

Mammoth Lakes Town Council Agenda Action Sheet

Council Meeting Date: December 16, 2015

Date Prepared: December 7, 2015

Prepared by: Nolan Bobroff, Assistant Planner

Title: Receive and file the Snowcreek Development Agreement annual review report

Agenda: Consent

Recommended Motion: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.

Background Information: The Snowcreek Development Agreement (DA) was approved by Town Council and became effective on July 23, 2010. The DA provides a 20-year vesting for the Snowcreek Master Plan Update (Snowcreek VIII) and Snowcreek VII projects. The DA achieves mutual benefits for both the Town and the Developer.

DAs are subject to annual review to evaluate compliance with required terms and conditions. The 2015 Snowcreek DA annual report finds that the Developer is in good faith substantial compliance with the terms and conditions of the DA.

The annual report identifies that the permanent protection of the Mammoth Creek Open Space Corridor was required by July 23, 2014. After coordinating with the Department of Fish and Wildlife (DFW) and the Town, the Developer has proposed to donate the subject property by grant deed to the Town with a third party conservation easement to DFW. The Town has been working with DFW and the Developer to draft the conservation easement and the required Land Management Plan (LMP). Additionally, the Planning and Economic Development Commission (PEDC) found the acceptance of the donated property within the Mammoth Creek Corridor consistent with the General Plan, as required by Government Code Section 65402(a). Since the DFW process is outside of the Developer's control, the Town has determined that the Developer is in good faith substantial compliance with the Snowcreek DA.

Funds Available: N/A

Account #: N/A

Reviewed by:

DT Town Manager Town Attorney

gm Community & Economic Development Manager

Town Vision / Priority: The Snowcreek DA is consistent with the Town's Vision because it further implements the Snowcreek VII and Snowcreek Master Plan Update (Snowcreek VIII) projects, which were both found in conformance with the Town's Vision and the General Plan. The projects support the Council's priorities of diversifying economic development and enhancing community amenities.

TOWN COUNCIL STAFF REPORT

Subject: Receive and file the Snowcreek Development Agreement annual review report

Meeting Date: December 16, 2015

Written by: Nolan Bobroff, Assistant Planner

RECOMMENDATION:

Staff recommends that Town Council receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.

BACKGROUND:

Development Agreements

DAs are contracts negotiated between project proponents and public agencies that govern the allowable land uses in a particular project and establish the conditions to which a development will be subject. DAs provide mutual benefits to the parties and must be consistent with the General Plan and any applicable specific plan.

Neither an applicant nor a public agency is required to enter into a DA; DAs are voluntary agreements of both parties. The terms and conditions of DAs are negotiated between the parties and subject to the ultimate approval of the public agency after following a specifically required process.

State law, Government Code 65864 et seq., and Municipal Code Chapter 17.108 outline the requirements for Town of Mammoth Lakes DAs. DAs are recorded, which binds future owners to the requirements and obligations contained in the DA. The Snowcreek DA was adopted consistent with these requirements.

Snowcreek DA

The Snowcreek DA was approved by Town Council via Ordinance 10-08 and became effective on July 23, 2010. The DA provides a 20-year vesting for the Snowcreek Master Plan Update (Snowcreek VIII) and Snowcreek VII projects, which total approximately 260 acres within the Snowcreek Master Plan area.

The Snowcreek DA is intended to:

- Increase the likelihood the subject development projects are built as intended in the long-term;
- Ensure the provision of needed facilities, improvements or services; and
- Provide assurance to the developer regarding the rules, regulations, and policies applicable to future development.

Both the Town and the Developer share mutual interest in implementation of Snowcreek VII and Snowcreek VIII projects and the resultant improvements that would result.

Community benefits provided through the Snowcreek DA include:

- Allowing egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range earlier than required (DA Section 2.2.1.a).
- Permanent preservation of the Mammoth Creek open space corridor (DA Section 2.2.1.b).
- Additional Financial Contribution (“AFC”) paid per unit at building permit issuance. This cash flow could result in up to \$10 million to use for purposes beneficial to the community and intended to be applied to various projects located within a surrounding geographic nexus (DA Section 2.2.2).
- Fiscal benefits that will accrue to the Town and community through the implementation of the Project as intended that would not occur without the DA, including transient occupancy taxes.
- Secondary access for both Snowcreek V and VIII and the emergency vehicle access road, which is in addition to the Fire District requirements.
- Establishment of public access across certain points of the project to surrounding public lands prior to project construction and after completion, which would provide access to an enhanced network of publicly accessible multi-use paths that is connected to the Town’s trail system.

