City of Cle Elum

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Wildwood Development Agreement & Preliminary Plat
Processing Summary and Analysis
October 8, 2024

The Cle Elum Municipal Code Chapter 14.30.030 requires that a Project Sponsor schedule a pre-application review meeting with City staff prior to submitting Type 2, 3, or 4 applications. The purpose of this meeting is to provide the City with a better understanding of the proposed project and to discuss the application requirements and permit processing schedule. Previously, this project had been reviewed under PRE-APP 2022-004, following a pre-application meeting held in July 2022. The Project Sponsor voluntarily chose not to move forward with the project at that time.

In October 2023, the Project Sponsor submitted a preliminary plat application, followed by a revised submittal that included a request for a development agreement. The following is a summary of recent discussions and additional information regarding those submittals. This information is advisory and subject to revision as additional research is conducted and/or additional information is provided by the Project Sponsor. A formal review of the project is currently underway.

On September 23, 2024, the Project Sponsor representatives of Wildwood met with representatives of the City of Cle Elum to discuss the application(s) being reviewed, specifically a Development Agreement and Preliminary Plat. Participants in this meeting included:

City of Cle Elum:
Clara Park, Van Ness Feldman
Colleda Monick, HLA Engineering and Land Surveying, Inc.

Wildwood "Project Sponsor/Applicant":
Jeff Stubbs; property owner
Marc Kirkpatrick; Encompass
James Carmody; Meyer, Fluegge & Tenney, P.S.

Prior to the September 23, 2024 meeting, representatives of Wildwood and the City held a series of additional voluntary discussions during in-person meetings and by phone and email. These informal and voluntary meetings and correspondence were conducted to assist the Project Sponsor with submitting future land use approvals. Information from those meetings is also incorporated below as a resource.

Project Summary:
Background
In 2022, the City of Cle Elum Development Review Team met with the Project Sponsor to discuss the proposed project to subdivide a 10-acre parcel (063034) zoned Multi-Family Residential into 76 lots and construct 76 single-family residences. The Project Sponsor voluntarily chose not to move forward with the development at that time.

In October 2023, the City received a preliminary subdivision application for 88 lots with a mix of single-family and duplex residences, to be developed over six phases on two parcels (623134 and 063034). The City reviewed the submittals and issued a Notice of Incomplete requesting additional information, including a critical areas report, title report, withdrawal of the submitted color concept map due to inconsistency with the civil plans, and an updated narrative as required by City code. The City's notice also identified that the proposed project was inconsistent with several development regulations and requested additional information from the applicant addressing those inconsistencies.

As noted in the City's comments, the applicant's options for moving forward with the project presented included submitting a revised proposal that was consistent with the City's code or requesting a development agreement to establish the standards and conditions that would apply to the project. The applicant provided revised submittals to the City in June 2024, including a request for a development agreement, and the City provided initial comments back to the applicant in July 2024 regarding the development agreement.

Approval Criteria and Processes:

The parties discussed the options for processing the applicant's requests for preliminary plat approval and for a development agreement. The City understands that the applicant is requesting concurrent processing of the approvals, and that the applicant is seeking preliminary plat approval for all six phases identified in the application. With concurrent processing of the development agreement and preliminary plat application, the parties agree that there are no processing timelines that are applicable to the City's review.

Approval of a preliminary plat and a development agreement are both subject to Type 4 review under the Code, with the City Council as the final decision body. Procedures for Type 4 review can be found under CEMC 14.30.080. The Code allows for concurrent or consolidated permit processing, including approval of a development agreement concurrent with approval of project permits. CEMC 14.30.020.B, 17.140.020.D. The City is currently reviewing the preliminary plat application for completeness.

CEMC Chapter 17.140 outlines the general requirements, standards and procedures for processing development agreements. Approval of a development agreement is in the sole legislative discretion of the City Council under its contracting authority. CEMC 17.140.020.A, -040.D. The applicant's preliminary plat application is dependent on approval of the development controls, standards, and conditions that the applicant is seeking through the development agreement.

As discussed with the applicant, by requesting concurrent processing, the applicant assumes the risk that the final decision regarding the development agreement (which may include denial or the imposition of additional or different development controls, standards, or conditions) will affect the preliminary plat application. In other words, the applicant understands that it is assuming the risk that it may expend substantial time and resources and that the City Council may ultimately vote to not approve the development agreement. Further, the applicant has declined the City's offer to coordinate an informational meeting with the City Council (ahead of the decisional hearing) at this time.

The applicant has provided a draft development agreement, to which the City has provided initial comments. Additional comments are provided below. As discussed with the applicant, because the applicant is seeking concurrent processing, many sections and provisions of the development agreement cannot be finalized or even drafted pending SEPA review and review of the preliminary plat. For example, at this stage the City cannot fully evaluate or identify the minimum standards that must be addressed in a development agreement, per CEMC 17.140.030.

Accordingly, the City is providing high-level comments for advisory purposes only, and all comments and input should be deemed preliminary and subject to change. Furthermore, please note that in the case of discretionary approvals, the role and authority of the City staff is advisory only. Final recommendation and decision on such applications can only be made by the City Council after public comment, hearing, and other public process.

