

THE MARION COUNTY HEARINGS OFFICER

In the Matter of the	)	Case No. CU 17-043
	)	
Application of:	)	Clerk's File No.
	)	
WILLAMETTE COUNTRY MUSIC CONCERTS, LLC	)	<b>Conditional Use</b>

**RECOMMENDATION**

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on the application of Willamette Country Music Concerts, LLC for a conditional use permit for a temporary use of 692 acres in an EFU (Exclusive Farm Use) zone in conjunction with a mass gathering permit August 15-18, 2019, at 13054 Jorgenson Road S and in the 3700 block of Wintel Road S, Jefferson, Marion County, Oregon (T9S, R3W, S19, tax lot 400; S21, tax lot 700; S28, tax lots 100, 300, 400, 500, 600 and 700; S28D, tax lots 800, 1000 and 1100).

By Order of the Marion County Board of Commissioners, the Board of Commissioners determined to consider both the conditional use permit and the mass gathering permit at one public hearing. The conditional use application was called up for consideration by the Marion County Board of Commissioners pursuant to the Marion County Code 17.110.765. The Board of Commissioners directed the Marion County Hearings Officer to hold a hearing on the conditional use application and make a recommendation to the Marion County Board of Commissioners. Order 17-144.

**II. Relevant Criteria**

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and Marion County Code (MCC), Title 17, especially chapters 17.119, 17.126.030, and 17.136. Also relevant to this application is MCC 9.25.

**III. Public Hearing**

A public hearing was held on this matter on December 20, 2017. The public hearing was continued on February 21, 2018. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- |    |                |  |
|----|----------------|--|
| 1. | Brandon Reich  | Planning Division                            |
| 2. | John Rasmussen | Marion County                                |
| 3. | Ann Hankins    | President, Willamette Country Music Festival |
| 4. | Scott McDowell | City Administrator                           |
| 5. | Michael Reeder | Attorney, Applicant                          |
| 6. | Del Huntington | Project Delivery Group                       |

7.	Don Leber	Bi-Mart Marketing Director
8.	Michael Nunes	Proponent
9.	Peter Yoakum	Proponent
10.	David Beyer	Proponent
11.	Dan Gilmour	Proponent
12.	Christine McClaughy	Proponent
13.	Anthony Roberts	Proponent
14.	Louis Gisler	Proponent (Jefferson Fire District)
15.	Molly Dinsdale	Opponent
16.	Don Dean	Opponent
17.	Brogan Oswald	Opponent
18.	James Buchal,	Attorney, Opponent
19.	Mary Anne Cooper	Marion County Farm Bureau, Opponent
20.	Roger Kaye	Opponent
21.	George Meyer	Opponent
22.	Ray Temple	Opponent
23.	Roger DeJager	Opponent
24.	Holli DeJager	Opponent
25.	Doug Schneider	Opponent
26.	Trina Yoakum	Proponent
27.	Rick Briley	Opponent
28.	Dennis Person	Opponent
29.	Harold Miller	Opponent
30.	Allyson Miller	Opponent
31.	Mitch Rohse	Opponent
32.	Tom Brawley	Opponent
33.	Brian Krebs	Opponent
34.	James J. McAteer	Opponent
35.	Laurel Hines	Opponent
36.	Joe Bessman	Proponent

The following documents were entered into the record as exhibits at the hearings and by submission to the planning division:

Ex. 1	December 20, 2017, written testimony of Del Huntington with attached educational and experience summaries of Del Huntington and Joe Bessman, PE (2 copies)
Ex. 2	December 8, 2017, letter from Kevin Hendricks, Jefferson Fire District's Interim Fire Chief
Ex. 3	December 20, 2017, memorandum from James Buchal, Murphy & Buchal, with attached documents labeled as exhibits 1-5
Ex. 4	December 20, 2017, letter from Roger Kaye, President of Friends of Marion County, with attached documents labeled as exhibits 1-10
Ex. 5	Oversized map of Talbot area showing concert venue and neighboring farms, submitted by George Meyer
Ex. 6	Cost Breakdown to GM Meyer Farms with attached explanation, estimate, and quote, submitted by George Meyer
Ex. 7	Note with three attached photos of farm equipment, submitted by George Meyer
Ex. 8	Oregon Farm Bureau printout, submitted by George Meyer

- Ex. 9 Two articles regarding motor vehicle accidents involving farm equipment, submitted by George Meyer
- Ex. 10 Cost breakdown to Talbot area businesses spreadsheet, submitted by George Meyer
- Ex. 11 Oversized map showing traffic back up, submitted by George Meyer
- Ex. 12 Signed petition in opposition, submitted by George Meyer
- Ex. 13 Two December 5, 2017, letters signed by multiple parties, submitted by George Meyer
- Ex. 14 Undated letter from Susan Watkins
- Ex. 15 Undated letter from Audrey Raschein, Blue Lace Farms, with two attached photos of farm equipment and a vehicle
- Ex. 16 December 13, 2017, letter from Rick Briley with attached Jefferson Volunteer role call incident summary report and highlighted Linn County Commissioner notes
- Ex. 17 December 19, 2017, memo from Mitch Rohse
- Ex. 18 December 20, 2017, written comments from Laurel Hines with two attached maps, two articles, and a photo printout of elk at Ankeny Refuge
- Ex. 19 Undated letter from Michelle Duncan, Linn County Sheriff's Office, submitted by Micheal Reeder
- Ex. 20 December 19, 2017, letter from Brian Meiering, Wetlands and Wildlife LLC, with attached Ankeny National Wildlife Refuge map
- Ex. 21 December 20, 2017, email from Reed and Robyn Anderson
- Ex. 22 December 22, 2017, memorandum from James Buchal with attached document labeled as exhibit 6
- Ex. 23 December 16, 2017, letter with attached envelope from Tom and MaryDell Kuzma
- Ex. 24 January 8, 2018, letter from Roger Kaye with three attached articles
- Ex. 25 Comments dated December 18, 2017, from Suzanne Nelson with attached envelope
- Ex. 26 Comments dated December 20, 2017, through February 15, 2018, from Karen Morin and Brandon Reich
- Ex. 27 February 18, 2018, emailed comments with two attached photo printouts of elk from Robert Rossiter to Brandon Reich
- Ex. 28 February 19, 2018, email from Wendy and Mike Sampels to Brandon Reich
- Ex. 29 February 21, 2018, Legal Issues Memorandum with attached exhibit A
- Ex. 30 Transportation Impact Analysis summary (paper version of PowerPoint) from Joe Bessman, PE
- Ex. 31 Transportation Impact Analysis dated February 20, 2018, prepared by Transight Consulting, LLC
- Ex. 32 Undated note and petition in support submitted by Applicant Kris Gross
- Ex. 33 Oral testimony of Micheal M. Reeder with attached documents labeled as exhibits 1-8
- \* Authorities case law submitted by Micheal Reeder (not an exhibit)
- \*\* Authorities case law submitted by James Buchal (not an exhibit)
- Ex. 34 March 2, 2018 letter from Keith Blair, Oregon Department of Transportation
- Ex. 35 March 1, 2018 letter from Joey McClinchy, Oregon Liquor Control commission
- Ex. 36 March 19, 2018 letter from Julia Uravich, Marion County Public Works Engineering

