

December 8, 2017

**VIA E-MAIL** ([treasure.comments@parkcity.org](mailto:treasure.comments@parkcity.org))

Park City Planning Commission  
P.O. Box 1480  
Park City UT 84060

**Re: Treasure Hill Conditional Use Permit Application –  
November 29, 2017 Planning Commission Meeting**

Dear Commissioners:

I am writing on behalf of THINC, a non-profit organization comprised of hundreds of Park City residents, business owners, and home owners. This letter is intended to supplement the public comments made on behalf of THINC at the November 29, 2017 meeting of the Planning Commission with respect to Project Number PL-08-00370, Treasure Hill Conditional Use Permit Application, Creole Gulch and Town Lift Mid-Station Sites. It also attempts to update our prior comments in a summary fashion on light of the applicant's recent minor refinements and new information that has been provided through the Planning Commission's process.

Step 1: Compliance with Master Plan Development Approval<sup>1</sup>

The Planning Commission is legally required to enforce the terms and conditions of the Sweeney Properties Master Plan approval ("MPD Approval") and hold Applicant strictly within the parameters of that approval. As the Utah Supreme Court has stated, "[a] development approval does not create independent free-floating vested property rights – the rights obtained by the submission and later approval of a development plan are necessarily conditioned upon compliance with the approved plan." *Keith v. Mountain Resorts Development, LLC*, 2014 UT 32, ¶ 31, 337 P.3d 213 (emphasis added).

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<sup>1</sup> THINC respectfully disagrees with the conclusion of Jody Burnet in his Advisory Opinion, dated April 22, 2009, that the Applicant still has vested right in its MPD Approval, given that nearly four decades that have passed since that approval. THINC refers the Commission to its public comments at the July 13, 2016 and its letter dated July 22, 2016, for a detailed treatment of that issue and reserves the right to raise this argument again should this matter proceed to litigation. Further, each of the clear violations of the MPD Approval and failure to satisfy the conditional use requirements outlined below further bolster that the applicant has not proceeded with "reasonable diligence" throughout this process, further supporting a finding that it does not possess any vested rights in the MPD Approval.

ATTORNEYS AT LAW

The Planning Commission cannot waive or reduce the requirements of the MPD Approval in any way, even through mitigation requirements. Mitigation comes into play only after the Applicant demonstrates full compliance with the MPD Approval and only in connection with evaluation of impacts under the CUP criteria, as discussed below.

The MPD Approval expressly incorporates as an integral part of the "complete development permit" the Woodruff drawings, the May 15, 1985 Fact Sheet, and the Master Plan Application. Applicant must therefore first demonstrate that its plans are in full compliance with all of the requirements and volumetrics set forth in the entire MPD Approval, including these exhibits. Applicant has not remotely met that burden.

In its November 29 staff report, the Planning Staff specifically identified a number of ways in which the Applicant's current plans fails to comply with what was approved in the MPD Approval. We agree with Staff that each of these constitutes a deviation from the MPD Approval, which is grounds for denial of a conditional use permit.

Specifically:

1. The Planning Staff is correct that the maximum approved support commercial was 19,000 sq. ft. Yet, the Applicant demands twice that amount.
2. The Planning Staff is correct that the maximum approved accessory/lobby space was 17,500 sq. ft. Yet, the Applicant demands far in excess of that.
3. The Planning Staff is correct that the limits of disturbance must match the building area boundary given that anything outside of the building area boundary is zoned as recreation open space that the MPD Approval requires be kept "pristine."
4. The Planning Staff is correct that the Woodruff drawings, submitted by Applicant and expressly incorporated into the MPD Approval, constitute the approved volumetrics for the project and that Refinement 17.2 reflects a significant deviation from those approved volumetrics.
5. The Planning Staff is also correct that the proposed excavation, as-built heights, massing, scale, altered finished grade, neighborhood incompatibility, site disturbance, and plans for placement of fill are not consistent with the MMPD Approval.

In addition to these deviations expressly called out in November 29 Staff Report, there are numerous other ways in which the current plans do not comply with what was approved, as has been noted by both Staff and THINC in recent months.

Building Area Boundary: The MPD Approval established a building area boundary outside of which no permanent structures could be located. Refinement 17.2 shows new permanent cliffscapes and retaining walls located outside of that on land now zoned as recreation open space. Both by ordinance and the express terms of the MDP Approval, no permanent structures can be located in recreation open space land.

