



To: Members of the Park City Planning Commission
From: VRCPC Holdings, Inc.
Date: May 23, 2022
Re: VRCPC Holdings, Inc.'s Response to Appellants' Appeal Submission

This is an appeal of the Park City Planning Director's decision to issue an administrative conditional use permit that allows Park City Mountain (PCM) to upgrade two ski lifts. The Planning Director reached her decision after employing a rigorous and thorough process. She analyzed the application for over three months, retained an outside consultant, sought public comment, reviewed input from appellants and other community members, and held a lengthy public hearing. Only then did she issue an administrative CUP, containing 19 detailed conditions of approval.

Unhappy with the outcome, appellants argue that PCM must obtain a CUP, rather than an administrative CUP. PCM's Development Agreement with the City forecloses these claims. The Agreement plainly provides that where, as here, lift upgrades are identified in the approved Park City Mountain Upgrade Plan, the correct path is an administrative CUP. Appellants' contentions that PCM's parking mitigation plan does not satisfy the requirements for an administrative CUP are also meritless. That is presumably why appellants devote the remainder of their submission to impacts that are not relevant to the Planning Director's decision to issue an administrative CUP under the Development Agreement allowing the lift upgrades—the only subject of this appeal. The Commission should affirm the Planning Director's decision without further delay.

Background

Park City Mountain—the largest ski resort in the United States—provides a world class mountain experience for its guests. As part of its commitment to maintain and enhance that experience, PCM invests in improvements to ski operations, including ski lift upgrades.

A. The Park City Development Agreement and Mountain Upgrade Plan

In 1998, the City approved a Development Agreement—including a Mountain Upgrade Plan—that governs ski lift upgrades at Park City Mountain. The Mountain Upgrade Plan sets out (at pp. 29-30) a “lift upgrading program,” which involves installing seven new lifts and “replac[ing] and/or reconfigur[ing] . . . several . . . existing lifts” to “improv[e] access and distribution to the mountain.” The Plan instructs (at p. 5) that “[s]ki lifts should be placed to serve the available ski terrain in the most efficient manner, while considering a myriad of factors such as . . . interconnectability between other lifts and trails[] and the need for circulatory space at the lower and upper terminal sites.” It also sets out (at pp. 5, 35) PCM-wide and lift-specific maximum comfortable carrying capacity restrictions, *i.e.*, the daily “number of visitors that can be accommodated at any given time[] which guarantees a pleasant recreational experience.”¹

¹ Comfortable carrying capacity is not a visitation metric. Neither is it a cap on the number of daily visitors. See Staff Report Exhibit M at p. 2. Rather, it is a resort design and planning metric, and “[a]n increase in [comfortable carrying capacity] does not directly cause an increase in business or in demand.” Staff Report Exhibit M at p. 4.

The Development Agreement requires PCM to obtain an administrative CUP from the Planning Director before it can upgrade any of the ski lifts specified in the Mountain Upgrade Plan.² The Development Agreement requires (at pp. 12-13) the Planning Director to consider six factors before granting a permit. If, for example, a proposed lift upgrade will expand lift capacity, PCM must have “assure[d] that it has adequate parking or . . . implemented such other assurances, as provided in the Parking Mitigation Plan, to mitigate the impact of any proposed expansion of lift capacity.”

B. Factual background

In January 2022, PCM submitted an administrative CUP application to the Planning Director, seeking to upgrade two lifts at Park City Mountain as part of the Mountain Upgrade Plan. PCM proposed to upgrade its existing Silverlode lift from a six- to an eight-person chair. PCM also sought to remove two lifts and replace them with a new high-speed, six-person chair (the Eagle lift).³ PCM noted that the upgrades will not significantly increase the resort’s overall comfortable carrying capacity, which will still fall well below the maximum capacity set out in the Mountain Upgrade Plan. See Staff Report Exhibit H (stating that the resort’s comfortable carrying capacity with the upgraded lifts will be 12,860 visitors); see also Mountain Upgrade Plan at p. 35 (allowing a maximum comfortable carrying capacity of 13,700 guests).

Both upgrades, PCM explained, will improve guest experiences. Among other things, the lifts’ increased efficiencies will decrease wait times in lift lines, allowing guests to spend more time on the mountain. Both lifts will also allow guests to efficiently access and circulate through available terrain. PCM stated that, if approved, it will upgrade the lifts during the 2022 construction season and will open the lifts to guests starting with the 2022-2023 season. See Attachment to PCM’s Application at pp. 1-3.

