

**DOUGLAS COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

140 19<sup>th</sup> Street NW  
East Wenatchee, WA 98802-4109

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
CUP-02-01A	)	<b>DECISION AND</b>
SCOTT	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 18, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. FINDINGS OF FACT**

1. The applicants and property owners are Tim and Becky Scott.
2. General Description: This is an application for an amendment to an existing Conditional Use Permit (CUP-02-01 - Wine tasting room/ retail wine sales). The applicant is requesting to amend current hours/ days of operation. Additionally, the applicant is requesting to utilize the existing wine storage/aging facility as a reception hall. The property is zoned Commercial Agriculture 10 (AC-10).
3. Location: The project is located at 3400 10<sup>th</sup> Street SE East Wenatchee, WA. The project is further described as being located in Section 21; Township 22N; Range 21E Douglas County Assessor's Parcel Number: 22212120005.
4. Site Characteristics: The subject property includes an existing single family residence, vineyard, wine production facility, and gravel parking area. The subject property is relatively flat with a steep slope on the southern end of the property.
5. Site Access: The subject property is accessed from 10<sup>th</sup> St SE. The internal drive that leads to the project location will be designed to meet all applicable requirements including, but not limited to, emergency vehicle access requirements.
6. Zoning: The subject property is located within the Commercial Agriculture 10 (AC-10) zoning district. The AC-10 zoning district allows wineries, wine tasting facilities, and agricultural processing facilities as permitted uses. The AC-10 zoning district allows reception halls, or event centers, via a conditional use permit (CUP).

7. The Douglas County Comprehensive Plan designates this property as Resource Lands – Irrigated Agriculture. The following goals and policies set forth in the comprehensive plan are relevant to this development:
- 7.1 GENERAL LAND USE:
- 7.1.1 POLICY G-9: Rural developments should only occur where adequate access to transportation systems, rural levels of utilities and facilities are available. Appropriate facilities/services may include domestic water, sewage disposal, fire and police protection, schools, and power, etc. depending on the scale and impact of the development.
- 7.1.2 POLICY G-10: Impacts to fire and police protection, school(s) and other public services/utilities should be considered during the development review process for proposals within urban growth, rural, and agricultural areas.
- 7.1.3 POLICY G-11: Establish siting and design criteria to provide buffering or other mechanisms that will protect adjacent land uses from potential conflicts between incompatible uses.
- 7.1.4 POLICY G-15: Encourage the operation of rural commercial businesses, natural resource related industries, recreation and tourism activities, cottage industries, small scale business, and home occupations that are consistent with existing and planned land use patterns and are of an appropriate size and scale to maintain rural character.
- 7.2 RURAL LANDS:
- 7.2.1 POLICY R-3: Establish land use designations that represent rural character and that protect the integrity of rural areas.
- 7.2.2 POLICY R-6: Encourage development in rural areas to be served by rural levels of service.
- 7.3 RURAL DEVELOPMENT:
- 7.3.1 POLICY RD-3: Development and recreational opportunities in rural shoreline and other rural areas shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.
- 7.3.2 POLICY RD-4: Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or an acceptable operation capacity.
- 7.3.3 POLICY RD-5: The costs associated with implementing a rural development and providing the necessary utilities, facilities and/or services will be borne by the developer.
- 7.4 UTILITIES:
- 7.4.1 POLICY U-5: Provide utilities at service levels that are appropriate for the specific land uses and areas, thereby avoiding excess capacities that may encourage growth beyond the desired densities of an area.
- 7.4.2 POLICY U-6: Promote multi-jurisdictional cooperation between cities, the County, special purpose purveyors and other private utilities for utility planning and implementation.
- 7.4.3 POLICY U-9: The cost of on-site utility improvements or site preparation for developments will be the responsibility of the development benefiting from the improvement.

7.5 ECONOMIC DEVELOPMENT:

7.5.1 POLICY ED-1: Support the retention and expansion of existing business and the recruitment of new businesses that provide family-wage jobs.

7.5.2 POLICY ED-14: Promote the development of entertainment and recreational facilities that to attract and capture tourism dollars within the County.

