

**City of Cle Elum, Washington
City Heights Planned Mixed Use Development
Phase 2 Preliminary Plat Application
Compliance Determination and Consistency Review
May 3, 2022**

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II. Introduction

A. Phase 2 Description

In November of 2011, the Cle Elum City Council approved a Master Site Plan, an Annexation and Development Agreement, and a Planned Action Ordinance for City Heights, a planned mixed-use development that includes the development of up to 962 dwelling units on 358 acres in the City of Cle Elum generally located north of Sixth Street. Until recently, no actions have been taken to implement this approved Master Site Plan.

The City has now received the second application to implement the approved Master Site Plan, a proposed subdivision that would create 69 residential lots on approximately 27-acres within City Heights Development in the vicinity of Pods B4, B5, and B6, which are generally located west of Summit View Drive. This Phase 2 application also includes the construction of Collector and Internal Roads, the construction of trails, the installation of water, sewer, and stormwater improvements, the extension of a water main from SR 903 west of the site, and the proposed construction of an Interim Access Road that would connect with Montgomery Avenue to the east of the site.

B. Required Permits and Approvals

The proposed Phase 2 subdivision is subject to preliminary and final plat approval by the City in accordance with the applicable provisions of the City Heights Development Agreement, the City Heights Environmental Impact Statement, and the Cle Elum Municipal Code. In addition, the City must review and approve the Clearing, Grading, and Infrastructure Plans for all Phase 2 infrastructure improvements, such as the construction of roads, the installation of water and sewer mains, and the construction of stormwater management facilities. A City Clearing, Excavation, and Land Filling Permit(s) will be required. In addition, any Phase 2 improvements that are to be constructed outside of the City limits will require environmental review and approval by Kittitas County. In addition, state, and federal permits or approvals may be required for any construction activities such as infrastructure improvements proposed in designated environmentally sensitive areas and their buffers, including streams, wetlands, steep slopes, and landslide hazard areas. Following final plat approval, City building permits must be obtained prior to constructing buildings or structures.

C. Environmental Review

A final environmental impact statement (FEIS) for the proposed City Heights Master Site Plan was issued by the City in 2010. The Cle Elum City Council subsequently approved Ordinance 1353 on November 11, 2011, which designated City Heights as a Planned Action in accordance with the provisions of the Washington State Environmental Policy Act.

In accordance with the provisions of the City Heights Development Agreement Appendix Q, the Phase 2 preliminary plat application shall be reviewed to determine if it is within the scope of the FEIS and Planned Action Ordinance and whether additional environmental review is required or not.

D. Phase 2 Preliminary Plat Application Review Process

Originally, the City intended to review preliminary subdivision applications under the Development Agreement as a Type IV application in accordance with the provisions of CEMC 17.45.110 and CEMC 17.100, as modified by the Appendix Q to the City Heights Development Agreement. This would include the distribution of a written Notice of Application and an opportunity for the public and public agencies to submit written comments. The City Development Review Team would then evaluate preliminary subdivision applications for consistency with the City Heights EIS, the City Heights Development Agreement including the vested development standards, and the conditions of Master Site Plan approval. Upon completion of this consistency review, the City was planning on issuing a written Determination of Consistency and scheduling a public hearing to be conducted by the City Planning Commission. A staff report that includes the consistency determination and recommended conditions of approval, if applicable, would have been made available for public review at least 14 days prior to this hearing. Upon completion of the public hearing, the Planning Commission would have made a recommendation to the City Council on the preliminary subdivision application. The City Council would then have reviewed the recommendation from the Planning Commission, along with the record that was developed during the review process and acted on the preliminary plat application.

The Applicant, however, asserted that the original City Council approval of the Master Site Plan and Development Agreement eliminated the need for a public hearing on implementing approvals such as the Phase 2 preliminary plat application, and that the preliminary plat application was only subject to administrative review and approval as a Type 2 permit under City code. The City and the Applicant were unable to resolve this disagreement regarding the interpretation of the Development Agreement and the dispute was referred to an arbitrator for a hearing as required by the Development Agreement. The Arbitrator ruled that preliminary plat applications under the Development Agreement should be processed as Type 2 applications and as a result, no public hearing will be conducted prior to a decision on this or other preliminary plat applications. The Development Agreement does provide for a 15-day period to file an appeal of the Consistency Determination with the City Council.

E. Phase 1 Preliminary Plat Approval

The City has approved a preliminary plat application to implement the first phase of the City Heights Planned Mixed Use Development which includes the creation of 62 residential lots, the establishment of numerous tracts, and the construction of the required infrastructure within

Development Pods B-7 and C. This plat is subject to the provisions of a Settlement Agreement negotiated by the parties dated July 21, 2021. In addition, the City has issued an updated Clearing, Excavation, and Land Filling Permit effective April 1, 2022. The Project Sponsor has now initiated activities under this permit and is seeking approval from state and federal agencies for construction activities in and near environmentally sensitive areas as well as archaeological/historical resource areas.

III. Phase 2 Application

A. Overview

The Project Sponsor submitted a preliminary plat application to implement Phase 2 of the City Heights Planned Mixed Use Development on May 24, 2021. Then on May 28, 2021, the Project Sponsor filed an appeal of the City's approval of the Phase 1 plat on which the Phase 2 application was based. On June 14, 2021, the City determined that the Phase 2 application was complete, but that it did not contain sufficient information to proceed with processing, and additional information was requested. On August 3, 2021, the Project Sponsor submitted additional information for City review. The Project Sponsor then filed a Claim for Damages against the City asserting that the time that the City had spent allowing the Project Sponsor to review and comment on the draft Phase 1 Consistency Determination and approval of the Phase 1 preliminary plat application resulted in unreasonable delays in the implementation of the project. The City has now also approved the Phase 1 Clearing, Grading, and Infrastructure Plans, and is proceeding with the review of the Phase 2 preliminary plat application with the understanding that until Phase 1 has final plat approval, that the Phase 2 preliminary plat application may need to be further revised in order to be consistent with the Phase 1 approvals.

On or about January 11, 2022, the City responding to a request from City Heights, provided the Project Sponsor with a draft of the Phase 2 Compliance Determination and Consistency Review. The Project Sponsor asked the City not to issue this decision and requested an opportunity to address the numerous instances in which the City had determined the Phase 2 preliminary plat application to be inconsistent with the Development Agreement and approved Master Site Plan. Following discussions between the parties, the Project Sponsor submitted an updated Phase 2 application on March 11, 2022. On March 14, 2022, the Project Sponsor applied for a Clearing and Grading Permit to implement the Phase 2 preliminary plat application that was submitted just one business day before. The Clearing and Grade Permit application contains materials that are not consistent with the application materials submitted with the Phase 2 preliminary plat application, and a separate letter noting the revisions that must be made to these clearing and grading plans will be provided to the Project Sponsor.

B. Phase 2 Preliminary Plat Application Materials

The complete Phase 2 Preliminary Plat Application as updated, includes the following documents:

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1. City Heights Phase 2 Subdivision Application dated July 30, 2021.
2. City Heights Phase 2 Preliminary Plat Map prepared by Encompass Engineering and Surveying dated 03/2022.
3. City Heights Phase 2 Preliminary Site Plan and Engineering prepared by Blueline dated March 11, 2022.
4. City Heights Phase 2 SEPA Checklist revised March 11, 2022.
5. City Heights Phase 2 Phaing (sic) Narrative memo to Gregg Dohrn from Blueline dated July 30, 2021.
6. City Heights Phase 2 Draft Consistency Review Checklist authorship unknown dated July 13, 2021.
7. City Heights Development Standards Compliance authorship unknown and undated saved on August 3, 2021.
8. City Heights Phase 2 Preliminary Plat - Response to City Comments memo to Mike Kenyon, City of Cle Elum Assistant City Attorney, prepared by Blueline dated March 11, 2022.
9. City Heights Phase 2 Preliminary Storm Drainage Report prepared by Blueline dated March 11, 2022.
10. City Heights Geotechnical Report prepared by Terra Associates dated June 9, 2020.
11. City Heights Phase 2 and Phase 3 Traffic Assessment prepared by Heffron Transportation dated May 21, 2021.
12. City Heights Phase 2 Plat and Interim Montgomery Road Access Impact Analysis prepared by Sewall Wetland Consulting dated March 8, 2022.
13. City Heights Zone 3 Water Main Extension Impact Analysis prepared by Sewall Wetland Consulting dated March 11, 2022.
14. City Heights Wetlands and Wildlife Report Addendum prepared by Sewall Wetland Consulting dated November 3, 2010.

C. Phase 2 Preliminary Plat Notice of Application

On April 7, 2022, the City issued a Notice of Application for the Phase 2 preliminary plat application. This action is consistent with the City's processing of the Phase 1 preliminary plat application, the City Heights Development Agreement, the provisions of CEMC 17.100 under which this project is vested, and RCW 36.70B. This Notice of Application is the only opportunity for the public and agencies with jurisdiction to comment on the proposed Phase 2 preliminary plat and the deadline for submitting comments was set for April 22, 2022. Please note that these comments were not reviewed by the City prior to making this consistency determination. A copy of these letters will be provided to the Project Sponsor and have been incorporated by this reference (See Exhibit FF).

IV. SEPA Compliance Determination

A. Introduction

The City Heights Development Agreement Appendix Q, as interpreted through a binding arbitration order, addresses both the process for determining if the Phase 2 preliminary plat application is consistent with the Washington State Environmental Policy Act (SEPA) and the City Heights Planned Action Ordinance, as well as the process for determining if the Phase 2 preliminary plat application complies with the City Heights Development Agreement and the provisions of the Cle Elum Municipal Code under which the project is vested.

Step One in the review for compliance with SEPA requires that the City determine if the Phase 2 application materials are consistent with criteria for a planned action and within the scope of the City Heights EIS and Planned Action Ordinance. If it is, then the existing City Heights EIS shall be utilized, and no further SEPA threshold determination is required. If the Phase 2 application is determined to exceed the Planned Action, then the City shall prepare a threshold determination, taking into account the existing City Heights EIS and the governing development standards applicable to the City Heights Project. The City may request additional information and studies and shall issue a Determination of Non-Significance (DNS), a Mitigated Determination of Non-Significance (MDNS), or if certain conditions persist a Determination of Significance which shall require the preparation of a supplement to the City Heights EIS.

A memo with City comments on the SEPA Checklist can be found in the Phase 2 Preliminary Plat file. The City provides the following additional comments that may be useful for Final Plat approval or for submitting future phases.

B. City Heights Phase 2 Plat and Interim Montgomery Access Impacts Analysis

The Applicant included in the Phase 2 preliminary plat application a report titled “City Heights Phase 2 Plat and Interim Montgomery Access Impacts Analysis” prepared by Sewall Wetland Consulting, Inc. dated March 8, 2022. This report includes numerous provisions that are not substantiated and/or are not consistent with other application materials. This includes, but is not limited to the following:

This report is a description of the critical areas as well as proposed impacts associated with the City Heights Phase 2 Plat as well as the Montgomery Interim Access as detailed on the BlueLine (sic) City Heights sheets CA-01 & CA-03 (see attached). (emphasis added)

City Comment: A copy of these drawings were not attached to the Sewell report. This report was dated prior to the date on the Preliminary Site Plan and Engineering Drawings that were submitted on March 11, 2022, so it is not clear if the report is referring to the sheets that were submitted with the updated Phase 2 Preliminary Plat application or another version. We will need to review a copy of the referenced drawings and/or confirm that the Sewall Report is consistent with the other application materials.

2.4 Summit View/Montgomery Interim Access

As depicted on Sheet CA-03, Summit View Road will connect to North Montgomery Avenue. This will require crossing Stream E, a Type 4 stream (now considered a Type N water). This stream is a small (12” wide) intermittent stream that only carries snow melt in the early spring and is dry the remainder of the year. The stream currently passes through a (sic) 18” culvert in the area of the proposed road crossing. The culvert goes under an old roadbed that is generally abandoned. The proposal is to place a larger 48” arch pipe culvert over the old culvert in the same length. There will be no stream impacts from this work. This culvert will be placed to insure in the future that the stream will flow through this area with adequate room, if the existing 18” culvert were to fail. There is no place else to make this access connection and avoid the stream due to the steep topography in this area. Although there is no work in the stream itself, the proposed roadbed will pass over the existing abandoned roadbed, and disturb 1,669sf of existing vegetated buffer. This is proposed to be averaged by adding 1,913sf of buffer to the western buffer along the stream upslope of the crossing. (emphasis added)

City Comment: The highlighted reference above to the stream passing through the culvert “in the area of the road crossing” is not consistent with Sheet CA-03 of the Preliminary Site Plan and Engineering which shows the proposed road passing over the existing 18” culvert.

City Comment: On Sheet CA-03 there is a note indicating that the size of the 48” culvert was based on guidance provided by Sewall Wetland Consultants. However, there is no analysis of this in the Sewall report, just a statement that the arch pipe culvert will be 48”. City Comment: Reference is made to the potential of the existing 18” culvert failing, but no analysis or explanation of this statement has been provided.

