

Before Hearing Examiner  
Gary N. McLean

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF CLE ELUM**

Regarding an APPLICATION FOR A )  
CONDITIONAL USE PERMIT to develop a )  
48-unit multifamily residential complex )  
known as the "Bullfrog Road Apartments" )  
on a site zoned General Commercial in the )  
City of Cle Elum, submitted by )  
SCOTT LIEN, )  
Applicant )  
(Project location: 4240 Bullfrog Road) )  
\_\_\_\_\_ )

**File No. CUP-2024-003**

**FINDINGS OF FACT,  
CONCLUSIONS AND DECISION  
APPROVING CONDITIONAL USE  
PERMIT**

**I. SUMMARY OF DECISION.**

The applicant's Project satisfies all applicable approval criteria and merits approval, subject to conditions.

**II. RECORD.**

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing held for this matter are maintained by the City of Cle Elum and may be examined or reviewed by contacting the City Clerk's Office.

**Hearing Testimony:** City Planning Consultant, Colleda Monick; the applicant, Scott Lien; local resident, Phil Hess, who submitted written comments included as part of the record; Victor Salemann, PE with the TSI firm, applicant's engineering consultant; and Mike Heit, with HLA Engineering, as the City's engineering consultant, all asked to present testimony and/or responses to public comments under oath during the public hearing conducted on March 5, 2025. No one submitted written comments or provided personal testimony or evidence that would constitute a preponderance of evidence rebutting findings in the Staff Report and reports in the record that support approval of the requested permit. City and applicant witnesses provided credible testimony and

**FINDINGS OF FACT, CONCLUSIONS AND  
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PERMIT TO AUTHORIZE "4240 BULLFROG  
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directed attention to portions of the record that comprise a preponderance of evidence supporting issuance of the pending conditional use permit, subject to conditions.

**Exhibits:** The City's Planning Consultant, Ms. Monick, generated proposed findings, conclusions, and a recommendation of approval, shared with the Hearing Examiner in the week before the public hearing, referenced in this Decision as the Staff Report. The Staff Report and the following Exhibits were all accepted into the Record in their entirety without modification:

EXHIBIT LIST			
File Numbers: CUP-2024-003, SDR-2024-005, CA-2024-002			
Hearing Date: March 5, 2025			
Ex. #	Bates #	Date	Document Title
A. City Staff Report			
C-01		02-19-2025	Staff Report (Revised 03-04-2025)
B. Application Submittals			
C-02		11-01-2024	Property Owner Approval Letter
C-03		11-08-2024	Conditional Use Permit Application
C-04		11-08-2024	Site and Design Review Application
C-05		11-08-2024	Narrative
C-06		11-15-2024	Critical Areas Permit Application
C-07		11-15-2024	Site Plan
C-08		11-22-2024	Critical Area Report
C-09		11-22-2024	Geotechnical Report
C-10		11-22-2024	Infiltration Test Report
C-11		11-22-2024	SEPA Checklist
C-12		11-22-2024	TIA
C-13		02-15-2025	Revised Site Plan
C. Public Notice			
C-14		11/22/2024	Notice of Complete Application
C-15		12/5/2024	Notice of Application and Environmental Review
C-16		2/6/2025	Notice of Public Hearing
C-17		2/6/2025	SEPA- MDNS
C-18		12/5/2024	Notice of Application and Environmental Review mailed to Agencies, Property owners within 300', Posted in the Newspaper and Onsite.

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C-19		1/6/2025	Notice of public Hearing and MDNS mailed to Agencies, Property Owners within 300', Partys of Record and Posted in the Newspaper and Onsite.
D. Agency & Public Comments and Communications			
C-20		12/18/2024	Cle Elum Roslyn School District
C-21		12/10/2024	Confederated Tribes of the Colville Reservation
C-22		1/6/2025	Department of Fish and Wildlife
C-23		1/6/2025	Washington State Department of Transportation
C-24		2/18/2025	Kittitas County Public Works
C-25		12/25/2024	Phil Hess
C-26		12/14/2025	Kathy Wyborski
E. Other Processing Documents			
C-27		1/24/2025	Applicant Response Letter to Agency Comments
C-28		1/24/2025	Applicant Response Letter to Phil Hess Comment
C-29			H&D Logging Co. Short Plat No. 1
C-30		3/4/2025	Staff Memorandum- Revisions to Staff Report
C-31		3/4/2025	Staff Memorandum, Att. A- Redlines to Staff Report

The Examiner visited the road network and project site in the weeks before the public hearing and after, and is fully advised on matters at issue herein, including without limitation adjacent developments and land uses, applicable law, application materials, and relevant comprehensive plan provisions.

### III. FINDINGS OF FACT.

Based upon the record, the undersigned Examiner issues the following Findings of Fact.

#### *Application, Site Location, Description of Project.*

1. In November of 2024, the applicant, Scott Lien, as Principal of Kamiak Real Estate, LLC, submitted a set of application materials seeking approval of a Conditional Use Permit to authorize development of a residential project at 4240 Bullfrog Road, which is located in the City of Cle Elum's General Commercial Zone. (*Staff Report, page 1; Application materials, Exhibits C-2 through C-12*).

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2. There is no dispute that the City's municipal code requires a conditional use permit for residential uses proposed in the General Commercial zone. *(See CEMC 17.32.030.A)*. So, after the application materials were reviewed and deemed complete for processing, Staff issued public notices inviting comments regarding the proposal and its environmental review for the matter, and announcing the date of an open record public hearing, all in accord with applicable City codes and noticing requirements. *(Staff Report, page 2; Ex. C-14 through C-19, copies of public notices and confirmation materials; Testimony of Ms. Monick)*.

