



## Agenda Report 2017-06-19-05

Date: June 19, 2017

To: Russ Axelrod, Mayor  
Members, West Linn City Council

From: Peter Spir, Associate Planner *PS*

Through: John Boyd, Planning Manager *JB*  
Eileen Stein, City Manager *ES*

Subject: AP-17-01 – Reconsideration of Final Decision, Findings and Conditions of Approval to deny the appeal of the 34 lot subdivision at 18000 Upper Midhill Drive.

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### Purpose

On May 8, 2017, the City Council (“Council”) tentatively denied Jason and Jessica Harra’s appeal (AP-17-01) of the Planning Commission’s (“Commission”) decision to approve a 34-lot subdivision at 18000 Upper Midhill Drive and directed staff to prepare the Final Decision and Findings, including conditions of approval.

### Question(s) for Council:

1. Does the proposed Final Decision and Order correctly represent and support the Council’s May 8, 2017, tentative decision?

### Public Hearing Required:

None required.

### Background & Discussion:

On May 8, 2017, the Council held a public hearing based on those specific grounds for appeal that were determined to be within the scope of the Council’s reconsideration. The Council tentatively denied the appeal and upheld the Commission’s decision. The Council directed staff to prepare a final decision and findings with conditions of approval for review and potential adoption on June 19, 2017.

### Budget Impact:

None

### Council Options:

1. Adopt the Final Decision and Order, with proposed conditions of approval, and uphold the Planning Commission’s approval of the 34-lot subdivision by denying the appeal (AP-17-01).
2. Modify and adopt the Final Decision and Order, with conditions of approval, and uphold the Planning Commission’s approval of the 34-lot subdivision by denying the appeal (AP-17-01).
3. Direct staff to draft a Final Decision and Order to approve the appeal by Jason and Jessica Harra and overturn the Planning Commission’s approval of the 34-lot subdivision.

**Staff Recommendation:**

Staff supports the Council's adoption of the Final Decision and Order, which includes supportive findings and the conditions of approval.

**Potential Motion:**

1. Move to adopt the Final Decision and Order, including the conditions of approval, deny the appeal of AP-17-01, and uphold the Commission's approval of the 34-lot subdivision.
2. Move to tentatively approve the appeal of AP-17-01, thereby overturning the Commission's approval of the 34-lot subdivision, and direct staff to bring back a Final Decision and Order with appropriate findings for adoption.

**Attachments:**

1. Final Decision and Order

**WEST LINN CITY COUNCIL**  
**FINAL DECISION AND ORDER**  
**AP-17-01**

**IN THE MATTER OF THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL ON  
RECONSIDERATION OF THE CHENE BLANC 34-LOT SUBDIVISION AND WATER RESOURCE AREA  
PERMIT AT 18000 UPPER MIDHILL DRIVE**

**Overview**

The City filed an Amended Notice of Withdrawal of Decision with LUBA on January 17, 2017. On January 19, 2017, LUBA issued its order granting the request with a deadline of June 1, 2017 to issue the decision on reconsideration.

On February 6, 2017, the City Council ("Council") returned the Chene Blanc application (AP-16-02) to the Planning Commission ("Commission") for reconsideration in a *de novo* public hearing. The Council adopted the motion "*...to approve the reconsideration process set forth in the City Attorney's January 24, (2017) Memorandum and focus the scope of the reconsideration to adequate public facilities including traffic impact and influences and pedestrian improvements and safety.*" The motion relates to the approval criteria of West Linn Community Development Code ("CDC") 85.200.A. The Council did not authorize reconsideration of any other criteria or issues.

The City provided notice of the Commission hearing in compliance with the CDC as follows:

"Public notice was mailed to all persons with standing from the original application, all property owners within 500 feet of the site, and all neighborhood associations on March 2, 2017. Notice was published in the Tidings newspaper on March 9, 2017. The site was posted with a sign on March 10, 2017. The notice requirements of CDC Chapter 99 have been met."

March 22, 2017 Staff Report to the Commission at 3.

At the Commission's March 22, 2017, meeting, the Commission held a *de novo* public hearing to reconsider the applications for compliance with CDC 85.200.A.1. No Commission members identified any disqualifying conflict of interest, bias, or *ex parte* communications. Commissioner Metlen declared a site visit. No one challenged the impartiality of any Commissioner to participate in the case. During the hearing, no one alleged that the Commission committed any prejudicial procedural errors. The Commission subsequently approved the applications with 11 conditions of approval.

On April 7, 2017, Jason and Jessica Harra filed a timely appeal of the Commission decision. Both established standing by submitting written testimony into the record. Mrs. Harra also testified orally at the March 22, 2017 hearing.

The City provided notice of the May 8, 2017 Council hearing in compliance with the CDC as follows:

“Public notice was mailed to all property owners within a 500 foot radius of the property, all persons with standing on April 19, 2017 and all neighborhood associations. Notice was published in the Tidings newspaper on April 27, 2017. The site was posted with a sign on April 27, 2017. The notice requirements of CDC Chapter 99 have been met.”

May 8, 2017 staff report at 2. At the appeal hearing on May 8, 2017, all members of Council were present. Mayor Axelrod introduced the item and explained the order of proceedings. City Attorney Tim Ramis then discussed then substantive and procedural parameters of the hearing, including that the appeal was on the record, and no new evidence was allowed. When prompted, no members of Council identified any disqualifying conflicts of interest or bias. Councilor Sakelik declared that he visited the site two months ago. Councilor Martin declared that he had a conversation with Jim O’Toole regarding an agreement negotiated between the applicant and Robinwood Neighborhood Association regarding construction routes. He also declared that he attended the Commission meeting as a Council liaison. Councilor Cummings stated that she attended a meeting at the fire station where the issue was mentioned. Mayor Axelrod stated that he had received emails and process questions from members of the public and these were referred to City staff. No one challenged the jurisdiction of the Council as a whole to hear and decide the matter. A member of the public challenged Councilor Martin’s impartiality based upon an alleged conversation he had with a Commission member during a break at the March 22, 2017 Commission meeting. Councilor Martin stated that he did not recall the conversation and that he was not biased but he was happy to recuse himself. The Council discussed the matter and passed a motion authorizing Councilor Martin to participate in the proceedings. The member of the public did not renew her objection.

