

April 27, 2018

***Via Email Only***

[breich@co.marion.or.us](mailto:breich@co.marion.or.us)  
Marion County Hearings Official  
c/o Brandon Reich  
Planning Division  
5155 Silverton Road, NE  
Salem, Oregon 97305

Re: **Willamette Country Music Concerts, LLC**  
Applicant's Final Argument

Dear Marion County Hearings Official:

As you know, I represent Willamette Country Music Concerts, LLC (the "Applicant"), the applicant for the Bi-Mart Willamette Country Music Festival (the "Festival") Conditional Use Permit 17-043 (the "CUP Application"), which was applied for in conjunction with an Outdoor Mass Gathering Permit 17-004 (the "OMG Permit") and a Noise Ordinance Variance Permit (in conjunction with the OMG Permit).

Please accept this letter as the Applicant's final argument pursuant to ORS 197.763(6)(e). Please enter this letter into the record of the CUP application.

**James Buchal April 6, 2018 Memorandum**

In his April 6, 2018 memorandum, Mr. Buchal repeats the argument that the proposed Outdoor Mass Gathering cannot be approved in the EFU zone "as a matter of law." The Applicant reaffirms its legal positions as articulated in my February 21, 2018 "legal issues memorandum" and need not repeat them here. It is sufficient to conclude that Mr. Buchal's legal arguments are without merit. However, one new item of note should be cleared up. Mr. Buchal, on page 5, states:

*"The transportation reports (at p. 46 [of the originally submitted TIA]) that volunteers, crews and other Festival personnel (as opposed to attendees) constitute 3.6% of the people on site. 3.6% of 30,000 is 1,080 people, a far cry from the minimal crews depicted (though of course not all of the 1,080 people show up in advance or stay afterwards). In short, the*

*record demonstrates much longer periods of disruption by much larger groups of people.”*

This is a purposeful strawman argument and is representative of the tactics used by the opposition in this case. Mr. Buchal is conflating the evidence provided on page 46 of the February 21, 2018 TIA that provides a break-down of the approximate percent of event attendance (for the 4-day Festival) by category. It is abundantly clear that the Applicant’s percentage break-down on page 46 is not intended in any way to indicate how many people will be involved in the set up and tear down/clean up before and after the 4-day Outdoor Mass Gathering event. Of course there will not be over one thousand people setting up and/or taking down/cleaning up. Such a contention is absurd on its face. There is nothing in the record that remotely implies such a large number of individuals in the set-up/take-down crews. Furthermore, the Applicant provided very detailed information on these limited crews on pages 6 and 7 of the February 21, 2018 TIA. The information found on pages 6 and 7 are not inconsistent with the data found on page 46. The fact of the matter is that these limited crews are not anywhere near the numbers (and therefore will have nowhere near the impact) that Mr. Buchal claims.

Parts VI and VII of Mr. Buchal’s memorandum are addressed by the Applicant’s environmental specialist, Brian Meiring, PWS, of Wetlands and Wildlife, LLC in his April 17, 2018 letter and by the Applicant’s transportation engineer, Joe Bessman, P.E. of Transight Engineering in the April 6, 2018 Transportation Impact Analysis (the “Revised TIA”). Please also see the letter in the record dated April 20, 2018, from Transight Consulting, LLC, wherein the Applicant’s transportation and planning consultants provided a specific rebuttal to the comments posed by Mr. Buchal regarding the TIA and Temporary Traffic Control Plan (the “TTCP”).

### **George Meyer April 20, 2018 Letter**

In his letter to you dated April 20, 2018, George Meyer wrote a letter of opposition wherein he claimed to speak “on behalf of all the local farmers and residents who would be injured by the granting of these permits.” However, there is no evidence that Mr. Meyer speaks for the other farmers and residents in the area and no one but Mr. Meyer signed his letter.

