



# CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

## MEMORANDUM

**To:** Mayor Eisenbeisz and Assembly Members

**Thru:** John Leach, Municipal Administrator , Acting

**From:** Amy Ainslie, Planning & Community Development Director 

**Date:** February 18, 2026

**Subject:** Appeal of CUP 25-17

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### Background

On December 17, 2025, the Planning Commission heard case file CUP 25-17 which was an application for a conditional use permit filed by Chris McGraw for the Sitka Dock Company to operate a public transportation facility (a bus shuttle pick-up and drop-off location for cruise passengers) at 408 and 410 Oja Way. After several hours of presentation, applicant testimony, and public testimony, the Planning Commission voted 4-0 to deny the permit application, and further moved to postpone adoption of the findings of fact related to their denial to their next meeting which was scheduled for January 21, 2026. The Commission adopted the findings on that date, which also constituted the date of the Commission's final decision.

On February 2, 2026, the applicant (now appellant) filed an appeal of this decision with the Municipal Clerk. The basis of appeal includes seven primary arguments:

1. The record is devoid of evidence supporting the Commission's pollution findings
2. The application of undefined "acceptable levels" [staff note – regarding pollution] not found in SGC or by reference to any objective criteria is not a reasonable basis for denial of the CUP
3. The Commission's decision did not even consider the intent of the central business district and failed to fairly weight the goals of the comprehensive plan
4. The decision contains no meaningful analysis of mitigation measures
5. The CUP denial relies on speculative off-site impacts and third-party behavior
6. The street adequacy and traffic findings are conclusory and contradicted by longstanding use
7. The Commission's decision should have compared the CUP to existing conditions at the City-run shuttle bus drop-off at Harrigan Centennial Hall

Under Analysis, each argument is presented in summary, with a response from staff following. Any additional clarification of the appellant's arguments made by staff are in brackets [ ].

As they will be referenced frequently, these are the required findings for conditional use permits under SGC 22.10.160.C:

C. Required Findings for Conditional Use Permits. The planning commission shall not approve a proposed development unless it first makes the following findings and conclusions:

1. The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:
  - a. Be detrimental to the public health, safety, and general welfare;
  - b. Adversely affect the established character of the surrounding vicinity; nor
  - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
2. The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation.
3. All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
4. The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.
5. The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.
6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.

## **Analysis**

There are few primary staff conclusions/takeaways to highlight before more detailed analysis and response:

- The appeal does not appear to appropriately recognize an applicant's burden of proof as it relates to conditional use permit applications.
- The appeal does not appear to appropriately recognize the purpose of the findings of fact and decision. The findings of fact are intended to document and support the Commission's decision one way or the other – they are not a replacement for, or summation of, the entire record. Certain factors being absent from the findings does not necessarily mean they weren't discussed or considered by the Commission; the findings highlight those that led to their denial

of the permit. It is, however, the role of the Assembly to consider whether the Commission fairly and adequately considered all factors and evidence in arriving at its decision. The record, in its entirety, should be referenced in making that determination.

- The appeal inconsistently argues whether the Commission's consideration of the proposal should have taken place in the narrower context of the specific site and the applicant's operations, or if broader downtown, system-wide, or community level contexts should have been used.

**1. The record is devoid of evidence supporting the Commission's pollution findings; and**

**2. The application of undefined "acceptable levels" is not found in SGC or by reference to any to any objective criteria is not a reasonable basis for denial of the CUP**

- The appellant argues that the Commission's findings regarding negative health or environmental effects in relation to emissions and particulate pollution from proposed bussing operations relied on speculative testimony and found that that the proposal "may", but would not certainly, introduce hazard conditions on the site
- The record or findings did not contain any air quality analysis, information related to emissions levels, thresholds or limits per EPA standards or any other regulatory authority, or any other expert analysis/standard
- Lacking the above or a defined "acceptable level" in SGC for air quality and/or pollution levels, the Commission could not reasonably reach the conclusion that the pollution created from the proposal would be "unacceptable"
- The Commission should have compared pollution levels in the central business district (CBD) pre- and post-proposal as a whole, and had they done so, they would have found that pollution levels on the whole are less because of the reduction in bussing that would have occurred were the permit to be approved.
- The Commission should have approved the permit with a condition that the applicant/appellant produce a study that pollution would not occur beyond an objective standard.

