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November 4, 2021

***Via email***

Mayor Jay McGowan  
City of Cle Elum  
119 West First Street  
Cle Elum, WA 98922  
[jmcgowan@cleelum.gov](mailto:jmcgowan@cleelum.gov)

Gregg Dohrn  
City of Cle Elum  
Attn: Planning Department/47 Degrees North  
119 West First Street  
Cle Elum, WA 98922  
[Planning@cleelum.gov](mailto:Planning@cleelum.gov)

Re: Modification to the Master Plan for 47 Degrees North  
Project File No.: PMU-2021-001

Dear Mayor McGowan and Mr. Dohrn:

We are writing on behalf of Kittitas County Unincorporated Area Council, a Washington nonprofit corporation ("KCUAC") comprised of approximately 700 local residents interested in Sun Communities' application to modify the adopted Bullfrog UGA Master Plan. The purpose of this letter is to request your clarification of a number of procedural issues applicable to the land use application. Our questions arise primarily from the City's adoption of *Ordinance No. 1609*.

The City has advised that the land use application is being processed as a Type 4 permit application. At the time of filing of the land use application, the City's project review procedures were codified in CEMC Ch.17.100. Those procedures were subsequently repealed and replaced by *Ordinance No. 1609*. The new ordinance did not contain guidance on applicability to pending applications.

*Ordinance No. 1609* was adopted on September 13, 2021 and became effective five (5) days after the date of publication. The ordinance rewrote permit review processes, changed notice and command structure, and added integral review procedures including preliminary determinations of consistency. We would appreciate guidance with regard to the procedures governing review and decision making with respect to this land use application.

**A. Procedural Guidelines for Review of Land Use Application.**

Sun Communities filed "...a partial submittal to the Major Modification to the Master Plan for 47 Degrees North ..." on July 1, 2021. The procedure being applied to the application was unclear and inconsistent with the adopted procedures. For example, Sun Communities was allowed to file a partial and incomplete application; no determination of completeness was made; and a notice of application was circulated without a complete application. The public was advised additional supporting documents would be added at a later time.

The procedures were then changed with the adoption of *Ordinance No. 1609*. Would you please advise us as to the applicable provisions that will govern both process and decision making with respect to the land use application? That is, will the City be following the procedures that existed at the time of filing the application or will it follow *Ordinance No. 1609*?

As a final initial question, is our understanding that the application will be presented to a hearing examiner for open record hearing. Has the City adopted any rules governing hearings before the hearing examiner? We are particularly interested in procedures for pre-hearing motions.

**B. Determination of Completeness.**

Our next question relates to the absence of a determination of completeness. Both *Ordinance No. 1609* and prior procedural provisions (former CEMC Ch. 17.100) require a determination of completeness as a predicate to processing of the application. If a determination was not made within twenty-eight days of receiving an application, the application was deemed complete. We have not been able to locate a Determination of Completeness with respect to the 47 Degrees North application. Was a Determination of Completeness issued and, if not, what process will the City follow upon receipt of supplemental materials necessary for a complete application?

Second, Sun Communities acknowledged that its application was only a "partial submittal" and that additional "...supporting documents will follow in the coming weeks." The application did not include (a) final proposed conditions of approval; (b) proposed amendment or new development agreement; (c) rezone or conditional use permit applications, or (d) the additional "supporting documents". The application also failed to meet submission requirements as set forth in CEMC 17.45.080. Deficiencies included failure to submit existing site plan; purposed design standards; restrictive covenants and/or design and architectural guidelines; and identification of comprehensive plan policies and applicable agreements. What procedures will be applied to address these deficiencies and provide for public and agency comment?

Meaningful comment on the application can only occur when the public is provided an opportunity to review and submit comments based upon a complete application. Will the City provide for a second opportunity for comment when all necessary and required application materials are available for public review?



### **C. Notice of Application.**

Our third area of concern relates to premature issuance of the notice of application. City of Cle Elum issued *Bullfrog UGA Master Site Plan and Development Agreement – Notice of Application* (“NOA”) on August 12, 2021. The NOA was issued prior to adoption of *Ordinance No. 1609*. The amended ordinance clarifies requirements for a NOA. One requirement was the inclusion of a “...preliminary determination of the project’s consistency with the comprehensive plan, development regulations, development agreements, and any required mitigation.” CEMC 17.100.110(A)(6). The obvious intent of this provision was to identify at an early stage a project proposal’s inconsistency with specific development or project standards. For example, is the proposal consistent with zoning code requirements; what are the applicable permits; or is the proposal consistent with ordinance review standards. When will the City issue the preliminary determination of consistency?