7.6 Applicable provisions of DCC 18.80.030 "Evaluation Criteria":

7.6.1 The proposed use will be harmonious and in accordance with the general and specific objectives of the comprehensive plan and all subarea plans.

7.6.2 The proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity of the area.

7.6.3 The traffic generated by the proposed use shall be mitigated so as not to burden the traffic circulation system in the vicinity.

7.6.4 The proposed use will be served adequately by facilities and services such as highways, roads, law enforcement, fire protection, drainage, refuse disposal, domestic water and sanitary sewers, and schools; or that persons or agencies responsible for the establishment of the proposed use will provide adequate services.

7.6.5 The proposed use will not create excessive additional requirements at public cost for public facilities and services.

7.6.6 The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare, or odors.

7.6.7 Proposed ingress and egress, driveway widths, parking, and road improvements shall be approved pursuant to DCC Title 20 and to the satisfaction of the county engineer.

7.6.8 Adequate buffering devices such as fencing, landscaping, or topographic characteristics shall be in place in order to mitigate, and protect adjacent properties from potential adverse impacts of the proposed use, including visual or auditory effects.

7.6.9 Conditional use permits shall comply with the DCC and all applicable local, state, or federal regulations.

7.6.10 The hearing examiner is the review authority and may approve, conditionally approve or deny a request for changing the minimum lot size of a conditional use. Any waiver of minimum lot size shall not be construed as an exemption from the requirements of DCC Title 17 and RCW Chapter 58.17.

8. Environmental Review: Douglas County issued a Determination of Non-Significance on October 9, 2023 in accordance with WAC 197-11-340(2). No appeal has been filed.

9. Applicable agencies have been given the opportunity to review this proposal. These agencies have identified mitigation or project design requirements for the project that have been included as conditions of approval where appropriate.

Agency Notified	Response Received	Agency Notified	Response Received
Upper Columbia Irrigation District	03/27/2023	Douglas County Transportation/ Stormwater	11/30/2023
Douglas County Fire Marshal	12/13/2023	Douglas County PUD	04/11/2023
Douglas County Planning	12/04/2023	WA State Dept. of Ecology	04/10/2023
Chelan Douglas Health District	11/09/2023	Douglas County GIS	03/29/2023
East Wenatchee Water District	04/18/2023		

10. No public comments were received.
11. Comprehensive Plan consistency: The project is designated *Resource Lands – Irrigated Agriculture* by the Douglas County Comprehensive Plan. The proposal is supported by multiple policies related to general land use, rural development, and utilities. The proposal is consistent with Section 4.1 “Rural Land Use”, section 4.3 “Rural Development”, and section 8.3 “Utilities Goals and Policies” of the Douglas County Comprehensive Plan.
12. Consistency with DCC Chapter 18.80.030 “Conditional Uses – Evaluation Criteria”. The proposed land use is permitted as a Conditional Use Permit in the AC-10 zoning district. The following analysis details how the project is consistent with DCC 18.80.030 – CUP Evaluation Criteria.
  - 12.1 The proposed use will be harmonious and in accordance with the general and specific objectives of the comprehensive plan and all subarea plans.
    - 12.1.2 The proposal is supported by multiple goals and policies out of the Douglas County comprehensive plan regarding Rural Land Use, Rural Development and Economic Development.
  - 12.2 The proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity of the area.
    - 12.2.1 The project is designed to be harmonious and consistent with the character of the property and general vicinity of the area. The subject property has an existing permit to conduct wine tasting and sales. The property is also surrounded by two existing wine tasting facilities and one existing event venue.
  - 12.3 The traffic generated by the proposed use shall be mitigated so as not to burden the traffic circulation system in the vicinity.
    - 12.3.1 The applicant has provided a traffic impact analysis which analyzed impacts to the transportation system. The Douglas County Transportation and Stormwater Department has reviewed the project for impacts to the existing

transportation system/ traffic. The Transportation and Stormwater Department has indicated preliminary approval of the project, subject to suggested conditions of approval.

