

Mammoth Lakes Town Council Agenda Action Sheet

Council Meeting Date: November 19, 2014

Date Prepared: November 7, 2014

Prepared by: Jen Daugherty, Senior Planner

Title: Receive and file the Snowcreek Development Agreement annual review report

Agenda: Consent

Recommended Motion: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.

Background Information: The Snowcreek Development Agreement (DA) was approved by Town Council and became effective on July 23, 2010. The DA provides a 20-year vesting for the Snowcreek Master Plan Update (Snowcreek VIII) and Snowcreek VII projects. The DA achieves mutual benefits for both the Town and the Developer.

DAs are subject to annual review to evaluate compliance with required terms and conditions. The 2014 Snowcreek DA annual report finds that the Developer is in good faith substantial compliance with the terms and conditions of the DA.

The DA requires permanent protection of the Mammoth Creek Open Space Corridor by July 23, 2014. The Developer has been working to transfer this Creek Corridor property to the Department of Fish and Wildlife (DFW) for permanent protection. Since DFW's process is outside of the Developer's control, the Town has determined that the Developer is in good faith substantial compliance with the DA. The Developer is also exploring other options for permanent preservation of the Creek Corridor, such as donation of the property to the Town.

Funds Available: N/A

Account #: N/A

Reviewed by:



Town Manager

Town Attorney



Finance



Planning Manager

Town Vision / Priority: The Snowcreek DA is consistent with the Town's Vision because it further implements the Snowcreek VII and Snowcreek Master Plan Update (Snowcreek VIII) projects, which were both found in conformance with the Town's Vision and the General Plan. The projects support the Council's priorities of diversifying economic development and enhancing community amenities.

STAFF REPORT

Subject: Receive and file the Snowcreek Development Agreement annual review report

Written by: Jen Daugherty, Senior Planner

RECOMMENDATION:

Staff recommends the following to the Town Council: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.

CONSIDERATION OF THE TOWN'S VISION, TOWN COUNCIL PRIORITIES, AND MANDATES:

- *The proposed action is legally mandated.* Development agreements (DAs) are subject to annual review, as required by State law and Municipal Code 17.108.090, to evaluate compliance with required terms and conditions. Project proponents must demonstrate good faith compliance with the DA.
- *The proposed action relates to the following Town Council priorities:* The Snowcreek DA and 2014 annual review supports the Council's priorities for diversifying economic development and enhancing community amenities because the Snowcreek DA further implements the Snowcreek VII and Snowcreek Master Plan Update (Snowcreek VIII) projects, which include a hotel, expansion of the 9-hole golf course to 18-holes, and additional transient rental units.
- *The proposed action meets the following aspects of the Town's Vision:* The Snowcreek DA is consistent with the Town's Vision because it further implements the Snowcreek VII and Snowcreek Master Plan Update (Snowcreek VIII) projects, which were both found in conformance with the Town's Vision and the General Plan.

The Snowcreek DA achieves mutual benefits for both parties, including helping to ensure the Snowcreek VII and VIII projects are implemented.

The DA also provides greater community benefits than could be achieved through the current zoning, including the Additional Financial Contribution and permanent preservation of the Mammoth Creek open space corridor parcel.

BACKGROUND:

Development Agreements

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

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

State law, Government Code 65864 et seq., and Municipal Code Chapter 17.108 outline the requirements for Town of Mammoth Lakes DAs. DAs are recorded, which binds future owners to the requirements and obligations contained in the DA. The Snowcreek DA was adopted consistent with these requirements.

Snowcreek DA

The Snowcreek DA was approved by Town Council via Ordinance 10-08 and became effective on July 23, 2010. The DA provides a 20-year vesting for the Snowcreek Master Plan Update (Snowcreek VIII) and Snowcreek VII projects, which total approximately 260 acres within the Snowcreek Master Plan area.

The Snowcreek DA is intended to:

- Increase the likelihood the subject development projects are built as intended in the long-term;
- Ensure the provision of needed facilities, improvements or services; and
- Provide assurance to the developer regarding the rules, regulations, and policies applicable to future development.

Both the Town and the Developer share mutual interest in implementation of Snowcreek VII and Snowcreek VIII projects and the resultant improvements that would result.

