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Agenda Item 11
April 2, 2008
File No. _____

AGENDA BILL

Subject: Appeal of the Planning Commission's Determination to Approve Use Permit 2007-14 to allow an alternative housing mitigation plan to allow the applicant to pay in lieu fees instead of providing the affordable housing on-site.

Applicant: Brian Parro, CE Mammoth LLC

Appellant: John Walter, Chair for Advocates for Mammoth

Initiated by: Sandra Moberly, Senior Planner

BACKGROUND:

On February 13, 2007, the Planning Commission voted (3-2: with Commissioners Bacon and Saari voting no) to approve the Use Permit request to permit the applicant to pay an in lieu fee instead of constructing the required affordable housing on site. An appeal of the Commission's determination was filed on February 27, 2008.

Proposed Alternate Housing Mitigation Plan

The applicant has submitted an alternative housing mitigation plan which includes the payment of fees in lieu of providing the required housing on site. The application was reviewed by the Board of Mammoth Lakes Housing (the "Board"). The Board, which administers affordable housing programs on behalf of the Town of Mammoth Lakes, proposed an in lieu fee of \$114,000* per FTEE. The Board also recommended that the in lieu fees be paid prior to the issuance of grading permits.

Thirty-five bedrooms of affordable housing is equivalent to 70 FTEE's (one FTEE is equivalent to 250 square feet and each one bedroom is required to be a minimum of 500 square feet therefore; 35 one bedrooms multiplied by 2 equals 70 FTEE's). The applicant is proposing to split the payment of in lieu fees so they pay the in lieu fees for only Phase I of the project at this time. Phase I consists of 70% of the total project FTEE's (49 FTEE's/24.5 bedrooms) which results in a total Phase I payment of \$5,586,000.

*Based on 2008 rate of \$87,700/FTEE + 30% greater housing benefit for off-site mitigation and the very-low income requirement of Use Permit 2005-09.

ANALYSIS/DISCUSSION OF APPEAL:

Attachment 1 contains the appeal request. The appeal contends that the payment of in lieu fees for affordable housing for the Mammoth Hillside project does not implement the conditions that were required as a part of the original approval for the project.

The analysis of the appeal is presented with direct quotes from the appeal letter followed by a staff response.

1. "The Hillside project was granted a 35% density increase in return for providing on-site low income workforce housing. The original conditions of this density increase agreement stipulated that Hillside would build all required units in Phase I of their development plan, that they would be built by the developer on the Hillside site, and that they would be completed by the opening of Phase I."

Response: Development projects are required to mitigate the affordable housing only for the project that is under consideration. During the entitlement process for Phase I of the project, the applicant requested to mitigate the affordable housing for the future portion of their project (Phase II). This was because the applicant was going to construct the affordable units for both Phase I and Phase II within the Phase I portion of the project. The request to mitigate only the affordable housing for Phase I of the project is included in the alternative housing mitigation request.

The State Density Bonus Law does not require the affordable housing to be provided at the same time that the project generating the affordable housing is completed. However, as described below, the Town is committed to providing the affordable housing within a reasonable time frame.

2. "However, MLH is unable to guarantee it will be able to provide the low income housing required by the agreement, nor to meet the schedule stipulated by the agreement. The statement made at the Planning Commission meeting on February 13 was that MLH might instead provide varying degrees of affordable housing, and had no finalized plan as to the type, or completion date, of the housing."

Response: The Town is committed to providing the amount of affordable housing required for Phase I of the project (24.5 bedrooms of very-low income, rounded to 25). The State Density Bonus law allows varying degrees of affordable housing to be

provided which correlate directly to the amount of density bonus a project received. According to the State Density Bonus law, 25 bedrooms of very-low income housing are equivalent to 44 bedrooms of low income housing or 88 bedrooms of moderate income housing. The Town is committed to providing the equivalent of 25 bedrooms of very-low income housing which is permitted under state law. The Town may provide the affordable housing in varying affordability levels, according to the affordable housing needs of the Town. If units at an income level higher than Very Low are provided, a greater number of units will be provided in accordance with the ratios established in state law.

3. "The Hillside project will use the square footage they had been previously granted to build and sell larger market rate luxury units."

Response: The approved project plans did not include a designated area for the 35 units of required affordable housing. The conditions of approval for the use permit required the applicant to redesign the project to include 35 bedrooms of affordable housing in order to receive the state density bonus. Because staff has not received revised plans which show the proposed location of the 35 bedrooms of affordable housing, there is no way for staff to determine the use of the area which was anticipated to be affordable housing. The removal of the affordable housing units from the project will not allow the applicant to increase the maximum density, bedroom allowance, or building footprint beyond what was approved by the original entitlements (Use Permit 2005-08 and Tentative Tract Map 36-235).

4. "We believe it is the Towns' legal and moral obligation to our community to either (1) compel the Hillside project to meet its original commitment, or (2) to withdraw the density bonus given to the project, or (3) for MLH to absolutely guarantee that all units, as in the original agreement, will be low income affordable housing and will be completed before Phase 1 of the Hillside project is completed."

Response: The Town is committed to providing an equivalent amount of affordable housing that was anticipated as a part of Phase I of the Mammoth Hillside project. The Town expects to contract with Mammoth Lakes Housing to provide the affordable housing. Mammoth Lakes Housing has constructed numerous affordable housing projects within Town, and has provided the Town with a pro forma document showing their capability to provide 25 bedrooms of very-low income housing or an appropriate number of low or moderate income housing units with the funds received from the Mammoth Hillside project.

Based on the pro forma analysis and the previous performance of Mammoth Lakes Housing, the Town considers it a reasonable goal to provide the required affordable housing within five years from when the money is paid. Although the housing may be provided at a later date than would be the case if the housing had been provided as a part of the Mammoth Hillside project, the Town considers the in lieu fee option to be superior due to the fact that the Town and Mammoth Lakes Housing will retain control of the units, rather than the developer, the units can be constructed in a residential setting, rather than as a part of a condo hotel, and the affordability and size of units can be set to meet the Town's needs. The pro forma document is included as Attachment C.

REQUEST FOR APPEAL FEE WAIVER:

The appellant requests a waiver of the appeal fee stating that the appeal was filed "in the best interest of the Mammoth community." Appeals impose costs to both the property owner and the Town related to time delays, preparation of the analysis to respond to the issues raised in the appeal, public noticing costs, and the preparation and distribution of the Agenda Bill packet. Therefore, staff recommends that the request for waiver of the appeal fee be denied.

ENVIRONMENTAL CONSIDERATIONS:

Environmental Documentation was conducted for the Mammoth Hillside Project by the Community Development Department as a part of Use Permit 2005-09. At that time the project was considered in conformance with the Subsequent Program Environmental Impact Report for the North Village Specific Plan Amendment (State Clearinghouse No. 99-092082). The proposal to pay in lieu fees instead of constructing the units on site does not increase the environmental impact of the original project and staff has prepared an Addendum to the Subsequent Program EIR which is included as Attachment E as well as proposed findings for Council consideration with respect to that addendum which are included as Attachment F. The proposed project is a request to pay in lieu fees instead of providing the affordable housing on the project site which represents a reduction in the total number of units by 35. The ultimate location of the affordable housing units is unknown at this time. Because of the limited number of affordable housing units that are considered as a part of this alternative housing mitigation plan, it is reasonable that suitable development sites are available to accommodate the relatively small number of affordable housing units. The environmental impacts of those units will be subject to separate CEQA review when sufficient information about those units is known to allow meaningful environmental analysis.

OPTIONS ANALYSIS

Option 1: That the Town Council affirm the Planning Commission's approval of Use Permit 2007-14 by Minute Motion and adopt the CEQA findings set forth in Attachment F of this report.

Option 2: That the Town Council modify the Planning Commission's approval and direct staff to prepare a new resolution incorporating the revisions. The Town Council should also direct staff to return the project to the Planning Commission for review and comment. The new resolution would be brought back to the Town Council at a subsequent meeting for adoption.

Option 3: That the Town Council return the use permit to the Planning Commission for additional considerations and recommendations to the Town Council.

Option 4: That the Town Council find that the appeal has merit and reverse the decision of the Planning Commission and deny Use Permit 2007-14.

Option 1 would uphold the Planning Commission's approval of Use Permit 2007-14 and would allow the applicant to proceed with the alternative housing mitigation plan.

Option 2 would be similar to Option 1, but depending on the Town Council modifications, the applicant may be required to revise its use permit application. In this case, the UPA application would need to be considered by the Planning Commission at a future date.

Option 3 would allow the Town Council to pose questions of the Planning Commission for consideration in light of the appeal and provide recommendations to the Town Council.

