

Mammoth Lakes Town Council Agenda Action Sheet

Council Meeting Date: December 7, 2016

Date Prepared: November 28, 2016

Prepared by: Nolan Bobroff, Assistant Planner

Title: Receive and file the Snowcreek Development Agreement annual review report and authorize the Town Manager to sign the Snowcreek Development Agreement Statement of Compliance

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 and authorize the Town Manager to sign the Snowcreek Development Agreement Statement of Compliance.

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 2016 Snowcreek DA annual report finds that the Developer is in good faith substantial compliance with the terms and conditions of the DA.

Additionally, pursuant to Snowcreek DA Section 7.3, the Developer has requested a Statement of Compliance acknowledging that (1) the DA is unmodified and in full force and effect; (2) there are no uncured defaults under the DA by the Town or any other party; (3) Tentative Tract Map (TTM) 36-236 for Phases 2 and 3 of Snowcreek VII has not expired and is in full force and effect; and (4) TTM 2009-002 for Snowcreek VIII has not expired and is in full force and effect. Town staff has found that all of the statements are true and requests that the Town Council authorize the Town Manager to sign the Statement of Compliance on behalf of the Town.

Funds Available: N/A

Account #: N/A

Reviewed by:

____ Town Manager ____ Town Attorney ____ 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.

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TOWN COUNCIL STAFF REPORT

Subject: Receive and file the Snowcreek Development Agreement annual review report and authorize the Town Manager to sign the Snowcreek Development Agreement Statement of Compliance

Meeting Date: December 7, 2016

Written by: Nolan Bobroff, Assistant Planner

RECOMMENDATION:

Staff recommends that Town Council (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; and (2) authorize the Town Manager to sign the Snowcreek Development Agreement Statement of Compliance.

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:

Snowcreek DA - Annual Review

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 2016 annual review report for the Snowcreek DA and Attachment 2 is the written statement from the developer initiating the annual review. 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. On

May 18, 2016, the Town Council accepted the donation of the property and authorized the Town Manager to sign the grant deed. The Town has been working with DFW to draft the conservation easement and the required Land Management Plan (LMP), and anticipates completion of this component in the near future. Once DFW has accepted the language in the conservation easement and the LMP, the grant deed, the conservation easement and the LMP will be recorded sequentially, thereby completing the mitigation requirement to permanently protect the Mammoth Creek Open Space Corridor. Since the DFW process is outside of the Developer's and the Town's control, the Town has determined that the Developer is in good faith substantial compliance with the Snowcreek DA.

Snowcreek DA - Statement of Compliance

Pursuant to Snowcreek DA Section 7.3, within thirty (30) days of a receipt of written request from a requesting party, the Town shall execute and deliver to the requesting party a statement certifying: (1) the Agreement is unmodified and in full force and effect; (2) there are no uncured defaults under the Agreement by the Town or by any other party (as defined in the Agreement); and (3) any other information reasonably requested regarding the status of the Agreement and the performance by the Parties. The Request for a Statement of Compliance was received from Snowcreek VII LLC and Snowcreek Investment Company LLC ("Requesting Parties") by the Town on November 10, 2016 (Attachment 3).

In the request for the Statement of Compliance, the requesting parties are asking for confirmation of the following items:

- The Development Agreement, as recorded, is unmodified and in full force and effect.
- There are no uncured defaults under the Development Agreement by the Town.
- To the Town's knowledge, there are no defaults under the Development Agreement by any other Party (as defined in the Development Agreement) and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Development Agreement.
- Tentative Tract Map 36-236 for Phases 2 and 3, as modified by Resolution PC 2009-01, relating to the Snowcreek VII project, is unmodified, has not expired and is in full force and effect until the Development Agreement expires per Development Agreement sections 3.2.1.3 and 3.5.
- Tentative Tract Map 2009-002, last revised November 9, 2009, consisting of Sheets 1A, 1B and 2, received by the Town on November 19, 2009, and Sheets 3 and 4 received by the Town on August 7, 2009, relating to the Snowcreek VIII project, is unmodified, has not expired and is in full force and effect until the Development Agreement expires per Development Agreement sections 3.2.2.5 and 3.5.

Additionally, the Statement of Compliance asks for acknowledgement that the requesting parties can deliver the Statement of Compliance to prospective transferees and prospective lenders, and that any such party may rely upon the statements contained within the Statement of Compliance.

Upon review of the Statement of Compliance, Town staff has found that all of the statements in the Statement of Compliance are true, and requests that the Town Council authorize the Town Manager to sign the Statement of Compliance on behalf of the Town.

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, and authorize the Town Manager to sign the Statement of Compliance.

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, and authorize the Town Manager to sign the Statement of Compliance.

