



Staff Report

STAFF REPORT DATE: February 19, 2020

HEARING DATE: February 26, 2020

TO: Interested Parties

FROM: Jana Fox, Current Planning Manager

PROPOSAL: **Scholls Heights PUD Phasing Modifications
CU2019-0012 / LD2019-0032**

LOCATION: The Scholls Heights PUD is located generally at the northeast corner of the intersection of SW Scholls Ferry Road and SW Tile Flat Road. The proposed phase modifications occur near the eastern PUD boundary and affect only one tax lot, Map: 2S20100 Tax Lot: 03800. The Scholls Heights PUD involves the following: Map: 2S20100 Tax Lots: 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900, 4000, 4100, 4200, 4201, 4300, and 4400.

ZONING: Urban High Density (R1), Urban Medium Density (R2), Urban Medium Density (R4), Urban Standard Density (R5), and Urban Standard Density (R7)

SUMMARY: The applicant, West Hills Land Development, requests to modify the boundary between two phases of the previously approved Scholls Heights Planned Unit Development (PUD). The applicant proposes to shift 26 lots from the "Central" to the "Northeast" phase, including approximately 0.14 acres of active open space, a portion of Street "V", and associated utility improvements within the modification area. As a result of the proposed phasing modification the applicant request modification to Condition of Approval No. 5 of the previously approved PUD (approved case file no. CU2017-0010 Scholls Height PUD) to adjust the required amounts of open space per phase to reflect the change in units in the modified phases. Proposed changes are limited to modifications in phasing. No modifications are being proposed to the final lots, streets, or infrastructure approved through the Scholls Heights PUD.

RECOMMENDATION: **APPROVAL** of **Scholls Heights PUD Phasing Modifications (CU2019-0012 / LD2019-0032)** subject to conditions of approval.

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

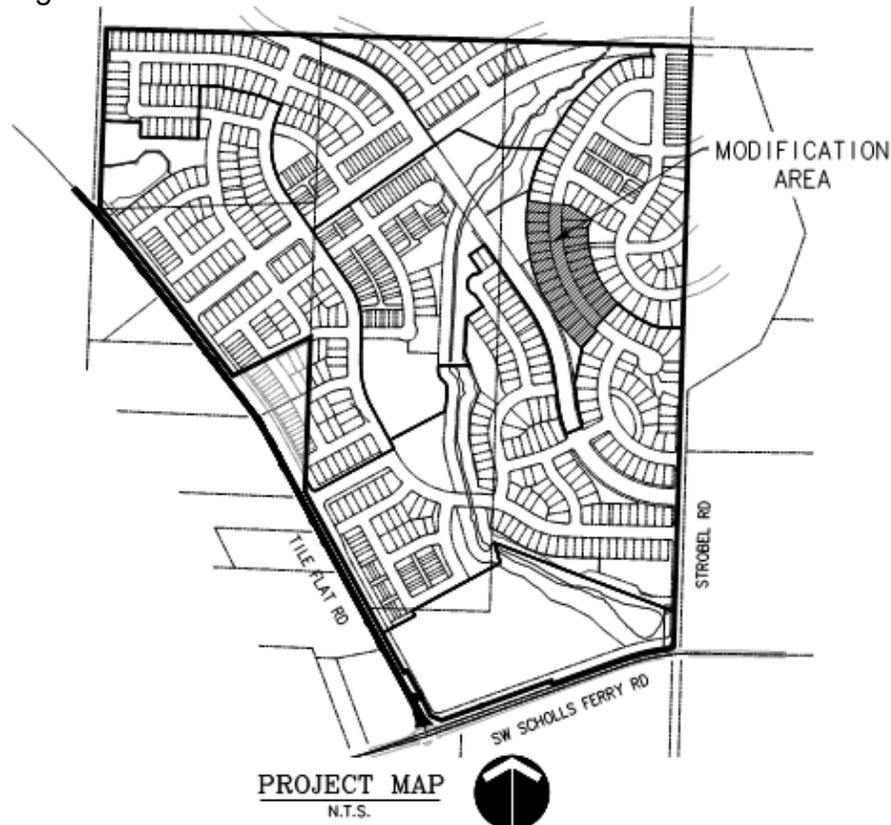
APPLICANT'S REPRESENTATIVE: Otak, Inc.
Attn: Li Alligood
808 SW Third Ave, Suite 300
Portland, OR 97204

