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***SUBMITTED VIA ELECTRONIC MAIL***

June 19, 2018

Marion County Board of Commissioners  
P.O. Box 14500  
Salem, OR 97309

Via email to: [breich@co.marion.or.us](mailto:breich@co.marion.or.us)

**Re: Applications for Permits No. CU 17-043 and MG17-004 (Gross) – Bi-Mart Willamette Country Music Festival**

Dear Commissioners,

The Northwest Environmental Defense Center (“NEDC”) appreciates this opportunity to comment on the proposed Conditional Use Permit (“CUP”) and Outdoor Mass Gathering (“OMG”) permit applications for the Bi-Mart Willamette Country Music Festival (“Project”) proposed to be held in Marion County. NEDC is a non-profit organization working to protect the environment and natural resources of the Pacific Northwest. NEDC’s members and supporters live, recreate, and work throughout the Willamette Valley, and NEDC’s membership includes individuals who live, work, visit, and/or recreate in the vicinity of the proposed Project site. NEDC is concerned that the Project has the potential to negatively affect the welfare of the surrounding environment and community. Accordingly, NEDC respectfully urges the Commission to deny the CUP and OMG permits for the reasons described in more detail below.

**I. The Project is incompatible with Statewide Planning Goal Number 5, the Marion County Comprehensive Plan, and the Marion County Code.**

Statewide Planning Goal 5 provides that County plans should include goals and policies for the preservation of natural areas. Accordingly, the Marion County Comprehensive Plan Fish and Wildlife Habitat Policy 8 provides that the County will cooperate with local, state, and federal agencies to conserve and protect wildlife habitat. Similarly, Fish and Wildlife Habitat Policy 4 provides that conflicts with wildlife must be considered in land development. The prefatory language to these policies explains that habitat protection needs can be achieved, in large part, by exercising care in “reviewing developments in rural areas of Marion County which will remain in agriculture and forestry uses.”

Additionally, Marion County Code section 17.136.050 sets forth the criteria that an applicant must meet before a CUP will issue for land within the Exclusive Farm Use (“EFU”) zone.

Subsection (A)(3), provides that a proposed conditional use in the EFU zone may “not have a significant adverse impact on watersheds, groundwater, *fish and wildlife habitat*, soil and slope stability, air and water quality.” (emphasis added). And subsection (A)(4) further provides that “[a]ny noise associated with the [proposed conditional] use will not have a significant adverse impact on nearby land uses.”

The nearby land uses—that is, uses permitted in the EFU zone—are described in section 17.136.010 (“Purpose”), which states, in part, that in addition to agriculture, “[t]he 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.” (emphasis added).

Thus, the Statewide Planning Goal 5, the Comprehensive Plan and the County Code contemplate that applicants for a CUP for lands within the EFU zone must demonstrate that the proposed use—and especially its noise impacts—will not have a significant adverse impact on wildlife habitat. Unfortunately, the evidence suggests that the Project will have just such an impact.

## **II. The Project threatens to have a significant adverse impact on wildlife and wildlife habitat.**

The Project is proposed to be located on land immediately adjacent to the Ankeny National Wildlife Refuge (“Ankeny NWR”), which is part of the Willamette Valley National Wildlife Refuge Complex. As the U.S. Fish & Wildlife Service’s (“USFWS”) website for the Ankeny NWR states, the refuge provides agricultural fields, seasonal wetland, permanent wetland, wet prairie, and riparian habitats for a variety of plant, animal, and bird species.<sup>1</sup> These fauna include red-legged frog, osprey, and a variety of nesting waterfowl.

