

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. 24-011**

APPLICATION: Application of LC Property Holdings LLC for an administrative review to expand a winery approved under AR21-016 on a 17.08-acre parcel in a SA (Special Agriculture) zone located in the 180 Block of Ankeny Hill Rd. SE, Jefferson. (T9S; R3W; Section 16; Tax Lot 200).

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 **June 21, 2026 (two years)** unless an extension is granted. The effective period may be extended for one year 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:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. All conditions of approval from case AR21-016, which approved the winery and established the vineyard referenced in this case on neighboring tax lot 2000, are still in effect. These conditions are as follows:
3. 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
4. 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.
5. 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.

6. 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.
7. 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).
8. A special 100-foot setback shall be maintained from the East, West, and South property lines for the winery and tasting room building and all public gathering places.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect 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 restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

9. 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.
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

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 **June 21, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 22, 2024** 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 SA (Special Agriculture). The intent of this designation and zoning is to promote commercial agriculture operations of diverse scale and type.
2. The subject property is located on the East side of Ankeny Hill Rd SE roughly 1.75-miles West down the extent of Ankeny Hill Rd SE from its connection to I-5. The majority of the property contains trees planted for the purpose of commercial timber and the remainder consists of open grass fields. There are no existing structures on the property. According to the findings of case AR21-016, it appears that the subject property was first described as a separate property in a sale agreement from 1985. Prior to this, the property was described in Major Partition case MJP80-042 as part of a single parcel with tax lot 2000 to the north, which is the location of the 15 acres of production vineyard. Notwithstanding this potential illegal land-division, an approval of a building permit in 2010 recognized tax lot 2000 as legal for land use purposes and, as further identified in AR21-016, tax lot 200 is now a separate parcel and legal for land-use purposes.

3. Surrounding uses in the area around the parcel are mixed. The parcel immediately to the north is the site of the vineyard that will operate in conjunction with the proposed winery and was originally where the applicants proposed to establish the winery through case AR21-016. Beyond that parcel to the north are a number of residential parcels in use as acreage home sites. To the south are several SA zoned parcels that consist of large open areas of grass in a mixture of pastureland and commercial grass seed operations. To the west most of the land is covered with trees and no active farming, with another set of residential parcels a little farther west. Finally, the property on the East side of Ankeny Hill Rd SE is federally owned and the site of the Ankeny National Wildlife Refuge, which has the primary management goal to provide high quality wintering habitat for migratory birds. While mostly open grassland and floodplains, the visitor center is located roughly 0.75-miles north on Ankeny Hill Rd from the subject property.
4. The applicants are proposing to establish and operate a winery on a contiguous parcel to an established vineyard. This is a change in the proposed location of the winery approved by case AR21-016.
5. Various agencies were contacted about the proposal and given an opportunity to comment:

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

Requirements:

- A. At the time of application for building permits, an Access Permit will be required for the change-in-use to the south residential driveway connection to Ankeny Hill Road for commercial usage. Under the Permit it will be required to widen and pave the approach with hot mix asphalt. Also, during the review it was noted that the middle barn access has limited sight distance looking north that presents a traffic safety issue. Although barn access is not directly associated with the winery, it will be required to be closed but could be consolidated with the north access, or under the Access Permit relocated to Oak Drive.
- B. Remove the private business sign from within public right-of-way at south driveway that is not allowed by zone code and presents an impediment to attaining clear sight distance during egress. At that location the R/W is 30 feet wide, generally taken from centerline of roadway.
- C. Transportation System Development Charges (TSDCs) will be assessed at the time of application for building permits.
- D. Utility service extensions such as power and communication within the Ankeny Hill Road public right-of-way requires permits from MCPW Engineering.

Marion County Building commented: "Permits are required to be obtained prior to development of structures and/or utilities installation on private property. Based on the proposed anticipated use, a State of Oregon licensed design professional, such as an engineer or architect, will be required to design and assemble construction plans for the future structure and use."

Marion County Septic commented: A site evaluation is required to set minimum requirement prior to a construction-installation permit.

All other commenting agencies stated no objection to the proposal.

6. 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. *The winery produces wine with a maximum annual production of:*
 1. *Less than 50,000 gallons; and:*
 - a. *Owens an on-site vineyard of at least 15 acres;*
 - b. *Owens a contiguous vineyard of at least 15 acres;*
 - c. *Has 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*
 - d. *Obtains grapes from any combination of subsections (A)(1)(a), (b) or (c) of this section; or*

2. *At least 50,000 gallons and the winery:*
 - a. *Owns an on-site vineyard of at least 40 acres;*
 - b. *Owns a contiguous vineyard of at least 40 acres;*
 - c. *Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;*
 - d. *Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or*
 - e. *Obtains grapes from any combination of subsections (A)(2)(a), (b), (c) or (d) of this section.*

The applicants have stated that the proposed winery is to be operated in conjunction with the adjacent vineyard on tax lot 2000 to the north. The vineyard property is owned by Benjamin and Michelle Miller, who are legal members of LC Property Holdings LLC as stated by the applicants and verified by information found on the Oregon Secretary of State's website. In the findings from AR21-016, it was stated that only 11-acres of the vineyard were planted at that time. A condition of approval was made that the owners provide satisfactory evidence that a minimum of 15-acres of vineyard were planted. Updated aerial imagery shows an expansion of the vineyard fields compared to the 2021 aerial imagery. Use of the area measurement tool in the GIS viewer software found the total acreage of planted grapes to be roughly 15 acres. While the reliability of this tool is limited, the new imagery is sufficient evidence that the additional 4 acres were planted and satisfies both this criterion and the condition of approval from AR21-016. The criterion is met.

7. 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 in the facilities will include a tasting room and a commercial kitchen and be used for activities permitted as listed in 2(a-h). The applicants also state they will be compliant with all the requirements listed in this section. The criterion is met and all requirements shall be made conditions of approval.

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 applicants are proposing to establish an on-site kitchen to be used in conjunction with the specified permitted activities. They have stated it will only be used in this way and will not function as a café or other public dining establishment. The criterion is met and the restrictions shall be made a condition of approval.

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.

The applicants state that they will comply with the requirements of this section. This was part of the conditions of approval from AR21-016. This condition of approval is still in effect for this proposal.

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.*

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.*

The criteria in sections E & F above relates to the conducting of agri-tourism events and other commercial events on the tract with the winery. The applicants have agreed to limit the number of these events to just 18 days annually and have stated that the events will be subordinate to the production and sale of wine. The criteria in these two sections shall be made a condition of approval.

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.

The applicants have shown on their site plan the location for proposed parking to serve the winery. The criterion is met and shall be made a condition of approval.

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 most recent aerial imagery of the property shows that additional vineyard acreage has been planted since 2021 and now appears to meet the required 15-acres of established vineyard fields. 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.*

The applicants stated that the private drive following the northern border of the subject property would provide access to the site. Based on the site plan provided by the applicants, it is unclear whether the proposed site for the winery buildings would meet the 100-foot setback from the south property line. The proposed location would meet the required setbacks from the front and rear property lines and there would be no reason to assess a 100-foot setback from the north property line as that parcel contains the vineyard used to qualify for the winery. To ensure that no conflicts with surrounding uses occurs, specifically the national wildlife refuge, a 100-foot setback requirement from the East, West, and South property lines shall be required. This shall be made a condition of approval.

- 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 applicants state they will comply with the above requirements. The criterion is met.

8. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: June 6, 2024

If you have any questions regarding this decision contact Alexander Seifer at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.