

June 6, 2022

Staff Memo and Recommendation to the Alta Appeal Authority

Re: Alta Ski Area Variance Request to Install Eight (8) Wyssen Tower Remote Avalanche Control Systems on slopes over 30% on Mount Baldy.

The Alta Ski Area (Alta) is requesting a variance to install eight (8) Wyssen Tower Remote Avalanche Control Systems (RACS) on their private land on Mount Baldy. Details on the RACS and proposed locations are attached in Alta's application material. A variance is necessary because the land use ordinance prohibits construction on slopes over 30% unless a variance is granted. By the very nature of avalanches and avalanche control, RACS must be installed on the steep slopes where avalanches begin. As one of the Planning Commission members noted, "RACS don't do much good if installed in the flats."

You, the Alta Town Council function as the Appeal Authority hearing and deciding on variances like this current request.

The Planning Commission has approved a Conditional Use Permit for the Mount Baldy (RACS) and recommended the that you view the Alta request positively. You have received that approval.

The Forest Service (Forest) has already approved RACS on Mount Baldy on the Forest Service property immediately next to Alta's private property on this current request. The Department of Justice's Division of Alcohol, Tobacco, Firearms and Explosives (ATFE) has also approved RACS, with specific conditions. Those approvals as well as the Wyssen Tower installation instruction requirements are attached. If all the RACS were on Forest or state land, the town would have no jurisdiction or authority. Our ordinances apply only to private lands.

The State Code has 5 conditions that must be satisfied for you to grant a variance, shown below in UCA 10-9a-702. (2).

10-9a-702. Variances.

- (2) (a) *The appeal authority may grant a variance only if:*
- (i) *literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*
 - (ii) *there are special circumstances attached to the property that do not generally apply to other properties in the same zone;*
 - (iii) *granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*
 - (iv) *the variance will not substantially affect the general plan and will not be contrary to the public interest; and*
 - (v) *the spirit of the land use ordinance is observed and substantial justice done.*

Land use ordinances, not just ours are simply not designed to address installations like these modern RACS. The ordinances are aimed at more traditional structures such as houses or garages. Salt Lake County is now going through this same process requiring conditional use permits and variances for installation of RACS. We have not had to go through this process before as the RACS have either been on federal or state land and out of our jurisdiction, even though within town boundaries.

Alta is seeking a variance which is really beyond the normal scope of a variance. Alta isn't seeking relief from the ordinances so they can build something with more coverage or less setback than the ordinances allow, they are seeking relief from the ordinance provision that prohibits construction on slope over 30%, for a public safety installation, RACS. The RACS provide avalanche mitigation. The RACS will replace avalanche control methods currently being done using military weapons or deployment of explosive hand charges by Alta Ski Patrol personnel.

The Department of Defense has set 2025 as the year military weapons must be discontinued for avalanche control so some alternative must be set into place. Access to Mount Baldy by personnel using hand charges for avalanche control is difficult and hazardous. A tram to the top of Mount Baldy has been proffered as a means for the Ski Patrol personnel to access the area to use hand charge deployment. The RACS, if successful, would eliminate the requirement for that access tram.

The following briefly addresses the state code's 5 conditions necessary to approve a variance.

(i) Literal enforcement of the ordinance would cause an unreasonable hardship on the applicant, by interfering with actions necessary to provide public safety avalanche control operations necessary to run a ski area. This request really has no effect on the land use ordinances that were developed at a time years ago when such things as these RACS were not in existence.

(ii) There are vast areas of FR-50, Mount Baldy's zone, within the town. The special circumstances in this area are the steep, cliffed avalanche producing areas. There are other relatively flatter, buildable areas within the FR-50 zone that do not exhibit the characteristics of Mount Baldy. Other FR-50 areas with the same characteristics as Mount Baldy would qualify for the same consideration for a variance for RACS as this current application.

(iii) There really are no other properties in this same zone with these same circumstances that wouldn't qualify for the same consideration. Granting this variance is not only essential to the enjoyment of a substantial property right possessed by Alta, running a ski area, but it is necessary to provide avalanche control and mitigation for the safety of everyone in the area.

(iv) Granting this variance will have no impact on the general plan and will not be contrary to the public interest. Granting this variance will have a positive impact on the activities mentioned in the general plan will have a positive effect on the public interest by enhancing public safety. Granting this variance preserves the spirit of the land use ordinance and substantial justice will be done by granting this variance, in fact, it is too bad that such modern, state of the art RACS do not have a public safety exemption under the terms of the ordinance, but again, since they were never predicted 50 years ago. There is no such exemption.

(v) The spirit of the land use ordinances will be observed, and substantial justice done by the granting of this variance request since the RACS will protect and preserve the existing uses allowed by the land use ordinance.

Staff Recommendation:

This request satisfies the conditions of the Utah State Code required to approve a variance. Staff recommends the variance request for the eight (8) Wyssen Tower Remote Avalanche Control Systems on Mount Baldy in the locations shown on the application be approved as submitted, subject to the same conditions of approval by the Forest Service for the approval on Forest Service property as outlined in their Decision Memo of January, 2022, The Department of Justice's Division of Alcohol, Tobacco, Firearms and Explosives approval letter of March 3, 2021, The Wyssen Installation manual, Alta's May 23, 2022, letter of request and the Town of Alta's Conditional Use Permit granted June 2, 2022, as attached.

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