



DATE: November 3, 2017

SUBJECT: Treasure Hill Properties' Rights to Place Excavated Materials, Preliminary Response to Staff's Claims about May 1985 Fact Sheet, and Responses to City's Working Issues List

1. Rights to Place Excavated Material as Proposed.

The Applicant has rights to place excavated material as proposed under its Special Warranty Deed With Possibility of Reverter ("Deed") to the City and its agreements with Vail.

Pursuant to Section 9 of the Deed, a copy of which is attached hereto as Exhibit A, the Applicant and its successors have the unconditional right to "[t]o use the Open Space Parcel as a depository for excess fill generated from construction (in connection with duly issued building permits) in conjunction with the Sweeney Master Plan" Section 9 provides for the City's engineer to work with the eventual developer about regrading, runoff and erosion control, replacement of topsoil, and revegetation, demonstrating that all parties were aware of the substantial nature of the deposit of excavated material on the hillside. The Deed, including Section 9, was reviewed and approved by the City's Attorney. Thus, the City knowingly and voluntarily accepted the Deed to the open space on the express condition that the Applicant be permitted to deposit excavation material on the open space as necessary to complete development of the Hillside Properties.

Additionally, the Applicant also has rights to place excavation material on portions of Vail's property should the need arise. Attached hereto as Exhibit B is a copy of an agreement between the Applicant (and related entities) and Vail's predecessor-in-interest, Greater Park City Company, providing in Section 3 that the Applicant and its successors may "place excess excavation material on upper Payday as shown" in an attached exhibit. The referenced exhibit identifies the large location on the Payday ski run where such excavation material may be placed.

2. The City Misrepresents Numerous Aspects of the May 1985 Fact Sheet.

2.1 The City Still Has Not Provided the Applicant or the Public with a Complete Set of Relevant Materials and Previously Presented an Incomplete Set to the Commission.

The Applicant is providing this preliminary response to the numerous and myriad misstatements made by Staff regarding the May 1985 Fact Sheet in its report dated October 11, 2017. However, the Applicant previously requested all documents in the City's possession relating to the 1985 Fact Sheet and related submissions, the response to which was due on October 19,

2017. While there have been recent discussions about the City producing records, the City has so far failed to produce records in response the Government Records Access and Management Act requests submitted to the City in late August. Until the City makes a complete production to the GRAMA request and the Applicant is able to review all of the related documents and information, this response is necessarily incomplete and preliminary. Nevertheless, substantial available information demonstrates that Staff’s conjecture, speculation, and assumptions are baseless.

Moreover, whether due to ignorance or something more nefarious, Staff has presented a partial and incomplete set of documents in several respects.¹ First, while Staff touted that the May 1985 Fact Sheet was an exhibit to the SPMP, Staff ignored that the reference specifically included “subsequent amendments” to that Fact Sheet. Even though the SPMP explicitly informed Staff that additional relevant documents exist, Staff did not bother to locate or review those documents before jumping to numerous conclusions about the May 1985 Fact Sheet and how it supposedly informs various topics under consideration. As discussed below, there were numerous subsequent versions of the Fact Sheet provided to the City leading up to the SPMP approval. Those subsequent versions omitted all of the portions of the May 1985 Fact Sheet that Staff found so critical to its speculative assumptions.

Second, Staff provided incomplete copies of related documents in its October 11 Staff Report. Specifically, the May 1985 Fact Sheet was actually a summary document of a much larger and longer submission to the City, the details of which are discussed below. Staff cherry-picked portions of the full report and included only those portions that appeared to corroborate its erroneous speculation and conclusions. Staff failed to provide the Commission and public with a full copy of the accompanying submission, which included numerous exhibits providing important context for the May 1985 Fact Sheet and full report. As discussed below, these exhibits to the complete report demonstrate that both the report and the summarized version in the May 1985 Fact Sheet offer little to no guidance in the interpretation of the SPMP.

2.2 Staff’s Speculation and Assumptions about the May 1985 Fact Sheet Are Baseless and Demonstrate an Apparent Effort by Staff to Subvert the CUP Process.

As with just about everything in life, context matters. When it comes to historical documents submitted to the City prior the SPMP approval, context matters a whole lot. Yet Staff presented the May 1985 Fact Sheet without any historical context, poaching isolated statements and charts from their context and then drawing wild conclusions about them.

The May 1985 Fact Sheet was part of a starting point for arriving at acceptable master plan parameters. Notably, in the master plan process, the intent was not to submit specific building

¹ Staff was not even forthcoming about how it located the May 1985 Fact Sheet. In its October 11 report, Staff suggested that it had deliberately sought out the information “to research additional consistency with the MPD.” (p. 52.) But that is misleading. The only reason that Staff was looking for the May 1985 Fact Sheet is because the Applicant asked the City to do so in its GRAMA request. The impetus behind the efforts to locate the May 1985 Fact Sheet was the Applicant, not Staff’s supposed desire to verify “consistency.” Staff’s dissembling raises troubling questions about its motives.

plans for approval (nor was that the result), but rather the intent was simply to work with the City on various design concepts toward the mutual goal of arriving at a master plan approval with acceptable parameters.

Unlike current Staff, which was not involved in the negotiations and discussions in 1985 and 1986 leading to the SPMP approval, the Applicant's principal, Dr. Pat Sweeney, was personally and directly involved. More to the point, Dr. Sweeney authored the May 1985 Fact Sheet, related submissions, and subsequent revisions. Dr. Sweeney was involved in the process before and after the submission of Fact Sheet, knows the provenance of the information in the Fact Sheet, and was involved in the extensive proceedings subsequent to the Fact Sheet, including the submission of the Woodruff drawings. Simply stated, there is no witness in a better position to contextualize the May 1985 Fact Sheet than Dr. Sweeney. Yet, before submitting the October 11 Staff Report to the Commission or making a number of sweeping conclusions about it, Staff never bothered to contact Dr. Sweeney—even to let him know that the City had located the document (which the Applicant had requested months earlier). Had Staff bothered to approach Dr. Sweeney first, much of the misinformation Staff later peddled to the Commission and public could have been avoided. Regrettably, Staff chose the cavalier approach instead.²

As even Staff admitted during the October 11 hearing, the May 1985 Fact Sheet was a very early, preliminary submission to the City proposing multiple alternative to develop the entire area that was eventually included in the SPMP—not just the Hillside Properties. The May 1985 Fact Sheet and its accompanying full report were preliminary starting points for discussion with City officials and look nothing like what was ultimately approved in the SPMP *after more than 17 months of additional negotiations following the submission of the May 1985 Fact Sheet.*

Of course, had Staff been neutral and objective in its assessment of the materials, it would have taken the time to understand that the May 1985 Fact Sheet was nothing more than one of many proposals considered (and rejected) by the City and that the development proposed in the May 1985 Fact Sheet bears no resemblance to the development approved in the SPMP. Instead, Staff adopted an advocacy role, pushing a crowd-pleasing—though demonstrably wrong—view of the May 1985 Fact Sheet.

