

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. 24-020**

APPLICATION: Application of John C. Moore for an administrative review to permit a secondary farm dwelling and a secondary single-family dwelling on a 51-acre parcel in an EFU (Exclusive Farm Use) zone located at 21338 Oak Lane NE, Aurora (T4S; R1W; Section 14A; Tax lots 100, 800, 1700).

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 **October 2nd, 2028**, 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 drain field 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. Within 90 days of the date of this decision, the applicant shall obtain building permits for the two accessory farm dwellings approved by this decision. Within the same 90-day window, the applicant shall decommission any residential dwelling for which no land use approval has been approved. The applicant shall limit the use of all buildings to (1) farm use as defined in ORS 215.203, and (2) uses for which land use approval has been obtained.
3. The dwellings shall be occupied by persons who are primarily engaged in working on the farm.
4. Prior to issuance of any permits, the applicants shall sign and record an Agricultural Land for Dwelling Qualification Declaratory Statement. The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director. (Enclosed)
5. Prior to issuance of any permits, the applicants shall sign and record a Farm/Forest Declaratory Statement. The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director. (Enclosed)
6. The secondary single-family dwelling shall be assigned the address of **21348 Oak Ln NE**.
7. The secondary farm dwelling shall be assigned the address of **21340 Oak Ln NE**.
8. The secondary single-family dwelling, and secondary farm dwelling, will each be established within the structures indicated on the site plan submitted with the application for this Administrative Review.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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. The applicant is advised of the following:

9. The applicants should contact the Aurora 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 #6 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 **October 2nd, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 3rd, 2024**, 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 correspondingly zoned Exclusive Farm Use (EFU). The primary intent of this designation and zone is to promote commercial agriculture.
2. The subject property is located on the south side of Ehlen Rd NE, and accessed off the east side of Oak Ln NE. The subject property is made up of three tax lots and totals 51-acres. The entire property is the site of the Aurora Colony Vineyards. Over 30-acres of the subject property is planted in use for wine grape production. The Winery tasting room and related accessory structures are located on tax lot 100. The primary farm dwelling is located on tax lot 800. There are five agricultural structures also located on tax lot 800. Two of these structures have been converted without building permits or land use approval into the dwellings which are the subject of this Administrative Review.

An Administrative Review application for a Farm Stand was submitted in 2003 (AR03-044) under the name Aurora Colony Gardens. The Farm Stand that was built appears to be a Chapel. The structure's permitted purpose was for the sale of farm products originating from the property, with a maximum occupancy of 38 people. The history of code enforcement complaints began the same year that the Chapel was built, with the first reports of an unpermitted event business on the subject property.

A winery on the subject property was conditionally approved in 2008 by AR08-044. Conditions of approval included remedying the various code compliance issues on the property such as unpermitted structures and additions. Those conditions of approval were not met. After further code enforcement action, the applicant reapplied for a winery in 2011 under AR11-029. Marion County Code Enforcement submitted a lengthy comment (being summarized here) outlining the history of code violations on the property for the 2011 Winery application. The decisions regarding this application were appealed twice and approved by Board of Commissioners. The approval of AR11-029 allowed up to 25 events per year on the subject property.

In 2012 the subject property was approved for a primary farm dwelling under AR12-034, to be occupied by the farm operator John C. Moore. Another primary farm dwelling was applied for in 2015, and then withdrawn. The winery tasting room was expanded in 2016 and an adjustment to the setbacks on the western property was approved under ADJ16-003.

New reports to code enforcement of agricultural structures unlawfully converted into dwelling units were brought

to the County in 2023. The subject parcel may qualify for additional farm worker housing via a secondary farm dwelling and a secondary single-family dwelling for a relative. Approval of these housing types could remedy this most recent violation.

Having been the subject of many land use cases, the three parcels (Tax lots 100, 800, & 1700) that constitute the subject property are all considered legal for land use purposes.

3. Adjacent surrounding uses are agricultural in all directions. The City of Aurora is less than a half mile to the east.
4. The applicants are proposing to establish a secondary farm dwelling, and a secondary single-family dwelling in existing structures.
5. The subject property is composed of three parcels, all of which contain 100% high value soils.
6. 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:

ENGINEERING REQUIREMENT

- A. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.

