Exhibit 6 to Resolution No. 6009-26
Supplemental Findings (November 9, 2026)

The City Council adopts the following Supplemental Findings to address certain matters raised on appeal and during the Council's de novo review.

Collectively, the "Findings" detailing the Application's compliance with all applicable criteria include:

- Architectural Review Decision – Lam Research TUB – Building B Addition (AR 26-0002), June 17, 2026 (Exhibit 1 to Resolution No. 6009-26) (the "**Staff Approval**")
- Supplemental Staff Memorandum – Architectural Review (AR) for Lam Research Corporation, located at 11259 SW Leveton Drive, Tax Lot 2S122AA00500, in the Manufacturing Park (MP Zone), September 14, 2026 (Exhibit 2 to Resolution No. 6009-26)
- City of Tualatin Staff Presentation – Request for Review: Lam Research – Building "B" Addition (AR26-0002), September 14, 2026 (Exhibit 3 to Resolution No. 6009-26)
- Supplemental Staff Memorandum- Written Comments Received During Open Record Period- Architectural Review (AR) for Lam Research Corporation, located at 11259 SW Leveton Drive, Tax Lot 2S122AA00500, in the Manufacturing Park (MP) Zone (October 12, 2026)(Exhibit 4 to Resolution No. 6009-26)
- Tux Findings attached as Exhibit 3 to Resolution No. 5937-25, Approving AR24-0002, dated December 8, 2025 (Exhibit 7 to Resolution No. 6009-26) (the "**Tux Findings**")
- These Supplemental Findings (Exhibit 6 to Resolution No. 6009-26) (the "**Supplemental Findings**")

I. APPEAL SUMMARY

On June 17, 2026 City staff issued an approval of the Type II Application prepared by Mackenzie, dated March 24, 2026 (the "**Application**") in AR26-0002 ("**Staff Approval**") for Type II Architectural Review ("**Architectural Review**" or "**AR**") of Lam Research Corporation's ("**Lam**" or "**Applicant**") TUB Building B Addition project (the "**Project**" or "**Building B Addition**"). The Staff Approval found that the Project meets the AR approval criteria specified in Tualatin Development Code ("**TDC**" or "**Code**"). On June 30, 2026, Brett Hamilton and Deborah Anderson (collectively, "**Appellant**") appealed the Staff Approval (the "**Appeal**").

On September 14, 2026, the Tualatin City Council ("**City Council**" or "**Council**") conducted a de novo public hearing to consider the Appeal and AR for the Project. In response to a request from the community at that hearing, Council closed the public hearing but left the record open. In accordance with ORS 197.797, the first open record period was 7 days (to September 21), the second record period was limited to responsive evidence and testimony (to September 28), and

the Applicant was allowed 7 days for final argument (to October 5, 2026). On October 12, 2026, City Council held a public meeting to deliberate and voted unanimously to deny the Appeal and approve AR for the Project (the "**Decision**"), for the reasons explained in the Findings.

Broadly, the Appeal raised issues with respect to the City's compliance with procedural requirements; the existing facility's, the Tux Project's and Project's compliance with noise limitations in Tualatin Municipal Code ("**TMC**"), Chapter 6-14 ("**Noise Ordinance**") and other Noise Standards; and the existing facility's and Project's use, generation, and management of hazardous materials and hazardous waste, including related questions about offsite emergency response planning (collectively, the "**Hazardous Materials Issues**," as defined in Section III below, and detailed in Section IV.E). Based upon Council's interpretation of the TDC and TMC and evidence in the whole record, the City Council denied the Appeal and approved the AR. The Council determined that:

- Participants have not alleged any procedural errors demonstrating prejudice to participants' substantial rights;
- The Noise Ordinance and TDC Chapter 63 are performance standards, so compliance is determined once a use approved by the Project is operational; they are not mandatory approval standards for AR approval;
- Lam is not operating or proposing to operate a hazardous waste treatment, storage, or disposal facility, and TDC 63.058 does not provide a basis for denying the Project;
- The purpose statements in TDC 33.020(1)(i) and TDC 62.100 are aspirational and do not establish independent, freestanding AR approval criteria; and
- The Project demonstrates compliance with all applicable mandatory approval standards.

The Supplemental Findings were prepared by the Applicant, who was the prevailing party in this Decision, and the "proponent" for the Project. Council adopts the Supplemental Findings as its own. This practice is commonplace, is supported by case law[1] and contemplated and authorized

[1] See, for example, *Rawson v. Hood River County*, 77 Or LUBA 571 (2018), which explains:

> Since *Sunnyside Neighborhood* [*v. Clackamas Co. Comm*., 280 Or 3, 20-21, 569 P2d 1063 (1977)], it has become common practice in this state for local governments to close the evidentiary record at the conclusion of the evidentiary phase of quasi-judicial land use proceeding and render a tentative oral decision. Local governments then commonly request proposed findings from the prevailing party or from planning staff. And finally, at a final hearing for adopting a final decision, the local government adopts the written decision and findings prepared by the prevailing party or planning staff, with or without modifications.
>
> While many of the findings of fact and the findings setting out a local government's final decision reasoning may therefore be supplied by the prevailing party or planning staff, the local government has all those findings before it when it acts to adopt its final written decision and can either embrace all those findings and adopt them as its own or have them removed and replaced with findings that the local government agree with. This process, or some variation on it, occurs in most quasi-judicial land use decisions. And we have explained on numerous occasions that it is the final written decision that is subject to LUBA review, not the oral statements that individual decision makers may make during the local

by the City Council's own rules. Council's rules expressly allow Council to "incorporate findings proposed by the proponent, the opponent, or staff in its decision." City Council Rule 4B(6). Council rejects all challenges that Council has erred in adopting the Supplemental Findings as its own, and were drafted by the Applicant.

The Tux Findings explained that the supplemental findings in that case that were published in advance of adoption included findings in the alternative, and then explained:

> "Some community members were concerned that some of the alternative Supplemental Findings may somehow impact the City's evaluation of potential Noise Ordinance violations. While Council disagrees with that concern, and that alternative Supplemental Findings were authorized in direct response to Noise Standards issues repeatedly raised by Appellant, Council desires to avoid any misconceptions about the independence of Noise Ordinance enforcement. Accordingly, Council has decided to not include in these Supplemental Findings some of the alternative findings related to Noise Standards. However, should this Decision be appealed, Council anticipates voluntarily withdrawing this Decision for reconsideration so that the alternative Noise Standards Supplemental Findings may be adopted in support of the Decision."
>
> Tux Findings, page 2.

Council adopts that same approach with this Appeal. As in the Tux Findings proceeding, the Appeal, testimony and evidence submitted in this proceeding repeatedly raised Noise Standards issues, and Council's primary conclusion, that the Noise Ordinance and the other Environmental Regulations in TDC Chapter 63 are performance standards rather than mandatory Architectural Review approval criteria, independently resolves those issues without regard to whether compliance is in fact achieved or feasible.

For the same reasons explained in the Tux Findings passage quoted above, Council is concerned that publishing alternative findings on the feasibility of compliance with the Noise Standards could create a misimpression that the City's enforcement of the Noise Ordinance is in some way constrained, conditioned, or predetermined by these Supplemental Findings, when in fact Code Compliance retains full and independent authority to enforce the Noise Ordinance based on actual operating conditions once the Project is constructed and operational. Accordingly, Council has decided to not include in these Supplemental Findings the alternative findings related to the Noise Standards, including the alternative findings addressing the credibility and weight of the competing acoustical evidence and the feasibility of compliance with the Noise Standards. This section and Sections IV.B.v and IV.B.vi below accordingly remain as placeholders, using the same placeholder language as was used in the Tux Findings. However, should this Decision be appealed, Council anticipates voluntarily withdrawing this Decision for reconsideration so that

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proceedings. *Lowery v. City of Portland*, 68 Or LUBA 339, 359 (2013); *Hale v. City of Beaverton*, 21 Or LUBA 249, 258 (1991); *McCoy v. Linn County*, 16 Or LUBA 295, 306 (1987); *Citadel Corporation v. Tillamook County*, 9 Or LUBA 401, 404 (1983).

the alternative Noise Standards findings may be adopted in support of the Decision, consistent with the approach taken in the Tux Findings.

II. PROJECT BACKGROUND

The Project approved by the Decision includes: construction of a 3,900 square foot addition to the existing Building B located at 11259 SW Leveton Drive. The proposed addition will be on the north side of Building B, along with an enclosed scrubber pad on the east side of the proposed building addition. The lot where construction will take place is 15.75 acres, located in the Manufacturing Park ("**MP**") zone.

The Project will not generate any new vehicle or truck trips on surrounding streets because the new building area will be used by current Lam employees and served by existing truck traffic. No testimony or evidence disputes this conclusion. The Project simply provides more space for Lam's ongoing activities within Building B.

The difference in scale in this Project and the "**Tux Project**" approved by AR24-0002 (Resolution No. 5937-25) (the "**Tux Approval**") is significant. The Tux Project involved a substantial expansion of Lam's research campus. Despite this difference in scale, the Project drew significant opposition substantially similar in content and origin to the opposition raised in the Tux Project, including from the same Appellant and several of the same participants. Council finds this relevant context for evaluating the credibility and weight of testimony that repeats, without new factual support, positions already considered and rejected in the Tux Approval.

This Project has been the subject of robust public participation at every stage. Community members participated in the March 24, 2026 Neighborhood Developer Meeting. Sixty-one written comments were submitted within the 14-day public comment period prior to Staff Approval. Members of the public submitted myriad public comments on the Project and testified at the de novo City Council hearing on September 14, 2026 where the Appeal was considered, and during the open record and responsive record period following the public hearing.

III. GENERALLY APPLICABLE FINDINGS[2]

In this Decision, the City Council is required to interpret and apply the TDC and TMC. From the outset, Council notes the Decision is for *Architectural* Review, an approval which has a very limited scope and purpose: it primarily evaluates the exterior appearance and design quality of proposed development, with criteria that address design standards for buildings, parking areas, and landscaping. The design-oriented nature of AR is why the body that initially reviews Type III AR applications, the Architectural Review Board, is the only City board or commission whose

[2] The findings in this Supplemental Findings Section III are intended to apply to all issues raised, and while Council attempts to specifically reference and incorporate Section III, even in the absence of an express incorporation in a particular subsection of Findings, these Supplemental Findings Section III are herein incorporated by reference throughout the Findings.

membership requires professional registration, such as Registered Architect, Registered Landscape Architect or Engineer.

Architectural Review for this Project requires findings of consistency with the applicable standards and objectives at TDC Chapter 73A through 73G. TDC 33.020(5)(d). The limited scope of Architectural Review matters because many of the issues raised in opposition to the Project are not relevant to the Architectural Review criteria. Evaluating the relevance of an argument typically depends on how City Council interprets the TDC and TMC. The City Council is aware of, and takes seriously, the broad discretion the City has to interpret and apply its own code, and the deference given to City Council's interpretation, particularly where, as here, no state statutes or regulations are involved. LUBA must affirm the City's interpretation of its own land use regulations unless LUBA determines that the City's interpretation is "inconsistent with the express language" of the regulation, the purpose of the regulation, the underlying policy that provides the basis for the regulation, or is contrary to a state statute, land use goal, or rule that the regulation implements. ORS 197.829(1). Whether the City's interpretation is inconsistent with the express language of a comp plan or land use regulation turns on whether the City's interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010).

In this generally applicable Section III, which applies to all issues raised, Council explains: (A) how it interprets the TDC and TMC to distinguish standards and identify the applicable approval criteria; (B) the limits on Council's authority to impose conditions of approval through Architectural Review; and (C) how Council considered and compared competing testimony and evidence to reach conclusions about relative credibility, resulting in the substantial evidence on which City Council relies.

Supplemental Findings Section IV below addresses specific issues raised on appeal, including interpretations of specific criteria and conclusions about whether they are mandatory approval criteria, whether they must be addressed through discretionary review, and whether they support a condition of approval. These Findings are all incorporated herein by reference. Where these Supplemental Findings incorporate the Tux Findings' interpretation of an undefined term or TDC or TMC provision, that incorporation is of Council's legal interpretation of the applicable code, which does not depend on facts unique to the Tux Project record. Where these Supplemental Findings rely on evidence specific to this Project and this record, including the credibility findings in Section III.C below, Council states that reliance independently, supported by evidence in this record, consistent with *Dimone v. City of Hillsboro*, 182 Or App 1, 14 (2002).

The Supplemental Findings include some findings in the alternative. To the extent that there is a conflict between any of the Findings that are not expressly or implicitly adopted in the alternative, these Supplemental Findings supersede the other Findings.

City Council rejects several issues raised by the opposition for reasons in common. For example, the City Council rejects several points for not being related to a mandatory approval standard, or because an alleged procedural error does not prejudice participants' substantial rights. To avoid redundancy on these issues, we frequently incorporate Findings by reference. Council's intent is to provide adequate findings on the high volume of issues raised. If any

Finding inadvertently fails to incorporate other supporting Findings by reference, that incorporation by reference of other relevant and supportive Findings should be implied because Council's intent is to provide adequate findings.

Certain public comments were not directed at the applicable approval criteria, and some were directed at development on Lam's campus that is not subject to this Architectural Review (e.g., the existing operations or Tux Project approved in AR24-0002). For example, generalized arguments about common law nuisance and quiet enjoyment rights targeted primarily at the existing Lam facilities were mentioned, but without correlation to applicable approval criteria or the alleged impact of the Project. Additionally, some testimony appeared to be assisted by generative AI, which made the testimony exceptionally detailed and at times difficult to align with the actual Project and issues under consideration. A local government's findings are not deficient for failing to address every item of evidence or every detailed technical question a party raises, so long as the findings adequately address the issue actually before the decision maker. *See Laurance v. Douglas County*, 45 Or LUBA 393, 397 (2003); *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000); *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). Council attempts to respond to all issues raised. Issues raised in public comment but not addressed in these Findings are deemed irrelevant to the mandatory approval standards that apply to the Decision or the approved version of the Project.

Similarly, certain public comments include requests for additional information or clarifications. City Council understands these requests as suggestions that findings of compliance or factual conclusions may not be supported by substantial evidence. Where those claims are developed with specificity that affords Council the ability to respond, we do so in these Supplemental Findings. To the extent that questions for additional information are not addressed with more specificity in these Supplemental Findings, we find the generalized requests for more information are either irrelevant to the approval criteria or do not undermine or otherwise dilute the credibility, persuasiveness, reasonableness or reliability of the evidence that is the bases for finding compliance (or feasibility of compliance). Such a request is not substantial evidence that a criterion is unmet or infeasible to meet.

Additionally, certain public comments requested more explanation or clarification about why certain standards are met. City Council understands these requests as suggestions that findings in the Staff Approval were inadequate. Where those claims are developed with specificity that affords Council the ability to respond, Council does so in these Supplemental Findings. To the extent that questions about the adequacy of findings are not addressed with more specificity in these Supplemental Findings, Council finds the generalized requests are either irrelevant to the applicable approval criteria or that no further explanation is needed because the record and the Staff Approval, taken together, identify the relevant facts and demonstrate the reasoning that connects those facts to Council's conclusions.

Many of the issues raised in this Appeal substantially repeat issues that were presented, analyzed, and resolved in connection with the City Council's approval of the Tux Project, and were directly addressed in the Tux Findings. Testimony largely repeats the same arguments that were rejected in the Tux Findings, often without acknowledging Council's prior interpretations in the Tux Findings. The Appeal, testimony, and evidence do not identify a material factual or legal

distinction that would support a different outcome than the result previously reached by Council in the Tux Findings. A local government's reasonable interpretation of its own ambiguous code is entitled to deference and will not be disturbed merely because a different interpretation is also plausible, and a decision maker is not required to reinterpret settled questions of code meaning simply because a party disagrees with the prior interpretation. Accordingly, this Decision relies heavily on the incorporated Tux Findings. Council intentionally structures these Supplemental Findings with the same organizational structure and headings as the Tux Findings. Rather than repeating the extensive Tux Findings under each heading, these Supplemental Findings are limited to updates, clarifications and the evidence related to this Appeal and Project. Accordingly, these Supplemental Findings and the Tux Findings are intended to be read together.

