



Staff Report to the Weber County Commission

Weber County Planning Division

Synopsis

Application Information

Application Request:	Consideration and action on a Zoning Development Agreement between Weber County and Western America Holding, LLC as part of Zoning Petition 2006-18 regarding a request to rezone approximately 4,297 acres located at Powder Mountain Resort from Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1), and Forest-40 (F-40) to Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40).
Agenda Date:	Tuesday, November 13, 2012
Applicant:	Steven H Nielsen II (Pronaia Capital), representing Western America Holding, LLC
File Number:	ZP 2006-18

Property Information

Approximate Location:	Powder Mountain Resort
Project Area:	Approximately 4,297 acres
Existing Zoning:	Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1), and Forest-40 (F-40)
Existing Land Use:	Powder Mountain Resort
Proposed Land Use:	Expansion and development of Powder Mountain Resort
Parcel ID:	See project file
Township, Range, Section:	See project file

Staff Information

Report Presenter:	Sean Wilkinson swilkinson@co.weber.ut.us 801-399-8765
Report Reviewer:	RS

Background

On June 1, 2010, a Memorandum of Understanding (MOU) between Weber County and Western America Holding, LLC was approved as a precursor to a formal Zoning Development Agreement between the parties regarding development at Powder Mountain Resort. The MOU promoted the creation of a Development Agreement that would establish the basic development parameters for Powder Mountain and cause the withdrawal of the Powder Mountain Town Incorporation Petition and litigation associated therewith. Negotiations on the Development Agreement began soon after the MOU was approved and have continued until the parties recently reached an agreement. The Agreement has been patterned after the County's development agreement with Snowbasin Resort.

One of the main reasons that the Development Agreement has taken so long to finalize is that Western America Holding, LLC began negotiating the sale of Powder Mountain Resort during the Development Agreement negotiations. The potential buyers needed additional time to review the Agreement and the negotiation process slowed down to accommodate this. The Planning Division, County legal counsel, and Western America Holding, LLC have now agreed in principle to the October 29th draft of the Development Agreement.

Each section of the MOU is addressed in the development agreement as are many of the principles that make up the Ogden Valley Planning Commission's 19 conditions recommended in 2007. The County worked hard to incorporate these principles into the Development Agreement and the only conditions not addressed in some form are the number limitations on hotel and commercial development, and the commencement of development with a multi-family/commercial village. Exhibit B lists the Planning Commission's 19 conditions and where they are found in the Development Agreement. This Development Agreement is tied to ZP 2006-18, for which two public hearings have already been held. A public hearing is not required to take action on this Development Agreement. A few of the highlights from each section of the Development Agreement are briefly summarized below. The summary does not include every provision of the Agreement and there are other provisions that the County Commission may want to discuss in more detail. Site specific issues such as the location of

a secondary road connection, or specific lot locations are not included in the Agreement, but will be addressed in future development applications.

Section 1 (General):

- When the agreement has been signed by both parties, they shall cause the dismissal of pending litigation and Western America Holding, LLC shall immediately withdraw the Powder Mountain Town Incorporation Petition.
- The County will rezone the property as described above in the application request.
- This Agreement supersedes the MOU.
- Both parties must agree in order to amend the Agreement or the Conceptual Development Plan. If an amendment is sought it must also go before the Planning Commission for a public hearing.

Section 2 (Health and Safety):

- This section discusses requirements that the developer must follow regarding avalanche hazards, fireplace use, development of a Weber County Sherriff's Office facility, wildfire prevention, and recommendations from the Utah Department of Environmental Quality and the Utah Geological Survey.

Section 3 (Destination and Recreation Resort Zone DRR-1):

- If a rezone to the DRR-1 Zone is requested, the density approved in the Development Agreement transfers as part of the rezone as per section 44-3.b of the County's Zoning Ordinance.
- Approval of a rezone to the DRR-1 Zone is not guaranteed and the developer must show that the resort can meet the rezone application requirements and the requirements of the DRR-1 Zone.
- If the property is rezoned to DRR-1 a new Development Agreement would be necessary.

Section 4 (Concept Development Plan):

- Exhibit B attached to this agreement includes the overall Concept Development Plan and the Conceptual Phase 1 Land Use Plan.
- The County will allow applications for the first phase of development to be submitted and processed prior to a rezone application to the DRR-1 Zone, but no development beyond the first phase as shown on the Conceptual Phase 1 Land Use Plan, and as otherwise limited in the Agreement, will be allowed until a DRR-1 rezone application has been submitted.

Section 5 (Development):

- Development inconsistent with the approved Conceptual Development Plans will not be approved.
- The County's typical development processes must be followed.
- The Developer shall consider comments from the Utah Division of Wildlife Resources made through the Resource Development Coordinating Committee at the site plan level of development approvals.
- The developer will make donations to the County described in the MOU with the following exceptions: A new \$100,000 donation will be made with the 100th unit and the donation associated with the 1,000th unit will be increased from \$250,000 to \$350,000. The County may also consider applying the value of land and improvements made by the developers in public benefits in lieu of the monetary donation.
- 30% of the project's gross acreage shall be preserved as open space within development applications.

Section 6 (Density):

- Total density for the project is 2,800 units, divided into two phases, as agreed to in the MOU. Phase 1 has 1,477 units and Phase 2 has 1,323 units. Single family dwellings and units in multi-family dwellings count as one unit, while hotel rooms count as one-third of a dwelling unit.
- Three corporate retreats are allowed with a maximum combined room total of 36. However, additional rooms may be added, but each room over the first 36 counts as one-third of a unit for density purposes.
- A wastewater treatment plan will be created after development of the first 200 units, but the first 200 units must still comply with all applicable health and safety regulations or no development can occur.

Section 7 (Traffic Mitigation):

- The developer will pay for a traffic safety/impact study after Phase 1 (1,477 units) has been completed. This is the same study described in the MOU.
- Air transportation and operations will comply with applicable zoning regulations in the Ogden Valley.

- The developer will work with the County to make acceptable provisions for construction traffic. This provision was also included in the MOU.

Section 8 (Reinvestment Fee Covenant):

- The developer is required to adopt a reinvestment fee covenant that complies with Utah State Code. The MOU called for a reinvestment fee covenant that could be used to benefit the Ogden Valley outside of Powder Mountain, but it was determined that using these funds outside of the Powder Mountain project area would violate Utah State Code. Due to the loss of this benefit for the rest of Ogden Valley, the developer's donations were increased as mentioned in Section 5 above.

Section 9 (Default and Enforcement):

- This section describes the developer's obligation to commence development of the project in a timely manner, actions that constitute a default, and how enforcement of the agreement is handled.

Section 10 (Exhibits):

- The exhibits attached to the agreement include the property description, the overall Conceptual Development Plan and Conceptual Phase 1 Land Use Plan, and the proposed zoning map for the project.