The Council accepted only testimony and argument at the appeal hearing that related specifically to the scope of the reconsideration, which was limited to the topic of “adequate public facilities including traffic impact and influences and pedestrian improvements and safety that are related to CDC 85.200.A.” CDC 99.280.B limits appeals of Commission decisions to: “1) Those issues set forth in the request to appeal; and 2) The record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal.”

The appellants’ four grounds for appeal are summarized as follows: 1) failure to address the timeframe for development; 2) the need for geological studies; 3) inadequate consideration of the impact of the proposed off-site mitigation on existing bike lanes on Willamette Drive; and 4) long term responsibility to address congestion, drainage, lighting, and related issues that may arise after the development is complete. Whether or not testimony was within the scope of the “on the record” hearing was determined by the Council at the hearing.

At the meeting on May 8, 2017, the Council held a public hearing on the appeal. The hearing commenced with a staff report presented by Peter Spir, Associate Planner. Attorneys Seth King and Michael Robinson of Perkins Coie, Planning Consultant Andrew Tull of 3J Consulting, and

Matt Bell of Kittelson and Associates, Inc. (“KAI”) presented for the Applicant. The appellants represented themselves.

The Council then accepted public testimony in support of the appeal, from neutral parties, and in favor of the application. The Council continued the hearing to May 18, 2017 for staff to determine the admissibility of oral and written testimony and for applicant’s oral rebuttal. Applicant was permitted to submit a final written argument by May 11, 2017. The Council did not authorize any other written submittals.

The Council held the continued hearing on May 18, 2017. Councilor Cummings was absent, but the other members of Council were present. When prompted, no members of Council declared any actual or potential conflicts of interest. Councilor Perry declared that a member of the public asked her a procedural question outside of the hearing. Mayor Axelrod declared that he received emails that had been transmitted to City staff. No one challenged the jurisdiction of the Council or any of its individual members to hear and decide the appeal. The Council then accepted statements from one of the appellants and appellants’ representative regarding the scope of the appeal. The applicant then provided rebuttal and answered questions. The Council then approved a motion to accept and reject argument and evidence offered into the record, consistent with the recommendations set forth in two staff memos dated May 17, 2017. The Council also voted to include in the record a letter dated May 16, 2017 letter from Jennifer Bragar, attorney representing the appellants, and its redacted Exhibit 2. The Mayor closed the public hearing. After deliberations, the Council approved a motion to tentatively deny the appeal and approve the applications by a 4-0 vote, with the Council directing staff to prepare findings and conditions. The conditions were to include the 11 conditions adopted by the Commission, the six proposed by the applicant, with modifications, as necessary, to meet the Council’s intent as expressed during deliberation.

## **I. Scope of the Appeal**

The Council finds that three different provisions limit the scope of this appeal.

First, the Council finds that the scope of the appeal must necessarily fall within the limited scope of the reconsideration. As explained above, the Council adopted a motion on February 6, 2017, limiting the scope of the reconsideration to “adequate public facilities including traffic impacts and influences and pedestrian improvements and safety.” Therefore, the scope of the appeal must not exceed these subjects.

Second, appeals of Commission decisions are limited to “[t]hose issues set forth in the request to appeal.” CDC 99.280.B.1. *See also* CDC 99.280.D (“Review shall be limited to the issues clearly identified in the notice of appeal.”). This matter is an appeal of a Commission decision. Therefore, the scope of this matter is limited to issues clearly identified in appellants’ appeal statement.

Third, in order to be preserved, appeal issues must have been raised with specificity before the Commission: “No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond.”

CDC 99.280.D. Based upon this provision, the Council finds that the scope of appeal is limited to issues raised with specificity before the Commission.

Together, these provisions limit the scope of this appeal to issues that are: (1) within the scope of the reconsideration; (2) identified in the appeal statement; and (3) raised with sufficient specificity before the Commission. As explained below, the Council finds that three issues meet these criteria, and the appeal is limited accordingly.

Appellants have identified four appeal issues in their appeal statement:

“We are appealing the approval and ask that this be taken up by the West Linn City Council for further review. Our reasons are as follows:

“1. The Planning Commission has not sufficiently addressed the timeframe for this development. The application only applies to the creation of lots to eventually be sold to construction companies. We are requesting that some sort of timeline be applied to the development to keep it from becoming a long drawn out process that would have a negative impact on the surrounding homeowners, especially those considering the sale of their homes.

“2. We do not believe that sufficient geological studies have been done on this parcel. There is a history of drainage issues and mudslides in the surrounding area that we believe have not been sufficiently addressed in the application.

“3. The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor. Nothing has been stated about how this will affect the existing bike lanes. We would like to see this addressed in a more substantial way. There is very little room to retain bike lanes in both directions and carve out a turn lane.

“4. We do not believe that a sufficient plan is in place to determine who addresses issues that arise after the developer walks away from the lots, once they are carved out. Is the City of West Linn responsible for any and all congestion, drainage, lighting, etc. issues?”

See appellants’ “Appeal of Planning Commission approval decision for File No. AP-16-02.” The Council finds that Appeal Issue 4 does not fall within the scope of reconsideration because it does not concern CDC 85.200.A, and it was not raised with specificity before the Commission. Therefore, the Council finds that Issue 4 falls outside the scope of the appeal.

