Issues: Mojave Village

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I have reviewed the proposed Conditional Use Permit and Development Agreement. The questions and suggested changes below are intended to clarify the agreement, make sure the commitments being made are actually reflected in the document, and reduce the possibility of different interpretations years from now. Council discussion, public input, and staff responses may identify additional issues that also need to be addressed before the agreement is finalized.

The memo identifies 40+ issues, ranging from simple drafting corrections and requests for clarification to substantive changes and several additional protections I believe should be considered.

Even if all of these issues are satisfactorily addressed, I still have concerns about the underlying project. Those include:

- The overall density and number of units. At full buildout, this development alone could house a population equivalent to close to 10% of Ivins' current population.
- The large number of very small lots. This is a new zoning approach for Ivins. I would be more comfortable starting with fewer small lots, giving us an opportunity to see how this type of development actually works and to address any problems before approving it on this scale again.
- Development on highly visible sensitive hillside land. Even with limits on disturbance, this is land where development will be particularly visible and where mistakes will be difficult to undo.
- The visual effects of grading and retaining walls. The amount and appearance of grading, cut and fill, retaining walls, and revegetation could have a significant effect on how this hillside ultimately looks.
- Traffic and infrastructure impacts. I want to better understand both the project's impacts and how they interact with other anticipated development in this area.
- Premature disturbance of the property. I don't want substantial portions of the property graded or otherwise disturbed years before they are actually ready to be developed.

At the same time, there are features of the proposal that I think deserve careful consideration, including the residential buffering around the relocated STR area, lower building heights on the estate lots, limits on disturbance of the hillside, the contribution toward Chinle Park, sidewalks and pedestrian connections, and wider streets.

This memo isn't a statement of support or opposition to the project. It is my attempt to make sure that, if the Council ultimately approves it, we understand exactly what is being approved and that the

Development Agreement accurately reflects the protections and commitments on which that approval is based.

PURPOSE

#A: Does “Applicable Laws” mean the laws as they exist when the agreement is signed, or laws as amended during development? Either way, I’d like that clarified in the agreement.

#B: I want this to be absolutely unmistakable. Are we saying that approval of this agreement eliminates the ability to build the original 160 STR units in their old location and substitutes the 160 units on Parcel A one-for-one? I don't want there to be any possible interpretation someday that both locations retain STR rights.

#D: Why are we calling this ‘small housing’? Wouldn't it be more precise to say ‘3,000-square-foot or larger lots for detached single-family homes’?

#E: Just a drafting correction: I think we're missing a comma and an ‘and’ after the list of exhibits.

#F: I'm confused by ‘the City is willing to allow Developer to develop with the Modified Standards.’ Aren't at least some of these Modified Standards, such as the 18-foot height limit, additional restrictions Lance is agreeing to rather than something the City is allowing him to do? Should we distinguish between exceptions we're granting and additional restrictions he's accepting?

#F: Bryan, can you confirm that all this is saying is that any Chinle Cliffs obligations that apply to this same land continue to apply? And if this agreement and the Chinle Cliffs agreement ever conflict, which one controls?

#F: Do we need another condition here saying that required technical, engineering, grading, traffic and sensitive-lands review must be completed, and any resulting requirements incorporated into the final plans or exhibits, before this agreement becomes effective? Or are those adequately protected somewhere else in the agreement?

TERMS

#1: This says the Developer Obligations are those in effect when an application is submitted for each phase. Does that mean a phase developed ten years from now would generally be subject to the City requirements in effect ten years from now, rather than everything being frozen today?

#1: And since each phase is treated as a separate subdivision, does that mean each phase still goes through the normal subdivision, technical and engineering review required at that time?

#2: I like the explicit statement that no overnight rentals are allowed in Parcels B or C. Is that strong enough to permanently limit STRs under this agreement to Parcel A? And this document uses both "overnight" and short-term" as does our city code. Should be pick one term for this agreement and define it clearly?

