



Administrative Staff Report

Report Date: March 9, 2023

Application Submittal Date: September 14, 2022

Application Complete Date: September 21, 2021

Project Name: August Cider Winery Operations

Type of Application: Administrative Conditional Use Permit

Permit Number: 21-04338

Project Location

10764 NE Berry Street

Kingston, WA 98346

Commissioner District #1

Assessor's Account

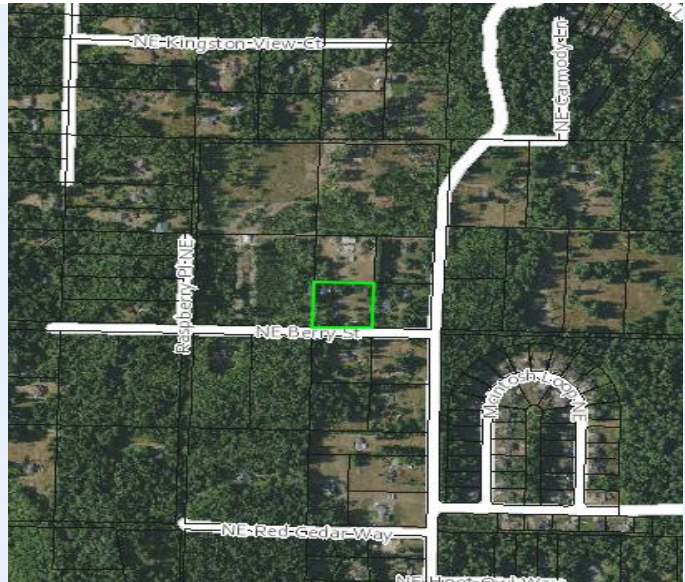
4320-000-009-0204

Applicant/Owner of Record

David Mcilvena & Lindsey Rapp Smith

Indianola, WA 98342-0558

VICINITY MAP



Decision Summary

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

1. Background

The request is for the August Cider Winery Operations – Administrative Conditional Use for Winery Operations. The project proposal review process has changed from a Type-3 to a Type-2 application based on zoning categories, the land use is only allowed per KCC 17.450.010 Agricultural Permissibility (See 21.04.070 Project Permit Procedures. This proposal is to establish winery operation at the property located at 10764 NE Berry St. in Kingston as provided per Kitsap County Code 17.455.060(H) Agricultural, Accessory Use or Agritourism. The Winery operations will occur in an existing outbuilding on the property. The applicant is proposing to complete the planting to establish an orchard on the property. The manufactured product is (hard) cider which is classified as wine under Federal and State alcohol regulations. Annual production volumes in the existing facility are expected to be 4,000 gallons annually (15,000 Liters) of finished product. Operations will include grinding and pressing, fermentation apple juice in tanks, storage in tanks, bottling and packaging of

finished product, and retail sales by appointment. Shipping and receiving operations are not anticipated to take place more than once per day.

2. Project Request

The applicant is requesting approval to operate a Cidery for growing, processing and tasting on property designated rural, consistent with KCC 17.455.060 as Agricultural Accessory Use or Agritourism.

3. SEPA (State Environmental Policy Act)

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

Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project A Determination of Nonsignificance (MDNS) was issued on February 2, 2023. SEPA noted the following information/SEPA mitigation conditions have been imposed and are listed under conditions 22 at the end of this report:

4. COMMENTS:

The SEPA comment period previously occurred concurrent with the revised Notice of Application dated September 06, 2022. The comment period was 14 days. The Department received public comments on the cidery from five neighbors adjacent to the subject property. The comments are summarized as follows: The commercial operation is inconsistent with the neighborhood residential character, water system does not support the cidery, traffic safety, noise associated with special events, concern with the property being rented out as a short-term vacation rental (Air-BNB).

MITIGATION:

Failure to comply with mitigation measures identified here may result in a Determination of Significance (DS) for this project, additional mitigation measures, revocation of corresponding permits, or other legal action. KCC 18.04.120(D), WAC 197-11-350(7), KCC 10.28.140, KCC 10.28.146.

Water

1. A grass parking lot is proposed on the upland parcel. A drainage plan demonstrating compliance with KCC Title 12 and the Kitsap County Stormwater Design Manual will be required.

Noise:

2. Noise must meet the County noise ordinance per KCC 10.28. Noise levels shall not exceed the standards in KCC 10.28.040 for Maximum Permissible Environmental Noise Levels and shall not exceed the standards in KCC 10.28.145 for Public Disturbance Noises. Compliance with these standards is a condition of this MDNS and corresponding permits.
3. If sound amplification is proposed to be used at any time, noise monitoring at events shall first be performed by a qualified third-party approved by the Department of Community Development (DCD) to ensure ongoing compliance with KCC 10.28 Noise. The qualified and approved third-party must monitor noise levels at the first event following permit issuance, and at the first event where amplified sound is used, and thereafter as requested by DCD, or the permittee. The third-party contractor must report the results of the monitoring to DCD. As the permit applicant, the responsibility for providing this information lies with the permittee and their successors and will be provided at their expense regardless of whether it is the permittee or DCD that requests the monitoring for an event. SEPA mitigation measures may include monitoring the impact and taking corrective measures. WAC 197-11-768(6). If the noise analysis or noise monitoring reports indicate noise levels exceeding the standards in KCC 10.28.040 or 10.28.145, all and events must cease until DCD finds sufficient noise mitigation is in place. Such mitigation may include, but not be limited to, no longer allowing amplified sound.
4. To accommodate the proposal while also protecting rural character, use compatibilities, and balanced uses, if events are to be permitted in the future, it will be limited to 50% consecutive days within any one month. The restriction of event scheduling is supported by the Kitsap County 2016 Comprehensive Plan, narrative pages 1-11 to 1-13, Land Use Goals 13 and 14, Land Use policies 57 to 59, and Economic Development Policy 21.