Community benefits provided through the Snowcreek DA include:

- Allowing egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range earlier than required (DA Section 2.2.1.a).
- Permanent preservation of the Mammoth Creek open space corridor (DA Section 2.2.1.b).
- Additional Financial Contribution (“AFC”) paid per unit at building permit issuance. This cash flow could result in up to \$10 million to use for purposes beneficial to the community and intended to be applied to various projects located within a surrounding geographic nexus (DA Section 2.2.2).
- Fiscal benefits that will accrue to the Town and community through the implementation of the Project as intended that would not occur without the DA, including transient occupancy taxes.
- Secondary access for both Snowcreek V and VIII and the emergency vehicle access road, which is in addition to the Fire District requirements.
- Establishment of public access across certain points of the project to surrounding public lands prior to project construction and after completion, which would provide access to an enhanced network of publicly accessible multi-use paths that is connected to the Town’s trail system.

Additional community benefits provided by the Project are identified in the Recitals of the DA.

ANALYSIS/DISCUSSION:

Because of economic conditions and the significant impacts caused by the recession, a determinate phasing schedule of development was not practical and was not approved with the Snowcreek DA. Rather, basic performance milestones were provided, which are listed in the attached annual review report (Attachment 1). The DA allows for a finding that it is acceptable for milestones to have not been met due to unavoidable delays or events as described in Section 11.15 of the DA.

Attachment 1 is the 2014 annual review report for the Snowcreek DA. This report finds that the Developer is in good faith substantial compliance with the terms and conditions of the DA.

The annual report identifies that the permanent protection of the Mammoth Creek Open Space Corridor was required by July 23, 2014. As described in Attachment 3, the Developer has been working to transfer the ownership of the Mammoth Creek Open Space Corridor to the Department of Fish and Wildlife (DFW) for permanent protection. Since the DFW process is outside of the Developer's control, the Town has determined that the Developer is in good faith substantial compliance with the Snowcreek DA. The Developer is also exploring other options for permanent preservation of the Creek Corridor, such as donation of the property to the Town.

OPTIONS ANALYSIS

- Option 1: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement.
- Option 2: Receive and file the Snowcreek Development Agreement annual review report, finding the Developer in good faith substantial compliance with the terms and conditions of the Development Agreement, and comment on the report or request further information or public discussion at a future regular public meeting or closed session, as legally permitted.

Both options allow the Snowcreek DA annual report to be filed consistent with the requirements of the Snowcreek DA.

STAFFING CONSIDERATION:

The work associated with the Snowcreek DA annual review has been considered in staff's work priorities and work programs.

FINANCIAL CONSIDERATIONS:

The Snowcreek DA includes terms related to financial contributions to the Town, such as the Additional Financial Contribution (e.g., \$10,000 per unit provided to the Town at time of building permit issuance pursuant to DA Section 2.2.2). The DA vests development impact, affordable housing in-lieu, application processing, and building permit fees for 20 years. Application processing fees will be subject to a cost of living adjustment (COLA).

ENVIRONMENTAL CONSIDERATIONS:

An Environmental Impact Report (EIR) was certified for the Snowcreek Master Plan Update (Snowcreek VIII) Project (SCH# 2006112015). A

Mitigated Negative Declaration was adopted for the Snowcreek VII Project (SCH# 2006022011). Pursuant to CEQA Guidelines Section 15161, no additional environmental review is required for the DA annual review.

LEGAL CONSIDERATIONS:

The Town's legal counsel and special legal counsel were part of the Town's negotiating team for the Snowcreek DA. The Town Attorney has reviewed this staff report.

