

MEMO

To: Benton County Board of Commissioners

From: Alan Sorem, Attorney
Emily Rich, Attorney

Date: August 25, 2026

Re: LU-25-067 – Applicant’s Final Legal Arguments



I. Introduction

Applicant submits this supplemental memorandum as Applicant’s final legal arguments in response to evidence and arguments submitted during the rebuttal period. Applicant requests this memorandum be entered into the official record for the above referenced Application.

As described herein and in Applicant’s previous submissions, Applicant has provided substantial evidence into the record to support that Applicant has demonstrated compliance with all applicable criteria and the conditions of approval to ensure compliance are feasible.

II. Procedural Comments

The County did not commit any procedural errors. Moreover, opponents assertions of errors fail to prove such alleged errors prejudiced their substantial rights, and do not provide a basis to deny the Application.

a. *Rebuttal Period*

The Board of Commissioners (“**Board**”) held a second evidentiary hearing on the Application on August 4, 2026 (the “**Board Hearing**”) and left the record open for additional evidence and argument. The first week following the Board Hearing was reserved for Applicant’s rebuttal evidence. The second week was open to all participants who previously commented and desired to provide rebuttal to the new evidence submitted by applicant during the first week. And the final week is for Applicant to submit final legal arguments. Each period lasted 7 days, with submissions due by 5 p.m. on the day of the applicable deadline.

As this is not an initial evidentiary hearing, rights under ORS 197.797(6)(a) are not applicable. Applicant’s understanding of the motion was not to leave the record open, but to afford the Applicant an opportunity to respond to the evidence submitted during the hearing. Applicant was granted one week to do so, and the opponents were similarly given one week to respond with rebuttal evidence and

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final argument. ORS 197.797(6)(c), to the extent it is applicable, only provides a participant “an opportunity to respond to new evidence submitted during the period the record was left open.” The Board Hearing complied with this requirement, which provided both the Applicant and participants with the opportunity to submit additional evidence and arguments. Participants had a full seven-day period to provide new evidence in response to Applicant’s rebuttal evidence. Applicant’s final rebuttal is limited to legal argument only consistent with ORS 197.797(6)(e).

Comments were raised by Sean Malone on behalf of Cary Hoffer that the method in which the record was left open after the Board Hearing was a procedural error and prejudiced a party’s substantial rights because it limited the ability to submit new evidence. However, this assertion is not accurate. Mr. Hoffer, as well as other participants, were expressly allowed and did submit new evidence into the record. See for example that certain comment submitted by Greenlight Engineering dated August 16, 2026 and that certain comment titled “Saving Powers Primary Response in OPPOSITION to Northside LU-25-067 8-18-26” which totaled 107 pages and included significant amounts of new evidence (the “**Saving Powers Comment**”). No authority was cited to support the assertion that the rebuttal process did not comply with the applicable state or County requirements. The Board has committed no procedural error, and no participant’s substantial rights were prejudiced.

b. Notices

County planning staff provided notices for each step of the Application process including each hearing in compliance with BCC 51.615(1)(a), which states that a notice of a quasi-judicial land use action shall “[e]xplain the nature of the application or land use action and the use or uses which could be authorized.” The notice of hearing that was mailed for the Board Hearing included the heading of “Appeal of the Planning Commission to deny the Northside Christian Church Conditional Use Permit (CUP) application (File # LU-25-067).” The notice also stated that the Application “proposed to construct an 18,902-SF church building to serve as a worship space and multi-purpose facility for up to 500 attendees. A 2,160 SF storage shed is also proposed.” The notice satisfies the requirements of BCC 51.615(1)(a). The “nature of the application or land use action” is that it’s an appeal of the Planning Commission denial of a Conditional Use Permit and the use which could be authorized is the development of a church, which is properly identified in the notice. Comments were submitted arguing the notice for the Board Hearing, and several other notices, were deficient because the notices stated the building was 18,902 square feet and does not include the childcare or gymnasium uses, which they argue require a separate Conditional Use Permit.

Applicant addresses this in further detail below, but the childcare, gymnasium, and other uses like special events are incidental and accessory uses to the use that will be authorized under the Application, which is a church. Further, the gross floor area of the church is 28,557 square feet, but the footprint of the church, and impact on the subject property, is 18,902 square feet as stated in the

notice. BCC 51.615(1)(a) does not require that the entire gross floor area of every building be identified or that each and every possible accessory use be included. Such an interpretation would be inconsistent with the plain text, and place unnecessary burdens on staff. As stated on page 9 of the comment submitted by Sean Malone dated August 18, 2026 in the rebuttal period, “the square footage of the building and the proposed uses in the proposed worship structure never changed. It has always been roughly 28,557 square feet with a church, gymnasium, and a day care center for phase 1.” The purpose of the notice is to provide recipients with notice of potential land use actions and applicable criteria. The notice accomplished this purpose by accurately identifying that the action was an appeal of a conditional use permit to develop a church. The County Code and state law allow accessory uses to be performed as part of a church use. The County committed no error, and therefore no party’s substantial rights were prejudiced. The notices complied with BCC 51.615(1)(a).

c. *Modification of Application*

Applicant submitted an application for a conditional use permit to develop a church and initially proposed a 2-phase construction project for site build out. As described in the Staff Report to the Planning Commission, Phase 1 proposed a 18,902 square foot gymnasium building to temporarily serve as the worship space for up to 500 attendees and Phase 2 proposed construction of a 54,709 square foot main sanctuary building, as well as a parking variance associated with Phase 2. Following comments from the County and the public including adjacent property owners, Applicant modified the proposal to eliminate Phase 2, thereby also eliminating the need for a parking variance. As stated above, the proposal is now limited to Phase 1, for the construction of a worship building to serve up to 500 attendees at services. The site plan accurately identified the footprint of the building, which is 18,902 square feet. The architectural plans always showed a building with a gross floor area of 28,557 square feet, and the discrepancy was corrected during the hearing and rebuttal period.

Applicant promptly clarified the proposal, as set forth in Applicant’s rebuttal materials, which included the memorandum dated August 11, 2026 identifying the misunderstanding, as well as the updated evidence to account for the total gross floor area such as the Udell Rebuttal Memorandum and the Updated Local Trip Study from Sandow Engineering (the “**Local Trip Generation Study**”), and rebuttal memorandum from Sandow Engineering dated August 11, 2026 (the “**Sandow Rebuttal Memo**”). Since the site plan accurately identified the building’s footprint, the site plan and development standards were not significantly affected except for the parking requirements, which was updated on the revised site plan. Suggestions that this discrepancy is proof of bad faith are unsubstantiated and inappropriate. Applicant corrected the mistake and updated the evidence as soon as the discrepancy was brought to its attention.