Summary of County Commission Considerations

- Does the agreement accomplish the County's purposes in eliminating the Powder Mountain Town Incorporation Petition and dismissing pending litigation?
- Is the agreement consistent with the MOU?
- Have the Ogden Valley Planning Commission's 19 conditions been considered in the Agreement?
- Are there provisions of the Agreement that the County Commission is not comfortable with?
- Are there provisions that the County Commission would like added to or amended in the Agreement?

Staff Recommendation

The Planning Division recommends approval of the Zoning Development Agreement as written in Exhibit A. The Agreement is based on the provisions of the MOU and takes into account most of the Ogden Valley Planning Commission's 19 conditions.

Exhibits

- A. Zoning Development Agreement (October 29th Draft)
- B. Ogden Valley Planning Commission 19 conditions with references to the Development Agreement

Staff Report Exhibit A

WEBER COUNTY ZONING DEVELOPMENT AGREEMENT

PARTIES: The parties to this Zoning Development Agreement (“Agreement”) are Western America Holding, LLC, a Utah limited liability company and owner of the property commonly known as Powder Mountain (herein “Developer”) and Weber County, a body politic in the State of Utah (herein “County”). The Developer and the County are collectively referred to herein as the “Parties.”

EFFECTIVE DATE: The effective date of this Agreement will be the date that rezoning approval is granted as outlined below by the Weber County Commission (“Commission”).

RECITALS

WHEREAS, the Developer seeks to rezone certain property located within the Ogden Valley Township of unincorporated Weber County, Utah from Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40) to Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40) for the general purpose of developing a year round destination resort upon property that consists of approximately 4,297 acres and is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, the County seeks to promote the health, welfare, safety, convenience and economic prosperity of the inhabitants of the County through the establishment and administration of zoning regulations concerning the use and development of land in the unincorporated area of the County as a means of implementing the General Plan as adopted for all or part of the County; and

WHEREAS, the Developer has requested that the above referenced Property be rezoned for the purposes of allowing him or his designees to develop the Property in a manner that has been presented to the County and that is represented in the Concept Development Plan shown in Exhibit B; and

WHEREAS, the Developer considers it to his advantage and benefit for the County to review his petition and supplementary information having prior knowledge of the development, so as to more completely assess its compatibility with applicable zoning ordinances, the County's General Plan, the surrounding area, and those uses that exist on the lands surrounding the property; and

WHEREAS, the County is desirous of rezoning the property for the purpose of developing it in the manner presented, but the County does not feel that the property should be rezoned unless the proposed development, is commenced as soon as conditions allow and completion is pursued in good faith; and

WHEREAS, the Parties entered into a binding Memorandum of Understanding (MOU) on June 1, 2010 to facilitate the completion of the Development Agreement and specified various issues; and

WHEREAS, the Parties are desirous that certain litigation (Appellate Case No.20090897) which is presently pending before the Utah Supreme Court relating to the incorporation of the Town of Powder Mountain be dismissed and the Incorporation Petition be withdrawn; and

NOW THEREFORE, for good and valuable consideration in receipt of which is hereby acknowledged and accepted by both Parties, the Parties hereto mutually agree and covenant as follows:

AGREEMENT

1. General

- 1.1. Upon the Effective Date of this Agreement, the Parties shall cause the dismissal of (Appellate Case No.20090897) and the Developer shall immediately cause the Incorporation Petition to be withdrawn.
- 1.2. The County shall rezone the Property described in Exhibit A from Forest Residential-3 (FR-3), Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40) to Forest Valley-3 (FV-3), Commercial Valley Resort Recreation-1 (CVR-1) and Forest-40 (F-40), as shown on the proposed zoning map attached as Exhibit C, for the purpose of allowing the Developer to construct his conceptually pre-designed project on the subject Property.
- 1.3. The responsibilities and commitments of the Developer and the County, as detailed in this document when executed, shall constitute a covenant and restriction that shall run with the land and be binding upon the Developer, his assigns and/or his successors in interest.
- 1.4. The provisions of this Agreement shall supersede the MOU.
- 1.5. Both Parties acknowledge that this Agreement will be recorded in the Office of the Weber County Recorder, and recognize the advantageous nature of this Agreement which provides for the accrual of benefits and protection of interests to both Parties.
- 1.6. This Agreement constitutes the entire Agreement between the Parties; however, the Parties acknowledge that an official, recorded copy of the Powder Mountain Rezone Application will be kept in the Weber County Clerk/Auditors Office and the Planning Division Office for reference purposes. The Parties may consider amendments or modifications to the provisions of this Agreement and/or the Concept Development Plan only by written instrument and only upon agreement by both Parties. In the event that an amendment to the Concept Development Plan is sought, it may only be made after considering the recommendation of the County Planning Commission which may hold a public hearing to obtain public input on the proposed amendment or modification of the Concept Development Plan.
- 1.7. This Agreement with any amendments or modifications shall be in full force and effect according to this approved Agreement until the property covered herein has been reverted to its former zone designation as a result of default.
- 1.8. Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.

2. Health and Safety

- 2.1. Developer shall address site specific avalanche hazards at the site plan level of approvals for development.

- 2.2. The Developer is committed to utilizing efficient low-emission fireplaces in future development on the Property, including but not limited to, natural gas, liquid propane and high efficiency wood burning systems. The Developer will work with the County to facilitate these uses, but the Developer shall not be prohibited from utilizing traditional log-burning fireplaces on a limited basis in lodges, hotels, corporate retreats, commercial areas and single-family homes, provided however Developer shall comply with all federal, state and local regulations.
 - 2.3. The Developer shall provide a facility for the Weber County Sheriff's Office including but not limited to office space, equipment storage, and a holding cell. The facility design/floor plan shall be approved by the Weber County Sheriff's Office and shall be provided at a time that is deemed necessary and practical by the same. The facility may be integrated with other County services and is anticipated to be built when the existing main parking lot and main lodge area are redeveloped into a mixed use village.
 - 2.4. The Developer shall seek input from the U.S. Forest Service to develop and implement a wildfire prevention, evacuation and suppression plan for the Project. Developer shall address phase and site specific wildfire hazards and management plans at the time of and within all development review applications.
 - 2.5. Developer agrees to follow the recommendations of the State of Utah Department of Environmental Quality and Utah Geological Survey as outlined in letters dated October 12, 2007 and September 18, 2007 respectively.
3. Destination and Recreation Resort Zone (DRR-1)
 - 3.1. The County has enacted the Destination and Recreation Resort (DRR-1) Zone. Provisions were made to allow previously approved master planned resorts that meet the requirements of Section 44-3.b of the Zoning Ordinance to be rezoned to the DRR-1 zone. The Parties agree that should the Developer choose to make application to rezone to DRR-1 the Resort shall retain the density and other development rights listed in Section 6 of this Agreement, provided that the Resort can meet all other requirements of Chapter 44 of the Zoning Ordinance including demonstrating "a substantial public benefit while exhibiting an exceptional vision and development plan superior to that allowed by current or conventional zoning."
 - 3.2. If the Developer chooses to make application for a rezone to the DRR-1 Zone, the Developer will comply with the requirements of the Weber County Zoning Ordinance 35-4.3 (Destination and Recreation Resort Zone Supplementary Requirements) and 44 (Ogden Valley Destination and Recreation Resort Zone DRR-1). A new development agreement would be approved as part of any DRR-1 rezone approval.
 4. Concept Development Plan
 - 4.1. Consistent with the MOU and this Agreement, which supersedes the MOU, Weber County adopts the Concept Development Plan found in Exhibit B including the Conceptual Phase 1 Land Use Plan. Further, consistent with the recommended rezone conditions by the Ogden Valley Township Planning Commission, it is recognized that the Concept Development Plan may need to be amended as found in section 1.6.
 - 4.2. Weber County shall retain the right to approve or deny more specific/detailed conceptual development plans, provided however, that Weber County shall approve more detailed

