March 18, 2025

Sent via email

Mammoth Lakes Planning Commission
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Re: Comments on the Amended and Restated Snowcreek Development Agreement

Dear Commissioners:

This letter is submitted regarding the Amended and Restated Snowcreek Development Agreement. I have reviewed the 2007 Final Environmental Impact Report (EIR) closely and consider the 2007 EIR's analysis of and mitigation for Snowcreek VIII's impacts to biological resources, greenhouse gas emissions, wildfire risks, air quality, and public resources inadequate due to changed circumstances and significant new information that has emerged in the last two decades. I urge the Town of Mammoth Lakes, at a minimum, to correct the deficiencies identified below to ensure adequate and informed public review of Snowcreek VIII (the Project).

The revised DA proposes to extend the 2010 DA's term by 20 years from 2025 to 2045 and possibly five more years if the Developer continuously operates the 9-hole golf course during the term of the SDA (even *longer* if a decrease in the median home sales value by 10% or more occurs over a one-year period). This cannot stand under the California Environmental Quality Act (CEQA), which makes plain that even when a certified EIR is in effect, an agency must revise its analysis to consider significant new information and changed circumstances. (Pub. Res. Code § 21166; Guidelines, § 15162(a)(2), (a)(3)(A), (B).) The Snowcreek VIII Project is a textbook example of this requirement: a massive 220-acre development of up to 790 residential dwelling units and 400 resort/hotel rooms and private residential club units on undeveloped sensitive habitat, which has already not been assessed in nearly *two decades* and now seeks a DA extending its term by more than 25 years. The Town must take into account changed circumstances and significant new information, including information provided below, that could greatly impact the 2007 EIR's conclusions and require further mitigation before agreeing to any revised DA that would extend the term even further.

Additionally, it is critical to note that the Commission's findings regarding the 2010 DA's community benefits no longer remain relevant. Not only is Snowcreek VIII seeking to move forward under very different economic circumstances, but the Project no longer includes

the 18-hole golf course the Town once considered an "important element" of Snowcreek VIII's community benefits. The Planning Commission should thus either (1) recommend denial of the revised DA, and/or (2) revise the Snowcreek Master Plan Update and complete a revised EIR alongside this update to ensure Snowcreek VIII will not significantly adversely impact our community or environment.

COMMENTS

The Planning and Economic Development Commission should recommend to the Town Council denial of the Amended and Restated Snowcreek Development Agreement for a myriad of reasons. First, the Project no longer provides "community benefits" as required under Municipal Code (MC) Chapter 17.104, considering that the economic crisis during which the 2010 DA was finalized no longer exists. Second, no "unavoidable delay" occurred requiring the Town to extend the 2010 DA. And third, even if the Project were to still provide community benefits, the Town must complete subsequent CEQA review before approving the revised DA due to changed circumstances and new information regarding significant adverse environmental impacts. Failure to complete CEQA review could result in this massive 220-acre development on sensitive habitat moving forward more than 25 years from now, without CEQA review having been completed for nearly a *century*.

I. The Revised Development Agreement Lacks the Community Benefits that Formed the Basis for the 2010 Development Agreement's Approval.

The Commission should recommend denial of the revised DA because the revised DA significantly reduces community benefits, and some 2010 benefits no longer remain relevant in 2025. This violates Municipal Code 17.104.040, which requires this Commission to make findings that "the agreement [or revised agreement][1] is in conformity with and will promote public convenience, general welfare, and good land use and development practices" and will provide community benefits beyond development under present Resort and Open Space zoning. Furthermore, the Staff Report's assertion that Snowcreek VIII can move forward without this revised DA and thus without *any* community benefits overlooks provisions in the 2010 prohibiting this from happening.

A. Community Benefits That Existed in 2010 No Longer Exist Today.

Fifteen years ago, the Town repeatedly explained that the 2010 DA's primary community benefits did not come from Snowcreek VIII itself, but from the hotel and golf course's timely construction during the recession. Specifically, the Town reasoned that reducing the term by one day for each day that construction of the hotel and expanded golf course has not commenced by 2020 would benefit the community by incentivizing prompt construction, faster than construction

[1] Municipal Code 17.104.080.

without the 2010 DA.[2] Meeting packets, notes, and agendas from fifteen years ago leave no doubt that the Town viewed prompt action as necessary to attract visitors to Mammoth Lakes during the recession fifteen years ago.[3]

The initial 2010 DA memorialized this reasoning. Its Recitals explained that "[t]he parties are negotiating this Development Agreement at a time of great economic crisis in the United States, the State of California and the Town of Mammoth Lakes. Many development projects have been put on hold or the properties on which such projects were to have been developed have been foreclosed upon or conveyed to the projects' lenders. There has probably never been a more appropriate time for a government agency to enter into a development agreement and carry out the legislative intent behind the Development Agreement Statute." And regarding the timing for Snowcreek VIII's golf course and hotel, the 2010 DA stated: [E]xceptional circumstances exist to justify this Term, including but not limited to the economic crisis[.]"

