

MEMORANDUM
COMMUNITY DEVELOPMENT/RESOURCE AGENCY
PLANNING SERVICES DIVISION
County of Placer

TO: Board of Supervisors

DATE: May 17, 2016

FROM: Michael Johnson, AICP
Agency Director

SUBJECT: Withdrawal of Appeals for (1) Northstar Forest Flyer (PCPA 20130040) and (2) Northstar Basin Retrofit Project (PLN15-001114/ESD14-00104)

ACTION REQUESTED

Accept appellant Aspen Grove Owners Association's request to withdraw the appeals filed for (1) Northstar Forest Flyer (PCPA 20130040) and (2) Northstar Basin Retrofit Project (PLN15-001114/ESD14-00104).

BACKGROUND

Northstar Forest Flyer (PCPA 20130040)

Aspen Grove Condominium Association filed an Appeal of the Planning Commission's May 23, 2013 approval of the Conditional Use Permit and adoption of the Mitigated Negative Declaration to allow for the construction and operation of an all-weather toboggan-style downhill coaster. The Appeal was scheduled for the July 23, 2013 Board hearing. On July 9, 2013, the applicant requested to continue "off-calendar". The appellant agreed via their attorney, Greg Gatto. Staff took forward a staff report requesting a continuation to an open date which the Board approved.

Northstar Basin Retrofit (PLN15-001114/ESD14-00104)

On September 10, 2015, Stoel Rives LLP (on Behalf of Aspen Grove Condominium Association) appealed the Development Review Committee's September 1, 2015 adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approval of the Northstar Basin Retrofit Project Grading Plans to replace portions of the existing interim storm drain system with a permanent underground treatment system and overflow channel that would discharge excess flows to the West Fork of West Martis Creek.

On November 25, 2015, Stoel Rives LLP (on Behalf of Aspen Grove) appealed the Planning Commission's November 19, 2015 denial of its third-party appeal, and upholding of the adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, and approval of the Grading Plans. Both parties subsequently waived the 90-day appeal period and requested a continuance of the appeal hearing to the May 17, 2016 Board meeting.

On April 28, 2016, a letter was received from Stoel Rives LLP, on behalf of the Aspen Grove Condominium Association, requesting withdrawal of both of the above appeals (Attachment A). The request states that this request is made "pursuant to a settlement" in the third-party litigation with various Northstar entities. The County is not a party to this settlement and is not privy to any of the terms. While Aspen Grove reserves its rights in this letter to comment or oppose changes to either of the above approvals, this right is one available to all members of the public in the context of the public review and hearing process for discretionary projects.

Pursuant to County Code Chapter 17, Article 17.60, Section 17.60.110(D)(5): "After an appeal of a decision has been filed, an appeal shall not be withdrawn except with the consent of the appropriate hearing body." Therefore, staff brings forward the appellant's request to withdraw the above appeals to the Board for consideration.

RECOMMENDATION

Staff recommends the Board accept the request to withdraw the pending appeals on (1) Northstar Forest Flyer (PCPA 20130040) and (2) Northstar Basin Retrofit Project (PLN15-001114/ESD14-00104) and direct the Clerk to remove these appeals from the Board's calendar.

ATTACHMENT

Attachment A: Request to Withdraw Appeal, dated 04/28/16

cc: Karin Schwab, County Counsel
Michael Brown, Esq., and Greg Gatto, Esq., Stoel Rives LLP
Andrew Strain, CLP Northstar
Beth Collins-Burgard, Esq., Brownstein Hyatt Farber Schreck
Alan Miller, Chief North Basin Regulatory Unit, Lahontan
E.J. Ivaldi, Deputy Planning Director
Dan Dottai, CDRA-ESD Manager
Gerry Haas, CDRA Senior Planner



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April 28, 2016

MICHAEL B. BROWN
 Direct (530) 582-2282
 michael.brown@stoel.com

**VIA EMAIL (mjohnson@placer.ca.gov) and
 VIA U.S. FIRST-CLASS MAIL**

Michael J. Johnson, AICP
 Agency Director
 County of Placer
 Planning Services Division
 3091 County Center Dr.
 Auburn, CA 95603

Re: Aspen Grove Condominium Association Appeals

Dear Mr. Johnson:

This firm represents the Aspen Grove Condominium Association ("Aspen Grove"), which previously filed the enclosed appeals of the following projects:

- Northstar Forest Flyer (PCPA20130040), and
- Northstar Basin Retrofit Project (ESD14-0014/PLN15-00114).

