



STAFF REPORT

Report date: July 28, 2021

Application: Scholls Heights NE Phase Modifications

Application Numbers: CU2021-0006 / LD2021-0004

Proposal: The applicant, West Hills Land Development, requests approval of a Modification of a Decision of a Planned Unit Development (CU2017-0010) and a Modification of a Decision of a Preliminary Subdivision (LD2017-0009). Staff notes previous modifications to CU2017-0010 were approved under CU2019-0012. Previous modifications to LD2017-0009 were approved under LD2019-0032. The applicant proposes to split the Northeast Phase of the project into two separate phases with minor lot dimension modifications. The request also involves a reduction to rear yard setbacks for specific lots within and outside of the Northeast Phase. Minor grading changes to roadways and lots. Modifications to conditions of approval related to the applicant’s requested phasing and site mods.



Proposal location: The site is located at the northeast corner of the intersection of SW Tile Flat Road and SW Scholls Ferry Road. The Scholls Heights PUD encompasses the following Tax Lots 3200, 3300, 3301, 3400, 3700, 3800, 3900, 4000, 4100, 4200, 4201, 4300, 4400, 4500, 4600, 4700, and 4800 on Washington County Tax Assessor’s Map 2S20100. The focus of the work is the Northeast phase which is located in the northeastern portion of the subject site.

Applicant: West Hills Land Development

Recommendation: APPROVAL of CU2021-0006 / LD2021-0004, subject to conditions of approval.

Contact information:

City Staff Representative: Jana Fox, Current Planning Manager
503-523-8530 / jfox@BeavertonOregon.gov

Applicant: West Hills Land Development
Dan Grimberg
3330 NW Yeon Ave, Suite 200
Portland, OR 97210

Applicant's Representative: Otak, Inc.
Kevin Brady
808 SW 3rd Avenue, Suite 800
Portland, OR 97204

Owners: John & Margaret Bierly
12150 SW Kobbe Drive
Beaverton, OR 97007

South Cooper Mountain Owners LLC
Curtis Huson
703 Broadway St, Ste 510
Vancouver, WA 98660

Bierly Property Holdings LLC
19266 Dayton Rd
Bend, OR 97703

Hubert & Jeannette Bierly
26690 Horsell Rd
Bend, OR 97701

Lewis Bierly, John Bierly, Susan Thompson Et Al
12150 SW Kobbe Dr
Beaverton, OR 97007

Existing Conditions

Zoning: The Northeast phase currently properties zoned R4 (Urban Medium Density) and R7 (Urban Standard Density).

Site Conditions: The site is currently undeveloped. The first phase of development, the East Phase, also called Phase 1A/1B by the developer, is currently under construction.

Site Size: The Scholls Heights Planned Unit Development (“PUD”) is approximately 132 acres in total.

Location: The Scholls Heights PUD is located at the northeast corner of the intersection of SW Tile Flat Road and SW Scholls Ferry Road. The northeast phase is located in the northern and eastern portion of the Scholls Heights PUD.

Neighborhood Association Committee: Neighbors Southwest.

Table 1: Surrounding Uses

Direction	Zoning	Uses
North	Washington County Rural Residential (AF20)	Rural Residential
South	Washington County Rural Residential (AF20)	Rural Residential
East:	City of Beaverton Residential Zoning	The Ridge PUD
West:	Washington County Exclusive Farm Use (EFU)	Rural Residential

Application Information

Table 2: Application Summary

Application	Application type	Proposal summary	Approval criteria location
CU2021-0006	Modification of a Decision- Planned Unit Development	Split the previously approved NE phase into two phases. Modifications to rear yard setbacks.	Development Code Sections 40.03.1, 40.15.15.6.C, and 50.95
LD2021-0004	Modification of a Decision – Preliminary Subdivision	Split the previously approved NE phase into two phases. Modifications to grading.	Development Code Sections 40.03.1, 40.45.15.5.C, and 50.95

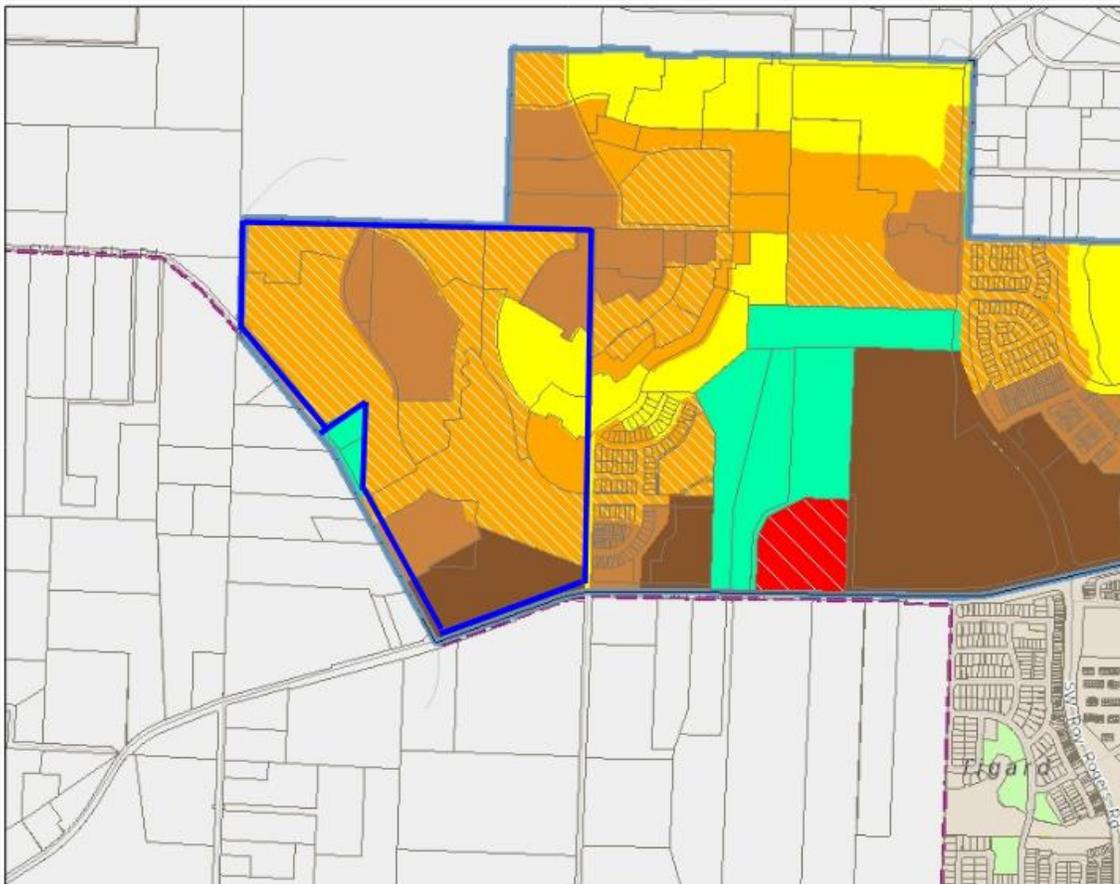
Table 3: Key Application Dates

Application	Submittal Date	Deemed Complete	Day 120*	Day 365**
CU2021-0006	March 24, 2021	June 16, 2021	October 14, 2021	June 16, 2022
LD2021-0004	March 24, 2021	June 16, 2021	October 14, 2021	June 16, 2022

* Pursuant to Section 50.25.8 of the Development Code, this is the latest date, without a continuance, by which a final written decision on the proposal can be made.

** Pursuant to Section 50.25.9 of the Development Code, the total time to extend the final decision may not exceed 245 days from the date of the original 120-day period.

Beaverton Exhibit 1.1 Zoning Map



Legend

- Washington County Taxlots
- Park and School Boundaries
 - Parks
 - School Land
- Beaverton City Limits
- County Line
- UGB
- Zoning**
 - Urban Low Density (R10)
 - Urban Standard Density (R7)
 - Urban Standard Density (R5)
 - Urban Medium Density (R4)
 - Urban Medium Density (R2)
 - Urban High Density (R1)
 - Neighborhood Service Center (NS)
 - Community Service (CS)
 - Corridor Commercial (CC)
 - General Commercial (GC)
 - Station Community - SC-S
 - Station Community - High Density ()
 - Station Community - Employment ()
 - Station Community - Multiple Use ()
 - Town Center - High Density Reside
 - Town Center - Multiple Use (TC-ML)
 - Regional Center - Old Town (RC-O)
 - Regional Center - East (RC-E)
 - Regional Center - Beaverton Centri
 - Regional Center - Downtown Trans
 - Regional Center - Multiple Use (RC)
 - Commercial - Washington Square ()
 - Office Industrial - Washington Squa
 - Office Industrial (OI)