Option 4 would deny Use Permit 2007-01, voiding the Planning Commission's approval of the Use Permit. In order to pursue an alternative housing mitigation plan, the applicant would need to submit a new application with a new use permit with an alternative housing mitigation plan that is substantially different from the current application. Alternatively, the applicant could implement the housing mitigation plan as originally approved.

VISION CONSIDERATIONS:

Consistent with the Town's Vision Statement, the project will provide fees for the acquisition of "adequate and appropriate housing that residents and workers can afford." The payment of in lieu fees will allow the Town to contract with Mammoth Lakes Housing to acquire new land for developments and provide affordable housing to residents through

Mammoth Lakes Housing in a mix of unit sizes and affordability levels that meet the Town's needs.

FINANCIAL CONSIDERATIONS:

The affirmation, modification, or reversal of the Planning Commission's approval of Use Permit 2007-14 will have no financial impact on the Town's General Fund. The housing in lieu fee will be held in trust to provide the required affordable housing and the amount of the fee has been calculated in an amount sufficient to fund that housing.

LEGAL CONSIDERATIONS:

The affirmation, modification, or reversal of the Planning Commission's approval of Use Permit 2007-14 is within the authority of Town Council pursuant to Municipal Code Chapter 17.68. Approval of the alternative housing mitigation plan is consistent with both the City's ordinances and the state density bonus law provided that 25 bedrooms of very low income housing or an appropriate, higher number of low- or moderate-income units are constructed on account of this project. This amendment to the project will not have environmental consequences meaningfully different from that of the original project and thus the findings and conclusions with respect to CEQA for the original project remain valid. Additional CEQA review will be performed for the affordable housing units when sufficient detail about those units is available to allow meaningful environmental analysis.

RECOMMENDATION:

Staff recommends that the Town Council affirm the Planning Commission's approval of Use Permit 2007-14 and adopt the CEQA findings stated in Attachment F by Minute Motion and that the request for waiver of the appeal fee be denied.

- Attachment A: Appeal Request Dated February 27, 2008
- Attachment B: Original Project Affordable Housing Calculation
- Attachment C: Mammoth Lakes Housing Completed Project List and Pro Forma
- Attachment D: Planning Commission Resolution, Minutes and Agenda Report dated February 13, 2008
- Attachment E: Addendum to Subsequent Program Environmental Impact Report for the North Village Specific Plan Amendment.
- Attachment F: CEQA Findings
- Attachment G: Legal Opinion Regarding In Lieu Fee Proposal
- Attachment H: Chapter 17.68 of the Municipal Code (Appeals)



TOWN CLERK

**P. O. Box 1609 Mammoth Lakes, CA 93546
(760) 934-8989 Ext. 227 Fax (760) 934-8608**

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT THE MAMMOTH LAKES TOWN COUNCIL will hold a **PUBLIC HEARING** at the Mammoth Lakes Council Chambers, Old Mammoth Road, Mammoth Lakes, California, on Wednesday, April 2, 2008, at 6:00 p.m. to consider all evidence and reports relative to the application described below:

Appeal of the Planning Commission's Determination to Approve Use Permit 2007-14 to allow an alternative housing mitigation plan to allow the Mammoth Hillside Project to pay in lieu fees instead of providing the affordable housing on-site.

ALL INTERESTED PARTIES are invited to attend said **HEARING** and express opinions or to submit written testimony for or against the proposal to the Town Clerk.

FURTHER INFORMATION on the above application may be obtained or viewed at the Office of the Town Clerk, at the Town Administrative Offices, or by phoning Senior Planner Sandra Moberly 934-8989, extension 251.

BY ORDER OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES.

Dated: March 14, 2008

A handwritten signature in cursive script that reads "Anita Hatter". The signature is written in black ink and is positioned above a horizontal line.

Anita Hatter, Town Clerk

ATTACHMENT A

Appeal Request Dated February 27, 2008

1842

91,842.00



COMMUNITY DEVELOPMENT DEPARTMENT
P.O. BOX 1609, Mammoth Lakes, CA 93546
TELEPHONE (760) 934-8989, FAX (760) 934-8608

APPEAL OF DECISION OF PLANNING COMMISSION

This form must be filed within fifteen (15) days of the stated action in order to be valid.

APPLICATION NUMBER APPEALED TTM 36-235-UP 2007-14

DATE OF STATED ACTION February 13, 2008

APPLICANT'S NAME Advocates for Mammoth

ADDRESS Po Box 2005

Mammoth Lakes, CA 93546

APPEAL FEE: See Community Development Department Fee Schedule

Action taken by the Planning Commission which is being appealed:

Denial
 Approval

Approval with Conditions
(Attach a copy of conditions and indicate those you wish waived or modified.)

Nature of Appeal (set forth what is being appealed): Planning Commission

approval of alternative housing mitigation plan for the Mammoth Hillside project.

Reason for Appeal: See Attached

I certify that I am the: Legal Owner Authorized Legal Agent Other Interested Party

Date: 2/27/2008

[Signature]
Signature of Applicant
Chair

February 27, 2008

To: Mammoth Community Development Department

From: Advocates for Mammoth

Re: Appeal of Planning Commission approval of alternative housing mitigation plan for the Mammoth Hillside project

REASON FOR APPEAL:

The Hillside project was granted a 35% density increase in return for providing on-site low income workforce housing. The original conditions of this density increase agreement stipulated that Hillside would build all required units in Phase 1 of their development plan, that they would be built by the developer on the Hillside site, and that they would be completed by the opening of Phase 1.

In lieu of providing this on-site housing the Hillside project proposed, and received Planning Commission approval, to give to Mammoth Lakes Housing (MLH) approximately \$5.5 million to build the required units off-site.

However, MLH is unable to guarantee it will be able to provide the low income housing required by the agreement, nor to meet the schedule stipulated by the agreement. The statement made at the Planning Commission meeting on February 13 was that MLH might instead provide varying degrees of affordable housing, and had no finalized plan as to the type, or completion date, of the housing.

The Hillside project will use the square footage they had been previously granted to build and sell larger market rate luxury units.

We believe it is the Towns' legal and moral obligation to our community to either (1) compel the Hillside project to meet its original commitment, or (2) to withdraw the density bonus given to the project, or (3) for MLH to absolutely guarantee that all units, as in the original agreement, will be low income affordable housing and will be completed before Phase 1 of the Hillside project is completed.

In addition to appealing this Planning Commission decision we also request the return to Advocates for Mammoth of the Appeal fee we were required to submit in the amount of \$1,603. The decision to allow the Hillside Project to circumvent their workforce housing requirements is not a logical one nor in the best interests of the Mammoth community.

ATTACHMENT B

Original Project Affordable Housing Calculation

Original Project Affordable Housing Calculation

The original approval for the Mammoth Hillside project (Use Permit 2005-09) split the project into two phases, Phase I which consisted of 325 bedrooms, and Phase II consisted of 107 bedrooms (432 rooms total). The use permit did not include entitlements for Phase II and the applicant will need to submit future use permit and tentative tract map applications for this portion of the project. During the process for Use Permit 2005-09, the applicant was proposing to construct the required affordable housing for both Phase I and II within the Phase I portion of the project, and staff calculated the affordable housing calculation to include mitigation for the entire project (both Phase I and II). The total required affordable housing for both Phase I and Phase II is 36 bedrooms of very-low affordable housing. The project included a state density bonus for the provision of very-low income housing and this was included in the requirement of 36 bedrooms of affordable housing. Condition 12 of Resolution 2006-01 references the 36 bedrooms of affordable housing required in order to receive the state density bonus.

After the project was approved in January of 2006, it was discovered that the Lake Mary right-of-way calculations were based on acquiring 0.61 acres and the actual acquisition was only 0.54 acres. The result of the reduced acquisition area caused an overall reduction in the property density of 4.53 bedrooms. This reduction in density as a result of the Lake Mary right-of-way is shown in the table below.

<u>Area</u>	<u>Acres</u>	<u>Allowable Rooms/Ac</u>	<u>Density Transfer</u>	<u>Rooms</u>	<u>35% Density Bonus</u>	<u>Total Bedrooms</u>
<u>SL</u>	4.09	48	0	196.32	68.712	265.032
<u>PR</u>	2.27	80	(-87.04)	94.56 (181.6- 87.04)	33.096	127.656
<u>Lake Mary ROW</u>	0.54	48	0	25.92	9.072	34.992
<u>Total:</u>	6.90	N/A	N/A	316.80	110.88	427.68

The previous total density was calculated at 432.216 total bedrooms (321 rooms without the density bonus) which results in a reduction of 4.53 bedrooms. To receive the maximum bonus allowable by the State Housing Density Bonus, the project must provide 11 percent of the site density before bonus at a very-low income level or 20 percent of the site density

before bonus at a low-income level. The original project was required to provide 36 bedrooms of very low income housing which was calculated as 321 rooms multiplied by 11 percent equals 35.31 (all density calculations resulting in fractional units are required to be rounded up to the next whole number). The reduction of the density to 316.80 bedrooms reduces the affordable housing requirement to 35 bedrooms and is calculated as 316.80 multiplied by 11 percent equals 34.848. This results in a revised affordable housing requirement of 35 bedrooms for Phases I and II. The affordable housing component for Phase I alone is 25 very-low-income bedrooms.

