



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 13, 2018

Department: Public Works Agenda Planning Date: June 7, 2018 Time required: 10 min

Audio/Visual aids: None

Contact: Brandon Reich Phone: 503-566-4175

Department Head Signature:

TITLE: Public hearing to consider the application for Mass Gathering Case 18-002/Whitewind Woodland, LLC.

Issue, Description & Background: The planning division has received an application for a small mass gathering permit to take place July 21-22, 2018; July 28-29, 2018; August 11-12, 2018; and August 18-19, 2018, and for annual renewal for the years 2019, 2020, 2021, and 2022, on an 80.55 acre parcel in an EFU (Exclusive Farm Use) zone located at 6518 Cascade Highway NE, Silverton. Section 9.25.050 of the Marion County Code allows the board of commissioners to grant a permit for a mass gathering only after review at a public hearing. On May 16, 2018, the board scheduled a public hearing on the matter for June 13, 2018.

Financial Impacts: None.

Impacts to Department & External Agencies: None.

Options for Consideration: 1. Close the public hearing, close the record, and approve the mass gathering permit subject to conditions. 2. Close the public hearing and leave the record open. 3. Close the public hearing and deny the mass gathering permit.

Recommendation: Staff recommends that the board close the public hearing, close the record, and approve the request subject to conditions.

List of attachments: Staff Report Order

Presenter: Brandon Reich

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Brandon Reich - breich@co.marion.or.us

## MARION COUNTY PLANNING DIRECTOR'S OUTDOOR MASS GATHERING REPORT

Application of Whitewind Woodland LLC )

Case No. MG18-002

### APPLICATION

Application of Whitewind Woodland LLC to hold a small mass gathering on July 21-22, 2018; July 28-29, 2018; August 11-12, 2018; and August 18-19, 2018, and for annual renewal for the years 2019, 2020, 2021 and 2022, on an 80.55 acre parcel in an EFU (Exclusive Farm Use) zone located at 6518 Cascade Highway NE, Silverton. (T6S; R1W; Section 25; tax lot 900).

### BACKGROUND

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

1. The property is located on the south side of Cascade Highway on the southwest corner of Cascade Highway and Valley View Road. The property contains a dwelling and accessory buildings.
2. Surrounding are properties in farm use and timbered property in an EFU zone.
3. The applicant is requesting to hold a Renaissance Era Faire and a Wild West Show as a small mass gathering. According to information submitted with the application: a) sound amplification will be used; b) alcohol will be available; and c) fireworks will not be used or shown.

### AGENCY COMMENTS

Comments on the subject application received from various governmental agencies are summarized in the section below. The full comments can be reviewed in the planning file.

4. Marion County Public Works commented on access and roadway safety requirements.

Silverton Fire District requested a site visit prior to the event to address access, fire safety and related issues.

All other contacted agencies either failed to respond or stated no objection to the proposal at the time this report was prepared.

### MARION COUNTY CODE CHAPTER 9.25 FINDINGS

5. Section 9.25.030 of the Marion County Code (MCC) contains the definition of large and small outdoor mass gatherings:

*“Small gathering” means any assembly of persons whose actual number is, or reasonably can be anticipated to be, less than or equal to 3,000 but more than 750 persons at any time, for a period that continues or can reasonably be expected to continue for more than six hours but not more than 120 hours within any continuous three month period, and that is held primarily in open spaces and not in any permanent structure in the unincorporated areas of Marion County. Included in the six to 120 hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.”*

*“Large gathering” means an assembly of persons whose actual number is, or reasonably can be anticipated to be:*

- i) *more than 3,000 persons at any time; or*
- ii) *more than 750 persons at any time on each of three calendar days during an assembly that continues or can reasonably be expected to continue for more than 120 hours;*

*and is held primarily in open spaces and not in any permanent structure within Marion County. Included within the calculation of hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.*

**The applicant indicates this event will take place July 21-22, 2018; July 28-29, 2018; August 11-12, 2018; and August 18-19, 2018. Daily hours are 10 am to 6 pm and overnight camping will be allowed. Estimated attendance is 1,500 to 2,000 people per day. The events are anticipated to last for approximately 8 hours each day for a total of 64 hours. The event takes place over a period of 30 days. Therefore, the total hours are not expected to exceed 120 hours in a three month period. Based on this information, the proposed event meets the definition of a “small gathering.”**

6. MCC 9.25.070 through 9.25.200 contains the following criteria for reviewing an outdoor mass gathering application:

MCC 9.25.070:

*D. If the application is for a one-time small gathering, the application must be considered by the board following a public hearing. If the application is for an annual small gathering, the application in the first year must be considered by the board following a public hearing. For either a one-time or annual permit, the board may impose reasonable conditions in the permit. If an annual small gathering permit is issued, it is renewable for up to four additional consecutive years, as established by board order. In order to renew an annual small gathering permit, the applicant shall submit an application annually consistent with the requirements of this chapter. The planning director is vested with authority to grant a renewal of an annual small gathering permit or refer the proposed renewal to the board for consideration following a public hearing. A renewal permit is subject to all permit requirements set forth in this chapter as well as any conditions imposed by the board in the permit for the first year. In the event that there are complaints about the annual small gathering in the prior year, or the applicant failed to satisfy the conditions in the annual small gathering permit in the prior year, the planning director may refer the renewal to the board for a public hearing consistent with the requirements of this chapter. In the event that the planning director renews an annual small gathering permit, the planning director shall send notice to neighboring property owners consistent with the policy developed pursuant to MCC 9.25.060(B) notifying neighbors of the date or dates of the event, any permit conditions originally imposed by the board, and inviting the neighbors to contact the planning director with any complaints or concerns.*