As a result, considering that the Project's most significant community benefits of a new hotel and golf course *during an economic recession* no longer exist, the Commission must make revised findings and support these findings. Much of the support for this Commission's 2010 findings regarding community benefits from prompt hotel and golf course construction lies in the outdated 2009 economic analysis, which no longer applies.[4] At the time, the analysis explained that "a high quality 18-hole golf course is considered an *important element* when repositioning Mammoth Lakes as a world-class resort destination attracting visitors, especially groups, to the area."[5] And further, the 2009 economic analysis determined that "[t]he provision of 15,000 square feet of flexible meeting, banquet and conference space within the proposed Snowcreek resort hotel would represent a significant addition of meeting space in a market that *currently lacks it*. Again, this is considered an *important component* of the Town repositioning effort."[6]

These two statements no longer remain relevant. Regarding meeting space, for example, the nearly completed Limelight development has thousands of square feet of meeting space, cutting against the Snowcreek Hotel's community benefit. And the revised DA no longer requires the 18-hole golf course the Town previously considered "an important element," of benefits to the community, as the revised DA states: "Use of Golf Course Expansion Area. Should Developer wish to allow interim recreation uses by others within the 94-acre golf course expansion area, Parties shall negotiate an agreement in good faith regarding a lease or other property interest from Developer to Town of all, or a portion of, the 94-acre golf course

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[2] See, e.g., https://pub-townofmammothlakes.escribemeetings.com/filestream.ashx?documentid=5485

[3] E.g. https://mammothlakes.granicus.com/player/clip/35?view_id=4&meta_id=3212&redirect=true

[4] https://pub-townofmammothlakes.escribemeetings.com/filestream.ashx?documentid=5482

[5] https://pub-townofmammothlakes.escribemeetings.com/filestream.ashx?documentid=5482 at 14 (emphasis added).

[6] *Id*. (emphasis added).

expansion area for recreational uses. Such interim uses shall not prevent or preclude the Expanded Golf Course from being developed." Even more broadly, the hotel itself provides less of a community benefit, considering that numerous hotels have been constructed over the past fifteen years, including but not limited to Outbound Mammoth and the Mammoth Creek Inn Expansion.

As a result, this Commission must make revised findings with support from today's economic situation before recommending the revised DA's approval. As in 2010, these findings must take into account the Town of Mammoth Lakes *currently* and what would benefit our community in 2025, not in 2010 during economic crisis.

B. The Revised Development Agreement Only Reduces Community Benefits.

Even if the same economic crisis of 2010 prevailed today, the revised DA provides fewer community benefits now than in 2010. The revised DA Exhibit B lists the following:

- The Additional Financial Contribution.
- Fiscal benefits that will accrue to the Town and community through the implementation of the Project as intended that would not occur without this Agreement, including transient occupancy taxes.
- 8.9 acres of park area provided in excess of that required in conjunction with the buildout of Snowcreek VIII.
- Preservation of Mammoth Creek open space corridor.
- Championship 18-hole golf course will be designed by a top course architect.
- Practice facility to be designed by a top course architect.
- Secondary access for both Snowcreek V and VIII and the Emergency Vehicle Access Road connecting the Snowcreek VIII Project to Sherwin Creek Road is in addition to Mammoth Lakes Fire Protection District ("MLFPD") requirements.
- Allowing egress of backcountry skiers, snowboarders, snowshoers from the Sherwin Range immediately upon approval of the Project prior to its construction and completion.
- Programming of public spaces, including but not limited to the Great Lawn and Outfitters' Cabin, to increase visitation to the project and Town.
- Establishment of public access across certain points of the project to allow public egress to surrounding public lands prior to Project construction and after completion and which would also provide access to an enhanced network of publicly accessible multi-use paths that is connected to the Town's trail system.
- If needed by the Town, the Developer will provide the property described on Exhibit F attached hereto and incorporated herein by this reference for propane storage tanks. (Exhibit B.)