City Comment: The Sewall report describes the existing roadbed as both “generally abandoned” and “abandoned”, but no explanation is provided as to how these terms may differ or how they could both be applicable.

C. City Heights Zone 3 Water Main Extension Impact Analysis

The Applicant included in the Phase 2 preliminary plat application a report titled “*City Heights Zone 3 Water Main Extension Impact Analysis*” prepared by Sewall Wetland Consulting, Inc. dated March 11, 2022. This report includes numerous provisions that are not substantiated and/or are not consistent with other application materials. The City provides the following comments that may be useful for final plat approval or future phases. These comments include, but are not limited to the following:

This report is a description of the critical areas as well as proposed impacts associated with the Zone 3 Water Main Extension of City Heights project, as detailed on the BlueLine (sic) City Heights sheet CA-02 (see attached).

City Comment: A copy of Sheet CA-02 was not provided with the report, so it is not clear if the report is referring to the sheets that were submitted with the updated Phase 2 Preliminary Plat application or another version. The City will need to review a copy of the referenced drawings and/or confirm that the Sewall Report is consistent with the other application materials.

2.1 Crystal Creek Crossing (Sheet CA-02)

The proposed water main extension to the City Heights Phase 2 project is required to cross Crystal Creek, a Type 3 stream under the vested Code with an associated 50’ buffer. Under current Code the stream would be considered a Type F water as a result of known fish use. An associated Category III wetland known as Wetland G is located along the edges of the stream and is found immediately west of the proposed crossing. (emphasis added)

City Comment: The assertion that the water main extension is required to cross Crystal Creek is not explained or supported.

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City Comment: There is no direct reference to Wetland G on Sheet CA-02 of the Preliminary Site Plan and Engineering sheets dated March 11, 2022.

The water main extension will come from the south from SR903 in the area of the existing power line crossing and along the eastern edge of an existing 30' public utility easement. An existing gravel road used by offroad vehicles etc. passes through the creek in this area. Creek bed disturbance is high in this area due to the passage of vehicles through the actual stream bed. The area is heavily disturbed with the creek banks consisting of old coal mine tailings and debris. (emphasis added)

City Comment: No analysis is provided as to whether the proposed installation of the water main will result in increased or decreased disturbance of the creek bed by offroad vehicles, and the like. The report also does not identify proposed measures to avoid, minimize, and/or mitigate any potential adverse impacts associated with increased use.

City Comment: The report does not address whether the proposed method of installation will present adverse impacts associated with the presence of old coal mine tailings and debris. If so, an updated report will be required to identify measures proposed to avoid, minimize, and/or mitigate any potential adverse impacts.

The project will be to extend a water line from the maintenance road through the Crystal Creek stream bed. The line will be trenched through the stream bed ideally when the creek bed is dry. However, although this creek will go dry it is not always dry in the summer, so the crossing would occur in the low flow time of year and as conditioned by the HPA for the crossing. If water is present, this would entail a temporary diversion of the water from the creek around the 215sf of stream bed/wetland impact. The line would also temporarily impact 2,292sf of stream buffer. There would also be a permanent impact to the stream buffer of 611sf, which is proposed to be mitigated using buffer averaging with an equal area of buffer added just east of the proposed impact area. (emphasis added)

City Comment: The report does not identify the impacts and the proposed restoration and mitigation associated with the open trenching of the creek. Also, it does not identify what additional measures are proposed if the trenching occurs and if water is present, or how impacts associated with the stream diversion will be mitigated.

City Comment: No explanation is provided as to how the proposed replacement of buffers permanently impacted by an equal area meets the mitigation and restoration standards cited.

The boring of the creek is not possible due to the slopes and topography of the creek, an open trench is the only viable option. Impacts to critical areas are addressed in Cle Elum Municipal Code chapter 18.01.070:

City Comment: The report does not identify the alternative routes assessed for the water main extension and the basis of the conclusion that an open trench is the only viable conclusion.

City Comment: The report does not explain how the proposed water main extension complies with the provisions of CEMC 18.01.070. For instance, CEMC 18.01.070(E)(6) provides that: “Modification of stream channels shall be avoided.” (emphasis added)

The following general performance standards shall apply to activities permitted within critical areas or critical area buffers. Additional standards may be necessary based on site specific considerations or proposed development impacts.

City Comment: No explanation has been provided as to how and when a determination will be made if additional standards are necessary.

A. General Performance Standards.

- 1. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan based off of Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication #06-06-011a, March 2006, or as amended) and Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006, or as amended).*

Response: Any temporary disturbance of critical areas will be mitigated in an as-built Restoration Plan if needed.

City Comment: No explanation has been provided as to how the 1:1 replacement of a buffer without enhancement complies with these standards.

City Comment: There are no provisions in the City Heights Development Agreement or in the Cle Elum Municipal Code under which the City Heights project is vested for an “as-built Restoration Plan” and no explanation has been provided.

- 2. Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:*
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;*

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Response: Avoiding this impact is not possible and still be able to provide water to the project.

City Comment: No analysis or basis for this conclusion has been provided.

- b. *Minimizing impacts by limiting the degree or magnitude of the actions and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;*

Response: Minimizing the impacts has been accomplished by using the narrowest disturbance path for the water line to be trenched through the creek. This will be done in the dry season when flows are at their lowest or ideally, when the streambed is dry. Temporary impacts to the stream channel consist of 215sf of stream bed, as well as 2,292sf of stream buffer. All of these areas will be returned to natural grade and restored with native vegetation to include ponderosa pine, serviceberry, snowberry and nootka rose. Most of this area has little if any vegetation at this time. The creek bed will be restored to its original configuration with a WDFW approved gravel/cobble mix. There will also be some minor buffer averaging associated with the end of the maintenance road of 611sf of stream buffer, to be mitigated with an addition of 615sf of stream buffer next to the impact area.

City Comment: The response does not distinguish between actions that will be taken if the streambed is dry as opposed to when flows are at their lowest. The response does not identify the affirmative steps to be taken to avoid these impacts.

City Comment: The report does not explain how the proposed buffer averaging will adequately mitigate the impacts.

- c. *Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;*

Response: Temporary impacts associated with this crossing will all be restored as described above.

- d. *Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;*

Response: Not Applicable

- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or*

Response: As previously described, the minor permanent buffer impact will be averaged at a 1:1 ratio by adding an equal amount of buffer along the easter (sic) side of the buffer crossing and near the associated impact. (emphasis added)

City Comment: The report does not explain the basis for distinguishing “minor” permanent buffer impacts from other impacts.

City Comment: The report does not explain how the 1:1 replacement of a buffer without enhancement complies with the cited standards.

- f. Monitoring the impact and taking appropriate corrective measures.*

Response: Monitoring of the restoration plantings and stream bed will be provided as required by Code.

City Comment: The report does not identify what monitoring will occur nor does it describe the plans for corrective actions.

2.2 Wetland E Crossing

As shown on Sheet CA-02 of the Blueline City Heights Zone 3 Water Main Extension plan sheet, the maintenance road will extend from the Crystal Creek crossing previously described, north of Wetland G and its associated 50’ buffer and then curving around to cross Wetland E in a narrow portion of the wetland and based upon existing topography.

City Comment: Wetland G and its buffer are not identified on Sheet CA-02 in a manner consistent with the identification of other wetlands so this statement cannot readily be verified.

City Comment: It is not apparent on Sheet CA-02 how or where the maintenance road will pass north of Wetland G and its associated 50’ buffer, so this statement cannot readily be verified.

Wetland E is a Category III wetland that has a 50’ buffer based upon the previously approved Critical Areas Report described on Page 1 of this report.

As with the Crystal Creek crossing, efforts have been made to limit impacts to the wetland and its associated buffer to the greatest extent practicable. Permanent impacts to the

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wetland itself have been eliminated by eliminating the maintenance road across the wetland. Temporary impacts from the proposed construction work to place the waterline will include 327sf of wetland impact. (emphasis added)

City Comment: The report does not identify the efforts made to limit impacts nor the criteria used to determine if measures were practicable or not.

City Comment: The report does not explain how the water line will be maintained if no access is provided nor does it identify the impacts that would occur should access to the water main be required in the future.

Temporary impact to the buffer of Wetland E will include 5,328sf of buffer for the maintenance roads and stormwater outfalls. This will impact 3,110sf of buffer which will be mitigated on a 1:1 ration (sic) through buffer averaging adding 3,417sf of buffer to the wetland buffer on the east.

City Comment: The report does not explain how the addition of a buffer over 100' away from the stream on the side of a hill under powerlines that has already been designated as a no build area without enhancement adequately mitigates the impacts to buffers in immediate proximity to the wetland.

Impacts to critical areas are addressed in Cle Elum Municipal Code chapter 18.01.070:

The following general performance standards shall apply to activities permitted with in critical areas or critical area buffers. Additional standards may be necessary based on site specific considerations or proposed development impacts. (emphasis added)

City Comment: The report does not explain how and when a determination will be made if additional standards are necessary.

A. General Performance Standards.

- 1. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan based off of Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication #06-06-011a, March 2006, or as amended) and Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006, or as amended).*

Response: Any temporary disturbance of critical areas will be mitigated in an as-built Restoration Plan if needed.

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City Comment: The report does not explain how the 1:1 replacement of a buffer without enhancement complies with these standards.

City Comment: There are no provisions in the City Heights Development Agreement or in the Cle Elum Municipal Code under which the City Heights project is vested for an “as-built Restoration Plan” and no explanation has been provided.

2. *Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:*

a. *Avoiding the impact altogether by not taking a certain action or parts of an action;*

Response: Avoiding this impact is not possible and still be able to provide water to the project.

City Comment: No analysis has been provided to support or explain this conclusion.

b. *Minimizing impacts by limiting the degree or magnitude of the actions and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;*

Response: Avoidance of the impact has been accomplished by eliminating the maintenance road crossing and using the narrowest temporary impact footprint through the wetland and its associated buffer.

City Comment: The report does not identify the alternative routes that were evaluated, nor does it explain how the route selected resulted minimized the impacts. The report does not address how eliminating access to the water main results in an avoidance of adverse impacts as opposed to a deferral of these impacts when the water main is owned by the City.

c. *Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;*

Response: The proposed permanent impact of 3,110sf of buffer for the proposed eastern and western road terminus will be mitigated by averaging the buffer adding 3,417sf of buffer along the eastern side of the wetland in the vicinity of each impact.

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City Comment: The report does not explain how the addition of a buffer some distance from the stream under powerlines that are already a no build area without enhancement adequately mitigates the impacts to buffers in immediate proximity to the wetland.

- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;*

Response: Not Applicable

City Comment: The report does not address the impacts that may occur over time when there is no access to the watermain, and repairs are needed.

- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or*

Response: As previously described, buffer impacts will be averaged at a 1:1 ratio by adding an equal amount of buffer along the buffer near the crossing and associated impact.

City Comment: As previously noted, the report does not explain how this complies with cited standards.

- f. Monitoring the impact and taking appropriate corrective measures.*

Response: Since this is just averaging, no monitoring is anticipated. If any temporary impacts require restoration plantings these may require monitoring depending on the amount of impact.

City Comment: City Comment: The report does not explain why no monitoring is anticipated, and why no provisions have been made for corrective actions. Also, no explanation has been provided as to how and when a determination will be made if restoration plantings are required and how it will be determined if the amount of impact requires monitoring.

- 3. All boundaries of critical areas or any associated buffers shall be delineated prior to development activity on site.*

Response: The boundary of Wetland E was confirmed in June of 2020 to be the same as the original 2009 delineation and that edge is shown on Sheet CA-02.

City Comment: As previously noted, a copy of Sheet CA-02 was not attached to the Sewall Report, and as a result, it is not clear if the report is referring to the sheet that was submitted with the most recent version of the Phase 2 application, or a previous iteration. It is also noted that Wetland EE is identified on Sheet CA-02, but no information has been provided as to whether this delineation has changed, or the methodology used to make this determination.

D. City Heights Phase 2 and Phase 3 Traffic Assessment

The Phase 2 Preliminary Plat application includes a Technical Memorandum prepared by Heffron Transportation dated May 20, 2021, that assesses City Heights Phase 2 and 3 Transportation Impacts. It is important to note that this memo addresses a Phase 3 preliminary plat, yet no information has been provided to the City regarding a potential Phase 3 preliminary plat, so the adequacy of this assessment cannot be determined at this time. 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.

In addition, it should also be noted that the Heffron assessment concludes with the following:

It is noted, as listed for Improvement Measure #7 in the attached Table 3; a traffic analysis will be required at the SR 903 / SR 970 intersection when the building permit is issued for the 100th ERU (Equivalent Residential Unit) within City Heights. Phases 2 and 3 would push the total ERUs above this threshold. The traffic analysis would entail performing new traffic counts at the SR 903/SR 907 intersection. However, because the COVID-19 pandemic has closed or limited activities across the state, it is recommended that the updated traffic analysis be deferred until late summer or fall 2021 when it is hoped that more normal travel conditions will resume. The timing of this analysis will be set in consultation with City of Cle Elum staff.