A universally applicable update to the Tux Findings is the references to condition of approval A25 are replaced with condition of approval A14. The requirements of the conditions are identical; only the numbers changed between the Tux Project and the Building B Addition Project:

Tux Project: "A25. The proposed development must comply with the Environmental Regulations of TDC 63."

Project: "A14. The proposed development must comply with the Environmental Regulations of TDC 63."

Another universally applicable update to the Tux Findings is that, for the first time with this Project, testimony questioned the materials and chemicals used in Lam's existing advanced manufacturing processes and the extent to which they would be used in or affected by the approximately 3,900 square foot addition approved by the Project. This includes questions about hazardous waste treatment, storage, and disposal facility status under TDC 63.058, air quality under TDC 63.053, and offsite emergency response planning (collectively, the "**Hazardous Materials Issues**"), which are addressed in detail in Section IV.E. The Environmental Regulations in TDC Chapter 63 address noise (TDC 63.051), which is addressed in the Tux Findings. The Environmental Regulations in TDC Chapter 63 also address dangerous substances (TDC 63.058), waste materials (TDC 63.057), and air quality (TDC 63.053). References in the Tux Findings to TDC Chapter 63 generally, and to TDC 63.051 (noise) specifically, are updated to also include all standards within TDC Chapter 63. For example, Tux Findings Section III.A interprets TDC Chapter 63 and concludes that TDC 63.051 is a performance standard, that is, an ongoing operational or performance requirement that governs how a use functions after approval. Because performance standards are "not necessary prerequisites to issuance of a permit," they are not mandatory approval standards that require proof of compliance or feasibility of compliance during AR. That interpretation concerns the structure and function of TDC Chapter 63 as a whole, rather than any fact particular to the Tux Project, so it applies equally to the Hazardous Materials Issues, as explained further in Section IV.E below, and to all of the provisions in TDC Chapter 63.

A. Distinguishing Mandatory Approval Standards from Performance Standards and Aspirational Purpose Statements

The testimony and evidence in this Appeal allege, without explanation, that it is "wrong" or "incorrect" for the Council to interpret the TDC and TMC as it did in the Tux Findings, but the limited offered rationale is not a basis for reversing Council's prior interpretations adopted in the Tux Findings. Disagreement with the adopted interpretations, and their outcomes, is not a basis for reversing those interpretations, particularly where Council's prior final interpretation is reasonable and consistent with the text, context, and purpose of the provisions interpreted, as detailed in the Supplemental Findings in Section III.A.i to .v, and incorporated herein.

i. Mandatory Approval Standards

These Supplemental Findings incorporate by reference Section III.A.i to .iii of the Tux Findings, which include a detailed analysis and interpretation of which code provisions are mandatory approval standards in Architectural Review (including which are objective and which are discretionary), and that TDC 63.051 and the other Environmental Regulations in TDC Chapter 63 are performance standards rather than mandatory approval criteria. These interpretations address the structure and function of TDC Chapter 63 itself and the text of the Code, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

ii. Performance Standards: TDC 63.051 and TMC 6-14.

These Supplemental Findings incorporate by reference Section III.A.i to .iii of the Tux Findings, which include a detailed analysis and interpretation of which code provisions are mandatory approval standards in Architectural Review (including which are objective and which are discretionary), and that TDC 63.051 and the other Environmental Regulations in TDC Chapter 63 are performance standards rather than mandatory approval criteria. These interpretations address the structure and function of TDC Chapter 63 itself and the text of the Code, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

Without diluting the importance of all of the incorporated Tux Findings, Council reiterates the following final, unappealed interpretation and conclusion from the Tux Findings, which applies to this Project:

> "Because performance standards must not be met as a prerequisite to approving Architectural Review, no findings or evidence are required to address noise-related performance standards, and they cannot be a basis for denying the Architectural Review."
>
> Tux Findings, Section III.A.ii.

Council further supplements the Tux Findings as follows.

a. The 2019 TVF&R Approval (AR 19-0002) Does Not Establish a Different Interpretation of TDC Chapter 63

Testimony contends that the City's prior approval of the TVF&R Logistics Service Center (AR 19-0002) establishes that noise is properly addressed through Architectural Review, pointing to a sound barrier condition imposed in that decision as inconsistent with Council's conclusion here that TDC 63.051 and the Noise Ordinance are performance standards rather than mandatory AR approval criteria. Council addresses this argument here because it is a substantive challenge to the City's interpretation of TDC Chapter 63, not a procedural claim.

AR 19-0002 approved development of property zoned Light Manufacturing, a different zoning district than the Manufacturing Park zone applicable to the Project. The sound barrier condition Appellant references arises from TDC 60.310(3), a Light Manufacturing zone specific design standard requiring masonry walls or earth berms within a defined distance of residential property, a standard with no counterpart applicable to the Manufacturing Park zone governing the Project. That decision separately treated ongoing compliance with the Noise Ordinance as a matter to be regulated at the nearest residential property line going forward, not as a condition precedent to approval.

Council finds AR 19-0002 does not establish, and is not inconsistent with, Council's interpretation of TDC 63.051 and the Noise Ordinance as performance standards under the Manufacturing Park zone. AR 19-0002's sound barrier condition was compelled by a distinct, mandatory design standard applicable only in the Light Manufacturing zone. It was not an application of TDC 63.051 or the Noise Ordinance as a mandatory AR approval criterion. To the contrary, the condition in that decision requiring ongoing compliance with the Noise Ordinance and TDC 63.051 was itself identified among the decision's ongoing conditions, consistent with Council's conclusion here that such compliance is an ongoing obligation enforced through the City's code compliance process rather than a precondition to Architectural Review approval.

b. The "Absurd Result" Argument Is Based on a Misreading of What a Performance Standard Is

One recurring argument deserves a direct answer: the suggestion that treating Chapter 63 as a performance standard would let any developer build something that "clearly violates every environmental regulation" and force the Council to approve it anyway. That is not what the Tux Approval holds, and it is not what approving the Project means.

A performance standard is not an exemption from the law. It only changes *when* compliance is checked: it is determined after a building is constructed and operational, not during Architectural Review of the exterior of the building. Condition of Approval A14 (Building B) and the equivalent condition in the Tux Approval (Condition A25) both require ongoing compliance with Chapter 63 as a matter of law, enforceable by the City's Code Compliance Office.

If a use violates the noise ordinance, vibration limits, air quality standards, or any other Chapter 63 requirement once operating, the City can and will act through its established code

enforcement process under Tualatin Municipal Code Chapter 7-1, a process with its own evidentiary standards, due process protections, and ultimately a hearing before a Municipal Court judge. That is a real, enforceable backstop, not an empty promise. Treating these standards as a performance standard enforced after construction and once operations begin, rather than as a hypothetical exercise resolved before construction, is how the Council's own code is written, and is also how the Oregon Land Use Board of Appeals ("**LUBA**") has repeatedly described this exact kind of standard. *See Simonson v. Marion County*, 21 Or LUBA 313, 322 (1991); *Zusman v. Clackamas County*, 13 Or LUBA 39, 45 (1985).

The "absurd result" argument is also illogical because it is unreasonable to believe that any applicant would spend the resources needed to construct a use that could not operate because of the inability to meet performance standards.

Finally, the "absurd result" argument is a disagreement with the Council's interpretation that TDC Chapter 63 establishes performance standards rather than mandatory Architectural Review approval criteria, an interpretation Council adopted in the Tux Approval and reaffirms and applies here. LUBA must affirm that interpretation unless it is inconsistent with the express language of TDC Chapter 63, its purpose, the policy underlying it, or a state statute, land use goal, or rule that it implements. ORS 197.829(1). That standard is highly deferential, and an interpretation is entitled to affirmance so long as it is plausible and not inconsistent with the text, even if a petitioner can point to a different reading that it contends produces a more sensible result. A petitioner's preference for a different outcome does not make the Council's plausible, text based interpretation inconsistent with the Code.

c. Neither the Applicant's Narrative Nor the Staff Approval Converted TDC Chapter 63 into Mandatory Approval Criteria

Testimony suggests that because the Applicant's narrative addressed a performance standard or an aspirational purpose statement in the course of describing the Project, the City is thereby bound to treat that standard or purpose statement as a mandatory approval criterion. Council rejects that argument. An applicant's voluntary discussion of a standard that is not a mandatory approval criterion, whether offered for completeness, to provide context, or to preempt anticipated opposition, does not convert that standard into an approval criterion or waive the City's own interpretation of its code. The classification of a standard as a mandatory approval criterion, a performance standard, or an aspirational purpose statement is a legal question that depends on the text, context, and purpose of the provision itself, not on how thoroughly an applicant chose to address the provision in its submittal.

A related argument is that the Staff Approval itself, not merely the Applicant's narrative, characterized or otherwise treated TDC Chapter 63 in a manner that led participants to believe its provisions, including the noise standard in TDC 63.051, are mandatory Architectural Review approval criteria rather than performance standards. For example, Mr. Mulkey's September 21, 2026 testimony contends that the Staff Approval's listing of TDC Chapter 63 among the Chapters of the Tualatin Development Code identified in its Applicable Criteria section failed to provide adequate notice of the applicable criteria, because it did not expressly distinguish which

provisions of that chapter are mandatory approval criteria and which are performance standards enforced after construction.

The Staff Approval does not support this characterization. The Staff Approval's Applicable Criteria section lists TDC Chapter 63 among the Chapters of the Code that apply to the Project, alongside chapters that unquestionably include mandatory approval criteria, such as TDC Chapter 62 and TDC Chapter 73A. That listing identifies the Chapters whose text is relevant to the Decision; it does not purport to classify each provision within those Chapters as a mandatory approval criterion, and Council does not understand it to have been read that way by City staff at any point in this proceeding. The substantive finding in the Staff Approval on TDC 63.051 resolves any ambiguity. There, the Staff Approval quotes the Applicant's narrative conclusion that "this noise regulation is not listed as an approval criterion for Architectural Review," and states that "Staff concur with the applicant's finding pertaining to noise." Staff's concurrence was with that express characterization, not merely with the Applicant's underlying factual conclusion that compliance is feasible. The October 12, 2026 Staff Report confirms the same reading, explaining that the noise element of the relevant purpose statement "is implemented through Chapter 63 and secured by Condition of Approval A14," not treated as an independent approval criterion.

The finding under TDC 63.020, that with Condition of Approval A14 the Chapter 63 standards "are met," is best read in that same light and not as a conflicting signal. TDC 63.020 establishes only that the Chapter applies to the Project by virtue of its location in the Manufacturing Park zone; it does not itself impose a substantive performance standard. The finding that the Chapter's requirements are satisfied through Condition A14 is consistent with, not contrary to, Council's interpretation that ongoing compliance with the performance standards in Chapter 63 is assured through that condition and enforced after construction, rather than resolved as a precondition to Architectural Review approval. Read together, and in light of the Application narrative expressly disclaiming approval criterion status for TDC 63.051 and the Staff Approval's express concurrence with that characterization, the Staff Approval did not represent, and could not reasonably have been understood by a careful reader to represent, that TDC Chapter 63 imposes mandatory Architectural Review approval criteria.

Council recognizes that the phrase "these standards are met" could, read in isolation and out of context, be mistaken for an affirmative finding of compliance with a mandatory approval criterion, since similar phrasing appears throughout the Staff Approval in findings addressing criteria that are mandatory. Council rejects that reading.

First, it is inconsistent with the text Council has already interpreted. TDC 63.020 only establishes the applicability of Chapter 63 to industrial uses in Manufacturing Planning Districts; it contains no independent standard capable of being "met" or violated, and the Staff Approval's statement that the Chapter's standards are satisfied necessarily refers forward to Condition of Approval A14, which Council has already found enforces compliance on an ongoing basis rather than as a precondition to approval.

Second, that reading is inconsistent with the finding that immediately follows it, which expressly adopts the Applicant's statement that "this noise regulation is not listed as an approval criterion

for Architectural Review." A single decision (the Staff Approval) should not be read to contradict itself where a harmonizing interpretation, consistent with the Staff Approval's express statement and with the Tux Findings previously adopted by Council, is available.

Third, even if the phrasing in the TDC 63.020 finding were ambiguous standing alone, Council's own interpretation of the underlying code provisions is entitled to affirmance so long as it is plausible and not inconsistent with the text, the purpose of the regulation, or the policy underlying it. The interpretation Council adopts here, that Condition A14 secures ongoing compliance with the performance standards in Chapter 63 rather than converting Chapter 63 into a mandatory approval criterion, is plausible, consistent with the code's text and structure, and consistent with the Tux Findings. The ability to identify isolated language capable of a contrary reading does not defeat that interpretation under the deferential standard of review that applies.

To the extent Mr. Mulkey's testimony is instead understood to raise a procedural notice argument under ORS 197.763 or ORS 197.797 or that any ambiguity in how the Staff Approval listed TDC Chapter 63 deprived participants of a fair opportunity to respond, Council finds no prejudice to any party's substantial rights. The Staff Approval's substantive finding on TDC 63.051 expressly stated that the noise regulation is not an approval criterion, and that characterization was before all participants, including Mr. Mulkey (and his client Mr. Hamilton), throughout this proceeding. The record reflects that Mr. Mulkey, Mr. Hamilton and other opponents in fact submitted extensive testimony addressing noise, vibration, and other Chapter 63 standards in detail, including expert acoustical analysis, demonstrating that participants understood the issue and had a full and fair opportunity to be heard on it, regardless of how the Applicable Criteria section is read.

iii. Aspirational Purpose Statements: TDC 33.020(1)(i) and TDC 62.100

These Supplemental Findings incorporate by reference Section III.A.iii (inclusive of subsections a and b) of the Tux Findings, which analyzes the purpose statements in TDC 33.020(1)(i) and TDC 62.100 (with TDC 63.010 also addressed) and concludes that they are aspirational and do not independently establish mandatory approval criteria. These interpretations address the structure and function of the text of the Code, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

iv. Application Submittal Requirements are not Mandatory Approval Standards: TDC 33.020[3]

TDC 33.020(4) details the materials required to support an application for Architectural Review. The materials listed are not jurisdictional and are not mandatory approval standards. If an application fails to include the materials listed in TDC 33.020(4), that omission in and of itself is not a basis to deny an application. However, the submittal requirements are materials that may

[3] Section III.A.iv and .v address issues raised for the first time during review of this Project. They have no corresponding section in the Tux Findings and are not based on, or intended to incorporate, any finding from the Tux Findings.

be needed to evaluate a project's compliance with the mandatory approval standards. As a result, omission of the submittal requirements *may* lead to a conclusion that a mandatory approval standard is not met.

The October 12, 2026 Staff Report confirms that the Application was deemed complete on April 17, 2026, and that these submittal requirements are accordingly not independent approval standards whose omission could provide a basis to deny Architectural Review.

Testimony was offered alleging that the street plan required by TDC 33.020(4)(c) was not included with the Application. For the reasons detailed in Section III.A.v below, and incorporated herein, the undisputed evidence establishes that the Project has no street or access impact to evaluate. Accordingly, no evidence related to the street plan and access is required to demonstrate the Project's compliance with any applicable mandatory approval standards. Any gap in the street plan submittal requirement is immaterial and provides no basis to deny the Application.

v. TDC Chapter 75 (Access) Is Not an Applicable Approval Criterion for This Decision

TDC 75.010(2) applies Chapter 75's access standards to new development and modifications to existing development. Mr. Mann's September 20, 2026 testimony asked the City to explain whether TDC 75.020(5) (driveway standards) and TDC 75.020(7)(a) (review of commonly owned or consolidated multi-building-site properties as one unit) apply to this campus, noting that the Application narrative concluded Chapter 75 does not apply because the lots and the existing or previously approved access drives will remain unchanged.