The Project’s potential impacts to the Streaked Horned Lark are of particular concern. In 2013, the USFWS listed the bird species as “threatened” under the Endangered Species Act, 76 Fed. Reg. 61452, and the Willamette Valley provides one of only two habitat areas for the vulnerable population of this species. The total population in the Willamette Valley is estimated at only 900 to 1,300 birds, and the USFWS has found that this small population is “declining.” 78 Fed. Reg. at 61,498. The Ankeny NWR and surrounding agricultural fields provide crucial habitat for the Streaked Horned Lark, both for breeding and overwintering. 78 Fed. Reg. 61458 (USFWS final listing decision, stating that Ankeny Wildlife Refuge has a resident population of Streaked Horned Larks); *see also* 77 Fed. Reg. 62033 (Oct. 11, 2012) (USFWS proposed listing decision, showing designated Critical Habitat within roughly .5 miles of the project site.); Exhibit 1, U.S. Fish & Wildlife Service map of Critical Habitat for Streaked Horned Lark, Ankeny NWR.<sup>2</sup> Like most bird species, the Streaked Horned Lark are most vulnerable to disturbance during the breeding and nesting season, yet the Project will occur the tail end of this critical period. *See* Exhibit 2, Recovery Outline at p.3 (stating that “[t]he nesting season for streaked horned larks begins in mid-April and ends in late August.”).

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<sup>1</sup> Available at: [https://www.fws.gov/refuge/Ankeny/Wildlife\\_and\\_Habitat/Habitat.html](https://www.fws.gov/refuge/Ankeny/Wildlife_and_Habitat/Habitat.html).

<sup>2</sup> Available at: [https://www.fws.gov/wafwo/species/shl/15SHL\\_Unit4B\\_AnkenyNWR\\_Or.pdf](https://www.fws.gov/wafwo/species/shl/15SHL_Unit4B_AnkenyNWR_Or.pdf).

The Project involves projecting music from commercial-grade sound equipment from the stage until 11 pm each day, with sound checks occurring as early as 8 am. Additional noise will result from crowds and the vastly increased traffic to and from the Project site. Noise can have a variety of impacts on bird species, and can provoke stress responses, changes in foraging behavior, noise-avoidance, changes in reproductive success, and changes in vocal communication. *See generally*, Exhibit 3, Catherine P. Ortega, *Effects of Noise Pollution on Birds: A Brief Review of Our Knowledge*. Noise is not the only concern. Increased fire hazard, vehicle traffic, and unauthorized entry into the adjacent Ankeny NWR also threaten local wildlife.

Although commenters, including the USFWS and the president of the Salem Audubon Society voiced their concerns over the impacts of the Project on wildlife, and especially the impact on birds on and around the adjacent Ankeny NWR, the Applicant appears to have done little, if anything, to respond to their concerns or mitigate these impacts.

For example, the USFWS stated its December 5, 2017 letter that it discussed with the Applicant the potential impacts of, among other things, “increased traffic and trash, disturbance to wildlife, increased risk of wildfires, volume of people, dust abatement measures, [and] light and noise pollution.” While the letter acknowledges that the Applicant “sought to address some of the[se] concerns” the agency made it clear that it was “in the initial phase of discussing the possibility of the [Project] occurring adjacent to” the Ankeny NWR and that USFWS would “continue to evaluate and be engaged in this process as planning continues.”

Yet there appears to be no evidence in the record that the Applicant fully and conclusively addressed the concerns raised by the USFWS, continued to engage the agency in the process, or considered and adopted measures (such as establishing noise monitoring stations at locations outside the venue) to reduce or minimize these impacts. In a June 18, 2018 letter from Applicant's consultant, Wetlands Wildlife, LLC, the consultant states that he contacted the manager of the Ankeny NWR by telephone on June 13—a mere week before the Commission hearing and more than six months after the USFWS first raised its concerns. The consultant states that the Ankeny NWR manager “reiterated the concerns which would need to be addressed if the event is permitted by Marion County.” Yet the consultant argues that specific measures to address these concerns should not be developed until after the Project is permitted. This kind of empty assurance regarding Applicant's willingness to undertake unspecified and unenforceable measures in the future cannot support a finding at this time that the Project will have no impacts to wildlife and wildlife habitat.

In short, the Applicant has not made the required showing that substantial evidence demonstrates that the Project will have no significant adverse impact on wildlife and wildlife habitat. Accordingly, the Commission should deny the permit applications.

Thank you for considering these comments. Please include me on the list of recipients for future notices associated with this project.

Sincerely,

*/s/ Peter Broderick*

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