**The applicant has requested approval of an annual small gathering. If approved, the years for which this event may be renewed annually are 2019, 2020, 2021 and 2022.**

*F. Each public official receiving notice of the application who wishes to comment on the application shall submit such comment in writing to the board no later than the date and time for the hearing. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed. The board may consider and impose any reasonable condition the board deems necessary, including any suggested condition submitted by a public official who received notice of the outdoor mass gathering application or any suggested condition submitted by a member of the public.*

**The application and pertinent information was sent to various governmental agencies and public officials. Comments received were summarized in #4 above and the full comments can be reviewed in the planning file. Recommendations have been included as conditions of approval listed at the end of this report for consideration by the Board of Commissioners.**

*G. The board may deny an application or impose reasonable conditions if evidence is provided to the board indicating that an organizer has previously violated any provision of this chapter.*

**The organizer and property owner are not known to have previously violated MCC 9.25.**

H. The board may impose a permit condition requiring compliance with all or portions of Chapter 8.45 MCC, Noise, as set forth in MCC 9.25.150 (C).

**Noise and recommended conditions are discussed below.**

MCC 9.25.080: Insurance

- (A) *After consultation with the Marion County Risk Manager, the Board may require an organizer to obtain a commercial general liability policy in an amount commensurate with the risk and in compliance with standards established by the Marion County Risk Manager.*
- (B) *The Marion County Risk Manager shall establish standards for commercial general liability policies required for outdoor mass gatherings that include: minimum coverage amounts, policy type, minimum financial ratings for carriers, required additional coverage, requirements for naming additional insured parties, policy duration and any other requirement that the Marion County Risk Manager deems necessary.*
- (C) *The Organizer shall furnish the Public Works Director with an insurance certificate and a copy of the insurance policy complying with the insurance requirements imposed by the Board pursuant to subsection (A) of this section at least seven days before the first day of the outdoor mass gathering.*
- (D) *Any permits for an outdoor mass gathering may be voided by the Public Works Director if the Organizer fails to comply with subsection (C) of this section.*
- (E) *Any insurance premiums that must be paid to meet the requirements of this section are the responsibility of the Organizer.*

**The applicant has agreed to provide proof of adequate insurance prior to the event. As conditioned, MCC 9.25.080 is satisfied.**

MCC 9.25.090: Fire Protection Plan.

- (1) *No permit shall be granted under this ordinance unless the Organizer has a fire protection plan approved by the Fire Protection District Officer for the type, size, number and location of fire protection devices and equipment available at, in or near any location, including outdoor sites, building, tents, stadium or enclosure, wherein or whereupon more than 10 persons may be expected to congregate at any time during the course of an outdoor mass gathering.*
- (2) *If the site for which the permit is applied for is located outside a fire prevention district, the Organizer must show approval from the office of the State Fire Marshal or a fire prevention district that would respond in the event of an emergency.*

**The Silverton Fire District reviewed and provided comments on the event if the permit were approved. The district requested an onsite inspection prior to the event, as they have done in past years. The applicant must also comply with the Technical Advisory No. 11-09 (Statewide Guidelines for Fairs, Trade Shows, Carnivals or Common Venue Events). MCC 9.25.090 can be satisfied through conditions of approval.**

MCC 9.25.100: State Health Rule Compliance and Medical Service.

*The County Environmental Health Division shall have responsibility for approving plans relating to water supply, sewerage facilities, refuse storage and disposal, food and sanitary service, and emergency medical facilities in compliance with this ordinance and rules governing outdoor mass gatherings, adopted by the Oregon Department of Human Services. Each outdoor mass gathering shall have no less than one first aid station staffed by two adult individuals trained in first aid techniques.*

**The County Environmental Health Division reviewed and approved the applicant's plan. The division requires temporary restaurant licenses that must be obtained at least one week prior to the event. The applicant indicates that sanitary and disposal facilities as well as a staffed first aid booth will be provided. MCC 9.25.100 can be satisfied through conditions of approval.**

MCC 9.25.110: Public Safety.

- (A) *Prior to or on the date of application submittal, the Organizer must submit plans for public safety at the outdoor mass gathering to the Sheriff for approval demonstrating the following:*
1. *Adequate parking control and crowd protection policing must have been contracted for or otherwise provided by the Organizer. There shall be provided one parking control person for each 250 persons expected or reasonably expected to be in attendance at any time during the event. Further, there shall be provided one crowd control person for each 100 persons, expected or reasonably expected to be in attendance at any time during the event. The Sheriff may approve plans that provide for a lesser number of parking control or crowd protection personnel than set forth above, if in the Sheriff's discretion, adequate safety and security can be maintained under the circumstances. The Organizer shall submit the names of the proposed parking control personnel to the Sheriff.*
  2. *The Organizer shall submit the names and necessary background information, on forms provided by the Sheriff, for all crowd control personnel to be used during the outdoor mass gathering for investigation by the Sheriff as to fitness. Crowd control personnel must meet the following minimum standards in order to be approved as suitable by the Sheriff:*
    - a. *Be 21 years of age or older;*
    - b. *Be in good physical health;*
    - c. *Never have been convicted of a felony and must not have been convicted of a misdemeanor involving moral turpitude in the last five years; and*
    - d. *Either have received reasonable minimum training in law enforcement, security or relevant on-the-job experience.*
- (B) *All of the policing personnel must wear an appropriate identifying uniform and must be on duty during the entire outdoor mass gathering unless a relief schedule has been planned and approved. A relief schedule will only be approved by the Sheriff when sufficient policing strength on duty has been maintained.*
- (C) *It shall be the duty of the policing personnel to report any violations of the law to the Sheriff, the Sheriff's deputies or representatives and to take whatever action as can be reasonably expected of them to enforce the law.*

**The applicant submitted a Safety Plan, which was reviewed by the Marion County Sheriff's Office, which expressed no concerns over the proposed event. The applicant shall continuously comply with the requirements in MCC 9.25.110 above. MCC 9.25.110 can be satisfied through the conditions of approval mentioned above.**

MCC 9.25.120: Parking and Traffic Control.

