

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT Arnold	PROJECT NO(S). MISC-20-04	
NON-REFUNDABLE FEE(S)	REFUNDABLE DEPOSIT(S) \$5750.00	TOTAL \$ 5,750.00

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANQ) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Lot Line Adjustment (LLA) */** | <input checked="" type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: 18000 UPPER MIDHILL DR, WEST LINN, 97068	Assessor's Map No.: 21E14CA
	Tax Lot(s): 200
	Total Land Area: 6.12 Acres

Brief Description of Proposal: EXTENSION OF CITY FILE NO. AP-17-01 – CHENE BLANC 34-LOT SUBDIVISION AND WATER RESOURCE AREA PERMIT

Applicant Name: EMERIO DESIGN, LLC / ATTN: STEVE MILLER <small>(please print)</small>	Phone: (541) 318- 7487 Cell
Address: 6445 SW FALLBROOK PL., STE. 100	Email:
City State Zip: BEAVERTON, OR 97008	stevem@emeriodesign.com

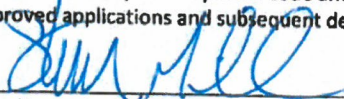
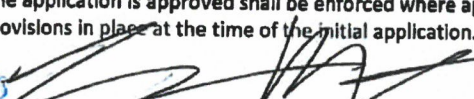
Owner Name (required): UPPER MIDHILL ESTATES, LLC <small>(please print)</small>	Phone:
Address: 735 SW 20 TH PLACE, SUITE 220	Email:
City State Zip: PORTLAND, OR 97205	

Consultant Name: EMERIO DESIGN, LLC / ATTN: STEVE MILLER <small>(please print)</small>	Phone: 541 318-7487 Cell
Address: 6445 SW FALLBROOK PL., STE. 100	Email:
City State Zip: BEAVERTON, OR 97008	stevem@emeriodesign.com

- All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format. If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

Applicant's signature _____ Date 5/13/2020 Owner's signature (required) _____ Date 5/13/2020

May 13, 2020

Michael C. Robinson

Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

City of West Linn Planning Department
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

RE: Application by Upper Midhill Estates, LLC for Two-Year Extension of the Chene Blanc Subdivision Located at 18000 Upper Midhill Drive; City of West Linn File No. AP-17-01

To Whom It May Concern:

This law firm represents Upper Midhill Estates, LLC, the Applicant. This Application requests a two-year extension of City of West Linn File No. AP-17-01 from July 19, 2019 to July 19, 2021 pursuant to West Linn Community Development Code (“CDC”) 99.325. This Application contains the following information:

1. A completed and signed City of West Linn “Development Review Application.”
2. A check made payable to the City of West Linn in the amount of \$5,500.00.
3. Three complete hard-copy sets (single-sided) of the Application materials. A CD is not required.
4. Neither a neighborhood meeting nor a pre-application meeting is required prior to submittal of this Application.

Please provide me with notice of the completeness review, notice of the public hearing, a copy of the Staff Report and copies of all documents received by the Planning Department concerning this Application.

City of West Linn Planning Department
May 13, 2020
Page 2

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive style.

Michael C. Robinson

MCR/jmhi
Enclosures

cc: Mr. Tim Ralston (*via email*) (*w/enclosures*)
Mr. Eric Evans P.E. (*via email*) (*w/enclosures*)
Mr. Steve Miller (*via email*) (*w/enclosures*)

PDX\134673\248389\MCR\27891873.1

BEFORE THE WEST LINN PLANNING COMMISSION

In the Matter of an Application by Upper)
Midhill Estates, LLC for an application to) City of West Linn File No. AP-17-01
extend the time in which to submit the final)
plat for City of West Linn File No. AP-17-) FINDINGS OF FACT AND
01, the Chene Blanc Subdivision located at) CONCLUSIONS OF LAW
18000 Upper Midhill Drive.)

I. INTRODUCTION.

This Application requests a two-year extension of the tentative plat approval.

The effective date for the West Linn City Council’s (the “City Council”) approval of City of West Linn (the “City”) File No. AP-17-01 (the “Decision”) was July 19, 2017 (**Exhibit 1**, Notice of Final Decision for City File No. AP-17-01). The Decision approved the tentative plat. West Linn Community Development Code (“CDC”) 99.230.B provides that the effective date of the Decision is 21 days from the date of mailing of the notice of the final decision. **Exhibit 1** shows that the City mailed notice of the Decision on June 28, 2019, making an effective date of July 19, 2017.

CDC 85.090 provides that that the final plat shall be submitted within 3 years of the approval of the tentative plat unless an extension is granted under CDC 99.325. CDC 99.325.A. provides for a two-year extension of the tentative plat approval, which, if approved, extends the three year period for submitting and recording the final plat until July 19, 2022.

The Applicant cannot complete the required improvements and record the final plat within three years of the effective date as required by CDC 85.090. Therefore, the Applicant requests the two-year extension of the Decision in order to have an additional two years in which to record the final plat. The requested extension does not include any modifications to the original application approved in the Decision.

Neither a pre-application meeting nor a neighborhood meeting is required before the submittal of this extension application because the Applicant does not request a modification to the Decision. CDC 99.325.E.1 and 2. This Application includes the appropriate Community Development Department deposit and the completed and signed City application form. CDC 99.325.E.3.

2. RESPONSE TO APPROVAL CRITERIA.

a. CDC 99.325, Extensions of approval.

“A. An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC 99.060(A), (B), (C), (D) or (E), as applicable, upon finding that:

1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved;”

RESPONSE: The Planning Commission can find that this standard is satisfied. **Exhibit 2** is a letter from Mr. Steve Miller of Emerio Design confirming that there have been no changes to the applicable CDC provisions and relevant approval criteria since the application was approved in 2017.

b. “2. There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or”

RESPONSE: The Planning Commission can find that this standard is satisfied.

There have been no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage since the 2017 Decision.

c. “3. The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC.”

RESPONSE: This standard is not applicable because the Applicant has satisfied subsections a.A.1 and 2.

d. E. Extension procedures.

“1. The application for extension of approval with modifications to the original approval may be submitted only after a pre-application meeting under CDC 99.030(B). If no modifications are made to the original approval, a pre-application conference is not required.

2. The application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC 99.038 for those cases that require compliance with that section. If no modifications are made to the original approval, no neighborhood meeting is required.”

RESPONSE: The Applicant has not modified the application as approved in the Decision. Therefore, a pre-application meeting and a neighborhood meeting are not required.

e. **“3. Applications for extensions must be submitted along with the appropriate deposit to the Community Development Department.”**

RESPONSE: The required deposit has been made to the Community Development Department with this application.

f. **“4. Notice of the decision shall be issued consistent with CDC 99.080.”**

RESPONSE: The Applicant understands that notice of the decision will be issued pursuant with CDC 99.080.

g. **“5. The decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to this chapter.”**

RESPONSE: The Applicant understands that the Planning Commission’s decision on this Application will not become effective until after all required appeal periods have been exhausted.

3. CONCLUSION.

The Planning Commission can find the applicable standards for an extension of the Decision are satisfied.

EXHIBIT LIST

Exhibit 1 AP-17-01 Decision

Exhibit 2 Current relevant CDC provisions and last date of amendment

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 party, 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 additional evidence.

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 those arguments and evidence described 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 (CDC 99.280.C):

"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."

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 affected the Commission's Findings the appellants now take issue with. 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 legal 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 must reject 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. 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 in a future project. 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 any 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 geotechnical analysis for review by the City in conjunction with plan review for the site. The Council accepts this voluntary condition and imposes it as modified below:

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and 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 and develop the building sites. 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 narrower 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 appellants’ contentions to the contrary do not undermine this conclusion. First, although appellants 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 appellants 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 appellants contend that the intersection barely meets applicable performance standards with the improvements, the Council finds that improvements 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 and ODOT’s findings. Therefore, the proposed improvements are expected to meet, and may 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 can be modified 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.*

Although a resident contended that Upper Midhill Drive is inadequate because it is narrower 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. 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. Finally, although residents contend that many local streets in the area lack adequate sidewalks, the Council recognizes that many neighbors are resistant to the placement of sidewalks. The Council acknowledges there are 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 9th 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 appellants 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 appellants' 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 appellants' contention that KAI erred in its assumed distribution of trips from Mary's Woods. Appellants 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."

