M.C. Haik-Public Comment February 10, 2021 Town of Alta Council Meeting

The ASL letter dated January 6, 2021 states that the USFS "confirmed" at a June 2020 meeting that ASL "has the right to restrict use of its parking lots to ski area patrons". The exhibit attached to this letter appears to indicate that parking facilities developed & paid for by the TOA are controlled by ASL. A more substantive review of the public record by the Alta Town Council is appropriate.

April 2020 I shared with the TOA Council agreements & invoices which clearly indicate that TOA municipal funds were expended to create several of the parking areas identified in the ASL exhibit. The exhibit fails to show the extent of the State of Utah road right of way. Many of the parking spots shown are within the State of Utah road right of way.

The exhibit legend shows "ASL Parking in SUP", these parking areas were paid for with TOA tax dollars and should be considered TOA assets administered by the TOA.

The exhibit legend shows "Private Land Parking", all of these parcels were acquired subject to the State of Utah road right of way, thus parking within road right of way is public & outside the r/w private.

The exhibit legend shows "UDOT Right of Way Parking on Forest Service Land", all of the USFS property in this vicinity was re-acquired subject to the State of Utah road right of way, thus parking within road right of way is public & outside the r/w controlled by USFS.

A competent exhibit showing the extent of the State of Utah road right of way is necessary to have a substantive discussion regards parking in the vicinity of SR#210 & other TOA roadways. The survey performed by U.S. Cadastral Survey showing the road r/w at 66 feet is a good start.

From: Dan Ketner
To: Piper Lever
Cc: Karen Travis
Subject: FW: Parking for Peruvian estates homes
Date: Wednesday, February 10, 2021 9:11:16 AM

HI Piper,
I just got these letters last night. Please share them with the council. I understand that I am past the deadline how ever I am sure this matter will not be resolved today.
There are 3 letters, this is 1 of 3

Thanks,
Dan Ketner
Alta Chalets
801-718-7330
www.altachalets.com

From: Randhir Jhamb <randhir.jhamb@att.net>
Sent: Tuesday, February 9, 2021 8:47 PM
To: Dan Ketner <dan@altachalets.com>
Subject: Parking for Peruvian estates homes

Dan,
Having owned and operated the Creekside Chalet since 1996, I find the idea that requiring 3 parking spots per home in our neighborhood to be excessive, unreasonable, and against what we are all striving for at Alta. We try to encourage any renters or guests we have at our homes to take a transportation service up the canyon, to alleviate congestion, and reduce the carbon footprint and associated pollution associated with having an unnecessary vehicle or two crowding the canyon road, or sitting idling in a parking lot .

Requiring three parking spots per home would also be probably impossible, given the tight constraints that we all have to abide by during the winter, due to the amount of snowfall, and the necessity of clearing the snow from the parking area. I believe that two parking spots per residence is more than adequate for the needs of the neighborhood, and beneficial to the environment, and also in keeping with the spirit of what Alta represents.

Thank you for your attention to this matter.

Regards,

Randhir Jhamb
Creekside Chalet
9880 East Peruvian Acre
Alta, Utah 94092

From: Dan Ketner
To: Piper Lever
Cc: Karen Travis
Subject: FW: parking allotments
Date: Wednesday, February 10, 2021 9:12:16 AM

---

3 of 3

Thanks,
Dan Ketner
Alta Chalets
801-718-7330
www.altachalets.com

From: richard manley <richardmanley978@yahoo.com>
Sent: Monday, February 8, 2021 10:12 PM
To: Dan Ketner <dan@altachalets.com>
Subject: parking allotments

Dan

Karen Travis informed me today that the Alta council is considering requiring 3 parking spots for each of the rental units for 2021-2022. 2 parking spots per rental has always been adequate for many years. 3 parking spots per rental would be a huge challenge, if not impossible. We've all made the 2 parking spots work. I don't see how increasing the parking allotment from 2 slots to 3 is even possible.