- Ex. 37 April 13, 2018 email from Sarah Cook, Jefferson City Recorder with attachments
- Ex. 38 April 20, 2018 Memorandum from Julia Uravich, Marion County Public Works Engineering
- Ex. 39 March 14, 2018 email from Jon Hazen
- Ex. 40 March 13, 2018 email from David Stone
- Ex. 41 February 22, 2018 letter from Laurel Hines with attachments
- Ex. 42 March 20, 2018 email from Laurel Hines
- Ex. 43 March 21, 2018 email from Howard Bruner
- Ex. 44 March 21, 2018 letter from Roger Kaye, President of Friends of Marion County with attachments
- Ex. 45 April 6, 2018 email from Linda Phelan Thompson
- Ex. 46 April 6, 2018 memorandum from James L. Buchal
- Ex. 47 April 6, 2018 email from Margaret Stephens
- Ex. 48 April 6, 2018 email from Molly Iris
- Ex. 49 April 6, 2018 email from Naomi Weidner
- Ex. 50 April 6, 2018 emails from Jean Baecher Brown
- Ex. 51 April 20, 2018 submission from farmers with letter from Roger Kaye, President of Friends of Marion County and attachments
- Ex. 52 April 10, 2018 email from Linda Learn
- Ex. 53 April 12, 2018 email from Laurel Hines
- Ex. 54 April 16, 2018 email from Bridgett Marlatt
- Ex. 55 April 17, 2018 email from Andrew Jones
- Ex. 56 April 17, 2018 email from Dorothy Kimball
- Ex. 57 April 17, 2018 email from Robert and Janet Bain,
- Ex. 58 April 17, 2018 email from R. Roaninn
- Ex. 59 April 17, 2018 email from Shannon McIntire
- Ex. 60 April 17, 2018 email from Mary Schamehorn
- Ex. 61 April 17, 2018 email from Kathleen Blevins
- Ex. 62 April 17, 2018 email from Royce Halford
- Ex. 63 April 18, 2018 email from Kellie Brandt
- Ex. 64 April 18, 2018 email from Jackie Guzman
- Ex. 65 April 18, 2018 email from Tosha Ferrando
- Ex. 66 April 18, 2018 email from Sara Judy
- Ex. 67 April 18, 2018 email from Jan Sheets
- Ex. 68 April 18, 2018 email from Tirzah Monet
- Ex. 69 April 18, 2018 email from Thomas Daly
- Ex. 70 April 18, 2018 email from Sue Veenendall
- Ex. 71 April 19, 2018 email from Penny McCarthy
- Ex. 72 April 19, 2018 email from Lorelei and Rick Gilmore
- Ex. 73 April 19, 2018 email from Michelle Nunes
- Ex. 74 April 19, 2018 email from Kristin Santose
- Ex. 75 April 19, 2018 email from Steve Parrent
- Ex. 76 April 20, 2018 email from Daniel Aguilar
- Ex. 77 April 20, 2018 email from Justin Kennedy
- Ex. 78 April 20, 2018 email from Diana Escamilla medina with attachment
- Ex. 79 April 20, 2018 email from Madison Kubishta
- Ex. 80 April 20, 2018 email from JoLynn Arlandson
- Ex. 81 April 20, 2018 email from Micheal Reeder with attachments
- Ex. 82 April 20, 2018 email from Mary Joan Posch

- Ex. 83 April 19, 2018 letter from Marcia and Gary Batten
- Ex. 84 April 20, 2018 letter from George Meyer
- Ex. 85 April 20, 2018 letter from Rick Nys, Greenlight Engineering to James Buchal
- Ex. 86 April 20, 2018 email from Wes Pilcher to Roger Kaye with attachment
- Ex. 87 April 20, 2018 email from Jennifer Deedon
- Ex. 88 April 17, 2018 letter from Jane Myers
- Ex. 89 April 20, 2018 emails from Dani Daniel with attachments
- Ex. 90 April 20, 2018 memorandum from Joe Bessman, Transight Consulting
- Ex. 91 April 6, 2018 Traffic Impact Analysis prepared by Transight Consulting, LLC
- Ex. 92 April 27, 2018 email from Micheal Reeder with attached WCMC, LLC Final Written Argument

The record remained open for all parties to submit evidence until April 6, 2018, and until April 20, 2018, for responses from all parties, and until April 27, 2018, for the Applicant to submit rebuttal and final arguments.

No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing.

#### **IV. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject properties consist of twelve tax lots on the north and south side of Wintel Road SE, Jefferson, and the north and south side of Talbot Road S, Jefferson; all west of Interstate 5. Applicant states the property is approximately 692 acres. Marion County Planning Division staff determined the acreage may be approximately 718 acres. The hearings officer adopts the planning staff's acreage of 718 acres. The properties are designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU.
2. The properties are largely undeveloped and in farm use, although some parcels contain dwellings, accessory structures, and farm-related buildings. Portions of the most western subject property, 093W1900400, are in the floodplain of the Santiam and Willamette rivers.
3. Surrounding properties are mostly zoned EFU and in various types of farm use. Property to the north of the most western subject property is zoned AR (Acreage Residential) and developed with residences. Property to the south of 093W2800100 is zoned AR (Acreage Residential) and developed with residences. Property to the east and southeast of that same parcel is zoned ID (Interchange District) and is undeveloped.
4. The Ankeny National Wildlife Refuge is located adjacent to the subject property.

5. Applicant applied for a conditional use permit in conjunction with a mass gathering and noise variance permit because Marion County Code (MCC) requires a conditional use permit be approved before, or considered in conjunction with, a permit for a large gathering (MCC 9.25.070(C)). MCC 9.25.030(A) defines a large gathering as an assembly of persons of more than 3,000 at any time. In this case, the Applicant proposes assembly of 30,000 persons over a four-day period, August 15-18, 2019.
6. The Marion County Planning Division requested comments on the application from various governmental agencies prior to hearing.

Marion County Public Works Land Development and Engineering Permits (MCPW LDEP) commented:

Approval of this Conditional Use would allow temporary use for a mass gathering on approximately 692 acres within the EFU (Exclusive Farm Use) zone. The event will reportedly draw up to 30,000 persons per day. Public Works Engineering recommends denial of the proposal be considered based on what we speculate to be a largely unmanageable impact of this event on the county and state roadway system, the impact to the community from significant traffic backups on relatively narrow county roads in the vicinity, and significant financial and resource impacts to be borne by the County for review and management of the impacts. However, if the proposal were to be approved, Public Works Engineering Division requests the following conditions and requirements be imposed.

#### ENGINEERING CONDITIONS

Condition A - No less than five (5) months prior to the scheduled event, submit to MCPW Engineering for review and approval, a Traffic Impact Analysis/traffic study (TIA) that also includes a detailed site plan.

This is a critical path contingency item. The TIA document shall be prepared, sealed, and signed by a registered traffic engineer. Applicant shall work with Public Works staff to identify the exact scope of the analysis; see RIA content requirements given in Engineering Requirements section of PW Engineering Memorandum. A conceptual site plan has been provided with the application; however, a more detailed plan is required.

Condition B - No less than four (4) months prior to the scheduled event, submit to MCPW Engineering for review and approval, a comprehensive Temporary Traffic Control Plan (TTCP) that addresses both vehicular and pedestrian traffic within the public right-of-way for the proposed event, along with a copy of the TTCP plan that was approved for use at the 2017 Willamette Country Music Festival held in Brownsville, Oregon.

Condition C - No less than three (3) months prior to the scheduled event, submit to MCPW Engineering for review and approval, that portion of ticket holder information packet related to traffic routing, directions, and traffic control.

Condition D - No less than two (2) months prior to the first event, submit to MCPW Engineering for review and approval, a draft detailed notice to all property owners and affected stakeholders within the vicinity of the event. No less than 14-days prior to the scheduled event, prepare and mail an approved notice to all property owners within a geographic expanse to be specified by Public Works staff.

Condition E - At the time the TIA is submitted for review, Applicants shall execute a MCPW Work Order agreeing to pay for all costs assumed by the Department of Public Works for such activities related to the event including, but not limited to, formal review of the TIA, TTCP and related event material; event planning activities; event traffic monitoring by Public Works staff during the festival; required response activities during the festival; and any post-event repairs or required actions.

Condition F - Applicants are required to restore the state and county road right-of-ways impacted by the event to the same or better condition as existed prior to the event or as specified in individual permits. This may include closing temporary accesses, restoring road shoulders and ditches, removing temporary traffic control devices, litter and debris pickup, etc.

Condition G - The approval be limited to a single event with a cap on ticket sales and attendance to 30,000 attendees per day.

#### ENGINEERING REQUIREMENTS

Requirement H - In accordance with Marion County Driveway Ordinance 651, driveways must meet sight distance, design, spacing, and safety standards. Access Permits will be required to install and/or remove temporary and/or intermittent use permanent accesses as approved and determined by MCPW Engineering.

Requirement I - A more detailed site plan is required to include all aspects of onsite functions such as vehicular and pedestrian routes, heliport landing area if required, vendor staging area, etc. Please contact PW Engineering for questions on site plan requirements.

Requirement J - Required elements of the TIA and the TTCP shall include, but will not be limited to:

- 1) Vehicle queuing analysis on county roads during both peak and nonpeak traffic generation times;
- 2) Coordination with ODOT Region 2 and District 4 on impacts to the state highway system, including 1-5 mainline, 1-5 interchanges, and OR 99E;
- 3) Analysis of internal circulation and service operations at accesses providing entrance to parking and camping and a plan for the expedient processing of entering vehicles to minimize dwell times on county roads;
- 4) Impact to the local residents and businesses with identified mitigations;

- 5) Railroad crossing impacts and proposed mitigations;
- 6) Consideration and accommodation of Buena Vista Ferry operations;
- 7) Emergency services (EVA) provisions;
- 8) Review of the roads, bridges, and intersections identified for vehicle routing in the traffic plan;
- 9) Identify other roadway safety considerations to be addressed prior to the event;
- 10) Pedestrian routing and safety;
- 11) Traffic incident response and management; and,
- 12) Mass evacuation plan.

Applicant shall meet with Public Works and ODOT staff to develop the full scope of the TIA and TTCP.

Requirement K - A Road Closure (Detour) Permit will be required for any road related closures.

