

## RECEIVED

MAY 20 2021

Marion County  
Planning



May 20, 2021

**VIA HAND DELIVERY**

Ryan Dyar, Associate Planner  
Marion County Planning Division  
5155 Silverton Rd. NE  
Salem, OR 97305

RE: Conditional Use Case 21-004  
Our File No: 27370-28235

Dear Ryan:

Youth With a Mission ("**Applicant**") submits the attached final rebuttal memorandum into the record in support of its land use application identified as Marion County Case No. CU 21-004 for a conditional use for a phased remodel and expansion of the existing campus of Youth Ministry on a 31.72 acre parcel in an AR (Acreage Residential) zone located at 7085 Battle Creek Road SE, Salem (T8S; R3W; Section 25B; Tax lots 100, 300, 400, 500, 600, 700, 800, 1001). For ease of reference, the attached memorandum references the following exhibits under the following naming conventions:

- (1) Exh. 104 – Hydrogeological Review
- (2) Exh. 105 – Peer Review
- (3) Exh. 117 – Applicant's Written Response Memo dated April 29, 2021
- (4) Exh. 118 – Letter from Mark Grenz regarding water budget
- (5) Exh. 120 – Maul Foster Hydrogeology Written Testimony
- (6) Exh. 121 – Prior Land Use Decisions
- (7) Exh. 124 – Renderings of portions of the proposed development
- (8) Exh. 235 – Rural Battle Creek Road Association/Caroline Childers' Rebuttal to Applicant's Post-Hearing Submittal dated May 13, 2021
- (9) Exh. 236 – Opposition Rebuttal Memorandum from Wally Lien dated May 11, 2021
- (10) Exh. 302 – Staff Report dated March 22, 2021

Park Place, Suite 200  
250 Church Street SE  
Salem, Oregon 97301

Post Office Box 470  
Salem, Oregon 97308

tel 503.399.1070  
fax 503.371.2927

[www.sglaw.com](http://www.sglaw.com)

May 20, 2021  
Ryan Dyar, Associate Planner  
Page 2

---

(11) Exh. 304 – Supplemental Staff Report to Hearings Officer dated April 26, 2021

Applicant appreciates the opportunity to respond to concerns and arguments raised.

Sincerely,



MARGARET Y. GANDER-VO  
margaret@sglaw.com  
Voice Message #374

MYG/jsm  
Enclosures  
4840-9888-7402, v. 2

## MARION COUNTY HEARINGS OFFICER

YOUTH WITH A MISSION,  
Applicant

---

### APPLICANT'S RESPONSE TO COMMENTS AND OPPOSITION TESTIMONY POST HEARING MEMO

---

On January 29, 2021, Marion County Planning Department accepted the application for modification of an existing conditional use intended to permit the expansion of the existing facilities owned and operated by Youth With A Mission ("YWAM") located at 7085 Battle Creek Road SE and comprised of eight (8) rectangular and irregular shaped tax lots designated by the Marion County Assessor as tax map S25 T8S R3W, tax lots 100, 300, 400, 500, 600, 700, 800, and 1001 (the "*Property*"). At the close of the hearing held on April 1<sup>st</sup>, 2021, the record was left open to allow for the submission of additional evidence and comments. This memorandum is Applicant's rebuttal to the additional evidence, comments, and arguments in the record.

### ARGUMENT

- 1. The Marion County Hearings Officer has Jurisdiction to Decide this Land Use Case.**

As previously stated in Applicant's Post Hearing Memo, the Hearings Officer



has the power to hear and decide applications for conditional uses listed in the applicable zone. MCZO 17.128.030(e) lists church expansions and related conference and residential facilities over 20,000 square feet as a conditional use in the AR zone. There is no evidence of a prior determination of violations of law nor are there any open enforcement actions against the Property. The opposition alleges that there are enforcement violations on the Property. These allegations are based on misstatements of law and fact. The Applicant rejects these assertions.

**a. The Current Uses on the Property are Authorized Under the Existing Conditional Use Permit.**

**i. Ropes Course:**

In the Supplemental Staff Report dated April 26, 2021, staff provided additional analysis of the approval of the ropes course as an independent use on the Property. *Exhibit 304, p. 1-2*. Applicant disagrees with this analysis as it is supported by neither the historical use of the Property nor the Code.

The climbing tower specifically was approved as part of Proposed Site Plan Amendment/Adjustment Case No. 99-1. As provided in the decision granting the Site Plan Amendment:

“the property contains a residential facility for training missionaries. One portion of the training includes an outdoor leadership class that the proposed



tower would become a part of. \*\*\*\* The tower will be used as one element of an already existing program.\*\*\*\*Use of the tower, as described by the applicant, is consistent with the previous conditional use approvals.”

