

**CITY OF FORT COLLINS
TYPE 1 ADMINISTRATIVE HEARING**

FINDINGS AND DECISION

HEARING DATE: December 10, 2020

PROJECT NAME: Homestead at Clarendon Hills (Parcel #9602200039)

CASE NUMBER: PDP #190007

APPLICANT: Kristin Turner
TB Group
444 Mountain Ave
Fort Collins, CO 80528

OWNER: Mosaic Land Development Services, LLC
1021 Nightingale Dr
Fort Collins, CO 80525

HEARING OFFICER: Marcus A. McAskin

PROJECT DESCRIPTION:

The Homestead at Clarendon Hills Project Development Plan (the “**PDP**”) proposes to develop a vacant 3.28-acre infill parcel located northeast of South Shield Street and Clarendon Hills Drive (the “**Property**”). The project includes subdividing the Property into 8 single-family detached lots.

Access to the Property is provided from existing neighborhood streets, Clarendon Hills Drive and Langdale Drive, and a shared driveway easement. Pedestrian public access and access to the existing Smith Lateral Ditch are provided in the eastern portion of the Property.

Wetlands are present along the Smith Lateral irrigation ditch located along the northern boundary of the Property. The Applicant provided an Ecological Characterization Study to satisfy the requirements of Fort Collins Land Use Code (“**LUC**”) Section 3.4.1(D)(1). The Study concluded that no significant ecological resources will be adversely impacted by development of the Property because the plan maintains mature trees and provides a habitat buffer zone along the ditch.

The Property is zoned Low Density Residential (R-L).

The PDP is subject to an Administrative Hearing (Type 1) review.

The Applicant is requesting approval of Alternative Compliance for LUC Section 3.2.1(D)(2) (“*Street Trees*”) to place street trees for Lots 1, 2, and 3 in the front yard of each of these lots (as shown on the PDP site plan) and as described in the Applicant’s Alternative Compliance request dated August 5, 2020.

No Modifications of Standards to the LUC are requested.

BACKGROUND:

Applicable project background is detailed in the Development Review Staff Report prepared for this Application, a copy of which is attached to this decision as **ATTACHMENT A** and is incorporated herein by reference.

The surrounding zoning and land uses are as follows:

	North	South	East	West
Zoning	N/A	Low Density Residential (R-L)	Low Density Residential (R-L)	Low Density Residential (R-L)
Land Use	Front Range Community College	Clarendon Hills single family detached lots	Clarendon Hills single family detached lots	Le Gardin single family detached lots

SUMMARY OF DECISION: **Approved with conditions.**

ZONE DISTRICT: **Low Density Residential District (R-L)**

HEARING: The Hearing Officer opened the remote hearing at approximately 5:35 p.m. on Thursday, December 10, 2020.

EVIDENCE: Prior to or at the hearing, the Hearing Officer accepted the following documents as part of the record of this proceeding:

1. Department Review Staff Report prepared for the Homestead at Clarendon Hills PDP #190007 (11 pages). A copy of the Staff Report is attached to this decision as **ATTACHMENT A** and is incorporated herein by reference.
2. Vicinity map.
3. Zoning map.
4. PDP Site and Landscape Plan (6 sheets).

5. PDP Utility Plans (16 sheets).
6. Homestead at Clarendon Hills Plat (2 sheets).
7. Drainage Letter and LID Report Homestead at Clarendon Hills concluding that the project satisfies applicable stormwater criteria and effectively limits potential damage associated with its stormwater runoff. (74 pages)
8. Design Narrative by TB Group, dated April 10, 2019 (1 page).
9. Alternative Compliance Request (for Street Trees) from TB Group, dated August 5, 2020 (3 pages).
10. Letter of support from Brookwood at Mail Creek HOA, dated September 30, 2020 (1 page).
11. Letter of intent from City of Fort Collins Parks Department, dated September 8, 2020 (1 page).
12. Letter of support from State of Colorado, acting by and through the Department of Higher Education, by the State Board of Community Colleges and Occupational Education, for the use and benefit of Front Range Community College, dated November 6, 2020, and including existing Development Agreement (24 pages).
13. Written comment from Clarendon Hills HOA regarding potential conflicts between pedestrians and vehicles within shared access, dated October 15, 2020 (2 pages).
14. Power point re: Pedestrian Path (9 pages).
15. Statement of Authority related to Brookwood at Mail Creek Homeowners' Association (10 pages).
16. Homestead at Clarendon Hills Site Distance Exhibit (1 page).
17. Copy of City of Fort Collins PowerPoint presentation.
18. Copy of Applicant Hearing Presentation (14 slides).
19. Confirmation a sign (sign #495) was posted on the Property on March 27, 2019.
20. Copy of confirmation of purchase from *Fort Collins Coloradoan* Ad#0004484050 and Affidavit of Publication, evidencing proof of Notice of Hearing in the *Fort Collins Coloradoan* on November 25, 2020.
21. Copy of written notice of hearing mailed on November 25, 2020.
22. Copies of emails received by Tenae Beane (City Coordinator) regarding the Application.
23. Written materials submitted by James and Desiree Curry (3 pages).
24. Multiple emails in support of limiting usage of pedestrian path to pedestrian and bicycle use only.
25. Letter from Timothy Dow dated August 25, 2020 addressed to Tenae Beane and Jason Holland (4 pages).
26. Rules of Conduct for Administrative Hearings.

