



# City of Durham

17160 SW Upper Boones Ferry Rd.  
Durham, Oregon 97224

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## **PLANNING COMMISSION**

### **FINAL FINDINGS AND DECISION ORDER**

APPROVAL of Durham Heights Planned Residential Development and Preliminary Subdivision Plan located on Upper Boones Ferry Road including a 4.1 acre Fanno Creek natural area dedication to the City, and a .54 acre park and open space tract dedicated to the public.

CITY FILE # 591-21

APPLICANT: Aziz Siddiqui, David Weekley Homes  
1905 NW 169<sup>th</sup> Place #102  
Beaverton, OR 97006

OWNERS: Colleen McNally  
16515 SW Upper Boones Ferry Rd.  
Durham, OR 97224  
Katherin T. Horton Trustee  
Mary. L. Taylor Living Trust  
P.O Box 88  
Hesperus, CO 81326

LOCATION: 16515, 16555, 16565 & 16575 SW Upper Boones Ferry Rd.  
Tax lot 200 Map 2S1 13BD & Tax Lots 700, 800 & 900 Map 2S1 13BA

LOT AREA: 11.41 acres

ZONE DESIGNATIONS: SDR Single-Dwelling Residential, DB-PRD Density Bonus for Planned Residential Development, NRO Natural Resource Overlay

AUTHORIZATION: The review and approval criteria for the application are provided in the Durham Development Code (DDC) under Section 2.5 Overlay Zoning Districts; Section 2.6 Planned Residential Development PRD; Section District; Section 2.8 SDR Zone; 2.15 Natural Resource Overlay District; Section 3.1 & Section 3.2 Site and Design in a Residential & PRD Zone; Section 3.7 On-site Access and Off-Street Parking; Section 3.8 Required Facilities and Undergrounding; Section 3.9 Street Design; Section 6.5 Signs in SDR; Section 4.3 PRD Approval Criteria; Section 4.6 Approval Criteria for NRO District; Chapter 5 Tree Protection; Section 7.2 Flood Management; Section 7.8 Density Transfer; Sections 9.7 Type 3 Procedures & Criteria.

## **I. Submittals & Agency Correspondence**

- Applicant's Application submittal 8-16-21, see illustrations sheets P-01 thru P-08 & L1.0
- Letter from Curran-McLeod, City Engineer dated 10-14-21
- City of Durham NW Tree Specialists arborist letter dated 10-14-21
- Pride Disposal: Letter provided by applicant dated 8-9-21 indicating service is available and that the private streets shall post "No Parking" on each side of the street, or residents must place their totes on Cambridge Lane.
- Comcast: 10-05-21 email said service is available and will work with the developer to extend service to the site.
- Clean Water Services (CWS): 10-15-21 updated Memorandum letter with conditions.
- NW Natural Gas: 10-14-21 email said have adequate capacity to serve with no concerns.
- ODOT: 10-15-21 letter with comments and conditions. Suggest that builders take measure to mitigate noise impacts.
- TVFRD: Letter dated 10-05-21 with fire protection conditions of approval.
- Tualatin Police: 9-24-21 email said the development would not impact their ability to provide services to Durham.
- Washington County: 10-04-21 email said no comments and the project will not impact county-maintained road sections.
- City of Tigard Water District: Service Provider 10-14-21 letter certifying water service
- Ziplly Fiber/ Frontier Communications: 10-05-21 email provided 3 pages of requirements and specifications for new service.
- No comments received from: Metro, PGE, Tigard-Tualatin School District, Tri-Met or WCCCA.

### **A. Public Services**

The necessary public services such as water, sanitary sewer, storm drainage and utilities are available to serve the existing parcel. The City Engineer and public service providers recommend conditions of approval related to utilities.

1. Streets: The City Engineer's letter dated 10-14-21 in summary states sidewalks shall be 5' wide, street parking restrictions per TVFR and Pride Disposal, update Geotech figure 6, provide final street profiles and other final plat conditions.
2. Water: The City of Tigard Service Provider Letter (SPL) dated 10-14-21 indicates the agency will provide water and fire hydrant services in accordance with the City's Public Facilities Improvement Permit submittal and approval.
3. Water Quality: The CWS letter provides development conditions prior to plat approval as specified in their Memorandum dated 10-15-21 and SPL dated 8-24-21 to protect the river's vegetated corridor, as well as erosion control measures, easement approvals and detailed storm and sanitary plans. The requirements are a condition of approval.
4. Sanitary Sewer: The CWS Service Provider Letter dated 6-3-21 for 30 homes indicates that sanitary sewer service is adequate. The letter was amended for 36 homes on 8-24-21. The applicant must obtain the necessary permits for erosion control, storm water and public sanitary sewer, including all agency permitting fees and system development charges in accordance with their Memorandum dated 10-15-21. Underground service connections originate in the floodplain and are extended to homes by easement.

5. Storm Water Runoff: The CWS Service Provider letter dated 6-3-21 indicates a water quality facility and a hydraulic and hydrological analysis is required and a “variable vegetated corridor” width per SPL21-001202. Updated conditions per memo dated 10-15-21.
6. Fire Protection: The Tract D is a dead-end street 141’ long. Tract E is a dead-end street 118 feet long. Under the TVRF rules a length over 150’ requires a larger turnaround. The agency said the site plan depicts adequate perimeter access to each lot. Developments with more than 30 dwellings must have access in two directions unless homes are provided with automatic sprinkler systems. The plan has 36 homes with access to Cambridge Lane to Upper Boones Ferry Road and an emergency access to Upper Boones Ferry Road from Afton Lane via Cambridge Drive south. The agency indicates there is a future secondary access near the SW corner of the subdivision. The agency said the site plan depicts a fire apparatus turnaround at Lots #16 & 17. Sheet P-5 depicts 3 public hydrants along Cambridge Lane and Street A. “No Parking” signage is required on the two private streets Tract D & E, and “No Parking” signage is required on one side of Cambridge Lane and Street A.
7. Semi-Public Utilities: DDC Section 3.8.3 requires electricity, natural gas, and telephone and telecommunications supply lines shall be placed underground. The applicant will need to coordinate connection to electricity, natural gas and communication supply lines services with those utilities.
8. Tree Preservation & Protection: The City hired NW Tree Specialists to provide a second opinion of the applicant’s tree report from Portland Tree Consultancy. The existing mature trees are primarily on the north side of the existing homes. Given the site’s existing slopes and permitted density, most trees located within the development area are expected to be removed. The trees on the bordering areas to the west, north and east are proposed to be retained. Detailed information is provided in the applicant’s narrative, the Portland Tree Conservancy and NW Tree Specialists reports as well as in Section 5 of this report.

## **II. Durham Development Code Requirements, Criteria and Findings**

### **1. Site Information and Existing Use**

The 36-Lot planned development will include a 4.12-acre natural resource open space including Fanno Creek and its vegetated corridor on both sides. The creek flows southwesterly along the rail line. In addition, Tract C is a protected storm water facility and Tract B is a 0.54-acre recreational open space area on the southern boundary of the site near the Cambridge Lane stub street. Tract B improvements include a 20-foot-wide pedestrian/bicycle pathway connecting the two built portions of Cambridge Lane and a storm maintenance access and emergency fire access. This area contains a stone seat wall with a rockery wall backing designed in a semi-circle with stone finishes that overlooks the storm water facility.

The proposed lots are located on the eastern 2/3rds of the site. The lots range in size from a small of 5,000 square feet to the largest at 11,347 square feet. The overall average lot size is 6,077 square feet. The number of lots increased after the neighborhood meeting from 34 to 36.

The public streets within the project include Cambridge Lane (Neighborhood Collector) which will be extended as a ¾ street along the southern boundary from SW Upper Boones Ferry to an intersection with proposed Street “A”. The remaining unfinished portion of the street will be

completed at the time of development of the adjoining parcel tax lot 100. Street “A” (Local Street) will be extended north and east to the project boundary to provide access to undeveloped property to the northeast of the site.

There are 2 small private streets proposed within the developed portion of the site to provide adequate access to the odd-shaped spaces of the property and necessary public street alignments. A private street may access no more than 6 dwelling units and are only permitted in a Planned Residential Development PRD, per 3.9.5 Private Streets. A street maintenance agreement between affected property owners is required and proposed by the applicant. A condition of approval limits the number of lots using the tracts as their only access.