PROPERTY OWNER: Lewis Bierly, John Bierly, Susan Thompson, et al.
12150 SW Kobbe Dr
Beaverton OR, 97007

BACKGROUND FACTS

Project Description

The applicant, West Hills Land Development, proposes to modify a previously approved PUD, the Scholls Heights at South Cooper Mountain PUD to adjust the phase boundary between the Central and Northeast phases of the development, resulting in a total of 26 lots being moved from the Central to Northeast phase along with associated site and open space improvements (area highlighted in the diagram below). This request necessitates the modification of a condition of approval of the Conditional Use – Planned Unit Development (CU2017-0010) related to the allocation of open space per phase. The adjustment to the phasing boundary is addressed in a request to modify the previously approved Preliminary Subdivision (LD2017-0009) application. The area of modification is identified in the diagram below.



Key Application Dates

Application	Submittal Date	Application Deemed Complete	120-Day*	365-Day**
CU2019-0012	December 19, 2019	January 8, 2020	May 7, 2020	January 7, 2021
LD2019-0032	December 19, 2019	January 8, 2020	May 7, 2020	January 7, 2021

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, without a continuance, by which a final written decision on the proposal can be made.

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Existing Conditions Table

Zoning	Urban Standard Density (R7)	
Current Development	Vacant / Agriculture (Approved Scholls Heights PUD)	
Site Size & Location	The site is located within the Scholls Heights PUD. The site size is approximately 8.8 acres.	
NAC	Neighbors Southwest	
Surrounding Uses	<p>Zoning: <u>North:</u> Urban Medium Density (R2 & R4) <u>South:</u> Urban Standard Density (R7) <u>East:</u> Urban Medium Density (R4), Urban Standard Density (R5 & R7) <u>West:</u> Urban Medium Density (R4)</p>	<p>Uses: <u>North:</u> Vacant / Agriculture <u>South:</u> Vacant / Agriculture <u>East:</u> Single Family Home / Agriculture <u>West:</u> Vacant / Agriculture</p>

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<u>Attachment B:</u> <i>CU2019-0012 Modification of a Planned Unit Development</i>	CU1-CU8
<u>Attachment C:</u> <i>LD2019-0032 Modification of a Preliminary Subdivision</i>	LD1-LD6
<u>Attachment D:</u> <i>Conditions of Approval</i>	COA1

Exhibits

Exhibit 1. Materials submitted by Staff

Exhibit 1.1 Vicinity Map (page SR-5 of this report)

Exhibit 1.2 Aerial Map (page SR-6 of this report)