This list provides the *very same* benefits the 2010 DA claimed, minus (1) preservation of Mammoth Creek open space corridor, which already happened seven years ago, and (2) minus

the 18-hole golf course, which the 2009 economic analysis referred to as an "important element" of the 2010 DA's community benefits. Furthermore, as described above, the benefits that remain have become less beneficial due to the different economic circumstances of today. The Planning Commission must explain to the community if and how it concludes that the revised DA still provides community benefits in 2025 and why losing several benefits and weakening others still supports the revised DA's approval.

C. Snowcreek VIII Cannot Move Forward Without the Revised DA.

The Staff Report states several times that, because Snowcreek VIII can move forward without this Commission's recommendation to approve the revised DA, this Commission would reduce community benefits by refusing to recommend approval. This is incorrect for several reasons. First, the 2010 Development Agreement provides that development cannot move forward *without* the 2010 DA. The 2010 DA explains that "Developer *would not proceed* with the Snowcreek Projects without the Town's assurances set forth in [the 2010] Agreement," and "[t]he Town would not enter into this Agreement without Developer's assurances set forth in [the 2010] Agreement and the anticipated benefits[.]" As a result, the developer is bound by the 2010 DA to proceed and cannot move forward without following the 2010 DA's terms.

And second, even without this term, this Commission can ensure maximum community benefits through updating the 2007 Snowcreek Master Plan. Municipal Code provides that "[t]he Director may administratively approve minor changes, alterations, or amendments to an *approved master plan*, subject to appeal pursuant to Chapter 17.100" after making the findings listed under Section 17.116.070 (b). (Code 17.116.070 (b).) In other words, this Commission has the authority to amend the 2007 Snowcreek Master Plan Update if it so chooses, and in doing so can require CEQA review with maximum mitigation to benefit the community and environment.

II. No Unavoidable Delay Justifies Extending the Term.

Prior to approving the 2010 DA, this Commission assured concerned residents that it would only extend the term due to "unavoidable delay."[7] However, despite these assurances, nowhere in the Staff Report is there a description of this "unavoidable delay" in constructing the hotel and golf course. These assurances, further memorialized in the 2010 DA, warrant CEQA review now fifteen years later and the chance at public participation through the CEQA public comment process, as discussed *infra*.

[7] See https://mammothlakes.granicus.com/player/clip/35?view_id=4&meta_id=3212&redirect=true and https://pub-townofmammothlakes.escribemeetings.com/filestream.ashx?documentid=5485

III. Authorizing the Revised Development Agreement Without Subsequent Environmental Review Violates CEQA.

The Staff Report claims that because no new development is directly associated with the SDA, no further environmental review is required. This is incorrect: CEQA makes plain that even when a certified EIR is in effect, an agency must revise its analysis to consider significant new information and changed circumstances. (Pub. Res. Code § 21166; Guidelines, § 15162(a)(2), (a)(3)(A), (B).) Here, considering nearly two decades have already passed, the Town must take into account changed circumstances and significant new information provided below that could greatly impact the 2007 EIR's conclusions and require further mitigation.

A. Significant New Information Requires the Town to Revise and Recirculate Numerous Sections of the 2007 EIR.

Where an agency's actions violate CEQA, "it must do the environmental review process over if it wants to approve the project." (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690.) Accordingly, before approving the revised DA, the Town must prepare and circulate for public review a revised EIR that complies with CEQA. (*See, e.g., King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 901 [where EIR inadequate, County must revise EIR, circulate it for public review and comment, and prepare responses to the comments before reapproving same or modified project].). Any revised draft EIR must comply with CEQA's mandatory requirements for public review, including completing and filing with the State Clearinghouse, providing a 45-day comment period, and consulting with public agencies. (Guidelines §§ 15082-88, 15105.) The Town must also consider and respond in detail to the public's comments. (*See* § 21091(d) [requiring agency responses to comments on draft EIRs]; Guidelines § 15088(c) [requiring "good faith, reasoned analysis" in responses]); (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266-67 ["recirculation and consideration of public comments" necessary before revised project approval].)

