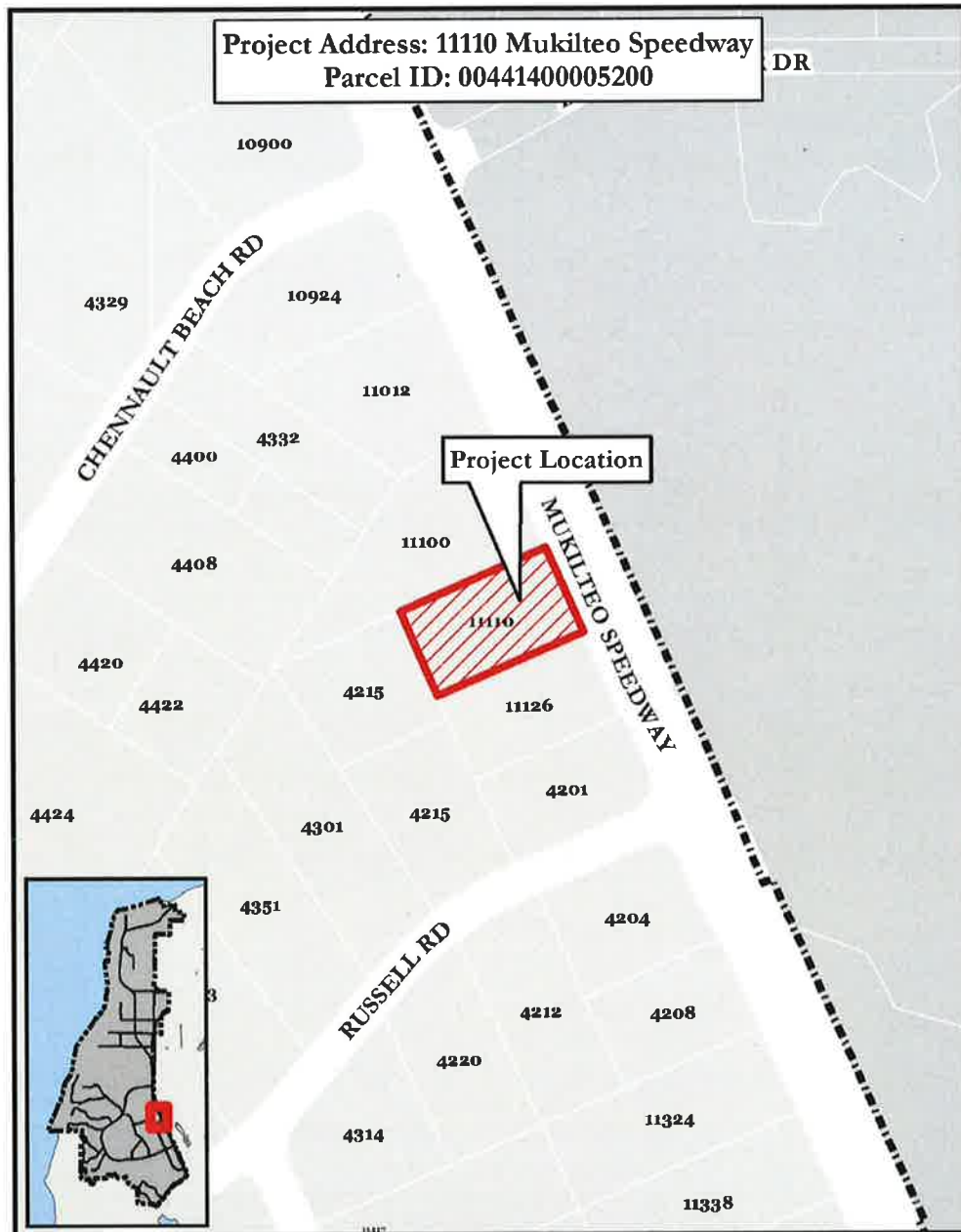
Contact Person: Linda Ritter  
Senior Planner  
Planning & Community Development  
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*Linda Ritter*  
Linda Ritter