The Staff Approval confirms that the campus is served by six existing driveways, three from SW 108th Avenue and three from SW Leveton Drive, all established through previous approvals, and that the Building B Addition will not create, modify, or relocate any of them. Consistent with this, the October 12, 2026 City Council Staff Report concludes that the Project changes no access. The Staff Approval does not list TDC Chapter 75 among the applicable Architectural Review criteria for this Decision.

Because TDC 75.020(5) and TDC 75.020(7)(a) govern the extent to which access must be reviewed when a driveway is proposed or modified, or when development on a multi-building site is first being configured, and the Building B Addition does neither, those standards are not triggered here. This differs from the Tux Approval, where a proposed driveway change did trigger, and was evaluated under, TDC 75.020(5). Council finds that TDC Chapter 75 is not an applicable approval criterion for this Decision, consistent with the Staff Approval and the Application narrative's conclusion on this point.

B. Authority to Impose Conditions of Approval

These Supplemental Findings incorporate by reference Section III.B (including subsections i, ii, and iii)[4] of the Tux Findings, which analyzes the scope of the City's authority to impose conditions of approval through Architectural Review under TDC 33.020(6)(a)(iii). That analysis addresses the legal limits of the City's conditioning authority generally, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

Council further supplements the Tux Findings as follows.

The Tux Findings identified conditions of approval that were requested in that proceeding. In the proceeding for the Project, testifiers requested four categories of conditions of approval. First, Anderson's September 21, 2026 testimony requested conditions requiring the Applicant to turn off parking lot lighting when not in use, consolidate night shift parking to a designated area, install motion sensor controls, and install shields to divert light away from the neighborhood. Second, Mulkey's September 21, 2026 testimony on behalf of Hamilton requested a condition requiring the Applicant to modify its equipment and facility design to prevent objectionable noise from emanating from the property, or in the alternative, denying the Application until compliance with the Noise Ordinance is demonstrated. Third, Chauncey's September 19, 2026 testimony and the Sierra Club's September 25, 2026 testimony requested conditioning or withholding approval until an independent, City-directed noise study is completed at the Applicant's expense and compliance is achieved. Fourth, Galvin's September 18, 2026 testimony and Mann's September 21, 2026 testimony requested a condition requiring the Applicant to provide additional information characterizing hazardous and waste materials, including the composition, classification, and quantity of Concentrated Mixed Metals waste and related waste streams, before the City relies on a finding of feasible compliance with TDC Chapter 63.

The variation in the conditions requested does not alter the interpretation and conclusions in the Tux Findings, which are applicable here, including the interpretation that the TDC does not authorize City Council to impose the requested conditions of approval because they are not required to implement any mandatory approval standards in the TDC, substantial evidence does not support the conclusion that additional conditions are necessary, and additional conditions would not further a legitimate planning purpose.

Council also incorporates by references the Findings in Section IV.D.i (and its subsections), related to the conditions of approval not improperly deferring compliance of discretionary approval criteria.

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[4] Section III.B.iv of the Tux Findings related to traffic expertise and is not incorporated. This issue was raised only in connection with the Tux Project and has not been raised, and does not arise, in connection with this Project. Accordingly, the corresponding section of the Tux Findings is not incorporated by reference and is not addressed in these Supplemental Findings.

C. Credibility of Expert Testimony and Relying Upon Substantial Evidence in the Whole Record to Support the Decision

These Supplemental Findings incorporate by reference Section III.C (excluding subsections i to iii, which relate to the record in the Tux Project) of the Tux Findings, which sets out the framework the City Council applies when weighing competing expert and lay testimony to determine what constitutes substantial evidence in the whole record. That framework states a method of evaluation, not a factual conclusion about the Tux Project, so it applies equally here.

Council further supplements the Tux Findings as follows.

i. Substantial Evidence Conclusion.

Council applies that incorporated framework of Section III.C of the Tux Findings to the hazardous materials evidence addressed in Section IV.E.i.c and Section IV.E.ii.a below, which are also incorporated herein.

As explained in Section I above, Council has not included in these Supplemental Findings the alternative findings weighing the competing acoustical evidence or evaluating the relative credibility of the Applicant's and Appellant's noise experts. Because Council's primary conclusion that the Noise Ordinance and the other Environmental Regulations in TDC Chapter 63 are performance standards, rather than mandatory Architectural Review approval criteria, independently resolves the Noise Standards issues raised in this Appeal, no finding resolving that competing acoustical evidence is necessary to this Decision, and Council does not make one. Section IV.B.vi below remains a placeholder on that basis, consistent with the approach taken in the Tux Approval.

IV. ANALYSIS OF ISSUES RAISED IN APPEAL

A. Procedural and Public Participation Issues

The Tux Findings related to alleged procedural and public participation issues addressed the specific facts of that proceeding and are not relevant to this Decision. Accordingly, rather than incorporating by reference the entirety of the Tux Findings Section IV.A (including subsections i, ii, iii, and iv), we copy below the legal standard interpretations from that Tux Findings Section that are incorporated by reference here, and which applies equally to this Decision for the reasons explained in Section III.C above.

> "To justify reversal of a land use decision for procedural error, the Appellant "must demonstrate both procedural error and prejudice to its substantial rights."[5] "Under ORS 197.835(9)(a)(B), the 'substantial rights' of parties that may be prejudiced by failure to follow required procedures are 'the rights to an adequate opportunity to prepare and

[5] See e.g., *Mason v. Linn County*, 13 Or LUBA 1, 4 (1984), *aff'd in part, rev'd and rem'd on other grounds*, *Mason v. Mountain River Estates*, 73 Or App 334, 698 P2d 529 (1985); see also ORS 197.835(9)(a)(B); OAR 661-010-0071.

submit their case and a full and fair hearing.'"[6] This standard is sometimes referred to as the "no harm, no foul" rule."

Tux Findings, Section IV.A.

Council further supplements the Tux Findings as follows. Council addresses the procedural and participation issues raised in the AR for this Project. The City's responsiveness to public records requests was addressed in the Tux Findings, Section IV.A.iv, and that issue is raised again here on different facts. Accordingly, Council addresses the public records concern in Section IV.A.iv below. So that the heading numbering stays compatible with the Tux Findings, these Supplemental Findings address the other new procedural allegations in Sections IV.A.i through iii and v.

Procedural concerns were raised by Jonathan Mann and Brett Hamilton. The adequacy of these individuals' opportunities to prepare for and participate in the process is evidenced by the extent and frequency of their engagement with the Project, culminating in this Decision, for which there was a de novo public hearing, followed by an open record period. For example, the record shows that:

- Notice of this Application was sent on April 20, 2026. The record for testimony and evidence closed on September 28, 2026. The public had a little over 5 months to participate in the Building B Addition process.
- Mr. Hamilton filed the Appeal of the Staff Approval on June 30, 2026, setting out in detail the grounds on which he sought City Council review.[7]
- Mr. Mann submitted written testimony on at least September 15 (multiple letters), 17, 19, 20 (multiple letters), 21, 23 (multiple letters), and 28, 2026, addressing use classification, equipment screening, lighting, landscaping, parking, waste and recyclables, traffic and access, noise, chemical management, notice and project description, and the decision deadline and records requests.[8]
- Mr. Hamilton submitted written testimony on at least September 11, 13, 14, 16, 21 (multiple letters), and 28, 2026, including his own and a retained acoustical engineer's noise analysis, a Homeowners' Association resolution and a 101-

[6] *Families for a Quarry Free Neighborhood v. Lane County,* 64 Or LUBA 297, 302 (2011), citing *Muller v. Polk County*, 16 Or LUBA 771, 775 (1988).

[7] Appeal Letter from Brett Hamilton to City Council, June 30, 2026, Exhibit B to the October 12, 2026 City Council Staff Report.

[8] Written Comments Received September 15-21, 2026, Exhibit F, and Written Comments Received September 6-14, 2026, Exhibit I, to the October 12, 2026 City Council Staff Report.

signature community petition, and comments addressing chemical management, notice and project description, and the decision deadline and records requests.[9]

- Mr. Hamilton retained counsel, Andrew Mulkey, who submitted detailed written legal argument on Mr. Hamilton's behalf during the open record period, including a September 21, 2026 letter and a September 28, 2026 letter. Mr. Hamilton also retained an acoustical engineer, Kerrie Standlee, P.E. of DSA Acoustical Engineers, Inc., who had time to review the application record, take additional sound measurements in the neighborhood north of the Lam Research facility, and prepare and submit a written report.
- Mr. Hamilton participated in the September 14, 2026 de novo public hearing before the City Council.[10]
- Mr. Mann and Mr. Hamilton each continued to participate in writing throughout the open record period (through September 21, 2026), and the reopened open record period (through September 28, 2026).[11]

This extensive record of participation, standing alone, supports the conclusion that Mr. Mann or Mr. Hamilton had an adequate opportunity to prepare and submit their case and to receive a full and fair hearing. Each had notice of, and meaningfully used, every stage of this proceeding: the initial comment period, the de novo hearing, the initial seven-day open record period, and the open response period. Neither identifies any position, evidence, or argument that this extensive process prevented him from raising. Because the substantial-rights inquiry asks whether a participant had that adequate opportunity, not whether every individual procedural request was granted exactly as asked, this record resolves the prejudice question for the procedural claims generally. Council nonetheless addresses each specific procedural claim in detail below.

i. Objection to Notices

a. TDC Chapter 63 Content

Mr. Mulkey, counsel for Mr. Hamilton, argued in his September 21, 2026 letter that the City's notices and staff reports were misleading or inadequate because they did not identify TDC 63.051 (Noise) and TDC 63.058 (Dangerous Substances) as approval criteria, and that this interfered with the public's ability to respond. Section III.A.ii and Section IV.A.i.c resolve this

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[9] Written Comments Received September 15-21, 2026, Exhibit F (including the David's Fox Run Homeowners' Association resolution, the community petition, and the Standlee/DSA acoustical report), and Written Comments Received September 6-14, 2026, Exhibit I, to the October 12, 2026 City Council Staff Report.

[10] See October 12, 2026 City Council Staff Report, p. 1 (Council held the appeal hearing on September 14, 2026 and heard applicant and public testimony).

[11] Submittals Received During the Response Period September 21-28, 2026, Exhibit J to the October 12, 2026 City Council Staff Report; see also id. at pp. 1-2 (new evidence due September 21, 2026, record reopened through September 28, 2026, and Applicant's final written rebuttal due October 5, 2026).

argument from both a substantive and procedural perspective, and both sections incorporated by reference herein.

b. Objection to Notices: Level of Detail and Project Description

A participant, Jonathan Mann, raised generalized concerns about the level of detail with the March 4, 2026 neighborhood/developer meeting notice, the March 18 neighborhood/developer meeting minutes, and the April 20, 2026 Type II Notice of Application. Separately, Mr. Mann filed public records requests with the City requesting details about these materials. We understand Mr. Mann's concerns to be related to the level of detail related to activities that would occur within the Building B Addition, including chemical management functions, and how the level of detail complies with the notice requirements in TDC 32.220(3)(b)(v) (a description of the land use action is required) and TDC 32.220(3)(b)(iii) (inclusion of a site plan).

First, Council's Decision is based exclusively on materials in the record of this Application. If there are other public records that may or may not be relevant to this Application that exist but are not included in the record of this Application, they have no bearing on Council's findings or this Decision.

Second, Council rejects the allegation that the level of detail Mr. Mann seeks is what is required by TDC 32.220(3)(b)(v), which requires a description of the land use action sought. A "land use action" is the type of land use application that will be pursued; here, Architectural Review. See, for example, TDC 32.020, describing the procedures for reviewing multiple applications, including the requirement for filing separate applications "for each land use action." Because TDC 32.220(3)(b)(v) requires only identification of the land use action, not a narrative description of the level of operational detail within the proposed development, the notice's identification of this Application as an Architectural Review satisfied that requirement regardless of how much detail it provided about chemical management or other on-site activities.

Third, Mr. Mann's alleged error relates to notice for a neighborhood/developer meeting, which occurred prior to Application submittal; this noticing does not impact the actual opportunity to participate in the Architectural Review hearing. Appellant did not allege that he personally failed to receive any required notice, and only the person or entity directly harmed by a notice error, not a party raising it on another's behalf, may raise that error. Mr. Mann participated in the de novo City Council public hearing where the Appeal was considered, and the volume and specificity of his written testimony demonstrates that he had an opportunity to prepare for and participate in the public process.

Fourth, the alleged lack of detail regarding hazardous materials and chemical management activities cannot constitute a procedural or substantive error because that information is not relevant to any mandatory approval criterion for Architectural Review. As explained in Sections II.A and IV.E and incorporated herein, TDC 63.058 and TDC 63.053 are performance standards, not mandatory approval standards that the Project must be shown to satisfy, or that the City's notices and the Application were required to address, as a precondition to this Decision. Because the omitted information bears on no mandatory approval criterion, its absence from the notices

and the Application cannot prejudice a substantial right, regardless of the level of detail Mr. Mann is interested in.

Separately, Mr. Mann raised a distinct notice objection concerning the Project description itself. Across his September 15 and 19, 2026 testimony, Mr. Mann asked the City to identify the actual April 20, 2026 mailed notice and accompanying site plan, the required mailing evidence, and the basis for the project-description finding under TDC 32.220. Mr. Mann clarified that his objection does not rest on the scrubber pad being omitted from the Application itself, or on a contention that every chemical used on site had to be individually listed; rather, he contends the issue concerns what the actual mailed notice and site plan described to recipients regarding the nature and scope of the proposed development.

Mr. Mann has not alleged, and the record does not show, that he personally failed to receive the April 20, 2026 notice or that he lacked an adequate opportunity to understand the nature of the Application, or to prepare for or participate in the proceeding. To the contrary, Mr. Mann's extensive, detailed written testimony throughout the open record and response periods demonstrates that he had ample information and opportunity to participate meaningfully in this proceeding. This objection is addressed further in the general no-prejudice conclusion below.

c. General Conclusion: No Prejudice to Substantial Rights from Either Notice Objection

Both notice objections addressed above fail for the same, independent reason: neither Mr. Mulkey (on behalf of his client Mr. Hamilton) nor Mr. Mann has shown, or even alleged, that the claimed notice deficiency prejudiced a substantial right to an adequate opportunity to prepare and participate. Oregon law is clear that a procedural or notice defect is reversible only if it prejudices a participant's substantial rights, not merely because a technical requirement may not have been perfectly satisfied.

As to Mr. Mulkey's objection, Council refers to Section III.A.ii.c and Section IV.A.i.a above and does not restate that analysis here. As to Mr. Mann's objection, his extensive, detailed written testimony throughout the open record and response periods, which engages closely with the Application's technical and narrative content, confirms that he had ample information and a full opportunity to participate meaningfully in this proceeding, including as to the project-description and chemical-management issues his objection raises. Neither Mr. Mulkey nor Mr. Mann has identified any argument, evidence, or position that either was prevented from raising because of the alleged notice deficiencies.

Skrepetos v. Jackson County, 29 Or LUBA 193 (1995) (failure to provide notice of hearings to persons other than petitioners does not prejudice petitioners' substantial rights if petitioners received notice of the local government hearings and participated in them), further holds that only the person or entity directly harmed by a notice error may raise it; a party who did not personally experience the notice error cannot raise it on another's behalf. *Thomas v. Wasco County*, 30 Or LUBA 142 (1995) (failure to comply with applicable notice requirements is reversible only if the defect prejudices a petitioner's substantial rights); *Bauer v. City of Portland*, 38 Or LUBA 432, 436 (2000); *Cape v. City of Beaverton*, 40 Or LUBA 78, 85 (failure

to provide notice was not prejudicial where petitioner nonetheless appeared at the approval hearing and presented comments).