3. Interior portions of the project site, to the east of vegetation and some large trees that stand along Bullfrog Road, were previously developed and used as a model home site for a now-abandoned project on another, much larger property in the vicinity. So, the site once included temporary structures, building pads, and paved areas that required tree removal, leaving trees and mature vegetation mostly on the west and southwest parts of the parcel. Most all of the existing site development on the site will be removed. *(Application materials; Site Visits; Proposed Site Plans)*.

4. The applicant's written narrative, included in the record as *Ex. C-5*, provides the following project description:

The application is to request conditional use of a 48-unit multifamily residential project on a site currently zoned for General Commercial (CG). The units are divided into 2 three-story buildings with approximately 72 surface parking stalls. The site, located at 4240 Bullfrog Rd, is bordered to the west by Bullfrog Road, to the north and east by a private access road owned by the Cle Elum Roslyn School District, and to the south by the Cle Elum Roslyn School District bus facility as well as a separate undeveloped lot. The zones that immediately abut the site are Public Use and Planned Mixed Use with another General Commercial zone to the north. Site access will be located at an existing access point to the north as well as a new access point to the east. The residential uses do not require deliveries. Construction is anticipated to begin in the summer of 2025 and last approximately one year. *(Ex. C-5)*.

5. The applicant's revised Site Plan for the project site is included in the record as *Ex. C-13*, with a screenshot of such plan provided below:

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6. As depicted on the site plan illustration provided above, the applicant's project will not require a new curb-cut, aka access point, directly onto Bullfrog Road. Instead, access will remain the same as it is today, using a 40-foot-wide common access and utility easement [parts of which are labeled as 'Access Road' on the site plan illustration] that already connects with Bullfrog Road and serves the site. (*Staff Report, page 5; Ex. C-29, H&D Logging Co. Short Plat No. 1, recorded in July of 1996*).

***Jurisdiction, applicable law.***

7. In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing on the pending Conditional Use Permit application and issue a written decision that is subject to judicial appeal. (*See Cle Elum Municipal Code (CEMC) 14.30.040, Permit Classification Table, listing a "Conditional Use Permit" as a Type 3 matter that is subject to a public hearing before and a final decision by the City's Hearing Examiner, which can be appealed to Superior Court; and CEMC 14.30.070, re: Procedure for Type 3 reviews*).

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***Burden of proof.***

8. The applicant bears the burden of proof to establish by a preponderance of the evidence that the requested project permit is consistent with state law, city codes and standards. (*Cle Elum Hearing Examiner Rules of Procedure, Sec. 3.9*).

***SEPA review; MDNS mitigation measures adopted as conditions for this permit.***

9. The Staff Report credibly summarizes the environmental review conducted for the applicant's proposal, which included public notices, consideration of comments and other relevant environmental information, resulting in issuance of a Mitigated Determination of Non-Significance (MDNS) on or about February 6, 2025. (*Staff Report, page 2; Ex. C-17, MDNS*). The MDNS included the following mitigation measures, each of which are adopted as Conditions of Approval for this conditional use permit, as modified below:

1. *Cultural Resources; IDP required.* In coordination with the Colville Tribe, the Permittee shall obtain a Cultural Resources Survey and Report from a qualified professional, subject to review and approval by the City's SEPA Responsible Official, which shall include an Inadvertent Discovery Plan and other best management practices to be followed during all ground disturbance work on the project site. The Permittee shall be required to satisfy recommendations and conditions included in the final Cultural Resources Report, as reviewed and approved by the City's SEPA Responsible Official. A copy of the approved IDP shall be maintained at the worksite, and all contractors and construction workers shall be informed of its contents and requirements before grading or other construction work begins.
2. *WDFW mitigation plan.* The applicant shall work with the Washington State Department of Fish and Wildlife to identify appropriate mitigations to suffice WDFW concerns associated with the project. Specific measures, requirements, timelines, and other requirements provided in any mitigation plan approved by WDFW shall be fully implemented and satisfied during the development process and thereafter, as specified in such mitigation plan.
3. *Traffic Mitigation.* The following is the list of traffic mitigation measures necessary to reduce or eliminate project impacts:
  - a. The proposed project shall provide proportional share contributions at the W 2nd Street (SR 903)/Miller Road, W 2nd Street (SR 903)/N Pine Street, W 2nd Street (SR 903)/N Stafford Avenue, and W 2nd Street (SR 903)/N Oakes Avenue intersection, where future intersection controls are warranted to meet adopted level of service standards regardless of the project. Proportional share contributions of the project of 0.52 percent, 0.59 percent, and 0.60 percent at these intersections, respectively, in evaluations of total entering vehicles (TEV}. Calculations of the proportional share requested by the City of Cle Elum include:
    - i. W 2nd Street {SR 903)/Miller Road - TEV Baseline 1,724 - 9 new Project Trips. Proportional Share {1,724 + 9 = 1,733. 9/1,733 = 0.52%}. The 2023-Predesign Estimated Cost is \$130,000. 0.52% \* \$130,000 = \$675.13.