A simple review of the materials Staff cherry-picked from the full report immediately demonstrates the place of the May 1985 Fact Sheet in the broader discussions that were then ongoing. The very first line of the Introduction to the complete report, from which the Fact Sheet was excerpted, states that the “document presents *a* development concept.” (Sweeney Properties Master Plan Proposal, May 15, 1985, p. 1, Exhibit C hereto (emphasis added).) Thus, it was clear

² Incredibly, Staff claims to “interpret” the Fact Sheet to reach several erroneous conclusions despite having never discussed the Fact Sheet with its author, Pat Sweeney. The one person who knows the intent and meaning of the Fact Sheet—including the context in which it was prepared and submitted to the City—is the one the person Staff has failed to consult about these issues. Stated bluntly, Staff is neither empowered nor equipped to “interpret” the Fact Sheet or to draw any conclusions about the meaning or intent of the Fact Sheet.

That Staff is ill-equipped to “interpret” the Fact Sheet is well demonstrated by the numerous errors in Staff's analysis.

that the report and May 1985 Fact Sheet related to “a”—that is, just one—proposal. *That* proposal was the one detailed in the report and Fact Sheet—and it looks nothing like the concept approved in the SPMP. The information in the May 1985 Fact Sheet pertains to that singular proposal set forth in the documents—a proposal that was ultimately rejected by the City. It does not relate to subsequent proposals, of which there were many. There is simply nothing to suggest that the 1985 Fact Sheet had the significance claimed by Staff.

Likewise, the second sentence of the Introduction explains that the proposed development concept “has been modified from the August 24, 1984 version to reflect changes resulting from preapplication discussions with the Park City Planning Staff.” (*Id.*) Thus, it is clear that the May 1985 submissions, including the Fact Sheet, were part of an evolving, dynamic, back-and-forth, give-and-take process with the City about the best way to develop the Hillside Properties. There is nothing in the May 1985 Fact Sheet or the longer report that suggests that anything proposed in May 1985 submissions will be binding or unchanged in future discussions. In fact, the content and context suggest the opposite.

The fluid and constantly changing nature of the discussions in the May 1985 time period is further confirmed by the report accompanying the May 1985 Fact Sheet. That report proposed “[a]n alternative plan which would not require rezoning the Hillside Properties” that was “based on the construction of a road from the Lowell-Empire switchback to Upper Norfolk Avenue.” (p. 7.) Thus, when the May 1985 Fact Sheet was submitted, the basic development concept for the Hillside Properties had not been settled upon. Various alternatives—vastly different in concept and scope—were still being considered. Given the early and preliminary state of the discussions and negotiations, it is inappropriate for Staff to poach isolated statements out of context and suggest that what amounted to brainstorming has some bearing on the final approval.

Although Staff concedes that information in the May 1985 Fact Sheet contradicts the eventual approvals in the SPMP (i.e., the number of residential UEs), Staff attempts to minimize these discrepancies. Where Staff apparently favors the information in the May 1985 Fact Sheet, Staff “finds” that such information is controlling. However, when information in the May 1985 Fact Sheet is inconvenient, Staff “finds” that information to be irrelevant. Of course, Staff has made these determinations based solely on its preferred outcome, not based on any objective facts and evidence.

2.3 The May 1985 Submissions Contradict the SPMP in Numerous Ways.

In reality, the discrepancies between the May 1985 submissions and the SPMP approval are substantial and irreconcilable.

For example, the May 1985 submissions contemplated a very different development concept. At the time, the Applicant only sought “a height increase to 40 and 50 feet” on the Hillside Properties “to allow dense clustering.” (p. 7.) However, as the SPMP approval demonstrates, the clustering concept was vastly expanded in subsequent iterations. Staff later recommended increased height envelopes to 98 feet for the Creole site and 55 feet for Mid-station—more than double the height requested in the May 1985 submissions for the Creole site. While the City Council eventually reduced those heights to 75 and 45 feet, respectively, the enormous difference between the development concept described in the May 1985 submissions and the concept

approved in the SPMP demonstrates that the specifics of the May 1985 Fact Sheet have no bearing on the questions currently before the Commission. But Staff ignored this.

Additionally, had Staff actually reviewed all of the exhibits to the full report accompanying the May 1985 Fact Sheet,³ particularly the proposed site plans, it would have immediately understood the vast differences between what was proposed in May 1985 and what was eventually approved in October 1986 in the SPMP. Those site plans, attached hereto as Exhibit D, propose developments on the Hillside Properties that have no resemblance to the concept approved in the SPMP, including the development concept depicted in the Woodruff drawings.⁴ For example, the proposed buildings on the Creole site are oriented differently, are disconnected from the Mid-Station site, and generally look nothing like the Woodruff drawings. Whereas the Woodruff drawings show an integrated development of the Hillside Properties, as the May 1985 report explains, the May 1985 proposal separated the Mid-Station development from the Creole development by a “550 foot driveway.” (p. 8.) Yet again, Staff ignored these discrepancies.

2.4 Following the May 1985 Submissions, the Applicant and the City Considered Numerous Other Concepts and Submissions. The May 1985 Submissions Were Just One Idea Among Many Proposed and Considered.

There were numerous additional submissions and meetings subsequent to the May 1985 Fact Sheet during which substantial changes were made to the application. Indeed, just a few months after the submission of the 1985 Fact Sheet, the City held additional meetings with the Applicant and discussed the “evolving concept” of the project, as summarized in a letter from the City to the Applicant. (July 18, 1985 Letter from City to MPE, Exhibit E hereto.) The City also proposed a contract zoning approach in that correspondence. That letter closed by referencing another future meeting about the application.

The Applicant responded by letter dated August 12, 1985 (Exhibit F hereto), in which the Applicant further described the evolving discussions about the fluid development concept emerging from the discussions. Specifically, the Applicant thanked the City for its “idea of looking at more of a high-rise approach in the Creole Mine Site . . . subject to specific guidelines which would allow several possible development alternatives.” The Applicant also suggested the parties continue to discuss the concept of contract zoning that the City raised in its prior letter.

³ Staff stated during the presentation on October 11, 2017, that the May 1985 Fact Sheet makes references to two phases for both the Creole and Mid-station sites but that Staff did not understand what that referred to. Had Staff read the full report in its entirety—including the exhibits—it would have been clear to Staff what that reference was to.

⁴ It should be noted that while the May 1985 Fact Sheet is identified as an exhibit to the SPMP, the Woodruff drawings are listed as an exhibit before the Fact Sheet. While the SPMP (and numerous subsequent representations by City officials) made it clear that the Woodruff drawings were merely for the purpose of testing volumetrics on the site, and not a restriction on future designs, it is evident that the City approved a development of the size represented by the Woodruff drawings, not the proposed development associated with the May 1985 Fact Sheet.

The parties continued to work on the development concept for several more months, including a needed exception to the height limitations to make the clustered development approach feasible.

Eventually, the Applicant submitted numerous additional versions of the Fact Sheet that eliminated statements about *all* of the areas Staff found so interesting about the May 1985 Fact Sheet. For example, the Applicant submitted a Fact Sheet on December 23, 1985, that contained numerical proposals only for the residential and commercial UEs. (*See Exhibit G hereto.*) There is nothing in the December 23, 1985 Fact Sheet about how much square feet is allotted to lobbies or how the commercial UEs were determined.