While the Application has been modified in response to comments, the Application has always accurately been described as a request for a conditional use permit to develop a church, which includes

incidental and ancillary uses like childcare services and the gymnasium. Opponents have argued that the Application was required to be withdrawn under BCC 51.525(2) because of the modification to reduce the Application to only Phase 1, along with the misunderstanding regarding the gross floor area. BCC 51.525(2) requires that “[i]f the applicant proposes a revision to the application that changes the type of land use action or limited land use decision requested in the initial application, the applicant shall withdraw the initial application and shall file a new application for the revised request.” The type of land use action is a conditional use permit to develop a church. As argued in further detail below, the incidental uses such as childcare, the gymnasium, or special events will be authorized upon approval of the permit for a church and do not require independent land use approval. The Board adopting the interpretation proposed by opponents would be inconsistent with the plain text of BCC 51.525 as well as the purpose of Statewide Planning Goal 1, which directs local governments to facilitate community engagement. Applicant has acted in good faith throughout the process and has repeatedly modified the proposal including voluntarily proposing conditions of approval in response to comments from County and the public in a desire to be a good neighbor according to their values. If applicants are required to resubmit applications every time revisions are made, it would discourage applicants from making modifications in response to public comments, which undermines the purpose of public engagement.

d. *Request to Strike*

The comment submitted by Mr. Malone during the rebuttal period requests to strike “the unnamed memorandum dated 8/11/26” because Mr. Malone asserts it bears no indication it was submitted by Applicant and the first week of the Rebuttal Period was limited to Applicant’s submissions. Mr. Malone does not cite any authority to support this request to strike. Mr. Malone quotes portions of this “unnamed memorandum,” which are quotes from the memorandum Applicant submitted as part of its Rebuttal Period. See page 4 of Mr. Malone’s rebuttal compared to page 2 of Applicant’s memorandum dated August 11, 2026. Applicant properly and timely submitted all materials to Planning staff on August 11, 2026 around 4:11 p.m., which included a transmittal email which staff are in possession of and should have been included into the record for the Application. The transmittal email identifies that all of the attached materials are being submitted on behalf of Applicant. Further, the very top of the memorandum dated August 11, 2026 states that it is addressed to the Board, “From: Northside Christian Church, Applicant” so even without the transmittal email the memorandum was clearly submitted by Applicant. There is no basis for the Board to grant Mr. Malone’s request to strike or for the Board not to consider any of Applicant’s materials in its decision.

e. *Legal Unit of Land*

The County found in the Staff Report to the Planning Commission that the Subject Property was lawfully created as a single legal parcel by deed in 1953. However, a subsequent deed in 2006 described two separate parcels and as such stated that the owner will be required to record a consolidation deed

restoring the parcel to the original lawful configuration. Opponents argue that the property was unlawfully divided and as such cannot be restored by a correction deed. This assertion is not consistent with applicable law and further opponents do not cite any authority to support that even if the property was unlawfully divided, the Board cannot approve the Application. ORS 92.017(1) states that “A lawfully created lot or parcel remains a discrete lot or parcel unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law” and ORS 92.018 provides a remedy for buyers who purchase an unlawful unit of land, however in this instance, unlike most cases involving an unlawful unit of land, the property was not divided in the sense that a portion was unlawfully sold to a third party. The 2006 deed included two descriptions for the property, but the property continues to be held under common ownership. There is no authority that has been provided to indicate that even if the property was unlawfully divided, the Board cannot approve the Application. LUBA held in *Thomas v. Wasco County*, 58 Or LUBA 452, that a local government can consolidate units of land for development purposes without violating ORS 92.017, which means even if the property constitutes two units of land, the Board can treat the property as a single unit of land for development purposes so setbacks and other standards will remain unchanged.

In the alternative, a single deed which describes a property in two legal descriptions is not an unlawful division without an intervening conveyance of a portion of the property to a third party. The Subject Property was not unlawfully divided, and as such a correction deed is an appropriate remedy in this instance. LUBA has consistently held that conveying multiple legal units of land through a single deed, even if the deed describes all the units of land in a single metes and bounds description, does not have the effect as a matter of law of consolidating or merging the pre-existing legal units of land in the absence of a lawful process to affect such consolidation. *Landwatch Lane County v. Lane County* (LUBA 2020-085) (2021) (“Ford”) affirmed *Landwatch v. Lane County* (LUBA 2016-056) (2017). As stated in ORS 92.017(1), a legal unit of land remains a legal unit unless vacated or further divided as provided by law. The Subject Property was legally created as a single unit of land and was not divided by law or vacated; the property continues to be held under common ownership. The same reasoning as applied in Ford is applicable here, given that the property continues to be held in common ownership, there is no intent to indicate that by describing the property in two different descriptions in the same deed, the grantor intended to legally divide the property. When a legal description contains an error, ORS 205.244 governs the recording of corrected instruments and provides that “an instrument that has been previously recorded may be rerecorded to make corrections in the original instrument.” Here, the subject property was, for whatever reason, described in two legal descriptions in the same deed but such error can be corrected through a correction deed as indicated by Staff and further has no bearing on whether the Application complies with the applicable criteria.

f. Conditions of Approval

There is substantial evidence in the record to support that the proposed Conditions of Approval are feasible and will ensure compliance with the applicable criteria. *Thomas v. Wasco County*, 30 Or LUBA 302 (2000) that states “A local government may find compliance with applicable criteria by either (1) finding that an applicable approval standard is satisfied, or (2) finding that it is feasible to satisfy an applicable approval standard and imposing conditions necessary to ensure that the standard will be satisfied. *Burghardt v. City of Molalla*, 29 Or LUBA 223, 236 (1995); *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992).”

In *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), aff'd, 67 Or App 274 (1984), the applicant therein requested preliminary plan approval for a Planned Unit Development (“*PUD*”). Petitioner argued that the City approved the PUD with conditions that should have been met for the preliminary plan approval stage and improperly deferred discretionary criteria to the final plan stage which is not subject to the same level of public participation and does not provide the right for opponents to appeal. Applicable criteria included that the PUD can be safely developed. The City made findings that safe development was feasible based on findings from applicant’s engineer that the development was feasible but additional reports should evaluate each phase prior to development to ensure compliance with the criteria. As such, the City imposed a condition of approval requiring subsequent geotechnical studies to ensure each phase would be safely developed. LUBA affirmed the City’s decision, holding that the City’s findings supported that the criteria could be satisfied through the imposition of feasible conditions, and the Court of Appeals affirmed LUBA’s decision. See also *Stockwell v. Benton County*, 38 Or LUBA 621 (2000) (A local government may find compliance with approval criteria by finding that the proposed means to achieve compliance is feasible, and imposing conditions of approval to ensure that the criteria are met); *Harcourt v. Marion County*, 33 Or LUBA 400 (1997) (A local government may impose conditions necessary to ensure compliance with applicable water availability criteria only when the findings adequately establish that compliance with those criteria is feasible). Applicant has provided substantial evidence in the record, including but not limited to expert evidence and reports, which support that it is feasible to satisfy the criteria, and feasible conditions will ensure the standard is satisfied consistent with Oregon law. Both Applicant’s engineer and the County’s public works staff testified in the hearing before the Board that compliance with the conditions of approval was feasible.