The Council finds that the remaining three issues (Issues 1, 2, and 3) fall within the scope of the reconsideration, were included on appellants’ appeal statement, and were raised with sufficient specificity before the Commission to allow a response by the Commission. Therefore, the Council finds that Issues 1, 2, and 3 fall within the scope of the appeal. However, as further explained below, the Council finds that not all arguments and evidence presented by the

parties fall within the scope of these three issues. Accordingly, the Council rejects these arguments and evidence below.

## **II. The Record**

The Council settled the record at the May 18, 2017, hearing. The record includes the entire file from AP-17-01 and AP-16-02 (which includes the original application), except as excluded by the Council below.

The Council finds that the record in this matter is limited in two ways. First, for the reasons explained above, the scope of appeal is limited to Issues 1, 2, and 3 identified in appellants' appeal statement. Accordingly, all arguments on appeal must relate to one or more of these issues.

The Council further finds that the Council may only accept new evidence on appeal in limited circumstances, and those circumstances are not present in this case. The Council may only accept new evidence on an appeal from the Commission in one of the following circumstances:

“1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or

“2. A factual error occurred before the lower decision-making body through no fault of the requesting party, that is relevant to an approval criterion and material to the decision.”

CDC 99.280.C. In this case, no one has alleged that the Commission committed a procedural error that prejudiced their substantial rights. Further, although appellants stated their intent to submit new evidence to Council, they did not couple that request with a specific allegation that the Commission committed a relevant and material factual error. The appellants also did not demonstrate that any factual error that did occur was not their fault. In fact, the Council finds that appellants had ample opportunity to present evidence and respond to Applicant's evidence before the Commission, which could have prevented the Commission from making the factual findings with which appellants now take issue. However, appellants failed to do so. Although appellants contend that they did not identify some factual issues until after the Commission closed the record, they did not object or allege a prejudicial procedural error. Further, the Council finds that appellants had approximately three weeks' time to review the applicant's materials before the Commission hearing, which Council finds to be an adequate time period to allow appellants to review and present argument and evidence in response to the application materials. Therefore, the Council finds that there is no basis to accept new evidence in conjunction with this appeal.

City staff submitted two memoranda dated May 17, 2017 into the record, one with subject line “AP-17-01 Review of Oral Testimony for Admissibility” and one with subject line “AP-17-01 Review of Submitted Comments for Admissibility,” which identify testimony that consists of new evidence and/or argument outside the scope of the appeal. The Council finds that these

memos correctly address the limitations on argument and evidence summarized above. Accordingly, the Council expressly rejects and excludes from the record the oral and written testimony identified as inadmissible in these two staff memos.

### III. **Applicable Approval Criteria**

The Council finds that the following CDC criteria fall within the scope of this reconsideration:

#### **85.200 APPROVAL CRITERIA**

“No tentative subdivision or partition plan shall be approved unless adequate public facilities will be available to provide service to the partition or subdivision area prior to final plat approval and the Planning Commission or Planning Director, as applicable, finds that the following standards have been satisfied, or can be satisfied by condition of approval.

#### **A. Streets.**

**1. General.** The location, width and grade of streets shall be considered in their relation to existing and planned streets, to the generalized or reasonable layout of streets on adjacent undeveloped lots or parcels, to topographical conditions, to public convenience and safety, to accommodate various types of transportation (automobile, bus, pedestrian, bicycle), and to the proposed use of land to be served by the streets. The functional class of a street aids in defining the primary function and associated design standards for the facility. The hierarchy of the facilities within the network in regard to the type of traffic served (through or local trips), balance of function (providing access and/or capacity), and the level of use (generally measured in vehicles per day) are generally dictated by the functional class. The street system shall assure an adequate traffic or circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried. Streets should provide for the continuation, or the appropriate projection, of existing principal streets in surrounding areas and should not impede or adversely affect development of adjoining lands or access thereto.

(...)”

#### **2.030 SPECIFIC WORDS AND PHRASES**

**“Adequate public facilities.** Public facilities that must be adequate for an application for new construction, remodeling, or replacement of an existing structure to be approved are transportation, water, sewer, and storm sewer facilities. To be adequate, on-site and adjacent facilities must meet City standards, and off-site facilities must have sufficient capacity to (1) meet all existing demands, (2) satisfy the projected demands from projects with existing land use approvals, plus the additional demand created by the application, and (3) remain compliant with all applicable standards.

For purposes of evaluating discretionary permits in situations where the level-of-service or volume-to-capacity performance standard for an affected City or State



roadway is currently failing or projected to fail to meet the standard, and an improvement project is not programmed, the approval criteria shall be that the development avoids further degradation of the affected transportation facility. Mitigation must be provided to bring the facility performance standard to existing conditions at the time of occupancy.”

#### **IV. Incorporated Findings**

The Council accepts, adopts, and incorporates within these findings, by reference, in their entirety, the following materials as findings demonstrating that the approval criteria for these applications are met:

1. Commission Final Decision and Order of March 22, 2017, which incorporated the March 22, 2017 Staff Report for AP-16-02, with attachments (including without limitation the 2016 Commission decision and the 2016 Council decision pertaining to the applications), and the Applicant's submittals, including without limitation the narratives, for all criteria;
2. Staff Report to the Council for May 8, 2017; and
3. The Applicant’s March 1, 2017 application narrative; and letters from Perkins Coie LLP dated March 22, 2017; April 19, 2017; and May 11, 2017.

In the event of a conflict between these incorporated documents and these findings, these findings shall control. The Council finds that, in the incorporated findings in Item 1 above, the City found that the applications comply with all applicable approval criteria with the exception of CDC 85.200, as it pertains to public transportation facilities. This findings document explains how the applications satisfy CDC 85.200, as it pertains to public transportation facilities.

