



PLANNING DEPARTMENT

## Planning Commission Staff Report

**Subject:** Treasure  
**Project #:** PL-08-00370  
**Author:** Francisco Astorga, AICP, Senior Planner  
**Date:** 14 September 2016  
**Type of Item:** Administrative – Conditional Use Permit

### Summary Recommendations

Staff recommends that the Planning Commission review Conditional Use Permit (CUP) criteria no. 1 ***Size and Scale of the Location of the Site*** as analyzed in the staff report. Staff recommends that the Planning Commission provide input and direction. Staff recommends that the Planning Commission conduct a public hearing and continue it to the October 12, 2016 Planning Commission meeting.

### Description

**Property Owner:** Sweeney Land Company and Park City II, LLC represented by Patrick Sweeney  
**Location:** Creole Gulch and Mid-station Sites  
Sweeney Properties Master Plan  
**Zoning:** Estate District –Master Planned Development  
**Adjacent Land Use:** Ski resort area and residential  
**Topic of Discussion:** CUP Criterion no. 1 Size and scale of the location of the Site  
CUP Criterion no. 9 Usable open Space  
**Reason for Review:** Conditional Use Permits are required for development per the Sweeney Properties Master Plan. Conditional Use Permits are reviewed by the Park City Planning Commission.

### Background

The Planning Commission reviewed this application during the [August 10, 2016 Planning Commission meeting](#). During the last August 10, 2016 Planning Commission meeting Staff focused on providing the area of the uses being requested, building breakdown by uses, support commercial in compliance of the proposal, Woodruff diagram analysis, back-of-house study, and additional 1985 minutes provided to the Commission. The focus of this Staff Report is to restate applicable codes for review and diagrams associated with the approved master plan, address the Fire Protection Plan, review the proposed uses, and finally transition into the volumetric analysis (mass, bulk, scale, compatibility, design, site design, etc.)

### Proposal

According to the applicant's calculations found on [Sheet P.16 – Area, Unit Equivalent & Parking Calculations](#), the current proposal consists of the following spaces:

<b>Overall Building area by Use</b>	<b>Square feet</b>
Residential (net):	393,911
Commons space & circulation (gross)	173,210
Allotted Commercial (MPD UE's, gross)	18,863
Support Commercial (gross)	33,412
Meeting Space (gross)	16,127
Accessory Space (gross)	136,301
Parking (gross)	245,063
<b>Grand Total</b>	<b>1,016,887</b>

The proposed project grand total is 1,016,887 square feet.

Above grade areas

The proposed residential net area is 393,911 square feet. The proposed gross common and circulation space is 145,655 square feet. The proposed gross allotted commercial is 18,863 square feet. The proposed gross support commercial is 33,412 square feet. The proposed gross meeting space is 16,127 square feet. The proposed gross accessory space is 70,372 square feet. The proposed gross parking is 3,661 square feet. The proposed subtotal of all of these spaces consists of 682,001 square feet, above grade.

Basement areas

The proposed gross parking is 241,402 square feet. The proposed gross common and circulation space is 27,555 square feet. The proposed gross accessory space is 65,929 square feet. The proposed gross basement subtotal is 334,886 square feet.

[Building by Building Breakdown](#) on August 10, 2016 Staff Report (page 6) contains specifics spaces listed on [Sheet P.16 – Area, Unit Equivalent & Parking Calculations](#). The [August 10, 2016 Planning Commission staff report](#), prepared by staff, contains several tables relating to summary of each building area by use, summary of the category specific totals, residential unit type breakdown, and square footage breakdown by residential size.

On [Sheet P.16 – Area, Unit Equivalent & Parking Calculations](#) the Applicant takes the proposed net residential square footage of 393,911 and divides by 2,000 (UE residential factor) which equates to 196.96 UEs. The Applicant also takes the proposed gross allotted commercial square footage of 18,863 and divides by 1,000 (UE commercial factor) which equates to 18.86 UEs. Furthermore, the applicant, also on Sheet P.16, takes the proposed gross support commercial of 33,412 square feet and divides by the proposed subtotal of all spaces consisting of 682,001 square feet (except basement space) which equates to 4.9%. Also, the applicant, takes the proposed gross meeting space of 16,127 square feet and divides by the same proposed subtotal of all spaces consisting of 682,001 square feet (except basement space) which equates to 2.36%. The Applicant shows these two (2) percentages which are both under 5% of the gross area as they believe that the project can be assigned an additional 5% of support

commercial space and an additional 5% of meeting space on top of their allotted commercial square footage consisting of 18,863 square feet.

### **Applicable Codes for Review**

The approved Sweeney Properties Master Plan, application date May 1985 and approved in December 1985 by the Planning Commission and October 1986 by the City Council, was subject to the LMC Third (3<sup>rd</sup>) Edition revised as of February 28, 1985. The subject application is not Master Plan Development application. Development parameter/condition no. 1 states the following:

*The Sweeney Properties Master Plan is approved based upon the information and analysis prepared and made a part hereof. While most of the requirements imposed will not be imposed until individual parcels are created or submitted for conditional use approval, certain specific obligations are also identified on the approved phasing plan. At the time of conditional use or subdivision review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances in effect at the time, in addition to ensuring conformance with the approved Master Plan.*

The CUP, submitted in 2004, is subject to the LMC of the time that it was submitted, which in this case is the LMC Fiftieth (50<sup>th</sup>) Edition revised as of July 10, 2003, see additional exhibits links: [2004 LMC 50th Edition](#). As indicated under 2004 LMC (50<sup>th</sup>) Edition § 15-1-10(D) Standards for Review:

(D) **STANDARDS FOR REVIEW.** *The City shall not issue a Conditional Use permit unless the Planning Commission concludes that:*

- (1) *the Application complies with all requirements of this LMC;*
- (2) *the Use will be Compatible with surrounding Structures in Use, scale, mass, and circulation;*
- (3) *the Use is consistent with the Park City General Plan, as amended;*  
*and*
- (4) *the effects of any differences in Use or scale have been mitigated through careful planning.*

The Planning Commission must review each of the items listed under [2004 LMC \(50<sup>th</sup>\) Edition § 15-1-10\(E\) Review](#) when considering a Conditional Use permit. In conjunction with the adopted criteria listed to mitigate and/or eliminate detrimental impacts and potential adverse effects through possible conditions of approval to preserve the character of the City, the zoning district, surrounding neighbors, or adjacent land uses; the proposal needs to comply with the original approved Master Plan, specifically, the adopted [findings](#), [development parameters and conditions](#), and [major issues](#) sections.

The City hired Attorney Jody K. Burnett to provide an [independent public advisory memorandum dated April 22, 2009](#) regarding vesting of the original MPD. Attorney Burnett concluded that the Sweeney Master Plan has continuing vested rights which are valid and advised the Planning Commission to continue processing the pending application of a conditional use permit under the development parameters and conditions and the CUP criteria set forth in the Park City Municipal Code. The following text below copied from Mr. Burnett's memorandum address the

*Finally, I also want to address a question that has been raised as to what standard should apply, in the vesting context, to the calculation of the amount of any additional support commercial and/or meeting space for the Sweeney MPD. From my vantage point, the evaluation of historical vested rights has to be viewed in the context of the land use regulations which were in place at the time the vesting occurred as a result of the original MPD approval. In this case, that means the provisions of the Land Management Code in effect as of the date of that original approval in 1986 should also be applied to the calculation of any additional meeting space and support commercial areas without requiring the use of unit equivalents of density. As you move forward with the conditional use permit approval process, the provisions of Section 10.12 of the 1985 LMC should be used for that purpose, which I understand provide that up to five percent (5%) of the total floor area within a hotel may be dedicated to meeting rooms, and support commercial areas without requiring the use of a unit equivalent of commercial space.*

### **1985/1986 Master Plan/Woodruff 3d Diagram Analysis**

The very first page of the Master Plan indicates the following: ***The following plans and exhibits, in addition to this report and the project file, constitute the complete development permit.***

- 1. Sweeney Properties Master Plan, sheets 1-16, 19-26, and 38-43 prepared by DelaMare, Woodruff, Stepan Associates, Inc.** These graphic diagrams consist of a total of 30 sheets. Most of these sheets have been re-numbered. Staff has only been able to locate 29 of these diagrams. Of the 29 sheets, only 13 apply to the Hillside Properties (Mid-station and Creole Gulch sites, subject sites). The 13 applicable sheets consists of the following:

- 200 Scale Site Plan (labeled sheet 2)
- 100 Scale NW Site with Boundaries (labeled sheet 7)
- 50 Scale Site Plan (labeled sheet 8)
- Town Lift Midstation & Creole Site Plan (labeled sheet 17)
- Building sections, no title (labeled sheet 18)
- Creole Parking Plan (labeled sheet 19)
- Town Lift Midstation & Creole Parking Plan (labeled sheet 20)
- Town Lift Midstation & Creole Parking Plan (labeled sheet 21)
- Town Lift Midstation & Creole Height Zones (labeled sheet 22)
- Town Lift Midstation Sample Elevations (labeled sheet 23)

- Creole Site Sample Elevations (labeled sheet 24)
  - Greater Park City Company Townlift Easements (labeled sheet 28)
  - Greater Park City Company Townlift Easements (labeled sheet 29)
2. **Sweeney Properties Master Plan document and Fact Sheet, dated May 15, 1985, and subsequent amendments.**
  3. **Sweeney Properties Master Plan Application.**
  4. **Sweeney Properties Master Plan Phasing Exhibit.** These sheets were placed towards the end of the 1985 Master Plan (narrative).
  5. **Sweeney Properties Master Plan Density Exhibit.** This sheet was placed towards the end of the 1985 Master Plan (narrative).
  6. **Sweeney Properties Master Plan Development Restrictions and Requirements Exhibit.** This exhibit was incorporated into Town Lift Midstation & Creole Height Zones (labeled sheet 22) as it was labeled as the development requirements and restrictions consisting of parking requirements based on size of unit.

During the July 13, 2016 and August 10, 2016 Planning Commission meetings the applicant's presentation included the Woodruff 3d diagram. The Woodruff plans were included in several of the original exhibits of the approved master plan, specifically, the Site Plan-labeled sheet 17 (horizontal component) and the *Building Sections*- labeled sheet 18 (vertical component). In context of the Woodruff 3d diagram, the applicant took both the Woodruff Site Plan and the Building Sections exhibits and put them together to create a massing model to show approximate building square footage. The applicant concludes the following below:

Site	Mid-Station		Creole-Gulch		
Building	Bldg. A	Bldg. B	Bldg. C	Bldg. D	Bldg. E
Bldg. SF	65,066	62,431	154,406	194,190	129,852
Site SF	127,497		478,448		
Overall Project Total	<b>605,945</b>				
Parking SF	51,088		218,130		
Overall Parking SF Total	<b>269,218</b>				
<b>Project SF Grand Total</b>	<b>875,163</b>				

The applicant depicts that according to the Woodruff 3d diagram, which includes two (2) exhibits of the originally approved plans, it would show the approximate square footage of 875,163 square feet including 269,218 square feet of parking. Please note, that the Woodruff Site Plan and Building Sections did not label any space of any specific use. Staff has had the opportunity to review the preparation of the Woodruff 3d diagram and finds that the applicant's estimates are accurate. Staff finds that the Woodruff Site Plan and Building Sections simply identified the concept approved for master plan as the

narrative indicated that there were many that were evaluated by the Planning Commission.

### **Fire Protection Master Plan Development**

The applicant asserted at the last public hearing that the Fire Protection Plan dictates the current design. Staff disagrees with this characterization. In January 2004, Ron Ivie, former Chief Building Official, and Scott Adams, Assistant Fire Chief/District Fire Marshal signed a letter dated January 9, 2004, prepared by the applicant, identified as the Fire Protection Master Plan Development. This does not mean that this is the only Fire Protection Plan that these fire officials would ever approve. As indicated on the letter, its goal was to address project-wide fire apparatus access associated with life safety concerns for the proposal. The letter indicated that the combinations of features outlined therein should provide an acceptable level of protection from fire and other hazards. The letter also stated that the review of detailed building plans would be conducted with the City's and the Fire District's Fire Marshal prior to submittal for building permits to ensure compliance with the wording and intent of that plan.

While staff recognizes it is prudent by an applicant to seek a Fire Protection Plan pre-approval prior to a building permit/Conditional Use Permit/Subdivision application public review process, the current Treasure CUP proposal, including its site plan, layout, circulation, etc., should not be tied to a concept that simply received Fire Protection Plan pre-approval. The 2004 Fire Protection Plan was presented to these officials regarding their applicable review standards and according to the letter, their proposal, simply works in terms of fire protection. It is not the one and only option.

### **Proposed Uses**

The Hillside Properties (Mid-station and Creole-Gulch sites) of the SPMP known as the Treasure project is allowed a total of 197 residential UEs and 19 support commercial Ues. As described in the Hillside Properties narrative description: *"The Town Lift Mid-Station site contains roughly 3.75 acres and is located west of Woodside Avenue at approximately 6<sup>th</sup> Street. The majority of the developable area is situated southeast of the mid-station loading area. A total of 35.5 residential unit equivalents are proposed with 3.5 equivalents worth of support commercial space as well."* Also, *"The Creole Gulch site is comprised of 7.75 acres and situated basically south of the Empire-Lowell switchback at approximately 8<sup>th</sup> Street. The majority of the property is currently zoned Estate €. A total of 161.5 residential unit equivalents are proposed. In addition, 15.5 unit equivalents of support commercial space is included as part of the Master Plan."*

The Master Plan was approved under the 1985 LMC Third Edition. These figures listed on the Master Plan are maximum possible allowances as long as any adverse impacts attributed to the density have been mitigated. The applicant proposes the following amount of spaces:

<b>Overall Building area by Use</b>	<b>Square feet</b>
Residential (net):	393,911
Commons space & circulation (gross)	173,210

Allotted Commercial (MPD UE's, gross)	18,863
Support Commercial (gross)	33,412
Meeting Space (gross)	16,127
Accessory Space (gross)	136,301
Parking (gross)	245,063
<b>Grand Total</b>	<b>1,016,887</b>

See 1985 LMC Third (3<sup>rd</sup>) Edition Unit Equivalent Section below:

**10.12. UNIT EQUIVALENT.** *Density of development is a factor of both the use and the size of the structures built within a Master Planned Development. In order to maximize the flexibility in the development of property, the following table of unit equivalents is provided:*

<u>Configuration</u>	<u>Unit Equivalents</u>
<i>Hotel room, not exceeding 500 square feet, including bathroom areas, but not corridors outside of room</i>	.25
<i>Hotel suite, not exceeding 650 square feet, including bathroom areas, but not corridors outside of room</i>	.33
<i>One bedroom or studio apartment, not exceeding 1,000 square feet</i>	.50
<i>Apartment of any number of rooms, not exceeding 1,500 square feet</i>	.75
<i>Apartment of any number of rooms, not exceeding 2,000 square feet</i>	1.00
<i>Apartment of any number of rooms, not exceeding 2,500 square feet</i>	1.33
<i>Apartment of any number of rooms, in excess of 2,500 square feet</i>	1.50
<i>Single family house</i>	1.00
<i>Commercial spaces (approved as part of Master Plan Approval), for each 1,000 square feet of gross floor area, exclusive of common corridors, or for each part of a 1,000 square foot interval</i>	1.00

*Hotel uses must be declared at the time of site plan approval, and are subject to review for neighborhood compatibility. The election to use unit equivalents in the form of hotel rooms may not be allowed in all areas because of neighborhood conflicts or more intensive traffic generated. Within a hotel, up to 5% of the total floor area may be dedicated to meeting rooms, and support commercial areas without requiring the use of a unit equivalent of commercial space.*

*Circulation spaces including lobbies outside of units, including lobby areas, do not count as floor area of the unit, or as commercial unit equivalents.*

*Computation of floor areas and square footage shall be as provided in the Uniform Building Code adopted by Park City.*

*Where the unit configuration fits one of the above designations, but the square footage exceeds the footage stated for the configuration, the square footage shall control, and the unit equivalent for that size unit shall apply.*

### Proposed Residential Space

The current proposal consists of 46 residences, 202 hotel rooms, and 67 (residences) club units. The applicant proposes a total of 393,911 square feet of net residential area which excludes common hallways, mechanical and storage areas, and (*public*) restrooms.

