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**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Revocation of the)	No. 16-01455
)	
)	
)	
<u>Olalla Valley Vineyard & Winery, LLC</u>)	FINDINGS, CONCLUSIONS,
<u>Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

This matter concerns a request by Kitsap County (County) to revoke a Conditional Use Permit (CUP) issued to Stuart Chisholm and Mary Ellen Houston (Applicant/Respondent) on April 17, 2017. The CUP allowed for the operation of a wine tasting room and event venue at the Olalla Valley Vineyard and Winery, agricultural uses associated with the vineyard, and winery uses of the 5.98-acre property at 13176 Olalla Valley Road. The County asserts that the CUP should be revoked for noncompliance with several conditions of the 2017 CUP, specifically: (1) exceeding the number of outdoor events allowed per month; (2) exceeding the maximum number of attendees allowed per event; (3) allowing parking for events in violation of an approved parking plan; (4) allowing for overnight recreational vehicle parking on the property; and (5) operating as a wine bar rather than a wine tasting room. The County also suggests, but does not explicitly request, that the Hearing Examiner revoke the CUP based on a violation of the County’s noise ordinance.

Because substantial evidence does not establish that the Respondent violated the 2017 CUP in a manner justifying revocation after the County provided it with the appropriate notice and opportunity to cure alleged violations, the County’s revocation request is **DENIED**. Although the Hearing Examiner denies the request to revoke the 2017 CUP, the record clearly reflects the need for clarification concerning the conditions associated with the initial permit. Accordingly, this decision provides clarity on these conditions to ensure that, moving forward, the Applicant is fully informed of, and operates its business in accordance with, its CUP.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held a limited open record hearing¹ on the request on December 16, 2021, using remote access technology. Per the parties’ agreement, the record was left open until January 21, 2022, to allow for the submission of closing briefs.

¹ As detailed in this decision, although members of the public were welcome to attend the open record CUP revocation hearing, the hearing was limited to exhibits and witnesses identified by the parties. *Hearing Examiner Order on Hearing Type and OVVW’s Request to Withdraw Motion to Dismiss, corrected November 24, 2021.*

Testimony:

The following individuals presented testimony under oath at the hearing:

County Witnesses:

Scott Diener, County DCD Manager of Development Services and Engineering

David Lynam, County Fire Marshal and Deputy Building Officer

Linda Murnane

Tina Fein

Respondent Witnesses:

William Palmer

Christina Civiletti

Scott Hall

Stuart Chisholm, Respondent/Applicant

Attorney Laura Zippel represented Kitsap County at the hearing.

Attorney Alan Wallace represented the Respondent at the hearing.

Exhibits:

A list of the exhibits admitted into the record, and information on the orders, legal briefs, and other submitted pleadings, is provided as Attachment A, following this decision.

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

FINDINGS

Background

1. Stuart Chisholm and Mary Ellen Houston (Applicant/Respondent) own and operate the Olalla Valley Vineyard & Winery (OVVW), located at 13176 Olalla Valley Road Southeast, which has been open to the public for wine tasting since 2008 and was purchased by the Applicant in December 2015. OVVW is located on a 5.98-acre parcel developed with a single-family residence at the south-central portion of the property; a winery building with a wine cellar, tasting room, and bathroom located just north of the single-family residence; a barn/garage structure with a meeting/events room located to the northwest of the single-family residence; and a barn and shed located to the east of the winery building. Access to the structures is provided from a graveled driveway and parking area connecting to Olalla Valley Road Southeast, which borders the property to the north. Large portions of the site consist of vineyard plantings, primarily located at the northwest corner of the property, with a smaller vineyard area located to the southeast of the single-family residence and winery building. The east and south property lines, as well as a majority of the north property line, are heavily vegetated with a mix of

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deciduous and coniferous trees. *Exhibit C-1; Exhibit C-3; Exhibit C-4; Exhibit C-5; Exhibit C-8; Exhibit A-1; Exhibit A-11.*

2. The OVVW property, and all surrounding properties, are within the County's "Rural Protection" (RP) zoning district, which "promotes low-density development and agricultural activities consistent with rural character and protects environmental features such as significant visual, historical and natural features, wildlife corridors, steep slopes, wetlands, streams and adjacent critical areas." *Kitsap County Code (KCC) 17.140.010.* Properties in the area surrounding OVVW are predominantly developed with single-family residences on acreage lots or are undeveloped. *Exhibit C-1; Exhibit C-3; Exhibit A-1; Exhibit A-31.*

Conditional Use Permit

3. When the Applicant acquired OVVW in 2015, wine tasting was not listed as a permitted use in the RP zoning district. The Applicant therefore sought approval from the County to continue OVVW's wine tasting use, and to allow for wedding and event uses, through a conditional use permit (CUP). Specifically, the Applicant described the proposed use in the CUP application in part as "to continue the vineyard and winery business and add an event venue on weekends to include weddings – 2-4 per mo. May-September." The Applicant also attached a project narrative to the CUP application, which states in relevant part:
 - Winery/Tasting Room: - Hours of Operation: May through October, Thursday – Saturday 12pm – 6pm and Sunday 1pm – 5pm. November – April: By Appointment Only.
 - Private Events: Meetings, Birthday parties, weddings etc. by prior arrangement (Weddings – June thru September only). Outdoor events will run 9pm during the summer months, allowing for one hour of clean-up and trash removal from the site at the end of every event.
 - Public Events: Musicians (folk, blues, jazz) on Friday evenings and/or Saturday afternoons. Attendance to be limited to prior sign-up via Olalla Wines web-site. A Maximum of 100 people for outdoor events and 35 people for indoor events will be enforced.

Exhibit A-31; Exhibit C-4.

4. The County determined that the existing vineyard and winery was allowed outright as an agricultural use in the RP zone and that the proposed wine tasting, wedding, and event venue uses would be similar to private recreational facility and/or club, civic, or social uses allowed in the RP zone with a conditional use permit. After the County determined that the CUP application was complete on April 11, 2016, the Kitsap County Board of County Commissioners enacted the County's Agricultural Code, Chapter 17.455 KCC, effective September 2, 2016. *Ordinance 536-2016.* The Agricultural Code specifies that certain agricultural and agritourism uses are allowed when accessory to a primary

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agricultural use in the RP zone, including assembly events, wineries, and tasting rooms associated with a winery (with an administrative conditional use permit). *KCC 17.455.060*. These provisions did not apply to the CUP application, however, because it was deemed complete prior to enactment of the County's Agricultural Code. *Exhibit C-3*.

5. On April 17, 2017, the former Kitsap County Hearing Examiner, Susan Drummond, issued a decision approving the CUP request. In approving the CUP request, the former Hearing Examiner entered the following findings of fact, as pertinent to the County's current request to revoke the CUP:

- **1.11 Operating Hours.** The existing Olalla Valley Winery tasting room operates May through October, Thursday through Saturday, noon to 6:00 p.m., and Sunday, 1:00 p.m. to 5:00 p.m., and November through April by appointment only. Outdoor events, to include two to four wedding and/or other events per month, would operate June through September, from noon to 9:00 p.m., for a maximum of 100 guests. Temporary tent structures may be used for outdoor events. Indoor events for a maximum of 35 people would occur in the existing winery building throughout the year, but primarily on weekends, from noon to 9:00 p.m.
- **1.14.5 Permit Revocation.** The Applicants were concerned about a condition providing for permit revocation. The word "initiate" does mean that while revocation could occur, it is not automatic. But, to the extent clarification would reassure the Applicants as to how such a process could unfold, a sentence noting the Applicants' opportunity to cure was added. This is a reasonable opportunity to cure (not an open-ended opportunity), which would presumably be provided regardless of this clarification.

Exhibit A-1; Exhibit C-1.

6. As pertinent to the County's CUP revocation request, the former Hearing Examiner entered the following conclusions of law:

- **2.2.9 Traffic.** The project is anticipated to have a minor traffic impact for most planned events and general operation of the tasting room, which would be for a maximum of 35 people; and less than a moderate traffic impact for weddings and other events for a maximum of 100 people.
- **2.2.10 Parking.** DCD [County Department of Community Development] determined 45 parking spaces are required to accommodate the maximum number of 100 people at an event (2.2 people per vehicle), and the Applicant are providing same. The grass parking has been reconfigured into two areas with 10 spaces in the northerly area and 27 spaces in the southerly area. The graveled driveway and entry area can accommodate additional vehicles. The final site plan will show this parking configuration. Also, as vehicle configuration could impact fire access, the

project has been conditioned to maintain adequate fire apparatus during any events.

Exhibit A-1; Exhibit C-1.

7. The former Hearing Examiner imposed the following conditions of CUP approval, as pertinent to the current revocation matter:
- 4. A final site plan shall be submitted which is generally consistent with the final revised March 20, 2017 site plan, excepting any corrections or changes required or appropriate to bring the site plan into conformity with this decision. The project shall be operated consistently with that site plan. If the project proposal is modified from that shown on the final approved site plan, Development Services and Engineering may require additional review and potentially new conditions.
 - 9. The updated site plan shall be submitted within 90 days of this decision. The approved site plan shall become the official site plan of record.
 - 12. Winery/tasting room activities shall be limited to: May through October, Thursday through Saturday, noon to 6:00 p.m., and Sunday, 1:00 p.m. to 5:00 p.m., November through April, by appointment only.
 - 13. Events may occur seven days per week and shall be limited to between the hours of 9:00 a.m. to 9:00 p.m. Indoor events may occur year round. Outdoor events, including weddings, shall be limited to June, July, August and September.
 - 14. The updated site plan shall show the planned parking configuration, which shall comply with applicable code requirements, including setback and fire access requirements.
 - 16. All events shall comply with the noise regulations at KCC Title 10, specifically Chapter 10.28 Noise.
 - 19. 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 be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
 - 21. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 01455). 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.

- 22. A violation of the conditions of approval shall be grounds to initiate revocation of this CUP. Before revocation occurs, the Applicants shall be afforded a reasonable opportunity to cure the violation.

Exhibit A-1; Exhibit C-1.

