



# ***Marion County*** **OREGON**

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### **MEMORANDUM**

**TO:** Marion County Hearings Officer  
**FROM:** Marion County Planning Division/King  
**DATE:** January 9, 2023  
**SUBJECT:** Conditional Use 22-045/Whitewind Woodland LLC

The Marion County Planning Division has reviewed the above named case and offers the following comments:

#### **FACTS:**

1. The subject property consists of tax lot 900 on the south side of Cascade Highway, north side of Evans Valley Loop NE, with Valley View LN NE to the east, just outside of the City of Silverton. The parcel is approximately 80.55 acres in size. The properties are designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use).
2. The property is largely undeveloped except for a single family home, accessory structures and in farm use. The majority of the parcel is in either farm or forest use, with the structures clustered to the front (northern) portion of the parcel. There are no river, streams, wetlands, floodplains or other natural hazards on the parcel or within the immediate vicinity.
3. Surrounding properties are zoned EFU and in various types of farm use. Property to the northeast of the parcel, approximately 600 feet, is zoned AR (Acreage Residential) and developed with residences. Property to the east of the parcel, approximately ¼ mile, are zoned AR and developed with residences. All of these parcels in the vicinity were on the notification list for the proposal.
4. The applicant has applied for a conditional use permit in conjunction with a mass gathering 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 is proposing 3,000 – 3,500 persons, over two weekends, during the last two weeks of July. The dates proposed would be July 22<sup>nd</sup>-23<sup>rd</sup> and 29<sup>th</sup>-30<sup>th</sup>.

5. Notice of the conditional use permit request was provided to various agencies. Their comments are summarized below:

Marion County Building Inspection commented: No Building Inspection concerns. If any structures and/or utilities are proposed to be built or installed permanently on the property, permits may be required in accordance with the state building code.

Marion County Septic commented: The owner must provide adequate nonwater-carried systems for the number of attendees in accordance with all provisions of OAR 340-071-0330. No connection to the existing onsite wastewater treatment system is permitted without an authorization notice approval per OAR 340-071-0205(1).

Oregon Department of Transportation commented: ODOT has no objections to the Large Mass Gathering permit. Overall ODOT agrees with the applicant's assessment that the impacts to highway operations and safety will be minimal, but attendance at these types of events are difficult to predict. If during the event there are concerns or issues, ODOT may require traffic mitigation such as signage, flaggers, or future limitations on capacity.

*All other agencies either had no comment or no response.*

#### **STAFF FINDINGS AND ANALYSIS:**

6. MCC 9.25.070 (C) states that for a gathering, "the applicant must obtain a conditional use permit for a temporary use in accordance with Chapters 17.119 and 17.126 MCC." Therefore the criteria in Chapters 17.119 and 17.126 MCC will be considered in conjunction with this conditional use application. Uses in MCC 17.126 are permitted generally across all zones subject, in part, to the criteria contained in that chapter, as well as other pertinent criteria. Also, the EFU zone contains specific criteria which apply to a conditional use in the EFU zone, MCC 17.136.060(A). [In addition, a large mass gathering that is anticipated not to last more than 120 hours which would not materially alter the stability of the overall land use pattern of the area, meeting the criteria in Oregon Revised Statutes 433.763(1)(c)(B).] This event, subtracting the 48 hours exempted by county code for set up and 48 hours exempted for take down, is expected to last approximately 100 hours.
7. The applicant states that the Canterbury Renaissance Faire has been operating annually for the last 13 years, under the small mass gathering permit. The applicant does not anticipate more than 4,000 people attending (based on phone conversations with staff) but wishes to apply to maintain compliance with MCC Mass Gathering criteria. Due to the recent pandemic the applicant states that attendance records have significantly increased and anticipates that the 2023 Faire may surpass the small mass gathering attendance maximum.
8. Regarding the criteria, the applicant provides the following:
  - That in the 13 years the event existed in Marion County, the event did not cause a change in farm practices on surrounding properties.
  - That they had worked on a traffic and parking plan to ensure traffic will not impact local farming practices.
  - Noise from the event will follow Marion County Noise Ordinance and the limited hours of operation will also assist in mitigation.

- The only structures on the property will be temporary and not cause watershed issues or impact fire or wildlife.
- That wildlife was not impacted by their event, Canterbury Renaissance Faire.
- Garbage, grey water, etc. will all be contained on site and removed from the property.
- That the event will not permit cruising or ATVs in order to minimize vehicle traffic.
- That attendees in previous events have not caused impact to neighboring properties.

9. The general conditional use criteria are found in MCC 17.119.070. Before granting a conditional use, the director, planning commission or hearings officer shall determine:

1. *That it has the power to grant the conditional use;*

The application will be heard in front of the Hearings Officer for a decision. Once the decision is made and if approved the applicant will apply for a Large Mass Gathering permit which will be heard in front of the Board of Commissioners. This criterion is met.

2. *That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;*

According to MCC 17.136.010, the purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. The purpose of the 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. In order to determine that the proposed conditional use for a mass gathering is in harmony with the purpose and intent of the zone, the proposal will be evaluated with the specific criteria for a conditional use in the EFU zone below in #12 of this document.

3. *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.*

This criterion can be met by ensuring 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. Also, in this instance complying with the requirements for a mass gathering, including providing plans related to fire protection, health safety, medical service, public safety, and parking and traffic control will ensure the public health, safety and welfare of persons working or residing in the area, and the protection of property and improvements in the neighborhood. This criterion can be met through the application of the mass gathering code.

10. The criteria for a temporary use are found in MCC 17.126.030(E)

1. *The temporary use is compatible with the purpose of the zone and adjacent land uses.*

The proposal will be evaluated with the specific criteria for a conditional use in the zone below in #12 of this document to ensure the use is compatible with the purpose of the zone and will minimize any impact on adjacent land uses.