Notes

Scholls Heights PUD

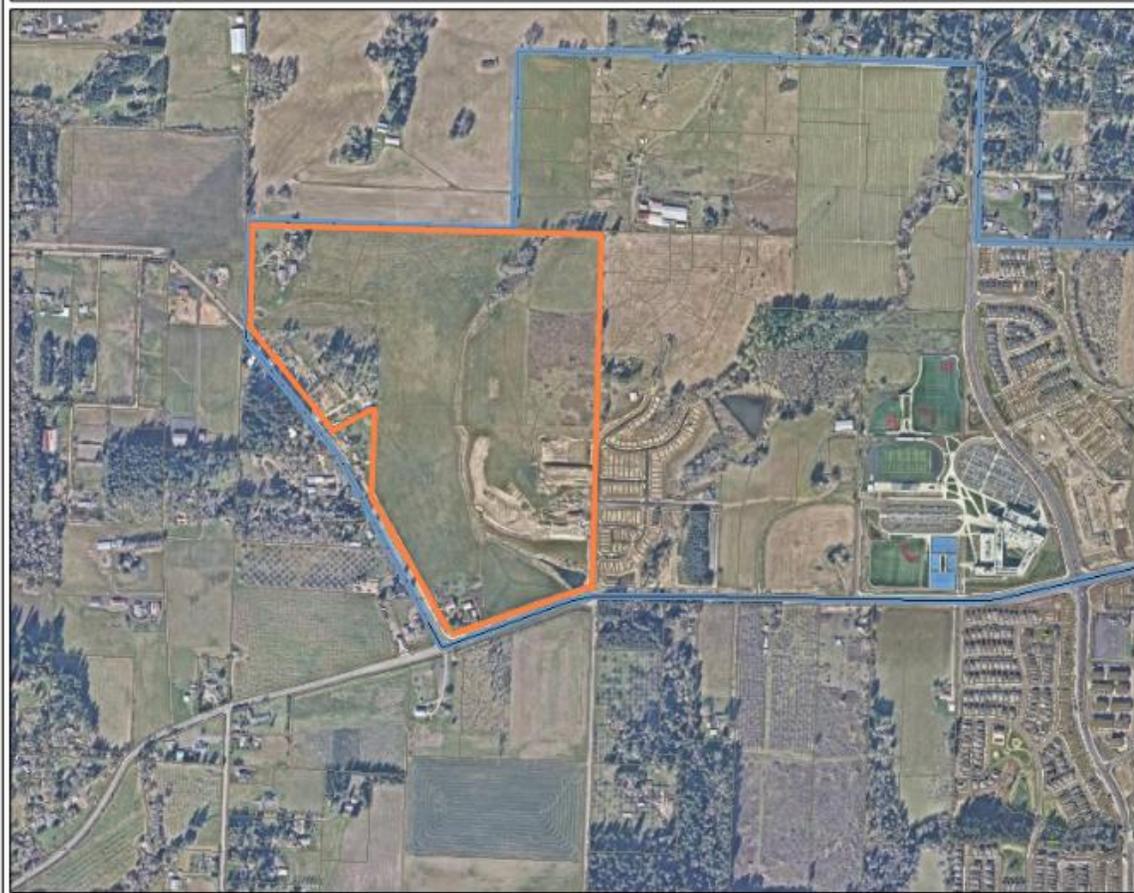


Report Date: 07/28/2021



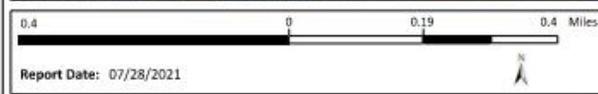
The information supplied in this application represents the best data available at the time of publication. City of Beaverton GIS makes no claims, representations, or warranties as to its accuracy or completeness.

Beaverton Exhibit 1.2 Vicinity Map



Legend

- Washington County Taxlots
Park and School Boundaries
- Parks
School Land
- Beaverton City Limits
- County Line