City Comment: The Phase 2 application will exceed this threshold. This analysis was not addressed in the revised Phase 2 application, nor has it subsequently been raised by the Project Sponsor/Applicant with City staff. As a result, it appears that the Phase 2 application does not comply with the Traffic Assessment that was submitted.

E. SEPA Compliance Determination

Given the incomplete or inaccurate information contained in the Phase 2 SEPA Checklist and associated documents, it is difficult to make an informed determination as to whether the Phase 2 Preliminary Plat application is within the scope of the City Heights EIS and Planned Action Ordinance in accordance with the provisions of City Heights Development Agreement Appendix Q. A revised SEPA Checklist with complete, accurate, and consistent answers would make the task easier and provide the basis for a more credible determination. However,

an Arbitration Order dated April 8, 2022, has ordered that the City must promptly issue its consistency determination for the Phase 2 Preliminary Plat application and that the City shall not actively seek additional comment or input from public agencies. As a result, the City is effectively precluded from seeking to establish a more complete record on which to base its determination.

Therefore, the City finds that the Phase 2 Preliminary Plat Map prepared by Encompass Engineering dated 03/2022 is within City Heights and within the scope of the City Heights EIS and Planned Action Ordinance. In accordance with the provisions of the City Heights Development Agreement Appendix Q, no further SEPA Checklist or Threshold Determination is required by the City for actions associated with implementing the Phase 2 preliminary plat that occur within the boundaries of the Phase 2 plat.

Please note that this SEPA Compliance Determination does not apply to the following actions:

1. The future development of Tract A within the Phase 2 plat.
2. The construction of the Montgomery Access Road or other infrastructure improvements outside of City limits.

V. Consistency Review

A. Overview

The proposed Phase 2 Preliminary Plat application is subject to administrative review by the City in accordance with the provisions of Appendix Q to the Development Agreement, as interpreted by an Arbitrator. In reviewing the Phase 2 application materials, the designated City Planner, in consultation with the Mayor, City staff, and consultants to the City shall consider the following:

1. *Whether the proposed action is within the scope and intent of the Master Site Plan.*
2. *Whether the proposed action is of a similar size and scale and does not present appreciably different environmental effects from those identified in the City Heights EIS.*
3. *Whether the proposed action reduces overall acreage identified as dedicated public areas, open space or buffering areas.*
4. *Whether the proposed action materially and significantly changes the balance of uses approved as part of the Master Site Plan.*

5. *Whether the proposed action can be completed consistent with the Development Standards set forth in this Agreement.*

Immediately upon rendering a decision, the City Planner is directed to mail and publish the Consistency Determination and the determination shall be final unless appealed to the City Council.

B. City Heights EIS Mitigation Measures

A summary of the Mitigation Measures identified in the City Heights EIS is included as Exhibit CC to this document. The Phase 2 preliminary plat application and all subsequent applications must comply with these measures.

C. Development Agreement Conditions of Approval

The City Heights Development Agreement includes approximately 115 conditions of Approval that are contained in Appendices A-P to the Development Agreement. These conditions of approval are incorporated by reference and can be found in Exhibit DD to this document. The Phase 2 preliminary plat application and all subsequent application must comply with these measures unless modified or replaced in accordance with the provisions of the City Heights Development Agreement. Examples of Phase 2 provisions that do not appear to be consistent with the Development Agreement include, but are not limited to the following:

The City Heights Development Agreement Appendix B Development Standards, Subdivisions (Title 16) includes the following:

5. Streets. Due to topographical limitations and the objectives of the PMU Zoning, compliance with the provisions of CEMC 16. I2A.060(C) shall not be required in City Heights, provided that: all streets within City Heights shall comply with the design standards set forth in Appendix I; Internal Roads shall be designed to efficiently serve the lots within each Development Area, and Collector Roads shall be designed in such a way as to connect in a logical manner with the arterials and collector streets outside of the Property. Alleys for accessing lots or improvements within Development Areas shall be permitted, but not required. While connectively within Development Areas is encouraged, cul-de-sacs and dead ends shall be allowed to the extent that such alternative design is practical in light of terrain, access, development costs, and site constraints. Road grades within City Heights may be up to twelve percent (12%) for segments less than one thousand (1000) feet, where the Ridge Entities provide certification from a professional engineer that such grade is reasonably necessary given terrain or other site constraints. Due to terrain and other physical limitations of the Property, intersections of Collector Roads and Internal Roads may be constructed at angles less than ninety degrees, provided

such angle will not result in a traffic hazard. Standards for roads within City Heights shall be as set forth in Appendix I, and curbs, sidewalks and gutters shall not be required within City Heights. [emphasis added]

The Phase 2 Preliminary Site Plans and Engineering do not depict the Phase 1 improvements to the Stafford Avenue corridor agreed to by the Project Sponsor and reflected in the July 21, 2021, Phase I Settlement Agreement. Furthermore, the Phase 2 application does not include improvements to Summit View Drive as a Collector Road, as required by Appendix I to the Development Agreement. In addition, the Phase 2 application includes an “Interim” Access Road to provide the required 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. The Project Sponsor has not requested a modification under Appendix R that would support constructing a road that does not comply with the requirements of the Development Agreement. For Phase 2, the City will approve private roads/tracts that are not consistent with Appendix I, however, this approval of private roads/tracts is not applicable to future phases. The applicant is encouraged to consult with City staff regarding approval of private roads/tracts for future phases.

D. Phase 1 Conditions of Approval

On July 21, 2021, the parties executed a written Settlement Agreement to modify the Phase 1 Conditions of Approval. The Conditions of Approval contained in this Settlement Agreement can be found in Exhibit BB to this document. The Phase 2 application must comply with all provisions of this Settlement Agreement, unless otherwise provided in this document.

The updated Phase 2 application materials do not incorporate all of the revised Phase 1 Conditions of Approval negotiated by the Project Sponsor. The Phase 2 application makes selective references to these revised conditions of approval; for instance, the application notes that the parties agreed that Park #2 need not be constructed but did not include the conditions on which this provision was based. Other revised Conditions of Phase 1 approval that would reasonably be expected to apply to Phase 2 and were not addressed or adequately incorporated into the Phase 2 Preliminary Plat include, but are not limited to:

25. *Property within the boundaries of the Phase 1 preliminary plat to be developed as trails and dedicated to the City shall be placed in a privately owned Open Space Tracts for future dedication to the City or other public agency, provided that in the interim period prior to dedication:*
 - a. *Critical areas and their buffers and other areas not suitable for recreational uses are identified and protected through signage and through such measures as the strategic placement of fencing.*

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- b. The property owner shall not encourage or permit unauthorized recreational uses to occur within critical areas or their buffers.*
 - c. The Project Sponsor may, upon completion of the improvements to a trail(s), elect to open the trail(s) to the public for authorized recreational uses and maintain the trail(s) at his sole expense, until the dedication process has been completed.*
- 26. The dedication of trails to the City or other public agency may occur only upon the completion of the following tasks:*
- a. All the property intended for the development of public trails in the Phase 1 plat, have been placed in open space tracts or easements suitable for dedication to the City or another public agency.*
 - b. A Trail Plan to guide the development and use of these trails in accordance with the provisions of Appendix N has been collaboratively prepared and approved by the Project Sponsor and the City.*
 - c. All required improvements have been constructed by the Project Sponsor and accepted by the City.*
 - d. All plats necessary for build-out of Development Areas AB, C, and D1-D4 have received final approval from the City.*
 - e. Park #3 the Red Rock Open Space is ready for dedication to the City.*

The deferral of the dedication of trails to the City in Phase 1 application was based on the following provision in Paragraph 7 of the City Heights Development Agreement:

Mitigation and satisfaction of Conditions of Approval may be phased or apportioned in a manner consistent with the proposed development phasing, provided that such phasing is reasonably practicable and will not result in a threat to public health and safety.

As a practical matter, developing and opening trails to the public in the middle of a multi-year construction project presents a clear threat to the public health and safety, and potential enforcement issues for the City. The same deferral should be incorporated into the Phase 2 project.

- 30. The Project Sponsor and the City agree that the primary access to the Phase 1 Preliminary Plat, and the Phase 2 Preliminary Plat shall be the Stafford Street Corridor. This shall include improvements to Reed Street starting at the intersection with W Sixth Street, then onto W Fifth Street, and then Stafford Street to the*

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intersection with W Second Street. This shall include improvements to the corner of Stafford Street north of Fourth Street, in accordance with the provisions of the City Heights Development Agreement Appendix I and City standards in accordance with the following provisions:

- a. The road base, depth of pavement, and the width of the paved area shall be consistent with the standards for the construction of Summit View Drive as a collector road, unless otherwise approved by the City.*
 - b. The improvements shall be designed and constructed to accommodate entering and exiting grades not to exceed 11%.*
 - c. At the City's election, replacement of a City water main.*
 - d. Pedestrian improvements may be excluded where topography or right-of-way limitations do not reasonably permit their inclusion.*
 - d. Guardrails, striping, and other safety measures shall be designed consistent with City standards.*
 - e. Drainage towards a collection system such as pipes, ditch, or bio-filtration swales.*
 - f. Design features shall reasonably accommodate City snowplowing.*
 - g. The Project Sponsor shall be responsible for the acquisition of such additional property as may be necessary to design and construct these improvements in accordance with the provisions of the City Heights Development Agreement.*
- 31. The City has submitted a CDBG grant application dated June 2, 2021, that includes a financial contribution from the Project Sponsor. If this project is selected for full CDBG funding, then the City shall be responsible for the design and construction of the improvements identified in Condition #36 improvements no later than October 31, 2022, subject to the availability of funds, provided that:*
- a. This project does not include any improvements to Reed Street south of Sixth Street. As a result, seasonal weight restrictions and access limitations shall apply to this segment.*
 - b. This completion date may be reasonably extended due to unforeseen circumstances.*

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The Phase 2 application does not refer to these improvements as the basis of the primary access, and the materials need 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. The Project Sponsor shall remain responsible for the acquisition of such additional property as may be necessary to design and construct the Stafford Avenue improvements in accordance with the provisions of the City Heights Development Agreement. The property has yet to be acquired and is adversely impacting the ability to advance the design.

- 41. The designated haul route to and from the Phase 1 plat shall be the Alliance Road Corridor, unless otherwise approved by the City. This haul route shall be used for the movement of all construction equipment and machinery, hauling building materials and supplies, and all forestry activities.*
- a. Neither Park Street, Steiner Street, Reed Street, Stafford Street, Billings Street, Oakes Street, W Sixth, nor W Fifth Street shall be used as a haul route unless specifically approved and authorized in writing by the City.*
 - b. Prior to the use of Alliance Road, the Project Sponsor shall obtain the required permits and approvals from Kittitas County.*

The Phase 2 application includes numerous references to the future determination of the haul route, as well as provisions that would be relevant to the use of Stafford Avenue as the haul route. As discussed in the Phase 1 application, City streets are weight restricted and shall not be used as the haul route under any circumstances. Alliance Road must be used as the haul route for Phase 2 development activities.

- 45. Prior to the final approval of the Phase 1 plat, provisions shall be made for at least one residential dwelling unit for sale or lease as low-income housing and one residential dwelling unit for sale or lease as moderate-income housing, provided that:*
- a. The Project Sponsor may submit for City review and approval a financial guarantee or other measures that ensures that the condition of approval requiring that provision of affordable housing as set forth in paragraph 6.8 of the Development Agreement will be met prior to the expiration or termination of the City Heights Annexation and Development Agreement.*

This condition is not adequately addressed in the Phase 2 application.

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 Phaing (sic) 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 Avenue 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. Prior to final plat approval, the applicant will provide final engineering plans, stormwater report, environmental, and geotechnical documentation for the Montgomery Road corridor including adequate bonding for final construction.

E. Vested Development Standards

The City Heights Development Agreement provides in paragraph 8.1 that:

To the extent this Agreement does not establish Development Standards covering a certain subject, element or condition, then City Heights shall be governed by the city codes and standards in effect on the Vesting Date, with any ambiguity construed in furtherance of the policies and goals set forth in Section 3.2

A copy of the Cle Elum Municipal Code Chapters 12-18 in effect on November 8, 2011, is incorporated by reference and can be found in Exhibit EE to this document.

It should also be noted, that in accordance with the provisions of the City Heights Development Agreement paragraph 8.2.1, all subsequent construction activities that require a building permit shall comply with the International Building Code, International Fire Code, and other construction and mechanical codes as adopted and implemented by the City and in effect at the time the application is submitted.

Neither Stafford Avenue in its existing condition or the proposed Montgomery Interim

Access Road comply with the provisions of the International Fire Code.