10. During the public hearing, the City's lead Planning Consultant, Colleda Monick, credibly summarized her Staff Report and recommendation of approval, subject to conditions, noting that a detailed Landscape Plan must be prepared, reviewed and approved for the project, and that MDNS mitigation measures must be satisfied, including those addressing traffic and cultural resource issues. Ms. Monick provided follow-up testimony to address public comments, including her explanation that there is no nexus or reason for this project to be required to extend Douglas Munro Road, as such work would best be addressed in connection with future development that might occur closer to such road. The Examiner concurs with Ms. Monick's credible explanation, and notes that maps and existing forested conditions on properties in the area establish that a Douglas Munro Road corridor development would most likely entail removal of many mature trees and development over challenging terrain to connect closer to the project site, which is located well to the west of where Douglas Munro Road now ends. *(Testimony of Ms. Monick).*

12. Phil Hess, a local resident who submitted written comments that are included as part of the record, reiterated his concerns about transportation impacts, that impacts and mitigation should be based upon reviews that extend 20-years instead of just 12-years, and that a new ingress/egress corridor (off Douglas Munro Blvd. to the east/southeast, or thereabouts) should be built to keep traffic off Bullfrog Road, which he believes is already too busy.

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1 He explained that the TIA included analysis out several years beyond that typically considered,  
2 because an analysis was already prepared for the [47-North] abandoned project. Even with  
3 consideration of the longer time period and potential transportation facility improvements, Mr.  
4 Salemann confirmed his professional opinion that additional mitigation measures [beyond those  
5 already listed in the MDNS] are not warranted for this project.

6 14. Mike Heit, with HLA Engineering, the City's 3<sup>rd</sup> party traffic impact consultant, confirmed  
7 that he believes that project, which will generate less than a one percent increase in impacts on  
8 surrounding facilities, is well below the level that would justify imposition of additional pro-rata  
9 financial contributions from the applicant.

10 15. In the end, no one offered a preponderance of testimony or evidence during the public hearing  
11 process that would serve as a basis to deny the requested conditional use permit.

12 16. While all evidence and information discussed in the Staff Report, application materials, and  
13 public comments were evaluated and carefully considered by the Examiner, several topics merit  
14 special attention, as discussed below.

15 ***Traffic impact considerations.***

16 17. The applicant's Traffic Impact Analysis ("TIA") prepared by qualified professionals from the  
17 TSI firm (Transportation Solutions, Inc.) summarizes the traffic impacts associated with development  
18 of the applicant's Project, a housing development west of Bullfrog Road and south of the SR 903 and  
19 Bullfrog Road roundabout, in the City of Cle Elum. The TIA provides analysis for a project with up  
20 to 50 multifamily residential units, slightly larger than the 48-unit project proposed in the final site  
21 plan. (See Ex. C-12, *Traffic Impact Analysis prepared by the applicant's engineering consultants*  
22 *from the TSI firm, Executive Summary on page 1*).

23 18. Three intersections located within the Cle Elum city limits are forecast to operate at non-  
24 compliant Level of Service levels after this Project is fully developed. (Staff Report, page 5; Ex. C-  
25 12). The Mitigated Determination of Non-Significance (MDNS) issued for this project includes  
26 mitigation measures that the applicant must satisfy to address transportation impacts on facilities in  
the City of Cle Elum, which are also included as conditions of approval for this conditional use permit.  
(See Ex. C-17, *SEPA MDNS issued for this project; Findings above re: MDNS Mitigation Measures*  
*adopted as conditions for this permit*).

19 19. Through a scoping process with the City of Cle Elum and Kittitas County officials, the  
20 applicant's traffic consultants also analyzed data to include additional horizon years in 2031 and 2037.  
21 A 50-unit project is forecast to generate up to: 338 new weekday trips, split 50% in and 50% out; 20  
22 new AM peak hour trips, split 5 in and 15 out; and 26 new PM peak hour trips, split 16 in and 10 out.  
23 The TIA explains that potentially-impacted "study" intersections and the Bullfrog Road and SR 903  
24 corridors all operate at LOS (Level of Service) "C" or better when Project traffic data is applied, all  
25 satisfying applicable LOS thresholds set for such facilities. The TIA explains that there are no offsite  
26 LOS improvements required based on the Project's minimal impacts expected to occur in the study  
area. (Ex. C-12, *Exec. Summary*).

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20. Projected trips do not meet warrants for left-turn or right-turn lanes on Bullfrog Road at the site access point. A recent and highly-relevant traffic analysis for the abandoned “47° North” project in the same area identified future 2031 and 2037 improvements that are anticipated to occur at the Bullfrog Road intersections with the I-90 ramps and Tumble Creek Drive. For this Project, PM peak hour trips are forecast to contribute less than 1 percent of the future intersection traffic volumes at these three intersections. (*Ex. C-12, Exec. Summary*).

21. In follow-up correspondence from the Kittitas County Engineer, Cameron Curtis, PE, the County confirmed that it will not seek any financial contributions or impact fees from the applicant for improvements within the county’s jurisdiction. (*See Ex. C-24, correspondence from Mr. Curtis, with Kittitas County Department of Public Works, dated February 18, 2025, “The analysis for the project shows that the LOS for County Roads will not require impact fees and therefore, Kittitas County does not have any concerns with the project”*). In hearing testimony responding to the Examiner’s direct questions on transportation impact issues, and concerns expressed in public comments, the applicant’s traffic engineering consultant and the City’s 3<sup>rd</sup> party traffic consultant provided credible information and directed attention to portions of the record that demonstrate how this project is not expected to generate traffic impacts on a scale that would warrant a pro-rata financial contribution or impact fees to help fund future improvements on the projects within WSDOT and Kittitas County jurisdiction. (*Testimony of Victor Salemann, with TSI; Testimony of Mike Heit, with the HLA engineering firm*).