Exhibit 2. Public Comment

No public comments received

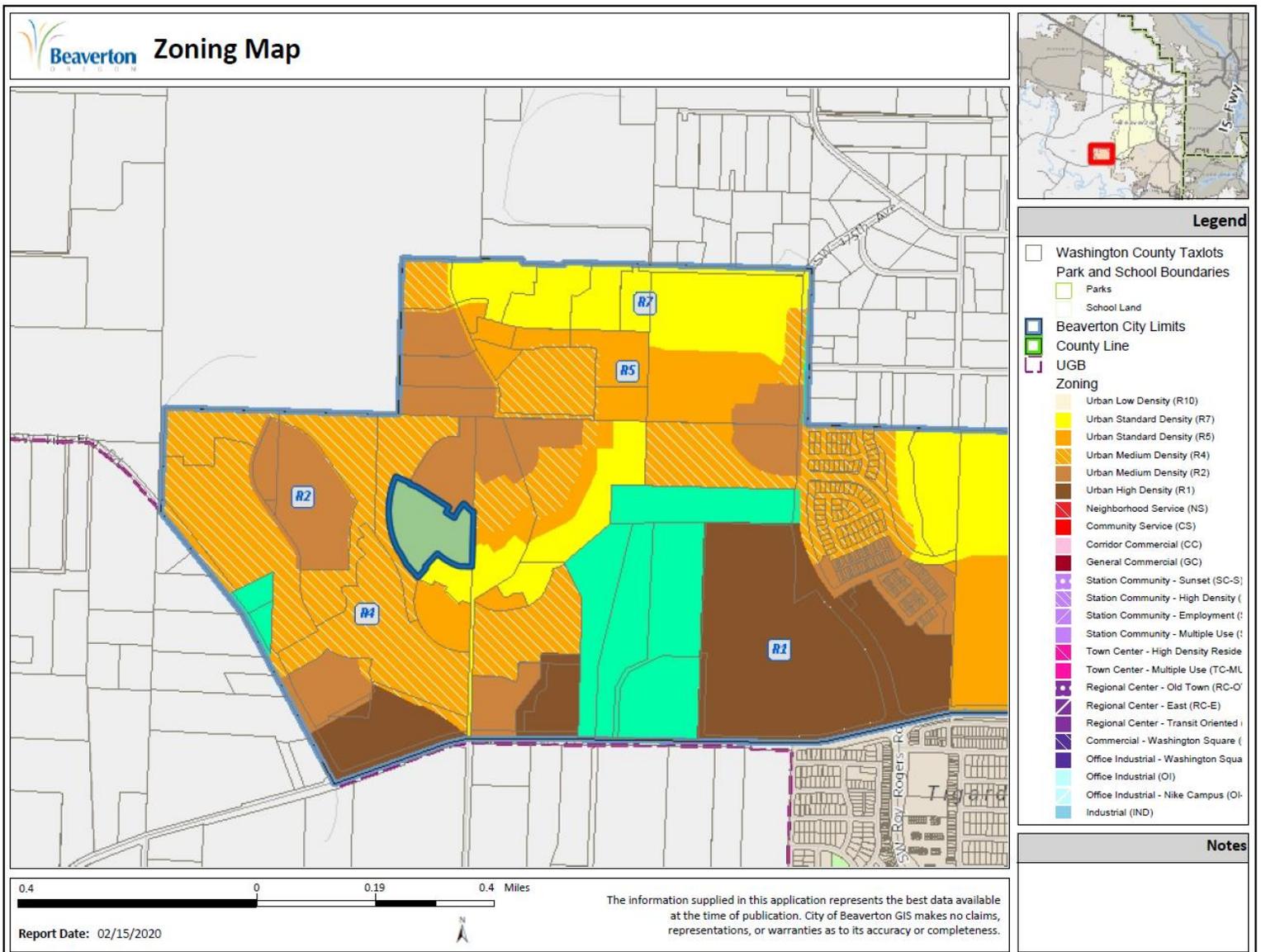
Exhibit 3. Materials submitted by the Applicant