*Exhibit 121, p. 35.* The decision associated with Case No. 99-1 was issued twenty-two (22) years ago and has been an established use on the Property for the totality of the interim period. The ropes course itself is consistent with recreational uses on Property that does not require an additional conditional use permit. The level of development associated with the ropes course, with the exception of the climbing tower, does not require a building permit or County approval independent of the other development on the Property. The installation of swings, decks, and play structures or even a system created out of these components (where those components comply with the applicable building standards) in a residential zone is not an independent use requiring land use approval. Where the ropes course components did not comply with the applicable design standards, Applicant applied for the necessary adjustment.

The fact that the ropes course is rented out to the public does not render the use unpermitted under the existing conditional use permit. It is a well-accepted practice that religious organizations rent out their facilities as a means of supplementing revenue for their associated missions. Religious institutions

historically rent out their facilities for a variety of uses both associated with and independent from membership in their particular faith community including support group meetings, celebrations of life, wedding ceremonies, retreats, conferences, and various other events as needed by the community. *See* MCC 17.110.472; 17.110.158. “Conference Grounds” specifically includes “a meeting place used for organized discussion and consultation.” MCC 17.110.158. This includes the type of training and team building activities that occur on the ropes course both as part of the missionary training program and being led by those students as a service for the broader community. The use of a religious organizations’ facilities and conference services is an accepted practice for both indoor and outdoor facilities within the AR Zone either through the conditional use permit or as a permitted accessory use.

As addressed previously, the ropes course itself is operated by a separate limited liability company, which is itself owned by Applicant for liability separation. However, it is used by the students and staff for internal team building as well as providing students an opportunity to put their training into practice by acting as facilitators for outside groups including schools, community leadership teams, and other community organizations. By providing this space as a service to the community, paid or not, the ropes course is operating as an extension of Applicant’s mission, training individuals to work collaboratively while allowing the students an

opportunity to put their leadership training into practice. The ropes course is a lawful accessory use to the existing conditional use and is not a violation of the current conditional use permit.

The opposition states that an ongoing violation on the Property “creates a failure in jurisdiction over the matter by the Hearings Officer” pursuant to MCC 17.110.680. *Exhibit 236, p. 2*. This interpretation misstates the plain language of the Code. MCC 17.110.680 states as follows:

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law, except federal laws related to marijuana, or is being used or has been divided in violation of the provisions of this title, *unless issuance of the permit or land use approval would correct the violation.*

MCC 17.110.680, *emphasis added*. Applicant’s position is that this use is a lawful use on the Property, as set forth above. The Supplemental Staff Report includes analysis that indicates that the ropes course as a standalone business would be an unapproved use on the Property but also states that:

Planning believes it is plausible that an outdoor physical activity – such as a



ropes course- could be conceived as furthering the religious mission of the organization, and therefore could be a "reasonable use of real property for activities customarily associated with the practices of the religious activity" (MCC 17.110.472).

*Exhibit 304, p. 2.* This statement was submitted prior to Applicant's submission of its Post-Hearing Memo, which provided additional justification more clearly tying the operation of the ropes course to the organization's overall mission. This additional justification provides needed context for determining that the use is operated in conjunction and in furtherance of Applicant's mission and is a lawful use.<sup>1</sup>

Given the additional information provided by staff and the lack of any open enforcement action from the County regarding a use that has been operating openly

---

<sup>1</sup> Staff has not provided the necessary Code provisions that would have been in effect at the time of the approvals of the climbing tower supporting its assertion that the ropes course was intended to operate only for the benefit of onsite participants and without that additional support, that statement should be viewed as an educated guess and not as an interpretation of the Code entitled to deference or evidentiary weight. If the Planning Department determines that the ropes course is not a lawful use, the appropriate course of action is to issue violation citation and offer the Applicant an opportunity to be heard. MCC 1.25.070. In such a preceding, the County has the burden of proving by a preponderance of the evidence that a violation of the ordinance has occurred. MCC 1.25.130. Until the culmination of that process, the Applicant is not in violation of an ordinance.

by the Applicant for over twenty (20) years, this issue is squarely before the Hearings Officer who by virtue of the fact that this Application is seeking the continuance of an existing use may determine whether the ropes course is operating in furtherance of Applicant's religious organization and thus is a reasonable use of real property for activities customarily associated with the practices of the religious activity. The Hearings Officer has the authority to make this determination under MCC 17.110.680.

