BLUELINE

March 11, 2022

Mike Kenyon
Kenyon Disend, PLLC on behalf of City of Cle Elum
119 W 1st St
Cle Elum, WA 98922

RE: City Heights Phase 2 Preliminary Plat – Response to City Comments
Blueline Job No. 19-349

Dear Mr. Kenyon,
This letter is in response to various communications with the city related to the review and approval of the Phase 2 Preliminary Plat Implementing Approval Application.

Supplement to Corr Cronin, LLP response provided January 24, 2022 (attached):
The applicant provided a detailed response to city comments as outlined in the attached Corr Cronin correspondence. The following info is intended to provide additional commentary to describe portions of the application materials that were revised.

General

1. Part A Question 12 on the SEPA Checklist. In response to CH's answer to this question, the City notes: While the SEPA Checklist asks for precise information regarding the location of the proposed project, one of the parcels identified as the site of the water main extension (923835) is owned by the City and is a part of the City Cemetery, which is not located anywhere near the location of the water main extension as depicted on the Civil Drawings. In addition, parcel 083825 does not appear on the County Assessor's website and is not depicted in the Civil Drawings.
   In addition, the parcels identified for the Montgomery Interim Access Road, includes parcel 956767, which in fact is not associated with parcel 956736, nor is it owned by the Project Sponsor. It is in Downtown Cle Elum and is nowhere near the Interim Access Road as depicted on the Civil Drawings. It should also be noted that the Civil Drawings indicates that the corridor for this road improvement includes properties not owned by the Project Sponsor and that are located outside of the City limits. These parcels are not identified in the SEPA Checklist or in the Civil Drawings nor is there any reference to proposed construction activities outside of the City's jurisdiction.

   The parcel labeled 923835 has been updated to reflect the correct parcel number (943835). The parcel labeled 083825 has been updated to reflect the correct parcel number (083835). The parcel labeled 956767 has been updated to reflect the correct parcel number (956737). The SEPA checklist and Phase 2 Preliminary Site and Engineering Plans (P2-PS&E Plans) were revised to reflect update parcel numbers. In addition the Interim Access Road connects to

Montgomery Ave via the existing 60' access easement across parcels 283134 and 659136. This has been noted in the SEPA checklist and on the P2-PS&E plans.

2. Part B Question 3a. on the SEPA Checklist. In response to CH's answer to this question, the City notes: These responses are inaccurate and misleading. The Civil Drawings indicate that the that the construction of the new Montgomery Interim Access Road would include a new stream crossing and wetland impacts. This is not addressed in the SEPA Checklist or the City Heights EIS. In addition, there is a floodplain associated with Crystal Creek that is not identified. Also, there is no mention or depiction of the stream that was filled/destroyed during Phase 1 in violation of the Washington State Water Pollution Control Act and the Washington State Forest Practices Act and that is in the immediate vicinity of Phase 2.
The proposed water main alignment actually crosses under two streams, not one, and is shown to be bored casings without impact. However, there are no boring launching/receiving pits shown on the plans, and with the steep topography in the immediate installation vicinities, the launching/receiving pits would be substantial in size, with major impacts on critical areas, buffers, and potential impacts to streams.

Stream E: No impact to Stream E is proposed as part of the Interim Montgomery Access. Impacts to the Stream E buffer are shown on the P2-PSE plans and mitigated in accordance with recommendations contained in the Sewall report titled City Heights Phase 2 Plat and Interim Montgomery Access dated 3/8/22. The SEPA checklist reflects this.

Crystal Creek Flood Plain: The floodplain established by FEMA has been added to the P2-PS&E plans and referenced in the SEPA checklist. A 20 scale blow up of the creek crossing has been added to the plan set to depict the various elements at the crossing. Note that fill is not proposed in the floodplain therefore available flood storage will not be reduced.

Crossing of Crystal Creek and Wetland E: The location of the proposed water main crossing at Crystal Creek is situated in an existing dirt road that currently runs through Crystal Creek (see sheet WD-01 for the revised plans). After further internal discussion the applicant has chosen to cross this creek, as well as wetland E, utilizing standard open trench pipe installation. This installation method triggers the need for a permit from the U.S. Army Corp of Engineers and is consistent with activities contemplated under ACOE Nation Wide Permit 33 – Temporary Construction Access. The temporary impacts to the creek, wetland and associated buffers will be limited in width and will be mitigated and restored as outlined in the Sewall Report titled City Heights Zone 3 Water Main Extension Impacts dated 3/11/22. Work in this area is anticipated to occur during the drier months and will be in compliance with the ACOE approval. Note: The ACOE approval is typically issued after local approval therefore documentation of city approval for this activity is requested immediately so as not to delay the ACOE process.

Though the open cut installation is the preferred method, the applicant reserves the option to install the water main through these critical areas and buffers utilizing alternate methods such as trenchless technologies. If an alternate installation is pursued a plan will be provided to the city prior to commencement of construction activities in these areas.