8. On April 25, 2017, the County moved for reconsideration and clarification of the Hearing Examiner's decision approving the CUP. Specifically, the County requested a revision to the CUP conditions to clarify ADA-accessible bathroom requirements and requested reconsideration of the Hearing Examiner's determination that the grassy parking area on the property would be a pervious surface. On May 8, 2017, the former Hearing Examiner issued a decision denying the County's motion but adding a new condition requiring the Applicant's engineer to confirm in September 2018 that the grassy parking area remains pervious in nature. The County's motion and the Hearing Examiner's subsequent decision on the motion are not at issue in this matter. *Exhibit C-2; Exhibit A-36; Exhibit A-38.*
9. On June 18, 2017, the Applicant submitted an updated site plan as required by a condition of the approved CUP. The updated site plan, which was approved by the County, shows parking stalls within grassy areas to the north and south of the existing barn/garage structure, as well as along the perimeter of the existing graveled driveway/parking area to the west of the winery building. The approved site plan does not depict any parking stalls along the remaining portion of the existing graveled driveway extending to Olalla Valley Road Southeast or along any of the property lines. *Exhibit C-1; Exhibit C-5; Exhibit A-1; Exhibit A-2.*

Complaints and Correspondence

2019 Complaints

10. In August 2019, the County began receiving complaints regarding the operations of OVVW from neighboring property owners Linda and Michael Murnane. The complaints generally raised concerns about the noise being generated during OVVW events, the number of guests attending the events, the number of events being held each month, and the number of vehicles parking at and near the property. For example, on August 7, 2019, the Murnanes emailed County Code Compliance Coordinator (CCC) Kim Dunn to report excessive noise from an August 3, 2019, outdoor concert event on the property. The email stated that the Murnanes counted over 60 vehicles parked on the property and along Olalla Valley Road Southeast during the event. The email also included information copied from the OVVW's Facebook page in support of the Murnanes' claim that OVVW exceeded the maximum number of events per month and maximum number of attendees per event allowed under the conditions of CUP approval. The Murnanes also emailed CCC Dunn on August 20, 2019, to report that they had called 911 to report a noise complaint related to an outdoor concert at OVVW held on August 18, 2019. The August 20, 2019, email stated that they used an app on their phone to determine that the

sound on their property from the event exceeded 85 dBA. *Exhibits C-10 through C-14; C-57; C-59.*

2019 and 2020 Correspondence

11. In a letter dated September 17, 2019, CCC Dunn requested an “informal meeting” with the Applicant to discuss complaints regarding the number of events being held at OVVW and the number of people attending the events. *Exhibit C-19.* The letter noted that the County had reviewed the CUP decision and that “there does appear to be some difference between what was proposed and what is taking place on the property,” and asked that the Applicant contact CCC Dunn by no later than October 7, 2019, to schedule the requested meeting. *Exhibit C-19.*

12. In an October 29, 2019, letter to the Applicant labeled with the heading “Reminder Notice,” CCC Dunn stated:

A review of County records indicates we sent you a notice on September 17, 2019 requesting that you contact our department to set up a meeting to discuss the County’s concerns regarding the number of complaints we have received with relation to the events being held at the winery. In the previous notice we informed you that we feel it is imperative to sit down and discuss your plans for the venue going forward. Based on the complaints and a review of the decision from the hearing examiner when the Conditional Use Permit (CUP) was established and/or approved, there does appear to be some differences between what was proposed and what is taking place on the property.

To date, we have not heard from you therefore we are reaching out again with the same request. Please contact me not later than November 12, 2019 to get the meeting set up. Again, this meeting will be at no cost to you and we certainly have not come to any conclusions.

Exhibit C-20.

13. On November 11, 2019, the Applicant provided an email response to CCC Dunn’s October 29, 2019, letter, which noted that the Applicant was advised by land use consultant William Palmer to ignore the September 17, 2019, request for an informal meeting because OVVW operations are in compliance with the conditions of CUP approval. The letter acknowledged that more than four outdoor music events were being held at OVVW during some months in the summer but asserted that, while our “CUP indicates that we can have between 2-4 events per month” that “number was arbitrary anyway, because we had no idea how many events we would be having” when applying for the permit. *Exhibit C-21.* The letter also noted that a sheriff’s officer had visited the property in response to a noise complaint and left without taking any action. Finally, the

letter stated that the Applicant would be happy to answer any specific questions from CCC Dunn either through email or in-person at OVVW. *Exhibit C-21.*

14. In a letter to the Applicant from May 28, 2020, DCD Assistant Director Angie Silva stated that DCD had investigated complaints against OVVW and that it appears that the Applicant has violated the conditions of CUP approval, including conditions limiting the number of outdoor events allowed each month and the number of people allowed at each event. The letter stated that the Applicant could come into compliance with the CUP conditions by either reducing the number of outdoor events and attendees or by applying for a CUP amendment to allow more events and attendees. With regard to the second option, the letter noted, “At this time, we cannot guarantee that an amendment will be supported or approved.” The letter did not provide any clearly identified deadlines or other specific instructions for bringing OVVW into compliance with the CUP conditions but stated:

[O]nce Kitsap County is authorized to enter Phase 3 of the Governor’s Stay Safe, Stay Healthy recovery plan, the Department will actively monitor compliance with your CUP, which also includes visiting your events. Please note violations will be documented, and you may be subject to civil citations that come with monetary penalties, as well as a complete CUP revocation.

If we cannot identify you have taken steps to come into compliance, the Department will have no choice but to evaluate this compliance case and proceed to revocation of your CUP with the Kitsap County Hearing Examiner. As allowed in Condition 22 of the approved CUP, it notes “A violation of the conditions of approval shall be grounds to initiate revocation of this CUP. Before revocation occurs, the Applicant shall be afforded a reasonable opportunity to cure the violation.”

We are trying to provide reasonable opportunity for you to be successful and to work together. However, we need to see progress towards that goal and so far that is not evident.

Exhibit C-22.

15. The next day, the Applicant emailed County Development Services and Engineering Manager Scott Diener regarding the CUP compliance matter. The email stated that the Applicant appreciated Mr. Diener’s willingness to work with OVVW but noted that the Applicant still disagreed that the CUP conditions limited the number of events each month or the number of attendees allowed at the events. The Applicant stated, however, that “We do agree that we (not the DCD) arbitrarily and verbally suggested 2-4 events per month, back in early 2016.” *Exhibit C-23.* The Applicant also noted that it would be

happy to work with Mr. Diener to find a solution that would work for DCD, the neighboring property owners, OVVW, and OVVW patrons, including amending the CUP conditions and measuring and adjusting music volume levels. Mr. Diener provided a response on June 17, 2020, stating that DCD's legal team would be comfortable showing that the CUP decision restricts events to four per month. *Exhibit C-23.*

2021 Correspondence and Complaints

16. The Applicant and County resumed discussions about OVVW's compliance with the conditions of the CUP during the summer of 2021. In a June 1, 2021, email exchange between the County and the Applicant, Mr. Diener stated that OVVW had scheduled more than four events for the month of June, contrary to the approved CUP, and that this could result in CUP revocation and/or civil penalties. Mr. Diener requested that the Applicant provide a plan for bringing OVVW into compliance with the CUP. The Applicant responded that the "season opener" advertised on OVVW's website was not an "event," explaining that OVVW allocated free tickets for the season opener to limit capacity due to COVID-19 restrictions. In response, Mr. Diener stated that, if the parties could not agree that "4 events means 4 events and not 5 or more," the County may have to seek revocation of the CUP. The Applicant again disagreed that the CUP restricted OVVW to four events per month but agreed to cancel one of the June music events to resolve the issue in the short term. *Exhibit C-24; Exhibit C-25.*

17. On June 14, 2021, Mr. Diener emailed CCC Dunn to inform her that the County and the Applicant came to an agreement regarding the CUP compliance matter, stating that the Applicant agreed to ensure that events would be limited to 100 attendees, music would be shut off by 9 PM or earlier, and that noise leaving the property would not exceed 68 decibels. The email further stated:

We agreed that any shows, etc that are advertised for ticketing (whether free or not) would be considered events. [The Applicant] understands [OVVW] is limited to 4 events per month and stated [that OVVW] would be in compliance with that beginning this month. We both understand that private events – wine tasting, birthdays, reunions, etc – are not considered 'events' as the CUP discusses them. [The Applicant] may want to have a longer conversation about increasing the number of events, but that is down the road. I advised that DCD would promote a balancing act of [OVVW's] interests vs the neighbors in any future application.

Exhibit C-26.

18. On July 6, 2021, the Murnanes emailed CCC Dunn with complaints that OVVW was violating the CUP by allowing RV camping on the property and by allowing vehicles to park along the entrance driveway, contrary to its approved parking plan. The Murnanes also lodged a complaint about noise from a wedding event taking place on the property on July 3, 2021. The July 6, 2021, emails included photographs taken during an earlier

February 3, 2021, wedding event, which show vehicles parked along the OVVW driveway and next to the fence separating the OVVW and the Murnanes' properties. The emails also included photographs of RVs on the OVVW property and a screen shot from a noise measurement application appearing to show a reading of 74 decibels. CCC Dunn emailed County Fire Marshal David Lynam the same day to inform him that she spoke with Linda Murnane about OVVW hosting wedding events on the property that were not advertised on their website but posted on Facebook and that she told Ms. Murnane that the County would have to show that the weddings were open to the public to prove OVVW was violating the CUP conditions. On July 11, 2021, the Murnanes provided CCC Dunn with screenshots from a "harvesthost.com" advertisement stating that two RV spaces were available on the OVVW site. *Exhibits C-15 through C-18; Exhibit C-32; Exhibit C-40.*

19. Around this same time, the County began receiving complaints about OVVW operations from other neighboring property owners, for example:
- On July 7, 2021, Dave Uebele stated that he could hear noise from OVVW events whenever he was outside on his property but not from within his house. He noted that the sound volume had not been loud enough to cause him to call law enforcement.
 - On July 9, 2021, Kevin Liger complained about disruptive and excessive noise coming from OVVW during outdoor events, sometimes two or three times a week, and requested that the County take corrective actions.
 - On July 12, 2021, Fredrick and Tina Fein complained that OVVW was violating the CUP by hosting concerts every weekend past 9 PM, hosting amplified outdoor wedding events past 9 PM, failing to comply with the parking plan, allowing RV camping on-site, and hosting events outside of the months allowed under the CUP. The Feins also raised concerns about the property's septic system being insufficient to serve the large number of guests attending events and about OVVW overselling wine and beer to patrons.

Exhibit C-41.

20. On July 12, 2021, CCC Dunn informed the Applicant that OVVW had five events planned for July, contrary to the 2017 CUP and the Applicant's agreement in June to limit events to no more than four per month. CCC Dunn stated that the Applicant would be required to cancel one of the July events to remain in compliance. She also informed the Applicant that DCD was actively investigating complaints from multiple neighbors about noise and RV camping on-site. The Applicant provided a response the same day, which notes:
- OVVW has scheduled only four music events for July, as shown on the OVVW website. OVVW had a private, family wedding on a Saturday evening at which music ended before 10PM, consistent with the County's noise ordinance.
 - On the day that we received a noise complaint from neighbors, the Applicant

measured noise at the west perimeter at 47 decibels. The County should not assume that a complaint is justified and, instead, should verify the complaint by measuring the decibel level at the property's perimeter.

- As for the RV issue, what permission is needed to have an RV stay for one night on personal property? OVVW accommodates Harvest Host (RV) members, who are allowed to stay on the premises for one night only, unless otherwise approved by OVVW. OVVW does not receive any payment for this service. Assuming that a permit is required, the Applicant will apply for one.

Exhibit C-27; Exhibit C-28; Exhibit C-57.