## **ii. RV Park**

The opposition indicates that Applicant is proposing to develop a prohibited RV park on the Property. Applicant is proposing the consolidation and expansion of the existing RV spaces, which were approved in CU 81-15. This analysis of the Conditional Use approval was confirmed by staff's analysis in the Supplemental Staff Report. *Exhibit 304*, p. 2-3. However, Staff is incorrect in its determination that this use is classified as an existing non-conforming use. Applicant applied for and received approval for six (6) RV spaces as part of the conditional use process. As a result, it is categorically not a non-conforming use under MCC 17.114.110 which states, "Any use which is permitted as a conditional use as provided in this title shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use, qualified with such conditions as the director, planning

commission or hearings officer has required.” The RV spaces are an approved conditional use on the Property and therefore can be expanded through the proposed conditional use master plan.

The opposition in the Opposition Rebuttal Memorandum entered into the record on May 13, 2021 alleges that Applicant is charging for the rental of the RV spaces, rendering the use an unpermitted RV Park. *Exhibit 236, p. 5*. This analysis is incorrect. Applicant charges a utility fee for connecting to the utilities and water infrastructure as a means of paying for the maintenance of the hookups and promoting stewardship of the resources in the area. The RVs are not open to the public and are limited to short term volunteers staying on the Property in furtherance of Applicant’s mission.

In the event the Hearings Officer determines that the proposed expansion of the existing use is not permitted, the appropriate remedy is a condition of approval capping that element of development at the existing six (6) RV spaces on the Property, but allowing for the relocation and consolidation of those spaces into the area designated on the site plan as an existing non-conforming use on the Property.

### **iii. Large Events**

Opposition continues to allege that large events are occurring on the Property. *Exhibit 235, p. 1*. These allegations lack dates or times as well as specifics regarding



what the neighbors consider "large events." This lack of specificity and particularity makes it impossible for the Applicant to provide evidence responding to these perceived "large events" as they are not historically something the Applicant has held on the Property. Applicant believes that the testimony provided by Mr. Sproul at the public hearing for CU 17-023 was in reference to special events and celebrations involving the students from the training program but would not involve additional off-site visitors. *See Exhibit 235.*

However, provided the Property was able to support a large event based on the capacity of water and septic systems, community events would be permitted by virtue of the use of the Property. Churches and conference facilities are traditionally used for large community events, as outlined above. Community events and celebrations are considered "reasonable use of real property for activities customarily associated with the practices of the religious activity." MCC 17.110.472.

Further, due to both the First Amendment of the United States Constitution, Article I Section 2 of the Oregon Constitution, and the Religious Land Use and Institutionalized Persons Act, the County may not place restrictions of the Property that will limit or substantially burden the practice of religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of

furthering a compelling governmental interest. 42 USC 2000cc(a)(1).

**b. Campus Population**

The opposition restates its allegation that Applicant is in violation of existing conditions of approval placed on the Property, alleging that Applicant has admitted to exceeding the 200 persons cap on the campus. Applicant has provided evidence responding to this assertion using the number of beds on the campus as a proxy for residential users as well as accounting for the existing RV sites. *Exhibit 117, p. 4-5*. This is the accurate total for the residential population on the Property. Opposition's assertion that the use of inflated numbers used in Applicant's feasibility materials "make it impossible to tell from the testimony of the applicant just exactly how many people are there." This statement both misrepresents Applicant's evidentiary record and is intentionally obtuse.

Onsite population numbers for any institution are fluid, increasing and decreasing as staff member, participants, and service providers arrive and leave. The population of students varies as programs occur in shifts with new enrollment numbers for different seasons. Applicant has provided as part of this Application a proposed residential population, accounting for both staff and students residing on the Property at 406 people. To serve that increased population, Applicant estimates that there will be an additional 60 staff members who will live off-site in the

surrounding community. Additionally, out of an abundance of caution, Applicant estimates that at a given time there may be an additional 30 off-site users not associated with either of these categories. These projections were established in conjunction with the service providers that provided Applicant's feasibility analysis for water, sewer, and traffic.

The feasibility analysis used conservative numbers to ensure that the proposed septic system and water usage can be supported by the Property. They are overly conservative to ensure that in the worst-case scenario the Property can support the proposed expansion.

## **2. Detail on Site Plan**

The opposition alleges that there is not a sufficient level of detail on Applicant's proposed site plan because Applicant has not provided the proposed elevations and square footage of the proposed buildings. *Exhibit 235*. Applicant is not required to provide this level of detail as part of the conditional use process. The conditional use process is not designed to act as site plan review. Applicant has provided a conceptual plan that will be further refined after Applicant has been approved for the proposed use. In the event Applicant was requesting a variance or an adjustment to the development standards in the zone, heights and square footage measurements would likely be relevant. However, in this instance, Applicant intends



to comply with the applicable development standards including the thirty-five (35) foot height restriction. In the event that the Applicant wanted to deviate from these standards, Applicant would have to obtain land use approval for that deviation.