Disturbance to Existing Ditch during Forest Practice activities:
Sewall has provided prior documentation indicating the purported "stream" is in fact a drainage ditch. Regardless, the applicant has chosen to relocate a portion of this ditch and will seek a WDFW HPA for the activity. The relocated ditch is mainly on the Phase 1 plans however the location of the ditch is depicted on the updated P2-PS&E Plans for reference. A copy of the updated Phase 1 plan and HPA will be provided to the city as part of Phase 1 permitting.

3. Part B Questions 4b. and 5b. on the SEPA Checklist. In response to CH's answer to this question, the City notes: This is not a complete or accurate answer. The proposed route for the Montgomery Interim Access Road passes through Parcel #19165. This parcel is subject to a Landowner Option Plan for the Northern Spotted Owl executed in 1992 by the landowner and the Washington State Department of Natural Resources and is recorded on the Title. The Northern Spotted Owl is a Threatened Species, and this plan must be addressed.
It should also be noted that the approved Master Site Plan (City Heights Development Agreement Exhibit 3) identifies three potential access routes to connect western portions of the City Heights Planned Mixed Use Development to Montgomery Avenue, one of the four required primary points of access. However, the SEPA Checklist does not address the impacts associated with each of these potential routes and no reference is provided that documents such an assessment of these alternatives has been identified was made in the City Heights EIS. Furthermore, no analysis or documentation was provided to support the route that was selected (Option B). This route involves property not owned by City Heights that is located outside of the City limits. In contrast, Optional Route C only appears to involve property owned by City Heights within the City limits, and no explanation is provided as to why this option was not selected.

See response by Corr Cronin. In addition, improvements to the parcels located outside of city limits will be permitted by Kittitas County as noted on the updated P2-PS&E Plans.

With respect to the plat application (as opposed to SEPA checklist), the City notes:

4. The Preliminary Plat Map included in the Phase 2 Drawings is not consistent with the Phase 2 road improvements in the Civil Drawings that were submitted. In addition, the Phase 2 Civil Drawings do not depict the Phase 1 improvements to the Stafford Avenue corridor negotiated by the Project Sponsor. Furthermore, the Phase 2 application does not include improvements to Summit View Drive as required by the Development Agreement. In addition, the Phase 2 application includes provisions for an Interim Access Road to provide secondary access to the

Phase 2 development. The Development Agreement specifically states that all roads, shall comply with the design standards in the Development Agreement.

It is common for design elements to be updated as a project moves from preliminary design to final design. Regardless, since the city is currently processing permits for both preliminary and final design at this time the Phase 2 Preliminary Site and Engineering plans, the Phase 2 Preliminary Plat (provided by Encompass) and the Phase 2 Clearing Grading and Infrastructure Plans have been synchronized to reflect the same improvements as reasonably feasible.

Note the portion of Summit View Road between Phase 1 and Road G is now proposed to be improved as depicted on revised submittal materials. Per preliminary discussions with City staff the ROW width for this portion of Summit View, which is located in wetland buffer, is proposed to be reduced from 45' to 40' to minimize impacts to the buffer. Note the required width of hardscape (road and pedestrian) can still be accommodated in this 40' width and may be attractive to the city to apply in other areas of the project to reduce City maintenance costs. Impacts to the buffer are mitigated per recommendations in the previously mentioned Sewall report.

Improvements to Stafford are address as part of the Phase 1 approval.

Refer to prior Corr Cronin correspondence for response to Interim Access comment.

5. The application includes this from Blueline, "None of the proposed roads exceed 12% for segments of more than 1,000 feet." The City's response: This statement does not comply with the provision in the Development Agreement highlighted in green above. The International Fire Code limits road grades to 10% and the Cle Elum Municipal Code under which the project is vested limits grades to 11%. The highlighted provision allows grades up to 12% for segments up to 1,000 feet. That is not the same as allowing grades in excess of 12% for distances up to 1,000 feet as stated in the application. This is not a statement of compliance, but rather documentation of non-compliance. The Phase 2 Civil Drawings show a grade in excess of 15% on the Montgomery Interim Access Road which does not comply with the Development Agreement or the International Fire Code. It should also be noted that although the Development Agreement, allows road grades up to 12% for segments less than 1,000 feet, any grade in excess of 11% for any distance may preclude use by emergency vehicles.

   It is further noted that the proposed water main extension includes the construction of a road from the Phase 2 site that stops just short of SR 903. This road as depicted in the Civil Drawings does not comply with the Road Stands in the City Heights Development Agreement Appendix I.

   Roads slopes are shown as consistent with DA parameters which allows slopes of up to 12% for segments less than 1,000 feet. No slopes are shown in excess of 12%.

A gravel access road is shown over the top of the zone 3 water main. It is for utility maintenance vehicles only and not proposed to be a full road.

6. With respect to the Stafford Street improvements included in the Phase I settlement, the City notes in response to the Phase II application: The Phase 2 application does not refer to these improvements as the basis of the primary access and it needs to be updated to reflect that the City successfully secured the CDBG grant to facilitate the design of these road improvements and to reduce the cost to the Project Sponsor.

   Addressed by prior Corr Cronin correspondence.