Pursuant to a settlement, Aspen Grove hereby withdraws the above-referenced appeals, without prejudice.

Notwithstanding its withdrawal of the appeals, Aspen Grove reserves all rights to challenge or oppose any amendment, change, or modification to (1) the Northstar Mountain Master Plan Project (the "NMMP"), from what is described in the Northstar Mountain Master Plan Draft Environmental Impact Report dated November 2013 and the Final Environmental Impact Report dated June 2014; and (2) the proposed Northstar Forest Flyer, from what is described in the Mitigated Negative Declaration dated April 19, 2013 (the "Forest Flyer"). Aspen Grove shall retain all rights to challenge or oppose in any matter any change or modification of (1) or (2) above, including but not limited to the extent such matter is related or relevant to the enforcement of the Stipulated Judgment or Performance Standards, which are referenced in the Settlement Agreement.



Michael J. Johnson, AICP
April 28, 2016
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Aspen Grove further reserves the right to bring any claim or complaint (whether administratively or in an action filed in a court of law) not directly related to Placer County's or other required approval of the NMMP or the Forest Flyer, including but not limited to claims for nuisance, trespass, injunction and/or for damages that may arise or result from construction and operation of the NMMP or Forest Flyer, and the withdrawal of the appeals shall not operate as a waiver, bar or release of any such claims.

Aspen Grove further reserves and retains all rights to enforce the lack of compliance with the Basin Retrofit Project or the associated Mitigated Negative Declaration, including but not limited to the extent such matter is related or relevant to the enforcement of the Stipulated Judgment or Performance Standards, which are referenced in the Settlement Agreement.

If you have any questions, please let me know. Thank you.

Sincerely,

Michael B. Brown

Enclosures

cc: Tamara L. Boeck
Greg C. Gatto
Richard Bjur
Alex Dockery (via email adockery@vlmglaw.com)
Karin Schwab (via email KSchwab@placer.ca.gov)
E.J. Ivaldi, Deputy Director (via email EJIvaldi@placer.ca.gov)



PLACER COUNTY PLANNING SERVICES DIVISION

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PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

-----OFFICE USE ONLY-----

Last Day to Appeal _____ (5 pm) Appeal Fee \$ _____
Letter _____ Date Appeal Filed _____
Oral Testimony _____ Receipt # _____
Zoning _____ Received by _____
Maps: 7-full size and 1 reduced for Planning Commission items Geographic Area _____

-----TO BE COMPLETED BY THE APPLICANT-----

1. Project name Northstar Forest Flyer
2. Appellant(s) Aspen Grove Owners Association (530) 582-2280 (530) 582-2281
Address 10008 S.E. River Street Telephone Number Truckee CA Fax Number 96161
City _____ State _____ Zip Code _____
3. Assessor's Parcel Number(s): 110-050-070

4. Application being appealed (check all those that apply) Application Number
 Administrative Approval
 Use Permit PCPA20130040
 Parcel Map
 General Plan Amendment
 Specific Plan
 Environmental Review PCPA20130040
 Minor Boundary Line Adjustment
 Tentative Map
 Variance
 Design Review
 Rezoning
 Rafting Permit
 Planning Director Interpretation _____ (date)
 Other: _____

5. Whose decision is being appealed: Planning Commission (see reverse)

6. Appeal to be heard by: Board of Supervisors (see reverse)

7. Reason for appeal (attach additional sheet if necessary and be specific):
Please see attached

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s)



PLACER COUNTY ZONING ORDINANCE SECTION 17.60.110

Rulings made by the below are considered by the Planning Commission:

- Planning Director (interpretations)
- Zoning Administrator
- Design/Site Review Committee
- Parcel Review Committee - other than road improvements which should be appealed to the Director of Public Works
- Environmental Review Committee

Rulings made by the Planning Commission are appealed directly to the Board of Supervisors.

Rulings made by the Development Review Committee are appealed to the hearing body having original jurisdiction

Note: An appeal must be filed within 10 calendar days of the date of the decision. Appeals filed more than 10 days after the decision shall not be accepted by the Planning Division.

For exact specifications on an appeal, please refer to Section 17.60.110 of the Placer County Code.