Senior Planner

*3/12/19*  
Date:

### Location Map



pc: Applicant  
Property Owners Within 380'  
Parties of Record (if any)  
Review Agencies

Management Services Director  
Community Development Director  
Permit Services Supervisor

Permit Services Assistants (2)  
File Copy (2)

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF MUKILTEO**

In the Matter of the Application of	)	No. CUP 2018-003
	)	
<b>Bill Spidell, on behalf of Ace Metal</b>	)	
<b>Recycling Center</b>	)	
	)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit to allow for intensification of a non-conforming use in the Community Business-South zoning district at 11110 Mukilteo Speedway is **GRANTED**. Conditions are necessary to mitigate specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 26, 2019.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Linda Ritter, City Senior Planner  
Bill Spidell, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with the following attachments:
  - A. Location map, undated
  - B. Aerial map, undated
  - C. Applications
    - i. Land Use Permit Application, received September 11, 2018
    - ii. Conditional Use Permit Supplemental Application Form, received September 11, 2018
    - iii. Building Permit Application, received September 11, 2018
  - D. Cover Sheet (Sheet No. 1 of 11), dated January 15, 2019, and Building Height Worksheet, received September 11, 2018
  - E. Application Submittal Notification, dated October 22, 2018
  - F. Letter from James Yoo to City of Mukilteo, dated September 5, 2018
  - G. Letter from Rachel McCrea, Northwest Regional Office, Washington Department of Ecology, to James Yoo, dated June 21, 2018
  - H. Site Plan (No. S-01, Sheet 1 of 1), dated August 2018

*Findings, Conclusions, and Decision*  
*City of Mukilteo Hearing Examiner*  
*Ace Metal Recycling Center CUP-2018-003*

- I. Notice of Application, dated October 29, 2018
- J. Final Declaration of Non-Significance, dated April 4, 1983
- K. Ordinance No. 997, effective date December 15, 1999
- L. Agency comments
  - i. Letter from Mukilteo Water & Wastewater District to City of Mukilteo, dated January 2, 2019
  - ii. Letter from Josette Fisher, Mukilteo School District, to Linda Ritter, dated October 31, 2018
  - iii. Email from Kathy Bowyer to Linda Ritter, dated October 29, 2018, with email string
- M. Public notice of application
  - i. Declaration of Posting, dated October 30, 2018
  - ii. Declaration of Posting, dated October 30, 2018, with photo, dated October 30, 2018
  - iii. Declaration of Mailing, dated October 29, 2018
  - iv. Affidavit of Publication, *Everett Daily Herald*, dated October 31, 2018, with classified proof, *Everett Daily Herald*, published October 31, 2018
- N. Public notice of hearing
  - i. Declaration of Mailing, dated February 7, 2019
  - ii. Affidavit of Publication, *Everett Daily Herald*, February 13, 2019, with classified proof, published February 9, 2019
  - iii. Declaration of Posting, dated February 8, 2019
  - iv. Declaration of Posting, dated February 8, 2019
- O. City PowerPoint presentation (14 slides)
- P. *Puget Soundkeeper Alliance v. Ace Metal Corporation*, Consent Decree, U.S. District Court for the Western District of Washington (No. 2:17-cv-00524-TSZ), June 1, 2018 (Draft)

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## FINDINGS

### Application and Notice

1. Bill Spidell, on behalf of Ace Metal Recycling Center (Ace) (Applicant), requests a conditional use permit (CUP) to allow for intensification of a non-conforming use in the Community Business-South zoning district. The Applicant proposes to construct a new, 420 square foot, non-enclosed building to cover part of an existing paved outdoor storage area. The building would provide a covered area, protected from rain, for containers that hold metal to be recycled. The property is located at 11110 Mukilteo Speedway.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Attachment C; Attachment D; Attachment H.*