F. Applicant Elections

Appendix R to the City Heights Development Agreement authorizes the Project Sponsor to include as a part of any application for a preliminary plat, or a proposed revision to an approved preliminary plat, certain pre-approved matters including:

1.1.1 Designations or changes in residential density or layout so long as the change falls within the density range approved for that Development Area under Exhibit 3 and Appendix A and other relevant portions of this Agreement.

1.1.2 Designations or changes in the square footage or layout of retail/commercial uses so long as the modification falls within the range of square footage/acreage approved for the Development Areas on Exhibit 3 and Appendix A and other relevant portions of the Agreement.

1.1.3 Designations or changes in lot size, lot configuration and road layout resulting from changes in the density or intensity under Paragraphs 1.1.1 or above.

1.1.4 Reallocation of Type of Product per Development Area so long as the maximum densities are unchanged and the Type of Product remains proposed for development within the Development Areas on Exhibit 3 and Appendix A and other relevant portions of the Agreement.

1.1.5 Designation or modification in alignment, location or layout of roads within City Heights, provided that the four Points of Access set forth in Appendix I do not change, and provided that the extent of connectivity of the roads is not materially reduced.

1.1.6 Revision (amendment) of an approved preliminary or final plat, provided that such revision/amendment is consistent with the Conditions of Approval and the Master Site Plan.

1.1.7 Other elections or modifications requested by the applicant, which are within the pre-approved ranges or provisions of this Agreement and the Exhibits or which the City Planning Director determines provide functional equivalence or are minor in nature. Such election or modification may include a proposed or revised phasing plan for a Development Area or for the Project.

The City Heights Development Agreement further provides that the City must verify that proposed Applicant Elections meet these criteria and to verify that no other City regulated feature has been significantly affected. Proposed Applicant Elections that do not meet these

criteria shall be processed as a Minor or Major Modification in accordance with the provisions of Appendix R to the City Heights Development Agreement.

The Phase 2 Application does not clearly identify any Applicant Elections. Deviations from the requirements for road standards in Appendix I are proposed. For this preliminary application only, the City will approve such deviations.

G. Proposed Minor Modifications

No minor modifications were requested by the Project Sponsor in conjunction with the Phase 2 preliminary plat application. However, several provisions have been identified above that do not comply with the City Heights Development Agreement and Master Site Plan approval. For future phases, the Project Sponsor should consider applying for minor modifications if the phase will include deviations from the requirements of the Development Agreement.

H. Proposed Major Modifications

No major modifications were requested by the Project Sponsor in conjunction with the Phase 2 preliminary plat application. The City provides advance notice here regarding a concern about the practical ability of the Project Sponsor to provide the fourth point of access to City Heights, the SR 903 connection, as required by the City Heights Development Agreement and EIS. To the extent that the Project Sponsor is unable to meet this requirement, an application for a Major Modification to the Development Agreement may be needed to avoid a potential violation of the Development Agreement.

I. New/Modified Conditions of Approval

The City Heights Development Agreement Paragraph 8.2 Vesting of Development Standards and Mitigation provides that the City shall not modify or impose new or additional Conditions of Approval except to:

1. Avoid a serious threat to public health or safety; or
2. Prevent a violation of applicable state or federal laws or regulations.

However, the Arbitration Order dated April 8, 2022, limits the use of this authorization as follows:

- a. When conditioning an application for an Implementing Approval, the City may not use the allowance to add conditions for a serious threat to the public health or safety, if in so doing the conditions added are related to a circumstance that existed and was reviewed and conditioned as part of the Development Agreement and EIS process.*

- b. When conditioning an application for an Implementing Approval, the City may not add conditions that substitute for or seek to enforce State and Federal law by overlaying City oversight. The City may add a condition that says the applicant must comply with State and Federal law, including to obtain any required State and Federal permits.*

Given the broad nature of this language it appears that the City is effectively precluded from imposing any conditions that would avoid a serious threat to the public health and safety if the conditions added are related to a circumstance that existed and was reviewed and conditioned as part of the Development Agreement and EIS process.

In addition, another provision of the Arbitration Order effectively precludes the City from coordinating permitting with state and federal agencies with jurisdiction that may result in adverse impacts to environmentally sensitive areas and/or in enforcement actions.

J. Phasing Adjustments

The City Heights Development Agreement Paragraph 7 provides that City Heights:

may proceed with development of the Property according to whatever phasing or parcel development plan the Ridge Entities (nee City Heights) deem appropriate, provided that: (a) any phase of development includes a complete Development Pod, (b) prior to final plat approval of any plat of or within a Development Pod, a Collector Road sufficient to access the Development Pod from outside of the Project has been completed or adequate financial assurances given therefore; and (c) prior to final plat approval of a Development Pod or Development Area, the off-site utility infrastructure improvements necessary to serve the Development Pod or Development Area at issue have been completed or adequate financial assurances given therefore in accordance with applicable CEMC provisions for sureties and financial assurances. Mitigation and satisfaction of Conditions of Approval may be phased or apportioned in a manner consistent with the proposed development phasing, provided that such phasing is reasonably practicable and will not result in a threat to public health and safety. No certificate of occupancy may be issued for any structure until all final plat conditions necessary to protect the public health, including specifically those pertaining to sewer, potable water, and stormwater, have been satisfied. The foregoing notwithstanding, a certificate of occupancy may be issued where sewer, water, and stormwater improvements have been completed but certain road improvements or other conditions have not been satisfied, as long as bonding or adequate assurance of the performance of such conditions has been provided.

During the Phase 1 Consistency Review process, the City has emphasized in discussions with the Applicant, that all required improvements must be designed and constructed to “stand alone” and function safely, in accordance with City standards, independent of any subsequent phases of development. As a result, in accordance with the provisions of the City Heights Development Agreement Paragraph 7, the City approval of the Phase 2 preliminary plat will include provisions to ensure that this phasing provision is addressed.

In addition, the City Heights Development Agreement includes several Conditions of Approval that establish a cumulative standard that must be met at build-out, but do not prescribe a minimum contribution for each phase. For instance, both Appendix B Development Standards and Appendix H Wildlife and Habitat to the City Heights Development Agreement require that 125 acres, which is 35% of the total acreage of City Heights, be set aside as open space, natural areas, parks, recreation areas, village greens, commons or public assembly areas, or otherwise undeveloped space. The proposed Phase 2 development contributes toward meeting this standard, but the City will monitor the contributions proposed in subsequent phases to make sure that this obligation can be reasonably satisfied.

In the City Heights Development Agreement, Paragraph 6.8 Affordable Housing, establishes a requirement that at least 12 residential units distributed among at least two Development Pods be initially sold or rented as low-income housing and 12 additional residential units as moderate-income housing. Since the proposed Phase 2 development provides for 69 of the 962 residential units authorized in City Heights (7%), a proportional distribution of this requirement, would result in the designation of one dwelling unit in Phase 2 as low-income housing, and one dwelling unit as moderate-income housing. While this should be relatively easy to accomplish, in recognition of the Flexibility Objectives established for the City Heights Development Agreement and the Conditions of Phase 1 approval negotiated by the Project Sponsor, the City suggests a pro-rated contribution in each phase or the inclusion of a financial guarantee or other measures to reasonably ensure that these requirements will be met.

K. Phase 2 Preliminary Site Plan and Engineering

Included with the revised Phase 2 preliminary plat application submitted to the City on Friday March 11, 2022, is a revised Preliminary Site Plan and Engineering document consisting of 43 sheets dated March 11, 2022. During the review of these sheets, numerous instances were identified where the plans do not comply with the provisions of the City Heights Development Agreement, the City Heights EIS, and/or the Conditions of Phase 1 preliminary plat approval negotiated by the Project Sponsor.

The following comments are provided as a courtesy to the Applicant to facilitate final plat approval. Please note that we have not identified every instance where a correction must be

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made; for instance, if a feature on Sheet 3 is identified as not in compliance, we have not identified the other sheets where this non-compliant feature is depicted.

1. On Sheet 1, Cover Sheet, and subsequent sheets as appropriate, statements such as “*Prior to construction an approved haul route shall be identified.*” and “*If Stafford is used as the haul route....*”

This was addressed in the Phase 1 Conditions of Approval negotiated by the Project Sponsor. Alliance Road has been determined to be the haul route and no City street, including Stafford Street, shall be used for hauling.

2. On Sheet 3, Development Pods, and other sheets as appropriate, please clearly identify the boundaries of the City Heights development, the City limits, and clearly identify parcels where development activities are proposed that are not owned or under the control of City Heights, and/or are outside of the City limits in accordance with the provisions of CEMC 16.12A.030 Preliminary Plats.
3. On Sheet 4, Development Pods, 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, B5, and 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.

It should be noted that Appendix R to the Development Agreement identifies changes to the size and shape of the Development Areas as a Minor Modification.

4. On Sheet 6, Phasing Map, there is reference to Divisions I, II, and III of Phase 2. Please note that the City’s consistency determination on the application for final plat approval of the Phase 2 plat will include the entire plat and that there will be no partial or segmented approvals.

It should also be noted that the Phase 2 Phasing Narrative is dated July 30, 2021 and has not been updated to address the revised Preliminary Site Plan and Engineering dated March 11, 2022.

5. On Sheet 7, Existing Conditions, and other sheets as appropriate, the following Geotechnical Notes are provided:

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- *Limits of existing slopes exceeding 35% with heights exceeding 10' have been shown for reference.*
- *Per Appendix G of the DA no clearing or grading (sic) shall occur within 25' from the top of slopes exceeding 35% unless otherwise recommended by the project Geotech and approved by the City.*
- *Refer to the June 9, 2020 Geotechnical Report for City Heights prepared by Terra Associates Inc. for details related to:*
 - *Reduced setbacks from top of slopes exceeding 35% from 25' to 15' (No clearing and grading in setback).*
 - *15' setback from toe of slopes exceeding 40% and taller than 15' for residential building construction (No clearing and grading in setback). Note that roadways and other infrastructure improvements can encroach into the toe of slopes exceeding 35%.*
- *Steep slope setbacks and related clearing and grading restrictions to be shown on final plat map.*
- *On slopes exceeding thirty five percent (35%), no clearing or grading shall occur within 25 feet from the top of any slope, unless, upon recommendation of a geotechnical report from the Ridge Entities licensed Geotechnical Engineer demonstrating that such work will not adversely affect slope stability, the City Engineer determines that such work will not adversely affect slope stability. (refer to Geotechnical notes on Sheet EC-01 for recommended buffer reductions.*

In reviewing the referenced Geotechnical Report prepared by Terra Associates, we note that it is dated June 9, 2020, and is based on conceptual plans provided by Blueline in 2020. The report states:

The recommendations contained in the following sections of this report are based on our understanding of these preliminary design features. If actual features vary or changes are made, we should review them in order to modify our recommendations, as required. We should review final design drawings and specifications to verify that our recommendations have been properly interpreted and incorporated into project design.

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- a. Please provide documentation from Terra Associates that they have reviewed the Preliminary Site Plan and Engineering sheets dated March 11, 2022, and that their recommendations have been properly interpreted and applied, or have been modified, if necessary.
 - b. Please submit with all final design drawings documentation from Terra Associates that their recommendations have been properly interpreted and applied.
 - c. Please explain why only existing slopes exceeding 35% with heights exceeding 10' have been shown for reference.
6. Sheet 8, Existing Conditions, and other sheets as appropriate, depicts a stream, but the stream is not identified using the references included in the reports prepared by Sewall Wetlands Consulting (Stream A, Stream B, etc.) which makes it difficult to utilize these reports and to assess the adequacy of the SEPA Checklist. Wetlands are frequently not labeled as well.
- a. Please identify all critical areas within or in proximity to the Phase 2 development.
 - b. Clearly label all streams, wetlands, and buffers and use consistent references in all documents.
7. Sheet 8, Existing Conditions, and other sheets as appropriate, refer to “*approximate location of ex (sic) ditch feature*”, “*ditch to be removed*”, “*ditch to be relocated*” and “*ditch to remain*”. Please identify if this “ditch” is a stream or wetland and whether the removal or relocation has been addressed in any of the documents submitted.

It is also noted that the relocated ditch appears to redirect water onto the Phase 1 development, but the Phase 1 plans do not depict the rerouted ditch or address how the new flows will be managed. Phase 1 and Phase 2 plans should be consistent.

In potentially a related matter, the Washington State Department of Natural Resources issued a Forest Practices Notice to Comply to City Heights on August 3, 2021, for the “*destruction of approximately 400 lineal feet of the Type N water*”. In addition, the Project Sponsor received a Notice of Violation from the Washington State Department of Ecology on September 24, 2021, for filling in a seasonal stream. Please identify the location of this stream that was filled/destroyed during Phase 1.

It should also be noted that the Project Sponsor has not provided the City with any information regarding potential remediation of these violations and as a result, the Project Sponsor may need to submit amendments to the approved preliminary plat if a reconfiguration of lots or the relocation of infrastructure is required.