Street Tract D is a 20’ foot wide paved street plus a 4’ sidewalk on one side serving 4 units and Tract E is a 20-foot-wide paved street serving 3 units. Lots 27, 32 and 33 will be required to access Cambridge Lane. However, Table 3.7.1.4.2 requires a 30’ wide access for two-way traffic for both of these tracts which serve 3 or more dwellings. Also, the driveway apron from Tract E is 75’ from UBFR apron but is required to be 100 feet, per City Engineer comments. However, again it should be noted that a PRD is allowed *variations in minimum site dimensions and design regulations, without meeting the criteria otherwise required for the grant of an adjustment or variance, in consideration of and in order to protect and encourage access to public transit facilities, to construct affordable housing, to preserve environmental resources and to redevelop underutilized sites.*

Stormwater service will be provided via a system of catch basins and pipes leading to discharge into the storm water facility located within Tract C. After treatment, stormwater will be released into the floodplain of Fanno Creek, in coordination with Clean Water Services requirements. Water service will be provided from lines in SW Upper Boones Ferry Road and extended into the site. Sanitary service will connect to an existing sanitary line in the floodplain of Fanno Creek and extended to the public and private streets to serve the development.

### Topography and Natural Features

The topography of the site steeply slopes downhill from east to west towards Fanno Creek which meanders through tax lots 200 and 700. The high point being 168’ 1 above MSL and low point in the southwest corner at 111’ above MSL. According to the applicant’s Geotechnical Report soil instability is particularly apparent for lots 1 – 6 adjoining the dedication open space Tract A. The Geotechnical Report Figure 6 was published before the final design and needs to be updated to coincide with the final lot layout of this proposal. The Fire District requires the Cambridge Lane slope be reduced to 15% adjoining lots #24 -27. This contradicts the applicant’s statement of a 12% slope on the street.

The western third of the property is designated with a Natural Resource Overlay (NRO) associated with the riparian corridor of Fanno Creek. Tract ‘A’, a 4.12-acre open space is proposed to protect these resources and will be dedicated to the city. The resources protected include Fanno Creek and its associated wetlands and floodplain and trees within the resident open space and Clean Water Services Vegetated Corridor.

The development area of the properties is generally forested, except for the large yard areas around the houses, with an open meadow in the western portion of tax lot 200. Some of the trees

are native in origin and some are planted and/or landscape trees in and around the houses and property. Most of the trees within the development area will be removed to provide for housing, streets and utilities. Mitigation of tree removal will be completed in compliance with City of Durham requirements.

## **2. Section 2.5 Overlay Zoning**

*Overlay zoning districts require additional use and design regulations to address special situations.*

**FINDINGS:** The City finds the subject site has two overlay zone designations that permit a Density Bonus for Planned Residential Development (DB-PRD) and the Natural Resource Overlay (NRO) zone. The site has been intended for a Planned Residential Development based on the significant natural resources on the western third of the parcel designated Tract A. The applicant is requesting a PRD development to protect the Fanno Creek natural resources and utilize the density bonus provision in accordance with the zone provisions.

## **3. Section 2.6 Planned Residential Development**

*Criteria: 2.6 Planned Residential Development is a permitted use in a residential district that allows for incentives in the form of additional and transferable density and variations in minimum site dimensions and design regulations, without meeting the criteria otherwise required for the grant of an adjustment or variance, in consideration of and in order to protect and encourage access to public transit facilities, to construct affordable housing, to preserve environmental resources and to redevelop underutilized sites. A Planned Residential Development may permit or require a property owner to transfer density from portions of a site that are inappropriate for development or that may be dedicated to a public purpose (other than for public right of way) to other portions that are suitable for increased density. This Code allows incentives for such density transfers of up to 10 percent additional density on the buildable portion of the site in addition to the density transferred from the preserved portion of the site. A Planned Residential Development may include multiple dwelling units within a commonly owned and maintained structure (a condominium or co-operative or commons ownership).*

**FINDINGS:** The City supports the applicant's findings that Durham Heights is a proposed Planned Residential Development and is a permitted use in the SDR district. This application allows for incentives in the form of transferable density and variation in minimum site dimensions and design regulations as permitted by this process without need of adjustments or variances. This plan preserves environmental resources in the Fanno Creek floodplain and adjoining vegetated corridor. The development provides housing on underutilized property within an urbanized region.

The applicant is proposing a density transfer from natural resource lands to the site's uplands. Those lands contained within Tract A will be dedicated to the City of Durham for protection including CWS maintenance easements for sanitary sewer lines and sensitive area protection measures. Per this code section, the applicant is proposing a 10 percent additional density transfer on the buildable portion of the site in addition to the permitted transfer of 30% from the preserved portion of the site. This represents a maximum transfer permitted of 40% additional density. The City finds the area calculations are accurate and the proposed increased density is below the maximum allowed density transfer.

Commonly owned parcels:

Tract A: dedicated to the City of Durham for protection of natural resources and the 100-year floodplain - 179,646 square feet or 4.1 acres. Maintained by CWS and Durham Heights HOA

Tract B: active open space includes a half-circle hard surface plaza with a seating area overlooking the water facility & a stone wall with rockery; a 20-foot-wide bike ped path also available for fire emergency and CWS stormwater access easements with gates at both ends - 23,588 square feet. To be owned and maintained by the HOA.

Tract C: CWS easements for storm water facility, owned and maintained by HOA - 17,511 square feet.

Tract D & E: private street and access for Lots 28, 29, 30 31, 34, 35, 36 to be maintained by HOA with CWS storm and sanitary access easements. Lots 27, 32 & 33 will be required to have garages oriented to Cambridge Lane

Temporary retaining wall on Cambridge Lane to be maintained by HOA

#### **4. Section 2.8 SDR Zone**

The parcel is zoned Single Dwelling Residential SDR which allocates land for large lot detached single family dwellings, with density bonus for a planned residential development (DB-PRD) and Natural Resources (NRO) Overlays. Therefore, SDR development standards are superseded by the Planned Residential Development overlay standards because a PRD is an outright permitted use in a SDR Zone per Section 2.8.1.3, addressed in Sections 3.1 and 3.2 below.

#### **5. Section 2.15 Natural Resource Overlay District**

*The NRO district allocates land that may be included in a planned residential development within a single dwelling residential district and that should be preserved whenever feasible for protection and preservation of fish, wildlife and riparian habitat, natural water storage areas such as flood ways and flood plains and stream side vegetated corridors along waterways.*

*2.15.1 Uses permitted in the NRO district are those permitted in the Natural Resources district but only as part of a Planned Residential Development.*

**FINDINGS:** The City finds the western third of the site is designated with a Natural Resource Overlay (NRO) zone associated with the riparian corridor and floodplain of Fanno Creek. Therefore, Section 2.15 rather than 2.8 SDR is the applicable zone. The applicant is proposing a planned residential development with detached single-family homes, a recreational common open space area and natural resource area open space. There are no land uses proposed within the Fanno Creek floodplain or field verified NRO area. Only utility connections will be located within the NRO.

#### **6. Section 3.1 and 3.2 Site and Design in a Residential and PRD Zone**

##### ***3.1 Standard Site Design in Residential Zones.***

*3.1.1 The minimum density for residential development when averaged city-wide shall be maintained at no less than 6 dwelling units per net buildable acre. The minimum base density for the SDR district shall be 10,000 square feet per dwelling. The minimum lot area in the SDR district shall be 10,000 square feet except in a Planned Residential Development.*

FINDINGS: The applicant’s specific density calculations for a Planned Residential Development with a Natural Resource Overlay meet the city’s minimum and maximum requirements. The net buildable area of the site is 259,853 square feet or 5.97 acres. The project proposes 36 units or 6.03 units per net acre. The application closely maintains the city-wide ability and requirement to average a minimum of 6 units per acre.

The base density for the project site is calculated by removing natural resource areas and public rights-of-way from the gross site area. In this case, the net buildable area is 259,853 square feet equating to a base density of 25.98 units. The proposed project is a Planned Residential Development and therefore the minimum lot size is altered through that approval from 10,000 square feet to 5,000 square feet per detached unit.

**Density Calculation**

Gross Site Area	497,395 SF
Minus:	
Right-of-way	57,896 SF
Natural Area	<u>179,646 SF</u>
	237,542 SF equals Net Developable Area: 259,853 SF
Base Density (net/10,000)	25.98 Units

Allowed Density Transfer (Sections 2.6, 3.2.4.3 and 7.8.1) = +40%  
 Transfer Density = Base Density X 0.40 = 10.39 units  
 Maximum Density = 25.98 Units plus 10.39 units = 36.38 units.