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 2016 Annual Review Report
2. Letter from Mr. Charles R. Lande initiating the Snowcreek DA Annual Review, dated October 26, 2016
3. Snowcreek DA – Request for Statement of Compliance
4. Snowcreek DA - available online at:
<http://www.townofmammothlakes.ca.gov/DocumentCenter/View/5109>

ATTACHMENT 1

Snowcreek DA 2016 Annual Review Report

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Snowcreek Development Agreement - 2016 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:

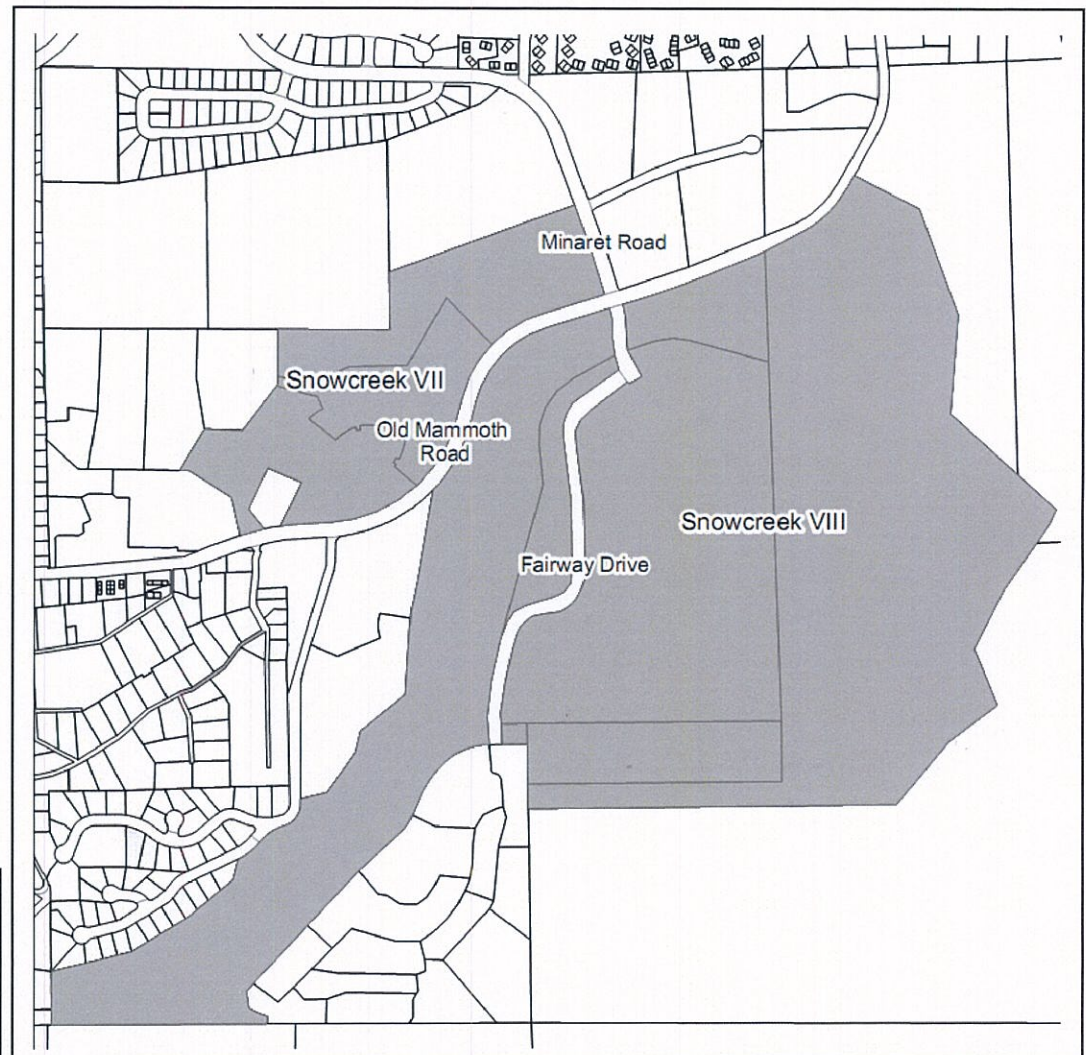
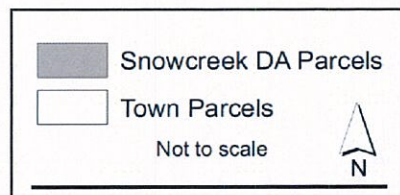
1. Snowcreek VII
2. Snowcreek VIII

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 7, 2016



Snowcreek Development Agreement – 2016 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 dated October 26, 2015	Yes	This annual review report is to be received and filed by Town Council on December 7, 2016.
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 Council accepted the donation of the property and

Snowcreek Development Agreement – 2016 Annual Review Report

					authorized the Town Manager to sign the grant deed on May 18, 2016 and the Town has been working with DFW to draft the conservation 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	Application for each use permit or Subsequent Approval; on-going with each phase of construction			

Snowcreek Development Agreement – 2016 Annual Review Report

	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).				
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. During Summer and Fall 2016, a protective wildlife fence was placed around the water pond per the request of the CA Department of Fish and Wildlife. Future improvements include landscaping between the fence and Old Mammoth Road to mitigate the visual impacts of the fence.
- 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. The developed intends to commence grading and building within the next 12 months.