Because neither objection identifies prejudice to a substantial right, neither provides a basis for denial or remand of this Decision.

ii. 120-Day Decision Deadline and Extensions

Questions were raised about the calculation of the statutory 120-day final-decision deadline under ORS 227.178 and the extensions associated with it. The October 12, 2026 City Council Staff Report confirms that the Application was deemed complete on April 17, 2026, making the 120th day August 15, 2026. The Applicant provided three written extensions: the Applicant's request for a 45-day extension of the 120-day period, Exhibit G to the October 12, 2026 City Council Staff Report, the Applicant's authorization of a further 28-day extension, Exhibit H to that Staff Report, received September 14, 2026, and the Applicant's authorization of an additional 28-day extension on October 22, 2026. Together, these extensions moved the final-action deadline from August 15, 2026 to November 24, 2026. The extensions accommodated the September 14, 2026 hearing, the subsequent open record and response periods, the Applicant's October 5, 2026 final written argument, and the time needed for Council to adopt these Supplemental Findings. These written extensions resolve the outstanding question regarding the basis for the September 29, 2026 date discussed at the September 14 hearing.

Testimony expressly conceded that it was not asserting at that time "that any extension was improper or that the City violated the 120-day requirement." Mann, 9/15 #4, 2. Instead, we understand Mr. Mann's skepticism about the 120-day deadline to relate to how that date may have influenced the open record period that followed the September 14, 2026 public hearing.

ORS 197.797(6)(c) sets the minimum open record period at 7 calendar days. During Council discussions at the September 14 hearing, some Councilors suggested providing more time than statutorily required by keeping the record open for 7 business days. Council ultimately decided to conduct the open record period in accordance with the statutory minimum, with each record period, final argument, and subsequent City Council hearing for deliberations on a 7 calendar day deadline. A reason for that decision included concerns that a more protracted open record period could run afoul of the City's 120-day deadline; while that is factually supported in the record, Council's reasoning for the length of the open record period is irrelevant, because the period as conducted complied with ORS 197.797(6) and (7) and no party has substantiated an allegation that the length of the open record period prejudiced a participant's substantial rights.

iii. Requests for Additional Open Record Time Are Denied

a. Request to Reopen the Record Following Final Argument

Testimony requested the opportunity to reopen the record if the Applicant's final written argument introduced new evidence. Council finds that, consistent with ORS 197.797(6)(e), the Applicant's October 5, 2026 final written argument did not include new evidence. It only summarized and applied the existing record, including the Tux Approval findings, the Staff Approval, and the evidence and responsive memoranda already submitted during the open record

and response periods. The final written argument cites statutes, administrative rules, and the Tualatin Development Code to explain the legal framework that governs the interpretation of TDC 63.058. These citations are legal argument, not evidence. They identify no new facts about Lam's operations, the Building B Addition, or any condition of the property, and rely on nothing outside the existing record. Interpreting an undefined term in the City's own code, including by reference to the body of law from which that term is drawn, is a legal question the Council must resolve regardless of which party raises it, and identifying the applicable legal framework for that interpretation does not introduce evidence within the meaning of ORS 197.797(6)(e). Accordingly, there is no statutory or procedural basis for reopening the record.

b. Request for an Opportunity to Respond to Public Records Request Documents

Mr. Mann's September 23, 2026 letter requested an opportunity to review and respond before Council's Decision if any record he had identified as outstanding, including the written extension records, the September 10, 2026 WQ26-1211 engineering review comments, or other Building B Addition records, were later added to the record or relied upon by Staff or the Applicant. Staff did not rely on any record Mr. Mann identified as outstanding. Mr. Mann's contingency is accordingly unnecessary, and there is no basis to afford him a further opportunity to respond.

iv. Any Delay in Releasing Public Records is Irrelevant

Section IV.A.iv of the Tux Findings addressed concerns with delays in releasing public records as follows, which is incorporated herein:

> "If this is a public records disclosure dispute, such a dispute is outside of the scope of a land use appeal and is therefore not a grounds for denial of AR or remand of this Decision. Further, as explained elsewhere in these Supplemental Findings, Appellant has not alleged, and cannot demonstrate, that his substantial rights to a full and fair hearing have been prejudiced."
>
> Tux Findings, Section IV.A.iv.

Mr. Mann's September 23, 2026 testimony identified several public records requests still outstanding as the September 28, 2026 response deadline approached, including the technical backup to the Applicant's September 4, 2026 noise model, the September 10, 2026 WQ26-1211 engineering review comments, and other Building B Addition records. He asked, conditionally, that if any outstanding record were later added to the record or relied upon by Staff or the Applicant, he be given an opportunity to respond before Council's Decision. Mr. Mann separately asked the City to identify the written extensions of the 120-day decision deadline. Those questions are addressed in Section IV.A.ii and .iii, and are incorporated herein.

As to the outstanding records themselves, the City's handling of public records requests is governed by Oregon's Public Records Law and administered by the City Recorder, a process separate from this land use proceeding. Mr. Mann confirmed he was not asking Council to resolve that dispute here. Council's Decision rests exclusively on the evidence in the record of this Appeal, and Staff do not rely on any record Mr. Mann identified as outstanding. Mr. Mann's

requested contingency is therefore unnecessary, and the pace of the City's response to his records requests did not deprive him of an adequate opportunity to prepare or participate in this proceeding.

v. Format and Accessibility of Public Comments

Testimony raised concerns with the format and completeness of public comments from the staff-level proceeding that were included in the appeal record available on-line. Mr. Hamilton raised a more specific version of this objection in his September 21, 2026 letter: according to the City's staff report, at least 61 public comments were received during the staff-level comment period but are missing from the appeal record, replaced by a one-page notice stating that "[t]o ensure privacy[,] public comments have been removed," while comments submitted after the September 14, 2026 hearing are posted online without redaction. In response to a public records request for the withheld comments, Mr. Hamilton states he received 62 files in a proprietary Outlook ".msg" format, some of which he could not convert using available software, and that of the comments he could convert, all opposed the Application.

Neither the general nor the specific version of this objection provides a basis for denial or remand. First, no party, including Mr. Hamilton, has identified how the manner in which these staff-level comments were produced or formatted prejudiced that party's own substantial rights to prepare and participate in this proceeding. Mr. Hamilton states that, of the comments he was able to convert and review, all opposed the Application; he does not identify any argument, evidence, or position reflected in the withheld comments that is not already fully represented in the extensive written and verbal testimony submitted directly into this appeal's record by Mr. Hamilton and other opponents. Second, any dispute over the City's handling of a public records request, including the format in which withheld records are produced, is a public records matter outside the scope of this land use appeal and does not itself furnish a ground for denying or remanding this Decision. Third, Council's Decision is based exclusively on the evidence and argument in the record of this appeal; to the extent the staff-level comments are not independently part of this appeal's record, their absence or format has no bearing on this Decision.

B. Noise Issues

Testimony argued that Lam must demonstrate compliance or the feasibility of compliance with a variety of noise related provisions that testimony argues are applicable during Architectural Review before the City can approve the Project.

The TDC and TMC sections that opponents argue impose noise-related standards include:

- Reference to “objectionable noises” in **TDC 62.100** (Manufacturing Park purpose statement)
- Requirement in **TDC 63.051** to comply with Tualatin Noise Ordinance and DEQ standards;
- Regulation of “noise disturbances” in **TMC 6-14-030 and 6-14-020;**
- Decibel and octave limits described in **TMC 6-14-050**; and

- Aspirations of sustaining "tranquility and contentment" and promotion of "peace, health and welfare" described in the purpose statement for Architectural Review in **TDC 33.020(1)(i)**.

Additionally, generalized arguments about common law nuisance and quiet enjoyment rights targeted primarily at the existing Lam facilities were mentioned, but without correlation to applicable approval criteria or addressing the alleged impact of the Project.

When responding to specific arguments, Council endeavors to cite the specific standard at issue. When referring to TMC 6-14, or TDC 63.051, which incorporates TMC 6-14, we use the term "Noise Ordinance." When referring to all of the noise-related standards in the bullet points above that opponents alleges are applicable to the Project, and not met, we use the general term "Noise Standards."

In the Tux Approval, Council already interpreted the Tualatin Development Code and Tualatin Municipal Code and concluded that the Noise Standards are not mandatory approval criteria for Architectural Review. Council reaffirms and incorporates that interpretation here. Section IV.B of the Tux Findings states:

> "As a legal…matter, there is no basis to deny AR approval of the Project based upon noise. Noise and compliance with the Noise Ordinance performance standards and aspirational purpose statements in the Manufacturing Park zone and Architectural Review are not relevant to the AR mandatory approval standards, so allegations about existing noise or potential future noise impacts are not bases for denying the AR.[12] If the City were to deny the AR based on the noise performance standards (rather than the criteria in TDC Chapter 73A through 73G), that the decision would be reversible error pursuant to ORS 197.835(10)(a)(A).[13]
>
> Additional Findings interpreting the applicable criteria and scope of allowable conditions are provided in Section III of these Supplemental Findings and are also detailed below; which are all incorporated by reference herein."
>
> Tux Findings, Section IV.B.

[12] ORS 197.835(8) (land use decision shall be reversed "if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations").

[13] ORS 197.835(10)(a)(A) provides: "[t]he board shall reverse or remand a decision… if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations." See *Oster v. City of Silverton*, 79 Or LUBA 447 (2019), citing ORS 197.835(10)(a)(A) (reversing a City land use decision based on project's failure to achieve LOS D standard from the City's TSP, where the approval criteria did not specifically and expressly incorporate the TSP).

i. The Existing Facility is Not Subject to Architectural Review, so Allegations of the Existing Facility's Violations of Noise Standards are Irrelevant.

Section IV.B.i of the Tux Findings interprets the Tualatin Development Code and Tualatin Municipal Code to conclude that existing noise from the Lam facility is not relevant to Architectural Review because the existing facility is not itself subject to Architectural Review. Council incorporates that interpretation herein:

> "…allegations about noise from the existing facility are not a basis for denying AR for the Project. The existing facility is not within the scope of the AR application under review; only the proposed Project is evaluated through Architectural Review.
>
> The exclusive forum for addressing whether the existing facility is in violation of the Noise Ordinance is the enforcement procedures in TMC 7-1.[14] TMC 6-14-115(3) ("The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation of this Chapter.")…."
>
> Tux Findings, Section IV.B.i.

That is precisely what has occurred. Following the Tux Approval, City Code Enforcement staff investigated noise concerns regarding the existing facility and conducted sound measurements at the property lines of complainants. As explained in the Staff Approval, "[i]n response to complaints, City Code Enforcement staff investigated noise concerns and conducted sound measurements at property lines of complainants," and "[s]taff determined that the measured noise levels did not exceed the applicable standards contained in Tualatin Municipal Code Chapter 6-14." Council finds this history significant for two reasons. First, it confirms that the enforcement process contemplated by TMC 7-1, and described in Section III.A.ii of these Supplemental Findings, is not merely theoretical. It is an active, functioning process through which the City independently investigates noise complaints regarding the existing facility and reaches a documented conclusion based on actual measurements, not supposition. Second, and independently, the result of that investigation is itself relevant evidence bearing on the existing facility's compliance with the Noise Standards, a question addressed in Section IV.B.i.a.

a. Existing Facility Noise Levels Are Not Predictive of the Project's Compliance with the Noise Standards

Council understands that allegations about noise from the existing facility may also be intended to provide support for the allegation that existing noise is predictive of the Project's compliance with the Noise Standards.

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[14]The robust enforcement procedures required by TMC 7-1 are summarized in these Supplemental Findings Section III.A.ii, and are incorporated herein.

First, for the reasons explained in Section III.A.ii and Section IV.B.ii and incorporated herein, TDC 63.051 and the Noise Ordinance are performance standards. They are not mandatory approval standards that the Project, or the existing facility's current noise levels, must be shown to satisfy as a precondition to this approval. Compliance with these standards is instead assured through the same ongoing enforcement process described in TMC 7-1 and assured by Condition of Approval A14, regardless of the existing facility's current noise levels. Similarly, for the reasons explained in Section III.A.iii and Section IV.B.iv and incorporated herein, the purpose statements in TDC 33.020(1)(i) and TDC 62.100 are aspirational and do not independently establish mandatory approval criteria. Because these purpose statements are not mandatory approval standards, the Project is not required to demonstrate, as a precondition to approval, that it will sustain "tranquility and contentment" or avoid "objectionable noises" to any greater or different degree than the existing facility. The existing facility's current noise levels accordingly have no bearing on the Project's compliance with these aspirational statements.

Second, the only official, independent investigation in the record, conducted through the enforcement procedures in TMC 7-1, concluded that the measured noise levels did not exceed the applicable standards and that the noise disturbance standard in TMC 6-14-030 was not met. Consistent with Council's recognition elsewhere in these Supplemental Findings that the independence of the City's ongoing Noise Ordinance enforcement should be preserved, Council relies on that investigation's outcome without reweighing or otherwise revisiting it here, or resolving competing acoustical evidence submitted by the parties, and this Decision does not foreclose future Code Enforcement investigations or otherwise affect the City's ability to address future complaints through the procedures in TMC 7-1. Based exclusively on that enforcement outcome, however, characterizing the existing facility as currently in violation of the Noise Ordinance or other applicable Noise Standards does not accurately reflect the result the enforcement process reached, and Council does not require resolution of the competing acoustical evidence submitted by the parties to reach that conclusion.

ii. TDC 63.051 and the Noise Ordinance (TMC 6-14) are Not Applicable as Mandatory Development Standards; they are Performance Standards.

Section IV.B.ii of the Tux Findings interprets the Tualatin Development Code and Tualatin Municipal Code to conclude that the Noise Standards are not mandatory approval criteria for Architectural Review and that Lam therefore bears no evidentiary burden to demonstrate compliance or feasibility of compliance with them. Council incorporates that interpretation here:

> "[Testimony] alleged that Lam has not demonstrated that the Project, especially when added to its existing facilities, will comply with the Noise Standards.
> The AR process considers a *proposed* development (not existing uses). Architectural Review is governed by TDC 33.020. The AR approval criteria are listed in TDC 33.020(5), and require the Project to "comply with the applicable standards and objectives in TDC 73A through 73G." Those criteria do **not** contain noise standards. Those criteria do **not** incorporate by reference the Tualatin Municipal Code, or the Noise Ordinance. Quite simply, noise impacts and the Noise Ordinance are irrelevant to Architectural Review of the Project.

> Appellant's argument that Lam has not carried the evidentiary burden related to noise issues is premised upon the assumption that the Noise Standards are mandatory approval criteria. For the reasons explained in Supplemental Findings Sections III.A and IV.B.iv (and incorporated herein), the Noise Standards are not mandatory approval criteria; they are performance standards or aspirational purpose statements. *Simonson v. Marion County*, 21 Or LUBA 313, 322 (1991) ('[s]uch performance standards are not necessary prerequisites to issuance of a permit.'")
>
> Because the Noise Standards cannot be the basis for denying the Architectural Review application, there is no evidentiary burden that the Applicant must meet related to noise.
>
> * * *
>
> Additional Findings interpreting the applicable criteria and scope of allowable conditions are provided in Section III of these Supplemental Findings, and are incorporated by reference herein. As detailed in those Supplemental Findings, the TDC 63.051 is a performance standard and the other Noise Standards are aspirational purpose statements, so the Applicant need not demonstrate compliance or the feasibility of compliance with those provisions, and no evidentiary burden is imposed."
>
> Tux Findings, Section IV.B.ii

Although not required, the Applicant provided expert evidence analyzing the existing facility's compliance with the Noise Ordinance and modeling of the cumulative impact of the existing facility, previously approved Tux Project and Project's expected compliance with the Noise Ordinance. Testimony in opposition, including DSA expert testimony, was also submitted. Council finds that it need not resolve this competing expert evidence to approve the Project, because, for the reasons explained above, the Noise Standards are not mandatory approval criteria and therefore cannot be the basis for denying Architectural Review regardless of how that evidence is weighed.

iii. Condition of Approval A14 Appropriately Requires the Project to Comply with the Performance Standards in the Noise Ordinance Once the Project is Operational.