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 appellants 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 appellants' 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 appellants do not adequately explain why the missing data

undermines KAI's analysis or its conclusions, and when appellants 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. Appellants have not cited to any evidence that undermines these statements. Accordingly, the Council denies appellants' contention on this issue.

Appellants 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 while the lack of a stamp does not undermine the reliability of KAI's testimony, the record reflects that KAI's analytical team included a transportation engineer, and appellants do not contend otherwise.

Although appellants 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 appellants' 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 appellants 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 appellants 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.

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, current conditions at the intersection of Highway 43 and Arbor Drive 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 anticipates that the use of a loop route, which uses of all those streets, may provide for a more efficient and safer circulation of temporary truck traffic. The loop route was also 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 (TMP).** Construction vehicles for the project shall be subject to the following traffic management restrictions.
 - a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
 - b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
 - c. Flaggers shall direct construction related 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.
 - d. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers".
 - e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.

- f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.

- 15. Subdivision Construction Management Plan (CMP).** 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.
 - h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.

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 application to modify the zoning.

VII. Conditions of Approval

The Council imposes the following conditions of approval prepared by the Commission, many volunteered by the Applicant and modified further by the Council:

- 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 shall comply with all applicable City standards. 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 geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.

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 (TMP). Construction vehicles for the project shall be subject to the following traffic management restrictions.

- a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
- b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
- c. Flaggers shall direct construction related 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.
- d. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers".
- e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.

f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. 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, subject to ODOT review, modification, and approval.

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and 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 and develop the building sites. 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, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.

15. Subdivision Construction Management Plan (CMP). 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.
- g. No employee parking at the bottom of College View Drive in the turnaround area.
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.

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.

17. Pedestrian Route. The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive to establish a safety zone for pedestrian traffic. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane for vehicles 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.

18. Community Outreach. The applicant shall provide updates at the monthly meetings of the Robinwood Neighborhood Association, from pre-construction phase to the commencement of the final plat phase.

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

6/26/17

DATE

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

Mailed this 28th day of June, 2017.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m.,
July 19, 2017.

Devrev/projects folder/projects/AP-17-01/CC final decision and order-ps-n

EMERIO *Design*

CIVIL ENGINEERS & PLANNERS

5/12/2020

Michael Robinson
Schwabe Williamson & Wyatt
PacWest Center
1211 SW Fifth Avenue Suite 1900
Portland, OR 97204

RE: Upper Midhill Land-Use Application Extension

Dear Mr. Robinson,

This letter is in response to our joint effort to address the City of West Linn's Community Development Code (CDC) Chapter; 99 Procedures for Decision Making: Quasi-Judicial, Section 99.325 Extensions of Approval, as it relates to City File Numbers: SUB-15-03/WAP-16-03/AP-17-01 (Chene Blanc 34-Lot Subdivision and Water Resource Area Permit at 18000 Upper Midhill Drive). Specifically, this letter address Section 99.325(A)(1):

Section 99.325(A)(1)

1. The applicant has demonstrated that the application is in conformance with applicable CDC provisions and relevant approval criteria enacted since the application was initially approved; and

The applicable Chapters identified in the Staff Report are Chapters: 14, 32, 48, 55, 85, and 92. I have reviewed all applicable criteria identified in the City's attached Staff Report against the City's on-line CDC and I have found no changes to the City's development code that would affect the City's decisions on the Chene Blanc 34-lot subdivision.

In addition to reviewing the City's development code against the applicable review criteria identified in the City's Staff Report, I also contacted City Planner, Jennifer Arnold, to confirm that there have been no code changes since the approval of the Chene Blanc 34-Lot subdivision that would impact the City's approval. Mrs. Arnold informed me that other than a couple rounds of some code clean up work, there have been no new relevant approval criteria enacted since the application was initially approved by the City.

Respectfully,



Steve Miller, Director of Planning Services
Emerio Design, LLC
6445 SW Fallbrook Place, Suite 100
Beaverton, OR 97008



CITY OF West Linn

22500 Salamo Road
West Linn, OR 97068

STAFF REPORT FOR THE PLANNING COMMISSION

FILE NUMBER: SUB-15-03/WAP-16-03

HEARING DATE: April 20, 2016

REQUEST: 34-lot Subdivision and Water Resource Area Permit at 18000 Upper Midhill Drive

APPROVAL CRITERIA: Community Development Code (CDC) Chapter 14, Single-Family Residential Attached and Detached/Duplex, R 4.5; Chapter 85, Land Division General Provisions; Chapter 32, Water Resource Area Protection.

STAFF REPORT PREPARED BY: Peter Spir, Associate Planner

Planning Manager's Initials AB Development Review Engineer's Initials KQL

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GENERAL INFORMATION

OWNER: 18000 Upper Midhill Drive, LLC
1235 N Dutton Ave. #E
Santa Rosa, CA 95401
Contact: David Chiddix

APPLICANT: Upper Midhill Estates, LLC
931 SW King Ave.
Portland, OR 97205
Contact: Ryan Zygar

CONSULTANT: 3J Consulting, Inc.
5075 SW Griffith Drive, Suite 150
Beaverton, OR 97005
Contact: Andrew Tull

SITE LOCATION: 18000 Upper Midhill Drive

LEGAL DESCRIPTION: Clackamas County Assessor's Map 2S1E14CA0200

SITE SIZE: 6.1 acres

ZONING: R-4.5, Single-Family Residential Attached and Detached/Duplex, 4,500 square foot minimum lot size for single family detached homes)

COMP PLAN DESIGNATION: Medium-Density Residential

120-DAY PERIOD: This application became complete on February 11, 2016. The 120-day maximum application-processing period initially ended on June 10, 2016. The applicant subsequently provided a 30-day waiver of the 120 day rule. Therefore, the 120 plus 30 day period lapses on July 10, 2016.

PUBLIC NOTICE: Public notice was mailed to the all neighborhood associations and affected property owners on March 31, 2016. The property was posted with a notice sign on April 7, 2016. The notice was published in the West Linn Tidings on April 7, 2016. The notice requirements of CDC Chapter 99 have been met. In addition, the application was posted on the City's website March 31, 2016.

EXECUTIVE SUMMARY

The applicant seeks approval of an application for Subdivision Preliminary Plat for the development of 34 residential lots (Chene Blanc Subdivision) on the 6.1 acre site. All lots will exceed 4,500 square feet in size per the underlying R-4.5 zone, with the smallest lot being 4,615 square feet and the largest being 11,705 square feet. The majority of lots exceed 6,000 square feet. The lots will be occupied by single family detached homes. *(The 34 lots represent the minimum allowed to be in compliance with the City's minimum density requirement of 70 percent of maximum density (see CDC 85.200(J) (7) and staff finding 39.)*

The properties to the south are also zoned R-4.5 and developed with single family homes. Two streets: Upper Midhill Drive and Hillside Drive stub into the subject property from the south and will provide access to this subdivision. These two streets are proposed to extend onto the site and connect with one another to provide access to the lots. Properties to the north, east and west are in the City of Lake Oswego and occupied by single family homes. There is no means of vehicular access to the site from Lake Oswego. The property is within the Robinwood Neighborhood Association boundary.

The site comprises a tree covered hillside that slopes down from west to east at a fairly constant 14 percent. The trees have been cataloged (number, type, size and condition) by an arborist and those findings have been reviewed by the City's Arborist. Trees considered significant by the City Arborist total 169. The applicant proposes to save 50 of the significant trees plus an additional 62 non-significant trees.

The applicant provided a Jurisdictional Wetland Delineation, by Schott and Associates, which examined two small isolated wetlands at the north portion of the site and a small drainage ditch located in Tract D which is off-site and located in the City of Lake Oswego. Tract D is owned by the Marylhurst Homeowner's Association. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and the City of Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) regarding the two wetlands and found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8).

GeoPacific Engineers conducted geologic and soil testing and analysis at the site. (See applicant's Technical Reports)

Transportation Engineers, Kittelson and Associates, have provided a Traffic Impact Analysis (TIA) with the scope of work including projected impacts at "build out" for nearby intersections including Arbor Drive and Marylhurst Drive. The Kittelson TIA was then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA. (See applicant's Technical Reports) Kittelson followed up the TIA with a subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" which was found acceptable by the City Engineer and DKS and consistent

with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures.

