

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. 22-013**

**APPLICATION:** Application of Tanner Keonig for a conditional use permit to establish a cidery business as a commercial activity in conjunction with farm use on a 52.82 acre parcel in an EFU (Exclusive Farm Use) zone located at 19887 Case Rd NE, Aurora. (T4S, R2W, Section 24, Tax Lot 700).

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

**EXPIRATION DATE:** This permit is valid only when exercised by **April 13, 2024**. 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 drainfield 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:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. 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.
3. 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.
4. No tasting room or events are permitted in conjunction with the cidery.

**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 agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact Woodburn 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.
6. 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 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) 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. 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 **April 13, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 14, 2022**, unless further consideration is requested.

**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. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural operations.
2. The property is located on both sides of Case Road NE, approximately 0.49 miles north of the intersection of Case Road NE and St. Paul Hwy NE. The property is developed with a dwelling constructed in 1880 and an accessory structure. The property was first described in its current configuration by a deed recorded as Volume 280, page 130 on February 1, 1943, and is considered legal for the purposes of land use.
3. Surrounding properties in all directions are zoned EFU and are in medium to large scale commercial farming operations.
4. Soil Survey for Marion County, Oregon indicates 96.9% of the subject property soils are High-Value Farmland with soils consisting of Amity Silt Loam (Am), Concord Silt Loam (Co), Terrace escarpments (Te), Wapato Silty Clay Loam (Wc), Woodburn Silt Loam 0-3% slopes (WuA), and Woodburn Silt Loam 12-20% slopes (WuD).
5. The applicant is proposing a conditional use to allow for a commercial operation in conjunction with farm use to establish a cidery business.
6. Marion County Land Development and Engineering provided the following comments:

#### **ENGINEERING REQUIREMENTS**

- A. Driveways must meet MCPW Engineering design standards. At the time of application for building permits it will be required to obtain an Access Permit to close the open property frontage by defining the access point to a standard width for a rural, two-way commercial access, and including paving the approach.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances.

Marion County Septic commented that: "1. Marion County has no septic records for this property. The applicant proposed in AR22-003 to use the existing septic system for the cidery, which requires an authorization notice approval for the change in use. The applicant will need to address the number of employees expected to work at the facility on a daily basis. If the change in use constitutes an increase in flow of greater than 50% or 300 gallons a site evaluation and construction/instillation permit will be required. 2. Land application of processed wastewater from the beer making process is regulated by the DEQ, the applicant should contact the DEQ to determine what if any permits are required.

Woodburn Fire commented that the applicant is proposing to use existing buildings for non-public use. No comments or concerns at this time.

Marion County Building commented that “Permits would be required for any new, or alterations to existing, structures and/or utilities or systems associated with the brewery/cidery on private property”.

Friends of French Prairie commented that “the application for CUP states that all cider and beer will be sold wholesale with no retail operation on site. Approval should include condition of no retail sales.”

All other parties notified either had no comment or no response was received.

7. In order to approve a commercial activity in conjunction with farm use, the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). 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 applicant is proposing to operate a cidery business. The applicant states that they grow the apples and pears for cider making on their other farming locations, as well as crops for specialty recipes such as apples, pears, peaches, berries, hazelnuts, and honey. The applicant states that any ingredients they do not grow themselves will be purchased from other local farms. Based on these facts, the business will be a primary customer of farm uses. Based on these facts, criterion 7(a) is met.

The business proposes to use farm products produced locally to brew cider. The applicant states that adding value to crops by turning them into cider is vital in staying sustainable in today’s economy. The applicant also states that the cidermaking process allows them to preserve perishable crops and be able to market them for a longer time than the traditional short harvest window for fresh produce. Based on these facts, the proposal will enhance the farming enterprises of the local agricultural community. Based on these facts, the business meets the criterion in 7(b).

The applicant states that they will serve the local agricultural community. The applicant states that they grow their own grains, apples, pears, peaches, berries, hazelnuts, and honey; and will be purchasing the rest of the ingredients they do not grow from other local farms. Friends of French Prairie requested that as a condition of approval that the applicants not be allowed to provide retail sales on site for the cidery. Marion County Planning does not see any adverse impact to the local agricultural community by allowing retail sales on site. No events or tasting room are permitted as part of this approval, but there is no evidence that allowing minimal on-site retail sales would create conflicts in the area. Because of these facts, Planning is not including this as a condition of approval as there is no justification in the record for this requested condition. Based on these facts, the business meets the criterion in 7(c).

The applicant states that the products and services provided will be essential to agriculture practices because it allows them to add value to their crops by turning them into cider and it allows them to market their crops for a longer time than the traditional short harvest window for fresh produce. Based on these facts, the criterion in 7(d) are met.
  
9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (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. The business proposes to establish a cidery business on the subject property. The business is not expected to force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands. The building that the applicant proposes to use is approximately 1500 square feet in size and is located towards the middle of the property near the road. The rest of the property is proposed to be used to grow farm crops, including an orchard, to provide farm products for the cidery process. The business is proposed to be buffered from surrounding farm uses. Based on these facts the proposal meets #9(a).

The Woodburn Fire District and the Marion County Sheriff's Office serve the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b).

The property is not within a wildlife habitat area, groundwater limited area, floodplain or geologically hazardous area. There are wetlands located along the western property line of the property where it borders Case Creek. The applicant does not propose any activities in conjunction with the business within 50 feet of the wetland. The applicant states that there will be no air pollution in association with the business and the crops being grown locally will provide a net positive for the air quality. Noise generated by the proposed activity should be comparable to agricultural activities and should create no significant impact. The proposal meets #9(c) and (d).

There are no potential water impoundments, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

11. Based on the above findings it has been determined that the applicant's request meets all applicable criteria to operate a cidery business as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich,  
Planning Director/Zoning Administrator

Date: March 29, 2022

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.