These Supplemental Findings incorporate by reference Section IV.B.iii of the Tux Findings, which includes a detailed analysis and interpretation concluding that Condition of Approval A14 (which was numbered A25 in the Tux Findings) appropriately requires ongoing compliance with the performance standards in TDC Chapter 63, including the Noise Ordinance, once a use is operational, and that this requirement does not improperly defer a finding of compliance with a mandatory approval standard. This interpretation addresses the structure and function of TDC Chapter 63 and TDC 33.020(6)(a)(iii) and the text of the Code itself, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

Council supplements those findings by further explaining why Condition of Approval A14 is not an improper deferral of a finding of compliance with a mandatory approval standard, for the reasons explained in Section IV.D.i of these Supplemental Findings and its subheadings, which are incorporated herein.

iv. The Manufacturing Park Zoning Purpose Statement (TDC 62.100) and Architectural Review Purpose Statement (TDC 33.020(1)(i) are Not Applicable as a Mandatory Development Standards; they are Aspirational Purpose Statements.

These Supplemental Findings incorporate by reference Section IV.B.iv of the Tux Findings, which includes a detailed analysis and interpretation concluding that the Manufacturing Park zoning purpose statement in TDC 62.100 and the Architectural Review purpose statement in TDC 33.020(1)(i) are aspirational purpose statements rather than mandatory approval criteria. This interpretation addresses the structure and function of TDC 62.100 and TDC 33.020(1)(i) and the text of the Code itself, not any fact particular to the Tux Project that is not included in the record of this Decision and applies equally to this Decision.

v. In the Alternative, the Existing Facility Complies With the Noise Standards.

For the reasons explained in the introduction to these Supplemental Findings, Council has decided to not include in these Supplemental Findings some of the alternative findings related to Noise Standards. Accordingly, this section of the Supplemental Findings does not include any substantive findings but remains as a placeholder should the alternative Noise Standards Supplemental Findings be adopted as a part of reconsideration of this Decision.

vi. In the Alternative, Substantial Evidence Supports the Conclusion that it is Feasible that the Project (in Combination with the Existing Facility and Approved Tux Project) Will Comply with the Noise Standards.

For the reasons explained in the introduction to these Supplemental Findings, Council has decided to not include in these Supplemental Findings some of the alternative findings related to Noise Standards. Accordingly, this section of the Supplemental Findings does not include any substantive findings but remains as a placeholder should the alternative Noise Standards Supplemental Findings be adopted as a part of reconsideration of this Decision.

C. Traffic Issues

The traffic-related findings in Section IV.C of the Tux Findings, which address a driveway access dispute and other traffic issues specific to the Tux Project, are not applicable to the Project and are not incorporated herein.

TDC 74.050(1) regulates when a traffic study is required under TDC 74.050. Every trigger in TDC 74.050(1), other than a plan amendment, requires an increase in site traffic as a prerequisite for a traffic study. The unrebutted evidence is that the Project will not generate any new vehicle

or truck trips on surrounding streets because the new building area will be used by current Lam employees and served by existing truck traffic. The Project simply provides more space for Lam's ongoing activities within Building B. Because the Building B Addition does not increase traffic volume, no traffic study is required.

Section III.A.iv and .v, which are incorporated by reference, explain why TDC Chapter 75 (Access) is not applicable, and the related conclusion that any gap in the street plan submittal required by TDC 33.020(4)(c) is immaterial and provides no basis to deny the Application.

D. Other Issues

i. Conditions of Approval do not Improperly Defer Compliance of Discretionary Approval Criteria

In the Tux Approval, some participants challenged 3 specific conditions of approval on the basis that they defer discretionary review to a process not subject to notice and opportunity for a public hearing. Council rejected those allegations in Tux Findings, Section IV.D. While the conditions of approval identified in this proceeding differ, the interpretation and analysis in the Tux Approval remains applicable, and the Tux Findings Section IV.D (including subsections) are incorporated herein, as supplemented below.

Participants in the proceedings for the Building B Addition specifically identified several Conditions of Approval by number and questioned, with varying degrees of development, whether those conditions improperly defer consideration of a discretionary approval criterion to a later process without notice and an opportunity to be heard, as required by *O'Shea v. City of Bend*, 49 Or LUBA 498 (2005): Condition A14 (TDC Chapter 63 performance standards), Condition A8.a (equipment screening under TDC 73A.110), Condition A7 (waste hauler verification under TDC Chapter 73D), and Conditions A2 through A6, A9, and A10 (stormwater, utilities, and related engineering review). Each is addressed in turn below.

a. Deferring Compliance, Generally

These Supplemental Findings incorporate by reference Section IV.D.i.a of the Tux Findings, which sets out the general legal standard governing when a local government may defer a final determination of compliance with an approval standard to a later stage. This legal standard addresses the general framework governing deferral under Oregon land use law, not any fact particular to the Tux Project that is not included in the record of this Decision, and applies equally to this Decision.

b. Condition of Approval A14 Does Not Unlawfully Defer Compliance with Discretionary Approval Criteria

The incorporated Tux Findings analyze and interpret whether a local government has improperly deferred a finding of compliance with an applicable approval standard, whether discretionary or ministerial, to a later stage of review.

We supplement that analysis to address a more basic, threshold question that is present here: whether Condition A14 implicates a mandatory approval criterion at all. Condition A14 provides: "The proposed development must comply with the Environmental Regulations of TDC 63." That text imposes an objective, self-executing compliance obligation, not a discretionary approval decision reserved for a future date; it requires compliance with already-defined code standards, enforced through the City's ordinary code compliance process, and calls for no further exercise of judgment or approval by City staff. Where a condition of approval, such as Condition A14 in this Decision or Condition A25 in the Tux Approval, implements a performance standard that is not a mandatory Architectural Review approval criterion in the first place, there is no finding of compliance with an approval criterion being deferred at all, and the limitations on deferral described above do not apply.

The City cannot defer a determination that was never required to be made as a precondition to approval. The premise of *McKay Creek* and its progeny, that a final determination concerning compliance with an applicable permit approval standard has been deferred to a later stage, is absent where the standard in question is a performance standard enforced on an ongoing basis after construction rather than an approval criterion resolved before approval. For the reasons set forth in Section III.A.ii of these Supplemental Findings, incorporated herein, TDC Chapter 63, including TDC 63.051 and TDC 63.058, consists of performance standards of that kind. Accordingly, Condition A14 does not improperly defer compliance, because the standards the condition implements, TDC Chapter 63, were never applicable approval criteria subject to deferral in the first instance.

Council's interpretation that TDC Chapter 63 imposes performance standards rather than mandatory approval criteria is itself entitled to affirmance if plausible and not inconsistent with the text, context, and purpose of the provisions. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 262, 241 P3d 1154 (2010). Council addresses below, in the alternative and out of an abundance of caution, why Condition A14 would not constitute an improper deferral even if TDC Chapter 63 were treated as including mandatory approval criteria.

(i) In the Alternative, if TDC Chapter 63 Included Mandatory Criteria, Condition of Approval A14 Does Not Unlawfully Defer Compliance with Discretionary Approval Criteria

In the alternative, even if TDC Chapter 63 included mandatory discretionary Architectural Review approval criteria, Condition A14 would still satisfy the standard for permissible deferral set out in the incorporated Tux Findings. Condition A14 requires the Project to comply, on an ongoing basis, with the performance standards of TDC Chapter 63, including TDC 63.051 (noise), TDC 63.053 (air quality), TDC 63.056 (storage of materials), and TDC 63.058 (dangerous substances). This Decision finds those standards met, or feasible to meet, based on the evidence in the record at the time of the Decision.

Condition A14 does not ask City staff, at a later date and outside any public process, to decide a discretionary question that the Decision leaves open. It makes an already adjudicated standard enforceable on a continuing basis once the Project is operational. That is the kind of condition

Rhyne describes as appropriate once a local government has found compliance, or feasibility of compliance, with an approval criterion following the required public process. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). Because no discretionary determination is left for a later, unnoticed stage, Condition A14 does not implicate the notice and hearing requirement of *McKay Creek*. The particular objections to Condition A14 are addressed in detail in Sections IV.B.iii and IV.E.i of these Supplemental Findings, which are incorporated herein.

c. Condition of Approval A8.a Does Not Unlawfully Defer Compliance with Equipment Screening Standards

Condition A8.a requires the Final Site Plan Set to show equipment screened in compliance with TDC 73A.110. One participant asked whether Condition A8.a leaves the equipment screening standard to a later discretionary decision. It does not. This Decision finds, based on evidence in the record, including distance, topography, existing building walls, dense evergreen and mature landscaping, and the berm along SW Tualatin Road, that new equipment associated with the Building B Addition would be screened from public view, and that the General Design Standards of TDC 73A.110 are satisfied.

Condition A8.a requires the Final Site Plan Set to demonstrate consistency with the plans and representations already found to satisfy that standard; it does not leave open any question the Decision did not already decide. This is precisely the circumstance that LUBA has held does not constitute deferral at all: "where the land use authority finds that an approval criterion is met but requires further confirmation through the final plan submission process, that is not the same thing as deferring a finding of compliance to a later stage of the approval process." *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007); see also *Friends of Collins View v. City of Portland*, 41 Or LUBA 261, 275-77 (2002).

Because Condition A8.a confirms compliance with a standard already found satisfied rather than deferring a discretionary determination to a later, unnoticed process, it does not implicate *McKay Creek*, and the challenge, in any event, does not satisfy the three-part showing *O'Shea* requires.

d. Condition of Approval A7 Does Not Unlawfully Defer Compliance with Waste and Recyclables Standards

Condition A7 requires written verification from the Project's waste hauler, before building permit issuance, that existing waste and recycling collection facilities serving Building B will meet collection requirements for the addition. One participant asked whether this condition verifies an existing arrangement or completes a required assessment. This Decision finds, applying the waste assessment method under TDC 73D.040, that the addition adds no employees, is not expected to increase waste or recycling volumes, and requires no modification of the existing collection facilities, and that the applicable standards of TDC Chapter 73D are therefore satisfied using the existing waste and recycling enclosure.

Condition A7 requires confirmation of an arrangement already found adequate; it does not ask the hauler, City staff, or any other party to make a new discretionary determination regarding compliance with a Chapter 73D standard.

As with Condition A8.a, this is confirmation of an existing finding through a later submittal, not deferral of a discretionary decision, and does not implicate the notice and hearing requirement of *McKay Creek*. *Wolfgram*, 54 Or LUBA 54; *Friends of Collins View*, 41 Or LUBA 261.

e. Conditions of Approval A2 through A6, A9, and A10 Do Not Unlawfully Defer Compliance with Utility and Stormwater Standards

Conditions A2 through A6 require submission of final stormwater plans, confirmation of downstream capacity, a downstream analysis, and compliance with the applicable Clean Water Services service provider letter; Conditions A9 and A10 address related utility connections. One participant asked which stormwater determinations were made at the time of the Decision rather than deferred to a later stage, and cited LUBA decisions addressing unlawful deferral of discretionary determinations.

This Decision finds that the site is served by existing public facilities and that the applicable standards of TDC Chapter 74 are satisfied subject to the conditions identified above. TDC 74.110(3)(a) itself contemplates that final storm drainage construction plans and calculations will be submitted for review and approval before construction; the code does not require the Council to make that final engineering confirmation itself as part of Architectural Review. Conditions A2 through A6, A9, and A10 accordingly implement a two-stage review process of exactly the kind *Rhyne* approves: the Council found compliance, or feasibility of compliance, with the applicable approval criteria following the statutorily required notice and hearing, and the conditions assign responsibility for confirming the technical details of that compliance to engineering staff at the permit stage. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). The LUBA decisions cited in opposition testimony address circumstances in which a local government left a discretionary approval standard itself unresolved pending a later process; here, by contrast, the Code expressly provides for later technical review of final plans implementing a standard already found met, which *Wolfgram* and *Friends of Collins View* confirm is not deferral within the meaning of *McKay Creek*.

ii. Exterior Gas Storage Complies with TDC 62.210(5)

The findings in Section IV.D.ii of the Tux Findings addressed a specific exterior gas storage challenge unique to the Tux Project's facts, which are not presented here, and are accordingly not incorporated herein.

TDC 62.210(5) requires that all uses be conducted wholly within a completely enclosed building, except for off-street parking and loading, utility facilities, wireless communication facilities, and outdoor storage occupying less than ten percent of the total site area. The Building B Addition expands Lam's existing, fully enclosed research and development laboratory use, and the Application does not propose any outdoor storage or other outdoor use. The Staff Approval found that no outdoor uses are permitted for this Project and that any future use must be conducted wholly within a completely enclosed building. Council finds that the Project complies with TDC 62.210(5).

E. Hazardous Materials Issues

This Section addresses the Hazardous Materials Issues raised in testimony. Three distinct sub-issues are presented. Section IV.E.i addresses TDC 63.058, which prohibits the storage, transfer, or processing of hazardous, toxic, or radioactive waste, and the related prohibition in TDC 39.400(3) (Section IV.E.i.d). Section IV.E.ii addresses TDC 63.053, the parallel Chapter 63 air quality standard, as it applies to the Building B Addition's proposed scrubber system. Section IV.E.iii addresses testimony concerning offsite emergency response planning for Lam's existing campus. Because the TDC 63.058 and TDC 39.400(3) analysis in Section IV.E.i establishes the interpretive and evidentiary framework that the remaining sub-issues apply, that analysis is addressed first and in the greatest detail, with Sections IV.E.ii and IV.E.iii incorporating it by reference where the same reasoning applies.

i. TDC 63.058 (Dangerous Substances) Is a Performance Standard and the Project Is Not a Treatment, Storage, or Disposal Facility

Opposition testimony raised concerns about chemical and waste management tied to TDC 63.058, suggesting the record does not establish "feasible compliance" with that standard. TDC 63.058 provides: “All uses and development are prohibited from the storage, transfer, or processing of hazardous, toxic, or radioactive waste.” Before addressing whether this provision has any bearing on the Building B Addition, it is necessary to interpret what it actually prohibits. Council then analyzes the nature of the standard, and concludes that it is a performance standard. Council then analyzes, in the alternative, evidence of the feasibility of the Project’s ability to comply with TDC 63.058.

a. Interpretation of Activities Regulated by TDC 63.058

TDC 63.058 relates only to waste (not materials), and the terms “hazardous,” “toxic,” and “radioactive” are not defined anywhere in the Tualatin Development Code.

When a City code provision uses an undefined term to describe a highly regulated category of material, the Council interprets that term consistent with the existing body of state and federal law that already defines and regulates it, rather than give the term some broader, free floating meaning the Council never adopted. TDC 63.058's own text supports this approach: it does not purport to create a freestanding definition of “hazardous,” “toxic,” or “radioactive” waste, but instead regulates those categories by name, in the same manner that the federal and state hazardous waste framework described below regulates them.

Hazardous, toxic, and radioactive waste are exactly that kind of highly regulated material: their generation, handling, storage, transfer, processing, and disposal are comprehensively governed by a detailed federal and state regulatory framework, described below. It would make little sense, and would risk inconsistent and unpredictable results, for the Council to interpret TDC 63.058 as reaching some different or broader universe of activity than what federal and state law already defines and regulates under these terms. The Council therefore looks to that framework, not to lay intuition or the dictionary about what "hazardous," "toxic," or "radioactive" might mean, to interpret TDC 63.058.

This interpretation is also entitled to deference on review. LUBA must affirm a city's interpretation of its own land use regulations unless the interpretation is inconsistent with the express language of the regulation, its purpose, or the policy underlying it, or is contrary to a controlling statute, goal, or rule. ORS 197.829(1). An interpretation is sufficient if it is plausible, meaning it is not expressly inconsistent with the text of the provision or the policies it implements; a plausible interpretation need not be the single best or most logical one available. *Siporen v. City of Medford*, 349 Or 247, 261 (2010); *Kaplowitz v. Lane County*, 285 Or App 764, 775 (2017); *Siegert v. Crook County*, 246 Or App 500, 509 (2011). The interpretation above, tying TDC 63.058's undefined terms to the existing federal and state hazardous waste framework, is at minimum plausible, and therefore satisfies this standard even if another interpretation might also be available.

