

MEMORANDUM RE: HOLLAND LAKE LODGE USFS PERMIT

TO: Interested parties

FROM: George Corn (406) 363-1163

Daniel Browder (406) 361-3677

DATE: November 15, 2022

According to our review of public documents, we believe Holland Lake Lodge, Inc. has already violated its USFS “Term Special Use Permit,” by its transactions with POWDR Corporation, which, according to its website, owns and operates eleven ski resorts across the country. Because of those violations, the Permit was terminated according to the Permit’s provisions. In particular, the formation of a new joint venture between the two entities, and related corporate transaction should cause the USFS to require the joint venture to submit a new permit application, rather than to consider POWDR’s request to expand the use of the existing permit as submitted in POWDR’s proposed “Master Development Plan.”

Holland Lake Lodge, Inc. (the Lodge), previously owned and controlled entirely by Christian Wohlfeil, was allowed to operate on our public lands by a special use permit issued by the U.S. Forest Service in 2017. The Permit—a 35-page legal document—contains multiple provisions intended to protect the Holland Lake Lodge site and surrounding public lands from potential negative effects from the Lodge’s operations. These protections include the permit’s termination clause, which specifies two major ways the Permit can automatically terminate: “Transfer of Title” and “Change in Control of the Business Entity.” The permit also requires that the Lodge must notify USFS if “a change in control of the business entity that holds this permit *is contemplated*.” As discussed more fully below, a change in control was not only contemplated, but was apparently effected.

The termination provision provides as follows:

Any change in control of the business entity as defined in Clause J.1 shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit....

In the Permit Clause J.1, “Change of control” specifically refers to joint ventures:

In the case of a ... joint venture ... control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. 2

[C]ontrol is any arrangement under which a third party *has the ability to exercise management authority* of the actions or operations of the business.” (Emphasis added.)

These provisions in the Permit are clearly intended to prevent a permittee from using corporate shenanigans to allow a third party to take over the Permit without going through the full vetting required of a new permit application.

Holland Lake Lodge and POWDR describe their project proposal as a “joint venture” which will result in future ownership by POWDR alone. The fact that Holland Lake Lodge, Inc. is now a joint venture, in itself, should have alerted Flathead National Forest Supervisor Steele to consider and investigate the corporate relations between the two entities in light of the termination clause and to determine whether those transactions and relations give POWDR the potential to “exercise managerial authority over” the Lodge’s operations. As described below, the public records alone show that POWDR does have the ability to exercise managerial authority. Non-public records will likely make that fact crystal clear. The USFS should determine that the Permit was violated and terminated, and the joint venture should apply for a new special use permit for the Holland Lake Lodge site.

Relevant public records document how Holland Lake Lodge’s various agreements, actions and arrangement shifted “the ability to exercise management authority” from the Lodge to POWDR. Those agreements actions and arrangements should at least have been scrutinized by the USFS to determine if the termination clause was triggered.

In our view, POWDR’s attempt to tag onto the remaining 14 years of the existing permit should fail. The new joint venture, POWDR by itself, or any other concessionaire, should be required to go through a full permit application process if it wants to use the site. It is inexplicable why Forest Supervisor Steele gave POWDR a free pass on the termination clause. The public deserves better.

The public records described below document that POWDR has the ability to exercise management authority over the Lodge’s operations. The USFS also has the ability to demand that the Lodge and POWDR provide non-public documents articulating the joint venture and the two entities’ corporate relations generally.

Apparently the USFS has made no such demand as a condition for considering POWDR's application.

Prior to its 2022 annual filing, Wohlfiel was the Lodge's president, secretary, and treasurer. After the 2022 filing, Justin Sibley is its president and Tim Brennwald is "other officer." Wohlfiel is no longer an officer or director. According to the Utah Secretary of State, Sibley is also POWDR Corp's president.¹ According to his Linked-In

¹ In addition to POWDER, Corp., Sibley is also a principal of the following Utah entities: Park City Ski Holidays, Inc.; POWDR Development Company; POWDR Properties Company; and POWDR Aviation, Inc. 3

page, Brennwald is POWDR Resort's Executive Vice President and CEO. Before and after the 2022 filing, Wohlfiel is listed as the Lodge's shareholder.

POWDR presents Wohlfiel's shareholder status as a fig leaf to claim that POWDR does not exercise control over the Lodge. We believe that POWDR has simply used other mechanisms besides holding shares to secure its control over the Lodge. It is unlikely that POWDR put forth the large amounts of money paid to Wohlfiel and toward expanding the Lodge without taking measures to protect its investment in some ways, most of which will not be evidenced in public records. The USFS should be shown all the transactions between Wohlfiel/Lodge and POWDR and any person or entity affiliated with POWDR.

The Utah Secretary of State public records show POWDR Corporation's address as 1794 Olympic Pkwy, Ste 210, Park City, Utah. The Montana Secretary of State's (MTSOS) public records show that on 4/15/2021, Holland Lake Lodge, Inc. transferred its legal address from Holland Lake Rd, Condon, MT, to "Holland Lake Lodge, Inc, 1794 OLYMPIC PKWY STE 210, LEGAL DEPT. PARK CITY, UT 84098." This indicates that for the last 18 months the Lodge's corporate affairs, including filing its 2022 annual report with the MTSOS, have been conducted by POWDR's "legal department."

