

BACKGROUND INFORMATION FOR NEW SKI AREA TRANSFER PROPOSAL

Many local skiers, including Los Alamos Ski Club (LASC) members, believe that Pajarito Mountain is now owned and operated by a partnership between Los Alamos County and a private entity. Regardless of the intent and attempt by the Board of Directors to finalize that transaction, that arrangement has not actually materialized, and no property has as yet been transferred. The Ski Club currently still owns the entire property, while the private entity, created as Pajarito Recreation Limited Partnership (PRLP), has operated the Ski Area under a management agreement with LASC. For the past three years, PRLP has supported Pajarito Ski Area in good faith, while proceeding with property-transfer negotiations and hoping for a resolution to the issues that have materialized. Due to the lack of ownership of assets and a clear path forward, PRLP is reluctant to invest major improvement funds, but has kept Pajarito Ski Area operational. Under their financial umbrella, we have enjoyed skiing and all-season recreation without interruption.

The Board has recently been approached by PRLP with a proposal, outlined below, which we believe will move this process along. Following careful consideration and further negotiation to ensure that our interests are properly protected, the Board of Directors believe this solution represents the best path forward and are strongly recommending it to the Club membership. The proposal is detailed below.

ORIGINAL TRANSFER PLAN AND AUTHORIZATION

In the spring of 2014 the LASC Board began negotiations to transfer ownership of the Ski Area to Los Alamos County and PRLP, a partnership whose offices are located in Durango, CO. In the 2014 plan, the County would own the majority of the land, with PRLP owning the lifts, buildings, and equipment and two strips of land along the top and bottom of the Ski Area plus the east parking area. PRLP would operate the Ski Area on the entire property under a lease agreement with the County, similar to the arrangement most western ski areas have with the US Forest Service. As part of the transfer, PRLP would assume LASC's financial obligations with Los Alamos National Bank (LANB), currently totaling about \$1.25 million, and would operate the Ski Area while the negotiations were being completed. Authorization to proceed along this path was provided by a vote taken at a special Club Member Meeting on May 15, 2014, with the relevant motion reading as follows:

"That the Membership of the Los Alamos Ski Club authorize the Board to transfer substantially all of the Club assets to Los Alamos County and the Sipapu Group who would then own, manage, and operate Pajarito Mountain Ski Area, understanding that this transfer and ownership will be subject to various deed restrictions and contract performance clauses and that the officers and Board are authorized and directed to negotiate, carry out and do all things reasonably necessary to consummate the authorized transactions."

CURRENT SITUATION

During the past three years, the negotiating parties have made strong and continuous efforts to enact the transfer along the lines outlined above. There have been numerous iterations between the LASC Board, PRLP, LANB, and the County, but without a clear resolution. The sticking point that has emerged (primarily between PRLP and LANB) is how much collateral is needed to cover the bank loans, and who would provide it. LANB requires that all the Ski Area land serve as collateral

for their loans. The total value of Pajarito Ski Area was appraised by LANB in 2014 at \$2.4 million, including all the structures, lifts, and equipment and the land within both Los Alamos and Sandoval Counties. Under the original land-division proposal, the collateral held by PRLP would be much less, and thus insufficient as far as the bank is concerned. Furthermore, as part of their business plan, PRLP wants to use the entire value of Pajarito Ski Area to secure additional loans they believe are needed to proceed with near-term capital development, specifically including construction of the pipeline needed for a reliable snowmaking water supply. Attempts were made to have the County-owned part of the Ski Area land used as additional collateral to support such development. However, the difference in approach and legal requirements for a for-profit entity and a taxpayer-funded local government organization has prevented such a solution.

NEW PROPERTY TRANSFER PROPOSAL FROM PRLP

PRLP has recently proposed that instead of receiving a fraction of the Ski Area as originally planned, with Los Alamos County retaining the major portion, PRLP would instead own all the land residing in Los Alamos County, plus the improvements and equipment...i.e. the entire property. They would take over the outstanding bank loans, which are still currently owned by LASC. In addition, and this is a new key stipulation, they would commit to paying for half of a water-supply pipeline currently being designed by the County's utilities department. This pipeline, whose construction cost (including contingency) is estimated at \$3.4 million, would supply water to Pajarito Mountain for enhanced fire mitigation, for assuring a full planned snowmaking capability every winter, and also for providing potable water for the Ski Area base facilities and Camp May. The County has set aside \$2 million to cover their share of the pipeline cost.

After a critical review of the situation, the LASC Board and senior advisors are in unanimous agreement that the new approach as proposed by PRLP is the best way forward to assure the future of skiing in Los Alamos County, and that taking over the loans plus paying half the pipeline cost is fair compensation for the Club's assets. Other solutions have been examined in depth by the Board over several years, both prior to the 2014 authorization and also more recently. In comparison with signing on with PRLP, other options the Board investigated all have significant drawbacks, or could involve having to suspend Ski Area operations for one or more seasons, or would not provide the same kind of potential for future sustainability and improvement of the Ski Area.