Land Use:

5. Pursuant to KCC 17.540 ACUP, the applicant shall adhere to all standards listed pursuant to KCC 17.455.060 Agricultural, accessory use or agritourism. to reduce the potential impact to neighbors and becoming incompatible with the Rural Residential character of the zone.

Transportation:

6. Construction of a Road Approach to the parking area parcel will be required, which must be constructed in compliance with County Road Standards and permitting requirements. The request is required to be consistent with Off-street parking standards providing sufficient parking onsite for the tasting room and retail operation per KCC 17.490.020. On-street parking is prohibited.

Light:

7. Lighting shall be shielded and directed downward to minimize the effect on nearby current and future residential properties and other uses in the area. Not more than one-foot candle of illumination may leave the property boundaries, as noted in KCC 17.105.110 Obnoxious Things.

The SEPA second comment period ended on February 16, 2023 appeal period expired March 2, 2023. No appeals were filed; therefore, the SEPA determination is final.

5. Physical Characteristics

The subject property is 2.21 acres in size, square shaped and located north of the community of Kingston. The property contains an existing single-family unit constructed 1990 and three outbuildings constructed on 1990 and earlier. The property is fairly level with an elevation of 400' with a minor slope from north to the south. The perimeter includes mix of vegetation deciduous, conifer trees and understory. The onsite septic system on the center west side of the property. The proposal is to establish the apple orchard on the east half of the property.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential	Standard	Proposed
Minimum Density	NA	1-dwelling (existing)
Maximum Density	5 acres	
Minimum Lot Size	NA	2.21 acres
Maximum Lot Size	140 feet	NA
Minimum Lot Width	140 feet	NA
Minimum Lot Depth	NA	NA
Maximum Height	35 feet	<35 feet
Maximum Impervious Surface Coverage	85%	NA
Maximum Lot Coverage	NA	NA

Applicable footnotes: NA

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (South)	50'	227' (Cider Bldg. 30')
Side (East)	20'	235' (Cider Bldg. 56')
Side (West)	20'	22' (Cider Bldg. 181')
Rear (North)	20'	32' (Cider Bldg. 246')

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single-family residence	Rural Residential (RR)
South	Single-family residence	RR
East	Single-family residences	RR
West	Vacant, Undeveloped	RR

Table 4 - Public Utilities and Services

	Provider
Water	Kitsap PUD #1
Power	Puget Sound Energy
Sewer	Kitsap County
Police	Kitsap County Sheriff
Fire	North Kitsap Fire & Rescue
School	North Kitsap School District #400

6. Access

The cider winery operation will have the same vehicular access from NE Berry Street as the existing single-family home. Berry Street is a public road and the functional classification is a local access road.

7. Site Design

The proposal was reviewed for consistency with zoning requirements in KCC 17.420.030 Design Standards, 17.540 Administrative Conditional Use Permit, and 17.455 Agricultural Code. The Department is required to make findings for the following requirements.

8. Policies and Regulations Applicable to the Subject Proposal

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

Kitsap County Comprehensive Plan, adopted June 30, 2016 and as amended April 27, 2020.

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

Land Use Goal 9. Promote food security, food systems, local food production, and public health by encouraging locally based food production, distribution, and choice through urban agriculture, community gardens, farmers markets, and food access initiatives.

Land Use Goal 13. Protect Kitsap County's unique rural character.

Land Use Goal 14. Foster rural businesses and business opportunities on designated commercial and industrial lands in the rural area, while balancing protection of rural character.

Rural Lands Goals and Policies

Land Use Policy 51

Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.

Land Use Policy 54

In accordance with RCW 36.70A070(5)(c):

- *Preserve rural character of the County, emphasis controlling rural development.*
- *Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area,*
- *Protect critical areas, as provided in RCW 36.70A.060, surface water and groundwater resources, and*
- *Protect against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170*

Land Use Policy 66. Allow agricultural activities and practices from cultivation to harvest as well as on-farm value-added processing within the Rural Wooded, Rural Protection and Rural Residential zoning districts or the Farming Focus Areas identified in the Agricultural Strategic Plan and Inventory.

Land Use Policy 72. Develop regulations that permit appropriate farm-related activities secondary to primary farm operations in Rural Wooded, Rural Protection and Rural Residential zoning districts. This includes, but is not limited to, farm infrastructure buildings, commercial activities in conjunction with adding value to products grown on the farm (on-farm processing, community kitchens), farm stands and sales, and other essential farm support activities.

Land Use Policy 88. Consider and identify current and potential economic opportunities and benefits to agriculture and agricultural-related businesses for the enjoyment of residents and visitors.

Economic Development

Economic Development Policy 5. Work with the official county tourism agency, port districts, private sector, other qualified tourism related entities and user groups to identify current and potential visitor and event amenities and services.

Economic Development Policy 29.

Expand the county's capacity to produce, process, distribute and access local foods.

Economic Development Policy 30.

Support, including Agri-tourism and value-added programs that will stimulate economic growth.

Economic Development Policy 31.

Strengthen the rural and urban economies through organizational partnerships that support food system education.