*Prior to or on the date of application the Organizer shall provide the Public Works Director with a parking and traffic control plan acceptable to the Public Works Director. The plan shall include a scale drawing showing the parking facilities within or adjacent to the location for which the permit is requested. Ingress and egress shall be shown on the plan and provide for safe movement of any vehicle at any time to or from the parking area. The Public Works Director may require that flaggers, traffic control devices or dust control measures be used during the outdoor mass gathering to ensure the safe and efficient flow of vehicles. If flaggers, traffic control devices or dust control measures are required, the plan must include details showing their expected use and placement. The use of flaggers, traffic control devices or dust control measures must comply with standards established by the Marion County Department of Public Works.*

**The Public Works Department traffic section reviewed the information for the event and provided suggested conditions of approval through which MCC 9.25.120 would be satisfied.**

MCC 9.25.130: Permit Posting

*Any permit issued as provided in this ordinance shall be kept posted in a conspicuous place upon the premises of the assembly. No permit shall be transferable or assignable without the consent of the Board. No rebate or refund of money paid for a permit shall be made.*

**This can be made a condition of any approval.**

MCC 9.25.140: Inspection of Premises

- (A) *No application shall be granted under this ordinance unless the Organizer agrees and consents, in writing as part of the application for the permit, to allow law enforcement, public health and fire control officers to come upon the premises for which the permit has been granted for the purpose of inspection and enforcement of the terms and conditions of the permit issued pursuant to this ordinance, and any other applicable laws or ordinances.*
- (B) *If any inspections described above reveal deficiencies in compliance with State or local law, the inspectors may return as often as needed until the deficiencies are cured. If the deficiencies are not cured or cannot be cured, the county Sheriff may terminate the outdoor mass gathering or extended outdoor mass gathering as provided in Section 17(3).*

**The applicant consented to allow inspections as outlined above. MCC 9.25.140 is satisfied.**

MCC 9.25.150: Restricted Hours of Operation.

- (A) *When sound amplification is used, no outdoor mass gathering shall be conducted within 1,000 feet of any neighboring residence between the hours of 11:00 p.m. and 9:00 a.m.*
- (B) *If written consent from neighboring property owners and residents are submitted with the application, the Board may modify these hours in the permit.*
- (C) *The Board, in its discretion, may require that an outdoor mass gathering comply with all or portions of the Marion County Noise Ordinance if the Board determines that doing so is necessary to preserve the comfort and repose of neighboring residents.*

**The applicant states sound amplification will be used during the day at noon and 4:00 p.m. during the shows. No noise is expected between the hours of 11:00 p.m. and 9:00 a.m. MCC 9.25.150 can be satisfied through conditions of approval.**

MCC 9.25.160: Organizer Responsible for Preserving Order

*It is the intention of this ordinance to put the burden of preserving order upon the organizer of the outdoor mass gathering, and if any outdoor mass gathering in the County is not being operated in accordance with the rules and regulations prescribed in this ordinance and as set forth in state law, the organizer shall be subject to revocation of the permit, and the organizer or other individual responsible subject to such other sanction as the law and this ordinance provide.*

**MCC 9.25.160 can be satisfied through conditions of approval.**

MCC 9.25.170: Enforcement.

- (A) *The Organizer shall keep a reasonable count of persons and vehicles entering and leaving the outdoor mass gathering.*
- (B) *If at any time during the outdoor mass gathering held under a valid permit, the number of persons or vehicles attending the outdoor mass gathering exceeds by 10 percent or more the number of persons or vehicles estimated in the permit application, the Sheriff, or any Sheriff's deputy, has the authority to require the Organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the Organizer.*
- (C) *For any outdoor mass gathering held under a valid permit, the County Sheriff has the authority to order the crowd to disperse and leave the outdoor mass gathering site if the Organizer cannot maintain order and compliance with all applicable state and local laws or refuses to maintain order and compliance with state and local laws or refuses or is unable to adhere to the terms and conditions of the permit.*
- (D) *In addition to state law provisions in ORS Chapter 433, including ORS 433.770(1), Marion County Legal Counsel may maintain an action in any court of general jurisdiction to prevent, restrain, or enjoin any violation of ORS 433.745.*
- (E) *If the organizer fails to remove all debris or residue from the event site or adjacent property within 72 hours after termination time of the event, or fails to remove all temporary structures within three weeks*

after the termination time of the event, any county code enforcement officer may issue citations to any organizer of the event. The county code enforcement officers may also issue citations to any persons who have left behind debris at the site or on adjacent property.

- (F) In addition to any other remedies provided, if the outdoor mass gathering site is not restored to its previous condition, or better, the County may arrange for clean up of the site, and then file an action for damages against the organizer and the landowner or successor landowner.
- (G) If any organizer violates any provisions of this ordinance, the Board may immediately revoke any permit for an outdoor mass gathering and may seek any legal remedy available.

**MCC 9.25.170 can be satisfied through conditions of approval.**

**MCC 9.25.180: Intoxicating Liquor Prohibited**

- (A) Except as provided in subsection (B) of this section, no Organizer, landowner or any person having charge or control thereof at any time when an outdoor mass gathering is being conducted shall permit any person to bring into such outdoor mass gathering or upon the premises thereof, any intoxicating liquor, or permit intoxicating liquor to be consumed on the premises, and no person during such time shall take or carry onto such premises or drink thereon intoxicating liquor.
- (B) Subsection (A) of this section shall not apply to the sale and consumption of intoxicating liquor from a facility located on the premises of an outdoor mass gathering section if the express approval of the Oregon Liquor Control Commission has been obtained in the form of a temporary license or letter of authority.

