

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 21-033**

APPLICATION: Application of Triple O LLC., for an administrative review to establish a winery on a 107.02 acre parcel in an EFU (Exclusive Farm Use) zone located at 11474 Sunnyview Rd. NE, Silverton (T7S; R1W; Section 21; tax lot 1700 & 100).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **January 26, 2024** unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Sales from the winery shall be predominantly wine produced in conjunction with the winery and may include the following activities: wine tours; wine tastings in a tasting room or other location at the winery; wine clubs; and similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
3. Sales from the winery may include items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010. The gross income of the winery from the sale of incidental items may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
4. Permitted activities include the provision of services including private events, such as facility rentals and celebratory gatherings hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
 - a. Are directly related to the sale or promotion of wine produced in conjunction with the winery;
 - b. Are incidental to the retail sale of wine on-site and may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery; and
 - c. Are limited to 18 days or fewer in a calendar year.
5. If on-site retail sales of wine, incidental items or services occur, upon request from the Marion County Planning Director, the applicant shall submit a written statement for the tax year in which the sales occurred, prepared by a certified public accountant, certifying compliance with the standards in MCC17.125.030 (A)(1).

6. The unpermitted structure(s) on tax lot 100 shall obtain appropriate building permits prior to establishment of the tasting room.
7. The existing dwelling located on tax lot 1700 shall not be used for events or other uses related to the proposed winery (see Finding 8-K).
8. Applicant shall comply with the requirements referenced in comments made by agencies in Finding #6 below.
9. Existing recreational vehicle on the property shall comply with the recreational vehicle standards as stated in 17.126.040(A-F).

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.
11. The applicants should contact the Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **January 26, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **January 27, 2022** unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (EXCLUSIVE FARM USE). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located on the south side of Sunnyview Road NE approximately one mile west of its intersection with Cascade Hwy NE. Tax lot 1700 contains a single family home and contains one dwelling and accessory structures. Tax lot 100 contains one or more unpermitted structures; structures shall be required to obtain appropriate permitting.
3. Adjacent parcels in all directions are zoned EFU and are in commercial farm use.
4. The applicant is proposing to establish and operate a winery.
5. Soil Survey of Marion County Oregon indicates 73.5% of the subject property is composed of high-value farm soils.

High Value Soils	60.0	73.5%
Non High Value Soils	21.6	26.5%

6. Public Works Land Development and Engineering Permits (LDEP) requested that the following Engineering Requirements and advisory be included in the decision:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required. The driveway approach was paved without a Permit, and does not meet PW Engineering design standards. A culvert and water bar will be required. Furthermore, Intersection Sight Distance looking to the east will need to be field-checked. If the access does not meet ISD standard considering the proposed commercial use, then it will need to be closed and relocated to the west. No secondary access will be allowed for the winery.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits.
- C. Utility work in the public right-of-way requires separate PW Engineering permits.

Marion County Onsite Wastewater Specialist commented:

1. The applicant states the home located on TL 1700 will be used from time to time to facilitate celebratory gatherings. The septic system (555-17-009796) serving this dwelling is approved for use to serve a single family residence only, any commercial use as stated by the applicant will require an authorization notice approval. When applying for the authorization notice, in addition to standard requirements for this application, a detailed proposal describing the use of the home with regards to wastewater will be required. For example it must include the number of events that will utilize the home, number of employees and/or guests, and the level of service provided (wine only, light meals, full meals prepared on or off site, etc). The applicant also states they wish to use the home as an AirBnB, this use must also be addressed in the authorization notice application (number of guests permitted, level of service provided).
2. A site evaluation is required for the proposed winery on TL 100. In addition to standard site evaluation requirements, a detailed proposal must be submitted stating the total capacity at the site for wine tastings, marketing and business activities, the allowable agri-tourism events, (combined indoor and outdoor capacity), as well as the level of service provided at each (as described in no. 1). Additionally, the applicant must address how wine waste will be disposed of at the site.

Marion County Building Inspection commented that any proposed structures and/or utilities on private property would require the proper permits. If the existing single family dwelling is opened to the public for "celebratory gatherings", additional permits would be required for this change of use.

Silverton Fire District commented that any new construction and change of use would need to meet Oregon Fire Code and the provisions of emergency access and water supply. Existing structures would need to be evaluated for change of use by the Building Department and depending on the new use, may need a fire and life safety evaluation.

All other contacted agencies did not respond or stated no objections to the proposal.

7. Wineries may be approved when the standards in Chapter 17.125.030(A) of the Marion County Code (MCC) are satisfied. These standards include:
- (a) *A winery with a maximum annual production of less than 50,000 gallons shall:*
 - i. *Own an on-site vineyard of at least 15 acres;*
 - ii. *Own a contiguous vineyard of at least 15 acres;*
 - iii. *Have a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or*
 - iv. *Obtain grapes from any combination of (i), (ii), or (iii).*

The site plan and applicant statement indicate that there is an active vineyard on site (tax lot 100 and 1700) of 44 acres that are currently sold to local wineries. The property owner also owns adjacent properties with active vineyards. Aerial images and a site visit confirmed that there are at least 15 acres currently planted with grapes. The proposal meets the criteria in #7(a).