7. Additional street concerns are indicated as follows:

   It should also be noted that, provision 39 of the Phase 1 Preliminary Plat approval states:

   In the event that topography or right-of-way limitations preclude the construction of Stafford Street improvements in compliance with the provisions of the International Fire Code as modified by the City, the Project Sponsor may submit plans for City review and approval for the construction of a Collector Road from Summit View to Montgomery Street.

   Yet, the Phase 2 Phasing Plan submitted with the Phase 2 application states:

   Montgomery Ave will be extended to Phase 2 to provide secondary emergency-use only access. Per Condition 39 of the Decision and Conditions of Approval and Settlement of Applicant's Appeal of Phase 1 Preliminary Plat, in any case the Montgomery connection may be constructed in phases provided that the final road complies with the standards in the City Heights Development Agreement including provisions of the International Fire Code as modified by the City and until the later of October 31, 2022 or the 70th certificate of occupancy issued for City Heights the road surface may be gravel surfacing capable of supporting fire apparatus vehicles.

   However, no documentation was provided with the Phase 2 application to substantiate that topography or right-of-way limitations preclude the construction of Stafford Street improvements or that the proposed design of the Montgomery Avenue extension complies with the standards in the Development Agreement or the requirements of the International Fire Code. In addition, there are no provisions in the Development Agreement that authorize the construction of roads that do not meet the required standards. Additionally, if Montgomery Avenue is an emergency-use access only, a permanent secondary access must be identified and included in the plans consistent with CEMC 16.12A.060A12.

   Addressed by prior Corr Cronin correspondence.

8. Another concern is that Section 8.2.1 of the DA requires compliance with, among other things, the IFC. City's comment is, "Neither Stafford Avenue in its existing condition or the proposed Montgomery Interim Access Road comply with the provisions of the International Fire Code."

   Addressed by prior Corr Cronin correspondence.

9. A City comment reads, "In addition, the following was noted during the review of the Phase 2 application materials. The City Heights Phases 2 and 3 Transportation Assessment prepared by Heffron Transportation includes a Phase 3, yet no information has been provided to the City regarding a potential Phase 3, so the impact of including this future development in the assessment cannot be determined. It should also be noted that this report assumes that the Phase 2 development will consist of 65 single family residential lots, but the revised Phase 2 application includes 69 lots.

   The Heffron report provided an analysis for 175 single family residences and an exhibit showing the general location of phases 1, 2 and 3 even though the city did not need information on future phase 3 to process the phase 2 approval. Regardless, the 175 units assumed in the analysis exceeds the number of residences proposed for approved phase 1 and proposed phase 2 making the analysis conservative. As such, the report has not been updated and the analysis in the report is adequate for the city to approve Phase 2. Future updates to the report are anticipated to be provided when phase 3 and/or other future development phases are permitted.

10. Section 2.4 of the Sewald Wetland Consulting report describes the Summit View/Montgomery interim access as crossing Stream E, and concludes that it is the only viable option. The City's response: This statement is incorrect. The approved Master Site Plan identifies three optional routes for this connection. The Sewall letter does not identify or assess these alternative routes and provides no basis for the assertion that the proposed route is the only place to make this access connection.

    Addressed by prior Corr Cronin correspondence.

11. Another comment:

    Sheet 4 is not clearly labeled, but it appears that the boundaries of the Phase 2 development include a portion of Pod B3. This is contrary to the application materials which state that Phase 2 includes Pods B4-B6. In addition, this does not comply with the following provision from the City Heights Development Agreement, Section 7, Phasing:

    "The Ridge Entities may proceed with development of the Property according to whatever phasing or parcel development plan the Ridge Entities deem appropriate, provided that: (a) any phase of development includes a complete Development Pod."

This non-compliance is not noted in the Development Standards Compliance document submitted with the Phase 2 application.

Sheet 4 identifies an abandoned BN Railroad line. This is misleading, as this is the Coal Mines Trail which is an important community asset and extremely relevant to the review of the Phase 2 application.

Addressed by prior Corr Cronin correspondence. The reference to abandoned railroad line has been removed from the updated materials.

12. Another comment:
    Sheet 4 and other sheets depict the corridor for a proposed Interim Access Road to connect Phase 2 with Montgomery Avenue. The City Heights Development Agreement Appendix I, includes the following:
    2.2 Collector Roads. . . .

    There are no provisions in the Development Agreement for interim roads and this proposed road does not comply with the standards for a Collector Road. In addition, the proposed alignment does not comply with the road corridors depicted on the approved City Heights Master Site Plan. [Note to Steve/Emily – the draft goes on to acknowledge that an Applicant Election may resolve this issue, but also notes that the Application does not include any such elections.]

    Addressed by prior Corr Cronin correspondence.

Other Comments Received from City:

1. The proposed zone 3 connection as shown at SR 903 traverses through the existing (and built out) Cle Elum Pines West (CEPW) subdivision. CEPW houses the zone 2 water main. Permitting the zone 3 water main in a different pressure zone and through a built out neighborhood is not an option.

   The preferred location of the Zone 3 watermain extension has been updated to depict the water main situated in the 30' utility easement on the adjacent property as discussed during a call with city staff. The P2-PS&E plans have been updated accordingly.