concept development plans consistent with the current Concept Development Plan and with the regulations of the applicable zones approved herewith. The more specific/detailed concept development plans shall be approved prior to or in conjunction with the first application for site plan/subdivision approval within each development area/phase. Weber County will allow the submittal of a conditional use, design review, and subdivision application for the first development phase, which is included as part of Exhibit B, and which is hereby determined to be consistent with the Concept Development Plan and which may include amenities consistent with the operations of a ski resort to proceed prior to submittal of a rezone application for the DRR-1 Zone. The Developer shall submit a rezone application for the DRR-1 Zone prior to any development beyond Phase 1.

4.3. The Parties recognize the benefits of minimizing road miles, and road widths to protect the natural habitat and they further recognize the benefit of clustering development. The Developer agrees as part of the amendment process to the Concept Development Plan to a design that minimizes road miles, road widths and encourages clustering.

5. Development

5.1. Developer shall develop the subject property based upon the approved Concept Development Plan (Exhibit B). The Concept Development Plan may be refined and modified but the general concept of the plans will not be changed without prior formal approval of the County.

5.2. Developer agrees that development, consistent with the Concept Development Plan approved as part of this Agreement and more particularly illustrated in Exhibit B, will be subject to and part of a more specific and more detailed subdivision and/or plan review. Development inconsistent with the Concept Development Plan will not be approved.

5.3. The County will review more detailed development plans and will approve/issue Land Use, Conditional Use, and Building Permits based on compliance with applicable standards found in State Law, the Weber County Zoning Ordinance, Building Code and/or Health Regulations.

5.4. Developer shall incorporate principles of sustainability into the development when practical and feasible. Developer shall demonstrate practicality and feasibility at the time of and within all development review applications.

5.5. Developer shall consider comments made by the State of Utah Division of Wildlife Resources (DWR) at the site plan level of approvals for development per the existing Resource Development Coordinating Committee (RDCC) process including trails and wildlife buffers. DWR comments, eligible for consideration, shall be those submitted prior to a Planning Commission meeting where the related application is being considered for the first time. Reasonable and customary wildlife buffers will be part of the Developer submittals for design review/subdivision applications.

5.6. The Developer shall agree to propose a Recreation Facilities Plan as part of any DRR-1 rezone application. The Recreation Facilities Plan shall provide that recreation amenities will be provided commensurate with the level of residential development and consistent with the Recreation Facilities Plan. Two years after any development commences, the Developer shall provide a biennial report to the Planning Division Staff that inventories

all existing (constructed) recreation facilities and commercial/residential units to date. The inventory shall include, but not be limited to, the number, type and general location of facilities/units. Recreational facilities and commercial units shall be represented in terms of acreage or square footage, whichever is more appropriate. General location(s) shall be provided in terms of development area as illustrated on the Concept Development Plan. (See Exhibit B)

- 5.7. In connection with the development, the Developer or its successors in interest shall make the following donations to the County, which sums shall be used solely for the benefit of the local community by purchasing and maintaining open lands or other community projects, as determined by the County: i) upon completion and sale of the 1st unit, the Developer or its successors in interest shall donate \$100,000; ii) upon completion and sale of the 100th unit, the Developer or its successors in interest shall donate \$100,000; iii) upon completion and sale of the 1,000th unit, the Developer or its successors in interest shall donate \$350,000; (iv) upon completion and sale of the 2000th unit, the Developer or its successors in interest shall donate \$500,000; and (v) upon completion and sale of the 2800th unit, the Developer or its successors in interest shall donate \$500,000. In the event that Developer establishes permanent open space, public use space, conservation areas or similar community benefits within Powder Mountain or the surrounding area the County will consider applying the value of the land and improvements included in such community benefits as a credit against the amounts to be donated by Developer at the time of the sale of the 1,000th unit and thereafter, as set forth above. Failure of the Developer to pay the required donations, in cash or community benefits acceptable to the County, in accordance with the above schedule will be deemed to be sufficient reason for County to deny additional building permits until the donation is received.
- 5.8. Developer agrees that a minimum of 30% of the total proposed project's gross acreage shall be permanently preserved as open space in any development application/plans for any improvements within the project. Open space within the Property is intended to provide and reserve suitable area for active and passive recreation. No dwelling units may be constructed within the open space area. Typical permitted uses within the Project's open space shall include parks, trails, natural unimproved landscaping, skiing and winter sports, golf, play fields, bathrooms and kiosks, snow safety and skier service facilities, and other support recreation activities. If Developer proceeds to submit an application for DRR-1 rezone then section 44-2 (9) Open Space shall apply.
- 5.9. The Parties agree to allow golf course development to one 18 hole golf course that will substantially preserve the natural landscape characteristics by incorporating a design type that utilizes native vegetation and limits large formal turf landscapes.
- 5.10. Developer agrees that all construction will utilize best management practices. Final site plan applications made to Weber County shall be accompanied by a summary of the best management practices being utilized.

6. Density

6.1 Residential density shall not exceed 2,800 units. The number of units will be applied in two density phases. Multiple development phases are anticipated within each density phase.

6.2 The Developer shall be entitled to the following density on the following terms and conditions: Phase 1 Density: 1,477 units which may include condominiums, single family lots and homes, hotels, and corporate retreats. Hotel rooms shall count as the equivalent of one-third 1/3 of a single family dwelling unit. In other words, a 100 unit hotel would count as 33 units. Condominium units containing lock out rooms that can be separately rented shall be counted as one unit (including the lock out rooms). Commercial development is not included in the unit density number. Following the construction of the first 200 units by the Developer, recreational and commercial uses shall be developed as needed to support the resort. Attached is Table 6.2 that sets forth a summary of the approved Phase 1 Density. Any allowed density that is not used in Phase 1 may be used in later phases of development.

TABLE 6.2 –PHASE 1 DENSITY AND DESCRIPTION	
Type of Use	Density Equivalent
Single-Family Dwelling	1 unit
Multifamily Dwelling	1 unit per dwelling unit
Hotel Room	.33 unit
Commercial Square Footage	N/A. Does not count toward unit density. See Total Project Density below.
Corporate Retreats	N/A. Does not count toward unit density. Max 3 corporate retreats with a combined number of rooms not to exceed 36 for Project unless traded per Section 6.4. Each room after 36 counts as .3 unit.
TOTAL PHASE 1 DENSITY PERMITTED:	1,477 residential units
<u>Seasonal workforce housing units</u> shall not be counted toward density of the Project regardless of where it is located.	