Opponents have argued that Condition P-12 that Applicant proposed in its Supplemental memorandum dated August 11, 2026 includes alternatives which defer discretionary criteria in violation of applicable law. Condition P-12 proposes alternative options for road improvements to address public concerns about pedestrian safety. One alternative is to “construct a separate eight foot wide shared use path behind the roadside ditch, if the applicant voluntarily obtains the easement or additional right of way necessary for its construction.” There is no discretionary approval of land use criteria being deferred by this proposed Condition. Staff recommended Condition P-12 to address the nonconformance and mitigate concerns about increased safety hazards for pedestrians. The fact that

Condition P-12 contains options does not make it an unlawful condition of approval nor does the possibility of engineering judgment being applied in the application of codified engineering standards.

Pursuant to Applicant's engineer, as supported by the Udell Rebuttal Memorandum, the roadway widening from a location approximately 50 feet west of the projects west property line to Scenic Drive as required by the Benton County Public Works Dept can be achieved. The existing right of way width to the east is currently 50 feet. The current right of way across the project frontage is proposed to be widened to 45 feet after a 5 feet dedication from the Applicant. These right of way widths are sufficient to construct the 24 feet paved section with 2 feet graveled shoulders. There is one pinch point near the projects east property line that will require some constrained design and engineering judgement with respect to gravel shoulder widths, ditch fore slopes and ditch back slopes to allow for the full 24 feet of paved travel surface to be constructed. However, both Mr. Vanatta and County Public Works staff testified that compliance with this condition would be feasible. The full 24 feet width paved travel section required to mitigate for the church's traffic impacts can be achieved.

The Benton County Condition requires a right of way dedication, along the south side of NW Powers Avenue, sufficient to meet the minimum 50-foot right of way standard. True the existing right of way is 40 feet in width with the established centerline being 20 feet more or less from each existing right of way limit. The standard interpretation of this condition is that the church dedicate 5 feet, as proposed, and the neighboring property on the north side of the roadway will dedicate the additional 5 feet when it is deemed necessary. While Applicant cannot require the neighbor to dedicate right of way, the County has the ability to condemn such space for right of way in order to bring Powers into conformance with the County's adopted Transportation System Plan, which, as mentioned, is currently nonconforming, even without Applicant's proposed use. Further, LUBA has held that private property rights are not a valid basis for evaluating whether an application complies with the applicable criteria. See *Long v. Marion County*, 26 Or LUBA 132 (1993), which held that while the proposed Planned Unit Development may violate private covenants, conditions, and restrictions, such assertion even if true provides no basis for reversal or remand, citing *Saylor v. City of Durham*, 63 Or App 327, 331, 663 P2d 803 (1983); *Brydon v. City of Portland*, 2 Or LUBA 353, 356-57 (1981). The same reasoning can be applied here. Even if other property owners refuse to dedicate or grant an interest in their property for the expansion of the right of way, the private property rights of the other owners do not provide a basis for finding that the proposed condition is not feasible, especially when there are feasible alternatives. Regardless of whether the Application is approved, the County could also acquire the right of way needed to bring the road up to the County's current standards so the proposed condition is feasible and the alternative does not improperly defer any discretionary criteria.

Further, Condition P-12, as proposed by Staff, only required improvements from a point approximately 50 feet west of the sites western boundary to Scenic Drive since as stated by Sandow Engineering approximately 75% of traffic from the church is expected to travel that direction. Public

Works agreed with this finding and further stated it “does not believe that the proposal will place an undue burden on public infrastructure as long as the impacts are mitigated as they are currently conditioned.” The Udell Rebuttal Memorandum dated August 11, 2026, supports Staff’s finding and found that while improvements along NW Powers from the site to Oak Grove are not feasible due to existing right of way widths, the proposed improvements along Powers from the site to Scenic Drive are feasible.

Applicant has also proposed Condition P-13 to provide security to ensure feasibility of the improvements. As stated in the Septic Capacity and Stormwater Management Memo dated May 28, 2026, Brian Vandetta of Udell Engineering has 28 plus years of practical experience as a Registered Professional Engineer in the State of Oregon. While many comments have submitted responses to the Udell Rebuttal Memorandum, there is no competing expert evidence, and it would not be reasonable to rely on general comments and anecdotal evidence without any specification of expertise where there is expert evidence from a professional with almost 30 years of experience who conducted his analysis based on state and county standards including approved methodologies for evaluating feasibility. See *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015) (Where there is expert testimony that residential development may adversely impact endangered salmon species, some level of scientific or professional expertise is necessary to rebut that testimony in order to provide evidence for a contrary conclusion) and *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019) (An attorney land use consultant prepared analysis including numerous plans, reports and other documents is not sufficient to rebut expert testimony absent evidence of the attorney land use consultant’s expertise).

Lastly, opponents argue that Condition P-2 proposed by Staff in the Staff Report to the Board which requires that “the applicant shall construct at least the minimum amount of parking required by the Benton County Code, but no more than the 261 spaces proposed with this application” is inconsistent with the updated site plan which now shows 286 spaces. Applicant agrees with Staff that Condition P-2 should be revised for consistency and proposes the Board adopt the following revised Condition P-2:

“Prior to issuance of a Certificate of Occupancy for construction of the main church building (the sanctuary/multi-purpose building), the applicant shall construct or demonstrate the existence of the minimum amount of parking required by the Benton County Code for all structures on the site and demonstrate compliance with all other applicable parking standards in BCC sections 91.605 – 91.665.”

Applicant has demonstrated through substantial evidence that the conditions of approval are feasible, and do not unlawfully defer any discretionary approval criteria. Applicant requests the Board approve the Application subject to the Conditions of Approval proposed by Staff, with the revisions set forth herein and in Applicant’s memorandum dated August 11, 2026.

III. Comments that do not relate to the applicable criteria

Applicant notes that there were many comments which do not relate to the applicable criteria, such as but not limited to comments regarding development standards which will be addressed through subsequent ministerial processes such as building permits, comments regarding impacts to property values, and comments regarding pre-existing conditions like photos of existing wear and tear or damage to Powers Road. Applicant does not specifically address comments that are not applicable to the criteria, as these are not a proper basis to deny the Application.