While PCM was preparing its application and after filing it, PCM’s Vice President of Mountain Operations attended multiple meetings with community members and offered solutions to address their concerns. Among other things, PCM agreed to plant trees and build a privacy fence along a neighboring property line. See PCM’s Apr. 14, 2022 Response to Public Comments at pp. 1-2.

PCM also consulted SE Group, a leading expert on ski area planning, and Fehr & Peers, a third-party transportation and parking consultant, to formulate a project-specific parking mitigation plan.⁴ See Staff Report Exhibit L. Even though SE Group concluded that the lift

² The Development Agreement refers to the Community Development Director, but this position was eliminated and replaced with the Planning Director.

³ The Silverlode lift will increase slightly its comfortable carrying capacity from 1,650 to 1,820 visitors. The Eagle lift will have a comfortable carrying capacity of 580 visitors. Both are well below the maximum capacities set out in the Mountain Upgrade Plan, *i.e.*, 2,080 and 1,230 visitors, respectively. See Notice of Planning Director at p. 2.

⁴ Appellants suggest (at pp. 9-12, 14) that PCM is improperly relying on a parking mitigation plan associated with a different application. That is wrong. The plan states that it is “associated with the administrative CUP application for the Eagle and Silverlode lift

“upgrades will not generate an impact on parking,” Staff Report Exhibit L at p. 5, PCM committed to undertake several mitigation efforts. It provided that it would implement a paid reservation system to park in PCM’s Mountain Village lots before 1:00pm. As PCM explained, this system will result in an approximate 11 percent decrease in demand for parking spaces and will incentivize guests to carpool or use transit alternatives, thus increasing average vehicle occupancy and reducing the total number of vehicles that attempt to park at the resort. It will also spread arrival times out and reduce traffic congestion because guests who have reservations will no longer need to arrive early in order to secure parking or circle the lot, looking for a space. Likewise, guests who choose not to secure a reservation can avail themselves of alternative free parking options. Among other mitigation efforts, PCM also agreed to convert approximately 90 employee parking spaces to guest spaces. See Staff Report Exhibit L at pp. 1-4.

C. The Planning Director’s decision

After conducting a lengthy public hearing and considering the comments of appellants and multiple other community members, the Planning Director issued a final decision, approving PCM’s application. As an initial matter, she concluded (at p. 2) that both of the proposed lift upgrades were planned in the Mountain Upgrade Plan. Accordingly, she considered (at pp. 2-4) the six factors set out in the Development Agreement in deciding whether to grant an administrative CUP.

As to the first and last factors—consistency with the Mountain Upgrade Plan and parking—the Planning Director concluded (at pp. 2-3) that the proposed lift upgrades “comply with” the Plan’s requirements. She also found (at p. 4) that PCM’s parking mitigation plan satisfied the Development Agreement’s parking requirements.

Concerning the remaining factors, the Planning Director found (at pp. 3-4) that: (1) “the visual impact of the lift upgrades have been minimized and are not more impactful than existing lifts being replaced/upgraded”; (2) “there is no proposed lighting with the lift upgrades”; (3) “the lift towers will be treated to blend with the natural surroundings”; and (4) “vegetation removal will be mitigated.”

The Planning Director then imposed (at pp. 4-7) nineteen conditions of approval to memorialize PCM’s agreed-upon solutions, to address comments and concerns made by appellants and other community members, and to mitigate any potential detrimental impacts from the lift upgrades. As relevant here, at least six conditions relate to parking. Among other things, they require PCM “to provide parking and traffic information demonstrating compliance with the Parking Mitigation Plan” and to “use the net proceeds generated from paid parking . . . to reinvest in transportation, transit, traffic mitigation, and/or parking measures to support guest access to the resort and traffic mitigation in and around the resort.”

This appeal followed.

replacements.” Staff Report Exhibit L at p. 1. The Planning Director’s decision also confirms (at p. 6) that “[t]his approval, including the parking mitigation herein, is solely for the installation and capacity associated with the lift upgrades subject to this application.”

Argument: The Planning Director Properly Issued an Administrative CUP Allowing Two Lift Upgrades Identified in the Mountain Upgrade Plan

A. The City-Approved Development Agreement confirms that PCM properly applied for an administrative CUP

Appellants do not dispute that the City has approved a Development Agreement that sets out the six factors the Planning Director must consider when reviewing ski lift upgrades identified in the Mountain Upgrade Plan. Instead, they claim (at pp. 13, 19) that the City’s Land Management Code (LMC) does not authorize the Planning Director to issue an administrative CUP for lift upgrades. Appellants misunderstand the legal framework.