The applicant proposes a total of 66,511 square feet of net residential area at the Mid-Station site consisting of 22 residential units which equates to 33.26 residential UEs. The applicant proposes a total of 327,400 square feet of net residential area at the Creole-Gulch site consisting of 283 residential units which equates to 163.70 residential UEs.

The current proposal exceeds the maximum residential UEs at the Creole-Gulch site by 2.20 residential UEs. The CUP can be amended by reducing the number of proposed residential UEs at the Creole-Gulch site to the maximum consisting of 161.5 UEs, as specified on the Master Plan. Staff finds that any change regarding overriding the allocated residential density at any of the two (2) sites would constitute of a necessary amendment to the original 1985/1986 approved master plan.

### Proposed Common Space and Circulation

The current proposal consists of a total of 173,210 square feet of common space and circulation. As specified on the 1985 LMC 3<sup>rd</sup> Edition § 10.12 Unit Equivalent circulation spaces including lobbies outside of units, including lobby areas, do not count as floor area of the unit, or as commercial unit equivalents. The same applies to the 2004 LMC 50<sup>th</sup> Edition as lobbies, hallways, circulation counts as Accessory Uses, which do not require the use of UEs.

### Proposed Accessory Space

The current proposal consists of a total of 136,301 square feet of accessory space. The 1985 LMC 3<sup>rd</sup> Edition does not address accessory spaces other than lobbies as part of circulation, see common space and circulation sub-section above. Furthermore, when reviewing and approving Master Plan Development, the 2004 LMC 50<sup>th</sup> Edition § 15-6-8(F) & (G) has a section on Residential Accessory Uses and Resort Accessory Uses as follows:

**(F) RESIDENTIAL ACCESSORY USES.** Residential Accessory Uses include those facilities that are for the benefit of the residents of a commercial Residential Use, such as a Hotel or Nightly Rental Condominium project which are common to the residential project and are not inside the individual unit. Residential Accessory Uses do not require the use of Unit Equivalents and include such Uses as:

- Ski/Equipment lockers
- Lobbies
- Registration
- Concierge
- Bell stand/luggage storage
- Maintenance Areas
- Mechanical rooms
- Laundry facilities and storage
- Employee facilities
- Common pools, saunas and hot tubs not open to the public
- Telephone Areas
- Public restrooms
- Administrative offices
- Hallways and circulation
- Elevators and stairways
- Back of house Uses

**(G) RESORT ACCESSORY USES.** The following Uses are considered accessory for the operation of a resort for winter and summer operations. These Uses are incidental to and customarily found in connection with the principal Use or Building and are operated for the convenience of the Owners, occupants, employees, customers, or visitors to the principal resort Use. Accessory Uses associated with an approved summer or winter resort do not require the use of a Unit Equivalent. These Uses include such Uses as:

- information
- Lost and found
- First Aid
- Mountain patrol
- Administration
- Maintenance and storage facilities
- Emergency medical facilities
- Public lockers
- Public restrooms
- Employee restrooms
- Ski school/day care facilities
- Instruction facilities
- Ticket sales
- Equipment/ski check
- Circulation and hallways

The 2004 code further identifies specific residential accessory and resort accessory uses.

#### Proposed Allotted Commercial/Support Commercial/Meeting Space

The applicant proposes a total of 18,863 square feet of what they identified as Allotted Commercial space and 33,412 square feet of what they identified as Support Commercial space. The proposed commercial space equates to a total of 52,275 square feet. The applicant also proposes a total of 16,127 square feet of meeting space.

The following statements apply throughout the approved Master Plan:

- Finding of Fact no. 4. *The commercial uses proposed will be oriented and provide convenient service to those residing within the project.*
- Development Parameters and Conditions No. 3. *The approved densities are those attached as an Exhibit, and shall be limited to the maximums identified thereon. Parking shall be provided on-site in enclosed structures and reviewed in accordance with either the table on the approved Restrictions and Requirements Exhibit or the adopted ordinances at the time of project approval. All support commercial uses shall be oriented and provide convenient service to those residing within the project and not designed to serve off-site or attract customers from other areas.*
- Narrative (introduction). *The Sweeney Properties Master Plan involves a number of individual development parcels. Combined, a total of 277 unit equivalents are proposed; including, 258 residential and 19 unit equivalents worth of support commercial space. [...]*
- Hillside Properties (narrative). [...] *A total of 197 residential and an additional 19 commercial unit equivalents are proposed between the two developments with over 90% of the hillside (locally referred to as Treasure Mountain) preserved as open space. [...] A total of 35.5 residential unit equivalents are proposed with 3.5 equivalents worth of support commercial space as well. [...] In addition, 15.5 unit equivalents of support commercial space is included as part of the Master Plan.*
- Major Issues-Land Uses. *The predominant land uses envisioned at this time are transient-oriented residential development(s) with some limited support commercial. [...] The amount of commercial space included within the Master Plan will be of the size and type to provide convenient service to those residing within the project, rather than possibly be in competition with the city's existing commercial areas.*
- SPMP Density Exhibit.

SWEENEY PROPERTIES MASTER PLAN DENSITY EXHIBIT

Parcel	Acres	Residential Unit Equivalents	Commercial Unit Equivalents	Maximum Building Height <sup>2</sup>	Minimum Open Space (%)
<b>Coalition Properties</b>					
East	0.986	40	Maximum Commercial space not to exceed FAR of 1:1	55'	39.8 <sup>1</sup>
West	0.543	13	---	35'	54.9
<b>Hillside Properties</b>					
Creole Gulch	7.75	161.5	15.5	<del>98'<sup>2</sup></del> * 75	70
Town Lift Mid-Station	3.75	35.5	3.5	<del>55'<sup>2</sup></del> * 45	70
Three 1/2-acre Single Family Lots	1.5	3	---	25'	83.9
<b>Develop HR-1 Properties</b>					
Carr-Sheen	0.288	3	---	28'	60
HPE	0.161	<u>2</u>	<u>19 U.E.</u>		

<sup>1</sup> Does not include Town Lift base facility  
<sup>2</sup> Maximum roof height, excludes elevator shaft

\* Subject to revised conditions as stated in the Motion by City Council 10/16/18

Staff finds that the Master Plan was clear in terms that the combined total was 19 UEs of support commercial. Both the 1985 and the 2004 LMC indicate that commercial spaces, approved as part of Master Plan Approval, are calculated on the basis of one (1) unit equivalent per 1,000 square feet of gross floor area, exclusive of common corridors. 19 support commercial UEs equates to a maximum gross floor area of 19,000 square feet. The applicant is currently proposing a total of 52,275 square feet of commercial equating to 52.28 commercial UEs. Any additional support commercial above the 19 UEs is not vested. For past articulation regarding this matter, see published [Staff Report dated September 23, 2009](#) (starting on staff report page 19) and [Planning Commission meeting minutes](#) (Planning Commission comments start on page 3) as staff agrees with this and the applicant does not.

Staff utilized 1985 LMC 3<sup>rd</sup> Edition § 10.12 to quantify the maximum possible additional support commercial and meeting space as underlined above. Staff calculated the floor area of the hotel (ONLY) and quantified the possible 5% support commercial of the total floor area of the hotel. Staff calculated total floor area of the hotel not including the additional proposed commercial area and meeting space.

(Floor area of Hotel)(5%) = possible maximum Support Commercial and Meeting Space combined.

The hotel area is located within Building 4b. The total floor area of the hotel (not including the commercial and meeting space) is 234,803 square feet. Five percent (5%) of 234,803 square feet is 11,740 square feet. The applicant currently proposes 49,539 of support commercial/meeting space proposed above the 19 UEs (19,000 s.f.) allowed within the Master Plan. The proposal is 37,799 square feet above the maximum of 11,749 square feet, possible allowance of 5% Support Commercial of Hotel. Also, this calculation is assuming that the Planning Commission will allow all the commercial units to be located on the Creole Site. Within the approved Master Plan, 15.5 UEs of support commercial were allocated to the Creole Site and 3.5 UEs of support commercial were allocated to the Mid-Station Site.

The applicant proposes 18,863 square feet of *allotted* commercial, 33,412 square feet of support commercial, and 16,127 square feet of meeting space. Staff finds that the proposed commercial/meeting space exceeds the 1985 LMC maximum allowance. See table below.

	Residential	Support Commercial	5% Support Commercial of Hotel
<b>Master Plan</b>	197 UEs (394,000 s.f.)	19 UEs (19,000 s.f.)	11,740 s.f.
<b>Proposed</b>	196.96 UEs (393,911 s.f.)	18.86 UEs (18,863 s.f.) Allotted Commercial	(33,412 s.f. support com.) (16,127 s.f. meet. space) 49,539 s.f.
<b>Compliance</b>	Complies with total, but allocation per site does not comply.	Complies with total, but allocation per site does not comply.	Exceeds allowed amount by 37,799 s.f.

The original MPD entitled 19 unit equivalents of support commercial, divided into Mid-Station at 3.5 UEs and Creole Gulch at 15.5 UEs. Any additional commercial area is not vested under the MPD and staff finds that such additional area will add impacts to the development which cannot be mitigated. Not only does the additional space create larger buildings and massing, but also additional traffic from deliveries and employees. These impacts are contrary to the original MPD approval and not vested density. The applicant must mitigate all impacts of the allowed support commercial and any additional support commercial. Additionally, the applicant has not provided sufficient clarity of uses or restrictions to meet the Master Plan requirement that all support commercial shall be for internal services only as indicated on finding of fact no. 4, development parameter and condition no. 3, land use major issue, etc.

The applicant does not agree with staff's methodology for calculating support commercial. The applicant utilized the 2008/2009 LMC to calculate the support

commercial area and meeting space within the development. See [September 23, 2009 Staff Report](#). They have calculated the total gross floor area of all the buildings per the 2008/2009 LMC definition. The Applicant added together the Gross Floor Area of ALL the buildings within the project. The total Gross Floor Area calculated by the applicant is 682,001 square feet. Five Percent (5%) of 682,001 is 34,100 square feet.

Note: The applicant also added the square footage of the support commercial and meeting space in the Gross Floor Area calculation. These numbers should not have been included in the calculation. These figures are:

Bldg. 4A	21,100 sq. ft. support commercial
Bldg. 4A	16,127 sq. ft. meeting space
Bldg. 4B	5,626 sq. ft. support commercial
Bldg. 5C	6,686 sq. ft. support commercial

Total            49,539 sq. ft.

$$682,001 - 49,539 = 632,462$$

$$5\% \text{ of } 632,462 = 31,623.1$$

2004 LMC reference:

**(C) SUPPORT COMMERCIAL WITHIN RESIDENTIAL MASTER PLANNED DEVELOPMENTS.** Within a Hotel or Nightly Rental Condominium project, up to five percent (5%) of the total floor Area may be dedicated to support Commercial Uses, see definition of Support Commercial Use, without the Use of a Unit

Equivalent for commercial space. Any support Commercial Uses in excess of five percent (5%) of the total Gross Floor Area will be required to use commercial Unit Equivalents, if approved as a part of the MPD. If no commercial allocation has been granted for an MPD, no more than five percent (5%) of the floor Area can be support Commercial Uses, and no other Commercial Uses will be allowed.

**(D) MEETING SPACE.** Within a Hotel or Condominium project, up to five percent (5%) of the total floor Area may be dedicated for meeting room space without the Use of Unit Equivalents. Meeting space in excess of five percent (5%) of the total floor Area will be counted as commercial Unit Equivalents. Any square footage which is not used in the five percent (5%) support commercial allocation can be used as meeting space. Meeting space in excess of the five percent (5%) allocation for meeting rooms and the five percent (5%) allocation for support commercial shall be counted as commercial Unit Equivalents. Accessory meeting Uses, such as back of house, administrative Uses, and banquet offices, are Uses normally associated and necessary to serve meeting and banquet space. These accessory meeting Uses do not require the use of Unit Equivalents.

By the applicant's calculation, the project could have up to an additional 31,623 s.f. of support commercial and 31,623 s.f. of meeting space.

The City Council hired Attorney Jody K. Burnett to provide an [independent public advisory](#) regarding vesting of the original MPD. Attorney Burnett reviewed the support commercial in terms of vesting. The following is from the letter to the Park City Planning Commission from Attorney Jody Burnett dated April 22, 2009:

*Finally, I also want to address a question that has been raised as to what standard should apply, in the vesting context, to the calculation of the amount of any additional support commercial and/or meeting space for the Sweeney MPD. From my vantage point, the evaluation of historical vested rights has to be viewed in the context of the land use regulations which were in place at the time the vesting occurred as a result of the original MPD approval. In this case, that means the provisions of the Land Management Code in effect as of the date of that original approval in 1986 should also be applied to the calculation of any additional meeting space and support commercial areas without requiring the use of unit equivalents of density. As you move forward with the conditional use permit approval process, the provisions of Section 10.12 of the 1985 LMC should be used for that purpose, which I understand provide that up to five percent (5%) of the total floor area within a hotel may be dedicated to meeting rooms, and support commercial areas without requiring the use of a unit equivalent of commercial space.*

Staff finds that any support commercial over five percent (5%) of the total floor area within specific hotels must count towards the Master Plan 19 unit equivalents. Staff's position is that even if the Planning Commission was to agree with the applicant, any support commercial above the 19 unit equivalents is not vested and would be subject to a full blown, new compatibility and Master Plan/CUP review. If the Planning Commission allows the applicant to take advantage of more permissive provisions of the current code, such application would be a substantive amendment to the original Master Plan and would require re-opening the entire Master Plan.

Additional support commercial space causes additional impacts such as impacts to mass and building size, traffic from deliveries and employees, greater water usage, etc. Staff recommends that rather than focusing on the calculation methods, the Planning Commission should focus on impacts of additional support commercial and the levels of mitigation. The applicant has vested rights to 19,000 square feet of support commercial as written on the Master Plan narrative and additional five percent (5%) of the hotel area, equating to an additional 11,740 s.f. as long as impacts are mitigated within the CUP review.

### Parking

The applicant proposes underground parking below the two sites. The applicant requests a total of 424 parking spaces. As indicated on Development Parameters and Conditions No. 3, parking shall be provided on-site in enclosed structures and reviewed

in accordance with either the table on the approved Restrictions and Requirements Exhibit or the adopted ordinances at the time of project approval. Currently the applicant requests to utilize the approved requirements and restrictions table found on Sheet 22. 2004 LMC criterion number (5) location and amount of off-Street parking will be reviewing the Planning Commission in the future.