On the other hand, the Applicant’s agents, Del Huntington and Joe Bessman, P.E., provide documentation of the extensive public outreach to neighbors, business owners and farmers in the area.<sup>1</sup> The farmers and others interviewed by the Applicant’s agents spoke for themselves. Notably, none of the businesses and individuals interviewed objected to or contradicted the summary and conclusions made by Mr. Bessman (found on pages 12 through 22 in the Revised TIA).

---

<sup>1</sup> See pages 12-14 of the Applicant’s Revised TIA dated April 6, 2018.

Additionally, Mr. Meyer's letter is informative for what it does not say. In his April 20<sup>th</sup> letter Mr. Meyer provides no evidence that his farming practices will be altered by the Festival. While Mr. Meyer describes his farming operation and the general challenges inherent in commercial farming in Marion County, he does not provide specific evidence to show that the Festival will alter his farming practices or significantly increase the cost of farming. He did not provide any evidence that he would likely harvest during the period of time that the Festival will occur (end of the third week in August). He provided no testimony that showed any harvesting of his crops during the third week in August. It is therefore reasonable to assume that it is highly unlikely that the Festival will have any effect on his farming practices, let alone a significant one. It is reasonable to expect Mr. Meyer to provide evidence and testimony about when his crop has historically been harvested. This he did not do. While it is well understood that harvest season is dependent on weather and moisture, it is still not reasonable to expect that there has been a harvest season in the last few decades so late that it bumped up into the end of the third week in August. If that ever happened in recent memory, it is reasonable to expect Mr. Meyer to at least say so. He does not provide any evidence that he has harvested in the third week of August in the recent past. In his November 20, 2017 letter to the record, Mr. Meyer states:

*"WCMF application states the event will occur during [the third week of August], a critical time in farm harvest of grass seed, green beans and straw...The grass seed is collected in the combine and transferred to the truck for delivery to the seed cleaner located in North Albany. The average round trip delivery takes two hours. If there is a delay with the trucks returning the combines would be sitting idle in the field with their seed bins full. Any down time [a]ffects our bottom line."*

What is more, Mr. Meyer's testimony is contradicted by multiple other farmers in the area who provided detailed harvest period information to the Applicant's agents, and is summarized and illustrated in the Revised TIA, Table 1, Summary of Area Crops, and Table 2, Summary of Harvest Period for Area Crops, pages 14-17. This evidence, meticulously compiled, recorded and illustrated shows that for all of Mr. Meyer's crops, except for the slight possibility of green beans which are dependent on when they are planted, none are harvested during the proposed Festival dates (August 15<sup>th</sup> through 19<sup>th</sup>, 2019).

It should be noted that Mr. Meyer's November 20<sup>th</sup> testimony was received prior to the revision of the Traffic Control Plan and the Revised TIA which redirected Festival traffic in a way as to minimize impacts to the farming operations along Talbot Road and Wintel Road. Therefore, Mr. Meyer's November 20<sup>th</sup> testimony is in no way helpful to supporting a conclusion that the Festival traffic will significantly impact his farming practices or significantly increase his cost of farming.

Mr. Meyer's April 20<sup>th</sup> testimony is not substantial evidence on which a reasonable person may rely because it does not even attempt to provide the facts necessary to conclude that the proposal will impact his farming operations in any way. *See generally, Dodd v. Hood River County*, 317 Or 172, 179-180 (1993); *1000 Friends of Oregon v. LCDR (Lane Co.)*, 305 Or 384, 405 (1988) (mere assertions from multiple, experienced major timber producers that concluded that a 40-acre minimum parcel size in the F-1 zone was sufficient for the economically manageable forest unit operation, without sufficient accompanying information, is not substantial evidence).