#### **V. Findings in Response to Appeal Issues**

**A. APPEAL ISSUE 1 – “The Planning Commission has not sufficiently addressed the timeframe for this development. The application only applies to the creation of lots to eventually be sold to construction companies. We are requesting that some sort of timeline be applied to the development to keep it from becoming a long drawn out process that would have a negative impact on the surrounding homeowners, especially those considering the sale of their homes.”**

Findings: The City Council finds that appellants’ contention does not provide a basis to deny or further condition the applications. Applicant has a three-year time period to implement the tentative subdivision by constructing on-site streets, utilities, and infrastructure and recording the final plat. CDC 85.090. This time frame for implementing the tentative subdivision will apply, unless Applicant obtains an extension of the time period. However, the City Council finds for two reasons that there is no basis to establish a time period for constructing homes on the platted lots on the site. First, neither the CDC nor any other City standard requires that construction of homes on platted lots occur within a specific period of time. Thus, there is currently no legal mechanism for the City to impose a deadline. Second, as stated in the May 8 staff report, there are many vacant platted lots throughout the City, and some of these have been unbuilt for decades. Thus, the City Council finds that the uncertainty about if or when

homes are constructed on infill lots is a common circumstance and one the City and its residents are able to manage. Therefore, the City Council denies this appeal issue.

**B. APPEAL ISSUE 2 – “We do not believe that sufficient geological studies have been done on this parcel. There is a history of drainage issues and mudslides in the surrounding area that we believe have not been sufficiently addressed in the application.”**

Findings: The Council finds that it is geotechnically feasible to develop and construct the proposed on-site public streets identified on applicant’s plans, subject to incorporating the recommendations of applicant’s professional geotechnical engineer, GeoPacific Engineering, Inc. (“GeoPacific”). As support for this conclusion, the City Council relies upon the testimony of GeoPacific in “Preliminary Geotechnical Engineering Report & Landslide Hazard Study” dated August 6, 2015 (“Geotechnical Study”), which is included in the record. GeoPacific prepared the Geotechnical Study by reviewing geologic mapping for the site and literature in the field and by analyzing excavations from 11 test pits from the site. At least three of these test pits are from locations where applicant is proposing to install public streets. Based upon its analysis, GeoPacific concluded that it is geotechnically feasible to develop the proposed project on the site. In its analysis, GeoPacific identified three main issues for project completion.

The first issue is the presence of ancient debris flow materials on the site. To address this issue, GeoPacific recommended that site grading be planned in such a way as to unload or completely remove the ancient debris flows. The second main issue is the presence of undocumented fill material and buried topsoil. The third issue is presence of expansive clay on the site. GeoPacific recommended that the expansive clay be removed and replaced with compacted fill; however, GeoPacific also stated the no such removal was recommended within the locations of the proposed public streets because they would be comprised of flexible pavements that are not significantly impacted by expansive soils.

GeoPacific further opined that, subject to adequate soil compaction and installation of pavement sections of specified thicknesses, the on-site public streets would be suitable to support the anticipated levels of traffic. GeoPacific’s recommendations included both wet-weather and dry-weather pavement construction techniques.

Finally, the Geotechnical Study recommended that GeoPacific be consulted to review the final grading and development plans and to provide any additional recommendations prior to construction.

Although appellants have expressed concerns about geotechnical conditions on the site, they have not raised any questions or issues that undermine or call into question GeoPacific’s recommendations and conclusions. Further, appellants have not presented an alternative geotechnical analysis presented by a professional geotechnical engineer that reaches different conclusions or makes different recommendations than GeoPacific.

Applicant has voluntarily agreed to submit a supplemental analysis for review by the City in conjunction with plan review for the site. The Council accepts this voluntary condition and imposes it as follows:

**“13. Supplemental Geotechnical Analysis.** The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.”

For these reasons, the Council finds that there is substantial evidence in the whole record to support the conclusion that it is geotechnically feasible to develop the project on the site, subject to compliance with GeoPacific’s recommendations in the Geotechnical Study. The Council denies this appeal issue.

**C. APPEAL ISSUE 3 – “The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor. Nothing has been stated about how this will affect the existing bike lanes. We would like to see this addressed in a more substantial way. There is very little room to retain bike lanes in both directions and carve out a turn lane.”**

Findings: KAI stated that it is feasible to incorporate bicycle lanes into the design of the interim improvements. See KAI memorandum dated March 1, 2017, page 3. The drawing of the proposed Willamette Drive interim improvements depicts bicycle lanes that are between approximately 5.5 and 8.5 feet wide on each side of the street. See Figure 9 of KAI’s March 1, 2017 memorandum. For approximately a quarter of the length of the interim improvements (125 feet), the proposed bicycle lanes will exceed the six-foot wide standard. See May 8, 2017 Staff Report, page 6.

The Oregon Department of Transportation (“ODOT”) has jurisdiction over this segment of Willamette Drive and has stated that, as needed, it will consider deviations from design standards for Applicant’s interim improvements that are consistent with design deviations granted for the Highway 43 Multimodal Transportation Project as a whole. See ODOT memorandum dated February 3, 2017, page 2. To the extent ODOT approves a design exception that affects bicycle lanes for the interim improvements, it will be the final decision of the agency with jurisdiction over this highway segment on the need for/sufficiency of bicycle lanes associated with the interim improvements. Accordingly, based upon the testimony from Applicant’s transportation engineer and ODOT, the Council finds that, subject to a condition requiring completion of the interim improvements (including bicycle lanes), as reviewed, modified, and approved by ODOT, this appeal issue is addressed.

Further, the Council finds that the interim improvements will be temporary in nature and may only accommodate development-related traffic for two years (between 2018, the earliest year of occupancy, and 2020, the date KAI testified to the Commission that the long-term improvements for Willamette Drive are anticipated to be completed). Further, the Council

finds these long-term improvements will incorporate bicycle lanes. See ODOT memorandum dated February 3, 2017, page 1. Commission Condition 3 requires Applicant to make its fair-share contribution to these long-term improvements, which will necessarily constitute Applicant's fair-share contribution to bicycle lanes associated with these long-term improvements. In order to ensure compliance with this requirement, the Council imposes the same condition below.