### **Volumetric Analysis & History**

The Planning Department finds that the volume analysis is next component as recent Planning Commission's discussions have been heading towards this subject. The Planning Department and Planning Commission must review each of the CUP criteria when considering whether or not the proposed conditional use mitigates impacts. Staff finds that the following criteria related to mass, bulk, scale, compatibility, design, and site design apply to the volumetric:

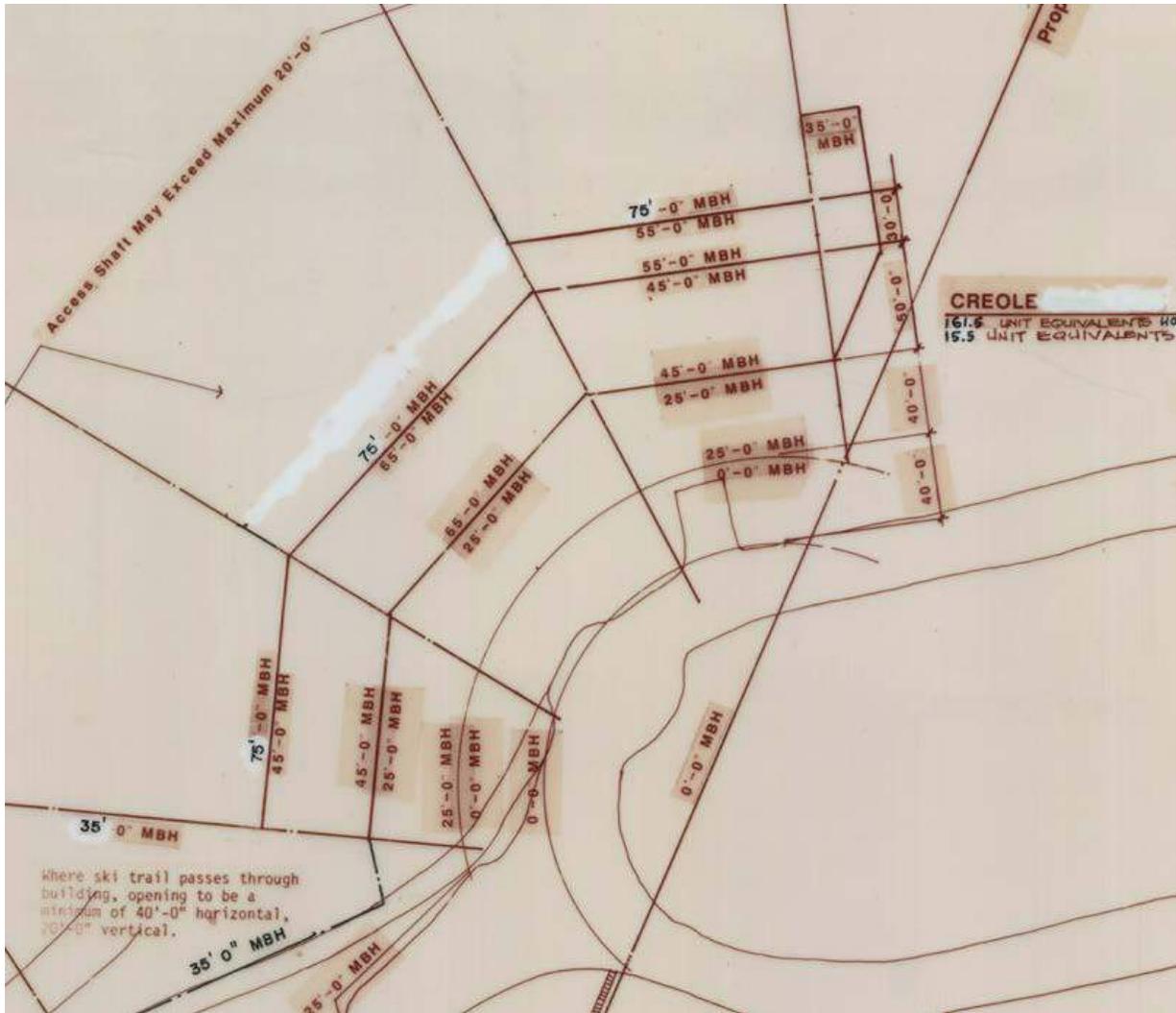
8. building mass, bulk, and orientation, and the location of buildings on the site; including orientation to buildings on adjoining lots;
11. physical design and compatibility with surrounding structures in mass, scale, style, design, and architectural detailing;
15. within and adjoining the site impacts on environmentally sensitive lands, slope retention, and appropriateness of the proposed structure to the topography of the site.

Currently, the Planning Department acknowledges the work of past members of the Planning Department, specifically, what was discussed during the September 23, 2009 Planning Commission which included the following analysis:

**Criteria 8. Building mass, bulk, and orientation, and the location of buildings on the site; including orientation to buildings on adjoining lots:**

*The 1986 MPD approval set standards for increased density and increased height on the site. The MPD set height envelopes over the site which increased the allowed height from the front to the rear lot lines. The area closest to the front lot line along the Lowell Avenue/Empire Avenue switchback was set at a 0' maximum building height. The maximum building height increases in steps from the front property line. Maximum elevations were also set within the MPD. The mid-station maximum elevation was set at 7420 feet and 7275 feet for Creole. The current application complies with the height requirements set forth in the MPD, yet the design modifies existing grade well beyond the anticipated amounts shown in the exhibits of the MPD.*

*The following is a portion of the Creole Height diagram from the MPD exhibits page 22.*



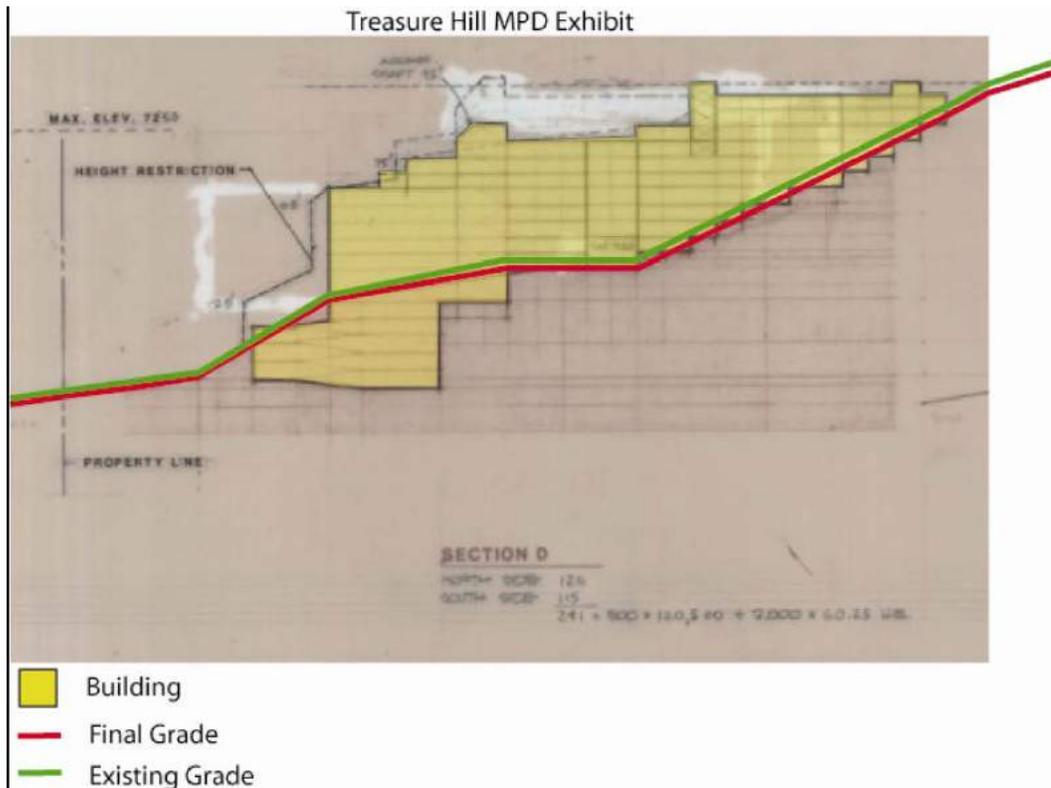
*This MPD exhibits designated the areas that the buildings could be built within the development parcel. The second guiding document is the conditions of approval for the MPD in which maximum height envelopes were defined. The following is from the findings within the MPD approval.*

\* Reflects City Council's 10.16.86 modifications.\*

- (d) The Town Lift Mid-Station development is restricted to a maximum height of 35' for at least 90% of the total unit equivalent volume of all above-grade buildings (exclusive of elevator shafts, mechanical equipment, and non-habitable areas) and an overall average height of less than 25' measured from natural, undisturbed grade. Additionally, no portion of any building shall exceed the elevation of 7240' above mean sea level.
- (e) The Creole Gulch site shall be limited to a maximum building height of 75' for at least 83% of the total unit equivalent volume of all above-grade buildings combined. An average overall height of less than 45' shall be provided and no portion of any building shall exceed either elevation 7250' for the eastern-most building or the elevation of 7275' for the balance of the project (above mean sea level).

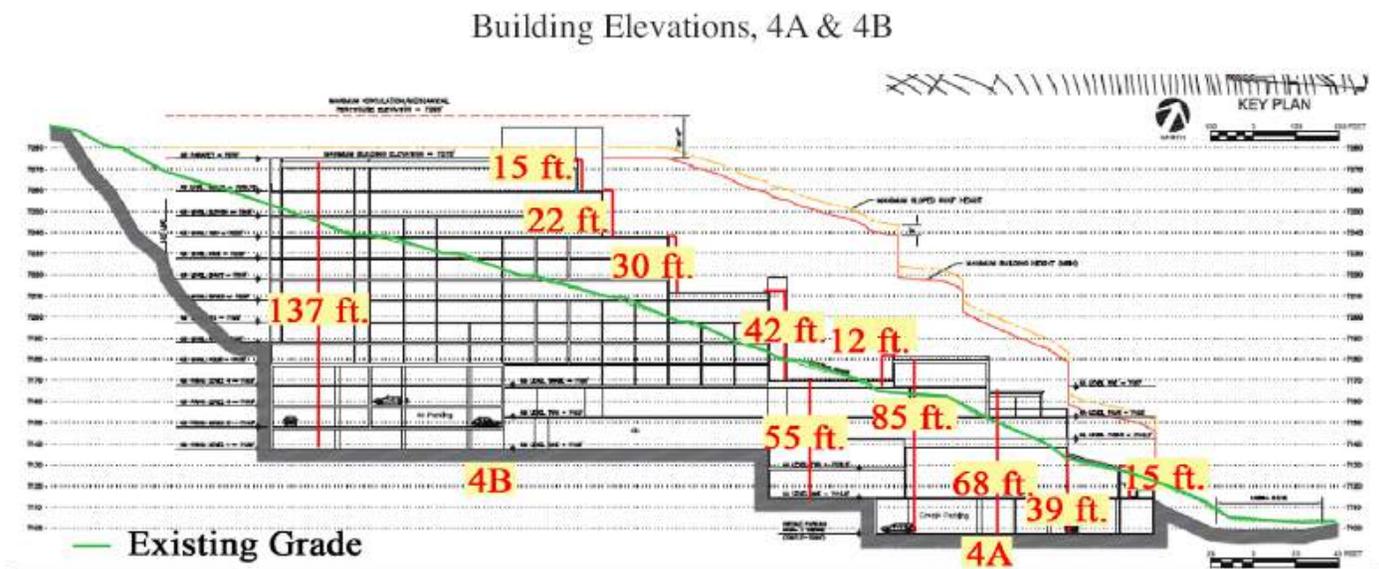
The above building height restrictions are in accordance with the approved Restrictions and Requirements Exhibits submitted, and are in addition to all other codes, ordinances, and standards.

Staff finds that the excess square footage included in the project that is influencing the building massing and bulk. The building mass and bulk is also influencing the orientation of the buildings on the site. The original MPD exhibits were to be utilized as guiding documents. The following is from Exhibit 19 and is an architectural section of one of the buildings on the Creole site.



The building steps with the grade on the site and manages to keep final grade (after construction) close to existing grade (pre-construction). The majority of the area shown below grade is for the parking.

The current application places more massing and bulk below the existing grade. Not only is the massing placed below the existing grade, the grade is then altered dramatically creating taller building walls, taller retaining walls, and greater massing. The following is a section through Creole site plan of the project. The green line is existing grade. The red line is the maximum height envelope. By creating a lower final grade, the buildings appear taller and the bulk and massing becomes larger. The pedestrian walking through the project will experience higher building walls due to the change in final grade. Also, the view from other parts of town (Exhibit B) is of building with greater massing due to the change in final grade from existing.



Staff expects grade to be altered on the unique, steep site in order to accommodate the amount of density allowed on this site, exterior circulation, and parking. The extent to which existing grade is being altered is far beyond the anticipated amount within the MPD and is creating greater impacts to mass and scale. The MPD was clear that the height measurement would occur from natural grade and were within height envelopes. By modifying natural grade over 100 feet, the height envelopes do not serve the purpose for which they were created.

Staff also expects that the hotel use will necessitate storage and accessory use. Planning to have accessory space and additional storage under ground is an effective means to mitigating massing and bulk above ground. Staff finds that the current design is very excessive in the amount of accessory space, storage,

and circulation which is creating impacts on the overall massing and bulk of the buildings. Within Exhibit A, staff has calculated the common space, circulation, and accessory space as a percentage of each building. The percentage is up to 41% in some buildings creating an inefficient design. Also, as discussed previously, the application exceeds the possible maximum support commercial and meeting space. The design is excessive and beyond the limit of the MPD.

Criteria 11. Physical design and compatibility with surrounding structures in mass, scale, style, design, and architectural detailing:

Compatibility with the surrounding structures in mass and scale must be considered within the rights of the Sweeney master plan. The master plan created an area of greater height allowances and density next to a historic neighborhood with low height and medium density. The MPD essentially created a new zone with height envelopes and greater density adjacent to the HR-1 zone, Estate zone, and open-space. The Planning Commission must find compatibility with surrounding structures within the higher density already approved.

