

# Planning Commission Staff Report

November 20, 2014



Case No:	14SUBDIV1008
Request:	Preliminary Major Conservation Subdivision Plan and Waivers
Project Name:	Urton Woods, Section 2
Location:	12801 and 12901-R Urton Ln.
Owner:	William & Barbara Dehart Bill Kim & Ange Spurlock
Applicant:	Ball Homes, LLC
Representative:	Bardenwerper, Talbott & Roberts, PLLC Mindel, Scott & Associates, Inc.
Jurisdiction:	City of Middletown
Council District:	19 – Jerry Miller

## REQUEST

- Preliminary Major Conservation Subdivision Plan for Urton Woods, Section 2
- Waiver to not provide a stub street on the east side of the site to connect to the lot owned by Ochsner Family, LLC (LDC 5.9.2.A.1.a.ii)

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The proposed conservation subdivision is a new section of the previously approved and recorded Urton Woods, Section 1. The request includes 99 buildable lots and six (6) open space lots. Each Conservation Subdivision requires the conservation of at least 30% of the total acreage of the site and this proposal has provided 30.1%. The conservation efforts on the subject site are focused in three main areas including the following: the area along the intermittent stream and Urton Lane on Lots 104 and 105, an internal tree preservation area on Lot 102, and Lot 101 which joins an open space lot at the northeast end of Section 1. Since Urton Lane is a designated Scenic Corridor, the proposal includes the required 50' Scenic Corridor Setback and 30' Scenic Corridor Buffer. This area also establishes a Woodland Protection Area and a 6' wood privacy fence. At the request of an abutting property owner, a 30' Woodland Protection Area will also be established at the south lot line of Lot 103. Section 2 will have access via Urton Woods Way through Section 1 and provides a street stub for a northern connection to the Ochsner Family, LLC tract to provide a potential future connection to Wooded Falls Road in the Towne Creek Subdivision. Both Planning & Design Services staff and Transportation Review staff have required an additional stub street on the east side of this proposal to connect to the west side of the Ochsner Family, LLC tract. The applicant has not provided the stub street and is, therefore, asking for a Waiver of that requirement.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Vacant	R-4	Campus
<b>Proposed</b>	Single Family Residential	R-4	Campus
<b>Surrounding Properties</b>			
<b>North</b>	Vacant	R-4	Campus
<b>South</b>	Single Family Residential	R-4	Neighborhood
<b>East</b>	Vacant, Single Family Residential	R-4	Campus
<b>West</b>	Single Family Residential	R-4	Campus

### PREVIOUS CASES ON SITE

- Docket 10-26-03: Preliminary Major Subdivision Plan for Urton Woods and Waivers to not provide stub streets to north and west adjacent properties
- Plat Book 53, Page 80: Urton Woods

### INTERESTED PARTY COMMENTS

- Staff has received numerous comments from persons interested in this proposal. All of the correspondence has been made available in a separate document and posted for the public's review. In summary, those in opposition to the proposal were concerned about drainage, blasting, access to and traffic on Urton Lane, tree removal, wildlife endangerment, loss of green space, compliance with Middletown Ordinances, flooding in the area, density, building materials by the developer causing a fire hazard, and the creation of more sinkholes. There was also one adjoining property owner who supported the proposal.

### APPLICABLE PLANS AND POLICIES

- Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER to not provide a stub street on the east side of the site to connect to the lot owned by Ochsner Family, LLC (LDC 5.9.2.A.1.a.ii)

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

STAFF: The waiver will adversely affect adjacent property owners because the lack of another access point to the east reduces the number of exit points from the subdivision and needlessly forces more traffic onto Urton Woods Way and the future connection to Wooded Falls Road. A third access point would better disperse traffic in the surrounding residential areas and foster greater connectivity.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: The waiver will violate **Guideline 7 (Circulation)**, and **Guideline 8 (Transportation Facility Design)** of Cornerstone 2020. Improving circulation and cross connectivity between adjoining developments are vital policies within the Comprehensive Plan. A third access point within this section of Urton Woods makes the surrounding transportation infrastructure better prepared to handle

additional traffic upon the development of land in this area and allow a better distribution of vehicular traffic.

- (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 not the minimum necessary to afford relief to the applicant because there are no physical or environmental constraints to providing the stub street.

- (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 will not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there are no physical constraints that make the connection impossible.

### TECHNICAL REVIEW

- With the exception of the required Waiver, the plan meets the requirements of the LDC.
- The plan has received preliminary approval from MSD and Transportation Review.
- Staff has requested a geotechnical report since slopes of 30% or more will be disturbed in this development. As of the date of publication of this staff report, staff has not received the requested geotechnical report. A Condition of Approval has been added that the report shall be submitted to staff prior to transmittal of the plan to permitting agencies.