Additional community benefits provided by the Project are identified in the Recitals of the DA.

ANALYSIS/DISCUSSION:

Because of economic conditions and the significant impacts caused by the recession, a determinate phasing schedule of development was not practical and was not approved with the Snowcreek DA. Rather, basic performance milestones were provided, which are listed in the attached annual review report (Attachment 1). The DA allows for a finding that it is acceptable for milestones to have not been met due to unavoidable delays or events as described in Section 11.15 of the DA.

Attachment 1 is the 2015 annual review report for the Snowcreek DA. This report finds that the Developer is in good faith substantial compliance with the terms and conditions of the DA.

The annual report identifies that the permanent protection of the Mammoth Creek Open Space Corridor was required by July 23, 2014. After coordinating with the Department of Fish and Wildlife (DFW) and the Town, the Developer has proposed to donate the subject property by grant deed to the Town with a third party conservation easement to DFW. The Town has been working with DFW and the Developer to draft the conservation easement and the required Land Management Plan (LMP). Additionally, on

February 11, 2015, the Planning and Economic Development Commission (PEDC) found the acceptance of the donated property within the Mammoth Creek Corridor consistent with the General Plan, as required by Government Code Section 65402(a) (see Attachment 3 for the PEDC Resolution). Since the DFW process is outside of the Developer's control, the Town has determined that the Developer is in good faith substantial compliance with the Snowcreek DA.

OPTIONS ANALYSIS

Option 1: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.

Option 2: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement, and comment on the report or request further information or public discussion at a future regular public meeting or closed session, as legally permitted.

Both options allow the Snowcreek DA annual report to be filed consistent with the requirements of the Snowcreek DA.

FINANCIAL CONSIDERATIONS:

The Snowcreek DA includes terms related to financial contributions to the Town, such as the Additional Financial Contribution (e.g., \$10,000 per unit provided to the Town at time of building permit issuance pursuant to DA Section 2.2.2). The DA vests development impact, affordable housing in-lieu, application processing, and building permit fees for 20 years. Application processing fees will be subject to a cost of living adjustment (COLA).

ENVIRONMENTAL CONSIDERATIONS:

An Environmental Impact Report (EIR) was certified for the Snowcreek Master Plan Update (Snowcreek VIII) Project (SCH# 2006112015). A Mitigated Negative Declaration was adopted for the Snowcreek VII Project (SCH# 2006022011). Pursuant to CEQA Guidelines Section 15161, no additional environmental review is required for the DA annual review.

LEGAL CONSIDERATIONS:

The Town's legal counsel and special legal counsel were part of the Town's negotiating team for the Snowcreek DA. The Town Attorney has reviewed this staff report.

Attachments

1. Snowcreek DA 2015 Annual Review Report
2. Letter from Mr. Chuck Lande initiating Snowcreek DA annual review, dated October 27, 2015

3. Resolution No. PEDC-2015-03 – General Plan consistency finding for acceptance of the donated property within the Mammoth Creek Corridor
4. Snowcreek DA - available online at <http://www.ci.mammoth-lakes.ca.us/index.aspx?nid=364>

Attachment 1

Snowcreek DA 2015 Annual Review Report

Snowcreek Development Agreement - 2015 Annual Review Report

Development Agreement Schedule of Performance Review

Snowcreek Hilltop Development Company, L.P. & Snowcreek Investment Company, L.P. Development Agreement

Summary: Snowcreek Development Agreement

Effective Date: July 23, 2010

Term: 20 years

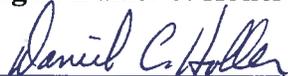
Expiration Date: July 23, 2030

Affected Projects:

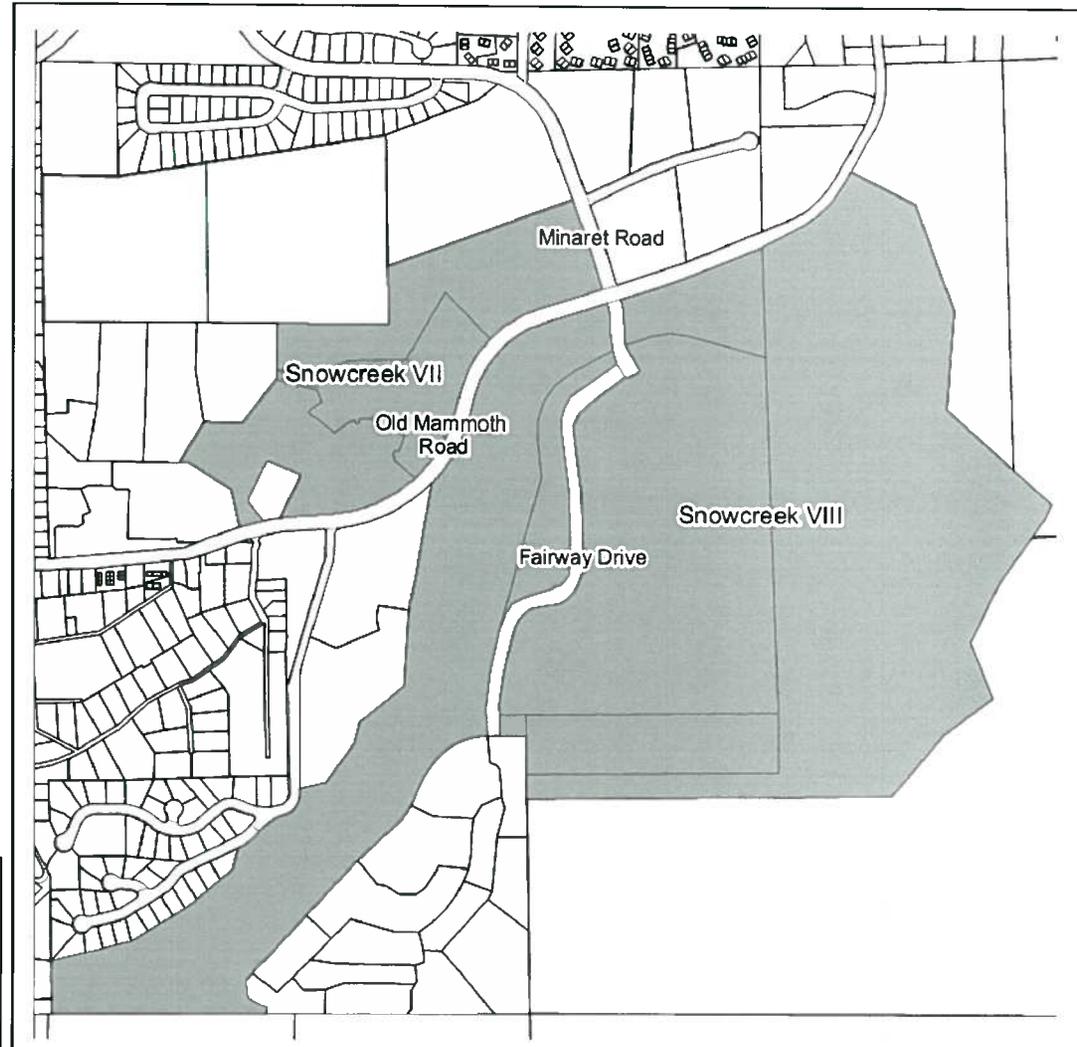
1. Snowcreek VII
2. Snowcreek VIII

Town Manager Determination: Developer is found to be in good faith substantial compliance with the terms and conditions of the Snowcreek Development Agreement.

Town Manager: Daniel C. Holler

Signature: 

Date: December 8, 2015



Snowcreek Development Agreement – 2015 Annual Review Report

Development Agreement Milestones (Article 2, Section 2.2.1)

Subject	Milestone	Due Date	Actual Date of Implementation	Satisfied/Complete	Notes
Annual Review	Developer will initiate the annual review by submitting a written statement to the Town Manager describing the Developer's good faith substantial compliance with the terms and conditions of the DA for the prior calendar year (7.2.2).	Initiated October 31 st each year	Letter received on October 27, 2015	Yes	This annual review report is to be received and filed by Town Council on December 16, 2015.
Backcountry Egress	Allow egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range prior to effective date of DA (2.2.1.a).	Prior to effective date of DA	Prior to effective date of DA	Yes	
	Continue to allow [egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range] during the pendency of construction of that portion of the Projects so long as the Developer, at its sole election, determines that such egress shall not negatively affect public safety (2.2.1.a).	On-going during construction of portion of the Projects that would affect that Sherwin Range egress			
Mammoth Creek Open Space Corridor	Record a real estate conveyance document, whether a grant deed, a conservation easement, or another legal mechanism reasonably approved by the Town Attorney, to permanently protect the Mammoth Creek Open Space Corridor (2.2.1.b).	July 23, 2014			The Developer has been coordinating with DFW and the Town to donate the property to the Town by grant deed along with a third party conservation easement to DFW. The Town has been working with DFW to draft the conservation