**Staff response:**

- Under SGC 22.10.160.C, the applicant bears the burden of proof to show that their proposal will meet the required findings for conditional use permits. The applicant did not provide substantive evidence demonstrating that hazardous conditions from pollution would not be introduced at the site.
- If it is going to approve a conditional use permit, the Commission must show through its findings that the proposal will not introduce hazard conditions at the site or in the area. The Commission felt that the proposal may introduce these hazardous conditions as noted by the applicant, but

it's important to recognize that it is not their burden to prove that it will (or in this case, would have). In short, if the Commission had information to reasonably conclude that the proposal may or could introduce hazardous conditions at the site, and lacking evidence from the application that it would not, they could not then find in absolute terms that it will not.

- The evidence/testimony the Commission considered in making findings related to pollution took into account particular/special uses in close proximity to the proposed location rather than a generalized impact (whether downtown or otherwise) including:
  - Proximity to schools in which young children (who can be more susceptible to air quality impacts)
  - Proximity to educational horticulture programs
  - The very close proximity to neighboring properties with homes within a few feet (or in one case, less than one foot) from the shared property line and their outdoor work and gardening spaces
  - The fresh air intake and only operable windows for the Police Department on the City/State building facing the subject properties and busing operations on Oja Way
- Given the lack of standards in SGC regarding pollution levels, it is more appropriate to consider the kinds of localized impacts as listed above in consideration of a conditional use permit rather than, as the appellant argues, a system-wide pollution or emissions impact level (i.e. the greater downtown area).
- Should the appellant wish to have the opportunity to produce a study on pollution impacts, he could reapply for the permit and include such evidence.

### **3. The Commission's decision did not even consider the intent of the central business district and failed to fairly weigh the goals of the comprehensive plan**

#### **a. Intent of the CBD**

- The Commission's findings did not reference the intent of the central business district which should invalidate the decision
- The decision did not appropriately consider that the central business district [along with other commercial zones that allow for residential use] requires residential uses to be accepting of greater traffic, noise, odor, and general impacts than residential zones. There was too much emphasis on protecting the "quiet enjoyment" of residential use in the area.

#### **Staff response:**

- SGC 22.10.160.C has the required findings for conditional use permits; "consistency with intent of the zoning district" is not a required finding. Instead, as it relates to this particular argument, the required findings to approve a conditional permit are that it will not:

- SGC 22.10.160.C.1.b, “Adversely affect the established character of the surrounding vicinity”
- SGC 22.10.160C.1.c, “Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site on which the proposed use is to be located”; and that
- SGC 22.10.160.C.2, “The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation”
- The intent of the zoning district is certainly relevant for the commission to consider, and did so during its deliberations. Some felt the proposal did not meet the intent of the zone to concentrated services satisfying all residents as there would be a significant block of the downtown area used solely by and for visitors, and would only be in use on a seasonal basis.
- In relation to residential impacts, the use proposed is conditional, not permitted (which, the code requires that residential uses be accepting of additional noise, traffic, etc. that result from permitted uses in these kinds of commercial zones as described by footnote 11 to SGC Table 22.16.015-1) in recognition that the intensity of some uses, even in commercial zones, must be balanced against other existing uses, including residential. The particulars of this case including its proximity to residential uses were relevant and important factors in the decision.

