

TMTH Traverse Mountain Area Plan Amendment City Council Report	
Applicant:	TMTH, LLC
Requested Action/Purpose:	Approval of a proposed area plan amendment
Date of DRC Review:	August 23, 2017
Date of Planning Commission Review:	October 26, 2017
Required Action	
Planning Commission:	Review and recommendation
City Council:	Final approval

APPLICABLE DEVELOPMENT CODE REGULATIONS

Section 04.010. Amendments to Lehi City General Plan; General Procedures.

- A. A proposed amendment to the Lehi City General Plan may be initiated by any property owner, any person residing in the City, any business owner, the Hearing Examiner, the Commission, the City Council, the Reviewing Departments, or the City Staff by filing an application for a General Plan amendment.
- B. If such amendment is approved pursuant to the provisions of this Code, the applicant may then proceed to file an application for development approval authorizing such development if such development is consistent with the approved General Plan amendment(s) as approved by the City Council.
- C. Submission. An application for an amendment to the Lehi City General Plan or General Plan Land Use Map may be filed with the City on the applicable application form as established pursuant to the provisions of this Code.

Section 04.020. Procedures for Amending the Lehi City General Plan Text and Maps.

- A. The City Staff/Reviewing Departments shall prepare a report within 21 days and not less than 7 days prior to the meeting with the Commission indicating whether the proposed amendment is consistent with the Elements of the General Plan, the effect of the proposed amendment on the existing goals, objectives and policies of the General Plan, and listing any revisions to this Code that would be needed to implement the proposed amendment.
- B. Prior to recommending the adoption, rejection or revision of any General Plan amendment, the Commission shall hold a public hearing in accordance with the procedures of this Code and the Utah Code, after receiving the report of the City Staff/Reviewing Departments and providing at least ten (10) days notice.
- C. After the Commission has reviewed the application and made its recommendation, the Staff shall submit a copy of the General Plan amendment as recommended by the Commission, the report of the Staff/Reviewing Departments, and the transcripts and/or minutes of the proceedings before the Commission to the City Council. Following receipt of a copy of the General Plan amendment recommendation from the Commission, and all other materials, the City Council shall schedule a public meeting to consider the Planning Commission recommendation for the proposed General Plan amendment. The City Council shall consider the proposed General Plan amendment and the recommendation of the Commission pursuant to the procedures established by this Code and the Utah Code including the required notice for a public meeting. The City Council shall approve the amendment, revise the proposed amendment and approve the proposed amendment as revised, or reject the proposed amendment. If the City Council approves the proposed amendment as submitted or as revised, the City Council shall adopt the General Plan amendment by ordinance.

Section 04.030. Criteria for Approval of General Plan Text and Map Amendments.

In considering a proposed amendment to the Lehi City General Plan, the applicant shall identify, and the City Staff, Reviewing Departments, Commission, and the City Council may consider the following factors, among others:

1. The effect of the proposed amendment on the character of the surrounding area;

2. Consistency with the General Plan Land Use Map and the goals and policies of the General Plan;
3. Consistency and compatibility with the General Plan uses of nearby and adjoining properties;
4. The suitability of the properties for the uses requested and their suitability for the uses identified by the General Plan;
5. Whether a change in the uses proposed for the affected properties will unduly affect the uses, or proposed uses for nearby and adjoining properties;
6. The gain to the public health, safety and welfare from the existing classification to the proposed amendment; and
7. The overall community benefit of the proposed amendment.

Section 06.010 Purpose and Intent.

The intent of the Planned Community Zone and this Chapter is to:

- A. Allow the City to encourage and facilitate more detailed and specific planning and analysis for certain areas of the City.
- B. Establish provisions and requirements which enable the City to address unique areas of the City or where other characteristics exist that warrant a comprehensive set of land use policies and standards which will encourage an efficient and imaginative development pattern.
- C. Provide an opportunity for flexibility from the constraints of traditional zoning and allow for development on a performance basis. Higher density and intensity of uses may be achieved as higher quality development and performance standards are implemented within the zone.
- D. Provide a consolidated and structured framework for the processing of preliminary and final subdivision plat(s), preliminary and final site plans, and other permits and licenses required by this Code.

An application for approval of a Planned Community Zone is a request by the applicant for additional flexibility beyond that allowed by the traditional zones within the City. It is the sole responsibility and burden of the applicant to convince the Planning Commission and City Council that the proposed Planned Community Zone is preferable to traditional zoning. Approval for use of the Planned Community Zone lies at the discretion of the City Council.

Section 06.020 Planned Community Description.

Each Planned Community Zone should include a cohesive mixture of land uses, including commercial and/or business park uses, which will provide services and employment opportunities to residents within the community. Residential uses should provide a range of housing types and densities to accommodate a variety of age and income groups and residential preferences, so that the community's demographic diversity is maintained. Commercial uses should focus on retail services for the residents of the community and must include a unifying design theme which compliments the residential areas. Residential and commercial land uses should be integrated to promote a walkable, sustainable community.

Development should promote creative lot configuration with usable public and private recreation areas, parks, trails and open space with assurance of maintenance. Preservation of open space and critical environmental areas is also highly encouraged through the use of clustering and other innovative development options where a standard lot pattern is not practical or desirable due to physical constraints.

Section 06.030 Design Compatibility.

Development within a Planned Community Zone should promote attractive, unified architectural design. Development should be planned as one complex land use with a common architectural design theme that provides variety within a context of architectural compatibility, rather than an aggregation of individual, unrelated buildings located on separate, unrelated lots. In order to ensure that development within the Planned Community Zone is compatible and meets the purposes of this Chapter, the Planning Commission may recommend and the City Council may require that certain design guidelines be employed as part of the approval of an Area Plan for a PC Zone. The design guidelines may include, but are not limited to, architectural controls, colors, materials, building mass, innovative design of buildings and access, and any other features deemed appropriate by the City Council. As part of the design guidelines for any Planned Community Zone each single family detached or attached dwelling shall include, as a minimum standard, an enclosed one (1) car garage.