Although a resident contended that the proposed bicycle lanes would be less than five feet wide, the Council denies this contention because it is refuted by the scaled drawings in the record of the proposed improvements. Another resident contended that the road width was more narrow than Applicant stated. The Council denies this contention on the same grounds and for the additional reason that the resident did not adequately substantiate its alternate measurement techniques and results.

Although residents contended that the proposed bicycle lanes would be less safe for bicyclists than current conditions, the Council denies these contentions for four reasons. First, these contentions are speculative and not supported by evidence. Second, the Council finds that the proposed bicycle lanes are, in some cases the same or nearly the same width, as existing bicycle lanes along this stretch of Willamette Drive. For example, existing bicycle lanes on the west side of Willamette Drive are only 5.5 feet for approximately 163 feet in the area where the interim improvements are proposed. Third, the Council finds that Matt Bell of KAI testified at the public hearing that ODOT may approve design exceptions to allow bicycle lanes as narrow as five feet wide in constrained areas, and the proposed bicycle lanes are, even at their narrowest point, expected to be six inches wider than that. Fourth, as stated above, the interim improvements are only temporary in nature and will be replaced as early as 2020.

For these reasons, and subject to the referenced condition of approval, the Council finds that Applicant's proposed interim improvements along Willamette Drive will provide for adequate bicycle lanes, subject to final review, modification, and approval by ODOT.

Finally, although appellants contend that they intended for this appeal issue to incorporate broader "traffic concerns," the Council finds that the plain language of the appeal statement, which expressly mentions concerns about bicycle lanes but no other specific transportation issues, does not support the appellants' contention. Nevertheless, the Council addresses the appellants' additional transportation-related contentions in Section VI of this findings document.

The City Council denies this appeal issue.

**D. APPEAL ISSUE 4 – “We do not believe that a sufficient plan is in place to determine who addresses issues that arise after the developer walks away from the lots, once they are carved out. Is the City of West Linn responsible for any and all congestion, drainage, lighting, etc. issues?”**

Findings: For the reasons explained in Section I (“Scope of the Appeal”) of these findings, the Council finds that this issue does not fall within the scope of the reconsideration and was not

raised below with sufficient specificity to allow the Commission to respond. Therefore, the Council denies this appeal issue.

## **VI. Findings in Response to Additional Issues**

The Council finds that residents raised additional issues that are outside the scope of the appeal issues and for that reason alone, they are denied. In order to be comprehensive, the Council addresses these issues on the merits below.

### **A. Adequacy of Interim Intersection Improvements.**

In conjunction with its development, Applicant proposed to construct off-site transportation facilities, to include restriping Willamette Drive with a northbound left turn pocket on the south leg of the Willamette Drive/Arbor Drive intersection and a left-turn refuge storage area on the north leg of the intersection, as depicted in Figure 9 of KAI's March 1, 2017 memorandum. These improvements are referred to as the "interim improvements" to distinguish them from long-term improvements that the City and ODOT have planned for this location. The purpose of the interim improvements is to mitigate traffic impacts of the development.

The Council finds that these interim improvements will render the intersection of Arbor Drive and Willamette Drive, which is currently failing, "adequate." For a transportation facility that is failing to be "adequate" for purposes of CDC 85.200, a development must avoid further degradation of the facility. CDC 2.030 (definition of "adequate public facilities"). Further, any mitigation measures required to bring the facility standard to existing conditions must be in place at the time of occupancy. *Id.*

The interim improvements will meet both aspects of this definition. First, the intersection improvements are projected to improve safety and operational performance of the intersection:

"The proposed mitigation measures will significantly decrease the delay associated with the left-turn movement from Arbor Drive to OR 43 by allowing for two-stage left turns. The proposed mitigation measures will also provide separation between slowed or stopped motorists on OR 43 waiting to make a left-turn onto Arbor Drive; the separate lane will reduce the potential for rear-end crashes at the intersection."

KAI memo dated March 1, 2017 at 3. The Council further relies upon the results of KAI's analysis, which show that, upon implementation of Applicant's interim improvements, the performance of this intersection is projected to improve from LOS "F" to LOS "D." See KAI memo dated March 1, 2017 at 1 and its Appendix B, Figure 8.

Second, to ensure that the interim improvements are in place before occupancy of the development, the Council imposes a condition requiring their completion before issuance of any grading or site development permits for the project:

“3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit or site development permit for the development site, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates’ March 1, 2017, memorandum (‘KAI Memorandum’) (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant’s proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.”

For these reasons, the Council finds the interim improvements will render the intersection of Arbor Drive and Willamette Drive “adequate.”

The Council finds that opponents’ contentions to the contrary do not undermine this conclusion. First, although opponents contend that the interim intersection improvements may be unsafe or create other hazards, the Council denies these contentions because they are speculative; they are not based upon any evidence in the record. Further, they ignore the fact that three separate transportation engineers—KAI, ODOT, and the City’s contract engineer at DKS—reviewed and concurred with the recommended improvements. Finally, they do not refute KAI’s detailed explanation at the Council public hearing of the modeling software (Synchro) used by KAI in its analysis, which is commonly used for such purposes. Likewise, the Council finds that a resident’s contention that Applicant’s development will worsen congestion on Willamette Drive and thus impede response time for emergency vehicles is speculative and is refuted by the substantial evidence that the intersection will experience less delay upon completion of the interim improvements than it currently does.

Further, although opponents contend that the proposed improvements are inadequate because they will likely require that ODOT approve a design exception, the Council denies this contention for three reasons. First, nothing in CDC 85.200 prohibits the City from finding that a transportation improvement is “adequate” simply because it requires ODOT to approve a design exception. Second, the Council finds that ODOT has jurisdiction over this issue and has adopted procedures and criteria for evaluating design exception requests. Compliance with these procedures and criteria will ensure that applicable ODOT standards are met. Third, the Council finds that, as stated by KAI, the interim improvements are consistent with the long-term improvements for Willamette Drive, which have themselves been subject to design exceptions.