Applicant proposed changes:

In addition to items referenced above, the applicant has made adjustments to other project elements as noted below. The list is intended to keep the city up to date on the design which the city may find helpful when completing the review and approval process for Phase 2.

- Phase 2 lot lines: Lot widths have been adjusted in some areas to respond to market demands.
- Phase 2 Future Amenity Area is now a future development tract. This is in response to a market analysis indicating the amenity area would be better suited in the Central area of the site. The future development tract will likely contain some amount of open space and likely 8 to 12 residences. Future analysis of this area will be provided when the tract is proposed to be developed. Recall Corr Cronin provided input in the attached correspondence addressing phasing / pod development concerns previously raised by the city.
- Summit View Drive: The portion of Summit View from Road B to Road G has been revised and is proposed to be improved from Phase 1 to Road G. The alignment from Road B to Road G changed slightly as did the alignment of the utilities in this area. Updated plans for the portion located within Phase 1, along with any other elements of Phase 1 that may have been adjusted, will be provided at a later date as part of revision to the approved Phase 1 plans.
- The preliminary drainage report was updated to be consistent with the changes.
- Updated information form Sewall Consulting has been updated to reflect the changes (as mentioned above and in the SEPA checklist)

We trust the revised materials address the city's concerns and look forward to getting this project under way. Please call or email me with any questions or comments that you may have at 425-250-7247or bpudists@thebluelinegroup.com.

Sincerely,

Brett Pudists, PE
Principal

CC: Barbara Rodgers

Attachments:
1/24/22 Letter from Corr Cronin to Kenyon Disend titled "City Heights Response to City Comments Concerning City Heights Phase 2 Preliminary Plat Implementing Approval Application"

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January 24, 2022

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Re: City Heights Response to City Comments Concerning Phase 2 Preliminary Plat Implementing Approval Application

Dear Mike:

Thank you for providing the City's Comments on the Phase 2 Preliminary Plat Implementing Approval Application by email dated January 13, 2022. Below, we have set out each of the City's comments, followed by City Heights' response in red. We look forward to discussing these issues with you to resolve any of the City's concerns and obtain the City's approval of the Phase 2 Preliminary Plat Implementing Approval application.

City Comments and City Heights Responses

1. Part A Question 12 on the SEPA Checklist. In response to CH's answer to this question, the City notes: While the SEPA Checklist asks for precise information regarding the location of the proposed project, one of the parcels identified as the site of the water main extension (923835) is owned by the City and is a part of the City Cemetery, which is not located anywhere near the location of the water main extension as depicted on the Civil Drawings. In addition, parcel 083825 does not appear on the County Assessor's website and is not depicted in the Civil Drawings.

In addition, the parcels identified for the Montgomery Interim Access Road, includes parcel 956767, which in fact is not associated with parcel 956736, nor is it owned by the Project Sponsor. It is in Downtown Cle Elum and is nowhere near the Interim Access Road as depicted on the Civil Drawings. It should also be noted that the Civil Drawings indicates that the corridor for this road improvement includes properties not owned by the Project Sponsor and that are located outside of the City limits. These parcels are not identified in the SEPA Checklist or in the Civil Drawings nor is there any reference to proposed construction activities outside of the City's jurisdiction.

City Heights Response: The identification of typos in parcel numbers is something that should have been raised by the City during the 7 months since the City determined that the Phase 2 Preliminary Plat application was complete. This is an issue easily remedied and not a basis for denying the Phase 2 Preliminary Plat application. The correct parcel numbers are: 943835 and 083835 respectively.

With respect to the Montgomery Interim Access Road, the applicant has an easement across the Hunter parcel (Parcel #283134) and Lancaster parcel (Parcel # 659136). The easement is depicted on the Preliminary Site and Engineering Plans, and the portion of the road across the two parcels mimics "Option B" of the Montgomery Connection depicted on the Approved Master Site Plan. To the extent any permits are needed from Kittitas County for construction of the portion of the road across the two parcels, it will be obtained by the applicant. Indeed, all of this information is set out expressly in the Development Agreement, Appendix I Section 2.2: "a right of way of thirty (30) feet has been permitted along the roughly two hundred (200) foot stretch of Montgomery Avenue coincident with the portion of the Collector Road located outside of City limits (immediately north of Fourth Avenue), and no additional easement shall be required for that area. This section does not lie within the City limits, and is subject to regulation by Kittitas County." The comments raised by the City are not a basis for denying the Phase 2 Preliminary Plat application.

2. Part B Question 3a. on the SEPA Checklist. **In response to CH's answer to this question, the City notes: These responses are inaccurate and misleading. The Civil Drawings indicate that the that the construction of the new Montgomery Interim Access Road would include a new stream crossing and wetland impacts. This is not addressed in the SEPA Checklist or the City Heights EIS.**

City Heights Response: The Stream (Stream E) is listed in SEPA B.3.a.1 and in SEPA B.3.a.2. The description is that interim access will be installed OVER the stream. On sheet MC-04 of the Preliminary Site Plan and Engineering Plans, there are notes indicating the road will span the creek with no impacts, notes quantifying buffer impacts and notes directing the reader to report by Sewall Consulting (which further describes in detail the anticipated activity at Stream E and how it is being minimized and addressed consistent with applicable regulations). There is no mention of a wetlands impact associated with the interim access road because there are no wetlands impacts.