27. Administrative (Type 1) Hearing: Order of Proceedings.
28. The City's Comprehensive Plan, Land Use Code, and the formally promulgated ordinances and polices of the City are all considered part of the record considered by the Hearing Officer.

TESTIMONY: The following persons presented at the hearing:

From the City: Jason Holland, City Planner

From the Applicant/Owner: Kristin Turner
TB Group
444 Mountain Ave.
Fort Collins, CO 80528

Ken Mitchell
Mosaic Land Development Services LLC
1021 Nightingale Dr
Fort Collins, CO 80525

From the Public: Attached hereto as **ATTACHMENT B**

The public comment portion of the hearing was opened at approximately 6:37 p.m.

The public comment portion of the hearing was closed at approximately 7:18 p.m.

The virtual hearing was closed at approximately 7:43 p.m.

FINDINGS

1. Evidence presented to the Hearing Officer established the fact that notice of the remote public hearing was properly posted, mailed and published.
2. As required by City Council Ordinance 079, Series 2020 (the "**City Ordinance**"), the Hearing Officer, in consultation with City staff, determined that it was desirable to conduct the hearing by remote technology so as to provide reasonably available participation by parties-in-interest and by the public, consistent with the requirements of the City Ordinance, because meeting in person would not be prudent for some or all persons due to a public health emergency.
3. Based on testimony provided at the public hearing and a review of the materials in the record of this case, the Hearing Officer concludes as follows:

- A. The Application complies with the applicable procedural and administrative requirements of Article 2 of the LUC.
 - B. Except for LUC Section 3.2.1(D)(2), for which Alternative Compliance is requested, the Application complies with the applicable General Development Standards contained in Article 3 of the LUC.
 - C. The Application complies with the Low Density Residential (R-L) zone district standards contained in LUC Division 4.4.
 - D. The proposed Alternative Compliance plan for LUC Section 3.2.1(D)(2), to place street trees for Lots 1, 2 and 3 in the front yard of each of these lots, is approved pursuant to LUC Section 3.2.1(N). In making this determination, the Hearing Officer finds that the Alternative Compliance Plan for landscaping, as described, accomplishes the purposes of LUC §3.2.1(D)(2) equally well or better than would a plan which complies with the standards of LUC §3.2.1(D)(2). Specifically, the Hearing Officer finds that the proposed Alternative Compliance Plan will maximize tree canopy cover and enhance neighborhood continuity. Specifically, the proposed street tree pattern is not inconsistent with the existing pattern of tree placement in the surrounding neighborhood.
4. The Application's satisfaction of the applicable Article 2, Article 3 (including the Alternative Compliance request described above), and Article 4 requirements of the LUC is sufficiently evidenced by the Staff Report and the testimony and materials presented at the hearing.
 5. One of the main issues regarding the Application involves the concern of the Clarendon Hills Homeowners' Association ("Clarendon HOA") with the comingling of pedestrian and vehicular traffic within the southeasterly portion of Tract A, specifically that portion lying between proposed Lot 8 and Lot 88, Clarendon Hills Third Filing ("Eastern Portion Tract A"). Mr. Mark Layman, representing the Clarendon HOA, summarized the Clarendon HOA's concerns with the pedestrian-vehicular conflict at the hearing and requested the Hearing Officer's consideration of a proposed solution that would restrict vehicular access on Eastern Portion Tract A. The Clarendon HOA requests a limitation on the Eastern Portion Tract A to pedestrian and non-motorized vehicles only. In addition, the Clarendon HOA requests that ditch maintenance personnel be required to access the Smith Lateral ditch on foot (while utilizing Eastern Portion Tract A). While the Hearing Officer agrees that the safety concern is valid, it is well settled in Colorado that an owner of a ditch easement may do "whatever is reasonably necessary to permit full use and enjoyment of the easement including the exercise of rights of ingress and egress for maintenance, operation and repair." *Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229, 1231-32 (Colo. 2001); *citing Osborn & Caywood Ditch Co. v. Green*, 673 P.2d 380, 383 (Colo.App.1983).
 6. There are three entities/ditch owners that routinely access the Smith Lateral ditch within the Property for maintenance activities: the Brookwood at Mail Creek HOA ("Brookwood HOA"), the City of Fort Collins Parks Department, and Front Range Community College ("FRCC").

7. *Roaring Fork* provides an overview of the importance of ditches (and ditch easements) to the history of Colorado, including rights appurtenant to ditch easements¹.
8. C.R.S. § 37-86-102 provides as follows:

“Any person owning a water right or conditional water right shall be entitled to a right-of-way through the lands which lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with said water right or conditional water right.”

8. In *Roaring Fork*, the Colorado Supreme Court noted that Colorado law recognizes that competing uses between interested property owners should be accommodated if possible, and that “inflexible notions of dominant and servient estates do little to advance that accommodation.” The court thus rejected the “traditional rule” that a burdened owner may never move or alter a ditch easement, adopting instead section 4.8(3) of the Restatement (Third) of Property: Servitudes (2000), which states as follows:

Unless expressly denied by the terms of an easement, ... the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner’s expense, to permit normal use or development of the servient estate, but only if the changes do not:

- (a) significantly lessen the utility of the easement,
- (b) increase the burdens on the owner of the easement in its use and enjoyment, or
- (c) frustrate the purpose for which the easement was created.