In addition, the record is clear that the Applicant's attorney, in the public meeting and in private email correspondence with Mr. Buchal, offered to have the Applicant's traffic consultant and engineer meet with Mr. Meyer in order to better understand his farming operations and traffic patterns in order to make reasonable accommodations, should any be necessary or desired by Mr. Meyer. Notwithstanding Mr. Meyer's refusal to meet, the Applicant's traffic consultants met with other area farmers and businesses and, in conjunction with ODOT and Marion County Public Works, developed revised traffic routes in order to better accommodate the concerns expressed by local farmers and businesses.

Furthermore, Mr. Meyer's vague objections are contradicted by substantial evidence in the record provided by the Applicant's traffic consultant and traffic engineer, found on pages 12 through 22 in the Revised TIA. Mr. Meyer's assertions are further undercut by Marion County Public Works' April 20, 2018 memorandum, page 3, note 6 which recognized the Applicant's efforts as follows:

*"The TIA shall include a detailed narrative that discusses how through and local traffic will be managed and allowed to move through intersections, checkpoints, and roadway segments to minimize impacts. This traffic may include but is not limited to the following: Farming traffic and agricultural implements, local residents, Ankeny National Wildlife Refuge visitors, and commuters that travel between I-5 and destinations west of the Willamette River.*

***Commentary: The revised TIA provides satisfactory discussions on the accommodation of local traffic and provides estimates of the delays."***

Even if Mr. Meyer does in fact harvest during the 4-day event, the Applicant has gone to extraordinary lengths to accommodate Mr. Meyer and the other area farmers. With the proposed Revised TIA and TTCP, at its PM peak, Festival traffic will only slow local traffic, including harvest-time traffic, to 15 to 20 miles per hour, which is the typical speed of large farm equipment. Furthermore, when Festival traffic is leaving the Festival site around

10:00 or 10:30 pm, local traffic will have the right-of-way to enter the queue to get onto the local roads and then onto I-5. As stated on page 4 of the Revised TIA, Festival staff will support on-site security crews, first responders, tow trucks and flagging crews. The Applicant will host a daily conference call with area farmers at 6 a.m. every morning of the OMG to coordinate daily delivery and equipment movement needs (if any) and to apprise the flagging crews. A neighborhood liaison number will be provided for area farmers experiencing any issues to directly contact Festival management staff.

### **Greenlight Engineering April 20, 2018 Letter**

Rick Nys, P.E., principal traffic engineer for Greenlight Engineering, provided to James Buchal, attorney for George Meyer, a final document critical of the Applicant's Revised TIA. As a registered professional engineer, Mr. Nys is required to stamp with a seal and sign as registrant all such final documents. ORS 672.020; OAR 820-025-0015(2). Mr. Nys failed to do so in this case. By not stamping the April 20<sup>th</sup> final document, Mr. Nys severely imperils his credibility.

Mr. Nys suggests that Festival traffic traveling north to the Festival will ignore the ODOT traffic control, incident response vehicles, flaggers, and published materials that direct Festival traffic to the northern interchange (Ankeny Hill Road) and cut in line by following their GPS that shows the shortest distance without regard to traffic control plans such as the one proposed by the Applicant. However, such a concern is not reasonable based on typical driver behavior. Just as the typical driver is expected to alter driving and routes based on road construction or wrecks, drivers are expected to obey traffic control signage and wayfinding guidance for special events. In addition, the flaggers at the Talbot Road interchange will have the ability to control and regulate Festival traffic and grant priority access to local residents and farmers. Will some Festival goers "cut in line" and attempt to avoid the Ankeny Hill Road interchange? Perhaps, but it is unlikely to be significant. If so, it can be controlled by the flaggers who can send nonlocal traffic out of direction. It is significant that both ODOT staff and Marion County Public Works staff do not share the concern of Mr. Nys. In addition, the Applicant's Revised TIA and TTCP was developed with over 10 years of experience with this proposed Festival, in addition to two other major annual festivals. Mr. Nys makes no claim of having any experience analyzing Outdoor Mass Gatherings such as the proposed Festival.

