

POWDER RENEGADE LODGE PUBLIC LIABILITY RISKS. OUR UPDATE FEB 21 2022

On Jan 22 2022 We sent our Report/Submission as in item below, to District Manager and others to detail the probability of damage claims and subsequent costs to taxpayers if Government approves activities in an Area **Unsuited to Purpose and Inadequate for Purpose.**

Those inadequacies were detailed in an earlier Report/submission Oct 2021:

PRL Snowdepths Inadequate:

<https://www.boundaryalliance.org/prlsnowdepthsinadequate.pdf>

and in our initial concerns on the application plus a selection of other submissions from Groups, and their concerns:

Report/Submission of Jan 2021 plus others.

<https://www.boundaryalliance.org/groupsubmissionsmerged.pdf>

Since Jan 22nd, now nearly 3 months into the projected PRL season, snow depths are still inadequate for purpose as indicated by the Grano Snow Station adjacent to the proposed operation. Our earlier Snow Depths Report details how the Grano depths relate to the PRL site.

Some highlights.

- As of Feb 19 2022, snow depths 42.9 " or 108.9.cm still well short of the 1.5 m Proponents believed adequate to operate.
- PRL's competition, mostly further into interior, have two to three times the base. Mentors operation had 314 cm or 123" on Feb 18th.
- Little frequency of fresh dry snow needed for cat and heli skiing operations.
- Frequent temperature inversions, (much of January) contributing to snow hardening and unsuitability of snow to meet expectations of Powder Dream skiers.
- Snow pack density has climbed to 35 in February. Aficionados are looking for fresh powder and substantially lower density.
- Warming trends are expected to provide wetter snow at PRL and other "foothill" sites.
- SWE (snow water equivalent) at 30 year average at Grano indicating site and its snowdepths have a long record of being inadequate.

Is Government approving applications despite public concerns? A recent article details how Government has been approving almost all recreational tenures despite the intrusion of many into areas supposedly with protected status for the benefit of wildlife. Trashing the intent of these supposed protections, just like the PRL one.

Also repeat applications on earlier failed tenures, just like the PRL proponents. This is their second attempt to operate on unsuccessful prior tenures.

<https://mountainculturegroup.com/tenure-in-the-kootenays-british-columbia/>

Our latest submission on Public Liability and Costs, follows:

POWDER RENEGADE LODGE: Public Liability Risks.

We Review the Probability of Injury Claims Resulting in Public Liability (Cost to Taxpayers) if Government Approves Activities in an Area Unsuitable to Purpose.

SUMMARY

- Snow depths inadequate for purpose.
- Suits, because of injuries, can be expected against Government (taxpayer) as a consequence of above.
- Save Harmless Clauses provide little or no assurance of protection against claims.
- Snow depths 2021-2022 winter indicate non-viable season.

The PRL cat-ski Application appears to be still under consideration, despite wide public condemnation of the Proposal in early stages, and later comment on inadequate snow depths, reduced seasons and questionable economic viability. See our Submission and a selection of others from January 2021 at:

<https://www.boundaryalliance.org/groupsubmissionsmerged.pdf>

and our Submission October 2021 detailing the inadequacy of snow depths in the proposed tenure:

<https://www.boundaryalliance.org/prlsnowdepthsinadequate.pdf>

This review focusses on the likely consequences (and subsequent public costs and public harm) of any approval of tenure for activities where snow depths and conditions are insufficient to the point of being **Unsuitable to Purpose** and **Inadequate for Purpose**.

Perhaps PRL and Government had/have some hope that this season's snow might be adequate. Even if it was, the issues we raised in our Oct 2021 Snow Depths and Viability Report cannot be dismissed, countered, or mitigated away, and for Snow Depths, the history and future modelling should tell all parties all they need to know.

IS THIS SNOW SEASON ONE to RAISE EXPECTATIONS AS TO ADEQUACY?

As of January 23rd 2022 (more than a month and a half into what Proponents expected to be Prime Season) snow depths at Grano Snow Stationⁱ were at 100.cm (39.4 inches) having dropped from a high of 119.cm on Jan 4 2022.