Economic Development Policy 35

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

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

9. Documents Consulted in the Analysis

<u>Applicant Submittals</u>	<u>Dated or date stamped</u>
Administrative CUP Questionnaire	August 11, 2021
Environmental (SEPA) Checklist	November 9, 2021
Habitat Management Plan & Supplement	August 14, 2017
Revised Site Plan	January 23, 2023
Final Health District Approval	August 27, 2021
Project Narrative	August 24, 2021
<u>Staff Communication</u>	<u>Dated</u>
Dev. Services & Engineering Memo	February 10, 2023

10. Public Outreach and Comments

Pursuant to KCC Title 21, Land Use, and Development Procedures, the Department gave

proper public notice within 800' around the subject property for the Administrative Conditional Use Permit. The Department received several public comments from the surrounding neighborhood. There were 10 people have requested to be interested parties

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.
1	<p>Based on previous examples, the neighbors have concerns with the potential number and scale of event on the property</p> <p>Events and People Olla Valley Winery "...including the number of events per year exceeding the allowed amount, the number of people at those events exceeding the allowed amount, the number of parked cars exceeding the allowed amount, noise ordinance violations and amplified sounds going past the cutoff of 9 p.m., lack of port-a-potties, trespassing by patrons onto or through others' properties, hosting of RVs overnight, a bar or tavern being established and the winery's appointment-only requirement being abandoned."</p>	
2.	<p>The neighbors want the peace and quiet of the country and that why I moved in here for, and for the county to honor "rural" property owners by not allowing commercial enterprise to occur next door. I don't want to have traffic and noise and drunks next door.</p>	
3.	<p>I will start with the doctrine of unclean hands. August has unclean hands. Currently they run an unpermitted business, an Air B and B. Small point, but the significance supports the conclusion. The drawing submitted by August Cidery show the driveway crossing the drain field. Can you see the corner of the drainfield protrude into the driveway on the as-built drawing? No homeowner could do this but here we have an unpermitted business. The drawings I submitted are fiction anyway. I recall Doug Smith bragging he did not get permits. So, this would suggest that August simply drew some lines and called it "drainfield". There is no proof that a drainfield even exists, yet it is presented with unclean hands for you to accept on faith.</p>	
4	<p>To get a building permit in Kitsap County you must have a water supply and the County does not accept "trucked in" water. Here, there is no water supply. There is a well that allows for the use of a single-family residence. The well agreement does not allow for water for commercial purposes unless the other well owner agree. The Other three owners (according to Ron Lemay who is also on the</p>	

	<p>well) will not agree to provide water to August. So, as a practical matter there is no water. August should not get a special "trucked in" allowance just because they are a commercial business.and think of the volumes of water a cidery needs for making cider and cleaning up. You must ask to see the well agreement and the written permission or agreement of the others that are signatory thereto.</p>	
5	<p>There is inadequate parking. Put an overlay on the proposed parking area. There is simply not adequate parking for patrons, employees and service providers. There is not enough turn around space. either. Hence, the cars will crowd the street. As I pointed out earlier there are no sidewalks and two cars cannot pass if there is someone parked on the narrow road. I put the county on notice that someone will be killed as they step out between the cars, particularly at night in the unlit street and alcohol will play a role.... intoxicating cider in this case. The attorney will ask if the county was aware of the unreasonable risk of harm the permit caused. Keep this letter for your records, you are on notice of the danger and the risk of harm. In addition to the risk we may have the Olalla Valley RVs phenomena along the street with patrons sleeping it off.</p>	
6	<p>The place is a death trap. As Ron Lemay said the prior owner did not get permits. I saw wires sticking out of junction boxes. Was the wiring ever inspected? The barn is not insulated, infested with powder post beetles. The building in the front is ostensibly too close to the road.... but not permitted so who really knows. But as I look at it, it looks too close to me. (they could measure the property line to cure this or simply move the building back. In my view the cedar barn is a fire trap waiting for a single match. I believe that building codes do not allow exposed cedar without sheetrock is not permitted. At least it wasn't when I wanted to do it on my building project.</p>	
7	<p>The county must make a finding that the land is primarily agricultural use. Then it could grant a conditional use permit compliance notwithstanding. This makes sense as the drafters of the conditional use permit legislation and WACs envision a beekeeper selling honey, or a farm stand selling produce. What is the Agricultural use here? Simply put there is none. Not a single crop has ever been harvested. Not one. So, for August Cidery to claim as required for the exemption of a conditional use permit... that the property is primary agricultural use... is a fiction. The code does not say a business can put in agriculture to comply with a conditional use permit. This is what August wants you to believe. So, they planted a few spindly little trees that they claim are of agricultural use. You can see them freshly planted in the little</p>	

	seed bed out front. They are years from being fruit bearing. but...if you close your eyes and tap your heels together three times you may see an agricultural use. (thank you for indulging my prose). What I do see is trees that will be planted for show and industrial importing of eastern Washington processed apples. That is what is in fact happening.	
Issue Ref. No.	Issue	Staff Response
	Olalla Winery	Based on the Department’s experience, the Olalla Valley would be considered an outlier due to the intensity of the event activities. Comparing the Olalla Valley operation to the August Cidery, the cidery is proposed to start at an extremely lower intensity to the winery. The applicant is wanting to phase in the improvements and willing to acquire separate permits if required.
1	Noise	This current permit application is to allow winery operations as allowable in the Kitsap Code. The permit application is to allow winery operations as allowable in the Kitsap County Agricultural Code 17.455.060. The business will operate within the parameters allowed within the County Code Regulations. Large events as described are beyond the scope of this permit will require additional land use review. The applicant is proposing a small production and retail operation to only operate during daylight hours.
2	Unpermitted Business	Kitsap County does not currently require permitting for short term rental properties
3	Water Supply	Potable water is available on the property. The well agreement does not exclude commercial usage. Any water usage will be within limits allowed by Washington State Department of Ecology for groundwater permit exemption.
4	Cidery operations	Per Kitsap County Code the business operations are not intended to support large numbers of vehicles at the property.
5	Compliance with Off-Street Parking	The business is required to comply parking standard and not intended to support large numbers of vehicles at the property.
6	Compliance Building Codes	It is indicated that the house and accessory structure on the property are of sound construction. Any future construction projects will comply with current Kitsap County Building codes as required.