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8. On Sheet 10, Preliminary Site Plan, and other sheets as appropriate, Tract A is identified as a future development. The nature of this future development has not been identified and was not addressed in the SEPA Checklist submitted with the Phase 2 preliminary plat application. As a result, no development of Tract A can be authorized until a separate application and SEPA checklist is submitted to the City so that a compliance review and consistency determination can be made.
9. On Sheet 10, Preliminary Site Plan, and other sheets as appropriate, Tract C, which is identified as a private open space tract, appears as a practical matter to be a part of Lot 1. Please explain this configuration and the basis for including it as contributing to the open space requirements and/or make the appropriate adjustments.
10. On Sheet 10, Preliminary Site Plan, and other sheets as appropriate, it does not appear that Tract R contains the entire storm water pond and facility. Please make the appropriate adjustments.
11. On Sheet 11, Trails Plan, and other sheets as appropriate, it appears that a bike trail is proposed to cross Road F. Please identify the measures proposed to provide for the safe crossing of all roads by bike and pedestrian trails per industry standards (DA Appendix N).
12. On Sheet 11, Trails Plan, and other sheets as appropriate, it appears that trails stop at the Phase 2 boundary. Paragraph 7 of the Development Agreement provides that:

Mitigation and satisfaction of Conditions of Approval may be phased or apportioned in a manner consistent with the proposed development phasing, provided that such phasing is reasonably practicable and will not result in a threat to public health and safety.

In addition, please recall that the Phase 1 Settlement Agreement negotiated by the Project Sponsor includes the following provision (Section 12(d)):

All infrastructure improvements have been designed and constructed to stand alone and operate in accordance with applicable standards without further improvements in subsequent phases.

- a. Please identify the measures proposed to keep trail users from continuing onto unimproved trails or into unauthorized areas such as critical areas. In addition to the signage plan referenced on Sheet 11 this may include such measures as fencing, bollards, and turnarounds.

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- b. It appears that there is a trail that meanders along and over the Montgomery Access Road through the cut at approximately Station 16+00. Please explain how this trail will still be accessible through this planned roadway section with steep cut side slopes.
13. On Sheet 11, Trails Plan, and other sheets as appropriate, please clearly identify existing trails within critical areas and associated buffers, existing trails to be located in or leading to critical areas and their buffers, and new trails proposed to be constructed in or leading to critical areas and their buffers. Also please provide a cross reference to documents that assess the environmental impacts associated with these trail plans and the projected increases in usage, and recommended mitigation measures.
14. On Sheet 11, Trails Plan, and other sheets as appropriate, please include reference to provision 25 of the Phase 1 preliminary plat approval negotiated by the Project Sponsor:

Property within the boundaries of the Phase 1 preliminary plat to be developed as trails and dedicated to the City shall be placed in a privately owned Open Space Tracts for future dedication to the City or other public agency, provided that in the interim period prior to dedication:

- a. *Critical areas and their buffers and other areas not suitable for recreational uses are identified and protected through signage and through such measures as the strategic placement of fencing.*
 - b. *The property owner shall not encourage or permit unauthorized recreational uses to occur within critical areas or their buffers.*
 - c. *The Project Sponsor may, upon competition of the improvements to a trail(s), elect to open the trail(s) to the public for authorized recreational uses and maintain the trail(s) at his sole expense, until the dedication process has been completed.*
15. On Sheet 11, Trails Plan, and other sheets as appropriate, please include reference to provision 26 of the Phase 1 Preliminary Plat approval negotiated by the Project Sponsor:

The dedication of trails to the City or other public agency may occur only upon the completion of the following tasks:

- a. *All the property intended for the development of public trails in the Phase 1 plat, have been placed in open space tracts or easements suitable for dedication to the City or another public agency.*

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- b. A Trail Plan to guide the development and use of these trails in accordance with the provisions of Appendix N has been collaboratively prepared and approved by the Project Sponsor and the City.*
 - c. All required improvements have been constructed by the Project Sponsor and accepted by the City.*
 - d. All plats necessary for build-out of Development Areas A,B, C, and D1-D4 have received final approval from the City.*
 - e. Park #3 the Red Rock Open Space is ready for dedication to the City.*
16. On Sheet 11, Trails Plan, and other sheets as appropriate, please include reference to provision 27 of the Phase 1 preliminary plat approval negotiated by the Project Sponsor:
- The parties agree to work in a collaborative manner to explore the feasibility of developing, operating, and maintaining Park #3 and all trails as a County regional recreational facility and the like.*
- a. The City encourages the Project Sponsor to submit a voluntary agreement that includes provisions for a Homeowners Association or other third party to own, operate, and maintain public parks and trails.*
17. On Sheet 13, Critical Area Buffer Impacts, and other sheets as appropriate, there is a reference to a 4,920 sq. ft. critical aera (sic) easement that is not depicted on the approved Phase 1 Clearing, Grading, and Infrastructure Plans. Please explain the impacts of this easement.
18. On Sheet 13, temporary buffer impacts should be added where Road G intersects Summit View Drive. Permanent buffer impacts are shown within the confines of the pavement limits, but construction activities will temporarily impact areas outside of the pavement limits. Temporary impacts would be anticipated at the intersection radii within the right of way limits.
19. On Sheet 14, Road and Storm Plans, and other sheets as appropriate, Tracts N and O are identified as private access and utilities tracts. These tracts connect to Roads F and B and appear to function in the same manner as these roads, while also the exclusive access to numerous lots. Tracts J and P are identified as private access and utilities tracts and are connected to Road F, also serving as the exclusive access to lots. Tracts N, O, J, and P include private road designs that are inconsistent with the Development Agreement provisions. The City has reviewed the private road proposal and approves the roads for this phase only as the roads will be privately owned and maintained, and while

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International Fire Code access standards are met, with the exception of the Development Agreement approved 12% maximum grade provision.

- a. Private roads/tracts are required to provide emergency access easements as required by the Fire Chief and public utility easements.
 - b. Temporary turnarounds at the end of Roads F and B are required until Phase 3 is platted or constructed.
20. On Sheet 15, Road and Storm Plans, and other sheets as appropriate, Road G is identified as a public road, but is inconsistent with the Development Agreement, Appendix I road standards. Road G, including the “tear drop” shall be privately owned and maintained, beginning at approximate Station 81+50, just west of the tear drop, and ending at Summit View Drive. Road G together with the tear drop is intended to serve as the secondary fire apparatus access road as required by the International Fire Code. Road G shall be marked as Emergency Access Only using signage and/or gates or bollards, as approved by the Fire Chief.
21. On Sheet 10, Preliminary Site Plan, and other sheets as appropriate, Tract L, which is identified as a private open space tract, appears in effect to be a traffic circle that may unnecessarily complicate traffic circulation and that may not be warranted under Manual on Uniform Traffic Control Devices (MUTCD) standards. Please explain the need for this feature and the plans for traffic circulation and controls.

Also please explain the ingress/egress to Lots 62, 63, 64 including the proposed location of a joint use driveway on a curve immediately adjacent to a proposed road. It appears that vehicles destined for these lots would need to go around the traffic circle instead of directly accessing the lots from Road G.

22. On Sheet 15, Road and Storm Plans, and other sheets as appropriate, it appears that Road G is proposed to be constructed within critical areas and/or associated buffers.
- a. Please clearly label the critical areas and buffers impacted by this proposed road and clearly reference the proposed mitigation including measures necessary to address the wider roadway and higher volumes of traffic associated with a Collector Road.
 - b. On Sheet 15, Road and Storm Plans, and other sheets as appropriate, Road B appears to extend from Phase 1, through Phase 2, and into an area to be developed in a subsequent phase providing access to Pods B7, B5, and potentially Pods B1-B3 in the future. Please submit revised plans with Road F and G designed as a Collector Road in accordance with the provisions of Appendix I and the International Fire Code.

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23. On Sheet 15, Road and Storm Plans, and other sheets as appropriate, there are notations such as “*Proposed ditch to intercept upstream flows and route to Stream C (typ)*”, “*Collect existing ditch and discharge on south side of Road B. Relocated ditch east of Phase 2 to be installed with Phase 1*” and “*Location of relocated ditch to be extended with revised Phase 1 materials.*”
- a. Please identify and clearly label the upstream flows to be intercepted.
 - b. Please reference the approved plans for the ditch identified to be relocated with Phase 1.
 - c. Please explain the statement “*Location of relocated ditch to be extended with revised Phase 1 materials.*”
 - d. Please explain and clearly depict how the intercepted flows will be routed to Stream C, including grades, ditch shape, and limits.
 - e. Please reference the downstream analysis and environmental assessment conducted for the increased flows being routed to Stream C.
 - f. Please explain the impacts of rerouting the ditch will have on proposed residential lots, including Lot 35 of Phase 1.
 - g. Please explain how the Phase 1 trail interacts with the rerouted ditch and energy dissipator as it enters Stream C. There appears to be a direct conflict between the trail, energy dissipator, and Stream C.
 - h. Provide proposed contours on stormwater pond B7-B.
 - i. Provide existing contours in the vicinity of stormwater pond B7-B and Stream C, confirming the dispersion trench runoff will enter the Stream and not runoff to the south.
24. On Sheet 17, Road and Storm Profiles, and other sheets as appropriate:
- a. The K Factor for the vertical curve at Sta. 77+63 doesn't meet minimum standards as identified in AASHTO's A Policy on Geometric Design of Highways and Streets.
 - b. The K Factor for the vertical curve at Sta. 83+91 doesn't meet minimum standards as identified in AASHTO's A Policy on Geometric Design of Highways and Streets.
 - c. Please explain the grade break of over 3% and no vertical curve at Sta. 81+29.

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25. On Sheet 18, Road and Storm Profiles, and other sheets as appropriate, we note that Tract P – E includes a road grade calculated at 12%.
 - a. Please include reference to the certification from a professional engineer that such a grade is reasonably necessary.
 - b. This road terminates at the toe of the 12% slope and no turnaround is provided for emergency vehicles, delivery trucks, and the like. Please explain how this complies with generally accepted industry standards.
 - c. Also please note that this is the only sheet that includes a reference to Tract P – E.
26. On Sheet 19, Sewer and Water Plans, and other sheets as appropriate, as noted during the Phase 1 Preliminary Plat review, side sewer laterals are not permitted to connect directly to manholes, but instead must connect directly to the adjacent sewer main.
27. On Sheet 19, Sewer and Water Plans, and other sheets as appropriate, please review the location of sewer and water services to each lot, as it appears that some lots may have two services (Lot 7) and others have none (Lot 6). Please make the necessary corrections.
28. On Sheet 20, Sewer and Water Plans, and other sheets as appropriate:
 - a. Please explain what is planned for the inside of the roundabout (Tract T), as private water services and side sewer laterals are aligned through Tract T.
 - b. Please note that side sewers cannot cross other lots, such as depicted for Lots 62-64 and Tract Q.
 - c. Please show the piping connection to Water Pressure Zone 3.
29. On Sheet 21, Road Sections and Details, and other sheets as appropriate, a Modified Collector Road Cross Section, an Alternative Collector Road Cross Section, three Modified Internal Road Cross Sections, an Unspecified Modified Road Cross Section, and a Private Access Tract Cross Section are depicted. However, the City Heights Development Agreement Appendix I, identifies a single design standard for Internal Roads and a single design standard for Collector Roads. There are no provisions in Appendix I for alternative or modified road design standards or for private roads in access tracts. The Project Sponsor has not requested a modification under Appendix R that would support constructing a road that does not comply with the requirements of the Development Agreement. For Phase 2, the City will approve private roads/tracts that are

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not consistent with Appendix I, however, this approval of private roads/tracts is not applicable to future phases.

- a. The Project Sponsor is encouraged to consult with City staff regarding approval of private roads/tracts for future phases.
 - b. Please revise the cross section for Summit View Road to include a 45' ROW in accordance with the Development Agreement Appendix I.
30. On Sheet 22, Tree Preservation and Clearance Plan, and other sheets as appropriate, the following notation is provided:

A detailed erosion control plan will be provided at final engineering. The plan will identify specific BMPs used to prevent sediment and sediment laden run-off from leaving the site area.

Please identify when final engineering plans will be submitted and the relationship of these plans to the plans submitted with the Phase 2 Clearing and Grading application that was submitted one business day after the Phase 2 preliminary plat application was submitted.

