MEMORANDUM

Date: **July 27, 2023**
To: **City Council/Planning Commission**
From: **Charles Gillette, P.E., Public Works Dir/City Engineer (representing the Sensitive Land Committee)**
Re: **The Retreat at Snow Canyon – Sensitive Lands Application Report of Findings and Potential Compromise**

Over a series of meetings held on May 2nd, June 6th and June 27th the Sensitive Lands Committee reviewed the application submitted regarding the proposed development called The Retreat at Snow Canyon for conformance with the Sensitive Lands Ordinance. This is a report of the findings of the committee.

Potentially all seven areas of sensitive lands could be found on the project. The committee's findings on these seven areas are given as follows:

Areas subject to flooding

The areas of flooding are identified by the flood zones that are delineated on the flood insurance rate maps produced by the Federal Emergency Management Agency (FEMA). The applicant is required to submit hydrology and hydraulic calculations to FEMA for any modifications to the flood zone. The only proposed changes to the flood zone are those that are caused by the construction of two bridges/culverts across the Tuacahn Wash. No buildings or other structures are proposed in the wash and thus the finding is that the proposed project is compliant with the sensitive lands ordinance.

Finding: the proposed project is compliant with the sensitive lands ordinance pending an application is made to FEMA for any modifications to the flood zone because of the proposed bridge structures to be placed in the wash.

Areas of wetlands

There were concerns that there were protected wetlands within the project since standing water has been observed in the past. Wetlands are protected based on a delineation procedure established by the Army Corps of Engineers performed by certified wetlands specialist. A letter has been submitted that the delineation procedure has been followed and the specialist found no jurisdictional wetlands on the project site.

Finding: No areas of jurisdictional wetlands are on the developed project site as proposed by the applicant.

Areas of hillsides

Areas of hillsides that are considered sensitive lands are defined by the ordinance and there were some areas on the project that appeared to possibly qualify as sensitive lands. However, engineer stamped plans have been submitted to evaluate if these areas qualify and no areas of sensitive lands were found on the developed project site.

Finding: No areas of hillsides as defined by the sensitive lands ordinance were found on the developed project site as proposed definition as proposed by the applicant.

Areas of habitat

There is a potential for tortoise to exist on the site but the area is not located within the area that is protected by the Habitat Conservation Plan. The applicant is required to request the Red Cliffs Desert Reserve to clear the site of any tortoises prior to disturbance.

Finding: Area is not protected by the Habitat Conservation Plan

Areas of lava fields and rock outcroppings

The ordinance protects lava fields and rock outcroppings that are larger than 8,000 square feet. The developed site contains a portion of the lava field on its east border. The presented plan disturbs 52 percent of the lava field. The ordinance allows disturbance of up to 70 percent.

Finding: The project disturbs 52 percent of the lava field which meets the ordinance that limits disturbance to 70 percent or less.

Areas of known geologic hazard

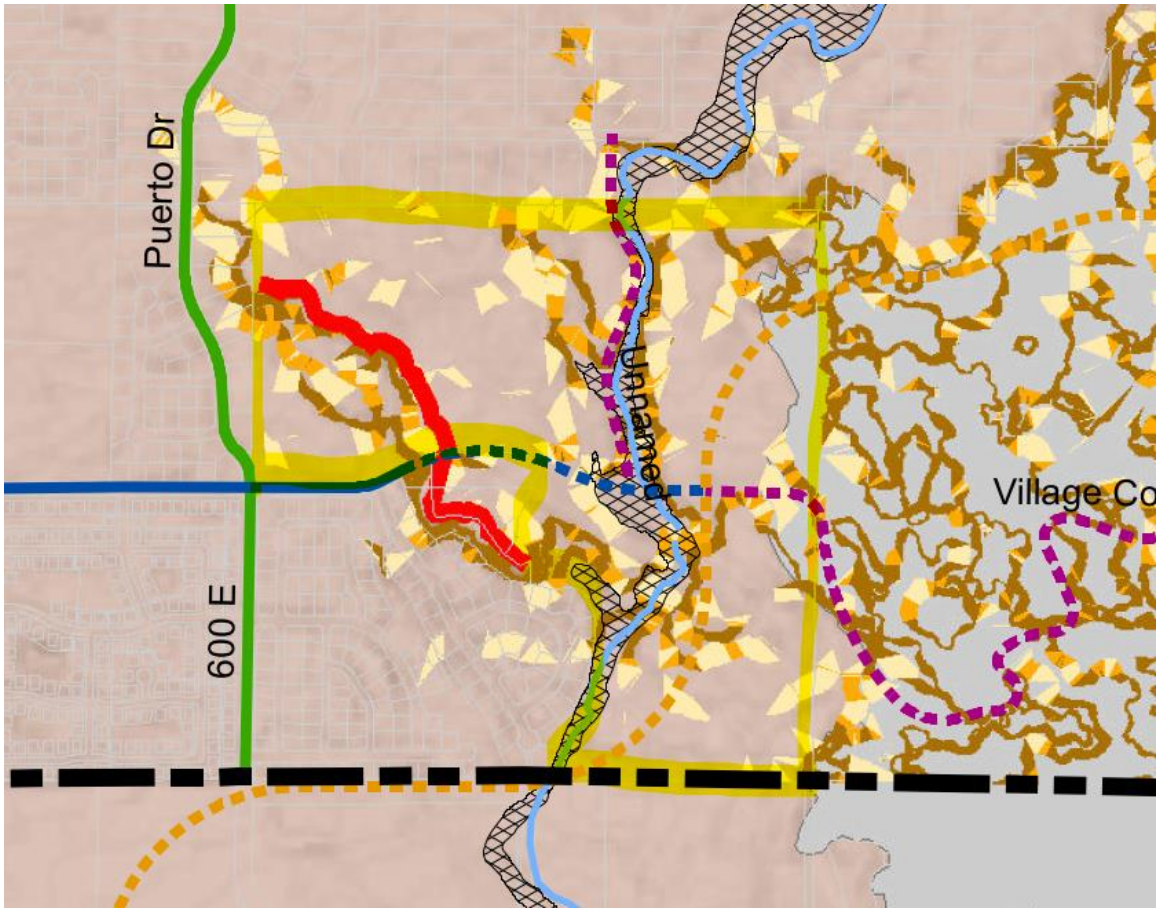
Areas of known geologic hazard have been found on the site. They include high groundwater and expansive clay soils more particularly located in the portion of the project adjacent to Puerto Drive and 400 South. The sensitive lands ordinance does not have specific requirements for projects that contain hazardous conditions such as these. The committee's recommendation is that the site be remediated in accordance with recommendations provided by the geotechnical engineer and that the remediation be a robust solution and not a bare minimal solution since when the minimalist approach is taken it is more likely that some future property owners will experience undesirable losses.