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<sup>1</sup> The property is identified by tax account number 00441400005200. *Attachment A.* A legal description is provided on the CUP application. *Attachment C.* The CUP application lists Ace Metal as the Applicant, James Yoo as the property owner, and Bill Spidell as the primary contact person. *Attachment C.*

2. The City of Mukilteo (City) determined that the application was complete on October 22, 2018. On October 29, 2018, the City mailed or emailed notice of the application to property owners within 380 feet of the property and to interested agencies and interested parties. The next day, the City posted notice of the application on-site and at the City's designated posting locations, including the Rosehill Community Center and the Harbour Pointe Shopping Centre. On October 31, 2018, the City published notice in the *Everett Daily Herald*. On February 7, 2019, the City mailed or emailed notice of the application to property owners within 380 feet of the property and to interested agencies and interested parties. The next day, the City posted notice of the application on-site and at the City's designated posting locations, including the Rosehill Community Center and the Harbour Pointe Shopping Centre. On February 9, 2019, the City published notice in the *Everett Daily Herald*. *Exhibit 1, Staff Report, pages 4 and 17; Attachment M; Attachment N.*
3. The City received three agency responses to the notices. The Mukilteo Water & Wastewater District wrote on January 2, 2019, that the District has no objections to the proposed use, so long as the water and sanitary sewer facilities in the east portion of the lot bordering the Mukilteo Speedway are protected during construction. On October 29, 2018, Mukilteo Transportation emailed that it had no comments. On October 31, 2018, the Mukilteo School District requested to be made a Party of Record. Although the Department of Ecology also received notice, it did not respond. No public comments were received. *Exhibit 1, Staff Report, page 17; Attachment L.*

#### State Environmental Policy Act

4. City staff determined that the request would be exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), in accord with Washington Administration Code (WAC) 197-11-800(6)(a), as an exempt project, where the City determined that the proposal is minor new construction that does not add additional square footage. *WAC 197-11-800(6).*<sup>2</sup> There are no critical areas on-site. *Exhibit 1, Staff Report, pages 1 and 16; Attachment O.*

#### Comprehensive Plan, Zoning, and Surrounding Property

5. The City Comprehensive Plan designates the property as "Commercial." The Comprehensive Plan contains goals and policies relevant to the proposed use. City staff determined that the following Comprehensive Plan Land Use (LU) and Economic Development (ED) policies are applicable to this project:
  - ED1: to implement programs that attract, support, and encourage businesses that will complement the City's vision and diversify its tax base, if feasible.

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<sup>2</sup> WAC 197-11-800(1)(d) provides: "The maximum exemption levels applicable to (c) of this subsection are . . . 30,000 square feet and 90 parking spaces." WAC 197-11-800(6) provides: "The following land use decisions shall be exempt: (a) Land use decisions for exempt projects." *Attachment O.*

- LU2e: to provide for smooth and compatible transitions between areas of different land use intensity.
- LU2f: to protect adjacent properties and public areas from light and glare.
- LU9b: to maintain natural hydrological functions of each watershed.

