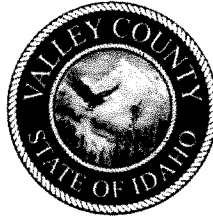


Valley County Planning and Zoning

PO Box 1350 • 219 North Main Street
Cascade, ID 83611-1350



Phone: 208-382-7115
Fax: 208-382-7119
Email: cherrick@co.valley.id.us

STAFF REPORT:	Tamarack Resort P.U.D. 98-1 and C.U.P. 23-51 Phase 3.4 – Lower Sugarloaf Custom Chalets – Preliminary Plat - ADDENDUM
HEARING DATE:	February 8, 2024
TO:	Planning and Zoning Commission
STAFF:	Cynda Herrick, AICP, CFM Planning and Zoning Director
APPLICANT / PROPERTY OWNER:	Tamarack Resort Two and Tamarack Real Estate Holdings LLC c/o Scott Turlington, 311 Village DR PMB 3026, Tamarack ID 83615
REPRESENTATIVE:	Chris Kirk 311 Village DR PMB 316, Tamarack Resort 83615
SURVEYOR:	Dan Dunn 25 Coyote Trail, Cascade, ID 83611
LOCATION:	Tamarack Resort - Poma Lift Area Parcel RP0049200000C0 in the NW ¼ Section 5, T.15N, R.3E, Boise Meridian, Valley County, Idaho
SIZE:	4.3 Acres
REQUEST:	Three Custom Chalet Lots in an Area Previously Platted as Open Space

A public hearing was held on January 11, 2024. The Commissioners asked for more information from the applicant, specifically the Facilities Plan, original approval, plat, and supplemental declaration.

Steve Millemann and Amy Pemberton provided information on the original approval (January 31, 2024). P.U.D. 98-1 approval includes the following:

- The Facilities Plan dated 2-12-2002.
 - The Facilities Plan has the general location and density of golf, ski, and commercial facilities, as well as the different types of residential units in Tamarack Resort.
 - The Facilities Plan called for TH-8 Townhomes at this site.
- Section E. Facilities - Section 1 – Application Overview
 - Allows for Tamarack Resort to modify the Facilities Plan without further County approval.
 - The order of construction may be modified.
 - The mix of dwelling units may be altered.

- General Declaration for Tamarack Resort 11/24/2003; Amended and Restated General Declaration for Tamarack Resort 01/30/2004; Second Amended General Declaration for Tamarack Resort 05-05-2006: Article 5. Property Rights and Section 5.1(k)
 - The 2004 version was recorded before the closing of any lots from the first release at Tamarack.
 - The right of the Declarant to convert Open Space to single family residential use...provided: any such conversion will be subject to necessary approvals from Valley County, and other required regulatory entities, will maintain the overall density limits established in the CUP, and will maintain the material balance between open space and developed property within the PUD.
 - All property owners have purchased their property subject to this section.
 - The contract between Tamarack Resort and the lot purchasers gave Tamarack the right to convert that land use from open space to single-family residential.
 - Tamarack is in compliance with the requirement to maintain at least 50% of the resort as open space.
- Buyer's Acknowledgement Regarding Property Report for Phase 1
 - Disclosure #10 "Future Development/Open Space"
 - "...reserves the right to modify the use of certain Open Space designated as such on the Master Plan and platting for the Resort. This modification may include conversion of certain Open Space to single family residential use..."
- The density and size of the proposal is less than was approved in the original P.U.D. and less than many of the nearby lots.
 - 3 proposed chalets, with a maximum size of 2,800-sqft each.
 - The parcel is 4.3 acres.
 - 1.5 +/- acres would be developed into three residential units, and
 - The remaining 2.8 +/- acres would remain as undeveloped common open space with recreation easement.

The applicant held an information meeting on January 31, 2024, as well as directly communicated with others who did not attend. Information is attached.

FINDINGS:

1. A public hearing was held on January 11, 2024. The matter was tabled to February 8, 2024, at 6:00 p.m.
2. Since the matter was tabled to a specific date and time, further legal notice was not required. However, it was in the *Star News* on January 18, 2024, and January 25, 2024.
3. Additional comments received:

In Opposition – Reasons Given Include:

- The original plan should not be altered as it was completed with deliberation and intention.
- Increasing the density in the area of the proposed site is contrary to what was represented to those who have purchased property thus far.
- The site was designated as open space due to environmental impacts including drainage, habitat, and water concerns.
- Adjacent property owners specifically chose properties due to the designated open space.

- This proposal would lower property values.
- Tamarack Resort ownership can easily expand the number of available housing units in the south portion of Tamarack Resort where improved infrastructure exists.

- 1) Dana Kemper, January 11, 2024
- 2) Barry Bram and Mary McLain, 94 Sugarloaf, January 22, 2024

STAFF COMMENTS / QUESTIONS:

- **Staff will bring approved applications to the hearing.**

ATTACHMENTS:

- Steve Millemann and Amy Pemberton, January 31 and February 1, 2024
- Facilities Program Summary describing TH-8 Townhomes
- Map showing location of TH-8 Townhomes
- Section I – Application Overview: describes original approval, PUD flexibility, etc.
- (3) Declarations (5.1 Article 5. Property Rights): General - 11/24/2003; Amended and Restated 01/30/2004; Second Amended and Restated – 05-05-2006
- Informational Meeting Held by Applicant
- Additional Responses

Proposed Conditions of Approval

1. The application, the staff report, and the provisions of the Land Use and Development Ordinance are all made a part of this permit as if written in full herein. Any violation of any portion of the permit will be subject to enforcement and penalties in accordance with Title 9-2-5; and, may include revocation or suspension of the conditional use permit.
2. Any change in the nature or scope of land use activities shall require an additional Conditional Use Permit.
3. The issuance of this permit and these conditions will not relieve the applicant from complying with applicable County, State, or Federal laws or regulations or be construed as permission to operate in violation of any statute or regulations. Violation of these laws, regulations or rules may be grounds for revocation of the Conditional Use Permit or grounds for suspension of the Conditional Use Permit.
4. The final plat shall be recorded within two years, or this permit will be null and void.
5. Must comply with all requirements previously approved as P.U.D 98-01 Tamarack Resort and any subsequent amendments.
6. Must have an approved storm water management plan and site grading plan approved by the Valley County Engineer prior to any work being done on-site.
7. Applicants engineer shall confirm all utilities were placed according to the approved plans.
8. Must have a will-serve letter from the North Lake Recreational Sewer and Water District guaranteeing that sewer capacity is available for immediate service prior to recordation of the final plat.
9. Shall comply with the requirements of the Donnelly Rural Fire Protection District.