7	Accessory Agricultural Use	In 2022, invasive brush cleanup and soil preparation has been completed in the orchard area. Onsite nursery trees will be planted on the property in spring 2023. Applicant is currently managing and harvesting apples from offsite parcels in Kitsap county also.
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11. Analysis

a. Planning/Zoning

The proposal was reviewed for consistency with zoning requirements in KCC 17.420.030 Design Standards, 17.540 Administrative Conditional Use Permit, and 17.455 Agricultural Code.

b. Lighting

If lighting is required for the tasting room, the lighting is required to be consistent with KCC 17.105.110. Lighting is required to be directed down away from adjoining property owners to prevent glare.

Staff Comment: This requirement applies to all properties in the County. However, the applicant is proposing only to operate during daylight hours

c. Off-Street Parking

New projects are required to be review for consistency KCC 17490 Off-street Parking and Loading. The intent is to confirm that adequate off-street parking is provided onsite to prevent impacts to surrounding property owners and safety issues on adjacent roadways. KCC 17.490.030 lists a specific standard below for wineries and breweries. The Cidery business appears to involve serving and sales to a minor amount of the drive-by customers and will be planned customer destination trips. When calculating the required number of spaces, any fractional parking spaces are required to be rounded up to the nearest whole number.

Planning Comment: On the site plan the parking area near the house is the designated parking area. Off-street parking near the cidery building is not a part of this application and is future parking. The applicant intends to revise the permit prior to any development in that area. The existing parking area onsite meets these requirements.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single-family use	3	3	3
Winery/Brewery	1 per 800 sf of gross floor area of building	Winery square footage 1,200 sf = $\frac{1,200}{800} = 1.5$ (2)	2
Total			5

d. Signage

If signage is desired, the applicant is required to apply for sign permits in accordance with KCC Section 17.510.060.L under the *Agricultural and Farm Stand Signage Program*:

1. Up to four off-premises A-frame signs shall be allowed within the Kitsap County right-of-way, sizing to be consistent with subsection (A) of this section, with the seller's name and contact info on back. A-frame signs in the ROW:
 - a. An A-frame sign shall not impede public vehicular, bicycle, or pedestrian circulation.
 - b. Attachments, including balloons, shall not be placed on signs.
 - c. Signs shall maintain a two-hundred-foot setback when approaching an intersection or a yellow and black county warning sign.
 - d. Symbols and directional arrows shall be used as the first order of preference in sign design to minimize wording and enhance safety and legibility.
 - e. Wire or metal stakes shall not be utilized to secure signs within the county right-of-way. Where anchoring is utilized to stabilize signs within the Kitsap County right-of-way, sandbags shall be used.
2. A farm stand sign is exempt provided the sign does not exceed six square feet.
3. A farm identification sign may be a permanent arm sign located on the premises, on or adjacent to an easement road leading to the farm, as allowed with written consent from all easement owners. The arm sign shall conform to sign detail sheet, arm sign, requirements.

Staff Comments: The Kitsap County sign code section above is the most applicable to the cidery tasting operation. The intent is for the cidery/ tasting operation to maintain the rural character with the surrounding residential development within the Rural Residential Zone. The sign code allows illuminated signs only within a commercial zone. The A-frame signs are consistent with the rural character and is the preferred method for advertising the business.

e. Landscaping

The following is the project review is for consistency with landscaping requirements to address rural character and compatibility.

17.500.027 Buffer types – When required. The director may require different buffer types depending on the proposed use of the site and adjacent zones and/or uses. Vegetation-based LID BMPs may be utilized within buffers as long as the primary purpose of the landscaping or screening buffer is not compromised. These types of buffers shall include:

A. Partial Screening Buffer. This type of landscaping is intended to provide partial visual separation of uses from streets and between compatible uses in order to soften the appearance of parking areas and building elevations.

1. Roadside and Setback Area Buffer. Required along existing or planned roads and side and rear property lines within urban growth areas. The planting area shall encompass the required front setback area, and areas adjacent to side and rear property lines, and consist of:

- a. Evergreen and/or deciduous trees;
- b. Evergreen shrubs planted to screen parking areas, in an amount and configuration to screen parked cars;

2. Separation Buffer. This type of landscaping is intended to create a visual separation that may be less than one hundred percent sight-obscuring between compatible land uses or zones.

Staff Comments: Consistent with the rural character, separation buffers will be encouraged to be maintained around the perimeter to limit potential impacts of noise and light impacts on surrounding property owners. The orchard will include some screening.