Finally, although opponents contend that the intersection barely meets applicable performance standards with the improvements, the Council finds that this contention misrepresents the facts. Not only will the interim improvements cause the intersection to meet applicable performance standards, they will make the intersection operate more safely and with fewer delays than it does under current conditions, according to KAI’s testimony in its March 1, 2017 memorandum. Therefore, the proposed improvements not only meet but go beyond the

requirements of CDC 85.200 and the definition of “adequate public facilities” in CDC 2.030, which only require that a development not worsen existing conditions at a failing intersection.

## **B. Impacts to Local Streets.**

The Council also finds that local streets between the site and Willamette Drive are adequate to serve the proposed development. As support for this conclusion, the Council relies upon the testimony of KAI, who explained that, upon build-out of the proposed development, these local streets would still carry significantly fewer trips than their design capacity:

“The streets that connect the proposed development to OR 43 are sufficient to accommodate existing vehicle traffic and traffic generated by the proposed development, particularly the segment of Upper Midhill Drive located north of Arbor Drive and the segment of Arbor Drive located east of Upper Midhill Drive. As local streets, these streets are designed to accommodate up to 1,500 vehicles per day. With the proposed development, these streets are projected to accommodate less than 900 vehicles per day. Therefore, there is sufficient capacity along the existing street network to accommodate a significant increase in traffic beyond the proposed development.”

KAI Memo dated March 1, 2017 at 4. The Council also relies upon the fact that Applicant will improve local street connections by completing a new connection between Upper Midhill Drive and Hillside Drive and by providing road widening and sidewalk improvements along Hillside Drive south of the site.

Although residents expressed particular concerns about a narrow stretch of Upper Midhill Drive, the Council finds that this roadway segment is adequate to serve existing traffic and the limited additional traffic generated by the development. As support for this conclusion, the Council relies upon testimony from KAI, who opined that there was adequate capacity on Upper Midhill Drive to serve existing and expected traffic:

“The segment of Upper Midhill Drive located south of Arbor Drive is narrow; however, as described in a previous response letter, it is sufficient to accommodate existing vehicle traffic and traffic generated by the proposed development, which is expected to be less than 10 vehicles per day, including one vehicle during the morning and one vehicle during the evening peak hour. With the proposed development, this segment of Upper Midhill Drive is projected to accommodate less than 300 vehicles per day.”

*Id.* Additionally, Council finds that, as explained above, Applicant’s interim improvements to the Willamette Drive/Arbor Drive intersection will decrease delays and improve safety at this intersection, which may reduce the need for development-related traffic to detour along this stretch of Upper Midhill Drive to access Willamette Drive at the Marylhurst signal.

Although a resident contended that Upper Midhill Drive is inadequate because it is more narrow than City standards for a local street, the Council finds that this contention does not

provide a basis to deny or further condition the applications for two reasons. First, the narrow nature of Upper Midhill Drive is an existing condition, not one created by the development, and the neighborhood has adjusted to it. As support for this conclusion, the Council relies upon the low levels of traffic utilizing this segment of Upper Midhill Drive, the fact that motorists in the neighborhood are accustomed to slowing to accommodate other traffic along this segment of the roadway, and the fact that there have been no reported crashes along Upper Midhill Drive over the five-year period ending December 31, 2015. KAI letter dated August 12, 2016. Second, the Council finds that, given the limited number of site trips that will utilize this segment of Upper Midhill Drive, it would not be roughly proportional to that projected impact to require Applicant to widen Upper Midhill Drive. The Council denies the resident's contention.

Finally, although residents contend that many local streets in the area lack adequate sidewalks, the Council denies this contention because there is a continuous network of sidewalks and paths linking the site and Willamette Drive:

“The existing sidewalk network is also sufficient to accommodate existing pedestrian traffic and pedestrian traffic generated by the proposed development. There is a continuous network of sidewalks and paths that connect the proposed development to OR 43 at the OR 43/Marylbrook Drive intersection, which is served by local transit service and is also the main entrance to Marylhurst University. While there are gaps in the sidewalk network that connect the proposed development to the OR 43/Arbor Drive intersection, as well as other destinations along OR 43 and Upper Midhill Drive, the existing network of sidewalks and shoulders is sufficient to accommodate pedestrians.”

KAI Memo dated March 1, 2017, at 4. No one has disputed the existence of this continuous sidewalk/path network. Applicant has also volunteered to install pedestrian way-finding signage in accordance with the Manual on Uniform Traffic Control Devices and City requirements. The Council finds that this signage will enhance safety. The Council accepts this offer and imposes the requirement in the following condition:

**“16. Pedestrian Way Finding Signs.** The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of ‘way finding’ signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.”

### **C. Adequacy of KAI Transportation Analysis.**

The Council finds that the KAI transportation analysis is credible. The Council reaches this conclusion for three reasons.

First, KAI conducted its transportation analysis in accordance with industry and City standards and correctly identified the type of use and applied the correct trip rates for the Development. The City requires that an applicant utilize the latest edition of the Institute of Transportation



Engineers' Trip Generation Manual to determine average daily vehicle trips. CDC 85.170.B.2.b. KAI utilized the 9<sup>th</sup> Edition of ITE's *Trip Generation*, which is the latest edition of this manual, to determine trip generation from the development. See KAI Memo dated March 1, 2017, at 2. Further, the Council finds that KAI utilized the correct use category (ITE Land Use Code 210 – Single-Family Detached Housing) in conducting its analysis. *Id.* Finally, KAI applied the trip rates for ITE Land Use Code 210 in its analysis. *Id.* By identifying the correct use and the correct trip rate for that use, the Council finds that KAI correctly projected the trip generation from the development.