In addition, there is a floodplain associated with Crystal Creek that is not identified.

City Heights Response: The comment -- that there is a floodplain not identified -- is something that should have been raised by the City during the 7 months since the City determined that the Phase 2 Preliminary Plat application was complete. Applicant will identify the floodplain associated with Crystal Creek and add it to the revised project materials. This is an issue easily remedied and not a basis for denying the Phase 2 Preliminary Plat application.

Also, there is no mention or depiction of the stream that was filled/destroyed during Phase 1 in violation of the Washington State Water Pollution Control Act and the Washington State Forest Practices Act and that is in the immediate vicinity of Phase 2.

City Heights Response: While applicant continues to dispute that the notice of violation was appropriate or correct (as the City is well-aware), applicant has already agreed to restoration of the area at issue as part of Phase 1. No part of the area to be restored is contained in Phase 2. This is not a basis for denying the Phase 2 Preliminary Plat application.

The proposed water main alignment actually crosses under two streams, not one, and is shown to be bored casings without impact. However, there are no boring launching/receiving pits shown on the plans, and with the steep topography in the immediate installation vicinities, the launching/receiving pits would be substantial in size, with major impacts on critical areas, buffers, and potential impacts to streams.

City Heights Response: The comments -- that one stream is not identified and the dimensions of the boring pit is not included -- are items that should have been raised by the City during the 7 months since the City determined that the Phase 2 Preliminary Plat application was complete. The applicant is considering boring, which adds considerable cost to the project, because it avoids impacts to the critical areas itself. The applicant will depict the size of the sending and receiving pits on the revised project materials to provide the City with additional information regarding the buffer impacts, which are temporary and which are expressly allowed and subject to restoration. This is an issue easily remedied and not a basis for denying the Phase 2 Preliminary Plat application.

3. Part B Questions 4b. and 5b. on the SEPA Checklist. In response to CH's answer to this question, the City notes: This is not a complete or accurate answer. The proposed route for the Montgomery Interim Access Road passes through Parcel #19165. This parcel is subject to a Landowner Option Plan for the Northern Spotted Owl executed in 1992 by the landowner and the Washington State Department of Natural Resources and is recorded on the Title. The Northern Spotted Owl is a Threatened Species, and this plan must be addressed.

City Heights Response: The Landowner Option Plan at issue for this parcel was executed in 2005. The only condition in the 2005 Landowner Option Plan is a prohibition on commercially harvesting timber. This requirement is not based on the presence of Northern Spotted Owl known to be on or near the site, and Northern Spotted Owl had not been found for 10 years prior to the 2005 Landowner Option Plan. Rather, to the extent there are any, the Northern Spotted Owl are miles away from the property. But more importantly, there are no Northern Spotted Owl conditions under the DA or under SEPA for this property. If the Landowner Option Plan were relevant, it would have been mentioned in the habitat management section of the EIS; it was not. There is no basis for the City to raise this issue, and it is not a basis for denying the Phase 2 Preliminary Plat application.

It should also be noted that the approved Master Site Plan (City Heights Development Agreement Exhibit 3) identifies three potential access routes to connect western portions of the City Heights Planned Mixed Use Development to Montgomery Avenue, one of the four required primary points of access. However, the SEPA Checklist does not address the impacts associated with each of these potential routes and no reference is provided that documents such an assessment of these alternatives has been identified was made in the City Heights EIS. Furthermore, no analysis or documentation was provided to support the route that was selected (Option B). This route involves property not owned by City Heights that is located outside of the City limits. In contrast, Optional Route C only appears to involve property owned by City Heights within the City limits, and no explanation is provided as to why this option was not selected.

City Heights Response: The SEPA Checklist does not require applicant to provide an analysis for its choice of one option (Option B) or impacts associated with other potential routes, which were already evaluated as part of the EIS and identified as options available to the applicant on the Master Site Plan. While Option B does involve other properties, applicant's access rights to those properties pre-date the EIS, Development Agreement and Master Site Plan. The applicant is not required to explain why other options identified in the Master Site Plan were not selected. Because such an analysis is not required, the lack of such an analysis it is not a basis for denying the Phase 2 Preliminary Plat application.

With respect to the plat application (as opposed to SEPA checklist), the City notes:

4. The Preliminary Plat Map included in the Phase 2 Drawings is not consistent with the Phase 2 road improvements in the Civil Drawings that were submitted.

City Heights Response: Please provide an excerpt or example of the inconsistency you have identified, so that the applicant can address the concern raised. Without additional information identified by the City, applicant is not able to provide a response.

In addition, the Phase 2 Civil Drawings do not depict the Phase 1 improvements to the Stafford Avenue corridor negotiated by the Project Sponsor.

