

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. 19-006**

APPLICATION: Application of Kenneth Johnston for an administrative review to establish a winery on a 64 acre parcel in an FT (Farm Timber) zone located at 3422 Silver Falls Drive SE, Silverton (T8S; R1E; Section 1C; tax lot 300).

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 **April 26, 2021** 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. Prior to obtaining building permits, the property owner shall provide evidence to the satisfaction of the Planning Director that a vineyard of at least 15 acres has been established on the property.
2. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
3. 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.
4. 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.
5. 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 25 days or fewer in a calendar year.
6. 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).

7. Public Works Land Development Engineering requests that the following conditions are required for approval of this land use case:

Condition A - Prior to establishment of the business, Applicant shall provide confirmation from ODOT that the current access to Highway 214 is acceptable for the proposed use.

Condition B - Prior to establishment of the business, but not beyond 90 calendar days from the date of an approved Notice of Decision, Applicant shall obtain an Access Permit for the Hancock Lane access and make any changes necessary to meet Marion County Standards.

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:

8. 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.
9. The applicants should contact the Drakes Crossing 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.
10. The applicants should contact the Oregon Department of Transportation for an access permit prior to making any changes to existing approach.

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 **April 26, 2019**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **April 27, 2019** unless appealed.

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

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm/Timber). The purpose of the Farm/Timber zone is to maintain properties for farm and timber use.
2. The subject property is located on the east side of Silver Falls Drive SE approximately 5,200 feet southeast of its intersection with North Fork Road Southeast. The property contains one dwelling and accessory structures.
3. Adjacent parcels to the north, west and south are zoned FT and are developed with residential dwellings and accessory structures. The parcel to the northwest is zoned FT and is currently undeveloped. Adjacent parcels to the east are zoned AR-5 and are developed with residential dwellings and accessory structures.
4. The applicant is proposing to establish and operate a winery.
5. Soil Survey of Marion County Oregon indicates 38.5% of the subject property is composed of high-value farm soils.

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

Condition A – *Prior to establishment of the business, Applicant shall provide confirmation from ODOT that the current access to Highway 214 is acceptable for the proposed use.*

Condition B – *Prior to establishment of the business, but not beyond 90 calendar days from the date of an approved Notice of Decision, Applicant shall obtain an Access Permit for the Hancock Lane access and make any changes necessary to meet Marion County Standards.*

In accordance with Marion County Code 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. Access is typically an Engineering Requirement, but has been elevated to Condition status in this instance as a matter of timing. Via aerial photos it appears unpermitted work has been conducted to the access from Hancock Lane between 2017 and 2018. Driveways must meet sight distance, design, spacing, and safety standards.

LDEP also requested that the following Requirements be included in the decision:

- C. 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 including a change in use to an existing structure, per Marion County Ordinance #00-10R.

LDEP requested the following Advisories be included:

- D. Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.

Marion County Onsite Wastewater Specialist commented that septic authorization and/or permits are required.

Marion County Building Inspection commented that a building permit is required for a change in use or occupancy.

Oregon Department of Transportation commented that the property has frontage on the Silver Creek Falls Highway No. 163 (OR-214). The property appears to be served by one approach to the highway at MP 28.79. The winery proposal will trigger a Change of Use as defined in OAR 734-051-3020 based on anticipated trip volume and sight distance at the highway approach. An Application for State Highway Approach will need to be submitted to obtain a valid permit for the site.

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 the existing four-acre vineyard will be expanded to include 11 additional acres, which will result in a total of 15 acres of land planted with grapes. With a condition of approval requiring the applicant to provide evidence that the vineyard is established, the proposal meets the criteria in #7 (a)(i).

8. A winery described in Chapter 17.125.030 (A)(1) may:

- (a) *Market and sell wine produced in conjunction with the winery, including 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;*
- (b) *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 retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and*
- (c) *Provide 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:*
 - i. *Are directly related to the sale or promotion of wine produced in conjunction with the winery;*
 - ii. *Are incidental to the retail sale of wine on-site; and*
 - iii. *Are limited to 25 days or fewer in a calendar year.*
- (d) *The gross income of the winery from the sale of incidental items pursuant to subsection (B)(2) of this section and services provided pursuant to subsection (B)(3) may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. Beginning on January 1, 2013, a winery approved under this section shall submit a written statement for the previous tax year, prepared by a certified public accountant, certifying compliance with the standards in this subsection.*

Once the vineyard has been established, 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.

Joe Fennimore
Director-Planning Division

Date: April 11, 2019

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