SEPA:
The project is subject to review under SEPA. The City will review the applicant's materials and will assess whether any additional or revised studies are needed to assess the proposal's potential impacts. Based on the review, the City will then determine the appropriate threshold determination.

Applicable Application Fees:
The City and the applicant have executed an agreement that enables the City to recover the costs associated with processing the applicant's development proposal. Processing costs may include staff time, outside professional, consultant, and legal service billings associated with pre-application consultations, SEPA review, processing of applications for City permits and approvals, and implementation of any approvals.

Comments on Draft Development Agreement:
The applicant submitted a revised draft development agreement to the City on August 27, 2024. Please note that these preliminary, high-level comments are for advisory purposes only and are subject to change. Further, the fact that the City may have limited or no input on any particular section or language should not be deemed as concurrence. For example, because the City's review of the proposed development standards is ongoing, the City may have limited input at this early stage but reserves all rights to later provide new or additional input. Similarly, it is highly likely that the agreement will require additional language regarding conditions and mitigation, but any comments on such provisions is speculative at this stage.

The City's comments below also incorporate the prior comments provided on July 15, 2024 to the extent those comments have not been addressed by the applicant. **The City welcomes further discussion of any of these comments.**

- Section 3, *Term* and Section 4.3, *"Agreement Term"*: The current draft does not incorporate or respond to the City's prior comments, which stated as follows:

  [T]he city proposes the following changes:
  - A 10-year limit to the agreement.
  - A start clock stipulation that if no permits are submitted within a 3-5 year period, the Development Agreement (DA) will become null and void.

    - Explicit language stating that no extensions of the term will be granted, except for those based on issued permits. The current language allowing extensions based on "approval" is confusing and misleading and should be removed.

- Section 4.8, "*Exhibits"* and Section 7.4, *Latecomers Agreement*: The draft identifies Exhibit 6 as a "Latecomers Agreement." A draft of this document was not provided. Further, a latecomers agreement is not required as part of a development agreement. At this stage the City cannot address whether a latecomers agreement may be appropriate for the proposal.

- Section 7.2, *Future Mitigation or Fees*: Please refer to the City's July 15, 2024 comments – "Future fees shall be based on the fee structure at the time of the submittal, including permits and connection fees."

- Section 8.1, *Permitted Uses*: The City proposes the following language: "Permitted uses shall include single family and common wall dwellings. Other permitted and conditional uses authorized in the zones may be permitted by the minor or major modification process as applicable."

- Section 8.2, *Setbacks*: This section should include the applicant's proposal for a 20-foot garage setback.

- Section 8.5, *Lot Coverage*: Please refer to the City's July 15, 2024 comments. The City proposes the following language: "The lot area covered by single family and structures accessory thereto shall not exceed sixty percent (60%) of lot area for and eighty percent (80%) for common wall units. Lot coverage shall be based on the total impervious area of the lot."

- Section 8.7, *Development Standards-Stormwater*: Please refer to the City's July 15, 2024 comments. The City proposes replacing the last sentence of Section 8.7 with the following language: "Stormwater design shall be based on Washington Department of Ecology's Stormwater Management Manual for Eastern Washington that is in effect on the date the civil stormwater plans are submitted for each phase."

  The applicant's proposed language contemplates vesting the project to the Stormwater Management Manual in effect on the date the civil stormwater plans are submitted for the first phase, regardless of the timing of the subsequent phases. Please note that vesting principles do not apply to stormwater regulations. *Snohomish County v. Pollution Control Hearings Board*, 187 Wn.2d 346, 386 P.3d 1064 (2016).

- Section 8.8.d, *Alley*: The City requires additional information on what the applicant is proposing in lieu of alleys. It is unclear what is contemplated by "private open space between new development and neighboring parcels," what standards will apply to such open space, and how the open space will be owned and managed.

- Section 9, *Phasing of Development*: The City is unable to provide comments as the current submittals do not provide sufficient information regarding the applicant's phasing plan or proposal. Please note that all amenities and improvements required to service a phase must be installed at the time of the phase.

- Section 10, *Acknowledgement of Sufficient Water and Sewer Capacity*: As discussed with the applicant, the parties understand that preliminary plat approval will require an assessment of water and sewer capacity. Comments on this subject are premature, as the assessment of capacity has not yet been conducted. Further, the approval process will identify any infrastructure improvements or other mitigation necessary to serve the project.

- Section 12, *Minor Modifications*: The agreement will require specific definitions and standards for minor and major modifications. Additional language regarding the processing of minor and major modifications may be necessary as well. This language may be developed as the City's review of the application progresses.

- Other general comments:

    - The development agreement is drafted to assume that the applicant will be able to obtain approval of the preliminary plat, including compliance with all relevant laws and decisional criteria and provision of adequate mitigation. For example, Section 10 is drafted to assume adequate water and sewer capacity to serve the project. The City's review is ongoing, and nothing herein should be construed as acceptance or approval of any aspect of the project proposal.

    - The development agreement will require additional provisions regarding dispute resolution and termination. The City will provide draft language when the agreement is further advanced. It is likely that subsequent review will identify other substantive or procedural aspects that require resolution in the development agreement.