ATTACHMENT TO NOTICE OF APPEAL

7. Reason for appeal

Pursuant to Placer County Code sections 17.60.110 and 18.32.010, Aspen Grove Owners Association (“Appellant”) hereby appeals the May 23, 2013 decision of the Planning Commission to approve the conditional use permit and adopt the mitigated negative declaration for the Northstar Forest Flyer Project, PCPA20130040 (the “Project”). This appeal is based on the matters enumerated in Appellant’s May 21, 2013 letter (a copy of which is attached as Exhibit A), as well as the reasons stated at the May 23, 2013 Planning Commission hearing, including, but not limited to:

- Environmental review of the Forest Flyer Project is impermissibly segmented from the Northstar Mountain Master Plan. The mitigated negative declaration therefore fails to adequately analyze the whole project, and instead, improperly segments its environmental analysis of the Project’s effects;
- The mitigated negative declaration’s conclusion that the roller coaster will only be utilized “by existing guests and homeowners at the resort and is not expected to generate any external vehicle trips for the coaster itself,” and presumption that the only traffic proposed to be generated by the roller coaster is for the five employees that will be operating the coaster is not supported by substantial evidence;
- The mitigated negative declaration fails to analyze any change in traffic circulation patterns that may result from visitor trips to the roller coaster;
- The mitigated negative declaration did not utilize a proper baseline to determine noise impacts during non-winter months and evenings and the determination that the Project will not have significant noise effects is not supported by substantial evidence;
- The roller coaster use is inconsistent with the FOR zoning designation;
- The equivalent use determination made pursuant to Placer County Code section 17.02.050.C is not supported by substantial evidence;
- The findings adopted in support of the mitigated negative declaration and conditional use permit are insufficient;
- Existing code and condition of approval violations by Northstar on the Northstar property preclude approval of the Project pursuant to Placer County Code sections 15.48.160 and 17.58.040(C);
- Additional items may be raised before the Board of Supervisors as part of its *de novo* consideration of the Project and accompanying environmental review.

Pursuant to Placer County Code section 17.60.100(C)(1), the Appellant may submit additional explanatory materials within thirty (30) days after the filing of this notice of appeal. Appellant also requests that the appeal be scheduled for the Board of Supervisor’s July 22 or 23 hearings in Tahoe, so that other interested parties directly impacted by the Project, including Aspen Grove homeowners, may attend.

EXHIBIT A

EXHIBIT A



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May 21, 2013

GREG C. GATTO
Direct (530) 582-2288
gcgatto@stoel.com

**VIA E-MAIL CDRAECS@PLACER.CA.GOV
AND FEDEX**

Placer County Planning Commission
c/o Environmental Coordination Services - Community Development Resource Center
Attn: Maywan Krach, Community Development Technician
3091 County Center Drive, Suite 190
Auburn, CA 95603

**Re: Northstar Forest Flyer Conditional Use Permit and Mitigated Negative Declaration
(PCPA20130040)**

Dear Commissioners:

Thank you for the opportunity to comment on the Mitigated Negative Declaration ("MND") for the proposed Northstar Forest Flyer ("Project"). This letter is submitted on behalf of the Aspen Grove Owners Association ("Aspen Grove"). Aspen Grove is a 180-unit residential condominium project located downslope at the base of the Northstar Village in Placer County, California, adjacent to the Project area. Aspen Grove is a member of the Northstar Property Owners Association ("NPOA"). Due to substantial deficiencies in the MND, as described herein, the County cannot approve the Project as currently proposed. Aspen Grove respectfully requests that the Commission deny the Project.

A. CEQA REVIEW OF THE PROJECT IS IMPROPERLY PIECEMEAELED.

The Project applicant has impermissibly segmented the Forest Flyer Project from the Northstar Mountain Master Plan. The MND therefore fails to adequately analyze the whole project, and instead, improperly segments its environmental analysis of the Project's effects.

Under CEQA, the term project refers to the whole of an action, and not each separate agency approval. (CEQA Guidelines §15378.) An initial study must consider all phases of project planning, implementation, and operation, including phases planned for future implementation. (CEQA Guidelines §15063(a)(1).) This ensures that all potential impacts of the proposed project will be examined before it is approved. (CEQA Guidelines §15378(a), (d).) An initial study that



fails to describe the entire project is fatally deficient. (*See Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267.)

