

# TOWN COUNCIL STAFF REPORT

Subject: Town Council/Planning and Economic Development Commission Workshop – Development Agreements and the Old Mammoth Place Development Agreement Application

Meeting Date: August 30, 2017

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## **RECOMMENDATION:**

Staff recommends that the Town Council and Planning and Economic Development Commission receive the information on the Old Mammoth Place Development Agreement and provide comments and direction as necessary.

## **BACKGROUND:**

This briefing was prepared to provide additional information to the Council and Commission about development agreements. This staff report describes what development agreements (DAs) are, the potential advantages and disadvantages of DAs, and how DAs are processed.

Although applications for development agreements are not common for the Town, a development agreement request from the Metric Mammoth LLC is currently being processed (“Old Mammoth Place DA”). The application for the Old Mammoth Place DA was submitted in May 2017, after approval of the Old Mammoth Place project amendments (District Zoning Amendment 15-002; Vesting Tentative Tract Map 16-001; Use Permit 16-001 (Amendment of Use Permit 09-003); and Design Review 16-004). Together the Old Mammoth Place entitlements and DA present the greater program, public use and access, and financial benefit required by the development agreement statute (Government Code § 65866) and Municipal Code.

## **ANALYSIS:**

### **1. What are Development Agreements?**

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

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

State law and the Town’s Municipal Code 17.108 outline the required content of DAs:

- The duration of the agreement.
- The permitted uses of the property.
- The density or intensity of uses.
- The maximum height and size of proposed structures.
- Provisions for reservation or dedication of land for public purposes.
- Provisions requiring annual review pursuant to Government Code 65865.1.
- A general phasing plan.

Development agreements may also include:

- Conditions, terms, restrictions, and requirements for subsequent discretionary actions; provided that these do not prevent development as set forth in the agreement.
- Terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.
- Fee requirements.

Currently, the only executed development agreements with the Town are the Intrawest Development Agreement, executed in 2002, and the Snowcreek Development Agreement, executed in 2010.

## **2. What are the Advantages of Development Agreements?**

Both parties to a DA receive benefits. DAs allow public agencies more flexibility to impose conditions and requirements to achieve greater community benefits, such as through the provision of needed facilities, improvements or services, exactions, and fees<sup>1</sup>. DAs can also require certain facilities or improvements be completed at an earlier stage in the development process as appropriate. One of the Town’s required findings to approve a DA is, “the DA shall be shown to be of greater benefit to the community than development under present zoning.”

DAs benefit applicants by vesting or “freezing” the applicable rules, regulations, and policies in place at the time of execution of a DA for future development under the project, unless otherwise specified in the DA<sup>2</sup>. Vesting regulations can be an advantage if an applicant believes requirements or fees may increase in the future. This gives applicants additional certainty in the process. Once a project is approved with a DA, the developer knows most expectations and cost burdens will not change, unless specifically permitted by the DA or the parties otherwise agree. However, any new, generally applicable health and safety requirements will still apply.

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<sup>1</sup> DAs are not subject to the typical nexus and proportionality tests for fees and exactions because they are voluntary contractual agreements by both parties.

<sup>2</sup> Typically, land use and development standards are vested; health/safety regulations are not.

### **3. What are the Disadvantages of Development Agreements?**

Although there are various benefits of DAs, there are also disadvantages. One disadvantage is a DA can limit a public agency's ability to respond to a changing regulatory environment because rules and regulations are vested. Therefore, if an agency's regulations are in need of updating, a DA would need to be drafted to sufficiently protect the community's current and future interests. Similarly, an applicant's obligations are also locked in by a DA. That can pose disadvantages due to unanticipated changing market conditions or project economics that may not be reflected in a DA.

Another disadvantage is unrealistic DA expectations may make a project infeasible. In other words, a public agency could require conditions in a DA that are too restrictive and onerous to allow a project to succeed. Of course, since DAs are negotiated at arm's length with developers, each developer is responsible for knowing what can be agreed to without jeopardizing the project's feasibility.

Also, because DAs are negotiated, the quality of a DA depends on both parties bringing the right information forward during the negotiation process. Once adopted, DAs require mutual consent to change, which makes it difficult to add conditions or requirements after the DA is executed.

### **4. How are Development Agreements Processed?**

Municipal Code Chapter 17.108 outlines the Town's processing requirements for DAs:

1. Pre-application Procedure – Applicant should hold preliminary consultations with the Community and Economic Development Department. (Applicant has been meeting with the Town Manager starting in February 2017).
2. Town Council notification of application. (Staff provided notification to the Town Council on June 20, 2017)
3. Town staff and applicant team conduct DA negotiations, and develop a draft DA. (Underway). DA negotiations and developing a draft DA is an exhaustive process. Various terms, conditions, and requests are discussed that require detailed analysis by both parties and numerous meetings. The Town's legal counsel is extensively involved during this step as legal issues repeatedly arise.
4. Planning and Economic Development Commission public hearing to make a recommendation on the DA to the Town Council. The Planning and Economic Development Commission public hearing allows the Commission and public to review the terms of the draft DA and provide input on the equity of the proposed agreement to both parties. The Commission makes a recommendation to Town Council that the Council considers when making the ultimate decision on a DA. The Planning and Economic Development Commission public hearing for the DA is anticipated to be held on September 13, 2017.

5. Town Council public hearing to consider the first reading of an ordinance approving the DA. Town Council must make the findings listed in Municipal Code Section 17.108.040 before it can approve a DA.
6. Town Council 2<sup>nd</sup> reading of DA ordinance.
7. Referendum period (30-days).