ATTACHMENT 2

Letter from Mr. Charles R. Lande initiating the Snowcreek DA Annual Review,
dated October 26, 2016

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October 26, 2016

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 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. A lot has transpired over the past 12 months the most notable of which is the completion and implementation of the reclaimed water system for use irrigating the golf course, the donation and acceptance of the 15.42 acre Mammoth Creek corridor parcel to the Town of Mammoth Lakes, and the "pulling" of building permits allowing for construction to commence once again on the Snowcreek VII 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

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ATTACHMENT 3

Snowcreek DA – Request for Statement of Compliance

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November 8, 2016

VIA EMAIL AND OVERNIGHT MAIL

Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546
Attn: Dan Holler, Town Manager
E-Mail: dholler@townofmammothlakes.ca.gov

Town of Mammoth Lakes
P.O. Box 1609
Mammoth Lakes, CA 93546
Attn: Andrew Morris, Town Attorney
E-Mail: pkobylarz@townofmammothlakes.ca.gov

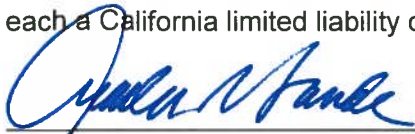
Re: Snowcreek Development Agreement - Request for Statement of Compliance

Gentlemen:

Pursuant to Section 7.3 of that certain Development Agreement dated July 23, 2010 ("Development Agreement"), by and among the Town of Mammoth Lakes, a municipal corporation ("Town"), Snowcreek VII LLC, a California limited liability company (fka Snowcreek Hilltop Development Company L.P.), and Snowcreek Investment Company L.P., a California limited partnership, recorded in the Official Records of Mono County as Document No. 2010003240, the undersigned hereby requests that the Town deliver a certified Statement of Compliance in the form attached hereto. Kindly deliver said Statement of Compliance at your earliest convenience to: c/o The Chadmar Group, 2716 Ocean Park Blvd., Suite 1064, Santa Monica, CA 90405.

Very truly yours,

Snowcreek VII LLC and Snowcreek Investment Company LLC,
each a California limited liability company



Charles R. Lande,
Authorized Signatory

SMRH:479829704.2

STATEMENT OF COMPLIANCE

Pursuant to Section 7.3 of that certain Development Agreement dated July 23, 2010 ("Development Agreement"), by and among the Town of Mammoth Lakes, a municipal corporation ("Town"), Snowcreek VII LLC, a California limited liability company ("SHDC") (fka Snowcreek Hilltop Development Company L.P.), and Snowcreek Investment Company L.P., a California limited partnership ("SIC"), recorded in the Official Records of Mono County as Document No. 2010003240, the undersigned Town hereby certifies to SHDC, SIC, their respective successors and assigns and the lenders and mortgagees of same:

1. The Development Agreement, as recorded, is unmodified and in full force and effect.
2. There are no uncured defaults under the Development Agreement by the Town.
3. To the Town's knowledge, there are no defaults under the Development Agreement by any other Party (as defined in the Development Agreement) and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Development Agreement.
4. Tentative Tract Map 36-236 for Phases 2 and 3, as modified by Resolution PC 2009-01, relating to the Snowcreek VII project, is unmodified, has not expired and is in full force and effect until the Development Agreement expires per Development Agreement sections 3.2.1.3 and 3.5.
5. Tentative Tract Map 2009-002, last revised November 9, 2009, consisting of Sheets 1A, 1B and 2, received by the Town on November 19, 2009, and Sheets 3 and 4 received by the Town on August 7, 2009, relating to the Snowcreek VIII project, is unmodified, has not expired and is in full force and effect until the Development Agreement expires per Development Agreement sections 3.2.2.5 and 3.5.

The Town acknowledges that this Statement of Compliance may be delivered by SDHC and/or SIC to prospective transferees and prospective lenders, and their respective successors and assigns, and that any such party may rely upon the statements contained herein. The undersigned certifies that he or she is duly authorized to execute this Statement of Compliance on behalf of the Town.

TOWN:

TOWN OF MAMMOTH LAKES

By: _____
Daniel C. Holler, Town Manager

ATTACHMENT 4

Snowcreek DA – Available online at:

<http://www.townofmammothlakes.ca.gov/DocumentCenter/View/5109>

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