City Heights Response: The phasing narrative for the Phase 2 buildout notes that it ties to infrastructure permitted with Phase 1. There is no requirement that Phase 2 preliminary engineering drawings need to depict offsite improvements to the Stafford Corridor that were a part of the Phase 1 approval, and which are still subject to discussion as part of the Phase 1 Civil Engineering Approval. Moreover, the City is responsible for the design and construction of Phase 1 improvements to Stafford Street. The City had not designed the Phase 1 improvements to Stafford Street at the time the applicant submitted its Phase 2 Preliminary Plat, and still has not done so. This is not a basis for denying the Phase 2 Preliminary Plat application.

Furthermore, the Phase 2 application does not include improvements to Summit View Drive as required by the Development Agreement. In addition, the Phase 2 application includes provisions for an Interim Access Road to provide secondary access to the Phase 2 development. The

Development Agreement specifically states that all roads, shall comply with the design standards in the Development Agreement.

City Heights Response: The stretch of Summit View Drive between Phase 1 and the north limits of City Heights will not be used a primary access until Development Pod D is constructed. In addition to primary Phase 2 access via Road B, a secondary connection to existing Summit View will be provided via Road K. The Phase 1 Preliminary Plat Settlement Agreement conditions 40.a and 40.b allows applicant to build the Montgomery Connection in phases, and allows the road to be gravel for an interim period, provided that the final road will comply with the standards set forth in the Development Agreement.

5. The application includes this from Blueline, "None of the proposed roads exceed 12% for segments of more than 1,000 feet." The City's response: This statement does not comply with the provision in the Development Agreement highlighted in green above. The International Fire Code limits road grades to 10% and the Cle Elum Municipal Code under which the project is vested limits grades to 11%. The highlighted provision allows grades up to 12% for segments up to 1,000 feet. That is not the same as allowing grades in excess of 12% for distances up to 1,000 feet as stated in the application. This is not a statement of compliance, but rather documentation of non-compliance. The Phase 2 Civil Drawings show a grade in excess of 15% on the Montgomery Interim Access Road which does not comply with the Development Agreement or the International Fire Code. It should also be noted that although the Development Agreement, allows road grades up to 12% for segments less than 1,000 feet, any grade in excess of 11% for any distance may preclude use by emergency vehicles.

City Heights Response: The comment -- that there is a portion of the Montgomery Interim Access Road that has a 15% grade -- is something that should have been raised by the City during the 7 months since the City determined that the Phase 2 Preliminary Plat application was complete. A short run of approximately 200 feet of the interim roadway was inadvertently shown as having a 15% grade. Applicant has already adjusted this short section to 12% grade and will add it to the revised project materials. This is an issue easily remedied and is not a basis for denying the Phase 2 Preliminary Plat application.

Applicant further notes that the Development Agreement provides for road grades of up to 12% for segments less than 1000 feet. Neither the International Fire Code (which allows a City to approve a grades steeper than 10% for fire apparatus access roads) nor the vested Municipal Code supersede this standard in the Development Agreement. The Development Agreement expressly recognizes that "due to topographical limitations and the objectives of the PMU Zoning, compliance with the provisions of CEMC 16.12A.060(C) [including road grades] shall not be required in City Heights." Rather the standards set out in Appendix I to the Development Agreement apply. Even if the vested Municipal Code did apply, it expressly provides: "Street grades shall…generally not [be] greater than eleven percent. Short sections of steeper grades are permitted where approved by the city engineer and will not result in hazardous traffic conditions." CEMC 16.12A.060(C)(5). As

such, in adopting the Development Agreement the City necessarily determined that short segments of up to 12% would not preclude use by emergency vehicles.

It is further noted that the proposed water main extension includes the construction of a road from the Phase 2 site that stops just short of SR 903. This road as depicted in the Civil Drawings does not comply with the Road Stands in the City Heights Development Agreement Appendix I.

City Heights Response: This 12-foot gravel access road is intended only for occasional use by City utility maintenance vehicles to the proposed water main. It is not intended to be a public road, and will be closed off to the public by bollards.

6. With respect to the Stafford Street improvements included in the Phase I settlement, the City notes in response to the Phase II application: The Phase 2 application does not refer to these improvements as the basis of the primary access and it needs to be updated to reflect that the City successfully secured the CDBG grant to facilitate the design of these road improvements and to reduce the cost to the Project Sponsor.

City Heights Response: The Phase 2 Preliminary Plat application was submitted to the City months before the Phase 1 settlement and months before the CDBG grant was awarded. As such, that information could not have been reflected in the application nor is there any requirement that the application include such information. To the extent this could be deemed an issue, other than one created by the City's delay in reviewing the application, it is easily remedied and is not a basis for denying the Phase 2 Preliminary Plat application.