Snowcreek Development Agreement – 2015 Annual Review Report

					easement and the required Land Management Plan (LMP). Since the DFW process is outside of the Developer's control, the Town has determined that the Developer is in good faith substantial compliance with the Snowcreek DA.
Phasing	Actual construction will occur in phases and subphases based on what the market will absorb at any given point in time. It is the intention of the parties for each phase or subphase of the Projects to provide all of the facilities, programs (including affordable housing), features, amenities, access and easements described in the Vested Rules as well as payment of all fees at the time set forth in the Vested Rules, related to that phase or subphase. The parties agree to discuss the actual phasing of development and the associated timing for completion of facilities, programs (including affordable housing), features, amenities, access and easements in connection with the application for each use permit or Subsequent Approval (2.2.1.c.1).	Application for each use permit or Subsequent Approval; on-going with each phase of construction			

Snowcreek Development Agreement – 2015 Annual Review Report

Resort Hotel and 18-Hole Golf Course	Subject to Section 11.15, if development of the Resort Hotel and 18-hole championship golf course has not commenced within 10 years after the effective date of the DA, then the remaining 10-year term of the DA shall be reduced one day for each day, or portion thereof, the 10-year milestone has not been met (2.2.1.c.2).	July 23, 2020			
Project Sales Price	Publicly available Project sales price activity shall be reviewed during the Annual Review, pursuant to Section 7.2 (2.2.2.f.3)	During annual review once units are for sale or have been sold			

Additional Progress

In addition to the milestones identified above, progress has been made on Snowcreek permits:

- The golf course recycled water pond project was completed in Summer 2015 and has been connected to the MCWD recycled water system.
- High-quality hydroseed and an irrigation system placed on the Snowcreek VII stockpile. The Developer has a deadline of August 30, 2017 to remove the stockpile.
- The Developer has re-applied for four (4) building permits that expired for Snowcreek VII. The permits are for four (4) buildings that contain a total of 14 townhome units. As of December 1, 2015, foundation only permits have been issued for two (2) of the buildings.

Attachment 2

**Letter from Mr. Chuck Lande initiating Snowcreek DA
annual review, dated October 27, 2015**

October 27, 2015

Mr. Nolan Bobroff
Assistant Planner
Town of Mammoth Lakes
P.O. Box 1699
Mammoth Lakes, California 93546

Re: Snowcreek Development Agreement

Dear Nolan,

Pursuant to the content of Paragraph 7.2 Annual Review of the Development Agreement by and between Town of Mammoth Lakes, Snowcreek VII LLC (fka Snowcreek Hilltop Development Company L.P.) and Snowcreek Investment Company LLC, this letter shall serve to initiate the annual review leading to the determination of Developer's good faith substantial compliance with the terms of the Agreement. Emerging from the Economic Recession, there has been a lot of activity in the past twelve months at Snowcreek. We are in the final stage of donating a 15.42 acre Mammoth Creek parcel to the Town of Mammoth Lakes with a Conservation Easement over the land. A reclaimed water system has been installed in the Snowcreek Golf Course which will ease the burden on use of potable water which will benefit the Town of Mammoth Lakes and the Mammoth Community Water District. Building permits have been applied for four buildings allowing construction of fourteen (14) townhome units within the Snowcreek VII/Hilltop parcel.

If there are any questions regarding the Development Agreement, please do not hesitate to call.

Sincerely,

Snowcreek VII LLC
Snowcreek Investment Company LLC



Charles R. Lande
Authorized Signatory

Attachment 3

**Resolution No. PEDC-2015-03 – General Plan consistency
finding for acceptance of the donated property
within the Mammoth Creek Corridor**

RESOLUTION NO. PEDC-2015-03

**A RESOLUTION OF THE MAMMOTH LAKES PLANNING AND
ECONOMIC DEVELOPMENT COMMISSION
FINDING THAT THE TOWN'S ACCEPTANCE OF DONATED
PROPERTY WITHIN THE MAMMOTH CREEK CORRIDOR FROM
SNOWCREEK HILLTOP DEVELOPMENT COMPANY, L.P. IS
CONSISTENT WITH THE GENERAL PLAN
(1244 OLD MAMMOTH ROAD, APN: 040-160-002-000)**