Comments have also been submitted which make arguments that allowing the proposed use will alter the character of the area or otherwise impact the surrounding properties because it will open the door for other commercial uses, essentially creating a slippery slope leading to the urbanization of rural lands. Any future uses which are not outright permitted in the zone, including any future uses on the subject property which are not approved under the current conditional use permit as either the primary or an accessory use, will be subject to independent land use review and approval and will have to demonstrate compliance with all applicable criteria the same as Applicant is doing now. The Applicant will not ease the evidentiary burden for any future applicants. The proposed use is also not the type of use which, unlike other uses such as residential use, attracts other kinds of development or increases in density. As found in the Staff Report to the Board, churches are often found in residential areas and it's logical for churches to be located in residential areas so churches can be close and connected to the community they serve. Residences may draw businesses or other types of commercial uses due to the availability of a new market or population to serve, but the church is not the type of use which would generally draw additional commercial development.

IV. The Proposed Use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone

a. Applicant has provided substantial evidence in the record to support that this criterion has been met

Pursuant to BCC 53.215(1), the Board must find that "The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone" (emphasis added). Many comments have stated concerns about impacts and asserted that due to the alleged impacts, the Application does not comply with this criterion. However, comments assert that any impacts to adjacent property or the character of the area and impute a standard that is not consistent with the County Code. The requirement is not that the Applicant must mitigate and eliminate all impacts but rather Applicant must mitigate any potential impacts so that the proposed use will not seriously interfere with the adjacent properties or character of the area. The standard is an important distinction.

LUBA's guidance on similar cases is illustrative of this distinction. A change in the area, such as the proposed commercial development when adjacent properties are dedicated to residential use, is not inherently a serious interference with the character of the area. In *Bartholomew v. Clackamas County*, LUBA 2025-073 (2026), LUBA addressed criteria substantially similar to the criteria under BCC 53.215(1) and (2), which required that the "proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located." LUBA held, consistent with the holding in *York v. Clackamas County*, 81 Or LUBA 20 (2020), alterations to the character of the area are not a sufficient basis to find the criterion was not met without evidence of how the use will actually substantially impair, or in this instance seriously interfere with, the surrounding uses.

Comments have asserted concerns about changes to the area but have not provided specific evidence to support how the proposed use would seriously interfere with the adjacent residential uses, character of the area, or purpose of the zone. As stated above, if the Board finds that this standard can be met whether solely based on evidence in the record or in conjunction with feasible conditions of approval to mitigate potential impacts to a level below "serious interference," then the Board must find that Applicant has satisfied this criterion.

Applicant has submitted substantial evidence and voluntarily proposed conditions of approval in order to ensure all potential impacts that might "seriously interfere" with the adjacent uses or character of the area will be adequately mitigated. As described above and in further detail below, Applicant has submitted expert evidence that the traffic impacts will be adequately mitigated such as through the road improvements proposed by Condition P-12 and the development of off-street parking sufficient to contain parking on site. As stated in Applicant's Supplemental memo dated August 11, 2026, the Applicant "will continue to employ applicable transportation-demand-management practices previously identified by the applicant, including volunteer parking coordination during peak services and special events, carpool and rideshare encouragement, directional and event signage, designation of a parking coordinator, and monitoring of on-site parking conditions" to ensure impacts continued to be adequately mitigated. Applicant has also submitted expert testimony that the onsite septic and stormwater management systems can feasibly comply with applicable regulations including County and DEQ requirements, and water will be provided by the City of Albany so there is no risk of interfering with nearby wells or aquifers. The regulations imposed by the County and DEQ are designed to mitigate impacts and ensure systems operate without interfering with other uses, and as stated in the Udell Engineering Memorandum dated May 28, 2026, "[d]esigning and constructed the Onsite Septic System [and stormwater system] to the established Benton County and the Oregon DEQ standards has proven to be sufficient to treat and dispose of septic waste [and to treat and manage stormwaters] for the many similar projects I have design and overseen in my 28 plus years of practical experience as a Registered Professional Engineer in the State of Oregon."

The County does not have a noise ordinance. This policy decision is relevant in that it demonstrates that regulation of noise ordinances in rural (or urban) areas has not been deemed necessary for residential uses. Nonetheless, Applicant has voluntarily proposed a condition of approval which would subject it to a higher standard than other uses in the area in response to concerns regarding potential impacts. Applicant has proposed a condition of approval regarding outdoor sound, and Applicant agrees with Staff's suggested edits to change the language from "shall not be directed toward adjacent residential properties" to "shall be directed towards the interior of the site" since all abutting properties are residential and to more clearly exclude sounds which are not amplified such as vehicle access. The proposed condition regarding noise mitigation, including those edits proposed by Staff, is as follows: "a. Outdoor amplified sound shall be limited to the areas immediately adjacent to the approved worship and multi-purpose building and shall be directed towards the interior of the site; b. Outdoor amplified sound activities shall occur only between 7:00 a.m. and 9:00 p.m. Sounds related to vehicle arrival, departure, parking lot circulation, emergency access, maintenance, or activities necessary for safe site operation are not considered outdoor amplified sounds for the purposes of this condition." This condition will ensure noise impacts are properly mitigated by prohibiting outdoor amplified sound during quiet hours, and indoor activities will be adequately mitigated through the building itself which will provide noise buffering as well as the setbacks from the adjacent properties. The proposed condition will not allow all night outdoor services or events as some comments have expressed concerns about.

In addition, Applicant has proposed a condition to ensure lighting does not seriously interfere with adjacent uses, by voluntarily offering the following condition: "Parking lot and exterior site lighting shall be turned off or reduced to security-level lighting no later than 10:30 p.m., or within 30 minutes after the conclusion of an evening activity, whichever is later. Security lighting, emergency lighting, and lighting necessary for safe building access and egress may remain in operation, provided such lighting is shielded and downward directed." As shown by Applicant's landscape plan, Applicant will plant trees along the eastern property line, trees and landscaping along Powers Road, and a retaining wall and landscaping bordering the parking area. These improvements will not only provide additional buffering for potential impacts but will further ensure the development is visually compatible with the character of the area.

Notably, there has been no evidence submitted regarding a high risk of trespass, nuisance, or other inherently dangerous activity that would seriously interfere with the residential or adjacent uses. There has also not been any testimony submitted by a party engaged in farm use regarding specific impacts to agricultural practices. Comments have raised general concerns on potential impacts to farm use, but these comments have been raised by nearby residential neighbors and have not identified specific impacts which will not be adequately mitigated. As stated on page 12 of the Staff Report, Staff conducted a review of churches in similar zones and conducted an analysis of corresponding residential density. As found by Staff, churches operate within a wide range of zones and densities in both rural and

urban areas. There is no meaningful difference between residential uses in rural areas and urban areas, other than rural areas may also be associated with accessory farm uses. Rural lands are not intended to only consist of residences and undeveloped farmland. Rural residential uses are generally on much larger parcels than in urban residential areas, which provides additional buffering and setbacks from other uses like the proposed use. In addition, rural areas are much more likely to deal with impacts similar to the proposed use, such as noise impacts, due to farm uses which can employ heavy, loud equipment for harvesting or managing crops, or the livestock itself which can produce significant noise and odor impacts. In addition, the heavy machinery employed by farm uses can impact wear and tear on roads compared to normal passenger vehicles. The rural residential zone allows other uses, like the proposed use, because they are not inherently incompatible. Therefore, the evidence that similar uses have been permitted by the County in other residential zones without altering their character for properties with lesser densities permitted is not only probative – but more relevant. As provided herein, Applicant has demonstrated that all potential impacts can be mitigated to a level below “serious interference” through feasible conditions of approval, consistent with the standard under BCC 53.215(1).