#3: I have a concern with 'in any sequence Developer chooses.' Why should the sequencing be entirely at the developer's discretion? I don't want us creating a situation where large portions of the 64 acres can be disturbed years before they're actually going to be developed.

#3: Can we require a City-approved phasing plan and limit grading and land disturbance to the active phase and infrastructure reasonably necessary to serve that phase?

#3: If land is disturbed for a phase and then development stops, can we require stabilization or revegetation within a specified period?

#3: This allows temporary turnarounds and loop roads. At what point do the permanent road connections have to be completed? I don't want 'temporary' infrastructure becoming semi-permanent.

#4: Drafting correction – 2^{nd} line – "…described in this agreement…" add "for"

#4 a: what does 'proceed forward in a timely manner' actually accomplish? Does that phrase create any enforceable obligation? If it doesn't, should we either define what it means or take it out rather than have language that sounds like a protection but really isn't?

#4: Exactly what are we vesting here: the zoning and development standards, or are we also vesting the layout, density and unit count shown in the exhibits?

#4: I like that this expressly says engineering review can change the road and lot configuration and result in fewer lots. Is there anything elsewhere in this agreement that could nevertheless be interpreted as an entitlement to exactly 374 units (or is it 369 units – see my comment in Exhibit B)?

#6: Bryan, help me understand Section 6 in light of Utah Code 10-20-508(2)(a)(i), which says a development agreement may not limit a municipality's future authority to enact a land-use regulation. Section 6 seems to say that some future City regulations won't apply to Mojave Village. What's the distinction?

- For example, suppose five years from now we adopt a citywide ordinance imposing stronger grading, dust-control or construction requirements on every new development in Ivins. Would those new requirements apply to a future phase of Mojave Village, or could the developer say Section 6 exempts them?

- I'm also trying to reconcile Sections 1 and 6. Section 1 sounds like future phases may be subject to requirements in effect when their applications are submitted. Section 6 sounds like some regulations adopted after this agreement won't apply. Which is it?

EXHIBIT B – PROJECT DETAILS

Total lots:

- Exhibits C & E – Lots and disturbed area for parcel B: The table and the site plans show 14 lots, not 19 lots. But Exhibit B says parcel B is 19 lots. We also received at some point a site plan showing 19 lots. If it is 19 lots these site plans and the table need to be revised.
- Should these numbers say 'up to' 160, 19 (or 14) and 195, or otherwise make clear that Exhibit B doesn't create an entitlement to exactly 374 (or 369) units units?
- Instead of "small housing units" say detached single-family units."

Open space:

- Shouldn't this state the actual maximum disturbance permitted on the estate lots, or at least expressly reference the disturbance limits and mapped disturbance areas elsewhere in the agreement? 'Only partially disturbed' doesn't give us an enforceable number.
- Should this even be labeled 'Open Space'? Isn't this really 'Undisturbed Area' or 'Disturbance Limitations' on privately owned lots?

HOA, CC&Rs:
Unless some City-required obligation depends on an HOA or CC&Rs, I suggest striking these two items.

Public amenities:
What does "Public Amenities: Chinle Cliffs and Arrowhead Park" actually mean? Lance's project narrative specifically identifies the $835,840 park contribution, assistance constructing the roadway serving the park, sidewalks on both sides of all roadways, and direct pedestrian connections to the park. Shouldn't the agreement or an incorporated plan identify these commitments specifically?

Private amenities:
Should we clarify that those amenities are included within the allowed disturbance area.

Water, sewer, storm drain, roads, trails:
What does "Ivins City" mean in these rows? I don't want this inadvertently suggesting the City is responsible for constructing or paying for project infrastructure. Should this specify the developer's construction responsibility and, where applicable, City ownership, operation or maintenance after dedication and acceptance?