Requirement L - Applicant shall provide evidence of meeting ODOT requirements, including obtaining any required permits.

Requirement M - There may be more specific traffic information required for a Mass Gathering Permit required in association with the Conditional Use.

Requirement N - Utility work within the public right-of-way necessary to provide for temporary onsite services requires permits from MCPW Engineering.

Requirement O - No event signs or entrance gates shall be placed within the public right-of-way. Only Temporary Traffic Control Signs identified in an approved TTCP are allowed within the R/W and event gates must be set a minimum of 50 feet back from the edge-of-pavement.

Jefferson Fire District commented:

I have attended a couple meetings with members from the Willamette Country Music Concerts, LLC and read through their permit application. I'm impressed with the detail of their plan and the amount of effort that goes into producing the festival. In conversations with President Anne Hankins, and others of her team, I am convinced they are sincere and heartfelt in their statements about wanting to be part of the community and helping all of us to be successful.

As for providing emergency services to the festival we have been in contact with Lebanon Fire District who was the lead fire agency for the 2017 event, and they are willing to share their plan with us. The plan includes using several agencies so the burden is not on one agency. Any services provided to the festival will be in addition to our normal operation and will not diminish what we already provide to the Community. The fire agencies and festival had a cost recovery agreement in place so there wasn't a financial liability to the fire agencies.



This event can be beneficial to the community of Jefferson and the surrounding area. It can bring opportunities to our schools and service groups, it can bring us pride and accomplishments. That is why I support the Willamette Country Music Festival in their desire to acquire the necessary permits to locate the festival in the Jefferson area.

Marion County Code Enforcement commented that there are no code enforcement issues with the property.

Marion County Building Inspection commented that building permits are required for temporary structures such as the stage and other uses, and that septic permits would be required.

City of Jefferson commented in support of the application.

Jefferson School District commented in support of the application.

Jefferson High School commented in support of the application.

Jefferson Middle School commented in support of the application.

U.S. Fish & Wildlife Service Willamette Valley National Wildlife Refuge Complex commented regarding the Ankeny National Wildlife:

Prior to receiving your request, we were aware of the potential for the music festival to change its venue to the private property adjacent to Ankeny National Wildlife Refuge. Tim Flowerday with Willamette Country Music Concerts, LLC (WCMC LLC) reached out to Refuge personnel in September and we met at Ankeny National Wildlife Refuge on November 1, 2017. The WCMC LLC was proactive in reaching out to us and seemed receptive to the concerns we shared with them. In our response to the county application we will share the same concerns we shared with WCMC LLC.

Ankeny National Wildlife Refuge is one of over 565 National Wildlife Refuges across the nation; a network of lands dedicated to conserving a vast array of fish, wildlife and plants valuable for communities and people to live from and enjoy. Ankeny Refuge is well known for the Willamette Valley habitats we restore and maintain; the hundreds of resident and migratory bird species that depend on these lands, and for the many recreation options. It is from this basis that we put forward our response - in brief and in summary - on the proposed event. Our response centers on potential impacts, opportunities and safety concerns:

- In thinking about the potential impacts from the festival, we discussed the following: increased traffic and trash, disturbance to wildlife, increased risk of wildfires, volume of people, dust abatement measures, light and noise pollution, time/management costs on Refuge staff, displacement of Refuge visitors, trespass and/or

misuse of the Refuge (e.g., entering the Refuge during closure hours, litter, driving in fields).

- Our safety concerns result from the short-term, high volume of people (40,000-60,000 daily) that would travel to and from the area, traveling around the Refuge, and the likelihood of high fire danger during the third week of August.
- In discussing the potential opportunities, we listed the following: increase in outreach and visibility, economic benefit to the area, and support for Refuges and the associated non-profit groups.

The applicant sought to address some of the concerns mentioned above in their application, as they did in our meeting with them.

Along with others in the community, we are in the initial phases of discussing the possibility of the Bi-Mart Willamette Country Music Festival occurring adjacent to Ankeny National Wildlife Refuge. We will continue to evaluate and be engaged in this process as planning continues.

Oregon Department of Transportation (ODOT) commented on December 6, 2017:

This morning we were able to drive the route proposed on the traffic plan overview you sent over.

A couple of comments.

There are indeed 4 public at-grade crossings being utilized for the event under the current traffic plan.

Buena Vista Rd S (USDOT 067081P I Oregon Crossing No. 3E-85.7)  
Wintel Rd S (0670830 I 3E-86.8)  
Marlett Rd (067084K I 3E-87.5)  
Talbot Rd S (0670855 I 3E-87.9)

When we spoke, I made reference to the fact that there should be some sort of outreach to the railroad. To follow-up on that point, these 4 crossings are all passive (absent of lights, gates, or bells). After further thought and internal discussion, it is also strongly encouraged that the railroad provide 24-hour railroad flagging in advance of, during, and after the event. This would almost certainly be at the expense of the event organizer. I volunteer myself to be an intermediary, as needed, to have that discussion happen (between the event organizer or designee and the railroad, Portland & Western (PNWR)).

ODOT commented again on December 7, 2017:

Thank you for notifying the Oregon Department of Transportation (ODOT) of the Condition Use application. This message is submitted for inclusion in the public hearing record and ODOT should be considered a party to the land

use action. Please provide a copy of the land use decision, notice of any time extensions or continuances, to ODOT at the address provided below, or you may provide notice to ODOT via e-mail. Electronic format is preferred.

Planning and Development Manager  
Oregon Department of Transportation  
Region 2 Headquarters  
455 Airport Road SE, Building B  
Salem, OR 97301-5395

Electronic documents can be directed to:

ODOTR2PLANMGR@ODOT.STATE.OR.US

ODOT staff has completed a review of the submitted application and has the following comments:

The proposed site of the Willamette Valley Country Music Festival is adjacent to the Pacific Highway, No. 1, Interstate 5 (1-5). No direct access to 1-5 is being proposed to the festival site however, two 1-5 interchanges are projected to be utilized in directing traffic to and from festival parking, camping and event facilities. It should be anticipated the two interchanges and the surrounding County road system will experience an increase of traffic destined to the festival location. The Applicant Statement indicates the projected attendance of the festival would be between 40 to 60 thousand people. This is a significant influx of traffic to the 1-5 corridor and the County road system in the proximity of the proposed festival location. It should be noted the festival is planned for August, which is traditionally one of the highest travel times of the year along the 1-5 corridor. In a separate email message ODOT received, the applicant mentioned they were seeking approval for the Conditional Use Permit application to accommodate 30 thousand people. It would be helpful to know if the approval of this Conditional Use Permit Application will set a cap on the festival attendance.

ODOT believes traffic impacts need to be documented as part of processing this Conditional Use Permit application. Traffic impacts have not been quantified in the applicant's Conditional Use Permit application. For this reason, ODOT is recommending a condition of approval be included with this land use decision that the applicant prepare and submit a Traffic Impact Analysis (TIA). ODOT would want to participate in the scoping of the TIA with Marion County. The purpose of this information is to determine where the greatest need will be in monitoring and controlling event traffics. ODOT District 4 Maintenance staff will need to work closely with the applicant and Marion County with traffic control.

The applicant did submit a traffic control plan with the Conditional Use Permit application. ODOT appreciates the applicant taking steps to address this item. It is common for ODOT staff to review a traffic control plan when a state highway will be impacted by an event similar to the Willamette

Valley Country Music Festival. Because this is a new location for the festival, ODOT cannot adequately know the scope of traffic impacts to validate the proposed traffic control plan at the time of submitting these comments.

The roadway network identified in the applicant's traffic control plan has four at-grade railroad crossings. Attached to this message are comments being provided by ODOT Rail Division addressing public rail crossing safety issues. Recommendations have been made to Marion County by ODOT Rail Division. Questions or comments can be directed to David Smith, Crossing Compliance Specialist, at 503.986.4095.

Based on the above information ODOT is recommending the following.

- Please verify the maximum attendance figure Marion County would approve with this Conditional Use Permit application.
- Include a condition of approval for this land use decision that the applicant prepare and submit a Traffic Impact Analysis (TIA). ODOT would want to participate in the scoping of the TIA with Marion County.
- The applicant should submit *An Application and Permit to Occupy or Perform Operations Upon A State Highway*. Approval of the permit would be inclusive of a traffic control plan addressing traffic flow at the 1-5 interchanges of Ankeny Hill and Talbot Road, as well as, traffic control on the County road system. The traffic control plan should be based on the findings of the aforementioned Traffic Impact Analysis (TIA).
- Address ODOT Rail Division comments attached to this message.

The applicant or their contractor shall obtain the permit 30 calendar days prior to commencing any activities within state highway right-of-way.

ODOT also included some preliminary internal discussions that are available in the file for review.

