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City of Beaverton Planning Commission  
c/o Planning Staff  
City of Beaverton  
12725 SW Milikin Way  
Beaverton, OR 97005

Re: Scholls Ferry Apartments DR2022-0046/TP2022-0007/VAR2022-0001

This office represents Placid Holdings, LLC, the applicant for the multi-family development at issue in the above captioned planning files. Please include this letter in the record.

### **The Proposal is for the Development of Housing**

The proposal is for the development of housing on land that is planned and zoned for high density housing. Therefore, it is subject to housing development protections adopted by the legislature in 2017 and 2019. In this regard, ORS 227.175(4)(c) prohibits the city from reducing the density of the proposed housing development below the maximum density that is allowed in the city code. Further, ORS 227.175(4)(d) prohibits the city from reducing the height of the proposed housing development below the maximum that is allowed in the city code. In addition, ORS 197.307(4)(b) prohibits the city from applying standards, conditions, or procedures that “themselves or cumulatively” discourage the development of housing “through unreasonable cost or delay.” Finally, ORS 197.522 requires the city to approve the proposed housing development if it meets city standards and ORS 197.522(3) requires the city to accept conditions of approval offered by the developer that would make the proposed housing development consistent with city standards.

ORS 197.522(3) is particularly important to this case to enable the city to approve alternative access for the proposed apartments via an applicant proposed condition of approval. The alternative access condition is necessary because the assumed access contemplated by the city in all of its planning documents to date, is through a dedicated right of way connecting a new portion of “SW Bunting Street” (that is now merely a driveway for the Trillium apartments) through the Trillium development to SW Winterhawk Lane. While the Trillium apartment developer was required by its land use approval<sup>1</sup> to give an easement to the city for the Trillium

<sup>1</sup> Among other requirements, Condition 46 of Trillium’s land use approval requires to following which the Trillium applicant never gave to the city as required:

**46. “Prior to final plat approval, the applicant/developer shall: Submit plans that show a public vehicular, bicycle, and pedestrian access easement over the walkways and drive aisle connecting SW Bunting St. to the westernmost property line, aligned to provide a safe and efficient future connection to SW Winterhawk Lane. (Transportation/ KR).”**

driveway to be the Bunting Street extension, the Trillium Developer never gave that required land dedication to the city.<sup>2</sup>

Rather, the city recently discovered that it mistakenly gave final approval to the Trillium apartment developer without obtaining the required easements for transportation connectivity that the Trillium development approval required. Ironically, it was the Trillium developer who raised this issue in this case, contending that the lack of an access easement through Trillium, meant the proposal here had to be denied for lack of access.

Fortunately, the city is not bound by that mistaken final approval<sup>3</sup> and the applicant here understands that the city is rightly actively working to obtain the easements that the Trillium developer was required by its final land use approval to give to the city. Trillium should be willing to cooperate with the city in this regard, because without complying with its land use approval conditions, the Trillium apartment complex is exposed to the city's authority to enforce those requirements by injunction and other legal means. However, compliance may not happen in a timely way. The Trillium developer may well refuse to cooperate with the city –something that the applicant here cannot control. Trillium's cooperation is complicated by the facts that its developer/owner is an active opponent of the project here, the Trillium developer has unsuccessfully tried to acquire the subject property for itself and may see its fortunes improved if the applicant here cannot get approval so long as Trillium stalls giving the city the easements that Trillium is required to provide. In the main, it is entirely foreseeable that the city enforcement process to obtain the land dedications from the Trillium developer that the Trillium developer's land use decision requires, may take more time than the applicant here can afford.

To avoid imposing unreasonable cost and delay on the applicant here (to comply with ORS 197.307(4) which prohibits the city imposing unreasonable cost or delay), the city should approve the original SW Bunting St access through Trillium but in the alternative also approve access via SW Winterhawk Ln., that the applicant here may select if it chooses in the event that the city is unable to timely obtain compliance from Trillium. As the record here demonstrates, both accesses meet all relevant standards. Approving both accesses as alternatives retains both

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<sup>2</sup>The Trillium developer did give the city an easement for use of emergency vehicles over the Trillium driveway. That is why the proposed plans here show an emergency access through Trillium. That emergency access is not the issue. The issue is that what is now the Trillium driveway was, per Condition 46 quoted above, supposed to be dedicated to the city to become an extension of SW Bunting and serve as a public motor vehicle access. And the Trillium developer simply failed to comply with that Condition 46 requirement and never made that required dedication.

<sup>3</sup>The following cases and many more, all reinforce this principle: *Griffin Oak v. Rockaway Beach*, 318 Or App 777 (2022) (no waiver of mandatory governmental requirement); *Bankus v. City of Brookings*, 252 Or 257, 260 (1969) (no estoppel against the government from the action of a city official “who purports to waive the provisions of a mandatory ordinance”); *Clackamas County v. Emmert*, 14 Or.App. 493, 499, 501-03 (1973) (same).

city flexibility and the ability of the project here to get under construction without unreasonable cost or delay.