¹ As stated by Justice Kourlis in *Roaring Fork*, 36 P.3d 1229, 1231-32:

“Ditches are important to Colorado. They permit a landscape, economy, and history in which fertile valleys prosper. Without them, properties adjacent to or distant from watercourses wither. Colorado is not a riparian state in which only those lands adjacent to the streams and rivers have rights to waters. Rather, as early as the tenure of the territorial legislature, our lawmakers recognized that our arid climate required the creation of a right to appropriate and convey water across the land of another so that lands not immediately proximate to water could be used and developed. Colorado Territorial Laws 67 § 2 (1861) reprinted in Gregory J. Hobbs, *Colorado Water Law: An Historical Overview*, 1 U. Denv. Water L.Rev. 1, 31 (1997) (“That when any person, ... [whose] farm or land, used by him for agricultural purposes, is too far removed from said stream ..., [that person] shall be entitled to a right of way through the farms or tracts of land which lie between him and said stream....”). By the time of passage of our constitution, that right was embodied in Article XVI, § 7, which provides, “All persons and corporations shall have the right-of-way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.”

(the “Restatement Test”). See *Roaring Fork*, 36 P.3d at 1237.

9. The *Roaring Fork* court held that the owner of property burdened by a ditch easement may not move or alter that easement unless that owner: (1) has the consent of the owner(s) of the easement or (2) obtains a declaratory determination from a court that the alteration would not damage the benefitted owners, in accordance with the Restatement Test. *Roaring Fork*, 36 P.3d at 1237–38. The court opined that the latter procedure provides a forum to both the owner of the servient estate, who seeks to make alterations that will genuinely cause no damage to the easement owner and will increase his or her own property uses, and to the easement owner(s), who can seek to show that changes would, in fact, cause damage. *Id.*

DECISION

Based on the findings set forth above, the Hearing Officer hereby enters the following ruling:

- A. The Alternative Compliance for LUC Section 3.2.1(D)(2) is approved.
- B. The Homestead at Clarendon Hills PDP #190007 is approved for the Property, subject to the following conditions of approval:
 - (1) The privacy fence and retaining wall along the east side of Lot 8 will both be placed within Lot 8, and not within Tract A east of lot 8.
 - (2) The privacy fence shall be placed in front of the retaining wall, facing Tract A, and the fence shall not be more than six feet in maximum height from the finish grade of the east property line between Tract A and Lot 8.
 - (3) The proposed soft surface trail shall be replaced with a concrete sidewalk along the extent of Lot 8, a minimum of four feet (4’) in width, with the sidewalk located at least five feet away from east property line of Tract A.
 - (4) The applicant shall use its best efforts to reach a written agreement with the Brookwood HOA, the City of Fort Collins Parks Department, and FRCC (together, the “Ditch Owners”) regarding the installation of pedestrian bollards, an access gate, or other similar improvements designed to impose reasonable limitations on vehicular access to Eastern Portion Tract A (“Access Safety Improvements”) in order to ensure, to the extent practicable, that unauthorized vehicles do not access Eastern Portion Tract A.
 - (5) Short of obtaining a written agreement from the Ditch Owners regarding the Access Safety Improvements, the Applicant shall seek a judgment from a court of competent jurisdiction that the Access Safety Improvements (or other modifications to the existing ditch easement as may be proposed by the Applicant designed to minimize future pedestrian/vehicular conflicts) do not unreasonably interfere with the exercise of easement rights by the Ditch Owners in accordance with the Restatement Test articulated in *Roaring Fork*. Seeking a declaratory judgment is a familiar mechanism in easement disputes. Parties employ them to

determine the existence, scope, and location of easements. *Roaring Fork*, 36 P.3d at 1238; citing *Bijou Irrigation Dist. v. Empire Club*, 804 P.2d 175 (Colo.1991); *Riddell v. Ewell*, 929 P.2d 30 (Colo.App.1996).

DATED this 23rd day of December, 2020.



Marcus A. McAskin
Hearing Officer

ATTACHMENT A

Staff Report
Homestead at Clarendon Hills – PDP #190007

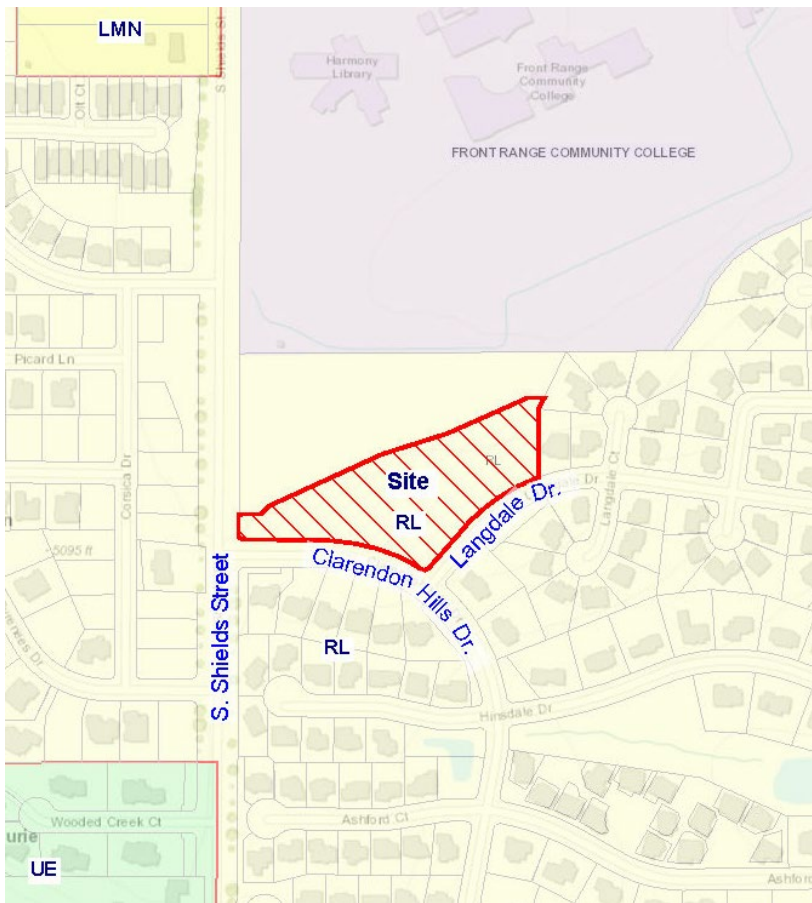
Administrative Hearing: December 10, 2020