PROTECTIONS IN THE NEW CONTRACT

A draft contract (final negotiations are still taking place with attorneys) has been prepared to cover the new transfer arrangements. It incorporates **strong restrictive covenants** (shown explicitly below) that confine the kinds of operations and development that can take place on the Ski Area property to those appropriate for maintaining and improving skiing and all-season recreational activities, and assure open access to the public for hiking, etc. As long as it exists, LASC will be responsible for assuring that these covenants are observed by PRLP; if the Club eventually dissolves, an assigned entity (likely the County) would take over that role.

In the case of a possible future sale of the property (or default on the loans) **Los Alamos County will have first right of refusal** to acquire the Ski Area.

PRLP could in the future consider pursuing residential or commercial development on portions of Pajarito Ski Area land, and as owners of the entire property they would have the right to do so. However, the record at the parent company's other ski areas does not suggest that this has much priority currently. In any case, any such future changes in direction would be subject to the **County's existing zoning process, which requires public comment.**

COVENANTS AS WRITTEN IN THE DRAFT CONTRACT

1. Use of the Ski Area Property

- a. The Ski Area Property shall be used primarily for Recreational Purposes. As used herein, the term Recreational Purposes shall mean and include the following:
 - i. winter recreational activities such as alpine snow skiing, cross-country skiing, snowboarding, snow biking, sledding, and the like; and
 - ii. spring, summer, and fall recreational activities such as hiking, mountain biking, and the like.
- b. The definition of Recreational Purposes is meant to be inclusive, not exclusive, of recreational and leisure activities, pastimes, and pursuits which currently exist and that may be developed and prove appropriate for the Ski Area Property in the future, including new and innovative recreational and leisure activities stemming from advances in technology.
- c. Recreational Purposes shall also include contests, competitions, and special events appropriate for, and in keeping with, the other Recreational Purposes listed herein.
- d. Recreational Purposes shall not include hunting or unauthorized motorized vehicle activities or sports. Hunting and unauthorized motorized vehicles shall not be permitted on the Ski Area Property.

2. **Use for Ancillary Purposes.** The restriction of the use of the Ski Area Property for Recreational Purposes as provided for in this Declaration shall not prohibit the use of the Ski Area Property for Commercial Purposes ancillary to, or otherwise supportive of, those Recreational Purposes. Such Commercial Purposes may include, but shall not be limited to, the operation of a for-profit ski and summer recreational facility which charges for goods and services provided to its patrons, such as use of mountain lift facilities, equipment sales and rentals, food, beverage, and related concessions, specialty schools and training, such as ski schools and lessons, hiking, mountain biking, mountaineering, and orienteering schools and lessons, and educational camps, schools, and related activities.

3. **Ski Area Property to be Open and Available to the Public.** The Ski Area Property shall be open to the public for Recreational Purposes both during hours in which the Ski Area property is being operated for Commercial Purposes and after hours; provided, however, that Owner may adopt reasonable rules and regulations that limit or otherwise restrict activities on the Ski Area Property and/or usage of portions of the Ski Area Property:

- a. so as not to interfere with patrons' use of the Ski Area Property at times during which the Ski Area Property is open and operating for Commercial Purposes;
- b. for health and safety reasons, as determined to be appropriate by Owner in its sole discretion;
- c. as may be required by Owner's liability insurance carrier or by any relevant governmental authority;
- d. to comply with applicable local, state, and federal statutes, rules, and regulations;
- e. to permit facilities maintenance and/or construction, including lift and trail maintenance and construction;
- f. to otherwise facilitate Ski Area business.

BENEFITS OF THE PROPOSED NEW TRANSFER PLAN

The advantage to PRLP in owning the entire property is that it will be able to use the entire Ski Area as the basis for future loan collateral at its full value of \$2.4 million. As owner of only part of the property, this would not be possible, the existing loan structure could not be supported, and in addition PRLP believe they would not be able to realize their goals for improvements at the Ski Area.

Los Alamos County is in support of PRLP's new proposal. While Pajarito Ski Area is seen as a definite asset for tourism and economic development, the County has no great interest in becoming a ski area operator, on top of the other recreational facilities for which it is presently responsible. It is providing the water supply pipeline design and will share in its cost 50-50 with PRLP. The County may also be able to support some improvements at the Ski Area, notably mountain biking trail development, by a process that will be somewhat more challenging than if it owned the property, but feasible nonetheless.

Advantages for the Los Alamos Skiing, Biking, and Hiking Communities are many. The Ski Area will survive, intact and functioning, the property will be open to the public year-round under the same terms as exist now, and strong protections (see above) are built into the transfer contract.