Section 06.050 Allowed Uses.

Any use identified as a permitted or conditional use on Tables 05-030A, 05-030B and 05-030 C or other use proposed by the applicant may be an allowed use in the PC Zone; however each requested use must be authorized through an Area Plan which has been approved and adopted by the City Council pursuant to the provisions of Chapter 15, Area Plans, of this Code. Proposed uses will be reviewed for compatibility within the PC Zone as well as compatibility with allowed uses in adjacent zones.

Section 06.160 Variations from Development Code and Design Standards.

In the process of approving an Area Plan for a PC Zone, the Planning Commission may recommend and City Council may approve variations from applicable standards of this Code or the Lehi City Design Standards and Public Improvements Specifications Manual if all of the following conditions are met:

- A. That the granting of the variation will not adversely affect the rights of adjacent landowners or residents.
- B. That the variation desired will not adversely affect the public health, safety or general welfare.
- C. That the granting of the variation will not be opposed to the general spirit and intent of this Chapter or the General Plan.

Section 10.120(A)

Up to a one (1) year extension of a development approval may be granted by the Planning Commission and/or City Council (as applicable based on the body that granted the original approval) upon a finding that special circumstances exist that warrant such an extension.

Section 12-B.040(G)

A completion date must be provided. In no case can a grading permit be approved for a timeframe greater than one (1) year; however an extension may be requested if the project is not completed within the approval timeframe. All ex-tensions shall be as per Section 10.120 of the Development Code.

Section 15.040. Effect of Area Plan Approval.

If a proposed Area Plan is adopted by the City pursuant to this Chapter no development, permit or license, shall be approved unless such development, permit or license is consistent with and conforms to all the requirements of the adopted Area Plan, the Lehi City General Plan, and this Code in effect at the time of the application unless modified by the provisions and requirements of the adopted Area Plan and any associated documents.

An Area Plan shall remain in effect as adopted by the City, unless and until amended by an action of the City following the procedures for a General Plan amendment as identified in Chapter 04 of this Code. Further, and at the discretion of the City, an Area Plan may be adopted by the City, with an accompanying Development Agreement pursuant to Chapter 29 of this Code, identifying the terms of the agreement, including the effective period of the Area Plan and review and amendment procedures.

HISTORY

- May 27, 1999:** This property was annexed to Lehi City as part of the Low Hills Annexation.
- Dec 4, 2000:** The Fox Ridge Area Plan was recorded for what is now Traverse Mountain which designated Planned Community zoning to the subject property.
- Jan 24, 2012:** The City Council approved a comprehensive amendment to the Traverse Mountain Area Plan. This is the most current version of the area plan that regulates development in Traverse Mountain.
- Apr 13, 2017:** The Planning Commission reviewed a previous version of the Traverse Mountain West Canyon concept.
- June 8, 2017:** The Planning Commission recommended approval of the proposed West Canyon concept plan. The minutes from this Planning Commission are as follows:

Public hearing and recommendation of TMTH's request for a new submittal of the Traverse Mountain West Canyon concept, a 38.8-acre development located at approximately Gray Hawk Drive & Ravencrest Lane in an existing Planned Community zone.

The applicant Rob Clauson was available for questions from the commission. There was discussion about possible ways to mitigate the dust.

Chairman Peterson opened the public hearing on this item.

Rob Ludlow was in support of the concept, but was opposed to the conversion of flex density.

Yon Harris was against the concept.

Chris Kat was opposed to the concept

Dave Reeve was in support of the concept.

Amber Gyman was in favor of the concept.

Miguel Hymus was still concerned about the dust.

Kyle Humphry was if favor of the concept.

Jason Rickabaugh was opposed to the concept (lives in Draper)

Elias was opposed to the concept

Adrian Dubiod was opposed to the concept (lives in Draper)

Rachel Richardson is against the concept

Scott Wellson was in support, but did express concerns with traffic, and air quality.

Ky Nielsen was in support of the concept.

Jared Morgan, representing the Traverse Mountain HOA, said the board will consider and analyze all comments. He said they want to see parameters for dust mitigation put in place and ensure that those will be met.

Erin Faraclas is against it because of the air quality concerns.

Paul Hancock was in support of moving forward the concept to allow the developer to work out the concerns.

Chairman Peterson closed the public hearing.

Karl Karen clarified some questions about the Area Plan.

Motion: Commissioner Ellis moved to recommend approval to the City Council for of TMTH's request for a new submittal of the Traverse Mountain West Canyon concept, a 38.8-acre development located at approximately Gray Hawk Drive & Ravencrest Lane in an existing Planned Community zone; with the conditions that the environmental impact study and the dust mitigation study is done that show that the health and safety of the residents will be protected during the export of material to Geneva; include all DRC comments; noting that because of the school ground being donated and the export not being on residential streets that it is actually a benefit to the residents; and that any density transfers would need to be included in the Area Plan and not allow the flex zones. Commissioner Hutchings seconded the motion.

Chairman Peterson suggested adding that a re-vegetation plan would need to be done and all bonding would need to be in escrow bonds.

Commissioner Ellis wanted to add that Geneva Rock, or whoever is exporting material, must abide by terms in writing.

Commissioner Everett suggested adding that the detail needs to be in the fugitive dust plan and what the ramifications are in terms of what steps will be taken, not only in accordance with the non-attainment fugitive dust that they would be required to do, but would maybe be a compromise in working with the HOA and the residents to say that if they are inspecting this, then these are the expectations. He said it may not be enforceable, but it should at least be on the table to mitigate this as much as possible.

Commissioner Peterson said that the density transfers need to be specific in the Area Plan amendment.

Amended Motion: Commissioner Ellis amended his motion to include all of the above comments. Commissioner Hutchings seconded the amended motion.

Vote: Commissioner Ash, No; Commissioner Everett, Yes; Commissioner Ellis, Yes; Commissioner Nielsen, Yes; Commissioner Peterson, Yes; Commissioner Seegmiller, Yes; Commissioner Hutchings, No. The Motion passed 5-2.