10. All lighting must comply with the Valley County Lighting Ordinance.
11. Shall place addressing numbers at each unit.
12. All easements shall be shown on the final plat.
13. The following notes shall be placed in the notes on the face of the final plat:
 - “The Valley County Board of Commissioners have the sole discretion to set the level of service for any public road; the level of service can be changed.”
 - “Only one wood burning device per lot.”
 - “Surrounding land uses are subject to change.”

END OF STAFF REPORT



MILLEMANN PEMBERTON & HOLM LLP
ATTORNEYS AT LAW

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HANNAH R. DRABINSKI
FREDERICK CORIELL

TELEPHONE
FACSIMILE

January 31, 2024

Cynda Herrick, AICP, CFM
Planning and Zoning Director
PO Box 1350
Cascade, ID 83611-1350

Re: Tamarack Resort PUD 98-1 &
CUP 23-51 Lower Sugarloaf Custom Chalets Preliminary Plat

Dear Cynda:

Since neither Steve or I are available to attend the Planning and Zoning Commission Meeting on February 8, we are writing to provide our analysis on Tamarack's proposal to plat three single family residential lots in a portion of property previously platted as common area. We would appreciate having this letter provided to the P&Z Commissioners in advance of the Meeting.

Our understanding is that the Planning and Zoning Commission has asked for Tamarack to connect the dots on the following:

- The approved PUD and CUP facilities plan calls for 8 townhomes to be located in the property that is the subject of CUP 23-51.
- Then the property was platted in the Phase 1 Final Plat as Common Open Space.
- Now, Tamarack is requesting a new plat for 3 custom chalet lots on this property.

First, Tamarack Resort's conditional use permit for PUD 98-1 is the entitlement from Valley County to proceed with the platting and construction of Tamarack Resort. The CUP incorporates all terms and conditions of the CUP application, as well as additional terms and conditions imposed as part of the approval process. The Resort property is not zoned, in the traditional sense. The CUP permits the implementation of the Tamarack Planned Unit Development, with the land uses, densities, facilities, and amenities which are provided in the CUP applications.

Part of the application for PUD 98-1 was the facilities plan dated 02/12/2002, which called for TH-8 Townhomes on the property at issue and provided detail on the Townhomes, both of which were included in the staff report for the current application. The facilities plan sets forth the general location and density of golf, ski and commercial facilities, as well as the different types of residential units in Tamarack Resort. Another portion of the CUP application submitted in

2002 that was included in the staff report for the current application allows for Tamarack to modify the mix of dwelling units utilized. This is at “Section 1 – Application Overview” under Section E. Facilities, and provides that “[Tamarack] reserves the right to modify the Facilities Plan, without further County approval, as follows: 1) the order of construction of facilities may be modified; ... and 4) the mix of dwelling units which comprise the total 2,043 units approved in the PUD (i.e. single family residence, townhome, villa, multi-family and hotel) may be altered...”

When Tamarack platted Phase 1 of Tamarack Resort, it platted the area reserved for TH-8 in the facilities plan as common area. It did not waive the right to plat residential units within the common area, however. The Second Amended General Declaration for Tamarack Resort provides at Section 5.1(k) that Owners have a nonexclusive right of use of Common Open Space, subject to “The right of the Declarant to convert Open Space to single family residential use...provided: any such conversion will be subject to necessary approvals from Valley County, and any other required regulatory entities, will maintain the overall density limits established in the CUP, and will maintain the material balance between open space and developed property within the PUD.

The overall density approved for Tamarack Resort is 2,043 dwelling units. Approximately 500 dwelling units have been developed to date. Therefore, the three proposed units will have no impact on the overall density limits established in the CUP. Additionally, the condition of Section 5.1(k) that the conversion of a portion of the common area to residential units will maintain the material balance between open space and developed property within the PUD is met because Tamarack is in compliance with the requirement to maintain at least 50% of the resort as open space.

Every purchaser of residential property at Tamarack purchases their property subject to the General Declaration, and other governing documents, of Tamarack Resort. Although the General Declaration has been amended several times, Section 5.1(k) as quoted above was in place prior to the first release of lots in Tamarack Resort. All owners have purchased their property subject to this provision. The Declaration is a binding contract between Tamarack and each lot purchaser. Thus, although the subject property was platted as open space, the contract between Tamarack and the lot purchasers gave Tamarack the right to convert that land use to single family residential.

Moreover, a prospective buyer did not have to even read the General Declaration to be on notice of Tamarack’s right to convert open space to residential land uses. The very first section of the Purchase and Sale Agreements for the Phase 1 lots, chalets and cottages was “Buyer’s Acknowledgement Regarding Property Report”, in which each buyer acknowledged that they had received and reviewed the Property Report for Phase 1. The outline of the Property Report, which included the list of Disclosures, was attached as an Exhibit to the Purchase and Sale Agreement, and the entire Property Report was provided to the buyer with the Purchase and Sale Agreement. Item No. 10 of the Disclosures portion of the Property Report was titled “Future Development/Open Space”. It stated as follows:

“As the development of the Resort evolves, Tamarack Resort LLC reserves the right to modify the use of certain Open Space designated as such on the Master Plan and platting for the Resort. This modification may include conversion of certain Open Space to single family residential use. Any such conversion will be

subject to necessary approvals from Valley County, and any other required regulatory entities, will maintain the overall density limits established in the CUP, and will maintain the material balance between open space and developed property."