### **Transportation Systems Are Adequate and Safe to Serve the Proposal and Meet all Relevant Standards**

Beaverton Development Code (BDC) 40.03.1.A requires, among other things, that transportation services “have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.” The applicant provided a traffic impact analysis (TIA) that demonstrated that adequate transportation facilities would be provided by extending SW Winterhawk Lane to SW Bunting Street across the applicant’s property and over the easement that Trillium’s developer was supposed to give the city, with eventual connection to SW Scholls Ferry Road. With proper conditions of approval, the Facilities Review Committee agreed that adequate transportation facilities were available for the proposed development. The only issue at that point was the need to remove more trees from what would become SW Bunting Street in the access easement over the property of Trillium Woods LLC (Trillium). The applicant and the city reached an agreement to solve the tree issue, and the application was on track for approval.

As explained above, however, in September 2022, the city realized Trillium had not provided the city with the easement required by Trillium’s land use decision and conditions of approval to provide the required SW Bunting Street connectivity. For reasons that remain unexplained, the city mistakenly gave Trillium its final approval, even though the easement provided by Trillium did not provide the required access. Which meant that Trillium no longer complies with applicable land use standards or its approval decision.

Trillium’s failure to provide the required easement to the city was then only discovered days before this application was scheduled to go before the Planning Commission. The public hearing on this project was rescheduled to the issue to be looked into and addressed. For its part, the applicant has responded with a supplement to this project’s existing TIA that demonstrates that there is adequate transportation capacity to serve the proposed development with access only from SW Winterhawk Lane. Therefore, the record conclusively demonstrates that adequate access can be provided for the proposal using either the access the city prefers through Trillium (that the city cannot now require because the city does not yet have the required easement for) or via the alternative of going just through SW Winterhawk Ln.

The proposed Scholls Ferry Apartments are considered needed housing, and therefore as explained above ORS 197.522(2) and (3) applies, and so the city should approve the proposal via findings and conditions of approval authorizing both accesses with the applicant here only being required to develop one of them. This is possible because the project TIA and supplement make plain that both the originally proposed access through Trillium via new “SW Bunting St.” and the proposed alternative access via SW Winterhawk Ln., have adequate capacity to serve the proposal and complies with all the applicable transportation requirements. Therefore, since the project either does or can comply with all standards via conditions of approval, the City should approve the application and impose the applicant’s proposed conditions of approval per ORS 197.522(2) and (3).

## **New transportation conditions of approval**

As explained above, the applicant here proposes that the Planning Commission approve the proposal with a condition of approval that access can be provided as described in the original TIA by way of a connection between SW Winterhawk Lane and SW Bunting Street through the Trillium apartment complex, but that if the city has not secured an easement from Trillium to enable the construction of that access by the time the applicant here begins its construction permitting processes, that the alternate access via SW Winterhawk as described in the TIA supplement, shall be used to serve the proposed project and in that case the applicant need not construct the Trillium, SW Bunting St access. The proposed condition in this regard is as follows:

Condition of Approval: Access serving the subject property shall be as described in the original traffic impact analysis for the proposal of connecting SW Winterhawk Lane to SW Bunting Street through the Trillium Apartment complex property. Provided, however, if the city does not obtain the necessary easements from Trillium Woods LLC (or its successor) to enable the applicant here to construct that original access by the time that the applicant begins the project's permitting approval processes, then the applicant is authorized to utilize the alternate access described in the TIA supplement which provides access to the subject property via SW Winterhawk Lane only. If and when the city obtains the required easement from Trillium, the project shall also be allowed to use that access.

## **Parking concerns**

Several commentors have raised concerns regarding the parking to be provided by the proposal. To respond, the only evidence in the record is that the proposal meets all requirements for parking. The 96-unit multi-family attached residential development is located on property that is zoned TC-HDR, a multiple-use zoning designation. According to the city's code at Table 60.30.10.5.A, attached dwellings in a multiple-use zone require 1 vehicle parking space per unit; therefore, the project requires 96 parking spaces.<sup>4</sup>

The proposed multi-family development provides more parking than the minimum required and provides 129 vehicle parking spaces as follows:

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<sup>4</sup> We understand that effective 2023, the city is eliminating all requirements for parking for projects such as the proposal.

**Vehicle Parking Provided:**

On-Site Surface Parking Areas

Standard Parking Spaces	= 68 spaces
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ADA	= 3 spaces
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Ground Floor Garage Parking Available in Building 1

Standard Parking Spaces	= 24 spaces
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ADA Spaces	= 2 spaces
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Ground Floor Garage Parking Available in Building 2

Standard Parking Spaces	= 30 spaces
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<u>ADA Spaces</u>	<u>= 2 spaces</u>
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**Total Surface and Garage Vehicle Parking Spaces Provided**      **= 129 spaces**

The proposed 129-vehicle parking spaces provided for the project, exceed the city's requirement by 33-spaces, or 34.4%.

### **Conclusion**

It is respectfully submitted that the proposal complies with all relevant approval standards and should be approved with the condition proposed by the applicant regarding approval of alternative accesses and related findings. Thank you for your consideration.

Very truly yours,

Wendie L. Kellington

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CC: Client

Development Team