Second, the Council finds that KAI correctly accounted for trips from in-process developments and adjusted its counts to consider school year trips. To account for trips from in-process developments and additional growth in regional and local traffic in the study area, KAI assumed a two percent (one percent per year for each of two years) in its traffic counts. See KAI Memo dated March 1, 2017, at 2. KAI testified that this adjustment was sufficient to account for trips from in-process developments such as the new duplexes on Willamette Drive and the expansion of Mary's Woods. *Id.* Stated another way, if KAI had separately added in trips from in-process developments and assumed a two percent growth in area traffic, it would have resulted in double-counting of these background trips. Further, to account for school year trips, KAI conducted supplemental traffic counts at the affected intersections in October 2016 and seasonally adjusted these counts. *Id.* This type of seasonal adjustment is industry standard and consistent with the ODOT Analysis Procedures Manual. *Id.* KAI re-ran its analyses with the adjusted October 2016 counts and found that, subject to implementing the identified mitigation measures, all affected intersections would operate consistent with applicable performance standards. KAI Memo dated March 1, 2017, at 2-3.

Although opponents contended that KAI's analysis failed to account for trips from in-process developments (including new duplexes on Willamette Drive and the expansion of Mary's Woods), the Council denies the opponents' contention for the reasons stated above. The Council further finds that, as explained in KAI's March 1, 2017 memorandum, the Mary's Woods development is not expected to occur until after full build-out of the development; therefore, the Council finds that trips associated with the Mary's Woods expansion would not actually affect the system in 2018, the occupancy date for applicant's development in KAI's analysis. Stated within the terms of the CDC 2.030 definition of "adequate public facilities," there will be no "projected demand" from Mary's Woods in the year the subject development opens. Therefore, these trips need not be part of the analysis. On a related point, the Council denies the opponents' contention that KAI erred in its assumed distribution of trips from Mary's Woods. Opponents did not cite to any alternative trip distribution in the record. Moreover, the Council finds that, as stated, the Mary's Woods expansion is not expected to occur until later, meaning that any trip distribution is not part of the "projected demand" that must be considered in determining whether there are "adequate public facilities."

Third, the Council finds that two other transportation engineers—at the City and ODOT— independently reviewed and concurred with the findings and conclusions of KAI's transportation analysis. The Council finds these independent reviews to lend further credence to KAI's findings.

Although opponents contend that KAI's transportation analysis is deficient because it does not include the actual traffic counts from 2016 or specifically state the number of trips associated with pending developments, the Council denies the opponents' contention for two reasons. First, it is well-settled that a local government may rely upon an expert's opinion even if the record does not include all of the evidence the expert relied upon in reaching that opinion. This is particularly the case when the opponents do not adequately explain why the missing data undermines KAI's analysis or its conclusions, and when opponents do not cite to any evidence that casts doubt upon KAI's testimony. Second, the Council finds that the data, while not separately reported, is adequately accounted for in the analysis: KAI testified that the traffic counts were reflected in the trip figures reported in the analysis. Further, KAI testified that the one percent annual growth rate discussed below included trips from in-process developments. Opponents have not cited to any evidence that undermines these statements. Accordingly, the Council denies opponents' contention on this issue.

Although opponents contended that KAI's March 1, 2017 analysis is deficient because it is not stamped by a professional transportation engineer, the Council denies this contention. The Council finds that the lack of a stamp does not undermine the reliability of KAI's testimony. Further, the record reflects that KAI's analytical team included a transportation engineer, and opponents do not contend otherwise.

Although opponents contended that KAI's assumption of a one percent annual growth rate (two percent overall for the 2017-18 time period) was not supported by any evidence, the Council denies the opponents' contention. Matt Bell, Transportation Planner with KAI, testified during the public hearing that the one percent annual growth rate is common throughout the Portland area and was coordinated with the transportation engineers at both the City and ODOT. Although opponents disagree with the selected growth rate, they do not cite to any substantial evidence in the record that conflicts with or undermines the selected growth rate nor do they contend that it is not an acceptable industry standard.

Finally, although opponents contend that Applicant's transportation analysis is deficient because it does not address CDC 85.170.B.2.e.1.C, the Council denies this contention because this issue is outside the scope of the appeal. It was not included in the appeal statement, and it was not raised with sufficient specificity to allow the parties to address the issue before the Commission closed the evidentiary record.

For these reasons, the Council finds KAI's analysis to be credible and to be based upon reasonable assumptions and industry practices. The Council denies opponents' contentions to the contrary.

#### **D. Need for Crosswalk on Willamette Drive.**

Residents requested that Applicant install a crosswalk on Willamette Drive at the intersection with Arbor Drive. Applicant has not identified a crosswalk on its interim improvements but has agreed to propose the crosswalk to ODOT. Council accepts Applicant's proposed condition and imposes it as follows:

**“12. Crosswalk on Highway 43.** The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.”

Subject to this condition, the Council finds that Applicant has addressed this concern.

**E. Construction Traffic.**

Residents expressed concern about impacts from construction traffic. Applicant contended that impacts from short-term traffic associated with construction of the approved use were outside the scope of CDC 85.200.A. The Council found that the introduction of construction truck traffic to local streets in the vicinity of the proposed subdivision site could pose a safety concern given the limited number of routes, the limited street widths, and the need to share the streets with other transportation modes (e.g., school buses, bicycles, and pedestrians).

The Council finds that there are two streets available to provide access to the site from the main commercial truck corridor of Highway 43 (also known as Willamette Drive). One is Arbor Drive; the second is Upper Midhill Drive connecting with Marylhurst Drive. The intersection of Willamette Drive and Arbor Drive has no traffic signal. The intersection of Marylhurst Drive and Willamette Drive has a traffic signal.

The Council finds that the use of a loop route, which uses of all those streets, will provide for the efficient circulation of temporary truck traffic. The loop route was expected to be safer in that school buses, bicycles and pedestrians will only encounter trucks coming from one direction and be better able to anticipate that traffic activity. Flaggers will be required, as a condition of approval, during school bus pick up and drop off to minimize potential conflicts.