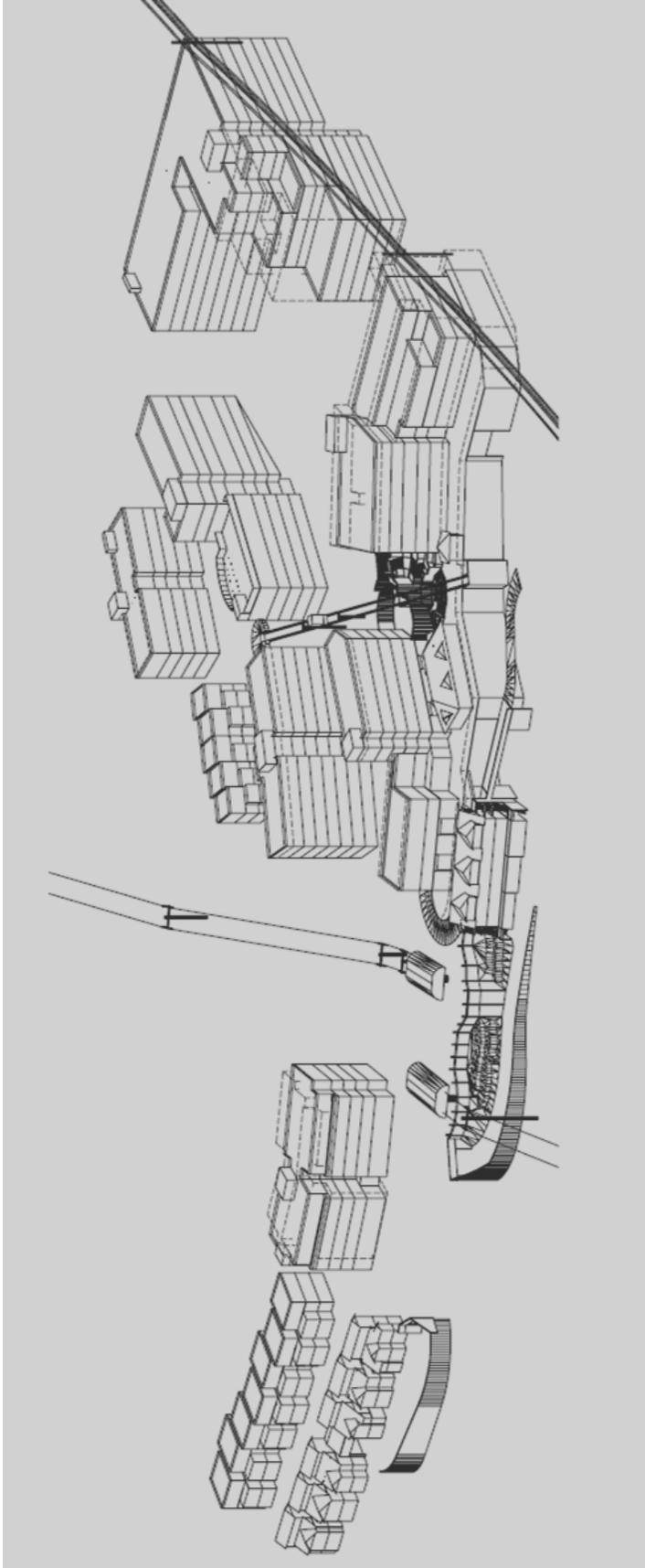
Staff acknowledges that it will be difficult to achieve a project massing that is similar to the existing neighborhood context given the previously approved density and volumetrics set forth in the MPD. The Sweeney Master Plan anticipated the difficulty of designing higher density adjacent to the historic district. The following is from the analysis section of the 1985 Master Plan staff report:

*“Scale: The overall scale and massiveness of the project has been of primary concern. Located within the Historic District, it is important for project designed to be compatible with the scale already established. The cluster concept for development of the hillside area, while minimizing the impacts in other areas, does result in additional scale considerations. The focus or thrust of the review process has been to examine different ways of accommodating the development of the property while being mindful of and sensitive to the surrounding neighborhood. The relocation of density from the Town Lift site was partly in response to this issue. The concentration of density into the Creole Gulch area, which because of its topography and the substantial mountain backdrop which helps alleviate some of the concern, and the requested height variation necessary in order to reduce the mass perceived (higher versus lower and wider), have greatly improved the overall scale of the cluster approach. The sites along Park Avenue have been conceptually planned to minimize scale and have provided stepped facades and smaller-scale buildings to serve as a transition.”*

*The objective of the administrative application of the CUP criteria is to determine whether or not the proposed project provides sufficient stepping of building masses, reasonable horizontal and vertical separation between the proposed*

*buildings and adjacent structures, and an adequate peripheral buffer so as to limit the potential for larger building masses looming over smaller adjacent structures.*

*During the 2004 – 2006 review of the conditional use permit, the applicant modified the 2004 submittal once during the review. The changes to mass and scale were presented during the October 13, 2004 Planning Commission meeting. The applicant lowered the entire project into the ground by 2-3 feet and compressed floor to floor dimensions to reduce entire heights by 5 to 10 feet. The applicant also shifted building volumetrics from the northern edge to the center and back of the project on buildings. The applicant also decreased the wall heights through out the project. The following shows the changes that were made in 2004.*



Staff continues to have concerns for massing within specific buildings. The areas of largest concern from a visual massing and streetscape compatibility perspective are circled in the following site plan. The visual massing of buildings 3b and 5a are of concern due to the visible location of these buildings from Main Street and Heber as well as driving up Empire Avenue and Lowell Avenue. Staff continues to have concern with compatibility of the development along the Empire Avenue and Lowell Avenue switchback. There is a dramatic contrast between the project's streetscape and the adjacent residential streetscape. Staff would recommend that the applicant make this area more compatible with the adjacent streetscape.



The following is the streetscape provided by the applicant. Staff recommends that the applicant improve the streetscape to show the entire visual experience for a pedestrian walking by the development with all portions of the development that are visible to be shown.

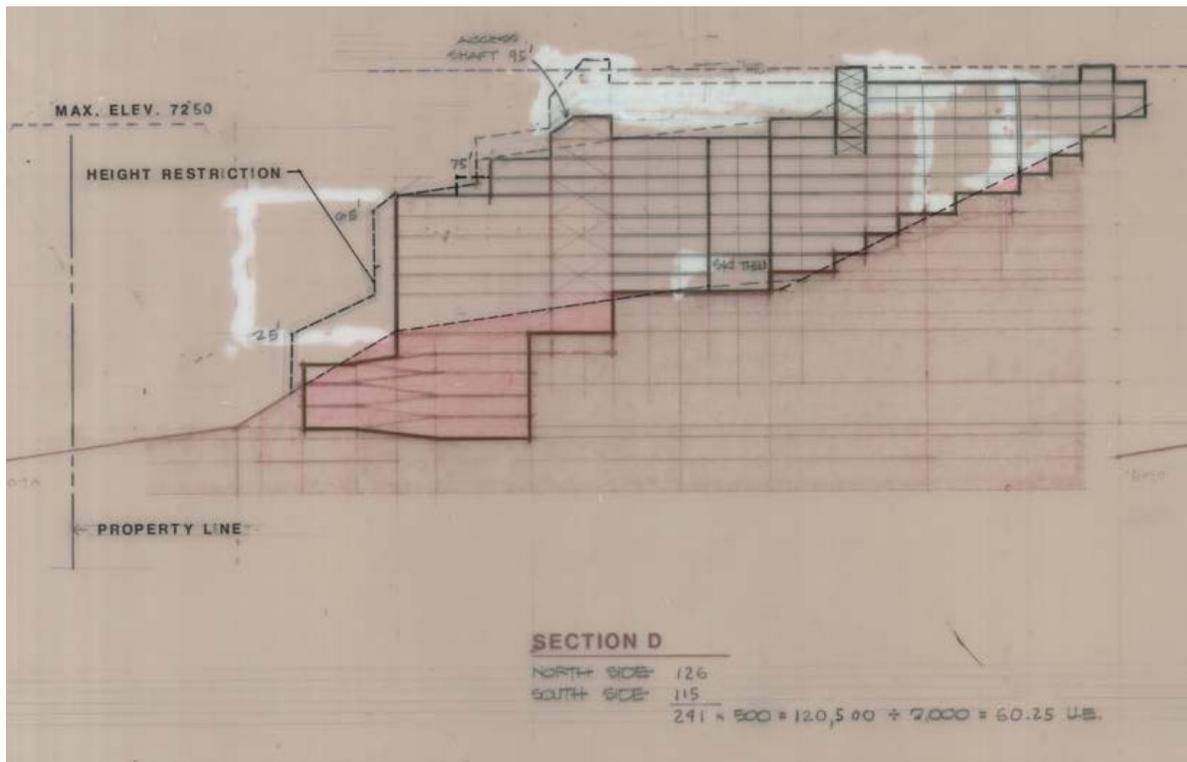


*The applicant has also submitted animations of driving along Empire and Lowell Avenue. These are available online at [http://www.treasureparkcity.com/subdocs\\_d.html](http://www.treasureparkcity.com/subdocs_d.html) within file A.8.1A, file A.8.1B, and file A.8.1C.*

[...]

Criteria 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.

*The proposed design requires a very large excavation and re-grading of the entire site. The project is located on the mountain side on steep topography. The impacts to the slope and existing topography are substantial and unmitigated. The project as designed will create a very large hole on the site. The project does not step with the natural topography of the site. As discussed previously, staff finds the project as designed is not in compliance with the concept approved by the City Council during the 1986 Master Plan approval. The exhibits within the master plan showed the building volumes stepping with the existing grade with the exception on the underground garage.*



*By stepping with the natural grade, there is less excavation. The exhibits within the master plan are guiding documents. The exhibits show minimal impacts on excavation.*

*The applicant has an excavation management plan. (Exhibit D) The excavation management plans estimates a total of 960,000 cubic yards of excavation to be relocated from the site. The plan includes moving excavate material up the mountain on a conveyor system to re-grade portions of the ski runs. The*

*excavation management plan includes the areas on the mountain which will be re-graded. This methodology creates less construction traffic on the adjacent streets. The overall impact of excavating 960,000 cubic yards of existing earth will be a great impact to the site and the existing topography.*

*There is significant mine waste on the development site. The Park City Environmental Coordinator is not in agreement with the applicant's environmental proposal. The development is within the Spiro Drinking Water protection zone. All contaminated materials must be handled to meet local, state, and federal regulations. The letters written between the Environmental Coordinator and the applicant are attached as Exhibit C. The primary focus of this report is mass, scale, and compatibility. Because topography is being drastically altered due to design, it is appropriate to bring the environmental issues into the discussion during this review. The Park City Environmental Coordinator will be attending the Planning Commission meeting.*

[...]

Currently the Planning Department agrees with the findings identified by staff during the September 23, 2009 and the January 10, 2010 Planning Commission meetings. The following outline consists of summaries made over the years compiled by various City Planners assigned to work on this CUP application taken directly from staff reports and meeting minutes. The compiled summaries below are regarding volumetrics mostly identified as CUP criterion no. 8 building mass, bulk, and orientation... and criterion no. 11 physical design and compatibility in mass, scale, style, design... The actual record, published Planning Commission staff reports and adopted meeting minutes can be found at the [City's website](#).

#### August 11, 2004

- *Building mass, bulk, orientation and location on site, including orientation to adjacent buildings or lots. Building locations and heights in conformance with the 1985 Sweeney Properties Master Plan. Massing and footprints discussed. Setbacks from the perimeter property line are generally greater than the required MPD setback of 25'. Setbacks off the Lowell/Empire Avenue switchback range from 30' to 60' for the wall of the parking structure and 70' to 80' for the buildings. Plaza and landscaped areas are located between the buildings and Lowell/Empire. Setbacks from the east property line, above old town range from approximately 50' to 90' with the driveway retaining wall setback about 35'. Request discussion of location of building 4A in terms of setback and stepping. Should the Planning Commission require additional building stepping for bldgs. 4a and 4b? Additional horizontal and vertical stepping may be needed for compliance with criterion. Staff concerned with massing of bldg 1B. Waiting on complete visual analysis and architectural modeling are complete.*
- *Discussion on setting 9 viewpoints.*
- *Concern for building 4b and break of façade lines both in plane and elevation.*

- *Concern for building mass and relationship with the adjacent community. Need to be satisfied in terms of the relationship of the massive structures with the height of the community*

#### August 25, 2004

- *Concern that the buildings appear to be coming out of what appears to be the SL Avenues District rather than PC concept.*
- *Did not understand why they used Chicago, San Francisco, and Salt Lake City as comparative architectural styles to Park City. They do not match the character and style.*
- *Struggle with criteria # 11 in terms of scale in relationship with the adjacent neighborhood fabric, because Park City is not an urban fabric. Park City is a townscape with a different scale and quality.*
- *Not enough information to be able to provide input on criterion 11 and architectural detail, design, style, and scale. Did not believe there was transition from a neighborhood to this kind of scale.*

#### September 22, 2004

- *Felt they were going in the right the direction and appreciated the reduction in height of the buildings closest to the residential neighborhoods. Need additional articulation.*
- *Why is all verticality placed in one location during the MPD process?*
- *Is the massing fixed by zoning that was done years ago or could they look for a better solution. Is it set due to MPD or could they look for a better solution?*
- *Going in right direction transferring some density into other locations within the project, to hide height in Creole Gulch.*
- *North wall needed stepping and a reduction in height.*
- *Would like to provide applicant with more flexibility to provide the best product he can achieve.*

#### October 13, 2004 Planning Commission

- *Time to evaluate the proposal for the site and compliance with the CUP and development*
- *Progress had been made in the massing and asked about the wall.*
- *Concern for the 25' wall off Lowell/Empire.*
- *Agreed that it was time to move forward with the evaluation of the project.*
- *Questioned whether the height restrictions put in place by the development agreement might cause difficulty since the tallest buildings are not against the hillside.*
- *Concern for height of building 4b and development agreement parameters being incorrect when assigned during MPD.*
- *Planning Director clearly explained the steps in possibly amending the MPD. "Number of steps. First would be to address in what area the project square footage could be relocated on the site that would be different from the volumetric allowed in the MPD, which could be done in work session discussions...Nothing*

would have to be amended to accomplish that. Once it can be determined whether positive changes can be achieved that will work for the applicant and the City, the next step will be to craft the language and what the volumetrics should be. If that is acceptable to the PC and the applicant, the last step will be to formally amend the MPD exhibit related to the specific areas of the plan... Amendments would be made only to those specific components of the MPD. If a decision is made to not approve the amendment, the PC would go back to the heights of the 1985 MPD.”

- Suggested that the evaluation discussion be held with a subcommittee to move the process along faster. Two commissioners volunteered to sit on the subcommittee.
- Applicant concerned of reopening MPD.

#### December 08, 2004

- Could not look at massing without considering the impacts on grading. Noted that a 105-foot cut is shown in that location against the building site. Unsure about the soil conditions or the ramifications of excavation. Normally a 1-to-1 cut is considered for the angle proposed, and the diagram shows a substantially higher cut.
- Noted that the cut line goes beyond the lot line. Stated that wants to be clear about the ramifications of a mass this substantial and a cut this low against the hillside as the ramifications of protecting the hillside are great.
- Concerned about the immensity of the project and the impacts on the City.
- Further reduce the severity of the edge as it meets the surrounding neighborhood.

#### May 25, 2005

- Request the Commission provide direction to staff on the CUP criteria.
- Planning Staff provided overview.
- Staff looking for direction on the 15 CUP criteria.
- Applicant provided project history, 6 months for city to do a peer review of proposed traffic study.
- Commissioner response:
  - Bulk and mass has previously been addressed. Need architectural rendering.
  - Compliance with Sweeney master plan but not CUP: bulk and height, need architectural rendering, height does not belong along property edge,
  - Staff look into mine waste: PCMC Environmental Coordinator working on report.
  - Impact of grading on neighboring project.
  - Massing on north side of development.

#### January 11, 2006

- Mass and scale by themselves are out of context and architecture brings it into context. If architecture is separate CUP then there must be room with height and mass to achieve best design. Need to look at vantage points from town.