Notably, the December 23, 1985 Fact Sheet demonstrates there had been numerous versions and iterations of the Fact Sheet since May of that year. The December 23, 1985 Fact Sheet shows that earlier revisions were made to that form of the Fact Sheet on December 5, December 3, November 12, September 23, and August 12. Of course, Staff knew that there had been revisions to the May 1985 Fact Sheet—after all, the SPMP said so—but Staff did not wait to have all of the relevant information before jumping to all manner of erroneous conclusions based on a superseded submission. Staff’s handling of the May 1985 Fact Sheet is deeply distressing.

Additionally, it should be noted that while the various versions of the Fact Sheet are referenced in the SPMP, the Woodruff drawings, which were prepared well after the May 1985 Fact Sheet, are listed as the *first* exhibit. Although the Woodruff drawings were not intended to constrain the ultimate design of the development, they were intended to provide a general approximation of square footage and height in order to arrive at Height Zones, UEs, open space requirements, and parking requirements. As the Applicant has demonstrated before, the Woodruff drawings depict a development of approximately 875,000 square feet, which would necessarily include far more square footage than Staff interprets the May 1985 Fact Sheet to contemplate. If Staff’s interpretation of the May 1985 Fact Sheet is correct—and to be clear, there is nothing to suggest it is—then the Woodruff drawings wholly supersede the Fact Sheet.

2.5 Staff’s Speculation about the Meaning of the May 1985 Fact Sheet Fails a Basic Reality Check.

Staff suggests that the May 1985 Fact Sheet limits the lobby and circulation space of the development to just 17,500 square feet. (Staff Report October 11, 2017, p. 55.) Of course, that suggestion defies common sense.

A simple “reality check” on that claim demonstrates its patent absurdity. As Staff recognized, the May 1985 submissions proposed 207 residential UEs. If the plan was a simple double-loaded corridor, the most efficient layout possible, with 30-foot deep bays on either side of the hallway and consisted of 414,000 square feet of residential space (207 UEs at 2,000 s.f. per UE), the hallways could be no wider than 2.54 feet without exceeding the purported 17,500 square feet allowed for hallways. The minimum code requirement for a hallway is 3.5 feet. Thus, the absolutely most efficient arrangement would not allow enough space for code compliant hallways. Further, the hotel front desk would have to be located outside, since no space would remain for an actual lobby and there could be no stairs. The entire project would have to be on one level, which would violate the open space requirement in the master plan.

This simple calculation readily demonstrates that the numbers and charts in the May 1985 Fact Sheet were not intended to represent a final or complete development proposal. As demonstrated above, the May 1985 Fact Sheet and full report were very early, preliminary ideas for how to develop the Hillside Properties. The Applicant and City continued to work for a year and a half—through multiple other concepts and designs—before settling on the concept represented in the SPMP.

3. Staff’s Claim that the May 1985 Fact Sheet Reveals that the 19 Commercial UEs Were Based on the Support Commercial Allowed Under the 1985 Land Management Code Is Based on a Misreading of the Code.

Staff claims now that the 19 UEs of allotted commercial provided in the SPMP are the only commercial space the applicant is allowed. This is the third different position Staff has taken on the issue since 2006. Staff’s original conclusion—that the Applicant is entitled to additional support commercial and meeting space under the 2003 LMC—is correct for the reasons the Applicant has explained many times before.

Staff now suggests that the May 1985 Fact Sheet proves that its third and latest position on this issue is correct because the Fact Sheet shows the 19 UEs were “derived from” the expected residential UEs “which triggered the a maximum of 5% of support commercial spaces (supported by the 1986 Land Management Code).” (Staff Report October 11, 2017, p. 54.)

Staff’s claim that the 1985/1986 LMC only allowed for 5% support commercial is demonstrably false. In fact, the 1985 LMC allowed for 10% support commercial, rendering Staff’s assumptions and conclusions palpably wrong. Section 10.9(i) of the 1985 LMC provided that “[w]ithin any Master Planned Development” up to “10% of the total gross floor area may be devoted to support commercial facilities.” Not only was the allowed amount 10% and not 5%, but the calculation was made based on “total gross floor area,” not just the residential floor area permitted under the allotted UEs. Thus, Staff’s conclusion that a cryptic line in the May 1985 Fact Sheet somehow limits the Applicant to only 19 UEs of commercial space and prevents the Applicant from taking advantage of the additional support commercial allowed under the 2003 LMC is baseless. Of course, the Applicant has provided numerous additional reasons it is permitted additional support commercial space under the 2003 LMC, including, but not limited to, the fact that state statute mandates it and the City’s attorney repeatedly assured the Applicant that it was permitted such space. These points have been made in numerous prior submissions to the Commission and City and will not be repeated here.

4. The Applicant’s Responses to the City’s “Working Issues List.”

Staff previously provided the Applicant with a list of items it believed the Applicant needed to address based on Staff’s review of the meeting minutes. As the Applicant demonstrates below, however, the Applicant has already addressed all of those items. Below in black is Staff’s list and comments followed by the Applicant’s responses in red.

Working Issues List Treasure Hill CUP Application

The following list was extracted by City staff out of the adopted meeting minutes in order to highlight the issues that have not yet been resolved or fully responded to during the public hearings. This document does not supersede or change the official meeting record. Many of the same issues were raised at several of the public hearings and repeated by several Commissioners in differing variations. This list is not intended to represent an exhaustive list of issues and the Planning Commission may choose to add or revise this list.

June 8, 2016

- Appropriate square footage needs to be established
 - ✓ Project complies with Unit Equivalent and density approvals under Sweeney Properties Master Plan (SPMP).
 - ✓ Other floor areas and uses comply with 2003 LMC (*see, e.g.*, MPE Position Papers dated July 6, 2016; August 5, 2016; September 9, 2016; October 7, 2016; December 9, 2016; MPE Presentations dated July 13, 2016; August 10, 2016; September 14, 2016; October 12, 2016).
 - ✓ City's own analysis demonstrates the project is as efficient as other modern resorts (*see Exhibit W*).
 - ✓ 17.2 significantly improves an already efficient project (*see MPE Presentation, Project Comparisons Exhibit, September 11, 2017*).
- Environmental concerns (How have the Sensitive Lands Ordinance requirements been met for the Estate Zone?)
 - ✓ Sensitive Lands Ordinance does not apply
 - ✓ Project will not affect water quality (*see Constructability Assessment Report, June 26, 2017*)
 - ✓ Project will handle potentially contaminated soil consistent with state and federal standards and practices (*see Constructability Assessment Report, June 26, 2017*)
 - ✓ 17.2 further improves the project by significantly reducing the cliffscape area and requiring less excavation.

July 13, 2016

- Concerned with commercial space proposed intended to draw more people to the project as opposed to just servicing guests
 - ✓ All proposed commercial space is designed to primarily provide service to guests of the Project and not attract customers from other areas.
 - ✓ There is no basis for requiring project to exclude others from patronizing commercial tenants.
 - ✓ "Concerns" about project's "inten[t] to draw" others to the project is not based on any objective evidence.
 - ✓ Proposed commercial space complies with SPMP, 1985 LMC, 2003 LMC, and all other requirements.
- Applicant asked applicant to explain how the 52,000 square feet of commercial would not compete with Main Street.
 - ✓ This is not a requirement of the SPMP or 2003 LMC.