The interpretation of what is a “project” is broad in order to maximize protection of the environment. (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 696.) Accordingly, CEQA “cannot be avoided by chopping up proposed projects into bite-sized pieces, which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.” (*Bankers Hill v. City of San Diego* (2006) 139 Cal.App.4th 249, 281.)

The rule against piecemealing was developed to insure that “environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-84; see also *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452 (“[t]here exists a real danger in the filing of separate environmental documents for the same project because consideration of the cumulative impact on the environment may never occur.”).) In recognition of this concept, CEQA Guidelines § 15165 advises “[w]here one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.” Thus, where two activities have a causal relationship, yet are reviewed in separate environmental documents that do not address the cumulative impacts of both activities, the courts are apt to find improper piecemealing.

In examining whether separate activities should be viewed as one project under CEQA, the courts have looked to the following: (1) whether the second activity is a reasonably foreseeable consequence of the first; (2) whether the second activity is a future expansion of the first activity that will change the scope of the first activity’s impacts; or (3) whether both activities are integral parts of the same project. (*Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 698.)

The project definition is the starting point of a piecemealing challenge. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223.) The project description and objectives for the Northstar Mountain Master Plan clearly encompass the Forest Flyer Project. For example, the project objectives for the Northstar Mountain Master Plan include “non-skiing recreation opportunities that are consistent with the overall management and use of the resort,” while the project components include “additional non-skiing recreation activities that are centered in the mid-mountain area and are consistent with the HMP.” The



Forest Flyer Project falls directly within the scope of the Northstar Mountain Master Plan project description, yet is improperly being analyzed in a mitigated negative declaration to avoid any cumulative impact analysis of the Forest Flyer Project. This separate consideration of parts of a project and the concomitant reduction in the number or potential significance of environmental effects, is impermissible under CEQA.

B. THE MND'S ANALYSIS OF IMPACTS IS INSUFFICIENT

1. The MND's Analysis of Potential Traffic Impacts is Woefully Inadequate.

The MND implausibly concludes that the Project will not generate any additional traffic to Northstar, but rather, that the roller coaster will only be utilized "by existing guests and homeowners at the resort and is not expected to generate any external vehicle trips for the coaster itself." The MND presumes that the only traffic proposed to be generated by the roller coaster is for the five employees that will be operating the coaster. However, the project applicant itself acknowledges that "the facility may draw additional guests due to the unique experience it offers..." (Northstar Forest Flyer FAQs, <http://www.northstarcalifornia.com/info/ski/the-mountain/forest-flyer.asp> (last visited May 20, 2013) (a copy of the webpage is attached hereto).) Accordingly, the MND's determination that the Project will only generate five additional vehicle trips is not supported by substantial evidence.

Even if the MND's improbable conclusion that the Project will not generate any additional trips to Northstar outside of existing visitors were accurate, the MND fails to analyze any change in traffic circulation patterns that may result from existing visitor trips to the roller coaster. Internal traffic circulation will certainly increase as a result of the Project. This is especially true during the non-winter months, when visitors will be accessing the mid-mountain area during a time that it is not regularly utilized. Thus, even if there are not increased trips to the Northstar area, there will be increased trips within Northstar to access the Project site. The changed circulation and additional trips generated within Northstar must be analyzed as part of the environmental review for the Project.

2. The MND Fails to Adequately Analyze Noise Impacts.

Under CEQA, noise impacts may be considered significant where a project creates a substantial increase (permanent, temporary, or periodic) in ambient noise levels. The Environmental Noise Analysis for the Project collected data from a location outside of Northstar. It does not appear that a proper baseline was used to determine noise impacts during non-winter months and evenings (when there is little existing background noise). It is likely that, especially during the



non-winter months, noise levels may be substantially increased within the vicinity of sensitive residential receptors. A proper baseline for environmental review of these impacts must be established. The County should also impose a condition limiting operating hours from 10:00 am to 4:00 pm.

The MND also determines that noise impacts to wildlife would be less than significant because the proposed Project is in an area of the Northstar Habitat Management Plan designated for "intensive ski development." This analysis fails to account for the additional noise created during the non-winter months, when there is a substantial increase in the use of the area by wildlife. The fact that an area is appropriate for intensive ski development does not also make it an appropriate site for intensive uses during the non-winter months. The MND fails to account for the increase in wildlife use of the Project site during the non-winter months and the potential impacts that addition of a new noise generating use may have on wildlife during this time.

