

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. 21-016**

**APPLICATION:** Application of Benjamin, John, and Michelle Sue Miller for an administrative review to establish a winery on an 88.04 acre parcel in a SA (Special Agriculture) zone located at 179 Ankeny Hill Rd. SE, Jefferson (T9S; R3W; Section 9D; Tax Lot 2000).

**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 **July 22, 2023** 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 applicant must provide satisfactory evidence to the Marion County Planning Department that shows a minimum of 15 acres of vineyards have been planted on the subject property before the following can occur:
  - A) Issuance of any building, including subsurface sewage, permits related to the establishment of the winery
  - B) Operation of any winery activities allowed under Marion County Code, Chapter 17.125.030
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).

**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:

7. 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.
8. The applicants should contact the Jefferson 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 **July 22, 2021**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **July 23, 2021** unless appealed.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and zoned Special Agriculture. The intent of both designation and zone is to promote and protect commercial agricultural operations of diverse scale and type.
2. The subject property is located on the east side of Ankeny Hill Road, approximately one-half mile from the road's intersection with Buena Vista Road. According to the applicant narrative, the property contains one dwelling and multiple accessory structures. The creation of the property in its current form is ambiguous. Major Partition 80-42 divided 189 Ankeny Hill Road (Tax Lot 1500) from 179 Ankeny Hill Road; however, that case shows Tax Lot 200 (a 17.08 acre property to the south of the subject property) as being a part of the subject property. The first record staff found of Tax Lot 200 being described as a separate unit of land was a sale agreement from 1985 (Reel 396 and Page 251). Notwithstanding this potential illegal land-division, a building permit was issued for the subject parcel in 2010 (Permit No: 08-02734). Through approval of this 2010 permit, Marion County Planning recognized the property as legal for land-use purposes.
3. Adjacent parcels to the north are zoned Acreage Residential and are developed with dwellings and accessory residential structures. Properties to the west are zoned Exclusive Farm Use, are undeveloped, and are being farmed. Properties to the south and east are zoned Special Agriculture and are developed with dwellings; these properties are being used for a mix of farm and forestry uses.

4. The applicant is proposing to establish and operate a winery.
5. Soil Survey of Marion County Oregon indicates 20.6% of the subject property is composed of high-value farm soils.
6. Marion County Building Inspection commented that a building permit may be required for a change in use or occupancy.

Marion County Septic Division commented that a proposal for a septic will be required to address the proposed maximum number of daily tasting room patrons, total number of daily employees. The proposal will need to include the proposed usage, including type of food service to be utilized—i.e. catered off site or prepared on site. Marion County Septic will also need to know the amount of time the events will encompass. This proposal will need to be submitted when submitting the application for either site evaluation or authorization inspection. It is recommended that the applicant hire a septic consultant.

Marion County Land Development and Engineering provided the following comments:

### **ENGINEERING REQUIREMENTS**

- A. In conjunction with issuance of building permits, an Access Permit will be required for the change in use. It has been noted at the time of a cursory field visit that one of the accesses has limited vision, and as a result ‘may’ need to be closed, consolidated with the other access or relocated as part of the Access Permit requirements.
- B. Transportation System Development & Parks Charges (SDCs) will be assessed at the time of application for building permits.

Jefferson Fire District commented that the development shall meet the Access and Water Supply requirements as outlined within the 2019 Oregon Fire Code.

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

7. In addition to agency comments, Marion County Planning received comments from one neighbor expressing concerns about the winery. Comments indicated concerns about increased traffic, roadway safety, and the potential impact (increased noise) on neighbors from winery activities.
8. 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 property is currently planted with eleven acres of grapes and that the property owner has a contract to purchase and plant four additional acres in 2021. Proof that the applicant purchased vines and a site plan showing the proposed location of the vineyard blocks was submitted with the application as evidence that the criterion will be met. This will result in a total of 15 acres of land planted with grapes. Confirmation of planting before any winery can be established or building permit issued will be made a condition of approval. The criterion can be satisfied.

9. 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 full 15 acres of vineyards have 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.

10. 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: July 7, 2021

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