***Tree Preservation.***

22. The Cle Elum Municipal Code includes a clear mandate that significant trees “shall be preserved to the maximum extent possible.” CEMC 17.64.040, captioned “Preservation of significant trees”, reads as follows:

Significant trees in areas in wetlands, fish and wildlife conservation areas, frequently flooded areas, geologically hazardous areas as defined in CEMC Chapter 18.01, and in the required landscaped buffer adjacent to I-90, shall be preserved. “Significant trees” are defined as existing healthy trees which, when measured four feet above grade, have a minimum diameter of eight inches for evergreen trees, or twelve inches for deciduous trees. Significant trees shall be identified by a tree survey prepared by the applicant and shall be preserved to the maximum extent possible. During construction, the applicant shall use accepted preservation techniques to protect significant trees designated for retention.

23. According to the applicant’s site plan, the western margin of the site will remain undeveloped, preserving most of the existing ponderosa pine and Douglas-fir trees. (*Staff Report, page 14*).

24. The City’s Comprehensive Plan includes Policy LU-1.8, which provides that: “Conditional Use Permits, street vacations, variances and other special applications shall only be permitted when there is an overriding permanent public benefit consistent with the goals and policies of this Comprehensive Plan.” (*emphasis added*).

25. In this matter, the applicant and Staff are very clear in explaining why the proposed buildings were not placed and situated so that they face Bullfrog Road, as design guidelines for the zone might otherwise require. Simply put, significant trees and mature vegetation – among the only inventory of such natural assets that have been left mostly undisturbed by previous development work on the parcel – can be preserved if the property’s western edge (along Bullfrog Road) and the southwest corner are left undisturbed, and new residential development is instead sited on previously cleared areas, like shown on the proposed project site plan.

26. The Staff Report provides the following explanation of how the project design would preserve a natural buffer:

The project site is adjacent to Bullfrog Road, a Rural Major Collector, and includes a portion of undeveloped land along the western margin that contains the only remaining native vegetation on-site. Preserving this natural buffer aligns with CEMC 17.64.040, which encourages the retention of significant trees, and serves multiple purposes: it minimizes the loss of native habitat, provides a visual and noise buffer between the development and the roadway, and maintains a transitional space between urban and rural elements. (*Staff Report, page 16*).

27. The applicant’s Critical Areas Report, included in the record as *Ex. C-08*, provides the following summary in its Conclusion, providing evidence supporting preservation of the large Ponderosa Pines and Douglas Fir trees located within the mostly undeveloped parts of the project site

During our site investigation, we did not find any wetlands, streams, or priority or sensitive fish and wildlife habitat in proximity to the Bullfrog Housing project site. The site has been previously developed and contains existing single-family homes, roads, and driveways. The proposed project would redevelop the project site to include the development of new apartment buildings along with parking infrastructure (see attached site plan). Based on the current plans, the west margin of the site would remain undeveloped and would preserve most of the existing ponderosa pine and Douglas-fir trees. As such, it does not appear that the proposed project will result in any adverse impacts on fish and wildlife habitat, including elk concentrations in proximity to the site. (*Ex. C-08, Critical Areas Report, Conclusion, on page 4, emphasis added*).

28. The applicant’s Critical Areas Permit application describes the project area and proposed limits on clearing and construction activity as follows:

The proposed project area begins approximately 28' from the western property line and extends to the east property line. The western edge and southwest corner of the site are to remain relatively undisturbed with the intent of preserving the majority of the existing trees. (*Ex. C-06, Critical Areas Permit application, on page 3*).

29. To ensure that western edge and southwest corners of the project parcel remain relatively undisturbed and to preserve existing trees for the long term – particularly any significant trees on the

property – the conditions of approval for this conditional use permit should include specific language requiring such protection and preservation going forward.

30. It would not be in the public’s interest to approve this project and then see a future application for additional development or expansion of buildings, parking lots, accessory structures and the like up along the Bullfrog Road corridor, requiring tree cutting and eliminating the large trees that currently serve as a visual and natural buffer/barrier, all of which the application materials and the Staff Report intend to preserve, for the long term.

31. In fact, approval of other residential development projects in the same part of the City of Cle Elum are known for including tree preservation requirements. As recently as last week, the Cle Elum City Council approved a collection of applications for a much larger master plan development along the Bullfrog Road corridor, known as the “Bullfrog Flats” development project, which included multiple conditions intended to preserve collections of large trees in buffer areas, most all to be protected through Conservation Easements<sup>1</sup>. *(See Conditions of Approval, Nos. 27, 28, 29, and 78, requiring use of Conservation Easements to preserve certain buffer areas, included as part of the Hearing Examiner’s Recommendation of Approval to the City Council, issued on March 3, 2025 for the Bullfrog Flats development applications).*

32. So, to be consistent with other residential development project uses approved in the Bullfrog Road area, and to ensure that tree preservation commitments by the applicant are fulfilled, a new condition of approval is included as part of this Decision, requiring the Permittee to record a Conservation Easement or other legal instrument in a form as approved by the City Attorney, preserving and protecting the western edge of the property, approximately 28' from the western property line, as well as the southwest corner of the site, consistent with the illustration and development footprint shown on the revised site plan (*Ex. C-13*). The Conservation Easement shall prohibit subsequent construction or development in the protected area and require that all construction and other activities associated with the residential use approved by this permit are conducted in a manner that protects and preserves existing trees and mature vegetation in the easement area.