The applicable approval criteria include:

- Chapter 14, R-4.5, Single-Family Residential Attached and Detached/Duplex;
- Chapter 85, Land Division General Provisions;
- Chapter 32, Water Resource Area Permit

Public comments: As of the publication date of this report, staff had received written comments from 22 individuals in opposition to the application. The written comments may be found in Exhibit PC-5.

RECOMMENDATION

Staff recommends approval of application SUB-15-03/WAP-16-03, based on: 1) the findings submitted by the applicant, which are incorporated by this reference, 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval below. With these findings, the applicable approval criteria are met. The conditions are as follows:

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 L1 (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.** Prior to approval of the final plat, the applicant shall pay the cost of improvements for off-site traffic mitigation, as determined and approved by the City Engineer and ODOT, on Willamette Drive between Arbor Drive and Shady Hollow Way. (See Staff Finding No. 22 and 42.)

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. (See Staff Finding No. 37.)

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. (See Staff Findings No. 33 and 43)

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). (See Staff Finding No. 5)

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. (See Staff Finding No. 31)

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. (See Staff Finding No. 41)

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.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
March 25, 2016

**STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE CODE CRITERIA**

CHAPTER 14, SINGLE-FAMILY RESIDENTIAL ATTACHED AND DETACHED/DUPLEX, R-4.5

14.030 PERMITTED USES

The following are uses permitted outright in this zoning district:

1. *Single-family detached residential unit.*
2. *Duplex residential units.*
3. *Family day care.*
4. *Single-family attached residential units.*
5. *Community recreation.*
6. *Residential home.*
7. *Utilities, minor.*
8. *Manufactured housing.*
9. *Transportation facilities*

Staff Finding 1: The applicant's subdivision proposes to accommodate 34 single-family detached homes. Per CDC 14.030(1), single family detached homes are permitted outright in this zone. This criterion is met.

14.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

- A. *The minimum lot size shall be:*
 1. *For a single-family detached unit, 4,500 square feet.*
 2. *For each attached single-family unit, 4,000 square feet.*
 3. *For a duplex, 8,000 square feet or 4,000 square feet for each unit.*
 - B. *The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.*
 - C. *The average minimum lot width shall be 35 feet.*
- (....)

Staff Finding 2: All lots exceed 4,500 square feet. All lots have front lot line dimensions and average widths greater than the required 35 feet. The 20-foot wide shared private access drive for Lots 13-15 exceeds the minimum accessway width of 15 feet. These criteria are met.

The remaining criteria of 14.070 (E-J) are not applicable at this time since they only apply at the time of the construction of homes. At such time that building permits are applied for, the home plans will be reviewed by the Planning and Building Departments for compliance with these standards.

Regarding 14.090, Chapters 34: "Accessory Structures" and Chapter 35: "Temporary Structures" do not apply since no accessory or temporary structures are proposed. Chapters 38: "Additional Yard Area", Chapter 40: "Building Height", Chapter 41: "Structures on Steep Lots", and Chapter 42: "Clear Vision Areas" apply to structures and would only be applicable at such time that building permits are applied for. Chapter 44: "Fences" will only apply at such time that fences are proposed to be built. Chapter 46: "Parking" requires one off street parking space per home. This criteria will be met at such time that a building permit is applied for. Chapter 48: "Access" is addressed in Staff Findings No. 41-61. Chapter 52: "Signs" does not apply since no signs are proposed. Chapter 54: "Landscaping" does not apply to the development of detached single family residential development. Per Chapter 54.020(E) (1-3), landscaping requirements only apply to non-residential uses and all non-single family residential uses and are therefore not applicable.

II. CHAPTER 85, GENERAL PROVISIONS

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 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.*

(....)

Staff Finding 3: This subdivision's ROW dedications provide for a looping road between Upper Midhill and Hillside Drives. This road is necessary to provide direct access to the lots and to provide TVFR and other emergency access. (A non-looping road would yield a cul de sac design which would violate cul de sac standards of 85.200(A)(11) (b): "New cul-de-sacs and other closed-end streets ... shall not exceed 200 feet in length or serve more than 25 dwelling units" as well as compromise TVFR and other emergency access.) The street width of 24 feet is consistent with local street standards (see staff findings 4 and 5). Six foot wide sidewalks and planter strips are also proposed to meet the dimensional requirements of this chapter. This criterion is met.

There is no opportunity to extend or connect streets in this subdivision to streets in adjacent subdivisions to the north, west or east since all surrounding properties are fully built out. The exception is two tracts “B” and “D” next to lot 34 which are owned by the Marylhurst Place Homeowner’s Association and located in the City of Lake Oswego. Tract “B” is occupied by a storm water facility for the Lake Oswego subdivision. Tract “D” is occupied in part by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by other uses, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place.

2. *Right-of-way and roadway widths. In order to accommodate larger tree-lined boulevards and sidewalks, particularly in residential areas, the standard right-of-way widths for the different street classifications shall be within the range listed below. But instead of filling in the right-of-way with pavement, they shall accommodate the amenities (e.g., boulevards, street trees, sidewalks). The exact width of the right-of-way shall be determined by the City Engineer or the approval authority. The following ranges will apply:*

<i>Street Classification</i>	<i>Right of Way (from West Linn TSP)</i>
(....)	
Collector	48-72 feet
Local Street	48-56 feet
(....)	

Additional rights-of-way for slopes may be required. Sidewalks shall not be located outside of the right-of-way unless to accommodate significant natural features or trees.

Staff Finding 4: The interior street is classified as a local street. Local streets require a ROW width ranging from 48-56 feet. The proposed right of way width is 50 feet for the south section of Upper Midhill Drive. The width then transitions to a 48 foot until the portion of Hillside Drive along the west property line where the ROW width returns to 50 feet. These widths meet the required 48-56 foot dimension. The criteria is met.

3. *Street widths. Street widths shall depend upon which classification of street is proposed. The classifications and required cross sections are established in Chapter 8 of the adopted TSP.*
(...)

Staff Finding 5: The applicant proposes a curb to curb street width of 24 feet. This agrees with the minimum required width for a local street per the adopted Transportation System Plan (TSP). (Table 8-1 of the TSP requires two 12 foot wide travel lanes for local streets.) This street width will require that the applicant 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). See Condition of Approval 6. Therefore, the criteria is met.

4. *The decision-making body shall consider the City Engineer's recommendations on the desired right-of-way width, pavement width and street geometry of the various street types within the subdivision after consideration by the City Engineer of the following criteria:*

a. *The type of road as set forth in the Transportation Master Plan.*

(...)

Staff Finding 6: The City's Development Engineer has reviewed the proposal finds the proposed ROW and street widths to be consistent with the City standards, the TSP and this code. The criteria is met.

5. *Additionally, when determining appropriate street width, the decision-making body shall consider the following criteria:*

a. *When a local street is the only street serving a residential area and is expected to carry more than the normal local street traffic load, the designs with two travel and one parking lane are appropriate.*

b. *Streets intended to serve as signed but unstriped bike routes should have the travel lane widened by two feet.*

c. *Collectors should have two travel lanes and may accommodate some parking. Bike routes are appropriate.*

d. *Arterials should have two travel lanes. On-street parking is not allowed unless part of a Street Master Plan. Bike lanes are required as directed by the Parks Master Plan and Transportation Master Plan.*

Staff Finding 7: Hillside Drive and Upper Midhill Drive are local streets in that they exist only to provide local access to the 34 lots within this subdivision. The remaining criteria does not apply since these streets are not collectors or arterials nor are any bike lanes required. The criteria is met.

6. *Reserve strips. Reserve strips or street plugs controlling the access to streets are not permitted unless owned by the City.*

Staff Finding 8: No reserve strips are proposed so this criterion does not apply.

7. *Alignment. All streets other than local streets or cul-de-sacs, as far as practical, shall be in alignment with existing streets by continuations of the centerlines thereof. The staggering of street alignments resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the centerlines of streets having approximately the same direction and otherwise shall not be less than 100 feet.*

Staff Finding 9: Both Hillside Drive and Upper Midhill Drive extend the alignment of the existing sections of those respective streets. There are no "T" intersections. This criterion is met.

8. *Future extension of streets. Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, streets shall be extended to the boundary of the subdivision and the resulting dead-end streets may be approved without turnarounds. (Temporary turnarounds built to Fire Department standards are required when the dead-end street is over 100 feet long.)*

Staff Finding 10: There is no opportunity to extend or stub out streets from this subdivision since all surrounding properties are fully built out with no reasonable expectation of future connection. The exception is two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied in part by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by other uses, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place. This criterion is met.