- 12.4 The proposed use will be served adequately by facilities and services such as highways, roads, law enforcement, fire protection, drainage, refuse disposal, domestic water and sanitary sewers, and schools; or that persons or agencies responsible for the establishment of the proposed use shall provide adequate services.
  - 12.4.1 The property will be accessed off of 10<sup>th</sup> St SE, then continue in a private drive down to the facility. The Douglas County Building Official/ Fire Marshal has reviewed and approved the access in regard to emergency vehicles. Sanitary sewer will be addressed through a combination of on-site septic systems and portable restrooms during events. Domestic water will be provided by the East Wenatchee Water District. The applicant will be required to install a new fire hydrant to address fire protection. Law Enforcement will be provided by the Douglas County Sheriff's Office.
- 12.5 The proposed use will not create excessive additional requirements at public cost for public facilities and services.
  - 12.5.1 All development requirements/ costs will be borne by the developer and will not create excessive additional requirements at public cost for public facilities and services.
- 12.6 The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare, or odors.
  - 12.6.1 The proposal will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reasons of excessive production of traffic, noise, smoke, fumes, vibration, glare, or odors. All impacts will be mitigated through appropriate conditions of approval.
- 12.7 Proposed ingress and egress, driveway widths, parking, and road improvements shall be approved pursuant to DCC Title 20 and to the satisfaction of the county engineer.
  - 12.7.1 The Douglas County Transportation and Stormwater Department has indicated preliminary approval of the project subject to certain conditions. The transportation system will be designed in accordance with all applicable standards of DCC Title 20. In addition, the Douglas County Fire Marshal has indicated preliminary approval of the project, subject to certain conditions, to provide an adequate road system for emergency vehicle access.
- 12.8 Adequate buffering devices such as fencing, landscaping, or topographic characteristics shall be in place to mitigate and protect adjacent properties from potential adverse impacts of the proposed use, including visual or auditory effects. (Refer to DCC Chapter 20.40, Landscaping standards, for specific requirements.)
  - 12.8.1 The subject property includes natural features that help mitigate impacts. The project impacts are mitigated due to separation distances, existing

landscaping and natural topography. The southern portion of the property includes a steep slope down that separates the project from other properties to the south at a lower elevation. This natural topography helps mitigate visual and auditory impacts. Separation distances add additional mitigation as most dwellings in close proximity are 400-500+ feet away from the project location. The low density of the AC-10 zoning district (1 dwelling per 10 acres) also benefit the project as it substantially limits the amount of residential properties in close proximity to the site. Existing landscaping also helps mitigate visual impacts.

- 12.9 Conditional use permits shall comply with the DCC and all applicable local, state, or federal regulations.
  - 12.9.1 The proposal has been conceived and designed to conform to local, state and federal regulations. Proposed development will meet applicable local, state, and federal regulations. Future modifications of any portion of the project shall be reviewed for compliance with all applicable regulations.
  - 12.10 As conditioned, the proposal appears consistent with the requirements of this section.
13. Consistency with DCC 20.42 – Off Street Parking and Loading: DCC 20.42 requires one parking space per 75 sq. ft. of event space for reception halls/ event centers. The applicant has proposed 7500 sq. ft. of event space and 100 parking spaces, meeting the required parking stall amount. Proposed parking stall dimensions meet the minimum dimensions required by DCC 20.42. The parking area consist of a gravel parking lot and ADA parking in paved areas closer to the residence.
  - 13.1 As conditioned, the proposal appears consistent with the requirements of DCC 20.42.
14. Consistency with DCC 18.36 AC-10 Commercial Agriculture District: All uses proposed are either outright permitted, or permitted via a CUP in the AC-10 zoning district. Any future development will comply with the regulatory standards of the AC-10 zoning district.
  - 14.1 As conditioned, the proposal appears consistent with the requirements of the zoning district.
15. Douglas County Transportation Department has evaluated the proposal and recommended approval of the project with applicable conditions
16. Douglas County Land Services: The application materials demonstrate compliance with adopted codes, standards, and specifications applicable to this project. As conditioned, the proposal is consistent with the provisions of Douglas County Code.
17. Initial application materials reviewed by Douglas County Transportation and Land Services and admitted into the record at the open record public hearing include:
  - 17.1 Ex. 1 Master application prepared by the applicant, submitted on April 25, 2023.
  - 17.2 Ex. 2 SEPA Checklist prepared by the Applicant, dated February 8, 2023.
  - 17.3 Ex. 3 Project Narrative prepared by the Applicant, dated October 9, 2023.
  - 17.4 Ex. 4 Site Plan prepared by the applicant, submitted on December 4, 2023.
  - 17.5 Ex. 5 Preliminary Construction Plans prepared by Anderson Perry, submitted on May 26, 2023.