ATTACHMENT C

Mammoth Lakes Housing Completed Project List and Pro Forma

Mammoth Lakes Housing Completed Project Summary

Ground Breaking	Project Name	Project Type	1 bedroom	2 bedroom	3 bedroom	FTEE Total	Incomes Served
August 2004	Meridian Court	Ownership	8	6	10	74	<80%-200%
September 2004	Aspen Village Apartments	Rental	0	24	24	168	<50%-60%
May 2006	Jeffreys Apartments	Rental	0	6	8	50	<50%-60%
November 2006	Manzanita Apartments	Rental	0	2	12	54	<50%-60%
Total			8	38	54	346	

FTEE Generation by Income

<60% AMI	272
61%-80%	33
81%-120%	15
121%-150%	9
151%-200%	17

MLH Grant Summary

	GRANTS BY YEAR	AMI Target	GRANT AMOUNT	OBJECTIVE
1	03-HOME-0668	<60%	\$3,500,000	Aspen Village Apartments
2	03-Trust Fund	<60%	\$2,000,000	Aspen Village Apartments
3	04-STBG-1911	<80%	\$500,000	4-B Trail Segment
4	04-PTAA-0064	<80%	\$35,000	Eastern Sierra Needs Study
5	04-WFH-085	<60%	\$238,000	Jeffreys' land
6	04-STBG-1964	<60%	\$1,500,000	Lupin Land, HBA, Rehab
7	05-HOME-0738	<60%	\$3,500,000	Jeffreys & Manzanita
8	05-HELP-020405-05	<120%	\$500,000	HBA
9	05-BEGIN-044	<120%	\$540,000	Meridian Court
10	05-BEGIN-056	<120%	\$600,000	San Joaquin Villas
11	05-PTAA-1454	<80%	\$35,000	Technical Assistance
12	05-HOME-1695	<80%	\$1,000,000	HBA
13	06-BEGIN-066	<120%	\$300,000	Aspen Townhomes
14	06-HOME-2469	<80%	\$400,000	HBA
15	06-CalHOME-247	<80%	\$600,000	HBA
16	07-HELP-022607-03	<120%	\$1,500,000	HBA
17	07-WFH-209	<120%	\$87,491	Aspen Townhomes
	Total		\$16,835,491	

Other Funding Received

Source	Project	AMI Target	AMOUNT
Housing Bonds	Aspen Village Apartments	<60%	\$7,500,000
Housing Bonds	Jeffreys & Manzanita Apts.	<60%	\$5,500,000
Tax Credit Equity	Aspen Village Apartments	<60%	\$5,800,000
Tax Credit Equity	Jeffreys & Manzanita Apts.	<60%	\$5,000,000
Total			\$23,800,000

Funding Received by Income Served

		%
<60% AMI	\$34,538,000	85%
61%-80%	\$2,570,000	6%
81%-120%	\$3,527,491	9%
121%-150%	\$0	0%
151%-200%	\$0	0%

2008 Purchase/Rental FTEE Mix

Assumptions

Bedrooms	2	3		
FTEES per unit	3	4		
FTEES per acre	48	64	16	units/acre
Net land area per FTEE(sf)	908	681		
Land cost per sf	\$46	\$46	\$2,000,000	Cost/Acre
Net land cost per FTEE	\$41,667	\$31,250		
Building area per FTEE (sf)	250	250		
Cost of construction per square foot	\$360	\$360	\$360	Cost/Sq. Ft.
Cost of construction per FTEE	\$90,000	\$90,000		
Development cost per FTEE	\$131,667	\$121,250	1	Other Costs %
80% Rent (28%)	\$1,156	\$1,284		
100% Rent (21%)	\$1,445	\$1,605		
Weighted Average rent	\$1,280	\$1,422		
Net rent per FTEE available to cover costs	\$324	\$228		
Net rent after monthly O&M	\$157	\$103		
Financing supported by net rent	(\$23,992)	(\$15,656)	6.75%	
Value of cost gap per FTEE(Rental)	\$107,675	\$105,594		
120% Sales (21%)	\$216,635	\$240,623		
150% Sales (20%)	\$270,794	\$300,778		
200% Sales (10%)	\$361,059	\$401,038		
Weighted Average Sales Price	\$272,058	\$302,182		
Net sales proceeds per FTEE available to cover costs	\$90,686	\$75,545		
Value of cost gap per FTEE(Sales)	\$40,981	\$45,705		
MIXED GAP per FTEE	\$87,667	\$87,627		

ATTACHMENT D

**Planning Commission Resolution, Minutes and Agenda
Report dated February 13, 2008**

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TOWN OF MAMMOTH LAKES PLANNING COMMISSION

Regular Meeting

Wednesday, February 13, 2008 - 9:00 a.m.

Council Chambers, Suite Z

Minaret Village Shopping Center

MINUTES

CALL TO ORDER

The regular meeting was called to order at 9:01 a.m.

ROLL CALL

Commissioners Jo Bacon, Tony Barrett, Rhonda Duggan, Vice Chair Elizabeth Tenney, and Chair Roy Saari. Also present were Mark Wardlaw, Community Development Director; Sandra Moberly, Senior Planner; Pam Kobylarz, Assistant Planner; and Karen Ridley, Administrative Coordinator.

REPORTS FROM THE COMMISSION

Commissioner Barrett complimented the rock work at the 80/50 project; he announced a Valentine's Day fund raiser for the Mammoth Lakes Theater at the Westin; he announced the performance dates for actor James Jordan's one man show on Mark Twain and provided information on the after party.

Vice Chair Tenney spoke of Caltrans snow removal on Highway 203; she spoke of Jack Winkler's letter regarding traffic and circulation problems at The Village.

STAFF PRESENTATION

1. FY 2007-08 Budget Update

Town Manager Robert Clark gave a PowerPoint presentation on the Town's budget for fiscal year 2007-2008; he and Finance Director Brad Koehn answered questions from the Commission and the public.

Commissioner Barrett requested to have the following questions and answers reflected in the minutes:

Commissioner Barrett recalled that 4-5 years ago, when the Town had budget issues, there was a 10% staff reduction in all departments, town wide. He asked if a 10% staff reduction has been discussed.

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Mr. Clark replied that he was unfamiliar with the 10% reduction because it probably occurred before he became Town Manager. He said that the 10% reduction is an option for Town Council to consider; however, at this time, he feels that it is premature.

Commissioner Barrett asked if there is a hiring freeze.

Mr. Clark replied that there is no hiring freeze; evaluation will be done on a case-by-case basis.

Commissioner Barrett inquired if the litigation referred to in Mr. Clark's PowerPoint presentation is in regards to the airport. Also, he asked if the litigation had been under-budgeted.

Mr. Clark confirmed that it is the airport litigation; he said that the claim occurred after the budget had been adopted; there was an assumption that the litigation would be covered by insurance; however, the claim has been denied; the Town is in the appeals process with this claim.

Commissioner Barrett asked if he is to assume that the Town does not have their fair share of the monies for capital projects. He asked if there is a possibility that the Town would not have the money to have air service.

Mr. Clark replied that most projects that are moving forward have a DIF component and a grant component.

Commissioner Barrett spoke of the recreation center project moving forward and the public safety, i.e. – police facility, being put aside. He asked Mr. Clark to address this issue.

Mr. Clark replied that public safety comes first in the 5-year capital improvement plan; the recreation center is further down the list of priorities.

Commissioner Barrett asked if the Town was continuing to pay consultants for the recreation center project.

Mr. Clark replied that there is one consultant.

At 9:37 a.m., Chair Saari opened for public comments.

John Walter, local, commented that it is rash to program a major project. He asked how bad things were going to be next year and what would happen if there are no major projects.

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Steve Schwind, business owner, asked if the TOT projections were available; he spoke of his business being down; he has cut back 20% and reduced his staff by 2 employees; he is working 7 days a week.

At 9:55 a.m., Chair Saari closed the public comments.

Mr. Clark promised to provide a copy of the PowerPoint presentation to the Commission via e-mail.

