

People for Eldorado Mountain/Citizens for Eldorado Canyon  
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Members of the Planning Commission  
Jefferson County Planning and Zoning  
100 Jefferson County Parkway, Suite 3550  
Golden, CO 80419-3550

RE: 00015485RZP1/EXP1 Comments on Staff "Findings"

Dear Members of the Planning Commission,

We wish to notify the Commission that we strongly disagree with the September 12 Staff Findings/Recommendation ("Findings" or "Staff Report").

We firmly believe that the Pinnacle proposal is not in conformance with the NMCP and the TLUP, and does not comply with Zoning Resolution Section 15.F regarding alternative sites. We also firmly believe that Pinnacle's proposal is not compatible with existing and allowable land uses in the surrounding area in all directions. We believe that Staff has overlooked a preponderance of evidence of incompatibility on record.

The Staff Report appears to presume that Jefferson County has an obligation to provide broadcasters with a tower site and also implicitly and explicitly compares Eldorado Mountain with Lookout Mountain. We question the validity of these presumptions.

The Staff Report appears to not address substantial evidence on record of visual resources in the Eldorado Mountain area, appears to not address Pinnacle's problems meeting Quiet Zone standards, and appears to not address NIST's conclusion that Squaw Mountain offers equivalent broadcasting coverage of the Denver area, compared to Eldorado Mountain. Staff Report appears to overlook the regulatory requirements of the Zoning Resolution concerning alternative sites, and has not acknowledged the land-use restrictions in place in the State Park and in Boulder County open space. The Staff Report appears to treat neighboring lands as vacant industrial properties wholly compatible with 79,000 square feet of industrial buildings and 500 foot towers.

Denial of rezoning for Pinnacle Towers on the basis of documented incompatibility does not restrict telecommunications services, nor does it infringe on private property rights, nor does it unfairly discriminate against any business.

We urge the members of the Planning Commission to consider the following documented incompatibility issues not addressed by the Staff Report.

NMCP: Non-conforming with regard to Noise, Hazards, Open-space, Trails, Public Services, Transportation, Visual Resources, and Wildlife

Noise (p.6): Helicopter and generator noise is incompatible with State Park and Wildlife habitat in Boulder Open Space. Written Restrictions contain no plan for noise mitigation in adjacent parks and open space.

Hazards (pp.6-7): Wildfire hazard not mitigated by Pinnacle. The proposal contains no plan for wildfire protection. Increased fire hazard at site without fire protection endangers Eldorado Springs and Eldorado Canyon State Park. Radiation hazards: RF study does not address future power increases (up to 5,000,000 MW per station) mentioned in NIST report. Heliport hazards: Not compatible with residential land uses, open space, or State Park land use.

Open Space/Trails (p.7): Visual Impacts to major public on open space and in State Parks are incompatible. Pinnacle's proposal includes major impacts on significant visual resources in public properties. The visual impacts of large red and white towers with strobe lights, in addition to 79,000+ square feet of ridgeline buildings, cannot be mitigated.

Public Services (p.7): No fire protection service. Lack of fire protection makes on-site storage of 40,000 gallons of fuel especially dangerous on the mountain top surrounded by steep slopes and rocky ridges. Proximity of the State Park and community of Eldorado Springs and other residences makes the proposal hazardous, and incompatible.

Transportation (p.7): Proposal is incomplete without proof of access. It is premature for Jefferson County to approve a rezoning application with a pending easement request that may not be granted. Any access scheme must show a benefit to the BLM-patented land, and the BLM must approve any such scheme. We have requested that the BLM notify us of any required public hearings pursuant to compliance with the Recreation and Public Purposes Act. Allowed physical access on existing road cannot be made safe for protection as mentioned above. Should Pinnacle not be granted access via State Park, the application must include proof of easements, feasibility and impact analysis of proposed eastern access route.

Visual Resources (p.7): Pinnacle application violates NMCP policies regarding visual resources. Pinnacle plan cannot ensure integrity of landscapes that have special visual qualities. 500-foot plus red and white towers with strobes and faux rock outcrops on 79,000 square feet of ridgeline buildings are not compatible with existing visual resources. Land-use precedents in adjacent and surrounding properties resulting from extensive State, County, municipal and community investment specifically protect significant visual resources. The applicant's visual analysis is incomplete, inaccurate and misleading. Applicant must show visual analysis of proposed eastern face of Eldorado Mountain.