*3.1.3 The minimum (front) setback from the edge of the street right of way shall be 20 feet in all residential districts and shall be 10 feet from the side and 20 feet from the corner of a residential structure in the SDR district. The minimum setback from the rear property line shall be 20 feet for detached dwelling units and 15 feet for attached units. Detached residential structures on flag lots shall be set back at least 10 feet from all property lines.*

FINDINGS: Through the Planned Residential Development process, the City may adjust dimension standards *without meeting the criteria otherwise required for the grant of an adjustment or variance, in consideration of and in order to protect and encourage access to public transit facilities, to construct affordable housing, to preserve environmental resources and to redevelop underutilized sites.* The applicant is proposing the following four (4) adjustments (in bold) to the base zone setbacks as permitted in Section 3.2.3:

<u>Base Zone Setbacks</u>		<u>Proposed Setbacks</u>	
Garage	20 feet	Garage	20 feet
Front Building	20 feet	Front Building	<b>15 feet</b>
Side yard	10 feet	Side yard	<b>5 feet</b>
Street side yard	20 feet	Street Side	<b>15 feet</b>
Rear yard	20 feet	Rear Yard	<b>15 feet</b>
Flag Lot all sides	10 feet	Flag Lot #31&36:	10’ feet on perimeter line

*Sections 3.1.4 thru 3.1.9 site design standards are addressed by the applicant’s report and, for brevity, are summarized with the following finding of compliance:*

FINDINGS: The average lot size is 6,077 SF and 20 of the 36 lots are less than 6,000 SF. All homes are single family. The applicant has exceeded the open space requirement and has shown that the zone building height, lot and street frontage, building projections and off-street parking provisions have been met. Any accessory structures, signs or fence improvement shall meet code requirements if requested by a homeowner in the future. Flag lots 31 and 36 shall provide 10' building setbacks from all property lines.

### ***3.2 Site Design in Planned Residential Developments.***

*3.2.1 The minimum area allowable for development or redevelopment as a Planned Residential Development (PRD) shall be 3 acres.*

FINDINGS: The site contains 11.41 acres, thereby qualifying for a PRD.

*3.2.2 The minimum lot size for detached single dwellings in a PRD shall be 5000 square feet. The minimum lot size for attached fee-owned, single unit attached housing in a PRD shall be 2500 square feet.*

FINDINGS: All proposed lots exceed the minimum lot size of 5,000 square feet for single family detached homes in a PRD. The lots range in size from a small of 5,000 square feet to the largest at 11,347 square feet. The overall average lot size is 6,077 square feet.

*3.2.3 The minimum setback from public right of way or from the property line, whichever applies, shall be 5 feet from the side (except for zero lot line construction where allowed as part of the site design) and 15 feet from the corner and rear lot lines. The City may allow for a reduced front setback to not less than 15 feet as part of the site design.*

FINDINGS: The applicant is proposing as a part of the PRD minimum setbacks of 5 feet from the side and 15 feet from the corner and rear lot lines as well as the front lot line in compliance with this standard. It should be noted these smaller setbacks do not affect any existing parcels in Durham. All new homeowners in Durham Heights PRD will have the same setbacks as their adjoining neighbors.

*3.2.3.1 Lot widths and front setbacks shall vary whenever feasible to break up an otherwise monotonous facade and provide for various dwelling shapes and sizes and the perception of open space between dwelling units.*

FINDINGS: The lot widths vary throughout the project with more common lot widths of 48 feet and 57 feet. The depth of the lots proposed also allow for varying front façade setbacks. Where lots are located on curves, lot setbacks will also vary, moving some buildings back and some forward. The combination of lot depths, lot widths and lots along a curve work to break up a monotonous façade and provide for various dwelling shapes and sizes with the perception of open space between some dwellings. Typical building elevations have been provided within the application to demonstrate variety.

*3.2.4 A Planned Residential Development shall include common open space equal to not less than 30% of the net buildable area of the property proposed for development.*

FINDINGS: The net buildable area of the site is 259,853 square feet. Therefore, the minimum required common open space is 77,956 square feet. The proposed development plan provides 179,646 square feet of natural area open space and a 23,588 square common recreational space for a total of 203,234 square feet. **This exceeds the minimum area required by 125,278 SF.**

NOTE: The standards for open space in the City's Development Code do not match the City's Comprehensive Plan. The Comprehensive Plan has yet to be updated to reflect the update for the Development Code. Staff has noted that generally the updated Code is what is looked to for decision making. However, to ensure compliance with both the Development Code and the Comprehensive Plan, the applicant is addressing both. The Comprehensive Plan excludes the "greenway" from the Common Area calculations. The "greenway" is the area of Fanno Creek, its associated wetlands and CWS Vegetated Corridors. As a result, calculations for Common Area are different for the Comprehensive Plan and expressed below. According to the applicant:

The buildable area is 259,853 square feet requiring 77,956 square feet of common area (30% of net buildable land) exclusive of the "greenway" as described above. Tract A includes the "greenway". The "greenway" represents 110,913 square feet of Tract A which is 179,646 square feet in size.  $179,646 - 110,913 = 68,733$  square feet. Thus, Tract A contains 68,733 square feet of qualifying Common Area outside the "greenway" per the requirements of the Comprehensive Plan. In addition to the area in Tract A qualifying as Common Area, Tract B is also Common Area outside of the "greenway". Tract A contains 23,588 square feet. Added together the sum is 92,321 square feet of Common Area which complies with the Comprehensive Plan. The minimum requirement as noted above is 77,956 square feet. Conclusion: Whether Common Area is calculated based on the Development Code or the Comprehensive Plan criteria, this project exceeds the minimum requirements in both cases.

*3.2.4.1 The common open space shall be platted to include those areas identified in the City's Comprehensive Land Use Plan as needed or desired for natural resource protection including flood plains, streams and adjacent vegetated corridors, and upland wooded habitat and for avoidance of geologic hazards.*

FINDINGS: The proposed development plan provides 179,646 square feet of natural area open space situated along Fanno Creek, to be platted within Tract A as shown on the preliminary plans and dedicated to the City of Durham. This area includes streams, floodplain, wetlands, vegetated corridors and upland wooded habitat.

*3.2.4.2 The common open space shall be accessible and usable by persons who occupy the development except for those tracts, if any, dedicated to natural resource preservation and for which public access is contrary to that purpose.*

FINDINGS: The common recreational open space proposed within Tract B will be accessible and usable by the persons who live in the development. Tract A which contains natural resources and will be platted in accordance with this section has restricted public access per CWS standards which requires fencing separating private parcels from the adjoining resource land. Tract A will be dedicated to the City of Durham but maintained by CWS and the Durham Heights HOA. Preliminary plat statements may contradict tract ownership, use and maintenance provisions. A condition of approval should include clarification of ownership, public access and tracts maintenance for Tracts A, B and C.

*3.2.4.3 The City shall allow up to a total of 40% additional housing density on the buildable portion of the site to which density is transferred as a bonus to encourage natural resource preservation.*

FINDINGS: As demonstrated in the density calculations provided earlier within these findings, the applicant has proposed a transfer of 40% additional housing density on the buildable portion of the site to which density is transferred. The applicant is proposing preservation of 179,646 square feet or 100% of the natural resource lands located on the site. The preservation area equates to 36.1 percent of the gross site area.

*3.2.5 The physical characteristics of the proposed development shall be compatible with the size, dimensions, configuration, topography and natural and man-made features of the site.*

FINDINGS: 36% percent of the entire site will remain undeveloped within a natural resource open space and be dedicated to the City. By preserving these natural features and developing in other areas, the development is compatible with the natural features of the site. On the developable areas of the site, grading will take advantage of the topography of the site to grade out the streets and lots thereby continuing to remain compatible with topography. The site has an unusual shape that the development plan has adapted to achieve compatibility. All existing structures are proposed to be removed and therefore no compatibility issues arise from the development of new structures which will all be built under the same parameters.

*3.2.6 The location, size and functioning of the proposed development shall be reasonably compatible with and not unreasonably impair the use and enjoyment of surrounding properties nor limit the appropriate development of those properties.*

FINDINGS: The entire northwestern boundary is adjacent to the existing rail line and therefore no impairment to properties in that direction will occur. The remaining surrounding area consists of a few undeveloped properties on the northeast side, and some developed with single family detached and attached units primarily to the south. This proposal for single family detached units is compatible with those existing uses regarding housing type but not density. But street A will ultimately provide a benefit to those properties.