Significant new information and changed circumstances further require a subsequent EIR after certification. (Pub. Res. Code § 21166; CEQA Guidelines § 15088.5(a); CEQA Guidelines, § 15162(a)(2), (a)(3)(A), (B).) CEQA specifically provides that "[w]hen an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required . . . [unless] [n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." (Pub. Res. Code § 21166(c).) CEQA defines significant new information as information showing: (1) "[a] new significant environmental impact would result from the project . . ."; or (2) "[a] substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." (CEQA Guidelines § 15088.5(a).) Additionally, CEQA requires a revised EIR when "substantial changes occur with respect to the circumstances

under which the project is being undertaken which will require major revisions in the environmental impact report." (Pub. Res. Code § 21166(b).)

B. New Scientific Knowledge on Climate Change Increases the Urgency of Addressing Climate Change.

Substantial new information on the severity of the Project's contributions to climate change has become available in the past 18 years. Not only has California set new GHG reduction targets, but groundbreaking climate change research sheds light on the critical need to reduce GHG emissions. The Town must take this significant information into account and require further mitigation measures aligned with statewide goals.

i. Substantial New Information on Climate Change Impacts Requires Revision.

First, since the Town certified the original 2020 FEIR, the Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change, concluded in its 2023 Sixth Assessment Report that: "[u]nsustainable and unequal energy and land use as well as more than a century of burning fossil fuels have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020." (IPCC 2023.) The increase in global surface temperature has resulted in sea level rise, more frequent extreme weather events, and "irreversible losses" at the species and ecosystem levels. (IPCC 2023.) The United States' own 2023 Fifth National Climate Assessment, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies, echoed these findings. The 2023 Assessment concluded that "[t]he global warming observed over the industrial era is unequivocally caused by greenhouse gas emissions from human activities–primarily burning fossil fuels," and long-term responses include "sea level rise, ice sheet losses, and associated disruptions to human health, social systems, and ecosystems." (Jay 2023.)

This significant new information requires immediate and aggressive greenhouse gas emissions reductions to keep warming well below 2°C above pre-industrial levels. The IPCC Sixth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, "[t]he best estimates of the remaining carbon budgets from the beginning of 2020 are 500 GtCO2 for a 50% likelihood of limiting global warming to 1.5°C and 1150 GtCO2 for a 67% likelihood of limiting warming to 2°C." (IPCC 2023 at 19.) Additionally, "[i]f the annual CO2 emissions between 2020-2030 stayed, on average, at the same level as 2019, the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%)." (IPCC 2023.) As of 2023, climate policies by countries across the world would lead to an estimated 2.7°C of warming, and possibly up to 3.4°C of warming, well above

the level needed to avoid the worst dangers of climate change. (Climate Action Tracker, The CAT Thermometer 2023.)

ii. The 2007 EIR's GHG Analysis Is Outdated.

The significant new information described *supra* leaves no doubt that climate change will transform California, resulting in increased temperature and frequency of wildfires, and a reduction in snowpack, precipitation levels, and water availability. (Turco 2023.) But the 2007 EIR fails to fully take into account significant new information regarding climate change impacts, which should be assessed under the newest version of CalEEMod, intended to incorporate the latest science on GHG emissions (CAPCOA 2021; CAPCOA 2022). The 2007 EIR's GHG analysis is therefore not supported by sufficient evidence and must be revised and recirculated.

iii. The 2007 EIR Fails to Adopt All Feasible GHG Mitigation.

Further, in light of these new assessments and substantial new information, the Town must further mitigate the Project's GHG emissions. In fact, any revised EIR must show how a project will conform to current statewide GHG reduction targets and adopt enforceable mitigation to achieve these goals. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 225-26; *League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 121-22.)

Since 2020, the State has released several new GHG reduction targets. For example, in November 2022, CARB released a new Scoping Plan, requiring "aggressive reduction of fossil fuels" and "rapidly moving to zero emission transportation," identifying "a technologically feasible and cost-effective path to achieve carbon neutrality by 2045." Additionally, under AB 1279, the California Climate Crisis Act, California must achieve net zero GHG emissions by no later than 2045 and achieve and maintain net negative GHG emissions thereafter. (AB 1279 2022.) Newsom has continued to issue climate-related executive orders, such as a 2020 order requiring that, by 2035, all passenger vehicles will be zero-emission, in addition to other motor vehicle emission goals. (Executive Order N-79-20 (2020).) Enforcement of and compliance with these steps are essential to stabilize the climate and avoid catastrophic impacts to our environment.

Appendix D of CARB's 2022 Scoping Plan includes on-site GHG-reducing design features and mitigation measures, as well as offsite measures the Town should consider to conform to these new targets. Other feasible measures can be found in the California Air Pollution Control Officers Association 2022 Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. (CAPCOA, December 2021.) The Town should take all feasible steps to reduce GHG emissions in light of the recent climate change research outlined *supra*.