Marion County Public Works provided additional follow-up to its December 11, 2017, memo following its review of the TIA. Marion County Public Works is not opposed to the proposal, provided its recommended conditions are imposed to mitigate anticipated traffic impacts. The recommended conditions suggested by Marion County Public Works, as provided in its April 20, 2018, Memorandum are significant: 30 proposed conditions, including the original proposed conditions, as well as additional conditions. Condition E provides that at the time the TIA is submitted for review, Applicant shall execute a MCPW Work Order agreeing to pay for all costs assumed by the Department of Public Works for such activities related to the event including, but not limited to formal review of the TIA, TTCP, and related event material; event planning activities; event traffic monitoring by Public Works staff during the festival; required response activities during the festival; and any post-event repairs or required actions. Applicant objects to an open-ended financial commitment to public

works. Condition F would require Applicant to restore the state and county road right of ways impacted by the event to the same or better condition as existed prior to the event or as specified in individual permits. This condition may include restoring road shoulders and ditches.

The Oregon Department of Transportation submitted additional comments after its review of the February 20, 2018, Traffic Impact Analysis, but did not submit additional comments after the revised TIA. ODOT indicated that Region Traffic has significant concerns, and is not comfortable supporting the plan as currently proposed in the February 20 TIA. ODOT stated that temporary traffic control mitigation measures at the I-5 terminals recommended within this study may be expected to acceptably mitigate traffic capacity at these isolated locations, but operations at these intersections may still fail due to inadequate queue storage length on the local County network upstream, which could unacceptably back traffic queues onto the mainline of I-5.

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

7. In addition, written comments from neighboring property owners and interested parties were received by Marion County Planning and are summarized below:

Written comments that were received expressed concerns over the following:

- The organizer not following the conditions of their permit in Linn County
- The amount of traffic
- Possible road closures
- Possible fires caused by the event
- The number of attendees
- The need for permits to use well water for the event
- Possible impact to wildlife
- Potential theft or vandalism caused by attendees
- Liability of neighboring property owners over trespass by attendees
- Traffic impacts at railroad crossings
- Fire equipment having access to fields and properties during the event
- Fights, thefts, and similar illegal activity at similar festival events
- Narrow roads in the area and their use by a variety of users, such as bicyclists, walkers, and delivery trucks
- Difficulty coordinating traffic with Interstate Highway 5
- Ability of nearby rest areas to handle the potential traffic and sewage demand

In addition, written comments expressed concerns over impacts to agricultural operations in the area:

- Difficulties transporting agricultural product during the event
- Impacts on irrigation and harvest schedule
- Ability of farm employees to access fields multiple times a day during harvest, changing irrigation equipment, and other farm activities
- Ability to move large equipment along roadways during the event due to the amount of traffic
- Large number of trucks and employees that need to access a field all at once for a specific period of time for harvest
- Possibility that the event would affect farming practices, such as manure application, tillage (which causes dust), chemical application, propane cannons, etc.

Written comments that were received also expressed support for the event:

- Potential benefit to non-profit foundations
- Economic benefits to the area in general
- Apparent willingness of organizer to address concerns
- Other events and times where traffic is slowed for different reasons
- Timing of the event appears to occur between harvests of major crops in the area; when it occurs after the harvest, the field may be lying fallow until fall tilling
- Farmers commonly contend with traffic issues, such as other festivals in the area, accidents, etc.
- Organizer appears willing to help coordinate farm traffic during the event
- Event offers onsite vendors so that not all attendees will create traffic leaving the event to travel to nearby cities and commercial areas

## **V. ANALYSIS**

### JURISDICTION

Pursuant to Order 17-144 of the Marion County Board of Commissioners, the hearings officer has jurisdiction to hold a hearing on the conditional use application and make a recommendation to the Marion County Board of Commissioners.

Under MCC 17.110.765, the Board of Commissioners may assume original jurisdiction over a land use application. Under MCC 17.119.030, the board may hear and decide only those applications for conditional uses listed in MCC title 17.

Applicant seeks a conditional use permit which was applied for in conjunction with an Outdoor Mass Gathering Permit. MCC 9.25 allows an outdoor mass gathering of people in the unincorporated areas of Marion County by permit issued by the Board of Commissioners. "Large gatherings" are those events with an estimated attendance of more than 3000 persons, or, more than 750 persons at

any time on each of 3 calendar days expected to continue for more than 120 hours.

A Conditional Use permit for temporary use is also required before the large gathering permit will be approved. MCC 9.25.070. The Board has elected to consider the applications for both permits at one public hearing, and ordered the hearings officer's recommendation on the conditional use application.

The Board of Commissioners may assume original jurisdiction over a land use application. The jurisdiction of the hearings officer in this matter is limited to a recommendation with respect to whether the conditional use permit application meets the criteria of the Marion County Code and the Marion County Comprehensive plan. That is, whether MCC 17.136.050, subject to the criteria stated therein, allows a temporary use for a music festival as a conditional use in the EFU zone. The EFU zone contains specific criteria which apply to a conditional use in the EFU zone. MCC 17.136.060.

Pursuant to MCC 17.110.765 and 17.119.030, the Board of Commissioners has jurisdiction to hear and decide the conditional use permit, a land use application.

However, further jurisdictional inquiry is required with respect to (1) Marion County's jurisdiction to require a conditional use permit under Oregon's land use laws and its own ordinances, and (2) whether a conditional use permit for temporary use can be approved in an Exclusive Farm Use zone as a matter of law.

#### CONDITIONAL USE PERMIT

Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If evidence for any criterion is equal or less, Applicant's burden is not met, and the application is denied. If evidence for every criterion is slightly in Applicant's favor, the burden is met and the application is approved.

A threshold issue advanced by the Applicant and raising jurisdictional concerns is whether Marion County is authorized to impose a conditional use permit process in addition to the mass gathering permit (despite the specific language requiring a conditional use permit). Applicant requests that the hearings officer recommend to the Board of Commissioners that no conditional use permit is required to approve its outdoor mass gathering permit.

Applicant first argues that Marion County is not authorized to subject an Applicant to a conditional use permit process with substantive criteria that Applicant claims is inconsistent with the criteria imposed by ORS 433.735, et seq. Applicant posits that under Oregon's statutory scheme, an outdoor mass gathering, as defined by state statute in ORS 433.735(1) is subject only to compliance with the health and safety regulations adopted by the Oregon Health Authority. ORS 433.735. That is, no land use considerations are applicable.

ORS 433.735(1) defines "outdoor mass gathering," unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is primarily in open spaces and not in any permanent structure. ORS 433.735(1) includes the phrase, "unless otherwise defined by county ordinance" which on its face, allows a county to refine the definition of an outdoor mass gathering. Marion County does refine its definition of mass gatherings by differentiating large and small gatherings.

MCC 9.25 allows an outdoor mass gathering of people in the unincorporated areas of Marion County by permit issued by the Board of Commissioners. "Large gatherings" are those events with an estimated attendance of 3,000, or, more than 750 persons at any time on each of 3 calendar days expected to continue for more than 120 hours. Outdoor Mass gathering includes the definition of large gathering. ORS 9.25.030.

The proposed music festival is an outdoor mass gathering as defined by ORS 433.735(1) and by Marion County Code 9.25.030.

Applicant then argues that no conditional use permit should be required to approve the Outdoor Mass Gathering application because Marion County did not otherwise define an outdoor mass gathering and the conditional use permit is an imposition beyond the requirements of ORS 433.750. That is, if Marion County could make a land use determination if it adopted a different definition for "large gathering."

As the Marion County definition of a large gathering is necessarily an outdoor mass gathering under state statute, Applicant argues that no conditional use permit process may be imposed, and no criteria for approval should be considered other than those health and safety standards adopted by the OHA.

Compliance with the health and safety rules governing all outdoor mass gatherings (as adopted by the Oregon Department of Human Services) is specifically required by Marion County Code, as well as by ORS 433.750. MCC 9.25.070(B).



In Marion County, if the application is for a large gathering, the Applicant must obtain a conditional use permit for a temporary use in accordance with Chapters 17.119 and 17.126 before the large gathering permit application will be approved. The Marion County definition for an outdoor mass gathering distinguishes large and small gatherings (unlike the statutory outdoor mass gathering definition). The procedure to obtain a conditional use permit will be independent of the procedure to obtain an outdoor mass gathering permit under this chapter. MCC 9.25.070(C).

Because the specific language of the Marion County Code 9.25 requires a conditional use permit for temporary use before a large gathering permit will be approved (although applications can be considered at one public hearing), the hearings officer recommends that the Applicant be required to obtain a conditional use permit for temporary use.