**The applicant indicates that intoxicating liquor will only be available at the event from a licensed vendor. As conditioned, MCC 9.25.1180 is satisfied.**

**MCC 9.25.190: Use or Possession of Illegal Drugs Prohibited**

No firm, person, society, association or corporation conducting an outdoor mass gathering, nor any person having charge or control thereof at any time when an outdoor mass gathering is being conducted shall permit any person to bring into the outdoor mass gathering, or upon the premises thereof, any illegal drugs, nor permit illegal drugs to be used on the premises.

**MCC 9.25.190 can be satisfied through conditions of approval.**

**MCC 9.25.200: Compliance Required**

The terms and conditions of this ordinance constitute minimum health, sanitation and safety provisions; and failure to comply with the terms and conditions of this ordinance or state law shall constitute a public nuisance and shall be subject to all civil and equitable remedies as such.

**MCC 9.25.200 can be satisfied through conditions of approval.**

**APPEAL PROCEDURE**

- 7. MCC 9.25.210 contains the following procedure for appealing the Marion County Board of Commissioners' decision:

**MCC 9.25.210: Review of Board's Action.**

All decisions of the Board concerning the issuance of a permit for an outdoor mass gathering shall be subject to review by the Circuit Court of the State of Oregon in Marion County only by writ of review under the provisions of ORS 34.010 to 34.100. Decisions of the Board concerning the issuance of a conditional use permit under Marion County Zoning Ordinance chapters 119 and 126 are subject to review as land use decisions.

**VIOLATIONS**

- 8. MCC 9.25.220 outlines procedures for violations of this ordinance:

MCC 9.25.220: Public Nuisance and Violations.

- (A) *Except as provided in subsection (B) of this section, violation of any provision of this ordinance or the erection or construction of a permanent physical alteration to the real property that is the site of the outdoor mass gathering shall constitute a Class A violation as provided in ORS Chapter 153.*
- (B) *Any violation of MCC 9.25(040)(A) is punishable upon conviction by a fine of not more than \$10,000.00 as provided for in ORS 433.990 (2005).*
- (C) *Enforcement shall be accomplished through Chapter 125 MCC.*

**CONCLUSION**

9. Based on the above findings, the Planning Director recommends approval of this application.

**RECOMMENDED CONDITIONS OF APPROVAL**

10. If the Board of Commissioners chooses to approve this application, the Planning Director recommends including the following conditions of approval:
- A. Marion County Public Works:
    - Applicant shall complete vegetation trimming and removal to optimize sight distance from the event access on Valley View Road. All vegetation removal shall be completed to the satisfaction of the Marion County Public Works (MCPW) Traffic Engineering section. Applicant should coordinate with Eric Anderson of the Traffic Engineering section at 503-588-5036.
    - Applicant shall confer with (MCPW) Traffic Engineering section on sign size details and placement for event traffic related signs. No signs shall be placed in a manner that creates a sight distance obstruction or impedes traffic. A traffic control signing plan shall be submitted to MCPW for review at least seven days prior to the event.
    - Applicant shall provide contact information for on-call flaggers used to control traffic within the Marion County right of way, if necessary. Permission must be obtained from MCPW Traffic Engineering section prior to implementation of traffic control.
    - Applicant shall not place offsite directional signing within Marion County public rights-of-way.
    - All event parking shall be located onsite. Vehicle queuing or parking will not be permitted within the Valley View Road NE right of way.
  - B. Marion County Health Department: All food vendors onsite must be licensed with the Marion County Health Department prior to operation.
  - C. Marion County Sheriff: The applicant shall follow the approved safety plan.
  - D. Insurance: The Organizer shall furnish the Public Works Director with an insurance certificate and an endorsement naming Marion County as an additional insured at least seven days before the first day of the outdoor mass gathering.
  - E. Silverton Fire District: The applicant shall schedule an onsite inspection prior to the event and meet the District's requirements. The applicant shall provide first aid personnel at the event. The applicant and all other vendors must comply with the Technical Advisory No. 11-09 (Statewide Guidelines for Fairs, Trade Shows, Carnivals or Common Venue Events).
  - F. Permit Posting: Any permit issued as provided in this ordinance shall be kept posted in a conspicuous place upon the premises of the assembly.



- G. Noise Restricted Hours of Operation: Sound amplification shall **NOT** be used between the hours of 11:00 p.m. and 9:00 a.m. Quiet periods shall be enforced by on-site security.
- H. Responsible for Order: The organizer shall be subject to revocation of the permit, if the outdoor mass gathering is not being operated in accordance with the rules and regulations prescribed in Chapter 9.25 MCC as presented in this report and as set forth in state law.
- I. Enforcement:
- The Organizer shall keep a reasonable count of persons and vehicles entering and leaving the outdoor mass gathering. If at any time during the outdoor mass gathering, the number of persons or vehicles attending the outdoor mass gathering exceeds by 10 percent or more the number of persons or vehicles estimated in the permit application, the Organizer shall limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the Organizer.
  - If the Organizer cannot maintain order and compliance with all applicable state and local laws or refuses to maintain order and compliance or is unable to adhere to the terms and conditions of this permit, the County Sheriff has the authority to order the crowd to disperse and leave the outdoor mass gathering site
  - If the organizer fails to remove all debris or residue from the event site or adjacent property within 72 hours after termination time of the event, or fails to remove all temporary structures within three weeks after the termination time of the event, any county code enforcement officer may issue citations to any organizer of the event. The county code enforcement officers may also issue citations to any persons who have left behind debris at the site or on adjacent property.
- J. Intoxicating Liquor: The sale and consumption of intoxicating liquor from a facility located on the premises of this outdoor mass gathering must receive the express approval of the Oregon Liquor Control Commission and obtain a temporary license or letter of authority.
- K. Illegal Drugs:
- The Operator of the mass gathering shall not permit any person to bring into the outdoor mass gathering, or upon the premises thereof, any illegal drugs, nor permit illegal drugs to be used on the premises.
  - The applicant shall notify the Marion County Sheriff Department of the use of any illegal substances on the property and identify the individuals to the responding Officer.
- L. Compliance:
- Failure to comply with the terms and conditions of this application shall constitute a public nuisance and shall be subject to all civil and equitable remedies as such.
  - At least seven days before the event occurs, the applicant shall be in compliance with all conditions that are required prior to the opening date.
  - If any organizer violates any provisions of this ordinance, the Board may immediately revoke any permit for an outdoor mass gathering and may seek any legal remedy available.
- M. Renewal: This event may be renewed annually. In order to renew, the applicant shall submit an application annually. The years for which this event may be renewed are 2019, 2020, 2021 and 2022.

