APPEAL REQUEST FORM

APPLICATION 2022-00000071/DP-MUP-SP

Project Number/Name of Decision being Appealed: Tahoe Donner Downhill Ski Lodge Replacement

Type of Decision: (i.e. similar use determination, use permit, tentative map, variance, etc.)
Planning Commission decision to APPROVE APPLICATION 2022-00000071/DP-MUP-SP AND ADOPT A MITIGATED NEGATIVE DECLARATION AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM

Description of Decision: The Planning Commission acted to APPROVE APPLICATION 2022-00000071/DP-MUP-SP AND ADOPT A MITIGATED NEGATIVE DECLARATION AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM

I/we hereby appeal the decision as follows:

Appeal Description ***(Attach additional sheets if necessary)***: See attached objection letters.

1. Detail what is being appealed and what action or changes you seek. Specifically address the findings, mitigation measures, conditions and/or policies with which you disagree.
   See attached letters from Rachel Mansfield-Howlett and expert hydrogeolist Greg Kamman that detail the inadequacies of the MND and and proposed mitigation.

2. State why you are appealing—be specific. Reference any errors or omissions. Attach any supporting documentation.
   See attached letters from Rachel Mansfield-Howlett and expert hydrogeolist Greg Kamman objecting to the adequacy of the MND and mitigation.

3. Please provide a summation of your arguments in favor of the appeal.
   On behalf of Tahoe Change Group, objections were lodged by attorney Rachel Mansfield-Howlett and expert Greg Kamman regarding the adequacy of the MND and proposed mitigation. (see attached objection letters)

4. State the changes or action requested of the appeal body.
   Overturn the approvals of the project and its environmental review. Require preparation of an EIR. (see attached objection letters)

I/we certify that I/we are the: ☐ Legal owner(s) ☐ Authorized Legal Agent(s) ☒ Other Interested Persons

Name: Cheryll Cross Telephone: (510) 299-6870

Address: 16550 Northwoods Blvd, Truckee CA 96161

Appellant(s) Signature: Cheryll Cross on Behalf of Tahoe Donner Change Oct 5, 2023

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Senior Planner Yumie Dahn
YDahn@townoftruckee.com

September 26, 2023

Subject: Comments on the MND and Conceptual Drainage Plan (CDP) prepared for the Tahoe Donner Downhill Ski Lodge Replacement Project

Via email

Dear Ms. Dahn:

On behalf of the Tahoe Donner Change group, thank you for the opportunity to comment on the Mitigated Negative Declaration (MND) and the Conceptual Drainage Plan (CDP) prepared for the Ski Lodge project. My prior letters to you, of January and June of this year, including Greg Kamman's expert comment letter on the MND and proposed mitigation are included here, by reference.

I'm following up with you to offer additional comments, as well as additional comments by expert hydrogeologist Kamman, regarding the Town's addition of new information regarding the MND and the CDP. (Attached, September 26, 2023 report from registered geologist and hydrogeologist, expert Greg Kamman, PG, CHG, Senior Ecohydrologist, CBEC.) Both my January and June letters of this year and Mr. Kamman's reports should be regarded as comments on the adequacy of the MND and proposed mitigation.

The conceptual plan proposes to mitigate the project's hydrological impacts to the *"extent feasible"* yet as expert Kamman points out, the basic threshold questions – what quantity of groundwater will be released and will the plan accommodate this amount of water without resulting in impacts – have not been answered.

> The plan has not attempted to quantify the volume of groundwater that will be captured and sprayed in dispersal area. It is my opinion that if groundwater levels are high, the dewatering and dispersal plan described may not be able to sufficiently achieve the desired outcome. Without knowing groundwater conditions and the volumes of water to be captured and sprayed, the plan has not demonstrated it is feasible if elevated groundwater levels are encountered. (Page 1, CBEC report.)

The CDP is subject to CEQA's admonition not to defer study or mitigation of a project's potentially significant environmental impacts to a future time unless certain conditions are met. None of the conditions that would allow this deferral are currently met.