Mr. Nys states: "Whether or not the County determines that the [County Transportation Impact Analysis] requirements are mandatory in this case, they are important to identify the elements of a useful, informative TIA..." Mr. Nys is correct in his presumption that the County's TIA requirements are not applicable and mandatory in this case. However, because the Applicant desires to provide a well-organized Outdoor Mass Gathering, and out of an abundance of caution, the Applicant commissioned a robust and thorough TIA that follows the publication of the Federal Highway Administration ("FHWA"), *Managing Travel for Special Events*. The FHWA methodology provides the

appropriate planning and coordination steps for an event that are much more detailed and specific to temporary conditions and the necessary management strategies.

Mr. Nys' criticism of the Revised TIA stems from his misguided contention that the County's TIA provisions that apply to permanent development (vs. a temporary use) should be applied in this case – an application for a 4-day Outdoor Mass Gathering. The difference between these two types of analyses is significant and was the purpose of providing the detailed scoping information to agencies in early January for review and comment. Both reviewing agencies - Marion County Public Works and ODOT - approved the TIA Scope of Analysis consistent with the FHWA *Managing Travel for Special Events*, and the agencies' subsequent responses and comments show a clear understanding of the difference between these two different types of applications. ODOT provides experience working with similar applications statewide for events that are held by the same organizers in Brownsville and Jackson County, along with sporting events and other types of mass gathering events throughout the State.

Mr. Nys faults the Applicant for not providing a traffic control plan. He states on page 2:

*“The TIA refers to suggested vehicle routing via signing, portable message signs and flaggers. However, there is no detailed traffic control plan for review. Marion County has required a detailed traffic control plan prior to the approval of the Conditional Use application. The ability of the planned routes to be successful in routing traffic cannot be reviewed without additional detail. At this late date, with the record before the County closing on April 20<sup>th</sup>, and no detailed traffic control plan filed before that date, the public has not had the opportunity to comment upon the plan, and given the evolution of the applicant's proposals and analyses to date, there is every reason to believe that a last-minute filing would be inadequate”*

Please note that the Applicant submitted a 14-page TTCP via e-mail to Marion County and ODOT on April 5, 2018. While it is acknowledged that the TTCP is not a final approved document, such is not required for approval of the CUP. Development and approval of a final TTCP is an iterative process with Marion County, ODOT, and ODOT Rail Division.

### **Marion County Public Works April 20, 2018 Memorandum**

The Applicant appreciates the effort that Public Works staff has put into working with the Applicant's team to develop the Revised TIA and TTCP. The Applicant has an exceptional reputation for organizing quality events. The fact that the Linn County Commissioners approved a 5-year OMG permit and continually increased the number of permitted attendees bears this out. The Applicant has a track record of working closely with

and maintaining positive relationships with reviewing authorities. It is in the spirit of cooperation with Marion County that the Applicant responds to a few of the items identified in the April 20, 2018 memorandum regarding CU 17-043.

Staff recommends proposed Condition E, found on page 2, as follows:

*“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 repairs or required actions.”*

While the Applicant deems it reasonable to accept responsibility for payment of some costs associated with the event that will be incurred by various County agencies, this broad and open-ended “blank check” proposed condition of approval is not reasonable. For example, the cost recovery to review the TIA and TTCP is found within the fees the Applicant paid to the County for the CUP and Outdoor Mass Gathering permit applications. This proposed condition of approval is an unusual request. Normal business practices require a budget mutually agreed upon by both parties. Without a mutually agreed-upon budget and justification for such, it is unreasonable to expect the Applicant to agree to this overly broad proposed condition of approval. It should be noted that the Applicant’s objections to proposed Condition E are the same as they are for proposed Condition J found on page 3.

Proposed Condition R, found at page 4, as well as the discussion on page 2 of Attachment 1, Comment 3, suggests that the County is concerned about the 30,000 attendee threshold being exceeded.