- ✓ The size, orientation, and location of the commercial areas of the project are designed so that they primarily serve the Project. Moreover, the customer experience of shopping and dining on Main Street will be fundamentally different from the experience at the resort. Additionally, the Project will provide additional bed base for Main Street and improved skiing for all of Old Town, particularly the beginner experience, with the obvious result of more business for Main Street and less vehicular trips to other base areas.
- ✓ 17.2 reduces the amount of support commercial sought.
- Concerns with amount of excavation, massing, and building orientation (neighborhood compatibility and impacts) (needs wrap-up discussion)
 - ✓ MPE has repeatedly responded to the “concerns” raised about these issues (*see, e.g.*, MPE Position Papers dated July 6, 2016; August 5, 2016; September 9, 2016; October 7, 2016; December 9, 2016; MPE Presentations dated July 13, 2016; August 10, 2016; September 14, 2016; October 12, 2016).
 - ✓ 17.2 further improves the project design in all of these areas.
 - ✓ SPMP addressed compatibility.
 - ✓ Building orientation was not specified in the SPMP.
 - ✓ Building massing was not specified beyond height zones, UE density, and open space requirement.
 - ✓ Excavation is inherent and was contemplated in the SPMP.

September 14, 2016

- Regarding building mass and bulk: Applicant requested to look at designing a building in such a way that honors the land and steps with the mountain; rather than cutting a huge bench into it and building a building. Asked if there a solution that lessens bulk, mass and other major issues.
 - ✓ These statements appear to reflect a misunderstanding of the applicable legal requirements.
 - ✓ The current design honors the land by concentrating all of the density into a very small footprint, leaving the rest as open space. That was the findings and conclusions of the SPMP—even with all of the excavation necessary, it is still far less than what would have happened without the SPMP.
 - ✓ To the extent practicable, the current design attempts to “step with mountain,” with the tallest buildings pushed back against the hillside while locating the stepping on the upper portions of the buildings where it is most visible (as opposed to under the buildings where you cannot see it).
 - ✓ The Woodruff design is not feasible and was never intended to represent the final design. The current design is a feasible plan implementing the basic concepts of the Woodruff analysis scheme while taking into account the realities of fire access and skiing through the project.
 - ✓ Stepping of the building bases up the hillside as shown in the Woodruff scheme does not mitigate building mass and bulk. In fact, it does the opposite and requires that building mass and bulk be pushed forward and upward due to the height zone limits with the result of the tallest portions of building

- being located closest to adjacent neighborhoods.
 - ✓ The belief that stepping the lower portions of the buildings reduces apparent bulk and mass as visualized offsite is errant.
 - ✓ 17.2 brings stepping at the “top” of the buildings, where it makes a difference if you are viewing the project from offsite.
 - ✓ “Layering,” i.e., significant gaps between steps up the hillside mitigates building mass.
- Regarding the architect’s perspective: What specifically were the methods used to mitigate scale and mass (other than mass excavating to lower structures height about existing grade).
 - ✓ See the previous bullet point responses.
 - ✓ The project mitigates scale and mass concerns by breaking the density into multiple separate buildings, which provide for a varied visual appearance and sight lines through the project.
 - ✓ The project further mitigates scale and mass concerns by moving density back from the front edge of the site and pushing taller buildings as back against the hillside.
 - ✓ The project mitigates scale and mass concerns by tucking the bulk of the density into Creole Gulch, as contemplated in the SPMP.
 - ✓ The project likewise mitigates scale and mass concerns by utilizing space efficiently and by minimizing back-of-house and circulation space. As the City’s own analysis demonstrates, the current design is more efficient than any other comparable mixed use resort hotel/condo project approved by the City. 17.2 further improves the project’s design with respect to efficiency.
- Anything above the SPMP density will require an SPMP amendment (address amount of Support Commercial and Accessory Space)
 - ✓ MPE has extensively and thoroughly debunked the idea that any part of the application requires an amendment to the SPMP (*see, e.g.,* MPE Position Papers dated September 9, 2016; October 7, 2016).
 - ✓ The application does not seek any UEs beyond that allowed in the SPMP.
 - ✓ Nothing about what the Applicant has proposed requires an amendment to SPMP.
 - ✓ Staff misrepresented the amount of allowed support commercial in the 1985 Code.

October 12, 2016

- If the applicant believes they are entitled to more than the 19UEs of commercial space they need to better explain why.
 - ✓ Applicant is entitled to the 19 UEs of allotted commercial space and additional support commercial under the 2003 LMC.
 - ✓ Applicant has addressed this issue in multiple submissions without a direct response from Staff to numerous points raised in those submissions (*see, e.g.,* MPE Position Papers dated July 6, 2016; August 5, 2016; September 9, 2016; October 7, 2016; MPE Presentations dated July 13, 2016; August 10, 2016; September 14, 2016; October 12, 2016).
- Design is not inviting to the pedestrian: Commission commented that the

over-excavation causes a dramatically different pedestrian experience versus originally approved in the SPMP and as consistent with the rest of the zone re: the character and scale.

- ✓ The claims about the design not being inviting to the pedestrian is absurd considering the effort that has been made to make the project pedestrian and skier friendly.
 - ✓ The Woodruff drawings illustrate no pedestrian improvements or even allows space for such.
 - ✓ The City has made a deliberate decision to make the Lowell Avenue approach area unfriendly to pedestrians, explaining in detail why it decided against installing sidewalks on Lowell Avenue near the project in the Staff's report dated September 13, 2017. The City has made a decision to use pedestrians to create "friction" to slow traffic in the area.
 - ✓ The concerns about "pedestrian experience" are amorphous and subjective. By objective measures, the current plans are far superior to any prior for pedestrians due to the improved skier and hiker access to surrounding areas and attractions. The excavation is necessary to make these long-term pedestrian improvements.
 - ✓ The claim that cliffscapes/retaining systems lessen the "pedestrian experience" is not supported by objective evidence. Because the density in the current plans is broken up into separate buildings rather than amassed in one large building makes the pedestrian experience far superior. Smaller, separated buildings are more inviting for pedestrians than one large monolithic structure. Pedestrians can walk between and around the buildings in the current version whereas pedestrians would be forced to enter and traverse through larger, single, unbroken structures. Does the City believe that by constructing retaining walls around its offices at the Marsac Building to accommodate parking and a transit center that it has created a pedestrian unfriendly experience?
 - ✓ Ironically, the current plans are far more pedestrian friendly for reasons Staff has also criticized. According to a report titled "Creating Walkable Communities" hosted on the website of the Federal Highway Safety Administration,⁵ pedestrian friendly designs include "open spaces such as plazas, courtyards, and squares." Yet the Applicant has been criticized for incorporating these elements into its design.
 - ✓ Likewise, well understood pedestrian design principles "encourage a mix of land uses," including locating residential and commercial "in close proximity to each other." This is exactly what the proposed plans provide, yet the Applicant has been criticized for doing so.
 - ✓ The Woodruff drawings made no provisions for pedestrians whatsoever and failed to provide for adequate pedestrian emergency egress (if the City's interpretation of those drawings is to be credited).
- Commission commented regarding being sensitive to the hillside to step it up the slope rather than benching it out and building up on the platform. Questioned whether the massive excavations that go beyond the limits of

⁵ https://safety.fhwa.dot.gov/ped_bike/docs/marc.pdf.

disturbance are consistent with SPMP and code.