C. A ROLLER COASTER IS INCONSISTENT WITH THE FOR ZONING DESIGNATION

Roller coaster uses are not expressly allowed in the FOR zoning district. If a proposed use of land is not expressly allowed under the County zoning ordinance, it is prohibited unless the Planning Department makes an equivalent use determination pursuant to 17.02.050.C. In order to determine that an otherwise prohibited use should be allowed as an "equivalent use," the Department must make several findings, including that "[t]he proposed use will share characteristics common with those listed in the zoning district, and will not be of greater intensity, density, or generate more environmental impact than the uses listed in the district." The staff report declares that the Planning Director concluded that the proposed roller coaster is similar in nature and character to ski lifts and ski runs.

The determination that a roller coaster is similar in character and nature to ski lifts and ski runs, and will not be of greater intensity, density, or generate more environmental impact than ski lifts or ski runs is arbitrary and capricious and not supported by substantial evidence. Ski lifts and ski runs operate seasonally, during approximately 4-5 months of the year. The roller coaster will operate year round, and therefore, will create additional impacts during the spring, summer, and fall months that do not exist with ski lifts and ski runs. The intensity of the proposed operations for the roller coaster are therefore more than double that of a seasonal ski lift and ski run operation. Because the Project is inconsistent with the existing zoning, it cannot be approved.

Further, approval of this Project must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. (*Topanga Assn. for a Scenic*



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Community v. County of Los Angeles (1974) 11 Cal.3d 506.) The findings requirement cannot be satisfied by a mere recitation of statutory language. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; see also, *Dore*, 23 Cal.App.4th at 328 (“Our Supreme Court expressly disapproved ‘the practice of setting forth findings solely in the language of the applicable legislation.’”) (quoting *Topanga*, 11 Cal.3d at 517, fn 16.) Yet, the findings proposed in the staff report merely parrot the findings as stated in local and state law.

Based on the above comments, and others submitted in writing and at the hearing, Aspen Grove respectfully requests that the Planning Commission deny approval of the Project. In the alternative, Aspen Grove requests that the Planning Commission direct that the Project and the potential environment impacts be analyzed and considered as part of the Northstar Mountain Master Plan.

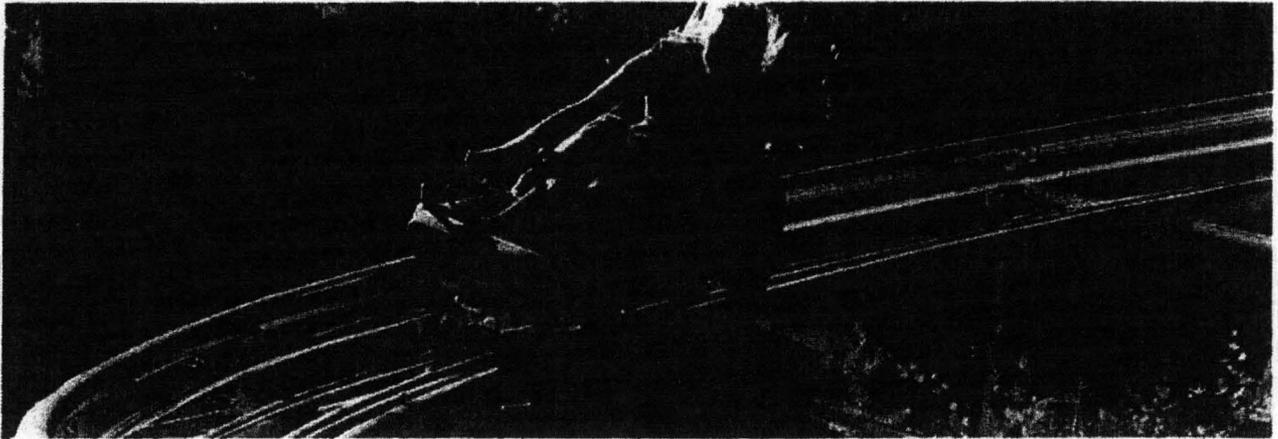
Thank you again for your attention to our comments.

