

# Planning Commission

## Staff Report

July 7, 2022



<b>Case No:</b>	22-RSUB-0002, 22-DDP-0070 & 22-FFO-0005
<b>Project Name:</b>	Oakland Hills Subdivision
<b>Location:</b>	11333 Bardstown Creek Road
<b>Owner(s):</b>	21 <sup>st</sup> Century Parks Endowment, INC.
<b>Applicant:</b>	Mindel Scott
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	22 – Robin Engel
<b>Case Manager:</b>	Molly Clark, Planner I

### REQUEST(S)

- **Revised Major Preliminary Subdivision / Revised District Development Plan** with existing conditions of approval/binding elements (22-RSUB-0002 & 22-DDP-0070)
- **Floyds Fork Development Review Overlay** with review of land disturbing activity on slopes greater than 20% and subdivision of land more than 5 lots (22-FFP-0005)

### CASE SUMMARY

The applicant is proposing to remove .39 acres from The Courtyards of Waterford Subdivision in case number 22-RSUB-0001 and add it to the Oakland Hills Subdivision under this case number 22-RSUB-0002. The applicant is also proposing to relocate the stub road that goes into the Courtyards of Waterford to make room for additional lots with the new added acreage to Oakland Hills. The total number of buildable lots is now 128 lots and 4 non-buildable lots.

On the previously approved revised Major Preliminary Subdivision plan / Revised Detailed District Development Plan for Oakland Hills, under case number 19-RSUB-0001, the number of buildable lots are 125 lots and 4 non-buildable lots. The open space requirements are still being met but will be decreasing from 39.55 acres to 38.88 acres.

The proposal utilizes the development potential transfer permitted by Land Development Code (LDC), section 4.7.7. This provision allows for the preservation of slopes greater than 20% and in return, the development potential of this area allows for reduced size lots across the subdivision. The applicant in accordance with LDC, section 4.7.5.B, supplied a geotechnical report. The revisions result in decreased impact on steep slopes in the area of the clubhouse and the southeastern section of the subdivision as slopes to the rear of the clubhouse are preserved and the cul-de-sac in the southeastern section has been shifted west.

### STAFF FINDING

The Amendment to Binding Elements and Revised District Development/Major Preliminary Subdivision Plan and Floyds Fork Development Review Overlay with land disturbing activity on slopes greater than

20% each appear to be adequately justified based upon staff's analysis contained in the standard of review.

## **TECHNICAL REVIEW**

Transportation Planning and MSD have preliminarily approved the proposal.

### **Development Potential Transfer 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.

### **Associated cases:**

- 9-106-02: Change in zoning from C-1 & R-R to R-4 on roughly 80 acres; a major preliminary subdivision for 736 single-family residential lots; 21 open space lots for a total of 319 acres of total open space; and 1 lot for future development. In 2005, a revised plan was approved and 90 single-family residential lots were recorded in sections 1A and 1B. It should be noted that 126 acres of this prior development site were transferred to support the development of The Parklands.
- 17ZONE1081: Change-in-Zoning from R-4, Single-Family Residential to R-6, Multi-Family Residential with a District Development Plan on a tract of 20 acres located in the northern-most section of the overall development site (approved by Metro Council on 9/28/18)
- 18DEVPLAN1099: Revised District Development/Major Preliminary Subdivision Plan for 592 single-family residential lots on 442 acres & Floyds Fork Development Review Overlay with variance to reduce the required front yard setback from 30 feet to 25 feet, except on lots 588-592 & 1-3. (approved by planning Commission on July 16, 2018).
- 19-RSUB-0001: Amendment to Binding Element, Revised District Development (19-DDP-0037) / Major Preliminary Subdivision Plan for 125 single-family residential lots & Floyds Fork Development Review Overlay (19-FFO-0003) with review of land disturbing activity on slopes greater than 20%. (Approved by Land Development & Transportation Committee on October 10, 2019.)

### **Floyds Fork DRO**

- The development plan demonstrates that all, or portions, of lots 1-2, 108-119, 123-125 & 127 are within the DRO. The proposed development conserves, protects, or addresses through binding elements many environmental resources; including, steep slopes; Perennial, blue-line streams; Intermittent blue-line streams; Ephemeral streams; sinkholes; Kentucky Glade Cress;

and tree canopy preservation. The proposed revisions do not appear to have a significant impact on the previous approval of the Planning Commission.