Homestead at Clarendon Hills PDP190007

Summary of Request

This is a request for a Project Development Plan (PDP) to develop the vacant 3.28 acre parcel at the northwest corner of S Shields St and Clarendon Hills Dr (Larimer County Parcel #9602200039). The project will include subdividing the parcel into 8 single-family detached lots. The Smith Lateral irrigation ditch is located along the northern portion of the property. A habitat buffer zone is provided along the irrigation ditch and a pedestrian trail connection is provided along the east side of the property. The proposed project is within the Low Density Residential (RL) zone district.

Zoning Map



Next Steps

If approved by the decision maker, the applicant will be eligible to submit a Final Development Plan.

Site Location

Located near the northwest corner of S. Shields St. and Clarendon Hills Dr. (parcel #9602200039).

Zoning

Low Density Residential (R-L)

Property Owner

Mosaic Land Development Services, LLC
1021 Nightingale Dr
Fort Collins, CO 80525

Applicant/Representative

Kristin Turner
TB Group
444 Mountain Ave
Fort Collins, CO 80528

Staff

Jason Holland, City Planner

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Staff Recommendation

Approval of the Project Development Plan, with Conditions

1. Project Introduction

A. PROJECT DESCRIPTION

- This is a request for a Project Development Plan (PDP) to develop 8 single-family detached lots. The proposed project is within the Low Density Residential (RL) zone district and single family lots are permitted subject to a Type 1 review. The property is approximately 3.28 acres.
- The Smith Lateral irrigation ditch is located along the northern portion of the property. A Natural Habitat Buffer Zone is provided along the irrigation ditch.
- A pedestrian trail connection is provided along the east side of the property within a pedestrian public access easement.
- Access to the new lots is provided from Clarendon Hills Drive, Langdale Drive and a shared driveway easement. A stormwater detention area is provided to the south along the shared driveway at the street intersection.
- Four conditions of approval are recommended as follows:
 - 1) The privacy fence and retaining wall along the east side of Lot 8 will both be placed within Lot 8, and not within Tract A east of lot 8.
 - 2) The privacy fence shall be placed in front of the retaining wall, facing Tract A, and the fence shall not be more than six feet in maximum height from the finish grade of the east property line between Tract A and Lot 8.
 - 3) The proposed soft surface trail shall be replaced with a concrete sidewalk along the extent of Lot 8, a minimum of four feet in width, with the sidewalk located at least five feet away from east property line of Tract A.
 - 4) The development shall provide pedestrian bollards at the south perimeter of the Tract A pedestrian public access easement in order to control vehicular access into Tract A.

B. SITE CHARACTERISTICS

1. Development Status/Background

The property is currently undeveloped and borders the Clarendon Hills residential subdivision to the east and south. The Clarendon Hills subdivision was planned and constructed in the 1990's under the prior Land Use Code. Initial plans for the Homestead parcel envisioned offices, multifamily or a church. None of these uses were constructed, and a portion of the property was sold to Front Range Community College which borders the property to the north.

2. Surrounding Zoning and Land Use

	North	South	East	West
Zoning	N/A	Low Density Residential (R-L)	Low Density Residential (R-L)	Low Density Residential (R-L)
Land Use	Front Range Community College	Clarendon Hills single family detached lots	Clarendon Hills single family detached lots	Le Gardin single family detached lots

C. OVERVIEW OF MAIN CONSIDERATIONS

The primary considerations with the proposal include pedestrian cross access, ditch owner access, storm drainage and habitat buffering.

A natural habitat buffer zone is required along the Smith Lateral. The lateral also requires maintenance access. The east side of the property is currently used as both the vehicular access point for ditch maintenance and as a pedestrian route to access trails on the Front Range Community College property to the north. The development plans propose to formalize these access functions, with shared access provided along the east side of Lot 8, within Tract A. This area is 12 feet wide at the narrowest portion directly east of Lot 8. This 12-foot wide access area is intended to be used by both pedestrians and as the primary access for routine ditch maintenance. Additional ditch access is provided within Tract A east of Lot 1.

Stormwater drainage and water quality are also a consideration, with Tract B provided at the intersection of Clarendon Hills Drive and Langdale Drive to meet city stormwater requirements.

2. Public Outreach

A. NEIGHBORHOOD MEETING

Pursuant to *Section 2.2.2 – Step 2: Neighborhood Meetings*, a neighborhood meeting is not required for Administrative (Type 1) projects. Therefore, a City neighborhood meeting was not held for this project.