C. The 2007 EIR Lacks Significant New Information Relating to the Project's Wildfire Risks.

The 2007 EIR also leaves out significant new information and changed circumstances regarding the Project's increased wildfire risks. In fact, the 2007 EIR does not even mention increased wildfire risks from the Project. However, not only is the Project site near a Very High Risk Fire Hazard Safety Zone,[8] but significant new information reveals heightened wildfire risks for sensitive habitats, species, and the local community from development, requiring the 2007 EIR's revision. CEQA requires assessment of "any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., . . . wildfire risk areas)." (CEQA Guidelines § 15126.2(a); *see also Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193 [recognizing potential for significant environmental effects when project brings new development to a wildfire-prone area]; CEQA Guidelines Appendix G, §§ IX(g), XX.) In light of these changed circumstances and significant new information regarding wildfire risks from development, the Town should update its assessment and mitigation measures to protect from the Project's wildfire risks.

i. Abundant and mounting evidence indicates that locating homes in high or very high wildfire areas demonstrably increases the risk of wildfire ignition.

A 2019 study from Governor Gavin Newsom's Office determined that construction of more homes in the wildland-urban interface is one of the main factors that "magnify the wildfire threat and place substantially more people and property at risk than ever before" (Governor Newsom's Strike Force, 2019). Another 2019 study found that housing and human infrastructure in fire-prone wildlands are the main drivers of fire ignitions and structure loss (Syphard et al., 2019). Sprawl developments extending into habitats that are prone to fire have led to more frequent wildfires caused by human ignitions, like power lines, arson, improperly disposed cigarette butts, debris burning, fireworks, campfires, or sparks from cars or equipment (Alexandre, Stewart, Keuler, et al., 2016; Alexandre, Stewart, Mockrin, et al., 2016; Balch et al., 2017; Bistinas et al., 2013; Keeley et al., 1999; Keeley & Fotheringham, 2003; Keeley & Syphard, 2018; Radeloff et al., 2018; Syphard et al., 2007, 2012, 2019). This has led California's Natural Resources Agency, which promulgates the CEQA Guidelines, to state unambiguously that "the evidence is clear that bringing more people to areas of higher wildfire risk exacerbates those risks." (AA 4:1663.)

Almost all (95-97%) contemporary wildfires in California have been unintentionally caused by people and human infrastructure (Balch et al., 2017; Keeley & Syphard, 2018). For example, the 2017 Thomas Fire, 2017 Tubbs Fire, 2018 Camp Fire, 2018 Woolsey Fire, 2019 Kincade Fire, 2020 Bobcat Fire, 2020 Silverado Fire, and the 2020 Zogg Fire were found to have been caused by electrical transmission lines and electrical equipment. And although many of the

[8] https://experience.arcgis.com/experience/03beab8511814e79a0e4eabf0d3e7247/

2020 fires were sparked by a lightning storm, the 2020 Apple Fire was caused by sparks from a vehicle, the 2020 El Dorado Fire was caused by pyrotechnics at a gender-reveal celebration, and the 2020 Blue Ridge Fire was likely caused by a house fire. Placing more homes and people in and near high fire-prone areas only increases the potential likelihood of these ignition sources, as has been documented in multiple scientific studies (Balch et al., 2017; Bistinas et al., 2013; Keeley et al., 1999; Keeley & Fotheringham, 2003; Keeley & Syphard, 2018; Radeloff et al., 2018; Syphard et al., 2007, 2012, 2019).

Since 2016 more than 200 people in California have been killed in wildfires, more than 50,000 structures have been burned down, hundreds of thousands have had to evacuate their homes and endure power outages, and millions have been exposed to unhealthy levels of smoke and air pollution (CalFire 2023).[9] Although public utility companies (*i.e.*, PG&E and Southern California Edison) are altering operations in the form of power outages and blackouts during extreme weather conditions (Callahan et al., 2019; Fry, Dolan, et al., 2019; Krishnakumar et al., 2019), wildfires can still spark and spread quickly towards homes, as evidenced by the wildfires in Moraga (Hernández et al., 2019) and Saddleridge/Sylmar (Fry, Miller, et al., 2019). And the power outages themselves disproportionately burden our most vulnerable communities, including the elderly, poor, and disabled (Chabria & Luna, 2019), and can cause traffic jams and collisions (CBS San Francisco, 2019). Michael Wara, Director of the Climate and Energy Policy Program and a senior research scholar at the Stanford Woods Institute for the Environment, estimated that PG&E's power outage in Northern and Central California could have an economic impact of $2.5 billion in losses, with most of the burden on businesses (Callahan et al., 2019).