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Notes

Scholls Heights PUD

Exhibit 1.3 Site Phase Plan

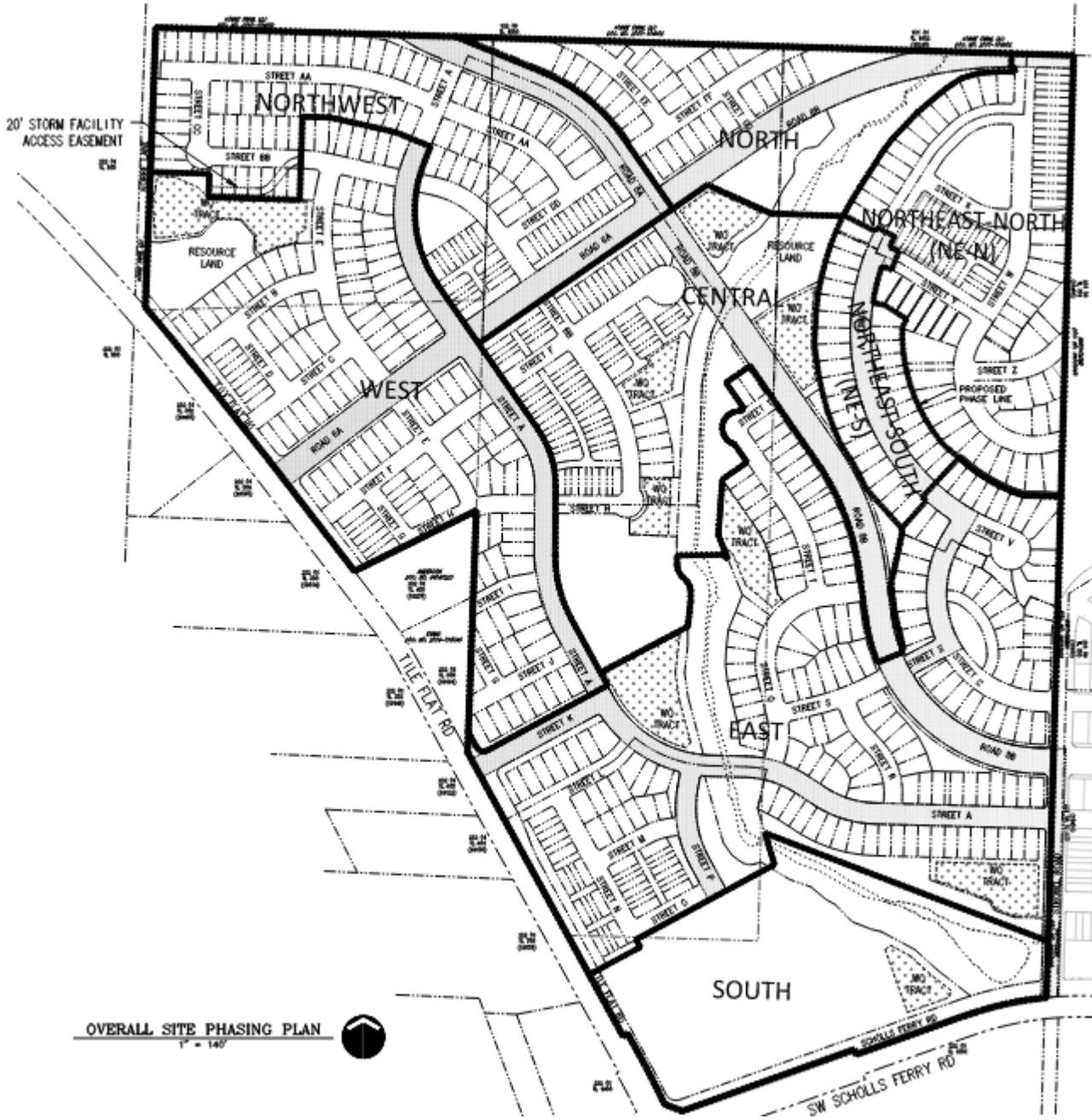


Exhibit 1.4 Lots Requesting Additional Rear Yard Deck Setback

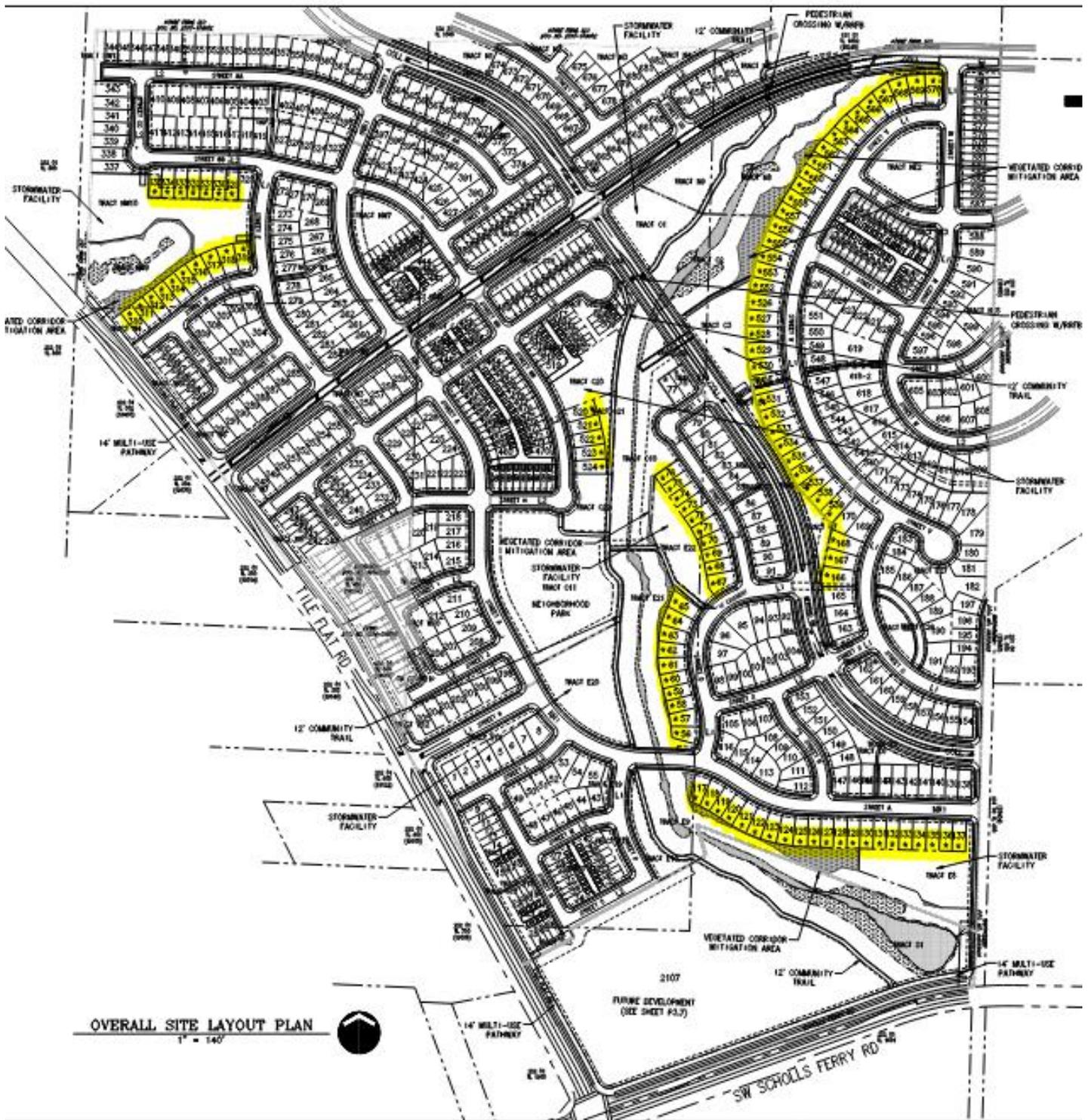


Table of Contents

STAFF REPORT.....	1
Attachment A: Facilities Review Committee Technical Review and Recommendation	14
Attachment B: CU2021-0006 Modification of a Decision- Conditional Use – Planned Unit Development.....	25
Attachment C: LD2021-0004 Modification of a Decision – Preliminary Subdivision	39
Attachment D: Conditions of Approval.....	49

Tables:

Table 1: Surrounding Uses	3
Table 2: Application Summary	4
Table 3: Key Application Dates	4

Exhibits:

Exhibit 1. Materials Submitted by Staff

- Exhibit 1.1 Zoning and Vicinity Map (page 5 of this report)
- Exhibit 1.2 Aerial Map (page 6 of this report)
- Exhibit 1.3 Overall Phasing Plan (page 7 of this report)
- Exhibit 1.4 Lots Requesting Additional Rear Yard Deck Setbacks (page 8 of this report)

Exhibit 2. Public Comment

- Exhibit 2.1 Letter from James Zupancic, received July 21, 2021

Exhibit 3. Materials Submitted by the Applicant

- Exhibit 3.01 Narrative
- Exhibit 3.02 Applications
- Exhibit 3.03 Service Provider Letters
- Exhibit 3.04 Pre-Application Conference Notes
- Exhibit 3.05 Storm Report
- Exhibit 3.06 Traffic Memo
- Exhibit 3.07 Civil Plan Set

Exhibit 4. Agency Comment

None received

Public Comment Response

The City has received one piece of public comment, a letter delivered via email on July 21, 2021 from James Zupancic who represents owners of the two parcels along SW Tile Flat Road, which are not part of the approved Scholls Heights PUD (“outparcels”). This piece of public testimony has been entered into the record as Exhibit 2.1 and is attached to this report. Mr. Zupancic raises a number of issues, which are summarized as follows:

- 1) The applicant must dedicate and improve the entirety of SW Tile Flat Road between the intersection of SW Scholls Ferry Road and the northern extent of the Scholls Heights property;
- 2) The potential partial widening of SW Tile Flat results in dangerous road conditions;
- 3) The Scholls Heights PUD, as currently conditioned, does not comply with the Transportation Planning Rule (TRP) and the Beaverton Active Transportation Plan (BATP);
- 4) The full improvements to SW Tile Flat Road result in an unlawful inverse condemnation for Mr. Zupancic’s clients due to an absence of nexus and proportionality; and
- 5) The application fails to comply with Section 40.15.4.C.3 of the Beaverton Development Code.

Prior to addressing Mr. Zupancic’s concerns, staff must address the lack of a connection between Mr. Zupancic’s concerns regarding improvements to SW Tile Flat Road and the applicant’s proposed modifications to the Scholls Heights PUD. The applicant’s proposal is limited in scope to splitting the northeast phase of the PUD into two phases. These minor changes to lots and grading within the northeast phase do not change the total number of lots or types of dwelling units proposed, neither does the request to reduce rear yard setbacks for decks greater than 30 inches for specific lots within the greater PUD.

In addition, none of the proposed modifications to the previously approved PUD involve changes to proposed transportation infrastructure or change the anticipated traffic demand. The improvements to the southern portion of SW Tile Flat Road up to Street K, just south of the outparcels, have been permitted and are under construction with the East phase of development (also called Phase 1A/1B). The northeast phase does not require the extension of SW Barrows Road to SW Tile Flat Road, which would trigger the remaining SW Tile Flat improvements north of the outparcels. The Modification of a Decision process, as outlined in Section 50.95.2 of the Beaverton Development Code (BDC), limits the scope of review of a modification application to those items proposed to be modified. The applicant has not requested any modifications to the PUD that impacts transportation improvements, including those transportation improvements to SW Tile Flat Road. Given the lack of connection between the applicant’s requested modifications to the Scholls Heights PUD and the improvements to SW Tile Flat Road, staff finds that the issues raised in Exhibit 2.1 are not relevant to the proposed modifications. Although the lack of connection to the current land use application

negates the need to address each of Mr. Zupancic's concerns as part of this application, a response to each concern follows.

In response to 1) above, the applicant is required to dedicate and improve the entirety of SW Tile Flat Road from SW Scholls Ferry Road to the northern most portion of the Scholls Heights PUD the applicant relies upon a broad statement in the TIA and a general condition of approval, while omitting the two following conditions of approval that explain the extent and triggers for the SW Tile Flat Road improvements. The applicant focuses on condition of approval ("COA") no. 6 of Land Use Order (LUO) No. 2571 for CU2017-0009, but excludes COA nos. 7 and 8 of the same order, which are shown below.

6. Submit plans that show 30 feet of right-of-way dedication and construction of half street improvements along SW Tile Flat Road to accommodate the following modified 3-Lane Arterial Street cross-section: existing rural drainage and shoulder on the west side, a 12-foot south-bound travel lane, a 14-foot left-turn lane, 2 12-foot west-bound travel lanes, a 7-foot buffered bike lane, a 7.5-foot planter strip measured from the face of the curb, and a 14-foot multi-use path. (Transportation / KR & Wash Co/NV)
7. Provide plans showing construction of SW Tile Flat Road from SW Scholls Ferry Road through the intersection with Street K is required with the first phase of development to the standards listed above in condition 6. (Planning / JF)
8. Provide plans showing construction of SW Tile Flat Road, north of the outparcels, is required with the first phase of development which connects Street 6 (Barrows) to SW Tile Flat Road. (Planning / JF)

Condition of approval no. 6 describes the overall right of way dedication and design for SW Tile Flat Road, COA 6 does not specify the extent of the improvements. COA 6 works in conjunction with COAs 7 and 8, which describe when, and to what extent, the improvements to SW Tile Flat Road are required. As outlined in COA 7, the first phase of development must construct improvements along SW Tile Flat from the intersection of SW Scholls Ferry Road through the intersection with the proposed Street K. Street K is located directly south of the outparcels. These improvements are currently under construction with the East (1A/1B) phase, which is the first phase of development. COA 8 dictates the remaining SW Tile Flat improvements which are located north of the outparcels; those improvements will be built when the public street connection from SW Barrows Road (Street 6) to SW Tile Flat Road is constructed. The applicant's plans reflect the conditioned extent of improvements, including plans that show the taper of SW Tile Flat Road in front of the outparcels, consistent with the adopted conditions of approval. The conditions of approval specifically omit the portion of SW Tile Flat Road in front of the outparcels. In order for the City to have required dedication of the outparcels, the consent of Mr. Zupancic's clients, the owners, would have been required. The owners of the outparcel properties are not part of the Scholls Heights PUD; therefore, the outparcels are not required to make any dedications at this time, and no conditions of approval require the outparcel owners to consent to dedications or improvements on SW Tile Flat Road in front of the outparcels. Staff finds that the Scholls Heights PUD was appropriately conditioned to dedicate and construct improvements to SW Tile Flat Road along the property frontage, which omits the outparcels.