June 27, 2017: The City Council approved the West Canyon concept plan, which contemplates an area plan amendment. The minutes from the City Council meeting are as follows:

Councilor Hancock reported that this item has been before the Council in some form or another in the past. He stated that he personally attended both Planning Commission meetings where it was discussed and has met with the developer. He feels that the reduced time line with one 6-month extension and the fact that the developer will donate a school and church site is better. He reported that they took a tour of the Geneva pit and saw how the conveyor system works. He stated that since this was originally proposed, many of the Traverse Mountain residents have come on board and are looking at this as a win-win for the community.

Motion: Councilor Hancock moved to grant Concept Plan approval of a new submittal of Traverse Mountain West Canyon, a 38.8-acre development located at approximately Gray Hawk Drive & Ravencrest Lane in an existing Planned Community zone; any density that is being proposed to be shifted will be called out as part of the required Area Plan amendment; minimize the grading on City property for contouring only; the developer should pay the \$300 park impact fee per unit on any transfer of density; ensure that no acreage is lost on the consolidated park and that it is actually developable and is flat.

Mayor Wilson questioned whether the City can require the developer to pay the park impact fees when density is transferred. Kim Struthers thinks that Councilor Hancock is referring to a private fee between the developer and the HOA. He thinks they could make recommendations or suggestions that happen, but he is not sure that the City can require that. Ryan Wood stated that the City has stayed out of that issue from the beginning. He thinks it is recorded on each lot but he can't answer to what happens when they move the density. Councilor Hancock stated that since this is Concept Plan approval, if they don't agree to that, there are opportunities to negotiate that with the developer during other stages of the development. Mr. Struthers stated that as part of the Area Plan Amendment the City can encourage them to amend the agreement with the HOA and highly encourage it.

Motion continued: Councilor Hancock continued his motion; in regard to the grading he wants the following: 1) a dust mitigation plan is put in place that is clearly defined to meet existing standards and the study that has been put out by the developer and ensure that the dust mitigation plan abides with the study; 2) put forth well defined hours of operation that are 7:30 AM to 7:30 PM with exception of Sundays; 3) that an agreement with Geneva be negotiated that outlines the three year time frame with a 1 time extension of 6 months; 4) put the payment to the HOA in writing if the extension is utilized;

5) put a bond in place for grading to ensure that the school and church pad are put in place. Notes in regard to the mining as far as findings, he feels that this places zero traffic on existing city roads as this is being pushed out on the developer's land and has no impact on city roads; that the Traverse Mountain community is receiving a school and church site; that the transfer of density is a significant benefit of not having more homes in this area; that the adjacent density with Winter Haven matches with the density adjustment to this concept plan; and that the developer is willing to contribute \$40,000 to a trailhead for the mountain biking system.

Mayor Wilson inquired if there is anything in the motion that creates an issue. Mr. Wood stated that his only concern is that some of these items are addressed in private agreements, Councilor Hancock stated that in regard to dust mitigation and the bond those can be enforced. Mr. Wood replied that they can. Councilor Albrecht seconded the motion.

Roll Call Vote: Councilor Revill, Yes, Councilor Hancock, Yes; Councilor Southwick Yes; and Councilor Albrecht, Yes. The motion passed unanimously.

July 11, 2017: The City Council discussed the approved concept plan for West Canyon in a pre-council meeting. The minutes from this discussion are as follows:

2.3 Discussion on the Traverse Mountain West Canyon Area Plan Amendment

Councilor Hancock stated that he would like to see certain contracts and obligations put in place before the Traverse Mountain Area Plan amendment moves forward. He stated that the Traverse Mountain residents are concerned with the bond, dust mitigation, the payment for density movement, and hours of operation for Geneva.

Councilor Condie reported that he appreciated the effort that Councilor Hancock went through to put the motion together that was passed at the last City Council meeting. He wants to ensure that City staff, City Council, and residents understand who is responsible for what, before the Area Plan amendment is considered. His concerns are as follows:

1. The payment to the HOA for the movement of density. A discussion was held regarding the \$300 payment to the HOA for density movement that would be used for parks – when would that payment be made and who would monitor it. Ryan Wood reported that would be a private agreement between the HOA and the developer. He stated that it can be put in the Area Plan amendment but the City won't enforce it. He stated that the City can verify and confirm that private agreements are in place but beyond that the City's role ends if they are breached.
2. Ensure that agreements are in place for the one-time six month extension and payment if that extension is used.
3. Ensure that the HOA has the authority to call the bond.
4. Ensure that the school and church sites are donated and graded. Councilor Hancock wants to ensure that if the developer doesn't build the church and school during the allotted time frame, that the properties go to the City.
5. Dust and noise control. A discussion was held as to how to mitigate dust and noise control and who would enforce them. The grading permit process and remediation of the site was also discussed.

Councilor Hancock feels that all of the things that Councilor Condie discussed need to be verified and resolved before final approval on the Area Amendment is voted on.

Dr. Elias Veraclas stated that his wife is an incoming HOA board member and he read some of her concerns with the project. She wants to see ongoing real time monitoring stations for the dust control and have it displayed on the HOA's and City's website. He expressed her concern of how to shut them down if the air quality is terrible. The primary motivation of the conveyor belt is to get the

material out fast and they don't feel that a typical mass grading operation is to move it fast. They are concerned as this is a mining operation and are concerned that this shifted from a volume based grading operation to time based grading operation. They are looking for an enclosed conveyor system. A discussion was held regarding the benefits of the reduced density versus the conveyor belt grading system. Mr. Veraclas stated that it doesn't appear that there is a good solution yet for people to become comfortable with. They want real time air monitoring and clear enforceable penalties to shut them down.