In converting the land use of this small parcel of open space, which is surrounded by residential development, Tamarack has selected a density and type of unit which is compatible with the surrounding residential development. The three proposed units are significantly less dense than the TH-8 density approved in the facilities plan. The parcel proposed for further development in the current application is 4.3 acres in total size, and 1.5 +/- acres of that would be developed with the three residential units. The remaining 2.8 +/- acres would remain as undeveloped common open space with recreation easements. The residential units to be placed in the three lots are custom chalets, the size of which cannot exceed 2,800 square feet in size. Thus, both the density and size of units being proposed are less than was approved in the original PUD and less than many of the nearby lots.

While neighboring owners may be frustrated with the conversion of a portion of a common area to residential units, the conversion is in compliance with the governing documents and the PUD approvals. This reserved right is not some "small print" buried in a form real estate purchase and sale agreement. It is highlighted in Section 1 of the Purchase and Sale Agreements, called out in the Property Disclosures which were attached to the Purchase and Sale Agreements and clearly reserved in the principle governing document for the Resort, in Article 5, titled "Property Rights" and Section 5.1, titled "Common Open Space".

The current developers of Tamarack Resort are working very hard and investing significant amounts of money into the Resort for the benefit all owners. This very selective conversion of open space to low density single family residential is being done with sensitivity to the character of the surrounding neighborhoods and without compromising the continuing commitment to provide the 50% open space that is valued by owners and helps make Tamarack Resort a beautiful development that will hold its value for the owners of property there.

Best regards,



STEVE MILLEMANN



AMY PEMBERTON

cc: Scott Turlington

CUP 23-51

From: AMY PEMBERTON [REDACTED]

Sent: Thursday, February 1, 2024 10:32 AM

To: Cynda Herrick <cherrick@co.valley.id.us>

Cc: [REDACTED]

[REDACTED]; Martin Pico

[REDACTED]; Steve Millemann [REDACTED]; Lori

Hunter <lhunter@co.valley.id.us>

Subject: RE: CUP 23-51

Cynda,

Please find attached both the 2nd Amended and Restated General Declaration (Recorded 2006-5-5) and the Amended and Restated General Declaration (recorded 2004-1-30). The 2004 version of the declaration has exactly the same provision at Section 5.1(k) that the 2006 version does. The 2004 version was recorded before the closing of any lots from the first release at Tamarack.

Let me know if you have any other questions!

Best,

Amy

Amy Pemberton

Millemann Pemberton & Holm LLP

[REDACTED]

Phase 3

TH-8 Townhomes

TH-8 TOWNHOMES

GENERAL CONCEPT

- WRA will provide paved street and utilities per Resort standards to the boundary of parcel TH-8. The developer/home builder (may be WRA) will be responsible for the improvements and sale of the individual lots or homes. All construction will be in accordance with the Resort Design Guidelines and Covenants.
- Units are sold as furnished condominiums, 1/4 fractional ownership
- Level of finishes to be more value oriented than the other condominiums in the Resort
- Units may be included in the Resort rental pool
- Construction programmed in year 1 of Phase 3

FACILITIES

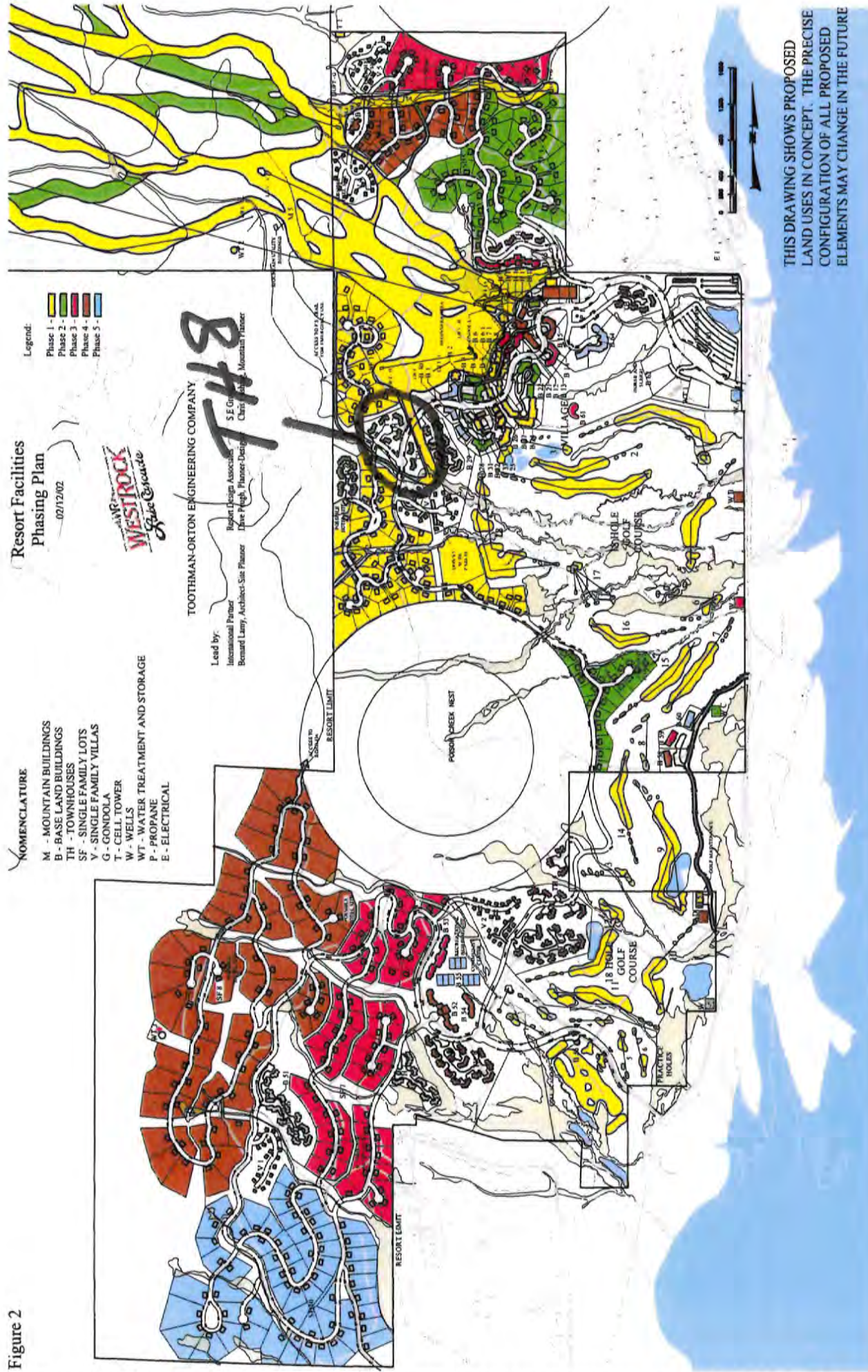
- 8 townhomes consisting of 2- and 3-story living units as follows:
 - 4 3-bedroom units of 2,100 sf, plus 2 car garage
 - 4 4-bedroom units of 2,500 sf, plus 2 car garage
- Outdoor pool/spa for the complex