Drawing Off-site Traffic. The MPD Approval requires that “all support commercial uses shall be oriented and provide convenient service to those residing with the project and not designed to serve off-site or attract customers from other areas.” The Applicant has admitted in numerous places that, as designed, the project will result in “significant or substantial” off-site visitors to the commercial support spaces. Its traffic engineer has said so, its attorneys have said so, and its plans clearly reflect that:

a. Treasure Hill Traffic Study Addendum #7: Applicant’s own traffic engineer states that the 17,740 of commercial space “is not integrated with the hotel building” and “is anticipated to spur trips to the Treasure Hill development.” He predicted such traffic to equal 56 a.m. peak hour trips and 109 pm peak hour trips—and even after questionable reductions, predicts 31 a.m peak hour trips and 61 p.m. peak hour trips.

b. Parking: In its January 6, 2017 position statement to the Planning Commission, Applicant’s attorneys stated that “a large portion of visitors” to the support commercial areas would be patrons, residents and employees. That is an admission that the project as designed is expected to and will attract off-site commercial visitors to the project—and potentially even a substantial number. In fact, according to Applicant’s own plans, at least 40% of the projected daily traffic is for offsite commercial visitors and 36% of the parking for the project is dedicated to offsite commercial visitors.

Tucked into Hillside: The MPD Approval states with respect to the issue of visibility that “the tallest buildings have been tucked into Creole Gulch where topography combines with densely vegetated mountainside to effectively reduce the buildings’ visibility.” Yet, the Applicant’s plans eliminate any possibility of a tuck that follows the slope of the existing mountainside and instead blasts away the mountainside and replaces it with cliffscapes and retaining walls.

Setbacks: The MPD Approval requires buildings to be “set back from the adjacent road approximately 100’” with “buildings sited considerably farther from the closest residence.” The buildings as proposed will be no more than 20’ from the road and much closer than 100’ from the closest residence.

Landscaping/Erosion Control: The MPD Approval requires “detailed landscaping plans and erosion control/revegetation methodologies for minimizing site impacts ... at the time of conditional use review.” As noted in the Staff Report, none of these have been provided, even in the most recent last-minute submissions. In fact, on page 7 of the Constructability Assessment, it directly states that construction protocols, revegetation and final grading will be addressed at the building permit stage.

Storm Drainage: The MPD Approval requires that “prior to any conditional use application . . . a utility plan addressing ... storm drainage shall be prepared for review and approval by City Staff.” In its recent submission, the Applicant expressly states that this will not be addressed until the building permit stage, which is directly contrary to the MPD Approval.

Construction Staging: The MPD Approval requires that “at the time of conditional use review/approval, individual projects or phases shall provide detailed ... construction staging

plans.” The Applicant has never provided detailed construction staging plans as required—only generalize, broad-brush statements and presentations utterly lacking in detail or measurables, as addressed in more detail below.

Construction Traffic: The MPD Approval directly states that, for construction traffic, “Empire Avenue and Lowell Avenue will be the main access routes to the Creole Gulch site” and then goes on to address the relevant construction details with respect to both roads in detail. The City clearly anticipated that construction traffic would come up one street and go down the other given the narrow size of the roads. But the Applicant’s plans now call for using only Lowell for construction traffic, effectively doubling the approved construction traffic for the road and requiring construction vehicles to pass one another on a street not wide enough to accommodate it.

Reconstruction of Empire/Lowell: The MPD Approval directly states that “Empire and Lowell south of Manor Way are and will be low-volume residential streets, with a pavement quality, width and thickness that won’t support that type of truck traffic.” So, the MPD includes an express finding that the width of these roads could not handle the construction traffic. Applicant was therefore invited to participate in reconstruction of these roads but declined to do so with respect to Empire. Now they want to send all of the construction traffic down Lowell alone, which the MPD states was not wide enough or thick enough to handle even half the traffic even back then. Lowell and Empire are currently the same width and narrower than they were at the time of the MPD Approval.

Snow Removal: The MPD Approval states: “No additional snow removal will be required of the city.” Yet, the central feature of the Applicant’s plans with respect to traffic on Lowell is a requirement for more frequent snow removal by the City.

Excavation: By Applicant’s own calculations in its “Woodruff Excavation Volume Quantity” memo, the Woodruff drawings contemplated only about 200-400,000 cubic yards of excavated material from the site. Yet, Refinement 17.2 contemplates 874,450 cy of excavated material. The proposed excavation is therefore 2-4 times what was approved in the MPD Approval. This additional excavation is the result of Applicant’s attempt to circumvent the building height limitations and increase density by digging its buildings far deeper into the ground than what was ever contemplated by either the Applicant or the City at the time of MPD Approval or what was represented to the City in the Woodruff drawings.