## **INTERESTED PARTY COMMENTS**

Staff has received several emails asking about the details of the case.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DISTRICT DEVELOPMENT PLAN**

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The proposed development conserves, protects, or addresses through binding elements many environmental resources; including, steep slopes; Perennial, blue-line streams; Intermittent blue-line streams; Ephemeral streams; sinkholes; Kentucky Glade Cress; and tree canopy preservation.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community have been met. The Traffic Impact Study concludes, "There will be a manageable impact to the existing highway network, with Levels of Service remaining within acceptable limits." The appropriate movement of pedestrians and cyclists is accommodated through the provision of sidewalks, trailways, and convenient access to recreational opportunities and the Louisville Loop.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: Sufficient open space (scenic and recreational) to meet the needs of the proposed development will be provided.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The proposal is for a single-family subdivision utilizing the development potential transfer permitted by LDC 4.7.7. The proposal provides a similar style of housing and lotting pattern with surrounding areas and simultaneously preserves environmental resources and provides open space.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The proposed development is in conformance with the Comprehensive Plan and Land Development Code. The development plan/subdivision plan/development review overlay plan is contains neighborhood streets designed to invite human interaction and easy access through the use of connectivity, and design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development as it is for a single-family subdivision and a single-family subdivision had been previously approved on the subject site. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards and all development on the subject site shall comply with all applicable standards contained with the Land Development code. The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space as deed restrictions will be provided to the satisfaction of Planning Commission's legal counsel. The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value as the site is located in an environmentally sensitive area and conserves, protects, or addresses through binding elements many environmental resources; including, steep slopes; Perennial, blue-line streams; Intermittent blue-line streams; Ephemeral streams; sinkholes; Kentucky Glade Cress; and tree canopy preservation. The proposal's transportation facilities are compatible with and support access to surrounding land uses as adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land

**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: The design and configuration of the development appears to result in the minimum disturbance of steep slopes. The revisions result in decreased impact on steep slopes in the area of the clubhouse and the southeastern section of the subdivision as slopes to the rear of the clubhouse are preserved and the cul-de-sac in the southeastern section has been shifted west.

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

STAFF: Compatible on-site utilities will be provided in coordination with respective agencies. The developer shall work to place all utilities, where possible, in common trenches.

- (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: The geotechnical report indicated that there was no evidence of slope instability, for example “scarp, leaning trees consistent with a slide, erosion of the slope, tension cracks, etc.” The report noted along stream banks that soil depth was shallow and rock outcrops were present. The report provides for mitigation measures and construction practices necessary to assure the stability of buildings and foundations to constructed on site.

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

STAFF: Plan 2040 calls for the integration of natural features into the pattern of development. It provides that proposals 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, the geotechnical report demonstrates that the proposal is in conformance with the aforementioned policies of the Comprehensive Plan as construction methods are provided to minimize property damage and environmental degradation related to disturbance of steep slopes.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Revised Preliminary Major Subdivision / Revised Detailed District Development Plan** with existing conditions of approval / binding elements.
- **APPROVE** or **DENY** the **Floyds Fork Development Review Overlay** for 128 single-family residential lots subject to proposed binding elements