Utah Code § 10-9a-532 permits a municipality to “enter into a development agreement containing any term that the municipality considers necessary or appropriate,” even if that term differs from or conflicts with a term in an existing ordinance. *See also* Utah Code § 10-9a-102(2). Here, Section 2.3 of the Development Agreement provides (at p. 11) that the “[d]evelopment of the skiing and related facilities as identified in the Mountain Upgrade plan is . . . subject to administrative review.” The text further tells us (at pp. 11-12 & footnote 2) precisely what kind of permit the City deemed necessary and appropriate for ski operations improvements identified in the Plan, including “lift[s]”—*i.e.*, “an administrative permit.”

This interpretation is consistent with the City’s past approach to lift upgrade approvals. Since 2015, PCM has obtained administrative CUPs to replace its Motherlode and King Con lifts because those lifts were specified in the Mountain Upgrade Plan. Where lifts are not identified in the Plan, PCM has obtained CUPs from the Planning Commission, *e.g.*, for the Quicksilver Gondola. *See* Staff Report at p. 3. Here, both of the proposed ski lift upgrades are identified in the Mountain Upgrade Plan: the Eagle lift is referred to as “Chondola,” and the Silverlode lift is referred to as “Prospector.” Attachment to PCM’s Application at pp. 2-3.

Lest there be any doubt, the Development Agreement states (at pp. 1-2, 13) that PCM “has a vested right to develop” and may “contract in reliance on” that right. Accordingly, the Planning Director followed the law in issuing an administrative CUP, and the Commission should limit itself to reviewing the factors set out in the Development Agreement.

B. PCM’s parking mitigation plan complies with the Development Agreement’s parking requirements for lift upgrades

Appellants offer a number of arguments attacking PCM’s parking mitigation plan. Their disagreement with what the Planning Director decided after carefully considering public comments does not render the administrative CUP invalid.

Appellants primarily complain (at pp. 8-9, 12, 15) that the plan does not provide any “guaranteed or dedicated offsite solutions with connections to improved bus service getting to or from the resort.” Notably absent from the Development Agreement’s parking requirements for ski lift upgrades, though, is any requirement for offsite solutions. PCM is not required to implement the plan or provide audit metrics in order to receive an administrative CUP. What matters, as explained, is whether PCM has “assure[d] that it has adequate parking or has

implemented such other assurances . . . to mitigate the impact of any proposed expansion of lift capacity.” Development Agreement at p. 14. Given that the lift upgrades will not even “generate an impact on parking,” Staff Report Exhibit L at p. 5, the parking mitigation plan’s paid reservation system and other mitigation efforts amply assure, as the Planning Director correctly recognized (at p. 4). Appellants’ quibbles (at p. 15) over what the permit’s parking-related conditions “presume[.]” and “stipulate” does not change the fact that the conditions further assure adequate parking and provide for “ongoing assessment” to minimize any detrimental parking impacts that arise from the two proposed lift upgrades. Notice of Planning Director at p. 4.

Next, appellants cite the Mountain Upgrade Plan to assert (at pp. 9-15) that a parking mitigation plan for lift upgrades must address parking and circulation with respect to a peak ski day. The Mountain Upgrade Plan is not the applicable standard. The applicable standard for an administrative CUP for lift upgrades is to “mitigate the impact of any *proposed expansion* of lift capacity.” Development Agreement at p. 13 (emphasis added). Therefore, PCM has proposed a parking mitigation plan to address the proposed increase in comfortable carrying capacity of 290.

Appellants’ next bid is to suggest (at p. 18) that a CUP is required because the parking mitigation plan affects behavior in the commercial recreational zone. Appellants’ theory is flawed. PCM is not seeking a conditional use in the commercial recreational zone; it is seeking to upgrade ski lifts in the recreation and open space zoning district. Notice of Planning Director at p. 1.⁵ In any event, as explained, the Development Agreement, not the LMC, governs here.

Finally, in an effort to manufacture the appearance of irregularity, appellants suggest (at p. 17) that is inappropriate for a planning director to approve a parking mitigation plan that her staff had a hand in crafting. Appellants are mistaken. There is nothing improper or unusual about the Planning Director’s staff asking PCM for additional information. See Staff Report Exhibit L at p. 1. Indeed, the Development Plan requires (at pp. 11-12) the Planning Director to “discuss the project and the potential impacts of the project” with PCM. Accordingly, upon request, PCM submitted a thorough—and transformative—parking mitigation plan.