**b. The objectives of the comprehensive plan were largely ignored by the Commission.**

- In consideration of Land Use Objective 2, [“Maintain downtown’s Central Business District (CBD) compact and walkable charm”], the Commission ignored the improvements in pedestrian safety and traffic efficiency that would have resulted from approving the permit and shifting away from use of Harrigan Centennial Hall
- Economic Development Goal 6.5 to, [“Support growth of Sitka’s independent, cruise-related, and heritage tourism work and enterprises”] was ignored by the Commission
- Land Use Goal 2.1, [“Promote multi-story development in the CBD with retail and commercial uses on lower floors and residential or office uses upstairs”] was not adequately considered by the Commission in light of the multi-story development proposed on 402 Etolin Way.

**Staff response:**

- On the whole, there were indeed some aspects of the proposal that – in staff’s analysis as noted by the appellant – were supported by the Comprehensive Plan. In particular, it was not contested that the proposal was consistent with Economic Development Goal 6.5. During the hearing, the parts of the Comprehensive Plan that were or weren’t supported by the proposal were weighed, but the Commission ultimately concluded that on the whole, it had a greater negative rather

than positive impact on Comprehensive Plan goals.

- The Commission did consider whether the proposed multi-story development on 402 Etoin Way sufficed to meet Land Use Goal 2.1, but ultimately decided that the amount of open space and parking lots created by the proposal contravened the second part of that objective about the CBD having a “compact, walkable charm” and contravened other plan goals under Land Use Objective 2 and as found on the Future Growth Map for the central business district related to higher-density and infill development, and downtown vibrancy.
- The findings to support denial of the permit focused on the aspects of the proposal that were not consistent with the Comprehensive Plan; the findings do not need to (and ultimately shouldn’t) serve as a record of the hearing and everything considered and discussed.

#### **4. The decision contains no meaningful analysis of mitigation measures**

- The applicant/appellant proposed several, extensive mitigation measures including pedestrian safety, fencing and sound barriers, shuttling operations to reduce other tour loading/unloading at the site, shuttle routing to avoid school pick-up and drop-off conflicts, and continuous staffing on the site to monitor operations/site conditions.
- The findings did not meaningfully analyze these proposed mitigations.

#### **Staff response:**

- Again, the findings reflect the basis from which the Commission denied the permit – they are not a record of the entire hearing and deliberation.
- The Commission did consider in its deliberation whether the proposed mitigations were adequate and ultimately found that they were not – some were because the impacts at hand couldn’t be controlled (i.e. the noise of buses coming and going from the site even if not idling while on site, controlling pedestrian movements to and from the site, redevelopment of the area and seasonality impacts), or because the mitigation proposed wasn’t adequate (e.g. noise attenuation, managing exhaust/pollution).
- The required finding referenced in this argument is SGC 22.10.160.C.3, “All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.” The Commission ultimately found that conditions that would be needed to lessen the impacts of the proposal couldn’t be monitored and enforced – specifically those that the Commission felt the applicant couldn’t control for such as bus noise while transiting, controlling pedestrian movements from (and especially to) the site, and Comprehensive Plan impacts related to redevelopment and seasonality/vibrancy of the area.

**5. The CUP denial relies on speculative off-site impacts and third-party behavior**

- The Commission’s findings attribute broader downtown behavior, speculative future third-party behaviors (such as tour operators, taxis) and future parking changes.
- CUP findings must be based on impacts caused by the proposed use, not generalized community conditions or hypothetical future redevelopment.

**Staff response:**

- The required findings for conditional use permits as found in SGC 22.10.160.C require the Commission to find that the granting of the permit will not result in certain negative impacts. Unintended consequences of a proposal, whether through the actions of the applicant or by others in response to the proposal, are reasonable, rational, and important considerations for the Commission to make. One could argue that failure to consider “knock-on” effects of a proposal would actually be an abdication of the Commission’s responsibility as it relates to thoughtful and thorough community planning.
- In several of his other arguments, the appellant argues that the Commission made a faulty decision because it did not consider other community conditions (such as comparing the proposal to current conditions of bussing operations taking place at Harrigan Centennial Hall). The logic of this argument is inconsistently applied by the appellant.