Attachments

1. Snowcreek DA 2014 Annual Review Report
2. Letter from Mr. Chuck Lande initiating Snowcreek DA annual review, dated October 20, 2014
3. Town July 22, 2014 Memo regarding Department of Fish and Wildlife's processing timelines for transfer of the Mammoth Creek Corridor property
4. Snowcreek DA - available online at <http://www.ci.mammoth-lakes.ca.us/index.aspx?nid=364>

Attachment 1

Snowcreek DA 2014 Annual Review Report

Snowcreek Development Agreement - 2014 Annual Review Report

Development Agreement Schedule of Performance Review

Snowcreek Hilltop Development Company, L.P. & Snowcreek Investment Company, L.P. Development Agreement

Summary: Snowcreek Development Agreement

Effective Date: July 23, 2010

Term: 20 years

Expiration Date: July 23, 2030

Affected Projects:

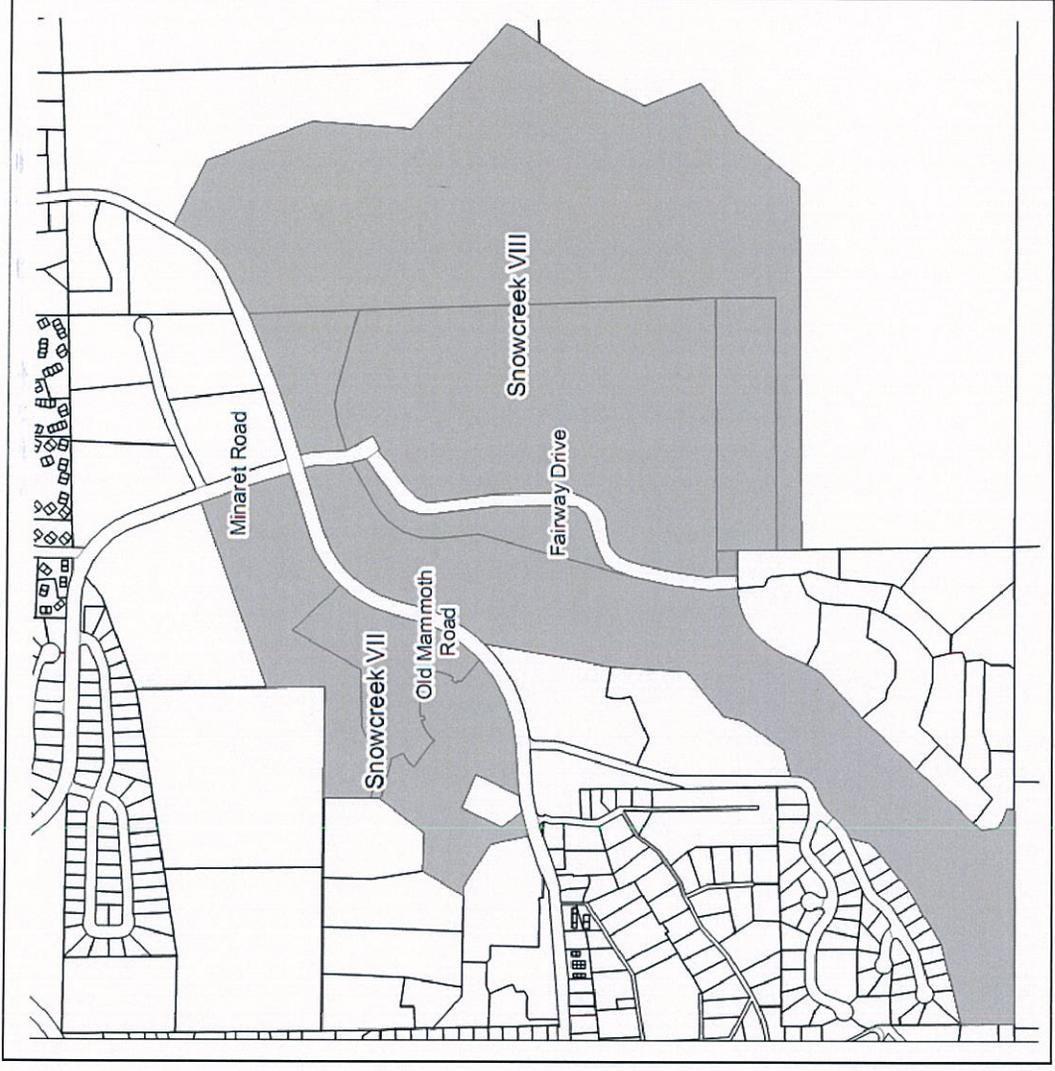
- 1. Snowcreek VII
- 2. Snowcreek VIII

Town Manager Determination: Developer is found to be in good faith substantial compliance with the terms and conditions of the Snowcreek Development Agreement.