Exhibit 3.1 Submittal Package

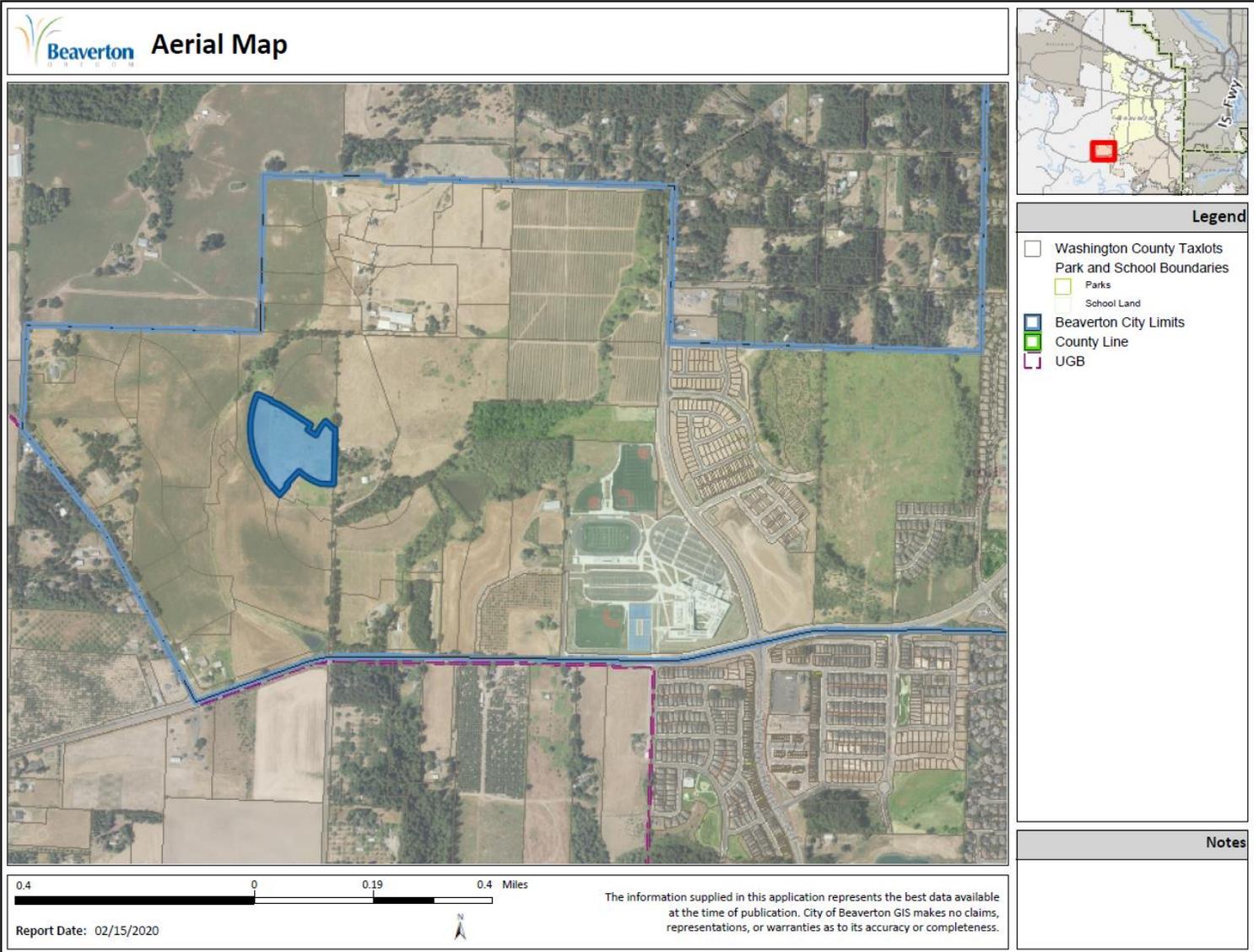
Exhibit 4. Agency Comments

No agency comments received

Scholls Heights PUD Modifications
CU2019-0012 / LD2019-0032



Scholls Heights PUD Modifications CU2019-0012 / LD2019-0032



**FACILITIES REVIEW COMMITTEE
TECHNICAL REVIEW AND RECOMMENDATIONS
Scholls Height PUD Phasing Mods
CU2019-0012 / LD2019-0032**

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 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, below.

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

- **All twelve (12) criteria are applicable to the Modification of a Conditional Use and Modification of a Preliminary Subdivision applications as submitted.**

The applicant proposes to adjust the boundary between the approved Central and Northeastern phases of the Scholls Heights PUD. This results in transferring 26 lots from the Northeastern phase to the Central phase, a total of 3.69 acres. This modification of the phasing plan requires a modification of the approved preliminary subdivision. As the result of moving lots between phases the condition of approval in the PUD application regulate to open space provision must be modified. No modifications to the final PUD and subdivision layout is proposed.

- A. *All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.***

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 with a total of 677 lots, including one oversized lot for a future 256-unit multifamily development. The applicant proposes to shift 26 units along Street V from the Central Phase to the Northeast Phase. The applicant does not propose to modify the proposed water, sanitary sewer, or stormwater facilities located in Street V to serve the adjacent lots. 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 Street V to serve the Northeast

Phase 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 adjust the phasing boundary between the Central and Northeast phases of development does not include any changes to the final layout of the site or subdivision, including Street V which the 26 lots transferred between phases access from. The proposal will maintain the existing access easement 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.

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.

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

- B. Essential facilities and services are available, or can be made available, with adequate capacity to serve the development prior to 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 years of occupancy.***

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 proposed to modify any final lot, street, utility, or open space layouts as approved by the Scholls Heights PUD. The proposal is limited to modifying the phase boundary line between the Central and Northeast phases. 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.

Therefore, the Committee finds that the proposal meets the criterion.

- C. The proposal 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 proposal.***

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 Standard Density Residential (R7). As demonstrated on the chart, the development proposal meets all applicable standards of the proposed zones.

Therefore, the Committee finds that the proposal meets the criterion.

- D. 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 proposal.***

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.

Therefore, the Committee finds that the proposal meets the criterion.