The site has been designed to minimize impacts to adjacent properties to the south and west because of planned street separations and planned open space tracts. Considering properties to the south, this project will construct the majority of the street section of Cambridge Lane leaving more development opportunity available to the underdeveloped adjacent property. It also provides for the future connection of Cambridge Lane so that all existing and future development will ultimately have choices in accessing Upper Boones Ferry Road. Additionally, the southern boundary of the site adjacent to developed parcels is proposed open space tracts and which will provide for public pedestrian/bicycle access to those existing properties.

**7. Section 3.9 Street Design**\_(See applicant's Sheet P4.0 and City Engineer's letter dated 10-14-21)

*3.7.1.8 Vehicle Access Requirements in Zoning Districts:* A land use in any zoning district shall provide for vehicle and pedestrian access in accordance with Table 3.7.1.8 width minimums.

FINDINGS: Applicants Tract D (26' x 141') and Tract E (20' x 118') provide private access for several lots to Cambridge Lane. Tract D has a 3' sidewalk on one side and potentially serves 6 lots. But per 3.7.1.8, only 2 dwellings are permitted on a 20' wide street. To assure compliance with city and fire safety requirements the City requires a condition of approval that lots 27, 32, 33 have access off Cambridge Lane. The PRD criteria also allow for variances and adjustments to design standards including the restricted number of lots that can access a private street.

*3.9.1 The standard width of right of way of all public streets to be constructed or reconstructed to serve a land division (other than a property line adjustment), applicable unless the City approves an alternate street design, shall be:*

*3.9.1.1 Major arterial, 80 feet, 60 feet paved - **Upper Boones Ferry Road***

*3.9.1.4 Neighborhood collector, 50 feet, 32 feet paved - **Cambridge Lane***

*3.9.1.5 Local-street and cul-de-sac, 40 feet, 26 feet paved – **Street “A”***

*Private access easements: **Tract D (26') & Tract E (20')***

FINDINGS: All existing and proposed streets comply with the street standards above with adjustments for the number of lots to be served by Tract D & E. SW Upper Boones Ferry Road is fully constructed with recent improvements within a 60 foot right of way with 30 feet on each side. No additional dedication is required. There are 2 public streets proposed for construction: SW Cambridge Lane and Street “A”.

SW Cambridge Lane is a Neighborhood Collector. The alignment is split with the adjacent undeveloped property to the south. This project will complete a three-quarter street improvement dedicating 40 feet of right of way and installing 26 feet of pavement. Future development to the south will complete the improvement with approximately 10 feet of right of way dedication and 6 additional feet of paving and sidewalk.

Street A is a local street intended to extend in the future to property to the northeast of the site. The street section includes 40 feet of right of way and 26 feet of pavement. A condition of approval shall include Planning Commission or City approval of an appropriate name for street A.

*3.9.2 Street Configuration. All streets, sidewalks, bicycle lanes and gutters, streetlights, street name signs and traffic control devices shall be aligned, contoured, drained, and constructed according to uniform standards that the City shall adopt from time to time on the advice of the City engineer.*

FINDINGS: The proposed streets sidewalks, gutters, streetlights, and street name signs are designed and will be constructed in accordance with the current City standards, except that the proposed 4' public sidewalks shall be widened to 5' on Street A and Cambridge Lane and is a condition of final plat approval. No bike lane or traffic control appear to be necessary except slight reconstruction of Upper Boones Ferry Road for the intersection however alterations to bike lanes will meet current City standards.

Cambridge Lane: A portion of Cambridge Lane along the southern boundary will be constructed with three-quarter street improvement with the remaining 6 feet of pavement, curb, planter strip and sidewalk on the south side to be constructed by future development.

Existing street extension of Cambridge Lane in the SE corner of Tract B: a small part of the existing southern stub street of SW Cambridge Lane touches the boundary. A small improvement will be made here to allow for the remainder of the street to be constructed as it extends through adjacent property. The centerline will align, and the design is such that continued alignment is possible with construction of the short stretch of Cambridge through adjacent property. No two streets are proposed to have a “T” intersection at less than 100 feet of spacing.

Street A: A new public street, Street “A” will be extended to the northeast as it is deemed necessary for future connection to adjacent property. The pavement is currently shown as 26’ wide with parking and sidewalks on both sides. The widening of sidewalks to 5’ per Section 3.7.1.8 and emergency fire access may result in a sidewalk and parking on only one side.

Cul-de-sacs: No cul-de-sac shall extend more than 300 feet. There are no cul-de-sacs proposed within this project. Street “A” is intended to be extended to the northeast for future development. Final termination of this street is yet to be determined but it is possible this could result in a limited access to Upper Boones Ferry Road further enhancing circulation within the City.

Street Grades: According to the applicant the street grade for Upper Boones Ferry Road is less than 6 percent and will not be altered. SW Cambridge Lane is a Neighborhood Collector and is proposed at 10% or less. The proposed local street, Street “A” does not exceed 12 percent. However, the TVFR comments require the Cambridge Lane slope be reduced to 15%, which is an oversight because the applicant’s planned slope is 9.82%. All proposed curves on public streets exceed a centerline radius of 100 feet. No change to the alignment of Upper Boones Ferry Road is proposed.

Adjoining Railroad: This project is adjacent to an active railroad right of way. A portion of the development will be separated from the railroad by natural resources. Lots 6-15 will back the rail line and front a street that is parallel to the railroad. Although highly unlikely that a crossing will ever be permitted along this stretch, the distance and street grade allow for approach grades to any future crossings and for landscaping to screen that right of way. Generally, this is not applicable to this development but being addressed to ensure compliance. ODOT recommends the homebuilders utilize noise abatement construction measures to mitigate the heavy freight rail noise from the track. This is a condition of approval.

Solar Access Orientation: The site has an unusual shape preventing perfect east/west alignment of all streets. Cambridge Lane being the exception. As a result, the streets have been oriented to the greatest extent possible for reasonable use of the property to provide for solar access. Block lengths have been designed to have lengths less than 1200 lineal feet. Even with extension of Street “A”, this criterion will be met.

Block Length: The preferred minimum length between intersections along an arterial is 1800 feet. The access spacing for the connection to Upper Boones Ferry Road from the nearest street to the south is approximately 410 feet. Although not the preferred spacing, the location of the Cambridge connection to Upper Boones Ferry Road is required by the City’s Transportation Plan. The nearest intersection to the north on Upper Boones Ferry is Durham Road at approximately 1,000 feet away. Again, the City’s Transportation Plan requires the Cambridge intersection to be where it is proposed by this project. The applicant in complying with the Transportation Plan, complies to the greatest extent possible with this criterion.

*3.9.2.12 A land division traversed by a water course, drainage way, channel or public or private street shall include an easement to the public for storm water conveyance conforming to CWS' current design and construction standards.*

**FINDINGS:** A land division traversed by a water course shall include an easement for CWS. The project contains a portion of Fanno Creek and its associated wetlands and floodplain along with public and small private streets. All required easements for storm water conveyance conforming to CWS current design and construction standards will be recorded with this project.

*3.9.3 Bicycle and Pedestrian Access. All streets and access ways provided in any new land division shall provide reasonably direct routes for pedestrian and bicycle travel in areas where such travel is likely if connections are provided and that avoids levels of motorized traffic that might interfere with or discourage pedestrian or bicycle travel.*

**FINDINGS:** Bicycle and pedestrian access and sidewalks are provided on all public streets and access ways. No bike lanes are required within the development site, and they have already been provided on Upper Boones Ferry Road. One public bicycle and pedestrian access is proposed through Tract B Open Space. This accessway provides for enhanced pedestrian/bicycle circulation within the local area. All streets and the accessways provide direct routes for pedestrians and bicycle travel in areas where such travel is likely if connections are provided. Additionally, the levels of motor vehicle traffic that will result on the local streets are typical of residential neighborhood use and will not interfere or discourage pedestrian or bicycle travel.