My vote would be to retain the 2 car status.

Thank You.

Richard Manley
9890 East Peruvian Acres Rd,
Alta, Utah 84092

Paisley Ferguson LLC
9870 Peruvian Acre Road
Alta, UT 84092

Town of Alta
PO Box 8016
Alta, UT 84092

February 9, 2021

Dear Mayor Sondak and Town Council,

We are writing in response to a letter from Jen Clancy written January 28, 2021 regarding a business license application. The information provided states that we need a minimum of 3 designated parking spots to obtain a business license. We own a single-family home in Peruvian Estates and have rented it through Alta Chalets for 15 years. During this period, Alta Chalets has communicated with all renters that the rental comes with up to 2 parking spots. There has never been an expectation that anyone renting our home could bring and park 3 vehicles.

We would like to request that the Town of Alta changes the requirement for licensure from 3 cars to 2 cars. The congestion in the canyon has increased dramatically since we have owned our home. The messaging we have heard from Alta is for visitors to carpool and take public transportation when available in order to minimize cars in the canyon. We do not think it is necessary or beneficial to the safety and enjoyment of the canyon to offer 3 vehicles with each rental in Peruvian Estates. Historically we have never offered 3 parking spots to the renters of our home.

Thank you for considering our request. Please contact each of us to discuss this further if you need more input.

Best regards,

T Petzold

Tricia Petzold and Ted Paisley

Kate and Hugh Ferguson

DRAFT NOT FOR CIRCULATION

MEMORANDUM

TO: Friends of Alta, Board and Supporters
FROM: Patrick A. Shea, Counsel for Friends of Alta
Rob D'Andrea, S.J. Quinney College of Law, University of Utah
DATE: February 8, 2021

INTRODUCTION

A question has arisen as to whether the Town of Alta (TOA) can impose ordinance obligations on land owned by the United States Forest Service (USFS), Lessees of Forest Service Land and private owners. I specifically, researched case law and specific statutory or regulatory provisions which would allow the TOA to enact a planning and permitting ordinance requiring compliance by private property owners and lessees of federal property so long as the ordinance recognizes final decision authority resides with the USFS, were researched in preparation of this Memorandum.

SHORT ANSWERS

I. Is it legal for the TOA to enact a planning and permitting ordinance requiring compliance by private property owners and lessees of federal property so long as the ordinance recognizes final decision authority resides with the USFS?

Yes. According to the U.S. Supreme Court, (see subsequent citations in Discussion Section, below) absent preemption of state law by federal law, states can enforce civil and criminal laws on federal land. A review of relevant federal statutes and regulations demonstrates no preemption, but rather that special use permit holders, such as the Alta Ski Lift Company (ASL), must comply with state laws, and therefore subservient governmental entities within a state, such as the TOA. Provided, final decision authority is recognized to be held by a federal entity, such as the USFS, and said federal authority has not been delegated to a private party.

FACTS

THE QUESTION
USFS owns a majority of the land in and around Little Cottonwood Canyon (LCC). Some private property owners in the LCC and ASL, which has a long-term lease with the USFS have attempted to avoid several efforts of oversight by the TOA. The town is considering various planning and permitting ordinances for land, regardless of ownership, within the jurisdictional boundary of Alta. They have been told by ASL that there can be no overlapping jurisdictions. That is, Alta cannot impose ordinance obligations on land owned or leased by the Forest Service, or for that matter, by private owners.

