

Planning Commission
Staff Report
August 5, 2021



Case No:	21-RSUB-0004/21-WAIVER-0096/21-WAIVER-0098
Project Name:	Creekside Commons
Location:	1200 S English Station
Owner(s):	Clayton Property Group
Applicant:	Elite Built Homes
Jurisdiction:	Louisville Metro
Council District:	20 – Stuart Benson
Case Manager:	Jay Lockett, AICP, Planner I

REQUEST(S)

- **Waivers**
 1. **21-WAIVER-0096** – Waiver of Land Development Code section 7.3.30.E to allow greater than 15% overlap of required rear yards with drainage easements. Applicable to lots 16, 21-22, 27-35 and 86-87.
 2. **21-WAIVER-0098** – Waiver of Land Development Code section 5.9.2.A.1.a.ii to not provide stub streets to serve future development.
- **Review** of noise impact study and mitigation per Land Development Code section 5.1.7.E
- **Revised Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20% and revision to conditions of approval.

CASE SUMMARY/BACKGROUND

A major preliminary subdivision plan utilizing development potential transfer for steep slopes is proposed on 47.56 acres of land located adjacent to Interstate 64 on S English Station Rd. The proposal includes 85 buildable lots and 2 open space lot. The majority of the development would be clustered along the western and southern parts of the site, in order to avoid disturbing the majority of the steepest slopes on the subject site. This proposal is a revision to a major preliminary subdivision approved under docket 19-RSUB-0003 for 106 buildable lots, and 18SUBDIV1024 for 134 buildable lots.

STAFF FINDING

The requests are adequately justified and meet the standards of review. The areas of disturbance with slopes greater than 20% for the proposed subdivision are minimized in accordance with the comprehensive plan. The waiver to allow drainage easements in the rear of certain lots will not adversely affect those lots and will allow for minimal disturbance on an environmentally sensitive site. The waiver to not provide a stub for future connection is adequately justified, as lots to the south are occupied by houses, irregularly shaped and are unlikely to redevelop in the near future. Direct connection to the large vacant lot to the east is undesirable based on topography and the associated slope disturbance required to make that connection.

TECHNICAL REVIEW

The application of development potential transfer on this project allows for the following:

- Lot sizes to be reduced in accordance with the alternative development incentives of the Neighborhood form district.
- Setbacks to be applied as required for standard subdivision development in the R-4 zoning district.
- The transferrable potential is based on the theoretical maximum allowable density of the zoning district containing the preserved slopes; therefore, the development potential of preserved areas is incorporated through reductions in lot sizes across the total area of the subdivision.
- Areas of steep slopes may be present within single-family lots subject to the requirements of Chapter 4, Part 7.5 – Land Disturbing Activity on Slopes Greater than 20%. Areas within lots may not be used for development potential transfer.
- All areas being considered for development transfer potential must be preserved as open space or by other acceptable means.

The proposed subdivision includes disturbance of slopes in excess of 20%. Land Development Code, section 4.7.5 provides that Land disturbing activities on slopes greater than 20% is permitted on lots created by major subdivision after the effective date of this regulation only if the activity is in keeping with the Comprehensive Plan and the proposed activity complies with the provided standards of this part. A staff analysis has been included in this report for the Planning Commission's consideration.

Portions of lots 6-15 lie within the 250-foot expressway noise buffer area. A sound study was conducted in accordance with Land Development Code section 5.1.7.E and found that sound levels on these lots would be in excess of 65 Decibels without appropriate mitigation. The study concluded that a variable height berm along these lots would appropriately mitigate the highway sound to an acceptable level. As a berm is not specifically anticipated as a sound mitigation method in the Land Development Code, the Planning Commission must determine whether the proposal meets the mitigation requirements per 5.1.7.E.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 1

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as all affected lots are internal to the development. Location of utility easements on this site is largely dictated by topography.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will not violate the Comprehensive Plan. The development will be compatible with other development in the area and the form district. The proposed location of utility easements will allow for minimal disturbance on an environmentally sensitive site.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all required yards will still be provided for all lots. A majority of the proposed lots will not have overlap of easements.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land, as it would likely require easements to be located off lots or beside structures, potentially disturbing additional steep slopes or further reducing useable yard areas for individual home sites.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER 2

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the lots to the south are irregularly shaped and unlikely to redevelop in such a way to utilize a stub connection from this property.