- ✓ Applicant has addressed this issue without a direct response from Staff to Applicant's positions (*see, e.g.*, MPE Position Paper dated January 6, 2017).
- ✓ Staff has presented confusing and contradictory information on the limits of disturbance issue. On one hand, Staff has taken the position that the "limits of disturbance" are defined by the "building area boundary" on Sheet 22 of the Woodruff drawings. But Staff has simultaneously acknowledged, including at the CUP hearing on October 25, 2017, that the SPMP specifically and expressly provides that the definition of the project's limits of disturbance will be "deferred until conditional use review." (SPMP Staff Report, p. 14.) Obviously, nothing on Sheet 22 was intended to define the limits of disturbance since the SPMP made clear that issue would be addressed in the future.
- ✓ Staff's apparent current position—that nothing can be temporarily disturbed in the area zoned Recreation Open Space—contradicts the way the City has treated that land itself. The City disturbed acres of land in the ROS zone when it constructed a water line through the property recently. Clearly, the City's current position cannot be correct or the City itself violated it. The contradictory and discriminatory treatment highlights the infirmity of the City's current position.
- ✓ The Applicant has provided additional information on the agreements it has with Vail and its rights under its deed to the City to place excavated material as proposed. Notably, when the City accepted the Applicant's land with express notice that the Applicant would place excavated material on a portion of the property, the City never objected or raised any concerns. The fact the Applicant expressly notified the City of that intent decades ago and the City accepted the dedication with that restriction without complaint demonstrates the parties' intent with respect to how the limits of disturbance would eventually be defined in the CUP process.
- ✓ The City approved the construction of five single family homes on the hillside portion of the SPMP using the open space within the platted lots and the adjacent ROS for driveways, retaining walls, utilities, regrading, and placement of excess excavation material which directly contradicts the staff's position regarding limits of disturbance as it pertains to the CUP application.
- ✓ To the extent feasible, the Applicant has attempted to design the project to have an appearance of stepping up the hillside by, among other things, placing taller buildings closer to the hillside.
- ✓ The more important consideration of building stepping from a height, massing, and bulk standpoint is not the stepping of the bottom of the buildings but the tops. The Applicant developed a series of "stepped" terraces for the proposed buildings to sit on. This is in consideration of creating phased, constructible, accessible, defensible, efficient buildings, which sit on underground parking structures and are in turn feasible and economic given the site and SPMP constraints. Stepping the buildings up the hill as shown in the Woodruff preliminary concept drawings will result in substantially equal (if not greater) site disturbance and will require significant disturbance well beyond the building area boundaries as well.

- ✓ For the various reasons previously explained, version 17.2 further improves on these areas.
- Commission commented that buildings at curve at Lowell and Empire Avenue to look nothing like the neighborhood and are not compatible.
 - ✓ Applicant has addressed this issue in several submissions without a response from Staff to Applicant’s positions (*see, e.g.*, MPE Position Papers dated August 5, 2016; September 9, 2016).
 - ✓ The basic compatibility of the project was already determined at the SPMP stage. (SPMP Revised Staff Report, p. 10, December 18, 1985 (The “proposed clustering approach was deemed the most compatible” of the alternative approaches presented for consideration.); *id.* at 2 (“[t]he uses proposed and general design of the project is or will be compatible with the character of development in the surrounding area.”).) The current design of the buildings near the curve is fundamentally the same as what was determined to be compatible in 1985. Staff has provided no response to this point.
 - ✓ There is no requirement for any building to “look like” the current neighborhood.
 - ✓ As Jody Burnett has instructed the Commission already, the determination of compatibility (among others), “must be understood and approached in the context of the findings adopted as part of the original approval of the Sweeney SPMP, . . . which specifically determined that the proposed cluster development concept and associated projects are consistent with the Park City Master Plan, the underlying zoning, is or will be compatible with the character development in the surrounding area.” (Jody Burnett Memorandum, April 22, 2009, p. 3.)
 - ✓ Likewise, the City’s attorney, Mark Harrington, has provided the same guidance to the Commission, noting that the determination of “Compatib[ility] with surrounding Structures in use, scale, mass and circulation . . . must be in the context of the density that is already approved **as specified in the SPMP versus particular CUP criteria.**” (Harrington April 9, 2004 Letter, p.2 (emphasis added).)
- Commission concerned with the time of completion and asked about how much blasting; noisy and disruptive construction activity; amount of construction truck traffic; number of construction employees; adequately protecting adjacent houses; storm-water run-off during construction; adequate water supply and all anticipated utility services; utility service installation impacts.
 - ✓ “Noisy and disruptive construction” is subjective—all construction activities could be so described.
 - ✓ Mitigation of all of these issues was comprehensively addressed in the Constructability Assessment Report submitted on June 26, 2017.
 - ✓ The Applicant expects to submit additional materials from Big D and others that will address these issues further.
 - ✓ Again, for the reasons previously explained, version 17.2 improves upon the prior version in many of these areas.
- Commission asked if sheet A16 was the full and final extent of excavation mitigation plans. Reiterated the same comments as to sheet

A18, project mitigators. Proposed mitigation needs to be brought up forward at this time. Wanted to know which of those project mitigators apply to direction to Criteria 8.

- ✓ As the Commission is aware, the Applicant has proposed numerous additional mitigation aspects beyond what are stated in sheets A16 and A18. The Applicant is working to compile all of the proposed mitigation commitments into a single submission.
- Commission requested updated infrastructure calculations - information appears out-of-date (Utility master plan requirement in SPMP).
 - ✓ These issues were comprehensively addressed in the Constructability Assessment Report submitted on June 26, 2017.
 - ✓ Although certain members of the Commission have requested additional detail about potential upgrading of utility lines upstream of the project, it is not feasible to provide the level of detail requested. Whether any given utility service will need to upgrade its service capacity is a function of demand for such services well beyond what the proposed project will contribute. The general background growth of the area will ultimately dictate when and if utility lines will have to be upgraded. Since utility upgrades may be necessary with or without the project, at most, the project will affect the timing of an upgrade (and even that is unlikely). However, given that the decision rests on numerous stochastic factors, the requested information is simply impossible to provide at this time.
 - ✓ This level detail is not required at the CUP stage—no other comparable project has been required to provide this level of detail in order to obtain a conditional use permit. Requiring the Applicant to provide such information as a condition of obtaining a conditional use permit would be discriminatory and violate the Applicant’s due process rights.
 - ✓ To the extent there was (or now exists) good reason for utility upgrades in the streets that access the project in order to provide for future potential needs (of not only the Applicant but others) and such upgrades were feasible, has the City Engineer not taken the initiative in doing so in advance of the recent roadway and utility rebuilds of both Lowell and Empire Avenues? Is the City Engineer not the person in the best position to do this particularly regarding interacting and influencing utility providers? Is it not the City Engineers responsibility as opposed to a private land owner? Why would the Applicant be presumed to manage public right-of-way, particularly, in retrospect. This is further perplexing when the least expensive proposition of reconstructing roads and associated in-ground infrastructure is to increase pipe size.
- Commission requested applicant to let the Planning Commission know and be clear for the record whether they plan to respond or not to their requests.
 - ✓ The Applicant has spent approximately 15 years anticipating (while working with the staff) and responding to the requests of the Planning Commission.
 - ✓ The Applicant has continually endeavored to respond to all of the Commission’s reasonable requests for information. Frankly, it is not often clear whether a Commissioner has formally requested information from the Applicant or simply remarked that certain information would be interesting.