Opposition alleges that Applicant is not providing accurate measurements regarding the location of certain proposed buildings adjacent to residential uses. *Exhibit 235, p. 3; Exhibit 236, p. 15*. Applicant has provided estimated distances based on aerial measurements, which are approximations but are illustrative when discussing noise dissipation over distance. Applicant believes the opposition is referencing the White's property which was not the property that Applicant was referencing in its noise analysis. *Exhibit 117*. The White's property is adjacent to the proposed dorm buildings along the southeastern property line, which may be closer via linear feet (an aerial measurement indicates an estimate of approximately 200 feet) but due to a wall that was constructed by the Whites, the topography of the site, and the focus of the central campus as the location for the majority of the outdoor noise generation, Applicant was referring to the Sproul property as the property most likely to be impacted by noise on the Property.

**3. The Proposed Use is in Harmony with the Purpose and Intent of the Zone**

The Property is zoned AR-10 pursuant to zone change ZC/CP/C/LLA 01-2 which unified the zoning of the Property, resolved an issue with an illegal unit of

land, and applied a Goal 3 exception to the Property.

**a. Past County Interpretations Regarding “Harmony with the Purpose and Intent of the Zone”**

The opposition suggests that the proposed development is not consistent with the intent of the zone, which is as follows:

The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. *It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.*

*MCC 17.128.010 emphasis added.* As stated above, the existing development on the Property has been continuously approved by Marion County over the past forty years, beginning with the approval issued as CU 81-15 on May 16, 1981. *Exhibit 121, p. 66.* The findings contained in the decision reflect the County’s interpretation of what constitutes the “harmony with the purpose and intent of the zone”:

The purpose and intent of the AR zone is primarily to provide for acreage homesites. Each parcel must be able to provide an adequate water supply and wastewater disposal system that will not will not exceed the environmental capabilities of the area or compromise the rural character of the area. MCZO 17.128. 010. Church-related facilities were contemplated in the AR zone, MCZO 17.128.030 (L). Provided that the water and sewer capabilities are sufficient on the parcel to accommodate the buildings and higher density population this expansion will be in harmony with the purpose and intent of the AR zone.

*Id.* 62. As stated in this decision and affirmed by the conditional use approvals over the intervening years, a use that is defined as a conditional use within the zone is in harmony with the purpose and intent of the zone when the proposed development can provide adequate water and sewer capabilities and satisfy the criteria established by the Code.

Opposition suggests that water and septic feasibility was the focus of the original determination because that was the focus of concern for the neighbors. *Exhibit 236, p. 6.* While it may be true that this was the primary concern of the neighbors at the time, as continues to be the case in this application, opposition does not provide any textual analysis indicating that both Staff and Applicant's



interpretation is not consistent with the text and context of the Code. As set forth above, the intent and purpose of the AR Zone is “appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan.” Religious organizations are acknowledged as both a permitted use and a conditional use in the zone, depending on the size of the development, and are to be expected in the zone, provided that where a religious organization is applying for a conditional use, they can demonstrate that the proposed use can “be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area,” meeting the same requirement placed on the residential uses in the area. *MCC 17.128.010*. Under the established principles of statutory interpretation, this portion of the Code contains two elements, that the proposed use will have adequate water and septic without (1) exceeding the environmental and public service capability of the area; or (2) compromising the rural character of the area. By referencing the purpose and intent of the zone, the conditional use criteria require the Applicant to demonstrate that the proposed use will provide an adequate level of water and septic service that will not (1) exceed the carrying capacity of the Property; and (2) compromise the rural character of the area. The first criterion requires the Applicant to demonstrate the feasibility of

meeting the water and septic requirements of the Property, which Applicant has addressed and will discuss again below in response to questions raised by the opposition.

The opposition suggests that the key for determining whether the use is in harmony with the intent and purpose of the zone is the analysis of whether the *use* “compromises the rural character of the area.” *Exhibit 236, p. 8*. However, this is not consistent with the plain text or with the County’s interpretation of its own code or the previous conditional use permits issued for the Property. Staff is correct in stating that:

Through inclusion as a permitted use in MCC 17.128.020, religious organizations are undoubtedly an anticipated use in the AR zone. Even larger religious organizations with residential and conference space are anticipated as a conditional use, and therefore do not inherently compromise the harmony and intent of the zone. Therefore, the answer to MCC 17.128.40 (a) depends not on the use per se, but whether the expansion will compromise the surrounding environmental and public service capacities or threaten the area’s rural character. These questions are best answered by looking to the additional conditional use criteria, MCC 17.128.40 (B) – (F). If it is found that the proposal is compliant with the criteria in (B) – (F), then 7(A) is satisfied.