Finding: The project has high groundwater and expansive clays and must be remediated with a robust approach.

- Roof drains shall be directed to solid pipe systems that discharge into approved drainage facilities without chance of being absorbed into the soils. Perforated drainage systems shall also be provided along property lines that connect into the solid pipe system.

Areas of interior bluff ridgelines

There is an area on the project site that is delineated as an interior bluff ridgeline. This area is shown in red on the Sensitive Lands Map.



The applicant has found that the application of the code restrictions of the interior bluff ridgeline for this project has been difficult to apply. Their attorney laid out an argument that the ridgeline does not exist based on a variety of arguments given as follows:

Applicant Argument #1: The definition provided by the ordinance, Section 16.08.202(4)(b)(i), says that "The ridgeline of an interior city bluff is identified as the point where the slope becomes steeper than eighteen percent (18%) and coincides with a very steep slope boundary of the area defined in the city ridgelines map." The applicant's attorney said that since there are no sensitive lands slopes or "areas of hillsides" there can be no interior bluff ridgeline since it must coincide with a very steep slope boundary.

Counter to Argument #1: The definition does not say it must coincide with an very steep slope boundary that is also defined as sensitive lands. It says "coincides with a very steep slope boundary of the area defined in the city ridgelines map." Instead of referring to a sensitive lands definition of slope it refers to the "ridgelines map". The ridgelines map is contained inside of the "sensitive lands map" where it shows shaded areas identified as "very steep slopes". The interior bluff ridgeline is legitimate if it coincides with the area shaded in the brown on the map defined as Very Steep Slopes >15%.

Applicant Argument #2: In Section 16.08.209, Paragraph (7), Ridgeline Protection restrictions are further defined. There is a paragraph that identifies that four viewpoints

were used to identify the protected ridgeline. The ridgeline in dispute is not visible from any of these viewpoints.

Counter to Argument #2: This paragraph that provides information on the viewpoints is providing background information and not a test to determine whether an interior bluff ridgeline is legitimate. The language used is past tense, "have been used". It is not present tense nor future tense to suggest that these viewpoints must be used for a test of any ridgeline.

Applicant Argument #3: The Section 16.08.209 is titled "Sensitive Lands Protection Regulations; Slopes, Low Density Residential" and thus only applies to Low Density Residential zones. The ridgeline is not in a low density residential zone.

Counter to Argument #3: The definition of interior bluff ridgelines in Section 16.08.202(4)(b)(i) does not have any requirement that it be in Low Density Residential and it also specifically points to Section 16.08.209 and Figure 8-7 pointing an applicant to the location to find what restrictions are to be enforced.

Applicant Argument #4: The applicant's attorney argued that the sensitive lands ordinance is ambiguous as evidenced by the previous arguments and state law has determined that ambiguous code shall be construed against the municipality in favor of the applicant.

Counter to Argument #4: The applicant has an interest in making the code appear to be ambiguous, but in review of the counters to each argument, there is a strong argument to be made that the code is clear enough for the applicant to make a compliant application. Also in Section 16.02.102 Administrative Interpretations, authorizes the zoning administrator to make interpretations of the code as needed when there is any possible ambiguity, conflicting provisions, or confusion.

Initial Findings: Thus, the initial findings of the Sensitive Lands Committee was that per the interpretation of requirements provided by the zoning administrator, and despite arguments made by the applicant, the proposed development submitted by the applicant did not protect the interior bluff ridgeline since it did not meet the restrictions and requirements of the sensitive lands ordinance.

Offer of Preservation Plan

The Sensitive Lands Committee did suggest to the applicant, in light of the fact that if the ordinance is being challenged and there was potential for a legal proceedings, that the applicant should submit an alternative plan that protected elements of the ridgeline but did not require the 150 foot setback.

The applicant fulfilled this request and did submit a revised plan called the "Preservation Plan" and indicated that it would be willing to offer this plan to avoid litigation. According to the applicant, this plan did reduce the density of the project by 14 units. The Sensitive Lands Committee reviewed the plan and was willing to recommend the new

plan, but since it does not meet the current ordinance, staff was directed to propose text and map amendments to the Planning Commission and City Council that if they were adopted would make the "Preservation Plan" compliant with the sensitive lands ordinance.

Staff did draft text and map amendments to the sensitive lands ordinance and submitted those with a recommendation from the Sensitive Lands Committee to consider approving the "Preservation Plan" either with the changes to the text and map or as part of a settlement agreement between the City and the applicant.

