

From: [Steve Lathrop](#)
To: [Kelly Bacon \(CD\)](#)
Cc: [Jeremy Johnston](#); [Greg Zempel](#); [Thorne, Mark](#); [Wedin, Lathan <lwedin@suncadia.com>](#)
Subject: RE: LP-22-00001 Suncadia Phase 2 Division 7 - Request for Information
Date: Thursday, March 17, 2022 9:01:19 AM

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Suncadia specifically objects to the application of the new Critical Area Ordinance to any development at the resort. The Development Agreement between Suncadia and the County is authorized under RCW 36.70B.170 which specifically provides:

"...A development agreement must set forth the development standards and other provisions that shall apply to and govern **and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.**" Wash. Rev. Code 36.70B.170(1). (Emphasis added)

Further:

"36.70B.180. Development agreements-Effect

Unless amended or terminated, **a development agreement is enforceable during its term** by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, **and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement.** A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement." (Emphasis added)

Wash. Rev. Code 36.70B.180 Development agreements-Effect (Revised Code of Washington (2022 Edition))

The case of *Alliance Investment Group v. City of Ellensburg*, 189 Wash.App. 763 (2015) deals only with statutory vesting under building permits (RCW 19.27.095) or land divisions (RCW 58.17.033). Contractual vesting under a development agreement was not considered or affected. There is no authority for extending either of the statutory vesting provisions to development agreements.

Over the years, Suncadia has been careful to not allow the imposition of new or different rules or regulations outside of the "Applicable Law" as defined in the Development Agreement. Please withdraw the below request and confirm that Suncadia is not subject to the recent revisions to KCC 17A.

Alternatively, as there would seem to be disagreement on the application of the newly revised KCC 17A to Suncadia in contravention of Exhibit F-1, Section A, of the Development Agreement, Suncadia

will be requesting to resolve this issue under Section F of that document, something that has not been necessary in nearly 22 years of the parties' cooperation under the development agreement. In such event, it should be pointed out that the county cannot refuse to process Subsequent Actions—in this case the preliminary plat public hearing on the Phase 2, Division 7 plat—pending the resolution of this question. Sec F-1(e) Suncadia will expect this public hearing to be held on April 19 as scheduled.

F. Steven Lathrop, Attorney at Law

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From: Kelly Bacon (CD) <kelly.bacon.cd@co.kittitas.wa.us>

Sent: Wednesday, March 16, 2022 9:46 AM

To: 'Wedin, Lathan' <lwedin@suncadia.com>; Steve Lathrop <Steve@lwbsd.com>

Cc: Jeremy Johnston <jeremy.johnston@co.kittitas.wa.us>

Subject: LP-22-00001 Suncadia Phase 2 Division 7 - Request for Information

Good morning,

Kittitas County adopted a new Critical Areas Ordinance and the changes took effect on February 7, 2022. It is my understanding that critical areas do not vest, therefore all future development are subject to our new CAO. Due to our GIS data showing a Type 2 Stream located on the property, CDS is requesting the following information:

- Stream Delineation
- Setback buffer from the ordinary high water mark of the stream in accordance with KCC 17A.

The request for the setback buffer to be shown, allows CDS to ensure there is buildable space on the proposed new lots. In order to keep on track with the April 19th Public Hearing date, I will need the additional information as soon as possible.

Please contact me directly with any questions.

Thank you,

Kelly Bacon

Planner I
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