Table 6 - Landscaping Table

	Required	Proposed
Required Landscaping (Sq. Ft) 15% of Site	NA	NA
Required Buffer(s) 17.500.025		
North	Separation Buffer	Separation Buffer
South	Roadside and Setback Buffer	Roadside and Setback Buffer
East	Separation Buffer	Separation Buffer
West	Separation Buffer	Separation Buffer
Street Trees	No	No

f. Frontage Improvements

NA

g. Design Districts/Requirements

NA

h. Development Engineering/Stormwater

Development Services and Engineering has reviewed the above land use proposal and finds the concept supportable in its approach to civil site development.

i. Environmental

Pursuant KCC Title 19 Critical Areas Code the County reviews project proposals for wetlands, wildlife conservation area, frequently flooded areas geologically hazardous areas and aquifer recharge areas. Kitsap County resource maps do not show steep slopes, wetlands or streams. However, the property is located within a 1 to 5-year wellhead travel zone with a Category 1 Critical Aquifer Recharge Area, pursuant to KCC 19.600.620 Activities with a Potential Threat to Groundwater quality. Based on criteria, the proposed land use will not require a hydrogeological report.

j. Access, Traffic and Roads

Development is limited to one ingress/egress per 300 lineal feet along a public arterial. Small parcels that provide less than 200 feet of road frontage shall be limited to one parking lane and exit.

Staff Comments: The applicant will be using the existing approved access off County Right of Way.

k. Fire Safety

The Fire Marshall's office reviewed the proposal and conditioned the project to maintain fire apparatus access for emergency response.

l. Solid Waste

The project was conditioned to coordinate with Waste Management on solid waste handling during the Building Permit review process.

m. Water/Sewer

The tasting room is consistent with the requirements for providing potable water and onsite sewage disposal. The propose water usage for the cidery will range between 20 to 60 gallons per day. The applicant is not proposing any irrigation will be done on site.

n. Kitsap Public Health District

The Kitsap Public Health District has reviewed and approved the proposal for water availability and onsite sewage disposal. The water system/well on an abutting property is classified as a public water system (Class-B) and reviews by Kitsap Public Health District which is the review authority.

The District representative commented that based on the Drinking Water Ordinance the proposal is allowed to connect to an approved Group B water system. The Health District's review comments state a single-family residence could potentially use up to 800 gallons per day. The existing house on the property has a 3-bedroom septic rated at only 360 gallons per day. The District has determined the extra 20-to 60 gallons per day does not take them anywhere near the upper limit of what would be allowed. For a system with four houses, 800 gallons per day (the WIRA limit) keeps the system below

the 5,000-limit. For questions contact Kimberly Jones RS, Program Manager, Kimberly.jones@kitsappublichealth.org.

Staff Comment: As advised, if the water system has problems with the cidery's usage then the water system should use their existing user agreement to start civil proceedings.

Land Use and Zoning Analysis:

In addition to agritourism requirements, the project is reviewed for consistency with KCC 17.420.030 Design Standards. The most applicable will be off-street parking, then landscaping to provide screening to help reduce noise and light and proper solid waste handling.

KCC 17.455.060 Agricultural, accessory use or agritourism.

An accessory agricultural use or agritourism use is allowed on a farm where a primary agricultural use exists and is allowed. The accessory agricultural or agritourism use shall be operated so as to not interfere with the primary agricultural use and shall not significantly interfere with the rural character of an area.

Onsite Orchard:

Applicant Response: We are in the process of preparing an acre of land to be planted with apple trees for value-added processing into hard cider. This past year we have removed invasive blackberry and scotch broom, planted cover crops onsite and have started soil amendment procedures. The operation will include growing heirloom apple cultivars that have historical use in traditional cidermaking and for other culinary purposes. We have 200 grafted fruit trees on site which will be planted beginning Spring 2023. These trees will produce a small crop the following year and are expected to be in full commercial production within 3 years. Currently we are producing cider at home - within Federal limits for hobbyists - using apples from our home orchard in Indianola (0.2 acres), and a 0.5-acre parcel in Poulsbo.

The applicant is not proposing a tasting room. The onsite tastings will occur within designated area next to the outside production space. The applicant does not anticipate more than 2 to 3 small groups visiting at a time during hours when tasting is offered. Each tasting includes five off-street parking spaces and not proposing a separate road access. The

KCC 17.455.060.H Wineries, Breweries, Cideries and Distilleries

Pursuant to KCC 17.455.060 and accessory agricultural use of agritourism is allowed as an accessory agricultural use on a farm where a primary agricultural use exists.

1. A tasting room is an allowed use in conjunction with a winery, brewery, cidery, or distillery as defined in KCC 17.455 subject or licensed by the Washington State Liquor and Cannabis Board subject to and Administrative Conditional Use Permit

approval.

a. A site plan review with a fee established by county resolution;

b. A traffic management plan

Staff Comments: Access is from NE Bell Street on Kingston.

c. Except as included in a town master plan approved pursuant to Section 17.360C.030, a parcel(s) without direct access to a Kitsap County maintained right-of-way shall require the farm owner to obtain written consent by a majority of the owners of an easement used to access the farm. A notice to title for each owner of the easement shall be required and submittal of the associated fee established by county resolution;

Staff Comments: The property owner has legal access to and from NE Berry Street, without encroaching on neighboring property and easement free. The facility and parking are is setback from the roadway.

d. A written agreement to not serve products in serving glassware, cups, or containers greater than a four-ounce capacity except when included in a town master plan approved pursuant to Section 17.360C.030, glassware with larger capacity may be served with a conditional use permit;

Staff Comments: As required by Kitsap County Code, a cidery winery tasting room (defined in code) is limited to consumption for sampling and is not considered to be a drinking establishment (also defined in code). The applicant will be required to submit a signed copy of the required written tasting room agreement, which limits the wine tasting to 4-oz. plastic cups.