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the matter of the application of	)	Case No. MG18-002
Whitewind Woodland LLC	)	Clerk's File No:
	)	Outdoor Mass Gathering

**ORDER**

This matter came before the Marion County Board of Commissioners at a public hearing on June 13, 2018, to consider the application of Whitewind Woodland LLC, to hold a small mass gathering on July 21-22, 2018; July 28-29, 2018; August 11-12, 2018; and August 18-19, 2018, and for annual renewal for the years 2019, 2020, 2021 and 2022, on an 80.55 acre parcel in an EFU (Exclusive Farm Use) zone located at 6518 Cascade Highway NE, Silverton. (T6S; R1W; Section 25; tax lot 900).

The Board, after having thoroughly reviewed the Planning Division's and Clerk's files, and the testimony and evidence in the record, makes the following Order:

IT IS HEREBY ORDERED that the Board **APPROVES** the outdoor mass gathering permit and adopts the evidence and Findings of Fact contained herein as Exhibit A. The Board further adopts the conditions of approval contained herein as Exhibit B.

DATED at Salem, Oregon this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 433.750 provides that this order may be appealed to a circuit court for the county as provided in ORS 34.020 to 34.100.

## EXHIBIT A

### FINDINGS OF FACT

1. The property is located on the south side of Cascade Highway on the southwest corner of Cascade Highway and Valley View Road. The property contains a dwelling and accessory buildings.
2. Surrounding are properties in farm use and timbered property in an EFU zone.
3. The applicant is requesting to hold a Renaissance Era Faire and a Wild West Show as a small mass gathering. According to information submitted with the application: a) sound amplification will be used; b) alcohol will be available; and c) fireworks will not be used or shown.

### AGENCY COMMENTS

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*and is held primarily in open spaces and not in any permanent structure within Marion County. Included within the calculation of hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.*

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**30 days. Therefore, the total hours are not expected to exceed 120 hours in a three month period. Based on this information, the proposed event meets the definition of a “small gathering.”**

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*D. If the application is for a one-time small gathering, the application must be considered by the board following a public hearing. If the application is for an annual small gathering, the application in the first year must be considered by the board following a public hearing. For either a one-time or annual permit, the board may impose reasonable conditions in the permit. If an annual small gathering permit is issued, it is renewable for up to four additional consecutive years, as established by board order. In order to renew an annual small gathering permit, the applicant shall submit an application annually consistent with the requirements of this chapter. The planning director is vested with authority to grant a renewal of an annual small gathering permit or refer the proposed renewal to the board for consideration following a public hearing. A renewal permit is subject to all permit requirements set forth in this chapter as well as any conditions imposed by the board in the permit for the first year. In the event that there are complaints about the annual small gathering in the prior year, or the applicant failed to satisfy the conditions in the annual small gathering permit in the prior year, the planning director may refer the renewal to the board for a public hearing consistent with the requirements of this chapter. In the event that the planning director renews an annual small gathering permit, the planning director shall send notice to neighboring property owners consistent with the policy developed pursuant to MCC 9.25.060(B) notifying neighbors of the date or dates of the event, any permit conditions originally imposed by the board, and inviting the neighbors to contact the planning director with any complaints or concerns.*

**The applicant has requested approval of an annual small gathering. If approved, the years for which this event may be renewed annually are 2019, 2020, 2021 and 2022.**

*F. Each public official receiving notice of the application who wishes to comment on the application shall submit such comment in writing to the board no later than the date and time for the hearing. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed. The board may consider and impose any reasonable condition the board deems necessary, including any suggested condition submitted by a public official who received notice of the outdoor mass gathering application or any suggested condition submitted by a member of the public.*

**The application and pertinent information was sent to various governmental agencies and public officials. Comments received were summarized in #4 above and the full comments can be reviewed in the planning file. Recommendations have been included as conditions of approval listed at the end of this report for consideration by the Board of Commissioners.**

*G. The board may deny an application or impose reasonable conditions if evidence is provided to the board indicating that an organizer has previously violated any provision of this chapter.*

**The organizer and property owner are not known to have previously violated MCC 9.25.**

*H. The board may impose a permit condition requiring compliance with all or portions of Chapter 8.45 MCC, Noise, as set forth in MCC 9.25.150 (C).*