One of our client’s members – Larry Stauffer – has corresponded with Mr. Dohrn regarding the issuance of a preliminary determination of consistency. We appreciate Mr. Dohrn’s responsiveness but remain confused about the timing of the preliminary determination of consistency and the failure to include the determination in the NOA as contemplated by *Ordinance No. 1609*.

We view the preliminary determination of consistency a necessary component of the notice of application. It is clear that the City intended that a determination of consistency was critical at an early stage in the process. Addressing consistency at an early stage allows review and decisions regarding review and application requirements, permissibility of the proposed land use and a number of other factors. In addition to providing a second opportunity to comment on a complete application, we also believe that the public and agencies should be able to comment on the preliminary determination of consistency.

### **D. Determination of Consistency.**

In addition to the procedural issues, we believe the preliminary determination of consistency has a potential substantive component. *Ordinance No. 1609* added provisions with respect to a “Determination of Consistency.” CEMC 17.100.130 provides:

As part of *all* project and application reviews, the City *shall determine* if a proposed project or development activity is consistent with the Goals, Policies, and Objectives of the Cle Elum Comprehensive Plan and the provisions of the Cle Elum Municipal Code.

The scope of review is specifically outlined in CEMC 17.100.130. *Ordinance No. 1609* contemplates that a “preliminary determination of consistency” is appropriate at an early stage in the review process and is an element to be included in the notice of application.

As we indicated in our earlier comment letter, we do not believe that the application is consistent with either the Comprehensive Plan or adopted development regulations. Our concerns include the following:

1. The land use application is not a “modification” of the Bullfrog UGA Master Site Plan but

rather a proposal for *rezone* to establish a new subarea plan and Planned Mixed Use development. Sun Communities is proposing to terminate the Bullfrog UGA Master Site Plan and substitute a 809-acre destination recreational vehicle resort under single owner control and operation. It is well established in this state that a request for a planned unit development is treated as a request for a rezone. *Johnson v. City of Mt. Vernon*, 37 Wn. App. 214, 218, 679 P.2d 405 (1984); *Lutz v. Longview*, 83 Wn.2d 566, 568-69, 520 P.2d 1374 (1974) (“It is inescapable that application of the PUD to this tract constituted an act of rezoning.”). Will rezone standards be applied to the application?

2. The application is not a “modification” of the existing Bullfrog Flats UGA Master Site Plan. It is a repeal of the adopted master plan and the substitution of a fundamentally different land use and plan. There is no part of the existing plan that remains after the purported “modification.” It is totally eliminated. The proposal must be evaluated as an independent application under CEMC Ch. 17.45 (PMU Plan Mixed Use District).
3. The application is inconsistent with CEMC Ch. 17.45 on its face. Manufactured home parks are not allowed within the PMU Plan Mixed Use District. CEMC 17.45.050(A) specifically provides that only identified principal and conditional uses maybe included within a final master plan. If the purposed use is not principally or conditionally permitted under the zoning ordinance (CEMC Title 17), the land use may not be included as a component of a Planned Mixed Use District. Cle Elum’s zoning ordinance does not recognize or authorize manufactured/mobile home parks as a permitted use in any zoning district. In fact, the zoning ordinance requires that there be no more than one single-residential structure per lot. CEMC 17.16.010(A).

Our only point in raising these issues at this time is that the application should not proceed if it is inconsistent with the established comprehensive plan and development regulations. The issuance of a preliminary determination of consistency allows review of fundamental and jurisdictional issues at an early stage in the process in order to avoid the time, expense and commitment of resources to a proposal that is clearly not allowed in a district or otherwise prohibited by adopted regulations.

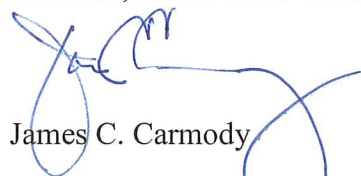
We would request that the City immediately issue a preliminary determination of consistency and provide an appeal mechanism to the City Council to address these important preliminary considerations. We would appreciate your thoughts on these points.

### **Conclusion**

Thank you for consideration of our questions. We would be happy to speak with you at any time if that would be of assistance in clarifying our questions and concerns. If you have any questions for us, please feel free to contact me or Larry Stauffer.

November 4, 2021  
Page 5

Very truly yours,  
MEYER, FLUEGE & TENNEY, P.S.

A handwritten signature in blue ink, appearing to read "James C. Carmody", with a large, stylized loop at the end.

James C. Carmody

cc: Client (via email)