**6. The street adequacy and traffic findings are conclusory and contradicted by the longstanding use**

- The Commission’s findings conclude that Oja Way is not adequate for shuttle activity and cite increased traffic volumes as a reason for denial. This is contradicted by longstanding real-world use as it relates to:
  - Existing use of the street and area by school buses
  - Historical traffic volumes on the street
  - Existing uses in the area (schools, courthouse, police station) that already attract significant traffic to the street
- The findings do not site objective evidence for site-specific safety deficiencies such as turning infeasibility, crash history, site distances, etc.

**Staff response:**

- Again, the applicant bears the burden of proof as it relates to conditional use permit applications. The applicant did not submit adequate evidence to demonstrate that there would not be traffic safety or inefficiency issues related to the proposal. The Commission found that there was enough credible concern as it related to traffic safety and adequacy of Oja Way without compelling evidence from the applicant to the contrary.
- In the hearing and deliberations, it was recognized that:
  - The additional volume of traffic should be considered in the specific

context of the proposal – large buses (and the frequency/concentration of their use of the street during day-time hours in summer months) have a different impact from general increased use such as that from passenger vehicles

- The existing levels of use and traffic in the area are a factor and demonstrated to the Commission that it needed to carefully consider whether this introduction of additional, heavy traffic was advisable and consistent with the existing character of the area.
- An objective study of factors such as turning radii, site distances, roadway width adequacy and on-street parking, and traffic delays would be needed to definitively settle traffic impact questions/concerns.
- Should the appellant wish to have the opportunity to produce a traffic study, he could reapply for the permit and include such evidence.

**7. The Commission’s decision should have compared the CUP to existing conditions at the City-run shuttle bus drop-off at Harrigan Centennial Hall**

- A reasonable analysis of the CUP would address that shuttle buses with cruise passengers are going to travel to downtown Sitka one way or another, and therefore the decision should have been based on a comparative analysis of this use at the proposed properties versus Harrigan Centennial Hall.
- There are several benefits of the proposed location over Harrigan Centennial Hall including pedestrian-vehicle conflicts (particularly as it relates to noted jaywalking volumes on Harbor Drive), reducing vehicle congestion, and reducing bus volumes on the road which also results in reduced vehicle emissions.
- If Harrigan Centennial Hall does not have a conditional use permit for this use, there is an inconsistency in code application which calls into question the validity of this permit denial.

**Staff response:**

- As noted in response to appellant argument #5, the appellant has an inconsistent view on the reach of the Commission’s analysis – i.e. whether it should be broad, expansive, and comprehensive as it relates to system-wide or community-wide considerations, or whether it should be site and proposal specific.
- Materials by the applicant regarding comparison of the proposed site to Harrigan Centennial Hall were submitted and considered by the Commission, and testimony heard by the Commission did include these comparisons (though they contained different conclusions than those of the applicant).
- As noted in response to appellant argument #6, the applicant/appellant did not provide sufficient evidence to support his conclusions that traffic safety

and efficiency benefits would result; this is reflected in the Commission's findings. Should the appellant wish to have an opportunity to submit a traffic study that would show that the public's health, safety, and general welfare is improved under the proposal from the status quo, he could reapply for the permit and include such evidence.