2. *The temporary use will have adequate public services to maintain the public health and safety.*

The applicant describes that there are adequate public services to the property for the event while maintaining public health and safety. In addition, complying with the requirements for a mass gathering, including providing plans related to fire protection, health safety, medical service, public safety, and parking and traffic control, will provide a means to review the event to ensure there are adequate public services available to the property and the event to maintain the public health and safety. This criterion can be met through the application of the mass gathering code.

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.*

As part of the mass gathering approval, the event will be granted specific times of operation. Penalties can be assessed for exceeding those operating times. This criterion can be met through the application of the mass gathering code.

11. The criteria for a conditional use in the EFU zone are found in MCC 17.136.060(A):

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.*

Agricultural is a significant economic asset for Marion County and the EFU zone recognizes the importance of agriculture and the need to protect farming practices from potential conflicts. The applicant indicated that the event will not impact theirs or other neighboring farming activities. Additionally, based on written testimony provided by the applicant the farming that takes place on the subject parcel is harvested prior to the event, so there would be no impact on that practice. The neighboring farms have not previously expressed issues or complaints regarding impacts on their farm operations. Staff recognizes that it is critical that any event of such a large scale on farm land not impact farming practices on the subject parcel or other lands in the area and, based on testimony by applicant, believes that this can be met.

In order to ensure the event is compatible with surrounding farming practices, it can be made a condition of approval that the property owners record a declaratory statement acknowledging farming in the area that may impact the event. Also, the applicant could work with their traffic engineer to identify likely farm traffic patterns in the area that would occur before, during, and after the event and incorporate into the event's traffic plan measure to minimize any impacts to farm traffic. Additionally, the applicant could identify likely farm practices in the area that could take place during the event and incorporate into their plan for the event measures to minimize the impact of the farming practices on the event, without farmers having to appreciably change farm practices during the event. With the provision of additional information, this condition may be able to be met.

2. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The Silverton Fire District did not make comments regarding this specific permit but have worked with the applicant in previous years and there is no indication that any issues would arise from this new proposal. At the time this staff report was written, there are no approved traffic or health safety (water, sewage disposal, garbage, etc.) plans. These would need to be provided by the applicant to demonstrate there are adequate rural services available to the property for the proposed event. Were traffic and health safety plans approved through the mass gathering process, this criterion would be met. At the time this staff report was prepared, the Oregon Department of Transportation provided commented related to traffic and did not express any concerns. Marion County Land Development and Engineering Department had no comment on the proposed use. This criterion can be met.

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.*

As part of the mass gathering permit, the applicant will have to have an approved health safety (sanitation) plan in place and collect and remove garbage, black and grey water, etc. Also, the applicant intends to abate dust in parking areas. In telephone conversations with the applicant, they indicated that there would be sufficient potable water supply, portable toilets, adequate waste disposal (garbage) and traffic/parking lot attendants. With the health safety plan in effect from the mass gathering permit, the event would not appear to have a significant adverse impact on watersheds, groundwater, soil and slope stability, and air and water quality. Were a health safety plan approved through the mass gathering process, this criterion would be met.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The applicant describes how noise from the event will be mitigated because the operation would only occur between 10:00 a.m. and 8:00 p.m., which complies with the County's noise ordinance. The mass gathering code permits noise from an event between 9:00 a.m. and 11:00 p.m. The proposal meets the criterion.

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.*

There do not appear to be any potential water impoundments, such as ponds, that would be impacted by the proposal. There are no areas of the parcel in any natural hazard areas. The proposal is not within a Sensitive Groundwater Overlay and would not impact the ground water. Marion County would not require a permit for use of the land (such as for camping). There also are no significant mineral and aggregate sites in the area that would be impacted by the proposal. This criterion is met.

12. The county must also make findings for a large gathering related to Oregon Revised Statute 433.763(1)(c)(B):

*The proposed gathering:*

(i) *Is compatible with existing land uses; and*

The predominate use of the land on the subject properties and surrounding lands is farm use. If the applicant can demonstrate the event will not impact the farming practices on those properties, as described in #12 above, then this event can be demonstrated to be compatible with existing farm land uses. Provision of the health safety, medical service, public safety, and parking and traffic control required by the mass gathering permit should ensure the event is compatible with other land uses, such as residential use of land near the event.

(ii) *Does not materially alter the stability of the overall land use pattern of the area.*

No permanent changes to the land are proposed. If the applicant meets the requirements for a mass gathering, the event will be temporary in nature and minimize the impact to the subject properties and neighboring properties, thus ensuring that the event does not alter the overall land use pattern of the area. Demonstrating that the event will not cause farming practices to change during the event will ensure that farming in the area will be able to continue, again maintaining the stability of the overall land use pattern of the area. Subject to providing the evidence described in #12 above, this criterion is met.

13. If approved, Planning suggests the following conditions of approval be applied:

- A. The applicant shall obtain an approved Mass Gathering Permit.
- B. The applicant shall obtain any building and septic permits required for the event.
- C. The applicant shall identify likely farm practices in the area that could take place during the event and incorporate into their event plan measures to minimize the impact of the event on farming practices without farmers having to appreciably change farming practices during the event.
- D. The property owners shall file a farm/forest declaratory statement acknowledging farm practices taking place in the area that may impact the event.
- E. The applicant shall obtain approval for a mass gathering permit, including approved plans for health safety, medical service, public safety, and parking and traffic control.
- F. The applicant shall submit evidence of compliance with all required agencies to planning staff no later than 90 days prior to the event.
- G. For wells used in conjunction with the event, provide evidence of obtaining any permits required by the Oregon Department of Water Resources.