31. On Sheet 22, Tree Preservation and Clearance Plan, and other sheets as appropriate, the following Tree Notes are provided:
- *(DA Appendix B, Subdivisions #3): Trees in open space or planned public area with a diameter in excess of 30" DBH shall not be removed prior to the creation of a vegetation management and revegetation and planting plan completed by a certified arborist.*
 - *Select trees less than 30" caliper inch may be removed within open space areas shown as area of tree retention as deemed necessary by developer per the DA (DA Appendix B, Subdivisions #3).*
 - *(DA Appendix B – Zoning #9) "Significant trees" per (CEMC 17.64.040) pertains only to trees within wetlands, fish and wildlife conservation areas, frequently flooded areas, and geologically hazards areas. Such trees may be removed from these areas where such removal is mitigated through relocation or revegetation pursuant to a critical area mitigation plan.*
 - *Clearing on lots within Geotech recommended steep slope setbacks is not allowed unless otherwise specifically approved by the Geotech on a lot by lot basis.*

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- *Tree clearing (trees to be removed) on lots shown to the edge of steep slope setback or rear of lot. The Applicant's desire is to review trees on a lot by lot basis and identify pockets of trees and vegetation to voluntarily retain. This lot by lot evaluation is anticipated to be coordinated with the building design for each lot.*
- a. Please explain when the required vegetation management and revegetation and planting plan will be completed by a certified arborist and submitted for City review and approval. Also, please explain when and how trees in open space or planned public area with a diameter in excess of 30" DBH will be identified and protected prior to the completion of this required plan.
 - b. Please identify the lots that contain Geotech recommended steep slope setbacks and how and when clearing in these areas will be specifically approved by the Geotech on a lot-by-lot basis.
 - c. Please identify when and how trees will be reviewed on a lot-by-lot basis to identify pockets of trees and vegetation that will be voluntarily retained. Also please explain how these trees will be protected if this lot-by-lot evaluation is to be coordinated with the building design for each lot.
32. On Sheet 22, Tree Preservation and Clearance Plan, and other sheets as appropriate, the following Earth, Soils, and Critical Areas Note is provided:
- *No vegetation shall be removed from slopes with a grade in excess of thirty five percent (35%) unless, upon recommendation of the Ridge Entities licensed Geotech Engineer, the City Engineer determines vegetation removal is necessary to complete road, trail or utility corridors and appropriate measures are undertaken to ensure slope stability.*
- a. Please clearly identify where it is proposed to remove vegetation from slopes with a grade in excess of 35% to complete road, trail or utility corridors and a recommendation from a licensed geotechnical engineer that such removal is necessary and appropriate measures have been included in the design to ensure slope stability.
33. On Sheet 22, Tree Preservation and Clearance Plan, and other sheets as appropriate, please explain how trees will be retained in the shaded areas, when water and sewer utilities are planned in these areas. If the trees can be retained, please explain how root structure will not be adversely impacted during open cut utility installation.

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34. On Sheet 26, Zone 3 Water Main Extension Plan, and other sheets as appropriate, please provide a copy of the easement(s) for the construction and maintenance of the proposed water main extension as required by the City's Construction Standards, Chapter 1:
 - a. Granted by Cle Elum Pines West.
 - b. Granted by Puget Sound Energy.
 - c. Granted by Bonneville Power Administration.
 - d. Granted by the City of Cle Elum and/or Kittitas County for crossing the Coal Mines trail.
35. On Sheet 26, Zone 3 Water Main Extension Plan, and other sheets as appropriate, please note that there is no Coal Creek Trail as noted on the sheet and that the Coal Mines Trail shall not be utilized as a water main access road. Please revise your plans accordingly.
36. On Sheet 26, Zone 3 Water Main Extension Plan, and other sheets as appropriate, please revise the plans to place the water main in a casing within the floodway, to allow for future maintenance.
37. On Sheet 26, Zone 3 Water Main Extension Plan, and other sheets as appropriate, reference is made to a gravel access road. The Development Agreement requires that all roads be designed in compliance with the standards in Appendix I.
 - a. Please revise the plans to depict this road as a Collector Road in accordance with the provisions of Appendix I.
 - b. Alternatively, to avoid any confusion with approved roads, please relabel this feature on all sheets as "graveled utility maintenance access easement" or something to that effect and add notes that this easement is for use by utility maintenance vehicles only.
38. On Sheet 27, Zone 3 Water Main Extension Plan, and other sheets as appropriate, we note that the Geotechnical Report prepared by Terra Associates dated June 9, 2020, and based on conceptual plans provided by BlueLine contains the following:

Our study indicates that coal waste has been stockpiled at the west end of the site. The coal waste is loose and would not be suitable for support of buildings or new infrastructure. Additionally, analytical testing indicates the waste has a high organic content and such would be subject to long-term subsistence due to decay and degradation of the organic material. To establish suitable structural support, it will be necessary to remove this material and replace to finish grade elevations with

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suitable granular fill. Alternatively, light to moderately loaded structures along with main utility pipes could be supported on piles.

- a. Please provide documentation that Terra Associates has reviewed the plans dated March 11, 2022, confirming that Terra Associates' recommendations have been properly interpreted and incorporated into the design.
 - b. Please revise the plans to place the water main in a casing within the wetland, to allow for future maintenance.
 - c. Please review and revise the plans as appropriate to provide reasonable access to the isolated watermain between Crystal Creek and Wetland E. This section of proposed watermain is isolated between critical areas and has no proposed access.
 - d. Please review and revise the plans to provide a minimum of 6' of horizontal clearance from retaining walls to allow for maintenance of the water main.
39. On Sheet 28, Zone 3 Water Main Extension Plan, and other sheets as appropriate, Road B is depicted as a gravel road extending to SR 903.
- a. Please explain why this road has not been designed as a Collector Road to provide the required fourth primary access road to City Heights.
 - b. Please identify the standards that were used for the design of this proposed road.
40. On Sheet 29, Zone 3 Water Main Extension Profile the watermain shall have a minimum cover of 54" consistent with approved Phase 1 plans and the City's Construction Standards.
41. On Sheet 33, Critical Area Buffer Impacts, and other sheets as appropriate:
- a. Please review and confirm the location of the OHWM and buffers for Crystal Creek. Also, please explain the arrow line work in the stream. It appears the arrows designate the Crystal Creek alignment, yet the OHWM does not encompass the arrow line work.
 - b. Please extend the wetland buffer delineation through the stream improvement area.
42. On Sheet 33, please explain how the proposed addition of 4,907 sq. ft. of buffer in an area with slopes that exceed 35% and that may not be developed, adequately mitigates impacts to buffers elsewhere.

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43. The Kittitas County Assessors page shows a Type 4 seasonal stream parallel to Summit View Drive, in the proximity of the proposed the intersection with the proposed Montgomery Interim Access Road. Please add the Type 4 stream to the plans and identify any impacts.
44. The following provisions shall apply to the Montgomery Road access.
 - a. Prior to final plat approval, the applicant will provide final engineering plans, stormwater report, environmental, and geotechnical documentation for the Montgomery Road corridor.
 - b. The required secondary access road to serve Phase 2 is identified as an Interim Access Road that does not comply with the standards for a Collector Road as required by the City Heights Development Agreement, Appendix I. The interim access, as provided for under the Phase 1 settlement agreement, will be allowed until the City issues the 70th certificate of occupancy.
 - c. Please revise the plans to depict this secondary access as a Collector Road in accordance with the standards in the City Heights Development Agreement Appendix I and the provisions of the International Fire Code.
 - d. Please provide documentation that Terra Associates has reviewed the revised plans and that they confirm that their recommendations have been properly interpreted and incorporated into the design.
45. The applicant shall submit a bond quantity worksheet for the final Montgomery Road design prior to final plat approval. Upon receiving the bond quantity worksheet, the City shall issue its concurrence or, if the City Engineer does not concur, the City Engineer will issue comments explaining his lack of concurrence. The applicant shall re-submit a bond quantity worksheet addressing the City's comments. This process shall continue until the parties have agreed to a bond quantity.
46. Please provide a copy of the easement(s) for the construction and maintenance of the Montgomery Access Road in perpetuity granted by:
 - a. Bonneville Power Administration.
 - b. Puget Sound Energy.
47. Please explain and provide a copy of the Interim Public Access Easement that is referenced on the preliminary Montgomery Road plans. Please explain what appears to be a reference to a Note C identified on the sheet.

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48. On the preliminary Montgomery Road plans:

- a. There is a reference to the County GIS. The County GIS indicates that Stream E extends both north and south further than depicted on this sheet. Please depict all of Stream E and its buffers.
- b. Please depict Stream B which is identified in the City Heights EIS as a Type 3/F Stream with use by fish, and its associated buffers. This stream can also be found on the County GIS.
- c. Please identify impacts and proposed mitigation measures.

49. Please clearly identify all properties in the unincorporated County and all properties within the City limits, as depicted near Stream E. Also, since the Montgomery Interim Access Road includes a segment in the unincorporated County which is located within the Cle Elum Urban Growth Area and these properties may be annexed into the City, please provide the following information:

- a. The approximate location of easement AFN 505098 is depicted. Please identify the precise location of this easement and make sure that its boundaries are clearly highlighted.
- b. As previously discussed, please provide documentation that City Heights has a legal right to utilize this easement to construct a Collector Road across properties that it does not own. City Heights' counsel has advised the City that it has a legal opinion confirming City Heights possesses the property rights necessary to construct the road.
- c. Please depict the entire area of the existing drainfield and identify the area proposed to be impacted.
- d. Please identify the design standards proposed for this segment of the roadway.
- e. Please identify who will be responsible for maintaining the segment of this access road located in the unincorporated County when it is built and if it is annexed into the City.
- f. Please provide a copy of the easement(s) for the privately owned and maintained Deer Creek Road.
- g. Please identify the standards to which the intersection with the Montgomery Access Road is proposed to be built and whether these standards comply with County or City standards. Please identify any stop signs or access controls that may be proposed.

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- h. Please identify who will be responsible for maintaining this new intersection located in the unincorporated County when it is built and if it is annexed into the City.
- i. Please indicate whether the existing easement as depicted on AFN 5005098 connects with Montgomery Road within the City limits, and if not, how this connection will be made.
- j. The required secondary access road to serve Phase 2 is identified as an Interim Access Road that does not comply with the standards for a Collector Road as required by the City Heights Development Agreement Appendix I.
- k. Please revise the plans to depict this secondary access as a Collector Road in accordance with the standards in the City Heights Development Agreement Appendix I and the provisions of the International Fire Code.
- l. Please provide documentation that Terra Associates has reviewed the revised plans and that they confirm that their recommendations have been properly interpreted and incorporated into the design.

VI. Phase 2 Preliminary Plat Consistency Determination

A. Phase 2 Preliminary Plat Approval

The Phase 2 Preliminary Plat prepared by Encompass Engineering and Surveying consisting of 6 sheets and dated 03/2022 (Exhibit AA), is approved based on the following considerations:

1. The Phase 2 Preliminary Plat appears to generally be within the scope and intent of the Master Site Plan.
2. The Phase 2 Preliminary Plat appears to generally be of a similar size and scale and arguably does not present appreciably different environmental effects from those identified in the City Heights EIS, provided that no determination has been made regarding proposed development activities outside of the City limits.
 - a. Any adverse environmental impacts associated with development activities outside the City limits remain within the purview of those external agencies with jurisdiction.
3. The Phase 2 Preliminary Plat does not appear to reduce overall acreage identified as dedicated public areas, open space or buffering areas.

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4. The Phase 2 Preliminary Plat does not appear to materially or significantly change the balance of uses approved as part of the Master Site Plan, provided that no determination has been made regarding the future development plans of Tract A.
5. It appears that the Phase 2 Preliminary Plat can be implemented, and final plat approval could be obtained in accordance with the conditions of approval in the City Heights Development Agreement and the City Heights EIS, provided that all actions to implement the Phase 2 preliminary plat comply with the specified provisions.

B. Phase 2 Preliminary Plat Implementation

All actions to implement the approved Phase 2 Preliminary Plat shall comply with the following provisions. Final approval of the Phase 2 Plat shall be based on a finding by the City that these provisions have been satisfied.

1. All construction and development activities shall comply with:
 - a. The approved Phase 2 Preliminary Plat Map (See Exhibit AA to this document for reference).
 - b. The mitigating measures of the City Heights EIS (See Exhibit CC to this document for reference).
 - c. The City Heights Annexation and Development Agreement including Appendices A-R (See Exhibit DD to this document for reference).
 - d. The provisions of the Cle Elum Municipal Code in effect on November 11, 2011 (see Appendix EE for reference) including, specifically Titles 12 through 18, except to the extent such Development Regulations are inconsistent with, or modified by, the Development Agreement or the Master Site Plan.
 - e. The provisions of the July 19, 2021, Phase 1 Settlement Agreement, as applicable (See Exhibit BB).
2. No construction activities of any kind shall be initiated within the boundaries of the Phase 2 preliminary plat map (Exhibit AA) without written authorization to proceed from the City. This shall include, but is not limited to:
 - a. Grading, excavation, or land filling.
 - b. Site preparation.