Landscape buffer:

This describes larger lots along portions of the perimeter, but it doesn't actually establish a landscape buffer. Also, buffering shouldn't depend on whether adjoining private property is currently developed. Some estate lots on the west side border existing homes or other private property that could later be developed residentially, while R-1-3 lots on the east side also border private property.

- Should we require a landscape buffer wherever the Project adjoins private property and define what that buffer actually consists of?

EXHIBIT C – PROJECT SITE PLAN

Parcel B:

- Corrections: should be "a Large Estate Lot of approximately 10 acres" and "subject to disturbance limitations"
- I read the first sentence as imposing the 18-foot height limit on all of Parcel B, including the Large Estate Lot. But the next sentence says the house, barn and other improvements on the 10-acre lot are permitted consistent with RE-12.5 and the City Code. Could that be interpreted as allowing that large lot a 25 foot height limit allowed by code?
    - Maybe clarify with something like "All primary and accessory buildings within Parcel B, including the Large Estate Lot, shall be subject to a maximum building height of eighteen feet (18'), notwithstanding the otherwise applicable RE-12.5 standards."
- The agreement allows a barn, corrals and equestrian/recreational amenities on the approximately 10-acre lot. Should we define this more carefully? Do they and their associated grading count toward the lot's maximum disturbance area? What height, setback, outdoor lighting and other standards currently apply to those structures and uses, and given the hillside location, are those standards sufficient or should we establish additional standards in this agreement?

Parcel C:

- Change to "…consisting of lots for detached single-family homes subject to…"

Parcels B & C:
No short-term rentals allowed - See my comment under Terms #2.

General site plan question:
I understand that engineering may require roads and individual lot lines to move. But are the boundaries and general locations of Parcels A, B and C binding? In particular, can Parcel A expand or move through administrative/engineering review, or would that require Council approval and an amendment to this agreement? And will the residential buffering shown around Parcel A be preserved, so future engineering or administrative changes cannot materially reduce or eliminate that separation?

EXHIBIT E – PARCEL B MAXIMUM DISTURBANCE AREA

The exhibit still contains the placeholder saying the Parcel B Maximum Disturbance Areas are "to be prepared and attached," even though a disturbance table is attached. Should the placeholder be deleted and the agreement confirm that the attached table and final disturbance map constitute Exhibit E?

EXHIBIT F – MODIFIED STANDARDS FROM APPLICABLE LAW

Maximum height: This says the maximum height of all "primary buildings" is limited to 18 feet. What about barns or any accessory buildings?

Disturbance limitations:

- "Lots within Parcel B shall minimize fill slopes and predominately build structural pads by cutting out the natural slope." "Minimize" and "predominately" don't paint a clear picture for me. Can we get more specific about what is actually required?
- "Some fill slopes may be allowed if still needed…" This also is subjective. Who determines when fill slopes are "allowed" and under what standard? Should there be more specific limitations on the amount or height of fill that can be used?
- Retaining walls can be up to 9 feet high stepping up a visible hillside. Is that what we intend? Should we ask staff to evaluate the visual impact and whether additional limits on the total height, number of tiers, spacing between tiers, or visibility are appropriate?
- "All fill slopes shall be revegetated and screened with trees and bushes." Should this be more specific about the required revegetation and screening, and when it must be completed?
- Retaining walls must be rock consistent with existing rock or colored concrete that blends with the hillside. I'd like staff to weigh in on this. Is exposed rock actually the preferred treatment on these hillsides, or can rock retaining walls themselves become visually prominent? What materials, colors and construction methods would best blend into this particular hillside?

Privacy walls:

- Why are we regulating these walls based on distance from the property line rather than their relationship to the approved disturbance area? The way this is written may work visually for most of the lots, but it seems that at least the two largest lots could be a problem. A privacy wall only 10 feet inside the property line on one of those lots could enclose a very large area and become a significant visual feature on the hillside. Should privacy walls instead be required to stay within the approved disturbance area?
- I'm also concerned about the sentence saying that everything within a privacy wall is considered disturbed, even if the native landscape isn't actually disturbed. An important benefit being presented with these estate lots is that roughly 60% of the land will remain undisturbed, which should substantially reduce the visual impact of development on the hillside. But if large

portions of that land can be enclosed by privacy walls and simply counted as disturbed, aren't we potentially losing much of that visual benefit? Wouldn't it be better to require privacy walls to remain within the approved disturbance area?