Assertion 2) concludes that the partial widening of SW Tile Flat Road will lead to unsafe conditions. The evidence provided in support of this assertion relies not upon traffic studies conducted by professional engineers but on generalizations about perceived potential safety concerns. The conditioned improvements, including the tapered portion of SW Tile Flat Road were evaluated by the City's traffic engineer and found to be safe. SW Tile Flat Road is conditioned to be widened to a 3-lane cross section; a 3-lane cross section contains one travel lane in each direction with a center refuge/turn lane to allow cars to make left turns without holding up traffic. Per the approved plans the portion of the street adjacent to the outparcels will be a two-lane cross section (until such time as they are developed in the future) which omits the center turn lane, the outparcels contain two single family homes which have limited trips, the lack of a center refuge lane in front of the outparcels does not create a safety concern. The interim striping improvements are designed to safely transition from a two-lane cross section to a three-lane cross section by providing a right turn only lane onto Street K south of the outparcels and providing a tapered widening north of the outparcels. The multiuse path will be interrupted in front of the outparcels as the outparcels are not a part of the approved PUD. When the outparcels develop they will likely be required to fill in the missing trail section; this is consistent with how trails are developed throughout the City, proportionally over time as adjacent development occurs. The County has the ability to require signage to put cyclists and pedestrians on notice that the protected improvements will end. The Scholls Heights PUD will provide alternative routes interior to the development, which can accommodate bicycles and pedestrians, should they wish to avoid the two-lane section of road adjacent to the outparcels. Staff finds that the design and conditioned improvements to SW Tile Flat Road, including those narrowed portioned adjacent to the outparcels, do not pose a safety hazard.

Assertion 3) is that the Scholls Heights PUD, as currently conditioned, does not comply with the Transportation Planning Rule (TRP) and the Beaverton Active Transportation Plan (BATP). The request under consideration for modifications to the Northeast Phase does not require findings associated with the TRP as no comprehensive plan amendment is sought. Additionally, the BATP is not an adopted development regulation which can be applied directly to development applications. The Planning Commission is limited to the approval criteria in the Beaverton Development Code when evaluating whether a proposal meets the approval criteria. Staff notes that the plan for the trail along SW Tile Flat Road has been conditioned for the portions of the road abutting the Scholls Heights PUD, which while not required, is consistent with the BATP. Staff finds that the TPR and BATP are not applicable to the proposed modifications currently being considered.

Assertion 4) is that the conditions of approval for Scholls Heights PUD regarding the improvements to SW Tile Flat Road results in inverse condemnation. As previously discussed in response to assertion 1), there are no conditions of approval which require any dedication or improvements to the outparcels. As there are no dedications or improvements required of the outparcels, there can be no takings. No changes are required to the outparcels, they may remain in their current form as single-family homes until the owners choose to develop them. Staff finds that as there are no dedications or improvements required of the outparcels, there is no inverse condemnation.

The fifth and final assertion is that the application fails to comply with Section 40.15.4.C.3 of the Beaverton Development Code (BDC). Section 40.15.4.C.3 of the BDC is not a section of the development code, staff assumes that is a typo and the letter intends to refer to Section 40.15.15.4.C.3; however, this section is not applicable to the proposal as it relates to a Major Modification of a Conditional Use, which is not a component of the application. The applicant has requested a modification of a decision under Section 50.95 of the BDC; therefore, approval criterion 40.15.15.4.C.3 does not apply. While the BDC cited in Exhibit 2.1 does not apply, there is a similar provision in section 40.15.15.6.C.3 of the BDC which requires compliance with the comprehensive plan. As noted in the findings below, the applicant does not propose to modify the previously approved transportation improvements, as such this challenge is not applicable; it should have been raised when the Scholls Height PUD was approved. Staff finds that the identified BDC Section 40.15.4.C.3, and the intended citation of 40.15.15.4.C.3 are not applicable to the applications currently under consideration.

Attachment A: Facilities Review Committee Technical Review and Recommendation

Application: Scholls Heights PUD North East Phase Mods

Proposal: The applicant, West Hills Land Development, requests modifications to previously approved PUD and Preliminary Subdivision applications to split the northeast phase of the project into two phases. Minor associated lot dimension changes, condition of approval changes, and a request for additional rear setback relief under the PUD.

Recommendation: APPROVE CU2021-0006 / LD2021-0004 subject to conditions of approval.

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in a different order. The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the submitted application(s) as identified below:

- All twelve (12) criteria are applicable to the Planned Unit Development Modification and Preliminary Subdivision Modification applications as submitted.

Section 40.03.1.A

Approval Criterion: *All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.*

FINDING:

Chapter 90 of the Development Code defines "critical facilities" to be services that include public water, public sanitary sewer, storm water drainage and retention, transportation, and fire protection. The Committee finds that the proposal includes, or can be improved to have, necessary on-site and off-site connections and improvements to public water, public sanitary sewer and storm water drainage facilities.

The original preliminary subdivision approval (LD2017-0009) created a 7-phase subdivision and PUD (CU2017-0010) with a total of 677 lots, including one oversized lot for a future 256-unit multifamily development. The applicant proposes to divide the Northeast (NE) Phase into two phases (NE-North and NE-South). The 129 approved lots within the NE phase will be split into 31 lots in the NE-South Phase and 98 lots in the NE-

N phase. Minor change to lot configuration are proposed with no change to the overall number of lots.

The applicant proposes only minor change to the utility phasing to accommodate the splitting of the NE phase into sub phases. The two proposed changes are construction of Stormwater Pond 3 located in the Central Phase with either sub-phase of the NE phase to serve the stormwater needs of the development. The second change is the construction of an emergency fire access road, including drainage culverts to provide secondary fire access to SW Tile Flat Road. The stormwater pond will need to provide maintenance access extending to the collector road 8B, staff recommends a condition to this effect.

The applicant does not propose to modify the proposed water, sanitary sewer, or stormwater facilities located in public streets to serve the adjacent lots. Staff notes that the NE phase is dependent upon water, sanitary sewer, stormwater service, and vehicular access from the Eastern Phase (also known as Phase 1A) which is being developed currently by Taylor Morrison. Staff review of necessary water pressure zones indicates that the NE-N and NE-S phases must be built within the 550 pressure zone, extended from the collector road (8B), staff recommends a condition to this effect.

The proposed phasing modifications will not impede construction of necessary utilities to serve future phases of development. Easements for the purpose of public utilities and access are already recorded along public streets to serve the other of development. The Committee finds that the subdivision, as modified, will continue to be adequately served by water, sanitary sewer, and stormwater.

The applicant's proposal to split the NE phase into two sub phases NE-South and NE-North does not include any substantial changes to the final layout of the site or subdivision, (minor lot line changes are proposed and will be addressed in the subdivision review) including no changes to street and utility locations. The proposal will maintain the existing access easements until public streets are constructed and dedicated. The proposal will continue to provide adequate transportation facilities.

The applicant has provided a Service Provider Permit from TVF&R which states that no conditions of approval are required for the proposed phasing modifications.

Staff notes that the conditions of approval from the original PUD approval remain effective unless specifically modified with this request. The Committee finds that the proposed development can provide the required critical facilities, as conditioned. Therefore, the Committee finds the proposal meets the criterion for approval.

Conclusion: Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the approval criterion.

Section 40.03.1.B

Approval Criterion: *Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved*

if it adequately demonstrates that essential facilities, services, or both, will be provided to serve the proposed development within five (5) years of occupancy.

FINDING:

Chapter 90 of the Development Code defines “essential facilities” to be services that include schools, transit improvements, police protection, and pedestrian and bicycle facilities in the public right-of-way.

The applicant does not propose to modify any street, utility, or open space layouts as approved by the Scholls Heights PUD. The proposal is limited to modifying the phase boundary lines to create two sub phases from the NE Phase, reducing rear lot setbacks for decks adjacent to tracts and making minor lot line shifts between parcels. Essential facilities such as schools, transit improvements, police protection and pedestrian and bicycle facilities will continue to be provided for, as previously approved.

In summary, the Committee finds that the proposed development can provide required essential facilities when development is proposed.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.C

Approval Criterion: *The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).*

FINDING:

Staff cites the Code Conformance Analysis chart at the end of this report, which evaluates the project as it relates to the applicable Code requirements of Chapter 20 for the Urban Medium Density Residential (R4) and Urban Standard Density Residential (R7). As demonstrated on the chart, the development proposal meets all applicable standards of the proposed zones.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.D

Approval Criterion: *The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by*

the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.