This proposed Planned Residential Development is providing bicycle and pedestrian access through construction of public streets and accessways connecting to Upper Boones Ferry Road and the stub of Cambridge Lane to the south. This provides access to adjacent residential areas, transit stops, schools, shopping and employment areas within ½ mile of the project site. SW Upper Boones Ferry is currently improved with bike lanes and sidewalks. The collector and local streets within the project site will provide sidewalks where appropriate along their frontages. This project is proposing to preserve the natural resources without need of a request to alter street designs or dimensions.

*3.9.4 Alternate Street Design to Protect Natural Resources. May be considered by the City to minimize impervious surface and otherwise manage storm water runoff quality and quantity so as to protect natural resources.*

**FINDINGS:** The applicant proposes an alternative street design for two dead end areas in the irregularly shaped portion of the property by access easements described as Tract D & E. To achieve the allowed density on the site and dimensional requirements of each lot, while preserving 100% of the Fanno Creek natural resource land, these tracts are justified because they will serve a total of 6 lots and by condition exclude those facing Cambridge Lane.

*3.9.5 Private Streets. The City may allow private streets if designed and constructed to standards published by the City Engineer and provide access to no more than 6 dwellings only within a Planned Residential Development and include adequate provisions for maintenance by covenant.*

FINDINGS: The applicant is proposing two private streets both accessing less than 6 units, with a condition to assure so. Both streets will connect with SW Cambridge Lane. Tract D has a 26' width and Tract D will have a 20-foot width. Tract D will also have a 4' sidewalk on one side. Both streets have been designed to exceed typical residential needs for access to so few lots, as well as to provide widths adequate for emergency vehicle access. As part of the final platting the streets be included as Tracts D & E with HOA covenants for ensuring adequate provisions for maintenance and repair in a form approved by the City.

**8. 3.10 Protection of Transportation Facilities.**

*An applicant for proposed development in any zoning district shall submit a Traffic Impact Analysis prepared by a registered professional traffic engineer when the proposed development may reasonably be expected to generate more than 200 vehicle trips per day or when the City determine that the application if approved may have a "significant effect" on an existing or planned transportation facility as that term is defined in OAR 660-012-0060.*

FINDINGS: The proposed project will generate more than 200 vehicle trips per day and therefore the applicant has submitted a Traffic Impact Analysis, prepared by Kittleson & Associates, Inc., a registered professional traffic engineering firm and highly respected within the metro area. The findings from the report make 4 recommendations including:

1. A striping change on SW Upper Boones Ferry to accommodate turning movements.
2. A STOP sign installed eastbound on the new site access street approach to SW Upper Boones Ferry.
3. Provide adequate sight distance eastbound on the local street at SW Upper Boones Ferry Road.
4. A final sight distance evaluation be performed post construction and prior to occupancy for eastbound on SW Upper Boones Ferry Road.

The applicant indicates they will comply with the recommendations from the Traffic Impact Analysis as well as the City Engineer's conditions of approval.

**Section 4.3 APPLICATION APPROVAL CRITERIA**

9. **Section 4.3 PRD Approval Criteria:** The City may approve a PRD Land Use application if it finds that:

4.3.1 The proposed use is permitted in the underlying zoning district, whether permitted outright, with conditions or with the concurrent grant of a variance.

FINDINGS: The City finds the proposed development complies with the PRD zone with adjustments to four of the building setback requirements. The sloping land and protected Fanno Creek floodplain and vegetated corridor reduce the developable portion of the parcels by 4.12 acres and justifies the building setbacks from front, side and rear property lines. The use of alternate street design by a private access easement to a limited number of lots is also justified based on approval by The TVFR District conditions and approval.

4.3.2 The site as developed will conform to the site design standards or will conform upon compliance with conditions of approval or with the concurrent grant of an adjustment or variance, or both, and the City finds that compliance with the conditions of approval is feasible

FINDINGS: The City finds the applicant has balanced the physical slope and tree constraints of the property and the protection of the Fanno Creek natural resources with the ability to construct single family dwellings in the form of a planned development allowed in this area.

4.3.3 All public improvements necessary to serve the development are or will be available prior to the issuance of any building permit.

FINDINGS: The City finds public facilities are designed or will be provided in accordance with the recommended conditions of approval from public agencies and the City and must be constructed prior to issuance of any building permit.

4.3.4 A residential or Planned Residential Development in the NR, NRO, SDR or MDR district provides for the dedication to the public or other means to preserve natural resource area, with or without concurrent grant of a density transfer within the boundaries of the site.

FINDINGS: The City finds the developer has agreed to dedicate Fanno Creek, its floodplain and vegetated corridor, identified as Tract A to the City of Durham. Further, the Durham Heights HOA is responsible for maintaining Tract A.

4.3.5 The proposal complies with the tree preservation provisions of the Code.

FINDINGS: The City Arborist indicates the developer and their arborist have prepared a good analysis and proposal. The City Arborist has three recommendations to be considered by the Planning Commission in the final decision.

4.3.6 The applicant with conditions of approval as may be necessary shall not degrade the level of service of transportation facilities serving the development.

FINDINGS: The City finds the applicant has designed the neighborhood in accordance with Cambridge Lane Neighborhood Collector Street standards, Street A local street standards and to be built in accordance with the fire safety regulations of the Tualatin Valley Fire Rescue district standards, assuming compliance with their conditions of approval.

4.3.7 The proposed use substantially complies with the housing policies of the City's land use comprehensive plan.

FINDINGS: The proposed development shall substantially comply with relevant Comprehensive Plan housing policies. Per plan policy, in the City's Northwest subarea a density bonus of 30% shall be allowed for a planned residential development subject to the following standards:

- 1) Common open space which preserves wooded area for ecological and recreational benefit and contains a minimum area equal to 30% of the new buildable area. FINDING: The Fanno Creek floodplain and vegetated corridor are being fully preserved with no permanent structures in that area. The site is 11.4 acres, and the preserved area is 4.1 acres or 36% of the total site area.
- 2) Construction of recreational improvements which are suited for the proposed development. FINDING: Recreational improvements including a ped/bike path and a semi-circle rockery seating area overlooking the water detention pond and natural area and are passive improvements consistent with the sensitive floodplain and vegetated corridor area.
- 3) Dedication of Greenway (if applicable). FINDING: The applicant has offered to dedicate the Fanno Creek Greenway defined as Tract A to the City of Durham, while also agreeing to maintain the area through a Homeowners Association (HOA). The developer will also be improving marginal and degraded habitat in the vegetated corridor to CWS standards including planting native vegetation.

- 4) Minimum site area of five net buildable area. FINDING: The site is 11.4 acres, and the net buildable area is 6.7 acres, which exceeds the minimum of 5 acres.
- 5) Variable lot sizes not less than 5,000 square feet. FINDING: Lot sizes in the project range from 5,000 SF to 11,457 SF. There are no lots less than 5,000 SF.
- 6) Provision for modified yard setbacks, including allowance for zero side lot line housing in addition to the following setbacks: 20' front; 5'side; 15'corner; 15'rear. FINDING: Requested setback variances are 15' for the dwelling except 20' for the garage; 5' on the site; 15' on corners and 15' in the rear per this allowance and justified by the slope of the land and some irregularity in parcel shape.
- 7) Common open space which provides a city-wide public benefit, such as connection to the Greenway system shall be dedicated to the City for park purposes. Otherwise, the common open space will remain under private ownership for maintenance purposes by either a homeowner's association or other entity as may be proposed by the developer and accepted by the City. FINDING: see a.3) above.

All residential developments requiring land use approvals shall be reviewed in accordance with the following criteria:

- 1) Access: FINDING: the project has direct access to public streets as well as connections to existing streets and is providing traffic safety by aligning with an existing driveway on the opposite side of Upper Boones Ferry Road, adequate fire turnarounds and fire safety.
- 2) Site Characteristics: FINDING: The project is designed with respect to the hazards of flooding and landslides from steep slopes by avoid construction on those sites. The project layout is response to compact energy efficient design within walking distance with Metro area transit stops and high-capacity road corridors of state highway Upper Boones Ferry Road and U.S. Interstate 5.
- 3) Services: FINDING: The project has access to all public and private services who have had the opportunity to review the proposal and make comments and conditions to assure compliance with their respective standards.
- 4) Community Benefits: FINDING: The project seeks to provide single-family housing compatible with the existing Durham community, while reducing lots sizes to reduce the cost.

#### **10. Section 4.6 Approval Criteria for Land Uses in NR and NRO Districts**

The City finds the western third of the site is designated with a Natural Resource Overlay (NRO) zone associated with the riparian corridor and floodplain of Fanno Creek. The applicant is proposing a planned residential development with detached single-family homes, a recreational common open space area and a natural resource protection area. There are no uses proposed within the field verified NRO area. Only utility connections will be located within the NRO.

