



# MEMO

To: Dave Kallas, Geneva Rock Products, Inc.

From: Jennifer Jastremsky, AICP, Planner III

CC: Christina Oliver, Scott Cooley, Russell Fox, David Dobbins, Mike Barker, Rachele Conner

Date: August 3, 2018

Re: Geneva Rock Products Land Use Map Amendment, Rezone, Text Amendment, Conservation Easement, and Development Agreement

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## Comments:

Below are the review comments for the Geneva Rock Products applications. These are items staff suggest the applicant address prior to proceeding to public hearing. Staff will identify these items for the Planning Commission and City Council review.

## Development Agreement:

1. Definition of “Buildout” is unclear, Section 1.2.5. What is included in Buildout? The definition states the completion of all work on the entire project specified herein. The agreement does not specify what entire project is.
2. Definition of “City Consultants” does not include geologist or geotechnical engineer, Section 1.2.7.
3. Definition of “Development Application” is unclear, Section 1-2-16. Do these applications apply to the mining, or additional work beyond that?
4. Definition of “Master Plan” indicates it provides for future *uses* and *development* wherein the exhibit in Appendix B. This exhibit only shows two areas within the subject application, Section 1.2.18. The “uses” and “development” cannot be interpreted to specific uses or to determine what uses are included within the development activities.
5. A definition for *Reasonable Advance Notice* needs to be included for notification on locking the access road to the conservation easement.
6. Property described in Exhibit A is the entire subject application including both the “conservation” and “rezone” areas, Section 1.2.23. The definition indicates entire area may be developed.
7. The agreement does not provide any specifications or regulations about development of the property.
8. Agreement vests the area to the 2018 Draper City Municipal Code while the overall project does not have a duration or expiration. The agreement gives the applicant the option to agree to future city laws. Sections 3.1, 3.2.1, and 8.



9. Development agreement changes the standard city review and approval process, including appeals. Sections 6 and 7.7.
10. The agreement and easement allows the property owner to maintain control of the easement property, including locking access to the proposed roadway without limit. Section 6.
11. The agreement does not specify what development applications may be required or applied for and whether these applications are in conjunction with the mining operations, improvements on the conservation easement, or applications for redevelopment of the site after mining has completed. Section 7.
12. Agreement allows for outsourcing of development application reviews. The City does not typically outsource reviews and does not have a current list of consultants that can be pulled from. Additional time would be required in order to do a RFQ. Section 7.1.
13. Section 3.1 give rights to “develop the project”. The Agreement is unclear on what the “project” is. Is it mineral extraction or more? See number 4 above.
14. Section 4.1 discusses conditions precedent to the effective date of the agreement, however, it is unclear from the list of conditions precedent when the date will be (“after the latter of...”). This needs to be clarified.
15. The term of the agreement may be unenforceable because it is tied to the concept of “Buildout”, which is undefined. See number 1 above and Section 4.2.
16. Section 7.3 allows applicant participation in the selection process of city’s independent experts. The applicant should not participate as there are remedies in the agreement if the applicant does not agree with the city’s expert’s opinion.
17. Both parties paying arbitrators fees, otherwise there could be an inherent conflict of interest. Section 7.8.3.
18. Section 9.9 needs to include a provision barring the award of attorney’s fees.
19. The agreement should state that the City shall in perpetuity prohibit residential, commercial or industrial development on the conservation easement land.

#### Conservation Easement:

1. A conservation easement holder has not yet been found. Per the agreement, the conservation easement has to be recorded within 40 days of agreement approval. Is that enough time to find an easement holder and work through their process? Beginning statement and signature page.
2. The conservation easement document states that existing encumbrances are *not* subordinate to the conservation easement. No title report or other documentation has been provided indicating what encumbrances are on the property and what effect on the conservation easement those encumbrances may have. Last paragraph under recitals.
3. The conservation easement references an *original easement* in Section 1. What is this original easement and how will it affect the conservation easement?
4. The conservation easement does not grant public access. Coupled with the ability to gate and lock the access point in to the easement area indefinitely, public access may not be allowed, or will be heavily restricted? Section 4
5. Amendments to the conservation easement are required to go through the Grantor and Grantee and potentially removes the City from the process if the easement holder is a third party. Section 12.



6. Will having the conservation easement as part of the development agreement exhibits require the City to reopen the development agreement for any change to the easement? Also see number 5 above.

**Land Use Map Amendment, Rezone, and Text Amendment:**

1. Changing the mining, quarrying, processing, and commercial materials operation to a permitted use in the M-2 zone creates a discrepancy to the Land Disturbance Title of the Draper City Municipal Code, 18-2-020(D). This provision indicates a Land Disturbance Permit is not required when operations are conducted under a valid special use permit, such as a conditional use permit.
2. By making the uses *Basic Industry* and *Mineral Extraction* permitted, the city loses oversight permit authority for all properties zoned M2, not just the Geneva properties.
3. No information on safety, air quality, best management practices, or federal/state safety requirements have been provided outlining how the proposed use would be safe for adjacent properties and residents.
4. The rezone request letter lists the conditional use process as a way to require restoration of the mined areas. The text amendment proposal is to eliminate the CUP.