2. Structures and equipment related to the operations of a winery, brewery, cidery or distillery shall comply with KCC Title 14 and 17 and not exempt from building permits.

Applicant Response: The applicant has and will obtain all required permits.

3. Retail sales are directly related to the facility and related merchandise.

Staff Comments: The applicant should agree to this requirement prior to final approval.

KCC 17.455.060.I Assembly Events. Assembly as defined in this chapter are allowed on the farm.

1. The event(s) must be incidental and secondary to a primary agricultural use and may be subject to an assembly permit pursuant to Title 14;

2. All operations comply with Title 10, Peace, Safety and Morals;

Applicant Response: The applicant is not planning to conduct special ng any special events.

Staff Comments: *No amplified sound or amplified equipment may be used on the premises. The project is required to be consistent with KCC 10.28 Noise. The tasting room cannot create excessive noise, light and/or glare, cause negative impacts to the neighborhood, nor prevent adjacent property owners from enjoying their property rights.*

3. A parcel(s) without direct access to a Kitsap County maintained right-of-way shall require the farm owner to obtain written consent by a majority of the owners of an easement used to access the farm. A notice to title for each owner of the easement shall be required and submittal of a fee established by county resolution;

Staff Comments: *Access is from a County public road.*

4. Attendance shall not exceed two hundred persons at any given time. A venue where the attendance will exceed two hundred persons may be allowed subject to an administrative conditional use permit (ACUP);

Staff Comments: *The applicant is not proposing any special events. If events are planned, the events will be limited to the amount of off-street parking to be provided onsite.*

5. Up to eight assembly events per calendar year are allowed; provided, that:
 - a. Not more than one event can occur per twelve days;
 - b. A permit is obtained after a site plan review and submittal of a fee established by county resolution;
 - c. Access, egress, and parking facilities must be clearly identified on site. Adjacent properties can be used for parking if:
 - i. A written agreement between the assembly event location owner and the owner of the parcel used for parking is provided; and
 - ii. The off-site parking is included in the site plan review.

Applicant Response: Not necessary, no special events proposed.

Staff Comments: *If proposed in the future, the applicant will be required to comply with all above standards for assembly events, frequency of events, and the required amount of off-street parking.*

- d. Written notification shall be provided to the owner of any parcel immediately adjacent to the farm either six weeks prior to each event, or four weeks prior to the first event of the year where such notice is provided with a calendar indicating the date of future events. Noticing shall include the event, hours of the event, and

contact information for the event manager that is available at all times during the event;

Applicant Response: We will not have a tasting room. We plan to accommodate visitors to the property as allowed under Kitsap county Code and Washington State Liquor Control Board's requirements for an onsite tasting room. We intend to sell finished packaged cider to customers on site. Sales will occur during daylight hours.

Staff Comment: *The applicant is not proposing events.*

6. Nine or more assembly events may be allowed subject to an administrative conditional use permit (ACUP). As included in a town master plan approved pursuant to Section 17.360C.030, sixteen or more events may be allowed with each occurring no less than six days apart with a conditional use permit. Kitsap County staff may restrict the number of events or timing of events during the permit process;

Applicant Response: No events are anticipated.

Staff Comments: *The applicant's response does address event frequency However, a venue where the attendance will exceed two hundred persons may be allowed subject to amendment (revision) of the approved ACUP;*

7. Each scheduled assembly event shall be considered a separate assembly event from any that preceded or came after;

Applicant Response: The applicant is not proposing events.

8. The duration of an assembly event or activity shall not exceed forty-eight consecutive hours including set-up and clean-up;

Applicant Response: The applicant is not proposing events.

9. Sanitation and solid waste shall conform to Kitsap Public Health District requirements;

Applicant Response: The existing toilet room is served by an existing pump basin which discharges to an approved 3-bedroom gravity onsite septic system. The cidery drainage from floor drains will be collected in a holding tank to be pumped periodically by a septic service company as described in with the approved Kitsap County Public Health District Building Site Application.

10. Land use approvals for events or activities are transferable with the land. Occupancy and assembly permits are not transferable.

Applicant Response: Applicant understands

12. Review Authority

The Director has review authority for this Administrative Conditional Use Permit application under KCC, Sections 17.540.020 and 21.04.100. The Director may approve, approve with conditions, or deny an Administrative Conditional Use Permit.

13. Findings

1. The proposal is consistent with the Comprehensive Plan.

Staff Comments: The proposed use is not inconsistent with the Kitsap County Comprehensive Plan, and KCC 17.455 Agricultural Code.

2. The proposal complies or will comply with requirements of KCC Title 17 and complies with or will comply with all the other applicable provisions of Kitsap County Code and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report.

Staff Comments: The Department determined that Cidery Winery operation is consistent with Kitsap County Code, consistent with the Kitsap Public Health District requirements operation of the on-site septic and Group B water system and the Liquor Control Board requirements

3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity.

Staff Comments: The Cidery is a permitted use per the Kitsap County Code, but conditionally approved. It is not expected that the cidery operation as proposed by the applicant will impact the neighbors with the operation of the cidery, the tasting and no special events,

4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.

Staff Comments: Once the orchard is established and the tasting occurs operation will be required to strictly follow Kitsap County Code to not create negative impacts to property owners in the vicinity.