Interim Town Manager: Daniel C. Holler

Signature: *Daniel C. Holler*

Date: November 10, 2014



Snowcreek Development Agreement – 2014 Annual Review Report

Development Agreement Milestones (Article 2, Section 2.2.1)

Subject	Milestone	Due Date	Actual Date of Implementation	Satisfied/Complete	Notes
Annual Review	Developer will initiate the annual review by submitting a written statement to the Town Manager describing the Developer's good faith substantial compliance with the terms and conditions of the DA for the prior calendar year (7.2.2).	Initiated October 31 st each year	Letter received on October 20, 2014	Yes	This annual review report is to be received and filed by Town Council on November 19, 2014.
Backcountry Egress	Allow egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range prior to effective date of DA (2.2.1.a).	Prior to effective date of DA	Prior to effective date of DA	Yes	
	Continue to allow [egress of backcountry skiers, snowboarders, and snowshoers from the Sherwin Range] during the pendency of construction of that portion of the Projects so long as the Developer, at its sole election, determines that such egress shall not negatively affect public safety (2.2.1.a).	On-going during construction of portion of the Projects that would affect that Sherwin Range egress			
Mammoth Creek Open Space Corridor	Record a real estate conveyance document, whether a grant deed, a conservation easement, or another legal mechanism reasonably approved by the Town Attorney, to permanently protect the Mammoth Creek Open Space Corridor (2.2.1.b).	July 23, 2014			Town July 22, 2014 memo found Developer in good faith substantial compliance because DFW's process to accept this property is outside of the Developer's control.
Phasing	Actual construction will occur in phases and subphases based on what the market will absorb at any given point in time. It is the	Application for each use permit or Subsequent			

Snowcreek Development Agreement – 2014 Annual Review Report

	<p>intention of the parties for each phase or subphase of the Projects to provide all of the facilities, programs (including affordable housing), features, amenities, access and easements described in the Vested Rules as well as payment of all fees at the time set forth in the Vested Rules, related to that phase or subphase. The parties agree to discuss the actual phasing of development and the associated timing for completion of facilities, programs (including affordable housing), features, amenities, access and easements in connection with the application for each use permit or Subsequent Approval (2.2.1.c.1).</p>	<p>Approval; on-going with each phase of construction</p>		
<p>Resort Hotel and 18-Hole Golf Course</p>	<p>Subject to Section 11.15, if development of the Resort Hotel and 18-hole championship golf course has not commenced within 10 years after the effective date of the DA, then the remaining 10-year term of the DA shall be reduced one day for each day, or portion thereof, the 10-year milestone has not been met (2.2.1.c.2).</p>	<p>July 23, 2020</p>		
<p>Project Sales Price</p>	<p>Publicly available Project sales price activity shall be reviewed during the Annual Review, pursuant to Section 7.2 (2.2.2.f.3)</p>	<p>During annual review once units are for sale or have been sold</p>		

Additional Progress

In addition to the milestones identified above, progress has been made on Snowcreek permits:

- Grading permit for golf course recycled water pond approved (GP 14-12).
- High-quality hydroseed and an irrigation system placed on the Snowcreek VII stockpile.

Attachment 2

**Letter from Mr. Chuck Lande initiating Snowcreek DA annual
review, dated October 20, 2014**

October 20, 2014

Ms. Jennifer Daugherty
Associate Planner
Town of Mammoth Lakes
P.O. Box 1699
Mammoth Lakes, California 93546

Re: Snowcreek Development Agreement

Dear Jen,

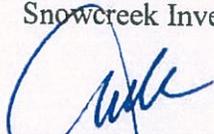
Pursuant to the content of Paragraph 7.2 Annual Review of the Development Agreement by and between Town of Mammoth Lakes, Snowcreek VII LLC (fka Snowcreek Hilltop Development Company L.P.) and Snowcreek Investment Company LLC (fka Snowcreek Investment Company L.P.), this letter shall serve to initiate the annual review leading to the determination of Developer's good faith substantial compliance with the terms of the Agreement. Given the continued economic recession the Country and Town have experienced over the last few years, we have taken action to be able to record the Tentative Tract Map. We have reached a verbal agreement with the California Fish and Wildlife Agency to accept title to the Mammoth Creek parcel. The Agency has been "processing" the paperwork through CFW channels, now in Sacramento. I also understand the CFW have had some discussions with you/Town of Mammoth Lakes. Acceptance of this parcel will accomplish two provisions of the Development Agreement – achieving the goals of an Open Space Easement over the parcel and satisfaction of the Deer Migration Mitigation.