6.3 Phase 2 Density. Upon meeting the requirements specified in 6.2 above and the conditions and benchmarks specified in this Agreement, the Developer shall be entitled to proceed with Phase 2 Density, an additional 1,323 units, which shall include single family dwelling units, multi-family dwelling units condominiums, and hotel rooms among other uses. Hotels and lock out rooms, shall count as described in 6.3. Attached is Table 6.3 that sets forth the approved Phase 2 Density.

TABLE 6.3 – PHASE 2 DENSITY AND DESCRIPTION	
Type of Use	Density Equivalent
Single-Family Dwelling	1 unit
Multifamily Dwelling	1 unit
Hotel Room	.33 unit
Commercial Square Footage	N/A. Does not count toward unit density. See Total

	Project Density below.
Corporate Retreats	N/A. Does not count toward unit density. Max 3 corporate retreats with a combined number of rooms not to exceed 36 for Project unless traded per Section 6.4. Each room after 36 counts as .3 unit.
TOTAL PHASE 2 DENSITY PERMITTED:	1,323 residential units
TOTAL PROJECT DENSITY PERMITTED: 2,800 residential units <u>Seasonal workforce housing units</u> shall not be counted toward density of the Project regardless of where it is located.	

- 6.4 The first 36 corporate retreat rooms shall not count against the Project’s density entitlement. Additional corporate retreats may be added, however, such additional corporate retreat rooms will count towards the density limitations and each corporate retreat room shall count as .3 unit for density purposes.
- 6.5 A Seasonal Workforce Housing Plan shall be presented and reviewed and a recommendation made by the Planning Commission and approved by the County Commission as part of a any request for change in the concept development plan for the Project after the first 200 units, or as part of a rezone application to DRR-1. This plan shall comply with the requirements set forth in Section 44-7 of the DRR-1 Zone. The Seasonal Workforce Housing Units shall be in addition to the allowed density limitations set forth in Section 6.1.
- 6.6 After development of the first 200 units, the Developer shall evaluate the wastewater treatment facility capacity in relation to the timing for future demand and submit to the County a plan for wastewater treatment beyond the first 200 units. Subject to compliance with applicable federal, state and local regulations, Developer may provide for wastewater treatment through: (i) continuation of the use of existing permitted wastewater treatment facilities for some period of time, (ii) expansion of the existing treatment facility or construction of a new waste water treatment facility approved by Utah DEQ/DWQ within the resort boundary, (iii) negotiation of a wastewater treatment and reuse agreement with an existing wastewater treatment facility, or (iv) identify an alternative site suitable for new a wastewater treatment facility. In the event that a new treatment facility is constructed within the resort boundary, such facility shall be approved by Utah DEQ and the County Health Department to provide a level of effluent quality that will allow the re-use of treated water for snowmaking, aquifer recharge, and irrigation of fields, forests, golf course and/or landscaping. The total number of dwellings and supporting buildings shall be limited by the provision of the necessary water, sewer and other utility infrastructure to support such development. No development shall be allowed unless Developer demonstrates the ability to provide water, sewer and other necessary infrastructure in accordance with state laws, rules and regulations and county ordinances.

7. Traffic Mitigation

- 7.1. Upon the completion of Phase 1, County shall issue a scoping letter and the Developer shall pay for a traffic safety/impact study by an entity acceptable to the Parties (the “Traffic Study” or “Study”). The Study shall address the existing access road for the

Property and shall make recommendations for improvements to the existing access road and related safety issues, including but not limited to guard rails, additional signage, flashing lights in dangerous areas, and runaway ramps. The Parties shall forward the Study to the Utah Department of Transportation (“UDOT”) and actively seek UDOT’s implementation of the Study’s recommendations. The study shall also determine whether a secondary access is necessary for emergency purposes and/or general use and provide cost estimates for both improvements to the “Powder Mountain Road” and the secondary access.

- 7.2. The Developer shall present a transit plan with an implementation methodology that may include but not be limited to:
- A. Airport shuttle.
 - B. Complimentary on and offsite transit service.
 - C. Park and Ride provided in Ogden City or other approved Wasatch Front location.
 - D. Mandatory employee shuttle originating from Wasatch Front.

This Plan is to be presented and approved prior to or in conjunction with any site plan/subdivision submittal.

- 7.3. Developer agrees that air transportation into the Resort and Resort air operations will comply with the standards and requirements for heliports in the Ogden Valley. Heliports are allowed only in the DRR-1 and F-40 Zones, subject to applicable standards and requirements. “Resort air operations” refers to those aerial operations vital to construction and management of the resort, i.e., lift installation and avalanche control.

- 7.4. The Parties will work together collectively and with local residents to set reasonable limitations on construction traffic to provide a safe working environment on the existing access road and surrounding roads. These limitations will be presented to the Planning Commission for approval prior to or in conjunction with any site plan/ subdivision submittal. Developer shall make reasonable accommodations to ease construction traffic, such as placing staging areas in appropriate areas and providing lower level parking areas and shuttles for construction workers.

8. Reinvestment Fee Covenant

- 8.1. Developer shall adopt and record a reinvestment fee covenant that complies with the requirements of the Utah State Code for such covenants.

9. Default and Enforcement

- 9.1. The Developer acknowledges that the County's granting of this rezoning outlined herein is contingent upon the Developer proceeding expeditiously with the implementation of its development plan. The County acknowledges that the development of the Property will occur in phases over an extended period of time. Nevertheless, in the event that the Developer does not begin construction of its first phase of improvements within three years following the Effective Date, as evidenced by Developer submitting a complete building permit application and paying all applicable fees for the construction of any portion of the Phase 1 improvements, the County shall have the right to process a rezone of the Property to reinstate the zoning classifications of the Property to those that existed immediately prior to the Effective Date.

- 9.2. The following conditions, occurrences and/or actions will constitute a default by the Developer, his assigns and/or his successors in interest:
- 9.2.1. The failure of the Developer to dismiss (Appellate Case No.20090897) and withdraw the Incorporation Petition within ten (10) business days following the Effective Date of this Agreement.
 - 9.2.2. Failure to present a detailed development plan, gain County approval and obtain Land Use/Conditional Use and Building Permits and commence construction within the manner of time specified in Section 9.1 of this Agreement.
- 9.3. In the event that any of the conditions constituting default, by the Developer (including his assigns or successors in interest) occur, the County may examine the reasons for the default and at its discretion, modify the terms of this Agreement, approve a change to the Concept Development Plan or initiate steps to revert the zoning designation to its former zones.
- 9.4. In the event that legal action is required in order to enforce the terms of this Agreement, the prevailing party shall be entitled to receive reimbursement, from the faulting party, for attorney's fees and other associated costs incurred while enforcing this Agreement.
- 9.5. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned or transferred to any other party, individual or entity without assigning also the responsibilities arising hereunder.
- 9.6. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be invalid the remainder of the Agreement shall remain in full force.
- 9.7. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the Parties hereto nor any rights or benefits to third parties, except as expressly provided herein.
- 9.8. This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties hereto.
- 9.9. The Exhibits to the Agreement are incorporated herein by the reference to them in the Agreement.
- 9.10. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and shall be delivered personally to the party for whom intended, or, if mailed be certified mail, return receipt requested, postage prepaid to the Parties as follows:

For Western America Holding:

Steve Nielsen
299 Main Street, Suite 2490
Salt Lake City, UT 84111

For Weber County:

Weber County Planning Division
2380 Washington Blvd., Suite 240
Ogden, UT 84401

Any party may change its address by giving written notice to the other party in accordance with the provisions of this section.