*Exhibit 1, Staff Report, pages 13 and 18.*

6. The property was annexed into the city in 1991. The zoning of the property at the time of annexation was Light Industrial. In 1999, the City passed Ordinance No. 997, which rezoned the property to Community Business-South (CB(S)). Ordinance No. 997 recognized that some inconsistent uses would be considered non-conforming. The City determined that Ace's business was best defined as a "junkyard," as that is defined in its municipal code. *Mukilteo Municipal Code (MMC) 17.08.020*. A junkyard is not allowed as a permitted or conditional use within the CB(S) zone. The City code does, however, provide that a non-conforming use may be expanded or intensified with a CUP. *MMC 17.68.050*. The City has determined that the proposed covered storage building should be considered an expansion or intensification.<sup>3</sup> *Exhibit 1, Staff Report, pages 7 through 9; Attachment K.*
7. The City reviewed the CB(S) zoning requirements and determined that the existing setbacks (front = 42 feet; rear = 91 feet; north side = 40 feet; and south side = 87 feet) meet the setback requirements in the underlying zone. *MCC 17.20.020*. There is no minimum or maximum lot size. *MCC 17.20.020*. The height of the existing building (30 feet) and proposed building (16 feet) comply with the 35-foot height limit. *MCC 17.20.010*. Lot coverage of 14 percent and maximum hard surface of 87 percent would be below the allowed 50 percent and 90 percent coverage allowed in the underlying zone. *MCC 17.20.020*. No additional parking or landscaping is proposed, nor is any required in the underlying zone. *MMC 17.56.040; MMC 17.156.130. Exhibit 1, Staff Report, pages 11 and 12.*
8. Property to the north is zoned CB(S) and is used for auto repair. Property to the west is zoned Light Industrial and contains manufacturing uses. Property to the south is zoned CB(S) and is used as a storage yard. Property across Mukilteo Speedway in unincorporated Snohomish County is zoned Light Industrial and is used as an airport. *Exhibit 1, Staff Report, page 4.*

#### Conditional Use Permit

9. The property is approximately 38,775 square feet, with an existing 8,709 square foot building occupied by two tenants. The Applicant's metal recycling business occupies 7,797 square feet of the building. A state-licensed marijuana retail facility is located in

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<sup>3</sup> It is the opinion of the Hearing Examiner that the proposed building is not an expansion of the business because it does not increase the square footage of the business or the services the business offers. It is more akin to an intensification of the existing use because the building will cover an existing area of the business that is now open to the weather.

the remaining 912 square feet. The western portion of the property is generally flat, with a gentle slope easterly toward the Mukilteo Speedway, which provides access. All utilities are available at the property. *Exhibit 1, Staff Report, pages 3 and 4.*

10. In 2018, Ace Metal Corporation and Puget Soundkeeper Alliance entered into a Consent Decree in U.S. District Court for the Western District of Washington, involving a settlement of alleged Clean Water Act stormwater discharge violations. The settlement captured in the Consent Decree includes a requirement that Ace Metal Corporation install a covered structure in the southwest corner of the facility to prevent exposure of bins holding metal to precipitation and potential runoff.<sup>4</sup> The property is located in Watershed Inventory Resource Area (WIRA) #8, which would receive runoff from the site. *Exhibit 1, Staff Report, page 6; Attachment P.*

#### Testimony

11. City Senior Planner Linda Ritter testified generally about the application and, specifically, about how the application would satisfy the CUP criteria of MMC 17.64.020. She explained that, although the existing non-conforming use is best described as a “junkyard,” as defined by the City code (MMC 17.08.020), the proposed storage building would be for an intensification of the existing use, and therefore it requires approval of a CUP.

City staff reviewed the proposal for compliance with the general performance regulations for conditional uses found in MMC 17.64.020. The City determined that:

- The proposal would comply with the goals and objectives of the Comprehensive Plan.
- The proposed covered storage area would be located at the rear of an existing building and would not be visible from the Mukilteo Speedway. No additional parking or landscape screening is required.
- No additional traffic impacts will occur, the site already has privacy fencing around the storage yard, and no additional lighting is proposed.
- The area of the site is adequate to accommodate the proposed use.
- The proposal would meet dimensional regulations for the CB(S) zone, including setbacks.
- The site does not abut a residential zone, and no tree or shrub buffer is required.
- The Applicant has submitted a scaled site plan.
- There are no new policy issues involved in the proposal that would warrant sending it to the Planning Commission for a recommendation.