- On permitting for Harrigan Centennial Hall:
  - Staff did receive a public records request for this (and additional) information; the filer (which the appellant has now identified himself as) was contacted by the Clerk's office multiple times to determine whether he wished to proceed with the records request based on the estimated cost, or if he wished to revise the scope of the request. As of the time of authoring this memo, staff has not received a response from the appellant.
  - While a complete records request was not completed pending a response from the appellant, a preliminary review of use of Harrigan Centennial Hall for shuttling-purpose was conducted.
  - SGC Chapter 6.25 regulates the use of the Harrigan Centennial Hall plaza and the adjoining parking lot with Crescent Harbor, as well as Crescent Harbor Lightering Dock and the O'Connell Bridge Lightering Dock specifically in relation to commercial passenger loading and unloading, sale of tours and excursions, and other commercial activities.
  - In the time available, staff was not able to find the date on which these regulations were first enacted. However, staff was able to find that under Ordinance No. 03-1720, the existing code at the time for sale of organized excursions and rental equipment for visitor-related activities was amended to expand the provisions to other CBS property in and around the tendering facilities and parking areas. Under Ordinance 2006-12 this code was amended again to establish or increase permit fees for certain activities, provisions for youth sales and musicians, sign limitations, and some new permit requirements. The code was substantially revised under Ordinance 22-30 in accordance with changes to designated use, staging, and permit needs identified in the Short-Term Tourism Plan, with more minor modifications following in Ordinance 22-34 and Ordinance 23-13.
  - The municipality has the authority to enact land use regulations governing the use of occupancy of land; that can be in the form of zoning regulations or other land use regulations. SGC 6.25 is another, long-standing, legitimate form of land use regulations that authorizes these activities to take place at Harrigan Centennial Hall such that a conditional use permit does not appear to be necessary.

In an additional filing submitted on February 18, 2026, the appellant raised another concern regarding the basis of certain commissioners' decisions in this case.

- The appellant stated that at the December 17<sup>th</sup> hearing, one commissioner stated that her reason for denying the permit was because she believed the proposal was for a private transportation facility, not a public one, and that private transportation facilities were not identified in the public facilities use table in the code [SGC Table 22.16.015-4] [nor identified as a permitted or conditional use in any of the land use tables].
- The appellant met with staff and received a determination from the Planning Department that his proposal best fit the definition [use designation] of a public transportation facility, and had applied for the permit following said direction.
- The appellant states that at the January 21<sup>st</sup> meeting, a different commissioner also stated that one of the reasons she voted to deny the permit was because she felt it was a private rather than public [transportation] facility.

**Staff response:**

- The applicant did meet with Planning staff prior to his conditional use permit application and requested a determination on the use designation of his proposal under the zoning code. And, an administrative interpretation was indeed issued under SGC 22.05.090 by the Planning Department classifying the use as a public transportation facility. This was explained to the Commission by staff at both the December 17<sup>th</sup> and January 21<sup>st</sup> meetings.
- In reviewing meeting recordings, staff found that Commissioner Alderson did in fact state on December 17<sup>th</sup> that a reason for her decision was her feeling that the proposal was a private rather than public transportation facility which was not identified in the code as a permitted or conditional use. She again raised this point at the January 21<sup>st</sup> meeting, but clarified that it was one of rather than the main or sole reason for her decision. Staff did not find in meeting recordings that this rationale was stated basis for decision by any other commission members (i.e. this was one commissioner, not two, based on review of the meeting recordings).
- Staff agrees that this argument – the transportation facility being private rather than public and what that would mean for application of zoning code provisions – would not be a relevant basis for permit denial. However, at the December 17<sup>th</sup> meeting, Commissioner Alderson started her comments in deliberation with the following (summarized):
  - Pedestrians could not be adequately controlled/directed to use the designated route, and that there would inevitably be pedestrian cut-through traffic scenarios especially when visitors were returning to the site from other areas of town
  - Jaywalking in the downtown area during the summer needed to be addressed separately, and that the proposal would not solve the issue

