

*City of Cle Elum*  
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## **City Heights Phase 3 Preliminary Plat Notice of Decision Approval with Permitted Conditions<sup>1</sup>**

<b>Implementing Approval:</b>	Phase 3 Preliminary Plat
<b>Project File Number:</b>	SUB 23-001
<b>Process:</b>	Notice of Decision
<b>Complete Application Date:</b>	February 16, 2023
<b>Notice of Decision Date:</b>	March 31, 2023
<b>Proposed Open Space:</b>	0.49 acres
<b>Proposed Number of Lots:</b>	19
<b>Proposed Pods:</b>	Portions of Pod B5
<b>Proposed Affordable Housing:</b>	None
<b>Cumulative Water ERUs:</b>	142 (does not include affordable housing)
<b>Cumulative Sewer ERUs:</b>	144

**Project Location:** This project is located within Tract GG of the Phase 1 Final Plat, and Tracts A, R, and T of the Phase 2 Preliminary Plat. At the time of this notice of decision, the new parcel number for Tract GG is not available from the Kittitas County Assessor. Currently, the parcel numbers for the project area are 956735 and 956732.

**Project Description:** A preliminary plat for a 19-lot residential subdivision within the City Heights Master Planned Mixed Use Development. The subdivision is located within development pod area B5. Phase 3 completes development of pod area B5; the other portion of the pod is developed in Phase 2. The preliminary plat also proposes road, water, sewer, and utility improvements and trail access.

**Consistency Review:** The City has determined that, as conditioned, the Phase 3 Preliminary Plat is consistent with the City Heights EIS and Development Agreement. In accordance with the provisions of the City Heights Development Agreement (DA) Appendix Q, no further SEPA Checklist or Threshold Determination is required by the City for actions associated with implementing the Phase 3 Preliminary Plat that occur within the boundaries of the Phase 3 Preliminary Plat.

### **Findings of Fact:**

1. 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

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<sup>1</sup> Any conditions included in this preliminary plat approval are permitted by the development agreement, master site plan, EIS, and various settlement agreements and authorized by the Arbitrator's April 8, 2022 Order at Section B(3).

development that includes the development of up to 962 dwelling units on 358 acres in the City of Cle Elum.

2. A final environmental impact statement 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.
3. The site is zoned Planned Mixed Use.
4. The Phase 3 Preliminary Plat will create 19 lots and provide 0.49 acres of open space on a total of 2.14 acres.
5. The Phase 3 Preliminary Plat is located on the to-be-created Tracts A, R, and T within the Phase 2 Preliminary Plat, which is a portion of Tract GG of the Phase 1 Final Plat. Tracts A, R, and T will be created upon final plat approval and recording of Phase 2 of the development.
6. The Phase 3 Preliminary Plat completes development of pod area B5. The other portion of the pod is proposed as part of Phase 2.
7. The preliminary plat is reviewed as a Type II application, according to the provisions of the Phase 1 Settlement Agreement.
8. On February 16, 2023, a notice of application was published in the Cle Elum Tribune, posted on the City's website, posted on the site, mailed to neighboring landowners and interested parties, and emailed to public agencies.
9. Comment letters were received from the Bonneville Power Administration and Washington Department of Fish and Wildlife.
10. The project will be served by city water and sewer.
11. The City Engineer has determined that, as conditioned, the proposed vehicular ingress and egress, pedestrian access, emergency access, and utilities are adequate.
12. The City Planner has determined that, as conditioned, the proposed project will meet minimum standards required by the DA, EIS mitigating measures, and all other governing documents.

**Conclusions:**

1. The City Planner has administrative decision-making authority for preliminary plats, pursuant to the Phase 1 Settlement Agreement and the November 16, 2020 Arbitration Order.
2. The preliminary plat is consistent with the scope and intent of the Master Site Plan.
3. The preliminary plat is of a similar size and scale and does not present appreciably different environmental effects from those identified in the City Heights EIS.
4. The preliminary plat does not reduce overall acreage identified as dedicated public areas, open space or buffering areas.
5. The preliminary plat conforms to the Master Site Plan and applicable requirements of the zoning district, as modified by the development agreement.
6. As conditioned, the preliminary plat conforms to adopted standards for the construction of all public facilities including streets, sidewalks, stormwater control, sewer systems, water systems and street lighting, as modified by the development agreement.
7. There are no critical areas within the preliminary plat.
8. As conditioned, the preliminary plat includes appropriate provisions for public health, safety and welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways including trails,

transit stops, potable water, sanitary waste disposal, parks and recreation, playgrounds, schools, sidewalks, and safe walking conditions for those students who will only walk to school.