Obviously, an exponential increase in the amount of excavation generates an exponential increase in the material that must be moved and disposed of. The Applicant now acknowledges that the excavated material will be nearly 1 million cubic yards with a conservative swell factor of 25-35%. Realistically, the proposed volume will be much greater than that when reasonable and realistic swell factors are used for the excavated materials.<sup>2</sup> Notably, there is no documentation provided backing up that estimated swell factor, which is extremely small based on known swell factors for the type of rock found on site. Because such

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<sup>2</sup> THINC would refer the Planning Commission to its August 4, 2017 letter to the Planning Commission, where we included copies of resources demonstrating swell factors ranging from 50-80% are far more realistic than the figures proposed by the applicant. See, e.g., *Surface Mining*, AIME volume, Seeley W. Mudd series, 1968; Bulking Factor table found at [www.engineeringtoolbox.com/soil-rock-bulking-factor-d\\_1557.html](http://www.engineeringtoolbox.com/soil-rock-bulking-factor-d_1557.html).

massive excavation was never contemplated or approved in the MPD Approval, the movement and placement of this much fill was never contemplated by anyone much less approved.

To the contrary, the MPD Approval expressly contemplated that all "cut and fill shall be balanced and distributed on site, with any waste material to be hauled over City specified routes." "On-site" means within the building area boundary for the project. It does not mean the recreation open space mountainside conveyed to the City by the Applicant—and most certainly cannot be construed under any possible definition to mean recreation open space owned by third parties. The Applicant has reversed the requirements of the MPD Approval entirely, proposing to keep only about 60,000 cubic yards of fill "on site," with all the rest dumped over 16 acres of open space owned by the City and PCMR. Yet, the MPD Approval expressly provides that the mountain open space must be preserved "substantially intact and pristine."

We therefore respectfully disagree with Staff's conclusion in its recent report that it might somehow be permissible under limited circumstances for Applicant to place any excavated material in the ROS-zone land for any purpose. Again, this would be directly contrary to the provisions of the MPD and is also inconsistent with Staff's conclusions that the Limits of Disturbance must match the Building Area Boundary. By definition, no construction activity can take place outside of the Limits of Disturbance. Therefore, no dumping of fill, regrading of slopes, or construction of roads for that purpose can take place outside of the Limits of Disturbance, particularly on the ROS-zoned land.

Even if "subtle" and "sensitive" placement of fill for regrading of ski slopes were permissible, as suggested by Staff, Applicant's plans would not remotely qualify as such. As noted by Staff, the Applicant's current plans would dramatically and permanently transform the topography of the hillside and ridgeline of the mountain. The vast majority of fill would not be placed on ski runs at all but rather spread across 16 acres of densely forested evergreen mountainside. It would be used to create a new hill with a height of 140' from existing grade at the ridgeline, prominently in view of Old Town. It would fill in Creole Gulch with over 1 million cubic yards of excavated material up to as 65' deep. The plans would therefore require construction of a network of roads over the open space and through forested lands requiring 40' cross cuts to be traversed by massive construction vehicles. They would require clear-cutting of thousands of trees. Those plans do not remotely comply with the MPD Approval requirements of preserve pristine mountainside and avoiding removal of evergreens. Nor do they comply with the intent, purpose, and character of open space land.

Although the Applicant relies upon the open space conveyance deed in support of its right to use the land for this purpose, the deed does nothing of the sort. First, the deed was executed in 1996—ten years after the MPD Approval. Therefore, it does not comprise part of the MPD Approval or reflect the Planning Commission's understanding or intent of the scope of the MPD Approval at the time of approval a decade earlier. The deed does not, and legally cannot, expand any rights granted or any restrictions contained in the MPD Approval. The deed does nothing more than reserve whatever rights that the Applicant might have with respect to use of the open space land that were granted in the MPD Approval, if any. And the deed says precisely that—that use of the land by Applicant must be "in conjunction with the Sweeney Master Plan."

The deed does, however, require that any resulting damage from use of the open space "be repaired." Applicant cannot possibly repair a new 140' hill, the damage to Creole

Gulch, or the clear-cutting of forested hillside. Revegetation alone would take 30-40 years. That is not repair. Applicant's excavation and fill placement plans do not comply with the deed, much less the MPD Approval.