- (b) The waiver will not violate specific guidelines of the Comprehensive Plan; and

STAFF: The waiver will not violate the Comprehensive Plan. The development will be compatible with other development in the area and the form district. The lots to the south are occupied by various owners and are unlikely to redevelop in a manner to utilize a connection to this lot. Direct connection to the large vacant lot to the east is undesirable based on topography and the presence of environmentally sensitive areas on the subject site.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as other aspects of the Land Development Code related to pedestrian and vehicular connectivity will be met on the subject site.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land, as a required connection to the south is unlikely to realistically serve future development due to the shape of those lots and the fact that they are developed with single homes occupied by a variety of owners. Direct connection to the east is undesirable due to environmental constraints.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR LAND DISTURBING ACTIVITIES ON SLOPES GREATER THAN 20%

- (a) The Commission finds that the design and configuration of the development results in the minimum disturbance of slopes greater than 20% necessary to accommodate the proposed use of the site; and,

STAFF: A preliminary soil and slope evaluation was performed and no significant concerns with respect to slope instability or substantial erosion were observed on these scattered lots. There are some lots throughout the development that would have portions of slopes greater than 20%, however the preliminary soil and slope evaluation did not find that a full geotechnical report be completed at this time. Lots 16-17, 36, 42-46 and 66-68 show some areas of slopes greater than 30% and the preliminary plan shows limits of disturbance to avoid disturbing the majority of the steepest areas. There are several karst features identified on the preliminary plan. A geotechnical engineer will evaluate and determine appropriate methods for filling any sinkholes. Overall, the design and layout appear to be the minimum necessary accommodate the proposed use of the site.

- (b) Compatible on-site utilities (electric, phone, cable) are placed in a common trench; and,

STAFF: The final location of all utilities will be determined prior to the recording of the record subdivision plat. The preliminary location drainage features has received approval from the Metropolitan sewer District.

- (c) The Planning Commission may approve the activity if the geotechnical report opines and demonstrates that:

a. The slope's ground surface and subsurface are not unstable;

b. Development of the slope and associated mitigation measures will not increase the degree of risk of slope instability both on- site and on adjacent lands; and,

c. If a geotechnical report is required, the applicant provides a plan, acceptable to the Commission, that specifies how the mitigation measures and construction practices, including construction supervision, necessary to assure the stability of buildings and foundations to be constructed on the site as recommended in the geotechnical report will be implemented.

STAFF: In general, the provided preliminary soil and slope evaluation opines that the on-site slopes in the observed areas were stable at the time of observation. It provides that disturbance of slopes should not exceed the limits of evaluation in the report. Construction measures to maintain stability have been provided and should be incorporated into the construction of all new homes and the life of those homes.

- (d) The activity is in keeping with the Comprehensive Plan.

STAFF: The Comprehensive Plan calls for the integration of natural features into the pattern of development and that proposal should respect the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems. In general, preliminary soil and slope evaluation demonstrates that the proposal is in conformance with the aforementioned policies of the Comprehensive Plan as construction methods have been provided to minimize property damage and environmental degradation related to disturbance of steep slopes. While some buildable lots are being placed in areas of concern, the majority of home construction will occur outside the areas of steeper slopes.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waivers**
- **Determine** whether the proposed berm meets the requirements for sound mitigation per 5.1.7.E.
- **APPROVE** or **DENY** the **Revised Major Preliminary Subdivision Plan (Development Potential Transfer)** with review of land disturbing activity on slopes greater than 20% and revisions to conditions of approval.