b. *Unreliable Analyses*

The Saving Powers Comment included a chart and analysis of development in the Rural Residential zones within the County compared to other zones and claims that based on said analysis, the proposed development will be the largest of any kind in a Rural Residential zone in the County, and up to six times larger than any other church building in a Rural Residential zone in the County. However, the analysis has fundamental flaws which make these claims unreliable at best. For example, the comment claims that a search began by identifying lots over 5,000 square feet. However, a tax lot created by the Assessor’s offices for assessment purposes is not the same as a legal unit of land. A legal unit of land can contain multiple tax lots, and further as explained above, multiple legal units of land can be consolidated for development purposes, so structures can be sited on more than one tax lot and more than one legal unit of land, which makes the base sample inherently flawed because its underinclusive. The comment also states in the methodology that the names of property owners were searched using common religious institutional names such as “church”, “synagogue”, “congregation,” etcetera. However, this methodology excludes religious uses that do not own the property. For example, the reason for the Application is that Northside Christian Church currently meets at Oak Grove Elementary School, so Northside’s use would not have shown up in the commenter’s analysis. Most importantly, the methodology states that those buildings identified as a farm building by the Assessor’s office were excluded from the search, but farm buildings are the most likely to be the largest structures in the Rural Residential, or any other rural zone. An agricultural exempt building employed for farm use, such as a barn for raising livestock or a processing or storage facility, is not subject to land use approvals since it is an outright permitted use in the Rural Residential zone, and would also not be subject to the same development standards as the proposed development since agricultural exempt buildings are generally

exempt from the applicable state building codes and development standards. A 100,000 square foot barn for raising chickens would not show up in the above referenced analysis, despite that it would have similar if not much greater impacts on rural residential uses such as due to noise, odor, dust, and traffic. For these reasons the asserted analysis is fatally flawed and does not provide a proper basis to conclude that the proposed development would seriously interfere with the character of the area or adjacent uses.

Another comment within the Saving Powers Comment conducted a noise analysis which similarly has fatal flaws which make it unreliable to support the assertion that noise impacts from the proposed will seriously interfere with the area or adjacent uses. The commenter does not indicate any experience as sound engineer or any other relevant expertise which qualifies them to conduct a noise analysis, and there are assertions made about noise levels for certain uses or zones, with no explanation as to where the data came from other than a list of websites which even if reliable are not specific to the property or even Oregon, and does not include information as to whether measurements were actually taken or where it was taken to obtain these numbers. The commenter also submits supposed measurements from a festival at Oak Grove in June 2026, but again its not clear how these supposed measurements were obtained since this is being submitted in August, and whether the commenter has the proper expertise to take and evaluate such measurements such as to evaluate whether the equipment is properly calibrated or a reliable model. Similar to the analysis above, the noise analysis also includes the fatal flaw of not accounting for farm uses in the Rural Residential zone, which is an outright permitted use. As shown on page 78, a chart claims it includes “specific common noise sources alongside their typical decibel values” but there is again no indication of where the data came from and the Rural zone identifies a common noise source as “distant agricultural equipment” when farm uses include much more than just agricultural equipment as potentially loud noise sources, and the noise source would not be “distant” since it can occur on any property zoned Rural Residential, or EFU, as an outright use. The noise analysis also does not appear to be in response to any evidence submitted by Applicant. For these reasons the asserted analysis is fatally flawed and does not provide a proper basis to conclude that the proposed development would seriously interfere with the character of the area or adjacent uses.

c. Accessory and Incidental Uses

Many opponents argue the impacts could be greater than what has been accounted for by Applicant’s experts because its based on assumptions like the 500-person occupancy of the worship area, not the actual occupancy or gross floor area of the building, and there is no limit on the number or attendees for special events or other incidental uses like the gymnasium. Comments similarly argue that incidental uses like the childcare facility or gymnasium require independent land use approval. These comments do not provide a proper basis to deny the Application and as set forth herein, Applicant has

provided substantial evidence to support that such incidental uses have been accounted for in Applicant's expert reports regarding feasibility to comply with the criterion under BCC 53.215(1) and (2).

As stated on page 7 of the Staff Report to the Board, the Benton County Code, consistent with ORS 215.441, defines a church as "a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship. When a church is allowed on real property pursuant to the Development Code, also allowed shall be the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, childcare and meal programs, but not including private or parochial school education for prekindergarten through grade 12 or higher education." The definition is broad because the legislature recognized that religious activities and ministry covers a wide range of accessory uses and is not simply limited to a standard weekly service. As a matter of state and federal law, the County cannot regulate how a religious organization worships.

Childcare is expressly identified as an allowed accessory use. A gymnasium is also a use customarily associated with the practices of religion, especially in regards to youth and children's ministry. Vacation bible school is a staple for many Christian churches, with often involves combining children's activities like sports and games with the teaching of religious principles, similar to church camps, and Sunday school. Gymnasiums are customarily associated with churches and similar to any other accessory use will be authorized for use in conjunction with the church upon approval of the Application. In addition, as stated below regarding the requirements of RLUIPA, the County cannot discriminate against the proposed use by treating it differently than other churches or similar uses that have been approved. Churches, and similar nonreligious uses like public schools, often have accessory and incidental uses including special events and the County has not previously denied such uses based on accessory or incidental uses. As such, the County cannot deny the Application based on such accessory or incidental uses where substantial evidence supports that compliance with the applicable criteria is feasible.

The Saving Powers Comment stated that "[i]n a recent communication, Community Development Director Bob Richardson asserted that secondary operations like the daycare and gymnasium are merely "incidental," "subordinate," and "customarily associated with" Sunday worship under BCC 51.020." While the interpretation of the Development Director is not binding on the Board, the Development Director has significant expertise and is most familiar with the requirements of the County Code and such expert evidence further supports that the all the uses proposed in the Application can be approved consistent with the primary use for a church.

V. The Proposed Use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area

Pursuant to BCC 53.215(2), the Board must find that “The proposed use does not impose an undue burden on any public improvements, facilities, or services available to the area” (emphasis added). Many comments have stated concerns about impacts and asserted that due to the alleged impacts, the Application does not comply with this criterion. As stated above, under Oregon law the requirement is not that the Applicant must mitigate and eliminate all impacts but rather Applicant must mitigate any potential impacts so that the proposed use will not impose an undue burden, which can be met by demonstrating that compliance with the applicable state and County standards is feasible, and will be ensured with conditions of approval including future permitting with state agencies and County departments. As stated above, if the Board finds that this standard can be met whether solely based on evidence in the record or in conjunction with feasible conditions of approval to mitigate potential impacts to a level below “undue burden,” then the Board must find that Applicant has satisfied this criterion.