21. On July 15, 2021, the Murnanes distributed a flyer to surrounding neighbors that described the noise impacts to their property that they were experiencing from OVVW outdoor concerts. The flyer also asserted that OVVW was operating in violation of the CUP by providing overnight RV camping sites, exceeding the allowable attendee limit at events, holding outdoor concert events outside of approved months and after 9 PM, and offering an extensive food menu and the sale of beer. The flyer stated that neighbors concerned with OVVW operations could contact County officials or submit an online code compliance request. The County thereafter received additional complaints from neighboring property owners. For example:

- On July 15, 2021, Elena Komrosky complained about the noise from OVVW events, noting that she has to shut her windows during events to enjoy her home. She also complained about the number of vehicles parked on the property and raised concerns about potentially intoxicated drivers.
- On July 19, 2021, Ms. Fein raised concerns about a large portable structure on OVVW property, located close to the border of her property.
- On July 20 and 26, 2021, the Murnanes reiterated their complaints about noise, parking, and attendance levels at OVVW events.
- On July 26, 2021, Mr. Liger complained about drum noise from a July 24, 2021, OVVW event, noting that he documented a 70 to 72 decibel reading at his residence.
- On July 31, 2021, James and Jessica Garner complained about noise from OVVW events and about OVVW patrons trespassing on their property.
- On August 24, 2021, Ms. Fein reiterated her complaints about noise from events, including private events. She stated that the number of private events together with public music events appeared to exceed that allowed under the CUP. She also complained about the conduct of intoxicated patrons of OVVW.
- On August 25, 2021, Mr. Garner reiterated his concerns about OVVW patrons trespassing on his property and provided photographs in support.

Exhibit C-41; Exhibit C-57.

22. On July 21, 2021, (while the County was still receiving complaints from neighboring property owners) Mr. Diener emailed the Applicant to inform it of the County’s position that OVVW was operating in violation of the CUP conditions, noting that all OVVW events for public attendance, including free events, are required to be included within the four event per month limit; private wedding events also are also required to be included within the four event per month limit; RV camping is beyond the scope of the CUP and would require a CUP amendment; and parking outside of the event location was not represented in the CUP application and was not approved with the CUP. The email further stated:

Remedy

DCD and the County Commissioners are getting complaints and emails with documentation on a near daily basis. We have also been advised the Sheriff’s Office has been called to address complaints as well. This communication shall serve as notice to you that DCD is aware of activities occurring and conditions existing at the [OVVW] site that may be in violation of your CUP and are giving you reasonable opportunity to correct those conditions and activities. Failing to do so may lead to additional enforcement action including revocation of the conditional use permit.

The following issues require immediate actions:

1. The total number of events cannot exceed 4 per month, including both public events and private events. You will need to cancel events in July and in any subsequent month where more than 4 public or private events are scheduled.
2. Ensure you are compliant with noise limits of 55 DbA.
3. No further RV camping is allowed, and RVs must vacate the property.
4. If a membrane/tent structure exceeds 400 sf it cannot be used until a Fire Marshal tent permit is secured.
5. Parking outside the venue must cease immediately.

Exhibit C-29.

23. The Applicant provided a response to Mr. Diener’s email the same day, which argued:
- The Applicant and the County agreed in June 2021 that private functions would not be considered events subject to a four per month limit but, instead, the limit would apply to “any shows, etc. that are advertised for ticketing (whether free or not).”
 - Now that the County has “pointed out that the CUP specifically states that a wedding is an event, yes, we will have to go to a public hearing so that the language in the CUP can be amended to reflect our understanding.”

- The Applicant had assumed that “Goats and Grapes” event, although ticketed, was not an OVVW event. It was held on OVVW property during normal operating hours and the money went directly to the host. If approached by other charities to do the same, OVVW will respectfully decline. OVVW otherwise held four music events in July and beyond.
- The Applicant performs sound checks at every music event to ensure that the sound level complies with the County noise ordinance. The Applicant insists that DCD personnel come to the property during events to measure the sound levels with DCD approved and calibrated sound measurement devices rather than rely on complaints from neighbors.
- OVVW allows up to two RVs to park on the property for one night only. There is no water or electric hookup provided and wastewater and other refuse is contained within the RV, with no dumping of waste allowed. Please direct the Applicant to the section of the County code demonstrating noncompliance, and the Applicant will obtain any necessary permits.
- OVVW does not allow offsite parking for events for insurance liability purposes. Vehicles often park outside the venue to access other tourist attractions in the area.

Exhibit C-30.

24. On July 24, 2021, Mr. Diener went to the right-of-way outside of the OVVW entrance and documented the following observations:

- The event was signed as a private event.
- I could clearly hear the band playing Def Leppard’s ‘Pour some sugar on me’. I have no idea of the Db readings.
- Cars were not parking in the [right-of-way], but cars lined the private entrance and were parked next to the vineyard.
- At 9 PM sharp, a Sheriff’s vehicle entered.
- At 9PM the band ended and I heard: “*Thank you . . . Please tip your waitresses and thanks for supporting Olalla Valley Winery and (Mod? Something). We are done playing, but we are not done drinking!*”

Exhibit C-33.

25. On July 31, 2021, Mr. Diener again went to the right-of-way outside of the OVVW entrance and documented the following observations, “At 8:50, I could hear event participants, but no music, and the sounds of people cleaning up the event. In my opinion they have ignored our latest request to ‘cure’ over-scheduling issues and are ripe for revocation.” *Exhibit C-34.*

26. Land Use Consultant William Palmer, on behalf of the Applicant, addressed the alleged CUP violations in an August 20, 2021, letter to Mr. Diener. In the letter, Mr. Palmer asserted that:

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- The CUP conditions did not place any limits on the number of events that could be held between the months of June and September and the hours of 9 AM and 9 PM.
- Even if the CUP conditions limited the number of public events, it contained no limitation on the number of private events that could be held on the property
- The County has not verified any violation of the noise regulations. The Applicant has invited the County to come to the property during music events to measure sound levels and, if sound levels exceed noise regulations, the Applicant will take appropriate measures to reduce the sound levels.
- The Applicant agrees to prohibit RV overnight stays on the property.
- The Applicant does not believe that parking outside of the property on the right-of-way is occurring as a result of OVWW events.

Exhibit C-31.

27. The County continued to receive complaints from neighboring property owners about OVWW operations through November 2021. For example:
- On September 2, 2021, the Murnanes asserted that OVWW was not following its parking plan and provided photographs documenting attendee parking at an August 20, 2021, music event to support their assertion. They also complained about noise and vehicle parking associated with an August 27, 2021, music event and an August 28, 2021, private wedding event. In addition, the Murnanes asserted that an RV was parked overnight on the OVWW property and that the Applicant was continuing to advertise overnight RV parking on the Harvest Host website.
 - On September 10, 2021, Mr. Murnane reported a noise complaint to the Kitsap County Sheriff's Office. The Murnanes also emailed Mr. Diener and CCC Dunn to report that vehicles, including RVs, were parked on the property on this date in violation of the parking plan. The Murnanes attached a photograph to the email, which shows an RV parked near the fence separating their and OVWW's properties.
 - On September 23, 2021, the Murnanes reported that an RV parked on the OVWW property the previous day was still on the site.
 - On September 24, 2021, the Murnanes again reported that an RV was parked overnight on the OVWW property.
 - On October 12, 2021, the Murnanes again reported that an RV was parked overnight on the OVWW property.
 - On October 22, 2021, the Murnanes provided the County with an advertisement for an October 22, 2021, open mic night at OVWW that included a free glass of wine.
 - On October 29, 2021, Ms. Fein provided the County with an OVWW advertisement for a November 5, 2021, indoor music event.

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- On November 2, 2021, the Murnanes provided the County with a link to the OVVW website, which states that the wine tasting room has a portable bar.
- On November 4, 2021, Ms. Fein provided the County with an OVVW advertisement, which states that the tasting room would be open to guests by appointment or drive-in November through April.
- On November 12, 2021, Ms. Fein noted that the OVVW held an indoor concert on November 5, 2021, that cars were parked in the rain saturated field, and that noise from concert patrons (but not music) continued past 9 PM. Ms. Fein also provided the County with an OVVW advertisement stating that the tasting room would be available for walk-in appointments and an advertisement for a December 11, 2021, Holiday Gift Market event in the tasting room.
- On November 29, 2021, the Murnanes provided the County with an advertisement from a May 28, 2021, music event, which they noted was outside of the June through September period approved for outdoor event.

Exhibits C-35 through C-39; Exhibits C-42 through C-5.

CUP Revocation

Procedural Matters

28. Ultimately, DCD determined that it and the Applicant were at an impasse. Accordingly, it requested revocation of the CUP and scheduled a revocation hearing for October 14, 2021. Stuart Chisholm and Mary Ellen Houston (hereafter “Respondent”) requested a continuance of the hearing to allow them adequate time to find an attorney, which request was unopposed by the County. On October 7, 2021, the Hearing Examiner entered an order granting the request for continuance and setting a new hearing date for December 9, 2021. The order also provided a schedule for the submission of dispositive motions, witness and documents lists, and hearing briefs. The next day, the Attorney Laura Zippel, on behalf of the County, filed a notice of unavailability and a motion to amend the Hearing Examiner’s order to revise and clarify the motion and briefing schedule and to hold a prehearing conference on the matter.

On October 13, 2021, the Hearing Examiner entered an order setting a prehearing conference for October 20, 2021, to clarify the scheduling of the hearing, the briefing schedule, and other procedural matters. Following the prehearing conference, the Hearing Examiner entered a Pre-Hearing Order on October 21, 2021, which continued the hearing date to December 16, 2021; required the County to produce a Statement on Grounds for Revocation by November 3, 2021; allowed the parties to produce a memorandum to address what level of public participation at the public hearing would be appropriate; and set a revised schedule for the submission of dispositive motions, witness and documents lists, and hearing briefs. *Notice of Public Hearing, published September 29, 2021; Respondent Request for Continuance, dated October 4, 2021; Hearing Examiner Order on Request for Continuance, dated October 4, 2021; County Motion to Amend Order on Request for Continuance, dated October 7, 2021; Hearing Examiner*

Order on Pre-Hearing Conference, dated October 13, 2021; Pre-Hearing Order, revised October 21, 2021; Revised Notice of Public Hearing, published October 7, 2021; Second Revised Notice of Public Hearing, published December 1, 2021.

29. Consistent with the Hearing Examiner’s Pre-Hearing Order, on November 3, 2021, the County submitted a Statement on Grounds for Revocation, which listed the following as alleged violations of the CUP:
- Exceeding the number of outdoor events per month.
 - Exceeding the maximum number of attendees permitted per event.
 - Parking for events in violation of approved parking plan.
 - Allowing use not permitted in CUP with overnight stays for guests with RVs.
 - Operating as a wine bar instead of as a wine tasting room.
- County Statement of Grounds for Revocation, dated November 3, 2021.*
30. The same day, the County submitted a memorandum that noted the parties’ agreement that the hearing should not allow for public testimony but, instead, that only those witnesses identified and called by the parties would be allowed to testify. On November 17, 2021, the Respondent filed a motion to dismiss the CUP revocation matter, which it later moved to withdraw. *County Memorandum in Support of Closed Record Hearing, dated November 3, 2021; Respondent Motion to Dismiss, dated November 11, 2021; Affidavit of Stuart Chisholm in Support of Motion to dismiss, dated November 11, 2021; Respondent Request to Withdraw Motion to Dismiss, dated November 19, 2021.*
31. On November 24, 2021, the Hearing Examiner entered an order granting the Respondent’s motion to withdraw its motion to dismiss. The order also clarified the how the hearing would be conducted in light of the parties’ agreement, stating:

To clarify, the issue before the Hearing Examiner is not whether this should be a “closed record appeal” hearing (where review is limited to a previous decision and administrative record). But, rather whether the revocation hearing should use the same procedures as for the original CUP application with public testimony (an “open record application hearing”) or should use the procedures for an appeal hearing with testimony limited to those identified and called on by the parties (an “open record appeal hearing”).