Any one of the above deviations is grounds for denial of a Conditional Use Permit for the project. Because the Applicant has failed to overcome the first obstacle of demonstrating that its plans fully comply with the MPD Approval, the Commission must deny its Conditional Use Permit application as a matter of law.

### Step 2: Impacts under the Conditional Use Criteria

In addition to constituting deviations from the MPD Approval, the above issues also create incompatibilities with the surrounding structures in use, scale, mass and circulation and inconsistencies with the Park City General Plan. They will also result in tremendous impacts under the virtually of the of the 15 criteria to be reviewed in connection with this conditional use permit application, including size and location of the site, traffic considerations including capacity of the existing streets. Those numerous impacts have been detailed in THINC's comments and letters over the last year.

As Utah Code § 10-9a-509.5(4) makes clear: "Subject to Section 10-9a-509, nothing in this section and **no action or inaction of the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations.**" (Emphasis added). Similarly, as § 15-1-10(D) of the 2003 LMC is clear that a conditional use permit "shall not issue...unless the planning commission concludes that (1) the Application complies with **all requirements of this LMC[.]**" (Emphasis added). The applicant falls far short of the 15 separate items that the "Planning Commission must review... when considering a Conditional Use permit" according to § 15-1-10(E) of the 2003 LMC. Given that "the reasonably anticipated detrimental effects of [this] proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards," the applicant's permit should be denied for at least the following reasons, in addition to numerous others noted by Staff throughout the consideration of the application. Utah Code § 10-9a-507(2)(b). THINC addresses many of the CUP criteria below where the applicant most egregiously fails to address the profound impacts of its proposal, but defers to Staff's conclusion on those criteria not discussed in detail below. Further, while some mitigation is discussed within this section, additional problems with the applicant's proposed mitigation are addressed in the final section of this letter.

#### **(1) size and location of the Site**

The size and location of the Site for the proposed development are not appropriate for such a massive project with so much excavation. First, as noted above, the MPD Approval contemplated a much smaller development on this Site, demonstrating that the Site itself is not appropriate for such a massive development. By far exceeding the MPD Approval's contemplated size, the proposal far exceeds the bulk and massing appropriate for a Site of this size. These bulk and massing impacts are enhanced when considering the location of the Site, particularly its proximity to Historic Main Street. By exceeding the MPD Approval so greatly, the proposed development shrinks the remaining portions of the Site in a way that cannot be mitigated. In fact, the proposed mitigation involving massive volumes of excavation actually creates a greater impact to the Site by removing more than a million cubic yards of the Site, creating an even greater impact to the Site. In other words, the proposed mitigation

actually creates an even more profound impact. THINC respectfully suggests that there is no way to mitigate the visual impacts to the Site and surrounding areas caused by the excesses of the proposed development. These excesses cast a profound shadow on the Site and surrounding historic locations that could only be mitigated by reducing the development to match what was actually approved by the MPD Approval.

## **(2) traffic considerations including capacity of the existing Streets in the Area**

Having seen and heard that actual evidence of the real-world traffic conditions on the neighborhood roads, the Commission cannot possibly conclude that these roads adequately function now, much less that they will adequately function in the future with the sharp increase in traffic projected from the Treasure Hill development. The Commission cannot focus blindly on speculative data prognostications while ignoring the actual evidence in the record of the real-world capacity issues on these roads. The current road capacity on the existing streets in the proposed development area is inadequate under winter conditions, and the development would push those roads beyond functionality and beyond their maximum designed capacity.

Current traffic volume on Lowell and Empire is estimated by Avenue Consultants to be between up to 1,400 vehicles per day. The Treasure Hill development will double that number, adding about 2,600 daily vehicle trips for a total of up to 3,700 vehicle trips per day on each street. These roads are only designed for a maximum of 2,600 daily vehicle trips. So, the development would add the total maximum daily trips to the roads in addition to existing traffic. Yet, Avenue Consultants estimates that during winter driving conditions, roadway capacity on Lowell and Empire is only about 720-1,440 vehicles per day.

The traffic reports relied upon by the Applicant do not factor in actual road conditions under real-world conditions. The studies assume that the Old Town roads around Treasure Hill actually function year-round as they appear on paper, i.e., having pristine road conditions, with a handful of cars, and a few pedestrians walking on clear sidewalks, past nicely spaced driveways, on flat terrain. But that is not remotely how these roads actually function, particularly not during winter time.