In 2018, the State officially recognized that introduction of low or intermediate density development in the wildland urban interface increases ignition risk. (OPR 2018 Final Statement of Reasons – Update to CEQA Guidelines Checklist]; see also *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 193 [recognizing potential for significant environment effects when project brings new development to a wildfire prone area].)

As another recent peer-reviewed study from Stanford University researchers explained, "Changing demographic factors have undoubtedly played a substantial role in community exposure and vulnerability—including the expansion of urban and suburban developments into the 'wildland-urban interface.'" (Goss et al. 2020.) In fact, development in the wildland-urban interface, like the proposed project, is responsible for the most buildings burned in California, despite less fuel. (Kramer et al. 2019.) Researchers have determined that growth in the wildland-urban interface "often results in more wildfire ignitions, putting more lives and houses at risk." (Radeloff et al. 2018.)

[9] These data are from annual CalFire Incident Reports, available at https://www.fire.ca.gov/incidents.

Developments with low/intermediate densities extending into habitats that are prone to fire have led to more frequent wildfires caused by human ignitions, and these types of developments have the highest chances of burning (Keeley et al. 1999; Keeley and Fotheringham 2003; Syphard et al. 2007; Syphard et al. 2013; Balch et al. 2017; Radeloff et al. 2018; Syphard et al. 2019). This can disrupt the natural fire regime and lead to a dangerous feedback loop of deadly fires and habitat destruction. Thus, developing housing in locations in California that currently have low or no density—such as the Project site—dramatically *increases* the number of fires and the amount of area burned. (*See* Keeley 2005; *see also* Syphard et al. 2013; Syphard et al. 2007 [stating that ninety-five percent of California's fires are caused by human activity].) Common anthropogenic causes of fire include arson/incendiary, equipment use, debris burning, smoking, vehicles, fireworks, electricity, and outdoor cooking. Additionally, structure fires can spread and initiate wildland fires.

As one California court recently put it when finding the County of San Diego's EIR for a residential development project inadequate on these very grounds:

> [T]here is no discussion in the EIR of whether or how adding 1400 new residents into the area will affect the likelihood of wildfires. Adding this many residents into the Harmony Grove Project area is bound to affect the likelihood of fire given that, according to one report, 95% of modern wildfires in California are started by people. . . .The EIR should have addressed the issue. Although the EIR discusses what will be done to deal with wildfires, it does not address how adding new residents will affect the potential for wildfires to start.

(*Elfin Forest Harmony Grove Town Council v. County of San Diego* San Diego Sup. Ct. Case No. 37-2018-00042927-CU-TT-CTL, minute order dated Feb. 20, 2020 [included as reference].) Similarly here the 2007 EIR failed to address this significant new information regarding how the Project will affect the potential for wildfires to start.

ii. New Information Reveals Heightened Public Health Risks from Wildfires.

Beyond assessing these changed circumstances, the revised EIR should take into account significant new information regarding wildfire impacts on local communities, as described below.

a. Increased Wildfire Risk Poses Health Concerns for the Surrounding Community.

First, new studies reveal the severity of health risks from wildfire. For example, wildfires place local communities at higher risk of increased occurrences of poor outdoor and indoor air quality from $PM_{2.5}$ from smoke, which can have both acute and long-term health effects that disproportionately affect vulnerable populations, like children, the elderly, those with underlying chronic disease, low-income communities, and communities of color. (Reid-Wainscoat et al., 2024.) In addition, epidemiologists recently found that increased exposure to wildfire smoke may

also be linked to higher rates of dementia. (B. Zhang et al., 2023; Z. Zhang et al., 2023.) Researchers further estimate that between 2008 and 2018 California wildfire smoke caused more than 50,000 premature deaths. (Connolly et al., 2024.)

b. New Information Suggests More Unintentional Ignitions Due to Development Increases Firefighting Costs and Strain on Firefighters.

Second, new information sheds light on the costs of wildfires for state and local authorities. Fire suppression costs in areas managed by the California Department of Forestry and Fire (Cal Fire) have skyrocketed from $114 million in the 2000-2001 fiscal year to close to $3 billion for the 2020-2021 and 2021-2022 fiscal years combined. (CalFire 2022.) During the 2022-2023 fiscal year, CalFire used an estimated $3.3 billion for wildfire protection and suppression. (LAO 2023.) This does not include the cost of lives lost, property damage, or clean up.