Additionally, the Marion County requirement for a conditional use permit in conjunction with a mass gathering permit is authorized by state statute. ORS 433.763(1) provides that any gathering of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within one three-month period and any part of which is held in open spaces shall be allowed if the organizer makes application for the permit, and the applicant demonstrates that it can comply with the requirements of ORS 433.750. ORS 433.763(1)(c) requires the planning commission to make findings that (A) any permits required by the applicable land use regulations have been granted; and (B) the proposed gathering is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.

Because it is required by Marion County Code, and that requirement is authorized by state statute, the hearings officer recommends to the Board of Commissioners that a conditional use permit is required in order to approve the Applicant's outdoor mass gathering permit. The Applicant should not be permitted to seek an outdoor mass gathering permit without obtaining a conditional use permit.

**The hearings officer recommends that the Marion County Board of Commissioners follow the Marion County Code's requirement for the Applicant to obtain a conditional use permit in conjunction with its mass gathering application.**

#### MCC 17.119

Under MCC 17.119.020, an application for a conditional use may be filed by the following only:

- A. The owner of the property that is the subject of the application;
- B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;

- C. A lessee in possession of the property subject to the application who submits written consent of the owner to make the application;
- D. The appropriate local government or state agency when the application is for a public works project;
- E. A governmental body that has initiated condemnation proceedings on the property that is subject to the application, but has not yet gained title;  
or
- F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application for a proposed conditional use, or to enlarge, expand, or alter a conditional use, shall be on a form provided by the planning division and shall contain such information as the director, planning commission or hearings officer feels is necessary to fully assess the effect of the conditional use on the surrounding area.

According to deed records, Jimmy and Kristine Gross own the subject property and could file the application. MCC 17.119.020 is satisfied.

Under MCC 17.119.025:

- A. Applications shall include the following signatures:
  - 1. Signatures of all owners of the subject property;
  - 2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement;
  - 3. The signatures of the lessee in possession of the property with the written consent of all the owners; or
  - 4. The signatures of the agents of those identified in MCC 17.119.020(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.119.020(B) or (C), and all the owners of the property;
  - 5. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or
  - 6. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common; provided, that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.

- B. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein shall prevent the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

According to deed records, Jimmy and Kristine Gross own the subject property. Only Jimmy Gross signed the application. Property owner Kristine Gross must also sign to have a valid application under MCC 17.119.025. As a condition of any approval of the application by the Board of Commissioners, Kristine Gross shall sign the conditional use application prior to any implementation of the use. As conditioned, MCC 17.119.025 will be satisfied.

MCC 17.119.070

Applicant seeks a conditional use permit for a temporary use for a music festival as a conditional use in the EFU zone.

A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristic of the conditional use, which is not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use ensures that the use will be in consonance with the purpose and intent of the zone. 17.119.020.

Under MCC 17.119.070, in determining whether a conditional use permit should be granted, the Board of Commissioners (pursuant to MCC 17.110.765, 17.119.030 and Order 17-144) shall determine:

- A. That it has the power to grant the conditional use;
- B. That the conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
- C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

The proposal will not be recommended by the hearings officer for approval by the Board of Commissioners unless all criteria are met.

Under MCC 17.119.070, the Board may hear and decide only those applications for conditional uses listed in MCC Title 17.

MCC 17.119.070(A): Does the Board have the power to grant a conditional use permit for a temporary use of property in an EFU zone for a music festival?

MCC 17.136.050 provides for conditional uses in the Exclusive Farm Use (EFU) zone. It provides the following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:

- A. Single-family dwelling or manufactured home not in conjunction with farm use, subject to the criteria and standards in MCC 17.136.060(B), 17.136.070 and 17.136.100.
- B. Temporary residence for hardship purposes subject to the requirements of MCC 17.120.040 with filing of the declaratory statement in MCC 17.136.100(C).
- C. Portable or temporary facility for primary processing of forest products subject to MCC 17.136.060(E).
- D. The following commercial uses:
  1. Home occupations, including bed and breakfast inns, subject to the criteria in MCC 17.136.060(C) with filing of the declaratory statement in MCC 17.136.100(C).
  2. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under MCC 17.136.040(F), and subject to MCC 17.136.060(D), but including a winery not permitted under MCC 17.136.040(B), but not including a medical marijuana processor as defined in MCC 17.110.376, subject to MCC 17.136.060(D).
  3. Expansion of a lawfully established dog kennel with filing of the declaratory statement in MCC 17.136.100(C).
  4. Room and board arrangements for a maximum of five unrelated persons in existing dwellings with filing of the declaratory statement in MCC 17.136.100(C).
  5. The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.
  6. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
  7. Composting Facilities.
    - a. Existing composting operations and facilities that do not meet MCC 17.136.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-0060, subject to compost facility operators preparing, implementing, and

maintaining a site-specific odor minimization plan that:

- i. Meets the requirements of OAR 340-096-0150;
  - ii. Identifies the distance of the proposed operation to the nearest residential zone;
  - iii. Includes a complaint response protocol;
  - iv. Is submitted to the DEQ with the required permit application; and
  - v. May be subject to annual review by the county to determine if any revisions are necessary.
- b. New composting operations and facilities that do not meet MCC 17.136.020(J) may be established on land not defined as high-value farmland subject to the following:
- i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060; and
  - ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and
  - iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle;
  - iv. Compost facility operators must prepare, implement and maintain a site-specific odor minimization plan that:
    - (A) Meets the requirements of OAR 340-096-0150;
    - (B) Identifies the distance of the proposed operation to the nearest residential zone;
    - (C) Includes a complaint response protocol;
    - (D) Is submitted to the DEQ with the required permit application; and
    - (E) May be subject to annual review by the county to determine if any revisions are necessary.
8. Operations for the extraction and bottling of water, except in the sensitive groundwater overlay zone.
9. Agri-tourism events and activities excluding events that promote the use or sale of marijuana products or extracts, subject to the requirements in MCC 17.120.090.
10. Dog training classes or testing trials not permitted under MCC 17.136.040(O).
- E. The following mining and processing activities:
1. Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 and MCC 17.120.410 through 17.120.480.
  2. Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298 and MCC 17.120.410 through 17.120.480.

3. Processing, as defined by ORS 517.750, of aggregate into asphalt or Portland cement subject to MCC 17.120.410 through 17.120.480 and 17.136.060(H)(1).
  4. Processing of other mineral resources and other subsurface resources subject to MCC 17.120.410 through 17.120.480.
- F. The following utility uses:
1. Commercial utility facilities for the purpose of generating power, other than wind power generation or photovoltaic solar power generation, for public sale, subject to MCC 17.136.060(F).
  2. Wind power generation facilities subject to MCC 17.120.100.
  3. *Repealed by Ord. 1387.*
  4. Transmission towers over 200 feet in height.
- G. Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities as defined in ORS 215.283(2)(g).
- H. The following recreation uses subject to MCC 17.136.060(I):
1. Expansion of a lawfully established private park, playground, hunting and fishing preserve or campground subject to MCC 17.136.060(G) with filing of the declaratory statement in MCC 17.136.100(C).
  2. Expansion of a lawfully established community center, operated primarily by and for residents of the local rural community, where the land and facilities are owned and operated by a governmental agency or nonprofit community organization with filing of the declaratory statement in MCC 17.136.100(C).
  3. Public parks, open spaces, and playgrounds including only those uses specified under OAR 660-034-035 or 660-034-0040, whichever is applicable, and consistent with ORS 195.120 and with filing of the declaratory statement in MCC 17.136.100(C).
  4. Expansion of a lawfully established golf course on the same tract consistent with definitions in MCC 17.136.140(C), and with filing of the declaratory statement in MCC 17.136.100(C).
  5. Living history museum subject to MCC 17.136.060(H)(2), and with filing of the declaratory statement in MCC 17.136.100(C).
- I. Expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation.
- J. The following transportation uses:
1. Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
  2. Reconstruction or modification of public streets involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
  3. Improvement of public street related facilities, such as maintenance yards, weigh stations and rest areas where

additional property or right-of-way is required but not resulting in the creation of new land parcels.

4. Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.
- K. A replacement dwelling to be used in conjunction with farm use with filing of the declaratory statement in MCC 17.136.100(C), if the existing dwelling is listed in the Comprehensive Plan inventory and the National Register of Historic Places as historic property as defined in ORS 358.480.
- L. Residential home or adult foster home, as defined in ORS 197.660 and MCC 17.110.477, in an existing dwelling and with filing of the declaratory statement in MCC 17.136.100(C).
- M. A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(2).
- N. Expansion of existing schools not for kindergarten through grade 12 established on or before January 1, 2009, on the same tract wholly within a farm zone subject to MCC 17.136.060(I).

