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BEFORE THE HEARING EXAMINER
FOR THE CITY OF CLE ELUM

In the Matter of the Consolidated Hearing for the WILDWOOD RANCH DEVELOPMENT and Appeal of the Mitigated Determination of Nonsignificance (MDNS) issued for such proposal, WILDWOOD RANCH, LLC, Applicant/Respondent, CITY OF CLE ELUM, SEPA Responsible Official, Respondent, FRIENDS OF DEER MEADOW, LLC, Appellant.	File Nos.: SUB-2023-003, DA-2024-001, SEPA-2024-004 **APPELLANT FRIENDS OF DEER MEADOW, LLC'S RESPONSE IN OPPOSITION TO MOTION FOR CONTINUANCE** Hearing Examiner Gary N. McLean Hearing Date: November 12, 2026

I. RELIEF REQUESTED

Appellant Friends of Deer Meadow, LLC ("Friends of Deer Meadow" or "Appellant") asks the Hearing Examiner to deny the Motion for Continuance filed by Applicant Wildwood Ranch, LLC ("Wildwood Ranch" or "Applicant") and to proceed with the consolidated hearing on November 12, 2026, as the Prehearing Scheduling Order directs.[1] In the alternative, if the Examiner is inclined to grant any continuance, Appellant asks that the hearing be reset to a date certain during the week of January 11, 2027, rather than in December.

[1] F-04 at 1 (Oct. 30, 2026) ("Prehearing Order"); Applicant's Mot. for Continuance (Nov. 8, 2026) ("Motion").

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II. STATEMENT OF FACTS

The development applications at issue were filed in 2023 and 2024, and the City issued the challenged Mitigated Determination of Nonsignificance ("MDNS") on August 14, 2025.[2] Friends of Deer Meadow appealed the MDNS on August 29, 2025.[3] The Applicant's own traffic study, prepared by TENW, is dated April 4, 2024.[4] By the Applicant's own account, it has taken "extensive time" to bring this matter to hearing.[5]

On October 30, 2026, the Examiner issued the Prehearing Order. It set the consolidated hearing to begin November 12, 2026; required witness and exhibit disclosures by 5:00 p.m. on Thursday, November 5, 2026; and required that expert reports be "fully disclosed and provided to all other parties and the Examiner no later than Friday, November 6, 2026, at 5:00 p.m."[6] The Order fixed 5:00 p.m. as the service and filing deadline, while recommending service by 4:00 p.m. so parties could confirm receipt.[7] It also gave the Examiner express authority to allow rebuttal testimony or supplemental expert reports on a showing of good cause.[8]

Friends of Deer Meadow timely served its three expert reports at 3:53 p.m. on Friday, November 6, 2026, before both the recommended 4:00 p.m. transmittal time and the 5:00 p.m. deadline.[9] The reports are a Civil Drainage Analysis by Cecil & Associates, an Evaluation of Variances by DN Traffic Consultants, Inc., and a Traffic Impact Analysis by DN Traffic Consultants, Inc.[10] Each report reviews and responds to the Applicant's own submittals: the drainage report analyzes the site plan shown in the Applicant's SEPA Checklist, and the traffic

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[2] See File Nos. SUB-2023-003, DA-2024-001, SEPA-2024-004; Motion at 2 (quoting report scope referencing "the August 14, 2025, SEPA decision (MDNS)").
[3] See F-01.
[4] Motion at 2.
[5] Motion at 2.
[6] Prehearing Order at 1, ¶¶ 2, 3.
[7] Prehearing Order ¶ 6.
[8] Prehearing Order ¶ 5.
[9] Motion at 1.
[10] Motion at 1.

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reports address the Applicant's TENW Traffic Impact Analysis.[11] The City "immediately circulated the reports."[12]

On Sunday, November 8, 2026, four days before the hearing, the Applicant moved to continue the hearing for up to thirty days.[13] The Motion does not contend that any party violated the Prehearing Order.