That federal and state framework makes clear that TDC 63.058, by its terms, prohibits only a specific, narrow category of *waste* facility: a waste treatment, storage, or disposal facility, which are referred to a "**TSDF**." TDC 63.058 refers to facilities that store, transfer, or process hazardous, toxic, or radioactive waste, the same core activities, treatment, storage, and disposal, that define a TSDF under the regulations issued by the United States Environmental Protection Agency ("**EPA**") under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("**RCRA**"), and under the parallel state program at OAR 340-104, implemented by the Oregon Department of Environmental Quality ("**DEQ**"). See OAR 340-104-0001 (establishing minimum state standards for TSDFs and incorporating the EPA's regulatory definition of a TSDF); 40 CFR Part 260.10 (defining "Treatment," "Storage," and "Disposal Facility"); 40 CFR Parts 264, 265, and 270 (establishing TSDF standards, permitting, and approval requirements).

A TSDF is a facility that treats, stores, or disposes of hazardous waste. An example is a specialized, heavily permitted site built for that purpose, like a hazardous waste landfill or incinerator. It is a different thing entirely from a business that may generate some hazardous waste as a byproduct during its operations, and temporarily holds that waste on site, consistent with generator-specific standards, before it is picked up and taken away to a regulated TSDF. Read consistently with the state and federal framework it necessarily draws upon, Council interprets TDC 63.058 to prohibit only a use that is itself a TSDF; it does not prohibit any use that may simply involve, generate, or temporarily accumulate hazardous waste in the ordinary course of its operations.

For the reasons explained in Section IV.E.i.c., and incorporated herein, Council finds that Lam's Project does not propose to construct or operate a TSDF as either a primary or accessory use, and that Lam does not treat, store, or dispose of hazardous waste in a manner that would render Lam's facility a TSDF under Oregon or federal law. Instead, at most, Lam is a generator that accumulates its own hazardous waste for the permitted period before offsite shipment, which is a distinct and separately regulated category from a TSDF, and generator status alone does not subject a facility to TSDF permitting requirements, or render the use prohibited under TDC 63.058.

Based upon Council's interpretation and the distinction between a generator and TSDF, two independent bases fully address the testimony, and each one is sufficient on its own.

b. TDC 63.058 is a Performance Standard

First, and independently, TDC 63.058 is one of the Chapter 63 Environmental Regulations. Like TDC 63.051 (Noise) and the balance of Chapter 63, it is a performance standard enforced once a use is operational under Condition of Approval A14, not a mandatory approval standard that must be proven feasible before the Council can approve the Building B Addition. The Council's reasoning in the Tux Approval, that Chapter 63 standards are not "necessary prerequisites to issuance of a permit," and that "no findings or evidence are required" to address them at approval (Tux Approval, Supplemental Findings § III.A.ii), applies to TDC 63.058 exactly as it applies to the noise provisions, for the same reasons explained in Section III.A.ii of these Supplemental Findings. This threshold point resolves the issues raised related to hazardous materials without the Council needing to wade into the technical waste stream questions opponents have raised.

Treating TDC 63.058 this way also makes practical sense. Overseeing compliance with the detailed technical standards, including evaluating a use's self-reporting activities, associated with generators, and when a facility may qualify as a TSDF requires the kind of specialized scientific and regulatory expertise that DEQ and EPA, not the City Council, are equipped to apply. DEQ already regulates hazardous waste generation, accumulation, and disposal under the state hazardous waste program, and EPA does the same at the federal level. Those agencies have the technical staff, testing protocols, and permitting procedures needed to determine whether a given facility's activities cross the line from ordinary generator status into TSDF status, a determination that depends on detailed factual and technical questions about waste streams, storage practices, and treatment processes. The Council is not equipped, and need not attempt to make that technical determination in this proceeding. That the City's own code places the relevant inquiry outside the mandatory Architectural Review approval criteria, and leaves it to be addressed through ongoing compliance, is consistent with, not contrary to, how this kind of technical regulatory performance standard is normally and appropriately resolved.

Some testifiers, such as Mr. Mann's September 17, 2026 letter, requested that the City require Lam to identify the specific classification standard applied to its waste streams, explain the function of the Dilute Mixed Metals Waste and Concentrated Mixed Metals Waste systems shown on the Building B ASR drawings and their connection to the CMS building, and provide further evidence reconciling that infrastructure with the application's representation that no hazardous, toxic, or radioactive waste is proposed to be stored, transferred, or processed as part of the Building B Addition.

The City did not require Lam to provide that additional detail, and Lam did not provide it. Council finds that Lam was not required to do so. Because TDC 63.058 is a performance standard rather than a mandatory approval standard, Lam bears no evidentiary burden to establish, and the Council need not find, that compliance with TDC 63.058 is feasible as a condition of approval. Additionally, a local government's findings are not deficient for failing to address every item of evidence or every detailed technical question a party raises, so long as the findings adequately address the issue actually before the decision maker. *See Laurance v. Douglas County*, 45 Or LUBA 393, 397 (2003); *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000); *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). The issue properly before

the Council is whether TDC 63.058 is an applicable approval criterion that must be shown to be satisfied, or feasibly satisfiable, before approval; it is not whether Lam's existing or proposed waste-handling infrastructure, considered in isolation, independently demonstrates compliance with the hazardous waste standards that apply once the facility is operating. Because the Council resolves that threshold issue in Section IV.E.i.b above, the Council need not, and does not, resolve the more granular classification questions Mr. Mann's letter raises as a precondition to approval.

As a performance standard, ongoing compliance with TDC 63.058 is assured by Condition of Approval A14, which requires continuing compliance with all applicable Chapter 63 environmental regulations once the Building B Addition is operational. That condition operates alongside, and is reinforced by, the independent and more rigorous federal and state hazardous waste framework described above. A facility that generates and temporarily accumulates hazardous waste as a generator, rather than operating as a TSDF, remains subject to generator-specific standards, including accumulation time limits, container and labeling requirements, and recordkeeping, under OAR 340-102-0010 and the parallel federal generator standards at 40 CFR Part 262. Should Lam's operations ever expand to the point that they cross the regulatory line from generator status into TSDF activity, triggering the TSDF-specific requirements described in Section IV.E.i.a, Lam would be required to obtain the corresponding DEQ or EPA permit before doing so, independent of, and in addition to, Condition A14. Such further permitting would demonstrate that the Project (or Lam's existing facilities) had been converted into a TSDF, in which case TDC 63.058's prohibition on TSDFs would apply. The combination of Condition A14 and this existing, independently enforced regulatory structure provides the Council a sufficient basis to conclude that the Project will not operate as a TSDF, and that TDC 63.058 will continue to be satisfied as the Building B Addition becomes operational.

Treating TDC 63.058 as a performance standard enforced through Condition A14, rather than as a mandatory approval standard requiring a pre-approval feasibility finding, is not an improper deferral of a finding of compliance with a mandatory approval standard. The general standard governing when deferral of a compliance determination is and is not permitted, and its application to Condition A14, are addressed in Sections IV.D.i.a and IV.D.i.b of these Supplemental Findings, which are incorporated herein. As explained there, Condition A14 does not call for any future discretionary land use approval; it requires straightforward, ongoing compliance with existing, objective Chapter 63 standards. Nor does TDC 63.058 itself call for any future discretionary City approval: whether Lam's operations ever cross the line from generator status into TSDF activity is, and will remain, a determination made by DEQ and EPA under the independent federal and state hazardous waste permitting framework described above, which could then implicate City enforcement proceedings, but not an additional City land use review. Because TDC 63.058 was never a mandatory approval standard for the Building B Addition in the first place, and compliance with it is assured through that independent, non-discretionary regulatory structure operating alongside Condition A14, Condition A14 does not unlawfully defer a required finding.

c. In the alternative, Substantial Evidence Supports the Conclusion that it is Feasible for the Project to Comply with TDC 63.058

The following Supplemental Findings are offered in the alternative and apply the evidence in the record based on the alternative interpretation that TDC 63.058 is a mandatory approval standard, which would require the City Council to find that compliance is achieved or feasible. These alternative findings rely upon the interpretation of TDC 63.058 in Section IV.E.i.a, which is incorporated herein.

Council concludes that there is no basis in the record to conclude that the Building B Addition would cause Lam's facility to become a TSDF under Oregon or EPA regulations, and therefore be prohibited by TDC 63.058. Oregon and federal law establish specific standards and a permitting process to operate a TSDF. See OAR 340-104-0001; 40 CFR Part 260.10; 40 CFR Parts 264, 265, and 270. While some testimony, including Mr. Maguire's September 20, 2026 (second) letter, points to references on Lam's plans to a CMS building, waste-management infrastructure, and information about hazardous materials, those details are not dispositive of TSDF status. No party has identified, and the record does not contain, any TSDF permit application, any TSDF permit, or any other evidence that Lam's existing facilities or the minor expansion proposed by the Building B Addition would require Lam to seek or obtain approval to operate a TSDF under this framework.

Lam's existing campus has operated for years at a substantially larger scale than the Building B Addition alone. No party identified a TSDF permit for Lam’s existing campus, and we do not understand any party to allege that Lam’s existing facilities have ever been required to obtain TSDF approval under this state and federal framework. The Building B Addition is a minor expansion of that existing use, adding laboratory space and an enclosed scrubber pad, together with the waste management infrastructure described in testimony. That the existing, much larger campus has operated without becoming a TSDF is strongly predictive of whether this minor addition will cause Lam's facility, as a whole, to become one.

This remains true even accounting for the new waste management infrastructure that the Building B Addition includes. TDC 63.058 does not prohibit a use from generating hazardous waste or from temporarily accumulating that waste onsite in the ordinary course of its operations; it prohibits a use from operating as a treatment, storage, or disposal facility. Not all accumulation of waste constitutes "storage" within the meaning of TDC 63.058 or the federal and state TSDF framework it incorporates: a generator's temporary, time-limited accumulation of its own waste, consistent with generator-specific standards such as OAR 340-102-0010, is treated differently under that framework than the storage, treatment, or disposal activity that defines a TSDF. For the reasons explained in Section IV.E.i.a and here, that kind of infrastructure is itself consistent with ordinary, regulated handling of incidental waste, not evidence of TSDF status. A reasonable person could conclude on this record that, because Lam's existing, much larger campus is not a TSDF, the addition of a comparatively small amount of laboratory space and waste management infrastructure, of the kind addressed below, does not render Lam's facility, taken as a whole, a TSDF.

Mr. Maguire's September 20, 2026 (second) letter argues that the waste-management infrastructure shown on Lam's plans, including the Dilute Mixed Metals Waste and Concentrated Mixed Metals Waste systems and their documented connection to the CMS building, is evidence that contradicts the Application's statement that no hazardous, toxic, or radioactive waste will be stored, transferred, or processed as part of the proposed development. The Council finds this alleged inconsistency is resolved by the legal distinction between a generator and a TSDF explained in Section IV.E.i.a above. The waste-management infrastructure that Mr. Maguire's and Mr. Mann's letters describe, including the identified tanks, transfer piping, and connections to the CMS building, is consistent with a generator's ordinary handling and temporary accumulation of its own waste before offsite shipment, and does not, by itself, establish that Lam treats, stores beyond permissible accumulation timelines, or disposes of hazardous waste onsite in the manner that would make Lam's facility a TSDF.

The Application's representation that no hazardous, toxic, or radioactive waste will be stored, transferred, or processed as part of the Project is accordingly consistent with, not contradicted by, the existence of generator-level waste-handling infrastructure described in testimony. Because TDC 63.058 is a performance standard rather than a mandatory approval standard, and because the existence of this infrastructure does not tend to show that Lam treats, stores beyond permissible accumulation timelines, or disposes of hazardous waste onsite, the Council does not find it necessary to require Lam to provide the additional technical detail about the specific composition, pH, or volume of particular waste streams that Mr. Mann's and Mr. Maguire's letters request as a precondition to this approval.

In weighing this testimony against Lam's representations, the Council also finds it relevant that Lam is a sophisticated operator of an advanced research and manufacturing facility that is independently subject to, and represents that it complies with, the comprehensive federal and state hazardous waste framework described above, as well as other environmental and safety regulatory regimes. Lam's representations about its own waste handling practices are made by the party most familiar with its own operations and most directly exposed to regulatory consequences for inaccurate representations, which the Council finds lends those representations credibility. By contrast, the opposition testimony on this point reflects lay observation and inference from plan drawings, without technical expertise in hazardous waste classification**.** The Council therefore finds Lam's representations more credible and persuasive than the contrary lay inferences opponents draw from the same plan drawings. *See Younger v. City of Portland*, 305 Or 346, 360 (1988) (substantial evidence is evidence a reasonable person would rely on to make a decision).

The record does not include technical expert testimony from Lam specifically addressing its waste stream classifications, and the Council does not rely on any such expert showing; this credibility finding rests instead on Lam's direct operational knowledge and regulatory accountability as the facility operator, which the Council finds sufficient, together with the analysis above, to resolve the alleged inconsistency Mr. Maguire and Mr. Mann identify.

Applying that same Section III.C credibility framework, incorporated herein, Council also finds TVF&R's determination more credible than the contrary lay inferences Mr. Maguire and Mr. Mann draw from technical plan labels such as "CMS Building," because those inferences read

isolated labels on technical drawings out of the regulatory context that TVF&R and Lam actually apply. As explained more fully in Section IV.E.iii, which is incorporated herein, TVF&R, the agency responsible for enforcing the Oregon Fire Code as it relates to the classification, storage, handling, and use of hazardous materials, reviewed this Application and, in a written response dated August 28, 2026, raised no concerns regarding hazardous materials or the land use. TVF&R's determination reflects the agency with direct regulatory jurisdiction over hazardous material classification and handling, applying that expertise to the same plans Mr. Maguire and Mr. Mann read in isolation, and is therefore further substantial evidence supporting the conclusion that the Building B Addition does not operate, and will not cause Lam's facility to operate, as a treatment, storage, or disposal facility that is prohibited by TDC 63.058.

d. TDC 39.400(3) Imposes the Same Prohibition as TDC 63.058, is Satisfied for the Same Reasons, and the Associated Activities Are in Any Event Accessory to Lam's Existing Use

Mr. Mann's September 17, 2026 testimony documents future B-CMS connections to the Dilute Mixed Metals and Concentrated Mixed Metals Waste systems and requests reconciliation with TDC 63.058, and additionally raises TDC 39.100 and the prohibition in TDC 39.400(3). His September 19, 2026 testimony explains that TDC 39.100(3)(c) permits accessory uses that are subordinate and incidental to a primary use, subject to its qualifications, including "unless stated otherwise in this Code," and that TDC 39.100(4) identifies considerations for distinguishing primary from accessory uses.

On that basis, Mr. Mann asks the City to identify whether the hazardous materials and waste management activities associated with Lam's operations are part of the primary laboratory use, an accessory use, or a separate primary use, and to explain the Project specific facts supporting that classification. He further asks that, if the City relies on accessory status, it reconcile that conclusion with TDC 39.400(3) and TDC 63.058, including the applicable rules of construction in TDC 31.105, and states that he objects to treating the permitted laboratory classification as sufficient without addressing the separate prohibition in TDC 39.400(3) and the documented future waste connections. His September 28, 2026 testimony states that his objections under TDC 39.400(3) and the use classification provisions remain, and again asks the City to explain which activities the CMS connections serve, how the associated waste is classified, and how the proposed activities meet the applicable use restrictions.

Council finds that Mr. Mann does not contend that these activities are in fact a separate, independently classified use; he asks the Council to make, and support with Project-specific findings, a reasoned classification and compliance determination that addresses TDC 39.400(3) on its own terms rather than treating the Light Manufacturing classification as sufficient standing alone. The following Supplemental Findings provide that determination.