Climate change only adds to extreme weather and fire conditions, which, in combination with poorly planned development, has led to more ignitions and longer fire seasons, increasing strain on over-burdened firefighters and first responders. Wildland firefighters suffer disproportionately high rates of cancer and other serious diseases, likely due to extreme smoke exposure. (Hwang et al., 2023; Johnson & Lam, 2023.) In addition, the physical and mental fatigue of endlessly fighting fires and experiencing trauma have spurred new reports indicating rising rates of suicide and substance abuse among firefighters. (Cart, 2022.) The revised EIR must assess these impacts and include appropriate mitigation.

iii. The 2007 EIR's Fails to Describe Existing Wildfire Conditions on the Project Site and Must Now Include Changed Circumstances.

The 2007 EIR's assessment also fails to describe the project site's existing wildfire conditions, let alone the conditions that exist now. An EIR for a development project of this size and scope often uses modeling software, such as the industry-standard FlamMap, BehavePlus, or similar programs, to provide fire behavior modeling for the project site. The analysis typically includes descriptions of the project site's topography, fuel loads, and wind patterns, and uses those inputs to anticipate wildfire conditions under various scenarios. But here, in sharp contrast, the 2007 EIR fails to provide any of that information.

iv. A Revised EIR Must Mitigate the Project's Wildfire Impacts.

Finally, taking into account changed circumstances from heightened wildfire risk and new information regarding wildfire risks, the Town should accordingly add mitigation measures for wildfire risks. The revised EIR must also provide substantial evidence that the adopted mitigation measures will effectively reduce the project's impacts. (*League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 120-21; *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168-69.)

The March 18, 2025 Planning & Economic Development Commission Staff Report even admits that the heightened fire risk necessitates mitigation, stating: "With the recent devastating wildfires, it has illustrated the need for the proactive development of fire breaks to protect at-risk communities. The language in the Amended and Restated SDA requires the developer to work with the Fire District to construct a fire break through the Snowcreek VIII development area." However, this promise lacks the requisite analysis of changed circumstances and significant new information, as well as the specificity of mitigation measures CEQA requires. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173 [requiring concrete, specific, and enforceable mitigation measures].)

D. Numerous Species That May Occur in the Project Area Have Been Listed Since 2007.

The 2007 EIR's biological resources analysis and mitigation lacks information regarding changed circumstances and significant new information on species listed under the California Endangered Species Act (CESA) and the federal Endangered Species Act since 2007. In fact, the 2007 EIR's biological surveys were conducted *twenty years* ago on August 8-10, 2005, to assess the environmental conditions of the site and its surroundings and identify special-status species and sensitive habitats. Furthermore, citations in Biological Resources section are largely from the 1990s. The Town must revise and recirculate the EIR with updated conditions.

Since 2007, several species have gained protection under the California Endangered Species Act and federal Endangered Species Act that may be present in the Project location, including the Yosemite toad, Sierra Nevada yellow-legged frog, burrowing owl, Sierra Nevada red fox, and wolverine

First, the Sierra Nevada yellow-legged frog was listed as an endangered species under the ESA on April 29, 2014. (79 Fed. Reg. 24256 (April 29, 2014).) Designated critical habitat was then proposed on April 25, 2013 and finalized on August 26, 2016. (81 Fed. Reg. 59046.) Sierra Nevada yellow-legged frogs inhabit the lakes, ponds, marshes, meadows and streams at elevations ranging from 4,500 to 12,000 feet and are generally not found more than one meter (3.3 feet) from water, although along streams they have been observed more than 22m (71 ft) from the water and have been documented to travel up to 3.3 km (2.05 mi) along streams in a single season. (*Id*. at 24260.) The Sierra Nevada yellow-legged frog was historically abundant and ubiquitous across many of the higher elevations within the Sierra Nevada, but have disappeared from a large fraction of their historical range. (*Id*. at 24260-61.) Local population-level changes were first noticed in the early 1900s although they were still abundant at many sites, and population losses continued between the 1960s and 1990s, and have continued in recent decades. As a result, potential impacts to the Sierra Nevada yellow-legged frog must be assessed and mitigated before the Project can move forward.

Second, along with the Sierra Nevada yellow-legged frog, the Yosemite toad was listed as a threatened species under the ESA on April 29, 2014. (79 Fed. Reg. 24256 (April 29, 2014).)