10. Exhibits

- A. Property Description
- B. Concept Development Plan and Conceptual Phase 1 Land Use Plan
- C. Proposed Zoning Map

IN WITNESS WHEREOF, the Parties hereto, having been duly authorized, have executed this Agreement to be effective upon date of approval.

Approved by the Parties herein undersigned this _____ day of _____, 2012

Weber County Corporation
"County"

Western America Holding, LLC
"Developer"

By: _____
Craig L. Dearden
Chair, Weber County Commission

By: _____
Steve Nielsen
Representative, Western America Holding,
LLC

ATTEST:

Ricky D. Hatch, CPA
Weber County Clerk/Auditor

CORPORATE ACKNOWLEDGMENT

State of Utah,)
)ss
County of Weber)

On this _____ day of _____, in the year 2012, before me, _____ a Notary Public in and for the State, personally appeared, _____ proved, on the basis of satisfactory evidence, to be the _____ of _____ corporation which executed the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of a Resolution of its Board of Directors that said corporation executed the same.

Witness my hand and official seal.

Notary Public

APPROVED AS TO FORM:

Weber County Attorney

Date

Exhibit A



POWDER MOUNTAIN Re-Zone Legal Description

Beginning at a point on the Weber-Cache county line, said point being South 03°24'06" West 1083.29 feet along the section line from the monument marking the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian (basis of bearing is South 89°31'02" East 2271.58 feet from said Northwest Corner to the monumented North Quarter Corner of said Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, basis of bearing was measured from Geodetic North at said Northwest corner of Section 6) and running thence along said Weber-Cache county line (as shown on the Weber/Cache County Line plat recorded in Book 40 at Page 21, plat bearing is South 68°01'08" East) South 67°49'02" East 996.28 feet, thence meandering along said Weber-Cache county line the following (2) courses 1) South 68°53'43" East 618.79 feet to the existing Weber County brass monument, 2) South 32°04'40" East 1432.61 feet; thence South 57°57'32" West 266.13 feet to a point of curvature of a 402.11 foot radius non-tangent curve to the right, the center of which bears South 57°54'04" West; thence southerly along the arc of said curve 161.07 feet through a central angle of 22°57'00"; thence South 09°08'56" East 310.95 feet to a point of curvature of a 1667.00 foot radius curve to the left, the center of which bears North 80°51'04" East; thence southerly along the arc of said curve 35.04 feet through a central angle of 01°12'16" to a point of curvature of a 1667.00 foot radius curve to the left, the center of which bears North 79°38'49" East; thence southerly along the arc of said curve 253.22 feet through a central angle of 08°42'12"; thence South 19°03'23" East 177.42 feet; thence North 30°19'57" East 59.89 feet; thence South 74°47'46" East 428.89 feet; thence North 42°56'09" East 501.23 feet to the Weber-Cache county line; thence South 47°03'40" East 477.42 feet along said County line; thence South 76°31'40" East 455.56 feet along said County Line to a point of curvature of a 130.00 foot radius curve to the right, the center of which bears South 37°52'07" West; thence southerly along the arc of said curve 148.28 feet through a central angle of 65°21'05"; thence South 13°11'46" West 60.72 feet to a point of curvature of a 20.00 foot radius curve to the left, the center of which bears South 76°50'14" East; thence southeasterly along the arc of said curve 40.57 feet through a central angle of 116°12'40" to a point of curvature of a 1049.43 foot radius curve to the right, the center of which bears South 12°50'47" East; thence easterly along the arc of said curve 546.24 feet through a central angle of 29°49'23"; thence North 20°08'22" East 90.12 feet to the Weber-Cache County meander line; thence along said County meander line the following (11) courses: 1) South 76°31'40" East 55.28 feet, 2) North 72°56'20" East 2236.46 feet to the existing Weber County brass monument, 3) South 83°59'38" East 300.00 feet, 4) South 44°11'33" East 390.61 feet, 5) South 85°40'38" East 1023.04 feet, 6) North 51°00'22" East 311.10 feet to the existing Weber County brass monument, 7) North 50°59'56" East 762.67 feet, 8) North 64°33'56" East 1678.18 feet, 9) North 68°06'56" East 1724.96 feet, 10) South 84°54'04" East 727.30 feet, 11) North 72°55'56" East 43.77 feet to the Quarter Section line of Section 4, Township 7 North, Range 2 East, Salt Lake Base and Meridian; thence along said Quarter Section line South 00°19'06" East 3595.99 feet to the North quarter corner of Section 9, Township 7 North, Range 2 East, Salt Lake Base and Meridian; thence South 00°03'35" West 5405.90 feet to the South quarter corner of said Section 9; thence South 86°20'47" East 2517.49 feet to the Southeast Corner of said Section 9; thence South 46°37'20" West 3639.90 feet to the Northeast Corner of the Southwest quarter of Section 16, Township 7 North, Range 2 East, Salt Lake Base and Meridian; thence South 00°43'08" West 2358.71 feet to the South quarter corner of said Section 16; thence South 86°47'40" West 2650.21 feet to the Southwest Corner of said Section 16; thence North 85°54'28" West 2514.70 feet to the South quarter corner of Section 17, Township 7 North, Range 2 East, Salt Lake Base and Meridian; thence South 87°20'03" West 2432.26 feet to the Southwest Corner of said Section 17; thence North 03°35'27" West 2575.97 feet to the West Quarter Corner of said Section 17; thence North 85°39'14" West 1270.03 feet to the Southwest Corner of the East Half of the Northeast Quarter of Section 18, Township 7 North, Range 2 East, Salt Lake Base and Meridian; thence North 04°19'32" West