Because the parties agree, the revocation hearing will be limited to exhibits and witnesses identified by the parties by Noon, December 2, 2021, as set out in the October 21, 2021, Revised Pre-Hearing Order. While members of the public are welcome to “attend” the hearing (held using remote meeting technology), public testimony will not be solicited.

Again, only those witnesses specifically identified—in advance—by the parties to this revocation hearing will be called upon to testify.

Hearing Examiner Order on Hearing Type and OVVW's Request to Withdraw Motion to Dismiss, corrected November 24, 2021.

Prehearing Briefs

32. On December 9, 2021, the County submitted a prehearing brief, in which it asserts:
- OVVW's authorized uses under the 2017 CUP are limited to a winery, tasting room, and a limited, low-impact events venue. OVVW expanded the limited, low-impact events venue use approved by the CUP by holding more than four events per month and by allowing more than 100 attendees at the events. OVVW also expanded the tasting room use approved by the CUP by operating a drinking establishment. In addition, OVVW admits to allowing RVs to stay on the property overnight, which is neither a permitted use under applicable zoning regulation nor a use authorized by the CUP.
 - The approved site plan details specific areas on the property reserved for event parking for 45 vehicles. OVVW violated the approved site plan by allowing parking along the property's fence line, outside of the reserved parking areas.
 - OVVW's unlawful expanded uses render the CUP conditions insufficient and ineffective. The CUP application review process and the CUP approval were based upon the limited uses proposed by OVVW, and the conditions of approval were designed to specifically address impacts of the limited uses. OVVW's unlawful expansion of the uses proposed and approved by the CUP has resulted in impacts to the surrounding residential community.
 - The County notified OVVW of the violations on multiple occasions and provided OVVW with a reasonable opportunity to cure the violations. OVVW refused to come into compliance.

County Prehearing Brief, dated December 9, 2021.

33. On December 9, 2021, the Respondent submitted a prehearing brief, which asserts:
- The County did not follow its civil enforcement code and, therefore, the CUP revocation matter should be remanded to allow the County to issue a notice of infraction for the alleged violations, consistent with the County code and state law.
 - OVVW has not violated the CUP by hosting outdoor events. The CUP does not place any limitation on the number of outdoor events allowed per month but, rather, merely states that outdoor events will include two to four weddings and/or other events per month. The CUP application materials demonstrate that the Respondent intended the two to four event range to be only an estimate and not a limitation on the total number of outdoor events.
 - The County has not provided any credible evidence demonstrating that OVVW has held outdoor events with more than 100 attendees. The only evidence

provided to support this allegation is a table from OVVW's Facebook page, which indicated only how many people were "interested" in attending various events.

- OVVW has operated parking at the site consistent with the previous Hearing Examiner's decision and OVVW's site plan. The County overlooks the fact that the Hearing Examiner specifically noted that the graveled driveway and entry area could accommodate additional vehicles. In addition, OVVW's site plan clearly shows multiple parking spots within that driveway and parking area. The County also appears to take issue with vehicles parking along OVVW's outer fence. But the County raised this issue for the first time in the staff report for the CUP revocation, leaving OVVW no reasonable opportunity to cure the alleged violation.
- OVVW does not allow RV stays on its site as part of OVVW's business. Rather, OVVW is part of Harvest Hosts, a membership program for RV owners providing single night RV camping at wineries, breweries, and distilleries that is popular amongst similar small businesses in the area and throughout Washington State. While the RV owner is technically obligated to purchase an item from OVVW, OVVW does not enforce that obligation due to code compliance considerations. Moreover, this is an alleged code violation issue that should not warrant CUP revocation. Accordingly, this issue is fit for resolution between the County and OVVW, and the Hearing Examiner should disregard what amounts to an alleged code violation improperly framed as a basis for CUP revocation.
- OVVW operates a code compliant wine tasting room in accordance with industry standards. The County merely speculates that, under industry standards, OVVW operates its tasting room as a wine bar rather than a tasting room by offering by-the-glass or bottle servings instead of offering only free samples of wine products. OVVW's industry expert opines that OVVW's services are conducted in the same manner as other wine tasting room facilities throughout the Washington wine growing area and throughout the country. The County's own definition of tasting room under KCC 17.455.030, which is inapplicable in this matter because the CUP vested to regulations in effect prior to adoption of KCC 17.455.030, does not restrict tasting rooms to offering only free samples. OVVW's tasting room is not a "drinking establishment" under KCC 17.110.228 because it is not primarily engaged in the retail sale of alcoholic beverages for consumption on the premises. 61.7 percent of OVVW's revenue is derived from retail and wholesale wine sales for consumption by the bottle, including on and off premises, whereas a mere 4.1 percent is derived from wine sales by the glass. In addition, this allegation concerns an alleged code violation, not a violation of the CUP.
- The County's argument that OVVW violated a CUP condition limiting tasting room activities to appointment only in November through April should not be considered because the County did not include this allegation in its statement of

grounds for revocation. The County's argument that OVVW violated the noise ordinance should not be considered for this reason as well.

Respondent Prehearing Brief, dated December 9, 2021.

Revocation Hearing

34. At the outset of the hearing, Attorney Alan Wallace, on behalf of the Respondent, requested that several of the County's exhibits pertaining to complaints about noise from OVVW events be excluded from the record because the County did not identify noise as a basis for CUP revocation in its Statement on Grounds for Revocation. Specifically, Attorney Wallace requested the Hearing Examiner to exclude Exhibits C-7, C-11, C-32, C-35, C-37, C-38, and C-57, on this basis. He also requested the Hearing Examiner to exclude Exhibits C-49 through C-51, which relate to the County's allegation that the Respondent violated the CUP by allowing wine tasting to occur between the months of November and April without an appointment, again noting that the County did not identify this issue as a basis for CUP revocation in its Statement on Grounds for Revocation. The Hearing Examiner denied Attorney Wallace's request to strike exhibits from the record. In denying the request, the Hearing Examiner explained that his decision on the CUP revocation matter would not be based on issues not properly identified by the County and noticed to the Respondent. The Hearing Examiner also noted that he is not strictly bound by the rules of evidence and that he would afford weight to the evidence only as appropriate to the relevant issues. *Arguments of Attorney Wallace; Oral Ruling of Hearing Examiner.*
35. Attorney Wallace also requested that the Hearing Examiner prohibit County witnesses Linda Murnane and Tina Fein from testifying at the hearing, asserting that the parties had agreed to prohibit members of the public from providing testimony at the revocation hearing. The Hearing Examiner denied Attorney Wallace's request, noting that his Pre-Hearing Order specifically provided that testimony would be limited to witnesses identified on the parties' witness lists and that Linda Murnane and Tina Fein were identified on the County's witness list. *Arguments of Attorney Wallace; Hearing Examiner Order on Hearing Type and OVVW's Request to Withdraw Motion to Dismiss, corrected November 24, 2021; Oral Ruling of Hearing Examiner.*

County Witnesses

36. County DCD Manager of Development Services and Engineering Scott Diener testified that he provided oversight and guidance to County staff when preparing the staff report and recommendation for the Respondent's 2016 CUP application. He stated that he also assists the County's code compliance division in understanding potential code compliance issues and in determining what actions would be needed to achieve compliance. Regarding the 2016 CUP application, Mr. Diener explained that he understood the CUP request to include only a continuation of the limited, non-amplified music events that were already taking place at OVVW and that this understanding of the request guided County staff's review of the impacts likely to occur from the request. He

noted that County staff did not distinguish between private and public events because the goal was to mitigate for impacts. Mr. Diener noted that conditions of the CUP limit the number of events that could take place at OVVW each month and detailed his discussions with the Respondent about the number of events at OVVW exceeding this limit. He explained that, throughout the course of their discussions on this issue, the Respondent indicated disagreement about the type of events that were subject to this limitation, acknowledging that he could have been clearer in his communications that the limitation applied to all outdoor events, whether private or open to the public. Mr. Diener also stated that the Respondent's approved site plan depicted parking spaces on the site, explaining that the Respondent was allowing parking along the western property line inconsistent with the approved site plan. He explained that the County utilized a computer program to analyze a photograph taken from an OVVW event, which determined that 131 attendees were in the photograph in violation of the 100-attendee limit. Mr. Diener stated that County staff determined that the Respondent was operating OVVW in violation of the CUP and that the County provided the Respondent with a reasonable opportunity to cure the violations but that the Respondent has failed to do so.

In response to questioning from Attorney Wallace on cross-examination, Mr. Diener acknowledged that neither the CUP application materials nor the CUP decision referenced unamplified music for events at OVVW. He stated that, although it is not unlawful under the County code for businesses to allow parking in a right-of-way, the CUP application was not reviewed for overflow parking impacts and the number of parking spaces included in the approved site plan was meant to accommodate the 100-attendee limit for OVVW events. Mr. Diener noted that he visited the entrance to the site on a couple of occasions and did not see any vehicles parked in the right-of-way. He stated, however, that several photographs provided to the County show vehicles parked along the site's western property line, inconsistent with the parking spaces depicted in the approved site plan. He acknowledged that the OVVW event photograph appearing to show more than 100 persons at an event did not show whether some of the persons were employees or vendors. Mr. Diener also acknowledged that he did not attend any events on-site to determine if the number of event attendees exceeded the required limit. He stated that overnight RV stays could be considered as accessory to an allowed agritourism use but asserted that the RV overnight stays would still violate the CUP because they were not proposed in the CUP application and are likely associated with the conditional event use of the property. Mr. Diener noted that the Respondent has invited County staff to visit the property during OVVW events to evaluate whether it was operating consistent with the CUP conditions, but he explained that it would be inconvenient for staff to attend the events because they are often held during evenings or weekends. He explained that, should the CUP be revoked, the Respondent would still be able to operate the primary wine and vineyard business, including the tasting room.

Testimony of Mr. Diener.

37. County Fire Marshal and Deputy Building Officer David Lynam testified that the County building and fire codes provide a broad range of code enforcement tools. He noted that compliance actions generally begin by advising a person in a letter of the alleged violation and the County's actions that would occur in response to the violation. Mr. Lynam explained that the County would then seek voluntarily compliance and, if the request for voluntary compliance is ineffective, to seek compliance measures such as issuing citations or revoking permits. He noted that civil infractions may not be effective to cure a violation because violators may simply pay a penalty as part of the cost of doing business and continue unpermitted actions. This has been a problem with other, similar businesses in the past. Mr. Lynam stated that the County decided not to issue civil infractions for the violations alleged in this matter because, apart from its potential ineffectiveness, the code references revocation as an appropriate remedy for violation of CUP conditions. He also stressed that the code does not require the issuance of civil infractions before seeking CUP revocation. Mr. Lyman noted that the evidence in support of the alleged violations includes numerous photographs, statements from neighboring property owners, and information provided from OVVW social media postings and website. He explained that he instructed County staff to verify the allegations provided in the neighboring property owners' complaints. Mr. Lyman stated that County staff's investigation confirmed that OVVW exceeded the four events per month limit in July 2019, August 2019, June 2021, and July 2021. He explained that these events included any outdoor events, including concerts, weddings, opening day events, a goat petting event, and anything taking place at the winery. Mr. Lyman further stated that County staff documented at least one outdoor event held at OVVW in May 2021, outside of the June through September timeframe allowed under the CUP, and that OVVW had cancelled a harvest festival event that would have been held outside of the allowed timeframe. He asserted that, in addition to the documentary evidence demonstrating noncompliance with the 100-attendee limit for events, the Respondent spoke to the difficulty in maintaining this limit and that OVVW now limits ticket sales to 80 per event to ensure that it does not exceed the guest limitation.