Jennie Kapp stated that in all the other meetings she has attended, they say at a 20 mph wind Geneva doesn't have to do anything to mitigate the dust. She wonders if the studies will take that into account and wondered what the average wind speed is in Traverse Mountain. She stated that it is the dust that they are worried about. Ryan Wood replied that they still have to do everything to mitigate the dust, whether the wind is blowing or not. A discussion was held regarding how Geneva would operate in high winds. It was discussed that if Geneva couldn't operate due to high winds, that they could possibly get a credit on the timeframe and have it extended the number of days that they couldn't operate due to the winds.

Nov 14, 2017: The City Council reviewed the proposed area plan amendment and tabled it to the December 12, 2017, meeting. As part of the motion, the City Council suggested the applicant work with the city to create a development agreement to ensure the conditions proposed can be enforced. The applicant has drafted a development agreement for City Council consideration which has been attached in the packet.

Dec 12, 2017: The City Council reviewed the proposed area plan amendment and tabled it to the January 16, 2018, meeting. To allow additional time to review the proposed development agreement.

ANALYSIS

The applicant is requesting approval of a proposed amendment to the Traverse Mountain Area Plan. The amendment is based on the approved West Canyon concept plan that was approved by the City Council on June 27, 2017. In the concept plan City Council motion, several conditions of approval were listed that would need to be reflected in the area plan amendment proposal in order to satisfy their concerns. On October 26, 2017, the Planning Commission reviewed and recommended approval of the proposed area plan amendment. The Planning Commission's recommendation included several conditions of approval. It should be noted that the applicant has submitted an updated addendum which addresses several of the recommendations from the Planning Commission. This report will describe the elements of the proposed amendment, compare the conditions listed by the City Council motion to the proposed amendment, list the conditions from the Planning Commission motion, review of consistency with the Development Code, and describe the DRC comments.

The elements of the proposed area plan amendment are based on the approved West Canyon concept plan. The elements of the proposed addendum to the Traverse Mountain Area Plan include grading, land use, and requirements for the proposed school and church sites. These elements are further described below.

Grading

The area plan amendment proposes to allow mass export of material from the M-1, L-1, and L-2 districts of Central Canyon. Exporting of materials is a change from the existing requirements for Central Canyon to have balanced grading operations. The transport of material is proposed to be done by means of a conveyor belt system and by truck without the use of public roads. As part of a grading permit, the applicant proposes to construct an earthen berm to help buffer Geneva's operations from any existing homes. As part of any grading operation, fugitive dust control must be considered to reduce the negative impacts to residents living in the area. The DRC commented that more information should be provided on a revegetation/remediation plan. The DRC also commented that the addendum must state that any grading onto City owned property will be minimized and for contouring only.

At the 26th of October Planning Commission meeting, the applicant provided an updated and more specific fugitive dust control plan. The dust control plan includes several control levels that would determine the amount and type of dust mitigation measures. The Planning Commission requested that the DRC review the updated dust mitigation plan for any additional comments. The DRC reviewed the updated dust mitigation plan on the 1st of November and their comments included the following: Recommend placing a provision to stop operations once a specified sustained wind speed is reached – i.e. 50 miles per hour. Recommend that a third party inspector track operations and provide weekly reports to the city. The city will follow up periodically to ensure compliance based on information provided. Also

recommend Geneva staff or third party be available daily to field complaints. The weekly reports must include watering logs, quantities of material removed, and hourly wind speeds.

The proposed addendum to the area plan states that there is a three year grading timeline with the possibility of a six month extension. If the 6-month extension is utilized, the developer must pay a \$300,000 extension fee to the Traverse Mountain Master Association. Included in the addendum is the requirement of the developer to provide to Lehi City a \$1,000,000 bond to ensure the timely completion of the grading. The Planning Commission recommended that the extension fee be modified/increased to \$100,000 per month up to six months. They also recommended that the bond for completing the grading work be adjusted to a value that is adequate to ensure the completion of the grading.

Currently, grading operations in Traverse Mountain must comply with Chapters 12-A Hillside Preservation and 12-B Grading Ordinance, with the exception that the Area Plan allows mass grading on slopes over 30 percent and stipulates areas of balanced grading. The current time frame for grading in Central Canyon would need to conform to Section 12-B.040 of the Development Code, which allows for a one-year time frame with the possibility of extending up to one additional year to complete the work. The proposed area plan amendment extends the grading operation up to three and a half years, which is considerably longer than what is currently allowed. It can be difficult to compare impacts of the one-year requirement to the proposed three and a half year timeline since projects under a balanced grading scenario could be phased into smaller subsequent projects, each with their own one-year time limit.

It should be noted that under any grading scenario (balanced or export), grading permits cannot be issued on any property until a preliminary subdivision or conceptual site plan is approved. The approvals of the preliminary subdivision and/or concept plan would show what the final grade must be in order to allow the development and would provide additional details on grading operations. A final grading permit must be approved by the City Council prior to any work contemplated in this amendment. The grading permit requires a final detailed grading plan that matches the grade and layout of the preliminary subdivision and school/church concept plan. The bonding proposed with this request would also need to be placed as part of the grading permit prior to starting of any work.

The export of materials can have additional advantages and disadvantages when compared to a balanced grading operation. The current area plan and proposed amendment both contemplate tearing down the small ridge in the L-1 district to accommodate Street B to reach West Canyon. Export of material includes potential advantages in construction of planned buildings as native soils have less likelihood of settling and sliding than do areas of fill. The disadvantage of exporting is the incentive is tied to removing as much material as possible, whereas a balanced grading operation is incentivized by completing the work as quickly as possible in order to get the development in place. The negative incentive of export can be controlled by having a detailed grading plan that is designed for the final development and roads that will need to be built onsite. The time limitations are also key in controlling the export operation and eliminating the possibility of over excavation.