As an initial matter, the CDP is not a ministerial action. Its association with the discretionary project approvals convert it to a discretionary action. As explained in my previous June 2023 comment letter, CEQA requires the impacts of all the various elements of a project to be considered prior to project approval. This is referenced as the requirement for the Town to consider the "whole of the action." In disallowing segmentation, CEQA considers the CDP together with the environmental review and project approval, all of which are considered as part of the discretionary actions associated with this project.

The plan involves impermissible future study. Deferring identification of mitigation measures to future study cannot support a finding that a significant impact is mitigated to a less than significant level, ***because the mitigation remains uncertain***. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 312-314, a county required future hydrological studies as conditions of a use permit, specifying that any mitigation measures suggested by the studies would become requirements of the permit. The Court held that unspecified future mitigation based on a future study was improper. Here, the Town has not even required the project to operate under a conditional use permit, therefore there is very little ability for the Town to be able to enforce any aspect of the use of this large development project and mitigation remains uncertain. The Town's refusal to require the project to go through the usual CUP approval process is indeed mystifying.

Evaluating the impacts of a post project approval is also disallowed under CEQA for the simple reason that the Town must be able to assure the public that in adopting the MND, no segment of the project will result in ***any*** impacts at ***any*** time. Moreover, the ability to impose mitigation to bring all impacts to insignificance after the project is approved will have been lost. The MND's assurance that the project will not result in any impacts must include certainty about future actions and include objective performance criteria for any proposed future mitigation measure in order to be able to ensure the project is without remaining impacts at any stage of its development.

The staff report for the upcoming Planning Commission regarding the amendment to mitigation measure MM HYD-1 that includes the CDP states:

> The Plan shall ***minimize*** impacts to water quality, including Alder Creek, by incorporation of water quality best management practices (BMPs), e.g. the use of sediment basins or holding tanks, energy dissipators, and/or sediment traps, that are designed and proven to protect water quality of receiving waters, The Dewatering Contingency Plan shall prioritize gravity flow techniques, ***where feasible*** ...

The amended mitigation measure will become a part of the mitigation monitoring program. It's very unusual for an agency to adopt a mitigation monitoring program when an

MND is proposed. It is much more common to see a mitigation monitoring program when an EIR has been prepared because with an EIR, it is permissible for some impacts to remain, therefore, it's appropriate for an EIR to minimize impacts to the extent feasible. Conversely, in order for an MND to be considered valid, all impacts must be reduced to insignificance, therefore ***minimizing impacts*** is the incorrect standard to utilize in determines a mitigation measure's adequacy. With an MND every single impact *must* be reduced to insignificance, otherwise the fair argument applies and an EIR must be prepared.

The 240-page document that includes the Town's Master Responses to comments received on the MND was just released this last Thursday and is littered with comments opining how mitigation will be imposed for various project impacts according to best management practices and other means in order to ***minimize impacts***. This is not a valid standard for permitting the adoption of a mitigated negative declaration! The Master Response states:

> As described in the MND, implementation of the Dewatering Plan and the included BMPs, consistent with the most recent California Stormwater Quality Association Construction BMP Handbook, would ensure that any construction activities involving dewatering is conducted in accordance with proven effective measures that ***minimize the potential impacts*** to groundwater and any receiving waters …

The plan also involves an impermissible deferral of mitigation to a future time. CEQA disallows deferral of future mitigation when a mitigation plan does not include objective criteria to reduce ***all impacts to insignificance***. Here, if impacts remain after mitigation is imposed, the Town will have given false assurance that the project will not result in any impacts, and importantly, any future condition placed on the project will not be subject to public review or comment. The purpose of CEQA's disclosure requirements is so that the public is put on public notice of any potentially significant impact prior to the project's approval. Here, the plan merely includes minimization of impacts to the degree feasible, with no definitive objective standards.

Expert Kamman has evaluated the plan and determined that "there is nothing presented in the dewatering plan that alters my prior comments (June 16, 2023) to the Project IS/MND." He further detailed the failures of the MND and the CDP in the attached report. (Attached September 26, 2023 report by Greg Kamman, PG, CHG.)

I will not reiterate the objections I detailed in prior letters that were submitted to the Town in January and June of 2023 regarding, *inter alia*: processing a significant development permit without basic operational restrictions in place via the adoption of a major CUP and the standards for requiring an EIR to be prepared.