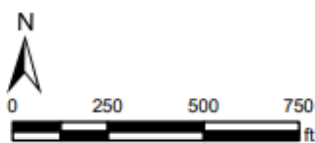
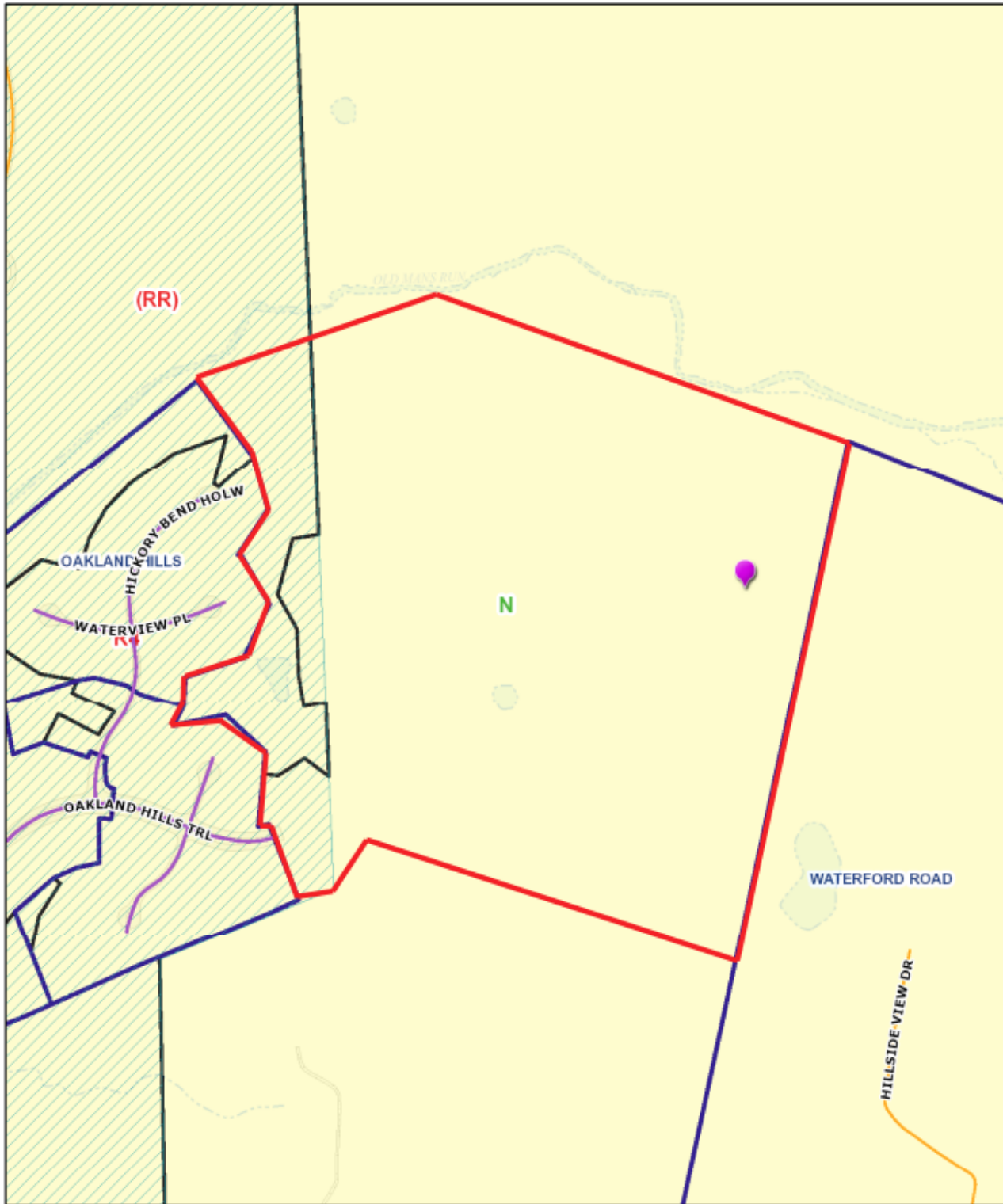
**NOTIFICATION**

Date	Purpose of Notice	Recipients
6/17/22	Hearing before LD&T	1 <sup>st</sup> tier and 2 <sup>nd</sup> tier adjoining property owners and current residents Attendees of the last Planning Commission hearing Registered Neighborhood Groups in Council District 22

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Conditions of Approval/Binding Elements