- 17.6 Ex. 6. Storm Report prepared by Complete Design, submitted on September 1, 2023
- 17.7 Ex. 7 Civil Plans prepared by Complete Design, submitted November 29, 2023.
- 17.8 Ex. 8 Traffic Impact Analysis prepared by TENW, submitted November 29, 2023.
- 17.9 Ex. 9 Traffic Impact Analysis prepared by TENW, submitted December 13, 2023.
18. The project has frontage along 10th Street SE, a County Rural Collector roadway. The existing road frontage along 10th Street SE generally meets Douglas County Road Standards.
19. The preliminary civil plans and drainage report include a stormwater dispersion facility located along the low sides of driveway and parking areas.
20. The Traffic Impact Analysis (TIA) is acceptable and takes into account the cumulative impacts from the adjacent proposed developments. The conclusion in the TIA is that no traffic mitigation is necessary as the existing access from 10th Street SE operate at an acceptable level of service with this project at the time of build out and at a horizon year of 2025.
21. The November 29, 2023 TIA was updated and superseded by the December 13, 2023 TIA. The update was submitted by the applicant to revise the analysis to include events with up to 200 attendees and to identify a secondary emergency vehicle access to S Union Ave at 10th St SE. The updated TIA concludes that the level of service is acceptable at the study intersections for events with up to 200 attendees.
22. The Washington State Department of Ecology has provided comments referring to the winery/ wine processing portion of the project. Ecology states that the requirement to obtain a Winery General Permit is not applicable to the application as submitted. Ecology sites specific thresholds for projects required to obtain the Winery General Permit and instructs the applicant to coordinate with Ecology if further expansion of the facility is proposed.
23. The occupancy is proposed for a maximum of 200 persons. 150 of those persons will be located in the designated outdoor spaces. The building occupancy for the existing tasting room is 50 persons max.
24. The parcel is located on 10th street and has two access points. The main entrance located approximately 550 feet from Union Street and a secondary access located at the corner of 10th and Union where the nearest fire hydrant is located. Per IFC Appendix C fire hydrants shall be located within 250 feet of the nearest road frontage and then 500 feet thereafter.
25. The main driveway access to the winery and production building also includes a fire access turnaround.
26. Three ADA parking stalls and one van accessible stall will be provided adjacent to the winery.
27. Surrounding property owners were given the opportunity to comment on the proposal, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
28. Onsite septic permit (23-372) satisfies the condition of the septic system sizing required with additional patrons and residential home.
29. Public water is provided via East Wenatchee Water District to meet additional water supply demand.

30. No members of the public commented on the proposal.
31. Comments from reviewing agencies have been considered and addressed where appropriate.
32. Proper legal requirements were met and surrounding property owners, affected agencies, and interested parties were given the opportunity to comment on the proposal at a public hearing.
33. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
34. The entire Planning Staff file was admitted into the record at the public hearing.
35. Appearing and testifying on behalf of the Applicant were the following individuals:
  - 35.1 Tim Scott. Mr. Scott testified that he was an agent authorized to appear and speak on behalf of the Applicant and property owner. Mr. Scott testified that he agreed with all of the representations within the staff report and had no objection to any of the proposed Conditions of Approval. He confirmed that there would be a limit of 150 guests outside and 50 guests inside the facility.
  - 35.2 Becky Scott. Ms. Scott testified that she was an agent authorized to appear and speak on behalf of the Applicant and property owner. Ms. Scott indicated that she and her husband are the new owners of the winery and that they would work with neighbors regarding noise issues. She testified that 90% of the live music events end by 8 p.m. and are always finished by 9 p.m. She further testified that they have the ability to direct noise away from neighbors and toward the river. She agreed that all parking could be located on site. Finally, she agreed that all music and amplified voices would end by 9 p.m.
36. Appearing and testifying on behalf of the public were the following individuals:
  - 36.1 Rich Lough. Mr. Lough testified that he built his home in 1978 and that it is surrounded by orchards and that his family and friends know his house to be a gathering point. He testified that they have had problems with trespassers on their property from winery events. He also testified about noise from events in the evenings, including, but not limited to, amplified voices. They specifically referenced an auctioneer that was very noticeable at their property.
  - 36.2 Stacy Lough. Ms. Lough testified that while she supports the winery's use, she had concerns that noise impacts would be worse with 150 people outside.
37. The Hearing Examiner finds that the Traffic Impact Study adequately addressed traffic impacts resulting from the uses proposed by this amendment to the Conditional Use Permit.
38. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Comprehensive Plan.