The only arguably relevant or similar conditional use in the EFU zone is agri-tourism events and activities excluding events that promote the use or sale of marijuana products or extracts, subject to the requirements of MCC 17.120.090. MCC 17.120.090 limits attendance at the agri-tourism event or activity to 500 people. Further, "agri-tourism" means a common, farm-dependent activity that promotes agriculture, and any income from which is incidental and subordinate to the working farm operation. MCC 17.120.090(K). The proposed use cannot be considered agri-tourism.

MCC 17.136.050 does not provide any other catchall provision that would allow the proposed use if it met certain other criteria. MCC 17.136.050 does not authorize the conditional use of a large-scale music festival in the Exclusive Farm Use Zone. The hearings officer recommends denial of the conditional use application.

ORS 215.203(1) provides that zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283, or 215.284.

Farm use is defined as the current employment of the land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing

animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. ORS 210.203(2). The application does not describe farm use as defined.

ORS 215.213 provides for uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993. Marion County has not adopted a marginal lands system prior to 1993, and ORS 215.213 is inapplicable. The other exception noted in ORS 215.203(1), ORS 215.284, addresses dwellings not in conjunction with farm use, and is not applicable.

#### ORS 215.283

ORS 215.283 provides for the uses that may be established in any area zoned exclusive farm use (EFU).

ORS 215.283 includes agri-tourism and other commercial events that are related to and supportive of agriculture in an area zoned for exclusive farm use. Again, the definition of an agri-tourism event described in ORS 215.283 precludes the music festival as proposed.

The agri-tourism or other commercial event is incidental and subordinate to the existing farm use. ORS 215.283(4)(a)(A). The duration must not exceed 72 consecutive hours. ORS 215.283(4)(a)(B). The maximum attendance does not exceed 500 people. ORS 215.283(4)(a)(C). The maximum number of motor vehicles at the event does not exceed 250 vehicles. ORS 215.283(4)(a)(D).

ORS 215.283(4)(a) does not permit the music festival as proposed to be established on the subject property, an area zoned for exclusive farm use.

ORS 215.283(4)(b) and (c) also address agri-business events, but the single-event license contemplated by the subsections are not land use decisions, and are more restrictive in size and scope than ORS 215.283(a).

ORS 215.283(6)(c) explicitly states that outdoor mass gatherings do not include agri-tourism or other commercial activities. This language appears to indicate the legislative intent to preclude an outdoor mass gathering on EFU zoned land. However, if the language in 215.283(6)(c), specifically "in addition to other authorizations that may be provided by law" allows for a conditional use for a large-scale music festival (as an outdoor mass gathering), such authorization is not provided in ORS 215.283.

There is disagreement between the Applicant and the opposition regarding the duration and number of people involved during, as well as before and after the event. Regardless, the duration and number



of persons significantly exceed the limitations of an agri-tourism event.

The Applicant's proposal cannot be permitted under ORS 215.283(4).

ORS 215.283 does not authorize the use of EFU property for the music festival as proposed. If the music festival, as proposed, cannot be authorized under the "other authorization" referenced in ORS 215.283(6)(c), it cannot be permitted at all in the EFU zone.

The hearings officer recommends that under the restrictions of ORS 215.283, the application should be denied.

If such "other authorization" exists to allow the music festival to take place on EFU zoned property, such authority must arise under Marion County Code as a temporary conditional use.

The subsequent inquiry is whether a conditional use permit can be obtained for a temporary use in the Exclusive Farm Use Zone.

#### Temporary Use

MCC 17.126.030 provides for permitted temporary uses. 17.126.030 (A) through (D) describes specific permitted uses, which are inapplicable to the application. However, MCC 17.126.030(E) does provide a catch-all provision. It provides that temporary uses that do not meet the limitations identified in the section and other temporary uses not addressed herein may be approved as a conditional use as provided in Chapter 17.119 of the MCC subject to meeting the following criteria:

1. The temporary use is compatible with the purpose of the zone and adjacent land uses.
2. The temporary use will have adequate public services to maintain the public health and safety.
3. The operator of the temporary use has signed an agreement with the planning division regarding termination of the use consistent with the time limitations established in the conditions of approval.

Although it is not explicitly permissible for a conditional use permit to be obtained for a temporary use, it could be argued that a temporary use could be permitted as a conditional use as provided in 17.119 pursuant to the catch-all provision in MCC 17.126.030(E). The Applicant, however, argues that ORS 433.735, ORS 197.015(10)(d), and ORS 215.283(6)(c) take the outdoor mass gathering issue outside of the land use arena as opposed to allowing the permit to be issued under MCC 17.126.

However, MCC 9.25.070 specifically requires the Applicant to obtain a conditional use permit for a temporary use in accordance with Chapters 17.119 and 17.126, and the conditional use requirements must be met.

If the Board considers the issuance of a conditional use permit for temporary use or accepts Applicant's position that the proposal is not subject to land use regulations, MCC 9.25.040 presents a limitation: a mass gathering permit does not permit the organizer to construct any permanent physical alterations on the real property that is the site of the outdoor mass gathering. Without even consideration of the roadways and berms that are arguably temporary, the proposal includes the drilling of a well, which suggests a permanent physical alteration of the property. Although the well must be separately permitted, the consideration of the installation of a well for a specific non-agricultural purpose seems incompatible with the purpose of the zone and adjacent land uses.

ORS 433.763 allows gatherings exceeding 3,000 people that continue for no more than 120 hours to be subject to land use regulation by the County.

Under MCC 17.119.010, a conditional use is an activity similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone could not otherwise be permitted. A temporary use may only be approved as a conditional use as provided in Chapter 17.119. MCC 17.119 does not consider a large-scale music festival as a conditional use, and there is no catchall provision in MCC 17.119.050 to consider whether the music festival can be issued a conditional use permit under other criteria.

The Marion County Code does not allow a temporary use for a music festival as proposed as a conditional use in the Exclusive Farm Use zone. In the EFU zone, the Marion County Code does not permit the temporary use of property for an event or activity that cannot be authorized as a conditional use.

The description of the proposal as "temporary" is debated by the opponents, as the proposal includes drilling of an additional well to provide water at the festival to attendees. Applicant seeks what would be considered a variance under Marion County Code to allow an event that cannot be authorized as a conditional use.

MCC 17.122.010 provides for the power to grant variances: Subject to the restrictions and provisions contained in this title, the director, planning commission, hearings officer, or board shall have the power to vary or modify the strict application of any of the standards of this title in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded. *Variances to allow uses or new uses not otherwise allowed are prohibited. Variance to criteria and definition are also prohibited.* (Emphasis added). MCC 17.122.010 specifically restricts the Board of Commissioners from granting a variance to allow a new conditional use or vary the criteria.

The Board of Commissioners does not have the power to grant a conditional use permit for a temporary use of property in an EFU zone for a music festival as proposed. MCC 17.119.070(A) is not met. The hearings officer recommends that the Conditional Use permit sought in Application 17-043 be denied.

Purpose and Intent of the Zone

If the Board of Commissioners disagrees with the hearings officer, and determines that a conditional use permit for the temporary use of EFU property for the music festival as proposed is permitted by the Marion County Code (and allowed by state statute), the Board must determine whether the conditional use will be in harmony with the purpose and intent of the zone.

MCC 17.119.070(B): Will the conditional use, as described by the applicant, be in harmony with the purpose and intent of the zone?

It is the position of the hearings officer that if the use, as described by the Applicant, cannot be considered a conditional use under MCC 17.119, it is by definition not in harmony with the purpose and intent of the zone. However, the criteria provided in MCC 17.136 allows a factual analysis of whether the music festival is in harmony with the purpose and intent of the zone.

MCC 17.136

MCC 17.136.010 contains the EFU zone purpose statement:

The purpose of the EFU (exclusive farm use) zone is to provide areas for continued practice of commercial agriculture. It is intended to be applied in those areas composed of tracts that are predominantly high-value farm soils as defined in OAR 660-033-0020(8). These areas are generally well suited for large-scale farming. It is also applied to small inclusions of tracts composed predominantly of non-high-value farm soils to avoid potential conflicts between commercial farming activities and the wider range of non-farm uses otherwise allowed on non-high-value farmland. Moreover, to provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some pre-existing residential acreage.

To encourage large-scale farm operations the EFU zone consolidates contiguous lands in the same ownership when required by a land use decision. It is not the intent in the EFU zone to create, through land divisions, small-scale farms. There are sufficient small parcels in the zone to accommodate those small-scale farm operations that require high-value farm soils. Subdivisions and planned developments are not consistent with the purpose of this zone and are prohibited.

To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in

OAR 660-033-0130 and in some cases more restrictive criteria are applied to ensure that adverse impacts are not created.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

Non-farm dwellings generally create conflicts with accepted agricultural practices. Therefore, the EFU zone does not include the lot of record non-farm dwelling provisions in OAR 660-033-0130(3). The provisions limiting non-farm dwellings to existing parcels composed on Class IV - VIII soils [OAR 660-033-0130(4)] are included because the criteria adequately limit applications to a very few parcels and allow case-by-case review to determine whether the proposed dwelling will have adverse impacts. The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283.