- The underlying principle becomes very simple: if preserving the natural hillside is one of the benefits of the proposal, the DA should protect the appearance of that natural hillside.

EXHIBIT G – CITY OBLIGATIONS

#1 – “Allow development”: Is this too broad? Should this make clear that development remains subject to all required subdivision, engineering, technical and other reviews, etc.?

EXHIBIT H – DEVELOPER’S OBLIGATIONS

Section I #8: Does that address land that is graded before construction of the phase actually begins? My larger concern is preventing portions of the property from being disturbed substantially in advance of when they will actually be developed.

Section II #3: Section II #3: “Provide building height buffering” is a holdover from the prior agreement, which included a 25-foot height limit on perimeter units. Since that buffering concept no longer applies in the same way at the new location, shouldn't we simply change this to “Building height: Maximum building height of 35 feet”?

EXHIBIT I – STANDARD TERMS

#1 – Conflicting provisions: Since many of the specific project protections are in the exhibits, what is the risk of them being considered last?

#4 – Assignment: If Lance sells Parcel A, B or C to another developer, do all of the applicable obligations automatically follow that property and become fully enforceable against the new owner? I just want to make sure none of these protections depend on Lance remaining the developer.

ADDITIONAL ISSUES

Construction impacts: Exhibit H says the project will be constructed using “standard construction procedures.” Is that sufficiently specific for a project of this size? Before approval, should we know what existing City requirements will govern dust, construction hours, construction traffic and haul routes, blasting or rock excavation, temporary lighting, and stabilization of disturbed areas? I'm not necessarily suggesting that all of those need special standards in this agreement, but I'd like staff to tell us what protections already apply and whether there are any gaps.

Sidewalks: Lance has represented that sidewalks will be on both sides of all streets. Shouldn't we state this in the agreement?

Road widths: Lance has represented that the development will have 43' and 55' roads, wider than would otherwise be required. Shouldn't we state this in the agreement and which roads are 43' and which are 55'?

Road serving Chinle Park: Lance's narrative expressly promises assistance constructing the roadway serving the park. The DA has Guy Lane construction obligations, but I'd want staff to confirm those provisions are exactly the promised park-road assistance.

Backyard for every STR unit: Lance's narrative specifically says every unit includes a private backyard. I don't see that promise in the DA.

Phasing among Parcels: The agreement allows the developer considerable flexibility in the sequence of development. Could all or substantially all of Parcel A's 160 STR units be built while Parcel C remains undeveloped? Should development of Parcels A, B, and C be tied together in some reasonable way so the project develops as a mixed residential/STR project?

Technical review before final approval: What technical work should be completed before the Council gives final approval to the Development Agreement? In particular, should we have completed or sufficiently advanced grading and drainage plans, a traffic analysis, sensitive-lands analysis, geotechnical information, utility/infrastructure review, and the final disturbance-area mapping before the agreement is approved?

Sensitive lands: If the project isn't going through a formal Sensitive Lands Committee review, what professional analysis and staff review will give us reasonable assurance that the proposed disturbance limits, grading, retaining walls, building pads and revegetation adequately protect the hillside and important views?

Additional density and public benefit: Under the existing approvals and agreements, this property could accommodate approximately 220 units: the 160 already-approved STR units and approximately 60 additional homes. This proposal would increase that to approximately 369-374 units. That is a substantial increase in density being requested from the City What additional public benefits are we receiving in return for that increased density? And should we consider negotiating an affordability or attainable-housing commitment for some portion of the additional housing?