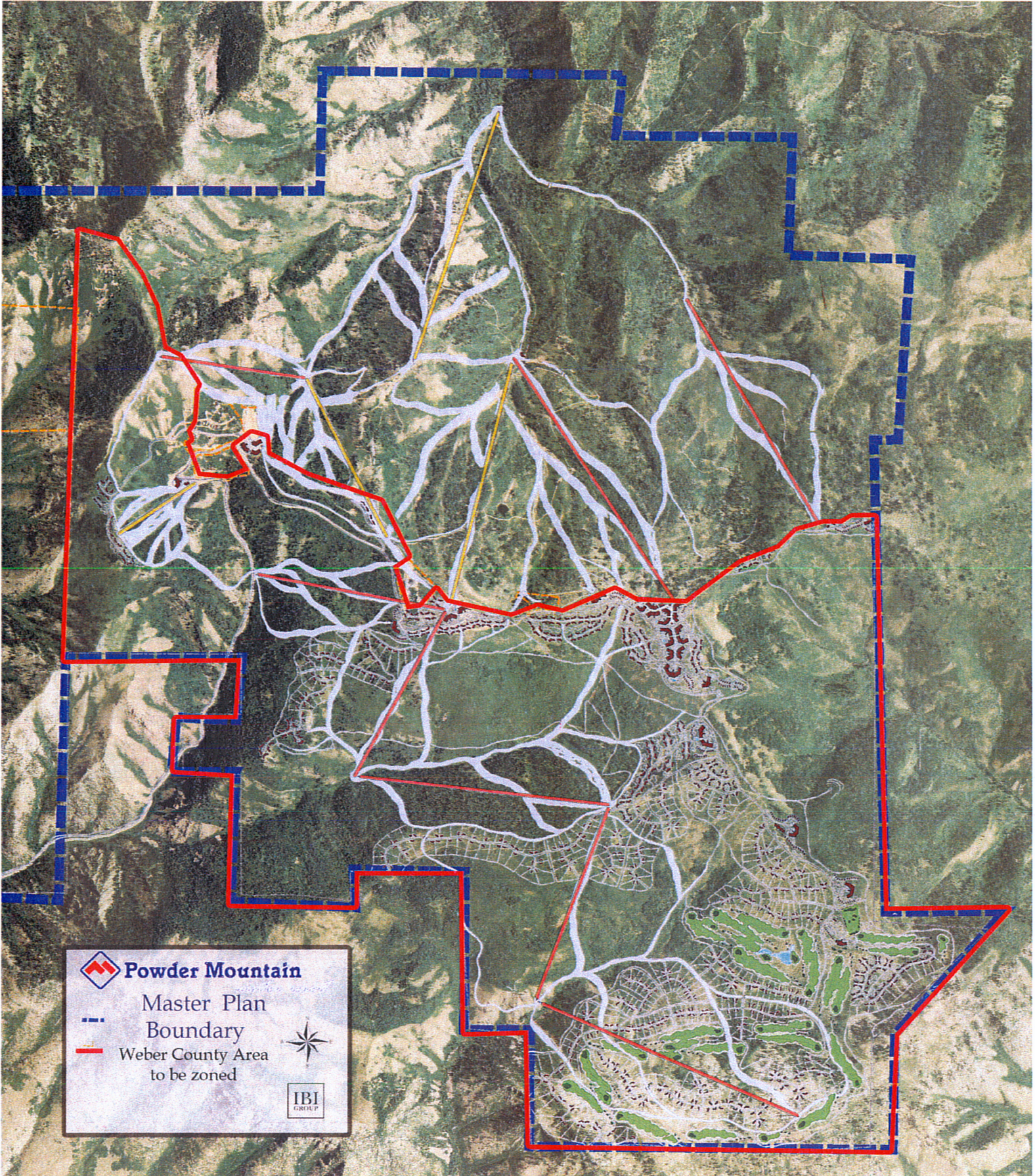
**B A S E L I N E
S U R V E Y I N G**

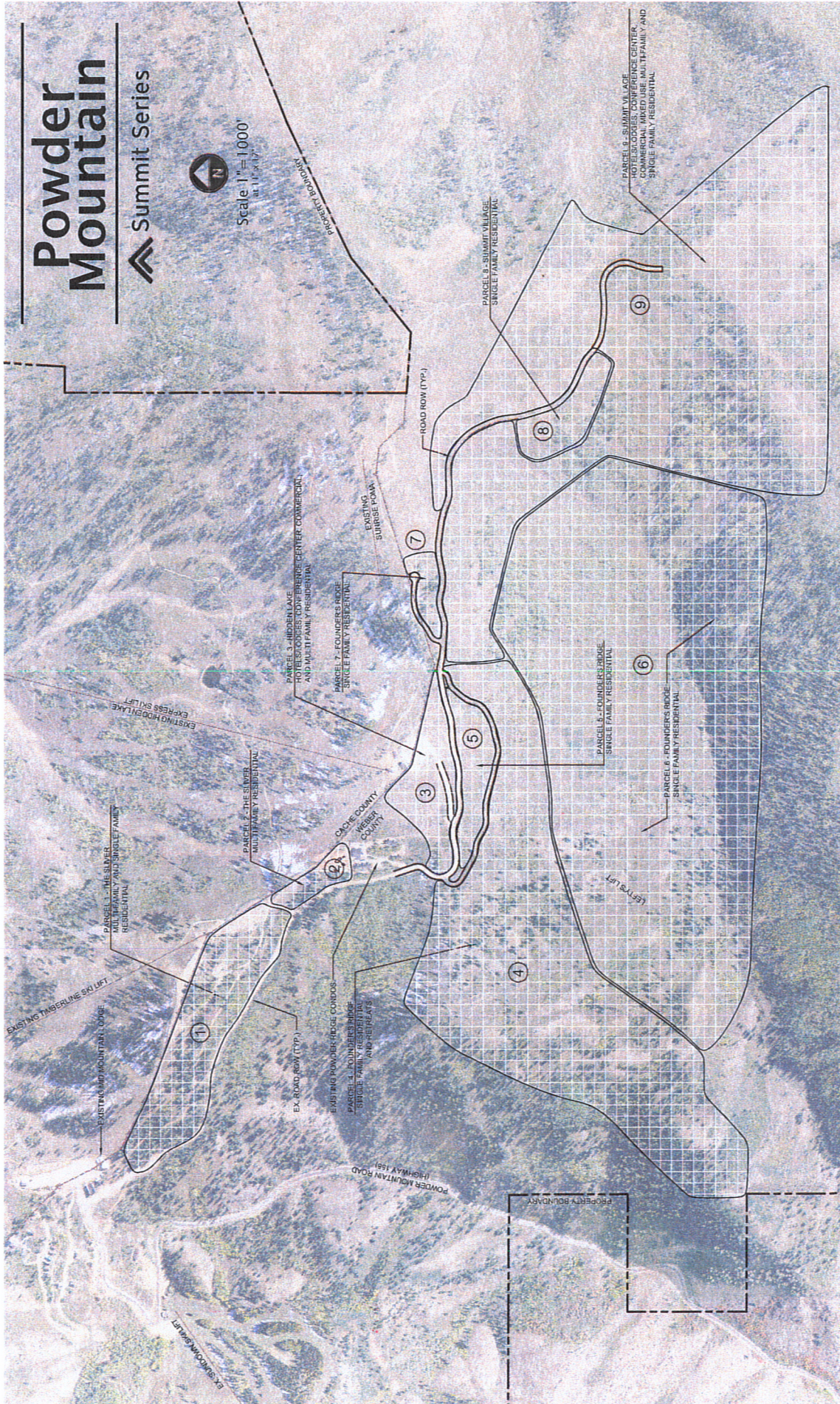
boundary subdivisions & l. & c. g.s.
topographic construction staking