9. *Intersection angles. Streets shall be laid out to intersect angles as near to right angles as practical, except where topography requires lesser angles, but in no case less than 60 degrees unless a special intersection design is approved. Intersections which are not at right angles shall have minimum corner radii of 15 feet along right-of-way lines which form acute angles. Right-of-way lines at intersections with arterial streets shall have minimum curb radii of not less than 35 feet. Other street intersections shall have curb radii of not less than 25 feet. All radii shall maintain a uniform width between the roadway and the right-of-way lines. The intersection of more than two streets at any one point will not be allowed unless no alternative design exists.*

Staff Finding 11: The only intersection within this subdivision is where Upper Midhill Drive which intersects Hillside Drive in the vicinity of Tract C. This is a right angle intersection. The criterion is met.

10. *Additional right-of-way for existing streets. Wherever existing street rights-of-way adjacent to or within a tract are of inadequate widths based upon the standards of this chapter, additional right-of-way shall be provided at the time of subdivision or partition.*

Staff Finding 12: Portions of Upper Midhill Drive and Hillside Drive (with different names) were platted in the 1923 Robinwood subdivision plat with ROW widths of 50 feet. Some of these ROWs will be extinguished through the platting of this subdivision. Portions of these ROW will be used to accommodate streets in this application plus a shared 16 foot wide private driveway to serve lots 13-15. For the remainder of the site, the applicant is providing new ROW ranging from 48-50 feet in width, which is consistent with City and TSP ROW standards. The criterion is met.

11. *Cul-de-sacs.*

a. *New cul-de-sacs and other closed-end streets (not including stub streets intended to be connected) on sites containing less than five acres, or sites accommodating uses other than residential or mixed use development, are not allowed unless the applicant demonstrates that there is no feasible alternative due to:*

1) *Physical constraints (e.g., existing development, the size or shape of the site, steep topography, or a fish bearing stream or wetland protected by Chapter 32 CDC), or (...)*

Staff Finding 13: There are no cul de sacs within this subdivision. The criteria does not apply. (Staff notes that lots 13-15 will be accessed from a portion of a public ROW using a shared private 16 foot wide driveway. This use of this driveway will be pursuant to Condition of Approval 5 which also prohibits lot 12 from accessing this driveway.)

12. *Street names. No street names shall be used which will duplicate or be confused with the names of existing streets within the City. Street names that involve difficult or unusual spellings are discouraged.*

Staff Finding 14: The applicant will use the names of existing streets that stub out to this property. This criterion is met.

13. *Grades and curves. Grades shall not exceed 8 percent on major or secondary arterials, 10 percent on collector streets, or 15 percent on any other street unless by variance. (...)*

Staff Finding 15: The interior streets are local streets with a maximum allowed grade of 15 percent. The grade is 15 percent for a 60 foot long section of Hillside Drive and another 30 foot long section of that street reaching 13.5 percent. Most of the street grades are between six and eight percent. The criterion is met.

14. *Access to local streets*

(...)

15. *Alleys*

(...)

Staff Finding 16: All lots have access to local streets with the exception of lots 13-15 which will access Upper Midhill Drive via a shared private 16 foot wide driveway. This use of this driveway will be pursuant to Condition of Approval 5. The criteria is met. There are no arterials or alleys within this subdivision. Therefore, this criteria does not apply.

16. *Sidewalks. Sidewalks shall be installed per CDC 92.010(H), Sidewalks. The residential sidewalk width is six feet plus planter strip...or to match existing sidewalks or right-of-way limitations.*

Staff Finding 17: The applicant proposes to install six-foot sidewalks along all sections of Upper Midhill and Hillside Drives. (See sheets 201 (cross section) and 210 (site plan).) In response to slope conditions and to minimize grading adjacent to an existing retaining wall, the west section of Hillside Drive adjacent to double frontage lots on Woodhurst Place will have sidewalks placed adjacent to the curb with the planter strips behind the sidewalk. The City Engineer approves this configuration. The criterion is met.

17. Planter strip. The planter strip is between the curb and sidewalk providing space for a grassed or landscaped area and street trees. The planter strip shall be at least 6 feet wide...or in response to right-of-way limitations.

Staff Finding 18: The applicant proposes to install six-foot planter strips along all sections of Upper Midhill and Hillside Drives. In response to slope conditions, and to minimize grading adjacent to an existing retaining wall, the west section of Hillside Drive adjacent to double frontage lots on Woodhurst Place will have sidewalks placed adjacent to the curb with the planter strips and street trees behind the sidewalk. (See sheets 201 (cross section) and 210 (site plan).) The City Engineer approves this configuration. The criterion is met.

18. Streets and roads shall be dedicated without any reservations or restrictions.

Staff Finding 19: The applicant proposes to dedicate the streets without any reservations or restrictions. The criterion is met.

19. All lots in a subdivision shall have access to a public street. Lots created by partition may have access to a public street via an access easement pursuant to the standards and limitations set forth for such accessways in Chapter 48 CDC.

Staff Finding 20: All lots have access to public streets with the exception of lots 13-15 which will access Upper Midhill Drive via a shared private 16 foot wide driveway. The criterion is met.

20. Gated Streets

(...)

21. Entryway treatments and street isle design

(...)

Staff Finding 21: The subdivision will not be gated. The applicant is not proposing any subdivision monument/entry treatment. These criteria are met.

22. Based upon the determination of the City Manager or the Manager's designee, the applicant shall construct or cause to be constructed, or contribute a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis

commissioned to address CDC 85.170(B)(2) that are required to mitigate impacts from the proposed subdivision. The proportionate share of the costs shall be determined by the City Manager or Manager's designee, who shall assume that the proposed subdivision provides improvements in rough proportion to identified impacts of the subdivision. Off-site transportation improvements will include bicycle and pedestrian improvements as identified in the adopted City of West Linn TSP.

Staff Finding 22: The applicant's Transportation Impact Analysis (TIA) was prepared by Kittelson and Associates. Those findings were then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA and the proposed mitigation measures. The City Engineer and DKS found Kittelson's TIA findings and their subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" to be acceptable and consistent with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures on Willamette Drive between Arbor Drive and Shady Hollow Way.

The criterion is met by condition of approval 3.

B. Blocks and lots.

1. General

(...)

2. Sizes

(...)

3. Lot size and shape

Staff Finding 23: Staff incorporates the applicant's findings regarding blocks. All lots meet and exceed the 4,500 square foot minimum lot size and dimensional standards of the underlying R-4.5 zone. (Lot sizes range from 4,615 to 11,705 square feet.) All lots are sized to reasonably accommodate a detached single family home. These criteria are met.

4. Access. Access to subdivisions, partitions, and lots shall conform to the provisions of Chapter 48 CDC, Access, Egress and Circulation.

Staff Finding 24: Please see staff findings 42-56 for discussion of the "Access" criteria. The criterion is met.

5. Double frontage lots and parcels.

(...)

6. Lot and parcel side lines

Staff Finding 25: There are no double frontage lots within this subdivision. (There are double frontage lots in the City of Lake Oswego between Woodhurst Place and Hillside Drive that are adjacent to this subdivision. They are not part of this application. Also, whereas lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15,

Condition of Approval 5 will prohibit it.) All lot lines generally run at right angles or perpendicular to the abutting ROW except for three lots on curves where the lot lines radiate from the curve. These criteria are met.

7. *Flag lots. Flag lots can be created where it can be shown that no other reasonable street access is possible to achieve the requested land division. A single flag lot shall have a minimum street frontage of 15 feet for its accessway. Where two to four flag lots share a common accessway, the minimum street frontage and accessway shall be eight feet in width per lot. Common accessways shall have mutual maintenance agreements and reciprocal access and utility easements. The following dimensional requirements shall apply to flag lots:*

a. *Setbacks applicable to the underlying zone shall apply to the flag lot.*

(...)

e. *As per CDC 48.030, the accessway shall have a minimum paved width of 12 feet.*

Staff Finding 26: There are no flag lots in the subdivision. This criteria does not apply.