- *Planning Staff “recalled that during the Town Lift project, the City Council formed the Town Lift Design Review Task Force consisting of representatives from the HPB, PC, and architects. The task force drafted design guidelines specific to the project. Same could be done for TH.*
- *Consensus reached that separating design review in a separate CUP ok.*
- *Still uncomfortable with the NW corner where the largest massing occurs adjacent to the residential neighborhood. Very vertical and contrasting form next to the scale of the residences.*
- *Concerned with setting the volumetric and massing in stone when the hotel operator will probably want to do something different. Can they recognize density, height, and volume to buildings without being too specific?*
- *They have to specify the volumetric, keeping in mind that they represent the maximum extent that a building can be built. There is certain wisdom in coming back for final details once they have a known hotelier who will be building a known product.*
- *Did not believe that the massing and volumetrics presented was the best for the site.*
- *Hard to make decisions without having the drawings in scale with the surrounding community.*
- *Summarized that PC will separate architecture review but not yet satisfied with building mass, particularly the N and W side adjacent to homes, key vantage points at the street level to be reviewed.*

January 25, 2006

- *Staff remarked that prior to doing any modeling, the applicant wanted input from the Planning Commission.*
- *Planning Commissioners had several questions raised from the computer generated drawing presented by the applicant.*
- *The Planning Commission discussed specific areas they would each like to use as viewpoints:*
  - *Must provide viewpoints from eye-level*
  - *Street façade important*
  - *Pedestrian connection with regards to mass and how they can enhance pedestrian connectivity through community*
  - *Need to see existing building surrounding project*
  - *What are impacts on lowering Lowell and Empire on existing residents?*
    - *approx. 5 feet elevation change*
    - *will allow massing shifts*
    - *benefit improving the grade*
  - *Visual analysis*
    - *previously: the aerie, city park, deck of the town lift base, the Garda deck, the golf course, Heber/main intersection, Marsac building, PCMR*
    - *New suggestions: from homes on East side of Lowell looking towards PCMR, top of the stairs near Woodside, coming down the ski trail, animation up Lowell and down Empire, panorama from the*

*Larson deck and Garda deck, Heber/main, roundabout, Aerie, PCMR, City Park, Radisson,*

- *compare with existing structures*
- *provide cross sections*

#### February 8, 2006

- *Outline vantage points identified at last meeting*
  - *Top of stairs near Woodside*
  - *Heber/Main intersection*
  - *Round-about*
  - *City Park (along Deer Valley Drive)*
  - *Aerie Drive*
  - *In front of the project at Lowell/Empire (animation along Lowell/Empire)*
  - *Marsac Building (near south entrance)*
  - *Park Avenue and Holiday Ranch Loop intersection*
  - *Golf Course (18<sup>th</sup> Fairway)*
  - *Park City Mountain Resort looking up Lowell*
  - *Panorama from Larson deck without new trees and looking up the hill*
  - *Panorama from Garda deck without new trees and looking up the hill*

#### April 12 2006

- *Architectural information for compatibility:*
  - *How can you evaluate scale and massing, relationship, character, and compatibility without some degree of architecture?*
  - *Did not recall that they had agreed to separate the architecture. Open to the idea, but unsure how it could be done.*
  - *Architecture consistent with the neighborhood.*

#### April 26, 2006

- *Would like the opportunity for the applicants to complete the drawings.*
- *Staff recommended that applicant provide a complete set of revised project plans including:*
  1. *all site plan and grading details (including vegetation protection and excavated material relocated on site)*
  2. *open space calculations;*
  3. *building setbacks for all structures*
  4. *building height compliance with approved building volumetrics*
  5. *residential unit size and configuration so as to verify density and parking compliance*
  6. *architectural details illustrating size, building form and massing, roof shapes, exterior details including materials, window to wall ratios, decks, plaza/outdoor spaces, retaining walls, etc.*
  6. *project streetscape detailing the design of project entrances, retaining walls, landscape areas, pedestrian ways.*
  7. *preliminary landscape plan*
  8. *ski lift and funicular design*

### August 26, 2009

- *Commission asked if there is a computer simulation tool that would help them understand the feet of excavation and final grade. It was difficult for them to understand what existing grade is today and what final grade will be once excavation occurs.*
- *Planning Staff stated that the applicant had updated the elevation of the buildings to show the difference between final grade and the existing grade through the building. She offered to put together a packet that better explains the grades.*
- *Commission felt a massing model would help demonstrate the excavation.*

### September 23, 2009

- *Staff finds that any support commercial over 5% of the total floor area within specific hotels must count towards the MPD 19 unit equivalents.*
  - *Even if the Planning Commission agrees with the applicant, any support commercial above the 19 unit equivalents is not vested and would be subject to a full blown, new compatibility and MPD/CUP review (if you allow the applicant to take advantage of more permissive provisions of the current code, such application would be a substantive amendment to the original MPD and require re-opening the entire MPD).*
  - *Staff indicated that additional support commercial causes additional impacts such as impacts to mass and building size, traffic from deliveries and employees, greater water usage, etc. Rather than focus on the calculation methods, the Planning Commission should focus on impacts of additional support commercial and the level of mitigation. The developer has vested rights to 19,000 square feet of support commercial and 5% of the hotel area as long as impacts are mitigated within the CUP review.*
- *Staff discussion points:*
  - *Does the Planning Commission agree with Staff's analysis on support commercial? The applicant has given the staff the perception that the project as it is designed today will not be modified. This should be discussed during the work session. If the applicant is not going to make modifications to comply with the support commercial, staff can make findings for denial and move onto the next elements in the review.*
  - *The total square footage of the project is larger than originally anticipated within the master plan approval and original CUP submittal.*
  - *The modification of grade is more extensive than originally anticipated creating greater impacts to the site, scale, hillside, and neighborhood.*
  - *Staff requests discussion and direction on additional square footage.*
  - *Should the design be revised to become more efficient and comply with the limits of the MPD?*
  - *Would the Planning Commission like another streetscape of the project showing the full elevations of the buildings? Does the Planning Commission have other areas of concern not identified by staff? Should a separate design review task force be created to evaluate the style, design, and architectural detailing of the project?*

- *Are the proposed structures appropriate to the topography of the site?*
- *Commission comments:*
  - *Conclusions from the staff report analysis were consistent with the supported documentation of the Land Management and the legal counsel interpretation of which Code applies.*
  - *The size of the building, the amount of commercial space, and the amount of excavation relate to future uses that contribute to mass and space. They needed to do as much as possible to reduce the mass and scale of the building and to make sure the commercial space requested is used in the original content of the MPD, which is support commercial only. It cannot attract outsiders into this project.*
  - *Open to addressing the Sweeney rebuttal in conjunction with the Staff report at the next meeting.*
  - *Regarding excavation, stated that in looking at the original MPD, found that the point of excavation for the significant buildings was from natural grade. In each drawing, by the time it gets to the top of the building, there is a half a story of existing grade without the big cut. With a million square feet proposed and without having the tailing issue resolved to the satisfaction of the City Staff, felt the excavation still needed to be addressed.*
  - *The currently proposed project has grown from what was approved under the MPD.*
    - *Noted that four primary items that identify where the increases have occurred and how it impacts mass and scale were the additional support commercial at 33,412 square feet; the additional meeting space at 16,127 square feet; and the circulation, common space and accessory space at 309,511 square feet, which was slightly under the amount of residential.*
    - *Concern with the amount of back of house circulation square footage is built into the additional support commercial and meeting space.*
  - *Planning Commission would need to spend a considerable amount of time on that issue to understand the impacts of the excavation, as well as the water and mine tailing issues. Felt strongly about having an environmental impact study commissioned by the City because it is crucial in evaluating the final plans for the project.*
  - *In doing the excavation and taking existing grade down to final grade, the massing is much larger than what was approved with respect to the MPD.*
  - *Felt a major question raised in the Staff report was whether or not the applicant was willing to change their plan. Commissioner asked the applicant if they were willing to change their plan or if the Planning Commission should rule on the current proposal.*
  - *Applicant replied that they would need time to discuss their options and to respond to the Staff report before making that decision.*
  - *Commissioner stated that shifting the mass into the hill only changes the mass; it does not reduce the mass. In addition, that approach triggers*

*other impacts caused by the additional excavation required to move the massing back. Unsure if that was a wise approach and questioned whether it was permissible under the MPD or the CUP criteria.*

- *Commission encouraged the applicants to provide a massing model of the project with topos as part of the streetscape. Remarked that most of the visuals provided by the applicant are in a vacuum and do not show the correlation with the surrounding houses. Requested a streetscape that provides a better feel for how that fits in with the surrounding structures on the street.*

#### February 10, 2010

- *Commission comments:*

- *Commission agreed with the comments about making the development project a different color in the model.*
- *Planning Commission Chair pleased with the model.*
- *“The applicant will present only general development concepts that may be approved at this juncture. Final unit configuration and mix may be adjusted by future developers at the time of conditional use review.”*
- *“The master plan development procedure attempts to deal with the general concept of a proposed development and defers or relegates the very detailed project and new elements to the conditional use stage of review”.*
- *On September 23, 2009 four Commissioners made specific comments that were in agreement with the Staff report. Five Commissioners wanted the applicant to prepare a rebuttal for the next meeting.*
- *Model attempts to address two discussion points from the last meeting; 1) providing additional streetscape; and 2) are the structures appropriate to the topography, it does not address the other significant discussion points of; a) excessive proposed support commercial; b) excess square footage; and c) efficiency of design.*
- *Did not find that the applicants’ proposal on points a, b or c comply with Criteria 8, 11 or 15.*
- *Commissioner did not find the project to be in compliance with the MPD. Commissioner felt the first step in the process was to reach agreement that the CUP application complies with the underlying MPD.*
- *Property lines behind the buildings that encroach on to open space. Did not believe anyone had anticipated going into open space, excavating material and taking out the trees, and then leaving it as a guide wall or cliffscape, which is not a natural open space setting.*
- *Efficiency of design and noted that in 2004 they received a design that was roughly 500,000 square feet. In that design 57% was residential units and he thought that was an inefficient design. Now they have a design that is over a million square feet and 39% of the area is residential units. Project was going backwards in its efficiency rather than forward. The project now is 20% larger than it was when they began talking about mass and scale.*

- *The 1986 plan showed the development starting with natural grade and excavating only what was needed for the buildings. The buildings appeared to step up the mountain and then it went back to existing grade. There was very little change between the existing grade and the finished grade. The proposed excavation and grade change is a major contrast to the 1986. Nothing to reduce the parking requirement, including the commercial space. This was one reason why the project was lopsided on its efficiency.*
- *If the plans were final, the Planning Commission needed to assess those plans and vote on them. In order to do that, the Staff needed to prepare all the documents, all the studies, and all the Staff reports so the Planning Commission could vote on the project. Applicant attorney letter saying that the further they go down this road the more the applicant detrimentally relies on what the applicant is being told by Staff. The way to stop that detrimental reliance is to stop the Staff's analysis and vote on what appears to be the final plan.*
- *If the applicant intends to change their plans substantially based on comments from the Planning Commission, the April meeting may not be a vote. However, unless there are substantial changes to the plans provided, the Planning Commission has the obligation to vote on the plan and stop the alleged detrimental reliance by the applicant.*
- *Commission asked Staff to prepare the documents the Planning Commission would need to decide on this project:*
  - *The MPD, which includes the 1986 Staff report and the original plans.*
  - *Crowd, traffic and parking studies and all traffic and parking plans that have been generated by both the applicant and the City.*
  - *All mitigation plans in any form submitted by the applicant. All excavation plans submitted by the applicant. Any construction mitigation plans submitted by the applicant.*
  - *Any environmental studies by both the City and the applicant or any third party.*
  - *Applicable 1986 Code sections for both the LMC and the historic guidelines.*
  - *All legal opinion memoranda that has been submitted by both the applicant's attorney and by the outside counsel retained by the City.*
  - *Minutes from all the meetings since the time the DVD was given to the Planning Commission.*
- *The Planning Commission responded to the eight points outlined in the Staff report as follows:*
  - *Support Commercial. All the Commissioners concurred with the Staff's analysis.*
  - *The applicant's willingness to make changes. The Commissioners had already addressed this point in their comments.*

- Staff request for discussion and direction on additional square footage. The Commissioners had addressed this point in their comments.
- Should the design be revised to become more efficient and comply with the limits of the MPD. The Commissioners concurred that the first step is to comply with the MPD.
- Whether the Planning Commission wanted another streetscape of the project showing full elevations of the building. Planning Commission Chair believed the model accomplished what they needed to see. The Commissioners concurred. Commissioner requested detailed photographs of the model for future reference. Commissioner thought it would be helpful to have GPS coordinates for the top parts of the buildings. He felt there needed to be an objective standard for measuring height about sea level. PC Chair requested copies of the slides that Mr. Elliott had presented this evening.
- Whether the Planning Commission had other concerns not identified by Staff. Commissioner was interested in seeing an avalanches assessment due to the risks involved with the amount of excavation proposed and the slope retention.
- Should a separate design review task force be created to evaluate style, design, architecture detailing of the project, and the HDDR? Commissioner felt the Historic Preservation Board was qualified and the MPD identifies the HPB as the body for review. Planning Staff noted that the Historic District Design Review is usually conducted by Staff, but it could go before the HPB at the request of the Planning Commission. Commissioner believed the MPD envisioned a review by the HPB. Chair noted that the Historic Review has changed since the time of the MPD and he preferred to have the HPB involved. Commissioner commented on other projects where the City Council had designated a design review task force. He believed that the scale and impacts of this project would warrant a design review task force. The Commissioners concurred.
- Are the proposed structures appropriate to the topography of the site. Chair reiterated an earlier comment that the applicants have spent more time fitting things in to the site as opposed to fitting them on the site. He did not believe it was appropriate as proposed. Simply based on the excavation, Commissioner did not think it was appropriate to the topography. Commissioner thought the model helped demonstrate the sprawl and excessive height, which was not appropriate for the site. Commissioner pointed out the absence of any stepping.
- In reading the minutes of the MPD, believed the intent was for the project to be hidden in the Gulch. At this point, that has not been accomplished. There is too much of the project out front and not enough in the Gulch.

*Buildings on the left side were appropriate, except for the cliffscape behind them that is outside of the limits of disturbance. Backdrop is altered so much that it changes the mass of the project. Buildings on the other side do not follow the topography of the hill.*

- *The mass had changed in the project, concerned that the appearance of the mass would be even greater once the project was excavated.*
- *Applicant architect representative felt the Planning Commission had provided good comments and direction. The applicants would take those comments, consider their options and provide a response as soon as possible regarding the next step to move forward.*

**Discussion Requested: Staff requests to address questions that the Planning Commission might have regarding this staff report.**

### **Notice**

The property was posted and notice was mailed to property owners within 300 feet on May 11, 2016. Legal notice was published in the Park Record on April 27, 2016 and May 11, 2016 according to requirements of the Land Management Code. The Planning Commission continued this item to the July 13, 2016, August 10, 2016, and to this September 14, 2016 Planning Commission meeting.

### **Public Input**

Public input has been received by the time of this report. See the following [website](#) with public input received as of April 2016. All public comments are forwarded to the Planning Commission via the staff report link above and kept on file at the Planning Office. Planning Staff will not typically respond directly to the public comments, but may choose to address substantive review issues in subsequent staff reports. There are four (4) methods for public input to the Planning Commission:

- Attending the Planning Commission meetings and giving comments in the public hearing portion of the meeting.
- Preparing comments in an e-mail to [treasure.comments@parkcity.org](mailto:treasure.comments@parkcity.org).
- Visiting the Planning office and filling out a Treasure CUP project Comment Card.
- Preparing a letter and mailing/delivering it to the Planning Office.

### **Summary Recommendations**

Staff recommends that the Planning Commission review Conditional Use Permit (CUP) criteria no. 1 ***Size and Scale of the Location of the Site*** as analyzed in the staff report. Staff recommends that the Planning Commission provide input and direction. Staff recommends that the Planning Commission conduct a public hearing and continue it to the October 12, 2016 Planning Commission meeting.