**Noise and recommended conditions are discussed below.**

MCC 9.25.080: Insurance

- (A) *After consultation with the Marion County Risk Manager, the Board may require an organizer to obtain a commercial general liability policy in an amount commensurate with the risk and in compliance with standards established by the Marion County Risk Manager.*
- (B) *The Marion County Risk Manager shall establish standards for commercial general liability policies required for outdoor mass gatherings that include: minimum coverage amounts, policy type, minimum financial ratings for carriers, required additional coverage, requirements for naming additional insured parties, policy duration and any other requirement that the Marion County Risk Manager deems necessary.*
- (C) *The Organizer shall furnish the Public Works Director with an insurance certificate and a copy of the insurance policy complying with the insurance requirements imposed by the Board pursuant to subsection (A) of this section at least seven days before the first day of the outdoor mass gathering.*
- (D) *Any permits for an outdoor mass gathering may be voided by the Public Works Director if the Organizer fails to comply with subsection (C) of this section.*
- (E) *Any insurance premiums that must be paid to meet the requirements of this section are the responsibility of the Organizer.*

**The applicant has agreed to provide proof of adequate insurance prior to the event. As conditioned, MCC 9.25.080 is satisfied.**

MCC 9.25.090: Fire Protection Plan.

- (1) *No permit shall be granted under this ordinance unless the Organizer has a fire protection plan approved by the Fire Protection District Officer for the type, size, number and location of fire protection devices and equipment available at, in or near any location, including outdoor sites, building, tents, stadium or enclosure, wherein or whereupon more than 10 persons may be expected to congregate at any time during the course of an outdoor mass gathering.*
- (2) *If the site for which the permit is applied for is located outside a fire prevention district, the Organizer must show approval from the office of the State Fire Marshal or a fire prevention district that would respond in the event of an emergency.*

**The Silverton Fire District reviewed and provided comments on the event if the permit were approved. The district requested an onsite inspection prior to the event, as they have done in past years. The applicant must also comply with the Technical Advisory No. 11-09 (Statewide Guidelines for Fairs, Trade Shows, Carnivals or Common Venue Events). MCC 9.25.090 can be satisfied through conditions of approval.**

MCC 9.25.100: State Health Rule Compliance and Medical Service.

*The County Environmental Health Division shall have responsibility for approving plans relating to water supply, sewerage facilities, refuse storage and disposal, food and sanitary service, and emergency medical facilities in compliance with this ordinance and rules governing outdoor mass gatherings, adopted by the Oregon Department of Human Services. Each outdoor mass gathering shall have no less than one first aid station staffed by two adult individuals trained in first aid techniques.*

**The County Environmental Health Division reviewed and approved the applicant's plan. The division requires temporary restaurant licenses that must be obtained at least one week prior to the event. The applicant indicates that sanitary and disposal facilities as well as a staffed first aid booth will be provided. MCC 9.25.100 can be satisfied through conditions of approval.**

MCC 9.25.110: Public Safety.

- (A) *Prior to or on the date of application submittal, the Organizer must submit plans for public safety at the outdoor mass gathering to the Sheriff for approval demonstrating the following:*

1. *Adequate parking control and crowd protection policing must have been contracted for or otherwise provided by the Organizer. There shall be provided one parking control person for each 250 persons expected or reasonably expected to be in attendance at any time during the event. Further, there shall be provided one crowd control person for each 100 persons, expected or reasonably expected to be in attendance at any time during the event. The Sheriff may approve plans that provide for a lesser number of parking control or crowd protection personnel than set forth above, if in the Sheriff's discretion, adequate safety and security can be maintained under the circumstances. The Organizer shall submit the names of the proposed parking control personnel to the Sheriff.*
  2. *The Organizer shall submit the names and necessary background information, on forms provided by the Sheriff, for all crowd control personnel to be used during the outdoor mass gathering for investigation by the Sheriff as to fitness. Crowd control personnel must meet the following minimum standards in order to be approved as suitable by the Sheriff:*
    - a. *Be 21 years of age or older;*
    - b. *Be in good physical health;*
    - c. *Never have been convicted of a felony and must not have been convicted of a misdemeanor involving moral turpitude in the last five years; and*
    - d. *Either have received reasonable minimum training in law enforcement, security or relevant on-the-job experience.*
- (B) *All of the policing personnel must wear an appropriate identifying uniform and must be on duty during the entire outdoor mass gathering unless a relief schedule has been planned and approved. A relief schedule will only be approved by the Sheriff when sufficient policing strength on duty has been maintained.*
- (C) *It shall be the duty of the policing personnel to report any violations of the law to the Sheriff, the Sheriff's deputies or representatives and to take whatever action as can be reasonably expected of them to enforce the law.*

**The applicant submitted a Safety Plan, which was reviewed by the Marion County Sheriff's Office, which expressed no concerns over the proposed event. The applicant shall continuously comply with the requirements in MCC 9.25.110 above. MCC 9.25.110 can be satisfied through the conditions of approval mentioned above.**

**MCC 9.25.120: Parking and Traffic Control.**

*Prior to or on the date of application the Organizer shall provide the Public Works Director with a parking and traffic control plan acceptable to the Public Works Director. The plan shall include a scale drawing showing the parking facilities within or adjacent to the location for which the permit is requested. Ingress and egress shall be shown on the plan and provide for safe movement of any vehicle at any time to or from the parking area. The Public Works Director may require that flaggers, traffic control devices or dust control measures be used during the outdoor mass gathering to ensure the safe and efficient flow of vehicles. If flaggers, traffic control devices or dust control measures are required, the plan must include details showing their expected use and placement. The use of flaggers, traffic control devices or dust control measures must comply with standards established by the Marion County Department of Public Works.*

**The Public Works Department traffic section reviewed the information for the event and provided suggested conditions of approval through which MCC 9.25.120 would be satisfied.**

**MCC 9.25.130: Permit Posting**

*Any permit issued as provided in this ordinance shall be kept posted in a conspicuous place upon the premises of the assembly. No permit shall be transferable or assignable without the consent of the Board. No rebate or refund of money paid for a permit shall be made.*