8. *Large lots or parcels.*

Staff Finding 27: Staff finds that lots 23 (9,583 square feet) and 28 (11,705 square feet) are large enough to be partitioned in the future to create one additional lot each given that the minimum lot size is 4,500 square feet. Any further development would require a minor partition and review of that application in the context of CDC Chapter 85. This criterion is met.

C. *Pedestrian and bicycle trails.*

(...)

Staff Finding 28: The sidewalks along all lot frontages will provide the necessary pedestrian facilities while the interior street will allow for bike circulation.

There are no opportunities available for the development of connective trails to adjoining subdivisions. The exception are two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by another use and located on a steep 27 percent slope effectively removes the option of constructing a pedestrian or bike path from this subdivision to connect with Woodhurst Place.

The footpath connecting the Hillside Drive ROW with Woodhurst Place in the City of Lake Oswego near the southwest corner of this site has the potential to provide a useful pedestrian link. The path is off-site, owned by the City of Lake Oswego and therefore outside of the purview of this application.

*D. Transit Facilities.
(...)*

Staff Finding 29: There are no transit facilities or service in this area so this criteria does not apply.

E. Grading. Grading of building sites shall conform to the following standards unless physical conditions demonstrate the propriety of other standards:

1. All cuts and fills shall comply with the excavation and grading provisions of the Uniform Building Code and the following:

a. Cut slopes shall not exceed one and one-half feet horizontally to one foot vertically (i.e., 67 percent grade).

b. Fill slopes shall not exceed two feet horizontally to one foot vertically (i.e., 50 percent grade). Please see the following illustration.

2. The character of soil for fill and the characteristics of lot and parcels made usable by fill shall be suitable for the purpose intended.

3. If areas are to be graded (more than any four-foot cut or fill), compliance with CDC 85.170(C) is required.

4. The proposed grading shall be the minimum grading necessary to meet roadway standards, and to create appropriate building sites, considering maximum allowed driveway grades.

(....)

Staff Finding 30: The applicant's submittal included a stamped geotechnical report by GeoPacific. The City's Development Engineer has reviewed the applicant's plans (Sheet C230) and geotechnical report and finds the grading and fill plans meet the criteria.

The grading plan is the minimum necessary to meet the allowable/maximum local street grade of 15 percent and provide appropriate building sites. Fill placed on lots to facilitate home construction may be required to undergo further geotechnical review as directed by the City Building Official based on individual lot conditions.

The criteria is met.

F. Water.

1. A plan for domestic water supply lines or related water service facilities shall be prepared consistent with the adopted Comprehensive Water System Plan, plan update, March 1987, and subsequent superseding revisions or updates.

2. Adequate location and sizing of the water lines.

3. Adequate looping system of water lines to enhance water quality.

4. For all non-single-family developments, there shall be a demonstration of adequate fire flow to serve the site.

5. A written statement, signed by the City Engineer, that water service can be made available to the site by the construction of on-site and off-site improvements and that such water service

has sufficient volume and pressure to serve the proposed development's domestic, commercial, industrial, and fire flows.

Staff Finding 31: Water is available in Upper Midhill and Hillside Drives. These waterlines will be looped through the subdivision. The City Engineer has confirmed the water system has sufficient water volume and pressure to serve the subdivision (see Sheet C300). The applicant shall submit a fire flow test for review and approval by TVFR per Condition of Approval 7. The criteria are met.

G. Sewer.

- 1. A plan prepared by a licensed engineer shall show how the proposal is consistent with the Sanitary Sewer Master Plan (July 1989). Agreement with that plan must demonstrate how the sanitary sewer proposal will be accomplished and how it is gravity-efficient. The sewer system must be in the correct basin and should allow for full gravity service.*
- 2. Sanitary sewer information will include plan view of the sanitary sewer lines, including manhole locations and depth or invert elevations.*
- 3. Sanitary sewer lines shall be located in the public right-of-way, particularly the street, unless the applicant can demonstrate why the alternative location is necessary and meets accepted engineering standards.*
- 4. Sanitary sewer line should be at a depth that can facilitate connection with down-system properties in an efficient manner.*
- 5. The sanitary sewer line should be designed to minimize the amount of lineal feet in the system.*
- 6. The sanitary sewer line shall avoid disturbance of wetland and drainageways. In those cases where that is unavoidable, disturbance shall be mitigated pursuant to Chapter 32 CDC, Water Resource Area Protection, all trees replaced, and proper permits obtained. Dual sewer lines may be required so the drainageway is not disturbed.*
- 7. Sanitary sewer shall be extended or stubbed out to the next developable subdivision or a point in the street that allows for reasonable connection with adjacent or nearby properties.*
- 8. The sanitary sewer system shall be built pursuant to DEQ, City, and Tri-City Service District sewer standards. The design of the sewer system should be prepared by a licensed engineer, and the applicant must be able to demonstrate the ability to satisfy these submittal requirements or standards at the pre-construction phase.*
- 9. A written statement, signed by the City Engineer, that sanitary sewers with sufficient capacity to serve the proposed development and that adequate sewage treatment plant capacity is available to the City to serve the proposed development*

Staff Finding 32: The applicant proposes to install a sanitary sewer lines to service all lots within this subdivision (see Sheet C300). The system will be built to appropriate standards and the City Engineer has confirmed the sufficient capacity of the sanitary system and sewage treatment facility. These criteria are met.

I. Utility easements.

Subdivisions and partitions shall establish utility easements to accommodate the required service providers as determined by the City Engineer. The developer of the subdivision shall make accommodation for cable television wire in all utility trenches and easements so that cable can fully serve the subdivision.

Staff Finding 33: The applicant proposes to place all utilities within the public right of way or within appropriately dimensioned utility easements and tracts to serve the subdivision. Per Condition of Approval 5, the applicant shall provide the City of West Linn a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access, utilities and maintenance of the shared drive in perpetuity. This criterion is met.

J. Supplemental provisions.

- 1. Wetland and natural drainageways.*
- 2. Willamette and Tualatin Greenways.*

Staff Finding 34: There are two small non-stream fed wetlands on the north portion of the site totaling 3,920 square feet. The City required a wetland delineation, which was prepared by Schott and Associates and is included in the applicant's submittal. (See also the outlined wetlands at northwest portion of the site on sheet C100.) The wetland delineation was confirmed by the Oregon Department of State Lands (DSL) in a concurrence letter which is part of the record.

In order to satisfy the City's requirement for street connectivity and TVFR emergency access and meet the allowable street grades, Hillside Drive connects with Upper Midhill Drive in the vicinity of the wetlands. The associated grading means that the wetlands will be filled and mitigated for, consistent with Chapter 32: Water Resource Areas. (See staff findings 72-77.)

Schott and Associates also identified a small non-jurisdictional drainage ditch on the north edge of the property. The ditch is located in Tract D which is in Lake Oswego and owned by the Marylhurst Homeowner's Association. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) and found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8). (According to the City of Lake Oswego Planning Department, the ditch was removed from the 1-B list of their Sensitive Lands Map and is not designated for resource protection. This means that there is no buffer or other resource requirement for it. The ditch is not on the City of West Linn's WRA map.)

City of Lake Oswego Storm water maps show two City of Lake Oswego storm water catch basins feeding 12-inch storm lines in Tract D which are intended to collect discharge from the ditch.

The development of this subdivision will result in a reduction of cross property storm water flow since storm water runoff from all impervious surfaces (streets, sidewalks, roofs, driveways, patios, etc.) will be intercepted and directed to the storm water lines on the streets in front of the subdivision's homes. Storm water will then be directed to the detention/treatment facility and then to the main storm water line near lot 23.

The property is not within the Willamette or Tualatin Greenways.
The criteria is met.

3. *Street trees.*

Street trees are required as identified in the appropriate section of the municipal code and Chapter 54 CDC.

Staff Finding 35: Street trees shall be installed as required in the West Linn Public Works Standards (see Sheet L1). These criteria are met.

4. *Lighting.*

To reduce ambient light and glare, high or low pressure sodium light bulbs shall be required for all subdivision street or alley lights. The light shall be shielded so that the light is directed downwards rather than omni-directional.

Staff Finding 36: The applicant's Photometric Plan (Sheet C280) identifies LED street lights which will produce no off site illumination. This criterion is met.

5. *Dedications and exactions.*

The City may require an applicant to dedicate land and/or construct a public improvement that provides a benefit to property or persons outside the property that is the subject of the application when the exaction is roughly proportional. No exaction shall be imposed unless supported by a determination that the exaction is roughly proportional to the impact of development.