8. A winery described in Chapter 17.125.030 (B-L) may:

B. In addition to producing and distributing wine, a winery established under this section may:

- 1. Market and sell wine produced in conjunction with the winery.*
- 2. Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:*
 - a. Wine tastings in a tasting room or other location on the premises occupied by the winery;*
 - b. Wine club activities;*
 - c. Winemaker luncheons and dinners;*
 - d. Winery and vineyard tours;*
 - e. Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;*
 - f. Winery staff activities;*
 - g. Open house promotions of wine produced in conjunction with the winery; and*
 - h. Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.*
- 3. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:*
 - a. Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or*
 - b. Served in conjunction with an activity authorized by subsection (B)(2), (4) or (5) of this section.*
- 4. Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to subsections (E) and (F) of this section.*
- 5. Host charitable activities for which the winery does not charge a facility rental fee.*

The application states that the winery will have a tasting room as well as activities related as permitted in 2(a-h). The applicant also states that they will be compliant with all requirements listed under subsection 8(B). The criterion is met.

C. A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS [624.010](#) to [624.121](#) for the preparation of food and beverages described in subsection (B)(3) of this section. Food and beverage services authorized under subsection (B)(3) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

The application states that the applicant will utilize the allowance of an on-site kitchen facility and will not use the allowed kitchen in the capacity of a café' or other dining establishment. This criterion is met.

D. The gross income of the winery from the sale of incidental items or services provided pursuant to subsections (B)(3) to (5) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. At the request of the planning director, the winery shall submit a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this section for the previous tax year.

Applicant statement states that they will comply with this requirement. The criterion is met.

E. A winery may carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery, subject to the following:

1. Events on the first six days of the 18-day limit per calendar year shall be authorized through the issuance of a renewable multi-year license that has a term of five years and is subject to an administrative review to determine necessary conditions pursuant to subsection (F) of this section. The license described in this section is not a land use decision, as defined in ORS [197.015](#), and is not subject to review by the Land Use Board of Appeals and is not a permit, as defined in ORS [215.402](#) or [227.160](#).

2. Events on days seven through 18 of the 18-day limit per calendar year shall be authorized by the local government through the issuance of a renewable multi-year permit that has a term of five years, is subject to an administrative review to determine necessary conditions pursuant to subsection (F) of this section, and is subject to notice as specified in ORS [215.416\(11\)](#) or [227.175\(10\)](#). The permit described in this section is a land use decision, as defined in ORS [197.015](#), and is subject to review by the Land Use Board of Appeals and is a permit, as defined in ORS [215.402](#) or [227.160](#).

The application states that the winery and tasting room will be compliant of this requirement. The criterion is met.

F. As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery are subordinate to the production and sale of wine and do not create significant adverse impacts to uses on surrounding land, the local government may impose conditions on a license or permit issued pursuant to subsection (E) of this section related to:

- 1. The number of event attendees;*
- 2. The hours of event operation;*
- 3. Access and parking;*
- 4. Traffic management;*
- 5. Noise management; and*
- 6. Sanitation and solid waste.*

This can be made a condition of approval. The criterion is met.

G. A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

Applicant statement states that all parking requirements will be met. The criterion is met.

H. Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (A) of this section have been planted or that the contract has been executed, as applicable.

The applicant submitted 'Exhibit G', a map showing all currently planted grape blocks and proposed. A site visit and aerial images has confirmed the planning of grapes. The criterion is met.

I. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

- 1. Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places unless the local government grants an adjustment or variance allowing a setback of less than 100 feet; and*
- 2. Provision of direct road access and internal circulation.*

All proposed structures and outdoor gathering places as stated in the applicant statement will meet the 100 foot setback requirement. The criterion is met.

J. In addition, the following apply to any permitted winery request:

- 1. Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;*
- 2. Regulations of general applicability for the public health and safety; and*
- 3. Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.*

The applicant states that they will comply with the above criteria. The criterion is met.

K. When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

- 1. The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and*
- 2. The meals may be served at the bed and breakfast facility or at the winery.*

The applicant statement notes that the existing dwelling will be used for an Airbnb and not an established Bed and Breakfast. If the applicant wishes to use the existing dwelling as a rental unit the applicant shall comply with the Home Occupation Bed and Breakfast regulations. Additional permitting may be required for commercial use.

L. As used in this section:

- 1. "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.*
- 2. "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1326 § 4 (Exh. A), 2012.]*

The vineyard has been established; therefore the winery may perform the activities described above. The applicants state that they intend to operate the winery in accordance with the criteria and carry out activities permitted for wineries. The criteria described above can be made conditions of approval to serve as notice that if the applicants decide to operate the winery as allowed activities must comply with the criteria.

9. Based on the above findings, it has been determined that the proposed winery satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Director-Planning Division

Date: January 11, 2022

If you have any questions regarding this decision contact Lindsey King at (503) 588-5038.