*Exhibit 1, Staff Report, pages 12 through 16; Testimony of Ms. Ritter.*

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<sup>4</sup> On June 21, 2018, the Northwest Office, Washington Department of Ecology, reviewed and approved Ace’s Level 3 Corrective Action Engineering Report, prepared by Aspect Consulting, LLC, to meet Industrial Stormwater General Permit #WAR125520. *Attachment G.*



12. Applicant Representative Bill Spidell explained that, in 2014, stormwater discharges exceeded permit limits. Puget Soundkeeper Alliance and Washington Department of Ecology filed lawsuits, and a final consent decree was signed in August 2018. He then applied for the CUP in September 2018. Mr. Spidell was forthright and straight-forward in his testimony. He agreed with the conditions recommended by the City and reiterated his intent to comply with all regulations impacting his business. *Testimony of Mr. Spidell.*

Staff Recommendation

13. City staff reviewed the application and concluded that, with conditions, the proposal would meet the requirements of the Comprehensive Plan, applicable zoning regulations, City development standards, and the Mukilteo Municipal Code. *Exhibit 1, Staff Report, pages 17 and 18.*

**CONCLUSIONS**

Jurisdiction

The Hearing Examiner is authorized to conduct an open record hearing on the conditional use permit request, and to approve, approve with conditions, or deny the request. *MMC 2.38.030.A.1; MMC 17.13.070 Table 4.*

Criteria for Review

City code provides that conditional use permits shall be granted or denied by the City after due consideration has been given to the performance standards set forth in Title 17 MMC and after the Applicant has shown that the conditional use would not impinge on the health, safety, welfare, and rights of the residents of the city. *MMC 17.64.010.*

In order to approve a CUP, the Hearing Examiner must determine that the proposed use complies with the following criteria:

- A. All conditional uses must be in accordance with the goals and objectives of the comprehensive plan and they must not violate the purpose of the district in which they will locate.
- B. It must be demonstrated that all conditional uses if located as proposed would not be injurious or detrimental to the character of the zone or to its abutting or adjoining neighbors.
- C. The conditional use must employ reasonable measures of fencing, buffering, traffic restraints, sign and light controls, and any other appropriate measures to protect the surrounding properties and adjoining districts.

- D. All conditional uses must have adequate site area to accommodate the use. The minimum site area for a conditional use is no less than that permitted in the underlying district.
- E. All conditional uses must conform to the dimensional regulations in the individual districts, except that additional restrictions may be imposed to ensure the uses are compatible within the district.
- F. All conditional uses having a site area in excess of one acre must provide a buffer of trees and shrubs around the perimeter of lots abutting a residential zone.
- G. All applications for conditional uses must be accompanied by layout and development plans drawn to an appropriate scale which show at least the following: which show at least the following:
  - 1. Site plans showing landscaping, paving, parking, access, relationship of building to site, outdoor lighting, proposed fencing and topography;
  - 2. Sections and elevations of proposed structure;
  - 3. Vicinity map showing property, zoning and access;
  - 4. Provision for sewage disposal, storm drainage and surface runoff.
- H. All conditional uses must comply with the parking regulations in Chapter 17.56.
- I. In the course of reviewing the conditional use permit application, the City staff may request a recommendation by the planning commission on matters under its permit authority related to the conditional use permit. The matters may include but are not limited to the comprehensive plan or the nature and intent of the zone in which the conditional use permit is requested.

*MMC 17.64.020.*

The criteria for review adopted by the Mukilteo City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of proposed development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

- 1. With conditions, the proposed use would be in accordance with the goals and objectives of the Comprehensive Plan and would not violate the purpose of the**

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**district in which the use will be located.** The proposal is consistent with the Comprehensive Plan goals and policies to attract, support, and encourage businesses that complement the City's vision and diversify its tax base; to protect adjacent properties from glare; and to maintain the natural hydrological functions of the WIRA #8 watershed by complying with stormwater permits. The proposed use would be compatible with surrounding uses and consistent with the Comprehensive Plan's Commercial designation. The property and surrounding properties to the south and north are zoned Community Business-South (CB(S)), and properties to the east and west are zoned Light Industrial. The existing use is non-conforming, but may be expanded or intensified with a CUP.