7. Additional street concerns are indicated as follows:

It should also be noted that, provision 39 of the Phase 1 Preliminary Plat approval states:

> *In the event that topography or right-of-way limitations preclude the construction of Stafford Street improvements in compliance with the provisions of the International Fire Code as modified by the City, the Project Sponsor may submit plans for City review and approval for the construction of a Collector Road from Summit View to Montgomery Street.*

Yet, the Phase 2 Phasing Plan submitted with the Phase 2 application states:

> *Montgomery Ave will be extended to Phase 2 to provide secondary emergency-use only access. Per Condition 39 of the Decision and Conditions of Approval and Settlement of Applicant's Appeal of Phase 1 Preliminary Plat, in any case the Montgomery connection may be constructed in phases provided that the final road complies with the standards in the City Heights Development Agreement including provisions of the International Fire Code as modified by the City and until the later of October 31, 2022 or the 70th certificate of occupancy issued for City Heights the road surface may be gravel surfacing capable of supporting fire apparatus vehicles.*

However, no documentation was provided with the Phase 2 application to substantiate that topography or right-of-way limitations preclude the construction of Stafford Street improvements or that the proposed design of the Montgomery Avenue extension complies with the standards in the Development Agreement or the requirements of the International Fire Code. In addition, there

are no provisions in the Development Agreement that authorize the construction of roads that do not meet the required standards. Additionally, if Montgomery Avenue is an emergency-use access only, a permanent secondary access must be identified and included in the plans consistent with CEMC 16.12A.060A12.

City Heights Response: The July 2021 Phase 1 Preliminary Plat Settlement Agreement conditions 40.a and 40.b allow the applicant to build the Montgomery Connection in phases, and allows the road to be gravel for an interim period, provided that the final road will comply with the standards set forth in the Development Agreement. The final road, which will comply with the standards set forth in the Development Agreement, will be constructed in conjunction with Development Pod D. The Phase 2 application should have referenced Condition 40, not Condition 39. Condition 40 expressly allows the construction of the interim gravel road until the 70th certificate of occupancy or October 31, 2022, whichever is later. As such, given the City's approval of the July 2021 Phase 1 Preliminary Plat Settlement Agreement, the reference to the standards in the Development Agreement or International Fire Code are inapplicable for this interim road. Moreover, Appendix B (Subdivisions (Title 16) paragraph 3) of the Development Agreement expressly provides that City Heights is not subject to the standards set forth in CEMC 16.12A.060(A)(12) (Secondary Access). In addition, the Development Agreement expressly recognizes that "due to topographical limitations and the objectives of the PMU Zoning, compliance with the provisions of CEMC 16.12A.060(C) shall not be required in City Heights." Rather the standards set out in Appendix I to the Development Agreement apply. The City's comments are not a basis for denying the Phase 2 Preliminary Plat application.

8. **Another concern is that Section 8.2.1 of the DA requires compliance with, among other things, the IFC. City's comment is, "Neither Stafford Avenue in its existing condition or the proposed Montgomery Interim Access Road comply with the provisions of the International Fire Code."**

City Heights Response: This comment fails to identify the basis on which the City contends that "Stafford Avenue in its existing condition or the proposed Montgomery Interim Access Road" do not comply with the International Fire Code. The City is designing and constructing the Stafford improvements pursuant to Condition 37 of the July 2021 Phase 1 Preliminary Plat settlement. Condition 40 expressly allows the construction of the interim gravel road until the 70th certificate of occupancy or October 31, 2022, whichever is later. To the extent that the International Fire Code is applicable pursuant to Section 8.2.1 of the Development Agreement, it expressly allows for the City's approval to change the Fire Code's provisions. As such, given the City's approval of the July 2021 Phase 1 Preliminary Plat Settlement Agreement, the reference to the standards in International Fire Code are inapplicable for the Montgomery Interim Access Road. To the extent that the City is repeating its comments above relating to a short 200 foot section of the Montgomery Interim Access Road that was inadvertently shown at a 15% grade, this is an issue easily remedied and is not a basis for denying the Phase 2 Preliminary Plat application. Applicant has already adjusted this short section to 12% grade and will add it to the revised project materials.

9. A City comment reads, "In addition, the following was noted during the review of the Phase 2 application materials.

The City Heights Phases 2 and 3 Transportation Assessment prepared by Heffron Transportation includes a Phase 3, yet no information has been provided to the City regarding a potential Phase 3, so the impact of including this future development in the assessment cannot be determined. It should also be noted that this report assumes that the Phase 2 development will consist of 65 single family residential lots, but the revised Phase 2 application includes 69 lots.

City Heights Response: The Heffron report provided references to Phase 3, but the City does not need that information to evaluate whether the Phase 2 Preliminary Plat application should be approved. The City is evaluating only Phase 2. In addition, while Heffron assumed Phase 2 would consist of 65 single family residential lots, the overall number of lots in Phase 1 & Phase 2 is less than Heffron's assumptions. As the City is aware, there was a loss of 7 lots in Phase 1 due to the City's requirements. The addition of 4 lots to Phase 2 in the Phase 2 application means that there is still a shortfall of 3 lots over what was assumed in the Heffron report. As such, the overall effect is fewer lots and trip counts. This is not a basis for denying the Phase 2 Preliminary Plat.

10. Section 2.4 of the Sewald Wetland Consulting report describes the Summit View/Montgomery interim access as crossing Stream E, and concludes that it is the only viable option. The City's response: This statement is incorrect. The approved Master Site Plan identifies three optional routes for this connection. The Sewall letter does not identify or assess these alternative routes and provides no basis for the assertion that the proposed route is the only place to make this access connection.

