



# NORTH OGDEN CITY

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**MAYOR**  
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## MEMORANDUM

**TO:** North Ogden City Council and  
Mayor Richard G. Harris  
Ron Chandler, Manager

**FROM:** Dave Carlson, City Attorney/Dir. Economic Development

**DATE:** May 14, 2012

**RE:** Cove PRUD Development Agreement

Before you for your approval is a development agreement between Westside Investment, LLC and North Ogden City regarding development of the Cove PRUD. By approving the development agreement you authorize the Mayor to execute it making it binding on the city. A development agreement approved by the City Council is one of the few council actions that cannot be undone by a future City Council.

The permanency of a development agreement is its benefit. It serves to assure a developer and its investors that all approvals necessary for full development of a project have been granted and will not be changed mid-stream. It assures a more clear meeting of the minds between the developer and city regarding the expectations of a development.

In my opinion, the development agreement before you for approval is not only prudent but essential given the ambiguity that has surrounded the Cove PRUD. There has been uncertainty in the record of past City Council actions, disagreement over the interpretation of the subdivision plats, city failure to impose critical developer performances as condition of approval and irregularity in the way the city required security for future developer performances.

To add to the complexity over the status of the Cove, it has changed ownership four times since it received its initial approval.

For both the City and the Developer, the development agreement allows the parties to start with a clean slate and more clear understanding of what the city requires and what the developer must perform.

It solves many problems for all associated with the Cove PRUD: the city, the developer and present and future lot owners.

It makes clear what performances have been completed and those that remain to be completed by the developer and it assures the city a new escrow sufficient to secure those performances which are incomplete.

It makes clear the need to complete certain essential infrastructure not addressed in prior approvals including completion of offsite secondary water system improvements, an avalanche/debris flow protection berm and dedication of right-of-way at the intersection of Mountain Road and Dillion Way.

It memorializes amendments to the original cove development scheme that have recently been granted by the Planning Commission and City Council.

It requires plat notations and notes in deeds to put future lot owners on notice that avalanche/debris flow protection is incomplete, provides a release of liability for the city and the developer pending completion of the protection features and notifies lot owners that individual lot drainage swales must be completed by each builder.

It restricts the issuance of building permits as an incentive for the developer to complete construction of the avalanche/debris flow features and the offsite secondary water system improvements.

This development agreement represents hundreds of hours of analysis, review and discussion by the Mayor, City Manager(s), City Engineer, Community Development Director, Building Official, Public Works Inspector, Public Works Director, City Attorney, Developer representatives, Developer legal counsel and the lot owner legal representative.

The version provided to you in your packet is substantially agreed to by the parties although some minor issues are still being ironed out and a final version will be provided to you at your May 23, 2012 meeting.

Once this development agreement is signed and the amended plats recorded, this important North Ogden residential subdivision can be put back on the real estate market to attract new families to the North Ogden community.

I look forward to answering your questions.

Sincerely,

Dave Carlson