FINDING:

The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates to the applicable Code requirements of Chapter 60, in response to the above mentioned criteria.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.E

Approval Criterion: *Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.*

FINDING:

The applicant states that continued maintenance and normal replacement of common facilities will be provided by a homeowners association (HOA) once the PUD is developed. Until that time the site will remain undeveloped and in private ownership. Staff finds that the design of the development, including the modification of phase lines does not preclude the continued maintenance of private common facilities.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.F

Approval Criterion: *There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.*

FINDING:

No changes to the previously approved Scholls Heights PUD which effect the design of public street or pedestrian access are proposed with this application. The modification of phase lines will not affect the provision of safe and efficient vehicular and pedestrian circulation patterns within the boundary of the development.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.G

Approval Criterion: *The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.*

FINDING:

No changes to the previously approved Scholls Heights PUD which effect the design of public street or pedestrian connections are proposed with this application. The modification of phase lines will not affect the on-site vehicular and pedestrian circulation systems or their ability to connect to the surrounding circulation system in a safe, efficient and direct manner.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.H

Approval Criterion: *Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.*

FINDING:

The subject site is within the approved Scholls Heights PUD and does not proposed to modify with this project any portion of the approved final development plans including structures of public facilities.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Section 40.03.1.I

Approval Criterion: *Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard, or ill-designed development.*

FINDING:

The subject site is within the approved Scholls Heights PUD and does not proposed to modify with this project any portion of the approved final development plans including structures of public facilities.

Conclusion: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the approval criterion.

Section 40.03.1.J

Approval Criterion: *Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.*

FINDING:

The applicant proposes minor grading modifications interior to the stie to accommodate daylight basements and garage under lots as well as minor grading changes to Streets V and Y to accommodate these housing types. No changes which will negatively affect adjacent properties or developments.

Conclusion: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the approval criterion.

Section 40.03.1.K

Approval Criterion: *Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.*

FINDING:

No physical development is proposed. The subject site is within the approved Scholls Heights PUD and does not proposed to modify with this project any portion of the approved final development plans including structures of public facilities.

Conclusion: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the approval criterion.

Section 40.03.1.L

Approval Criterion: *The application includes all required submittal materials as specified in Section 50.25.1 of the Development Code.*

FINDING:

The applicant submitted the land use applications on March 24, 2021 and deemed themselves complete on June 16, 2021. In review of the materials during the application review process, the Committee finds that all applicable application submittal requirements, as identified in Section 50.25.1 are contained within this proposal.

Conclusion: Therefore, the Committee finds that the proposal meets the approval criterion.

Code Conformance Analysis

Chapter 20 Use and Site Development Requirements Residential Zoning Districts

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.05.20			
Attached & Detached Residential Dwellings	Permitted	The applicant does not propose to change where attached and detached residential dwellings are proposed.	N/A
Development Code Section 20.05.15			
Parcel Area	Vary by zoning district with additional flexibility provided by the PUD	The applicant proposes minor lot line changes to lots within the NE phase. All modified lots continue to comply with the parcel area requirements of the PUD.	YES See CU Findings
Residential Density	Minimum: 826 Maximum: 2107	The applicant does not propose to modify the number of lots/units proposed. The number of proposed units in the PUD remains 892.	N/A
Minimum Lot Dimensions	Vary by zoning district with additional flexibility provided by the PUD	The applicant proposes minor lot width changes to lots within the NE phase. All modified lots continue to comply with the lot dimension requirements of the PUD.	YES See CU Findings
Yard Setbacks	See setback table below	The applicant proposes to add an additional rear yard setback reduction limited to decks greater than 30 inches in height along natural area or stormwater tracts. Specific lots listed below by zoning district.	YES See CU Findings
Maximum Building Height	Maximum Per Zoning District and PUD approval.	The applicant does not propose to modify the maximum building height permitted through the Scholls Height PUD Process.	N/A

Building Setbacks

Approved Building Setbacks w/ Scholls Heights PUD CU2017-0010								
	R2		R4		R5		R7	
Setback	Code Standard	Approved	Code Standard	Approved	Code Standard	Approved	Code Standard	Approved
Front	10'	10'	10'	10'	15'	10'	17'	15'
Garage	5' or 18.5'	18.5'	20'	20'	20'	20'	20'	20'
Side	5'	3.5'	5'	3.5'	5'	3.5'	5'	3.5'
Rear	15'	15'	15'	15'	20'	15'	25'	15'
Rear Garage	5' or 18.5'	4' and 18.5'	20'	4'	20'	4'	20'	4'

Additional Requested Setback Reduction								
	R2		R4		R5		R7	
Setback	Lot #'s	Proposed	Lot #'s	Proposed	Lot #'s	Proposed	Lot #'s	Proposed
Rear yard setback for decks greater than 30 inches above grade	520-524	5'	56-65 67-76 117-137 329-335 310-319 557-570	5'	166-168	5'	539-556	5'

Chapter 60 Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	No Design Review is requested at this time. Future Design Review approval for changes to approved single family attached housing may be needed but this application is not dependent upon a future Design Review approval.	N/A
Development Code Section 60.10			
Floodplain Regulations	Requirements for properties located in floodplain, floodway, or floodway fringe.	The site is not located within a floodplain.	N/A
Development Code Section 60.12			
Habitat Friendly and Low Impact Development Practices	Optional program offering various credits available for use of specific Habitat Friendly or Low Impact Development techniques.	No Habitat Friendly or Low Impact Development credits are requested.	N/A
Development Code Section 60.15			
Land Division Standards	On-site contouring within 25 feet of a property line within or abutting any residentially zoned property.	The proposed grading modifications are interior to the site and comply with the grading standards of 60.15	YES
Development Code Section 60.30			
Off-Street Motor Vehicle Parking	One parking space per single family dwelling unit.	The applicant does not propose to modify the number of proposed off-street vehicle parking spaces. Each lot will have at minimum the one required off-street parking space.	YES
Development Code Section 60.30			
Required Bicycle Parking	No bike parking requirements for detached and attached single family dwellings.	N/A	N/A
Development Code Section 60.33			
Park and Recreation Facilities and Service Provision	Requirements for annexing property to THPRD.	The site is already within THPRD's boundaries.	YES
Development Code Section 60.35			

Planned Unit Development	Development and design principles for Planned Unit Developments.	The subject site is part of the approved Scholls Heights, requested modifications to PUD conditions of approval and setbacks.	See CU Findings
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Development Code Section 60.55

Transportation Facilities	Requirements pertaining to the construction or reconstruction of transportation facilities	Refer to the Facilities Review Committee findings herein.	YES
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Development Code Section 60.60

Trees and Vegetation	Regulations pertaining to tree removal and preservation.	No changes to proposed tree removal or sensitive areas.	N/A
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Development Code Section 60.65

Utility Undergrounding	Requirements for placing overhead utilities underground.	Refer to the Facilities Review Committee findings herein.	YES
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Development Code Section 60.67

Significant Natural Resources	Regulations pertaining to wetlands and riparian corridors.	No changes proposed to sensitive areas and natural resources.	N/A
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Attachment B: CU2021-0006 Modification of a Decision-Conditional Use – Planned Unit Development

ANALYSIS AND FINDINGS FOR MODIFICATION OF A DECISION-PLANNED UNIT DEVELOPMENT

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **CU2021-0006**, subject to the applicable conditions identified in Attachment D

Section 40.03.1 Facilities Review Committee Approval Criteria

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B and all the following criteria have been met, as applicable.

FINDING:

Staff has reviewed the applicable Facilities Review Committee approval criteria in Attachment A of this report. Staff cites the findings presented in Attachment A in response to the Facilities Review Committee approval criteria. As identified in Attachment A, the proposal meets Approval Criteria 40.03.1.A through L, subject to conditions of approval identified in Attachment C.

Conclusion: Therefore, staff finds that the proposal meets the Facilities Review Committee approval criteria.

Section 40.15.05 Purpose

The purpose of a Conditional Use application is to review uses that may be compatible in the underlying zoning district but because of their size, operation, or other characteristics require review on a case-by-case basis. These uses are subject to the regulations in this Section because they may, but do not necessarily, result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area or create nuisances. Conditional Uses may be approved, approved with site-specific conditions designed to minimize or mitigate identified adverse impacts, or denied.

A Planned Unit Development is a special kind of Conditional Use that permits the modification of the development standards in the underlying zoning district to achieve innovative design, preserve natural resources, reduce energy consumption and/or otherwise address unique site opportunities and constraints. Such approval allows the modification of such design standards without the necessity for separate Adjustment or Variance application.

This Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval

Section 40.15.15.6.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Conditional Use – Planned Unit Development applications. The Commission will determine whether the application as presented meets the Conditional Use – Planned Unit Development approval criteria. The Commission may choose to adopt, not adopt, or modify staff's findings. In this attachment to the staff report, staff evaluates the application in accordance with the approval criteria for Conditional Use – Planned Unit Development applications.