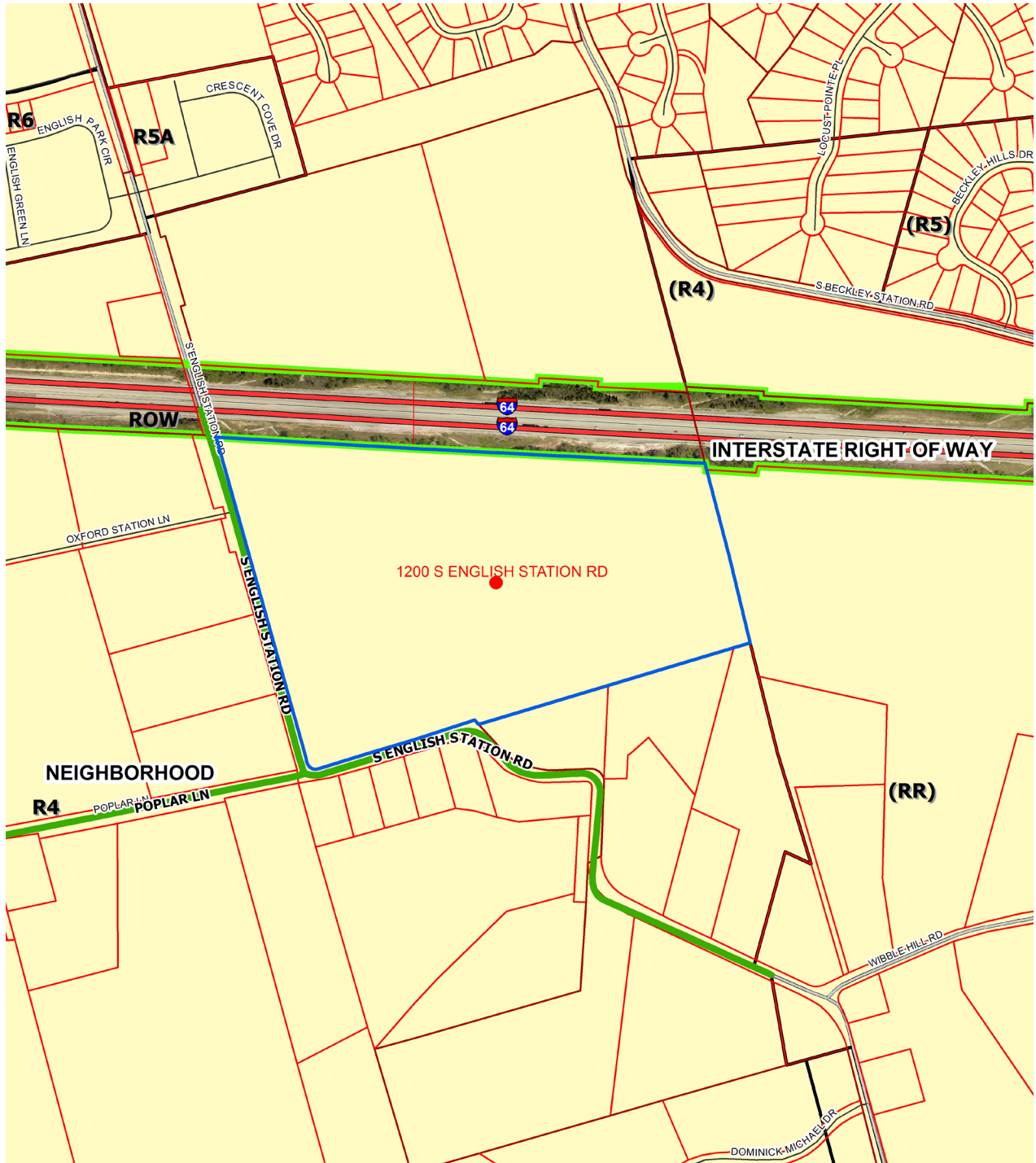
NOTIFICATION

Date	Purpose of Notice	Recipients
9-18-19	Hearing before Planning Commission	1 st tier adjoining property owners Attendants of Neighborhood Meeting Registered Neighborhood Groups in Council District 20

ATTACHMENTS

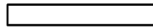
1. Zoning Map
2. Aerial Photograph
3. Existing Conditions of Approval with Proposed Changes
4. Proposed Conditions of Approval