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<sup>1</sup> On March 25, 2025, the Cle Elum City Council (“City Council”) approved the Master Plat, Boundary Line Adjustment, and the Preliminary Plats for Phases S-1, S-2, and J as proposed in the applications submitted by Bullfrog Flats, LLC (“Bullfrog Flats” or “Applicant”) under Resolution No. 2025-008. The Resolution expressly adopted all findings and conditions for the project, submitted to the City Council by the Hearing Examiner in a written Recommendation of Approval, issued on March 3, 2025. Under Resolution No. 2025-009, the City Council also approved related matters, i.e., the Second Amendment to the 2002 Development Agreement by and between the City of Cle Elum and Trendwest Investments, Inc. and Trendwest Properties, Inc. dated October 30, 2002 and as amended by the First Amendment dated March 28, 2017 (the “2002 Development Agreement” or “Agreement”), the transfer of the 2002 Development Agreement to Bullfrog Flats, and agreements relating to transportation and water system mitigation. *(See Notice of Decision, posted on City’s website on March 27, 2025, re: Bullfrog Flats Development project; and Res. No. 2020-008, Sections 2 and 3, adopting Hearing Examiner’s recommendation, conditions, and findings).*

1 *A Conditional Use Permit can only be approved if the use meets all required conditions and*  
2 *specifications set forth in the zone unless a variance has been granted by the City.*

3 33. There is no dispute that a Conditional Use Permit can only be approved if the proposed “use  
4 meets all required conditions and specifications set forth in the zone where it is proposed to be located  
unless a variance has been granted by the city.” (See CEMC 14.30.170.A.4).

5 34. One of the many conditions and specifications that apply to projects in the General  
6 Commercial zone reads as follows: Buildings shall be located and designed to focus on the public  
7 street serving the development. (CEMC 17.32.090.A). The Staff Report, application materials,  
8 testimony from Staff and the applicant, all confirm that the applicant’s pending multi-family  
residential project does not fully comply with the design guideline set forth above, requiring that  
buildings shall be located and designed to focus on the public street serving the development, in this  
case Bullfrog Road.

9 35. The Examiner is tasked with considering and weighing all City development regulations and  
10 policies that apply to a specific project site, and such consideration entails natural and physical  
11 conditions on the project site. Here, the City’s tree preservation mandate that significant trees “shall  
12 be preserved to the maximum extent possible”, found in CEMC 17.64.040, captioned “Preservation  
of significant trees”, can be accomplished through approval of the proposed site plan, with potential  
13 enforcement of a tree preservation condition of approval. The site plan and preservation-related  
condition of approval will ensure that significant trees are indeed preserved to the maximum extent  
possible, and that the applicant’s pledges to do so are not just lip service.

14 36. Absent site conditions that are unique to this application – where mature trees and vegetation  
15 on the western edge and southwest corner of the project site essentially serve as the last cluster of  
16 natural vegetation on the parcel – a conditional use permit should be denied for this project unless a  
variance is also obtained to waive or modify otherwise applicable design requirements that apply in  
the zone at issue.

17 37. The City’s code is clear in explaining that where several regulations might apply to a  
18 particular situation, the most restrictive shall apply. (See CEMC 17.04.070, captioned “Controlling  
provisions”, which reads as follows:

19 The provisions of this title [the City’s Zoning code] shall be held to be minimum  
20 requirements. Where this title imposes greater restrictions than are imposed by other  
21 chapters, laws, rules, or regulations, the provisions of this title shall control. Where this  
title imposes lesser restrictions than are imposed by other chapters, laws, rules or  
regulations, the provisions of the more restrictive title shall control.)

22 38. The Examiner finds and concludes that a tree preservation mandate, as found in CEMC  
23 17.64.040, is a more restrictive regulation than a design regulation that otherwise requires buildings  
24 to face a public street. Thus, the tree preservation regulation – implemented through the new  
conservation easement condition imposed by this Decision – should be given priority and control. In

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fact, if the building placement guideline were given primacy, the outcome would most likely result in cutting and removal of significant trees so the buildings could face the street. (*See Staff Report, explanation on page 17, noting that strict adherence to design guideline would require removal of treed buffer*). That would not be in the public interest.

39. Again, standing alone, a generic residential project on the same property but with no significant trees along road frontage abutting the project site would probably be required to situate building facades to face the street unless the applicant obtains a variance from the design guideline at issue.

*The project, as conditioned, satisfies approval criteria and merits approval.*

40. The Staff Report generally lists and discusses various City code provisions that apply to aspects of the project, how the proposed site plan can be modified to satisfy applicable development regulations, and how the requested Conditional Use Permit can be conditioned to satisfy approval criteria.

41. The criteria for approval of a Conditional Use Permit read as follows, with additional findings provided in italics:

**CEMC 14.30.170, Conditional use permit.**

Certain uses may only be permitted in a zoning district through the issuance of a conditional use permit.