Additionally, it is not often clear whether a Commissioner has formally requested information from the Applicant or has directed that request to Staff.

- ✓ The Applicant remains committed to responding to all reasonable and timely requests for information and requests that the Commission and Staff identify any requests they believe are outstanding.

November 9, 2016

- Commission requested images of cliffscapes in finished form.
 - ✓ The Applicant has provided an extraordinary amount of information and numerous images about the cliffscapes costing hundreds of thousands of dollars.
 - ✓ To expect more information than this is unreasonable and, as a practical matter, not feasible prior to final design and, even then, will have to be subject to actual encountered soils conditions and implementing agreed upon treatment options depending on the infield circumstances.
 - ✓ The Applicant has provided information about various treatment options for the cliffscapes, as well as the potential addition of aesthetic effects (like waterfalls, vegetation, etc.). In 2005, Staff described the Applicant's submission on these issues as "fairly extensive plans." However, neither Staff nor the Commission have provided any meaningful feedback or guidance about these design proposals for the cliffscapes.
 - ✓ This is not a requirement at the CUP stage—no other comparable project has been required to provide this level of detail to obtain a conditional use permit. This differential treatment raises serious concerns for the reasons explained previously.
- Commission asked if there a Vail representative that can agree to the soil acceptance; maybe attend one of the public hearings?
 - ✓ All the excavation material (assuming 17.2 is the approved plan) will be placed on the projects property.
 - ✓ The Applicant addressed this issue above.
- Commission commented nothing in plans that mitigate noise (construction), dust and other impacts. (Is the applicant planning to submit additional information with specificity to address concerns?)
 - ✓ All of these issues were comprehensively addressed in the Constructability Assessment Report submitted on June 26, 2017.
 - ✓ The Applicant expects to submit additional materials from Big-D and others that will address these issues further.
 - ✓ Again, for the reasons previously explained, version 17.2 improves upon the prior version in many of these areas.

December 14, 2016

- Commission concerned about site impacts related to slope retention and appropriateness of structures to the topography.
 - ✓ Applicant has addressed this issue in without a response from Staff to

- Applicant's positions (*see, e.g.*, MPE Position Papers dated October 7, 2016).
- ✓ The SPMP and the attachments incorporated into the SPMP Staff Report contemplated that a significant amount of excavation would be necessary in order to cluster the density at the site selected by the City during the SPMP process. For example:
 - building heights were established relative to “mean sea level” because everyone understood the existing grading would be substantially altered (SPMP Staff Report p.4);
 - the SPMP makes explicit reference to anticipated “cut and fill” necessary to construct the buildings (SPMP Staff Report p.6);
 - the SPMP makes explicit reference to “site disturbance” and noted that all of the alternative development plans would have resulted in far more excavation (SPMP Staff Report p.14);
 - the proposed development plan, because it is part of the broader strategy outlined in the SPMP Staff Report, honors the Hillside Properties far better than any of the other proposed alternatives.
 - ✓ To the extent the Commission is concerned about the engineering aspects of building on the slope, those issues have been addressed in the Constructability Assessment Report submitted on June 26, 2017, the presentation of Big-D, and the presentation by Applied Geotechnical Engineering. The geotechnical work has confirmed that the underlying bedrock is ideal for constructing a project of this type and that slope stability is not an issue. In other words, objective, scientific evidence has been presented on this topic to the Commission, and that evidence demonstrates that slope stability is not a problem.
 - ✓ The Applicant expects to submit additional materials from AGECE addressing some of these issues.
 - ✓ Again, for the reasons previously explained, version 17.2 improves upon the prior version in many of these areas.

January 11, 2017

- Commission asked how is storm run-off addressed?
 - ✓ This issue was comprehensively addressed in the Constructability Assessment Report submitted on June 26, 2017.
 - ✓ Ultimately, this issue will be addressed at the final design stages of the project. It is premature to expect that all of the final design issues will be resolved at the CUP stage.
 - ✓ This is not a requirement at the CUP stage—no other comparable project has been required to provide this level of detail to obtain a conditional use permit.
 - ✓ Storm run-off during construction is addressed through the Storm Water Pollution Prevention Plan (SWPPP) that is a requirement at the State level and is also noted as a requirement for building permit. Post- construction storm run-off is addressed in the Constructability Assessment Report.
- Commission asked how is the applicant discouraging people from using Empire and Crescent Tram?

- ✓ This and broader transportation issues have been comprehensively addressed in the numerous submissions by the Applicant’s traffic engineering professional, including in the most recent submission on July 26, 2017 (*see also* MPE Position Paper dated September 8, 2017).
 - ✓ The project, as well as the rest of SPMP and associated amenities, provide project residents and guests, and, in addition, residents and guests of much of the Historic District many options other than to use motorized vehicles on City streets.
 - ✓ The Applicant’s traffic engineer has identified areas where signage could be placed to control the flow of vehicles to the project.
 - ✓ The project will eventually use numerous methods to communicate the preferred route of travel to and from the project, including through websites, social media, and written literature/brochures.
 - ✓ Ultimately, the control of traffic flow on the streets is an issue the City must address. If there are concerns about these issues, the City can certainly take action to address them.
- Commission inquired about off-site pedestrian staircases: Where do we need staircases and where we don’t? Update requested. (Address off-site pedestrian connectivity).
 - ✓ The Applicant has offered to complete the 6th and 8th Street stairs.
 - ✓ The Applicant has also offered to clear snow on the Crescent walkway other than where the ski trail crosses it. Because of right-of-way constraints, conflicting easements of record, in-the-ground utilities, and inherent grades (both for skiers and pedestrians), it is not feasible for the Applicant to construct a tunnel under the ski run.
- Commission on snow removal and storage: If the City is going to own snow removal and snow storage would like to understand a better plan than “make it a priority”. (*Note: The May 15, 1985 Sweeney Properties Master Plan Fact Sheet and Unit Breakdown specifies: “No additional City Streets to maintain”, and “[n]o additional City snow removal responsibilities”.*)
 - ✓ First, the City should be doing all necessary snow removal outside of the project boundaries as conditions currently stand.
 - ✓ Secondly, the Commission directed this question to the City, not the Applicant.
 - ✓ The parenthetical is a misrepresentation of the Fact Sheet. One of the main advantages to a clustered development approach was avoiding the construction of new City streets across Treasure Hill. The statements in the Fact Sheet simply point out that a clustered development approach would not add any new snow removal obligations for the City because no new streets would be constructed. The Applicant never suggested it would be responsible for snow removal on existing City streets other than directly adjacent to the project as required by City ordinance.
 - ✓ Version 17.2 provides for snow melt on the project and a 10-foot area for snow storage at the project frontage within the Lowell/Empire right of way, from which piled snow will be removed by the Applicant as necessary.
- Commission questioned limiting access to support commercial: Is there a

way to have patrons be limited to use a room card for commercial transaction for control?