In order to approve a Conditional Use – Planned Unit Development application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.15.15.6.C.1

Approval Criterion: *The proposal satisfies the threshold requirements for a PUD application.*

FINDING:

The Scholls Heights at South Cooper Mountain PUD met Threshold 3 for a Conditional Use-Planned Unit Development which states:

- 3. Is required for proposed residential development of a site that is equal to or greater than 10 acres, including all phases, and located within the South Cooper Mountain Community Plan Area.*

The applicant was approved for an 892-unit PUD with associated open spaces and natural features. The applicant proposed to modify the approved PUD by splitting the northeast phase into two phases, referred to as Northeast-South (NE-S) and Northeast-North (NE-N). Additional rear yard setback reductions are requested for properties abutting natural resource tracts for rear yard decks. No changes to streets, utility corridors, or open space design are proposed. Section 50.95 of the BDC describes the process for modifying a previous land use approval and specifies that the proposal, when modifying a condition of approval, must adhere to the same process as the original decision; therefore a Type 3 PUD review is required. This Modification of a Decision application for the PUD is only required to split the northeast phase into two phases and to modify rear yard setbacks from those previously approved. As a result of splitting the northeast phase the open space allocation conditioned on the northeast phase must be re-allocated to the new phases according to the proportion of lots in each new phase.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.15.15.6.C.2

Approval Criterion: *All City application fees related to the application under consideration by the decision-making authority have been submitted.*

FINDING:

The City of Beaverton received the appropriate fee for a Conditional Use – Planned Unit Development application.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.15.15.6.C.3

Approval Criterion: *The proposal meets the Site Development Requirement for setbacks within the applicable zoning district for the perimeter of the parent parcel unless otherwise provided by Section 60.35.10.3.*

FINDING:

The proposal does not include modification to exterior lot line setbacks which will continue to comply with the parent parcel setbacks. The applicant requests reductions to interior rear lot lines which abut natural resource areas in order to allow decks above 30 inches up to a 5-foot setback. This request will be evaluated in the PUD compliance table below. Staff finds that the parent parcel setbacks will be maintained.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.15.15.6.C.4

Approval Criterion: *The proposal complies with the applicable policies of the Comprehensive Plan.*

FINDING:

The applicant proposes only to modify the phase limits by splitting up the northeast phase into two phases and reducing rear yard setbacks for decks abutting resource and stormwater tracts. No proposed components of this modification application affect compliance with the Comprehensive Plan and/or South Cooper Mountain Community Plan which was originally evaluated as part of the Scholls Heights PUD. Staff finds that the criterion is not applicable.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.15.15.6.C.5

Approval Criterion: *The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.*

FINDING:

The applicant’s proposed changes do not affect the number of lots proposed, road locations, utility locations or open space areas which would affect the sites’ ability to accommodate the

proposal. Staff finds that the site can continue to accommodate the proposal, as modified through this request.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.15.15.6.C.6

Approval Criterion: *The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.*

FINDING:

The applicant does not propose to modify any of the major components of the final design of the Scholls Heights PUD. The proposed modifications include splitting the existing northeast phase into two phases and minor setback requests interior to the site which would not impact surrounding development. No changes to street or utility infrastructure are proposed with these modifications.

Conclusion: Therefore, staff finds that the proposal meets the criterion.

Section 40.15.15.6.C.7

Approval Criterion: *The width of the proposed lots or staggering of building setbacks within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.*

FINDING:

The applicant does not propose to modify any of the final housing types or housing locations of the Scholls Heights PUD, only modifying the phase boundaries and requesting rear yard setback reductions for decks on specific lots.

Conclusion: Therefore, staff finds that the approval criterion is not applicable.

Section 40.20.15.6.C.8

Approval Criterion: *The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15.*

FINDING:

The applicant does not propose to modify the protection of natural resources, the applicant does request to allow reduced rear yard setbacks specifically to allow decks greater than 30

inches for lots 56-65, 67-76, 117-137, 166-168, 310-319, 329-335, 520-524, and 539-570 which abut open space or stormwater tracts. The requested setback reduction will not impact the preserved natural resource areas. The natural resources on the site which were proposed and approved for protection with the Scholls Heights PUD, which included preservation of substantial stream corridor, wetland, and habitat areas. Therefore staff finds that the criterion is met.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.20.15.6.C.9

Approval Criterion: *The proposal provides improved open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15:*

- a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest to complement the overall site design.*
- b. The shape of the open space is such that the length is not more than three (3) times the width the purpose of which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.*
- c. The dedicated land(s) is located to reasonably serve all lots for the development, for which the dedication is required.*

FINDING:

The applicant does not propose to modify any of the final design, including the allocation and design of open space, of the Scholls Heights PUD. Since the total amount of required passive and active open space required per phase is based on the number of dwelling units in that phase, the condition of approval from the original PUD application is to be modified to adjust the amount of open space required in the Northeast-North and Northeast-South phases to reflect the new dwelling unit totals for each phase. The ultimate design is not proposed to be modified.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.20.15.6.C.10

Approval Criterion: *For proposals within the SC-S (Station Community-Sunset) zoning district, the requirements identified in Sections 20.20.40.2. and 20.20.40.3. are satisfied.*

FINDING:

Report Date: July 28, 2021

City of Beaverton

Page 29

The proposed PUD is not located within the SC-S zoning district, therefore this criterion is not applicable.

Conclusion: Therefore, staff finds that the approval criterion is not applicable.

Section 40.20.15.6.C.11

Approval Criterion: *If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. If a phased PUD has been approved, development of the future phases of the PUD shall be filed within five (5) years of the date of decision of the PUD. Refer to Section 50.90.*

FINDING:

The Scholls Heights PUD was approved with seven (7) phases and is now proposed to have eight (8) phases. The first phase of the subdivision the East Phase (also referred to in site development plans as phase 1A/1B) is permitted and under construction. The applicant continues to understand that development applications shall be filed within five (5) years.

Conclusion: Therefore, staff finds that the proposal meets the approval criterion.

Section 40.20.15.6.C.12

Approval Criterion: *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

FINDING:

The applicant has submitted the required application materials for review of a Modification of a Decision-Conditional Use-Planned Unit Development application in the proper sequence. The Modification of a Decision (PUD) is being processed concurrently with a Modification of a Decision – Preliminary Subdivision application. The Modification of a Decision – PUD is dependent upon approval of the Modification of a Decision – Preliminary Subdivision (LD2021-0004), staff recommends a condition of approval requiring that LD2021-0004 be approved.

Conclusion: Therefore, staff finds that by meeting the condition of approval, the proposal meets the approval criterion.

Section 50.95 Modification of a Decision

The applicant has requested modifications to conditions of approval of the previously approved Conditional Use – Planned Unit Development application (CU2017-0010). Staff notes that CU2017-0010 was previously modified with application Cu2019-0012 which modified the phase boundaries of the Central and Northeast phases. As a modification of a previous decision is sought, Section 50.95 of the Development Code is applicable to the request. To approve a Conditional Use – Planned Unit Development application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 50.95.1

An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

FINDING:

The applicant has requested this modification to a condition of approval associated with a decision, originally approved through a Type 3 procedure, Scholls Heights at South Cooper Mountain PUD (CPA2017-0006 / ZMA2017-0005 / CU2017-0010 / DR2017-0052 / LD2017-0009 / LD2017-001 / SDM2017-0007 / TP2017-0008) therefore, the applicant must return to the Planning Commission to request a modification. The applicant states that the required materials have been submitted with this Modification of a Decision for a Type 3 Conditional Use – Planned Unit Development application. The applicant explains that the request is limited to modifying Condition of Approval No. 5 of the original PUD, which was modified with CU2019-0012 as Condition of Approval No. 3. The condition states the required amount of open space to be provided with each phase of development. As the number of units in the new Northeast-North and Northeast-South phases are proposed to be modified as a result of this request the condition must be updated to reflect the new number of units in each new phase. Staff has addressed the relevant approval criteria for the Conditional Use – Planned Unit Development as well as the Facilities Review section of this report and found that the proposal is compliant with all applicable approval criteria, contingent upon the modification of the subject condition of approval and approval of the phasing modifications through the Modification of a Decision – Preliminary Subdivision application being processed concurrently. All other original conditions of approval of CU2017-0010 remain effective, unless modified with CU2019-0012.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.2

An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

FINDING:

The applicant met with staff accordingly for a pre-application conference on October 28, 2020 (PA2020-0041) and was provided the information necessary to apply for a Modification of Decision application.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.3

An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

FINDING:

This applicant states it does not request to extend the deadline for filing an appeal or stay the appeal proceedings. The applicant is aware the 120-day requirement for the modification application applies.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.4

Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

FINDING:

The applicant has applied to modify the conditionally approved Conditional Use – Planned Unit Development (CU2017-0010), as further modified by CU2019-0012 as part of the application package approved for the Scholls Heights at South Cooper Mountain PUD.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.,

Section 50.95.5

An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

FINDING:

The approved Scholls Heights at South Cooper Mountain PUD project was originally processed under the Type 3 review procedures. The requested modification to the approved condition associated with the project will follow the Type 3 review procedures.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.6

The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. A new or modified condition would better accomplish the purpose of the original condition.

FINDING:

The applicant states that the request for modification of Condition of Approval No. 3 of CU2019-0012 (previously Condition of Approval No. 5 of Cu2017-0010) is necessary due to the change in phase boundaries by splitting the northeast phase into the northeast-north and northeast-south phases which then allocated lots to each phase. This change does not alter the total amount of overall required open space or the total amount of active open space, it only modifies what is required in the new phases to reflect the change in number of units.