Wildlife (p.8): Any huge industrial facility in this area is incompatible with wildlife. We disagree with Staff findings about a purported benefit to wildlife. A majority of Eldorado Mountain is currently protected for wildlife habitat historically by extensive and long-lasting State, County, municipal, and community efforts. Provisions for mitigating birdkill at the site are wholly unacceptable. Adjacent open space and State Park management includes seasonal closures designed to protect wildlife.

TLUP: Not in conformance with Engineering and Economic Concerns, Quiet Zone, Visual and Noise Impacts, Health Issues, and Tower Siting and Review.

Engineering and Economic Concerns (page 8): Jefferson County has no obligation to provide towers for broadcasters, and rezoning is not an automatic property right.

Applicant cannot demonstrate that it is able to obtain FCC licensing because existing studies show that Pinnacle cannot comply with FCC standards. According to Hart Associates, about half of the Pinnacle's proposed antennas cannot meet Quiet Zone RF requirements and cannot demonstrate compatibility with the TMQZ. "Mr. Hart's review concludes that the antenna proposed will not adequately protect the Quiet Zone" (Findings, p.8).

Visual and Noise Impacts (p.9): Applicant cannot meet TLUP criteria regarding visual impacts. According to Staff, "Telecommunications facilities should result in minimal visual impact to be compatible with the aesthetic character of the area" (p.9), yet does describe how the 500 foot red and white towers with strobes and 79,000 square feet of ridgeline buildings are compatible with the aesthetic character of Eldorado Canyon State Park and Eldorado Mountain Open Space. The rock formations, vegetation, colors, and topography of Eldorado Mountain are unique. The case record has abundant evidence of significant visual resources that the Staff Report does not consider. The visual impact policies were designed to protect visual resources and should not be ignored. The case record contains a preponderance of evidence of significant visual resources in the area that would be harmed.

Residential Interference (pp. 9-10): This is a major incompatibility issue. Eldorado Mountain does not have an existing RF interference problem, and Pinnacle's proposal would bring a nuisance. Pinnacle does not adequately characterize the expected RF interference its facility will cause to local residents and visitors in an area that has no existing RF problem.

Staff Findings refer to the report by Pinnacle's paid consultant Mullaney-Raines that attempts to model RF interference using a single 100 kw FM station, yet actual RF levels caused by the facilities will be much greater and are not considered by Staff.

The NIST report mentions FCC proposed power increases up to 5 million watts per station. The blanketing interference maps provided in the Mullaney-Raines study shows a contour line for the interference based on the 100 kw model, but in reality the contour

would be much larger and extend farther from Eldorado Mountain than shown in the Pinnacle study. The number of people affected by Pinnacle's blanketing interference would be much greater than that presented by Pinnacle.

Staff Findings note that there is “no standard for assessing susceptibility of consumer electronics to interference” (p. 10). We believe that a standard does exist, and that Pinnacle should be required to pay for necessary studies by an independent third party, to assess the harm that blanketing and other types of interference will cause.

Staff Findings are very disturbing in this section because it implicitly compares Eldorado Mountain to Lookout Mountain, and base their conclusions on a comparative standard assuming that because the area surrounding Eldorado Mountain has fewer people, the blanketing interference matters less. Such an interpretation is fundamentally flawed because it fails to note that the Lookout Mountain residents came to the nuisance by deliberately moving to a residential neighborhood where towers and antennae were already grand fathered, and knowingly purchased houses and decided to reside near an antenna farm.

Staff Findings discuss buffer lands under Health Issues. Staff's conclusion that Use Area B “will essentially serve as a buffer for Use Area A” is erroneous. Use Area B is located downhill and to the east of the Eldorado Mountain site. To the north and west, Boulder Open Space and the State Park would become de facto buffer zones for Use Area A.

Use Area B is located on the highly visible east side of Eldorado Mountain, and Pinnacle's proposed “utilities, transmission lines, and other ancillary equipment” need to be included in the visual study. Further, Pinnacle's proposed access road on the steep and highly visible east side of Eldorado Mountain would be in Use Area B, which is not allowed in the Written Restrictions.