On cross-examination, Mr. Lynam testified that an OVVW Facebook post provided to the County by a complainant showed that 486 people had attended a concert event on the site. When asked whether this attendee count was plausible or accurate, Mr. Lynam responded in the affirmative but confirmed that no member of County staff attended any event to verify violations of the 100-person attendee limit. He explained that the purpose of code enforcement is to encourage voluntary compliance but had no knowledge of whether the Respondent is attempting to comply with the 100-person limit for events.
Testimony of Mr. Lynam.

38. Linda Murnane testified that she lives on a seven-acre property located just to the west of the OVVW property line and that her house is located approximately 300 feet from the outdoor stage on the OVVW site. She stated that OVVW operations prior to the new

ownership and CUP approval consisted of a small vineyard and winery with a tasting room and nonamplified music. Ms. Murnane explained that she does not oppose the business but had assumed that the new owners would operate OVVW in the same manner. She stated that she began contacting the County in 2019 to complain about the noise being generated on the property and about OVVW operations not complying with the CUP. Ms. Murnane noted that she began tracking OVVW operations through OVVW's website and social media posts, which she stated showed that OVVW was not complying with event and event attendee limitations of the CUP. She further noted that she began taking photographs of vehicle and RV parking taking place on the site in violation of the CUP and approved site plan.

On cross-examination, Ms. Murnane testified that the OVVW outdoor stage is visible from her backyard. She stated that she reviewed the 2016 CUP application and did not submit any comments on the proposal because it did not mention amplified music. Ms. Murnane noted that she did not attend any events to verify that the number of people attending the events exceeded the 100-person limit but stated that she was told by a concert performer that hundreds of people attended an event. She stated that she used a phone application and a decibel meter to verify that noise from the OVVW site was in violation of the County noise ordinance, acknowledging that she has not received any training in operating a sound measurement device. *Testimony of Ms. Murnane.*

39. Tina Fein testified that she lives on a 22-acre property located to the east of the OVVW property. She noted that she never had a problem with OVVW operations prior to its current ownership. Ms. Fein stated that she attended an event on August 19, 2019, which was very loud and at which she counted 118 people, saw no portable restrooms, and saw people bringing in their own alcohol in coolers. She explained that she started complaining to the County in 2021. Ms. Fein stated that she tracked 12 events at OVVW in August and that vehicles often park along the fence line during concerts. She also stated that she has observed RVs parking on-site during music events, but no more than two RVs at one time.

On cross-examination, Ms. Fein testified that she reviewed the 2016 CUP application and did not have any concerns because, from her interpretation of the application materials, only minimal seasonal events would take place. She stated that, although the proposal indicated that music concerts would take place, it did not clearly state that such concerts would be amplified. *Testimony of Ms. Fein.*

Respondent Witnesses

40. Land Use Consultant William Palmer testified that he was contracted by the Respondent to prepare the 2016 CUP application. He noted that the OVVW facility was already in place but that the CUP was required to continue operating the unpermitted wine tasting room. Mr. Palmer described his experience with subsequent permit applications for wedding event venues, which he stated has informed his view that the County has

concerns about allowing such uses in rural areas. He stated that he has concerns about the County failing to provide adequate notice of, and clear instructions on how to cure, the alleged violations leading to the County's actions in seeking revocation of the CUP. Mr. Palmer noted in this regard that code compliance matters typically begin with a letter from the County detailing the alleged violations, with specific code references, and providing a deadline for responding to the allegations. He explained that the project narrative submitted with the CUP application indicated that two to four outdoor weddings would be held each month, that he did not believe the limitation to apply to outdoor concert events, and that weddings on the property have not exceeded this limitation. Mr. Palmer detailed his involvement with the correspondence between County staff, consistent with the findings above, and with the Respondent's good faith efforts to resolve the matter. He stated that the County's efforts to address the noise complaints from neighboring property owners by seeking a CUP revocation for allegedly exceeding the number of events at the property is inappropriate and that the County should, instead, verify the complaints by measuring the noise at an event.

On cross-examination, Mr. Palmer acknowledged that the staff report prepared for the 2016 CUP request indicated that the Respondent planned to hold 2 to 4 weddings and/or outdoor events per month on weekends during June through September. He explained on redirect, however, that he did not believe the limitation to strictly apply to all outdoor events based on language in the staff report and the former Hearing Examiner's CUP decision, particularly because the CUP conditions did not include any specific reference to this limitation. *Testimony of Mr. Palmer.*

41. Christina Civiletti testified that she has worked in code enforcement since 2005 and that she currently serves as a code enforcement manager in San Mateo, California. She explained that the County's actions leading to the CUP revocation matter are not in accord with industry standards, which dictate an escalation of code enforcement options rather than seeking the harshest penalty at the outset. Ms. Civiletti raised concerns with the notice provided to the Respondent about the alleged violations, noting that it is industry standard to issue a formal warning notice to the property owner of record, rather than an informal email, and that formal notice should include a specific reference to the violation, code provisions identifying the violation and authority for enforcement actions, instructions on how to cure the violation, and a timeline for required compliance actions. She stated that the notice and enforcement actions by the County here were contrary to the purpose of seeking voluntary compliance. She also raised concerns with the County's investigation of the alleged violations, noting that industry standards dictate that code enforcement officials verify alleged violations through their own site visits and photographs. Ms. Civiletti stated that information taken from websites and social media posts could appropriately form the basis for opening an investigation but that they should not be relied upon to prove the violations and, instead, the County should have conducted an independent investigation to verify that violations were occurring. She also raised

concerns about the County failing to verify noise complaints with a professional noise meter and about the County's use of a software program to analyze a photograph to confirm the number of attendees attending an OVWV event.

On cross-examination, Ms. Civiletti testified that she has not worked as a code enforcement officer for the County or within State of Washington. She acknowledged that the County code does not require that a civil infraction be issued prior to seeking CUP revocation but, on redirect, maintained that due process and industry standards dictate that the Respondent was not afforded appropriate notice and opportunity to correct the alleged violations. *Testimony of Ms. Civiletti.*

42. Scott Hall testified that he has been a long-time board member of the nonprofit Kitsap Community and Agricultural Alliance and that he was involved in the County's process in adopting its current agricultural code. He explained that, prior to the adoption of the agricultural code, certain accessory agricultural uses required approval of a CUP. Mr. Hall explained that the current agricultural code now allows for eight assembly events with up to 200 persons for each event with an assembly permit and that more than eight events may be allowed through the administrative CUP process. On cross-examination, Mr. Hall acknowledged that the Respondent's CUP application vested to the version of the County code prior to its adoption of the agricultural code. *Testimony of Mr. Hall.*
43. Respondent Stuart Chisholm testified that he and his wife, Respondent Mary Ellen Houston, purchased OVWV on December 30, 2015. He stated that OVWV had a tasting room and had previously been advertised as an event venue but that he later discovered that it had been operating without required permits for these uses, necessitating his request for a CUP. He explained that the County planner for the CUP had asked him to estimate the number of weddings that would occur on the property, which he stated was two to four wedding per month. Mr. Chisholm noted that he communicated in the application materials his intent to expand the uses of the property to include outdoor music events, stating that the County planner did not request him to clarify the number of outdoor music events that would be held at OVWV.

Mr. Chisholm explained that the Facebook postings provided to the County by a neighboring property owner, and utilized by the County to prove a violation of event attendee limits, reflected only the number of persons interested in the event and not the number of people who actually attended the event. Mr. Chisholm noted the CUP conditions provide him with a reasonable opportunity to cure alleged violations and stated that he was not provided this opportunity because the County never informed him about issues regarding parking along the western property line or operating a drinking establishment. In this regard, he also noted that he has made efforts to remedy alleged violations by clearing raspberry bushes to accommodate vehicle parking within the designated parking area, limiting ticket sales to 80 per event, informing guest to not park offsite, and discontinuing OVWV participation in the Harvest Host overnight RV parking

program. Mr. Chisholm detailed how OVVW was operating a tasting room as opposed to a drinking establishment, noting that the wine tasting room does not contain seating and that an advertised “bar” refers only to an outside table selling wine by the bottle or glass during events. He explained that OVVW has a state domestic winery license and that he has never received notice from the County about its concerns with wine sales on the property. Mr. Chisholm also noted that OVVW is phasing out wedding events and has begun referring people to another wedding venue.

On cross-examination, Mr. Chisholm testified that weddings events are held in the same months as music events. He stated that there was only one complaint about OVVW operations during 2019 and that there was a sudden escalation of complaints in 2021 after a neighboring property owner reached out to other property owners in the area about her concerns. *Testimony of Mr. Chisholm.*

Post-Hearing Briefs

44. The parties agreed at the hearing that the record would remain open until January 21, 2022, to allow for the submission of closing briefs, and the Hearing Examiner entered a post-hearing order memorializing the parties’ agreement. *Hearing Examiner’s Post-Hearing Order, dated January 18, 2022.*
45. The County submitted a post-hearing brief, which asserts:
 - Nothing in the County code requires a separate enforcement process to be followed before or during a CUP revocation, and neither the code nor state law requires a specific code compliance process to be followed prior to CUP revocation. Instead, both KCC 17.600.010 and KCC 21.04.280 unambiguously provide legal authority to the Hearing Examiner to revoke a CUP for noncompliance with its conditions. The County was not required to issue civil infractions prior to requesting revocation of OVVW’s CUP. Issuing a civil infraction would allow OVVW to pay a fine without requiring it to correct the violation.
 - The County’s investigation was thorough and procedurally compliant. The County did not rely on unverified information provided by the complaints but, instead, conducted its own investigation. When complaints were first received, the County used various methods to verify their accuracy. County staff spoke directly with the complainants; researched the allegations online through social media, OVVW’s own website, and other third-party websites; and conducted field visits to verify that events were occurring on-site.
 - The County provided ample notice to OVVW regarding the alleged CUP violations as evidenced by over two years of communications between the County and the Respondent. The County also provided reasonable opportunities to cure the CUP violations, but OVVW failed to do so.