B. PUBLIC COMMENTS:

Any communication received between the public notice period and hearing will be forwarded to the Hearing Officer to be considered when making a decision on the project.

Resident comments communicated to staff relate to safety concerns along the trail access east side of the property because the access is shared by ditch maintenance vehicles. Concerns received from ditch owners include a request that the primary maintenance access to be located on the east side of the development using the same access point as the pedestrian access. Ditch owners and operators have also expressed concerns that the development will negatively affect the function of the ditch by releasing additional stormwater into the ditch. A preference to have the ditch piped has also been expressed. Additionally, the property owner has expressed concerns that the narrowest portion of the east access, which is 12 feet in

width, cannot be wider because it will negatively impact the size of Lot 8. Residents would prefer that this area be 22 feet in width and have provided an assessment of this area which is attached to this staff report.

3. Article 2 – Applicable Standards

1. Conceptual Review - CDR190012

A conceptual review meeting was held on February 7, 2019.

2. First Submittal - PDP190006

This project was submitted on April 14, 2019.

3. Neighborhood Meeting

Not applicable pursuant to 2.2.2 – *Step 2: Neighborhood Meetings.*

4. Notice (Posted, Written and Published)

Posted Notice: March 27, 2019, Sign # 495

Written Hearing Notice: November 25, 2020, 295 addresses mailed.

Published Hearing Notice: November 25, 2020, Coloradoan Confirmation #0004484050

4. Article 3 - Applicable Standards

A. DIVISION 3.2 - SITE PLANNING AND DESIGN STANDARDS

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
<p>3.2.1 – Landscaping and Tree Protection</p>	<p>This Code Section requires a fully developed landscape plan that addresses relationships of landscaping to the circulation system and parking, the building, abutting properties, and users of the site in a manner appropriate to the neighborhood context.</p> <ul style="list-style-type: none"> Section 3.2.1(D)(2) Street trees. Street trees are provided at approximately 40-foot intervals along Clarendon Hills Drive and Langdale Drive, in accordance with the standards of this section. Per Section 3.2.1(N), the applicant proposes Alternative Compliance for 3 of the street trees for lots 1, 2, and 3, to place trees in the front yard of each of these lots. The applicant’s alternative compliance request is attached to this staff report. Staff finds that the alternative plan meets the alternative compliance criteria, in that the proposed alternative landscape plan maximizes tree canopy cover and enhances neighborhood continuity. The proposed pattern of street trees is not incongruent with the varied pattern of tree placement within the surrounding neighborhood, and the establishment of additional tree canopy is not affected by the alternative. Section 3.2.1(D)(3) Minimum Species Diversity. The project provides not more than 15% of any one tree species in compliance with this standard. A landscaped stormwater detention area is provided at the Clarendon/Langdale Drive intersection which provides visual interest, habitat, and water quality treatment. Three existing trees are proposed to be removed. Tree mitigation requirements are met, with one mitigation tree provided per City Forestry requirements. 	<p>Complies, with Alternative Compliance requested</p>

<p>3.2.2 – Access, Circulation and Parking</p>	<p>In conformance with the Purpose, General Standard, and Development Standards described in this section, the access and circulation system provided with the project is adequately designed with regard to safety, efficiency and convenience for vehicles, bicycles and pedestrians, both within the development and to and from surrounding areas, with conditions.</p> <p><i>Subsection 3.2.2(C)(6) -- Direct On-Site Access to Pedestrian and Bicycle Destinations.</i></p> <p>This section reads as follows:</p> <p><i>“The on-site pedestrian and bicycle circulation system must be designed to provide, or allow for, direct connections to major pedestrian and bicycle destinations including, but not limited to, trails, parks, schools, Neighborhood Centers, Neighborhood Commercial Districts and transit stops that are located either within the development or adjacent to the development as required, to the maximum extent feasible. The on-site pedestrian and bicycle circulation system must also provide, or allow for, on-site connections to existing or planned off-site pedestrian and bicycle facilities at points necessary to provide direct and convenient pedestrian and bicycle travel from the development to major pedestrian destinations located within the neighborhood. In order to provide direct pedestrian connections to these destinations, additional sidewalks or walkways not associated with a street, or the extension of street sidewalks, such as from the end of a cul-de-sac, or other walkways within the development, to another street or walkway, may be required as necessary to provide for safety, efficiency and convenience for bicycles and pedestrians both within the development and to and from surrounding areas.”</i></p> <p>To meet this standard, a pedestrian path is maintained on the east side of the development within Tract A. This area has been used informally by area residents to gain access to trails within the Front Range Community College property. This access is also used by the Smith Lateral ditch owners for maintenance access. Because the applicant’s development plan narrows this access area to 12 feet, and there appears to be no viable option to separate these functions, conditions of approval are recommended to further address safety and maintenance of this area. This includes providing pedestrian bollards at the south access of the trail connection and changing the soft surface trail to concrete along Lot 8.</p>	<p>Complies, with conditions</p>
<p>3.2.2(K)(1)(c) Parking Requirements</p>	<p>Each residential lot is more than 50 feet wide and is required to provide at least one off-street parking space. Minimum off-street parking quantities required for the project are satisfied through two garage spaces provided on each lot, for a total of 16 off-street parking spaces.</p>	<p>Complies</p>