The Applicant has supplied evidence into the record to support the conclusion that the 30,000 attendee limitation will be met. The Applicant has stipulated to the condition of approval that there will be no more than 30,000 attendees per day, including campers, event volunteers, Festival staff, day-use attendees, performers and their crews/support staff, EMS/security, management/logistics and vendors. See page 45 of the Revised TIA. The Applicant was very detailed and specific in providing the County with the estimated breakdown of the attendance. To be clear, the electronic ticketing platform to be used is not owned by the Festival. The ticketing platform is used for large events, stadiums, and arenas throughout the world that controls attendance levels, as well as provides important data to organizers. The electronic ticketing platform does not allow for over capacity sales. The radio frequency identification (RFID) bracelets are not able to be manipulated by the Festival owners or anyone else. The ticketing platform is designed and built not to exceed the certain, specified attendance limits, such as the stipulated 30,000 limit proposed.

International ticketing platform providers that the Festival contracts with rely on accuracy and reputation. It is absurd to suggest that the ticket platform provider and/or the Applicant would disregard built-in efficiency and subject themselves to financial risk merely to sell more tickets than allowed. The Applicant would not put in jeopardy current and future approvals for the Festival merely to sell more tickets.

It is absurd for the opposition to assert that the Festival has “gone over the limits” at the Brownsville/Linn County location. There is substantial evidence in the record to find that the 30,000 limit will not be exceeded. See pages 45-46 of the Revised TIA wherein the Applicant’s agents firmly establish that the number of people on the Festival site will not exceed 30,000 and, in all likelihood, the attendance numbers will be well below that threshold. The Applicant is willing to stipulate to allow County staff to review the ticket platform capacity build for the 2019 Festival any time prior to the event after the ticket platform capacity build is complete in order to allow County staff to verify that the ticket platform build is not more that permitted. The Applicant, however, cannot be limited to “approval” of the ticket platform capacity build by County staff.

Lastly, on page 5, staff proposes Condition X, which would require the Applicant to pay for the County to count vehicle trips on area roadways. This proposed condition of approval is not acceptable to the Applicant. The Applicant is however, willing to provide its own traffic count that will likely be more comprehensive, less expensive, and provide a greater variety of data than the County’s typical traffic count. A third party contractor whose business relies on accuracy will collect the data and the data collected will be made public and given to County staff.

### Conclusion

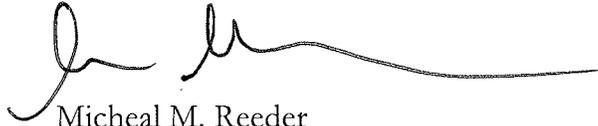
Outdoor Mass Gatherings are permissible within the EFU zone notwithstanding the fact that they are not uses specifically authorized by the EFU statutes. This conclusion is supported by statute, DLCD administrative rule and case law.

The Applicant is not proposing to develop the property with permanent roads, driveway, or any other structures. Not only are Outdoor Mass Gatherings allowed in EFU zones subject to health and safety rules adopted by the OHA pursuant to ORS 433.750, the County may not require the applicant of an OMG permit to apply for a land use permit, such as a conditional use permit.

However, out of an abundance of caution, the Applicant has submitted the CUP, the Revised TIA and TTCP that, together, show that the proposed Festival will meet the criteria of approval for the CUP and the OMG permit regulations.

Marion County Hearings Official  
Re: Willamette County Music Concerts, LLC  
April 27, 2018  
Page 9

Respectfully submitted,



Micheal M. Reeder  
Attorney for Willamette Country  
Music Concerts, LLC

MMR:jgh

cc: Scott A. Norris, Assistant County Counsel  
Anne Hankins, Willamette Country Music Concerts, LLC  
James L. Buchal (opposing counsel)

N:\U - Z\Willamette Country Music Concerts, LLC 20257\Marion County Land Use 20257-1\Post-HO Hearing Record\From Applicant\Reeder to  
HO Final Argument CLEAN (Jan edits) #2 042718.docx