COMMENTS FROM THE PUBLIC

Mr. Schwind spoke of the Stakeholder presentation at the last meeting; he spoke of the paradigm of the General Plan, i.e. – a village in the trees; however, he said that discussions seem to be about projects that tower above the trees; he feels that Mammoth is overbuilt with hotel rooms; he suggested that the Commission should recommend to the Town Council the Stakeholders' suggestions from their presentation on "Vision of Districting."

Mr. Walter commented that it seems as though the South Gateway Group is planning our Town.

APPROVAL OF MINUTES

2. Minutes of January 23, 2008

P. 3, add "and passive solar in the living area" to the end of Item #5 in the paragraph regarding additional conditions of approval on the Tihana Townhomes project.

P. 3, within the Action on the Tihana Townhomes project, clarify that Chair Saari opposed the project because of the density issue.

P. 4, add "as appropriate" to the end of the sentence for the Consensus on Item #6.

P. 5, next to last paragraph, change: "Landon" to "Lehman."

Action: It was moved by Vice Chair Tenney, seconded by Commissioner Bacon and carried by a 5-0 vote to approve the minutes of January 23, 2008 as amended. Note: Commissioners Bacon and Barrett were not present at the evening meeting.

CONSENT AGENDA

None.

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PUBLIC HEARINGS

Public Hearing Procedure

- a. Statement and presentation by staff
- b. Statement from applicant
- c. Testimony from interested parties (Chair may limit testimony to 5 minutes per individual)
- d. Response from applicant if necessary
- e. Chair closes public hearing
- f. Commission deliberation

3. Use Permit 2007-14. The project is a request for an alternative housing mitigation plan to allow the applicant to pay in lieu fees instead of providing the affordable housing on-site. The Mammoth Hillside project (Tentative Tract Map 36-235 and Use Permit 2005-09) was approved in January of 2006. Applicant: Rhona Hunter for CE Mammoth, LLC. Location: West of Canyon Boulevard, North of Lake Mary Road. APN: 33-020-10, -11, -21, -33 and 31-110-27. Staff contact: Sandra Moberly, Senior Planner, x 251.

Senior Planner Sandra Moberly presented the staff report and answered questions from the Commission.

Pam Hennarty, Executive Director of Mammoth Lakes Housing, spoke of the cost to produce one FTE - \$87,700; the benefit to the community; grant funds; down payment assistance funds; 3-4 vacant parcels as possible sites for affordable housing; she answered questions from the Commission.

At 10:36 a.m., the public hearing was opened.

Mr. Walter commented that a plan is needed for workforce housing for the middle class; he supports Mammoth Lakes Housing; he questioned whether it is wise to place the low income housing off-site; he recommended starting over on this project to make sure that it is done right.

For the record, Commissioner Barrett asked if once the project is approved, can the Commission request the applicant to go through the whole approval process if there is a substantial change such as density or height.

Director Wardlaw replied that we are not starting over; we are focusing on a specific amendment to an already approved project.

Ms. Hennarty clarified for Lara Kirkner of the Mammoth Times that the average size of a 3-bedroom in a Mammoth Lakes Housing development is 1,200 square feet.

At 11:10 a.m., the public hearing was closed.

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The Commission deliberated.

Commission Barrett requested that his following comments should be on the record as a verbatim transcript:

“First of all, I think that we need to accept the fact that we developed Mammoth Lakes Housing to be our ears and working body for this body, for the Council, and for the community; to have a board of highly professional folks that spend a lot of time making decisions that come forward; that is part of our toolbox; that is the arm of the non-profit for this community. Secondly, I don’t believe that this needs to come back. I feel that this project was vetted. It was approved. It is approved with a state density bonus; a state density bonus that we really don’t have any room to move. If the state density bonus said that you can’t do off-site lodging; there you go; you have a decision to go forward with this project. Our decision should not be based, and I’m very firm on this, it should not be based on windfall. It makes me very nervous to be talking about windfall and I pose the question to my fellow commissioners: if this project is being sold at \$700 or \$800 a square foot would you have the same concern? I would be interested in hearing that. We can’t make our decisions on whether the cost or windfall. We make our decisions based on community; the direction of the General Plan; if it is compliant. We have Mammoth Lakes Housing which has its policy coming forward. We have a vision that really hasn’t changed over the years; it has been modified. But this Fall, with all of these categories, it was approved. The Community Benefit to have an off-site for a five star hotel, where you would be placing employees downstairs, out of the public. They are part of the public. They are not there to enjoy all of the amenities. The quality of life... When this thing came forward to Council, the big issues remained. It shouldn’t have. I went along with on-site. That’s what the developer wants. This is a far better plan; it will take us forward; it will allow families to have amenities. More than likely, in a 4 square mile area, we are going to be close enough. I’m not concerned about that. I’m more concerned that Mammoth Lakes Housing has the ability to go forward and we are not letting windfall interrupt what our general thinking should be in making correct decisions. Can we ask: is the project going to provide TOT for the market rate housing and would they sell a 2,000 square feet going to provide that? Yes we can on future projects. This has already been approved. I don’t think that we can ask that. I find it very discerning that we are questioning Mammoth Lakes Housing who has just made over \$35 million dollars in the past year in grants; that has provided housing to throughout this community. I’ve always, and Pam can attest to this, I’ve said that you want on-site housing. I’ve wanted to see that. Talk about the Highway 203 project having on-site. I’ve wanted to see it. You want to see amenities with it. But I would basically say that you can call any five-star resort, and I’ve done the research on it, they do not have on-site housing. If they do, it’s your place in the Caribbean and off away places where you do have co-mingling of employees and your clientele; and believe me, it doesn’t work. It would not work here. I really firmly believe we should move this forward; allow Pam to start working; and Mammoth Lakes Housing on acquiring this land. On acquiring dirt if that’s what it going to be. We are in a down turn market right now. That \$5 million, right now, could provide probably \$8 or \$10 million dollars, right

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now, by being leveraged and that would go into more improvement items, like we did with our increasing tax for those. If you don't allow this trigger to be pulled now and the housing market makes a turn around, we could lose and still be in the same position for them to provide on-site housing. So, I think that we really need to get away from this windfall. This is not a brand new project. I do not believe that it should be brought back. Legally, it can't be brought back. If their site plan changes with any kind of substance or footprint, density, and height – yes it can be. But they are proposing to take their current approved density and inclusive and that has less people on property and that has not been part of the question or the discussion at all. I think that needs to be addressed. They are talking about taking something that they already approved and increasing their density. So, I think that we really need to get re-focused to support Mammoth Lakes Housing; supporting what they've done in the past; having Mammoth Lakes Housing bring forward a plan for this money now is very short-sighted. Until the EIR is done, they need to have the money first, so that they can go forward with research on what they can do and come up with plans. So, I'm very supportive of this moving forward. I appreciate the work that Mammoth has done and staff and Mammoth Lakes Housing and I think that it would be very short-sighted if we delay by not approving this."

For the record, Commission Bacon said that Commission Barrett is right; this was approved with on-site housing. She commented that the on-site housing was stated as an amenity; having the people at The Village gives us the chance to animate The Village; there is no plan that gives the Town any kind of guarantee that low income units are going to be built; she does not believe that off-site is better; she does not agree with the statement that the living conditions would be detrimental; she feels that on-site housing is needed and now is the time to do it.

Steve Black, representing the applicant, commented that they are proposing to break ground in May 2008; the project should be completed by 2011; he provided background on the project. Speaking as a member of the community, he said "it's in our best interest to let Pam do what she does."

Rebecca Paranick, representing the Community Stakeholders Group, commented that the Stakeholders comment on policy, not on individual projects; the Stakeholders do support the variety of options of Mammoth Lakes Housing and the toolbox.

Mr. Walter commented that we have an obligation to give a 35% bonus to low income housing and that we need something from Mammoth Lakes Housing that will be used as low income housing.

Action: It was moved by Commissioner Barrett, seconded by Commissioner Duggan and carried by a 3-2 vote, with Chair Saari and Commissioner Bacon opposing, to adopt Option 1 and adopt the resolution making the required CEQA findings, approving the project request, and including the findings as listed in the resolution and all conditions of approval.

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At 12:10 p.m., the Commission took a lunch break.

At 1:04 p.m., the meeting reconvened.

4. Use Permit 2008-01: Altis. An amendment to approved Use Permit 2005-03 to change the use from fractional ownership to whole-ownership; to reduce the density from 22 units plus a manager's unit to 22 units; and to reduce the size of the amenity building. Applicant: Katarina Mezeiova / Mammoth Bridges Development Co., LLC. Location: 880 Bridges Lane. Zoning / General Plan: Resort (R)/ Storied Places Master Plan. Staff contact: Pam Kobylarz, Assistant Planner, x 253.