- The County has provided substantial evidence that OVVW violated the CUP by holding more than four outdoor events per month, by not limiting event attendees to 100 persons or less per event, by allowing parking in violation of the approved site plan, by allowing overnight RV parking on-site, and by operating a drinking establishment instead of a wine tasting room.
- OVVW has failed to cure the violations in a timely manner.
- OVVW may argue that revocation is not appropriate at this time because it cured the majority of violations. However, not only do many significant violations remain, but the claimed fixes come too little too late, and OVVW's actions show a general unwillingness to comply.
- OVVW's use of the property for events using amplified sound constitutes a nuisance. The County is not asking for revocation for noise based on a violation of a specific condition in the CUP. Rather, the County is informing the Hearing Examiner that noise impacts do meet one of the standards in KCC 21.04.280.A as a basis for revocation. Although the County does not specifically allege a violation of the CUP condition requiring compliance with the County noise ordinance, Chapter 10.28 KCC, if the Hearing Examiner finds that the other violations have been cured, the Hearing Examiner should still revoke the permit under KCC 21.04.280(A)(4).
- The Agricultural Code is not relevant to the revocation proceeding and, if the CUP is revoked, OVVW may continue its winery and vineyard business without a permit.

County Post-Hearing Closing Brief, dated January 21, 2022.

46. The Respondent submitted a post-hearing brief, which asserts:
- OVVW is not limited to four total outdoor events per month. Language in the CUP decision stating that outdoor events were to include two to four weddings and/or other events per month only suggests, but does not require, that OVVW cannot have more than four total outdoor events per month. In preparing the CUP application, OVVW was only asked to specify the number of weddings it would hold per month, not total outdoor events. The quantity of weddings specified in the application was not intended as an express limitation on the total number of outdoor events that could be held at OVVW per month. In addition, the notion that OVVW is limited to no more than four events per month is refuted by a condition in the CUP stating that events may occur seven days per week.
 - OVVW has not purposefully held any events with over 100 attendees and the County has failed to provide any evidence to the contrary. As explained in the Appellant's prehearing brief, the only evidence provided to support this allegation is a table from OVVW's Facebook page, which indicated only how many people were "interested" in attending various events. Mr. Lyman testified that he had no personal knowledge of instances where guests at OVVW events exceeded 100 people. Although Mr. Lyman testified that the County imported a photograph

from an OVVW event into a computer program that identified more than 100 people in the photograph, the Appellant's code enforcement expert witness, Christina Civiletti, testified that the program can be inaccurate and unreliable. OVVW has deliberately changed its procedures over the years to guarantee that its live music events have no more than 100 attendees, including limiting ticket sales to 80 per event. It should also be noted that the 100-attendee limit imposed under the CUP is more restrictive than what is permitted outright under the current County Code.

- The County cannot seek revocation of OVVW's CUP based on purportedly operating a drinking establishment because it did not provide notice and opportunity to cure. The County is also preempted from regulating OVVW's wine sales pursuant to its Washington State Liquor Control Board domestic winery operations license.
- The County's allegations regarding vehicular and RV parking do not support revocation of the CUP. Regarding RV parking, Mr. Diener conceded at the hearing that OVVW's participation in the Harvest Host Program could be deemed a permissible accessory use to agritourism under the County Code. Despite this concession, OVVW has voluntarily discontinued its participation in the Program. Therefore, OVVW prior participation in the Harvest Host Program, which the County admits may have been a permissible accessory use all along, is no longer at issue and does not warrant revocation of the CUP. Regarding vehicle parking, there is no code requirement or CUP condition prohibiting overflow parking along public rights-of-way. OVVW had allowed parking along its fence line after the County incorrectly informed OVVW that overflow parking is not allowed along the public right-of-way. Although the County advised OVVW that parking outside the venue must immediately cease, it did not notify OVVW that occasional overflow parking along the fence line would violate the CUP. In any event, OVVW has remediated the overflow parking issue by replacing preexisting raspberry bushes with grass to create 10 additional parking stalls on the property.
- The minimal notice that OVVW received for revocation of the CUP violates fundamental principles of due process. The vague and conclusory notice the County provided to OVVW regarding revocation of its CUP does not comport with basic due process requirements because it did not provide sufficient information for OVVW to prepare its defense. The Hearing Examiner should decline the County's attempt to revoke OVVW's CUP based on this procedurally deficient notice.
- The unsubstantiated noise complaints from neighbors do not support revocation of the CUP, and the Hearing Examiner should strike from the record County exhibits focusing on noise issues. The County's Statement of Grounds for Revocation does not identify excessive noise as a basis to revoke the CUP, and the County has not provided any concrete evidence from a qualified noise expert demonstrating that any music event at OVVW exceeded 55 decibels. To the

extent the County was actually concerned about noise emanating from OVVW, it has procedures and tools at its disposal to address that issue. Having failed to utilize those tools and procedures, or identify excessive noise as ground for revocation, the County should not be permitted to level accusations and submit neighbors' complaints as evidence in this revocation matter.

Respondent Post-Hearing Brief, dated January 21, 2022.

JURISDICTION

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide a request by the County to revoke a conditional use permit. *KCC 17.600.010; KCC 21.04.280.*

Criteria for Review

KCC 17.600.020 provides:

Any master plan, performance based development permit, administrative conditional use permit, hearing examiner conditional use permit, or variance granted in accordance with the terms of this title, may be revoked if any of the conditions or terms of such permit or variance are violated, or if any law or ordinance is violated in connection therewith. If, after notice and hearing, a performance based development permit is revoked for a substantial violation of any of its conditions, the board of county commissioners may reconsider any zone change granted in connection with the performance based development, and restore the zoning existing prior to the permit notwithstanding improvements constructed prior to such revocations; but any such proposed change of zone shall follow the procedures otherwise specified herein for zone changes.

Under KCC 21.04.280:

- A. Any approval granted in accordance with the procedures of this chapter may be revoked if any one or more of the following grounds are established:
1. The approval or permit was obtained by fraud;
 2. The use for which such approval or permit was granted is not being executed;
 3. The approval or permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval or permit, or in violation of any statute, resolution, code, law or regulation;
 4. The use for which the approval or permit was granted was so exercised as to be detrimental to the public health or safety, or to constitute a nuisance;
 5. There are outstanding fees owed on the application and/or permit approval, and the time frame for the balance owed is not in

accordance with the department's adopted fee schedule and adopted fee policies.

- B. The hearing examiner shall hold a hearing on any proposed revocation after giving written notice to the permittee and/or owners of property consistent with Section 21.04.210.

The Hearing Examiner enters the following conclusions based upon the review criteria detailed above, and the testimony and exhibits admitted at the open record hearing:

CONCLUSIONS

Legal Principles

As an initial matter, it should be noted that the County code provisions governing the Hearing Examiner's review of a CUP revocation request provide little guidance on the standard of proof required to warrant CUP revocation or on the scope of the Hearing Examiner's authority to fashion remedies short of revocation upon a determination that violations of approval conditions have occurred. Regarding the standard of proof, however, the parties agree that the County bears the burden of establishing sufficient factual grounds to warrant CUP revocation under the substantial evidence standard. *See Respondent Prehearing Brief at 6; County Post-Hearing Brief at 3; Respondent Post-Hearing Brief at 8.* "Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Phoenix Development Inc., v. City of Woodinville*, 171 Wn.2d 820, 829, 256 P.3d 1150 (2011).

Regarding the Hearing Examiner's authority to fashion appropriate remedies in CUP revocation matters, KCC 21.04.280 provides only that, following a hearing on the matter, the Hearing Examiner "may" revoke a permit if it is established (by substantial evidence) that a CUP is being, or has recently been, exercised contrary to the conditions of approval or in violation of the code. The provision's use of the word "may" indicates that the Hearing Examiner is not required to impose the extraordinary remedy of revoking a CUP even upon a determination that the conditions of approval have been violated. Rather, the Hearing Examiner retains discretion to fashion a remedy short of revoking the CUP. This interpretation of the Hearing Examiner's discretionary authority in CUP revocation matters is supported by the broad authority granted to the Hearing Examiner during the CUP review process to impose reasonable conditions ensuring that a proposed use would comply with requirements of the code; improve compatibility with surrounding land uses; protect the public health, safety, and welfare; and satisfy the specific criteria for CUP approval, as well as by the underlying purpose of the Hearing Examiner system to afford procedural due process and fundamental fairness. *KCC 2.10.020; KCC 17.550.030.* With these principles in mind, the Hearing Examiner addresses the County's request to revoke the CUP issued to the Respondent.

Notice and Reasonable Opportunity to Cure

At the outset and throughout these proceedings, the Respondent has argued that fundamental principles of due process required the County to provide adequate notice of the violations alleged and a reasonable opportunity to cure the violations. The Hearing Examiner agrees but need not rely on constitutional due process principles in support because these requirements are inherent in the 2017 CUP condition specifically stating that “[b]efore revocation occurs, the Applicants shall be afforded a *reasonable* opportunity to cure the violation.” *Exhibit C-1; Exhibit A-1 (emphasis added)*. In the Hearing Examiner’s view, a “reasonable” opportunity to cure should include, at a minimum, adequate notice of the *specific* conduct alleged to be in violation of the CUP, *clear* instructions on how to cure the alleged violations, a provided timeframe specific to demonstrate compliance, and adequate warning of the penalty sought to be imposed for a failure to cure the violations as instructed.

The Respondent asserts that the County was required to issue civil infractions prior to seeking revocation of the CUP. Although the Hearing Examiner agrees that this practice would ensure that the County provides reasonable notice and opportunity to cure alleged violations prior to seeking CUP revocation, the Hearing Examiner disagrees that issuance of civil infractions is a prerequisite to seeking CUP revocation.² The CUP revocation provisions of the County code, KCC 17.600.020 and KCC 21.04.280, do not explicitly state that issuance of civil infractions is required prior to CUP revocation, and the Respondent’s own code enforcement expert, Christina Civiletti, conceded at the hearing that the County code does not impose any such requirement.

Here, the Hearing Examiner concludes the County provided reasonable notice of the alleged violations and opportunity to cure the alleged violations no earlier than July 21, 2021. The communications from the County to the Respondent about the alleged violations prior to this date were either inadequate to provide a reasonable opportunity to cure or suggested that the Respondent had taken reasonable actions to cure alleged violations. For example, the September 17, 2019, email from County Code Compliance Coordinator (CCC) Kim Dunn to the Respondent requested an “informal meeting” to discuss the County’s concerns regarding complaints about the number of OVWV events and attendance levels at the events but did not provide any specific allegations of a CUP violation or instructions on how to cure the violations. *Exhibit C-19*. CCC Dunn’s “reminder notice” on October 29, 2019, similarly failed to allege any specific violations of the conditions of permit approval and, again, merely requested a meeting with the Respondent to address complaints. *Exhibit C-20*.

DCD Assistant Director Angie Silva’s May 28, 2020, letter to the Respondent specified the County’s allegations that the Respondent was violating the conditions of the CUP limiting events to four per month and attendee limits to 100 people per event, provided instructions on how to cure the violations, and stated that failure to cure the violations could result in a revocation of the CUP. Although this notice appears sufficient to provide a reasonable opportunity to cure the

² However, use of the civil infraction process, which involves the issuance and potential escalation of fines, likely would have resulted in earlier clarification of the 2017 CUP limitations on events, etc.

alleged violations consistent with the earlier CUP decision, the County and the Respondent came to an agreement shortly thereafter about the CUP compliance matter, which included an understanding that private events were to be excluded from the four events per month limit.