1. Zoning Map



18SUBDIV1024

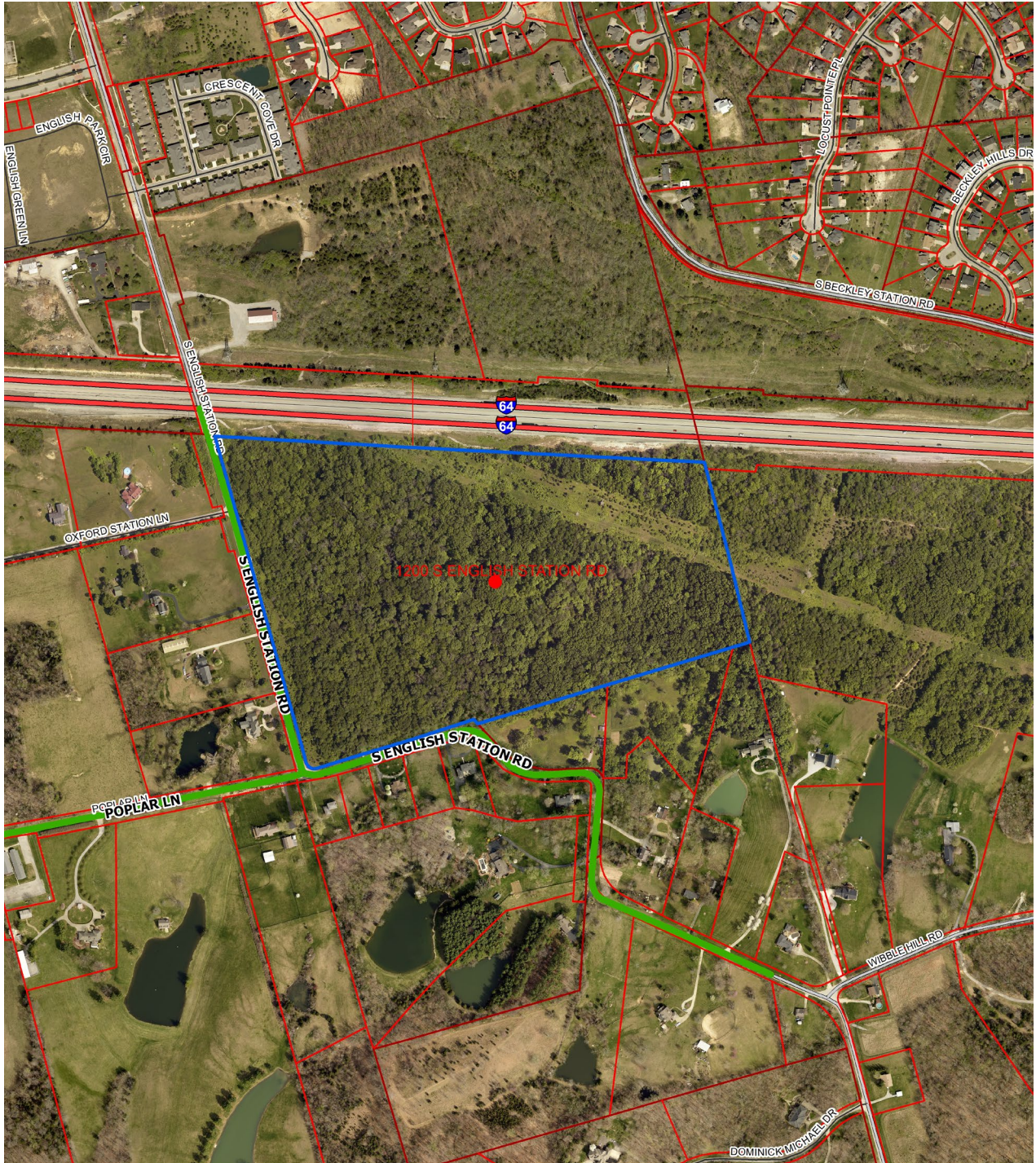
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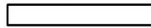
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2. Aerial Photograph



18SUBDIV1024

feet



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3. Existing Conditions of Approval with Proposed Changes

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
3. Open space shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
4. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
5. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvacide approved by the Louisville Metro Health Department. Larvacides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
6. Trees will be preserved and/or provided on site and maintained thereafter as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the Land Development Code. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
7. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
8. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

9. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
10. Prior to requesting a Certificate of Occupancy for any homes on lots ~~90-100~~ **6-15**, the developer will construct the ~~5' noise barrier~~ **variable berm** as described in the Kim Noise Impact Study dated ~~January 2019~~ **July 2021** where **as shown on the Subdivision Plan and** depicted in Figure 1 of that study.

4. Proposed Conditions of Approval

1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
2. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
3. Open space shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
4. The developer shall be responsible for maintenance of all drainage facilities and undeveloped lots ensuring prevention of mosquito breeding, until such time as the drainage bond is released.
5. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
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9. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
 10. Prior to requesting a Certificate of Occupancy for any homes on lots 6-15, the developer will construct the variable berm as described in the Kim Noise Impact Study dated July 2021 as shown on the Subdivision Plan and depicted in Figure 1 of that study.