Designated critical habitat is not far from the Project, in the Mammoth Lakes Basin. Yosemite toads are associated with wet meadows due to their breeding ecology and spend the majority of their lives in upland habitats adjacent to breeding meadows, often relying on moist upland areas such as seeps and springs as important non-breeding summer habitat. (*Id*. at 24285.) However, Yosemite toad adults use terrestrial habitats extensively and move an average of 275 m (902 ft) from their breeding meadows, and can move farther than 1 km (0.63 mi). (*Id*.) Eggs are typically laid in meadows and ephemeral pools immediately at snowmelt, followed by a period of about 40-50 days to metamorphosis. (*Id*.) Because Yosemite toads rely heavily on shallow, ephemeral water, they may be more sensitive to minor changes in habitat. *Id*. at 24288.

Yosemite toads historically ranged in the Sierra Nevada from the Blue Lakes region north of Ebbets Pass (Alpine county) to south of the Evolution Lake area (Fresno county), and spanned 1,460-3,630 m (4,790-11,910 ft) in elevation. (*Id*. at 24286.) The extent of the toad's range continues to be about the same, but population declines are thought to have occurred range-wide for the Yosemite toad. (*Id*. at 24288.) As a result, potential impacts to Yosemite toads must be assessed and mitigated before the Project can move forward.

Third, even more recently, on October 10, 2024, the California Department of Fish and Wildlife accepted a petition to list the Western Burrowing Owl as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. As a candidate species, the Western Burrowing Owl now has full protection of a threatened species under CESA. (See Cal. Fish & Game Code §§ 2074.4, 2085; Cal. Code Regs. tit. 14 § 783.1(b).)

The Western Burrowing Owl is a small ground-nesting bird of prairie and grassland habitats, forced to adapt to human-altered habitat as urban development and agriculture have spread. Burrowing owls largely rely upon burrows dug by burrowing mammals for nests, primarily those of ground squirrels in California. Where burrows are scarce, these owls may attempt to nest in pipes, culverts, or artificial nest boxes. Burrowing owls also frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats.

In California, preferred habitat for burrowing owls includes areas of short, sparse vegetation, such as grassy fields, vacant lots, and pastures, with useable burrows and foraging habitat proximity. Burrowing owls require open fields with adequate food supply for foraging habitat, low vegetative cover to watch for predators, and adequate roosting sites. These owls are often observed perching by their burrows or hunting insects, rodents, amphibians, or small birds in open fields.

Mono County falls within the burrowing owl's range,[10] and burrowing owls have been recently spotted throughout Mono County, photographed, and uploaded onto the eBird website.[11] As a result, potential impacts to burrowing owls must be assessed and mitigated before the Project can move forward.

Fourth, beyond these species, the Sierra Nevada red fox was listed as federally endangered in 2021 (86 Fed. Reg. 41743), and the wolverine was listed as federally threatened in 2023. (88 Fed. Reg. 83726.) A wolverine was spotted in Mammoth Lakes just two years ago in 2023 and could very well be impacted by the Project.[12]

In sum, the recent listing of these species provides significant new information and changed circumstances that a revised EIR must take into account.

E. The Town of Mammoth Lakes' Visitors Have Increased Since 2007, Resulting in Increased Traffic Congestion.

The 2007 EIR found the Project would result in less than significant impacts on traffic congestion. But the amount of traffic on Old Mammoth Road is much different in 2025 than 2007, especially considering substantial increases in tourism. Mammoth Lakes has gone from 2,323,979 visitor trips per year from 2015-16 to 3,939,221 from 2021-22.[13] As a result, Old Mammoth Road faces far more congestion now, which must be assessed and mitigated in a revised EIR due to changed circumstances.

IV. CONCLUSION

Thank you for the opportunity to submit comments on the Revised DA for Snowcreek VIII. I urge the Town to prepare a revised EIR that fully complies with CEQA and recirculate. Because significant new information has become available on many resource topics, the Town must re-evaluate and incorporate new circumstances as well as new research and studies on those impacts that have become available in the last 18 years.

Best,

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[10] CDFW. Burrowing Owl Range Map. Available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1872

[11] Numerous examples of this documentation was submitted with these comments.

[12] https://www.sfgate.com/california-parks/article/second-wolverine-101-years-seen-california-18127753.php

[13] https://pub-townofmammothlakes.escribemeetings.com/filestream.ashx?DocumentId=28565

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