And as you have seen, construction continues on units/buildings on the Hilltop Parcel. The sale of units has dictated the construction pace.

If there are any questions regarding the Development Agreement, please do not hesitate to call.

Sincerely,

Snowcreek VII LLC
Snowcreek Investment Company LLC



Charles R. Lande

Attachment 3

**Town July 22, 2014 Memo regarding Department of Fish and
Wildlife's processing timelines for transfer of the
Mammoth Creek Corridor property**



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT
P.O. Box 1609, Mammoth Lakes, CA 93546
Phone: (760) 934-8989 Fax: (760) 934-8608
www.townofmammothlakes.ca.gov

DATE: JULY 22, 2014
TO: DANIEL C. HOLLER, TOWN MANAGER
FROM: SANDRA MOBERLY, PLANNING MANAGER & JEN DAUGHERTY, SENIOR PLANNER
RE: SNOWCREEK DEVELOPMENT AGREEMENT – MAMMOTH CREEK OPEN SPACE CORRIDOR PRESERVATION
CC: CHARLES R. LANDE, SNOWCREEK HILLTOP DEVELOPMENT COMPANY L.P. AND SNOWCREEK INVESTMENT COMPANY L.P.

Section 2.2.1.b of the Snowcreek DA requires the Developer to have recorded a real estate conveyance document, whether a grant deed, a conservation easement, or another legal mechanism reasonably approved by the Town Attorney, to permanently protect the Mammoth Creek Open Space Corridor.

Operating Memorandum No. 1 to the Snowcreek Development Agreement extended the deadline for permanent protection of the Mammoth Creek Open Space Corridor until July 23, 2014 or the commencement of construction of the new golf course, whichever comes first. Commencement of construction of the new golf course has not occurred; therefore, the July 23, 2014 deadline is in effect.

The Developer has been working to transfer the ownership of the Mammoth Creek Open Space Corridor to the Department of Fish and Wildlife (DFW) for permanent protection. It is the DFW's intent to accept this property and is proceeding through the process necessary for acceptance. DFW anticipates completing this process in approximately four months (please see attached July 18, 2014 email from DFW).

Therefore, although the Developer has not completed the permanent preservation of the Mammoth Creek Open Space Corridor by July 23, 2014, the Town finds the Developer to be in good faith substantial compliance with the DA because of the progress with DFW and because the DFW's timelines are outside of the Developer's control. The Developer's compliance will again be reviewed by the Town during the DA annual review, which is to be initiated by the Developer prior to October 31, 2014 (DA Section 7.2.2).

Attached:

- Operating Memorandum No. 1
- DFW email, July 18, 2014



**TOWN OF MAMMOTH LAKES
COMMUNITY DEVELOPMENT DEPARTMENT
P.O. Box 1609
437 Old Mammoth Road, Suite R
Mammoth Lakes, CA 93546**

**SNOWCREEK DEVELOPMENT AGREEMENT
OPERATING MEMORANDUM NO. 1**

This document is Operating Memorandum No. 1 to the Snowcreek Development Agreement (DA), in accordance with DA Section 7.1.

Section 2.2.1.b of the Snowcreek DA requires the Developer to have recorded a real estate conveyance document, whether a grant deed, a conservation easement or another legal mechanism reasonably approved by the Town Attorney, to permanently protect the Mammoth Creek Open Space Corridor by July 23, 2012.

However, Section 11.15 of the DA identifies that performance by any Party shall not be deemed to be in default where unavoidable delays or events occur. Unavoidable delays or events include market forces beyond the Parties' control. Upon the occurrence of an unavoidable event, the time for performance shall be extended for the duration of the unavoidable delay.