- E. 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 ditches, 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.***

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.

Therefore, the Committee finds that the proposal meets the criterion.

- F. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.***

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.

Therefore, the Committee finds that the proposal meets the criterion.

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

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.

Therefore, the Committee finds that the proposal meets the criterion.

- H. *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.***

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.

Therefore, the Committee finds that the proposal meets the criterion.

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

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.

Therefore, the Committee finds that the proposal meets the criterion.

- J. *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.***

No changes to the approved physical development are proposed, including grading. 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 grading.

Therefore, the Committee finds that the proposal meets the criterion.

- K. 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.***

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

Therefore, the Committee finds that the proposal meets the criterion.

- L. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.***

The applicant submitted the land use applications on December 19, 2019 and was deemed complete on January 8, 2020. 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.

Therefore, the Committee finds the proposal meets the criterion.

Code Conformance Analysis

Chapter 20 Use and Site Development Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.05.15 (Site Development Standards)			
Site Development Standards	R7 Site Development Standards	The applicant does not propose any modifications to the approved lots, lot sizes, setbacks, building heights, or other site development standards which were approved with the Scholls Heights PUD. The approvals related to site development standards in the Scholls Heights PUD remain effective.	N/A

Chapter 60 Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05-Design Standards			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	No physical development is proposed.	N/A
Development Code Section 60.15 – Land Division Standards			
Land Division Standards	Standards pertaining to Land Divisions	The modifications to the Preliminary Subdivision are related only to phasing changes.	See LD Findings
Development Code Section 60.30 – Off-Street Parking			
Off-street motor vehicle parking and Required Bicycle Parking	Parking standards for vehicles and bicycles by use.	No physical development is proposed.	N/A
Development Code Section 60.33 – Park and Recreation Facilities & Service Provisions			
Parks & Recreation Facilities	Areas within the City must annex to THPRD or provide commensurate facilities.	The subject site has been annexed into the THPRD service area.	YES
Development Code Section 60.35 Planned Unit Development			
Planned Unit Development Standards	Requirements for Planned Unit Developments.	The proposal is part of the area within the approved Scholls Heights PUD. One condition of approval is proposed to be modified.	See CU Findings
Development Code Section 60.55 - Transportation			
Transportation Facilities	Regulations pertaining to the construction or reconstruction of transportation facilities.	No modifications to the approved physical development are proposed.	N/A
Development Code Section 60.60-Trees & Vegetation			
Trees & Vegetation	Regulations pertaining to the removal and preservation of trees.	No additional trees are proposed for removal.	N/A
Development Code Section 60.65-Utility Undergrounding			
Utility Undergrounding	All existing overhead utilities and any new utility service lines within the project and along any existing frontage, except high voltage lines (>57kV) must be placed underground.	No modifications to the approved physical development are proposed.	N/A
Development Code Section 60.67-Significant Natural Resources			
Significant Natural Resources	Regulations pertaining to Significant Natural Resources	No modifications to approved physical development are proposed. Significant Natural Resource preservation was addressed in the Scholls Heights PUD approval.	N/A

**RECOMMENDATION AND CONDITIONS OF APPROVAL
BY THE FACILITIES REVIEW COMMITTEE:**

Recommendation

The Facilities Review Committee finds that the proposal complies with all the technical criteria. The Committee recommends that the decision-making authority in **APPROVE** the proposal, subject to conditions of approval identified in Attachment D.

**CU2019-0012
ANALYSIS AND FINDINGS FOR
PLANNED UNIT DEVELOPMENT
(Modification of a Decision)**

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

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

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

Section 40.15.05 Conditional Use Applications; 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 applications... This Section is carried out by the approval criteria listed herein.

Section 40.15.15.4.C. Approval Criteria. In order to approve a PUD application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a PUD application.

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 moving 26 single-family lots from the “Central” to “Northeast” phase. No changes to the overall subdivision or PUD is plan as a result of the proposed phasing change, only a modification in what lots and associated improvements are constructed in which phase. 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 adjust the amount of open space required for each phase of development as a result of the shifting of the number of lots between the “Central” and “Northeast” phases. The total amount and location of open space is not proposed to be modified, including the location of the community park.

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

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

The applicant paid the required fee associated with a Conditional Use - Planned Unit Development application.