BUILDING AREA

- | | |
|--------------------|-----------|
| • Townhome units | 18,400 sf |
| • Garages | 3,600 |
| • Net common areas | 500 |

Total Gross Area 23,700 SF

Figure 2



PUD Flexibility
- amendments

SECTION I – Application Overview

A. This Application

On August 1, 2002, WestRock's Planned Unit Development (PUD) Application was approved by Valley County. Subsequent to that approval, a Capital Contribution Agreement was consummated between Valley County and WestRock on September 10, 2001, see *Document F* in *Appendix A – Prior Valley County Approvals and Actions*. This Application document is referenced as a CUP package, because it contains three (3) applications: 1) a CUP/Preliminary Plat Application for all development components to be built or placed on the private lands, 2) a CUP Application for those components to be built or placed on the State of Idaho leased lands, and 3) a request to approve modifications to the currently approved PUD.

B. General Project Concept

The project is broken into five phases of three years each plus a one-year predevelopment phase, totaling a sixteen-year build-out to completion. At build-out, the Resort will be a full-service all-seasons destination resort offering a wide variety of residential options and a range of recreational activities featuring skiing and golf. The timing and order of sequencing of phases and facilities may vary in response to market demand, however adherence to the amenity guarantees will still be required as described in the Sequencing Plan contained below.

C. Ownership

The Resort, is owned by WestRock Associates LLC ("WRA"), who will be the master developer of the Resort complex. Given the diversity of real estate products and amenities, WestRock will sell segments of the Resort real estate for development by others. WestRock Associates will retain design and development control of all products through the attached Development Guide, Architectural Design Guidelines and the Declaration of Covenants, Conditions and Restrictions.

D. Site / Infrastructure

The site consists of several distinct geographical areas—a flat meadow close to Lake Cascade; a shelf area above the meadow where the Village will be located; rolling foothill terrain well suited to residential development, mountain slopes offering a variety of skiing and hiking experiences; and the mountain top offering commanding views, and recreational opportunities for mountain biking, snow-mobiling and cross-country skiing as well as a restaurant. The land, excluding the ski areas and a small portion of the golf course is privately owned by WRA, while the remaining land will be leased. Total site infrastructure, including roads and utility systems (electricity, water, sanitary and storm sewer, and telecommunications), is to be supplied to the perimeter of each development site by WRA.

E. Facilities

The resort facilities are summarized and located in *Appendix G - Facilities Program Summary*. Golf facilities will consist of an 18-hole course designed by Robert Trent Jones II, a par-3

teaching course, a Golf Academy and clubhouse. Ski related facilities are summarized in the Mountain Master Plan Summary, located in *Appendix F*. The Sequencing Plan, contained below, identifies the minimum Phase 1 facilities, which will be constructed to assure that a stand-alone resort, with sufficient critical mass, is established as part of Phase 1 of the development. WestRock reserves the right to modify the Facilities Plan, without further County approval, as follows: 1) the order of construction of facilities may be modified; 2) facilities within Multi-Use areas may be moved among lots within such Multi-Use areas; 3) total commercial, administrative and service square footage may be altered, and 4) the mix of dwelling units which comprise the total 2,043 units approved in the PUD (i.e. single family residence, townhome, villa, multi-family and hotel) may be altered; PROVIDED, that: a) the total number of units allowed by the WestRock CUP is not exceeded; and, b) the aforesaid land uses remain in their designated land use areas, as depicted in the Land Use Map, see *Figure 4* in *Section VIII*. All such modifications shall be promptly provided to County staff for use in reviewing Building Permit submittals and enforcing the terms and conditions of the CUP. Modifications to the Facilities Plan shall be submitted to the Planning and Zoning Administrator, whose review of the proposed modifications shall be to determine whether the proposed modifications are consistent with the locations of land use types and overall mix of land uses contained in the approved CUP. The Administrator shall advise the Developer within 15 days after submittal of any objections which the Administrator has to the proposed modifications, under the aforesaid criteria. If no such objections are voiced, then the modifications shall be deemed approved and shall become part of the CUP.

F. Compliance with Valley County Approval Process

Because this is an application for Conditional Use Permit for both the private and State lease lands, and for Preliminary Plat approval for the private lands, this Application package addresses Chapter III of the Land Use and Development Ordinance (LUDO), the Valley County Comprehensive Plan and Article II of the Subdivision Regulations.