Frequent periods above freezing. Little or no snow forecast, well into February.

Snow density trending up to 32, not the stuff of anyone's Powder Dreamsⁱⁱ

The Proponents have suggested that "once there is approximately **1.5 meters of snow settled**" (emphasis ours) on the ground, most areas for travel are passable simply by driving the snow-

cat over the snow. That this depth might not adequately cover obstacles and regrowth is obvious.” *extract page 2 of our Oct 2021 Snow Depths Report:*
<https://www.boundaryalliance.org/prlsnowdepthsinadequate.pdf>

As further indicated in the above Report, PRL’ s proposed tenure lacks the snowfall of almost all of its competition and faces significantly shorter potential seasons.

WHAT ARE THE PUBLIC RISKS to taxpayers and clients ?

Ski Operations are well aware of associated risks and the possibility of suits for injuries and damage. Downhill ski operations usually attach liability waivers to lift tickets and post signs. Cat ski and Heli Ski operators usually go much further and require Guests sign a full Waiver, Release from Liability and Assumption of Risks document. These increasingly lengthy and convoluted waivers are an attempt by Operators to remove themselves from any and all responsibility including all forms of negligence and have gone so far past notions of reasonable care or duty of care so as to invite legal challengesⁱⁱⁱ. A current cat-ski operation’s example: [Safety and Risk Awareness - | K3 Cat Ski - Cat Skiing and Snowboarding in British Columbia](#)

Notwithstanding any type of waiver, the injured can still sue. The success of suits where damage occurred from hitting visible hazards, trees, rock outcroppings and other evident hazards is not assured.

Hidden hazards, stumps, rocks, under snow regen or replanted trees, are another matter. These hazards, increasingly likely with an inadequate margin of snow cover, can be expected to cause injury and damage where clients may well be deemed to have had a **reasonable expectation** of safety.

Such suits can be made against the Operators and Government. Where the case can be made that Government authorized operations in an area **unsuited to purpose**, Courts may well find Government liable, with subsequent public costs.

SAVE HARMLESS CLAUSE & INSURANCE are not effective against such claims.

In granting this type of tenure, (License of Occupation) Government usually requires a Save Harmless Clause (AKA Indemnity Agreement) making tenant responsible for all damages and costs associated with any claims. Such agreements are not necessarily collectible.

In granting this type of tenure, Government usually requires tenant provide public liability insurance, with some expectation that this (and save harmless clause) will protect against any claims.

The availability, affordability, renewability or adequacy^{iv} of such insurance is increasingly in question which in part has prompted the use of Release from Liability Forms.

CONCLUSIONS

Unwarranted financial risk^v exposure to taxpayer, potential public harm, along with all of the other compelling reasons for rejection of the PRL Proposal, should see this Proposal terminated now.

al grant for BEA.

ⁱ Grano Snow Station, just outside the proposed tenure boundary. It provides data relevant to the entire tenure, as discussed in detail in our Oct 2021 Snow Depths Report.

ⁱⁱ Powder Dreams as titled in the Proponents website <https://catskidreams.com/> and the Powder Dreams of anyone who has paid a lot of money expecting deep and dry powder snow.

ⁱⁱⁱ While Operators look to invoke protections under the Occupiers Liability Act, Courts that are increasingly invoking notions of, ‘reasonable expectations’ can be expected to limit the protections that Proponents or Government think is available under that Act.

^{iv} “Insurability, where insurance is available and affordable, is eroding in Canada.” Thistlethwaite, School of Environment, Enterprise.... University of Waterloo. While this reference was mostly referring to effects of climate change, risk assessment and subsequent cost and availability from Insurers, trends across all types of risk.

^v Governments sorry record on risk assessment, risk reduction and risk oversight is evident in disastrous and costly events occurring at increased frequency. Flooding, fires, source pollution, pandemics, major projects e.g. Site C, rising uncounted emissions and more, all worsened and sometimes initiated by Government’s action or inaction. Some adherence to the Precautionary Principle would have reduced or prevented much of the above damage and should have resulted in rejection of the PRL Proposal in its early stages, before it was accepted for (limited) public input.