3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 18 "Zoning", Title 19 "Environment", and Title 20 "Development Standards" of the Douglas County Code.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### **III. DECISION**

Based on the above Findings of Fact and Conclusions of Law, review of all applicable files, including the Planning Department staff file, and after an open record public hearing, the Hearing Examiner has determined that CUP No. 02-01A is hereby **APPROVED** subject to the following Conditions of Approval.

### **IV. CONDITIONS OF APPROVAL**

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. The project shall proceed in substantial conformance with the plans and application materials of file except as amended by the conditions herein.
2. The applicant, and site operators, are responsible for compliance with all applicable local, state and federal rules and regulations and shall acquire all applicable permits.
3. All future modifications to the project shall be reviewed by Douglas County Land Services Department.
4. Food program requires an additional statement and/or additional floor plan confirming a service sink is provided and conveniently located per WAC 246-215-05240).
5. An approved fire access road from the corner of 10th Street shall be constructed at the secondary access. The fire access road shall be a minimum of 20 feet wide and constructed of materials capable of supporting a 75,000 lb. fire apparatus.
6. Final construction plans designed by a Professional Engineer licensed in the State of Washington shall be submitted to and accepted by Douglas County prior to construction. Construction plans shall be prepared in accordance with the requirements of the Douglas County Code.
7. A final site-specific stormwater plan and report prepared by a Professional Engineer (PE) licensed in the State of Washington that conforms to Douglas County Code and the current edition of the Stormwater Management Manual for Eastern Washington (SWMMEW) shall be submitted to and accepted by Douglas County prior to construction. The report shall

CUP No. 02-01A

Scott

Page 9 of 11

include a separate operation and maintenance section that describes maintenance obligations and procedures.

8. Prior to any on-site grading occurring, a Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control Plan (TESC Plan) shall be submitted to and accepted by Douglas County. The SWPPP and TESC Plan shall be kept on-site at all times and updated as necessary to address and prevent sediment and sediment laden water from leaving the project site.
9. The Engineer of Record shall monitor construction and shall provide as-built drawings and report as necessary along with certification that the improvements have been completed in accordance with the applicable codes, regulations, and accepted plans. UIC registration shall be provided as applicable.
10. Prior to use of the parking area as proposed in this CUP amendment, a Private Stormwater Operation and Maintenance Agreement shall be executed on standard Douglas County forms. The site plan, details, certification, and operation and maintenance recommendations are provided to the County. County staff then prepares the agreement for signature and recording by the applicant.
11. Individual/common plan development for this proposal may exceed 1-acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (WSDOE) in administering their general permit to discharge stormwater associated with construction activity. The applicant is responsible for acquisition of all applicable permits prior to beginning ground breaking activities, including but not limited to: Construction Stormwater General Permit, Sand & Gravel Stormwater General Permit, and/or Industrial Stormwater General Permit. Compliance with the Washington State Department of Ecology's regulations is the responsibility of the applicant.
12. The final civil engineering plans and stormwater report shall include the proposed secondary emergency vehicle access. The emergency vehicle access shall be designed and constructed in accordance with the International Fire Code and Fire Marshal requirements.
13. The applicant shall apply for a new access permit prior to constructing the new emergency vehicle access to S. Union Ave.
14. All amplified noises and all music, whether or not amplified, shall end by 9:00 p.m.
15. The Applicant shall comply with all environmental noise requirements set forth within the Douglas County Code and WAC 173-60-040.

Dated this 26th day of December, 2023.

DOUGLAS COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp

CUP No. 02-01A

Scott

Page 10 of 11

**Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.**

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.**