4.6.1 Any proposed development will not change the flow of flood waters during future flooding such as to compound flood hazards. FINDING: The project plans indicate no structures are planned to be located in the floodplain or the vegetated corridor that would change the flow of flood waters.

4.6.2 No proposed structure, fill, storage or other use shall reduce the capacity of the Flood Management Area, nor raise the flood surface elevation on any adjacent property nor create a foreseeable hazard to the public health, safety and welfare. FINDING: The close oversight by CWS

to install their sanitary sewer lines in the floodplain, as well as their easement access to the natural areas to assure adequate maintenance of facilities over time.

4.6.3 The proposed use shall not adversely affect runoff, erosion, ground stability, water quality, ground water level, or flooding and the site can support the proposed improvements without creating a risk of damage to adjacent property. FINDING: The expert project review and monitoring of the natural area resources and floodplain by Clean Water Services will assure protection of those resources.

11. **Section 5 Tree Protection** (See applicant's sheet P3.1 Tree Mitigation Plan)

*5.7 Type "G" Permit. For Previously Undeveloped Property.*

*5.7.1 Tree Preservation Plan. The City's approval of a land division-, land use or building permit issued for vacant property shall be deemed to obligate the property owner to use best efforts to preserve all existing trees on the site to be divided or developed. Separate Type "G" permit applications shall be submitted for a land division and installation of required infrastructure as well as for installation of utilities and structural building permits on each lot at the time the lot applies for a building permit. The applicant shall submit with the initial application a tree preservation plan prepared by a certified arborist with a narrative as to how the plan will affect tree preservation.*

FINDING: The City finds the project is a residential planned development requiring tree removal for grading, installation of streets, utilities, driveways and homes. The site is moderate to steeply sloped downhill to Fanno Creek. To properly grade the site to accommodate the allowed uses, most of the trees within just the developed areas will have to be removed to ensure long standing safety for the new residents. The application includes a tree preservation plan in the natural area and on the perimeter of the site prepared by the applicant's Arborist. The project certified Arborist and the City Arborist have reviewed the plans and provided recommendations.

*5.7.2 An applicant shall attempt to preserve existing trees on a site by varying the site design, as provided for elsewhere in this Code, and by the following means, whichever are applicable:*

FINDING: The applicant is varying site design through the provisions that protect natural resource lands and only developing those areas of land outside of these areas. The allowed uses for development activities requiring streets, utilities, grading and home sites will impact trees in the developed part of the property. The applicant is using the following to protect trees to the greatest degree possible while still allowing for the safety of future residents and visitors.

In compliance with the tree preservation provisions the applicant has agreed to the following which should be conditions of final approval:

1. The applicant will implement the project arborist's measures and standards for tree preservation and protection during all phases of construction including excavation, grading and filling, repair and removal of trees, pruning and structural support, fertilization and aeration. The project Arborist has provided those recommendations within his report.

2. Tree protection zones will be utilized for the protection of trees throughout all phases of project construction.
3. The project arborist will work with the City's arborist to ensure all tree related decisions and activity are acceptable to them.
4. Coring a tree is highly invasive and can open the tree to infection. It is more appropriate to assess the health of the trees in a non-invasive way such as Visual Tree Assessment which is the standard way of assessing health.
5. It is understood the City can stop work for any violation of the approved plan. The applicant will ensure that all contractors on-site are aware of the issues associated with the tree preservation plan to mitigate any such occurrence.
6. The applicant will provide an acknowledgement from the contractor of the approved tree protection plan in writing prior to any on-site tree removal and a copy will be provided to the City.
7. In the event any damage occurs to a preserved tree, the applicant will work to repair that damage in a timely manner.
8. Lou Phemister, the project arborist will be on-site per his recommendations to oversee construction activities and prevent harm to any trees to be preserved.
9. The project arborist will coordinate with the City's Arborist to identify possible preservation of additional trees not shown on the application.

*5.8 Mitigation Required. Removed trees shall be replaced with mitigation trees to the extent that at maturity they equal the canopy being removed or mature canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. Mature canopy coverage shall be as set forth on the City's tree list based on the tree species, or as otherwise determined by the City Administrator.*

**FINDINGS:** The applicant is proposing mitigation in accordance with this criterion to the extent that at maturity they equal the canopy being removed or mature canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. The credits and mitigation details are provided within the Arborist Report and shown within the mitigation plans submitted. The tree mitigation requirements are included as conditions of approval.

The City's certified arborist Peter Van Oss, NW Tree Specialists has reviewed the report and provided the summary and recommendations:

*Provided with the information I received and the conclusion of my findings, it is my professional opinion that the tree plans prepared by Portland Tree Consultancy suffice in the protection of the trees during and post development. It is pertinent that the provided provisions laid out are adhered to. The area of concern addressed in this report should be evaluation and considerations made regarding the mitigation of the issues.*

City Arborist's Recommendation:

1. Re-evaluate the impacts of the removal of the existing wind breaks in the two areas (north & east sides)
2. Choose to retain or remove both trees #402 and 403.

3. The beech trees along the access road (Cambridge Lane) south of 16516 provide a significant donation to the neighborhood. Their large stature and attractive fall color provide a visual break and maintains the continuation of the overall appearance of SW Upper Boones Ferry Road. It may be worth trying to retain the trees and negotiate with the neighboring property owner to the south to try and move the proposed location of SW Cambridge Lane to the south. (Note: According to the applicant, ODOT requires the driveway on the opposite side of the new Cambridge Lane to align with the new intersection.)

## **12. Section 7.2 Flood Management**

*7.2.1.1 An application for development in the floodplain shall be reviewed and decided by a Type I process but for those aspects of the development that are within the jurisdiction of the City Building Official. A development permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."*

**FINDINGS:** The project site does include portions of the Fanno Creek 100-year floodplain per FIRM Map 2016. The flood elevation is set through the Flood Insurance Study at 131 feet above mean sea level. The only activity proposed within the floodplain include the necessary outfall for the storm facility and trenching and installation of a sanitary sewer line to connect to the line within the floodplain. Both of these activities are of limited and temporary disturbance and result in no net fill within the floodplain. The elevation of the lowest floor of the proposed homes along the edge of the floodplain is shown in the grading plan. The lots that the homes will be located on are outside of the floodplain and no special floodproofing for those structures will be necessary, and homes proposed by this project will have a finished floor more than a foot above the base flood elevation. The finished floors nearest the 100-year floodplain are more than 10 feet above the base flood elevation.

Upon completion of the proposed homes along the floodplain, the applicant will provide the Building Official the record of the actual elevation of the lowest floor of the new homes and whether a basement is included. In turn, he can verify and record the actual elevation, maintain flood proofing certification required by this chapter and maintain for public inspection records pertaining to the provisions of this chapter.

## **13. Section 7.8 Density Transfer**

*7.8.1 An applicant for a Planned Residential Development or for a land division in a residential or environmental zoning district (SDR, MDR, MDDO, NRO) may request as part of that application to transfer the permitted or required density for the development site from one portion of the site to another portion, and the City may require such a transfer to protect natural resources and wildlife habitat.*

**FINDINGS:** The applicant is proposing a Planned Residential Development on lands zoned SDR with a natural resource overlay. The applicant is proposing a density transfer from the development site and from the protected natural resource areas to the upland developable land areas as previously described.

The proposed project has set aside 4.12 acres for the preservation of significant natural resources including Wetlands, Vegetated Corridors, Fanno Creek and its floodplain. This transfer lessens the effects of the development restrictions in place within water quality sensitive areas and flood management areas.

The surrounding neighborhood area is developed with single-family detached and attached housing. The nearest developments have developed as planned residential developments for the most part and have lots averaging less than those proposed within this project even though density of net developable lands on the site will include transferred density. As such, this project is not densifying the developable area with transfer density to a point where a transition between established land use patterns is necessary.