- ✓ There is no basis in the SPMP, the applicable City code, or the CUP factors to impose any type of limitation on access to the commercial spaces in the project.
- ✓ Any such restrictions would be a substantial economic burden on the project and the commercial uses.
- ✓ Any condition limiting access to the commercial uses in this way would be unreasonable and out of proportion to any expected benefit. For example, this limitation would prevent patrons of the ski resort from buying a cup of coffee, having lunch at the project, or purchasing a pair of sunglasses from the apparel shop.
- ✓ The City has never imposed this type of restriction on any other development, and it would be manifestly unjust to impose it here.
- ✓ Such a restriction is patently unreasonable.
- Commission on snow melting stations on site: Is it a possibility?
 - ✓ Version 17.2 provides for snow melt on the project and a 10-foot area within the right of way for snow storage, from which piled snow will be removed by the applicant as necessary.
 - ✓ Such a system has never been implemented by the City nor required of other property owners to serve public right-of-ways.
- Can the use of Crescent Tram be prohibited for guests, employees, and operations of the Treasure Hill proposed development?
 - ✓ It would be discriminatory and illegal to treat those associated with the project differently from other members of the public regarding the use of City streets. However, it is within the City's authority to generally restrict the flow of traffic on the streets in a nondiscriminatory manner.
 - ✓ The project will prohibit deliveries, employees, employee shuttles, and courtesy vans from using Crescent Tram.

March 8, 2017

- Commission requested an updated emergency traffic and fire protection analysis to current codes.
 - ✓ On more than one occasion, staff indicated that responsible officials from the Fire District would make a presentation to the Commission about these issues and staff would make the arrangements. The Applicant expects the City to follow through with its commitment. More recently, in a meeting on October 23, 2017, Staff indicated it does not think it is now necessary. If staff has changed its mind and would like the Applicant to ask the Fire District to speak at a Planning Commission hearing regarding this issue, the Applicant will make such a request. Obviously, it will be up to the Fire District if they will oblige.
 - ✓ The Fire Department has issued a letter to the Applicant stating that design is feasible from a fire protection standpoint.
- Commission on parking: Need to understand off-site (neighborhood

impacts) parking in conjunction with on-site parking. Needs to be part of the parking analysis: Is the parking updated also an addendum or is it part of the transportation update? Parking is important to be reviewed concurrently with the traffic update.

- ✓ The Applicant has agreed as mitigation beyond that required by the SPMP to forfeit the right of its residents, guests, and employees to park on nearby City streets. The operator of the development will use best efforts to promote and enforce this restriction. The City by not issuing necessary permits and enforcing existing ordinances can effectively further enforce this restriction.
- ✓ The Applicant has provided its proposed number of parking spaces and demonstrated that the number of spaces requested is consistent with the SPMP and the applicable City code. Staff has not contradicted that position or provided any material feedback about parking issues.
- ✓ The Applicant has demonstrated that the proposed parking is appropriate and reasonable under well-established industry standards (*see* Triton Engineering Report dated July 26, 2017; MPE Position Paper dated September 8, 2017).
- ✓ The Commission has provided conflicting guidance on this issue, with some Commissioners suggesting the proposed parking is insufficient while others have suggested the opposite.
- ✓ The proposed parking is similar that of other comparable projects.
- ✓ The ultimate developer will be required to propose a parking management plan as a condition to the building permit, which can be reviewed with the City on a periodic basis.
- Planning Commission requested a briefing on the past Planning Commission discussion to lower parking requirement from 424 to 366.
 - ✓ This request appears to have been directed to City Staff, not the Applicant.
 - ✓ The ultimate developer will be required to propose a parking management plan as a condition to the building permit, which can be reviewed with the City on a periodic basis.
- Commission concerned with Finding of Fact #5 from master plan (5. *The required parking can readily be provided on-site and in enclosed structures.*), and how the applicant has not demonstrated it. Concerned that applicant has not shown how they would manage parking on-site.
 - ✓ The Applicant has demonstrated that the proposed parking spaces are a reasonable expectation of parking demands based on well-established industry standards (*see* Triton Engineering Report dated July 26, 2017; MPE Position Paper dated September 8, 2017). This analysis has not been challenged.
 - ✓ The ultimate developer will be required to propose a parking management plan as a condition to the building permit, which can be reviewed with the City on a periodic basis.
 - ✓ The plan details are many and speak for themselves regarding driveways, associated lobbies, loading, etc..
 - ✓ It is not feasible to provide more specifics at this time.
- Commission does not know specific uses of the commercial space on the site. Can't determine if it would draw additional traffic, adequacy of mitigation measures, proper evaluation.
 - ✓ The Applicant also does not know the specific uses of the commercial space at

this time. Although the Applicant can provide reasonable examples representing the general types of establishments that would make sense for the project, ultimately it will depend on a host of currently unknowable factors and, regardless, it will change from time to time subject to general restrictions in place. These educated assumptions are adequate for analysis under generally accepted engineering standards.

- ✓ Committing to specific commercial uses is not required at the CUP stage. No other CUP applicant has been required to provide this information in order to obtain a conditional use permit.
- ✓ The Applicant's traffic engineering professional made several worst-case assumptions about traffic that could be associated with the commercial uses and determined that there was still more than adequate capacity to handle any such traffic (*see* Triton Engineering Report dated July 26, 2017; MPE Position Paper dated September 8, 2017).
- Commission on parking management plan concerns because the applicant has not demonstrated how they will manage on-site parking (need for a parking management plan) due to the draw of additional traffic of guests that are not over-night guests due to:
 1. Support commercial. Space approved at 19 UEs (19,000 sf.) not 52,000 sf.
 2. Meeting space: 16,000 sf. of proposed space.
 3. Miniature ski base: The potential of day skiers accessing the runs from the new development to avoid crowds at PCMR ski base.
 - ✓ The Applicant disagrees with the statement regarding support commercial for the reasons expressed previously, as identified above.
 - ✓ The Applicant's professional traffic engineer has established that the proposed parking is more than sufficient for the support commercial and meeting space in the hotel. Indeed, based on well-established industry standards, which are based on comprehensive studies, the parking needs of hotels with these types of amenities is well understood. The proposed parking conforms with these industry standards (*see* Triton Engineering Report dated July 26, 2017; MPE Position Paper dated September 8, 2017).
 - ✓ As the Applicant has repeatedly stated, day skiers will not be allowed to park at the project whatsoever.
 - ✓ The ultimate developer will be required to propose a parking management plan as a condition to the building permit, which can be reviewed with the City on a periodic basis.
- Commission concerned with three (3) outlined items and how they related to employee parking in Old Town and taking the cabriolet up without specific management plans/ideas from applicant (how to control employees). Because of location in Old Town, this needs to be thoroughly addressed.
 - ✓ The above bullet point assumes an unreasonable ability to predict the future and control employees beyond what is feasible and legal.
 - ✓ The Applicant subsequently addressed these issues in its updated submission on parking and traffic (*see* Triton Engineering Report, July 26, 2017). The Applicant has proposed specific mitigation measures relating to employee traffic and parking based upon specific conditions (i.e., ski season, local

- events).
- ✓ The ultimate developer will be required to propose a parking management plan as a condition to the building permit, which can be reviewed with the City on a periodic basis.