Sincerely,

Rachel Mansfield-Howlett

Attachment

cbec eco engineering

Hydrology | Hydraulics | Geomorphology | Design | Field Services

September 26, 2023

Tahoe Donner Change
16550 Northwoods
Truckee, CA. 96161

Subject: Review of MND Response to Comments and Conceptual Dewatering Plan
Tahoe Donner Downhill Ski Lodge, Truckee, California

Dear Tahoe Donner Change members:

As follow up to my review and comment letter (dated June 16, 2023) on the Public Draft Initial Study/Mitigated Negative Declaration (IS/MND sated May 2023) for the Tahoe Donner Downhill Ski Lodge, Truckee, California, you have asked me to review the September 2023 Response to Comments and Conceptual Dewatering Plan prepared by Auerbach Engineering Corporation and dated June 2023. My review comments on these documents are presented below.

Response to Comments dated September 2023

Responses to my comments to the Public Draft IS/MND are contained in Master Response 1 (Groundwater) starting on page 2 of the September 2023 Response to Comments section of the Proposed MND. Based on the description of site conditions contained in the MND and the proposed Civil Improvement Plans contained in Appendix D to the Preliminary Drainage Report prepared by Auerbach Engineering, Corporation dated December 2, 2022, it is my professional opinion that there is nothing in the Master Response 1 that alters my conclusions and comments contained in my June 16, 2023 comment letter. The basis of this opinion is as follows.

- The last sentence on page 2 and first sentence of page 3 of the Response to Comments speculate about the possible state of vertical connectivity (perched vs. fully saturated) and horizontal connectivity of the water table beneath the site. The uncertainty of groundwater

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conditions implied by these statements suggests the baseline groundwater conditions have not been adequately evaluated and described in the MND.

- The second sentence on page 3 states that all soils are saturated during spring snowmelt and other rainfall events and are not necessarily a barrier to design and feasibility of infiltration facilities. While I agree that saturated soil does not impede design, it certainly has a bearing on the infiltration feasibility. If soil is saturated, there are no unfilled voids in which water can be absorbed and stored, thus precluding infiltration.

- The final sentence of the first paragraph on page 3 states that seasonally shallow groundwater levels would not preclude the construction of the proposed infiltration facilities. The ability to construct the infiltration facilities is not in question; there is no argument that they can be constructed in saturated soil. The concern is that the infiltration facilities will not function as intended if they are underlain by saturated soil or intersect the groundwater table. The occurrence of saturated conditions calls into question the feasibility of infiltrating water into already saturated soil with no void pore space available to accept and store infiltration water.

- The second and fourth paragraphs on page 3 present an argument that reducing the length of the proposed project retaining wall foundation drain versus existing conditions would result in a reduced volume of water requiring drainage. This may be the case if the base of the foundation drains were located at the same elevation or depth below groundwater. However, Master Response 1 presents an invalid comparison as it does not account for the different base elevations of the existing and future foundation drains. The foundation elevation associated with the proposed Level 1 building will be at 6762 feet resulting in an associated foundation drain elevation around 5-feet lower (or 5 feet deeper) than the existing conditions drain elevation. This will lead to the proposed project foundation drain being submerged 5 feet deeper under groundwater, resulting in a longer period of being submerged and a greater volume of water discharge to the drainage swale versus a drain constructed at the existing condition elevation. The MND has not adequately quantified the discharge volume of either existing or future project condition foundation drains needed to evaluate the potential impact to the environment and should be considered incomplete. It is my professional opinion that such calculations are reasonably feasible using standard industry accepted methods but are lacking from the MND.

- The second sentence of the fifth paragraph on page 3 states that the geotechnical engineer (NV5) has indicated the volume of groundwater intercepted by the foundation drain would be on the order of a few gallons per hour. This sentence cites the AEC Technical Information in support of Responses to Comments (July 18, 2023) as the source of the NV5 estimate. However, there is no context of groundwater conditions associated with this estimate (i.e., season of year, timing of rainfall, groundwater levels, etc.). Nor is documentation of the AEC Technical Information provided in the MND to verify or evaluate the foundation drain discharge estimate. It is also my experience and professional opinion that discharge rates from the proposed project

foundation drain as designed and fully submerged by groundwater would result is a significantly higher flow rate than a few gallons per hour.