The request to modify the amount of open space per phase to accommodate the proposed change in the number of lots in the Northeast-North and Northeast-South phases is not a significant modification from the original decision as the total amount of required and provided open space is not proposed to be modified.

The proposed modification allows for the amount of open space required per phase to continue to be proportional to the number of units in the phase. With the proposed modification of the number of lots between the Northeast-North and Northeast-South phases the new condition remains consistent with the original purpose and better accomplishes the original conditions intent given the change in the number of lots per phase.

Conclusion: Therefore, staff finds by meeting the conditions of approval the proposal meets the criterion.

Conclusion and Recommendation

Based on the facts and findings presented above, staff recommends **APPROVAL** of **CU2021-0006** subject to conditions of approval.

Planned Unit Development Code Conformance Analysis

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Modification of Base Zoning Standards			
60.35.10.1.A-C Permitted Uses	Compliance with permitted and conditional uses of the zoning district.	No changes to proposed unit types or uses are proposed.	N/A
60.35.10.2. Density and Lot Dimensions:	Density and building scale shall relate to the surrounding neighborhood development and natural resources by providing massing and architectural compatibility with the surrounding neighborhood.	The applicant does not proposed changes to density or to building type. Minor changes in lot lines are evaluated in the Modification of a Preliminary Subdivision application but are de minimum in nature and do not effect density, housing type, or compatibility with surrounding neighborhoods.	N/A
60.35.10.2.A.1 Density Transfers	Density transfers allow an equal transfer of dwelling units from one portion of the site to another in certain areas.	The applicant has not proposed density transfers.	N/A
60.35.10.2.B.1 Residential Lot Sizes	Minimum lot size may be reduced to 50% of the minimum land area of the applicable zoning district(s), except as permitted in 60.35.10.3.C.2.	The applicant does not propose modification to any lots that would reduce the lot size below 50% of the base zone requirements.	Yes
	Minimum lot size proposed between	No lots which are subject to compact detached housing	N/A

60.35.10.2.B.2
Residential Lot
Sizes

25% and 50% of the minimum land area of the applicable zoning district, shall meet the applicable Design Standards or Design Guidelines related to Compact Detached Housing in Section 60.05.

standards are requested.

60.35.10.2.B.3
Residential Lot
Sizes

Maximum lot size may not exceed 195% of the minimum land area of the applicable zoning district(s) in conformance with the table below unless designated for a future phase, which includes further division of property or development of attached product.

The applicant does not propose to modify any previously approved oversized lots.

N/A

60.35-10.2.B.4
Residential Lot
Sizes

A proposed Planned Unit Development shall not result in fewer dwelling units (lower density) than if the subject site were reviewed as a Preliminary subdivision.

The applicant does not propose to change the total number of proposed units which conforms to the density requirements.

N/A

60.35.10.3.A.1-2
Setbacks

Proposed lots abutting the perimeter of the property shall comply with the standard front and rear yard setbacks of the parent parcel. Side yards of the

The applicant does not propose to modify any perimeter lots line.

N/A

parent parcel may not be reduced unless approved by the Planning Commission and utilizing Development Bonus and Development Incentive Options of Section 60.35.30.

60.35.10.3.B.1 Front Setbacks	Front setbacks interior to the PUD may be reduced, excluding the garage where the garage door faces the front property line. Structures shall not encroach in a public utility easement.	No applicant states no additional reductions to front yard setbacks are requested.	N/A
60.35.10.3.B.2 Front Setbacks	Garages that face a public street shall be set back 20 feet from the property line and recessed a minimum of 4 feet from the front building plane, not including porches, when facing a street.	The applicant states no additional reductions to garage setbacks are requested.	N/A
60.35.10.3.C.1 Rear Setbacks	Rear setbacks shall be the same as the base zone for the parent parcel, excepting alley accessed lots which may be reduced to 4-feet.	Parent Parcel setbacks are met, including the rear yard.	Yes
60.35.10.3.C.2	Garages and carports accessed from both	No additional special garage or alley setbacks are	N/A

Rear Setbacks	sides of an alley shall be set back a minimum of 4' with no less than 28' between garage doors.	requested. The applicant requests to reduce the rear yard setback for lots 56-65, 67-76, 117-137, 166-168, 310-319, 329-335, 520-524, and 539-570 for decks greater than 30 inches up to 5 feet from the rear property line. Each of these lots about a natural area or stormwater tracts.	
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60.35.10.3.D Side Setbacks	Except for zero-lot line development side setbacks are a minimum of 3' with a total of 6' between two buildings. Zero-lot line developments shall have one side yard setback of 10' and the other zero.	The applicant states that no additional changes to side yard setbacks are requested.	N/A
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Open Space

60.35.15 Open Space Requirements	Requirements to amount, location and design of open space.	No modifications to the size, location, or design of open space are proposed.	N/A
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Building Architecture – PUD – Detached Only

60.35.20 Detached Residential Architectural Standards	Architectural standards for detached residential developments.	The proposal does not include changes to detached residential dwellings.	N/A
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Development Bonuses and Development Incentive Options

60.35.30 Development Bonuses and Incentives	PUD offers the applicants additional standards which can be met as incentives and reduce open space and setbacks.	The applicant is not seeking development bonuses or incentives.	N/A
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Attachment C: LD2021-0004 Modification of a Decision – Preliminary Subdivision

ANALYSIS AND FINDINGS FOR MODIFICATION OF A DECISION -PRELIMINARY SUBDIVISION APPROVAL

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **LD2021-0004**, subject to the applicable conditions identified in Attachment D.

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B, and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

FINDING:

Staff has reviewed the applicable Facilities Review Committee approval criteria in Attachment A of this report. Staff cites the findings presented in Attachment A in response to the Facilities Review Committee approval criteria. As identified in Attachment A, the proposal meets Approval Criteria 40.03.1.A through L, subject to conditions of approval identified in Attachment C.

Conclusion: Therefore, the Committee finds that the proposal meets the criteria.

Section 40.45.05 Purpose:

The purpose of Land Division applications is to establish regulations, procedures, and standards for the division or reconfiguration of the boundaries of land within the City of Beaverton. This Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval:

Section 40.45.15.5.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Land Division Applications. The Commission will determine whether the application as presented, meets the Preliminary Subdivision approval criteria. The Commission may choose to adopt, not adopt or modify the Committee's findings. In this portion of the report, staff evaluates the application in accordance with the criteria for Preliminary Subdivision.

To approve a Preliminary Subdivision application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.45.15.5.C.1

The application satisfies the threshold requirements for a Preliminary Subdivision application. If the parent parcel is subject to a pending Legal Lot Determination under Section 40.47., further division of the parent parcel shall not proceed until all of the provisions of Section 40.47.15.1.C. have been met.

FINDING:

Threshold 1 for a Preliminary Subdivision states that an application for Preliminary Subdivision shall be required when the following threshold applies:

1. *The creation of four (4) or more new lots from at least one (1) lot of record in one (1) calendar year.*

The applicant was previously approved for a 677 lot subdivision (471 lots for detached single-family homes, 205 lots for attached single-family homes, 1 parcel for future multi-family development of 216units). The applicant proposes to split the northeast phase into two phases, the Northeast-North and Northeast-South phases, resulting in no change to the total number of lots proposed. The applicant also proposes minor grading changes and lot line modifications. As LD2017-0009 was approved by the Planning Commission per BDC 50.95 the proposed modification must be approved by the Planning Commission. Staff notes that LD2017-00019 was previously modified by LD2019-0032 which moved 26 units from the central phase to the northeast phase.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.45.15.5.C.2

All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING:

The City of Beaverton received the appropriate fee for a Preliminary Subdivision application.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.45.15.5.C.3

The proposed development does not conflict with any existing City approval, except the City may modify prior approvals through the subdivision process to comply with current Code standards and requirements.

FINDING:

The applicant proposes to go through the Modification of a Decision – Preliminary Subdivision process in order to appropriately address the proposed change in phasing. This request is limited to modifying the northeast phase by splitting it into two phases, the Northeast-North and Northeast-South. Additionally, minor grading and lot line changes are proposed. All conditions of approval for LD2017-0009, unless modified by LD2019-0032, will remain effective, as a condition of approval of this request.

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.45.15.5.C.4

Oversized lots resulting from the subdivision shall have a size and shape which will facilitate the future potential partitioning or subdividing of such oversized lots in accordance with the requirements of the Development Code. In addition, streets, driveways, and utilities shall be sufficient to serve the proposed subdivision and future potential development on oversized lots. Easements and rights-of-way shall either exist or be proposed to be created such that future partitioning or subdividing is not precluded or hindered, for either the oversized lot or any affected adjacent lot.

FINDING:

The applicant proposes minor lot line shifts between previously approved lots, no changes to overall density or number of lots are proposed. Any previously approved oversized lots are not proposed to be modified with this application.

Conclusion: Therefore, staff finds the criterion is not applicable.

Section 40.45.15.5.C.5

If phasing is requested by the applicant, the requested phasing plan meets all applicable City standards and provides for necessary public improvements for each phase as the project develops.