City Heights Response: This is a repeat of the City's comment in paragraph 3 above. As stated above, the SEPA Checklist does not require applicant to provide an analysis for its choice of one option (Option B) or impacts associated with other potential routes, which were already evaluated as part of the EIS and identified as options available to the applicant on the Master Site Plan. On sheet MC-04 of the Preliminary Site Plan and Engineering Plans, there are notes indicating the road will span the creek with no impacts, notes quantifying buffer impacts and notes directing the reader to report by Sewall Consulting (which further describes in detail the anticipated activity at Stream E and how it is being minimized and addressed consistent with applicable regulations). The applicant is not required to explain why other options identified in the Master Site Plan were not selected. Because such an analysis is not required, the lack of such an analysis it is not a basis for denying the Phase 2 Preliminary Plat application.

11. Another comment:
Sheet 4 is not clearly labeled, but it appears that the boundaries of the Phase 2 development include a portion of Pod B3. This is contrary to the application materials which state that Phase 2 includes Pods B4-B6. In addition, this does not comply with the following provision from the City Heights Development Agreement, Section 7, Phasing:

"The Ridge Entities may proceed with development of the Property according to whatever phasing or parcel development plan the Ridge Entities deem appropriate, provided that: (a) any phase of development includes a complete Development Pod."

This non-compliance is not noted in the Development Standards Compliance document submitted with the Phase 2 application.

City Heights Response: The Master Site Plan roughly delineates the locations of Development Pods. It is not, however, a document based on a survey and the Development Pods are not staked. Determining the precise boundary between Development Pods shown on the Master Site Plan is not possible. Nor is a Master Site Plan intended to be implemented at that level of precision. Rather, the intent of a Master Site Plan is to allow for flexibility while providing the City with assurances that EIS identified critical areas will be protected, usable open space will be provided, maximum densities and general design elements are established over the course of a large and lengthy development. The City clearly understands the intent and flexibility of the Master Site Plan given the City's changes to Park #2, which is depicted adjacent to Development Pods B4 and B3 on the Master Site Plan, but which is not going to be built.

The Development Agreement recognizes this intent in the Implementing Approval application process in Appendix Q, which provides that the City reviews an Implementing Approval application to determine if it is "materially consistent with the Master Site Plan." To the extent there is any argument that the applicant has submitted the Phase 2 Preliminary Plat in a way that exceeds the phasing requirements of the DA – and there is not – the materially consistent standard applies and is easily met. At the very most, a portion of a road and a small portion of the lots for a few homes could be deemed to include a small portion of Development Pod B3. There are no increases to density, no change in critical areas or useable open space. In sum, the Phase 2 Preliminary Plat application is materially consistent with the Master Site Plan.

Moreover, the Development Agreement requires that "any phase of development includes a complete Development Pod." Where a complete Development Pod is included in a phase (which is unquestionably true here), however, there is no prohibition against additional small areas being included in a phase. If that were the intent of the phasing provision, then the Development Agreement would say any phase of development must only include one or more complete Development Pods, which it does not say.

The City's comments are not a basis for denying the Phase 2 Preliminary Plat application.

Sheet 4 identifies an abandoned BN Railroad line. This is misleading, as this is the Coal Mines Trail which is an important community asset and extremely relevant to the review of the Phase 2 application.

City Heights Response: The comment appears to be referencing offsite features – outside of the Phase 2 Preliminary Plat – which were derived from the City's or County's GIS layers. If the City's

or County's GIS layers are incorrect in identifying features that are outside of the Phase 2 Preliminary Plat area, that is not the applicant's error nor is it misleading. This is not a basis for denying the Phase 2 Preliminary Plat application.

12. Another comment:
Sheet 4 and other sheets depict the corridor for a proposed Interim Access Road to connect Phase 2 with Montgomery Avenue. The City Heights Development Agreement Appendix I, includes the following: 2.2 Collector Roads. . . .

There are no provisions in the Development Agreement for interim roads and this proposed road does not comply with the standards for a Collector Road. In addition, the proposed alignment does not comply with the road corridors depicted on the approved City Heights Master Site Plan. [Note to Steve/Emily – the draft goes on to acknowledge that an Applicant Election may resolve this issue, but also notes that the Application does not include any such elections.]

City Heights Response: As noted above, the Master Site Plan is not a document based on a survey. The exact location of a road from Summit View to Montgomery is not strictly prescribed by the Development Agreement. The proposed alignment is very similar to the alignment for this road shown on the Master Site Plan. Moreover, as described in detail above, in the July 2021 Phase 1 Preliminary Plat settlement Condition 40, the City approved the Interim Access Road to be built in phases and for the surface to be gravel. The Development Agreement's standards for a Collector Road will apply when the Interim Access Road is permanently constructed as part of Development Pod D. In light of the Phase 1 Preliminary Plat Settlement, the Phase 2 Preliminary Plat application is not materially inconsistent with the Master Site Plan, or Development Agreement. Nor is any Applicant Election required.

Sincerely,

CORR CRONIN LLP

/s/ Emily Harris

Emily Harris

cc: Steve Fogg
City Heights