Exhibit C-26. Although the County later clarified its position that all outdoor events, whether public or private, were to be included in the four event per month limit, it was reasonable for the Respondent to conclude that private outdoor wedding events were not included in this limitation prior to the County's clarification. Accordingly, the Hearing Examiner determines that the May 28, 2020, letter did not provide reasonable notice and opportunity to cure the violations at issue in this CUP revocation matter and, instead, relies on a July 21, 2021, email from Mr. Diener to the Respondent as providing the required notice of some, but not all, of the violations alleged in this matter.

On July 21, 2021, Mr. Diener emailed the Applicant to specify the County's allegations that OVVW was operating in violation of the CUP by: (1) conducting more than four outdoor events on the premises per month, including public, private, wedding, and free events; (2) allowing RV camping on-site; (3) allowing parking outside of the event venue; and (4) violating the County's noise ordinance. The July 21, 2021, email also provided instructions on the immediate actions required of the Respondent to cure the alleged violations, stating:

The following issues require immediate actions:

1. The total number of events cannot exceed 4 per month, including both public events and private events. You will need to cancel events in July and in any subsequent month where more than 4 public or private events are scheduled.
2. Ensure you are compliant with noise limits of 55 Dba.
3. No further RV camping is allowed, and RVs must vacate the property.
4. If a membrane/tent structure exceeds 400 sf it cannot be used until a Fire Marshal tent permit is secured.
5. Parking outside the venue must cease immediately.

Exhibit C-29.

In addition, the July 21, 2021, email notified the Respondent that failing to take the identified corrective actions "may lead to additional enforcement action including revocation of the conditional use permit." *Exhibit C-29.* Noticeably absent from this "notice," however, is any indication of a time certain to take the required corrective actions. In addition, subsequent correspondence between the Respondent and the County between the issuance of this notice and the County's request to revoke the CUP reveal that the parties had a fundamental disagreement about the requirements of the CUP that resulted in the Respondent's determination not to take the corrective actions identified in the July 21, 2021, notice. Specifically, the Respondent appears to have relied, heavily, on guidance from consultant William Palmer who opined in an August 20, 2021 letter that the 2017 CUP decision did not place limits on the allowable number of outdoor events because such limit was not explicitly detailed in the approval conditions and that the CUP decision placed no limits on private events at all. Like DCD, the Hearing Examiner strongly disagrees with Mr. Palmer's interpretation of the 2017 decision (as detailed more fully

below).³ Regardless, sufficient opportunity to cure the violations prior to the County’s revocation request was not provided or insufficient evidence substantiates that the violations have occurred thereby warranting permit revocation, as further detailed below.

Of note, too, the County agreed to produce a “Statement on Grounds for Revocation” prior to the hearing to clarify the grounds upon which the County would be seeking revocation of the CUP and to provide the Respondent an opportunity to prepare a defense against the stated grounds for revocation. That such a statement was necessary, in and of itself, speaks to the lack of a clearly identified compliance and abatement process occurring prior to the County seeking revocation.

That said, the County’s Statement on Grounds for Revocation listed the following as alleged violations supporting a revocation of the CUP:

- Exceeding the number of outdoor events per month.
- Exceeding the maximum number of attendees permitted per event.
- Parking for events in violation of approved parking plan.
- Allowing use not permitted in CUP with overnight stays for guests with RVs.
- Operating as a wine bar instead of as a wine tasting room.

County Statement of Grounds for Revocation, dated November 3, 2021.

Because the July 21, 2021, email from Mr. Diener to the Respondent provided the first reasonable notice and opportunity to cure alleged violations and because the County restricted the bases for CUP revocation to those identified in the Statement on Grounds, only those violations alleged in *both* the July 21, 2021, notice *and* the Statement of Grounds are properly before the Hearing Examiner in this matter. Accordingly, the Hearing Examiner does not address issues related to excessive noise at OVWV events or the allegation that OVWV is operating a wine bar or drinking establishment rather than a wine tasting room. If the County wishes to pursue revocation of the CUP based on these alleged violations, it must first provide the Respondent with the appropriate notice and opportunity to cure, as outlined in this decision.

Remaining Alleged Violations

Limitation of Number of Events Allowed Per Month

The County asserts that the Respondent violated conditions of the CUP that limit outdoor events to four per month. In response, the Respondent argues that the 2017 decision did not contain any such limitation on the number of outdoor events that could be held at OVWV. The Hearing Examiner determines that, when read as a whole, the 2017 decision approving the CUP intended to limit the number of outdoor events at the property to four per month. The Hearing Examiner recognizes, however, that this limitation could have been made clearer in the 2017 CUP decision and therefore determines that revocation of the CUP based on this violation would not be

³ Of note, too, the Applicant/Respondent explicitly acknowledged a limitation of four outdoor events a month in emails from 2019 and 2020, as seen in Exhibits C-21 and C-23.

appropriate. Moreover, the record does not clearly establish that the Respondent violated the event limitation after being afforded appropriate notice and opportunity to cure in the July 21, 2021, email from Mr. Diener.

The 2017 CUP decision specifically referenced the number of outdoor events proposed to be held at OVVW during months of June through September, stating in relevant part in Finding 1.11: “Outdoor events, to include two to four wedding and/or other events per month, would operate June through September, from noon to 9:00 p.m., for a maximum of 100 guests.” Contrary to the Respondent’s arguments, the most sensible interpretation of this language provides that *all* outdoor events, including both wedding and other events, would be limited to no more than four per month during the months of June through September. As such, the prior CUP approval reviewed the impacts of the proposed use against this limitation and did not, as the Respondent contends, approve a conditional use with no limitation on the number of “non-wedding outdoor events” that could be held in the summer season. In addition, the prior CUP approval did not make any distinction between private and public outdoor events, and it is difficult to discern why any such distinction would be relevant absent some indication that a private event would have different impacts than a public event. Although the conditions of the CUP that reference outdoor events did not explicitly state that they were to be limited to no more than four per month, another condition of the CUP specified that the “uses of the subject property are limited to the uses proposed by the Applicant.” *Exhibit C-1; Exhibit A-1*. While the Respondent has argued that the limitation of four events was something it “arbitrarily suggested” when applying for its CUP back in 2016, nothing in the record suggests the former Hearing Examiner reviewed the proposal and its potential impacts with a different number of events in mind. *Exhibit C-23*. Accordingly, allowing more than four outdoor events per month constitutes a violation of the CUP conditions.

Substantial evidence supports a determination that the Respondent held more than four outdoor events a month on the property, in violation of the 2017 CUP, at various times prior to July 2021. This evidence, however, includes event calendars published on OVVW’s website and in social media postings, as well as the Respondent’s own admissions, referring to events held prior to Respondent being afforded appropriate notice and opportunity to cure in the July 21, 2021, email from Mr. Diener. As such, substantial evidence does not support the conclusion that the Respondent violated the CUP in this manner *after* this date and, therefore, the Hearing Examiner declines to revoke the CUP on this basis.

Because this decision now makes clear that the “four outdoor event limitation” applies to all outdoor events—whether public or private, and whether involving a wedding or other outdoor event such as a concert—the Respondent must henceforth adhere to this requirement or seek an amendment of the CUP to allow additional events per month moving forward. **More succinctly, OVVW may host (or allow) no more than four outdoor events a month on its property unless additional permissions are obtained.**

Limitation on Attendees Allowed at Events

The Respondent acknowledges that the 2017 CUP decision limited the number of event attendees to 100 people for outdoor events. In support of its allegation that the Respondent violated this requirement, the County relies on a photograph taken at an August 8, 2019, event showing a large crowd; testimony from Mr. Diener that he used a software program to confirm that there were more than 100 people in the August 8, 2019, photograph; a Facebook posting purporting to show that more than 100 people—and as many as 486 people—were present at events during the 2019 concert season; and testimony from Ms. Murnane that she was told by a member of a band performing at OVVW that the crowd exceeded 100 people. The Hearing Examiner concludes that the above does not constitute substantial evidence supporting revocation of the CUP.

Notably, the County did not provide any testimony or documentary evidence from a person with direct knowledge that more than 100 people attended any event on the property even after the Respondent welcomed County staff to attend an event to document any observed violation. Although Mr. Diener testified at the hearing that it would be inconvenient for County staff to attend a weekend event to document any violations, it is the County's burden to provide substantial evidence supporting revocation of a CUP (a substantial property interest). The County has not done so here.

Moreover, even assuming that the evidence produced by the County was sufficient to demonstrate a violation of the CUP, all of the evidence refers to events taking place prior to July 21, 2021, the date upon which the County provided the Respondent with appropriate notice and opportunity to cure. After that date, the Respondent took measures to limit attendance at events, including limiting including limiting ticket sales to 80 per event. Accordingly, the Hearing Examiner denies the County's request to revoke the CUP on this basis.

Compliance with Parking Provisions in the Approved Site Plan

The 2017 CUP approval included the following conclusion:

2.2.10 Parking. DCD determined 45 parking spaces are required to accommodate the maximum number of 100 people at an event (2.2 people per vehicle), and the Applicant are providing same. The grass parking has been reconfigured into two areas with 10 spaces in the northerly area and 27 spaces in the southerly area. The graveled driveway and entry area can accommodate additional vehicles. The final site plan will show this parking configuration. Also, as vehicle configuration could impact fire access, the project has been conditioned to maintain adequate fire apparatus during any events.

Exhibit C-1; Exhibit A-1.

In addition, conditions of the CUP approval required the Respondent to submit an updated site plan showing the planned parking configuration and required OVVW to operate consistently with the site plan. The Respondent later submitted a final site plan consistent with this

requirement, which was approved by the County. The approved site plan shows parking stalls within grassy areas to the north and south of the existing barn/garage structure, as well as along the perimeter of the existing graveled driveway/parking area to the west of the winery building. The approved site plan does not, however, depict any parking stalls along the remaining portion of the existing graveled driveway extending to Olalla Valley Road Southeast or along any of the property lines. The County presented substantial evidence, in the form of photographs taken from neighboring property owners, that the Respondent allowed vehicles to park along the west property line, inconsistent with the approved site plan and in violation of the CUP. Several of the photographs showing violation of the CUP on this basis were taken after the County provided adequate notice and opportunity to cure the violations on July 21, 2021.

Whether revocation of the CUP on the basis of this established violation is appropriate, however, must be measured against the notice provided. Here, the notice provided in the July 21, 2021, email from Mr. Diener directed the Respondent to take the following corrective action to resolve the parking issue, “parking outside the venue must cease immediately.” In light of communications from the County that it had concerns about the Respondent allowing vehicles to park in the right-of-way outside of the OVVW property, it was reasonable for the Respondent to assume that Mr. Diener’s directive to disallow “parking outside the venue” did not relate to parking on-site inconsistent with the approved site plan. Accordingly, the Hearing Examiner declines to revoke the CUP on this basis. The Respondent has since taken steps to remedy the parking issue, such as replacing preexisting raspberry bushes with grass to create 10 additional parking stalls on the property consistent with the approved site plan, and this decision makes clear that the Respondent must adhere to the approved site plan moving forward.