PREFERRED POSSIBLE SOLUTIONS

From my experience as national director of the Bureau of Land Management (BLM) I observed many overlapping jurisdictions – towns, cities, counties, and states – each having overlapping jurisdictions with BLM. The most important component of these overlapping jurisdictions was the acknowledgment and compliance that BLM had final decision authority. In the instance of Alta, they could enact a planning and permitting ordinance which required a property owner or lessee of federal property (such as USFS), to comply with the new ordinance, provided the ordinance recognized the final decision authority relative to the action of the property owner or lessee of federal property, would reside with the USFS. *

DISCUSSION

I. It is legal for the town of Alta to enforce municipal/township laws on private landowners and ALS within their jurisdiction because federal law supports rather than preempts state law on USFS land

The Property Clause states that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art. IV, § 3, cl. 2. The U.S. Supreme Court has interpreted the Property Clause to mean that "[t]he power over the public land thus entrusted to Congress is without limitation." *California Coastal Comm'n v. Granite Rock Co.*, 480 S. Ct. 1419, 1425 (1987) (internal citations omitted). However, the U.S Supreme Court has also held that "'the State is free to enforce its criminal and civil laws' on federal land so long as those laws do not conflict with federal law" in violation of the Supremacy Clause. *California Coastal Comm'n v. Granite Rock Co.*, 480 S. Ct. 1419, 1425 (1987) (citing *Kleppe v. New Mexico*, 426 S. Ct. 2285, 2293 (1976)); U.S. Const., Art. VI, cl. 2.

The Supreme Court determines that state law has been preempted by federal law in the following instances: (1) when "Congress evidences an intent to occupy a given field;" (2) when "Congress has not entirely displaced state regulation over the matter in question" but "it is impossible to comply with both state and federal law;" and (3) when "state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Granite Rock Co.*, 480 S. Ct. at 1425. In comparison, when the Supreme Court finds that federal law requires state law be followed (emphasis added), preemption is not found, and states are free to enforce their criminal and civil laws on federal lands.

For instance, in *Granite Rock*, an unpatented mining claim holder on land owned by the USFS in California sought declaratory and injunctive relief to prevent the California Coastal Commission from enforcing a state permit requirement. *Id*. at 1419. The Supreme Court held that neither USFS regulations nor federal land use statutes preempted the state's permit. *Id*. In fact, USFS regulations explicitly required that operators within national forests comply with state air quality standards, state water quality standards, and standards for disposal of wastes. *Id*. at 1426.

Federal land use statutes support the view that federal law supports rather than preempts state law on USFS lands in LCC. For instance, 16 U.S.C. § 480 provides:

> Civil and criminal jurisdiction. "The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

Thus, federal regulations specifically preserve state jurisdiction on national forest lands.

Further, 16 U.S.C. § 551 provides:

> The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of Title 18.

To fulfill this statutory obligation, the U.S. Department of Agriculture (USDA) has promulgated various regulations governing national forest land, including regulations that incorporate the law of the state in which the national forests are located, and enforce those standards as federal law. *See* *https://le.utah.gov/interim/2014/pdf/00004976.pdf*. Compliance with state and federal law is required through regulations concerning grazing permits, wild free-roaming horse and burro claims, mineral location and development, wildlife management, fire management, and special authorization uses. 36 C.F.R. §§ 222.3, 222.4, 222.62, 228.5, 228.108, 241.2.

In addition, 16 U.S.C. § 551a provides:

> The Secretary of Agriculture, in connection with the administration and regulation of the use and occupancy of the national forests and national grasslands, is authorized to cooperate with any State or political subdivision thereof, on lands which are within or part of any unit of the national forest system, in the enforcement or supervision of the laws or ordinances of a State or subdivision thereof. Such cooperation may include the reimbursement of a State or its subdivision for

> expenditures incurred in connection with activities on national forest system lands. This Act [this section] shall not deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction, within or on lands which are a part of the national forest system.

This demonstrates both the authority of state law over national forest land as well as USDA intent to cooperate with states to enforce state laws on national forest land. Therefore, federal law generally supports rather than preempts state law on forest service lands.