Marion County Building Department commented: "Permit(s) are required to be obtained for the construction and/or conversion of structures for dwellings on private property."

Marion County Code Enforcement submitted comments supporting approval because it would solve a code case on the subject property. MCCE also provided clarification that the dwellings in question are located on 21358 Oak Ln NE (Tax lot 800), not 21338 Oak Ln NE (Tax Lot 100).

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. The criteria for approving a secondary farm dwelling on high value farmland is contained in MCC 17.136.030 (B):

1. *The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.*

The primary dwelling is occupied by the farm operator of the vineyard and owner of the winery John Moore. The secondary dwelling is to be occupied by the Vineyard Manager Carlos Jimenez. Affidavits from both confirm that these individuals are each principally engaged in the farm use of the land. The criterion is met.

2. *There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.*

The only other lawfully established dwelling owned by the farm operator on resource zoned lands is the primary dwelling on the subject parcel which is occupied by the applicant. The criterion is met.

3. *The proposed dwelling will be located:*

- a. *On the same lot or parcel as the primary farm dwelling; or*

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

The proposed secondary farm dwelling is located on the same parcel as the primary dwelling as per MCC 17.136.030(B)(3)(a). The criterion is met.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$40,000 gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years;

The subject property consists of high value farmland. The applicant has submitted balance sheets for the vineyard as well as tax returns showing the minimum gross annual income has been met for at least the last two years. The criterion is met.

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

The applicant is not a commercial dairy farm and is not applying under this provision. The criterion does not apply.

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

No livestock is involved in the vineyard. The criterion does not apply.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

The dwelling is not located in a big game habitat area. The criterion does not apply.

6. A deed restriction filed with the county clerk requiring removal of the home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

This criterion ensures compliance with OAR 666-033-0130(24)(a)(A) *“The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.”* The affidavits provided by the applicant shall serve in this case as ensuring compliance. The applicant understands that the structure in use as a farm dwelling must be converted to non-residential uses at such time that it is no longer occupied by a person assisting with the farm. The criterion does not apply.

8. The criteria for a secondary single-family dwelling on real property used for farm use is subject to the following criteria in MCC 17.136.030(C):

1. A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator’s spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.

The proposed secondary single-family dwelling is occupied by the applicant’s son Micah Moore. Two signed affidavits from John Moore were submitted, attesting to all his duties as the farm operator, as well as attesting that Micah is his biological son and an employee of the farm. A signed affidavit from Micah was submitted showing that he provides significant assistance to the primary operator in the capacity of general manager of the farm operation. The criterion is met.

2. The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.

The applicant representative provided affidavits from John Moore, Micah Moore, and Carlos Jimenez. These affidavits list all the duties that each are responsible on the vineyard. John Moore attests to working in excess of 60 hours a week on the farm operation between the vineyard and winery as the Farm Operator. Carlos Jimenez is the Vineyard Manager, and works in excess of 50 hours a week in this capacity. Micah Moore is the General Manager and works full time. John Moore attests that he is the primary decision maker. The affidavits provided show that he continues to play the predominant role in management and use of the farm. The criterion is met.

3. A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.

This criterion ensures compliance with OAR 666-033-0130(9)(a) *“To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator.”* The affidavits provided by the applicant shall serve in this case as ensuring compliance. The applicant understands that the structure in use as a farm dwelling must be converted to non-residential uses at such time that it is no longer occupied by a relative assisting with the farm. The criterion does not apply.

4. For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section.

The subject property consists of high value farmland. The applicant has submitted balance sheets for the vineyard as well as tax returns showing the minimum gross annual income has been met for at least the last two years. The criterion is met.

5. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

“It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.

These covenants, conditions, and restrictions can be removed only at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.”

This shall be met by the recording of an Agricultural Land for Dwelling Qualification Declaratory Statement as a condition of approval. The criterion is met.

9. In addition to the above criteria MCC 17.136.030 requires that a dwelling established in the EFU zone through this process shall comply with MCC 17.136.100(C), which reads as follows:

Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

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

10. 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: September 18, 2024

If you have any questions regarding this decision contact John Speckman 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.