

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. 24-016

APPLICATION: Application of Lynne Properties, LLC for an administrative review to permit a winery on EFU (Exclusive Farm Use) zoned land on an 8.47 acre and a 13.43-acre parcel located at 10375 Champoege RD NE, Aurora (T4S; R1W; Section 6D; Tax lot 200, 300 & 400).

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 **August 31, 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 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. The applicant must maintain a minimum of 15 acres of vineyard on the subject properties for the operation of any winery activities allowed under Marion County Code, Chapter 17.125.030.
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. Development of an onsite commercial kitchen will require licensing through the Oregon Health authority and 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.
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 events of any kind are hosted by the Winery, upon request from the Marion County Planning Director, the applicant shall submit details about any and all events including:
- A. The number of event attendees;
 - B. The hours of event operation;
 - C. Access and parking;
 - D. Traffic management;
 - E. Noise management; and
 - F. Sanitation and solid waste handling.
8. 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).
9. A special 100-foot setback shall be maintained from the North, West, and South property lines for the winery, tasting room and all public gathering places. A special reduced 75-foot setback shall be maintained from the East property line for the winery, tasting room, and 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:

- 10. 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.
- 11. 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 for certain applications to 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) based on 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 **September 3, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 4, 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 EFU (Exclusive Farm Use). The intent of this designation and zoning is to provide areas for continued practice of commercial agriculture.
- 2. The subject property consists of three parcels located on Champoeg Road NE, approximately a half-mile west of the intersection of Champoeg Road NE and Butteville Road NE. The property has been producing wine-grapes since at least 1975. Tax Lot 200 is approximately 13.43 acres in size, while Tax Lots 300 and 400 are

approximately 8.47 acres and 1.51 acres in size, respectfully. Currently, Tax Lot 200 is developed with a building being used as a wine tasting room and two farm buildings, while Tax Lot 300 contains one farm building and Tax Lot 400 has one dwelling (the primary residence). The subject Tax Lots were the subject of Administrative Review 92-009 to establish a winery, which was approved, and subsequently Administrative Review 22-036 which determined all three to be separate legal parcels. All three subject parcels of this property are therefore legal for land use purposes.

3. All adjacent parcels to the north, east and west are zoned EFU. There are a few AR (Acreage Residential) zoned parcels south adjacent, surrounded by more EFU zoned parcels. Surrounding uses are primarily agricultural with some rural residential. The agricultural uses nearby include production of hazelnuts, hops, grass seed, and hay. To the north of the subject parcel is a wooded area adjacent to the Willamette River owned by the State of Oregon Parks & Rec. This area includes a mixed-use trail leading from Champoege Park to Butteville.
4. The applicants are proposing to establish a new tasting room and operate the existing winery under the updated winery code in MCC 17.125.030. The winery was established in 1992 under the old winery code. The current winery code allows limited events on site.
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.

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits, an Access Permit will be required to pave the west access approach due to its commercial usage and permanently close the east gated field access with a fence section as it appears to be redundant and furthermore exceeds county standard of 5% maximum grade for a gravel approach.
- B. Transportation System Development Charges (TSDCs) will be assessed at the time of application for building permits for the additional winery building.

Marion County Building commented: "Permit(s) are required to be obtained prior to the development and/or utilities installation on private property for a winery tasting room. No concerns identified according to the application and site plan submitted under Administrative Review 24-016."

Marion County Septic commented: "There is record of an existing system serving a small winery/tasting room installed under permit 93-02792. To connect any new structures to the existing system, or if there is an increase in flow, an authorization will be required."

All other commenting agencies either did not respond or 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. *Owens an on-site vineyard of at least 40 acres;*
 - b. *Owens 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 applicant operates a winery on the property which already includes a vineyard of more than 15-acres. The applicant's proposal is for a winery producing less than 50,000 gallons of wine per year. 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 applicant already operates a tasting room where they market and sell wine produced on site. The proposed new tasting room would accommodate events such as winemaker luncheons and dinners, and tours of the vineyard and winery, and open house events. The continued sale of items related to wine will be incidental. The applicant is interested in hosting agri-tourism, commercial, and charitable events. To incorporate these allowed uses is the primary purposed of renewing the winery approval with this administrative review. These criteria may be met with all requirements being 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 states that they understand the licensing and restrictions if and when they chose to include an on-site kitchen facility. 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. The criterion is met and shall be a condition of approval.

- 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 18 days annually and have stated that the events will be subordinate to the production and sale of wine. The applicant has stated they will furnish documentation demonstrating compliance at the request of the Planning Director. 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, and is aware that additional parking may be required. The building permit review process will ensure compliance with all parking standards. 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 1992 approval of a winery on the property (AR92-009) mentions that the vineyard had already existed for 17 years. Therefore this vineyard is roughly 50 years old. Aerial imagery confirms that it continues to exist and meets the 15-acre minimum. In the last couple of years an ageing field has had to be removed and has not been replanted. This field is the proposed location for the new tasting room. The applicant states that they plan to replant more grapes around the structure after the new tasting facility is built. Once the new grapes are planted the vineyard will exceed 15-acres. 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 applicant requests a reduced easterly setback from 100-feet to 75-feet to reduce impact on existing grape vines in the area around the proposed site of the new tasting room. On the eastern property line the applicant has planted a row of trees to create a vegetative buffer for the farm, dwelling and accessory structures east of the subject property. Other land east of the property is the woodland owned by the State of Oregon. There will be no structures within 500-feet of the proposed tasting room. The applicant's site plan shows the location of the proposed tasting room, parking stalls, and internal road circulation. Staff approves the reduced setback request to the eastern property line. The criterion is met.

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: August 16, 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.