Commissioner Duggan stepped down from the dais.

Assistant Planner Pam Kobylarz presented the staff report.

At 1:10 p.m., the public hearing was opened.

Jim Smith, Director of Development with Starwood Development, gave a PowerPoint presentation and answered from the Commission.

The Commission deliberated; the following suggestions were made: 1) add the following sentence to Standard Condition #11: Canned, recessed lights should not be visible through the windows from outside of the buildings or off-site; 2) add a Special Condition #2: In lieu of providing an on-site manager, the CC&Rs for the project shall include requirements for an off-site manager that may be either for the project as a whole or chosen on a unit-by-unit basis.

Action: It was moved by Commissioner Barrett, seconded by Vice Chair Tenney and carried by a 4-0-1 vote, with Commissioner Duggan abstaining, to adopt Option 1 and adopt the resolution finding the project to be consistent with the previously adopted mitigated negative declaration for this site, conditionally approving the application, and including the findings as amended in the resolution and all conditions of approval.

Commissioner Duggan returned to the dais.

BUSINESS MATTERS

5. Community Development Department Work Program (Mark Wardlaw)

Director Wardlaw presented the staff report.

The Commission deliberated. There was consensus to initiate a district plan for the Sierra Valley Sites.

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DIRECTOR'S REPORT

6. Director's Department Report

Director Wardlaw spoke of the Color Handbook that has been updated by the Color Subcommittee; he announced the evening joint Commissions workshop on the East Open Space/Stream Corridor Area Planning Study; he spoke of the table ? of the General Plan.

The regular meeting ended at 2:12 p.m. and adjourned to the East Open Space/Stream Corridor Area Planning Study Workshop of February 13, 2008 at 6:00 p.m.

7. "East Open Space/Stream Corridor Area Planning Study Workshop #1: Issues, Opportunities, and Constraints."

The joint Commission workshop was called to order at 6:00 p.m.

The following Commissioners and staff were present at the workshop:

Planning Commission: Commissioner Jo Bacon, Commissioner Rhonda Duggan, Vice Chair Elizabeth Tenney, and Chair Roy Saari

Mobility Commission: Commissioner Marshall Minobe

Public Arts Commission: Commissioners Noelle Deinken and Warren Harrell

Tourism and Recreation Commission: Commissioners Dieter Fiebiger and Ruth Harrell

Staff: Mark Wardlaw, Community Development Director; Ellen Clark, Senior Planner; and Lee McElroy, Supervising Community Development Technician

Director Wardlaw provided an overview of the planning study process. He introduced Don Vita of Vita Planning and Landscape Architecture.

Mr. Vita and his associate, Cris Schatz, gave a PowerPoint presentation and answered questions.

Commissioner Minobe commented that strenuously preserving the open space stream corridor is in the interest of the community; the Town should hold the line for potential variances.

Commissioner Warren Harrell commented that there should be a year round connectivity to everything; we should focus on making Mammoth a place that people want to visit.

Commissioner Ruth Harrell spoke of maintaining the "feet first" idea; she spoke of the need for more public access.

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Commissioner Duggan commented that the developments should not be a destination, but a part of the journey; she spoke of the need for professional events in the Mammoth Creek Corridor.

Commissioner Fiebigger commented that the creek should be kept natural; do not put concrete in or around the creek.

Public Comments

Phil Aberle, local, commented that development of the creek area is an abuse and misuse of nature; he commented on the golf balls, bottles, and other trash found in the area; we should be ashamed of what we have done to it; leave it alone and respect it.

Brian Fisher, President of the Mammoth Creek Condos, commented that the area should be left as a pristine creek area; he is supportive of the bike path.

Dan Dawson, local, encouraged Mammoth Creek Condos to stop cutting down vegetation; we need to broaden our scope of the streets; focus on a single trail to reduce the impacts; the Town should seek grant funding to acquire the site.

Leigh Gaasch, local, commented that the area should be left as peaceful, open space; we should preserve our history; preserve for the next generation; more natural plants take less water; the health of the creek is most important.

Mike Johnson, local, commented that archeological interpretations need to be reviewed; he suggested a dog park for Mammoth Creek Park.

Gretchen Burman, local, commented that the fish population is very poor; we need to support the health of the creek; leave it natural.

ADJOURNMENT

The workshop ended at 7:45 p.m. and adjourned to the next regular meeting of February 27, 2008.

Respectfully submitted,

Mark Wardlaw
Community Development Director

Karen Ridley
Administrative Coordinator

ATTACHMENT E

Addendum to Subsequent Program Environmental Impact
Report for the North Village Specific Plan Amendment

**ADDENDUM TO SUBSEQUENT PROGRAM ENVIRONMENTAL IMPACT
REPORT FOR THE NORTH VILLAGE SPECIFIC PLAN AMENDMENT
[SCH NO. 99-092082]
March 14, 2008**

INTRODUCTION

This report is an Addendum to the Final Subsequent Program Environmental Impact Report (Final EIR – SCH No. 99-092082) for the North Village Specific Plan Amendment, in association with the entitlement request approved by the Town of Mammoth Lakes Planning Commission on February 13, 2008 for the Mammoth Hillside project. This Addendum has been prepared in response to an appeal of the project by the Advocates for Mammoth. This Addendum documents the Town's decision not to require the preparation of a subsequent or supplemental EIR for this change to the project.

According to Section 15162 of State CEQA Guidelines, a subsequent EIR can be required only if:

- Substantial changes in the project are proposed which require major revisions to the previous EIR due to new significant environmental increase in the severity of previously identified significant effects (Section 15162 (a) (1));
- Substantial changes have occurred with respect to the circumstances under which the project is being undertaken which require major revisions to the previous EIR due to new significant environmental effects or a substantial increase in the severity of previously identified effects (Section 15162 (a)(2));
or
- New information of substantial importance has become available since the prior EIR was certified that shows any of the following:
 - The project will have one or more significant effects not discussed in the previous EIR;
 - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the measure or alternative ; or
 - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative (Section 15162 (a) (3)).

Section 15164 of the CEQA Guidelines states that an Addendum to an EIR may be prepared "if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a Subsequent EIR have occurred." If none of the aforementioned conditions have been met and Staff finds that none has been met, preparation of a Subsequent or Supplemental EIR is not required. Rather, the Lead Agency may:

- Decide that no further environmental documentation is necessary; or,
- Require that an Addendum be prepared.

The Final Subsequent Program Environmental Impact Report (“Program EIR”) was certified in 1999, and the Mammoth Hillside project was determined to be consistent with the Program EIR when the project was approved in 2006. The Town prepared environmental documentation to determine consistency and support the finding that no further environmental review was required.

Some modifications have been proposed to the project, namely, payment of an in lieu fee and removal of the affordable housing from the project site without changing the footprint or volume of the structure to be built but simply dedicating that structure to non-affordable uses instead of reserving living areas for affordable use. Instead the proponent of the project will pay a housing in-lieu fee to fund the construction of 25 very-low-income housing elsewhere in the Town. Those units will require further environmental review when sufficient details about their location and design are known to permit meaningful environmental review.

The Town has determined that the changes do not cause any new significant environmental effects. The circumstances under which the Mammoth Hillside project is being developed have not changed substantially; nor has new information of substantial importance come to light. The original environmental analysis for the project included analysis of the highest possible number of units on the project site, and the proposal will not generate new environmental impacts or exacerbate impacts identified in the Subsequent Program Environmental Impact Report for the North Village Specific Plan Amendment. This Addendum documents the reasons for these findings in more detail below. The analysis also shows that the payment of in lieu fees will not cause any new significant environmental effects or a substantial increase in the severity of effects that were previously identified in the Final Subsequent Program Environmental Impact Report. The ultimate location of the affordable housing units is unknown at this time. The environmental impacts of the affordable units in another location will be subject to separate CEQA review.

This Addendum constitutes an attachment to the Final Subsequent Program Environmental Impact Report. The Final Subsequent Program Environmental Impact Report and the previously approved entitlements for the Mammoth Hillside Project are available to the public at the Town of Mammoth Lakes Community Development Department at 437 Old Mammoth Road, Suite R, Mammoth Lakes, CA 93546. The contact person regarding this project at the Town is Sandra Moberly, Senior Planner, at (760) 934-8989.

ORIGINAL PROJECT DESCRIPTION / BACKGROUND

Project Location

The property is located at on the northwest corner of the intersection of Lake Mary Road and Canyon Boulevard, within the North Village Specific Plan area. The project site includes the following APNs: 31-110-277, 33-010-02, 33-020-10,-11,-21,-33.