1. **Zoning Map**



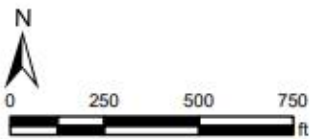
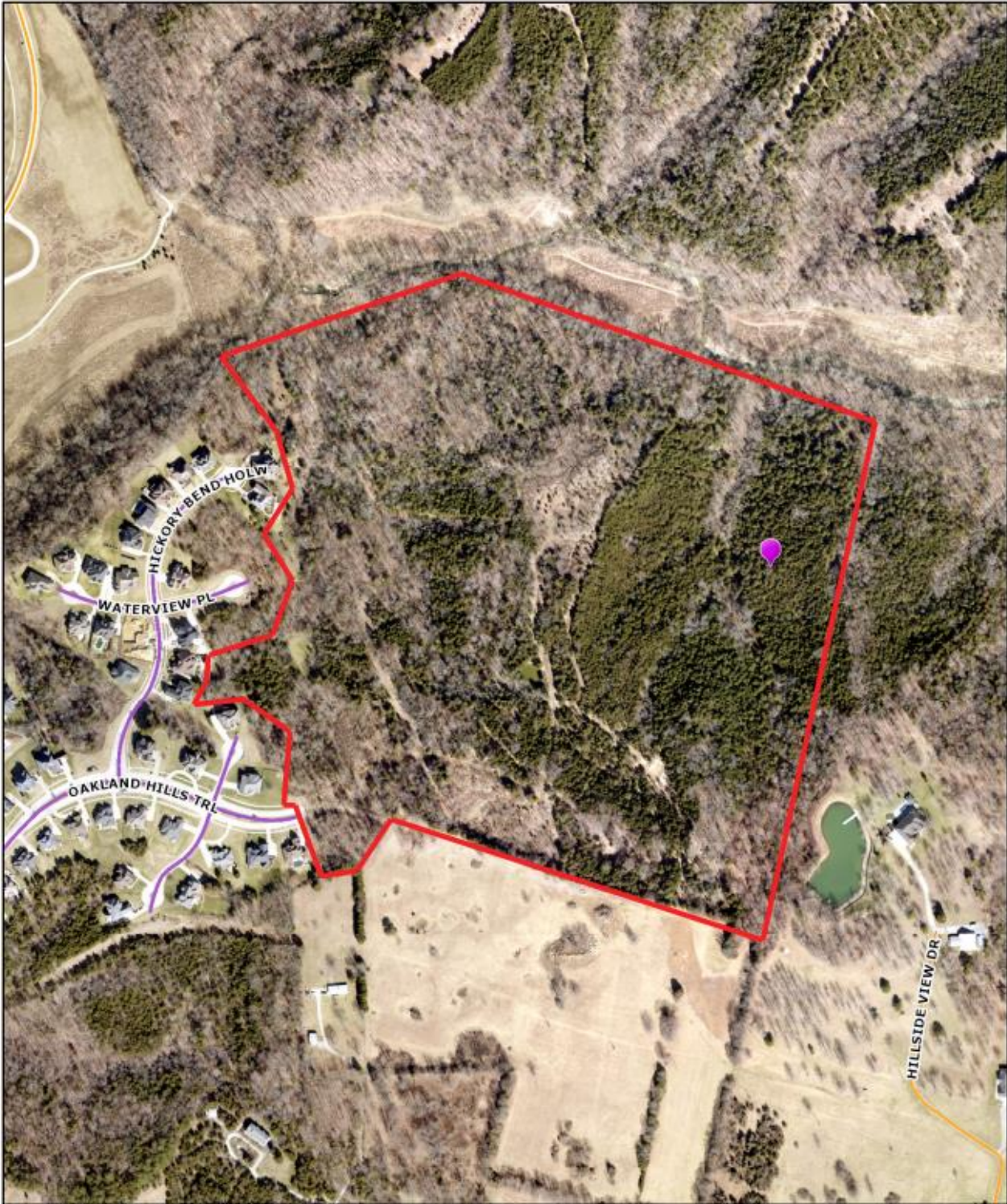
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2. Aerial Photograph



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**3. Existing Conditions of Approval 19-RSUB-0001 (No Changes):**

1. The development shall be in accordance with the approved district development plan and all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission
3. At the time of recordation of the last plat for remaining undeveloped area(s) within the total extent of the subdivision as shown on the approved plan of docket # 19DEVPLAN1099, the density of the single-family residential development shall not exceed 1.34 dwelling units per acre (592 units on 442 acres), resulting in a total gross density of 1.07 du/ac on 638 acres including 1A & 1B and previously transferred open space (deed book 9498, page 335) (collectively, the "Development Site"). Subject to the aforementioned requirements, the developer(s) is not precluded from recording more lots than previously approved for areas within the Development Site.
4. Construction fencing. Within each section, construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property lines. Fencing shall be in place prior to any grading or construction to protect the existing root system from compaction. The fencing shall enclose the entire area beneath the tree canopy on the subject property and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit for any section or phase (including but not limited to building, parking lot, site disturbance, or change of use) is requested
  - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
  - b. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
  - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. The binding elements shall run with the land and the owner of the property or owner of any portion thereof shall at all times be responsible for compliance with these binding elements.
7. Prior to the recording of the record plat for any section or phase, 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 Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
  - c. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas, open space, TCCA, riparian vegetation and stream side buffers, and other issues required by these binding elements.
  - d. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3000 cash in homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
8. Wetlands Determination. ACOE approval, if required, will be obtained in conjunction with MSD construction plan approval.