Conditions are necessary to ensure that the Applicant constructs the storage building in conformance with the approved Site Plan; protects the MWWO on-site water and sanitary sewer facilities during construction; records a Land Use Binder with the Snohomish County Auditor prior to issuance of a building permit; ensures that all contractors and subcontractors working on the project obtain a City business license; and complies with all other applicable rules, regulations, and ordinances. *Findings 1-13.*

2. **With conditions, the proposed use would not be injurious or detrimental to the character of the zone or surrounding uses.** The proposed structure would be located at the rear of the existing building and would not be visible from the Mukilteo Speedway. No additional parking or landscaping is required. No additional traffic impacts were identified. The City provided reasonable notice of the application and open record hearing. The City addressed agency comments and no public comments expressing any concerns were received.<sup>5</sup> As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal satisfies all requirements under the municipal code. *Findings 1, 3-13.*
3. **The proposed use would employ reasonable measures of fencing, buffering, traffic restraints, sign and light controls, and any other appropriate measures to protect the surrounding properties and adjoining districts.** The property has privacy fencing around the storage yard. There will be no off-site impacts from the proposed use. *Findings 1, 3-13.*

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<sup>5</sup> Ms. Ritter testified that the Puget Soundkeeper Alliance was not specifically notified of the hearing. Because the City provided notice by publication and posting, reasonable notice was provided consistent with legal requirements. *See Habitat Watch v. Skagit County*, 155 Wn.2d 397 (2005). Based on the fact that no one responded with any concerns, especially PSA, it must be assumed that the proposed use is in compliance with the Consent Decree.

4. **The property subject to the application provides an adequate site area for the proposed use.** The zone does not have a minimum lot size requirement. There is adequate space on-site to construct the storage building. *Findings 1, 7, 11, and 13.*
5. **The proposed use would conform to the dimensional regulations of the CB(S) zone.** The existing non-conforming use was rezoned in 1999. The existing building meets the City's zoning setbacks. Although the proposed building structure is considered an intensification of an existing non-conforming use, it would comply with the existing zoning setbacks. *Findings 1, 7, and 13.*
6. **The proposed use is located on property that measures less than one acre and does not abut a residential zone.** *Findings 8, 9, and 11.*
7. **The Applicant provided a complete CUP application.** The Applicant provided the City with the Land Use Permit Application and Conditional Use Permit Supplemental Application Form (application) on September 11, 2018. The City determined that the application was complete on October 22, 2018. The application materials included a scaled site plan. *Findings 2 and 11.*
8. **The proposed use complies with required parking regulations. No additional parking is required.** *Findings 7 and 11.*
9. **City staff has not requested a recommendation from the planning commission because City staff determined that it was unnecessary.** *Finding 11.*

### DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to allow for expansion/intensification of a non-conforming use (junkyard) in the Community Business-South zoning district at 11110 Mukilteo Speedway is **GRANTED**, with the following conditions:<sup>6</sup>


1. The non-enclosed building/covered storage area shall be constructed in substantial conformance with the approved Site Plan dated October 19, 2018, and shall be built on existing pavement.
2. The Mukilteo Water & Wastewater District has both water and sanitary sewer facilities in the East portion of the lot, bordering the Mukilteo Speedway. These facilities shall be protected during construction. Prior to building permit issuance, the Applicant shall provide documentation from MWWD approving the structure location.

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<sup>6</sup> Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

3. Prior to issuance of a building permit, a Land Use Binder of the Hearing Examiner's decision and conditions shall be recorded with the Snohomish County Auditor.
4. All contractors and subcontractors working on the project described herein shall obtain a business license from the City before initiation of any site work.
5. The Applicant shall comply with all other applicable rules, regulations, and ordinances.

DECIDED this 8<sup>th</sup> day of March 2019.



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THEODORE PAUL HUNTER  
Hearing Examiner  
Sound Law Center