Applicant properly evaluated the proposed use based on adopted best practices and applicable state and local standards. The evidence addresses impacts related to primary church services and the incidental and accessory uses in the reports and evidence regarding the mitigation of potential impacts, which has shown that compliance with all applicable standards is feasible and can be ensured through reasonable conditions of approval. As stated above, the state and County define a church broadly, recognizing the accessory and incidental uses customarily associated with a church. The reports prepared by Applicant’s experts were based on industry standards set by state and County regulations, and similarly account for these incidental uses under the identification of the proposed use as a church. As stated on page 3 of the Local Trip Generation Study, the analysis was performed based on the ITE Trip Generation Handbook. Page 47 of the analysis shows the methodology pursuant to the ITE Handbook which begins with identifying the ITE Land Use Code. Page 48 of said analysis is the ITE Land Use Code used for evaluating traffic impacts from churches, which, similar to the state and County definition of a church, recognizes that a “church houses an assembly hall or sanctuary. It may also house meeting rooms, classrooms, and occasionally, dining, catering, or event facilities.” It also notes that some churches also offer “day care or extended care programs during the week” in addition to services held on Sundays. The Local Trip Generation Study properly evaluates the proposed use, including the identified accessory and incidental uses, because the ITE category for a church accounts those accessory uses into the methodology. The updated traffic study further found no significant change based on the building’s gross floor area versus the analysis under the church’s 500 seat capacity for worship services so further evidence or additional conditions of approval are not necessary to demonstrate compliance with this criterion.

The Greenlight Engineering Memorandum dated August 16, 2026, argues that the Sandow Local Trip Generation Study included several errors in its analysis. However, the Greenlight Engineering Memorandum is incorrect. The Local Trip Generation Study conducted the analysis in compliance with approved County and industry standards including the ITE Manual. Greenlight Engineering argued that

the Local Trip Generation Study erred by using local data collected by Sandow Engineering rather than relying on data points provided in the ITE Manual's data set for Sunday trip data. As provided in Sandow Engineering's August 3, 2026, and the Sandow Rebuttal Memo dated August 11, 2026, there is no data provided at all for Sunday ADT using the building's square footage as the independent variable, and there is only one data point provided when using the number of seats as the independent variable. As shown by the ITE data sheets attached to the Local Trip Generation Study, the one data point is for a church with 1,000 seats, which is inconsistent with the Northside Church proposal. Sandow Engineering has sufficiently demonstrated the need to perform a local trip generation study for all time periods, including Sunday and performed the analysis consistent with approved methodologies. As stated in the Local Trip Generation Study, "per the ITE Trip Generation Handbook, local trip data can be used in lieu of the ITE data when the sample size for the land use is small." Greenlight Engineering argues that part of Sandow Engineering's rationale for using the local trip study versus the ITE dataset is not valid. Sandow Engineering noted that the subject property is located outside of an urban setting as an additional basis to support using a local trip study, and Greenlight Engineering argues "there is no evidence that the ITE dataset does not likewise include rural churches." However, as the data attached to the Sandow Local Trip Generation Study demonstrates, the ITE defines the locations included in the dataset as "General Urban/Suburban."

Greenlight Engineering also argues that in addition to needing to use ITE data, that the local trip generation study was not conducted in accordance with applicable standards. However, this is incorrect. As stated herein, Sandow Engineering conducted its analysis based on the applicable ITE methodologies. Greenlight Engineering argues Sandow Engineering should have used 5 comparable sites instead of 3 site. As per Chapter 9.3 of the ITE Trip Generation Handbook, "the analysis should collect data at a minimum of three local sites." Sandow Engineering collected data at three sites meeting the requirements of the ITE. Greenlight Engineering also argues that the local trip generation study data should have been combined with the available ITE data points, rather than replacing the ITE data. Chapter 9.4 of the ITE Manual provides that "the weighted average rate is appropriate for use as a stand-alone local estimator for trip generation if the weighted average rate for the local counted sites is at least 15 percent higher or lower than the comparative Manual rate, and if the local trip generation data provided results that satisfy Chapter 4 criteria that demonstrate the validity of the data in a statistical sense" and "as described in that chapter, an acceptable weighted average trip generation rate requires at least three data points with a computed standard deviation that is no more than 55 percent of the weighted average rate."

As previously established, the only time frame in which this is applicable is Sunday Peak Hour. The following provides the ITE Rates, Sandow Engineering local trip generation rate, and the ITE statistical validation for the Sunday Peak hour:

ITE Average Rate	Sadow Average Rate	% Difference	Standard Deviation (SD)	SD % of Average Rate
11.20 trips/ksf*	6.18 trips/ksf	45%	2.43	39%
0.54 trips/seat	0.38 trips/seat	29%	0.02	5%

*ksf=1,000 sf building floor area

The local study provided a minimum of 3 data points in compliance with the ITE standards, the difference between the local data and the ITE rate is greater than 15 percent, and the standard deviation of the local data is less than 55% of the average rate for the local data. As described above, the local trip data in the Sadow Local Trip Generation Study meets the ITE criteria. Greenlight Engineering argues that the local data shows a substantial variation between the three churches used in the study and that the variability is an argument for using the ITE data to estimate Sunday peak hour trips. However, there is less variability among the local trip rates than there is among the ITE rates. The ITE data varies between 3.4 trips/ksf and 48.9 trips/ksf per site and between 0.30 trips/seat and 0.90 trips/seat per site for Sunday peak hour. Sadow Engineering's local trip study had a variability of 4.55 trips/ksf and 9.02 trips/ksf and 0.38 trips/seat and 0.40 trips/seat for the Sunday peak hour. There is substantially less variability in the rates for the local study, indicating the local study is a more reliable data set than the ITE rates.

Greenlight Engineering argues that the local trip study is inaccurate because data was collected during the summertime asserting that churches may decrease services. However, it logically follows that churches would increase services for children and families since children have increased availability during the summer, such as by providing summer BBQs, vacation bible school, and other recreational events during the day when children are normally in school. There is nothing in the record establishing that the ITE church data were collected outside of the summer months, that the ITE dataset controls for seasonal variations in church attendance, or that the ITE Sunday rates represent a particular season of the year. Greenlight cannot reasonably criticize the local data based solely on the possibility of seasonal variation while assuming, without support in the record, that the ITE data are unaffected by the same potential variation.