**This can be made a condition of any approval.**

MCC 9.25.140: Inspection of Premises

- (A) *No application shall be granted under this ordinance unless the Organizer agrees and consents, in writing as part of the application for the permit, to allow law enforcement, public health and fire control officers to come upon the premises for which the permit has been granted for the purpose of inspection and enforcement of the terms and conditions of the permit issued pursuant to this ordinance, and any other applicable laws or ordinances.*
- (B) *If any inspections described above reveal deficiencies in compliance with State or local law, the inspectors may return as often as needed until the deficiencies are cured. If the deficiencies are not cured or cannot be cured, the county Sheriff may terminate the outdoor mass gathering or extended outdoor mass gathering as provided in Section 17(3).*

**The applicant consented to allow inspections as outlined above. MCC 9.25.140 is satisfied.**

MCC 9.25.150: Restricted Hours of Operation.

- (A) *When sound amplification is used, no outdoor mass gathering shall be conducted within 1,000 feet of any neighboring residence between the hours of 11:00 p.m. and 9:00 a.m.*
- (B) *If written consent from neighboring property owners and residents are submitted with the application, the Board may modify these hours in the permit.*
- (C) *The Board, in its discretion, may require that an outdoor mass gathering comply with all or portions of the Marion County Noise Ordinance if the Board determines that doing so is necessary to preserve the comfort and repose of neighboring residents.*

**The applicant states sound amplification will be used during the day at noon and 4:00 p.m. during the shows. No noise is expected between the hours of 11:00 p.m. and 9:00 a.m. MCC 9.25.150 can be satisfied through conditions of approval.**

MCC 9.25.160: Organizer Responsible for Preserving Order

*It is the intention of this ordinance to put the burden of preserving order upon the organizer of the outdoor mass gathering, and if any outdoor mass gathering in the County is not being operated in accordance with the rules and regulations prescribed in this ordinance and as set forth in state law, the organizer shall be subject to revocation of the permit, and the organizer or other individual responsible subject to such other sanction as the law and this ordinance provide.*

**MCC 9.25.160 can be satisfied through conditions of approval.**

MCC 9.25.170: Enforcement.

- (A) *The Organizer shall keep a reasonable count of persons and vehicles entering and leaving the outdoor mass gathering.*
- (B) *If at any time during the outdoor mass gathering held under a valid permit, the number of persons or vehicles attending the outdoor mass gathering exceeds by 10 percent or more the number of persons or vehicles estimated in the permit application, the Sheriff, or any Sheriff's deputy, has the authority to require the Organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the Organizer.*
- (C) *For any outdoor mass gathering held under a valid permit, the County Sheriff has the authority to order the crowd to disperse and leave the outdoor mass gathering site if the Organizer cannot maintain order and compliance with all applicable state and local laws or refuses to maintain order and compliance with state and local laws or refuses or is unable to adhere to the terms and conditions of the permit.*

- (D) *In addition to state law provisions in ORS Chapter 433, including ORS 433.770(1), Marion County Legal Counsel may maintain an action in any court of general jurisdiction to prevent, restrain, or enjoin any violation of ORS 433.745.*
- (E) *If the organizer fails to remove all debris or residue from the event site or adjacent property within 72 hours after termination time of the event, or fails to remove all temporary structures within three weeks after the termination time of the event, any county code enforcement officer may issue citations to any organizer of the event. The county code enforcement officers may also issue citations to any persons who have left behind debris at the site or on adjacent property.*
- (F) *In addition to any other remedies provided, if the outdoor mass gathering site is not restored to its previous condition, or better, the County may arrange for clean up of the site, and then file an action for damages against the organizer and the landowner or successor landowner.*
- (G) *If any organizer violates any provisions of this ordinance, the Board may immediately revoke any permit for an outdoor mass gathering and may seek any legal remedy available.*

**MCC 9.25.170 can be satisfied through conditions of approval.**

**MCC 9.25.180: Intoxicating Liquor Prohibited**

- (A) *Except as provided in subsection (B) of this section, no Organizer, landowner or any person having charge or control thereof at any time when an outdoor mass gathering is being conducted shall permit any person to bring into such outdoor mass gathering or upon the premises thereof, any intoxicating liquor, or permit intoxicating liquor to be consumed on the premises, and no person during such time shall take or carry onto such premises or drink thereon intoxicating liquor.*
- (B) *Subsection (A) of this section shall not apply to the sale and consumption of intoxicating liquor from a facility located on the premises of an outdoor mass gathering section if the express approval of the Oregon Liquor Control Commission has been obtained in the form of a temporary license or letter of authority.*

**The applicant indicates that intoxicating liquor will only be available at the event from a licensed vendor. As conditioned, MCC 9.25.1180 is satisfied.**

**MCC 9.25.190: Use or Possession of Illegal Drugs Prohibited**

*No firm, person, society, association or corporation conducting an outdoor mass gathering, nor any person having charge or control thereof at any time when an outdoor mass gathering is being conducted shall permit any person to bring into the outdoor mass gathering, or upon the premises thereof, any illegal drugs, nor permit illegal drugs to be used on the premises.*

**MCC 9.25.190 can be satisfied through conditions of approval.**

**MCC 9.25.200: Compliance Required**

*The terms and conditions of this ordinance constitute minimum health, sanitation and safety provisions; and failure to comply with the terms and conditions of this ordinance or state law shall constitute a public nuisance and shall be subject to all civil and equitable remedies as such.*

**MCC 9.25.200 can be satisfied through conditions of approval.**

**APPEAL PROCEDURE**

7. MCC 9.25.210 contains the following procedure for appealing the Marion County Board of Commissioners' decision:

**MCC 9.25.210: Review of Board's Action.**



*All decisions of the Board concerning the issuance of a permit for an outdoor mass gathering shall be subject to review by the Circuit Court of the State of Oregon in Marion County only by writ of review under the provisions of ORS 34.010 to 34.100. Decisions of the Board concerning the issuance of a conditional use permit under Marion County Zoning Ordinance chapters 119 and 126 are subject to review as land use decisions.*

### **VIOLATIONS**

8. MCC 9.25.220 outlines procedures for violations of this ordinance:

MCC 9.25.220: Public Nuisance and Violations.