3520.00 feet along the West line of said East Half and the extension thereof to a point 866.76 feet northerly of the Northwest Corner of said East Half; thence West 2460.69 feet; thence South 02°20'05" East 659.64 feet to the Southeast Corner of the Southwest Quarter of the Southwest Quarter of Section 7, Township 8 North, Range 2 East, Salt Lake Base and Meridian; thence North 84°07'08" West 1197.28 feet to the Southwest Corner of said Section 7; thence North 89°39'48" West 1322.81 feet to the Southwest Corner of the East Half of the Southeast Quarter of Section 12, Township 7 North, Range 1 East, Salt Lake Base and Meridian; thence North 00°06'22" West 2681.08 feet along the West line of said East Half; thence North 89°50'14" West 1322.49 feet to the Southwest Corner of the Northeast Quarter of said Section 12; thence North 00°04'52" West 1344.10 feet to the Southwest Corner of the Northwest Quarter of the Northeast Quarter of said Section 12; thence South 89°45'43" East 1319.67 feet to the Southeast Corner of said Northwest Quarter of the Northeast Quarter; thence North 00°12'08" West 1340.37 feet to the Northeast Corner of said Northwest Quarter of the Northeast Quarter; thence North 89°45'21" West 1317.72 feet to the North Quarter Corner of said Section 12; thence North 89°50'36" West 2635.43 feet to the Northwest Corner of said Section 12; thence North 02°14'17" East 5031.31 feet; thence North 01°49'08" East 2646.08 feet; thence North 01°49'08" East 1792.67 feet to the Weber-Cache County meander line; thence along said County meander line the following (5) courses: 1) South 70°19'23" East 5.76 feet, 2) South 62°14'34" East 719.20 feet to the existing Weber County brass monument, 3) South 24°23'46" East 2776.74 feet, 4) South 84°50'46" East 337.97 feet to the existing Weber County brass monument, 5) South 46°17'14" East 1274.89 feet; thence South 33°03'13" West 270.18 feet; thence South 84°03'13" West 206.88 feet; thence South 00°03'26" West 167.56 feet; thence South 84°03'13" West 12.63 feet to a point of curvature of a 197.62 foot radius curve to the left, the center of which bears South 05°56'53" East; thence westerly along the arc of said curve 64.31 feet through a central angle of 18°38'43" thence South 65°24'24" West 52.84 feet to a point of curvature of a 305.00 foot radius curve to the right, the center of which bears North 24°35'34" West; thence westerly along the arc of said curve 116.12 feet through a central angle of 21°48'49"; thence South 87°13'16" West 100.24 feet to a point of curvature of a 240.00 foot radius curve to the left, the center of which bears South 02°46'48" East; thence southwesterly along the arc of said curve 255.36 feet through a central angle of 60°57'46"; thence South 26°15'26" West 44.03 feet to a point of curvature of a 335.00 foot radius curve to the right, the center of which bears North 63°44'32" West; thence southwesterly along the arc of said curve 165.97 feet through a central angle of 28°23'10"; thence South 54°38'39" West 37.98 feet to a point of curvature of a 100.00 foot radius curve to the left, the center of which bears South 35°21'29" East; thence southeasterly along the arc of said curve 369.84 feet through a central angle of 211°54'10"; thence North 22°44'21" East 120.59 feet to a point of curvature of a 215.00 foot radius curve to the right, the center of which bears South 67°15'41" East; thence northeasterly along the arc of said curve 307.94 feet through a central angle of 82°03'52"; thence South 15°35'58" West 55.58 feet; thence South 39°45'07" East 136.97 feet; thence North 88°13'31" West 142.96 feet; thence South 47°06'24" West 72.31 feet; thence South 24°12'14" East 397.37 feet; thence North 28°10'49" East 36.38 feet; thence South 61°49'22" East 100.00 feet; thence North 29°09'07" East 4.49 feet; thence South 41°13'35" East 553.25 feet to a point of curvature of a 708.18 foot radius curve to the right, the center of which bears South 07°16'51" East; thence easterly along the arc of said curve 209.63 feet through a central angle of 16°57'37" to a point of curvature of a 215.91 foot radius curve to the right, the center of which bears South 09°40'48" West; thence southeasterly along the arc of said curve 158.63 feet through a central angle of 42°05'46"; thence North 65°04'53" East 316.92 feet; thence North 00°12'10" East 495.42 feet; thence North 61°15'10" East 66.00 feet; thence South 28°44'36" East 123.04 feet; thence North 64°47'59" East 163.00 feet; thence North 25°12'01" West 140.00 feet; thence North 22°21'29" West 100.99 feet; thence North 19°25'39" East 124.19 feet to the Weber-Cache County line (as shown on the Weber/Cache County Line plat recorded in Book 40 at Page 21); thence along said line the following (4) courses: 1) South 26°40'11" East 263.33 feet to the existing Weber County brass monument, 2) South 36°46'13" East 374.24 feet to the existing Weber County brass monument, 3) South 66°55'13" East 745.72 feet, 4) South 67°49'02" East 217.95 feet to the point of beginning.

Containing 4,297 acres.