TDC 39.400(3), which lists the uses prohibited within the Light Manufacturing use category, prohibits "[s]torage, transfer, or processing of hazardous, toxic, or radioactive waste." This is the same operative phrase, using the same undefined terms "hazardous," "toxic," and "radioactive" waste, as the prohibition in TDC 63.058, which likewise prohibits "the storage, transfer, or processing of hazardous, toxic, or radioactive waste." The same prohibited use language also

appears in the Exceptions subsections of other Chapter 39 industrial use categories, including TDC 39.410 (Heavy Manufacturing), indicating that this phrase functions as a standard exclusion applied consistently across the industrial use categories, rather than as a use category specific standard with its own independent meaning.

Consistent with TDC 31.105's direction that the Development Code be construed as a whole and that the same words be given the same meaning throughout, Council interprets TDC 39.400(3)'s prohibition on the "[s]torage, transfer, or processing of hazardous, toxic, or radioactive waste" the same way, and for the same reasons, that it interprets the identical language in TDC 63.058, as explained in Section IV.E.i.a above, which is incorporated herein.

Mr. Mann's testimony identifies no textual or contextual basis in TDC 39.400(3), or elsewhere in TDC Chapter 39, for giving this identical phrase a different meaning in the use classification context than it carries in the Chapter 63 environmental performance standard context. To the contrary, reading the two provisions consistently avoids the anomalous result of a single, undefined prohibition applying differently to the same activity depending on which chapter of the Code is invoked.

Applying that consistent interpretation, Council finds, for the same reasons explained in Sections IV.E.i.a through IV.E.i.c above, which are incorporated herein, that the record contains no evidence that Lam's facility treats, stores beyond permissible accumulation timelines, or disposes of hazardous waste onsite, or that the Building B Addition would cause it to do so. The documented Dilute Mixed Metals Waste and Concentrated Mixed Metals Waste systems and their connection to the CMS building, which Mr. Mann's testimony identifies as the basis for his TDC 39.400(3) objection, are the same waste management infrastructure addressed in Section IV.E.i.c, and are consistent with the incidental generation and temporary accumulation of waste rather than the treatment, storage, or disposal activity that TDC 39.400(3) and TDC 63.058 alike prohibit. Council therefore finds that the record supports the conclusion that it is feasible for the Project to comply with TDC 39.400(3), for the same reasons, and based on the same evidence, supporting that conclusion as to TDC 63.058.

Mr. Mann's testimony separately asks the City to classify the hazardous materials and waste management activities as part of the primary laboratory use, an accessory use, or a separate primary use, and to explain the Project-specific facts supporting that classification. Council addresses that question independently, and in the alternative, as follows. The Staff Approval classifies the Building B Addition as an expansion of the existing Building B, a research and development laboratory, which TDC Table 62-1 lists as a permitted use within the Light Manufacturing use category applicable to the Manufacturing Park (MP) Zone, and finds that this use is accessory to the primary manufacturing and office uses of the Lam Research campus. TDC 39.100(3)(c) defines accessory uses as "uses or activities that are subordinate and incidental to a primary use on a site," allowed in all zones in conjunction with the primary use and subject to the same regulations as the primary use, unless the Development Code states otherwise. TDC 39.100(4) identifies considerations relevant to distinguishing a primary use from an accessory use, including the description of the activity in relation to other uses on the site, the relative amount of site or floor space and equipment devoted to the activity, the relative number of

employees involved, building and site arrangement, and whether the activity would likely be found independent of the other activities on the site.

Applying those considerations, with no one factor being determinative, on balance, the generation, accumulation, and management of hazardous materials and hazardous waste associated with Lam's manufacturing and laboratory operations is subordinate and incidental to the primary research and development laboratory and light manufacturing use within the meaning of TDC 39.100(3)(c). The record does not show that this activity occupies a distinct area of the site; involves separate staffing, hours of operation, or equipment beyond the waste handling and transfer infrastructure incidental to laboratory and manufacturing operations; or is marketed, operated, or otherwise conducted as an independent commercial or industrial activity. Rather, the generation and incidental handling of chemical byproducts and waste streams is a direct and necessary consequence of conducting the research and development laboratory use that TDC 39.400 itself lists as an example use within the Light Manufacturing category.

Neither TDC 39.400 nor Table 62-1 treats the incidental generation and management of process chemicals and waste associated with a research and development laboratory as a separate use requiring its own classification, and Mr. Mann's testimony identifies no language in either provision suggesting otherwise. Council therefore finds, in the alternative to the interpretation set out above, that the hazardous materials and waste management activities described in testimony are accessory to, and do not alter, Lam's existing use classification as a research and development laboratory within the Light Manufacturing use category.

This conclusion is also consistent with, and reinforced by, Tualatin Valley Fire and Rescue's independent review of the application, which Mr. Mann's own September 19, 2026 testimony acknowledges occurred. As explained more fully in Section IV.E.iii, which is incorporated herein, TVF&R reviewed the Application in its capacity as the agency responsible for enforcing the Oregon Fire Code as it relates to hazardous material classification, storage, handling, and use at the Lam campus, and raised no concerns regarding hazardous materials or the land use. TVF&R's review did not identify the Building B Addition's hazardous materials management as a separate use requiring independent classification, consistent with Council's conclusions above.

ii. TDC 63.053 (Air Quality) Is Also a Performance Standard

Mr. Maguire's September 20, 2026 (second) letter raises an argument parallel to the issues raised related to hazardous waste and TDC 63.058 about the proposed scrubber system for the Building B Addition, contending that the record lacks sufficient information to establish "feasible compliance" with TDC 63.053, the Chapter 63 air quality standard. The same two independent bases that resolve the hazardous waste testimony and TDC 63.058 detailed in Section IV.E.i apply equally here, for the same reasons, and are incorporated herein.

TDC 63.053 provides that "[a]ll uses and development must comply with the most recent air quality standards adopted by the Oregon Department of Environmental Quality," and that "[p]lans of construction and operations must comply with the recommendations and regulations of the State Department of Environmental Quality."

By its own terms, TDC 63.053 is framed the same way as TDC 63.051 and TDC 63.058: it describes an ongoing obligation that governs how a use operates and is measured once operating, not a demonstration that must be made before Architectural Review can be approved. City Council finds that TDC 63.053(2) confirms this by directing that air pollution be measured using DEQ-approved procedures and equipment, and by authorizing the City to request operational monitoring information "upon request" from "persons responsible for a suspected source of air pollution," language that presupposes an operating use, not an entitlement-level Architectural Review filing.

TDC 63.053's reference to “plans of construction and operations” describes a category of plan outside the scope of Architectural Review, consistent with the operational framing above. This interpretation is entitled to deference on review for the same reasons explained in Section IV.E.i.a above: an interpretation is sufficient if it is plausible, meaning it is not expressly inconsistent with the text of the provision or the policies it implements, even if it is not the single best or most logical interpretation available. *Siporen v. City of Medford*, 349 Or 247, 261 (2010); ORS 197.829(1). Reading TDC 63.053 consistently with the parallel noise and hazardous waste performance standards in the same chapter, and with the Tux Approval's conclusion that Chapter 63 standards are not "necessary prerequisites to issuance of a permit" (Tux Approval, Supplemental Findings § III.A.ii), is at minimum plausible, and therefore satisfies this standard even if another interpretation might also be available.

Independently of the textual and structural bases above, DEQ's occupation of this regulatory field confirms that TDC 63.053 does not require a pre-approval feasibility finding by the Council. Overseeing compliance with DEQ's air quality standards, including evaluating scrubber design, removal efficiency, exhaust characterization, and permitting thresholds, requires the kind of specialized technical and regulatory expertise that DEQ, not the City Council, is equipped to apply. DEQ already administers the air quality permitting program that TDC 63.053 expressly incorporates by reference, and TDC 63.053(2) itself contemplates that information about a source's operating conditions will be requested and evaluated once a use is operating, not during Architectural Review. Mr. Maguire's September 20, 2026 (second) letter requested that the City require Lam to identify, among other things, the chemicals and processes connected to the proposed scrubber system, the expected constituents of the exhaust after scrubbing, expected emission concentrations and rates, the scrubber's design basis and expected removal efficiencies, the proposed exhaust stack parameters, and the engineering or regulatory analysis supporting the conclusion that no DEQ air quality permit is required. The City did not require Lam to provide that additional detail, and Lam did not provide it. Council finds that Lam was not required to do so.

Because TDC 63.053 is a performance standard rather than a mandatory approval standard, Lam bears no evidentiary burden to establish, and the Council need not find, that compliance with TDC 63.053 is feasible as a condition of approval. A local government's findings are not deficient for failing to address every item of evidence or every detailed technical question a party raises, so long as the findings adequately address the issue actually before the decision maker. See *Laurance v. Douglas County*, 45 Or LUBA 393, 397 (2003); *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000); *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). The issue properly before the Council is whether TDC 63.053 is an applicable approval criterion that

must be shown to be satisfied, or feasibly satisfiable, before approval, not whether the scrubber system's specific technical design and performance characteristics, considered in isolation, independently demonstrate compliance with the air quality standards that apply once the facility is operating. Because the Council resolves that threshold issue above, it need not, and does not, resolve the more granular design and emissions questions Mr. Maguire's letter raises as a precondition to approval.

Treating TDC 63.053 as a performance standard enforced through Condition A14, rather than as a mandatory approval standard requiring a pre-approval feasibility finding, is not an improper deferral of a finding of compliance with a mandatory approval standard, for the same reasons explained in Sections IV.D.i.a, IV.D.i.b, and IV.E.i.b of these Supplemental Findings, which are incorporated herein. Condition A14 does not call for any future discretionary land use approval or further exercise of the Council's judgment; it requires straightforward, ongoing compliance with existing, objective Chapter 63 standards. Nor does TDC 63.053 itself call for any future discretionary City approval: whether the Building B Addition's scrubber system and associated equipment comply with applicable air quality standards is, and will remain, a determination made by DEQ under its independent air quality permitting program, not by the City through further land use review. Because TDC 63.053 was never a mandatory approval standard for the Building B Addition in the first place, and compliance with it is assured through that independent, non-discretionary regulatory structure operating alongside Condition A14, Condition A14 does not unlawfully defer a required finding.

a. In the alternative, Substantial Evidence Supports the Conclusion that it is Feasible for the Project to Comply with TDC 63.053

The following Supplemental Findings are offered in the alternative, and apply the evidence in the record based on the alternative interpretation that TDC 63.053 is a mandatory approval standard, which would require the City Council to find that compliance is achieved or feasible.

The record does not show that the Building B Addition's scrubber system would violate applicable DEQ air quality standards. The Application narrative states that any equipment associated with the Project that may produce emissions will be selected and designed to comply with the most recent DEQ air quality standards, and that no equipment or operations requiring a DEQ air quality permit are anticipated as part of the Project. The Application narrative separately states, in addressing the Chapter 63 odor standard, that nuisance odors are not anticipated because all exhaust air from the lab will be scrubbed and filtered. No party has identified, and the record does not contain, any DEQ air quality permit application, denial, or violation finding, or any other evidence that the scrubber system would fail to comply with DEQ's air quality standards. Questions about the scrubber's specific design basis, removal efficiency, or expected emission constituents are the kind of operational detail that TDC 63.053(2) contemplates will be documented and, if necessary, requested once the use is operating, not a precondition to approving the building's exterior design. Air quality permitting and compliance is subject to ongoing, independent regulatory oversight by the DEQ, separate from and in addition to the City's Architectural Review process. For all of these reasons,

Council finds that substantial evidence in the record supports the conclusion that it is feasible for the Project to comply with TDC 63.053.

Finally, to the extent the Application narrative's representations regarding the scrubber system and compliance with TDC 63.053 are weighed against the lay speculation in Mr. Maguire's testimony, Council finds the Application narrative more credible and entitled to greater weight.

Lam is a sophisticated, existing operator of the subject facility with direct operational knowledge of its own processes, equipment, and waste and emissions streams, and its narrative was prepared and submitted as part of a land use application subject to the Application's acknowledgment of accuracy and the City's and DEQ's independent regulatory oversight. By contrast, Mr. Maguire's testimony, while sincere, does not purport to be based on comparable technical expertise, and raises questions about categories of information that go beyond what TDC 63.053 requires Lam to demonstrate at the Architectural Review stage.

The Council need not, and does not, resolve this record by weighing the technical merits of a lay challenge against an unrebutted Application narrative; a local government has discretion to determine which evidence in the record to credit when evidence is conflicting, and that choice will not be disturbed so long as it is one a reasonable decision maker could have made, particularly where, as here, the Applicant remains independently accountable to DEQ for the accuracy of its representations once the facility is operating. *See Laurance v. Douglas County*, 45 Or LUBA 393, 404 (2003) (citing *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988)). For the same reasons explained in Section IV.E.i.c above, applying the Section III.C credibility framework, Council finds Lam's own technical representations, corroborated by TVF&R's independent review, more credible than lay speculation drawn from technical plan materials read out of their regulatory context.

iii. Testimony About Offsite Emergency Response Planning for Lam's Existing Facility Does Not Provide a Basis to Deny Architectural Review for the Project

Testimony raises detailed questions about Washington County's Chemical Facility Offsite Release Plan for the Lam campus, the AEGL exposure modeling associated with Lam's existing ammonia inventory, and the degree to which the Tigard-Tualatin School District, Washington County Emergency Management, the Local Emergency Planning Committee, and Tualatin Valley Fire & Rescue have coordinated around that existing emergency plan. The City Council takes community safety seriously. But none of that testimony provides a basis to deny or condition approval of the Building B Addition, for three independent and alternative reasons.

First, and independently, offsite emergency response planning, consequence modeling, and inter-agency coordination are not Architectural Review approval criteria. Architectural Review evaluates the exterior design of a building under TDC Chapters 73A through 73G; it does not evaluate, and the Council is not called upon to adjudicate, the adequacy of county emergency management planning, school district coordination, or fire district response capability. Those are the responsibilities of Washington County Emergency Management, the Local Emergency Planning Committee, the Oregon State Fire Marshal, and Tualatin Valley Fire & Rescue, acting

under their own statutory and regulatory frameworks, not the City Council acting on an Architectural Review application. Because the questions raised are not tied to any applicable approval criterion, and testimony cites to no criteria, those issues cannot supply a basis to deny or condition approval of the Building B Addition, notwithstanding their importance in those other channels.

This division of responsibility reflects the reality that the Council does not possess, and this record does not require it to develop, the specialized expertise in hazardous material classification, consequence modeling, or emergency response planning that those agencies and first responders bring to bear through their own expert personnel and processes. It is precisely because those subject matter experts, not the City Council, are equipped to evaluate offsite emergency response planning that the Code does not assign these functions as being applicable during Architectural Review.

Nor could the Council impose a new condition of approval requiring Lam to undertake or fund additional emergency response planning, modeling, or inter-agency coordination as a condition of this Architectural Review approval. As explained in Supplemental Findings Section III.B, which is incorporated herein, the Council's authority to impose conditions of approval is not unlimited: a condition must implement a mandatory approval standard in the TDC, must be supported by substantial evidence demonstrating the condition is necessary, and must further a legitimate planning purpose connected to the application under review. A condition addressing offsite emergency response planning for Lam's existing, already operating campus would not implement any mandatory Architectural Review approval standard applicable to the Building B Addition, and the record contains no evidence that such a condition is necessary to address any impact caused by this Project specifically.

Second, this testimony is primarily about Lam's existing, already operating campus and its existing hazardous material inventory, not about the Project. The Chemical Facility Offsite Release Plan, the AEGL modeling, and the agency coordination described in testimony all predate, and are independent of, this Application. Testimony asks whether the Building B Addition and its enclosed scrubber pad will increase or change the type, quantity, storage, transfer, or handling frequency of ammonia or other hazardous substances at the Lam campus, whether the enclosed scrubber pad reflects a new or increased hazardous material use or process capacity, whether the expansion changes the likelihood or consequences of an off-site chemical release, and whether the City analyzed cumulative operations and hazardous material use across the Lam campus rather than evaluating the addition solely by its square footage.