- (A) *Except as provided in subsection (B) of this section, violation of any provision of this ordinance or the erection or construction of a permanent physical alteration to the real property that is the site of the outdoor mass gathering shall constitute a Class A violation as provided in ORS Chapter 153.*
- (B) *Any violation of MCC 9.25(040)(A) is punishable upon conviction by a fine of not more than \$10,000.00 as provided for in ORS 433.990 (2005).*
- (C) *Enforcement shall be accomplished through Chapter 125 MCC.*

### **DECISION**

9. Based on the above findings and discussion, the Board finds the organizer meets the requirements, or can be conditioned to meet the requirements, for holding an outdoor mass gathering.

## EXHIBIT B

Approval of MG18-002 is subject to the following conditions of approval that are hereby adopted as being necessary for the public health, safety, and welfare.

### CONDITIONS OF APPROVAL

A. Marion County Public Works:

- Applicant shall complete vegetation trimming and removal to optimize sight distance from the event access on Valley View Road. All vegetation removal shall be completed to the satisfaction of the Marion County Public Works (MCPW) Traffic Engineering section. Applicant should coordinate with Eric Anderson of the Traffic Engineering section at 503-588-5036.
- Applicant shall confer with (MCPW) Traffic Engineering section on sign size details and placement for event traffic related signs. No signs shall be placed in a manner that creates a sight distance obstruction or impedes traffic. A traffic control signing plan shall be submitted to MCPW for review at least seven days prior to the event.
- Applicant shall provide contact information for on-call flaggers used to control traffic within the Marion County right of way, if necessary. Permission must be obtained from MCPW Traffic Engineering section prior to implementation of traffic control.
- Applicant shall not place offsite directional signing within Marion County public rights-of-way.
- All event parking shall be located onsite. Vehicle queuing or parking will not be permitted within the Valley View Road NE right of way.

B. Marion County Health Department: All food vendors onsite must be licensed with the Marion County Health Department prior to operation.

C. Marion County Sheriff: The applicant shall follow the approved safety plan.

D. Insurance: The Organizer shall furnish the Public Works Director with an insurance certificate and an endorsement naming Marion County as an additional insured at least seven days before the first day of the outdoor mass gathering.

E. Silverton Fire District: The applicant shall schedule an onsite inspection prior to the event and meet the District's requirements. The applicant shall provide first aid personnel at the event. The applicant and all other vendors must comply with the Technical Advisory No. 11-09 (Statewide Guidelines for Fairs, Trade Shows, Carnivals or Common Venue Events).

F. Permit Posting: Any permit issued as provided in this ordinance shall be kept posted in a conspicuous place upon the premises of the assembly.

G. Noise Restricted Hours of Operation: Sound amplification shall **NOT** be used between the hours of 11:00 p.m. and 9:00 a.m. Quiet periods shall be enforced by on-site security.

- H. Responsible for Order: The organizer shall be subject to revocation of the permit, if the outdoor mass gathering is not being operated in accordance with the rules and regulations prescribed in Chapter 9.25 MCC as presented in this report and as set forth in state law.
- I. Enforcement:
- The Organizer shall keep a reasonable count of persons and vehicles entering and leaving the outdoor mass gathering. If at any time during the outdoor mass gathering, the number of persons or vehicles attending the outdoor mass gathering exceeds by 10 percent or more the number of persons or vehicles estimated in the permit application, the Organizer shall limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the Organizer.
  - If the Organizer cannot maintain order and compliance with all applicable state and local laws or refuses to maintain order and compliance or is unable to adhere to the terms and conditions of this permit, the County Sheriff has the authority to order the crowd to disperse and leave the outdoor mass gathering site
  - If the organizer fails to remove all debris or residue from the event site or adjacent property within 72 hours after termination time of the event, or fails to remove all temporary structures within three weeks after the termination time of the event, any county code enforcement officer may issue citations to any organizer of the event. The county code enforcement officers may also issue citations to any persons who have left behind debris at the site or on adjacent property.
- J. Intoxicating Liquor: The sale and consumption of intoxicating liquor from a facility located on the premises of this outdoor mass gathering must receive the express approval of the Oregon Liquor Control Commission and obtain a temporary license or letter of authority.
- K. Illegal Drugs:
- The Operator of the mass gathering shall not permit any person to bring into the outdoor mass gathering, or upon the premises thereof, any illegal drugs, nor permit illegal drugs to be used on the premises.
  - The applicant shall notify the Marion County Sheriff Department of the use of any illegal substances on the property and identify the individuals to the responding Officer.
- L. Compliance:
- Failure to comply with the terms and conditions of this application shall constitute a public nuisance and shall be subject to all civil and equitable remedies as such.
  - At least seven days before the event occurs, the applicant shall be in compliance with all conditions that are required prior to the opening date.
  - If any organizer violates any provisions of this ordinance, the Board may immediately revoke any permit for an outdoor mass gathering and may seek any legal remedy available.
- M. Renewal: This event may be renewed annually. In order to renew, the applicant shall submit an application annually. The years for which this event may be renewed are 2019, 2020, 2021 and 2022.