Staff Finding 37: The applicant will dedicate right of way (ROW) for internal streets. The applicant will be dedicating to the City Tract C, which is the storm water treatment and detention pond for this subdivision. Dedication to the City is appropriate since it will allow for unrestricted access by City of West Linn Public Works crews for the maintenance of the storm water facility. The dedication is declared in Condition of Approval 4. There are no other dedications proposed or requested. This criterion is met.

6. *Underground utilities.*

All utilities, such as electrical, telephone, and television cable, that may at times be above ground or overhead shall be buried underground in the case of new development.

Staff Finding 38: The applicant shall underground utilities to meet the West Linn Public Works Standards. This criterion is met.

7. *Density requirement.*

Density shall occur at 70 percent or more of the maximum density allowed by the underlying zoning. These provisions would not apply when density is transferred from Type I and II lands as defined in CDC 02.030. Development of Type I or II lands are exempt from these provisions. Land divisions of three lots or less would also be exempt.

Staff Finding 39: The R-4.5 zone permits a maximum density of 9.6 dwelling units per net acre. Net acre is defined as “The total gross acres less the public right-of-way (ROW) and other acreage deductions, as applicable”.

The gross site comprises 265,860 square feet. The ROW comprises 34,637 square feet. Type II lands are an applicable deduction. The two small wetlands in the north part of the site constitute Type II lands. The wetlands will be filled and mitigated for off-site. The larger wetland comprises 3,086 square feet. 2,344 square feet of this larger wetland falls within the proposed street ROW so it has already been deducted from the “developable net area”. The remaining 742 square feet plus the smaller 877 square foot wetland total 1,619 square feet. After deducting the 1,619 square feet and the ROW dedication from the gross site area, the net site area is 5.2 acres.

5.2 net acres yields a maximum of 49 dwellings/lots (9.6 dwellings/lots per acre X 5.2 acres). Applying the 70 percent density requirement means that the minimum number of dwellings/lots allowed in the subdivision is 34 (49 X .7).

The applicant is proposing 34 dwellings/lots which is the minimum number of lots allowed. The criteria is met.

8. *Mix requirement.*

The “mix” rule means that developers shall have no more than 15 percent of the R-2.1 and R-3 development as single-family residential. The intent is that the majority of the site shall be developed as medium high density multi-family housing.

Staff Finding 40: The property is not zoned R-2.1 or R-3 so these provisions do not apply. This criterion is met.

9. *Heritage trees/significant tree and tree cluster protection.*

All heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction. All non-heritage trees and clusters of trees (three or more trees with overlapping dripline; however, native oaks need not have an overlapping dripline) that are considered significant by virtue of their size, type, location, health, or numbers shall be saved pursuant to CDC 55.100(B)(2). Trees are defined per the municipal code as having a trunk six inches in diameter or 19 inches in circumference at a point five feet above the mean ground level at the base of the trunk.

Staff Finding 41: The site comprises no heritage trees. There are 169 significant trees on the site (see C110-C114). Of these trees, 50 will be retained with a canopy totaling 77,863 square feet which translates to 33 percent of the existing tree canopy. Many of the trees scheduled for retention are along the north and east edges of the site which will increase the buffering to the adjacent Lake Oswego neighborhood. This amount exceeds the maximum 20 percent retention requirement.

Nineteen significant trees with a total DBH of 434 inches are proposed for removal due to street construction and associated grading. The applicant is proposing to mitigate by planting street 434 inches of DBH of 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 per Condition of Approval 8.

This criterion is met.

III. CHAPTER 48, ACCESS CONTROL

48.025 ACCESS CONTROL

B. Access Control Standards

1. Traffic impact analysis requirements. The City or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also CDC 55.125, Traffic Impact Analysis.)

Staff Finding 42: A traffic impact analysis (TIA) was required since the criteria of 85.170(B) (2) are met. (Per the TIA, prepared by Kittelson and Associates, the projected Average Daily Trip count (ADT) of 389 trips exceeds the TIA threshold of 250 trips.) The TIA identified the existing and projected trip generations, trip distributions, turn movements plus levels of service and volume to capacity ratio of affected intersections. The study concluded with recommendations to address the projected impacts.

Those findings were then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA and the proposed mitigation measures. The City Engineer and DKS found Kittelson's TIA findings and their subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" to be acceptable and consistent with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures on Willamette Drive between Arbor Drive and Shady Hollow Way.

The criterion is met by Condition of Approval 3.

2. The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access

easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system. Access to and from off-street parking areas shall not permit backing onto a public street.

Staff Finding 43: Access to lots 13-15 will be consolidated in a shared 16 foot wide private driveway. The City will require a reciprocal access easement, per Condition of Approval 5, for this driveway. Whereas lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15, Condition of Approval 5 will prohibit it. The criterion is met by condition.

3. Access options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods (planned access shall be consistent with adopted public works standards and TSP). These methods are "options" to the developer/subdivider.

a) Option 1. Access is from an existing or proposed alley or mid-block lane. If a property has access to an alley or lane, direct access to a public street is not permitted.

b) Option 2. Access is from a private street or driveway connected to an adjoining property that has direct access to a public street (i.e., "shared driveway"). A public access easement covering the driveway shall be recorded in this case to assure access to the closest public street for all users of the private street/drive.

c) Option 3. Access is from a public street adjacent to the development lot or parcel. If practicable, the owner/developer may be required to close or consolidate an existing access point as a condition of approving a new access. Street accesses shall comply with the access spacing standards in subsection (B) (6) of this section.

Staff Finding 44: The applicant proposes access to the majority of lots via Option 3 (above) which is access from a public street. The exception would be lots 13-15 which will be accessed via a "shared driveway" (Option 2). An access easement covering the shared driveway shall be recorded to ensure access to the public street for all users of the shared driveway per Condition of Approval 5. These criteria are met.

4. Subdivisions fronting onto an arterial street.

(...)

5. Double-frontage lots.

(...)

Staff Finding 45: This subdivision does not front on an arterial. There are no double frontage lots proposed within this subdivision; however lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15. Condition of Approval 5 will prohibit lot 12 from accessing that driveway.) These criteria do not apply.

6. Access spacing.

- a. *The access spacing standards found in Chapter 8 of the adopted Transportation System Plan (TSP) shall be applicable to all newly established public street intersections and non-traversable medians.*
- b. *Private drives and other access ways are subject to the requirements of CDC 48.060.*

Staff Finding 46: The proposal does not create any new intersections or non-traversable intersections. Access to all lots will be via a continuous local street (Hillside/Upper Midhill Street) with no intersecting streets. These criteria are met.

7. *Number of access points.*
8. *Shared driveways.*

Staff Finding 47: Staff incorporates applicant findings and references Staff Finding No. 44. These criteria are met.

- C. *Street connectivity and formation of blocks required.*
In order to promote efficient vehicular and pedestrian circulation throughout the City, land divisions and large site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:
 1. *Block length and perimeter.*
The maximum block length shall not exceed 800 feet or 1,800 feet along an arterial.

Staff Finding 48: Staff finds that no block length exceeds 800 feet. Hillside Drive connects to Hillside Drive less than 800 feet from where it turns 90 degrees to connect with Upper Midhill Drive. Upper Midhill Drive connects to College View Drive less than 800 feet from where it turns 90 degrees to connect with Hillside Drive.

There is no opportunity to connect streets from this subdivision to streets within adjacent subdivisions to the north, west or east since all surrounding properties are fully built out. The exception is two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by another use, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place.

This criterion is met.

2. *Street standards. Public and private streets shall also conform to Chapter 92 CDC, Required Improvements, and to any other applicable sections of the West Linn Community Development Code and approved TSP.*

Staff Finding 49: All street designs and improvements shall be consistent with the provisions of CDC Chapters 92 and 85, and the West Linn Transportation System Plan (see Findings 3-7). This criterion is met.