9. As conditioned, the public use and interest will be served by this project.

**Decision:** The application for the Phase 3 Preliminary Plat is APPROVED, subject to the following conditions as permitted by the development agreement, master site plan, EIS, and various settlement agreements:

General

1. Prior to final approval of the Phase 3 Preliminary Plat, the Phase 2 Preliminary Plat must receive final approval and the offsite approvals, including the Zone 3 Water Main easement and/or WSDOT franchise agreements depending on alignment, BPA and PSE approvals, and Kittitas County grading permit approval, must be secured by the applicant.<sup>2</sup>
2. Declaration of Covenants, Conditions, and Restrictions shall be recorded at Kittitas County and the recording number provided on the final plat. The CC&Rs shall be reviewed and approved by the City prior to recording. The CC&Rs shall include private road maintenance provisions.
3. Declaration of Stormwater Covenant shall be recorded at Kittitas County and the recording number provided on the final plat. The declaration shall be reviewed and approved by the City Engineer prior to recording. The declaration should include a map which clearly identifies which portion of the system are privately owned and maintained and which are publicly owned and maintained.
4. 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.
  - 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 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

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<sup>2</sup> This paragraph is intended to address the Arbitrator's April 8, 2022 Order at Section B(2) and the Phase 1 Settlement Agreement at Section VI.C. This requirement supports the consistency determination and allows the applicant to obtain preliminary plat approval and begin construction activities. As designed, Phase 3 cannot demonstrate consistency without final approval of Phase 2 occurring first. Tracts A, R, and T upon which Phase 3 will be built do not currently exist and will not be legally created until Phase 2 final plat approval is obtained and the plat is recorded. The infrastructure to serve Phase 3 is entirely dependent on Phase 2 infrastructure and does not stand alone. The applicant could modify the Phase 3 preliminary plat and infrastructure plans to receive final approval prior to Phase 2 final approval; however, this action would require a minor modification to revise the preliminary plat and, pursuant to the Phase 1 Settlement Agreement Section VI.C.1, the requirement to construct the Zone 3 Water Main and the Montgomery Interim Access would need to be addressed with Phase 3 final approval.

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 Blum 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.

#### Consistency with Development Agreement

1. According to the DA, Appendix D, Section 3, the first 140 sewer ERUs within City Heights can be served by the existing facilities on a permanent basis. According to Appendix E, Section 2, the City's current water system has sufficient water rights and water supply to provide 140 water ERUs to the project. All ERUs beyond 140 will need to be mitigated.

Section 6.2 of the DA states: "The Ridge Entities shall provide at their cost all additional wastewater collection, treatment and discharge facilities and improvements necessary to mitigate the impacts of City Heights, all as further provided in, and consistent with Appendix D."

Section 6.3 of the DA states: "The Ridge Entities shall provide at their cost all additional water diversion, treatment and delivery facilities necessary to mitigate the impacts to the water system from City Heights. Additionally, the Ridge Entities, at their sole cost, shall provide the water rights necessary to comply with the City's water ordinances related to the annexations to the City, all as further defined and consistent with Appendix E."

2. No subdivision of any phase that causes the cumulative ERUs to exceed 140 will be allowed prior to the following:
  - a. Approval of a "Capacity Purchase Agreement" or "Wastewater Agreement" for future improvements, as described in the DA, Appendix D, Sections 2.1 and 2.2; and
  - b. Approval of a "Water Supply Agreement" for future improvements, as described in the DA, Appendix E, Section 12; and
  - c. The conveyance of water rights to the City of Cle Elum for all water ERUs above 140, as described in the DA, Appendix E, Sections 2 through 4.
3. With preliminary plat approval of Phase 3, there will be uses requiring 142 water ERUs and 144 sewer ERUs. If the applicant chooses to apply for final plat approval prior to meeting the conditions in #2 above, the applicant may divide Phase 3 into two divisions, with the first division including up to 15 lots for a total of 140 sewer ERUs and 138 water ERUs. The second division may be eligible to receive final plat approval after the conditions in #2 are met.
4. Construction of required improvements shall not commence until the City issues a Grading, Excavation, and Land Filling Permit specific to Phase 3 and the applicant obtains all other required state and federal permits and approvals. The City Engineer will review infrastructure plans to ensure compliance with the DA and city standards. No construction may take place outside the limits of approved grading permits.

5. All required public improvements for the entire phase shall be made prior to final plat approval, unless the applicant provides the City a bond for the estimated construction costs of the remaining improvements, as provided for by the DA.
6. All utilities, including water and sewer, must be connected and functioning prior to approval of any occupancy permits within this phase.
7. The project shall comply with all other provisions of the DA, EIS Mitigating Measures, MOU, Arbitration Orders, Settlement Agreements, Cle Elum City Code, and other governing documents.
8. Road names for Roads A and B must be approved by KITTCOM prior to final approval.
9. The Road B westerly segment must be modified to meet the standards within the DA.
10. 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 DA
11. The applicant shall submit a complete application for the final plat, including all divisions, within five years of the date of this preliminary plat approval. The City shall grant one five-year extension if a timely request is submitted to the City. Additional extensions shall be discretionary.

**Approval:**

  
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Christina Wollman, City Heights Planner

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March 31, 2023  
Date

**Appeal Period:** In accordance with the provisions of the City Heights Development Agreement Appendix Q, appeals of this Phase 3 Preliminary Plat Approval must be filed with the Cle Elum City Council within 15 days of the publication of this Notice of Decision. This decision will be published on April 6, 2023. Applications to appeal this decision must be submitted to the City Clerk and shall include:

1. The name, mailing address, and contact information of the petitioner(s).
2. The name, mailing address, and contact information of the petitioner'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 application appeal fee as required by the City Fee Schedule.

**Change in Valuation:** Property owners that may be affected by this decision may request a change in valuation for property tax purposes in accordance with the provisions of RCW 36.70B.130.

For more information about this decision on the Phase 3 Preliminary Plat or the City Heights Project, please call and leave a message at (509) 674-2262 extension 3 or send an email to christina.wollman@cleelum.gov. Please be sure to clearly provide your name, address, and information on how to respond to your inquiry and we will make every effort to respond in a timely manner.