Under MCC 17.119.010, a conditional use is an activity similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone could not otherwise be permitted.

MCC 17.136 is intended to carry out the purpose and intent of the EFU zone. Meeting these criteria ensures a proposed use will be in harmony with the purpose and intent of the EFU zone. MCC 17.136.050 provides the uses conditionally permitted in the EFU zone.

MCC 17.136.050 provides for the conditional uses that may be permitted in an EFU zone subject to obtaining the conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria for use. MCC 17.136.050(D) describes permissible commercial uses permitted in an EFU zone.

The only commercial use arguably applicable, as noted, is stated in MCC 17.136.050(9) which provides for agri-tourism events and activities excluding events that promote the use or sale of marijuana products or extracts, subject to the requirements in MCC 17.120.090. MCC 17.120.090 limits attendance at the agri-tourism event or activity to 500 people. Further, "agri-tourism" means a common, farm-dependent activity that promotes agriculture, and any income from which is incidental and subordinate to the working farm operation. MCC 17.120.090(K). The proposed use cannot be considered agri-tourism, or any other conditionally permitted use, under the Marion County Code.

MCC 17.136.060(A)

If the Board of Commissioners finds that a conditional use permit for temporary use of EFU property for the proposed music festival can be authorized under state law and county code, all criteria stated below must be met.

Under MCC 17.136.060(A), the following criteria apply to all conditional uses in the Exclusive Farm Use (EFU) zone:

1. 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.
2. Adequate fire protection and other rural services are or will be available when the use is established.
3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
5. 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.

MCC 17.136.060(A) (1)

MCC 17.136.060(A) (1) requires that 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.

Farm practices. MCC 17.136.060(A) (1) incorporates OAR 660-033-0130(5) and ORS 215.196(1) requirements. ORS 215.196(1) as interpreted in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), requires a three-part analysis to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require that the county consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

The location of the proposed music festival is west of Interstate 5 between Talbot Road and Ankeny Hill. The location is served by multiple, narrow, two-lane roads and surrounding by agricultural operations. Opposition to the

application primarily focused on the traffic impact of the significant influx of attendees to the music festival, both on large highways and narrow farm roads.

The Applicant provided a Transportation Impact Analysis (TIA) dated February 20, 2018, and a revised TIA dated April 6, 2018, the purpose of which was to identify potential traffic capacity, safety, and operations constraints associated with traffic destined for the music festival.

In this EFU zone, farming operations involve farm equipment which include tractors, combines, mowers, and other equipment which move to various fields on public roadways. With respect to traffic analysis, the festival is proposed for August 15 through August 18, 2019. The Applicant states that significant grass harvest will be completed by these dates, and local farm operators indicate that harvest and related activities requiring equipment will continue during these dates.

In response to the TIA presented in February, comments by both State and County agencies indicated "significant concerns" that event-related traffic would back up on Interstate 5. Applicant then submitted a revised plan that Applicant states addresses the County's concerns.

The Transportation Impact Analysis (TIA) presented by the Applicant in April concludes that if the proposed conditions and traffic control plan are implemented as proposed by the Applicant, the music festival will not force a significant change in, or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use, and is compatible with existing land use.

Although the Oregon Department of Transportation response to the February 20, 2018, TIA indicated that it could not support the proposal, it has not responded to the new analysis. ODOT support of the current TIA proposal should be considered instrumental in evaluating the proposal as the traffic impact is clearly a significant safety and management issue.

Marion County Public Works provided a follow-up to its December 11, 2017, memo following its review of the TIA. Marion County Public Works is not opposed to the proposal, provided its recommended conditions are imposed to mitigate anticipated traffic impacts. The recommended conditions suggested by Marion County Public Works, as provided in its April 20, 2018, Memorandum are significant: 30 proposed conditions, which require additional information, routing, notifications, and coordination with ODOT.

If the application is approved by the Board of Commissioners, the hearings officer recommends that the conditions of Marion County Public Works be imposed.

The traffic impact of the music festival, while potentially frustrating to drivers in general, is alleged by opponents of the festival to be an unreasonable and costly interference with farming operations. Witness testimony from opponents of the application also addressed concerns with the negative impact on the wildlife refuge caused by the significant traffic increase brought by the

event. Because the festival is proposed to be a conditional use that is not specifically allowed in the EFU zone, it is crucial to address the potential harm and financial impact to local farming operations, as well as on the wildlife refuge.

Brogan Oswald, a local farmer, testified in opposition to the application. Mr. Oswald testified that there would be significant changes in his farming operations if the application were approved.

Roger DeJager operates a dairy near the proposed festival site. He testified that the overflow parking area for the event is approximately 20 feet from his dairy. Mr. DeJager testified that milk is perishable, and is hauled to Portland every other day. The deliveries are time-sensitive, and if the delivery is delayed, it can impact the milk temperature, which could result in a rejection of the delivery. If festival traffic impacts the dairy operations, including milk delivery, Mr. DeJager, would suffer significant costs as a result of the changed farming operations.

George Meyer, a farmer with acreage next to the proposed site, indicates that he will be significantly impacted by the music festival, and that the impact will increase the costs of his farming practices. Mr. Meyer posits that because of the fluid nature of farming that can be impacted by weather, temperature, and irrigation, it is crucial for the surrounding farmers to operate with flexibility. Mr. Meyer submitted a letter of opposition on behalf himself, and indicates that his sentiments are shared by other local farmers. Applicant disputes that Mr. Meyer can speak on behalf of other farmers. However, Oswald Farms, LLC, Blue Lace Farms, LLC, Neils Jensen Farms, Inc., Santiam Farms, Inc., H. Miller Landscape, Hilton Trenching, J2 Farms, Inc., J3 Farms, Inc., Willamette Valley Storage, LLC, and Dejager Dairy Farms, LLC, also presented testimony, written and otherwise, that the proposed music festival would significantly increase their operational costs and result in economic loss for their agricultural businesses. The statement from the referenced farms alleges that crops including grass seed, mint, dairy transport, nursery stock, vegetable crops, straw, specialty seed crops, and hazelnuts will be impacted the hardest. Grass seed is harvested for the seed, as well as for the straw, the harvest of which is indicated to continue in August.

George Meyer also indicated that in addition to harvesting crops, August is a crucial time for irrigation. He indicates his farm uses multiple irrigation systems, and that the roads and infrastructure cannot accommodate both the event and farming practices. Mr. Meyer identifies multiple concerns with respect to farming operations and the size restrictions of Talbot Road. The TIA indicates that local traffic on Talbot Road will experience limited delays between Jorgenson Road and I-5. However, there is limited support for such statement in the TIA.

Applicant responds that although Mr. Meyer describes general challenges to his farming operation, he does not provide specific evidence to show that the music festival will alter his farming practices or significantly increase the cost of

farming. Applicant further responds that Mr. Meyer presented no evidence that he would likely harvest during the period of time that the festival would occur.

Neils Jensen, a local grass seed farmer, also owns a warehouse and is involved in trucking of farm products. Mr. Jensen argues that for most agriculture producers, there is a one-time annual opportunity to "receive a paycheck." Mr. Jensen states that July, August, and September are the months in which local farmers irrigate, and then harvest. Mr. Jensen estimates 288 daily trips down Talbot Road and over the freeway overpass to, and through Jefferson. This high usage during the proposed festival dates would be impacted by festival traffic.

Brian Krebs, President of Santiam Farms, Inc., farms EFU zoned properties on Talbot Road and Buena Vista Road. As part of the farming operations, the company does custom straw baling for its farm, as well as other farms. He indicates that his harvest usually starts around July 4, but does not end until mid-October. Festival traffic may significantly prevent farm equipment, which is up to 20 feet wide, from traveling on the county roads in a timely manner.

The TIA does not provide sufficient queuing estimates or assurances that the queues will not back onto I-5, which is a significant concern of ODOT. The conclusions of the TIA are insufficient to address the legitimate concerns of local farmers, for which there is support that such impacts would be costly. Despite the best efforts of the Applicant, farm practices in August will be changed by the significant influx of traffic.

Applicant proposes measures to mitigate the impact on farming operations in the area including a daily call-in line.

It is more likely than not that the proposed temporary use of the EFU zoned property for a large-scale music festival in August will force significant changes in the accepted farm practices on surrounding lands devoted to farm use, and such changes will increase the cost of farming practices on surrounding farm land. MCC 17.136.060(A)(1) is not satisfied.

MCC 17.136.060(A)(2)

MCC 17.136.060(A)(2) requires that adequate fire protection and other rural services are or will be available when the use is established.