*7.8.2.1 To encourage preservation of significant natural resources by the use of density transfer, when such a resource exists on the site and is to be preserved as provided for in this section, the City shall allow up to a total of 40 percent additional density to be applied to that portion of the site to which the density is transferred.*

**FINDINGS:** The applicant is proposing to preserve all of the significant natural resources on site including Fanno Creek and its associated wetland and Vegetated Corridors and the entire floodplain. All trees will be preserved within this area. Degraded and marginal vegetation areas are required to be improved in their natural conditions through implementing Clean Water Service standards. The applicant acknowledges that:

*7.8.3.1 Transferable density rights shall not be assignable and shall not be redeemable for cash or for a credit against any development fee or charge due the City.*

*7.8.3.2 A transferable density right shall be deemed void if not exercised within 15 years from the date that the City's land use decision granting the right is final or until the property on which a person seeks to exercise the right is rezoned into a zoning district in which the City does not allow the use of density transfer, whichever is first.*

*7.8.4 The portion of the site of the land division or land development from which density is transferred shall be restricted by recorded covenants running with the land or shall be dedicated in fee or as a conservation or open space easement to a public entity for a public purpose. Any such covenant or dedication shall be in a form approved by the City attorney. The City shall keep a separate registry of all such transfers and of the allowable development level for the site following transfer.*

*7.8.5 As required by ORS 94.531(3), an applicant for a density transfer shall first show that the holder of a recorded mortgage encumbering land from which density is to be transferred from one portion to another has prior written notice of- and has consented in writing to the proposed transfer.*

#### **14. Section 8 Subdivision Requirements**

**FINDINGS:** The City Engineer Curran-McLeod provided a report and will be reviewing the final subdivision plat. Their report identifies several conditions to be satisfied in accordance with the subdivision plan being reviewed by the Commission and the final plat requirements of the city,

Washington County and state statute. The engineer's conditions of approval are included in the recommended conditions of approval at the end of this report.

### **15. Section 9.7 Type 3 Procedures & Criteria:**

**FINDINGS:** The applicant filed a development application on August 18, 2021, in accordance with City application requirements. The City's Type 3 review procedure requires a neighborhood meeting which was held on March 16, 2021, as well as a notice to be sent to property owners within 300 feet to provide an opportunity for public comment in addition to the public hearing before the Durham Planning Commission. Notice was sent at least 20 days before the public hearing scheduled for November 2, 2021. No comments were received prior to the hearing. The hearing was conducted as outlined in DDC Procedures Section 9.7.3.

## **III. DECISION**

On November 2, 2021, the Durham Planning Commission unanimously approved the Durham Heights PRD, City file #591-21, based on the findings of fact in the City Staff Report, and in this decision, subject to the following conditions of approval:

## **IV. CONDITIONS OF APPROVAL**

### **Prior to any work on the site and prior to or coincident with final Subdivision Plat Recording:**

1. The Geotechnical Report Figure 6 was published before the final design. The figure needs to be updated to coincide with the final lot layout of this proposal. The applicant indicates the proposed local street, Street "A" is 9.82% and does not exceed 12 percent. However, the TVFR comments require the Cambridge Lane slope be reduced to 15%. Slope details need to be resolved between the applicant and the City Engineer.
2. Final plat corrections shall include clarification of ownership, public access and tract maintenance for Tracts A, B, C, D and E.
3. A small triangle of partial street improvement for Cambridge in the southwest corner shall be designed and constructed to ensure extension can occur logically.
4. Obtain City approval of the Floodplain Development Permit to construct utilities in the 100-year floodplain. This may occur coincident with the CWS approval process.
  - Upon completion of the proposed homes along the floodplain, the applicant will provide the Building Official the record of the actual elevation of the lowest floor of the new homes and whether a basement is included to verify and record the actual elevation, maintain flood proofing certification required by DDC Section 7.2 and maintain for public inspection records pertaining to the provisions of this chapter.
5. Comply with CWS Memorandum dated 10-15-21 and Service Provider Letters as submitted. A Clean Water Services (CWS) Site Development Permit must be obtained prior to plat approval and recordation. Application for CWS Site Development Permit must be in accordance with the requirements of the Design and Construction Standards, Resolution and Order Nos. 19-5 as

amended by R&O 19-22 (CWS Standards), or prior standards as meeting the implementation policy of R&O 18-28, and is to include:

- a. Detailed plans prepared in accordance with Chapter 2, Section 2.04.
- b. All storm drainage and sanitary sewer improvements shall be designed, reviewed and approved in conformance with Clean Water Services standards in accordance with the CWS Service Provider letter dated August 16, 2016. Prior to any work on the site a CWS Storm Water Connection Permit Authorization must be obtained.
- c. Detailed grading and erosion control plan. An Erosion Control Permit will be required. Area of Disturbance must be clearly identified on submitted construction plans. If site area and any offsite improvements required for this development exceed one-acre of disturbance, project will require a 1200-CN Erosion Control Permit. If site area and any offsite improvements required for this development exceed five-acres of disturbance, project will require a 1200-C Erosion Control Permit.
- d. Detailed plans showing each lot within the development having direct access by gravity to public storm and sanitary sewer.
- e. Provisions for water quality in accordance with the requirements of the above-named design standards. Water Quality is required for all new development and redevelopment areas per R&O 19-5, Section 4.04. Access shall be provided for maintenance of facility per R&O 19-5, Section 4.07.6.
- f. If use of an existing offsite or regional Water Quality Facility is proposed, it must be clearly identified on plans, showing its location, condition, capacity to treat this site and, any additional improvements and/or upgrades that may be needed to utilize that facility.
- g. If private lot LIDA systems proposed, must comply with the current CWS Design and Construction Standards. A private maintenance agreement, for the proposed private lot LIDA systems, needs to be provided to the City for review and acceptance.
- h. Show all existing and proposed easements on plans. Any required storm sewer, sanitary sewer, and water quality related easements must be granted to the City.
- i. Applicant shall comply with the conditions as set forth in the Service Provider Letter No. 21-001202, amended August 24, 2021.
- j. Developer may be required to preserve a corridor separating the sensitive area from the impact of development. The corridor must be set aside in a separate tract, not part of any buildable lot and, shall be subject to a “Storm Sewer, Surface Water, Drainage and Detention Easement over its entirety”, or its equivalent.
- k. Detailed plans showing the sensitive area and corridor delineated, along with restoration and enhancement of the corridor.
- l. If there is any activity within the sensitive area, the applicant shall gain authorization for the

project from the Oregon Department of State Lands (DSL) and US Army Corps of Engineers (USACE). The applicant shall provide Clean Water Services or its designee (appropriate city) with copies of all DSL and USACE project authorization permits.

- m. Any proposed offsite construction activities will require an update or amendment to the current Service Provider Letter for this project.

CWS conclusion: This Land Use Review does not constitute CWS approval of storm or sanitary sewer compliance to the NPDES permit held by CWS. CWS, prior to issuance of any connection permits, must approve final construction plans and drainage calculations.

- 6. Denote on the final plans the minimum front yard setback is 20' for a garage and 15 feet for the dwelling; 5 feet from the side yard and 15' from a street side yard, and 15 feet from the rear yard. Detached dwellings on a flag lot shall be setback 10 feet from all perimeter property lines, applicable to lots #31 & 36.
- 7. To assure compliance with city and fire safety requirements, the applicant shall provide the City with property covenants or other documentation to assure that lots 27, 32 and 33 are required to have access off Cambridge Lane.
- 8. Obtain City approval of the Homeowners Association (HOA) documents and maintenance provisions for Tracts, A, B & C and the HOA Maintenance and Access Agreement for Tracts D, E including the pedestrian/bike trail in Tract B. Final plan corrections shall include clarification of ownership, public access and tract maintenance for Tracts A, B, C, D and E.
  - Include a provision in the final HOA documents prohibiting yard debris dumping or other material dumping or pesticide applications into Tracts A, B and C.
- 9. Prior to any tree removal, the owner shall obtain a Tree Removal Permit from the City based on a tree protection and mitigation plan prepared by the applicant's certified arborist as follows:
  - a. Re-evaluate the impacts of the removal of the existing wind breaks in the two (north and east) areas. Pruning could reduce limb failure. Consider a Level-3 risk assessment test of the trees to be removed.
  - b. Retain or remove both trees 402 and 403.
- 10. The following tree preservation and mitigation requirements shall be met:
  - a. Preservation of existing trees in good condition, suitable for preservation and of appropriate species, shall receive a 200% credit based on their existing canopy area. Planting of native species shall receive a credit of 125% of mature canopy. (Example: A 10,000 s.f. lot would require 3,500 s.f. of canopy. An existing Black Hawthorne has 314 s.f. of existing canopy. This property would receive a credit of 628 s.f., leaving 2,872 s.f that will need to be mitigated for with new plantings.)
  - b. Mitigation trees shall be selected from any of the tree lists maintained by the City, excepting nuisance trees, unless otherwise approved by the City Administrator.