Additionally, MTSOS records show that a new entity called Holland Lake Lodge Restaurant, LLC (the Restaurant) registered with the MTSOS on 6/21/2021—two months after the Lodge itself changed its legal address to POWDR's. These records show the Restaurant's address is also 1794 OLYMPIC PKWY STE 210 LEGAL DEPT., PARK CITY, UT 84098.

Significantly, the Montana Department of Revenue (MTDOR) records show that the Restaurant LLC is owned 100% by Justin Sibley and that Christian Wohlfiel is its manager. According to MTDOR records, it appears that the Lodge sold its

liquor license to POWDER/Sibley's "Restaurant" LLC, a few months later. Holland Lake Lodge Inc. (i.e. Wohlfiel) sold its all-beverage liquor license (No. 04-999-5296-001) to Holland Lake Lodge Restaurant, LLC (i.e. Sibley/POWDR) on October 2, 2021 for \$1,000.

However, MTDOR records also note there is a "Concession Agreement" between the Lodge and the LLC, which allows the Lodge to utilize the license that was formerly in its own name. This seems like the kind of corporate shenanigans that the Permit foresaw: The Lodge/Wohlfiel sold its license to Sibley's LLC; Wohlfiel was made the manager of the LLC, yet the manager can presumably be removed at Sibley's discretion as owner; and the LLC in turn allowed the Lodge to use the license Wohlfiel just sold. Because of 4

these transactions, POWDR's Sibley, as sole owner of the Restaurant LLC, exercises complete and ultimate control over the Lodge's alcohol license.²

² We attach records of the Montana Department of Revenue because they are not as easily accessed as other public records referenced.

Without a liquor license, the Lodge—a destination resort that touts fine dining as one of its attractions—can't legally sell alcohol, which would likely be a death blow.

UTSOS records show that in addition to POWDR, four additional Utah corporations are stabled at POWDR's Park City address. Nor is Holland Lake Lodge, Inc. the only out-of-state corporation to be housed in POWDR's stable. Records of the Colorado SOS document that Copper Mountain—a large Colorado ski area owned by POWDR—lists the same principal office mailing address: 1794 Olympic Pkwy, Ste 210, Park City, UT.

In sum, the Lodge is headquartered or stabled in POWDR's head office and POWDR's lawyers and staff are ensuring the Lodge's corporate compliance. The Lodge sold its liquor license (at an interesting price) to a newly formed Restaurant LLC, which is apparently owned by the President of POWDR. After the sale the Restaurant reached some sort of agreement with the Lodge which was necessary for the Lodge to be able to sell alcohol. At a minimum the staffing, the handling of legal affairs and control of the liquor license gave POWDR the ability to exercise management authority of the actions and operation of the Lodge. That by itself seems to us to be enough to terminate the Permit.

However, there's more evidence showing a transfer of control in the Holland Lake Lodge Master Development Plan as well as the failure of Supervisor Steele.

The plan, posted on the USFS website notes it was submitted on 4/15/22 by POWDR and Holland Lake Lodge Inc. and prepared by the WGM group.

Section 1.2 states: “The applicant Holland Lake Lodge, Inc. is a joint venture consisting of the current owner of the Lodge, Christian Wohlfeil, and the future owner POWDR Corp. (POWDR).”

However, by 4/15/22 the Lodge had already transferred its business address and the maintenance and operation of its corporation to POWDR and its legal department. Also, the Lodge had also already sold its liquor license to the Restaurant which was/is owned by Justin Sibley the President of POWDR, who had apparently leased it back to the Lodge. By the date of submission, 4/15/22, the Lodge’s Permit was likely already terminated.

The Plan provides that the “point of contact” for the project is Brian Stewart, a POWDR employee. Another illustration of the change of control is shown by the drilling of a well on the Lodge site. In granting permission for the drilling, the Forest Service explicitly 5

recognized a transfer of control has occurred by requiring both Mr. Stewart and Christian Wohlfeil to sign the permit.

Considering all these interesting facts and relationships, Forest Supervisor Steele should have started asking questions and requesting documents upon receiving the proposed Plan. Instead, he apparently intended to grant the expansion a categorical exclusion as the joint venture requested. This is particularly notable because the joint venture’s Plan explicitly states that POWDR will become the future owner of the resort. For example, a joint venture agreement undoubtedly sets out the financing responsibilities of the parties, the dates of performance and which party will be making the day-to-day decisions for the project. This information would shed more light on the transfer of control or sharing of control by showing which party has the ability to exercise management authority over the action or operations of the Lodge.

We are not suggesting that POWDR has done anything illegal. Corporations use legal shenanigans all the time, including to attempt to defeat “ownership and control” provisions in contracts, such as the Permit. POWDR’s corporate shenanigans may be legal, but they are precisely the sort of actions that the Permit was drafted to address.

The Permit gives Forest Supervisor Steele the right to review all the corporate transactions between Holland Lake Lodge and POWDR. Considering that this permit would affect pristine lands and waters on the Crown of the Continent, Mr. Steele also has the obligation to dig a little deeper into the corporate shenanigans at work here.