*Exhibit 302, p. 3-4.* The appropriate evaluation of the proposed development is whether the “rural character” is changed by Applicant’s proposed water use and septic management. Applicant has demonstrated that its water comes from an aquifer that is hydrologically sealed and that Applicant’s use of the water from this aquifer is not tied to the regional decline in the area. *See Exhibit 105; Exhibit 104; Exhibit 118.* Applicant has also demonstrated on its site plan and through testimony provided by Mark Grenz at the April 1<sup>st</sup> Public Hearing that the septic system will be developed and sited in accordance with Marion County standards for wastewater management systems, ensuring that there will be no impact on the surrounding residential uses.

Opposition further argues that the use is an “urban use” rather than a “rural use” which is not in conformance with the “rural character” of the area. This argument misstates the appropriate inquiry when evaluating whether the proposed development is in harmony with the purpose and intent of the zone. As indicated above, evaluation of the use itself is not indicative of whether the use is permitted in a given zone when that use is specifically acknowledged as a permitted use, conditional or otherwise. The purpose of classifying a use as a conditional use within the code is to allow for the evaluation of whether the use can be conditionally permitted when evaluated under the criteria put forth in the Code. The overall use is



categorized under the Code as a religious organization with related conference and residence facilities. There is no question that YWAM is operating within this use categorization, which is an anticipated and established use in the AR zone.

The opposition's primary argument regarding the categorization of the proposed development as an urban use is that it increases the overall density and lot coverage beyond what is anticipated in the AR zone. However, density and lot coverage are not applicable approval criteria for development in the AR zone. In fact, the only mention of "density" mentioned in MCC 17.128 is a minimum lot size and density standard which requires a minimum of two acres for future portioning and subdivisions, which is not applicable to the proposed development. If the intent of the Code was to place a density or lot coverage standard on conditional uses within the AR zone, they could have done so, but there is no indication in the language of the Code of an intent to place such restrictions on the conditional uses listed in the zone beyond requiring applicants to demonstrate that Applicant's proposed water and septic systems are in line with the harmony and intent of the zone. Implying such a restriction on a conditional use through the "in harmony with the intent and purpose of the zone" provision of the Code reads a restriction into the Code where none exists.

Further, opponents are suggesting that "rural" development equates to

“minimal” development, which is not the case in Marion County. Many outright permitted uses in the AR, EFU, and Forest zones are intense uses that require development of full parcels of development. Examples of this level of density can be found throughout the County including Mt. Angel Abbey, Marion County Fire District; various churches; public and private schools; farm equipment sales and repairs; and countless large commercial farms and wineries. These types of uses have a higher level of development, trip generation, and density than the surrounding resource and residential uses. Density, lot coverage, and the population associated with a use in and of itself does not render a use either “rural” or “urban.”

Additionally, higher density uses are often permitted as conditional uses within a given zone, allowing the application of reasonable conditions of approval by the County in order to maintain consistency within a given zone. Examples of this can be seen throughout the Code, including within the AR zone where similar density levels could be approved as part of the development of an elementary or secondary school or a commercial use in conjunction with farm use (e.g. farm equipment sales and farm stands).

Applicant proposes no variances or adjustments to the applicable design standards. Applicant’s concept plan demonstrates a design that will minimize the visual impact on the surrounding properties by maintaining visual buffers and



consolidating the proposed development as much as possible. Applicant provided rendering of the proposed development showing that the development will retain a large amount of grass along Battle Creek Road. Some of this will be septic drain field, which cannot be developed with buildings and will visually remain pastoral in nature. *Exhibit 124*. This is consistent with the existing nature of the Property is that it slopes away from Battle Creek Road, where there are large grass fields, up into the tree line. The goal of the proposed development is to retain as much vegetation as possible to help preserve and enhance the forested areas already existing on campus. A significant number of the buildings are within heavily forested areas, which is by design emphasizing the Property's rural nature and preserving part of what makes this training facility a prime location for missionaries that will be serving in largely rural areas. Applicant is dedicated to maintaining the rural character of the Property because it is an integral aspect of what makes the Property ideal for its established training program. It is the intent of Applicant to maintain the pastoral character of the Property to the maximum extent possible while also satisfying the parking and access requirements required under the Code for this level of expansion. The proposed development is an established conditional use in the zone and further development of the Property will be carried out in a manner that is in harmony with the purpose and intent of the zone. Applicant has satisfied this



approval criteria.

**b. Traffic Impact**

As stated at the hearing and confirmed by Marion County's traffic engineer, Applicant has fully mitigated its traffic impacts through the proposed mitigation measures and Applicant does not have a proportionate share contribution to the County's safety improvement project at Delaney/Parrish Gap Road. A proportionate share contribution is only triggered if the proposed development creates a deficiency in the transportation system. Applicant's TIA demonstrates that the traffic generated by the proposed development will not degrade the transportation system and that all study area intersections meet the County's operating standards. Without evidence that the intersection will fail or otherwise deviate from any standard, the County has no nexus for requiring a proportionate share contribution. Applicant will be required to pay system development charges (SDCs) associated with its building permits. Those SDCs will help pay for system wide improvements, including the identified improvement project. Marion County Engineering has removed the proportionate share contribution condition, acknowledging that there was no nexus for applying such a requirement in this instance.