Greenlight also criticizes the Sadow Rebuttal Memo's methodology regarding calculation and use of the Design Hour Volumes (DHV) and Average Daily Trips (ADT). However, Sadow Engineering complied with applicable standards. Greenlight argues that Sadow Engineering applied the incorrect definition of DHV, while simultaneously misrepresenting DHV by continuing to apply ODOT's Highway Access Management Standards found in OAR 734-051 Division 51 Highway Approaches, Access Control, Spacing Standards, and Medians. Greenlight Engineering further argues that the County's requirement to collect seven days of traffic data only establishes the duration of the traffic count and does not establish how DHV should be calculated. While this is correct, it also does not establish Greenlight's position that the 30th-highest hour must be used. The Benton County Transportation System Plan does not provide a specific methodology for calculating DHV. Greenlight Engineering is therefore criticizing

Sadow Engineering for not using a methodology when no evidence in the record supports that such methodology is required by the County or any other authority. Greenlight Engineering continues to argue that Powers Road is rural in nature, and the DHV calculations and associated traffic operations should be considered as rural traffic and standard urban DHV calculations should not be used, while simultaneously arguing the use of the ITE data, which is clearly defined by ITE as trip data for General Urban/Suburban churches as identified above. Sadow Engineering used actual current Powers Road data, combined with trip data from local churches within similar proximity to urban areas. Sadow Engineering's data illustrates that by either using the rate established for the church's square footage or number of seats in the assembly area, the ADT and DHV of Powers Road are not exceeding the County Transportation System Plan's established range of volumes typically experienced for the street classification.

The Greenlight Engineering comments do not provide a basis for denying the Application. The Sadow Rebuttal Memo conducted its analysis in compliance with all applicable County and industry standards including the County's Transportation System Plan and the ITE Handbook. Staff engaged DKS Associates to review the Applicant's traffic materials and as stated in the Staff Report to the Board found that feasible conditions of approval such as the road improvements under Condition P-12 will ensure the proposed use does not impose an undue burden on traffic infrastructure.

The Staff Report to the Board notes that as part of the proposed road improvements under Condition P-12, mailboxes, utilities, and a power pole may need to be relocated. Staff also note that a fire hydrant will need to be relocated because it is currently in a location "where it constitutes a road hazard based on the posted speed limit." The fire hydrant hazard is a pre-existing condition which will remain an issue regardless of whether the Application is approved and as such is not an impact that goes to the applicable criteria, other than to demonstrate that the Applicant will have a positive impact by addressing this pre-existing condition since it will be relocated at the time of the road improvements. The potential relocation of mailboxes is only a hypothetical impact and is not necessarily required. Regardless, such relocation is not an undue burden on residents. There has been no assertion that a relocation of mailboxes would significantly impact or prevent residents from receiving or retrieving their mail. In addition, Applicant has proposed Condition P-13 in Applicant's Supplemental memorandum dated August 11, 2026, to require financial security to ensure that the proposed improvements are completed as conditioned and in compliance with all applicable standards which will help ensure there is not an undue burden on public facilities.

Opponents made many anecdotal comments stating concerns about the traffic analysis excluding crucial elements or asserting their own analysis based on anecdotal evidence such as photos or videos of other churches, but this not reliable evidence to rely upon given expert evidence provided by Applicant which has been prepared by a licensed traffic engineer in conformance with applicable standards. As stated above, the Sadow Rebuttal Memo conducted an analysis which looked at other

church operations, however this was conducted pursuant to industry standards and accepted methodologies under the ITE Handbook. Anecdotal evidence of how other churches operate in different locations and any particular issues other churches may face in terms of circulation or parking does not provide evidence of how Applicant will operate or how Powers Road will be affected. The comments fault the traffic engineer for not conducting a full traffic impact analysis. However, a traffic impact analysis was not required in this instance. Staff did not require a traffic impact analysis when the original application was submitted proposing Phase 2, which would have included an approximately 54,000 square foot building, and did not require one when the application was reduced to only Phase 1 as it now stands. Comments have not cited any authority under state law or the local code which would require a full traffic impact analysis and the applicable criteria do not require one. Under site plan review and other applications concerning development, there are certain criteria that may require a full traffic impact analysis, such as that there must be "safe and efficient circulation." However, that is not the case here. There is no basis under BCC 53.215(1) or (2) to require studies of all potential intersections, crash data, or other analyses that would be considered in a full traffic impact analysis because the criteria requires that the proposed will not result in an undue burden, which has been satisfied through the analyses provided by Applicant as found by staff.

As noted in the Staff Report, the County engaged its own traffic expert. Applicant provided all information necessary to address the County's concerns and staff found the Applicant can feasibly comply with this criteria and imposed feasible conditions to ensure compliance. The updated traffic analysis does not impact this finding by staff but rather continues to demonstrate that all traffic impacts will be adequately mitigated so as not to place an undue burden on public infrastructure. While there is conflicting expert testimony, the opponent's expert does not negate Applicant's evidence but rather it is up to the Board to decide on credibility and weigh the evidence in the totality to determine whether the criteria has been satisfied. LUBA will not second guess the Board's choice between conflicting evidence, including expert testimony, as long as a reasonable person could decide as the Board did. See *Fairmount Neighborhood Assoc. v. City of Eugene*, 80 Or LUBA 551 (2019). Opponents submitted an additional memorandum from Greenlight in response to the updated traffic analysis submitted by Applicant, but as supported by Oregon law, the Board can and should still rely upon the evidence provided by Applicant. Applicant has provided rebuttal arguments prepared by Sandow Engineering in response to the latest Greenlight memorandum which demonstrates that the traffic analyses are in conformance with applicable standards and the criteria has been satisfied. As such a reasonable person could decide to rely on the Applicant's traffic expert and find that when the evidence is weighed in the totality, this criteria can be feasibly satisfied through the conditions such as for the proposed road improvements under Applicant's modified conditions P-12 and P-13.

Commenters similarly state the Udell Rebuttal Memorandum did not properly account for the full impact of the proposed use including the accessory uses. However, as stated in the Udell Rebuttal Memorandum, the calculations of capacity and feasibility conform to the applicable state and County

standards. County staff as well as Public Works evaluated the evidence submitted by Udell Engineering and as stated in the Staff Report to the Board, the Staff and Public Works found compliance with this criterion is feasible and reasonable conditions of approval such as to obtain all required state and local permits will ensure compliance. As stated on Page 1 of the Udell Rebuttal Memorandum, an analysis for septic feasibility was conducted based on Applicant's anticipated attendance and operations, and a second analysis was conducted based on "the number of seats in the church sanctuary and also applies the building code maximum occupancy loads for accessory uses to provide a conservative comparison." As stated therein, "Both scenarios remain below the approved design capacity per Benton County Environmental Health Division approval for case 138-23-00125-EVAL" and as such are feasible to comply with County standards. The misunderstanding about the total square footage did not significantly impact the analysis because as stated in the Udell Rebuttal Memorandum, the maximum occupancy for the building identified in the Oregon Structural Specialty Code is intended to establish safety for ingress and egress, but it does not represent the anticipated simultaneous occupancy of every room within the building. Further, the Oregon Administrative Rules do not base feasibility or compliance based on the numbers of services or the building's maximum occupancy under the structural code, but rather on the Church's 500 seat capacity. The computations were done by Brian Vandetta of Udell Engineering, who as stated above has over 28 years of experience as a licensed engineer, and the computations were based on the established standards and guidelines in OAR 340-071 Onsite Wastewater Treatment Systems and the practical experience gained from previous onsite septic projects that were permitted through Oregon DEQ. The submitted computations substantiate that the Benton County Onsite Septic Evaluation approved disposal field area for both initial installation and replacement installation are far more than sufficient for the expected sewage flows from the proposed development.