To address these concerns, Applicant proposed both a Traffic Management Plan (“TMP”) and a Construction Management Plan (“CMP”). The Council finds that Applicant’s TMP and CMP will minimize adverse impacts from construction traffic generated by the development and will ensure that there are adequate public facilities for this purpose. The Council imposes conditions requiring compliance with the TMP and CMP as follows:

- “11. Traffic Management Plan.** Construction trucks for the project shall be subject to the following traffic management restrictions:
- a. Inbound project truck traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project truck traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
  - a. Project trucks shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
  - b. Flaggers shall direct truck traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.
  - c. On-site vehicle noise will be mitigated by the modifying vehicle ‘backup beepers.’

Applicant shall be responsible for ensuring compliance with this Plan.”

**“15. Subdivision Construction Management Plan.** The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work.
- b. The Developer shall distribute a ‘flyer’ door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The ‘flyer’ shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area;
- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477;
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood;
- e. No construction equipment, including ‘porta potties’, shall be located outside the exterior boundaries of the construction site;
- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles; and,
- g. No employee parking at the bottom of College View Drive in the turnaround area.”

**F. Accessible Bus Stops.**

Residents expressed concern that Applicant’s interim improvements would adversely affect the ability of residents to gain access to and from Tri-Met buses at the existing bus stops. Applicant has proposed to coordinate with Tri-Met and ODOT to ensure provision of bus stops meeting applicable standards in this location. Council accepts Applicant’s proposed condition and imposes it as follows:

**“14. Tri-Met Bus Stops.** The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.”

Subject to this condition, the Council finds that Applicant has addressed this concern.

**G. Request to Rezone.**

Several residents requested that the City consider downzoning the site to a lower density designation. Applicant’s representatives stated on the record that Applicant was not interested

in a downzoning . The Council finds that it is required to consider the applications based upon the approval criteria in effect when the applications were submitted and thus, even if the City proceeded with a downzoning, it would not affect the pending applications or provide the City any additional authority to deny or condition the applications. Further, the Council finds that, as stated in Applicant's March 1, 2017, application narrative, the City's comprehensive plan includes the site's development potential in the buildable lands inventory. As a result, the City cannot reduce the density on the site without further analysis of the implications for the City's housing need and supply.

## **VII. Conditions of Approval**

The Council imposes the following conditions of approval:

1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C 111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15.
2. Engineering Standards. All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations are subject to the City Engineer's review, modification, and approval. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.
3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit **or site development permit** for the development site, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017, memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, **subject to ODOT review, modification, and approval.** The applicant shall also pay a proportionate fee **to the City of West Linn** in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.
4. Storm water Tract C. Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn.
5. Mutual Maintenance and Easements. Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.

6. No Parking Signs. The applicant shall install signs reading "No Parking- Fire Lane" on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. **In the event that the final grading plan requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.** (staff)

9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

10. Hillside Drive Off-Site Sidewalk Improvements. The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).

11. **Traffic Management Plan . Construction trucks for the project shall be subject to the following traffic management restrictions.** ~~Prior to issuance of a grading permit, the applicant shall submit a Construction Management Plan prohibiting project truck traffic on Upper Midhill Drive between Marylhurst Drive and Arbor Drive~~

**a. Inbound project truck traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project truck traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.**

**a. Project trucks shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).**

**b. Flaggers shall direct truck traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.**

**c. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers".**

**Applicant shall be responsible for ensuring compliance with this Plan.**

**12. Crosswalk on Highway 43.** The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, ~~consistent with ODOT standards~~ subject to ODOT review, modification, and approval.

**13. Supplemental Geotechnical Analysis.** The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.

**14. Tri-Met Bus Stops.** The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, ~~to assure that bus stops meeting Tri-Met applicable standards are available on Highway 43 near Arbor Street if the restriping affects the bus stops and if within the right-of-way. The bus stops shall comply with the Americans with Disabilities Act, if required to do so.~~

**15. Subdivision Construction Management Plan.** The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. ~~The City shall review and approve the Construction Management Plan prior to approval of construction plans.~~ The Construction Management Plan shall include:

**a.** A truck wash shall be installed prior to beginning of on-site construction work

~~• Construction traffic shall be prohibited from using Upper Midhill Drive between Arbor and Marylhurst Drive~~

**b.** The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area;

**c.** Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477;

**d.** A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood;

**e.** No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site;

**f.** Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles; and,

**g.** No employee parking at the bottom of College View Drive in the turnaround area.

*(applicant)*

~~16. Implementation of Highway 43 and Arbor Way Intersection Mitigation.~~ The Applicant shall complete the intersection mitigation improvements prior to beginning subdivision improvements. *(consolidated with COA 3 by staff)*

**16. Pedestrian Way Finding Signs.** The Applicant shall coordinate with ~~the City~~ and the Neighborhood Association, **and subject to the approval of the City Engineer, shall** to establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection **in accordance with Manual on Uniform Traffic Control Devices and City requirements.**

**17. Pedestrian Route.** The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane approximately 12 feet wide. Signs shall be installed at each end of Upper Midhill Drive identifying the area east of the line as a pedestrian route.

#### VIII. Order

Based upon these findings of fact and the above-referenced evidence, the Council concludes that the applications satisfy all applicable approval criteria and that the appeal issues have not demonstrated that the Commission erred. Accordingly, the Council approves the applications, subject to the above-listed conditions of approval. This order supersedes the Council’s findings pertaining to CDC 85.200 and the denial of the applications in the order for Case No. AP-16-02.

\_\_\_\_\_  
RUSSELL AXELROD, MAYOR

\_\_\_\_\_  
DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this \_\_\_\_\_ day of June, 2017.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m., \_\_\_\_\_, 2017.