In addition, because the Application package seeks approval of certain modifications to the PUD, the Application package addresses Appendix C of the LUDO, to establish that the proposed modifications should not alter the previously granted PUD and Concept approvals.

The Preliminary Plats for the private land contain the information required by the Valley County Subdivision Regulations. The parcels in Phase 2, 3, 4 and 5 will be further platted, preliminarily and finally, as the development moves into those Phases.

G. Proposed Modifications to the approved PUD

As design and layout of the PUD move into the more detailed CUP and platting stage, certain modifications to the PUD have been found to be necessary. These modifications do not materially change any component of the prior approvals, but they are, nonetheless, identified in the interest of full disclosure. Proposed modifications to the PUD include:

- Revisions to the Phasing Plan
- Adjusted dwelling units among residential use categories, without altering the total 2,043 units previously approved.

- Modest increase of the total commercial, administrative and service square footage within the areas of the resort in which those uses were previously approved.
- Increased the number of parking spaces from 3,392 to 5,068.
- Added a Cellular Communications Tower.
- Added a horse corral for horseback riding and sleigh ride purposes
- Recalculated open space at approximately 52% of the private and approximately 80% of the total resort property
- Adjusted Wildlife Habitat Conservation Plan to reflect reduced impact to Threatened and Endangered Species
- Added certain uses to the village, such as a non-denominational Chapel and the Nature Interpretive Center.
- Noted the potential for and reserved the right to construct a school on site.
- Identified eight potential small hotel sites outside of the village, a maximum of four (4) of which may be developed. If developed, these hotels will be architecturally compatible with the surrounding single- family residential neighborhoods and will reduce the total allowable dwellings units in the PUD, according to the equivalency formula contained in the LUDO.
- Revised/updated the Development Guide, Architectural Design Guidelines, and CC&R's.
- Moved a well site mistakenly shown on State of Idaho land.
- Reserved the addition of a small number of buildings and structures on State land.
- Updated the WestRock Development Guide to reflect the development of the Facilities Program, which also involves minor changes to the Land Use Map e.g. s small Multi-Use area has been added to Phase 5, to service the surrounding single family residential neighborhood.

H. Requested Entitlements and Approvals

- Issuance of a Conditional Use Permit for the private lands, which provides the following entitlements under the terms of the LUDO:
 - A CUP for the entire PUD, including the land uses and densities (i.e. total number of units and/or square footage of commercial (multi-use) facilities) for Phases 2, 3, 4, and 5;
 - Preliminary Plat approval for Phase 1. WestRock shall be entitled to Preliminary Plat approval of Phases 2, 3, 4, and 5 PROVIDED that those Plats substantially comply with the terms of the WestRock CUP and with the platting provisions of the Valley County Subdivision Regulations,
 - No further CUP's will be required for the WestRock PUD, provided that WestRock substantially complies with the terms and conditions of this CUP.
 - WestRock considers the CUP to include all components, terms, and conditions of the approved PUD, except to the extent modified in this Application package, as approved.
- Issuance of a Conditional Use Permit for the State of Idaho lands, contingent upon issuance by the State Land Board of a Lease or binding commitment to lease the State lands; and,
- Approval of the modifications to Concept and PUD Approval.

of two classes of regular membership and four classes of priority membership. The two classes of regular membership are as follows: (1) Class A-Residential; and, (2) Class B-Village. The four classes of priority membership are as follows: (1) Class C-Club; (2) Class D-Mountain; (3) Class E-Declarant; and, (4) Class F-Declarant-Assignee. The details with regard to the members of each Class, together with voting rights and the appointment of directors, are all defined and described in the Bylaws.

3.3 Compliance with Association Documents: All members shall comply with the terms and conditions of all Association Documents, as well as all Rules and Regulations which may be enacted by the Board pursuant to the Association Documents.

ARTICLE 4. Assessments And Other Amounts

4.1 Obligation for Assessments and Other Amounts: Declarant for each Unit it owns hereby covenants and each Owner by acceptance of a deed for his Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Resort Association the Common, Civic and Special Assessments and charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in this Declaration and the Articles, Bylaws and rules and regulations of the Resort Association as from time to time are in force and effect. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

4.2 Purpose of Assessments and Other Amounts: The assessments levied and any charge, fine, penalty or other amount collected by the Resort Association shall be used exclusively to pay expenses that the Resort Association may incur in performing any actions or functions permitted or required under this Declaration, or its Articles or Bylaws as from time to time are in force and effect.

4.3 Time for Payments: The amount of any assessment, charge for interest or otherwise, fine, penalty or other amount payable by any Owner or with respect to such Owner's Lessees, Subowners, Guests or Unit shall become due and payable as specified in the Articles or Bylaws. In addition, the Bylaws may authorize the Resort Association, during the period of any delinquency, to suspend an Owner or Lessee's voting privileges or any other privileges stemming from membership in the Resort Association.

4.4 Lien for Assessments and Other Amounts: In addition to any other remedies specified herein or in the Bylaws, the Resort Association shall have a lien against each Unit to secure payment of any assessment, charge, fine, penalty or other amount due and owing to the Resort Association, as provided in the Bylaws.

4.5 Liability of Owners, Purchasers and Encumbrances: The amount of any assessment, charge, fine or penalty payable by any Owner or with respect to such Owners, Lessees, Subowners, Guests or Unit shall also be a joint and several personal obligation to the Resort Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Unit shall be jointly and severally liable with the former Owner of the Unit for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Unit by such party, without prejudice to such party's right to recover any of said amounts from the former Owner. Each such amount, together with interest thereon at the Default Rate and reasonable attorney's fees and costs, may be recovered by suit for a money judgment by the Resort Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, the holder of a mortgage, deed of trust or other lien on a Unit shall not be liable for any such assessment, charge, fine or penalty and the lien for any such assessments, charges, fines or penalties shall be junior to any first lien on a Unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Valley County, Idaho, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Unit and naming the Owner of the Unit.