B. DIVISION 3.3 – ENGINEERING STANDARDS

<p>Applicable Code Standard</p>	<p>Summary of Code Requirement and Analysis</p>	<p>Staff Findings</p>
<p>3.3.1(C) – Public Sites, Reservations and Dedications</p>	<p>The applicant is required to dedicate rights-of-way for public streets, drainage easements and utility easements as needed to serve the area being developed.</p> <p>The project will dedicate both onsite and offsite easements prior to final recordation and as required by the City’s Engineering Services department.</p> <p>This primarily includes the Smith Lateral ditch access easement, which is indicated on the proposed plat, utility easements, 2.9 feet of right-of-way along Langdale Drive, and a pedestrian public access easement along the east side of Tract A.</p>	<p>Complies</p>

C. 3.4 ENVIRONMENTAL, NATURAL AREA, RECREATIONAL AND CULTURAL RESOURCE PROTECTION STANDARDS

The purpose of this Section is to ensure that when property is developed consistent with its zoning designation, the way in which the proposed physical elements of the development plan are designed and arranged on the site will protect the natural habitats and features both on the site and in the vicinity of the site.

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
<p>3.4.1 – Natural Habitats</p>	<p>The General Standard requires, to the maximum extent feasible, the development plan be designed and arranged to be compatible with and to protect natural habitats and features and the plants and animals that inhabit them and integrate them within the developed landscape of the community by: (1) directing development away from sensitive resources; (2) minimizing impacts and disturbance through the use of buffer zones; (3) enhancing existing conditions; or (4) restoring or replacing the resource value lost to the community when a development will result in the disturbance of natural habitats or features.</p> <p>Section 3.4.1(E)(1)(a-i) Buffer Zone Performance Standards allows the decision maker [Hearing Officer] to determine buffer zones that may be multiple and noncontiguous. The general buffer zone distance for each natural habitat or feature is established in the quantitative buffer zone table, but the Hearing Officer may reduce or enlarge any portion of the general buffer zone distance in order to ensure qualitative performance standards are achieved.</p> <p>Background: The location and condition of natural habitats and features are informed by an Ecological Characterization Study (ECS). The ECS was completed by Blue Mountain Environmental Consulting on April 9, 2019 and identifies an irrigation ditch, wetlands and mature trees as the natural features requiring protection or mitigation. The irrigation ditch, which serves as a wildlife corridor, contains narrow wetlands on both sides and is dominated by Reed Canarygrass, Three Square and Nebraska Sedge. Lining the ditch edges are mature Plains Cottonwoods, Peachleaf Willow, Chokecherry, Common Juniper and Ponderosa Pine. The transition to upland status is marked by a shift in understory dominance from Canarygrass to Smooth Brome. Wetland boundaries were determined through field surveys using U.S. Army Corps standards (vegetation, hydrology and soils). The total wetland area measures 10,084 square feet in size, with an unvegetated channel measuring 2,982 square feet and vegetated banks measuring 7,102 square feet. Wetlands are considered non-jurisdictional (not regulated by the US Army Corps of Engineers).</p> <p>According to the Land Use Code Section 3.4.1(E), the standard quantitative buffer for an irrigation ditch is 50 feet (measured from the top of bank), and 50 feet for wetlands less than 1/3 acre in size. Whichever buffer is greater prevails. In this instance, the 50-foot buffer from the top of bank applies.</p> <p>Development Proposal:</p> <p>The Homestead at Clarendon Hills development proposes eight single-family homes that back to the irrigation canal. Three trees are being removed: one plains cottonwood and two Siberian elm. The cottonwood is being mitigated by City Forestry while the Siberian elms are being mitigated by City Environmental Planning. Wetlands will not be impacted, however, the proposed development encroaches into the general 50-foot setback.</p> <p>Performance Standards:</p> <p>Where the proposed development encroaches into the general 50-foot buffer zone standard setback, the natural habitat buffer zone expands elsewhere to offset the encroached areas. Because the site is constrained to the north, east and west by adjacent development, the buffer is expanded to include an enhanced natural stormwater detention pond south of the proposed homes. As such, the applicant proposes meeting LUC 3.4.1 (E) natural habitat buffer zone performance standards, which are as follows:</p>	<p>Complies</p>

(a) The project shall be designed to preserve or enhance the ecological character or function and wildlife use of the natural habitat or feature and to minimize or adequately mitigate the foreseeable impacts of development.

Existing vegetation throughout the site is of low to moderate quality as the understory is dominated by smooth brome, a non-native species. Restoration and weed mitigation will enhance the current degraded understory condition and provide improved quality habitat. Additionally, the triangular stormwater detention area is designed as a pollinator garden with low-water, flowering plants and a stacked boulder wall for a natural aesthetic. The resultant buffer zone will balance habitat enhancement with an aesthetically pleasing entrance appropriate to a residential subdivision.

(b) The project, including, by way of example and not by way of limitation, its fencing, pedestrian/bicycle paths and roadways, shall be designed to preserve or enhance the existence of wildlife movement corridors between natural habitats and features, both within and adjacent to the site.

The proposed pedestrian trail aligns with the Nature in the City Strategic Plan by providing residents with appropriate access to nature. Sidewalks allow pedestrians close contact with the pollinator garden. Three rail fencing with wire mesh will protect wildlife from backyard pets adjacent to the corridor.

(c) The project shall be designed to preserve existing trees and vegetation that contribute to the site's ecological, shade, canopy, aesthetic, habitat and cooling value.

Notwithstanding the requirements of Section 3.2.1(F), all trees and vegetation within the Limits of Development must be preserved or, if necessary, mitigated based on the values established by the Ecological Characterization Study or the City Environmental Planner. Such mitigation, if necessary, shall include trees, shrubs, grasses, or any combination thereof, and must be planted within the buffer zone.