III. STATEMENT OF ISSUES

1. Whether the Applicant has shown "good cause" under Hearing Examiner Rule 1.13 to continue a noticed public hearing where every party complied with the Prehearing Order, the Order itself supplies a remedy short of a continuance, and the Applicant has had years to prepare its case.

2. Whether, if any continuance is granted, the hearing should be reset to the week of January 11, 2027, rather than to a date in December.

IV. EVIDENCE RELIED UPON

This response relies on the Prehearing Order, the Applicant's Motion, the expert reports served November 6, 2026, the notice of the November 12, 2026 public hearing, and the records and files herein.

V. AUTHORITY AND ARGUMENT

Hearings "shall normally be held at the time and place specified in the notice thereof," and a scheduled hearing may be continued on a party's motion only "for good cause."[14] The Rules direct that "[e]very effort shall be made to complete the hearing on the scheduled date(s)."[15] In deciding whether to continue a proceeding, Washington tribunals consider "the necessity of reasonably prompt disposition of the litigation," "the needs of the moving party," "the possible

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[11] Motion at 2.
[12] Motion at 1.
[13] Motion at 3.
[14] City of Cle Elum Hearing Examiner Rules of Procedure ("HE Rule") 1.13 (Nov. 1, 2023).
[15] HE Rule 1.17(a).

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prejudice to the adverse party," and "the prior history of the litigation."[16] Each consideration weighs against a continuance here.

A. A continuance is unnecessary because every party complied with the Prehearing Order.

The Prehearing Order "shall govern subsequent proceedings" and is "controlling on all participants."[17] It set a deadline of 5:00 p.m. on November 6, 2026 for expert reports, six days before the hearing.[18] Friends of Deer Meadow met that deadline, serving its reports at 3:53 p.m., and the Applicant does not suggest otherwise.[19] The only "cause" the Motion offers is that Appellant did exactly what the Order required, on the schedule the Order set. The Applicant has known of that schedule since October 30, 2026. If timely compliance with the Examiner's own deadline were good cause, every prehearing order would invite a continuance motion from whichever party received the other side's expert reports.

The Prehearing Order also already addresses the Applicant's concern. It authorizes the Examiner to permit "rebuttal testimony, supplemental expert reports, or other additional evidence upon a showing of good cause."[20] The Rules likewise allow the Examiner to "hold the record open . . . in order to allow participants to respond to matters raised."[21] And Appellant's experts must appear in person and are subject to cross-examination by the Applicant and the City at the hearing.[22] These tools give the Applicant a full opportunity to test and answer the reports without disrupting a noticed public hearing.

Nor does the Applicant need advance rebuttal to protect its position. Friends of Deer Meadow, as appellant, bears the burden to prove by a preponderance of the evidence that the

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[16] *Balandzich v. Demeroto*, 10 Wn. App. 718, 720, 519 P.2d 994 (1974).
[17] HE Rule 2.12(c); HE Rule 1.4.1(e).
[18] Prehearing Order ¶ 3.
[19] Motion at 1.
[20] Prehearing Order ¶ 5.
[21] HE Rule 1.17(b).
[22] Prehearing Order ¶ 4; HE Rule 2.19.

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MDNS fails to conform with applicable legal standards.[23] The Applicant may rest on the City's MDNS and its own studies, cross-examine Appellant's experts, and argue that Appellant has not carried its burden.

Finally, the Motion itself does not comply with the Rules. Written motions must be filed and served "at least seven business days in advance of the hearing," and "[l]ack of observance of time periods for filing and service of documents . . . will operate strictly against the party that failed to observe the same."[24] The Motion was served on a Sunday, four days before the hearing. The Rules encourage parties who anticipate motion practice to request a prehearing conference so a briefing schedule can be set.[25] The Applicant did not do so.

B. The Applicant has had months, and in fact years, to prepare for this hearing.

The applications date to 2023 and 2024, the MDNS issued in August 2025, and Appellant's appeal has been pending since August 29, 2025.[26] The issues the reports address, stormwater and traffic, are the issues raised in Appellant's appeal statement.[27] The Applicant has known for many months that these subjects would be contested at the hearing.