ARTICLE 5. Property Rights

5.1 Common Open Space. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Open Space, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Resort Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Open Space, including rules restricting use of any recreational facilities which may be located within the

Common Open Space to occupants of Units and their guests and rules limiting the number of guests who may use the Common Open Space;

(d) The right of the Board to suspend the right of an Owner to use any Common Open Space or any recreational facilities located within the Common Open Space (i) for any period during which any charge against such Owner's Unit remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Resort Association after notice and a hearing as provided in the Bylaws;

(e) The right of the Resort Association, acting through the Board, to dedicate or transfer all or any part of the Common Open Space pursuant to Article 6;

(f) The right of the Board, or the operator of a private amenity, to impose membership requirements and/or charge membership, admission or other fees for the use of any recreational facility which may be situated upon the Common Open Space and to allow the use thereof by non owners;

(g) The right of the Board to permit use of any Common Open Space, or any recreational facilities which may be situated on the Common Open Space, by persons other than Owners, their families, lessees and guests with or without payment of use fees;

(h) The right of the Resort Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of Declarant to place utilities within any Open Space; and,

(j) The right of Declarant to modify the use of that certain Open Space designated as Eagle Nest Open Space on the CUP, subject to the following:

(i) That portion of the Eagle Nest Open Space which is within 1,000 feet of any Lot shown on a Final Plat shall remain Common Open Space or Private Open Space; and,

(ii) The only other permissible use is Single Family Residential, with lot sizes of a minimum of five acres; and,

(iii) The only improvements that could be constructed within such Lots shall be within specified improvement envelopes with a maximum size of one acre, with the remainder of such lot to be maintained as Private Open Space; and,

(iv) Approval by the County of the necessary modification to the CUP.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit, unless provided to the contrary in the Lease.

5.2 Exclusive Open Space: Certain portions of the Open Space may be designated as Exclusive Open Space and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Units within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Open Spaces shall be assessed as a Local Maintenance Assessment pursuant to the Bylaws.

Declarant may construct any improvement within an Exclusive Open Space that Declarant, in Declarant's discretion, determines will benefit the Owners of Units assigned the exclusive use of such Exclusive Open Space. Additionally, the Owners of Units assigned the exclusive use of such Exclusive Open Space may propose to the DRC any improvement to such Exclusive Open Space that they feel will benefit such Owners, pursuant to Section 9.3(b) of the Bylaws.

Initially, the Declarant shall designate any Exclusive Open Space as such and shall assign the exclusive use thereof in a Supplemental Declaration; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Open Space to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 10.1. Thereafter, a portion of the Open Space may be assigned as Exclusive Open Space of a particular Neighborhood and Exclusive Open Space may be reassigned by the Resort Association with the vote of two-thirds (2/3) of the Members within the Neighborhood(s) to and/or from which the Exclusive Open Spaces are to be assigned. As long as the Declarant

the lien for any such assessments, charges, fines or penalties shall be junior to any first lien on a Unit taken in good faith and for value and perfected by recording in the office of the Recorder of Valley County, Idaho, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Unit and naming the Owner of the Unit.

ARTICLE 5. Property Rights

5.1 Common Open Space: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Open Space, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Resort Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Open Space, including rules restricting use of any recreational facilities which may be located within the Common Open Space to occupants of Units and their guests and rules limiting the number of guests who may use the Common Open Space;
- (d) The right of the Board to suspend the right of an Owner to use any Common Open Space or any recreational facilities located within the Common Open Space (i) for any period during which any charge against such Owner's Unit remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Resort Association, after notice and a hearing as provided in the Bylaws;
- (e) The right of the Resort Association, acting through the Board, to dedicate or transfer all or any part of the Common Open Space pursuant to the terms of this Declaration;
- (f) The right of the Board, or the operator of a private amenity, to impose membership requirements and/or charge membership, admission or other fees for the use of any recreational facility which may be situated upon the Common Open Space and to allow the use thereof by non owners;
- (g) The right of the Board to permit use of any Common Open Space, or any recreational facilities which may be situated on the Common Open Space, by persons other than Owners, their families, lessees and guests with or without payment of use fees;
- (h) The right of the Resort Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (i) The right of Declarant to place utilities within any Open Space; and,
- (j) The right of Declarant to modify the use of that certain Open Space designated as Eagle Nest Open Space on the CUP, subject to the following:
 - (i) That portion of the Eagle Nest Open Space which is within 100 feet of any Lot shown on a Final Plat shall remain Common Open Space or Private Open Space; and,
 - (ii) The only other permissible use is Single Family Residential, with lot sizes of a minimum of three acres; and,
 - (iii) The only improvements that could be constructed within such Lots shall be within specified improvement envelopes with a maximum size of one acre, with the remainder of such lot to be maintained as Private Open Space; and,
 - (iv) Approval by the County of the necessary modification to the CUP.
- (k) The right of the Declarant to convert Open Space to single family residential use, subject to the provisions of Section 5.1(j) above in the case of the Eagle Nest Open Space, provided: any such conversion will be subject to necessary approvals from Valley County, and any other required regulatory entities, will maintain the overall density limits established in the CUP, and will maintain the material balance between open space and developed property within the PUD.

ARTICLE 4. Assessments And Other Amounts

4.1 Obligation for Assessments and Other Amounts: Declarant for each Unit it owns hereby covenants; each Owner, by acceptance of a deed for his Unit, whether or not it shall be so expressed in any such deed or other conveyance; and, each Village Lessee, by acceptance of a Lease to a Village Unit, shall be conclusively deemed to have covenanted and agreed to pay to the Resort Association the Municipal, Civic and Special Assessments and charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in this Declaration and the Articles, Bylaws and rules and regulations of the Resort Association as from time to time are in force and effect. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

4.2 Purpose of Assessments and Other Amounts: The assessments levied and any charge, fine, penalty or other amount collected by the Resort Association shall be used exclusively to pay expenses that the Resort Association may incur in performing any actions or functions permitted or required under this Declaration, or its Articles or Bylaws as from time to time are in force and effect, including the funding of Reserve and Contingency Accounts.