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

3. *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.*

The applicant does not propose to modify any approved setbacks with this modification of a decision request. Previously approved modified setbacks will remain effective.

Therefore, staff finds the criterion is not applicable.

4. *The proposal complies with the applicable policies of the Comprehensive Plan.*

The applicant does not propose to modify any of the final design of the Scholls Heights PUD, only modifying the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase. No Comprehensive Plan polices are applicable to the changed phasing as the overall design of the PUD remains the same.

Therefore, staff finds the criterion is not applicable.

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

The applicant does not propose to modify any of the final design of the Scholls Heights

PUD, only modifying the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase.

Therefore, staff finds the criterion is not applicable.

6. ***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.***

The applicant does not propose to modify any of the final design of the Scholls Heights PUD, only modifying the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase.

Therefore, staff finds the criterion is not applicable.

7. ***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.***

The applicant does not propose to modify any of the final design of the Scholls Heights PUD, only modifying the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase.

Therefore, staff finds the criterion is not applicable.

8. ***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.***

The applicant does not propose to modify any of the final design, including protection of natural resources, of the Scholls Heights PUD, only modifying the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase.

Therefore, staff finds the criterion is not applicable.

9. ***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.***

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. The proposal is to modify the timing of improvements by moving 26 lots from the “Central” phase to the “Northeast” phase. 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 Central and Northeast phase to reflect the new dwelling unit totals for each phase. . The ultimate design is not proposed to be modified.

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

- 10. 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.***

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

Therefore, staff finds the criterion is not applicable.

- 11. 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.***

The Scholls Heights PUD was approved with seven (7) phases and will continue to have seven (7) phases. The only modification is to the number of units in the “Central” and “Northeast” phases. The applicant continues to understand that development applications shall be filed within five (5) years.

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

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

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 (LD2019-0032), staff recommends a condition of approval requiring that LD2019-0032 be approved.

Therefore, staff finds that by meeting the Conditions of Approval, the proposal meets the criterion.

Section 50.95 Modification of a Decision - Procedures.

The applicant has requested modifications to a condition of approval of the previously approved Conditional Use – Planned Unit Development (CU2017-0010) for the Scholls Heights at South Cooper Mountain PUD, therefore, Section 50.95 of the Development Code is applicable to the request.

- 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.**

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, which stated the required amount of open space to be provided with each phase of development. As the number of units in the “Central” and “Northeast” phase 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 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.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

- 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.**

The applicant met with staff accordingly for a pre-application conference on October 23, 2019 (PA2019-0075), and was provided the information necessary to apply for a Modification of Decision application.

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

- 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.**

This applicant does not request to extend the deadline for filing an appeal. The applicant states that the 120-day requirement for the modification application is acknowledged.

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

- 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.**

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

Therefore, staff find the proposal meets the criterion for approval.

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

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.

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

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.

The applicant states the proposed modification does not contend that an error of law or fact occurred to necessitate the subject condition of approval modification request.

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

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.

The applicant states that the request for modification of Condition of Approval No. 5 is necessary due to the change in the number of units per phase of development. 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 "Central" and "Northeast" phases to reflect the change in number of units.

Staff notes the applicant has removed the THPRD Community Park from their calculations as to the total area the area provided by phase as the Community Park area is not needed for the applicant to meet the open space requirements per phase. No modification to the size, location or purpose of the park area are proposed or granted with this modification of a decision. The area remains intended for a THPRD Community Park.

The request to modify the amount of open space per phase to accommodate the proposed change in the number of lots in the Central and Northeastern phase 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.

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

C. The circumstances have changed to the extent that the condition is no longer needed or warranted.

The applicant states that the condition is still needed and the request is limited to modify the numeric values of the condition of approval.

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

D. A new or modified condition would better accomplish the purpose of the original condition.

The proposed modification allow 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 “Central” and “Northeast” 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.

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

Recommendation

Based on the facts and findings presented, staff recommend **APPROVAL** of **CU2019-0012 (Scholls Heights PUD Modifications)** subject to the applicable conditions identified in Attachment D.

**LD2019-0032
ANALYSIS AND FINDINGS FOR
PRELIMINARY SUBDIVISION
(Modification of a Decision)**

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

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

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

Section 40.45.05 Land Division Applications; Purpose

The purpose of the Land Division applications is to establish regulations, procedures, and standards for the division or reconfiguration of land within the City of Beaverton.