### STAFF CONCLUSIONS

#### Waiver and Preliminary Major Conservation Subdivision Plan

Staff analysis in the standard of review section of the staff report indicates the proposed Preliminary Major Conservation Subdivision Plan is justified. However, the Planning Commission should consider whether the Waiver of an additional stub street connection on the east side of the site to the Ochsner Family, LLC tract is appropriate.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal meets the standards for granting a Waiver and Preliminary Major Conservation Subdivision Plan established in the Land Development Code.

#### Required Actions

- Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission **APPROVES** or **DENIES** the Waiver listed in the staff report
- Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission **APPROVES** or **DENIES** the Preliminary Major Conservation Subdivision Plan listed in the staff report

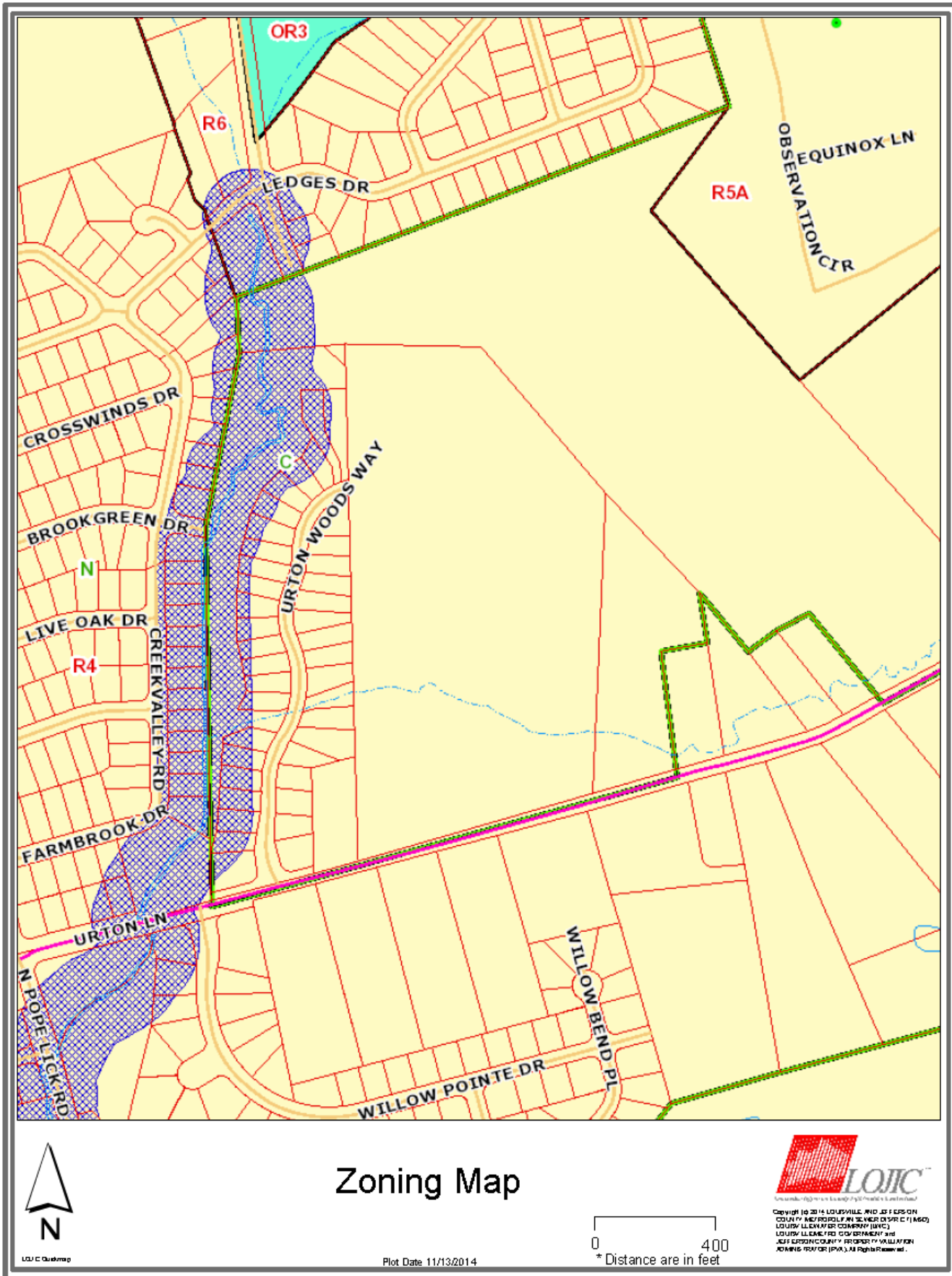
### NOTIFICATION

Date	Purpose of Notice	Recipients
11/7/14	Meeting before PC	1 <sup>st</sup> tier adjoining property owners Subscribers to Council District 19 Notification of Development Proposals