4.3 Time for Payments: The amount of any assessment, charge for interest or otherwise, fine, penalty or other amount payable by any Owner or with respect to such Owner's Lessees, Subowners, Guests or Unit shall become due and payable as specified in the Articles or Bylaws. In addition, the Bylaws may authorize the Resort Association, during the period of any delinquency, to suspend an Owner or Lessee's voting privileges or any other privileges stemming from membership in the Resort Association.

4.4 Lien for Assessments and Other Amounts: In addition to any other remedies specified herein or in the Bylaws, or allowed by law, the Resort Association shall have a lien against each Unit to secure payment of any assessment, charge, fine, penalty or other amount due and owing to the Resort Association, as provided in the Bylaws.

4.5 Liability of Owners, Purchasers and Encumbrances: The amount of any assessment, charge, fine or penalty payable by any Owner or Lessee, or with respect to such Owners, Lessees, Subowners, Guests or Unit shall also be a joint and several personal obligation to the Resort Association of such Owner and/or Lessee and such Owner's and/or Lessee's, heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Unit, or a leasehold interest in a Village Unit Lease, shall be jointly and severally liable with the former Owner or Lessee of the Unit for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Unit by such party, without prejudice to such party's right to recover any of said amounts from the former Owner or Lessee. Each such amount, together with interest thereon at the Default Rate and reasonable attorney's fees and costs, may be recovered by suit for a money judgment by the Resort Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, the holder of a mortgage, deed of trust or other lien on a Unit shall not be liable for any such assessment, charge, fine or penalty and the lien for any such assessments, charges, fines or penalties shall be junior to any first lien on a Unit taken in good faith and for value and perfected by recording in the office of the Recorder of Valley County, Idaho, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Unit and naming the Owner of the Unit.

ARTICLE 5. Property Rights

5.1 Common Open Space: Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Open Space and, subject to the terms of any applicable Supplemental Declaration, Common Areas (hereinafter in this Section jointly referred to as "Common Open Space"), subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Resort Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Open Space, including rules restricting use of any recreational facilities which may be located within the Common Open Space to occupants of Units and their guests and rules limiting the number of guests who may use the Common Open Space;

(d) The right of the Board to suspend the right of an Owner to use any Common Open Space or any recreational facilities located within the Common Open Space (i) for any period during which any charge against such Owner's Unit remains delinquent; and, (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Resort Association, after notice and a hearing as provided in the Bylaws;

(e) The right of the Resort Association, acting through the Board, to dedicate or transfer all or any part of the Common Open Space pursuant to the terms of this Declaration;

(f) The right of the Board, or the operator of a private amenity, to impose membership requirements and/or charge membership, admission or other fees for the use of any recreational facility which may be situated upon the Common Open Space and to allow the use thereof by non owners;

(g) The right of the Board to permit use of any Common Open Space, or any recreational facilities which may be situated on the Common Open Space, by persons other than Owners, their families, lessees and guests with or without payment of use fees;

(h) The right of the Resort Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of Declarant to place utilities within any Open Space; and,

(j) The right of Declarant to modify the use of that certain Open Space designated as Eagle Nest Open Space on the CUP, subject to the following:

(i) That portion of the Eagle Nest Open Space which is within 100 feet of any Lot shown on a Final Plat shall remain Common Open Space or Private Open Space; and,

(ii) The only other permissible use is Single Family Residential, with lot sizes of a minimum of three acres; and,

(iii) The only improvements that could be constructed within such Lots shall be within specified improvement envelopes with a maximum size of one acre, with the remainder of such lot to be maintained as Private Open Space; and,

(iv) Approval by the County of the necessary modification to the CUP.

(k) The right of the Declarant to convert Open Space to single family residential use, subject to the provisions of Section 5.1(j) above in the case of the Eagle Nest Open Space, provided: any such conversion will be subject to necessary approvals from Valley County, and any other required regulatory entities, will maintain the overall density limits established in the CUP, and will maintain the material balance between open space and developed property within the PUD.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit, unless provided to the contrary in the Lease.

5.2 Exclusive Open Space, Common Area and Exclusive Use Common Area:

(a) **Exclusive Open Space:** Certain portions of the Open Space may be designated as Exclusive Open Space and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Units within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Open Spaces shall be assessed as a Benefited Unit Assessment pursuant to the Bylaws.

Declarant may construct any improvement, utilities, or fixtures within an Exclusive Open Space that Declarant, in Declarant's discretion, determines will benefit the Owners of Units assigned the exclusive use of such Exclusive Open Space. Additionally, the Owners of Units assigned the exclusive use of such Exclusive Open Space may propose to the Board any improvement to such Exclusive Open Space that they feel will benefit such Owners, pursuant to Section 9.3(b) of the Bylaws.

Initially, the Declarant shall designate any Exclusive Open Space as such and shall assign the exclusive use thereof in a Supplemental Declaration; provided, any such assignment shall not preclude the

CUP 23-51

Scott Turlington [REDACTED]

Thu 2/1/2024 11:33 AM

To: Cynda Herrick <cherrick@co.valley.id.us>; AMY PEMBERTON [REDACTED]

Cc: Chris Kirk [REDACTED]; Martin Pico [REDACTED]

Steve Millemann [REDACTED]; Lori Hunter <lhunter@co.valley.id.us>

1 attachments (160 KB)

Lower Sugarloaf Informational Meeting.pdf;

Hi Cynda,

As a follow up, we held an informational meeting last night on the three proposed lots. I've attached the invitation that was sent to all of the homeowners who were in opposition. Not all attended but several did. Additionally, I've directly communicated with others who didn't attend yesterday. If you are so inclined, please include this in the packet for the commissioners. I will be prepared to address all the issues on the 8th. Thanks.