FINDING:

The applicant was previously approved for a seven (7) phase PUD. The applicant proposes to split the previously approved Northeast Phase into two phases the Northeast-

North and Northeast-South phases for a total of eight (8) phases in the PUD. No modifications to street or utility location are proposed. All lot changes are minor in nature and do not affect the provision of critical or essential services to the proposed lots. The Facilities Review report, found in Attachment A, assesses the ability of the proposed modification to provide all necessary public improvements with each phase. The Facilities Review report found that the necessary public improvements could be provided, as proposed to be modified.

Conclusion: Therefore, staff finds the proposal meets the criterion.

Section 40.45.15.5.C.6

Applications that apply the lot area averaging standards of Section 20.05.15.D. shall demonstrate that the resulting land division facilitates the following: [ORD 4584; June 2012]

- a) Preserves a designated Historic Resource or Significant Natural Resource (Tree, Grove, Riparian Area, Wetland, or similar resource); or,
- b) Complies with minimum density requirements of the Development Code, provides appropriate lot size transitions adjacent to differently zoned properties, minimizes grading impacts on adjacent properties, and where a street is proposed provides a standard street cross section with sidewalks.

FINDING:

The applicant does not propose lot averaging.

Conclusion: Therefore, staff finds the criterion for approval is not applicable.

Section 40.45.15.5.C.7

If lot area averaging standards are proposed pursuant to Section 20.05.15.D, no further applications for Adjustment or Variance from this standard are required or permitted.

FINDING:

The applicant does not propose lot averaging.

Conclusion: Therefore, staff finds the criterion for approval is not applicable.

Section 40.45.15.5.C.8

For proposals which create a parcel with more than one zoning designation the portion of the lot within each zoning district shall meet the minimum lot size and dimensional requirements of that zoning district.

FINDING:

No proposed tracts or parcels will have more than one zoning designation.

Conclusion: Therefore, staff finds the criterion for approval is not applicable.

Section 40.45.15.5.C.9

Applications and documents related to the request requiring further City approval shall be submitted to the City in the proper sequence.

FINDING:

The applicant has submitted the required application materials for review of a Modification of a Decision-Preliminary Subdivision application in the proper sequence. The Modification of a Decision (Preliminary Subdivision) is being processed concurrently with a Modification of a Decision – Conditional Use – Planned Unit Development application. The Modification of a Decision – Preliminary Subdivision is dependent upon approval of the Modification of a Decision – PUD (CU2021-0006), staff recommends a condition of approval requiring that CU2021-0062 be approved.

Conclusion: Therefore, staff finds that by meeting the conditions of approval the proposal meets the criterion for approval.

Section 50.95 Modification of a Decision

The applicant has requested modifications of the previously approved Preliminary Subdivision application (LD2017-0009 which was modified by LD2019-0032), therefore, Section 50.95 of the Development Code is applicable to the request. To approve a Modification of a Decision - Preliminary Subdivision application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 50.95.1

An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable

facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

FINDING:

The applicant has requested this modification to a preliminary subdivision associated with a decision, originally approved through a Type 3 procedure, Scholls Heights at South Cooper Mountain PUD (CPA2017-0006 / ZMA2017-0005 / CU2017-0010 / DR2017-0052 / LD2017-0009 / LD2017-001 / SDM2017-0007 / TP2017-0008) therefore, the applicant must return to the Planning Commission to request a modification of conditions to the PUD. Staff notes that the Scholls Heights PUD was previously modified by applications CU2019-0012 and LD2019-0032 through a Type 3 process. The applicant states that the required materials have been submitted with this Modification of a Decision for a Type 2 Preliminary Subdivision application. The applicant explains that the request is limited to splitting the Northeast phase into two phases, minor grading modifications, and minor lot line changes.

Staff has addressed the relevant approval criteria for the Preliminary Subdivision as well as the Facilities Review section of this report and found that the proposal is compliant with all applicable approval criteria. All other original conditions of approval of LD2017-0009 remain effective, unless modified by LD2019-0032.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.2

An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

FINDING:

The applicant met with staff accordingly for a pre-application conference on October 28, 2020 (PA2020-0041) and was provided the information necessary to apply for a Modification of Decision application.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.3

An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

FINDING:

This applicant states it does not request to extend the deadline for filing an appeal or stay the appeal proceedings. The applicant is aware the 120-day requirement for the modification application applies.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.4

Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

FINDING:

The applicant has applied to modify the conditionally approved Preliminary Subdivision (LD2017-0009) as part of the application package approved for the Scholls Heights at South Cooper Mountain PUD. Staff notes that the modification to Scholls Heights at South Cooper Mountain PUD LD2019-0032 was also conditionally approved.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.5

An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

FINDING:

The approved development was originally processed under the Type 3 review procedures. The requested modification to the approved site plan associated with the project will follow the Type 3 review procedures.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.6

The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of

approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. A new or modified condition would better accomplish the purpose of the original condition.

FINDING:

The applicant does not propose to modify a condition of approval of the Preliminary Subdivision application LD2017-0009 or LD2019-0032. As a condition of approval of this Modification of a Decision request all conditions of approval of LD2017-0009 and LD2019-0032 will remain effective.

Conclusion: Therefore, staff finds that by meeting the conditions of approval the proposal meets the criterion for approval.

Conclusion and Recommendation

Based on the facts and findings presented above, staff recommends **APPROVAL** of **LD2021-0004** subject to conditions of approval identified in Attachment D.

Land Division Standards Code Conformance Analysis

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Grading Standards			
60.15.10.1 Applicability	Grading standards apply to all land divisions where grading is proposed but do not supersede Section 60.05.25 Design Review.	The proposal is subject to the grading standards contained herein. The applicant does not propose to modify approved grading within 25 feet of a parent property line.	N/A
60.15.10.2.A-C Exemptions	Exemptions include: Public right-of-way, storm water detention facilities, grading adjacent to an existing public-right of way which results in a finished grade below the elevation of the adjacent right-of-way.	Storm water facilities and public rights-of-way are proposed within the applicable grading area. These areas are exempt from the grading standards.	Yes
60.15.10.3.A-F	When grading a site within 25 feet of a property line within or abutting any residentially zoned property, the on-site surface contours shall observe A-E of this code section.	The applicant does not propose to modify grading within 25 feet of any parent property line.	N/A
60.15.10.3.G	The on-site grading contours stated above	The grading standards have only been applied to the parent	Yes

apply only to the property lines of the parent parcel(s). They do not apply to internal property lines within a development.

property lines of the Scholls Heights PUD

Significant Trees and Groves

60.15.10.4 Significant Trees and Groves	Standards for grading within 25 feet of significant trees or groves.	Existing trees that do remain onsite will be protected in accordance with Tree Protection standards in Section 60.60.20 of the Code. Grading changes are not proposed in areas with protected tree groves.	N/A
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Attachment D: Conditions of Approval

Application: Scholls Heights PUD Northeast Phase Mods

Recommendation: APPROVE CU2021-0006 / LD2021-0004 subject to conditions of approval.

Modification of a Decision - Planned Unit Development (CU2021-0006)

1. All conditions in CU2017-0010 and CU2019-0012 remain in full effect, except condition of approval number five (5) of decision CU2017-0010 and condition of approval number three (3) of decision CU2019-0012 which are superseded by condition of approval (3) below.

A. Prior to Site Development Permit Issuance, the Applicant Shall:

2. Ensure the associated land use application LD2021-0004 has been approved and is consistent with the submitted plans. (Planning / JF)
3. Provide a plan showing the development of the required open space, as listed below, for each phase of development. Open space constructed in excess of that required in previous phases may be used to meet the open space requirements for subsequent phases. The open space requirements are approximately to 173 square feet of active and 691 square feet of total open space per dwelling unit. (Planning / JF)
 - a. East: 0.78 acres active open space and 3.11 acres total open space.
 - b. West: 0.57 acres of active open space and 2.28 acres of total open space.
 - c. Northwest: 0.39 acres of active open space and 1.57 acres of total open space.
 - d. Central: 0.32 acres of active open space and 1.27 acres of total open space.
 - e. Northeast-South: 0.12 acres of active open space and 0.50 acres of total open space.
 - f. Northeast-North: 0.39 acres of active open space and 1.55 acres of total open space.
 - g. North: 0.11 acres of active open space and 0.45 acres of total open space.
 - h. South: 0.85 acres of active open space and 3.42 acres of total open space.

Modification of a Decision - Preliminary Subdivision (LD2021-0004)

1. All conditions in LD2017-0009 and LD2019-0032 remain in full effect. (Planning / JF)

A. Prior to Site Development Permit Issuance the Applicant Shall:

2. Ensure the associated land use application CU2021-0006 has been approved and is consistent with the submitted plans. (Planning / JF)
3. Provide plans showing lots within the NE-N and NE-S phases are served by the 550-zone waterline. (Site Development / NP)
4. Provide plans showing the stormwater pond to serve the NE-N and NE-S phases has maintenance access in conformance with EDM standards. (Site Development / NP)

5. Ensure the associated land use application CU2021-0006 has been approved and is consistent with the submitted plans. (Planning / JF)