### **Exhibits/Links**

[Exhibit A - Public Comments](#)

[Exhibit B - Approved Sweeney Properties Master Plan \(Narrative\)](#)

[Exhibit C - Approved MPD Plans](#)

[Exhibit D - Proposed Plans – Visualization Drawings1](#)

Sheet BP-01	The Big Picture
Sheet V-1	Illustrative Plan
Sheet V-2	Illustrative Pool Plaza Plan
Sheet V-3	Upper Area 5 Pathways
Sheet V-4	Plaza and Street Entry Plan
Sheet V-5	Building 4b Cliffscape Area
Sheet V-6	Exterior Circulation Plan
Sheet V-7	Parking and Emergency Vehicular Access
Sheet V-8	Internal Emergency Access Plan
Sheet V-9	Internal Service Circulation
Sheet V-10	Site Amenities Plan
Sheet V-11	Usable Open Space with Development Parcels
Sheet V-12	Separation-Fencing, Screening & Landscaping
Sheet V-13	Noise Mitigation Diagrams
Sheet V-14	Signage & Lighting
Sheet V-15	Contextual Site Sections - Sheet 1
Sheet V-16	Contextual Site Sections - Sheet 2

[Exhibit E - Proposed Plans – Visualization Drawings2](#)

Sheet V-17	Cliffscapes
Sheet V-18	Retaining Systems
Sheet V-19	Selected Views of 3D Model - 1
Sheet V-20	Selected Views of 3D Model – 2
Sheet V-21	Viewpoints Index
Sheet V-22	Camera Viewpoints 1 & 2
Sheet V-23	Camera Viewpoints 3 & 4
Sheet V-24	Camera Viewpoints 5 & 6
Sheet V-25	Camera Viewpoints 7 & 8
Sheet V-26	Camera Viewpoints 9 & 10
Sheet V-27	Camera Viewpoint 11
Sheet V-28	Illustrative Plan – Setback

[Exhibit F - Proposed Plans – Architectural/Engineering Drawings 1a](#)

Sheet VM-1	Vicinity & Proposed Ski Run Map
Sheet EC.1	Existing Conditions
Sheet SP.1	Site & Circulation Plan
Sheet GP.1	Grading Plan
Sheet HL.1	Height Limits Plan
Sheet HL.2	Roof Heights Relative to Existing Grade
Sheet FD.1	Fire Department Access Plan

[Exhibit G - Proposed Plans – Architectural/Engineering Drawings 1b](#)

Sheet P.1	Level 1 Use Plan
Sheet P.2	Level 2 Use Plan
Sheet P.3	Level 3 Use Plan
Sheet P.4	Level 4 Use Plan
Sheet P.5	Level 5 Use Plan

Sheet P.6 Level 6 Use Plan  
 Sheet P.7 Level 7 Use Plan  
 Sheet P.8 Level 8 Use Plan  
 Sheet P.9 Level 9 Use Plan  
 Sheet P.10 Level 10 Use Plan  
 Sheet P.11 Level 11 Use Plan  
 Sheet P.12 Level 12 Use Plan  
 Sheet P.13 Level 13 Use Plan  
 Sheet P.14 Level 14 Use Plan  
 Sheet P.15 Level 15 Use Plan  
 Sheet P.16 Area, Unit Equivalent & Parking Calculations

Exhibit H – Proposed Plans – Architectural/Engineering Drawings 2

Sheet E.1AC2.1 Buildings 1A, 1C& 2 Exterior Elevations  
 Sheet E.1B.1 Building 1B Exterior Elevations  
 Sheet E.3A.1 Building & Parking Garage Exterior Elevations  
 Sheet E.3BC.1 Building 3BC Exterior Elevations  
 Sheet E.3BC.2 Building 3BC Exterior Elevations  
 Sheet E.3BC.3 Building 3BC Exterior Elevations  
 Sheet E.4A.1 Building 4A Exterior Elevations  
 Sheet E.4A.2 Building 4A Exterior Elevations  
 Sheet E.4B.1 Building 4B Exterior Elevations  
 Sheet E.4B.2 Building 4B Exterior Elevations  
 Sheet E.4B.3 Building 4B Exterior Elevations  
 Sheet E.4B.4 Building 4B Exterior Elevations  
 Sheet E.5A.1 Building 5A Exterior Elevations  
 Sheet E.5B.1 Building 5B Exterior Elevations  
 Sheet E.5C.1 Building 5C Exterior Elevations  
 Sheet E.5C.2 Building 5C Exterior Elevations  
 Sheet E.5D.1 Building 5D Exterior Elevations  
 Sheet S.1 Cross Section  
 Sheet S.2 Cross Section  
 Sheet S.3 Cross Section  
 Sheet S.4 Cross Section  
 Sheet S.5 Cross Section  
 Sheet S.6 Cross Section  
 Sheet S.7 Cross Section  
 Sheet S.8 Cross Section  
 Sheet S.9 Cross Section  
 Sheet UP.1 Concept Utility Plan

Exhibit I – Applicant’s Written & Pictorial Explanation

- |                         |                              |
|-------------------------|------------------------------|
| I. Overview             | VII. Lift Improvement        |
| II. Master Plan History | VIII. Construction Phasing   |
| III. Site plans         | IX. Off Site Amenities       |
| IV. Special Features    | X. Material Board            |
| V. Landscape            | XI. Submittal Document Index |
| VI. Management          |                              |

[Exhibit J – Fire Protection Plan \(Appendix A-2\)](#)  
[Exhibit K – Utility Capacity Letters \(Appendix A-4\)](#)  
[Exhibit L – Soils Capacity Letters \(Appendix A-5\)](#)  
[Exhibit M – Mine Waste Mitigation Plan \(Appendix \(A-6\)](#)  
[Exhibit N – Employee Housing Contribution \(Appendix A-7\)](#)  
[Exhibit O – Proposed Finish Materials \(Appendix A-9\)](#)  
[Exhibit P – Economic Impact Analysis \(Appendix A-10\)](#)  
[Exhibit Q – Signage & Lighting \(appendix A-13\)](#)  
[Exhibit R – LEED \(Appendix A-14\)](#)  
[Exhibit S – Worklist \(Appendix A-15\)](#)  
[Exhibit T – Excavation Management Plan \(Appendix A-16\)](#)  
[Exhibit U – Project Mitigators \(Appendix A-18\)](#)  
[Exhibit V – Outside The Box \(Appendix A-20\)](#)  
Exhibit W – Applicant’s Draft September 14, 2016 Presentation  
Exhibit X – Applicant’s Draft Position Paper – GP and Support Commercial Limitations  
Exhibit Y – Applicant’s Draft Executive Summary Square Footage Calculations

**Additional Exhibits/Links**

[2009.04.22 Jody Burnett MPD Vesting Letter](#)  
[Staff Reports and Minutes 2016](#)  
[Staff Reports and Minutes 2009-2010](#)  
[Staff Reports and Minutes 2006](#)  
[Staff Reports and Minutes 2005](#)  
[Staff Reports and Minutes 2004](#)  
[2004 LMC 50th Edition](#)  
[1997 General Plan](#)  
[1986.10.16 City Council Minutes](#)  
[1985.12.18 Planning Commission Minutes](#)  
[1986 Comprehensive Plan](#)  
[1985 Minutes](#)  
[1985 LMC 3<sup>rd</sup> Edition](#)

MPD Amendments:

[October 14, 1987 - Woodside \(ski\) Trail](#)  
[December 30, 1992 - Town Lift Base](#)  
[November 7, 1996 – Town Bridge](#)



**MPD Requirements**

**Standards for Review**

**CUP Criteria Nos. 1 to 15**

# Overview of Presentation:

- Confirm the Public Hearing Record
- Project Timeline
- Summary of Square Footage

## Correcting the Public Hearing Record:

- Date of the CUP Application
- Woodruff Drawings are attached to the 1986 MPD Approval
- No Reopening of the 1986 MPD Approval
- Support Commercial/Meeting Space

## Support Commercial and Meeting Space:

- Section 1.22, 1985 LMC:

“The project owner may take advantage of changes in zoning that would permit greater density or more intense use of land, provided however, that these changes may be deemed a modification of the plan and subject to the payment of additional planning review fees.”

## Treasure Hill Timeline:

## Treasure Hill CUP Square Footage:

□

Vested Square Feet	Authorization
393,911	Residential UEs of 394,000 UEs
17,470	Commercial UEs of 19,000 UEs
26,726	4% of the possible 5% additional Support Commercial
16,127	2.4% of the possible 5% additional Meeting Space – Based upon above-grade square footage
136,191	Accessory Uses – No Specific Restrictions
173,320	Circulation – No Specific Restrictions
245,063	Parking
1,008,808	<b>Total</b>





**DATE:** September \_\_, 2016

**SUBJECT:** Treasure Hill Properties' Compliance with General Plan and Support Commercial Limitations

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**1. Background.**

As the Planning Commission Staff report dated July 13, 2016, recites,

[t]he Sweeney Properties Master Plan (SPMP) was approved by the Planning Commission on December 18, 1985. . . . On October 16, 1986, the City Council approved the SPMP with amendments to the maximum allowed building heights [for the] Hillside Properties known as the Town Lift Mid-Station and the Creole Gulch sites.

The Hillside Properties consists [sic] of the Town Lift Mid-Station (Mid-station) and the Creole Gulch sites. These Hillside Properties are the last two (2) parcels to be developed within the SPMP. . . .

A combined total of 197 residential UEs and 19 support commercial UEs was approved for the 11.5 acre remaining development sites. Of the 123 acres of Hillside Property, 110 have become zoned recreation open space (ROS) due to the agreement within the SPMP.

Under the SPMP, each development site is required to attain the approval of a Conditional Use Permit (CUP) from the Planning Commission. On January 13, 2004, the applicant submitted a CUP application for the Creole Gulch and Mid-station sites. The CUP was reviewed by the Planning Commission from April 14, 2004 to April 26, 2006. A complete set of revised plans was received by staff on October 1, 2008. Additional materials were received by staff on December 18, 2008. The CUP was reviewed by the Planning Commission from January 7, 2009 to February 10, 2010. (pp.1-2.)

In April 2016, the applicant, MPE, Inc., requested that the Planning Commission place its CUP Application for the development of the Hillside Properties back on the Commission's agenda and to review the application for compliance with the applicable Land Management Code

(“LMC”) and SPMP Approval. The Planning Commission held public hearings on the CUP Application on June 8, July 13, and August 10, 2016.

The topics that the Planning Commission directed Staff and MPE to address at these past hearings touch upon a number of criteria under the Conditional Use Review Process set forth in the applicable 2003 LMC.<sup>1</sup> Specifically, the issues the Planning Commission has directed Staff and MPE to address during this and prior hearings cover portions of the following CUP criteria:

1. Size and location of the Site;
4. Emergency vehicle Access;
5. Location and amount of off-Street parking;
6. Internal vehicular and pedestrian circulation system;
8. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots;
11. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing; and
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.

The topics also touch upon several of the CUP Standards for Review, including:

2. the Use will be Compatible with surrounding Structures in Use, scale, mass and circulation;
3. the Use is consistent with the Park City General Plan, as amended; and
4. the effects of any differences in Use or scale have been mitigated through careful planning.

The topics that MPE has discussed with the Planning Commission during the previous hearings in 2016 have also included several of the conditions of the SPMP Approval, including the building height and building envelope limits established by the SPMP Approval.

The CUP Application satisfies the CUP Standards for Review, each of the criteria set forth in the 2003 LMC, and the associated conditions of the SPMP Approval, including the criteria, standards, and conditions covered by the issues addressed during the prior hearings.

Because “[a] conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use,” and because the CUP Application conforms to the conditions of the SPMP Approval and proposes additional mitigating factors to address the impacts of square footage and volume, the Planning

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<sup>1</sup> Staff and MPE agree that the Fiftieth Edition of the LMC revised on July 10, 2003 (“2003 LMC”) applies to the CUP Application.

Commission should conclude that the CUP Application meets the criteria, standards, and conditions relating to these issues. Utah Code § 10-9a-507(2)(a).

## **2. The CUP Application Conforms to the General Plan.**

### **2.1 The Planning Staff Concluded the CUP Application Complies with the Applicable General Plan in 2004 and 2005.**

Notwithstanding the Planning Staff's sudden and unexplained change of position on this issue, which is addressed below, Planning Staff has repeatedly concluded in the past that the **“Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density resort related development.”** (*See, e.g., [March 9, 2005 Staff Report](#) p. 5; [April 27, 2005 Staff Report](#) pp. 5–6 (emphasis in original).*)

In particular, the Planning Staff wrote in 2005 that:

#### **General Plan**

The Park City General Plan indicates that the Creole Gulch and Midstation parcels are an area of Medium Density Residential development. The proximity to the activities of both the Park City Mountain Resort and the Main Street Commercial District were factors in this designation, as well as in the approval of the clustered plan. The Park City Mountain Resort master plan approval for approximately 502 unit equivalents occurred after the Sweeney Master Plan approval. Residential density in Old Town is in the range of 12-15 units per acre. Typical low density residential neighborhoods, such as Park Meadows, Aspen Springs, and Thayne's Canyon are in the range of 3-5 units per acre.

Gross density of the Treasure Hill project is 3.15 unit equivalents per acre (197 u.e. on 62.5 acres, including only the 51 acres of open space associated with this phase of the MPD). Net density is approximately 17 u.e. per acre (197 u.e. on the 11.5 acres development parcel). By comparison, the net density of the Mountainside development is about 30 units per acre.

According to the City's inventory, there are about 424 existing units on Lowell and Empire Avenues in the 5 and 1/2 blocks south of Manor Way to the Empire/Lowell switchback. Sweetwater Condominiums consists of 89 units (located on approximately 50 Old Town lots) and Mountainside Marriot consists of 183 units. There are approximately 82 dwelling units on Empire, not including Victoria Village (24 units) and Skiers Lodge (16 units) condominiums, and 30 units on Lowell Avenue.

In a review of the building permits issued for single family and duplex units on Lowell Avenue south of Manor Way, staff found

that 28 of the 30 dwelling units on Lowell Avenue were constructed since approval of the Sweeney Master Plan. Although it was platted in 1878, Lowell Avenue is not considered an historic Old Town street and development on Lowell is relatively recent and is more closely associated with Park City's transition to a resort town. In fact, 22 of the 30 dwellings on Lowell Avenue were constructed following the awarding of Salt Lake City as host of the 2002 Olympic Winter Games. **The current Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density resort related development.**

([March 9, 2005 Staff Report](#) p. 5.)

## **2.2 Planning Staff's Current Position Relating to General Plan Compliance Is Erroneous and Contrary to the SPMP Approval and Staff's Own Prior Conclusions.**

The July 13, 2016, Staff Report fails to identify the version of the General Plan that Staff is supposedly applying to the CUP Application. During the hearing on July 13, 2016, planner Francisco Astorga identified the "1999 General Plan" as supposedly applicable. ([Planning Commission Meeting Minutes](#), p.16, July 13, 2016.) However, Planning Staff has failed to make the 1999 General Plan available for inspection or review. Instead, Planning Staff has appended apparently irrelevant versions of the General Plan to its Staff Reports, including the 1997 General Plan.