Esto Perpetua

Scott Turlington

President

Tamarack Resort

[REDACTED] TamarackIdaho.com

From: [Scott Turlington](#)
To: 


Subject: Lower Sugarloaf Informational Meeting
Date: Tuesday, January 23, 2024 4:03:14 PM

Hello Friends,

You are invited to attend an informational meeting on the 3 Lower Sugarloaf custom chalet lots on January 31st from 4pm – 5pm mountain. The meeting will be held in the Fern, located in The Lodge at Osprey Meadows. For those who can't attend in person, there is a Zoom link below that will get you into the meeting. If you have any questions, please feel free to reach out prior to the meeting. Thanks and look forward to seeing you all on the 31st.

Zoom Link:
<https://us02web.zoom.us/j/81026954044>

Esto Perpetua

Scott Turlington
President
Tamarack Resort
 | TamarackIdaho.com

Tamarack Resort PUD 98-1 Amendment and CUP 23-51 Phase 3.4 Lower Sugarloaf Custom Chlalets Prelim Plat

From: Barry Bram [REDACTED]

Sent: Monday, January 22, 2024 5:11 PM

To: Cynda Herrick <cherrick@co.valley.id.us>

Cc: Mary [REDACTED]

Subject: Tamarack Resort PUD 98-1 Amendment and CUP 23-51 Phase 3.4 Lower Sugarloaf Custom Chlalets Prelim Plat

To whom I May Concern:

I received notice of this planned development in the open space near my home, and also received a list of objections and observations from folks nearby including Trisha Sears, whose home is also near ours.

As the 3rd buyer in the entire Resort, my family has seen this mountain grow from 100% natural surroundings, to a few Yurts, to what it is now.

The Resort has a master plan for many more units to be built in the South End as well as infill of many vacant lots within the currently functioning Resort area.

I believe that increasing the density of the already planned/ subdivided areas (with the designated open spaces we relied on having around our property) is a mistake. Should the current Resort ownership wish to expand the number of available housing units, they can easily do so by beginning to develop the already mapped (and improved – with infrastructure) hundreds of lots in the Sound End. The idea of creating more density in the proximate areas to the current operating Resort would be against the nature of the Resort and for that matter, contrary to what was represented to us -- and everyone else for that matter -- who purchased property thus far.

Thanks for your serious consideration of the matter.

Barry Bram and Mary McLain
94 Sugarloaf
Tamarack Resort

Opposition to Tamarack Resort PUD 98-1 Amendment and CUP 23-51 Phase 3.4 Lower Sugarloaf Custom Chlalets Prelim Plat

From: Dana Kemper [REDACTED]

Sent: Thursday, January 11, 2024 4:15 PM

To: Cynda Herrick <cherrick@co.valley.id.us>

Subject: Opposition to Tamarack Resort PUD 98-1 Amendment and CUP 23-51 Phase 3.4 Lower Sugarloaf Custom Chlalets Prelim Plat

Cynda,

We are writing to you regarding our concerns and to object to the proposed Amendment to Tamaracks Existing Master Plan CUP 23-51 PH 3.4 Sugarloaf.

We purchased and built in Tamarack Resort specifically because of the approved Master Plan which was put in place to keep these kind of Overly Zealous Developers from "Filling-In of Open Space, For Profit" coming about later thru Amendments like this.

The Tamarack MasterPlan, working together with All Stakeholders, thru a multiyear long process, was Originally Approved by the County, State, and Forest Service Specifically to preserve the Open Space and the Environment while allowing for Long Term Use as a Master Planned Resort Community. The Developers are already allowed to Expand by Several Thousand Acres of Resort Development with the new Ski Area Expansion as well as the opening of new adjacent residential land, which is allowed in the new Master Plan.

As a long time Developer and Builder here in the Pacific Northwest, I understand how some people can sometimes be tempted to take the short term easy dollars instead of keeping the Long Term Best Interest of the Community in mind. As Conscientious Developers we are morally bound to be good citizens working with the Communities we Live and Work in.

The Masterplan was developed to balance the Look and Feel of Building aligning with Nature in an appealing and thoughtful harmonious aspect, with Open Space occurring around each Master Planned Housing area, The Open Space Land in question was put there specifically to make up for the Smaller lots and higher density of the Rock Creek Community which sits on one side of the Proposed area and the Poma Lift and Ski Run which dissect the Open Area Adjacent with Discovery Drive on the other side. The SugarLoaf Chalet lots sit on the opposite side of Discovery and the Open Space in question which was also planned as the adjacent buffer for these Lots, so as to keep the ratio of developed lots vs un-developed land in balance. Each Area of Building was originally Master Planned to be Surrounded with Applicable Open Space. With Loss of this Open Space Area that was Specifically Placed Within the Center of the Base Area, It would Adversely Affect the overall Natural Feeling and Ascetics, since the main road Discovery Drive would now have high density houses on each side of it directly within the Resort Core, something that was Originally Planned to Not Happen within the Master Plan.

The area in question was also originally put in open space because of the Enviromental Impacts which would have had to been mitigated and increased building costs which would have been incrementally increased do to the Drainage, Habitat, and Water Concerns in the area, which made this undesirable to plan for building, but Highly Desirable to save as Open Space since it outweighed the Development Value.

As Homeowners adjacent to this proposed area, the Reason we Specifically Chose this Area over others within the Resort was the Fact that we were Surrounded by Planned Open Space. We have all put Substantial Equity into Buying and Building our Homes here and would hate to have it Devalued by Losing Our Open Space which was put there to Protect our Homes Appeal and Values.

None of us want Tamarack to Become Known as just Another Project, that through the Developers Greed, Lost the Original Idea and Feel that was Master Planned with Consideration for the Environment, Usability, and Enjoyment of Tamarack Resort.

Sincerely

Dana Kemper