A. The approval of a conditional use permit shall be based on a finding by the city that:

1. The use will not endanger the public health, safety, or welfare;

*Compliance with all applicable development regulations, SEPA mitigation measures, and conditions of approval included as part of this permit, should assure the approved residential use on this site will not endanger the public health, safety, or welfare.*

2. The location and character of the use if developed according to the plan as submitted and approved or conditionally approved will be compatible and in harmony with the area in which it is to be located;

*The applicants' revised site plan can be conditioned to ensure the project is compatible and in harmony with the area where the project is located. The Staff Report summarizes how the application has been reviewed to ensure it satisfies applicable Critical Areas codes and policies, site and design review codes, off-street parking and loading requirements, and landscaping requirements. The examiner has added conditions of approval to provide further assurance that the project will be compatible and in harmony with the surrounding area.*

3. The proposed use is in general conformity with the city's comprehensive plan;

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city design standards, issuing specific site design findings on pages 15-17 of the Staff Report, that are republished or modified below in italics, and are adopted herein as Findings by the Examiner in support of the requested Conditional Use Permit:

As provided in CEMC 14.30.140(C), the City may approve a proposed site plan or building design in whole or in part, with or without conditions, based on the following findings:

1. The project is consistent with the Cle Elum comprehensive plan and meets the requirements and intent of the Cle Elum Municipal Code, including the type of land use and the intensity/density of the proposed development.

*This proposal complies with the goals and objectives of the Cle Elum Comprehensive Plan, the provisions of the Cle Elum Municipal Code, and the intent and purpose of the General Commercial zoning district.*

2. The physical location, size, and placement of the development on the site and the location of the proposed uses within the project avoid or minimize impacts to any critical resource or floodplain area to the greatest extent possible or are compatible with the character and intended development pattern of the surrounding properties.

*The applicant's critical areas report, generated by qualified professionals, confirms that no wetlands, streams or priority/sensitive fish and wildlife habitat are on or in close proximity to the project site. The critical areas report also explains that the proposed site plan, by leaving the last remaining treed areas undeveloped, is not expected to have any adverse impacts on fish and wildlife habitat, including nearby elk concentrations. The Examiner has added a tree preservation measure to the conditions of approval, to ensure that the project is compatible with the natural surroundings.*

3. The project makes adequate provisions for water supply, storm drainage, sanitary sewage disposal, emergency services, and environmental protection to ensure that the proposed project would not be detrimental to public health, welfare, and safety.

*The project makes adequate provisions for water supply, storm drainage, sanitary sewage disposal, emergency services, and environmental protection to ensure that the proposed project would not be detrimental to public health, welfare, and safety. The project includes appropriate Stormwater Management design features in compliance with applicable city and state stormwater requirements, including BMPs to control runoff, prevent erosion, and protect water quality; and has been conditioned to mandate preservation of significant trees, among other things.*

4. Public access and circulation including nonmotorized access and emergency vehicle access, as appropriate, are adequate to and on the site.

*The project site includes a 40-foot wide access easement and appropriate drive-aisle widths. The site design ensures safe and efficient movement, with pathways and access points that*

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*meet applicable standards for accessibility and emergency response requirements.*

5. Adequate setbacks and buffering have been provided. Any reduction to setbacks or buffer widths is the minimum necessary to allow for reasonable economic use of the lot and does not adversely impact the functional value of the critical resource area or adjoining land uses.

*Adequate setbacks are proposed. (Staff Report, page16). The Examiner has added an additional condition of approval to ensure ongoing protection for the last remaining collection of large trees on the site.*

6. The physical location, size, and placement of proposed structures on the site and the location of proposed uses within the project are compatible with and relate harmoniously to the surrounding area.

*The location, size, and placement of proposed structures, as well as the residential use within the project, are compatible with and harmoniously integrate into the surrounding area. The design considers neighboring properties and maintains consistency with the character of the community.*

7. The project adequately mitigates impacts identified through the SEPA review process, if required.

*As conditioned under this permit, which adds a tree preservation requirement, and mandates compliance with all mitigation measures imposed in the unchallenged MDNS issued for this proposal, the project adequately mitigates potential impacts.*

8. The project would not be detrimental to the public interest, health, safety, or general welfare.

*As conditioned, the project will not be detrimental to the public interest, health, safety, or general welfare.*

43. The Staff Report and previous findings provided above explain how the project can be conditioned to satisfy applicable design guidelines, parking, and landscaping requirements that apply in the general commercial zone or to residential projects. *(See Staff Report, pages 17-18).*

44. The portion of the site that is shown as undeveloped in the revised site plan – and that will be covered in a Conservation Easement [or other legal instrument preserving the area for the long term] – contains the only remaining native vegetation, which serves as a natural buffer between the development and the roadway. Preserving these trees and mature vegetation aligns with the City’s significant tree preservation mandate found in CEMC 17.64.040.

45. Maintaining this buffer not only minimizes the loss of native habitat and significant trees but also enhances the transition between the roadway and the proposed development. Additionally, this

1 buffer serves as an important visual and environmental feature, mitigating impacts on adjacent areas  
2 and supporting compatibility with the surrounding developments along this corridor. (*Staff Report,*  
3 *pages 1-18*).

4 46. The proposed development meets city guidelines for parking lots to be located behind or to  
5 the side of structures rather than at a street corner or between the building and the public street. The  
6 site design incorporates a natural buffer between the development and Bullfrog Road, preserving  
7 existing vegetation to enhance the transition between the roadway and the complex. (*Staff Report,*  
8 *page 18*).

9 47. Except as modified in this Decision, all findings or statements of fact in the Staff Report are  
10 adopted as findings by the Hearing Examiner.

11 48. Any factual matters set forth in the foregoing or following sections of this Decision are hereby  
12 adopted by the Hearing Examiner as findings of fact and incorporated into this section as such.

13 49. Based on a preponderance of evidence in the record and all findings above, the applicant's  
14 pending application for a Conditional Use Permit should be approved, subject to appropriate  
15 conditions.