48.030 MINIMUM VEHICULAR REQUIREMENTS FOR RESIDENTIAL USES

A. Direct individual access from single-family dwellings and duplex lots to an arterial street (...)

B. When any portion of any house is less than 150 feet from the adjacent right-of-way, access to the home is as follows:

- 1. One single-family residence, including residences with an accessory dwelling unit as defined in CDC 02.030, shall provide 10 feet of unobstructed horizontal clearance. Dual-track or other driveway designs that minimize the total area of impervious driveway surface are encouraged.*
- 2. Two to four single-family residential homes equals a 14- to 20-foot-wide paved or all-weather surface. Width shall depend upon adequacy of line of sight and number of homes.*

Staff Finding 50: No lots access arterials. All lots will have direct access to a public street with the exception of lots 13-15 which will access Upper Midhill Drive via a shared 16 foot wide private driveway dimensioned to meet the standards of this chapter. These criteria are met.

3. Maximum driveway grade shall be 15 percent. The 15 percent shall be measured along the centerline of the driveway only. Variations require approval of a Class II variance by the Planning Commission pursuant to Chapter 75 CDC. Regardless, the last 18 feet in front of the garage shall be under 12 percent grade as measured along the centerline of the driveway only. Grades elsewhere along the driveway shall not apply.

4. The driveway shall include a minimum of 20 feet in length between the garage door and the back of sidewalk, or, if no sidewalk is proposed, to the paved portion of the right-of-way.

C. When any portion of one or more homes is more than 150 feet from the adjacent right-of-way, the provisions of subsection B of this section shall apply in addition to the following provisions.

- 1. A turnaround may be required as prescribed by the Fire Chief.*
- 2. Minimum vertical clearance for the driveway shall be 13 feet, six inches.*
- 3. A minimum centerline turning radius of 45 feet is required unless waived by the Fire Chief.*
- 4. There shall be sufficient horizontal clearance on either side of the driveway so that the total horizontal clearance is 20 feet*

Staff Finding 51: The applicant proposes a shared private 16 foot wide driveway for Lots 13-15. Homes built on those lots will be less than 150 feet from the public ROW per TVFR standards. The access drive will have a 20 foot wide all weather surface with no vertical impediments. These criteria are met.

D. Access to five or more single-family homes shall be by a street built to full construction code standards. All streets shall be public. This full street provision may only be waived by variance.

Staff Finding 52: All access will be via streets built to City construction code standards with the exception of lots 13-15 which will access via a shared driveway built to meet Chapter 48 standards and TVFR requirements. This criterion is met.

E. Access and/or service drives for multi-family dwellings shall be fully improved with hard surface pavement:

- 1. With a minimum of 24-foot width when accommodating two-way traffic; or*
 - 2. With a minimum of 15-foot width when accommodating one-way traffic. Horizontal clearance shall be two and one-half feet wide on either side of the driveway.*
 - 3. Minimum vertical clearance of 13 feet, six inches.*
 - 4. Appropriate turnaround facilities per Fire Chief's standards for emergency vehicles when the drive is over 150 feet long. Fire Department turnaround areas shall not exceed seven percent grade unless waived by the Fire Chief.*
 - 5. The grade shall not exceed 10 percent on average, with a maximum of 15 percent.*
 - 6. A minimum centerline turning radius of 45 feet for the curve.*
- F. Where on-site maneuvering and/or access drives are necessary to accommodate required parking, in no case shall said maneuvering and/or access drives be less than that required in Chapters 46 and 48 CDC.*
- G. The number of driveways or curb cuts shall be minimized on arterials or collectors. Consolidation or joint use of existing driveways shall be required when feasible.*
- H. In order to facilitate through traffic and improve neighborhood connections, it may be necessary to construct a public street through a multi-family site.*
- I. Gated accessways to residential development other than a single-family home are prohibited.*

Staff Finding 53: The provisions of 48.030(E) do not apply since this is not a multi-family project. The provisions of 48.030(F) do not apply since no multi-family or non-residential on-site maneuvering or on site drives are proposed. The provisions of 48.030(G) do not apply since there are no arterials or collectors within the project site. The provisions of 48.030(H) do not apply since this is not a multi-family project. The provisions of 48.030(I) do not apply since no gated accessway is proposed and this is a single family residential development. All access will be via streets built to City construction code standards with the exception of lots 13-15 which will access via a shared driveway built to meet Chapter 48 standards and TVFR requirements. This criterion is met.

48.060 WIDTH AND LOCATION OF CURB CUTS AND ACCESS SEPARATION REQUIREMENTS

- A. Minimum curb cut width shall be 16 feet.*
- B. Maximum curb cut width shall be 36 feet, except along Highway 43 in which case the maximum curb cut shall be 40 feet. For emergency service providers, including fire stations, the maximum shall be 50 feet.*

C. *No curb cuts shall be allowed any closer to an intersecting street right-of-way line than the following:*

1. *On an arterial when intersected by another arterial, 150 feet.*

(...)

6. *On a local street when intersecting any other street, 35 feet.*

D. *There shall be a minimum distance between any two adjacent curb cuts on the same side of a public street, except for one-way entrances and exits, as follows:*

1. *On an arterial street, 150 feet.*

2. *On a collector street, 75 feet.*

3. *Between any two curb cuts on the same lot or parcel on a local street, 30 feet.*

E. *A rolled curb may be installed in lieu of curb cuts and access separation requirements.*

F. *Curb cuts shall be kept to the minimum, particularly on Highway 43. Consolidation of driveways is preferred. The standard on Highway 43 is one curb cut per business if consolidation of driveways is not possible.*

Staff Finding 54: All curb cuts will be reviewed at the time of building permit applications and shall be required to comply with these setbacks and standards. (Given the frontage of the proposed lots and the minimum separation requirements for curb cuts on one lot ((D) (3) above), only one curb cut per lot is expected.) No rolled curbs are proposed. These criteria are met.

G. *Adequate line of sight pursuant to engineering standards should be afforded at each driveway or accessway.*

Staff Finding 55: All curb cuts will be reviewed at the time of building permit applications and shall be required to comply with the clear vision area standards of CDC Chapter 42. This criterion is met.

48.070 PLANNING DIRECTOR'S AUTHORITY TO RESTRICT ACCESS APPEAL PROVISIONS

(...)

48.080 BICYCLE AND PEDESTRIAN CIRCULATION

(...)

Staff Finding 56: Bicycle and pedestrian circulation is provided for by the interior street and adjacent sidewalks. These criteria are met.

IV. CHAPTER 55, DESIGN REVIEW

55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW

- B. *Relationship to the natural and physical environment.*
 - 1. *The buildings and other site elements (...)*
 - 2. *All heritage trees (...)*
 - a. *Non-residential and residential projects on Type I and II lands (...)*

Staff Finding 57: Staff incorporates applicant findings. The City Arborist finds that there are no heritage trees at the site. The wetlands are Type II lands (the only on-site Type I or II land) and are addressed in staff findings 67-72. These criteria are met.

b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B) (2) (c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.

Staff Finding 58: There are a total of 169 trees identified as significant on this site. The significant tree canopy area on site totals 238,212 square feet or 5.4 acres. Of these trees, 50 significant trees will be retained through the site development and homebuilding process. A total of 77,863 square feet of significant canopy will be retained or 1.7 acres (see Sheets C110-C114). The proposed retention represents 33 percent of the site’s existing canopy which exceeds the required retention of up to 20 percent. In addition to the trees determined to be significant, 62 additional non-significant trees have been proposed for retention.

The value of the proposed tree retention is increased by the fact that many of the trees are on the north and east perimeter of the development site which should provide buffering and screening to the neighboring homes.

There are no heritage trees. This tree inventory has been reviewed and affirmed by the City Arborist.

There are no trees on Type I or II lands. (The only Type I or II lands comprise the two small wetlands in the north part of the site. The wetlands will be filled in as part of the WRA application and subsequently mitigated off-site.)

This criterion is met.

c. Where stubouts of streets occur on abutting properties, and the extension of those streets will mean the loss of significant trees, tree clusters, or heritage trees, it is understood that tree loss may be inevitable. In these cases, the objective shall be to minimize tree loss. These provisions shall also apply in those cases where access, per construction code standards, to a lot or parcel is blocked by a row or screen of significant trees or tree clusters.

Staff Finding 59: No street stubouts occur on abutting properties. This criterion does not apply.

d. For both non-residential and residential development, the layout shall achieve at least 70 percent of maximum density for the developable net area. The developable net area excludes all Type I and II lands and up to 20 percent of the remainder of the site for the purpose of protection of stands or clusters of trees as defined in subsection (B)(2) of this section.

Staff Finding 60: The R-4.5 zone permits a maximum density of 9.6 dwelling units per net acre. Net acre is defined as “The total gross acres less the public right-of-way (ROW) and other acreage deductions, as applicable”.