The opposition raises concerns about the increased level of use along Battle Creek Road and the lack of bike lanes and sidewalks. These concerns were largely

anecdotal in nature and did not include any evidence disputing the analysis performed by Applicant's traffic engineer which was peer reviewed by Marion County's traffic engineer. Battle Creek Road is a county road and one of the consequences of rural residential living is that these types of improvements are not developed in these rural areas, as identified in the Marion County Comprehensive Plan Rural Residential Goals and Policies. Applicant's TIA and the review by Marion County Traffic confirm that Battle Creek Road is currently operating, and will continue to operate, within Marion County's operational standards. Applicant has provided sufficient evidence in the record demonstrating that the proposed development will not increase traffic beyond the capacity of the existing roads.

**c. Availability of Fire Services**

The proposed development is the expansion of an existing use. As stated above, Applicant will be developing the Property in conformance with the applicable development standards, including fire suppression standards. Applicant is working with the Turner Fire District to ensure that adequate access and water will be available on the Property in the event of an emergency. Applicant will be required to have on-site water storage that is capable of providing adequate water suppression flow for the proposed development, and Applicant will be responsible for filling that tank using water delivered to the Property rather than pumping water from the

aquifer. The sizing of this tank will be overseen by the Turner Fire District and sizing will be tied to the largest proposed building on the Property. As indicated in the comments from Turner Fire District, there are specific Fire Code requirements that apply to the Property, these are part of the development requirements for the Property and Applicant is actively coordinating with Turner Fire District to ensure that it meets the requirement of the Code. Applicant has requested that the Turner Fire District provide a supplemental comment letter but also recognizes that the Fire Chief is not in the office full time and has many demands on his time.

The proposed development is the expansion of an existing use, and with the exception of water and septic, which Applicant has addressed elsewhere, Applicant has access to the necessary rural services. The campus is connected to adequate electrical service and is within the Cascade School District, although there are few school-aged children on campus and the majority of them are home schooled by their parents. There are adequate rural services available to support the proposed development. This criterion is satisfied.

#### **d. Adequacy of Water**

Opposition continues to raise concerns regarding the adequacy of water for the campus despite statements by three licensed hydrogeologists and a licensed geologist that have reviewed the proposed development, applicable water and



geological data, and certified that there is adequate water in the area for the proposed development. The purpose of the hydrological review process is “to provide information regarding the geology and hydrogeology of the area in the immediate vicinity of the proposed development and to furnish professional analysis of the information.” MCC 17.181.100. The reviews specifically evaluate the property itself in order to rebut the presumption that there is limited water in the area, which has been established by the implementation of the Sensitive Ground Water Overlay.

Applicant submitted its Hydrological Review to the peer reviewer and went through the peer review process in order to establish a budget for the proposed development prior to preparing its conditional use application, and thus, the water budget was issued as a permit for the Property.

MCC 17.181.100(C) provides the approval criteria for proposed development within the SGO zone and reads as follows:

***C. Hydrogeology Review Results. A hydrogeology study pursuant to MCC 17.181.110 shall be required if the hydrogeology review establishes that any of the following circumstances exist. If none of the following circumstances exist, no further evidence of water availability is required. As used in this section, “proposed development” includes any water conservation practices or standards proposed in the application that will influence the quantity of water***

*needed for the use.*

- 1. More than 90 percent of the recharge in the area of concern will be used after the proposed development is completed;*
- 2. The proposed use will adversely affect the long-term water supply of existing uses or potential new uses on existing vacant parcels in the area of concern;*
- 3. The additional proposed use will deplete the groundwater resource over the long or short term; and*
- 4. Existing information is inadequate to determine whether any of the circumstances described in subsections (C)(1) through (3) of this section exist.*

An applicant passes a hydrological review if there is a determination that less than ninety (90%) percent of recharge on the Property will be used. Applicant passed with a projected use at full build out of only forty-three and 40/100 (43.4) percent, using only approximately half of what it would be entitled to use under the SGO's established criteria. *Exhibit 104, p. 10*. By satisfying this criterion, Applicant established that "no further evidence of water availability is required." MCC 17.181.100(C)(1).

The concerns reflected in the comments made by Oregon Water Resources

Department (“*OWRD*”) regarding the generalized decline were addressed by the peer reviewer in issuing his ultimate conclusion that the Property, without any proposed conservation practices or proposed standards, can satisfy the code requirements for development within the SGO zone. The Property has an established water budget for the proposed development which cannot be the subject of collateral attack as part of this conditional use permit application. It is a final decision issued by the County and the applicable appeal period has passed. If the Applicant cannot use the County’s own peer reviewer to establish the adequacy of water in the area, the peer review process established in the County in its SGO Code is meaningless.