### ATTACHMENTS

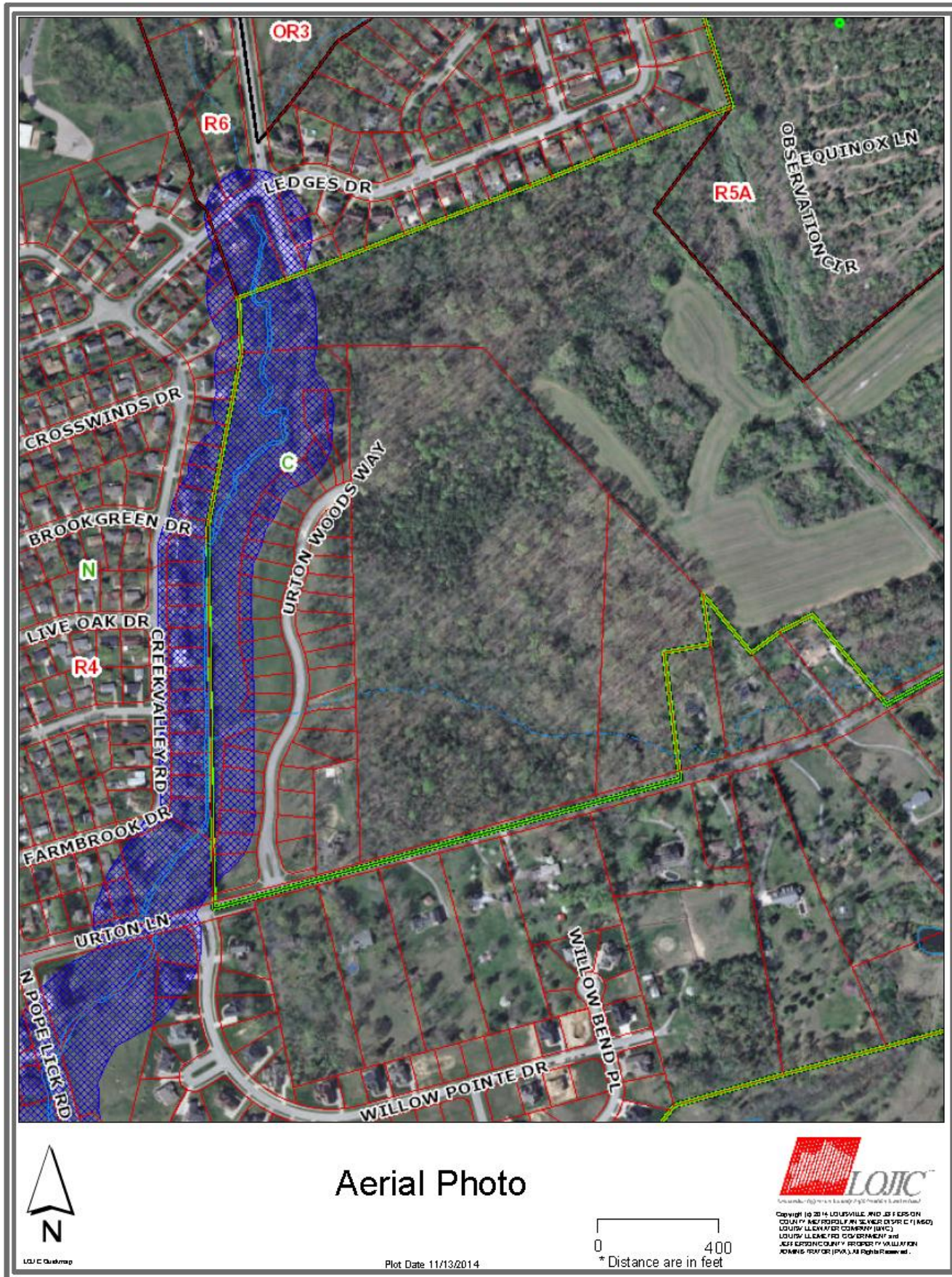
1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval

1. Zoning Map





2. Aerial Photograph



### **3. Proposed Conditions of Approval**

1. 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.
2. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - e. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - g. 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.
  - j. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
4. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
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. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and LD&T action.
8. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed restrictions shall be approved by Planning Commission counsel. All plans setting out woodland protection areas must contain the following notes:

- a. Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which existing vegetation shall be permanently preserved as noted on the plan. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat. As trees are lost thru natural causes new trees shall be planted in order to maintain minimum tree canopy as specified in Chapter 10, Part 1 of the LDC and as shown on the approved Tree Canopy/Landscape Plan.
  - b. Prior to any site disturbance permit being issued and prior to any clearing, grading, or the issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
9. 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.
10. 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 \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
11. 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.
12. The location of sinkholes as shown on the preliminary plan shall be identified on the record plat.
13. A geotechnical report shall be conducted for the site and the results shall be submitted to PDS staff prior to transmittal of the plan to permitting agencies and shall be submitted to Public Works and MSD for review prior to construction plan approval. Construction methods and precautions recommended in the report shall be applied to construction within the development.