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- c. Construction of streets and alleys, including paving and repaving.
 - d. Construction of water, sewer, or stormwater facilities.
 - e. Construction or relocation of trails.
 - f. Construction in or near critical areas and their buffers.
 - g. Construction or placement of buildings, structures, or temporary shelters.
 - h. Other construction activities as determined by the City.
3. Prior to initiating any construction activity associated with the implementation of the City Heights Phase 2 Preliminary Plat, the Applicant shall obtain the required City permits and approvals. This may include, but is not limited to:
- a. City approval of Phase 2 Clearing, Grading, and Infrastructure Plans (streets, water, sewer, storm water, etc.).
 - b. City grading, excavation, and land filling permit(s).
 - c. City critical areas permits or authorizations.
 - d. Participation in a pre-construction conference.
 - e. Installation and maintenance of temporary erosion and dust control measures.
 - f. Financial guarantees, and/or performance bonds.
4. All infrastructure plans and drawings submitted for City review and approval shall:
- a. Be designed and constructed to “stand alone” and function safely, in accordance with City standards, independent of any subsequent phases of development.
 - b. Include documentation from Terra Associates that their recommendations have been properly interpreted and applied.
5. The Project Sponsor shall be responsible for complying with applicable state and federal regulations and for obtaining required permits and approvals. This may include, but is not limited to:

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- a. Documentation of coverage under the Construction Stormwater General Permit from the Washington State Department of Ecology.
 - b. National Pollutant Discharge and Elimination System (NPDES) permit from the Washington State Department of Ecology.
 - c. Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife.
 - d. Right-of-Way (ROW) use or construction permit from the Washington State Department of Transportation.
 - e. Compliance with the standards of the Washington Model Toxics Control Act, if applicable.
 - f. Review and approval of a Forest Practices Application(s) by the Washington State Department of Natural Resources.
6. The Project Sponsor shall be responsible for obtaining all permits and approvals that may be required by Kittitas County. This may include, but is not limited to:
- a. Proposed construction activities in the unincorporated County.
 - b. It is understood by the parties that these areas are within the Cle Elum Urban Growth Area and may be annexed into the City at any time. Therefore, a high degree of coordination between the City and the County shall be required.
 - c. It is understood by the parties that City Heights may need to submit revised plans or application materials to the City, as a result of county, state, or federal agency approvals.
7. The areas designated for development in the Phase 2 Preliminary Plat Map in Exhibit AA to this document shall constitute the full development of Development Pod B-4, B-5, and B-6, and no further plats or development plans shall be submitted for these areas, except as authorized in this document.
8. No proposed lot, as depicted on the preliminary plat map, may be leased, or sold, or building constructed, prior to final plat approval, provided that:
- a. One sales/marketing/information center not to exceed 5,000 square feet may be placed within the boundaries of Phase 1 or Phase 2, subject to the issuance of a Temporary

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Use authorization by the City in accordance with the provisions of the City Heights Development Agreement Appendix B.

- b. Up to a total of twelve detached model homes and up to four attached buildings for attached product, each of which are utilized for sales and marketing purposes may be placed within the boundaries of Phase 1 and Phase 2, subject to the issuance of a Temporary Use authorization by the City in accordance with the provisions of the City Heights Development Agreement Appendix B.
 - c. This shall not preclude the sale of existing parcels in accordance with the provisions of the City Heights Development Agreement.
9. The Phase 2 plat consists of portions of parcels 593835/956731, 956732/956733, 956734/956735, and 956736/956737. The preliminary approval of the Phase 2 plat does not authorize any development activities on the portions of these parcels outside of the plat, unless specifically authorized in this agreement.
- a. Prior to final approval of the Phase 2 plat the Project Sponsor shall submit for City review and approval a boundary line adjustment or other means of establishing the portions of these parcels outside of the Phase 2 plat as separate parcels or tracts.
10. No Applicant Elections have been proposed as a part of Phase 2 and none have been authorized. The Project Sponsor may subsequently propose such elections in accordance with the provisions of the City Heights Development Agreement Appendix R.
- a. Authorized elections shall be processed as Type I applications.
11. No Minor or Major Modifications have been requested as a part of Phase 2 and none have been approved. Modifications to the approved Phase 2 preliminary plat may be submitted for City review and approval in accordance with the provisions of Appendix R to the City Heights Development Agreement and CEMC 17.100, provided that:
- a. Requests for minor modifications shall be processed as Type II applications.
 - b. Requests for major modifications shall be processed as Type IV applications.
 - c. Modifications for deviations from the Development Agreement, such as use of private roads/tracts, should be applied for under Appendix R for future phases.
12. The permitted uses and all terms and conditions applicable to public and private tracts shall be identified on the face of the final plat, provided that:

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- a. The Project Sponsor shall submit a draft copy of all documents that create or assign responsibilities to a homeowner's association to the City Attorney for review prior to final plat approval, or by mutual agreement of the parties, prior to the issuance of the first Certificate of Occupancy.
 - b. The City may require measures such as covenants or other legal instruments to ensure that the homeowner association(s) perform their obligations to maintain private tracts in perpetuity.
 - c. The Project Sponsor shall be responsible for maintaining all tracts that may be dedicated to the City or another public agency until such time that the dedication occurs, and that no unauthorized uses occur, nor any use that may cause degradation of these areas.
13. Permitted land uses within the Phase 2 plat include:
- a. Up to a total of 69 dwelling units on individual lots.
 - b. Trails designed and constructed in accordance with the provisions of Appendix N to the City Heights Development Agreement and the provisions in this document.
14. No development of Tract A is authorized through this preliminary plat approval. The Project Sponsor shall submit an application(s) to the City prior to the development of this Tract and a separate determination of compliance with the City Heights EIS and consistency with the City Heights Development Agreement shall be made.
15. Land development and exterior construction activities shall be limited to 7 AM to 8 PM Monday thru Saturday pursuant to the Development Agreement, Appendix H.
16. No development, construction, clearing, grading, fill, excavation, of disturbances of any kind shall occur in streams, wetlands, steep slopes, or any other critical area or their buffers without a critical area permit(s) or authorization from the City of Cle Elum, any associated permits and approvals from the City such as a clearing and grading permit or road construction authorization, and any permits or approvals that may be required from state or federal agencies with jurisdiction, including the Washington State Department of Fish and Wildlife.
- a. The Project Sponsor shall submit an updated critical areas report that is consistent with the approved infrastructure plans identifies the impacts to critical areas and their buffers and that addresses the required mitigation sequencing. This report shall include compensatory mitigation measures as required by Appendix G to ensure that there will be no net loss of wetland or habitat function and value.

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- b. The Project Sponsor shall be responsible for obtaining all required City, County, State, and Federal permits, and approvals. All development activities shall be designed and implemented in accordance with these permits and approvals.
 - c. No development activity that disturbs a wetland or wetland buffer may be initiated without City Council approval, unless otherwise agreed to in writing by the City and the Project Sponsor.
 - d. The Project Sponsor shall install and maintain measures to protect critical areas within the boundaries of the City Heights Master Site Plan from direct and indirect adverse impacts during Phase 2 construction activities.
 - e. The City may require as a condition of final Phase 2 plat approval, that the Project Sponsor take additional measures to protect critical areas within the boundaries of the City Heights Master Site Plan from direct and indirect adverse impacts that may be attributable project phasing, or the use of City Heights facilities such as trails. This may include installation of split rail fences, gates, and/or signage.
 - f. All critical areas and required buffers shall be placed in Open Space tracts or easements on the final plat.
17. The removal of trees shall comply with the applicable provisions of City Heights Development Agreement, as determined by the City. This shall include, but is not limited to:
- (1) Trees with a diameter in excess of thirty (30) inches, measured four feet above grade, in any open space or planned public area, shall not be removed prior to creation of a vegetation management and revegetation and planting plan completed by a certified arborist (Appendix B).*
 - (2) Landscaping for City Heights shall be consistent with the standards set forth in CEMC 17.64, with the following modifications and clarifications:*
 - 9.1 The definition of 'significant trees' set forth in CEMC 17.64.040 pertains only to trees within wetlands, fish and wildlife conservation areas, frequently flooded areas, and geologically hazards areas. Such trees may be removed from these areas where such removal is mitigated through relocation or revegetation pursuant to a critical area mitigation plan consistent with applicable law (Appendix B).*
 - (3) No development, earthmoving activity, or deposit of spoils or drainage shall occur*

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on the Red Rock Park delineated on the Master Site Plan, except as specifically authorized by the City for purposes of improving slope stability or enhancing the recreational aspects of the Red Rock Park (Appendix G).

(4) No vegetation shall be removed from slopes with a grade in excess of thirty five percent (35%) unless, upon recommendation of the Ridge Entities licensed geotech engineer, the City Engineer determines vegetation removal is necessary to complete road, trail or utility corridors and appropriate measures are undertaken to ensure slope stability (Appendix G).

18. Upon satisfactory dedication of Parcel CC in Phase 1 to the City in accordance with the provisions of the July 19, 2021, Phase 1 Settlement Agreement negotiated by City Heights, the City shall notify the Project Sponsor in writing that it has been relieved of the obligation to develop and dedicate to the City Park 2 as required in the City Heights Development Agreement Appendix N.
19. Consistent with the provisions of the July 19, 2021, Phase 1 Settlement Agreement negotiated by City Heights, property within the boundaries of the Phase 2 preliminary plat to be developed as trails and dedicated to the City shall be placed in privately owned Open Space Tracts for future dedication to the City or other public agency, provided that in the interim period prior to dedication:
 - a. Critical areas and their buffers and other areas not suitable for recreational uses are identified and protected through signage and through such measures as the strategic placement of fencing.
 - b. The property owner shall not encourage or permit unauthorized recreational uses to occur within critical areas or their buffers.
 - c. The Project Sponsor may, upon competition of the improvements to a trail(s), elect to open the trail(s) to the public for authorized recreational uses and maintain the trail(s) at his sole expense, until the dedication process has been completed.
20. The dedication of trails within Phase 2 to the City or other public agencies may occur only upon the completion of the following:
 - a. All the property intended for the development of public trails in the Phase 2 plat have been placed in open space tracts or easements suitable for dedication to the City or another public agency.

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- b. A Trail Plan to guide the development and use of these trails in accordance with the provisions of Appendix N has been collaboratively prepared and approved by the Project Sponsor and the City.
 - c. All required improvements have been constructed by the Project Sponsor and accepted by the City.
 - d. All plats necessary for build-out of Development Areas A, B, C, and D1-D4 have received final approval from the City.
 - e. Park #3 the Red Rock Open Space is ready for dedication to the City.
21. All authorized construction activities shall include documentation from a geotechnical engineer that the area is suitable for the proposed development and complies with the provisions of Appendix F to the Development Agreement (Coal Mine Hazards) and the applicable provisions of the City Heights EIS.
- a. The Project Sponsor shall provide additional information identifying the location of any known or potential mine hazards, mine shafts, or associated features such as mine entrances or foundations. In addition, the Project Sponsor shall provide documentation from a geo-technical engineer identifying the proposed measures necessary to avoid, remediate, or mitigate such hazards or features.
 - b. The location of any coal mine hazards, coal mine shafts and associated features within the boundaries of the Phase 2 preliminary plat shall be identified on the face of the final Phase 2 Plat along with a reference to relevant mitigation measures identified in the City Heights EIS and related technical studies for the plat.
22. If unknown coal mine hazards are identified during subsequent construction activities, all work in the immediate vicinity shall be suspended and the site secured, pending consultation with the City and the preparation of appropriate plans and measures necessary to protect the public health and safety in accordance with the provisions of the City Heights EIS and Development Agreement.
23. Prior to final plat approval, the Project Sponsor shall submit for City review and approval a water system design plan to serve the proposed Phase 2 Development. These plans shall be prepared and implemented in compliance with the applicable City standards, the provisions of Appendix E to the City Heights Development Agreement, and this document.
- a. Final plat approval of Phase 2 is contingent upon the design and approval a water main extension to connect to the City's Water Pressure Zone 3.

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24. Prior to final plat approval, the Project Sponsor shall submit for City review and approval a wastewater system design plan to serve the proposed Phase 2 Development. These plans shall be prepared and implemented in compliance with the applicable City standards, the provisions of Appendix D to the City Heights Development Agreement, and this document.
25. Prior to final plat approval, the Project Sponsor shall submit for City review and approval an updated traffic analysis as recommended by Heffron Transportation:

It is noted, as listed for Improvement Measure #7 in the attached Table 3; a traffic analysis will be required at the SR 903 / SR 970 intersection when the building permit is issued for the 100th ERU (Equivalent Residential Unit) within City Heights. Phases 2 and 3 would push the total ERUs above this threshold. The traffic analysis would entail performing new traffic counts at the SR 903/SR 907 intersection. However, because the COVID-19 pandemic has closed or limited activities across the state, it is recommended that the updated traffic analysis be deferred until late summer or fall 2021 when it is hoped that more normal travel conditions will resume. The timing of this analysis will be set in consultation with City of Cle Elum staff.