Similarly, Mr. Vandetta evaluated the feasibility of the proposed water supply based on his professional experience and applicable regulations. The City of Albany has also had notice and significant opportunity to comment and has not identified any concerns with the feasibility of the water supply. The proposed use of the City of Albany existing ¾-Inch water meter is sufficient to supply a large storage reservoir for the project's domestic water needs. The ¾-inch water meter can pass a standard safe continuous flow of 15 gpm and a maximum safe flow of 30 gpm. At the safe continuous flow of 15 gpm the existing ¾-inch meter could fill a tank as large as 21,600 gallon capacity in one day. The proposed church facility will have extremely low or absent water demands for the majority of the week. The Sunday usage will be the primary demand. With the demand being so low for the other 6 days in the week the reservoir will be 100 percent full going into the Sunday. As the reservoir is depleting from the Sunday use it will simultaneously be being filled from the ¾-inch meter. The final size of the reservoir will take this all into account to ensure the tank is of sufficient size to accommodate the use. The City of Albany ¾-inch water meter is sufficient with a storage reservoir to supply domestic water for the proposed development.

As stated above, pursuant to Oregon law the Applicant demonstrating that the criteria can be met through feasible conditions of approval is sufficient. Page 16 of the Staff Report to the Board notes that the stormwater management will be evaluated by the County Public Works Department and will also be evaluated and subject to permitting with the Oregon Department of Environmental Quality. As supported by Oregon law, the County can properly condition compliance with the applicable permitting and review requirements to ensure compliance with this criterion because Applicant has provided substantial expert evidence that such compliance is feasible.

VI. Federal Law

a. RLUIPA

As previously stated, in Applicant's legal memorandum dated June 11, 2026, the Board applying a higher evidentiary burden as suggested by comments or imposing conditions which do not address impacts from the proposed use, or which have not been imposed by similar uses, would be prejudicial against Applicant in violation of applicable law.

The Religious Land Use and Institutionalized Persons Act, 42 USC § 2000cc ("RLUIPA") provides federal protections to religious uses by instituting limitations on the type of land use regulations local governments can adopt as well as how local governments may apply land use regulations in certain instances. RLUIPA specifically provides, in part, that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." As stated by the United States Ninth Circuit Court of Appeals in *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596 (2022), RLUIPA applies not only to a facially discriminatory regulation but also to the enforcement of a facially neutral regulation in a discriminatory manner.

As stated above, churches, and similar uses like schools, commonly include accessory and incidental uses including but not limited to special events. The Board denying the Application based on such events, or for another reason that has not been imposed upon similar uses like conditions which impose a higher standard than the applicable criteria as proposed by many commenters, would be discriminatory in violation of RLUIPA. Applicant has submitted substantial evidence that compliance with the applicable criteria is feasible and Applicant has voluntarily agreed to additional conditions of approval like significant road improvements which have not been imposed on other uses in an effort to address County and public concerns. The Board denying the Application or imposing additional conditions of approval when Applicant has demonstrated compliance through substantial evidence, which as stated in the Staff Report to the Board is supported by County Staff as well as County departments like Public Works, would violate federal law.

Applicant has demonstrated that pursuant to applicable law, compliance with the criteria is feasible and reasonable conditions can be imposed to ensure compliance. Applicant has voluntarily offered conditions which go beyond applicable standards in an effort to address concerns and be a good neighbor, such as limitations on outdoor amplified sound, but the opposition comments do not provide a valid legal basis to require additional evidence or impose a higher standard on Applicant than set forth by the County Code. If the Board were to adopt opponents' requested interpretation and application of the criteria, the Board would both misapply its own code and violate federal law.

b. Takings

Applicant has demonstrated that pursuant to applicable law, compliance with the criteria is feasible and reasonable conditions can be imposed to ensure compliance. No additional conditions of approval are necessary to demonstrate compliance with the applicable criteria. However, the Board should carefully consider whether any additional conditions can comply with federal and state law in order to avoid an unconstitutional taking.

As stated in Applicant's legal memorandum dated June 11, 2026, the United States Supreme Court held in *Sheetz v. County of El Dorado, California*, 601 U.S. 267 (2024) that legislative and administrative actions are equally subject to the Nollan/Dolan proportionality test required under the Takings Clause of the Fifth Amendment, which requires that all exactions must have a nexus to the potential impact it is intended to address in addition to being roughly proportional to a specific impact of the proposed use. This means that even if a land use regulation, such as the County's Transportation System Plan, requires certain improvements to be made, a condition of approval requiring such improvements is still subject to the Nollan/Dolan proportionality test. In addition, a local government must adopt individualized findings for each exaction. See *McClure v. City of Springfield*, 175 Or App 425, 433-434, 28 P2d 1222 (2001).

In the event the Board considers whether to impose any additional conditions, the Board should keep in mind that all conditions imposed must be roughly proportional to the specific impacts of the Application, and the Board has to make specific findings to support any additional conditions to avoid a takings under applicable law such as the Takings Clauses of the Oregon and United States Constitutions.

VII. Conclusion

In conclusion, Applicant has meaningfully engaged in good faith with the County and the public throughout the application process including making changes to the proposal based on comments in a desire to be a good neighbor. As noted by opponents, the gross floor area for Phase 1, which is the only proposal at issue, has not changed. Applicant has provided expert evidence demonstrating that the unfortunate misunderstanding regarding the building footprint versus gross floor area did not

significantly affect the underlying findings and the Application can still feasibly comply with all applicable criteria when taking into account the total gross floor area as well as the anticipated attendance. As stated in the Staff Report to the Board, Staff and Public Works agree that the Application can feasibly satisfy the criteria with conditions of approval to ensure compliance. For the reasons set forth above, Applicant has provided substantial evidence in the record to support that, when weighed in totality, all applicable criteria can be feasibly satisfied with conditions of approval to ensure compliance consistent with Oregon law. Applicant respectfully requests that the Board approve the Application with the conditions of approval recommended by staff in the Staff Report to the Board, as modified in Applicant's Supplemental memorandum dated August 11, 2026.