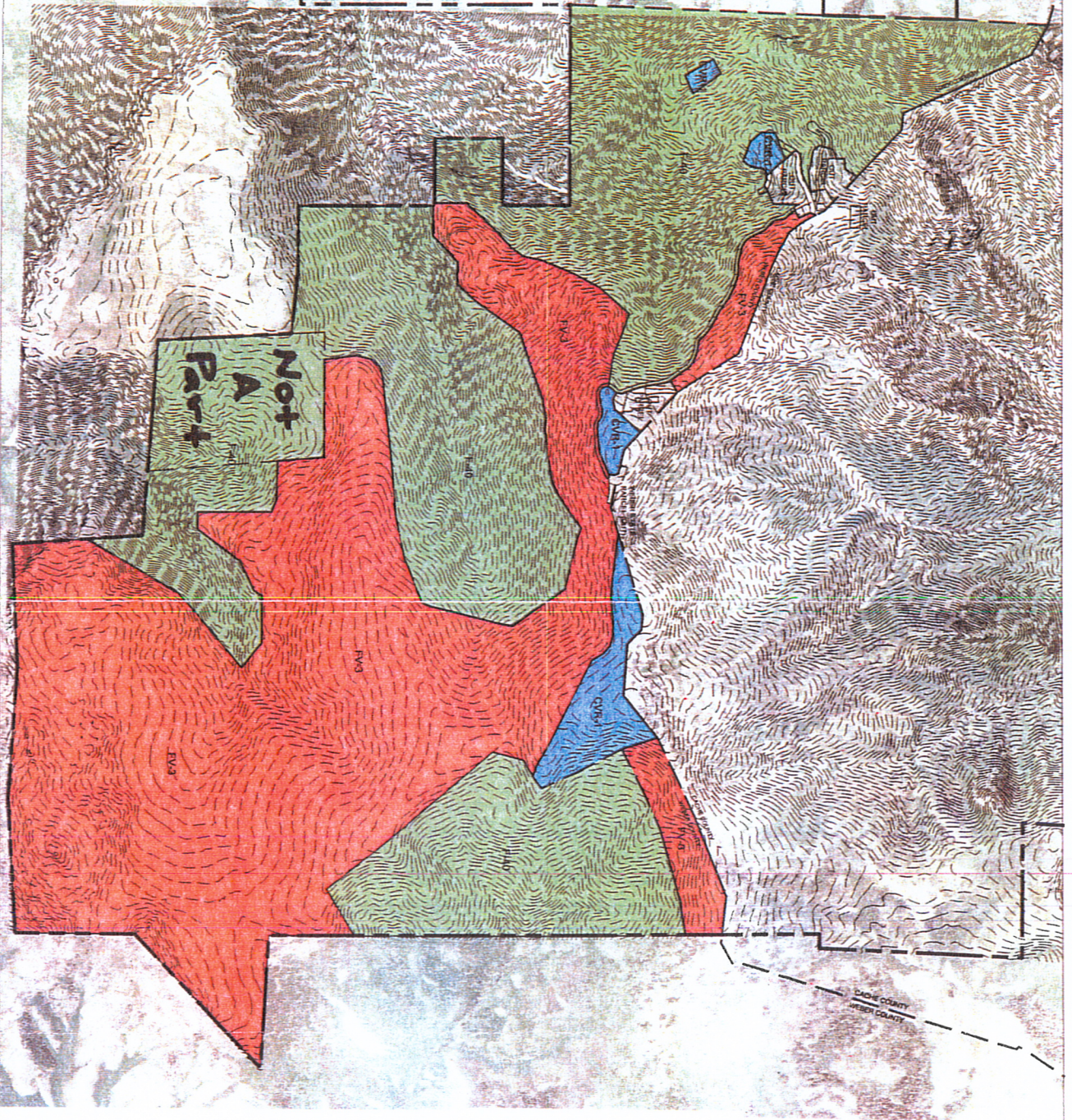
Exhibit B 1/2





Phase 1 Conceptual Land Use Plan

Exhibit C



SCALE: 1" = 2,000'

ZONING LEGEND

- Zone CVR-1
- Zone F-40
- Zone PV-3



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DATE	APPROVED BY
DATE	APPROVED BY
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REVISIONS

Powder Mountain Resort

Proposed Zoning: **05**

Prepared by: Jack Johnson Company, 10000 North 2600 East, Suite 100, Provo, UT 84601
 Date: 10/15/2008
 Project: Powder Mountain Resort

Staff Report Exhibit B

Ogden Valley Planning Commission 19 Conditions Comparison with Development Agreement

1. Village core commercial space and multi-family resort village to commence with any Phase 1 improvements. **(Not Included)**
 2. A seasonal emergency (ingress/egress) route be provided and improved in a manner that accommodates passenger cars. This route is to be in place prior to any commercial or residential building permits being issued by the Weber County Building Official. Gated or un-gated access needs to be addressed with the Planning Commission. **(Section 7.1)**
 3. A second permanent access road shall be improved (originating within Weber or Cache County) to the appropriate county's standard prior to site plan approval or final approval of any dwelling unit(lot) and/or sleeping room beyond the entire (Weber and Cache County) project's 895th unit and/or room. **(Section 7.1)**
 4. A transit plan shall be implemented that may include but not be limited to:
 - a. Airport shuttle.
 - b. Complimentary on and offsite transit service.
 - c. Park and Ride provided in Ogden City or other Wasatch Front location.
 - d. Mandatory employee shuttle originating from Wasatch Front.
- This Plan is to be presented and approved by the Ogden Valley Planning Commission and County Commission prior to any Phase 1 improvements commencing. **(Section 7.2)**
5. An employee housing plan shall be presented and approved by the Ogden Valley Planning Commission and County Commission. This plan shall provide an acceptable number of affordable housing units (as deemed necessary by the Ogden Valley Planning Commission and County Commission) at the resort and may provide other affordable units outside of the resort. **(Section 6.5)**
 6. No private, corporate or commercial air transportation into the Resort (excludes resort air operations, medical and heli-ski operations). "Resort air operations" refers to those aerial operations vital to construction and management of the resort i.e. lift installation and avalanche control. **(Section 7.3)**
 7. A minimum of 30% of proposed project's gross acreage shall be permanently preserved by a conservation and open space easement granted to Weber County and/or another entity (approved by Weber County) whose purpose is the conservation of open space and wild lands. This easement shall be presented and approved by the Ogden Valley Planning Commission and County Commission prior to any developer submitting any development application/plans for any improvements within Phase 1. This easement shall include, in addition to all other appropriate language, a metes and bounds description which can be located on the ground.
 8. The conceptual development plan to be amended to further reduce road miles and encourage more clustering. This "condition" is associated with density, therefore, the Planning Commission should give specific direction as to what extent the conceptual development plan should be amended after a density number has been determined. **(Section 5.8)**
 9. Powder Mountain shall agree to develop and adhere to the State of Utah Department of Wildlife Resources recommendations with regards to wildlife buffers where the resort boundary lies adjacent to State wildlife and/or Federal lands. **(Section 5.5)**

10. Powder Mountain agrees to limit golf course development to one 18 hole golf course that will substantially preserve the natural landscape characteristics by incorporating a design type that utilizes native vegetation and limits large formal turf landscapes. **(Section 5.9)**
11. All construction to utilize Best Management Practices. Each application made to Weber County for development shall be accompanied by a summary of what Best Management Practices are being utilized. **(Section 5.10)**
12. Development and implementation of a wild fire prevention, evacuation and suppression plan consistent with the U.S. Forest Service letter dated November 13, 2006. **(Section 2.4)**
13. Powder Mountain agrees to follow the recommendations of the State of Utah Department of Environmental Quality and Utah Geological Survey as outlined in letters dated October 12, 2007 and September 18, 2007 respectively. **(Section 2.5)**
14. Powder Mountain voluntarily agrees to present a construction mitigation plan, landscape plan, lighting plan and sign plan to the Ogden Valley Planning Commission and gain the Planning Commission's approval on these plans prior to presenting the Powder Mountain Resort Master Plan to the Weber County Commission. **(Section 7.4)**
15. Powder Mountain agrees to construct and ensure the operation and maintenance of a waste water treatment facility within the resort boundary. This facility shall provide treatment, to a level of quality, that will allow and guarantee the re-use of treated water for golf course and other irrigation purposes. **(Section 6.6)**
16. The Powder Mountain development is limited to 3 corporate retreats with a combined number of rooms not to exceed 36. **(Section 6.4)**
17. The Powder Mountain Resort density shall not to exceed 1218 dwelling units. **(Section 6.1)**
18. Hotel development is limited to no more than 4 hotel structures with a combined number of rooms not to exceed 385. **(Not Included)**
19. Powder Mountain commercial development shall not exceed 150,000 square feet. Hotel development does qualify as commercial development and will be counted towards the 150,000 square foot maximum. **(Not Included)**