Pinnacle has not demonstrated that owners of adjacent properties consent to the use of their lands for buffer. The Lippencotts own property to the east. The De Moss Trust holds own property to the south. The Kellers own property to the southwest. Colorado State Parks owns property to the West. Boulder City owns open space to the North. Pinnacle should demonstrate that these neighbors consent to the use of their land for industrial buffer.

Jefferson County does not commonly approve the use of public parks and open space for commercial or industrial buffer zones. The parks and open space surrounding Pinnacle's one-acre site were not acquired to be used to buffer Pinnacle's high-power RF fields, yet Staff makes arguments promoting the use of public recreational lands as corporate and industrial buffer.

Health Issues: There is no mention in Staff Findings of the effect of electromagnetic interference on biomedical devices such as pacemakers and heart monitors, respirators, that might be used by residents in communities near Eldorado Mountain or visiting the State Park. It would be tragic if someone were to die because of failure of a medical

device while visiting the State Park. This is a critical health issue that Staff fails to appraise. Staff also fails to note future power increases mentioned in the NIST report, and Pinnacle's studies fail to incorporate these future power increases into their analysis.

Tower Siting and Review (p. 11): Staff notes that "Towers, dishes and accessory buildings should be located to avoid the most visual impact." And then writes in the very next paragraph: "The Eldorado Mountain site is in an area that is on a ridgeline and is readily viewed from a variety of locations" (page 11).

We would add that Eldorado Mountain is a major landmark in north Jefferson County and Boulder County that is highly visible to tens of thousands of area residents in Boulder, Superior, Louisville, Lafayette, and Broomfield, and constitutes a significant visual asset to this part of Colorado.

Without mentioning the 500-foot red and white towers and strobe lights, Staff supports the Pinnacle application by finding that "the applicant proposes to screen the new or expanded buildings with a faux rock façade, and color existing buildings and equipment to match the surrounding terrain."

The proposed buildings will be up to 60 feet tall with another 30 feet of building-mounted antennae that can not be effectively screened with vegetation or faux rock, because of the ridgeline topography and geology, where trees take generations, even centuries, to grow as high as they are now. Moreover, the highly visible existing buildings have been constructed so close to the front of the mountain that there is no room to plant screening vegetation.

On page 11, Staff interprets the Pinnacle proposal as compliant with the TLUP regarding removal of towers, on the pretext that Pinnacle proposes to create a tower facility that has "the capacity for at least eleven digital towers and eight FM radio stations." But there is no proof that any towers anywhere will be removed. Approval of the Pinnacle proposal essentially authorizes undesirable tower proliferation on a new mountain top.

Staff's assessment of Squaw Mountain is incomplete and disregards information submitted by NIST regarding the benefits of Squaw Mountain for DTV broadcasting and disregards the fact that Squaw Mountain is available now, as letters on record prove. The Squaw Mountain Communications site is approximately 2,000 feet higher than the Eldorado Mountain site. Towers at Squaw Mountain would be less than 200 feet high, would not require obstruction painting or lights, and would not protrude above the ridgeline.

Broadcasters could elect to use Squaw Mountain and solve the problem on Lookout Mountain and spare Eldorado Mountain. It is unconscionable for Jefferson County to ignore a solution that would produce benefits on all sides. Given the feasibility and availability of Squaw Mountain for DTV broadcasting, with its benefits, it is unacceptable for Jefferson County to approve the pinnacle proposal with its many known deficiencies and incompatibilities.

The above is only a summary of a few outstanding issues in the Staff Findings/ Recommendation. Members of the Planning Commission should not feel compelled to approve this application so that Jefferson County can assist the broadcasting industry, or Pinnacle Towers, Inc. We believe that the Staff Report overlooks evidence that, under ordinary scrutiny, would have dictated a recommendation for denial. We urge the Planning Commission to assess the Pinnacle proposal using applicable standards for compatibility.

Although the applicable criteria for this rezoning decision do not include a consideration of the Lookout Mountain situation, it is possible for Jefferson County to make a decision that satisfies all parties, except Pinnacle Towers, Inc., and would benefit the entire region. Such a decision would protect Eldorado Mountain and surrounding lands from further unnecessary tower proliferation, and ultimately enable the reduction of towers from the mountain backdrop. We believe that there are alternative sites and strategies that can accomplish these objectives.

We urge the Planning Commission to deny the rezoning application on the basis of applicable policies and regulations, in consideration of the substantial and credible evidence of incompatibility on record.

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