#### 16 IV. CONCLUSIONS.

17 Based upon the record, and all Findings set forth above, the Examiner issues the following  
18 Conclusions:

19 1. The Hearing Examiner has jurisdiction to conduct an open record public hearing on the  
20 Conditional Use Permit application at issue and is directed to issue a written decision, which serves  
21 as the City's final action on the matter. (*See Cle Elum Municipal Code (CEMC) 14.30.040, Permit*  
22 *Classification Table, listing Conditional Use Permit as a Type 3 matter that is subject to a public*  
23 *hearing before and a final decision by the City's Hearing Examiner, which can be appealed to*  
24 *Superior Court; and CEMC 14.30.070, Procedures for Type 3 reviews*).

25 2. The applicant met their burden to demonstrate that the requested permit approval conforms  
26 to, and in fact implements objectives of, the City's Comprehensive Plan. *Findings; Staff Report.*

3 3. Based on the record, the applicant demonstrated that their application for a Conditional Use  
4 Permit merits approval, subject to compliance with Conditions of Approval.

5 4. Approval of this Conditional Use Permit will not and does not constitute, nor does it imply  
6 any expectation of, approval of any permit or subsequent reviews that may be required for building,  
7 grading, or other regulated activities on the Project site.

8 5. Any finding or other statement contained in this Decision that is deemed to be a Conclusion  
9 is hereby adopted as such and incorporated by reference.

10 **FINDINGS OF FACT, CONCLUSIONS AND**  
11 **DECISION APPROVING CONDITIONAL USE**  
12 **PERMIT TO AUTHORIZE "4240 BULLFROG**  
13 **ROAD APARTMENTS" RESIDENTIAL PROJECT**  
14 **IN THE GENERAL COMMERCIAL ZONE –**  
15 **FILE NO. CUP-2024-003**

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**VI. DECISION.**

Based upon a preponderance of evidence in the record and all Findings and Conclusions provided above, the 4240 Bullfrog Road Apartments application for a Conditional Use Permit assigned File No. CUP-2024-003 is hereby **APPROVED**, subject to compliance with all Conditions of Approval that are attached to this Decision and incorporated herein by this reference.

ISSUED this 31<sup>st</sup> Day of March, 2025



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Gary N. McLean  
Hearing Examiner

**FINDINGS OF FACT, CONCLUSIONS AND  
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**CONDITIONS OF APPROVAL**  
for  
**4240 BULLFROG ROAD APARTMENTS PROJECT**  
**CONDITIONAL USE PERMIT**

**LOCATION:** 4240 Bullfrog Road, in the City of Cle Elum's General Commercial zoning district.

**APPLICANT/PERMITTEE(S):** Scott Lien

**APPLICATION:** FILE NO. CUP-2024-003

A. This Conditional Use Permit authorizes the Permittee's development and operation of a 48-unit multifamily residential complex known as the "Bullfrog Road Apartments" project at 4240 Bullfrog Road, which is located in the City's General Commercial zone. Such uses may only be permitted in the General Commercial zone through review and issuance of a Conditional Use Permit. (*See CEMC 17.32.030.A*). The approved use shall be developed and operated as described in the application materials and Staff Report for this matter, subject to modifications needed to comply with these Conditions of Approval.

B. The Permittee shall obtain any associated permit, building permit, license, or approval required by the city and any state, federal, or other regulatory body with jurisdiction over aspects of the Project authorized by this Permit; any conditions of other regulatory agency permits, licenses, or approvals shall be considered conditions of approval for this Permit. Approval of this Permit will not and does not constitute, nor does it imply any expectation of, approval of any permit or subsequent reviews that may be required for building, grading, or other regulated activities on the project site. Any mention of other permits or required approvals noted in subsequent conditions should not be read or construed as exhaustive of approvals that may be needed for various aspects of this project, all in accord with current law.

C. The Permittee shall comply with all professional report conclusions and recommendations (expressly including, without limitation, BMPs, construction details, and the like) submitted in connection with this Project review and any associated approvals issued by the City for this Project, as approved, referenced, relied upon, and/or modified by the City.

D. To ensure that tree preservation commitments by the applicant are fulfilled, before grading or other construction permits are issued, the Permittee shall record a Conservation Easement or other legal instrument in a form as approved by the City Attorney, preserving and protecting the western edge of the property, approximately 28' from the western property line, as well as the southwest corner of the site, consistent with the illustration and development footprint shown on the revised site plan (*Ex. C-13*). The Conservation Easement shall prohibit subsequent construction or development in the protected area and require that all construction and other activities associated with the residential use approved by this permit are conducted in a manner that protects and preserves existing trees and mature vegetation in the easement area.

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E. The Permittee's Site Plan is subject to final Site and Design Review and approval by the Director, to ensure compliance with all applicable Site and Design Review standards and regulations found in City codes, including without limitation those addressing parking, landscaping, additional tree/vegetation plantings, and buffers, and these Conditions of Approval, including without limitation Conditions D and F(7). The Director has full discretion and authority to require modifications and additional information on the site plan, all in accord with applicable City development regulations and these Conditions, so long as such changes do not expand or substantially change the type of use approved and authorized in this Conditional Use Permit.