- The last sentence of the first paragraph on page 4 states that the background groundwater quality prior to capture by the drain is "typically quite high". What is the basis and/or documentation for this statement? What assurances are there that this applies to the project site?

- The final sentence of the second paragraph on page 4 states that the proposed infiltration facilities have been located downslope and setback sufficiently[1] from the foundation to prevent migration of infiltrated water into the foundation drainage system. I'm perplexed by this statement as Sheet C5 (Grading and Drainage Plan) of the proposed Civil Improvement Plans contained in Appendix D to the Preliminary Drainage Report prepared by Auerbach Engineering, Corporation (dated December 2, 2022) indicates the infiltration trench is located 0 to 20 feet upgradient of the proposed foundation drain depicted on Figure 1 of Master Response 1. Unless the project design has changed since release of the initial IS/MND, Master Response 1 is incorrect and the last sentence on page 5 (see footnote 1) corroborates my original comment and concern about the high probability of infiltration water capture by foundation drains.

Conceptual Dewatering Plan dated June 2023

Based on my understanding of surface and groundwater conditions at the site, I present the following concerns about the feasibility of the proposed Conceptual Dewatering Plan. There is nothing presented in the dewatering plan that alters my prior comments (June 16, 2023) to the Project IS/MND.

- The dewatering plan provides no indication on what time of year (spring, summer, or fall) when construction and dewatering will occur. Groundwater levels beneath the site vary throughout the year, ranging from near or at the ground surface during spring snowmelt season to deeper during drier periods of the year.

- The plan has not attempted to quantify the volume of groundwater that will be captured and sprayed in dispersal area. It is my opinion that if groundwater levels are high, the dewatering and dispersal plan described may not be able to sufficiently achieve the desired outcome. Without knowing groundwater conditions and the volumes of water to be captured and sprayed, the plan has not demonstrated it is feasible if elevated groundwater levels are encountered.

- The dewatering plan provides no indication on what time of year (spring, summer, or fall) when construction and dewatering will occur. Groundwater levels beneath the site vary throughout

[1] The last sentence on page 5 of the Response to Comments indicates that sixty (60) feet is sufficient distance from the foundation that the infiltration facilities will not have communication with the foundation drains.

the year, ranging from near or at the ground surface during spring snowmelt season to deeper during drier periods of the year.

- The plan has not attempted to quantify the volume of groundwater that will be captured and sprayed in dispersal area. It is my opinion that if groundwater levels are high, the dewatering and dispersal plan described may not be able to sufficiently achieve the desired outcome. Without knowing groundwater conditions and the volumes of water to be captured and sprayed, the plan has not demonstrated it is feasible if elevated groundwater levels are encountered.

- If excessive volumes of water are encountered during construction, there could be more water captured than the baker storage tank can handle when spray dispersal is not occurring (i.e., during non-construction periods such as night-time and/or weekends). If spray dispersal is not run on a continuous basis, excavated areas will fill and need to be pumped down to resume excavation. Dewatering per the plan operations will also lower the local groundwater table beyond the excavation area, which will recover to static levels when pumping ceases. The dewatering system will then require handling and disposing of this added volume when operations resume, and outlying groundwater levels draw down again.

- If spray dispersal operations are required around the clock for extended periods, dispersal area soils may become overly saturated leading to undesirable runoff from the dispersal area to downslope receiving lands and waters.

- If elevated water table conditions are experienced at the construction site, it is possible that the groundwater table elevations will be elevated close to the ground surface beneath the spray dispersal area. If shallow groundwater occurs under the spray dispersal area, there is limited unsaturated soil available to absorb the dewatered effluent. Once the unsaturated zone becomes saturated, there is no capacity to absorb the spray water and surface runoff will result.

In addition, the dewatering plan does not indicate if or how the dewatering system trenches and piping will be decommissioned/removed after construction.

Please feel free to contact me with any questions regarding the material and conclusions contained in this letter.

Sincerely,

Greg Kamman, PG, CHG
Senior Ecohydrologist