Land Use

The proposed area plan amendment affects the Central Canyon, Highway Commercial, and Perry land use districts of the Traverse Mountain Area Plan. The proposed amendment contemplates a density transfer to move 30 units from the M-1 district and 50 units from the L-1 district for a total of 80 units to the Highway Commercial District. The 80 units are proposed to be located adjacent to the Hyatt hotel and across Cabela's Boulevard from the Outlets at Traverse Mountain. The transfer of density is proposed in a located in a commercial area near a future Trax station. When higher densities are placed in locations with a mixture of uses and near transit, active transportation is more possible and can reduce the number of trips by car. Higher densities in the current location in Central Canyon will be primarily auto-oriented and generate more vehicle emissions than densities located near transit and commercial areas. The DRC noted that the updated land use map must show the parcel to where the density transfer is being located, instead of the overall land use district. This area plan amendment also proposes to allow density to be transferred from Perry owned parcels in Central Canyon to HDR C and HDR D parcels in the Perry planning district.

The amendment proposes to consolidate the private park in the L-2 district with the open space north of the Winterhaven subdivision. The park space is proposed to also serve as a storm drain detention area. The DRC commented that the park layout provided with the amendment should be labeled as conceptual. It is unknown how the final layout and grade will work out on the park and would need to be finalized when the funding source to build the park is available. The applicant must address the timing and funding of the proposed private park in the area plan addendum. Included with the proposed amendment is the contribution of up to \$40,000 for a trail head on Lehi owned property. Staff feels that the addendum should be clear and specific and just indicate \$40,000 to be contributed.

School and Church Requirements

The addendum states that property in the L-1 district will be donated for a school in return for the allowance of exporting materials. Alpine School District must bond for or finance the construction of the school within seven years, or the property must be transferred to Lehi City to be used as a public park. It is difficult to determine if the bonding of the school will happen within the 7-year timeframe considering the bonding process school sites must go through at the school district level. The Planning Commission recommended extending the timeline to 10 years which would provide additional time to allow the school to be bonded for.

The addendum also shows that the property north of the school site is to be used only for a church or civic use. If the proposed amendment were to be approved, the school and church sites would not be allowed to have any residential densities. The portion of L-1 and L-2 owned by Perry would remain as high density with 50 units of allowed density.

The addendum does not specifically address the responsibility of road construction to extend "Street B" in the area plan to the school and church locations. The construction of "Street B" should be addressed and the applicant should provide signed agreements from all property owners within the L-1 and L-2 districts. A letter was received by Perry Homes indicating they agree to coordinate with TMTH on the final alignment and design of the road. As part of ensuring the road is completed, a road design should be submitted to the city for review and bonding prior to the issuance of a grading permit. The city typically only accepts an escrow bond or letter of credit to ensure completion of improvements and construction work. The bonding for grading and the road would need to follow the City's typical requirements for bonding and bond estimation to ensure that the work and improvements are completed.

City Council Motion Requirements

At the June 27, 2017, City Council meeting, the motion for approval of the West Canyon concept included several conditions of approval. These conditions are listed below with a comparison of what is proposed in the amendment.

1. A dust mitigation plan is put in place that is clearly defined to meet existing standards and the study that has been put out by the developer and ensure that the dust mitigation plan abides with the study.
The applicant has hired the help of Kleinfelder to evaluate the types of impacts created by the grading operation and propose fugitive dust mitigation strategies. The applicant submitted an updated fugitive dust mitigation plan for the 26th of October Planning Commission meeting that includes more specific details for mitigation practices based on activity with three control levels. The control levels are dictated by the opacity of dust in the air.
2. Put forth well-defined hours of operation that are 7:30 AM to 7:30 PM with exception of Sundays.
The project narrative states that the hours of operation are to be from 7:30 AM to 7:30 PM with no work on Sundays. The hours of operation should be stated within the addendum and grading permit as to be more enforceable.
3. An agreement with Geneva be negotiated that outlines the three year time frame with a 1 time extension of 6 months.
The proposed addendum indicates the proposed grading will be a three year operation with the possibility of one additional six month extension. The extension would require the developer to pay a fee of \$300,000 to the Traverse Mountain Master Association. Geneva has provided a letter stating their agreement to the time frame conditions.
4. Put the payment to the HOA in writing if the extension is utilized.
This is a future condition that would need to be addressed if an extension is requested. If the extension is requested, the operation would not be allowed to continue unless the fee has been paid. The addendum does not specify that an agreement would be signed agreeing to the extension and payment.
5. Put a bond in place for grading to ensure that the school and church pad are put in place.
The addendum states that the developer or grading contractor will provide a surety bond to Lehi City in the amount of \$1,000,000 to ensure the completion of the grading. The letter Geneva provided also includes the requirement for the placement of a surety bond. The City typically only accepts an escrow bond or letter of credit for a bond to ensure construction is completed, and staff would recommend adhering to the City's standards for bonding.

Planning Commission Motion Recommendations

At the October 26, 2017, Planning Commission meeting, a motion was made to recommend approval of the proposed amendment with several conditions. These conditions are summarized below:

1. The church property, if not developed by the church within 7 years, be turned over to the City for a park or open space.
2. Street B, the developer has stated that he will be responsible to build that road in conjunction with other developers and that it will be within the allowed grade percentage for a school bus to access the site.
3. There will be milestones set in place that will be reviewed by the developer and the City to measure the progress being made to accomplish the grading in the prescribed amount of time in 3 years, with the option of a 6 month extension.
4. There will be a mandated amount of checks per week, month, year, that will happen as well throughout the grading process.
5. The bonding will be reviewed by the City to ensure that there is enough money to cover the improvements should they not fulfill their commitments, that the mechanisms are in place, in writing to cover all the improvements.
6. The DRC has an opportunity to review the new information from the dust mitigation control plan, and that all comments from that review will be included as well in the motion, and consider all other DRC comments from prior meetings.
7. There will be a mechanism or phone number to call and complain if they see dust and inspectors can be sent out to monitor the situation.
8. Include that the length of time be extended to 10 years that the School District has to build an elementary school.
9. The developer will look to grade the school and church site first, prior to grading the pads for the homes.
10. Staff review all bonding including the funding for the park and the mechanisms that will trigger the development improvements to the park site, and to ensure that the bonding is adequate enough to cover costs.