Referring to an unknown version of the General Plan, the July 13, 2016, Staff Report claims that the "proposed square footage of this project does not comply with the purpose statements of Land Management Code and goals and actions listed within the General Plan." ([July 13, 2016 Staff Report](#), p. 105.) Even though "purpose statements" and planning "goals" cannot be used to deny the CUP Application for the reasons set forth below, Staff's conclusions about these items are incorrect and contradict Staff's earlier conclusions to the contrary.

First, the July 13, 2016, Staff Report states that "[t]he project is located in the Estate zoning district of Park City" and that "purpose statement 8 [for that zone] states 'encourage comprehensive, efficient, compatible development which results in distinct and cohesive neighborhoods through application of the sensitive lands ordinance.'" ([July 13, 2016 Staff Report](#), p. 105.) The Staff Report acknowledges that the Sensitive Lands Overlay does not apply to the CUP Application, but concludes, *without any analysis or explanation* that the CUP Application "is excessive and inefficient." (*Id.*)

As an initial matter, the Staff Report fails to explain why the Estate Zone or its purpose statements are even relevant to the CUP Application. Treasure Hill was re-zoned as part of the MPD process. ([SPMP Revised Staff Report](#), p. 8, December 18, 1985.) Moreover, the underlying zoning for the Hillside Properties at the time of the MPD application was both Estate and HR-1. As explained further below, at the time the City approved the SPMP, it determined that the clustering of density in the Midstation and Creole Gulch sites was not only consistent with the General Plan, it was the best way to effectuate the goals of the General Plan.

Addressing Staff’s unexplained and unsubstantiated conclusion that the CUP Application is “excessive and inefficient,” the Applicant notes that the idea to “cluster the bulk of the density” at the Midstation and Creole Gulch sites reflected the City’s preference for a “high-rise”-type development, and that the current size of the proposed development is a function of the City’s own requirements, including its fire protection directives. ([SPMP Revised Staff Report](#), p. \_\_, \_\_, December 18, 1985.) As the City concluded in the SPMP Approval, “[b]ecause of the underlying zoning and resultant density currently in place, the cluster approach to developing on the hillside has been favored throughout the formal review and Hearing process.” (*Id.* at 12.) Indeed, the *very first* “Finding” in the SPMP Approval was that “[t]he proposed clustered development concept and associated projects are consistent with both the Park City Comprehensive Master Plan and the underlying zoning.” (*Id.* at 2.)

Moreover, the July 13, 2016, Staff Report makes no attempt to harmonize Staff’s current position with Staff’s contrary conclusions on numerous prior occasions. For example, in its March 9, 2005, Staff Report, Staff concluded:

The Creole Gulch and Mid-station development parcels are zoned E-MPD, and are subject to the approved Sweeney Properties Master Plan. The Sweeney Properties MPD allows hotel, condominium, townhouse, resort support commercial uses, and ski runs, lifts, etc. with the maximum densities and heights as outlined above. Open space parcels are zoned ROS. **The current Treasure Hill CUP plans comply with the existing zoning.**

([March 9, 2005 Staff Report](#) p. 5 (emphasis in original).) **Ten years ago, Staff concluded that the CUP Application complied with the existing zoning requirements and the General Plan; now, Staff takes the opposite position. Staff offers no explanation for this sudden about-face.**

The July 13, 2016, Staff Report also draws on certain “goal” and “intent” statements from some undisclosed version of the General Plan. ([July 13, 2016 Staff Report](#), p. 105–06.) Staff claims, based on these general purpose statements, that the “amount of circulation area, lobby areas, parking circulation, etc. [requested in the CUP Application] are not modest in scale and compatible to the surrounding area.” (*Id.*)

With respect to the assertion that the circulation areas, lobbies, and parking are not “modest” in scale, Staff offers nothing in support of this conclusion. As the Applicant has previously explained on numerous occasions, the square footage and floor areas of the project, including the circulation areas, lobbies, and parking are a function of the City’s fire protection requirements, the Land Management Code’s expressed preferences for such areas in resort developments, and modern development trends.

Indeed, Staff conducted an analysis of other resort developments allowed by the City during the same period of time as the SPMP Approval and CUP Application. As the July 13, 2016, Staff Report itself concludes “[b]ased on the Department’s research” into other developments the City has permitted to be built under the auspices of the same General Plan, “there is generally a trend towards wider hallways, more open lobby and check-in space, a desire by guests for socializing space, sitting spaces with views, etc.” ([July 13, 2016 Staff Report](#), p. 10.) The City’s

own analysis concluded that the CUP Application seeks space in these categories that is comparable—or less than—other resort developments the City has approved in the City. ([Exhibit W.](#)) The City has permitted these other developments under the same General Plan—with the same language—that Staff now claims precludes approval of the CUP Application. The Staff offers no explanation for this discrepancy in treatment.

As for Staff’s claim that the circulation areas, lobbies, and parking are not compatible with the surrounding areas, Staff again fails to articulate any reasons for its conclusion. As the Applicant has noted on numerous prior occasions, the Woodruff Plans, attached as exhibits to the SPMP Approval (and specifically incorporated into the SPMP Approval), anticipated buildings of the same basic size and volume as that proposed by the CUP Application. In fact, the buildings shown on the Woodruff Drawings were *more* “front loaded” and closer to the surrounding residential areas than the current proposal.

Nonetheless, Planning Staff, the Planning Commission, and the City Council concluded that the “proposed clustering approach [represented by the Woodruff Drawings] was deemed the *most compatible*” of the alternative approaches presented for consideration. ([SPMP Revised Staff Report](#), p. 10, December 18, 1985 (emphasis added).) Moreover, the second “Finding” of the SPMP Approval was that “[t]he uses proposed and general design of the project is or will be compatible with the character of development in the surrounding area.” (*Id.* at 2.)

Moreover, Staff’s current position is inconsistent with Staff’s own prior conclusions to the contrary. For example, in its March 9, 2005, Staff Report, Staff concluded, on the topic of “Compatibility, Scale, and Concentration of density in Creole Gulch area” that the “**current Treasure Hill CUP plans comply with the cluster concept, which was the preferred alternative, as approved with the Sweeney MPD.**” ([March 9, 2005 Staff Report](#), p. 14 (emphasis in original).)

The Staff Report fails to account for the prior findings of the SPMP Approval or its own prior Staff Reports, and it fails to explain why the development proposed by CUP Application is no longer compatible, when Staff found it to be compatible in 1986 and again in 2005.

Notably absent from the Staff Report dated July 13, 2016, is any explanation for the Staff’s departure from its prior conclusions in 2005 that the CUP application fully complied with the applicable General Plan. Reaching directly contradictory conclusions without providing any explanation or rationale for the change in position is the textbook definition of arbitrary and capricious action.

**2.3 The Current Staff’s Conclusions About General Plan Compliance Fails to Take Into Account the History of the Project and the SPMP Approval.**

Staff’s current approach to General Plan compliance suggests that the parties are writing on a blank slate, absent any context or history. But as the Applicant has outlined and summarized throughout these proceedings, in order to fully understand the current CUP Application and the reasons it should be granted, it is vital to understand the history of the project.

The City has already determined that the development proposed by the CUP Application is consistent with, and the best way to effectuate, the goals of the General Plan. At the time of the MPD Application,

[t]he city’s Comprehensive Master Plan identifie[d] the Hillside property as a key scenic area and recommends that development be limited to the lower portions of the mountain. . . . The proposed Sweeney Properties MPD is in conformance with the land use designations outlined in the Park City Comprehensive Master Plan.

([SPMP Revised Staff Report](#), p. 9–10, December 18, 1985.)

The SPMP Revised Staff Report further noted that “[t]he concept of clustering densities on the lower portion of the hillside . . . has evolved from both previous proposals submitted and this most recent review process” and that “[t]he Park City Comprehensive Master Plan update that was recently enacted encourages the clustering of permitted density to those areas of the property better able to accommodate development.” ([SPMP Revised Staff Report](#), p. 12, December 18, 1985.) As noted above, the *very first* “Finding” in the SPMP Approval was that “[t]he proposed clustered development concept and associated projects are consistent with both the Park City Comprehensive Master Plan and the underlying zoning.” (*Id.* at 2.)

To suddenly suggest that the CUP Application is inconsistent with either the General Plan or the “purpose statements” of the underlying zoning is to ignore the history of the SPMP Approval, in violation of the Applicant’s contractual rights and reasonable expectations based on the City’s prior representations, upon which the Applicant has relied by making significant investments of time, money, and other resources.

#### **2.4 The General Plan Is Not A Sufficient Basis For Denying the CUP Application.**

Finally, general policy statements contained in a General Plan and “purpose” and “intent” statements contained in a Land Management Code are not a sufficient basis to deny the CUP Application, whatever their merit.

As the City’s own current General Plan explains, the General Plan “is a long range policy plan that will guide future Land Management Code (LMC) and zoning decisions.” ([General Plan](#), p. 8.) However, the “LMC is the regulatory document that addresses specific zoning and land uses within respective zones.” (*Id.*) So long as the application complies with the *specific* provisions of the applicable Land Management Code, it is entitled to approval, regardless of supposedly contradictory language in the General Plan.

The same is true for generic “purpose” and “intent” statements prefatory to specific sections of code. As the Utah Supreme Court has noted, “a statement of legislative purpose . . . is nothing more than a statement of policy which confers no substantive rights.” *Price Dev. Co., L.P. v. Orem City*, 2000 UT 26, ¶ 23, 995 P.2d 1237, 1246. Such “purpose” and “intent” statements cannot be used to “limit th[e rights] actually given by the legislation.” *Id.*

### 3. The Support Commercial Sought in the CUP Application Is Allowed Under the Applicable Code.

#### 3.1 The Planning Staff's Current Position Is Erroneous.

The Staff Report dated July 13, 2016, states that “[a]ny additional support commercial and meeting space areas above the 19 UEs must be in compliance with the LMC at the time of the MPD vesting.” ([July 13, 2016 Staff Report](#), p. 104). The Staff Reports dated July 13, 2016, and August 10, 2016, further state that “[a]ny additional support commercial above the 19 UEs is not vested.” (*Id.*)<sup>2</sup> These Staff Reports cite an earlier staff report from September 23, 2009, and associated meeting minutes to justify this position.

While the August 10, 2016 Staff Report appears to focus only on Staff's position on the amount of square footage the Applicant is allowed for Support Commercial uses ([August 10, 2016, Staff Report](#), p. 138), Staff's analysis actually accounts for square footage for both Support Commercial and Meeting Space uses. The vast majority of the Staff Report only references Support Commercial space, and omits references to Meeting Space, but a careful reading of the Staff Report reveals that Staff's conclusion that the Applicant is only entitled to 11,740 square feet of additional space is for Support Commercial and Meeting Space uses, even though the Staff Reports suggest that this determination relates solely to Support Commercial space. (*See* [August 10, 2016, Staff Report](#), p. 135.)

The Applicant acknowledges that in 2009, the City brought in a new planner to the project, Katie Cattan, who took positions that were completely contrary to the conclusions previously reached by more senior planners with far more experience. Even though her analyses arrived at positions contradicting those set forth in prior Staff Reports, Ms. Cattan's Staff Reports, including the cited September 23, 2009 Staff Report, failed to even acknowledge the numerous prior Staff Reports—which spanned years of review—in which more experienced members of the Planning Staff reached opposite conclusions. Both Kirsten Whetstone, senior planner for Park City, and subsequently, Pat Putt, former planning director for Park City, recognized throughout the review process in 2004 and 2005 that the project was allowed an additional 10% of the total floor area for Support Commercial and Meeting Space uses pursuant to Section 15-6-8 of the 2003 LMC. (*See, e.g.*, April 14, 2004, Staff Report; May 26, 2004, Staff Report; July 14, 2004, Staff Report; August 11, 2004, Staff Report; August 25, 2004, Staff Report; **September 22, 2004, Staff Report; October 13, 2004, Staff Report; January 12, 2005, Staff Report; and January 26, 2005, Staff Report.**)

For example, as the March 9, 2005, Staff Report concluded, “[m]eeting space and support commercial (10% of the total approved floor area) per Land Management Code (15-6-8.) is allowed per the MPD, **in addition to the 19 UE of commercial uses.**” ([March 9, 2005 Staff Report](#), p. 17–18 (emphasis added); *see also* \_\_\_\_\_.)

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<sup>2</sup> The August 10, 2016, Staff Report is internally inconsistent on the question of vesting, noting both that “any support commercial above the 19 unit equivalents is not vested” and that the “applicant has vested rights to 19,000 square feet of support commercial as written on the Master Plan narrative **and additional five percent (5%) of the hotel area.**” ([August 10, 2016, Staff Report](#), p. 138 (emphasis added).)

Apart from the conclusion that the Applicant is entitled to 10% of additional floor area for Support Commercial and Meeting Space uses—5% for each—above the 19 UEs of Support Commercial set forth in the SPMP Approval, this passage also demonstrates that the City has consistently represented to the Applicant that the 2003 LMC resolves the Support Commercial question from 2004 through 2004. Staff’s explicit reference to Section 15-6-8 of the LMC is a reference to the 2003 LMC, *not* to the 1985 LMC. Staff instructed the Applicant to expend considerable time, money, and other resources further designing the project on the basis of these representations, which are now an integral part of the project’s design and functionality.

Staff’s current position represents a sharp and unexplained departure from Staff’s prior conclusions, specifically (1) that the 2003 LMC—not the 1985 LMC—applies to the Support Commercial and Meeting Space question, and (2) that the Applicant is entitled to an additional 5% of floor area for Support Commercial uses over and above the 19 UEs of Support Commercial set forth in the SPMP Approval. Staff provides no explanation for this arbitrary and capricious change of position.

**3.2 There Is No Basis For Threatening to Reopen the SPMP Over the Support Commercial Issue.**

The Applicant takes exception to the outrageous statements in the August 10, 2016, Staff Report suggesting that if the Applicant seeks more square footage for Support Commercial and Meeting Space uses than the Staff presently believes is appropriate, the City will “re-open[] the entire Master Plan” for a “full blown, new compatibility and Master Plan/CUP review.” (August 10, 2016 Staff Report, p. 138.)

Although the Staff Report fails to explain the legal basis of this threat, the Planning Commission’s Special Counsel, Jody Burnett, has told the Applicant that the position is based on [Section 1.22 of the 1985 LMC](#), titled “Vesting of Zoning Rights.” That section provides, in relevant part, that “[t]he project owner may take advantage of *changes in zoning* that would permit greater density or more intense use of the land, provided however, that these changes may be deemed a modification of the plan and subject to the payment of additional planning review fees.” (emphasis added). The Staff seems to believe that by seeking more space for Support Commercial and Meeting Space uses than the Staff believes is allowed, Staff may unilaterally deem this action to be a modification of the SPMP Approval.

Section 1.22, however, does not apply to the SPMP Approval or the Support Commercial and Meeting Space issue for several reasons. First, Section 1.22 is a general provision addressing the vesting of rights under an existing zoning ordinance when a development application is submitted. Basically, the provision codifies existing Utah Supreme Court precedent holding that an application is vested under the existing code at the time it is submitted. Section 1.22 is not specific to MPD agreements or to amendments to MPD approvals.