Further, ASL permit conditions likely require compliance with all municipal law absent federal preemption. AlSL operates under a 40-year term Forest Service special use permit, issued in 2002, that is administered by the Uinta-Wasatch-Cache National Forest ("Alta SUP"). *See* https://www.fs.usda.gov/nfs/11558/www/nepa/103726_FSPLT3_4285671.pdf. The Alta SUP could not be located, but the standard USDA Ski Area Term Special Use Permit contains the following Rules, Laws, and Ordinances clause:

> Rules, Laws and Ordinances. *The holder*, in exercising the privileges granted by this term permit, shall comply with all present and future regulations of the Secretary of Agriculture and federal laws; *and all present and future, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit to the extent they are not in conflict with federal law, policy or regulation.*(Emphasis added)The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.
>
> *See* https://www.fs.fed.us/r2/recreation/special-use/forms/new-forms/fs-2700-5b.pdf. (Emphasis added).

Thus, if ASL has signed a standard SUP, then their permit would explicitly state that they are subject to any municipal laws, ordinances, or regulations so long as they are not in conflict with federal law.

Rather than conflicting with federal law, state laws are supported by federal regulations implementing the National Forest Ski Area Permit Act of 1986. For instance, 36 C.F.R. § 251.56 requires special use authorizations to contain terms and conditions requiring: (1) "compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law;" and (2) "compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards."

Thus, under *Granite Rock Co.,* a municipal ordinance enacted by the TOA would be legal because it is not preempted by federal law.

II. Final decision authority does not need to reside with the Forest Service unless federal authority had been explicitly delegated to private parties

According to the D.C. Circuit Court of Appeals "[d]elegations by federal agencies to private parties are valid so long as the federal agency or official retains final reviewing authority. *United Black Fund, Inc. v. Hampton*, 352 F.Supp. 898, 904 (D.D.C.1972) (holding that no unlawful delegation of authority had occurred because chairman of the U.S. Civil Service Commission retained authority to review policies to make sure they met federal requirements); *see also R.H. Johnson & Co. v. SEC*, 198 F.2d 690, 695 (2d Cir.1952), *cert. denied* 344 U.S. 855, 73 S.Ct. 94, 97 L.Ed. 664 (1952)(holding that SEC did not unconstitutionally delegate powers to National Association of Securities Dealers, because it retained power to approve or disapprove rules, and to review disciplinary actions)." *Nat'l Park & Conservation Ass'n v. Stanton*, 54 F. Supp. 2d 7, 19 (D.D.C. 1999).

For instance, in *Stanton*, environmental groups challenged the National Park Service's delegation of management of a national scenic river to a private entity. 54 F. Supp. 2d at 7. However, Alta is not proposing that federal authority will be delegated to a private entity. Further, no federal statutes or regulations were located that indicate final review authority would be compromised with the USFS if Alta were to enact a planning and permitting ordinance requiring compliance by private property owners and lessees of federal property in LCC. Therefore, final review authority does reside with the USFS so long as federal authority hasn't been delegated to a private party. In the instance of LCC no evidence was found that such delegation had occurred or been authorized.

I. Municipalities assume state authority

Under § 10-8-84 of the Utah Municipal Code:

> (1) The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.
>
> (2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703.

Thus, under Utah state law, municipalities assume the authority of the state to pass ordinances and rules.

This authority is supported by precedent from the U.S. Supreme Court and the District Court of New Mexico. According to the Supreme Court, the legality of a local ordinance is analyzed the same as that of statewide laws. *Santa Fe Ski Co. v. Bd. of Cty. Commissioners of Santa Fe Cty.*, No. CV 01-0714 LH/LCS, 2004 WL 7337996, at *6 (D.N.M. Apr. 29, 2004) (referencing *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985)). In *Santa Fe Ski Co.*, the court held that the County's denial of a variance constituted

conflict preemption and conducted their preemption analysis the same for the local law as for that of a state law.

- Prof. Paul Cassell, S.J. Quinney, College of Law, University of Utah, agreed that the "preferred possible solution" was legal and would most likely withstand any legal challenge by any of the property owners and/or lessees of Federal lands. Prof. Cassell did not offer a formal opinion, and this memo shall not attribute to Prof. Cassell anything other than his informed personal opinion.