Consistency with Development Code Requirements

Chapter 15 of the Development Code includes the applicability of and effect of an area plan. The initial adoption of an area plan requires an amendment to the General Plan, and subsequent area plan amendments are done as amendments to the General Plan. Section 15.040 states that an amendment to an area plan must be done following the procedures for a General Plan amendment as identified in Chapter 4 of the Development Code.

Chapter 4 of the Development Code includes the requirements and process to amend the Lehi General Plan. Area plan amendments are treated by the Development Code as amendments to the General Plan, and must follow the procedures and criteria for approving an amendment to the General Plan. Section 04.030 of the Development Code includes factors that the City Council may consider when contemplating an amendment to the General Plan. These factors are as follows:

1. The effect of the proposed amendment on the character of the surrounding area;
2. Consistency with the General Plan Land Use Map and the goals and policies of the General Plan;
3. Consistency and compatibility with the General Plan uses of nearby and adjoining properties;
4. The suitability of the properties for the uses requested and their suitability for the uses identified by the General Plan;
5. Whether a change in the uses proposed for the affected properties will unduly affect the uses, or proposed uses for nearby and adjoining properties;
6. The gain to the public health, safety and welfare from the existing classification to the proposed amendment; and
7. The overall community benefit of the proposed amendment.

Chapter 6 of the Development Code describes the intent, approval process, and required elements for a Planned Community zone. The intent of Chapter 6 is to allow Planned Communities as a means of providing a variety of mixed

land uses and housing types with flexibility to tailor zoning requirements specific to that community. When a property is zoned Planned Community, an area plan is adopted and sets forth the zoning requirements for that community. The area plan is essentially the zoning code for that community (in this case Traverse Mountain). An area plan amendment contemplates changing the zoning requirements for a Planned Community and does not constitute or require a zone change. In the case of Traverse Mountain, the zone of Planned Community is already in place. When land use districts are amended by means of an area plan amendment, this effectively changes Lehi City's General Plan Land Use Map (land use master plan described in Chapter 4 – not to be confused with current zoning) and the zoning requirements of the planned community. The land use designations within the area plan serve as the land use master plan for that area.

In order to achieve the goals of a Planned Community, the Development Code provides the City Council discretion and flexibility to approve zoning regulations and land uses that vary from the Development Code. Sections 06.050 and 06.160 set forth the ability and requirements of approving other land uses and Development Code variations. Section 06.050 states that proposed uses will be reviewed for compatibility within the Planned Community zone as well as compatibility with allowed uses in adjacent zones. Section 06.160 includes three conditions that must be met in order to allow variations to the Development Code. These three conditions are as follows:

- A. That the granting of the variation will not adversely affect the rights of adjacent landowners or residents.
- B. That the variation desired will not adversely affect the public health, safety or general welfare.
- C. That the granting of the variation will not be opposed to the general spirit and intent of this Chapter or the General Plan.

The burden of proof falls upon the applicant to show the City Council that these three conditions have been met. The proposed amendment is highly complex and there are negative and positive considerations with both the existing area plan and the proposed area plan amendment. The City Council must discern which option may have the greater level of benefit for the community, and consider the short and long term impacts of either option.

Additional DRC Comments

The DRC made the following additional comments regarding the proposed area plan amendment:

- Transfer of density to the location shown may require additional power circuit capacity, and may require off-site power system improvements. All costs of studies, engineering, design and construction of improvements due to density shift shall be borne by the developer.
- Ensure that no acreage is lost on the consolidated park and that it is actually developable and is flat.
- Need to clearly identify the location of the truck access road that will be used for the export of grading materials, and how the truck traffic will be separated from local residential traffic.
- Need to add a note in the addendum that addresses possible changes to the utility sections. There may need to be updates to the utility sections in order to accommodate the density transfers when they occur, and a note should be added in the addendum that acknowledges this.
- Coordinate with Engineering and Planning Staff to identify a specific location of the trailhead now (vs. wait until a future date).

Please consider other DRC comments as part of the motion.

PLANNING STAFF RECOMMENDATION

This area plan amendment includes many complex issues, and there are benefits and negative impacts with both the existing area plan and proposed area plan amendment. The elements of the proposed amendment that staff perceives to be positive includes the transfer of density out of the canyon areas, the proposed school and church sites, and the inclusion of a new trail head. The elements of the proposed amendment that staff perceives to be negative include the increased duration of time for grading, export of material, and the additional nuisance potential of dust for the duration of the operation. At the time the Planning Commission report was written, staff had not yet received the more specific dust mitigation plan, which is one of the primary factors for the negative recommendation to the Planning Commission. The updated fugitive dust control plan provides additional controls above and beyond what the Development Code typically requires for a grading permit, and this provides additional assurance that much of the negative impacts would be mitigated.

Planning Division staff recommends a **CONDITIONED APPROVAL** for the proposed amendment to the Traverse

Mountain Area Plan including the following conditions:

1. Planning Commission recommendations from October 26, 2017.
2. DRC comments from August 23, 2017, and from November 1, 2017.
3. The bonding for the export operation, park, and Street B are done according to typical City standards which include:
 - Bond cost estimation completed by the Lehi Engineering Department based on the park design, road design, and final grading plan (complete with final contours and export calculations). The bond amount would be tied to the cost to complete the work and not an arbitrary amount that may or may not cover the costs in the event the work and improvements are not completed by Geneva and the developer.
 - The placement of either an escrow bond or letter of credit to ensure completion. Surety bonds are typically not allowed by Lehi City to assure the proper completion of work and improvements.
 - The releasing of bonds to be incremental based on the amount of work completed.
4. Include in the addendum that the applicant/developer is responsible for the construction of Street B up to the school site, and address timing of the road construction.
5. Include in the addendum the construction timing and funding of the private park north of Winterhaven.
6. The developer must provide a third party inspector that can be onsite to ensure the requirements of the proposed fugitive dust mitigation plan are enforced.
7. At the time of grading permit submittal, the applicant must provide a detailed grading plan that includes:
 - Locations of all cuts
 - Topographic contours
 - Location of any necessary retaining walls
 - Indication of final hillside slopes
 - Information to ensure slope stability
 - Best management practice details for dust mitigation
 - Final dust mitigation plan
 - Complete revegetation/remediation plan
 - Utility plan showing locations of water lines to feed the conveyor belts and watering of exposed hillside cuts
 - The developer hiring of a third party inspector
 - Completed bonds
8. The City Council would need to determine that the items in Chapters 4 and 6 of the Development Code are met in order to allow approval.