Mammoth Hillside Project Description

Tentative Tract Map 36-235 and Use Permit Application 2005-09 approved the development of a 4.6-acre portion of 6.97-acre parcel with 325 bedrooms with Lock-off Units totaling 225 "keys" (i.e., residential units). Three levels of understructure parking accessed from Canyon Boulevard will accommodate 259 vehicles. The project includes full-time valet parking services, a service loading dock, spa/fitness area, meeting facilities, restaurant, guest services area, a pool and patio area, and associated landscape and street frontage improvements. This project is considered Phase I of the Mammoth Hillside project. (Mammoth Hillside Phase II and the proposed Canyon Blvd. Pedestrian Bridge, conceptually outlined below, have not yet been entitled and will be considered under a separate development and environmental review). The project includes 36 units of very-low income affordable housing in order to utilize State Housing Density Bonus which allows for a density increase of 35 percent. The 36 units of very-low income affordable housing was reduced to 35 units as a result of the Lake Mary right-of-way acquisition as described in the section below titled *Affordable Housing Calculation Background*.

Prior Environmental Review

The Project is located within the area covered by the North Village Specific Plan ("Specific Plan"). The Specific Plan was originally adopted in 1991 and amended in 1994. The Specific Plan was further amended by the 1999 North Village Specific Plan Amendment.

Prior to approval of the 1999 North Village Specific Plan Amendment, the Town prepared and the Town Council reviewed and certified, pursuant to CEQA, the Subsequent Program Environmental Impact Report for the North Village Specific Plan Amendment ("Program EIR"), identified as State Clearinghouse No. 99-092082. The Program EIR reviewed and updated the Environmental Impact Report certified for the original Specific Plan in 1991 ("1991 EIR") and an Addendum to the 1991 EIR ("1994 EIR Addendum") certified in connection with the 1994 Amendment to the Specific Plan. The Specific Plan and the Program EIR cover an area ("Specific Plan Area") consisting of approximately 64.1-acres located in the northwestern portion of the Town in the vicinity of the intersection of Main Street/Lake Mary Road and Minaret Road.

The Mammoth Hillside project was determined to be consistent with the project description set forth in Section 3.0 *et seq.* of the Program EIR. The land uses included in the Mammoth Hillside project are consistent with the Land Use Plan associated with the 1999 Specific Plan Amendment in that 325 Sleeping Areas, or bedrooms, are contemplated by the proposed project. The designated properties are intended to provide visitor oriented resort services. Hotels, Resort Condominiums, and Time Share Units are

permitted by right within the Plaza Resort (PR) and Specialty Lodging (SL) designation as indicated on Table 3-3 of the Program EIR (page 3-20). The parking allocation, height limitations, setback requirements, and other design features of the Mammoth Hillside project have not been determined to be consistent with the requirements of the 1999 Specific Plan Amendment, as assessed in the Program EIR and staff included conditions of approval to be set forth in TTM 36-235 and UPA 2005-09 to remedy the inconsistencies. The Mammoth Hillside project was determined to be consistent with the 1999 Specific Plan Amendment Zoning Designation Plan set forth on Exhibit 3-7 of the Program EIR in terms of development type, density, and development concept.

Based upon a review of the Program EIR and the development applications submitted for the Mammoth Hillside project, the Town staff determined that:

(1) The development activities comprising the Mammoth Hillside project are consistent with the development permitted by the Specific Plan as conditioned in UPA 2005-09 and TTM 36-235;

(2) Approval and development of the Mammoth Hillside project is within the scope of the Specific Plan development program assessed in the Program EIR;

(3) Environmental effects will result from the Mammoth Hillside project, however, the effects were analyzed and mitigated within the Program EIR and the conditions of approval in UPA 2005-09 and TTM 36-235, will eliminate the need for additional mitigation measures or further environmental review; and

(4) No further environmental documentation is required for the Mammoth Hillside project because the project includes conditions of approval and implements mitigation measures of the Program EIR.

Affordable Housing Calculation Background

Use Permit 2005-09 split the project into two phases, Phase I which consisted of 325 bedrooms, and Phase II consisted of 107 bedrooms (432 rooms total). The use permit did not include entitlements for Phase II and the applicant will need to submit future use permit and tentative tract map applications for this portion of the project. When Use Permit 2005-09 was approved, the applicant proposed to construct the required affordable housing for both Phase I and II within the Phase I portion of the project, and Town staff calculated the affordable housing calculation to include mitigation for the entire project (both Phase I and II). The total required affordable housing for both Phase I and Phase II is 36 bedrooms of very-low affordable housing. The project included a state density bonus for the provision of very-low income housing and this was included in the requirement of 36 bedrooms of affordable housing. Condition 12 of Resolution 2006-01 references the 36 bedrooms of affordable housing required in order to receive the state density bonus.

After the project was approved in January 2006, it was discovered that the Lake Mary right-of-way calculations were based on acquiring 0.61 acres and the actual acquisition

was only 0.54 acres. The result of the reduced acquisition area caused an overall reduction in the property density of 4.53 bedrooms. This reduction in density as a result of the Lake Mary right-of-way is shown in the table below.

<u>Area</u>	<u>Acres</u>	<u>Allowable Rooms/Ac</u>	<u>Density Transfer</u>	<u>Rooms</u>	<u>35% Density Bonus</u>	<u>Total Bedrooms</u>
<u>SL</u>	4.09	48	0	196.32	68.712	265.032
<u>PR</u>	2.27	80	(-87.04)	94.56 (181.6- 87.04)	33.096	127.656
<u>Lake Mary ROW</u>	0.54	48	0	25.92	9.072	34.992
<u>Total:</u>	6.90	N/A	N/A	316.80	110.88	427.68

The previous total density was calculated at 432.216 total bedrooms (321 rooms without the density bonus) which results in a reduction of 4.53 bedrooms. To receive the maximum bonus allowable by the State Housing Density Bonus, the project must provide 11 percent of the site density before bonus at a very-low income level or 20 percent of the site density before bonus at a low-income level. The original project was required to provide 36 bedrooms of very low income housing which was calculated as 321 rooms multiplied by 11 percent equals 35.31 (all density calculations resulting in fractional units are required to be rounded up to the next whole number.) The reduction of the density to 316.80 bedrooms reduces the affordable housing requirement to 35 bedrooms and is calculated as 316.80 multiplied by 11 percent equals 34.848. This results in a revised affordable housing requirement of 35 bedrooms for both Phases I and II; the affordable unit requirement for Phase I alone is 26 very-low-income units or an appropriately larger number of low- or moderate-income units.

PROPOSED PROJECT MODIFICATION

The current project is a request to amend the entitlements for Phase I to allow the proponent to pay in lieu fees instead of providing the affordable housing on the project site which represents a reduction in the total number of units by 35. The ultimate location of the 35 affordable housing units is unknown at this time. The environmental impacts of the 35 units will be subject to separate CEQA review. This change in project will not alter the footprint of the construction proposed for Phase I or the volume of the structures to be built – the improved area will simply be devoted to other uses for which the project is approved.

Thirty-five bedrooms of affordable housing is equivalent to 70 FTEE's (one FTEE is equivalent to 250 square feet and each one bedroom is required to be a minimum of 500 square feet therefore; 35 one bedrooms multiplied by 2 equals 70 FTEE's). The applicant is proposing to split the payment of in lieu fees so they pay the in lieu fees for only Phase

I of the project at this time. Phase I consists of 70% of the total project FTEE's (49 FTEE's) which results in a total Phase I payment of \$5,586,000. The determination of appropriate mitigation for Phase II will be made in conjunction with the consideration of that project.

The applicant has submitted an alternate housing mitigation plan which includes the payment of fees in lieu of providing the required housing on site. The application was reviewed by the Board of Mammoth Lakes Housing (the "Board"), a non-profit housing provider. The Board, which administers affordable housing programs on behalf of the Town of Mammoth Lakes, proposed an in lieu fee of \$114,000* per FTEE. The Board also recommended that the in lieu fees be paid prior to the issuance of grading permits.

*Based on 2008 rate of \$87,700/FTEE + 30% greater housing benefit for off-site mitigation and the very-low income requirement of Use Permit 2005-09.

ENVIRONMENTAL IMPACT ANALYSIS OF PROJECT MODIFICATION

Land Use and Relevant Planning. The area of development and type of use will not change from the original project approval. No additional change to the General Plan land use designation, zoning, or other applicable plan or policy is required. The payment of in lieu fees and reduction of 35 affordable housing units from the project site is consistent with intent of the original approvals and in keeping with what was envisioned as part of the original project. The project would continue to provide the same number of housing units and bedrooms as allowed under UPA 2005-09 and TTM 36-235. [While it is not possible to evaluate the land use impact of the proposed replacement affordable units at this time, because the location and design of those units is not yet known, the housing element of the Town's General Plan identifies a number of sites on which that housing could be provided consistently with the General Plan and the environmental review for the General Plan.]