C. Appellants’ remaining arguments are improper invitations to apply additional criteria that the Development Agreement does not require to an administrative ski lift upgrade approval

Faced with the fact that the Planning Director properly applied the Development Agreement’s standards for review, appellants try a different tack. They invite (at p. 11) this Commission to consider impacts for which the LMC requires mitigation but the Development Agreement does not. This Commission should decline. Even if the Development Agreement did not govern (it does) and PCM had to obtain a CUP under the LMC (it does not), the proposed lift upgrades satisfy the criteria set out in LMC 15-1-10(E), as PCM explained in its application, Attachment to PCM’s Application at pp. 4-6, and as the Planning Director and her staff concluded, see Notice of Planning Director at p. 4; see *also* Staff Report at pp. 6-8.

⁵ Likewise, it is no help to appellants (at p. 18) that LMC 15-2.7-2 says that a “Parking Area or Structure with five (5) or more spaces” is a conditional use in the commercial recreational zone. PCM is not seeking permission to build a parking area or structure; it is seeking approval for two ski lift upgrades that are identified in the Mountain Upgrade Plan.

Appellants lean heavily on purported traffic considerations, *see* LMC 15-1-10(E)(2), suggesting (at pp. 8-9) that the parking mitigation plan’s paid reservation system will push guests to park on nearby streets and business premises. Appellants’ fear is unfounded. As explained, paid parking has been proven to reduce the demand for parking spaces and to increase carpooling and transit use, which will reduce the total number of vehicles that attempt to park at the resort. (*See* Fehr & Peers’ May 23, 2022 memo). The reservation requirement, in turn, will reduce traffic congestion and parking near the base area. Among other things, it will spread out arrival times because guests with reservations will no longer need to arrive early to secure parking. In addition, because PCM will inform guests about the reservation requirement well in advance of their arrival at the base area, *see* Staff Report Exhibit L at pp. 2-3, fewer guests will need to seek parking nearby after failing to secure a space at the resort. Instead, guests who have not secured a reservation (or who do not want to pay for parking) can avail themselves of alternative designated parking options.⁶ In any event, PCM will also use the net proceeds from paid parking to “reinvest in transportation, transit, traffic mitigation, and/or parking measures to support guest access to the resort and traffic mitigation in and around the resort.” Notice of Planning Director at pp. 6-7.

Appellants also argue (at pp. 8, 15) that there were several parking overflow days last season and speculate that this must mean that PCM is violating a provision of the Mountain Upgrade Plan (at p. 35) that discourages a “common practice” of reaching 110 percent of the resort’s comfortable carrying capacity. That is wrong. PCM is not in violation of the Mountain Upgrade Plan. Also missing from all of this is any explanation as to why this would warrant denial of the two lift upgrades requested here. After retaining and consulting an independent expert, the Planning Director correctly concluded that the comfortable carrying capacities for both upgraded lifts—1,820 and 580 visitors for Silverlode and Eagle, respectively—were well below the maximum capacities set out in the Mountain Upgrade Plan. *See* Notice of Planning Director at p. 2; *see also* Staff Report at pp. 4-5. Indeed, even on days when the lifts reach 110 percent of their comfortable carrying capacities, the number of guests would still fall below the lifts’ maximum comfortable carrying capacities. *See* Mountain Upgrade Plan at p. 35 (establishing maximums of 2,080 and 1,230 visitors for the Silverlode and Eagle lifts, respectively).

Finally, appellants assert (at pp. 9, 11) that no one evaluated “water and sewer system capacity.” *See* LMC 15-1-10(E)(3). They are wrong. PCM explained that “[n]o additional sewer or water capacity is needed” for the proposed lifts. Attachment to PCM’s Application at p. 5. In any event, appellants make no effort to explain why additional capacity is needed when the lift upgrades do not add any facilities that would connect to the water and sewer systems, as the Planning Director and her staff correctly recognized. *See* Notice of Planning Director at p. 4; *see also* Staff Report at p. 6.

⁶ Appellants are mistaken in positing (at pp. 8, 15) that overflow parking will not be available at Park City High School. PCM has signed a contract to use the high school’s parking lot on weekends and holidays for the 2022-2023 season. If that contract is not renewed, the Planning Director can “impose additional conditions or operational changes” under permit condition 15. Notice of Planning Director at p. 6.

Conclusion

For the foregoing reasons and those advanced by the City, PCM respectfully requests that the Commission affirm the Planning Director's administrative CUP at the June 8, 2022 hearing.