This recommendation is based on the following findings:

1. The applicant has provided a more comprehensive fugitive dust mitigation plan that exceeds the requirements of the Development Code.
2. The proposed school location is advantageous to encourage children to walk and bike to school, and reduces the distance for bussing and parents driving children to school.
3. Transferring housing density in a commercial area near future Trax is more sustainable and reduces the dependence of auto use for those residents compared to the location in the canyon.
4. Other findings based upon information presented during the public hearing.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission reviewed the proposed area plan amendment at the October 26, 2017, regular meeting. The minutes and motion from this meeting are as follows:

2.1. Public hearing and recommendation of TMTH's request for an amendment to the Traverse Mountain Area Plan.

Kim Struthers, Community Development Director, stated that they received more dust mitigation reports from the applicant and that Planning staff now feels that the report satisfies the health, safety and welfare concerns.

The applicant, Rob Clauson, stated that he is trying to come up with a better option for the Traverse

Mountain community. He distributed a slideshow packet and explained what is allowed under the current area plan compared to his proposal. Mr. Clauson asked a third party consultant to assist with dust mitigation. He also said that Geneva has agreed to follow the dust mitigation plan.

Amed is from Kleinfelder, an international engineering consulting firm. He was hired to provide third party consulting for the environmental impact and fugitive dust plan. He also disclosed that Geneva has been a client of Kleinfelder. Amed explained the state laws and the EPA requirements for fugitive dust. He showed a table from the packet that outlined the levels of dust control and explained that those would be followed based on the site supervisor's observation. The observer must be trained and certified to be an observer.

There was discussion about the penalty or fines for violating the state's regulations. It was determined that it could be a \$10,000 fine and in Lehi City it could also be a class C misdemeanor.

Commissioner Hutchings expressed concerns about the high wind speed in the area.

Brett Sumsion, with Geneva, was available to answer questions. He said the conveyor belt will be moving most of the time. He said they don't expect to do any drilling or blasting. He stated that they go the extra mile to control dust, and their philosophy is that if they see dust, then put water on it.

Commissioner Peterson opened the public hearing on this item.

Aaron Smodial was representing the Board of Utah Physicians for a Healthy Environment, and was opposed to the mining operation. Crystalline silica is the largest concern with mining operations, because exposure can create lung dysfunction.

Jason Porter Rickabaugh was opposed to mining in residential areas.

Rachel Richardson was against the amendment to the area plan. She wants the Commission to be educated on mining issues.

Delaine Barrius believes they cannot mitigate the dust and said the opacity observation is useless, especially in the dark of winter.

Tim Provost believes there are health concerns either way, but there will be development so he just wants what is best for the community. He said that we should focus on what we can control such as dust mitigation. He does not want high density in the canyon, and he wants another school.

Cindy Hancock agrees with Mr. Provost and likes that the dust will be controlled. She doesn't want the increased traffic that the high density would bring to the canyon. She would also like to see a school there.

Jessy Melocker believes that the mining operation would be harmful and doesn't believe that the dust can be controlled in this area because of the high wind speed. He said that health should be the first concern. His child and others in the area already have health concerns and this will make it worse for them.

Dan Reeve said that they all want a better community and clean area. He is in support of the amendment. He said this is not a mining operation and that this is mass grading. He believes that the developer has put forth a very robust dust control plan. He said that crystalline silica is produced by crushing operations and there would not be any crushing on site with the proposed amendment. Also, he believes the amendment would create less dust, rather than the current area plan which allows crushing.

Dr. Erin Faraklis, representing the HOA board, said that this would not be in the best interests of the residents. She is also a health care provider and is tagged with the Utah Physicians for a Healthy Environment, and agrees with their conclusion that this type of operation would be worse of the two options because of the conveyor belt and the high wind speeds. She is also a resident and knows that everyone just wants what is best, but she believes this is not the best option. She doesn't mind the high density in

the canyon and said that it adds to a diverse community and she welcomes that.

Sherrie Dodson had a concern about this setting a precedent for future development up the canyon.

Rob Ludlow stated that he is in support of the developer. He doesn't like the idea of busing students to West Lehi where ASD can afford ground. He said that the developer has a plan to mitigate the dust and apply controls to make the mass grading safe. He does not agree with the concerns of the Utah Physicians for a Healthy Environment. He said that they scare people into believing that this cannot be done safely.

Collin Brea was originally opposed to this plan, but after meeting with the developer he now understands that this would be a benefit to the community and he supports this amendment. He asked that the Commission look at the long term benefits of this proposal. He said that with either option there will be a lot of dust, but believes that this proposal is what's best for the community in the long term because it will provide a needed elementary school, and it will move density to an appropriate area.

Jennifer Carshner had some questions, and was concerned about the assurances in place if there is a violation to the fugitive dust plan.

Brandon Jones said that he knows that development is going to happen, and he recommends that a third party enforce the dust fugitive mitigation plan and also recommends that Lehi City do more to enforce the plan.

Joseph Thomas is concerned about the dust and had the same concerns as Mr. Jones. He recommended having checks in place to ensure that they are following the fugitive dust mitigation plan.

Angela Aanured stated that an environmental impact study has not been done and doesn't understand why this is even being considered.

Ezra Lee said that this is mining and if they open the door to do this, then what will happen further up the canyon. He wants to make sure the dust mitigation plan is enforceable and he asked that they be cautious about what they open the door for if they continue to develop up the canyon.

Jason Newman is concerned about the airborne particulate that they could be exposed to. He would expect more particulate in the air with this amendment. He said we already have poor air quality. He said that causing cancer is a concern and it should be taken seriously.