April 12, 2017

- Commission requested:
 - More info on landscaping plans to buffer impacts to neighbors
 - ✓ The Applicant has provided extensive detail and presented numerous times regarding its landscaping plans, including landscaping to separate the project from the neighborhood. It is not clear to the Applicant what additional information has been requested or what information is believed to be missing from what has already been submitted or what possible information relevant to a CUP approval information could be missing.
 - ✓ Comparable projects were not required to provide this for CUP approval. Instead, this level of detail is not usually required until final building permit approval. No explanation has been provided for treating this application any differently than others of a comparable nature.
 - More detail about the cliffscapes
 - ✓ This issue is addressed above. See notes associated with November 9, 2016, issues.
 - More information about the administrative (landscaping) guidelines that will be enforced against during a later approval process
 - ✓ This request seems to be directed to Staff, not the Applicant.
- Commission inquired about noise mitigation of snowmaking.
 - ✓ As the Applicant has previously explained, the project will generally comply in all aspects with the City's noise ordinance. Because the City's noise ordinance defines what constitutes a detrimental effect, there will be no cognizable detrimental effects, the Applicant has nothing to mitigate.
 - ✓ Snowmaking is already approved and has been operating in the area for a number of years without serious problems.
- Commission inquired about compliance with dark-sky standards for all lighting including glare through windows. A photometric plan would be helpful to assess impact on adjacent properties.
 - ✓ It is premature to discuss a possible photometric plan as this requires final design, which is not a requirement of the CUP process.
 - ✓ The Applicant has repeatedly agreed that the project would comply with all applicable City ordinances and with guidelines from the International Dark Sky Association regarding outdoor lighting.
 - ✓ Because the City's ordinances establish what constitutes a detrimental effect, and because the project will comply with all applicable ordinances, there are thus no detrimental effects to further mitigate.

June 14, 2017

- Commission asked about mitigating how people come in to use the

commercial. Suggest again, using a room key for all transactions.

- ✓ This issue is addressed above. See notes associated with January 11, 2017, issues.
- Commission on cabriolet: parking problems? Take away from business? Create congestions? Location of construction workers drop off and impacts? Traffic route displacement? How is the construction work going to function? Closed gondola would be better than the open cabriolet as it could detract people in a winter storm. More cabriolet details needed.
 - ✓ Various Commissioners precise concerns about the cabriolet were not well articulated during the June 14, 2017, hearing. It is not at all clear why Commissioners would speculate that the cabriolet would result in parking problems given that the cabriolet is designed to alleviate such problems.
 - ✓ With respect to construction issues, the Big D presentation suggested that the cabriolet is not expected or anticipated to play a significant role in moving construction employees to the site.
 - ✓ Many of the requested details are simply premature. For example, the eventual developer will have to work out operational issues in consultation with the City and other stakeholders. The details of its operation will likely depend on how the cabriolet is ultimately used by the public, guests of the project, day skiers, and others associated with the project. The Applicant has already proposed that the cabriolet be enclosed (which technically makes it a standup gondola). This will effectively mitigate noise coming from the gondolas as well as make them more user friendly during inclement weather.
 - ✓ Although many details must be worked out in the future, it is important to understand that the City's traffic engineer generally agrees that the cabriolet will significantly mitigate trips to and from the project. Thus, it is unnecessary to know the details of its operation to understand that it will help mitigate traffic issues.

July 12, 2017

- Commission on excavation expansion rate. Need to know why disagree with staff's estimated exaction expansion percentage. Need to know if Vail is ok with using their land to displace dirt and how much (specifically) they approve. Questions Creole-Gulch area as the primary dumping ground, conservation agreement, tree cut down, topsoil scraped off, etc.
 - ✓ AGEC's initial analysis demonstrates that the expansion rate will be approximately 20-25%. The Applicant expects to provide AGEC's final analysis in the near future. It is important to understand that AGEC's expansion analysis is based on significant testing and sampling at the site and bona fide expertise, not based on what some generic website claims to be the expansion factor.
 - ✓ With respect to the other issues, the Applicant will provide further information about its agreements with Vail and its right to place excavated material on the property it gifted to the City.

- Commission requested specificity needed for the entire project, not general info such as the Questar Gas letter example, e.g., how big will the pipes be, how far down Lowell, how far out 224 will it have to go before it taps into a source of gas that's big enough to supply all of that. How many roads will we need to tear up, etc. Need to have geo-technical assurances regarding the project not sliding down.
 - ✓ With respect to the questions about utilities, these issues are addressed above. See notes associated with October 12, 2016, issues.
 - ✓ AGEC addressed the unfounded concern about the project "sliding down." As AGEC representatives explained, the underlying geotechnical conditions are highly conducive to the proposed design and construction plan. AGEC's conclusion is based upon extensive sampling and testing conducted in the area. Notably, nobody has contested AGEC's findings.

August 9, 2017

- Applicant to answer construction employee estimate: How many people are showing up on that work site?
 - ✓ Big-D explained that there could be up to 600 construction employees on-site at a given time, though that would represent a peak number.
 - ✓ During periods that are less conducive to construction, such as during the winter months, Big-D explained that a much smaller workforce would likely be used.
- Applicant to address traffic discussion that took place in the past, regarding traffic flow, roads to be widened, sidewalks, street parking, snow storage, etc.
 - ✓ Mr. Horton addressed these issues exhaustively in both his written submission, as well as during his presentation to the Commission. In particular, Mr. Horton explained the historical discussions with the City regarding a variety of different options and alternatives, his understanding of why City officials made certain decisions, and his own views and opinions on those issues as a long time professional traffic engineer. Based on the written submissions and presentations to the Commission, the Applicant believes that it has adequately addressed these issues. However, if there are particular issues that require additional discussion, the Applicant would be willing to address them.
- Applicant to verify all calculations on final traffic study.
 - ✓ As Mr. Horton explained during his presentation, the calculations in his written submission have all been verified.
- Applicant to verify parking demand (from the Triton study). The 200-unit hotel with commercial and meeting space takes less parking than 100 condos, and considerably less than half as much commercial space.
 - ✓ The Applicant has confirmed the park spaces required for the project.
 - ✓ The Applicant has demonstrated that the proposed parking is appropriate and reasonable under well-established industry standards (*see* Triton Engineering Report dated July 26, 2017; MPE Position Paper dated September 8, 2017).

- ✓ The Applicant has also demonstrated that the proposed parking is consistent with the SPMP and applicable City codes. Notably, nobody has suggested otherwise.
- After seeing the revised plan. Commission will look for specific numbers in terms of the amount of dirt that's reduced, the amount of truck trips applicant thinks that it reduces, and what other impacts applicant thinks that mitigates and by how much.
 - ✓ The Applicant presented on these topics during recent CUP hearings. The Applicant believes that it has addressed these issues during those presentations, but again, if there are particular issues that require additional discussion, the Applicant would be willing to address them.
 - ✓ The Applicant explained in the MPE Presentation on September 13, 2017 Presentation, dedicated to the effect of the 17.2 refinements, that version 17.2
 - results in a significant reduction in excavation, which reduces the effects of such activity;
 - substantially reduces the cliffscape area and heights;
 - reduces the total floor area of the project;
 - reduces support commercial area;
 - eliminates two buildings closest to the cliffscape area; and
 - improves numerous other aspects of the proposal.