Population and Housing. The area of development and type of use will not change from the original project approval. No additional change to the General Plan land use designation, zoning, or other applicable plan or policy is required. The payment of in lieu fees and reduction of 35 affordable housing units from the project site is consistent with intent of the original approvals and in keeping with what was envisioned as part of the original project. The project would continue to provide the same number of housing units and bedrooms as allowed under UPA 2005-09 and TTM 36-235. As noted above, review of the proposed replacement housing would be unduly speculative at this time, but the replacement housing can be provided at a number of sites identified in the housing element of the General Plan consistently with the General Plan and the existing environmental review for that General Plan.

Aesthetics/Light and Glare. The area of development and type of use will not change from the original project approval. No additional change to scenic resources, the existing visual character, or daytime/nighttime views will occur. The impacts of the Mammoth Hillside project, as was conditioned in UPA 2005-09, on aesthetics and light and glare were covered in the Program EIR analysis, and do not exceed the effects evaluated in the

Program EIR. Therefore, the visual character and architectural character of the project will not be adversely altered or compromised. Review of the aesthetic/light and glare impacts of the replacement affordable housing at this time would be speculative.

Traffic/Circulation. No change to trip generation, traffic patterns, or on-site circulation will occur. The proposed alternative housing mitigation plan will remove 35 affordable housing units from the project site. The circulation impacts of the remainder of the project were analyzed as a part of the use permit for the project. The required parking for the affordable housing units will not be included in the parking garage as a result of the units being moved off site. Therefore, no additional impacts or needs associated with traffic, circulation, and parking will occur as a result of the proposed project change. Review of the traffic impacts of the replacement affordable housing at this time would be speculative.

Air Quality. The area of development and type of use will not change from the original project approval. The payment of in lieu fees will remove 35 affordable housing units from the development. The impacts of the Mammoth Hillside project were covered in the Program EIR and the Alternative Housing Mitigation Plan does not increase the impacts beyond those anticipated. Therefore, no additional impacts or needs associated with air quality will occur as a result of the proposed project change. Review of the air quality impacts of the replacement affordable housing at this time would be speculative although they should not be meaningfully different from inclusion of the units on site.

Noise. The area of development and type of use will not change from the original project approval and, for this reason, no change in on- and off-site noise levels (both short-term construction-related noise and long-term operational noise) associated with the payment of in lieu fees will occur. Therefore, no additional impacts associated with noise will occur as a result of the proposed project change. Review of the noise impacts of the replacement affordable housing at this time would be speculative.

Geology, Soils and Seismicity. The area of development and type of use will not change from the original project approval. No additional change to soils, topography, and earth movement, will occur and no additional exposure to seismic-related hazards would occur with the proposed change. Therefore, no additional impacts associated with geology, soils, unique geologic features, or seismicity will occur as a result of the proposed project change. Review of the geology, soils and seismic impacts of the replacement affordable housing at this time would be speculative.

Hydrology and Drainage. The area of development and type of use will not change from the original project approval. No additional change to water quality, groundwater supplies, drainage patterns, stormwater runoff, surface water movement, or flood hazard will occur. Therefore, no additional impacts associated with hydrology will occur as a result of the proposed project change. Review of the hydrology and drainage impacts of the replacement affordable housing at this time would be speculative.

Biological Resources. The area of development and type of use will not change from the original project approval. No changes to the area of disturbance are proposed as a part of this proposal. Therefore, no new impacts to biological resources will occur as a result of the project change. Review of the biological impacts of the replacement affordable housing at this time would be speculative.

Public Services and Utilities. The area of development and type of use will not change from the original project approval. No additional impacts to fire protection, police protection, schools or parks will occur. The movement of 35 units of affordable housing from the project site will ultimately result in the same net impact to the Town's public services and utilities when the units are provided elsewhere in Town. Therefore, no additional impacts or needs associated with public services or public utilities will occur as a result of the proposed project change.

Cultural Resources. The area of development and type of use will not change from the original project approval. No additional change to historical, archeological, or paleontological resources. Therefore, no additional impacts associated with cultural resources will occur as a result of the proposed project change. Review of the cultural resources impacts of the replacement affordable housing at this time would be speculative.

CONCLUSION

Given that the proposed project is a request to pay in lieu fees instead of providing the affordable housing on the project site which represents a reduction in the total number of units by 35 without changing the volume of the structure, and the original environmental analysis for the project included analysis of the highest possible number of units on the project site, the proposal will not generate new environmental impacts or exacerbate impacts identified in the Subsequent Program Environmental Impact Report for the North Village Specific Plan Amendment. Analysis of the impacts of constructing the substitute affordable housing offsite cannot be meaningful until the location and design of that alternative housing is known.

ATTACHMENT F
CEQA Findings

Attachment F
CEQA Findings

The Mammoth Lakes Town Council makes the following findings with respect to an Appeal of the Planning Commission's Determination to Approve Use Permit 2007-14 to allow an alternative housing mitigation plan to allow the applicant to pay in lieu fees instead of providing the affordable housing on-site:

1. The proposed changes in the project as previously entitled are to remove 36 very-low-income bedrooms from the project, to pay a fee in lieu of the provision of affordable housing on site, the design and construction of those units at another appropriately zoned site in the Town, and the completion of the project as previously approved with no change in its footprint or building volume.
2. These changes do not constitute a substantial change in the project because: (a) the physical changes on development site will be essentially unchanged; (b) the in lieu fee is calculated in an amount sufficient to fund replacement affordable housing to meet the affordable housing needs to be generated by this project; and (c) the Town will, by approval of the alternative affordable housing plan proposed, commit itself to arranging for the construction of the replacement affordable housing.
3. The changes in the project will not require major changes in the EIR, create new environmental impacts, or increase the severity of any previously identified impacts for the reasons stated in the Addendum to the EIR prepared with respect to the Town Council's consideration of this appeal. The Town Council reviewed the Addendum prior to action on this appeal.
4. There has been no substantial change in the circumstances of the project and no new information regarding the project has been identified which requires further environmental analysis under the standards of State CEQA Guideline Section 15162(a).
5. The location and design of the replacement units have not been determined and it is therefore not possible to evaluate the environmental impacts of the construction of that replacement housing at this time without undue speculation. Because of the limited number of affordable housing units that are considered as a part of this alternative housing mitigation plan, it is also reasonable that suitable development sites are available to accommodate the relatively small number of affordable housing units. Further environmental review will be conducted when the location and design of the replacement units is known and before construction of those units is approved.

6. For the reasons stated here, the Town Council may act on this appeal and approve the proposed changes in the project without requiring a subsequent environmental review.

ATTACHMENT G
Legal Opinion Regarding In Lieu Fee Proposal

Michael G. Colantuono
MColantuono@CLLAW.US
(530) 432-7359

Colantuono & Levin, PC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024
Main: (530) 432-7357
FAX: (530) 432-7356
WWW.CLLAW.US

MEMORANDUM

TO: Peter Tracy, Town Attorney
Town of Mammoth Lakes
106 South Main Street
Bishop, CA 93514-3437

FILE NO: 43009-0003

FROM: Michael G. Colantuono, Esq.

DATE: March 21, 2008

RE: Appeal of the Planning Commission's Determination to Approve Use Permit
2007-14 to allow the applicant to pay in lieu fees

Introduction and Summary of Conclusions. You have asked our opinion on these questions:

- (1) May the Town grant amended Use Permit 2007-14 to allow the applicant to pay an in-lieu fee rather than constructing required affordable housing on site?
- (2) May the Town allow the in-lieu fees to be used for low-income or moderate-income housing instead of the originally proposed very low-income housing without requiring a reduction in the density of the underlying project?
- (3) Need the Town provide for the location, unit mix, other design issues and construction timing for the replacement housing at the time it approves the amended use permit?

We conclude that the answer to the first two questions is "yes" and that the answer to the second question is "no." The reasoning which underlies these conclusions follows.

In Lieu Fee. Section 17.36.040 of the Town's zoning ordinance governs the payment of in-lieu fees rather than on-site provision of affordable housing and states, in relevant part:

D. Location. On-site housing is the preferred mitigation. On-site means on the same lot, within the same building, or within the same master-planned development. An alternate mitigation plan may be proposed by an applicant for consideration by the planning commission.

....

Only where findings can be made by the planning commission, based upon substantial evidence, that an on-site or offsite alternative is undesirable for the community or infeasible as determined by the commission or community development director, may the town then approve payment of a fee in lieu of provision of housing....