The gross site comprises 265,860 square feet. The ROW comprises 34,637 square feet. Type II lands are an applicable deduction. The two small wetlands in the north part of the site constitute Type II lands. The wetlands will be filled and mitigated for off-site. The larger wetland comprises 3,086 square feet. 2,344 square feet of this larger wetland falls within the proposed street ROW so it has already been deducted from the “developable net area”. The remaining 742 square feet plus the smaller 877 square foot wetland total 1,619 square feet. After deducting the 1,619 square feet and the ROW dedication from the gross site area, the net site area is 5.2 acres.

The R-4.5 zone allows 9.6 dwellings/lots per acre. That translates to a maximum of 49 dwellings/lots (9.6 dwellings/lots per acre X 5.2 acres). Applying the 70 percent density requirement means that the minimum number of dwellings/lots allowed in the subdivision is 34 (49 X .7).

The applicant is proposing 34 dwellings/lots which is the minimum number of lots allowed. The criteria is met.

Staff finds that the applicant has set aside of 33 percent of the significant tree canopy, which exceeds the required 20 percent. The value of the proposed tree retention is increased by the fact that many of the trees are on the north and east perimeter of the development site

which should provide buffering and screening to the neighboring homes. This criterion is met.

e. For arterial and collector street projects, including Oregon Department of Transportation street improvements, the roads and graded areas shall avoid tree clusters where possible. Significant trees, tree clusters, and heritage tree loss may occur, however, but shall be minimized.

Staff Finding 61: There are no arterials or collectors within this project area; therefore the criteria does not apply.

f. If the protection of significant tree(s) or tree clusters is to occur in an area of grading that is necessary for the development of street grades, per City construction codes, which will result in an adjustment in the grade of over or under two feet, which will then threaten the health of the tree(s), the applicant will submit evidence to the Planning Director that all reasonable alternative grading plans have been considered and cannot work. The applicant will then submit a mitigation plan to the City Arborist to compensate for the removal of the tree(s) on an "inch by inch" basis (e.g., a 48-inch Douglas fir could be replaced by 12 trees, each four-inch). The mix of tree sizes and types shall be approved by the City Arborist.

Staff Finding 62: The interior street alignment was determined by a combination of existing ROW, the need to loop and connect Upper Midhill Drive and Hillside Drive for circulation, lot access and TVFR emergency access and the need to keep the interior road grade under 15 percent. As a result of the alignment and associated grading, the applicant will mitigate for the removal of 434 inches of DBH by planting "on an inch by inch basis" 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. This criterion is met by Condition of Approval 8.

V. CHAPTER 92, REQUIRED IMPROVEMENTS

92.010 PUBLIC IMPROVEMENTS FOR ALL DEVELOPMENT

The following improvements shall be installed at the expense of the developer and meet all City codes and standards:

- A. Streets within subdivisions.*
- B. Extension of streets to subdivisions*
- C. Local and minor collector streets*
- D. Monuments*

Staff Finding 63: The applicant shall install improvements to meet the West Linn Public Works Standards. These criteria are met.

E. Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no

adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements

Staff Finding 64: The applicant has submitted a Preliminary Storm Water Report that complies with City of West Linn Public Works Standards. The applicant shall install improvements to meet the Standards, including the proposed storm water facility.

Staff notes that there is a ditch, in Tract D which is owned by the Marylhurst Place Homeowners Association and within the City of Lake Oswego. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) which declared, after a site visit, that the drainage ditch is a “non-jurisdictional drainage ditch” and exempt per OAR 141-085-0515 (8).

City of Lake Oswego Storm water maps show two City of Lake Oswego storm water catch basins feeding 12-inch storm lines in Tract D which are intended to collect discharge from the ditch.

The development of this subdivision will result in a reduction of cross property storm water flow since storm water runoff from all impervious surfaces (streets, sidewalks, roofs, driveways, patios, etc.) will be intercepted and directed to the storm water lines on the streets in front of the subdivision’s homes. Storm water will then be directed to the detention/treatment facility and then to the main storm water line near lot 23. This criterion is met.

F. Sanitary sewers

(...)

Q. Joint mailbox facilities

Staff Finding 65: The applicant shall comply with the requirements and install improvements to meet the West Linn Public Works Standards. These criteria are met.

92.030 IMPROVEMENT PROCEDURES

(...)

Staff Finding 66: The applicant shall comply with the requirements and install improvements to meet the West Linn Public Works Standards. These criteria are met.

WATER RESOURCE AREA

32.060 APPROVAL CRITERIA

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

- A. WRA protection/minimizing impacts.
 - 1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
 - 2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

Staff Finding 67: The applicant's wetland consultant, Schott and Associates, inventoried and delineated the two small wetlands in the north portion of the site comprising 877 square feet and 3,086 square feet for a combined area of 3,963 square feet or .09 acres. (See also the outlined wetlands at northwest portion of the site on sheet C100.) The delineation received a letter of concurrence (December 7, 2015) from Oregon Department of State Land (DSL).

The applicant is proposing to fill the wetlands and mitigate off-site through the purchase of DSL mitigation credits, which is allowed by 32.090(C) (3). Review of alternatives determined that filling the wetlands is necessary to accommodate grading for the alignment of the looping street since it (a) follows the existing plat ROW, (b) provides access to all lots, (c) avoids an illegal non-connective cul de sac design, (d) achieves street grades of 15 percent or less; and (e) provides TVFR and other emergency responders with access to the subdivision. The criteria is met.

Schott and Associates inventoried the small drainage ditch along the north property line, primarily in Tract D, owned by the Marylhurst Homeowners Association and located in Lake Oswego. The ditch intrudes onto the northeast corner of the project site for approximately 120 feet before returning to Tract D and Lake Oswego.

Schott and Associates determined there were no wetlands associated with it. DSL's concurrence letter found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8). According to the City of Lake Oswego Planning Department, the ditch was removed from the 1-B list of their Sensitive Lands Map and is not designated for resource protection: there is no buffer or other resource requirement for it. The ditch is not on the City of West Linn's WRA inventory.

- B. Storm water and storm water facilities.
 - 1. Proposed developments shall be designed to maintain the existing WRAs (...)

Staff Finding 68: The applicant has inventoried and delineated the two isolated wetlands and is proposing to fill them and mitigate off-site for the reasons outlined in Staff Finding No.67. Even if the wetlands were not removed, they are not associated with a stream so there is no opportunity to use the wetlands for storm water discharge. Storm water will instead be

intercepted from all impervious surfaces and directed into an approved storm water facility. The criteria is met.

C. Dedications and easements. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement. Nothing in this section shall prohibit the City from condemning property if:

1. The property is necessary to serve an important public purpose; and
2. Alternative means of obtaining the property are unsuccessful.

Staff Finding 69: The applicant has inventoried and delineated the wetlands and is proposing to fill them in and mitigate off-site. There are no easements or dedications proposed. The criteria is met.

D. WRA width. Except for the exemptions in CDC 32.040, applications that are using the alternate review process of CDC 32.070, or as authorized by the approval authority consistent with the provisions of this chapter, all development is prohibited in the WRA as established in Table 32-2 below: (...)

Staff Finding 70: The applicant has inventoried and delineated the wetland and is proposing to fill them in and mitigate off-site. Consequently, no WRA transitions or setbacks are required. The criteria is met.

E. Roads, driveways and utilities.

1. New roads, driveways, or utilities shall avoid WRAs unless the applicant demonstrates that no other practical alternative exists. In that case, road design and construction techniques shall minimize impacts and disturbance to the WRA by the following methods (...)

Staff Finding 71: Filling the two small wetlands is necessary to accommodate the alignment of the looping street since it (a) follows the existing plat ROW, (b) provides access to all lots, (c) avoids an illegal non-connective cul de sac design, (d) achieve street grades of 15 percent or less, and (e) provides TVFR and other emergency responders with access. After filling the wetlands, the applicant will mitigate off-site through the purchase of DSL mitigation credits. The criteria is met.

F. Passive recreation. (...)

G. Daylighting Piped Streams (...)

H. The following habitat friendly development practices shall be incorporated into the design of any improvements or projects in the WRA to the degree possible (...)

Staff Finding 72: There are no proposals for passive recreation facilities at this site. There are no existing piped streams on this property. This criteria is not applicable.