In addition to the limitations placed on the Property by the established Hydrogeological Review Budget, Applicant will continue to comply with the legal limitations placed on the Property through Oregon’s exempt use statutes. Applicant has provided evidence into the record demonstrating that it is feasible that the Applicant can comply with these restrictions upon full buildout of the campus through the adoption of behavior modification and technological conservation practices. In addition to these conservation practices, Applicant is proposing a condition of approval requiring Applicant to establish a Water Management Plan that will involve the monitoring of the water use on the Property and of the



community water system as a whole. Applicant has already ordered water meters and will be installing these meters once they arrive. Applicant's proposed condition of approval provides for consistent, data driven metering of the water use allowing for continuous monitoring of the groundwater resource.

Opposition alleges repeatedly that the young people residing on campus will not adopt this behavior modification due to their age. These statements are both ageist and not supported by any evidence in the record other than anecdotal experiences within the opponents' own families which have no bearing on the proposed development.

Applicant has provided sufficient evidence into the record that demonstrates that upon direct examination of the Applicant's water source, despite generalized decline in the area, there is adequate water to support the proposed development. The level of evidence provided through the Hydrological Review, the additional testimony provided by Maul, Foster, and Alongi, and the testimony provided by Applicant's engineer is sufficient to meet Applicant's burden. Further, Applicant's proposed conditional of approval is clear, objective and enforceable as well as being consistent with the type of conditions that Marion County has historically imposed in these instances.

///

### **i. OHA Well Misidentification**

As established in John Rehm's Hydrological Review, the wells used to support the Property are MARI 12553, identified on the site plan as the "Main Well", and MARI "12555," the "Lower Well". These wells are used to support the campus and seven (7) neighbors as part of a community water system that is monitored and maintained by the Applicant. Applicant identified these wells on the revised site plan after a surveyor provided Applicant's architect with the GPS coordinates for the locations. The well had been incorrectly located on the site plan that was submitted as part of the CU 17-023. Applicant spoke with previous volunteers that are familiar with the Property and believes that the well identified as the "abandoned well" on the site plan was abandoned close to twenty (20) years ago, which may explain why digital records of the abandonment are not available to the opposition.

Applicant previously addressed opposition's claims regarding the physical condition of the wells which were addressed thoroughly by Applicant's hydrogeologist in. *Exhibit 120*. The wells are in good condition and continue to be monitored and maintained by a qualified service provider, Merril Water Systems, as well as being subject to OHA oversight and testing requirements.

Applicant has continued to use best efforts to correct the OHA records but has been unable to contact the individual responsible for updating the database.

Applicant will continue to work towards correcting the records in the coming weeks. Applicant agrees with the application of Staff's proposed condition of approval requiring the records to be corrected prior to the issuance of building permits.

**e. Feasibility of Septic System**

Opposition raised concerns regarding the numbers applicant used in its Land Use Compatibility Statement, submitted to the Department of Environmental Quality (DEQ). As addressed above, the Applicant used the inflated numbers established by John Rehm in the Hydrological Review to establish feasibility for the installation of the new septic system on the Property. Applicant used these inflated numbers in order to establish a worst-case scenario and has established that it would be feasible for the Property to support a septic system and accompanying leach fields supporting a higher number of users than will be present on the Property.

The opposition suggests that Applicant has not adequately addressed the floodplains. As provided at the hearing by Applicant's engineer, Mark Grenz, the only proposed development in the flood plains is the stormwater detention facilities, which were placed in conformance with Marion County water quality regulations. The floodplain is depicted on Applicant's site plan and, as depicted, there is no additional development located in the floodplains.

///



#### **f. Estimated Noise Generation**

As provided in Applicant's previous written statements, while there will be noise generated by the proposed development, the noise generated will be consistent with the noise levels anticipated in the AR zone. Applicant has provided adequate evidence regarding the type of noise produced on the campus, evidence regarding projected noise generation from those sources, and evidence regarding the level of noise anticipated in the AR zone. The uses permitted outright in the AR zone go beyond purely residential uses and anticipate a level of noise that is consistent with the level of noise that will be produced by the proposed development. Opposition alleges that the Applicant has failed to provide detail regarding the level of noise produced by "church services, outdoor activities, vehicle use." *Exhibit 236, p. 28*. However, opposition fails to acknowledge that all of these activities are outright permitted uses in the AR zone as parks and playgrounds; religious organizations; and roads and parking areas not to mention the level of noise associated with commercial farm uses. MCC 17.128.020 (B);(D);(I).