- c. The minimum size for a tree planted as mitigation shall be 2” diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6’ tall measured from the top of the root ball, excluding the leader.
  - d. Trees categorized as small on the City’s tree list shall be spaced no closer than 15’ on center from other trees and no closer than 10’ from the face of any structure.
  - e. Trees categorized as medium on the City’s list shall be spaced no closer than 20’ on center from other trees and no closer than 10’ from the face of any structure.
  - f. Trees categorized as large on the City’s tree list shall be spaced no closer than 30’ on center from other trees and no closer than 15’ from the face of any structure.
  - g. No tree shall be placed less than 3’ from any hard surface.
  - h. Replacement of one or more trees when required as a condition of a land division or land development approval shall be complete within 6 months after the approval is final. The City may grant a 60-day extension if the City finds abnormal weather conditions require delay. Additional time beyond the 60-day extension shall be subject to Planning Commission approval. All required replacement trees will be installed within 6 months after the approval is final. Extensions will only be requested if due to events or conditions outside of the control of the applicant and processed accordingly through the City.
  - i. Trees removed for the purpose of installation of infrastructure upon a division of land may be mitigated by the developer by planting the required mitigation trees upon any lot in the division. Such trees will be required to be planted outside the anticipated footprint of any future structure or within required structural setback areas. As building occurs, the builder/owner of the lot shall receive a credit of 100% of mature canopy based on the species planted.
  - j. When an improved site cannot accommodate the required number of replacement trees the City may require the applicant to pay to the City a fee in lieu of replacement. The fee in lieu shall be in amount set by resolution of the City Council and shall be based upon the percentage of mature canopy not recovered through mitigation planting.
11. Comply with the City staff and City Engineer’s comments to date, including final plan requirements as may be revised during the final plat review, as follows:
- a. Determine the specifications and location of the planned triangular section of Cambridge Lane in the southwest corner of the site to be dedicated to the City for public street right-of-way.
  - b. Increase public sidewalk width from 4 feet to 5 feet.
  - c. Any raise in the floodplain level for sewer and storm outfalls must be in accordance with CWS and FEMA standards. The applicant has filed for a Floodplain Development Permit to be reviewed and approved by the City Engineer.
  - d. Illustrate the directional flow of Fanno Creek on final plans.
  - e. If a water well is located anywhere on the subject site, it shall be abandoned per City Engineer inspection and according to OWRD regulations.

- f. Revise the plat to include an access easement from Lot 30 over Lot 31 to allow for vehicle back-up movements.
  - g. On the final plat or sheet P1.0 include:
    1. A vicinity map at a 400-scale.
    2. A temporary benchmark in the plan area.
    3. Any and all unsubdivided land ownerships and zoning districts lying on and adjacent to the proposed subdivision, the proposed extension of adjacent streets, proposed dedications of public ROW and proposed boundaries of tracts to be dedicated to a public purpose and all lands within a ½-mile radius from proposed new streets and their connection with adjacent streets.
    4. Property information of the adjacent properties within ½-mile radius.
    5. Extend road profiles approximately 100 feet or to the centerline of UBFR.
    6. Final plans shall show all traffic control measures.
    7. Attempt to increase the distance between the Tract E private access road and the curb return on UBFR No Parking and “No Outlet” from 75’ to 100 feet.
    8. Provide “No Parking” and “No Outlet” signage per City and TVFR requirements including on the hammerhead temporary turnaround between Lots 16 & 17, adjoining the temporary retaining wall and on one side of Cambridge Lane, on one-side of Street A and on both sides of Tracts D & E.
    9. Identify the clear vision triangle areas at the intersection with UBFR on final plans.
    10. Include calculations for all sections of the retaining walls over 4 feet.
    11. Add skip-dash striping to the center turn land of UBFR southbound at the intersection with Cambridge Lane. Use the same striping on the northbound road at that intersection to accommodate left turns into the new development from the south.
    12. ADA curb ramps shall be designed in sidewalks at intersections of Cambridge Lane with UBFR and “A” street, including at the ped/bike pathway.
    13. Include all lighting in the final plans.
    14. Water service lines should be single runs per Tigard Water District specifications.
12. Comply with the applicant’s Traffic Impact Report requirements:
- a. A striping change on SW Upper Boones Ferry to accommodate turning movements.
  - b. A STOP sign installed eastbound on the new site access street approach to SW Upper Boones Ferry.
  - c. Provide adequate sight distance eastbound on the local street at SW Upper Boones Ferry Road.
  - d. A final sight distance evaluation be performed post construction and prior to occupancy for eastbound on SW Upper Boones Ferry Road.

**Prior to issuance of any City permits:**

13. Comply with ODOT Conditions of Approval dated 0-15-21 as follows:

Access to the State Highway (Upper Boones Ferry Road)

- a. A State Highway Approach Road Permit from ODOT for access to the state highway or written determination (e-mail, fax or mail acceptable) from ODOT that the existing approach(es) is/are legal for the proposed use is required. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. Site access to

the state highway is regulated by OAR 734.51. For application information go to <http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application-Forms.aspx>.

Note: It may take 2 to 3 months to process a State Highway Approach Road Permit.

- b. Permits and Agreements to Work in State Right of Way: An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way.
  - c. Noise: The applicant is advised that a residential development on the proposed site may be exposed to noise from heavy rail freight, passenger trains. It is generally not the State's responsibility to provide mitigation for receptors that are built after the noise source is in place. Builders should take appropriate measures to mitigate the noise impacts.
14. Comply with the following TVFR fire safety requirements:
- a. Prior to issuance of a grading permit, clarify if the secondary point of fire access will be equipped with a gate or other means of traffic control and provide a detail for the district. Removable bollards are not endorsed as a means of traffic control.
  - b. Post and restrict parking along both sides of Tract D & E, the secondary point of emergency access and within elements of the fire apparatus turnaround. Parking is only permitted on one side of Cambridge Lane and Street A.
  - c. As needed, adjust the grade along SW Cambridge Lane near lots #24 thru 27 to 15% or less.
  - d. Provide a current fire flow test demonstrating available flow at 20 psi residual pressure.
  - e. A Knox padlock or box may be required if the secondary point of emergency access is subject to locking.
  - f. New and existing buildings shall have approved address numbers; building numbers or approved building identification placed in a position that is plainly visible from the street or road fronting the property, including monument signs. These numbers shall be a minimum of 4 inches high with a minimum stroke width of ½ inch.
  - g. Comply with all other TVRF Fire Code requirements regarding "No Parking" signage specs, fire hydrant markers and clearances, access and water supply during construction, and other district standards.
15. Electricity, natural gas, and telephone and telecommunications supply lines shall be placed underground within the boundaries of a site and along those portions of public right of way that abut the site and shall otherwise be designed, constructed and placed according to the standards and requirements of the utility provider.
16. All storm drainage and sanitary sewer improvements shall be designed, reviewed and approved in conformance with Clean Water Services standards in accordance with the CWS Service Provider letter dated August 16, 2016. Prior to any work on the site, a CWS Storm Water Connection Permit Authorization must be obtained.

17. Water lines or service connections shall be designed, extended, if necessary, reviewed and approved in conformance with City of Tigard Water Department Standards. Meters can be purchased through the City of Tigard Utility Billing Department and should be placed outside of paved areas.
18. The proposed on-site improvements shall be monitored in accordance with the applicant's Geotechnical Report recommendations. Improvements shall be designed in compliance with the requirements of the current version of the Oregon Structural Specialty Code, reviewed and approved by City of Tualatin Building Department.
19. The applicant shall provide an explanation of what measures and implementation methods the homebuilders will use to mitigate noise generated by the heavy rail freight trains, passenger trains and transit vehicles using the track adjoining or near Lots 1 - 15.
20. The Planning Commission shall develop a list of possible street names for street A so the developer can coordinate with Washington County's street-naming staff to select a name that is not a duplication of an existing street in the county.

DATE OF PLANNING COMMISSION DECISION: November 2, 2021

SIGNED: \_\_\_\_\_  
Brian Goddard, Chairman  
City of Durham Planning Commission

ATTEST: \_\_\_\_\_  
Linda Tate, City Administrator

Date Mailed: \_\_\_\_\_