F. Conditions based on those proposed in Staff Report, on pages 19-20:

1. MDNS Mitigation Measures adopted as Conditions of Approval. The Mitigation Measures imposed in the SEPA MDNS issued for this project on or about February 6, 2025, included in the record as *Exhibit C-17*, are adopted herein as Conditions of Approval for this Permit, as modified below:

a) Cultural Resources; IDP required. In coordination with the Colville Tribe, the Permittee shall obtain a Cultural Resources Survey and Report from a qualified professional, subject to review and approval by the City's SEPA Responsible Official, which shall include an Inadvertent Discovery Plan and other best management practices to be followed during all ground disturbance work on the project site. The Permittee shall be required to satisfy recommendations and conditions included in the final Cultural Resources Report, as reviewed and approved by the City's SEPA Responsible Official. A copy of the approved IDP shall be maintained at the worksite, and all contractors and construction workers shall be informed of its contents and requirements before grading or other construction work begins.

b) WDFW mitigation plan. The applicant shall work with the Washington State Department of Fish and Wildlife to identify appropriate mitigations to suffice WDFW concerns associated with the project. Specific measures, requirements, timelines, and other requirements provided in any mitigation plan approved by WDFW shall be fully implemented and satisfied during the development process and thereafter, as specified in such mitigation plan.

c) Traffic Mitigation. The following is the list of traffic mitigation measures necessary to reduce or eliminate project impacts:

i. The proposed project shall provide proportional share contributions at the W 2nd Street (SR 903)/Miller Road, W 2nd Street (SR 903)/N Pine Street, W 2nd Street (SR 903)/N Stafford Avenue, and W 2nd Street (SR 903)/N Oakes Avenue intersection, where future intersection controls are warranted to meet adopted level of service standards regardless of the project. Proportional share contributions of the project of 0.52 percent, 0.59 percent, and 0.60 percent at these intersections, respectively, in evaluations of total entering vehicles (TEV). Calculations of the proportional share requested by the City of Cle Elum include:



1 aa. W 2nd Street {SR 903)/Miller Road - TEV Baseline 1,724 - 9 new Project  
2 Trips. Proportional Share  $\{1,724 + 9 = 1,733. 9/1,733 = 0.52\%\}$ . The 2023-  
3 Predesign Estimated Cost is \$130,000.  $0.52\% * \$130,000 = \$675.13$ .

4 bb. W 2nd Street {SR 903)/N Pine Street - TEV Baseline 1,516 - 9 new Project  
5 trips. Proportional Share  $(1,516 + 9 = 1,525. 9/1,525 = 0.59\%\}$ . The 2023-  
6 Predesign Estimated Cost is \$760,000.  $0.59\% * \$760,000 = \$4,485.25$ .

7 cc. W 2nd Street (SR 903)/N Stafford Avenue - TEV Baseline 1,491 - 9 Project  
8 new trips. Proportional Share  $\{1,491 + 9 = 1,500. 9/1,500 = 0.60\%\}$ . The 2023-  
9 Predesign Estimated Cost is \$950,000.  $0.60\% * \$950,000 = \$5,700.00$ .

10 2. All stormwater must be retained onsite consistent with the City's Construction  
11 Standards and Stormwater Management Manual for Eastern Washington. A stormwater  
12 drainage plan and report, prepared by a licensed engineer and registered in the state of  
13 Washington, shall be submitted for City review and approval.

14 3. A City of Cle Elum Business License must be obtained before commencing business.  
15 The license must be applied for through the Department of Revenue and can be applied for  
16 online: [www.dor.wa.gov](http://www.dor.wa.gov).

17 4. Applicant shall obtain permits through Kittitas County for any work occurring in any  
18 portions of public right-of-way within the County's jurisdiction.

19 5. Any applicable water connection charges shall be paid in full at or before the time a  
20 building permit is obtained.

21 6. Any applicable wastewater connection fees must be paid in full at or before the time  
22 a building permit is obtained.

23 7. Landscaping plans shall be submitted meeting the requirements of Chapter 17.64  
24 CEMC prior to issuance of building permits. Consistent with CEMC 17.64.040, "Significant  
25 trees" are defined as existing healthy trees which, when measured four feet above grade, have  
26 a minimum diameter of eight inches for evergreen trees, or twelve inches for deciduous trees;  
and Significant trees shall be identified by a tree survey prepared by the applicant and shall  
be preserved to the maximum extent possible. During construction, the applicant shall use  
accepted preservation techniques to protect significant trees designated for retention.

8. Final building and unit numbering shall be reviewed and approved by the City prior  
to occupancy.

9. Access Road shall be clearly posted with no parking signage.

10. An updated site plan shall be submitted to show the following:

25 FINDINGS OF FACT, CONCLUSIONS AND  
26 DECISION APPROVING CONDITIONAL USE  
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- 1 a. Location of required EV and EV-Ready parking spaces;  
2 b. Location of Conservation Easement area to satisfy these Conditions of approval;  
3 c. Location of Significant Trees, and designated tree protection zones to protect such  
4 trees, as identified in the tree survey prepared in accord with CEMC 17.64.040.

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*\* End of Conditions.*

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**APPEALS.**

As explained in CEMC 14.30.230, all Type 3 and Type 4 land use decisions and the decisions of the hearing examiner on appeals of Type 1 and 2 permits may be appealed by a party with standing by filing a land use petition in Washington State Superior Court, unless otherwise specified, in accordance with the provisions of Chapter 36.70C RCW. Such petition must be filed within twenty-one days of issuance of the decision. This process shall be the exclusive means of judicial review except for local land use decisions reviewable by a quasi-judicial body created by state law, such as the Shorelines Hearings Board.

State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.