As noted by LSC Transportation in its traffic report review, "[t]he traffic analysis needs to include an evaluation of roadway congestion along Lowell Avenue and Empire Avenue between the site and Manor Way, reflecting real-world winter traffic conditions." "Snow (both on the roadway and piled), grades, and the high density of residential driveways all combine to reduce the capacity of these roadways." The Avenue Consultants report likewise cautions that "during winter conditions when the roadway width is reduced to one lane and vehicles must regularly yield to oncoming traffic or even back up to make way for another vehicle, the roadway capacity may reasonably be assumed to drop to as little as one-tenth of the ideal values, which would be only 60-120 vehicles per hour."

The conditions proposed by Staff and the Applicant are wholly insufficient to mitigate the tremendous impact of the project on traffic and road capacity. There is simply no way that under winter conditions two cars can pass each other on these roads regardless of whether they are 25 feet wide or 22 feet wide. That is particularly true with respect to the hundreds of heavy construction trucks per day that would need to somehow pass each other along Lowell in order to construct Treasure Hill.

### **(3) utility capacity**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

### **(4) emergency vehicle Access**

Emergency vehicle access to the proposed development is constrained in at least the same manner as other traffic to the proposed site. Traffic failures that exist throughout the area impacted by the proposed development will have an equal or greater impact on emergency vehicles, particularly when considering that emergency vehicles tend to be larger than passenger vehicles. This enhanced impact to emergency vehicles is further enhanced when the real-world conditions and capacity constraints of Lowell and Empire Avenues are considered, particularly in winter months when the need for emergency vehicles is likely to be at its greatest, and constraints on these narrow, historic roads caused by snow are also at their greatest. The proposed mitigation of making these streets one-way during winter months does not do anything to mitigate emergency vehicle access to the proposed development, but instead makes access worse by denying emergency vehicles access to Crescent Tram and 10th Street, forcing them to drive greater distances out of their way and requiring greater travel time for vehicles for whom every second counts. The same mitigation required to address traffic issues noted above would be required to avoid such profound impacts for emergency vehicles, yet the applicant refuses to acknowledge the need for such life-saving mitigation efforts. The application should, therefore, be denied.

### **(5) location and amount of off-Street parking**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion. However, THINC notes that the excesses of the proposed development create greater needs for parking, that in turn create creating size, mass, and bulk impacts that cannot be mitigated.

### **(6) internal vehicular and pedestrian circulation system**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

### **(7) Fencing, Screening, and landscaping to separate the Use from adjoining Uses**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

### **(8) Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots**

The size excesses of the proposed development create profound mass, bulk, and orientation impacts. By far exceeding the size of development provided for in the MPD Approval, the development is far more massive and bulky than approved or appropriate for the Site. The excess mass and bulk's most notable impact are best seen on various renderings of the proposed development relative to what was actually approved. These renderings show



that the proposed development has profound visual impacts that can be seen from all across Park City for which no mitigation is possible. Rather than try to mitigate these impacts, the applicant curiously proposes creating even greater visual and physical impacts. These impacts come from the massive volumes of excavation proposed that would only serve to increase the impact of the mass and bulk of the project by creating a greater contrast against newly-formed cliffscapes that do not exist anywhere in Park City. The applicant has offered no mitigation of the profound impacts caused by their proposed cliffscapes, nor could one be offered, as the permanent physical destruction and removal of large volumes of the Site cannot be mitigated. The MPD Approval contemplated tucking the approved buildings into the mountain side, yet the applicant has ignored this basic requirement. The impacts caused by ignoring this requirement cannot be mitigated. The application should, therefore, be denied.

**(9) usable Open Space**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

**(10) signs and lighting**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

**(11) physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing**

Once again the excesses of the proposed development cause its physical design to be incompatible with surrounding structures. This is most notable through the addition of permanent cliffscapes, carved into the hillside. Such cliffscapes do not exist anywhere else in Park City, and most certainly not in the surrounding area. The cliffscapes are greater than 100 feet high in multiple locations, highlighting the profound impact to the appearance of the surrounding area caused by such massive excavation. This stands in contrast to the MPD Approval, which contemplated tucking buildings into the mountainside to respect the "scale of the Historic District" abutting the Site. By disregarding the Historic District, and failing to design the buildings in "conformance with the Historic District Design Guidelines" as required by the MPD, the applicant creates another significant impact. Degradation of the historic character of the area on such a scale cannot be mitigated. Further, the surrounding structures consist primarily of single-family residences, creating further incompatibility relative to the massive excesses proposed that cannot be mitigated. The application should, therefore, be denied.