The level of noise that will be produced by the proposed development will not rise to a level that it will have a significant adverse impact on the neighboring residential uses by rising to such a level that would be hazardous or unduly burdensome. Applicant's use does not include heavy equipment not outdoor noise

amplification. The noise that is the subject of complaint is singing and cheering, which other neighbors, including some of the neighbors in closest proximity to the Proposed Development, do not object to. Additionally, as stated above, any limitation on worship occurring on the Property must be limited to reasonable time, place, and manner restrictions. Denial of this proposal due to the sound of singing and worship violates the First Amendment of the United States Constitution, Article I Section 2 of the Oregon Constitution, and the Religious Land Use and Institutionalized Persons Act. The noise level on campus will continue to be monitored and enforced by staff, who emphasize the importance of keeping unnecessary noise levels at a minimum, in conformance with the requirements of the zone.

### **PROPOSED CONDITIONS OF APPROVAL**

Applicant has provided sufficient evidence into the record to allow for the approval of the Application without the application of any conditions of approval. However, to further emphasis its ability to meet the applicable approval criteria, Applicant proposes the application of the following conditions of approval for the hearing officer's consideration (the majority of which were included in the original staff report):

***Proposed Condition A:*** The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.

***Proposed Condition B:*** The applicant shall obtain a WPCF permit with DEQ.

***Proposed Condition C:*** Prior to issuance of building permits, applicants shall comply with requirements of the Oregon Water Resources Department.

***Proposed Condition D:*** Applicant shall provide proof to the satisfaction of the Planning Director that the record discrepancies regarding the Public Water System be reconciled with Oregon Water Resources Department and with Oregon Drinking Water Services.

***Proposed Condition E:*** In accordance with the requirements listed in Marion County Code 17.178, the applicant shall obtain flood plain permits through Marion County Planning for any development proposed in a mapped flood hazard area.

***Proposed Condition F:*** Prior to building permit approval applicant will demonstrate compliance with the Marion County Fire Code.



***Proposed Condition G:*** A Water Management Plan shall be developed by the applicant and shall be reviewed and approved by the Planning Director prior to recording to ensure that the proposed development is operating within either its legal water limit or the water budget established through the Hydro Review Process at 42,771 gallons per day, whichever is the lower level. The Plan shall include at a minimum the following elements:

- A. Water Conservation Requirements: Applicant will develop requirements and limitations on water use to minimize the amount of groundwater consumed by residents and off-site users.
- B. Water Use Monitoring Plan: A water-use monitoring plan shall be submitted to Marion County to monitor and report the water use from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer and shall include the installation of water meters on the existing wells and any new well drilled to serve the proposed development. The plan shall be implemented before building permits are issued.
- C. Well-Water Level Monitoring Plan: A well-water monitoring plan shall be submitted to Marion County to monitor and report the impact of water use

from the proposed development. The monitoring plan shall be developed by a registered geologist or licensed professional engineer. The plan shall be implemented before building permits are issued.

D. All data gathered under these plans shall be submitted to Marion County on an approved form or in an approved electronic format by June 30<sup>th</sup> each year.

***Proposed Condition H:*** Applicant will monitor on-site activity through the development of a sign-in protocol utilizing the proposed welcoming vestibule and will not allow any more than 500 people on the Property at a given time. If the maximum number of individuals that can be supported by the Applicant's water and septic systems established at the time of building permit approval to be fewer than 500 people, that lower threshold shall be the applicable cap on the on-site population.

These conditions act as reasonable restrictions on the Property that will ensure that the Property continues to operate in harmony with the intent and purpose of the AR zone. Applicant is willing to accept any reasonable conditions of approval.

### **CONCLUSION**

The Proposed Use is the expansion of an existing use that has been located on the Property for forty years. It has been continuously found to operate within the intent and purpose of the zone and the proposed development has been designed in

a manner that will continue to uphold this requirement. The majority of the proposed improvements are designed to replace outdated infrastructure and to replace buildings that already exist on the Property, updating staff housing and providing space for additional students. YWAM is a valued member of this community, providing valuable services that serve the community as well as extending that support into the surrounding communities. The Applicant is seeking to expand its mission in the community and is requesting approval to expand its campus as a result. Applicant has satisfied the applicable approval criteria. It is respectfully submitted that the Hearings Officer approve the Application.

DATED this 20th day of May, 2021.

By: s/ Margaret Y. Gander-Vo

ALAN M. SOREM, OSB #065140

Margaret Gander-Vo, OSB #163841

*Attorneys for Applicant Youth With A Mission*

Saalfeld Griggs PC

PO Box 470

Salem, OR 97308

Phone: (503) 399-1070

Email: asorem@sglaw.com

Email: margaret@sglaw.com