Vegetation within open areas will be improved through weed mitigation and enhancement plantings of structural and species diversity. The landscaping emphasizes native plants, flowering perennials and a diverse vegetation structure to enhance opportunities for pollinators and species' nesting and breeding. Site design has been modified to minimize encroachment into the ditch buffer and enlarge the buffer zone.

(d) The project shall be designed to protect from adverse impact to species utilizing special habitat features such as key raptor habitat features, including nest sites, night roosts and key feeding areas as identified by the Colorado Parks and Wildlife Division ("CPW") or the Fort Collins Natural Areas Department ("NAD"); key production areas, wintering areas and migratory feeding areas for waterfowl; heron rookeries; key use areas for wading birds and shorebirds; key use areas for migrant songbirds; key nesting areas for grassland birds; fox and coyote dens; mule deer winter concentration areas as identified by the CPW or NAD; prairie dog colonies one (1) acre or greater in size; key areas for rare, migrant or resident butterflies as identified by the NAD; areas of high terrestrial or aquatic insect diversity as identified by the NAD; remnant native prairie habitat; mixed foothill shrubland; foothill ponderosa pine forest; plains cottonwood riparian woodlands; and wetlands of any size.

While no raptors nests have been identified on the property additional bird surveys will be performed prior to the issuance of the Construction Permit.

(e) The project shall be designed so that the character of the proposed development in terms of use, density, traffic generation, quality of runoff water, noise, lighting and similar potential development impacts shall minimize the degradation of the ecological character or wildlife use of the affected natural habitats or features.

The project is proposing a large pollinator garden with a natural stacked boulder wall to maintain a natural aesthetic. The ditch corridor will be enhanced through shrubs, trees, grasses and forbs. Both areas encourage the use of different wildlife species for nourishment and cover.

(f) The project shall be designed to integrate with and otherwise preserve existing site topography, including, but not limited to, such characteristics as steepness of slopes,

	<p>existing drainage features, rock outcroppings, river and stream terraces, valley walls, ridgelines and scenic topographic features.</p> <p>The project preserves the existing site topography and emulates existing conditions in disturbed areas along the ditch corridor.</p> <p>(g) The project shall be designed to enhance the natural ecological characteristics of the site. If existing landscaping within the buffer zone is determined by the decision maker to be incompatible with the purposes of the buffer zone, then the applicant shall undertake restoration and mitigation measures such as regrading and/or the replanting of native vegetation.</p> <p>All buffers will be restored to native vegetation (with the exception of some trees in the riparian forest and flowering perennials in the detention area, for improved habitat). Additionally, weed mitigation and enhancement plantings will be incorporated to improve the natural ecological characteristics of the site.</p> <p>(h) The project may be designed to provide appropriate human access to natural habitats and features and their associated buffer zones in order to serve recreation purposes, provided that such access is compatible with the ecological character or wildlife use of the natural habitat or feature.</p> <p>The proposed pedestrian trail within the buffer zone align with the Nature in the City Strategic Plan by providing residents with appropriate access to nature.</p> <p>(i) Fencing associated with the project shall be designed to be compatible with the ecological character and wildlife use of the natural habitat or feature.</p> <p>The proposed fencing will not inhibit wildlife movement near the ditch.</p> <p>Summary:</p> <p>The mitigation results in 1.57 acres of Natural Habitat Buffer Zone (NHBZ), above the 1.48 acre requirement. Emphasis is placed on enhancing the low-quality open areas through weed mitigation, native grass and forb seed mixes, and native plantings. Also included is an enhanced stormwater detention pond at the front of the development, featuring a pollinator garden comprised of flowering low-water plant species. Wetlands will be avoided, and the majority of trees protected.</p>	
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D. 3.5.1 – BUILDING AND PROJECT COMPATIBILITY

The purpose of this Section is to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area.

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
<p>3.5.1(J) Operational and Physical Compatibility Standards</p>	<p>The purpose of this Section is to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area.</p> <p>Conditions may be imposed upon the approval of development applications to ensure that new development will be compatible with existing neighborhoods and uses. Such conditions may include, but need not be limited to, restrictions on or requirements for:</p> <ul style="list-style-type: none"> (1) hours of operation and deliveries; (2) location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare; (3) placement of trash receptacles; (4) location of loading and delivery zones; 	<p>Complies</p>

	<p>(5) light intensity and hours of full illumination;</p> <p>(6) placement and illumination of outdoor vending machines;</p> <p>(7) location and number of off-street parking spaces.</p> <p>In order to address this standard, four conditions of approval are recommended. The first condition requires removable bollards at the Langdale Drive trail access east of Lot 8. This area is also the primary access point for vehicles used to maintain the Smith Irrigation Lateral. In order to mitigate conflicts between pedestrians and maintenance vehicles, bollards that can be removed for ditch maintenance are recommended. The second condition requires that the proposed walkway be moved west to provide additional separation from the existing residence to the east. Two additional conditions are recommended which address the fencing and wall placement along the east side of Lot 8.</p>	
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E. 3.6 TRANSPORTATION AND CIRCULATION

This Section is intended to ensure that the transportation network of streets, alleys, roadways and trails is in conformance with adopted transportation plans and policies established by the City.