Second, even if Section 1.22 were to apply to MPD approvals, it does not state what Staff seems to think it states. The language of Section 1.22 applies to “changes in zoning” that result in “greater density or more intense use of the land.” But the Applicant’s position that the Support Commercial and Meeting Space provisions of the 2003 LMC apply to the CUP Application, rather than the provisions of the 1985 LMC, has nothing to do with “changes in zoning.” **It is not changes**

**in zoning that allow the Applicant to take advantage of the 2003 LMC but the Utah code, as acknowledged by the City Attorney and numerous prior Staff Reports.**

Finally, the Applicant believes the City’s threat to reopen the SPMP and breach the contract represented by the SPMP Approval over the parties’ disagreement about correct application of legal principles—particularly given the City’s prior positions—smacks of bad faith in the extreme. Threatening the Applicant with dire consequences that have nothing to do with the issue—a disagreement over less than 4% of the total project square footage—raises serious questions about the City’s motives.

### **3.3 As the Applicant Has Previously Explained, the Fiftieth Edition of Park City’s Land Management Code (“2003 LMC”) Applies to the CUP Application.**

The Applicant previously explained in great detail why the 2003 LMC applies to the CUP Application, including to the Support Commercial determination, in its submission to the Planning Commission dated July 6, 2016.<sup>3</sup> Without repeating the entire discussion, the Applicant reiterates the following points:

- Utah statutes provide that “[a]n applicant who has filed a complete land use application . . . is entitled to substantive land use review of the land use application under the land use laws **in effect on the date that the application is complete . . .**” Utah Code Ann. § 10-9a-509(1)(a)(i) (emphasis added);
- The SPMP Approval recognized that “[a]t the time of conditional use . . . review, the staff and Planning Commission shall review projects for compliance with the adopted codes and ordinances **in effect at the time.**” (MPD Revised Staff Report at 3 (emphasis added));
- In an August 25, 1999 letter to the Applicant, Mark Harrington, Park City’s then Interim City Attorney, stated that “Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**” (emphasis added); and
- In an April 9, 2004 memorandum to the Planning Commission, Mark Harrington, Park City’s then City Attorney, again stated that “Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**” (emphasis added).

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<sup>3</sup> Even though the Applicant has *repeatedly* informed the City and Planning Staff that its position is that the 2003 LMC governs the Support Commercial and Meeting Space question (*see, e.g., July 6, 2016, Applicant Memorandum*, p. 4 n.8), Staff continues to claim that the Applicant “utilized the 2008/2009 LMC to calculate the support commercial area and meeting space within the development,” which is simply false (*August 10, 2016, Staff Report*, p. 136). The Applicant is at a loss as to why Staff would continue to misrepresent its positions when the Applicant has made those positions clear and unambiguous.

**BJM:**

**Treasure Hill**  
**Executive Summary**  
**Square Footage Calculations**  
**(Addresses MPD Development Parameters and Conditions,**  
**CUP Standards for Review, and**  
**CUP Criteria Nos. 1 to 15 (except as noted otherwise in Footnote 1))**  
**September 14, 2016 Public Hearing**

**I. Applicant and Staff Agreement.**

MPE, Inc., the Applicant for the Treasure Hill Conditional Use Permit (“CUP”), and Staff are in agreement with respect to the following matters:

**A. Applicable Codes.**

1. **1985 LMC.** Park City’s 1985 Land Management Code (“LMC”) applies to all matters relating to the interpretation of the 1986 Master Plan Development (“MPD”) Approval for Treasure Hill.

2. **2003 LMC.** Park City’s 2003 LMC applies to all matters related to the review and approval of the 2004 CUP Application. The only apparent point of disagreement between Planning Staff and the Applicant is whether the 1985 LMC or the 2003 LMC controls the calculation of Support Commercial and Meeting Space. See the Applicant’s accompanying Support Commercial and Meeting Space Position Statement.

**B. CUP Application Date.**

The CUP Application was filed in 2004 and is a vested application as of that date. References to subsequent dates, including the “2009 Revisions” or the “2009 Update”, are merely references to refinements (many at the request of Staff and the Planning Commission) and updates to the 2004 vested CUP Application. The Applicant has only filed one CUP Application for Treasure Hill and that is 2004 CUP Application.

**C. Woodruff Drawings.**

The Woodruff Drawings were attached to and are part of the 1986 MPD Approval. The Woodruff Drawings do not vest the right to build the development shown on the Woodruff Drawings, but merely reflect one concept of what could be built under the 1986 MPD Approval.

**D. Vesting.**

The concept of vesting applies to both the 1986 MPD Approval and the 2004 CUP Application in the following manner:

1. **MPD Vesting.** The MPD Approval vested in 1986 and the vested rights thereunder include 197 residential and 19 commercial Unit Equivalents (“UEs”). The MPD Approval established the underlying UEs, not the total square footage that could be built with those UEs. The 1985 LMC and MPD Approval specified that such issues would be addressed in a subsequent CUP process, and the Park City Attorney and Planning Staff confirmed that square footage issues would be addressed under the LMC in effect at the time of the CUP Application—the 2003 LMC.

2. **CUP Vesting.** The CUP Application vested in 2004 and the vested rights include the square footage attributable to the 197 residential and 19 commercial UEs, and all other additional square footage permitted by the 2003 LMC. The Applicants *right* to additional square footage is “vested” with the *amount* of additional square footage to be determined through the CUP approval process.

**E. Historic District.**

As part of the CUP approval process, the Planning Commission will need to evaluate whether the Treasure Hill design conforms with Park City’s Historic District guidelines in the context of the MPD Approval.

**F. Staff Report Clarifications.**

[Address language in the Staff Reports that need clarification.]

**II. Clarifications.**

**A. Reopening the MPD.**

The Applicant has no intent to reopen the 1986 MPD Approval. The fact that Staff and the Applicant have differing interpretations of whether the 1985 LMC or the 2003 LMC applies to the calculation of Support Commercial and Meeting Space, that the Applicant has made a reasoned and good faith assertion as to why the 2003 LMC applies, does not constitute an amendment to the 1986 MPD Approval. Similarly, the City presumably does not intend to reopen the 1986 MPD Approval as it would result in going back to pre-MPD Approval development which would (i) require the City to give back the open space, easements, rights of way, public trails and associated improvements on Treasure Hill; (ii) result in a reversion to the underlying density allowable in 1985—in excess of 450 unit equivalents; and (iii) result in the Applicant being able to develop single family residences on Treasure Hill, a development that could look like the extension of Lowell Avenue to Upper Norfolk and King Road and above King Road, with the consequence that such development would be similar in appearance to the East side of Deer Crest.

**B. [Other?]**

[Text to come.]

### **III. Project Timeline.**

As the Applicant has stressed on numerous occasions, fully understanding the history of the refinement of the design of Treasure Hill is critical in evaluating and approving the CUP Application. The attached Project Timeline shows:

#### **A. 1986 MPD.**

The 1986 MPD Approval and applicable vesting of 197 residential and 19 commercial UEs. Both the MPD Approval and the 1985 LMC specified that the final development plan would be evaluated during a separate and later conditional use process under the LMC in effect at such time.

#### **B. 1999 Legal Directive.**

In an August 25, 1999 letter to the Applicant, Mark Harrington, Park City's then Interim City Attorney, stated that "Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**" (emphasis added) In reliance thereon, the Applicant expended great amounts of time and money designing a project with the understanding that the LMC in effect at the time of application would govern square footage and floor areas for the allowed UEs.

#### **C. Fire Protection Plan.**

The January 9, 2004 Fire Protection Plan agreed to by Park City and the Applicant following months of discussion and analysis. This Plan served as the basis for the ultimate design of the Treasure Hill Project.

#### **D. 2004 CUP Application.**

The January 13, 2004 CUP Application and the applicable vesting of 394,000 net square feet of residential space, 19,000 gross square feet of commercial space and all of the additional square footage then permitted under the 2003 LMC.

#### **E. 2004 Legal Directive.**

In an April 9, 2004 memorandum to the Planning Commission, Mark Harrington, Park City's then City Attorney, again stated that "Square footage and floor areas for the Unit Equivalents (UEs) are calculated as provided in the Land Management Code and Uniform Building Code adopted by Park City, **at the time of application.**" (emphasis added)

#### **F. 2005 Staff Report.**

The March 9, 2005 Staff Report by Kirsten Whetstone notes that the 2004 CUP Application complies with all of the applicable MPD Development Parameters and Conditions, all of the CUP Standards for Review, and almost all of the 15 CUP criteria (collectively, the "Approval Requirements"), including the following:

- “The revised Treasure Hill CUP plans comply with the approved density and all development is contained within the identified development parcels.”
- “The current Treasure Hill CUP plans comply with the clustered development concept approved with the Sweeney MPD.”
- “The current Treasure Hill CUP plans comply with the cluster concept approved with the Sweeney MPD.”
- “The Current plans comply with the MPD open space requirements.”
- “Staff has determined that the revised plans for Treasure Hill CUP comply with the height and elevation standards approved with the Sweeney MPD.”
- “The current Treasure Hill CUP plans comply with the Park City General Plan regarding location of medium density resort related development.”
- “The revised Treasure Hill CUP plans are consistent with [previously approved] heights and volumetrics.”
- “Meeting space and support commercial (10% of the total approved floor area) per Land Management Code (15-6-8) is allowed per the MPD, in addition to the 19 UEs of commercial uses. Additional square footage is allowed for back of house and other ancillary uses, such as storage, mechanical, common space, etc.”
- “...the location of buildings on the site, grading, slope retention, cliff-scape designs...complies with the site design and site suitability criteria of LMC Section 15-1-10, although specific conditions of approval will be required to address details of the grading plan, cliff scape design, retaining walls, and other elements of the site plan.”

Directives to the Applicant and the Planning Commission in the 2005 Staff Report included:

- Addressing mitigation of construction and traffic impacts
- Addressing maintenance, snow removal, and pedestrian access on Lowell and Empire.
- A more detailed review of the architectural concept.

**G. 2006 Staff Report.**

The April 12, 2006 Staff Report by Patrick Putt recommends “that the applicant prepare preliminary architectural drawings for each of the proposed buildings which illustrate size, building form and massing, roof shapes, exterior details including materials, window to wall ratios, decks, plaza/outdoor spaces, retaining walls, etc., for Planning Commission review as part of its’ action on the conditional use permit.” Notwithstanding Mr. Putt’s request for additional

architectural details, he concludes that the “plans being reviewed currently for the CUP illustrate that the MPD development parameters have been met.” In summarizing Treasure Hill’s entitlements Mr. Putt also notes that in addition to 197 residential UEs and 19,000 square feet of “Commercial Density”, Treasure Hill is entitled to additional Support Commercial equal to 5% of the gross floor area of Treasure Hill and additional Meeting Space equal to 5% of the gross floor area of Treasure Hill.

Based upon Staff’s acknowledgement in the March 9, 2005 Staff Report that the 2004 CUP Application complied with all of the Approval Requirements other than three of the 15 CUP criteria<sup>1</sup>, that the Applicant was entitled to the additional square footage under the 2003 LMC, including 5% additional square footage for Meeting Space and 5% additional square footage for Support Commercial space, and the directive to develop preliminary architectural plans to further illustrate compliance, the Applicant spent approximately \$1,000,000 on architectural drawings and engineering analysis for Treasure Hill.

As the CUP review process progressed after 2006, the preliminary architectural drawings, which provided greater detail and clarity regarding Treasure Hill, resulted in an additional 167,880 square feet being added to Treasure Hill.<sup>2</sup>

#### **H. 2009 Staff Report.**

After all of the updates and refinements made to the design of Treasure Hill between 2004 and 2008 with input from and at the direction of Planning Staff, and after an investment by MPE of approximately \$2,000,000, the April 22, 2009 Staff Report prepared by Katie Cattan (the fourth of five different planners assigned by the City to Treasure Hill), reversed the City’s prior position on essentially all previous submissions by MPE. For the *first* time, it also questioned the method for calculating Support Commercial. For all intents and purposes, this Staff Report reflects the end of the refinement of the design of Treasure Hill through the CUP process. Although communications continued after 2009 concerning parking, traffic, and construction of Lowell and Empire, the Applicant continued to pursue approval of the Treasure Hill CUP based upon the 2004 CUP Application, as refined between 2004 and 2009.

#### **IV. Square Footage.**

The square footage calculations for Treasure Hill are based upon the UEs established by the 1986 MPD Approval and the square footage and floor areas established by 2003 LMC, which is the approach required and endorsed by the 1985 MPD Approval, the 1985 LMC, the Park City Attorney, the Planning Staff, and Utah statute.<sup>3</sup> In accordance with section 15-6-8(A) and (E) of the 2003 LMC, the Applicant and Staff agreed that each Residential Unit Equivalent is equal to

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<sup>1</sup> The 3 unsatisfied CUP criteria will be addressed in later hearings.

<sup>2</sup> The bulk of this additional square footage primarily represents the design and inclusion of Support Commercial, Meeting Space, and associated accessory space related to additional Support Commercial equaling 4% of the gross floor area of Treasure Hill and additional Meeting Space equal to 2.4% of the gross floor area of Treasure Hill.

<sup>3</sup> Utah Code Ann. § 10-9a-509(1)(a)(i) (“An applicant who has filed a complete land use application . . . is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete . . .”).

2,000 net square feet of floor area and each Commercial Unit Equivalent is equal to 1,000 gross square feet of floor area.<sup>4</sup> As addressed in detail in previous Positions Statements and Presentations made by the Applicant to the Planning Commission, based upon these criteria and the directions of Staff, the Applicant has calculated square footage for Treasure Hill follows:

<b>Vested Square Feet</b>	<b>Authorization</b>
393,911	Residential UEs of 394,000 UEs
17,470	Commercial UEs of 19,000 UEs
26,726	4% of the possible 5% additional Support Commercial <sup>5</sup>
16,127	2.4% of the possible 5% additional Meeting Space <sup>6</sup>
136,191	Accessory Uses – No Specific Restrictions <sup>7</sup>
173,320	Circulation – No Specific Restrictions <sup>8</sup>
245,063	Parking
<b>1,008,808</b>	<b>Total<sup>9</sup></b>

This square footage is authorized by the 1986 MPD Approval and the 2003 LMC. It is reasonable in the context of what is required to make Treasure Hill a functionally integrated and profitable operating project, and it is reasonable in the context of what Park City has permitted for other similar developments based upon calculations using the same codes.

**V. Conclusion.**

[Text to come.]

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<sup>4</sup> Insert reference to Pat Putt’s email and other support for agreeing to 2,000/1,000 calculations.

<sup>5</sup> Section 15-6-8(C) of 2003 LMC. For the purpose of calculating additional Support Commercial square footage under this Section, the Applicant has advised Staff that all of Treasure Hill, like most resort developments, will be designed to operate as a Hotel or Nightly Rental Condominium with various ownership structures. In addition, as provided in the 2003 LMC, the calculation is based upon above-grade gross square footage of 673,922.

<sup>6</sup> Section 15-6-8(D) of 2003 LMC. For the purpose of calculating additional Meeting Space square footage under this Section, the Applicant has advised Staff that all of Treasure Hill, like most resort developments, will be designed to operate as a Hotel or Nightly Rental Condominium with various ownership structures. In addition, as provided in the 2003 LMC, the calculation is based upon above-grade gross square footage of 673,922.

<sup>7</sup> Section 15-6-8(D) of 2003 LMC.

<sup>8</sup> Section 15-6-8(A), (D), (F) and (G) of 2003 LMC.

<sup>9</sup> This amount reflects the removal of the mine exhibition and its corresponding 8,069 square feet of commercial and support commercial space.