26. Prior to final plat approval, the Project Sponsor shall submit for City review and approval detailed street plans plan to serve the Phase 2 Development. These plans shall be prepared and implemented in compliance with the provisions of the City Heights Development Agreement, the City Heights EIS, the applicable City standards, the provisions of the International Fire Code in effect at the time an application is submitted to the City, and this document, provided that:
- a. This shall include, but is not limited to, documentation that all streets have been designed in compliance with the provisions of the City Heights Development Agreement including but not limited to Appendix I, Appendix B, and paragraph 8.2.1 except as modified herein.
 - b. This shall include two ingress-egress routes designed and built to the Collector Road standard in Appendix I, that connect to the general City road system.
 - c. One of the required access routes shall be the Stafford Street Corridor. This shall include improvements identified in the Phase 1 Settlement Agreement negotiated by City Heights dated July 19, 2021. These improvements shall be depicted in the final plat.
 - d. Only streets designed, constructed, inspected, and accepted by the City as conforming to the provisions of the City Heights Development Agreement Appendix I, may be

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dedicated to the City.

27. The designated haul route to and from the Phase 2 plat shall be the Alliance Road Corridor. This haul route shall be used for the movement of all construction equipment and machinery, hauling building materials and supplies, and all forestry activities.
 - a. Neither Park Street, Steiner Street, Reed Street, Stafford Street, Billings Street, Oakes Street, W Sixth, nor W Fifth Street shall be used as a haul route.
 - b. Prior to the use of Alliance Road, the Project Sponsor shall obtain the required permits and approvals from Kittitas County.
28. Prior to final plat approval, the Project Sponsor shall submit for City review and approval a stormwater plan designed in accordance with the provisions of the 2004 Stormwater Design Manual for Eastern Washington prepared by the Washington State Department of Ecology (DOE) and as adopted by the City, consistent with the provisions of Appendix C to the City Heights Development Agreement, and this document, provided that:
 - a. The Project Sponsor will supplement the Phase 2 Stormwater Drainage Report, dated March 11, 2022, to address possible alteration of wetland hydrology from the proposed development activities. The report supplement should address the findings in Section 3.4 of the City Heights Draft EIS and demonstrate that the system as designed has considered and addressed wetland hydrology.
29. Prior to the final approval of the Phase 2 plat, provisions should be made for at least one additional residential dwelling unit for sale or lease as low-income housing and one additional residential dwelling unit for sale or lease as moderate-income housing, provided that:
 - a. The Project Sponsor may submit for City review and approval a financial guarantee or other measures that ensures that the condition of approval requiring that provision of affordable housing as set forth in paragraph 6.8 of the Development Agreement will be met prior to the expiration or termination of the City Heights Annexation and Development Agreement.
30. Upon discovery of any human remains, artifacts, or evidence of potential archaeological, historical, or cultural resources all construction activities or uses authorized shall be suspended pending authorization to proceed from the City, and/or the Washington State Department of Archaeology and Historic Preservation, in accordance with the provisions of state and federal law, including, but not limited to RCWs 68.50.645, 27.44.055, and 68.60.055.

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- a. If ground disturbing activities encounter human skeletal remains during construction, then all activity shall cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the Washington State Department of Archaeology and Historic Preservation (DAHP) provides notice to proceed. The finding of human skeletal remains shall be reported to the Cle Elum Police Department and the Kittitas County Coroner in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The County Coroner will assume jurisdiction over the human skeletal remains and decide of whether those remains are forensic or non-forensic. If the County Coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, and the Snoqualmie Tribe. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
 - b. If ground disturbing activities encounter artifacts, or evidence of potential archaeological, historical, or cultural resources during construction, then all activity shall cease that may cause further disturbance to those items. The Project Sponsor shall immediately contact the Cle Elum Planning Department to determine how best to secure the site and to consult with the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Snoqualmie Tribe, and the DAHP.
31. A complete application for the Phase 2 final plat approval, shall be submitted to the City within five years of the date of this preliminary plat approval, provided that:
- a. The Project Sponsor may submit a request to the City for one five-year extension of this deadline for submitting the final plat application. This request must be submitted prior to the deadline for submitting the final plat application. Absent a showing of bad faith, the City shall automatically grant one five-year extension if the request for such an extension is timely submitted to the City. Any additional extensions shall be discretionary.
 - b. The request for final plat approval shall consist of a single application that addresses the entire Phase 2 preliminary plat. The City will not accept applications for a division of the preliminary plat or that provides only for the partial completion of the Phase 2 preliminary plat.

32. The final plat map shall include:

- a. Identification and documentation of required parking in accordance with the provisions of Appendix B to the Development Agreement.
- b. All easements to be retained, modified, or extinguished, and all proposed easements. This shall include documentation that the Project Sponsor has the legal right to use existing easements.
- c. The identification of proposed areas and the associated acreage that may qualify for consideration as satisfying the Open Space requirements of Appendix H to the Development Agreement, subject to confirmation and approval by the City:
 - (1) Open space.
 - (2) Natural areas.
 - (3) Parks.
 - (4) Recreation areas.
 - (5) Village greens.
 - (6) Commons.
 - (7) Public assembly areas.

33. City review of an application for an Implementing Approval for Phase 2 final plat approval is expected to consider the following:

- a. A determination by the City that:
 - (1) All conditions of preliminary plat approval have been met.
 - (2) The final plat complies with the provisions of the City Heights Development Agreement.
 - (3) The final plat complies with the provisions of the EIS Mitigation Measures (See Exhibit CC).
- b. Arrangements have been made for required monitoring and required future inspections, if applicable.

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- c. Payment to the City of all cost recovery invoices, application fees, and any outstanding fees or charges.
 - d. Posting of such financial guarantees and performance bonds as may be required by the City to ensure that final plat approval is obtained prior to the expiration or termination of the City Heights Development Agreement and that all conditions of final plat approval are met.
34. Prior to the first anniversary of the \$140,000 payment for public works operations and equipment (Development Agreement Appendix M Public Works Paragraph 1), the Project Sponsor shall:
- a. Make one payment of \$65,000 for public works operations and equipment (Development Agreement Appendix M Public Works Paragraph 2).
35. Upon issuance of the first building permit for the first ERU within City Heights, the Project Sponsor shall pay to the City:
- a. A one-time payment of \$150,000 related to police and law enforcement operations and equipment impacts (Development Agreement Appendix J Section 4).
36. Upon issuance of the first building permit for the first ERU within City Heights, the Project Sponsor shall pay to the Cle Elum – Roslyn School District:
- a. A one-time payment of \$75,000 related to facility and equipment impacts (Development Agreement Appendix O Schools Paragraph 1).
 - b. A one-time payment of \$150,000 related to school bus impacts (Development Agreement Appendix O Schools Paragraph 2).
 - c. Upon the first anniversary of the preceding \$75,000 payment (Development Agreement Appendix O Schools 1), another one-time payment of \$75,000 shall be made related to facility and equipment impacts (Development Agreement Appendix O Schools Paragraph 3).
37. At the time of issuance of a building permit for each ERU, each Applicant shall pay to the City:
- a. \$250 per ERU stormwater fee for the sole purpose of improving stormwater facilities (Development Agreement Appendix C Section 7).

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- b. \$750 per ERU to offset impacts on City streets resulting from the development of City Heights (Development Agreement Appendix I Section 9).
 - c. \$400 per ERU for City Police and Law Enforcement operations and equipment needs (Development Agreement Appendix J Section 5).
 - d. \$250 per ERU for City Fire and Emergency Medical Services operations and equipment needs (Development Agreement Appendix K Section 4).
 - e. \$200 per ERU for City administrative operations and equipment needs (Development Agreement Appendix L).
 - f. \$375 per ERU for City Public Works operations and equipment needs (Development Agreement Appendix M Section 4).
 - g. \$100 per ERU for the operational needs of the Cle Elum - Roslyn Municipal Court (Development Agreement Appendix P Section 2).
38. At the time of issuance of a building permit for each ERU, the Applicant shall also pay to the City \$2,250 per ERU to offset impacts to facilities of the Cle Elum Roslyn School District. Such payments shall be collected by the City and distributed to the School District in accordance with the provisions of Appendix O to the Cle Elum Roslyn School District (Development Agreement Appendix O Schools Paragraph 6).
39. Upon issuance of a building permit for the 100th ERU within City Heights, the Project Sponsor shall donate to the School District up to three (3) acres of land, or such amount of land the fair market value of which does not exceed One Hundred Fifty Thousand Dollars (\$150,000), whichever is less (Development Agreement Appendix O School Paragraph 5).
40. Upon the School District's provision to the Project Sponsor of an affidavit supported by verifiable data indicating at least 100 students attending the School District reside in City Heights, the Project Sponsor shall pay directly to the School District a one-time payment of \$150,000 related to school bus impacts (Development Agreement Appendix O Schools Paragraph 4).
41. In the absence of a Memorandum of Understanding, the Project Sponsor shall submit with the applications to implement each subsequent phase of the City Heights Master Site Plan (Phase 3, 4 etc.) a traffic analysis report prepared by a qualified professional, as determined by the City. The report shall evaluate and confirm that there is adequate capacity within the three existing access points identified in the City Heights EIS to serve the proposed phase of development without causing an unacceptable Level of Service or

creating a threat to public health and safety that cannot be mitigated through the design of the required road improvements.

It is also important to note that in implementing this Preliminary Plat approval that the following considerations shall apply:

1. Nothing in this document shall preclude the Project Sponsor and the City from executing a Memorandum of Understanding further clarifying or revising the City Heights Development Agreement.
2. The City is under no obligation, by virtue of this decision to approve application materials that may be subsequently submitted or future phases of development. All applications shall be evaluated on their merits in accordance with the provisions of the City Heights EIS and the City Heights Development Agreement.
3. It is understood by the parties that revisions may need to be made to previous permits and approvals based on this preliminary plat approval and/or the review and approval of subsequent applications.
4. It is understood by the parties that revisions may need to be made to the approved Phase 2 Preliminary Plat prior to final plat approval.

VII. Next Steps

A. Appeals

In accordance with the provisions of the City Heights Development Agreement Appendix Q appeals of this Consistency Determination and Phase 2 Preliminary Plat approval must be filed with the Cle Elum City Council within 15 days of the publication of a Notice of Decision.

Any appeal shall include:

1. The name, mailing address, and contact information of the appellant(s).
2. The name, mailing address, and contact information of the appellant's attorney, if any.
3. A separate and concise statement of each alleged error in the Consistency Determination.
4. A statement of the facts and evidence on which each alleged error is based.
5. A statement and description of the type and extent of relief requested.

6. Payment of the appeal fee as required by the City Fee Schedule.

B. Subsequent Phases

The Project Sponsor may submit applications to implement subsequent phases of the City Heights Planned Mixed Use Development at any time, in accordance with the provisions of the City Heights Master Site Plan, the City Heights Planned Action Ordinance, the City Heights Development Agreement, and the City Development Standards under which this project is vested.

VIII. Exhibits

Exhibit AA: City Heights Phase 2 Preliminary Plat prepared by Encompass Engineering and Surveying dated 03/2022.

Link: {Insert Link}

Exhibit BB: City Heights Phase 1 Decision and Conditions as Approved in Settlement of the Applicant's Appeal

On May 27, 2021, City Heights filed an appeal of the initial Phase I approval decision issued by the City. On July 21, 2021, the City and the Project Sponsor executed a Settlement Agreement which included revised Phase 1 Conditions of Approval, which supersedes all previous approvals, and represents the resolution City Heights' appeal. Please click on the following link (press Ctrl and Enter) to view these revised Conditions of Approval.

Link: {Insert Link}

Exhibit CC: City Heights EIS Summary of Mitigation Measures

The City Heights Development Agreement Appendix B provides that:

In addition to the Development Standards set forth in this Agreement, all development within City Heights shall implement and be subject to those mitigation measures identified in the DEIS as "Mitigation Measures Included In Development Proposal."

Please click on the following link (press Ctrl and Enter) to view a list of the *Mitigation Measures Included In Development Proposal* extracted from the City Heights EIS.

Link: {Insert Link}

Also, please note when reading this document that Alternative 1 corresponds with the

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approved Master Site Plan. Alternative 2 is similar to Alternative 1 but includes fewer dwelling units. References to Alternatives 3 and 4 have been deleted as they referred to Alternatives that are no longer relevant as all properties subject to the City Heights Master Site Plan and Development Agreement have been annexed into the City of Cle Elum.

Exhibit DD: City Heights Development Agreement including Appendices A-R

Please click on the following link (press Ctrl and Enter) to view the City Heights Annexation and Development Agreement.

[Link: {Insert Link}](#)

Exhibit EE: City Heights Vested Development Standards

The City Heights Project is subject to the provisions of the Cle Elum Municipal Code in effect on November 11, 2011, except as modified by the City Heights Development Agreement. Please click on the following link (press Ctrl and Enter) to view the Municipal Code in effect on November 23, 2010, which for general reference purposes is a close approximation of the regulations under which City Heights is vested. For a more specific reference, please refer to the City website or contact the Cle Elum City Clerk.

[Link: {Insert Link}](#)

Exhibit FF: Phase 2 Preliminary Plat Notice of Application Comments

Please click on the following link (press Ctrl and Enter) to see the comments that were submitted to the City regarding the Phase 2 Preliminary Plat application.

[Link: {Insert Link}](#)