- There would be significant noise resulting from the proposal which is a legitimate consideration for conditional use permits in the central business district (and pointed to how generator noise from food trucks operating in the central business district were common considerations in said conditional use permit hearings)
- The proposal did not meet land use objectives in the Comprehensive Plan, and was in direct opposition to Land Use Goals 2.1, 2.2, and 2.3 and in direct conflict with the Future Growth Map for CBD
- She noted the proposal's inconsistency with the intent of the CBD zone, [22.16.070.A, "Intent. The central business district is designed specifically for concentrated retail, personal, and business services of all kinds satisfying all residents in one central location...].
- Therefore, while Commissioner Alderson appeared to take issue with the interpretation of the proposal as a public transportation facility, her decision was also made on the basis of considerations the commission should and is required to make. When raising the issue again on January 21<sup>st</sup>, Alderson ultimately recognized that this aspect was "irrelevant" and voted with the rest of the Commission to adopt the findings.

### **Recommendation and Conclusion**

In accordance with SGC 22.10.170.B.2, an Assembly decision following a closed record appeal hearing shall include one of the following actions:

- a. Grant the permit or appeal in whole or part
- b. Deny the permit or appeal in whole or part
- c. Remand for further proceedings

SGC 22.10.200, Remand, states, "In the event the assembly determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the assembly may remand the matter back to the hearing body. The assembly shall specify the items or issues to be considered and the time frame for completing the additional work. The assembly may hold a public hearing on a closed record appeal only for the limited purposes identified in the remand."

On the whole, staff believes that the Planning Commission thoroughly and appropriately considered the evidence, testimony, and code requirements related to this request.

Staff (and the Commission) agrees that considerations made by the Planning Commission with regards to pollution and traffic impacts did not include "objective", here meaning scientific or third-party professional/technical, evidence. However, the applicant bears the burden of proof to make such evidence available; the applicant's failure to do so does not necessarily mean that the record is "flawed" or "insufficient". Should the Assembly wish for the applicant to have an opportunity to present such evidence:

- The Assembly could remand specific aspects of this appeal back to the Planning Commission for further proceedings, or hold its own additional proceedings to address the issues. However:
  - Generally, a remand is warranted when the record is flawed or insufficient with respect to accurately capturing the proposal and proceedings, the reasons for the decision made, or if certain evidence/argument made was not thoroughly considered
  - Remands are generally not used as an additional hearing or evidence submission opportunity – particularly in the case of a closed record appeal
  - There are other factors outside of pollution and traffic impacts that led to the Commission’s denial of the permit; it’s difficult to imagine a scenario in which a remand resulting in a different permit decision as requested by the appellant would not functionally be a rehearing of the case
- Alternatively, the appellant could reapply for the permit with said evidence and any other new evidence, design changes, and/or mitigations that would be considered by the Planning Commission and therefore potentially alter the decision as a whole.

As a reminder, this is a closed record appeal in which additional evidence should not be submitted/considered. Public testimony taken should be limited to whether the Commission made a sound decision, and not on the merits of the proposal itself.

Encl: Motion Sheet

Primary Record\* of CUP 25-17 including:

- Aerial photo of subject properties
- Letter of Denial and Findings of Fact
- Planning Commission meeting minutes for December 17<sup>th</sup> and January 21<sup>st</sup>
- CUP 25-17 Staff Report for the Planning Commission
- Application and supplementary applicant materials
- Staff presentation at the December 17<sup>th</sup> Planning Commission meeting
- Proposed facility layout
- Proposed pedestrian routing
- Additional photos
- AK DOT/PF Traffic Data
- Comprehensive Plan excerpt – Future Growth Map for CBD
- Written public comment
- Interpretation of proposed use under zoning code

\*For brevity, materials excluded from the complete record for CUP 25-17 included copies of mail and public notices, property plats, deeds and lease agreements, internal department reviews that were summarized in the Staff Report, additional correspondence regarding the zoning code interpretation which did not ultimately change or affect the interpretation, and the audio recordings of the Commission’s site visit conducted prior to the hearing on December 17<sup>th</sup> as well as its December 17<sup>th</sup> and January 21<sup>st</sup> meetings. Staff are happy to provide the Assembly with any of these additional materials upon request.