Lamar Newman stated that they really have no idea how the two proposals will compare with levels of fugitive dust. He said that this will be blowing around their neighborhood and this can cause cancer. He said they are opening themselves up to more problems with dust particle exposure and this is not safe for the community.

Chairman Peterson closed the public hearing.

Mr. Clauson stated that the cancer causing crystalline silica is created by crushing, and they will not be doing any crushing on site. He said that monitoring will be the key to ensure safety.

He said that Geneva has a representative that handles fugitive dust complaints. He said that Kleinfelder is an international reputable company that will provide audits and submit those findings to the Traverse Mountain HOA and to the City.

Chairman Peterson inquired about what would happen if the grading isn't finished in three and a half years. Mr. Dinsdale replied that they need to look at the bonds and make sure it gives us what we need if the developer can't finish the work.

Commissioner Seegmiller said that the health considerations are paramount and should be considered first. She said that in order to recommend approve they have to find that there will not be a negative effect on health safety and welfare.

Chairman Peterson inquired if all the safeguards put in place are enough to mitigate the health concerns.

Commissioner Seegmiller does not think the applicant's efforts and plan will be enough.

Commissioner Hutchings was concerned that the DRC has not had a chance to review the report.

Commissioner Nielsen stated that quality of life is part of health, and he believes that this plan improves quality of life. He believes that this plan offers better dust control. He said that increased traffic is a health concern. Higher density in the canyons will create more traffic and more opportunities for pedestrian/vehicular conflict. He said that more parks and open space with less density adds to the health as well as less stress from overcrowded schools. He said there's a lot of things that go into health, it's not just dust. Either way there will be dust. He believes in the long term vision that this is a better option.

There was discussion about road B and that the grade can't be greater than 8% for school buses.

Mr. Clauson said that they added two more bonds, one for the road and another for the park.

Commissioner Ellis said that having an elementary school in the area would be a benefit to the health and safety, because they won't have to bus children.

Commissioner Seegmiller believes that health is not quality of life. Health is not being sick, and that health should come before any of these extra things.

Commissioner Hutchings stated that the school still needs to be bonded for and that will take time.

Motion: Commissioner Nielsen moved to recommend approval to the City Council for TMTH's request for an amendment to the Traverse Mountain Area Plan, based on the following findings: That the burden of proof has been shown that the health, safety and welfare of the proposed development exceeds that of the current approved plan, that by eliminating the ability to crush rocks on site, and limiting the amount of truck traffic and diesel exhaust. That the transfer of open space, and the stress from over congestion and busing of students from schools, the possibility of having additional open space, the dust control measures are better controlled on a conveyer, rather than open grading, and the dust control plan put in place will provide a healthier environment with possibly less dust than the current area plan allows for the cut and fill and pushing dirt up the canyon. Also that the church property, if not developed by the church within 7 years, be turned over to the City for a park or open space. That Street B, the developer has stated that he will be responsible to build that road in conjunction with other developers and that it will be within the allowed grade percentage for a school bus to access the site. There will be milestones set in place that will be reviewed by the developer and the City to measure the progress being made to accomplish the grading in the prescribed amount of time in 3 years, with the option of a 6 month extension. That there will be a mandated amount of checks per week, month, year, that will happen as well throughout the grading process. Also that the bonding will be reviewed by the City to ensure that there is enough money to cover the improvements should they not fulfill their commitments, that the mechanisms are in place, in writing to cover all the improvements. Also that DRC has an opportunity to review the new information from the dust mitigation control plan, and that all comments from that review will be included as well in the motion, and consider all other DRC comments from prior meetings. This is not setting a precedent for future development up the other canyons and that it's only through the benefits provided such as the church, school, open space, and the ability to mitigate dust and other health concerns, and the density being transferred out of the canyons. Also, just a comment that the developer has gone above and beyond what most developers do to try and appease the concerns of residents and ensure that their voice has been heard in the process. Also, that there will be a mechanism or phone number to call and complain if they

see dust and inspectors can be sent out to monitor the situation. Also, include that the length of time be extended to 10 years that the School District has to build an elementary school. Also that the developer will look to grade the school and church site first, prior to grading the pads for the homes. That staff review all bonding including the funding for the park and the mechanisms that will trigger the development improvements to the park site, and to ensure that the bonding is adequate enough to cover costs. Commissioner Hutchings seconded the motion.

Chairman Peterson noted that the fine for the 6 month extension is \$300,000 and that that may not be enough. Chairman Peterson suggested that the fine be \$100,000 per month of extension for a total of \$600,000.

Amendment: Commissioner Nielsen amended his motion to include Chairman Peterson's comments. Commissioner Hutchings seconded the amendment to the motion.

Vote: Commissioner Hutchings, No; Commissioner Bunker, Yes; Commissioner Ellis, Yes; Commissioner Peterson, Yes; Commissioner Nielsen, Yes; Commissioner Seegmiller, No. The Motion passed 4-2.

Commissioner Seegmiller stated that she would like to add to the record her reason for dissent. She said that she disagrees with this decision and making this recommendation to City Council and she believe that under section 06.160, that no one here can say that this will not adversely affect the public health, safety and welfare. This recommendation approves an additional 1 million tons of material being moved around, and exported and believes that will have a greater impact on health, rather than the cut and fill method. She said there are varying opinions on whether this is dangerous or not and she doesn't think that anyone can say with certainty that this is not going to make people sick. She believes that we have to know for certainty that this will not affect the health and safety of the residents in order to approve it. She believes that the mitigation efforts may help some, and appreciations the developers efforts in working with the residents, but she does not think this project can be done without negatively affecting the health of residents. She also said that on the record we heard that there is no plan to stop exportation of materials, no matter how windy it gets. She thinks that the decision tonight was motivated by considerations of changing density and consideration of wanting a school and parks, and those things are wonderful, but the first consideration should be for the health, safety and welfare, and we should not approve something that may adversely affect someone's health.