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
3.6.4 – Transportation Level of Service Requirements	The City Traffic Operations Department has reviewed the proposal to add eight single-family residential lots and determined that due to the relatively low anticipated traffic to be generated by this proposal -- per Larimer County Urban Area Street Standards (LCUASS) section 4.2.2.E the requirement for a Traffic Impact Study is waived.	Complies
3.6.6 – Emergency Access	This Section is intended to ensure that emergency vehicles can gain access to, and maneuver within, the project so that emergency personnel can provide fire protection and emergency services without delays. The project has been reviewed by Poudre Fire Authority and provides the necessary emergency access easements per their recommendations.	Complies

F. 3.8 SUPPLEMENTARY REGULATIONS

The purpose of this Section is to provide standards to implement the model standards outlined in the "Development Standards for the I-25 Corridor" and the "Fort Collins I-25 Corridor Subarea Plan."

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
3.8.11 - Fences and Walls	<p>This standard regulates fences and walls, and the following requirements apply to the proposed fences and walls which shall be:</p> <p>(1) no more than 4 feet high between the front building line and front property line</p> <p>(2) no more than 4 feet high if located in the front yard, or within any required side yard setback area in the front yard, except if required for demonstrated unique security purposes</p> <p>(3) no more than 6 feet high if located within any required rear yard setback area or within any side yard setback area in a rear yard</p>	Complies, with conditions

	<p>Additionally, the height of a fence or wall shall be the distance from the top of the fence or wall to the finished grade of the lot directly under the fence or wall as such grade existed at the time the fence or wall was constructed. Any berm, wall or similar feature that is constructed for the purpose of increasing the height of a fence or wall shall be considered to be a part of the fence or wall.</p> <ul style="list-style-type: none"> The project complies with these fencing and wall standards, with the exception of the proposed 6-foot fence along the east side lot line of Lot 8, which appears to be located on top of a proposed retaining wall. The proposed wall appears to have a maximum height of approximately 3 feet and the face of the wall abuts the Lot 8 side property line. In order to address the issue of the proposed 6-foot fence on top of the 3-foot wall, and also address the location of the fence and ensure that the 12 foot pedestrian access area is not further constricted, conditions of approval are recommended. 	
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5. Article 4 – Applicable Standards:

A. DIVISION 4.4 – LOW DENSITY RESIDENTIAL DISTRICT (R-L)

The R-L Low Density Residential District designation is intended for predominately single-family residential areas located throughout the City which were existing at the time of adoption of this Code. New residential projects on undeveloped land in the R-L zone district are uncommon.

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
4.4(B)(2)(a)(1) -- Permitted Uses	Single-family detached dwellings on new lots are permitted in the R-L zone subject to a Type 1 review.	Complies
4.4(D) -- Land Use Standards	<p>All eight proposed lots comply with the density and dimensional standards described in the section.</p> <ul style="list-style-type: none"> Residential Density in the Low Density Residential District shall have a minimum lot area the equivalent of 3 times the total floor area of the building but not less than 6,000 square feet. Each lot complies with the minimum lot width which is 60 feet for a single-family dwelling. Each lot demonstrates compliance with the minimum building setback requirements: <ul style="list-style-type: none"> 20' front 15' rear 5' side 	Complies

6. Findings of Fact/Conclusion

In evaluating the request for the Homestead at Clarendon Hills Project Development Plan, PDP190007, staff makes the following findings of fact:

- The Project Development Plan complies with process located in Division 2.2 – Common Development Review Procedures for Development Applications of Article 2 – Administration.

- The Project Development Plan complies with relevant standards located in Article 3 – General Development Standards, with conditions.
- The Project Development Plan complies with relevant standards located in Division 4.4, Low Density Residential (R-L) of Article 4.

7. Recommendation

Staff recommends approval of Homestead at Clarendon Hills Project Development Plan, PDP190007 based on the aforementioned Findings of Fact, with the following conditions:

- 1) The privacy fence and retaining wall along the east side of Lot 8 will both be placed within Lot 8, and not within Tract A east of lot 8.
- 2) The privacy fence shall be placed in front of the retaining wall, facing Tract A, and the fence shall not be more than six feet in maximum height from the finish grade of the east property line between Tract A and Lot 8.
- 3) The proposed soft surface trail shall be replaced with a concrete sidewalk along the extent of Lot 8, a minimum of four feet in width, with the sidewalk located at least five feet away from east property line of Tract A.
- 4) The development shall provide pedestrian bollards at the south perimeter of the Tract A pedestrian public access easement in order to control vehicular access into Tract A.

8. Attachments

1. Vicinity & Zoning Map
2. Hearing Mailed Notice
3. Hearing Notice – Coloradoan
4. Site & Landscape Plan
5. Utility Plans
6. Plat
7. Drainage Report
8. Applicant's Design Narrative
9. Alternative Compliance – Street Tree Placement
10. Environmental Characterization Study
11. Letter of Intent -- Brookwood at Mail Creek
12. Letter of Intent -- Parks Department
13. Letter of Intent -- FRCC
14. Resident Comments – Clarendon Hills HOA
15. Resident Comments – Pedestrian Path Study
16. Brookwood Statement of Authority
17. Intersection Site Distance

ATTACHMENT B

Homestead at Clarendon Hills
(PDP #190007)

**Attendees who provided testimony at the
Homestead at Clarendon Hills Administrative Hearing on December 10, 2020**

Don Heyse*
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Myles Crane*
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* Denotes the person who provided testimony. 11 members of the public spoke at the hearing.