9. A geotechnical survey report shall be performed in accordance with Land Development Code Chapter 4, Part 6 & . A copy of any such report shall be provided for incorporation into the case record.
10. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space as provided for in these Binding Elements. A note to this effect shall be placed on the record plat.
11. An original stamped copy of the approved Tree Preservation Plan shall be present on site during clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
12. Construction Vehicle Access. Construction vehicles and equipment shall be restricted to use Bardstown Road to access the site.
13. Sinkholes;
  - a. The perimeter boundary of the sinkhole shall be field-verified, staked in the field, and shown on the construction plans for each section or phase of development.
  - b. No buildings shall be constructed over any of the sinkhole/features as shown on the construction plans. The developer shall provide location of field verified sinkholes to DPDS staff prior to construction plan approval for each affected phase of the development.
  - c. Should additional sinkhole / features be encountered during construction of the site improvements, road, or structures, work shall be suspended in the vicinity of the occurrence and investigated by the geo-technical engineer. These new sinkhole / features encountered during construction shall be located on construction plans and treated or avoided in accordance with the geo-technical engineer's recommendations.
  - d. No repair or filling of existing sink holes shall occur without prior approval by the geotechnical engineer. The geotechnical engineer shall be on-site during construction to monitor, verify, and document appropriate sinkhole remediation for all sinkholes.
  - e. Local karst springs draining the sites must be identified and monitored during construction. Appropriate erosion and sediment control best management practices shall be utilized to protect against siltation during construction.
14. Glade Cress. Developer shall provide an updated inventory of Glade Cress for incorporation into the record prior to final preliminary plan transmittal in case 18DEVPLAN1099. Developer shall adjust boundaries or eliminate lots at the developer's discretion to ensure that all glade cress occurrences as shown on lots of the preliminary plan are incorporated into open space areas at the time of record plat for each section or phase.
15. Enhanced Abutting Property Buffers:
  - a. Developer shall provide a buffer that is substantially similar to the "enhanced abutting property buffer planting plan" dated on 4/26/05 and/or 05/04/05 between the development and the abutting properties owned by (1) R. Vance Bacon at 11300 Broad Run Road by planting up to 1200 tree seedlings, and (2) Costelle, Vessels and Payton (DB7351, Page 657) by planting up to 2400 tree seedlings each of a variety or varieties requested by the respective abutting property owner and as recommended by the Department of Planning and Design Services Staff landscape architect. Seedlings shall be bare root, 1 to 3 years old at time of planting, and shall be planted generally by mechanical method at locations most likely to contribute to a visual buffer between each such abutting property and the development. The cost of planting shall be borne by developer.
  - b. Additionally, to provide an enhanced buffer to the emergency access (possible future road) 60 shrubs 2 feet tall at time of planting shall be planted on: (1) the property of R. Vance Bacon at 11300 Broad Run Road, and (2) on the property of Betty Smith at 11304 Broad Run Road at locations determined by each property owner and as recommended by the Department of Planning and Design Services landscape architect and the Louisville Metro Department of Public Works. These shrubs shall be a native species and of a variety or varieties requested by each owner as to his/her property.

- c. No planting shall occur on any property without the consent of the respective property owner(s) allowing developer to enter upon the premises or the purpose of planting the seedlings. Developer shall provide a written request for said consent to each of the affected property owners which request must be responded to within 30 days of receipt. Should the developer not receive a timely response its buffer obligation on the affected property shall be void. Provided that consent is given, planting on each such property in (a) above shall be completed within 1 year upon receipt of consent by the affected property owner, and in (b) above within 30 months of approval of the first record plat, weather permitting. Developer shall not be responsible for maintenance of plants.
16. Waterford Road Improvement. Developer shall work in concert with the Kentucky Transportation Cabinet to widen the pavement of Waterford Road to 22-feet starting approximately 750-feet east of Bardstown Road (US 31E) to the Bullitt County line as set forth in a letter from Partick R Dominik to William Monhollon, PE dated April 25, 2003. This Waterford Road improvement shall be completed prior to the approval of the record plat for the 200<sup>th</sup> subdivision lot. (Based on testimony at the October 10, 2019 meeting of the Land Development and Transportation Committee. These improvements appear to have been completed.)
17. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
18. The access from Street "O" of the development to Broad Run Road shall remain a gated emergency access only, unless opening the access is approved by the Louisville Metro Council after a public hearing is held by the Planning Commission. Written notice of the public hearing shall be given to first and second tier adjoining property owners and persons who spoke at any of the public hearings before the Planning Commission at least 30 days in advance of the hearing. (This binding element added by Metro Council Ordinance No. 160, series 2003).