DAs are subject to annual review, as required by State law, to evaluate compliance with required terms and conditions. Project proponents must demonstrate good faith compliance with the DA. DAs are recorded, which binds future owners to the requirements and obligations contained in the DA.

## 5. Old Mammoth Place DA Request

The applicant for the Old Mammoth Place DA has proposed a series of terms or negotiated deal points that when considered together present a package of guarantees and benefits for both the Town and applicant. Staff has summarized the terms below:

### Proposed Terms and Commitments:

- Twenty-year term with Town option to terminate agreement if developer does not pull a demolition permit and apply for a building permit within 48 months.

### Financial

- *Housing Fees.* The Housing Ordinance (Chapter 17.136 of the Zoning Code) in effect at the time of the execution of the DA will be used as the calculation method for affordable housing fees. Staff has prepared a preliminary calculation based on the project as approved. The fee calculated pursuant to Chapter 17.136 of the Zoning Code is \$918,800.
- *Transient Occupancy Tax.* The developer has proposed that the Town reinvest a portion of the Transient Occupancy Tax generated by the project back into the project. The developer has proposed that the Town refund to the developer a total of approximately \$23 million of Transient Occupancy Tax (in terms of net present value) over a period of up to 20 years. This equates to a subsidy granted by the Town to the developer of a total of approximately \$46 million over a period of 20 years. Staff will prepare additional detail, including a spreadsheet of the proposed reinvestment and basis, prior to the workshop.
- *Development Impact Fees.* The developer will pay the DIF fees according to the DIF resolution in place at the time of the building permit application and in accordance with the approved entitlements for the project (DZA 15-002, TTM 16-001, UP 16-001, DR 16-004).
- *Enhanced Recreation Fees.* In addition to the DIF Fees, including the Parkland and Recreation portion of DIF, the developer will pay \$2,950 per room for enhanced recreation. Based on the approved project, this fee would total approximately \$1,000,000. The fee would be paid at the time of the first temporary or final Certificate of Occupancy issued for the project.

## General

- *Gondola.* Town will not unreasonably object to the concept of a gondola from the project site to the Village, but will not have any obligation to fund or otherwise participate in the construction of a gondola.
- *Enhanced Infrastructure Financing District (EIFD).* If the Town establishes an EIFD, the developer will consider participating in the development of infrastructure to be funded by the EIFD and not included as a project condition of approval or a requirement of the DA.
- *Housing for Construction Employees.* The developer will provide 12 units of housing available for construction employees. The developer will be prohibited from using housing in the RMF-1 zoning district (i.e. Sierra Valley Sites) to house construction workers. Town will have first right of refusal to purchase any construction worker housing after the project construction is complete.

## Other Development Agreement Terms

- Vests rules in place at the time of the execution of the development agreement. Does not vest California Building Code requirements, Development Impact Fees or calculation method, or fees imposed by other governmental agencies.
- Extends the term of the tentative map for the property to be the same term as the DA (20 years).
- The developer may request subsequent permits which will be processed by the Town according to the vested rules.
- The developer has requested that the Town provide access to Town recreation facilities at a set rate for their guests. Staff is working with the developer on this term.

## **6. Old Mammoth Place DA Community Benefits**

- Increased sales taxes, transient occupancy taxes, and property taxes.
- Town will have the right to use the outdoor plaza area at no charge for up to 12 days for year for civic functions.
- Significant new public infrastructure including:
  - New pedestrian and vehicular mid-block connector road and sidewalks.
  - Street improvements on Old Mammoth Road including road widening, sidewalks, and expanded bus pull out area.
- Contribution of an amount not to exceed \$100,000 for a new transit shelter on the east side of Old Mammoth Road, adjacent to Sierra Manors.
- Portions of the understructure containing 597 parking spaces will be available for public parking, including 100% of the parking spaces for the commercial and restaurant areas and 50% of the parking spaces for the hotel and residential areas.
- Developer will provide on-street public parking spaces, as determined in consultation with the Town Engineering Department, along the Project perimeter.
- Developer will provide water filling stations (e.g., drinking fountains and water bottle filling stations for pets) in public spaces, to be determined in consultation with the Town Engineering Department. These facilities will be winterized as needed.

- Developer will provide 200 square feet of ground floor retail space at no cost to the Town (including rent, utilities, etc.) for civic purposes (e.g. Chamber of Commerce information, Mammoth Lakes Tourism information, Town programs and products).
- Town will have the right to use the conference center space at no charge for up to eight days per year.
- The Town will have up to 12 hotel room nights at no charge to use for consultants, town employee interviews, and other guests.
- Developer will provide a shuttle service for guests and hotel condominium owners to Mammoth Airport and Mammoth Mountain Ski Area.
- Project will provide an approximately 5,500 square foot spa and wellness center.
- Project will be constructed to Leadership in Energy and Environmental Design (LEED) standards.

## **7. Recommendation**

Staff recommends that the Town Council and Planning and Economic Development Commission discuss the proposed DA terms as well as community benefits and provide questions and comments as necessary.

## **OPTIONS ANALYSIS**

This is a workshop item; no options are provided.

### **FINANCIAL CONSIDERATIONS:**

All direct costs of processing, reviewing, reporting, hearing, and acting upon a DA shall be borne by the Applicant (Municipal Code 17.108.020.D). DA negotiations include terms related to potential financial contributions to the Town.

### **ENVIRONMENTAL CONSIDERATIONS:**

Development agreements are subject to the required environmental review process dictated by the California Environmental Quality Act (CEQA).

### **LEGAL CONSIDERATIONS:**

The Town's legal counsel is included as part of the negotiating team for development agreements.