Residents from neighborhoods near the proposed event testified about concerns of fire hazards from dry ground, and the related concerns that nearby residents rely on fire protection from Salem. However, the Jefferson Fire Department reviewed and accepted the Fire and Life Safety Plan presented by the Applicant. The Applicant's plan indicated that all law enforcement, fire and rescue vehicles will have priority use of the designated production entrance from Ankeny Hill Road and I5 interchange, and further indicated that the property venue is accessible from all directions in case of emergency.

Utility lines are available to the subject property. A new well is proposed. New septic systems are not proposed. Adequate services will be available upon



development for the proposed use based on the submission of Applicant. MCC 17.137.060(A)(2) is satisfied.

MCC 17.136.060(A)(3)

MCC 17.136.060(A)(3) requires that the use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

The subject property is within a sensitive groundwater overlay (SGO) zone and a new well is proposed to serve the use. There is insufficient evidence to address whether the groundwater is adequately protected in the proposal. No MCCC identified watershed areas are on or near the subject property.

However, the significant concern under MCC 17.136.060(A)(3) is with respect to the Ankeny National Wildlife Refuge. Marion County's Comprehensive Plan identifies "natural areas" as ecologically and scientifically significant areas that contain components that are unique to that area and the location and cannot be relocated. It is a stated objective of the State and County to preserve and protect sections of ecologically diverse components before they are forever lost or altered.

The Ankeny National Wildlife Refuge is a 2,750 acre refuge is within the Willamette floodplain east of Buena Vista. It also includes the Ankeny Bottom waterfowl wintering area identified by Nature Conservancy. Waterfowl and birds of prey are among the major types of wildlife protected by this refuge. Ankeny National Wildlife Refuge is home to both common species, as well as threatened and endangered species.

The Marion County Comprehensive Plan provides that the Ankeny National Wildlife Refuge is adequately protected by the U.S. Fish and Wildlife Service. Comments by Damien Miller, Project Leader, Willamette Valley National Wildlife Refuge Complex, acknowledges the Applicant's efforts to address concerns regarding the refuge. However, Mr. Miller indicates that it is "in the initial phases of discussing the possibility" of the music festival occurring adjacent to the Ankeny National Wildlife Refuge. Additional comments have not been provided. The concerns as stated by Mr. Miller on behalf of the Willamette Valley National Wildlife Refuge Complex include the potential impacts from the music festival including increased traffic, trash, wildlife disturbance, increased risk of wildfires, misuse of the refuge, and noise pollution.

Opponents also reference that local visitor access to the refuge will be limited by the presence of the music festival.

The Marion County Comprehensive Plan further indicates that the EFU zone applies to the refuge and the surrounding area, and such zoning provides an additional safeguard in terms of incompatible uses located hereby. (MCCC, Environmental Quality, II H-15). The Marion County Comprehensive Plan relies on the restrictive nature of the EFU zone criteria to protect the refuge. The refuge cannot be relocated, but it is clear from the present location of the music festival in

Linn County that the music festival can be relocated. Unless and until it is established that there will be no significant adverse impact on the refuge, there is a conflict with Goal 5 of Oregon's Statewide Planning Goals & Guidelines which requires that the County plans should provide for the preservation of natural areas.

Although festival organizers indicate a commitment to mitigate concerns regarding the refuge, U.S. Fish and Wildlife only indicates that it is in the initial phases of discussion with festival organizers. Approval of the application without additional input from the U.S. Fish and Wildlife is premature, as the protected nature of the refuge demands heightened scrutiny.

It is not evident that there will not be significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality as a result of a large-scale music festival adjacent to a protected wildlife refuge. MCC 17.136.060(A)(3) is not satisfied.

MCC 17.136.060(A)(4)

MCC 17.136.060(A)(4) requires that any noise associated with the use will not have a significant adverse impact on nearby land uses.

Marion County's noise ordinance, MCC chapter 8.45 at MCC 8.45.080(A) specifically exempts sounds generated by conditional use permit activities from prosecution if the activities are conducted in accordance with the terms and conditions of the permit. Conditional uses do not get a free pass on noise, but noise standards must be set in the conditional use permitting process to be effectively enforced. State noise regulations are found in Oregon Department of Environmental Quality (DEQ) OAR 340-035 but they were not adopted as part of the noise ordinance. See, *Johnson v. Marion County*, 58 Or LUBA 459 at 470 (2009). The OAR can be looked to for guidance when evaluating noise in specific situations and may be set as the noise standard in conditional use decisions.

Peter Yoakum, a sound systems professional, testified as to the Applicant's ability to use specialized equipment that will mitigate noise concerns. The company's equipment has been used in noise restricted areas. Mr. Yoakum testified that the sound can be directed to the people in attendance at the music festival, and not to the adjacent wildlife.

Ray Temple, president of the Salem Audubon Society testified that there is great uncertainty with respect to the impact of migratory birds because of the proximity to the wildlife refuge. James J. McAteer, environmental consultant, also indicated that the wildlife could be impacted not only by the music, but by the impact of sound from the adjacent camping.

Comments by the USFW address the potential impact of noise on the refuge. This potential impact has not been thoroughly addressed in protection of the refuge.

It is not evident that any noise associated with the use will not have a significant impact on nearby land uses, specifically with respect to the Ankeny National Wildlife Refuge. MCC 17.136.060(A) (4) is not met.

MCC 17.136.060(A) (5)

MCC 17.136.060(A) (5) requires that 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.

No MCCP identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.136.060(A) (5) is satisfied.

**The conditional use, as described by the Applicant, is not in harmony with the purpose and intent of the Exclusive Farm Use zone. MCC 17.119.070(B) is not met. The hearings officer recommends that the application for a conditional use permit be denied.**

MCC 17.119.070(C)

The hearings officer recommends denial of the conditional use permit application because the criteria provided in MCC 17.119.070(A) and (B) is not met. As such, MCC 17.119.070(C) is inapplicable. However, if the Board determines that it has the power to grant the conditional use, and that such conditional use, as described by the Applicant, will be in harmony with the purpose and intent of the zone, the Board must determine that any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

It is the position of the hearings officer that all conditions proposed by Oregon Department of Transportation and Marion County Public Works, as well as any conditions proposed by the U.S. Fish and Wildlife Service are necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood, specifically but not limited to the Ankeny National Wildlife Refuge.

## VI. Summary

The Applicant's significant efforts toward compliance with the requirements for approval of the application evidence Applicant's good faith and sensitivity to the community's concerns.

The hearings officer's recommendation is not influenced by the testimony regarding fears about bad conduct of festival attendees and is not dependent upon a determination of whether the music festival "wore out its welcome" in Linn County. The hearings officer accepts the Applicant's good faith desire to accommodate the concerns of its opponents, and believes that the music festival

could be a well-run and positive experience for its attendees and the community. The hearings officer's recommendation is based on interpretation of the Marion County Code and state statutes which clearly contemplate restrictive criteria in an EFU zone for non-farm uses to ensure that adverse impacts are not created.

Despite the professional and dedicated approach of the Applicant's team, Applicant cannot meet the burden of proving applicable standards and criteria for approval of the large scale music festival in an EFU zone. Therefore, the hearings officer recommends that the Marion County Board of Commissioners deny the conditional use permit application.

#### VII. Recommendation

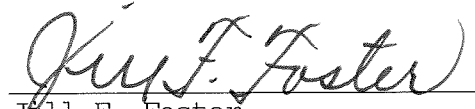
It is hereby recommended that the conditional use application to allow the temporary use of property for a music festival in an area zoned exclusive farm use as proposed by the Applicant be DENIED. Such recommendation is based on the hearings officer's position that a conditional use permit for temporary use of property zoned EFU for a large-scale music festival is not authorized by state statute or by the Marion County Code. ORS 433.763 contemplates that a county can apply its applicable land use regulations with respect to a mass gathering permit. Exclusive farm use zoning, as provided by law, substantially limits alternatives to the use of land, which is acknowledged by the legislature in ORS 215.243. Such limitation precludes the temporary and conditional use of EFU zoned property for the purpose proposed by the application.

If the Board of Commissioners disagrees with the hearings officer's recommendation and approves the conditional use permit, the hearings officer recommends that all conditions proposed by Marion County Public Works and Oregon Department of Transportation, as well as any conditions proposed by the U.S. Fish and Wildlife Service for the protection of the Ankeny National Wildlife Refuge be imposed by the Board. All such conditions are necessary to protect the public health, safety, and welfare and to protect persons or property.

#### VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 7<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Jill F. Foster  
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Recommendation on the following persons:

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by mailing to them copies thereof, except as specified above for agencies provided with email notifications. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 7<sup>th</sup> day of June, 2018, and that the postage thereon was prepaid.

  
Christi Klug  
Secretary to Hearings Officer