RV Overnight Stays

Finally, the County contends that the CUP should be revoked because the Respondent allowed RVs to park on the property overnight. The Hearing Examiner disagrees. First, although the Hearing Examiner recognizes that the conditions of the CUP require compliance with all applicable local laws, regulations, and ordinances and that KCC 21.04.280.A.3 authorizes the Hearing Examiner to revoke a CUP based on a code violation, he has concerns about the County seeking to enforce its code through the CUP revocation process when the decision approving the CUP bears little relation to the alleged code violation and when the County has other seemingly more appropriate code compliance tools at its disposal. Moreover, it is at best unclear whether the Respondent’s conduct in allowing overnight RV stays on the property constitutes a code violation. The County’s agricultural code allows for certain agrotourism uses that are accessory to a primary agricultural use. *KCC 17.455.030*. Although overnight RV stays are not specifically listed as a permitted accessory use, the County concedes that the use may be allowed if determined to be similar to a listed accessory use. The County argues, however, that the CUP should be revoked because the Respondent failed to present evidence that overnight RV stays would be considered similar to a listed accessory use. This turns the burden on its head, however, because the County is required to present substantial evidence of a violation to justify a revocation of the CUP. Moreover, the Respondent has discontinued its participation in the

Harvest Host program promoting overnight RV stays on the property. In an abundance of caution, the Respondent should seek a code interpretation from the County to clearly establish whether the overnight RV parking use is allowed under the code before resuming any such activities.

DECISION

Because substantial evidence does not establish that the Respondent violated the 2017 CUP in a manner justifying revocation after appropriate notice and opportunity to cure alleged violations was provided, the County's request to revoke the CUP issued to the Respondent is **DENIED**.

To provide guidance to the Respondent moving forward, this decision makes clear that, absent a CUP amendment, all outdoor events on the property are limited to four per month, and parking on-site must comply with the approved site plan. In addition, the Respondent should seek a code interpretation prior to allowing any overnight RV parking on the property.

DECIDED this 18th day of March 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

Appendix A

The following exhibits were admitted into the record:

County Exhibits:

- C-1. Hearing Examiner Decision Approving Conditional Use Permit, dated April 19, 2017
- C-2. Request for Reconsideration of Conditional Use Permit Decision, dated May 9, 2017
- C-3. Staff Report, dated March 23, 2017
- C-4. Project Application, Supplemental Application, Project Narrative, Site Plan, and SEPA Checklist, dated March 11, 2016
- C-5. Final Site Plan, dated June 18, 2017
- C-6. SEPA Determination of Nonsignificance, dated March 8, 2017
- C-7. Chapter 10.28 Kitsap County Code (KCC) – Noise, dated September 16, 2021
- C-8. Olalla Valley Vineyard and Winery (OVVW) Website Business Plan Reference, dated September 16, 2021
- C-9. OVVW Website Wine-Tasting Menu, dated September 16, 2021
- C-10. Complaint and Record of Number of Events and Attendees, dated August 7, 2019
- C-11. Complaint and Record of Number of Events and Attendees, dated August 20, 2019
- C-12. OVVW Website Record of Number of Events, dated June 1, 2021
- C-13. OVVW Website Record of Number of Events, dated June 16, 2021
- C-14. Record of Number of Attendees, dated August 8, 2019
- C-15. Complaint and Record of Parking, dated July 6, 2021
- C-16. Complaint and Record of Parking, dated July 6, 2021
- C-17. Complaint and Record of Hosting Recreational Vehicles, dated July 6, 2021
- C-18. Complaint and OVVW Website Record of Hosting Recreational Vehicles, dated July 11, 2021
- C-19. County Department of Community Development (DCD) communication to OVVW, dated September 17, 2019
- C-20. DCD communication to OVVW, dated October 29, 2019
- C-21. OVVW communication to DCD, dated November 11, 2019
- C-22. DCD communication to OVVW, dated May 28, 2020
- C-23. DCD communication thread OVVW, dated June 17, 2020
- C-24. OVVW communication thread to DCD, dated June 1, 2021
- C-25. OVVW communication thread to DCD, dated June 1, 2021
- C-26. DCD communication thread to OVVW, dated June 21, 2021
- C-27. DCD communication to OVVW, dated July 12, 2021
- C-28. OVVW communication to DCD, dated July 12, 2021
- C-29. DCD communication to OVVW, dated July 21, 2021
- C-30. OVVW communication to DCD, dated July 21, 2021
- C-31. OVVW/Palmer communication to DCD, dated August 20, 2021
- C-32. Noise Complaint, dated July 6, 2021
- C-33. DCD observation of July 2021 OVVW event, dated July 25, 2021

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- C-34. DCD observation of July 2021 OVVW event, dated August 2, 2021
- C-35. Kitsap County Sheriff's Office Report of Noise Violation, dated September 10, 2021
- C-36. Complaint and Record of Parking, dated September 2, 2021
- C-37. Complaint on Noise and Record of Recreational Vehicles Parking, dated September 2, 2021
- C-38. Complaint on Noise, Shuttling, and Record of Recreational Vehicle Parking, dated September 2, 2021
- C-39. Complaint and OVVW Website Record of Hosting Recreational Vehicles, dated September 2, 2021
- C-40. Website Photographs of OVVW Wedding, dated July 6, 2021
- C-41. Communications and Complaints to DCD, various dates
- C-42. Complaint and Record of Outdoor Events, dated November 29, 2021
- C-43. Complaint and Record of Hosting Recreational Vehicles, dated September 23, 2021
- C-44. Complaint and Record of Hosting Recreational Vehicles, with Website Review of Stay, dated September 23, 2021
- C-45. Complaint and Record of Hosting Recreational Vehicles, with Website Review of Stay, dated October 12, 2021
- C-46. Complaint and Record of Advertising Wine by the Glass, dated October 22, 2021
- C-47. Complaint and Record of Advertizing a Bar, dated October 29, 2021
- C-48. Website Description of OVVW services, dated November 2, 2021
- C-49. OVVW Website noting drive-in allowances November through April, dated November 4, 2021
- C-50. OVVW Website noting walk-in allowance, dated November 12, 2021
- C-51. OVVW Website for event noting no appointments needed, dated November 12, 2021
- C-52. Kitsap Sun Newspaper Article, dated July 27, 2016
- C-53. 2015 Parcel Image
- C-54. 2018 Parcel Image
- C-55. 2020 Parcel Image
- C-56. Excerpt from 2016 Kitsap County Comprehensive Plan, dated June 30, 2016
- C-57. Map of Neighbors with Noise Complaints, dated December 1, 2021
- C-58. Email from OVVW to Kitsap Board of Commissioners, dated October 17, 2021
- C-59. Staff Report in Support of Revocation, dated December 2, 2021

Respondent's Exhibits:

- A-1. Hearing Examiner Decision Approving Conditional Use Permit, dated April 19, 2017
- A-2. Site Plan, dated March 28, 2016
- A-3. Chisholm-OVVW Compliance with Hearing Examiner's Conditions of Approval, undated
- A-4. Letter from Wine Expert Matthew Loso on Tasting Room Services, dated November 29, 2021
- A-5. Four (4) Facility Photographs, undated
- A-6. Olalla Wine Sales by Product 2021, dated November 27, 2021

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- A-7. Olalla Wine Sales by Product 2021 – greater than 10 percent of total sales, dated November 27, 2021
- A-8. Domestic Winery License Conditions – RCW 66.24.170
- A-9. Sale of Beer by Domestic Wineries – RCW 66.24.246
- A-10. No Outside Alcohol Allowed, dated August 7, 2021
- A-11. Kitsap Sun Article – Olalla’s Slice of Heaven, dated October 27, 2021
- A-12. Declaration of Stuart Chisholm, dated December 2, 2021
- A-13. Olalla Winery Public Water System Group A, undated
- A-14. Public Water Permit 2021-2022, dated May 26, 2016
- A-15. OVVW Public Water Operating Permit 2021-2022, dated October 15, 2021
- A-16. Bay Street Bistro Port Orchard OVVW Wine Dinner, dated November 16, 2021
- A-17. Olalla Vineyard & Winery Promotional Material, undated
- A-18. OVVW Sales for 2021 as percentage of total
- A-19. OVVW Sales for 2021 less than 10 percent of total sales
- A-20. Levels of Noise in dB Comparison, dated November 18, 2021
- A-21. Counts of Complaints against OVVW
- A-22. Murnane Flyer to Neighbors, dated July 15, 2021
- A-23. Patron and Charity Testimonials and Vineyard Photographs
- A-24. Rebuttal of Complainant Neighbor Emails to County, dated October 29, 2021
- A-25. Project Narrative, dated April 11, 2016
- A-26. SEPA Environmental Checklist, dated March 1, 2016
- A-27. SEPA Determination of Nonsignificance
- A-28. Diener to Chisholm Email, dated July 21, 2021
- A-29. Palmer Response to July 21, 2021, Email, dated July 21, 2021
- A-30. Photograph of Outdoor Olalla Music Event Attendance, undated
- A-31. Original CUP Permit Documents, various dates
- A-32. WCC Premises Business License 2021-2022, dated October 8, 2021
- A-33. Olalla Premises Business License 2021-2022, dated October 8, 2021
- A-34. Respondent Witness List, dated December 2, 2021
- A-35. Letter from William Palmer to Hearing Examiner Drummond, dated May 1, 2017
- A-36. Kitsap DCD Motion for Reconsideration, dated April 25, 2017
- A-37. WSLCB Beer License Endorsement Approval, dated March 11, 2021
- A-38. Hearing Examiner Decision on Motion for Reconsideration, dated May 9, 2017
- A-39. Index of Files for Submission, dated December 2, 2021
- A-40. Objection to County Exhibits, presented September 9, 2021
- A-41. Exhibit References to Rebut DCD Hearing Brief, undated

Motions, Orders, and Briefs

- Notice of Public Hearing, published September 29, 2021
- Respondent Request for Postponement of Hearing, dated September 29, 2021
- County Opposition to Respondent Request for Postponement of Hearing, dated October 1, 2021

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- Respondent Request for Continuance, dated October 4, 2021
- Hearing Examiner Order on Request for Continuance, dated October 7, 2021
- County Motion to Amend Order on Request for Continuance, dated October 8, 2021
- Hearing Examiner Order on Pre-Hearing Conference, dated October 13, 2021
- Pre-Hearing Order, revised October 21, 2021
- County Memorandum in Support of Closed Record Hearing, dated November 3, 2021
- County Statement on Grounds for Revocation, dated November 3, 2021
- Revised Notice of Public Hearing, published October 7, 2021
- Respondent Motion to Dismiss, dated November 17, 2021
- Affidavit of Stuart Chisholm in Support of Motion to Dismiss, dated November 11, 2021
- Respondent Request to Withdraw Motion to Dismiss, dated November 19, 2021
- Hearing Examiner Order on Hearing Type and OVWV's Request to Withdraw Motion to Dismiss, dated November 24, 2021
- Hearing Examiner Corrected Order on Hearing Type and OVWV's Request to Withdraw Motion to Dismiss, dated November 24, 2021
- Second Revised Notice of Public Hearing, published December 1, 2021
- County Prehearing Brief, dated December 9, 2021
- Respondent Prehearing Brief, dated December 9, 2021
- Hearing Examiner Post-Hearing Order, dated January 18, 2022
- County Post-Hearing Closing Brief, dated January 21, 2022
- Respondent Post-Hearing Brief, dated January 21, 2022
- Declaration of Attorney Alan Wallace in Support of Respondent Post-Hearing Brief