WHEREAS, the Snowcreek Hilltop Development Company, L.P., has requested the Town to accept the donation of the Mammoth Creek Corridor parcel, which is approximately 15.5 acres located at 1244 Old Mammoth Road; and

WHEREAS, the Snowcreek Development Agreement was approved by Town Council via Ordinance 10-08, and Section 2.2.1.b of the Development Agreement requires the subject property to be permanently protected by a recorded real estate conveyance document, such as a grant deed or conservation easement; and

WHEREAS, the Snowcreek VIII Environmental Impact Report Mitigation Measure BIO-4a requires the Developer to purchase or contribute funds to a conservation easement for mule deer subject to approval by the Department of Fish and Wildlife; and

WHEREAS, the Department of Fish and Wildlife stated in a November 17, 2014 letter to the Town that the donation of the Mammoth Creek Corridor property will fulfill the requirements of Mitigation Measure BIO-4a as long as the Town manages the property for wildlife and habitat values and a third party conservation easement is provided to the Department of Fish and Wildlife; and

WHEREAS, if the property is accepted by the Town, the Town would maintain the property for wildlife and habitat values, including maintaining the soft surface trail system with the necessary safety and environmental enhancements (e.g., erosion control); and

WHEREAS, if the property is accepted by the Town, a third party conservation easement would be provided to the Department of Fish and Wildlife, which is anticipated to exclude the area from the existing multi-use path along Old Mammoth Road to Old Mammoth Road and any property that may be required for future road or right-of-way improvements for Minaret Road and Old Mammoth Road; and

WHEREAS, Government Code Section 65402(a) requires a General Plan consistency determination prior to the Town acquiring any land; and

WHEREAS, the Planning and Economic Development Commission conducted an administrative hearing on the application request on February 11, 2015, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning and Economic Development Commission considered, without limitation:

1. The staff report to the Planning and Economic Development Commission with exhibits;
2. The General Plan, Snowcreek Master Plan Update, Snowcreek Development Agreement, Government Code, and associated Land Use Maps;
3. Oral evidence submitted at the hearing; and
4. Written evidence submitted at the hearing.

NOW THEREFORE, THE PLANNING AND ECONOMIC DEVELOPMENT COMMISSION OF THE TOWN OF MAMMOTH LAKES DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. FINDINGS.

1. CEQA.

The donation of the subject property to the Town is exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines Section 15325(a): Acquisition or transfer of land to preserve existing natural conditions, including plant or animal habitats. The property would be acquired for the purpose of preserving wildlife and habitat values in perpetuity.

2. GOVERNMENT CODE FINDINGS.

The Town's acceptance of the Mammoth Creek Corridor parcel, which is approximately 15.5 acres located at 1244 Old Mammoth Road, is consistent with the General Plan in terms of location, purpose, and extent of the donation pursuant to Government Code Section 65402(a). The location and purpose of the donation is consistent with the General Plan because Mammoth Creek has been identified for preservation of natural, scenic, and recreational values (Goal R.3) and to be managed as open space, habitat preservation, and passive recreation (Policy R.3.B). Additionally, the property would be preserved as open space, consistent with the Snowcreek Development Agreement and Snowcreek VIII Master Plan Update. The extent of the donation is consistent with the General Plan because the property would be donated through a grant deed to the Town.

SECTION 2. PLANNING AND ECONOMIC DEVELOPMENT COMMISSION ACTIONS. The Planning and Economic Development Commission hereby takes the following actions:

1. Finds that the Town's acceptance of donated property within the Mammoth Creek Corridor from Snowcreek Hilltop Development Company, L.P. is consistent with the General Plan.

PASSED AND ADOPTED this 11th day of February 2015, by the following vote,
to wit:

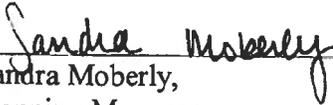
AYES: Brown, Harvey, Tenney, Vanderhurst

NAYS:

ABSENT: Grahek

ABSTAIN:

ATTEST:



Sandra Moberly,
Planning Manager



Madeleine "Mickey" Brown,
Chair of the Mammoth Lakes Planning
and Economic Development
Commission

NOTE: This action is subject to Chapter 17.104 of the Municipal Code, which specifies time limits for legal challenges.

Attachment 4

Snowcreek DA

Available online at

<http://www.ci.mammoth-lakes.ca.us/index.aspx?nid=364>