The record answers each of those questions. The Staff Approval describes the proposal as an approximately 3,900 square foot addition to the north side of the existing Building B, together with an enclosed scrubber pad, that will not generate additional vehicle trips because no additional jobs are created by the expansion of the existing lab building, and that will not generate additional waste or recycling materials requiring modification to the existing collection facilities. The Application narrative similarly describes the addition as adding laboratory space that will be used by current Lam employees and served by existing truck traffic, without increasing waste or recycling volumes. A scrubber is air pollution control equipment that removes contaminants from an exhaust stream before discharge; it is equipment that controls

emissions from the existing laboratory function, not a new process or a new source of hazardous material use, and TDC 63.053 air emission compliance is secured by Condition of Approval A14. Nor was the City required to analyze the addition by reference to the Lam campus's cumulative hazardous material inventory, because the Architectural Review approval criteria in TDC Chapters 73A through 73G do not require that analysis, and no party identifies an approval criterion that does.

In any event, and most directly responsive to this testimony, Tualatin Valley Fire & Rescue independently reviewed this Application in its capacity as the agency responsible for enforcing the Oregon Fire Code as it relates to the classification, storage, handling, and use of hazardous materials at the Lam campus. In a written response dated August 28, 2026, Deputy Fire Marshal Alex McGladrey of TVF&R explained that TVF&R enforces the Oregon Fire Code through periodic inspections verifying proper classification, storage, handling, and use of hazardous materials, separation of incompatible materials, compliance with Maximum Allowable Quantities and control area limitations, and compliance with specialized provisions for hazard classes including compressed gases, corrosives, flammable liquids, oxidizers, and toxic materials, and that TVF&R reviewed this Application and raised no concerns regarding hazardous materials or the land use. That TVF&R, the very agency with subject-matter jurisdiction and expertise over hazardous-material classification and fire and life safety at this campus, reviewed this Application and raised no concerns is substantial evidence that the Building B Addition does not raise hazardous-material classification, storage, handling, or fire and life safety concerns warranting denial or additional conditions, considering Council's authority to impose conditions of approval, and no party has identified any evidence in the record contrary to TVF&R's conclusions.

Finally, testimony that ammonia is identified as an Extremely Hazardous Substance above its Threshold Planning Quantity describes the existing regulatory classification of a chemical already present at, and already governed at, the Lam campus; it is not evidence that the Building B Addition changes that classification or the hazard level associated with Lam's existing operations. That classification is precisely why Lam's existing facility is already subject to the Washington County Chemical Facility Offsite Release Plan, LEPC oversight, and OSFM reporting described in testimony, through those existing, independent regulatory channels, not through this Architectural Review application.

In sum, the Council does not dismiss the importance of offsite emergency response planning, evacuation procedures, shelter-in-place protocols, or inter-agency coordination to the surrounding community, including Hazelbrook Middle School and Farmington Square Tualatin. Those are legitimate and important public safety concerns. But they are appropriately addressed through the existing regulatory and expert channels established for that purpose, including Washington County Emergency Management, the Local Emergency Planning Committee, the Oregon State Fire Marshal, and Tualatin Valley Fire & Rescue, each acting within its own statutory jurisdiction and technical expertise. They are not implemented through TDC Chapter 63 or the Architectural Review approval criteria in TDC Chapters 73A through 73G, and they are accordingly outside the scope of this Architectural Review proceeding. The Council's conclusion that these issues do not provide a basis to deny or condition approval of the Building B Addition rests on the applicable approval criteria and the evidence in the whole record, including

TVF&R's own review and determination that it has no concerns, not on any view regarding the importance of the underlying public safety subject matter.

F. Other Issues, Raised for the First Time in this Appeal

i. Compliance with Architectural Review Criteria

A narrow set of testimony, most comprehensively set out in Jonathan Mann's September 19, 2026 letter, raised detailed questions tied to the actual Architectural Review approval criteria in TDC Chapters 73A through 73D, specifically mechanical equipment screening, outdoor lighting, landscaping, and vehicle and bicycle parking and waste enclosure capacity. Council addresses each of these standards in turn below.

Findings are adequate for review if they identify the relevant approval standard, set out the facts relied upon, and explain how those facts lead to the conclusion that the standard is met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992); *Matthews v. Lane County*, 81 Or LUBA 757, 760 (2020). Findings must also address and respond to the specific issues relevant to compliance with the applicable standards that were raised during the proceedings below. Council structures the findings below to satisfy that standard, identifying the applicable standard, the testimony raising the issue, the evidence Council relies upon, and Council's conclusion for each standard.

The Staff Approval already found the Architectural Review mandatory approval standards are satisfied based on the Application materials. In direct response to the specific questions Mann raised, a supplemental letter dated September 28, 2026 from Mackenzie, Lam's project architect and land use planner, provided additional supporting evidence and analysis addressing each point. Council finds this supplemental evidence is properly part of the whole record and, together with the Application materials and the Staff Approval, provides substantial evidence supporting each of the findings below.

Mechanical Equipment Screening (TDC 73A.110(8)). The applicable standard requires that above grade and on grade electrical and mechanical equipment, such as transformers, heat pumps, and air conditioners, be screened with sight obscuring fences, walls, or landscaping.

Mann's testimony acknowledged that distance, topography, existing buildings, and vegetation may support a screening finding, but asked the City to identify the plans, elevations, sightlines, equipment heights, and observation locations supporting that finding, rather than relying on distance alone.

In response, the September 28, 2026 Mackenzie letter and its Sheets 1 and 2 provide supplemental sight line diagrams from adjacent public streets depicting the view of the proposed roof mounted mechanical equipment from those vantage points.
Council finds that these diagrams, together with the Application materials, demonstrate that the proposed roof mounted mechanical equipment will be effectively screened by a combination of distance, topography, existing buildings, and existing vegetation, as shown from the specific public street vantage points depicted. This evidence directly responds to Mann's request for the

supporting plans and observation locations, and Council finds no additional mechanical equipment screening is required.

Outdoor Lighting (TDC 73A.110(7)). The applicable standards require development to locate, orient, and select exterior lighting to facilitate surveillance of onsite activities from the public right of way without shining into public rights of way, and separately require exterior lighting to be screened, baffled, or directed away from residential planning districts.

The Application's exterior elevation sheet, Sheet A.3 (also labeled A0.00), depicts proposed exterior light fixtures labeled full cutoff. Mann's testimony asked the City to confirm which fixtures are authorized, whether the depicted locations and full cutoff specifications are required, and how the new loading area would be illuminated.

In response, the September 28, 2026 Mackenzie letter and its Sheet 3 provide an updated site plan identifying existing and proposed outdoor light fixtures and adding a callout confirming that the new loading area will be appropriately illuminated.

Council finds that the Application plans and this supplemental site plan, read together, identify the specific fixtures, locations, and full cutoff specifications that are authorized and required, and confirm that the exterior lighting, including lighting serving the new loading area, meets the applicable safety and security standards.

Landscaping (TDC 73B.040(1)). The applicable standards require that all areas not occupied by buildings, parking spaces, driveways, drive aisles, pedestrian areas, or undisturbed natural areas be landscaped, subject to the minimum landscaping percentage otherwise applicable to the zone.

The Staff Approval found that the addition will be located within an area that is already paved, abuts and connects to the existing Building B, does not affect any existing landscaping, and is not visible to the general public, such that no additional landscaping is required. Mann's testimony asked the City to identify the particular trees, berm segments, buildings, and buffers relied upon, whether the visibility finding accounts for leaf off conditions, and whether those features are existing or depend on a future development phase.

In response, the September 28, 2026 Mackenzie letter and its Sheet 4 provide a site plan on a recent aerial drone photograph base depicting the existing vegetation, including vegetation associated with the in progress Tux development, between the proposed Building B Addition and the adjacent public streets.

Council finds that this aerial exhibit, together with the Application materials, identifies the specific existing vegetation relied upon and confirms that it exists today, independent of any future development phase, and that no new landscaping is required to meet TDC 73B.040(1). Council further finds that the screening relied upon for this finding is not deciduous vegetation alone, but a combination of distance, topography, existing buildings, and the berm along SW Tualatin Road, together with existing vegetation, and that this combination of features is not substantially affected by seasonal leaf loss. To the extent Mann's testimony asks the Council to make a further, specific finding on seasonal foliage conditions, a local government's findings are

not deficient for failing to address every item of evidence or every detailed technical question a party raises, so long as the findings adequately address the issue actually before the decision maker. See *Laurance v. Douglas County*, 45 Or LUBA 393, 397 (2003); *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000); *Douglas v. Multnomah County*, 18 Or LUBA 607, 619 (1990). The issue properly before the Council is whether the Building B Addition's roof mounted mechanical equipment and the addition area itself are adequately screened from the adjacent public streets identified in the record, not whether each individual landscape feature retains its screening value in every season. Because the combination of non-vegetative features identified above independently supports the screening and visibility findings in this and the mechanical equipment screening finding above, the Council need not, and does not, resolve the more granular seasonal foliage question as a precondition to approval.

Vehicle and Bicycle Parking (TDC 73C.040(1)). The applicable standards require that a development provide the minimum number of vehicle and bicycle parking spaces set out in Table 73C-1 for the applicable land use.

Mann's testimony observed that the Application narrative described certain bicycle facilities approved through AR24-0002 as facilities the campus will provide, while a separate table in the record described the same quantities as currently provided and combined existing and approved development, and asked the City to reconcile those descriptions and confirm what parking will actually be available when the Building B Addition begins operating.

In response, the September 28, 2026 Mackenzie letter and its Sheet 5 provide updated bicycle and vehicle parking calculations based only on existing, built facilities, excluding the separately approved but unbuilt Tux development, and evaluated those existing facilities against the additional 3,900 square feet associated with the Building B Addition.

Council finds that this supplemental calculation directly responds to Mann's request by isolating existing, currently available parking capacity from approved but unbuilt capacity, and that the calculation demonstrates the existing vehicle and bicycle parking facilities, standing alone, provide sufficient capacity to accommodate the Building B Addition under TDC 73C.040(1).

Waste and Recycling Enclosure (TDC 73D.020). The applicable standards allow an applicant to demonstrate compliance with the Chapter 73D waste and recyclables storage standards through any of several design methods, including the minimum standards method in TDC 73D.030 or the waste assessment method in TDC 73D.040.

The Application narrative originally represented that compliance would be demonstrated under the waste assessment method. In preparing the September 28, 2026 supplemental response to testimony, Mackenzie determined that the waste assessment form described in TDC 73D.040(1) was not available, and concluded that the minimum standards method in TDC 73D.030, an independently sufficient compliance method under TDC 73D.020, was easier to apply and more appropriate.

The September 28, 2026 Mackenzie letter and its Sheet 6 accordingly apply the minimum standards method. That method requires 6 square feet of storage area per 1,000 square feet of

gross leasable area for wholesale, warehouse, and manufacturing uses, applied to a combined total floor area of approximately 52,900 square feet, consisting of Building B's existing floor area of approximately 49,000 square feet plus the Building B Addition's approximately 3,900 square feet. The resulting required storage area is approximately 317.4 square feet, and the existing enclosure, at approximately 1,000 square feet, exceeds that requirement.

Council finds that TDC 73D.020 permits an applicant to select among the listed design methods, that Mackenzie's shift from the waste assessment method to the minimum standards method is adequately explained in the record, and that the calculation supporting the minimum standards method demonstrates the existing waste and recycling enclosure exceeds the applicable size requirement under TDC 73D.030.

Together, the Staff Approval, the Application materials, and this supplemental evidence provide substantial evidence supporting each of the Findings above and directly answer the specific questions Mann raised regarding mechanical equipment screening, outdoor lighting, landscaping, and vehicle and bicycle parking and waste enclosure capacity. Council accordingly finds that the Architectural Review criteria in TDC Chapters 73A through 73D addressed above are satisfied.

The City's October 12, 2026 Staff Report to Council independently confirms this conclusion. The Staff Report's Attachment B-1, Section VII.A, reviewed each of these standards against the current text of TDC Chapters 73A through 73D, 74, and 75, and found each applicable standard met by the Staff Approval and its conditions.

ii. Applicable Version of TDC 73A.110

Testimony correctly notes that Ordinance 1454-25, adopted November 24, 2025 and effective 30 days later, added new applicability and exceptions provisions at the front of TDC 73A.110 and renumbered the General Design Standards that follow. The Staff Approval cites the equipment screening standard as subsection (5)(a) and the exterior lighting standard as subsection (4); under the current, amended code those same, unchanged standards instead appear at TDC 73A.110(8)(a) (screening) and TDC 73A.110(7) (lighting).

The City's October 12, 2026 Staff Report to Council confirms this is a numbering change only, that the underlying text of both standards is unchanged, and that Staff recommend the Council's Supplemental Findings cite the current subsections. Council agrees, finds that the Staff Approval's reference to the prior numbering of TDC 73A.110 is a harmless scrivener's error, and clarifies that the applicable, current citations are TDC 73A.110(8)(a) for equipment screening and TDC 73A.110(7) for exterior lighting. Because the substance of both standards is identical under either numbering, this correction does not change the Staff Approval's findings of compliance, Condition A8.a, Condition A15, or the outcome.

Council also finds, in the alternative, that compliance with the amended TDC 73A.110(1) applicability threshold is unnecessary because the Project does not meet it. TDC 73A.110(1), as amended by Ordinance 1454-25, provides that the General Design Standards apply only to (a) a new building, or (b) an expansion or substantial exterior remodeling of existing development that

is greater than 50 percent of the building's gross floor area, or that alters a façade abutting a public or private street frontage by more than 50 percent.

The Building B Addition is not a new building; it adds to the existing Building B. The October 12, 2026 Staff Report states that existing Building B has a gross floor area of approximately 49,043 square feet. The approximately 3,900 square foot Building B Addition is approximately 8 percent of the existing building area, far below the 50 percent gross floor area threshold in TDC 73A.110(1)(b).

The Application plans, Sheets A.1 and A.2 of Attachment 2, further show that the Building B Addition's façade abuts an internal private parking area, not a public or private street, so the addition also does not alter a qualifying street-facing façade. The Project therefore meets neither applicability threshold in TDC 73A.110(1).

Nonetheless, and as confirmed in the October 12, 2026 Staff Report, Staff applied the General Design Standards to the Project regardless of this alternative basis, and found them satisfied for the reasons discussed above and in the Staff Approval. The outcome under TDC 73A.110 is therefore the same whether or not the amended applicability threshold applies.

iii. Lighting Plan and Street Plan Submittal Requirements

Testimony asked the City to identify the specific sheets in the Application materials that satisfy the application submittal requirements for a lighting plan (TDC 33.020(4)(b)) and a street plan (TDC 33.020(4)(c)). As detailed in Supplemental Findings Section III.A.iv, and incorporated herein, TDC 33.020(4)'s application materials requirements are submittal requirements reviewed for completeness under TDC 32.160, not approval criteria under TDC 33.020(5)(c).

For the lighting plan, Sheet A.3 (also labeled A0.00), attached to the Application, depicts the proposed exterior lighting fixtures on scaled elevations and identifies them as full cutoff fixtures, and satisfies TDC 33.020(4)(b). The October 12, 2026 Staff Report confirms this finding, noting that the north elevation in the Application plans shows two wall mounted exterior lights on the addition, labeled full cutoff, and that exterior lighting for the addition was evaluated under the Staff Approval's safety and security standard findings, which found that existing exterior site and building lighting will adequately illuminate the area of the addition.

For the street plan, the submitted civil plan set, including the Grading & Erosion Control Plan (Sheet C1.20) and the Utility Plan (Sheet C1.30), depicts the existing streets and accessways serving the site. To the extent any of the specific data points listed in TDC 33.020(4)(c), such as approximate curve radii or proposed street grades, are not separately broken out on those sheets, that omission does not affect the Project's compliance with any applicable approval criteria.

TDC 33.020(4) is an application materials submittal requirement, not itself an approval standard, and it exists to give the City and the public the information needed to evaluate a project's street and access impacts. For the reasons detailed in Section III.A.v above, and incorporated herein, the Project has no street or access impact to evaluate, so any gap in the street plan submittal is immaterial and provides no basis to deny the Application or delay this Decision.