Similarly, Section 17.36.050 of the zoning ordinance, regarding alternative housing proposals, states, in relevant part:

B. Criteria for Approving Alternate Mitigation Plans. The town shall consider, *but not be limited to*, the following criteria in evaluating an applicant's proposal for use of off-site development, in-lieu fees, establishing a housing credit or other alternate mitigation plan:

....

5. That the use of mitigation fees by the town is more appropriate than the provision by the applicant of affordable housing. (Emphasis added.)

Thus, while on-site provisions of housing is preferred, the Town's ordinance authorizes the use of in-lieu fees if the commission or community development director determines "that an on-site or offsite alternatives is undesirable for the community" and that "the use of mitigation fees by the town is more appropriate than on- or off-site housing" then "the town [may] approve payment of a fee in lieu of provision of housing." This is a flexible standard and staff recommended, and the Planning Commission found, that on-site and offsite alternatives were undesirable because in-lieu payment would allow the City's housing partner, Mammoth Lakes Housing, to provide a better mix of affordable units (the Town does not need more very low-income units as much as it needs low- and moderate-income units), to leverage housing dollars obtained from other sources, and to provide housing in a more appropriate residential setting as compared to inclusion of the units within a luxury condominium hotel resort. Given the flexibility of the standard established by the Town ordinance, we conclude the Town Council would be within its discretion to rely on these reasons to accept an in-lieu fee rather than to require on- or off-site construction by the project proponent.

Change of Affordability Mix. The project obtained a 35% density bonus when originally approved because it offered 11% of the total units as very low-income units. The question arises whether the Town may allow the fees paid in lieu of these units to be used for low- or moderate-income units without rescinding the density bonus awarded to the project. The Town's density bonus ordinance, Section 17.36.090 of the Mammoth Lakes Municipal Code, is very terse and references the state density bonus law, Government Code Sections 65915 - 65917. Those sections require the Town to award a 35% density bonus for a project which includes 20% very low-income units (Section 65915(g)(1)), 11% very low-income units (Section 65915(g)(2)), or 40% moderate-income units (Section 65915(g)(4)). While the statute also allows the Town to award greater density bonuses than the statute requires (Section 65915(n)), the zoning ordinance does so only for projects which provide even more affordable housing than the statute requires.

Mammoth Lakes Municipal Code Section 17.36.090. We conclude that the Town may alter the mix of affordability of the units provided via the in-lieu fee without reducing the project's 35% density bonus if an appropriately larger number of less-deeply-subsidized units are constructed. The mix of units must include very low-income units accounting for 11% of the proposed project (excluding its density bonus), very low-income units accounting for 20% of that original project count, or moderate-income units accounting for 40% of that original count.

Delayed Determination of Location and Design of Replacement Units. The Town ordinance does require a housing plan to specify the location of the units to be provided and requires the units to be available for occupancy before a certificate of occupancy may be granted for the underlying project. Mammoth Lakes Municipal Code Section 17.36.040(A)(4) & (B). However, the ordinance also allows housing obligations to be satisfied by payment of an in-lieu fee to be used by the Town to build housing. Mammoth Lakes Municipal Code Sections 17.36.050(D) and 17.36.050(A)(5), discussed above. As to in-lieu fees, section 17.36.070 of the Municipal Code states:

A. The developer of qualifying projects (see Section 17.36.030(C)) may pay an in-lieu fee for the number of mitigation units required to be provided and not otherwise mitigated.

1. Payment In-Lieu Fee. Payment of an in-lieu fee shall be made for each FTEE or partial FTEE not otherwise mitigated. This fee shall be established by resolution of the town council.

2. Timing of Payment and Use of Funds. Payment of in-lieu fees shall be made to the town finance director prior to, and on a proportionate basis to, the issuance of any building permits for the applicable portion of the development.

3. Authorized Use of Funds. *The funds and interest accrued shall remain in the fund and shall be used only for the purposes of planning for, administering, subsidizing or developing affordable housing.*

4. Refunds of Expired Permits. Any payment made for a development for which a building permit has expired due to noncommencement of construction, may be refunded in accordance with the provisions of Section 15.16.090 of the town of Mammoth Lakes municipal code. (Emphasis added.)

This language plainly contemplates that in-lieu fees will be used by the Town at a later time when a project can be developed and implemented. A.B. 1600 does establish deadlines by which fees such as these be used (Government Code Section 66001(e)), and we recommend the Town observe these deadlines. However, there is no obligation under the Town's ordinance to have a fully developed housing proposal complete with site, unit mix, and design when the Council approves the proposed amended Use Permit to require in-lieu housing fees rather than on-site provision of affordable housing.

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Conclusion. We conclude that the Town zoning ordinance and the state density bonus law permit the Town to accept an fee in-lieu of on-site provision of affordable housing from this project and to use those fees for housing at affordability levels other than the very low-income units proposed by the original project without revoking the 35% density bonus provided the affordability of the units matches or exceeds the requirements of the density bonus law. We also conclude that the Town need not have a plan to expend the fees when it approves the proposed Use Permit Amendment.

If we can provide further advice on this subject, please let me know. Thank you for the opportunity to assist.

ATTACHMENT H
Chapter 17.68 of the Municipal Code (Appeals)

the applicant has not complied with the conditions. The planning commission shall hold a public hearing in accordance with the procedure prescribed in Section 17.64.040 and, if not satisfied that the conditions of approval of the variance have been complied with, may revoke the variance or take such action as may be necessary to ensure compliance with the conditions. (Ord. 89-05 §1(part), 1989: prior code §19.17.392)

17.64.140 New application. Following the denial or revocation of a variance application, no application for the same or substantially the same variance on the same or substantially the same site shall be filed within one year of the date of denial or revocation of the variance. (Ord. 89-05 §1(part), 1989: prior code §19.17.393)

Chapter 17.68

APPEALS

Sections:

- 17.68.010 Appeal of decision of the planning commission.
- 17.68.020 Fee.
- 17.68.030 Council action on an appeal.

17.68.010 Appeal of decision of the planning commission. Where this title provides for appeal to the town council of a decision of the planning commission, the appeal shall be made within fifteen days of the date of the decision by the filing of a letter of appeal with the planning director. The appeal shall state in writing the reasons for the appeal. Within fifteen days of receipt of the appeal, the director shall transmit to the town clerk the letter of appeal, copies of the application and all other papers and documents which constitute the record upon which the planning commission made its decision. (Ord. 89-05 §1(part), 1989: prior code §19.17.610)

17.68.020 Fee. An appeal shall be accompanied by a fee established by resolution of the town council to cover the cost of processing the appeal. (Ord. 89-05 §1(part), 1989: prior code §19.17.620)

17.68.030 Council action on an appeal. The town council shall hold at least one public hearing on a decision of the planning commission which has been appealed. The hearing shall be held within forty days from the filing of the appeal; the time and place of the hearing shall be

set by notice given as prescribed in Section 17.56.070 of this title. The council shall render a decision on an appeal within twenty-one days following the closing of the public hearing on the appeal. Failure of the council to act within the time period prescribed by this chapter shall be deemed approval of the planning commission action. The council may affirm, reverse or modify a decision of the planning commission. The decision of the town council shall be final except that, if the council modifies a decision of the planning commission, such proposed modification first shall be referred to the planning commission for review and comment. (Ord. 89-05 §1(part), 1989: prior code §19.17.630)

Chapter 17.72

AMENDMENTS

Sections:

- 17.72.010 Zoning amendments.
- 17.72.020 Initiation.
- 17.72.030 Application--Data and maps to be furnished.
- 17.72.040 Deposit.
- 17.72.050 Public hearing.
- 17.72.060 Investigation and report.
- 17.72.070 Public hearing procedure.
- 17.72.080 Action by the planning commission.
- 17.72.090 New applications.
- 17.72.100 Change of zoning map.

17.72.010 Zoning amendments. A. The zoning map and zoning regulations may be amended by changing the boundaries of any zone or by changing any zone regulation or any other provision of this title in accord with the procedure prescribed in this chapter.

B. Subject to the provisions contained in Sections 7.04.060 and 7.04.070, the zoning maps and zoning regulations may be amended by changing the boundaries of any zone or by changing any zone regulation in accordance with the procedures prescribed in this chapter. Any other amendment ordinances are adopted. (Ord. 00-01 §1(Exh. A(part)), 2000; Ord. 89-05 §1(part), 1989: prior code §19.17.400)

17.72.020 Initiation. A. A change in the boundaries of any zone may be initiated by the owner or the authorized agent of the owner of the property by filing an application for a change in zone boundaries as prescribed in this sec-