**(12) noise, vibration, odors, that might affect people and Property Off-Site**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion. However, THINC notes that the massive excavation proposed will create profound noise, vibration, and the disturbance of historic mining areas known to contain unsafe levels of contamination. The applicant has offered no concrete measures to mitigate the impacts of the proposed excavation, and the vague commitments offered would be unenforceable and do not truly mitigate these impacts. The application should, therefore, be denied.

**(13) control of delivery and service vehicles, loading and unloading zones, and Screening of trash pickup Areas**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion. However, THINC notes that delivery and service vehicles will only add to and increase the impacts on traffic, particularly in the busy winter months when road capacity is most constrained.

**(14) expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental , or commercial tenancies, how the form of Ownership affects taxing entities; and**

THINC defers to the analysis of Staff on the impacts and the applicant's failure to mitigate such impacts with respect to this criterion.

**(15) within and adjoining the Site, impacts on Environmentally Sensitive Lands, Slope retention, and appropriateness of the proposed Structure to the topography of the Site.**

As discussed above, the massive quantities of excavation proposed by the applicant again create profound and significant impacts on the Site by removing large quantities of the Site, leveling large portions of the Site, and removing nearly all of the excavated materials. Rather than offer any proposed mitigations to these impacts, the applicant proposes to increase impacts on by placing nearly all of the excavated materials on neighboring parcels, permanently altering the appearance and topography in ways that cannot be mitigated. The deviations from the MPD Approval proposed by the applicant are discussed above and will not be repeated. However, even if violation of the MPD Approval were not at issue, the impact of the proposed excavation and transport of so much material would have to be considered and mitigated. But once again, the impact of permanently altering the topography of the Site and failure to respect the existing mountainside cannot be mitigated. The proposal's failure to respect the topography of the surrounding parcels could theoretically be mitigated by transporting the excavated materials off the mountain, but no such proposal has been made, nor could it actually be accomplished because of the impact of that much heavy construction traffic on surrounding roads. And transporting the materials off the mountain would certainly not mitigate the impact of permanent alteration of the topography of the Site. Slopes are not retained; instead they are destroyed. Nothing that is appropriate to the topography of the Site is proposed; instead the topography is eliminated. The application should, therefore, be denied.

**Step 3: Mitigating Impacts**

Applicant must also propose a mitigation plan that sufficiently addressed the tremendous impacts of this project. As both Staff and THINC have repeatedly pointed out, the Applicant has failed at every turn to identify specifically what it proposes to do to mitigate the substantial impact of its project on virtually every one of the 15 CUP criteria.

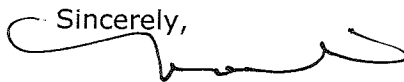
Applicant's most recent Constructability Assessment merely continues this pattern. After projecting 600 days of blasting and excavation of over 1 million cubic yards of material and 8 years of continuous construction with hundreds of heavy construction vehicles daily,

the Applicant provides only a handful of one-sentence bullet points as its construction mitigation plan. Those bullet point includes such "soft and fluffy" statements as these:

- "Traffic control meetings will be held regularly"
- A project website will be maintained
- Initial construction staging will be established and internalized "to the extent practical" and "as soon as possible" inside the parking structures.
- "Fencing, screening, and berms will be installed and proactive re-vegetation will occur"—when, what, where?
- "Re-vegetation will be scheduled to occur as soon as practical"
- "Construction work hours will be reduced during busy holidays periods and special events"—reduced to what? Measurable how?
- "Significant offsite parking for employees and shuttles to the project will be provided"—significant meaning what? Apparently not all or even most—just "significant" as determined by the Applicant—and how many shuttles? When? Where? For whom?

This is no construction mitigation plan. These are unquantifiable, unmeasurable words utterly lacking in detail and accountability. The reality is that given the tremendous impacts of this project on historic Old Town and its residential streets and neighborhoods, no amount of mitigation will truly mitigate the tremendous impacts. That is the reason for the half-hearted attempts by the Applicant to propose any mitigation efforts. At the end of the day, whatever they propose will be facially insufficient. Because the impacts cannot be reasonably mitigated, the Conditional Use Permit application must be denied.

Thank you again for your consideration of THINC's concerns.

Sincerely,  


Nicole M. Deforge

cc: client

4826-5956-9239, v. 1