

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
CONDITIONAL USE CASE NO. 20-021**

APPLICATION: Application of Kevin and Fiona Kiker, Trustees of the Caledonia Trust, for a conditional use to establish a winery as a commercial activity in conjunction with farm use on an 18 acre property in the EFU (Exclusive Farm Use) zone located at 15192 Jefferson Highway 99E, Jefferson. (T10S, R3W, Section 1B, Tax Lot 1900).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

EXPIRATION DATE: This conditional use permit is valid only when exercised by **July 8, 2022**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels 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: Once the approved use is established the following conditions must be continually satisfied:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The winery shall be developed and operated as described in the application and as conditioned.
3. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. Prior to or in conjunction with issuance of any building permits, the applicants shall provide a detailed site plan demonstrating compliance with the parking requirements of Chapter 17.118 of the Marion County Code (MCC).
5. Parking must be provided on the same parcel as the proposed winery
6. All other structures and parking areas must be located a minimum of 20 feet from any property line.
7. Any light used to illuminate a parking or loading area shall be directed away from any abutting residential zone or public street.
8. The sale of wine produced on the property is permitted as part of this approval.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

9. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.

10. Any sign placed on the property shall meet the standards in Chapter 17.191 MCC.
11. Incidental sales (less than 25% of total gross sales) of other items directly related to the winery, including serving glasses and other merchandise, food, and wine made from product not grown in the state of Oregon, are permitted as part of this approval. 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.
12. A limited service kitchen including limited food pairings with wine is permitted upon proof of compliance with condition #9. A permanent, full service restaurant or café is not permitted.
13. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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 #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

14. 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.
15. The applicants should contact Marion County Land Development and Engineering at (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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, 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 8, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective, **July 9, 2020** unless further consideration is requested.

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

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the east side of Highway 99E (Jefferson Highway), approximately 380 feet south of the intersection of Highway 99E and Adams Lane. The property is developed with a house and two outbuildings. The property is currently used for seed production. The property was recorded by deed on September 14, 1967 (Volume 638, Page 471) and is considered a legal lot for land use purposes.
3. According to Soil Survey for Marion County Oregon, 100% of the soils on the subject property are high-value soils.

4. Properties to the east, south, and west are zoned EFU (Exclusive Farm Use) and consist of large size farm parcels, some of which are developed with dwellings, and others that are not. Properties to the north are zone AR (Acreage Residential) and are developed with residential uses.
5. The applicants are proposing to operate a winery and tasting room as a commercial activity in conjunction with farm use. The applicants plan to be open to the public Thursday through Sunday. The applicants are proposing to convert an existing building on the property to be used for wine production and the tasting room.
6. Jefferson Fire District commented that the applicants must comply with the District's Recommended Building Access and Premise Identification regulations.

Marion County Building Inspection commented that a building permit is required for a Change in Use or Occupancy.

Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirements included:

ENGINEERING REQUIREMENTS

- A. As a stipulation for issuance of building permits, Applicant will be required to furnish evidence of ODOT access coordination including meeting any of their permitting requirements.
- 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 per Marion County Ordinance.
- C. It may be required to design, permit and construct a stormwater volume attenuation facility in conjunction with a future shop/winery and parking area if that combined area exceeds 0.5-acre.

ENGINEERING ADVISORIES

- D. ODOT has jurisdiction over Jefferson Hwy (SR 164) for access and utility work.
- E. DEQ regulates non-agricultural ground disturbing activities of 1.0-acre and above.

All other commenting agencies stated no objection to the proposal.

7. In order to approve a commercial activity in conjunction with farm use the applicants must demonstrate compliance with the specific criteria listed in Marion County Code (MCC) 17.136.060(D). These include:
 - (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
8. The grapes that are proposed to be grown on site would supply the grapes for processing into wine. The processing of grapes and bottling it enhances the local agricultural community by adding value to a farm product locally. Wine produced from grapes grown on site may be sold to retail and wholesale customers as other farm products are sold. The applicants are applying for a winery and a tasting room as a commercial use in conjunction with farm use. Wine tasting is a customary practice in conjunction with the purchase of wine. Therefore, the

operation of a wine tasting room in addition to the wine production facility can be permitted as a commercial use in conjunction with farm use.

9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*
10. It will not significantly increase traffic on area roads. Fire protection is provided by Jefferson Fire Department and the Marion County Sheriff provides policing. Other needed rural services are available on the property. Due to clustering with existing development, the winery and tasting room will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality, create a significant amount of noise, impact potential water impoundments or conflict with mineral and aggregate sites. The proposal meets the criteria for a conditional use in the EFU zone.
11. As described above, the use is a commercial use in conjunction with farm use and , due to the close connection between the proposed use and farm use, it would not significantly increase the cost of farming in the area. The property owners own a 42 acre tract of land including the subject property. The applicants state that the winery will be “modest” in size, with an adjoining grape vineyard. The growing of grapes is a farm use. To ensure compatibility with surrounding uses, MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicants and subsequent owners that there are farm or timber operations in the area. Recording the declaratory statement can be made a condition of any approval. There appears to be adequate fire protection and other rural services to the property. Because the use will take place inside a building, there are no anticipated significant adverse impacts on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality or noise in excess of what is usually found in rural agricultural settings. Also, there are no water impoundments or significant mineral and aggregate sites on the property or within the area that could be impacted by the proposed use.

A winery is allowed subject to standards in the EFU zone pursuant to MCC 17.125.030(A), provided it is located on a property with 15 acres of vineyard or a contiguous property is planted with 15 acres of vineyard. The subject property is not currently developed with a vineyard. Therefore, sales of products not grown in the state of Oregon or produced on the property from local agricultural products are limited to 25% of gross annual sales at the winery. OLCC (Oregon Liquor Control Commission) may require food service as a condition of a liquor license. Limited food service can be permitted in so far as it promotes sales of local agricultural products, but a full service restaurant cannot be permitted for a commercial activity in conjunction with farm use. Food intended to be consumed on the property is considered an incidental product and, together with sales of promotional merchandise and other products not classified as local agricultural products, must not exceed 25% of the total sales of the winery development.

The proposal satisfies or can be conditioned to satisfy, the general criteria for a conditional use for a commercial activity in conjunction with farm use in the EFU zone.

12. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for a conditional use for a commercial activity in conjunction with farm use and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: June 23, 2020

If you have any questions regarding this decision contact Alyssa Schrems 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.