Section 40.45.15.5.C Approval Criteria. *In order 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:*

- 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.***

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 216-units). The applicant proposes to modify the phasing boundary between the “Central” and the “Northeast” phases of development, resulting in 26 single-family dwelling lots in the R7 zoning district moving from the “Central” phase to the “Northeast” phase. As LD2017-0009 was approved by the Planning Commission per BDC 50.95 the proposed modification must be approved by the Planning Commission.

Therefore, staff finds that the proposal meets the criterion for approval.

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

The applicant has paid the required application fee for a Preliminary Subdivision application.

Therefore, staff finds that the proposal meets the criterion for approval.

- 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.***

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 phase boundary between the “Central” and “Northeast” phases which will move 26 single-family lots and associated improvements from the Central to Northeast Phase. All conditions of approval for LD2017-0009 will remain effective, as a condition of approval of this request.

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

- 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.***

The applicant does not propose to modify the final lot pattern of the previously approved Preliminary Subdivision LD2017-0009.

Therefore, staff finds that the criterion for approval does not apply.

- 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.***

The applicant was previously approved for a seven (7) phase PUD. The applicant proposes to modify the boundary between two phases, the Central and Northeast phases. 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.

Therefore, staff finds that the proposal meets the criterion for approval.

6. Applications that apply the lot area averaging standards of Section 20.05.50.1.B shall demonstrate that the resulting land division facilitates the following:

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, and where a street is proposed provides a standards street cross section with sidewalks.

The applicant does not propose to modify the layout or size of the lots of the previously approved Preliminary Subdivision LD2017-0009.

Therefore, staff finds that the criterion for approval does not apply.

7. Applications that apply the lot area averaging standards of Section 20.05.50.1.B do not require further Adjustments or Variance for the Land Division.

The applicant does not propose to modify the layout or size of the lots of the previously approved Preliminary Subdivision LD2017-0009.

Therefore, staff finds that the criterion for approval does not apply.

8. The proposal does not create a parcel which will have more than one (1) zoning designation.

The applicant does not propose to modify the layout, size, or zoning of the lots of the previously approved Preliminary Subdivision LD2017-0009.

Therefore, staff finds that the criterion for approval does not apply.

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

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 (PUD) 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 (CU2019-0012), staff recommends a condition of approval requiring that CU2019-0012 be approved.

Therefore, staff finds that by meeting the Conditions of Approval, the proposal meets the criterion.

Section 50.95 Modification of a Decision - Procedures.

The applicant has requested modifications to a condition of approval of the previously approved Conditional Use – Planned Unit Development (CU2017-0010) for the Scholls Heights at South Cooper Mountain PUD, therefore, Section 50.95 of the Development Code is applicable to the request.

- 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.**

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. 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 modifying the boundary between the “Central” and “Northeast” phases which would mean 26 less units in the Central phase and 26 more units in the Northeast phase.

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.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

- 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.**

The applicant met with staff accordingly for a pre-application conference on October 23, 2019 (PA2019-0075), and was provided the information necessary to apply for a Modification of Decision application.

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

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.**

This applicant does not request to extend the deadline for filing an appeal. The applicant states that the 120-day requirement for the modification application is acknowledged.

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

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.**

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.

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

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

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.

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

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.

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

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

Recommendation

Based on the facts and findings presented, staff recommend **APPROVAL** of **LD2019-0032 (Scholls Heights PUD Modifications)** subject to the applicable conditions identified in Attachment D.

CONDITIONS OF APPROVAL**CU2019-0012 Modification of a Decision - Planned Unit Development:**

1. All conditions in CU2017-0010 remain in full effect, except condition of approval number five (5) of that decision which is superseded by condition of approval (3) below.

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

2. Ensure the associated land use application LD2019-0032 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.
 - 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: 0.51 acres of active open space and 2.05 acres of total open space.
 - f. North: 0.11 acres of active open space and 0.45 acres of total open space.
 - g. South: 0.85 acres of active open space and 3.42 acres of total open space.

LD2019-0032 Modification of a Decision - Preliminary Subdivision:

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

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

2. Ensure the associated land use application CU2019-0012 has been approved and is consistent with the submitted plans. (Planning / JF)