Since the summer of 2014 PRLP has sustained operations at the Ski Area and made modest improvements. Salaries have been paid, failing equipment has been repaired or replaced (some of which was expensive), and lifts kept in operation, or in the case of the beginner chair, upgraded with a modern drive system. Furthermore, it is believed that PRLP has operated Pajarito Mountain at a significant annual loss, which gives some indication of good faith and serious long-term intent.

With PRLP support, the snowmaking system at the Ski Area has continued to develop. Water collected in the storage pond has allowed us to make snow for the past two seasons, providing a pre-Christmas opening date for a few slopes, and also enabling the area to remain open for Spring Break. PRLP has plans to expand snowmaking to more slopes in the future, given the reliable water supply that will be provided by the pipeline, while still planning to collect as much water from Spring snowmelt as practical. PRLP will be paying the County for water delivered through the pipeline.

Additional advantages for local skiers of PRLP ownership will include:

- a. improved financial stability provided in a larger organization, and long-term facility improvements;
- b. access to good used equipment, e.g. snowcats from other company-owned areas, and a more modern rental-ski inventory;
- c. more exposure from the advertising arm of PRLP like the January 2016 article in *Skiing* magazine, and more coverage for local events;
- d. more options for skiing at less cost through the diversity of season passes available through PRLP, with access to other corporation-owned areas as well as partner areas.

RECENT CLUB-MEMBER MEETINGS AND AUTHORIZATION TO PROCEED WITH NEW PLAN

At the May 2 Annual Club Member Meeting, President Philip Rae reviewed the history of the property transfer negotiations, presented the new transfer proposal put forward by PRLP, and confirmed unanimous Board and advisor support for this approach. Following general discussion of the overall situation facing LASC, he put forward a motion for the Club to authorize the Board to proceed along the new transfer path within the umbrella of the original 2014 authorization. The formal vote showed 28 of the members present in favor and 5 opposed. Post-meeting discussions revealed that most of the no votes were due to a desire for more information and especially to hear from County and PRLP management. That opportunity was provided on June 1 at an information meeting, with Harry Burgess giving the County's perspective, and James Coleman speaking for

PRLP. Both were able to answer a range of Club member questions on various aspects of the new transfer proposal.

At their monthly meeting on June 28, the Ski Club Board agreed on legal counsel to review the draft transfer contract with PRLP, to e-mail LASC members this information summary regarding the transfer, and also to announce a Special Meeting to take place on Thursday August 10 for discussion and voting on a modified motion to replace the May 15, 2014 motion. This motion will read as follows:

“That the Membership of the Los Alamos Ski Club authorize the Board to transfer ownership of substantially all of the Club assets to Pajarito Recreation LP, subject to various covenants and deed restrictions, in return for their agreement to assume LASC’s existing loans and a commitment to partner with Los Alamos County to construct a permanent water supply for Pajarito Ski Area. Further, the Board is authorized to take all reasonably necessary steps to negotiate and consummate the authorized transaction and arrangements.”

The Board believes this change in wording from the May 2014 motion will put the authorization to proceed (given a positive vote) on satisfactory legal ground and in accord with Club Bylaws. If the motion carries, the LASC attorney-reviewed property transfer contract with PRLP will be finalized and signed without further delay. We hope to complete the property transfer by the end of this summer.

LASC BOARD RECOMMENDATION

The Los Alamos Ski Club Board of Directors believe that transferring the entire Pajarito Ski Area property is the best option for continued skiing in Los Alamos County for all the reasons given above. PRLP have made a good-faith effort to run the Ski Area, and are enthusiastic about being part of the future here. They have kept their commitments of reasonable ticket prices, mountain management, and consistent days of operation during the last three years.

NOTE ON SANDOVAL COUNTY PROPERTY (WEST LAND)

Transfer of the Club property west of the Los Alamos County – Sandoval County boundary (the land originally acquired from the Dunigan Ranch before it became the Valles Caldera National Preserve) to PRLP cannot take place at this time. This tract is encumbered with a covenant stating that the Dunigan family heirs have right of first refusal if the property is to be transferred from LASC to another entity. There will be a significant amount of due diligence to locate and negotiate with these heirs, a process that has not yet been initiated. Thus, the Club will continue to be a property owner for some time, leasing the Sandoval County land to PRLP for operations. Club members will be kept up to date on negotiations with the Dunigan family as they proceed.

As part of the contract now being prepared, PRLP will assume all expenses associated with the Sandoval County land and will maintain appropriate insurance to indemnify LASC against any legal claims. When the Dunigan family process is finalized and the existing encumbrance is removed, the Sandoval County portion of the Ski Area will be transferred to PRLP under the same terms and restrictions as the portion within Los Alamos County.