14. Decision

Based upon the analysis above and the decision criteria found in KCC 17.540.040.A, the Department of Community Development recommends that the ACUP request for the August Cider Winery Operations be **approved**, subject to the following 22 conditions:

a. Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. 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.
3. All signage design and location (including exempt signs) shall comply with County code. KCC 17.455.060.L speaks to signs allowed under the agriculture program. The signs allowed under this section are then subject to individual permitting and review standards under KCC 17.510 *Sign Code* and must be approved by DCD prior to installation.
4. The approval is to operate a winery tasting room on the subject property per KCC 17.455.060 *Agricultural Accessory Use or Agritourism*. No other use is authorized, except as allowed outright in KCC 17.455 *Agriculture Code*. Any other use, including, but not limited to, a drinking establishment, wedding events, musical concerts, birthday/family/reunion events, farm stays, and ag schools, may require additional application and review by DCD. If special events are planned, the applicant shall submit a revision to the site plan showing the location of overflow parking and traffic circulation onsite. Depending on the proposal or type/number of events, an application to amend/revise the ACUP or a Conditional Use Permit application may be needed. Events are considered events whether they are free, for compensation, public, or private.
5. "Assembly event" is defined as *a use or activity where a group of persons gather to participate in a commercial or marketed event or activity including, but not limited to, entertainment, equestrian events, recreational or celebratory events or activities, conventions, retreats, or weddings*. Assembly events are regulated by KCC 17.455.060.I, which regulates frequency of events, size of events by attendees, and more. Any assembly event shall be permitted in accordance with this code. The initial permitting threshold for events is based on the number of events, whereby eight or less events are subject to different requirements than nine or more. The applicant is encouraged to contact DCD if there are any questions about assembly events.
6. Per the applicant, apple tree orchard will be planted on-site after construction of the cidery. Planting must occur within 1 year.
7. DCD staff shall have rights to access to the business during operating hours to check on compliance, including for public or private events.

8. No amplified sound or equipment may be used on the premises. If an amplified system is to be considered, it shall be first evaluated through a modification to the land use approval and SEPA Addendum, professional noise analysis, and mitigation. DCD reserves the right, per code, to hire a third-party professional to review any noise analysis. No amplified system may be used until mitigation has been accepted, permitted, and installed. DCD considers an amplified system one that uses a microphone or a system whereby sound volume is increased by any means, including but not limited to electronic means. If DCD receives on-going complaints about noise, and the complaints are investigated and found to be valid, DCD may require, at the applicant's expense, noise analysis or monitoring, as well as subsequent evaluation as described above.
9. The recipient of any administrative conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of an agreement to abide by the terms and conditions of the administrative conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.
10. 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 the 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, and is not, to be construed as approval for more extensive or other utilization of the subject property.
11. The decision set forth herein is based upon representations made and exhibits contained in the project application. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
12. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

13. This Administrative Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.
14. Any violation of the conditions of approval shall be grounds to initiate revocation of this ACUP under KCC 17.600 *Revocation of Permits or Variances*. The applicant shall be given reasonable opportunity to cure violations prior to proceeding to revocation.

b. Development Engineering

15. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed area. While a formal plan is not required, the applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either of the thresholds noted above, then additional review for stormwater management will be required.
16. If the project proposal is modified from that shown on the site plan approved for this permit application, Development Services and Engineering will require additional review and potentially new conditions.

c. Environmental

17. This permit shall comply with all applicable Kitsap County critical area regulations and conditions of approval.
18. Recommend contacting the Kitsap Conservation District to help put together a voluntary farm plan to follow best management practices for the orchard/winery operation.

d. Traffic and Roads

19. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

e. Fire Safety

20. Fire apparatus access roads are required and must be maintained in accordance with IFC 503 Amended by Kitsap County Code. Any proposed revision to these roads must be submitted to, reviewed and approved by the Kitsap County Fire Marshal's Office. Access roads shall comply with the following:
 - Unobstructed width of 20 feet and height of 13 feet 6 inches.
 - Shall be designed and maintained to support a 60,000-pound fire apparatus and be provided with an all-weather driving surface.
 - Dead end access roads exceeding 150 feet in length shall be provided with an

approved turnaround.

- Inside turning radius shall be a minimum of 35 feet
- 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.
- Road shall not be more than 12% grade.

f. Solid Waste

21. Prior to issuance of the required building permit, provide documentation from the solid waste/recycling service provider that their requirements for this project have been met.

g. Kitsap Public Health District

22. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

Report prepared by:



Jeff Smith, Staff Planner / Project Lead

March 7, 2023

Date

Report approved by:



Katharine Shaffer, Planning Supervisor

March 7, 2023

Date

Attachments:

Attachment A – Site Plan

Attachment B – Building Floor Plan

Attachment C – Zoning Map (Required)

CC: Dave Mcilvena and Ian & Lindsey Rapp Smith, mcilvena@gmail.com

Interested Parties:

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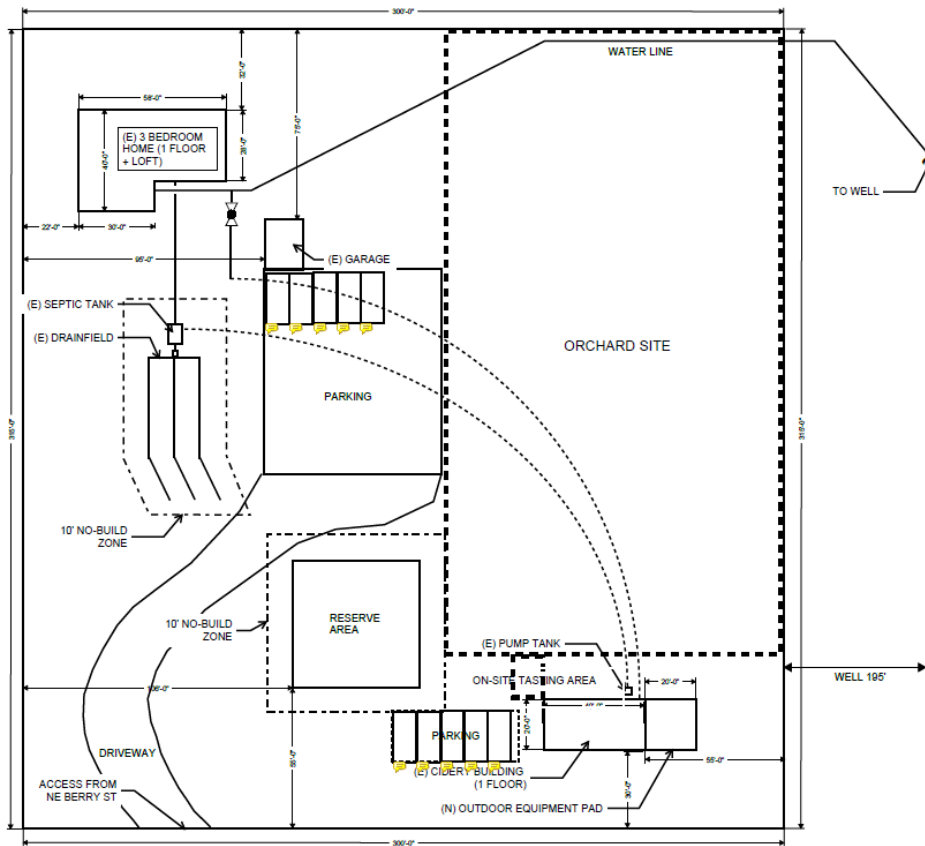
Ronald Luke, 27896 Lindvog Rd NE KINGSTON, WA 98346

Kitsap County Health District, MS-30

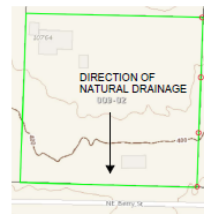
Kitsap County Public Works Dept., MS-26


DCD Staff Planner: Jeff Smith

Site Plan

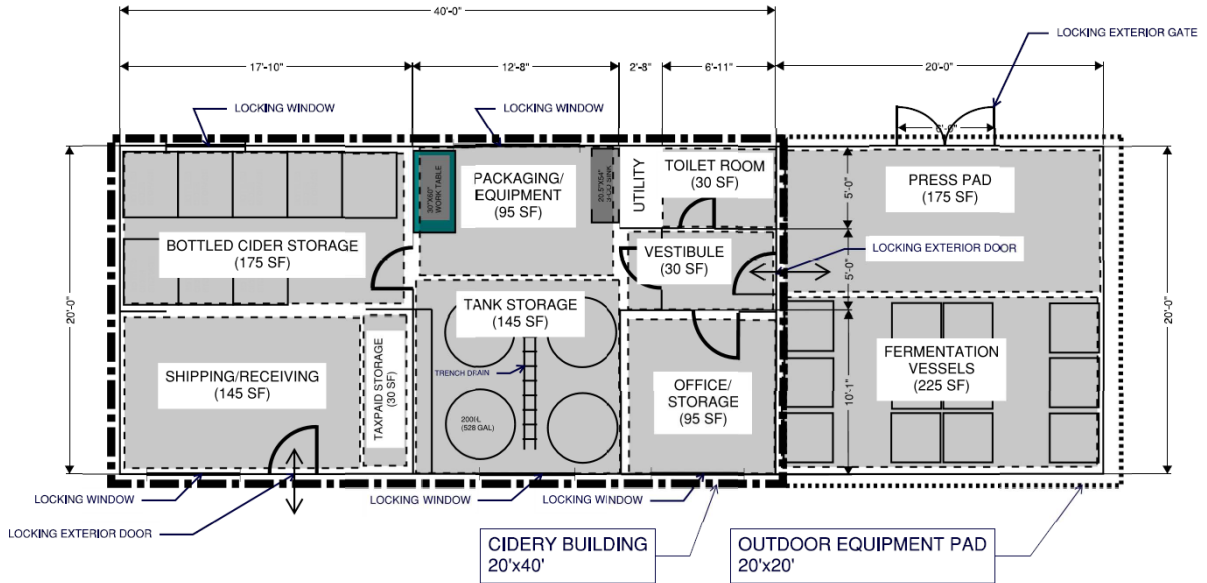



 **SITE PLAN - 10764 NE BERRY ST (APN: 4320-000-009-0204)**
SCALE: 1"=50'



 **CONTOUR PLAN - 10764 NE BERRY ST**
N.T.S.

NOTES
1. OUTDOOR EQUIPMENT PAD IS ENCLOSED BY AN 8-FT FENCE WITH LOCKED ACCESS GATE.



 FLOOR PLAN - 10764 NE BERRY ST
SCALE: 1/8"=1'

August Cidery Zoning Map



Comments

** This map is not a substitute for field survey ** Map Scale: 1 inch = 200 feet
Parcel No: 4320-000-009-0204 TaxPayer: MCILVENA DAVID IAN & LINDSEY RAPP SMITH Site Address: 10764 NE BERRY ST

Kitsap Co. Parcel Search Application