Snowcreek VIII Mitigation Measure BIO-4a requires the applicant to purchase or contribute funds to purchase a conservation easement on property(ies) that contain important lands for the Round Valley mule deer herd or any other migratory mule deer herd within the Mammoth Lakes vicinity as determined by California Department of Fish and Game (CDFG). In lieu of providing replacement land, the CDFG may approve an in lieu protection program. Satisfaction of this mitigation measure is required prior to the onset of construction activities associated with the development of the new golf course. The Developer intends to utilize the Mammoth Creek Open Space Corridor to satisfy this mitigation measure requirement.

Both Parties agree that the Great Recession and continued economic downturn constitute market forces beyond the Parties' control, which have delayed the development of the Snowcreek VIII Project, including the new golf course. Therefore, the deadline for Snowcreek Investment Company to comply with Section 2.2.1.b is extended for two years, until July 23, 2014, or the commencement of construction for the new golf course, whichever comes first. The Parties acknowledge that execution of this Operating Memorandum No. 1 does not constitute an amendment to the DA, and is merely a recognition that "market forces beyond the Parties' control" pursuant to section 11.15 of the DA have necessitated extension of this deadline.

THE TOWN OF MAMMOTH LAKES,
a municipal corporation

By: David Wilbrecht
David Wilbrecht, Town Manager

Date: 9/28/12

SNOWCREEK INVESTMENT COMPANY
a California limited partnership

By: Chadmar SIC Partners LLC, its general partner
Chadmar, Inc., its manager

By: Charles R. Lande
Charles R. Lande

Date: 10.9.12

Jen Daugherty

From: Ellsworth, Alisa@Wildlife <Alisa.Ellsworth@wildlife.ca.gov>
Sent: Friday, July 18, 2014 10:20 AM
To: Jen Daugherty
Cc: Chuck Lande
Subject: RE: Mammoth Creek Meadow ownership transfer

Follow Up Flag: Follow up
Flag Status: Completed

Hi Jen,

It is the intent of CDFW Region 6 to accept the property as mitigation for the SnowCreek project. I have processed the HMLA package that Chuck provided me and it is now with our Regional Manager for signature. It will then go to Sacramento for processing. I believe this process takes approximately 4 months but is also determined by how backlogged they are. I can stay in touch with both you and Chuck on this process.

Sincerely,

Alisa Ellsworth
Senior Environmental Scientist
Lands North Region 6
California Dept of Fish and Wildlife
407 W. Line St.
Bishop, CA 93514
(760) 872-1173
Alisa.Ellsworth@wildlife.ca.gov
www.wildlife.ca.gov

From: Jen Daugherty [<mailto:jdaugherty@townofmammothlakes.ca.gov>]
Sent: Friday, July 18, 2014 8:08 AM
To: Ellsworth, Alisa@Wildlife
Cc: Chuck Lande
Subject: Mammoth Creek Meadow ownership transfer

Hi Alisa,

Thanks for speaking to me last week about DFW accepting the Mammoth Creek Corridor property from Mr. Chuck Lande. So I can update my files, could you please send me an email describing that DFW will be accepting this property and how long you expect it to take to be approved/finalized?

I would really appreciate it if you could respond before Wednesday 7/23.

Thanks!

Jen Daugherty

Senior Planner
Town of Mammoth Lakes
P.O. Box 1609
437 Old Mammoth Road, Suite R (FedEx, UPS, and courier)
Mammoth Lakes, CA 93546
Ph: (760) 934-8989 x260
Fax: (760) 934-8608
jdaugherty@townofmammothlakes.ca.gov

www.townofmammothlakes.ca.gov

***Beginning January 3, 2014 the Town Administrative Offices will be closed to the public on Fridays, except by appointment. Please call ahead to make an appointment if needed.*

PLEASE UPDATE YOUR ADDRESS BOOK WITH MY NEW EMAIL ADDRESS: jdaugherty@townofmammothlakes.ca.gov

Attachment 4

Snowcreek DA

Available online at

<http://www.ci.mammoth-lakes.ca.us/index.aspx?nid=364>