The reports also do not ask the Applicant to learn anything new about its own project. The drainage report evaluates the site plan in the Applicant's SEPA Checklist, and the traffic reports respond to the Applicant's own 2024 TENW Traffic Impact Analysis.[28] The Applicant's consultants prepared that underlying work and are the persons best positioned to address it promptly. Under *Balandzich*, the "needs of the moving party" are modest where, as here, the moving party has had ample time and is responding to critiques of its own studies.[29] The

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[23] HE Rule 2.18.
[24] HE Rule 1.12(b); HE Rule 2.13(d); HE Rule 1.7.
[25] HE Rule 1.12(d).
[26] See File Nos. SUB-2023-003, DA-2024-001, SEPA-2024-004; F-01.
[27] F-01.
[28] Motion at 2.
[29] *Balandzich*, 10 Wn. App. at 720.

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Applicant's acknowledgment of the "extensive time it has taken to get this matter to hearing" weighs in favor of proceeding, not delay.[30]

C. Changing the schedule at the last minute is unfair to the public and to the parties who have prepared to proceed.

This is a consolidated open record public hearing. The Rules invite members of the public "to express their views and to offer factual testimony and exhibits," and direct the Examiner to consider "accommodating the desires of all members of the public to be heard when public testimony is taken."[31] Members of the public need not be identified in advance and may testify during the public testimony portion of the hearing.[32] Citizens have relied on the noticed date, arranged time away from work and family obligations, and prepared comments to deliver on November 12, 2026.[33] A continuance granted days before the hearing would leave many of them uninformed, or unable to attend on whatever new date is chosen.

Appellant, too, has prepared to proceed. Its counsel and experts have prepared their presentations in reliance on the Prehearing Order. Moving the hearing at this stage would impose duplicative preparation and expense on Appellant to cure a problem the Applicant could have raised weeks ago. That prejudice to the non-moving party is a recognized reason to deny a continuance.[34]

D. In the alternative, any continued hearing should be set for the week of January 11, 2027.

If the Examiner is inclined to grant relief, Appellant asks that the hearing be reset to a date certain during the week of January 11, 2027, not to a date within thirty days as the Applicant proposes. A thirty-day continuance would place the hearing in mid-December, in the middle of the holiday season, when public attendance and participation are likely to suffer. Appellant's

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[30] Motion at 2.
[31] HE Rule 3.2; HE Rule 1.16(b)(3).
[32] Prehearing Order ¶ 4.
[33] D-01-D-37.
[34] *Balandzich*, 10 Wn. App. at 720.

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counsel also has conflicting deadlines on other matters the first two full weeks of December. Finally, Appellant's experts are unavailable during that period.

Appellant further asks that any continuance be conditioned to prevent further delay: (1) the new date should be announced in open hearing on November 12, 2026, or set by written order with notice to the public;[35] and, (2) any additional evidence from the Applicant should be limited to rebuttal of the three reports served November 6, 2026, and due on a date the Examiner sets well before the reset hearing, with leave for Appellant to respond.[36]

VI. CONCLUSION

All parties complied with the Prehearing Order, the Applicant has had ample time to prepare, and the public is entitled to the hearing it was promised. The Examiner should deny the Motion and proceed on November 12, 2026. If the Examiner grants any continuance, the hearing should be reset to a date certain during the week of January 11, 2027, on the conditions described above.

DATED: November 9, 2026.

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[35] HE Rule 1.17(a).
[36] Prehearing Order ¶ 5.

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2026, I caused a true and correct copy of the foregoing Appellant Friends of Deer Meadow, LLC's Response in Opposition to Motion for Continuance and [Proposed] Order Denying Applicant's Motion for Continuance to be served on the following person(s) in the manner indicated below:

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☒ Electronic Mail (Prehearing Scheduling Order ¶ 6)

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed on the 9th day of November, 2026, at Bellevue, Washington.

/s/ Terrence I. Danysh
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