Respectfully,

Greg C. Gatto

Encl.

cc: Kathy Eckert, Senior Board Commission Clerk
Aspen Grove Owners Association Board



Envisioning a Whole New Way Ride the Mountain

The Forest Flyer is designed to enable others to forge a closer connection to the place we cherish most – the Mountains. Northstar's proposed Forest Flyer builds on the traditional reach of ski areas to connect individuals and families who may not otherwise visit the mountains or forest by allowing more diversity of ages and abilities to connect to the outdoors in a new and exciting way that responds to their needs, skill levels and experiences. In other words, many of our guests are missing out on experiencing the mountain in the summertime because they do not have the skills to participate in a rigorous mountain bike ride or hike. The Forest Flyer provides a unique experience that you need a ski resort for – you need a lift and the contour of the mountain to follow down. The rider can experience the sights, sounds and feel of the forest in a truly unique way. In the winter, Northstar's Forest Flyer allows visitors the sense of amazing tree skiing – for those who don't have the technical ability to do so on skis or a snowboard.

The Forest Flyer is an all-weather toboggan that rides securely on raised steel tracks down the mountain via gravity through a forested setting. The Forest Flyer is intended to diversify and enhance the year round guest amenities at Northstar by providing an additional recreational opportunity for guests to experience the mountain. The Forest Flyer accommodates guests of all ages and abilities and allows guests to connect to the outdoors and experience travelling through the forest in a new and exciting way that responds to a variety of guest needs, skill levels and experiences.

Guests will board the Forest Flyer using individual toboggans designed to carry two visitors or a single rider at the lower station (elevation 6,835 ft.) located at mid-mountain near the Village Run just below the Vista Express Lift bottom terminal. The toboggans will carry guests uphill on steel tracks, adjacent to Loggers Loop ski trail, to the top station (elevation 7,084 ft.) located uphill of the Village Express Lift top terminal. The uphill line consists of a straight steel track with a mid-station that provides one turn in the line. At the top station, the detachable grip automatically releases from the lift cable and the toboggan car slides onto the downhill steel tracks returning to the lower station. The downhill track consists of curves, circles, and dips creating an exciting outdoor experience. Speed is controlled by the guest with braking levers and by a second automatic braking system that maintains a maximum speed.

No additional resort infrastructure is proposed for this project. Guests will park in the existing resort parking lots (Village and Castle Peak lots) and access the site via the Big Springs Express Gondola. Existing parking, restroom, solid waste disposal, security services, first-aid services, and mid-mountain facilities are adequate for the proposed project.

Forest Flyer FAQs + Information

1. Will the Forest Flyer increase resort visitation?

No. The Forest Flyer is intended to provide an additional activity for existing summer and winter guests who are already visiting or staying at the resort, thereby giving them more things to do during their visit. It is not intended to act as a stand-alone attraction that will generate measurable external vehicle trips or additional resort visitation. Thus existing parking, restroom, solid waste disposal, security services, first-aid services, and mid-mountain facilities are adequate for the proposed project. Since the facility is located at mid-mountain, it is anticipated to draw existing residents and patrons of Northstar that are already onsite for other resort offerings such as shopping, lodging, conferences, or recreational offerings (skiing, biking, hiking,



golfing, etc.). While the facility may draw additional guests due to the unique experience it offers, the increase in overall guest visits is expected to be nominal.

2. Previous application and relocation of Forest Flyer

A project application for the Forest Flyer was submitted to Placer County in 2010. At this time, the project was proposed to run from the Northstar Village, adjacent to Village Express Lift to the east of Woods Run with the top station located just below Highlands View Drive. Numerous comments and concerns were received from local stakeholders and the proposal was halted in order to reassess the project. The scope of the project and the project location has been revised to address concerns expressed by stakeholders. The Forest Flyer has been relocated to the mid-mountain area at the top of the Big Springs Express Gondola and night operations have been eliminated from the proposal. The new proposal addresses the following concerns that were raised during the previous application:

- The project has been relocated away from sensitive residential noise receptors
- The project has been relocated to avoid spans of wetlands and surface waters
- The project has been relocated to avoid visual impacts to the Village and surrounding residences
- The project has been sited to avoid sensitive biological resources, sensitive noise receptors, and so that it is not visible from outside the mid-mountain area.
- Night operations have been eliminated. The facility operating hours will be consistent with resort operating hours

3. Conscious Site Planning

The Forest Flyer is consistent with the HMP developed in collaboration with Sierra Watch and MAP – The project is proposed in HMP Management Zone B designated for "Intensive Ski Area Development". The project is sited at the developed resort core and is nestled between existing ski runs, ski lifts, and roadways. The project has been sited to avoid impacts to sensitive resources including wildlife, surface waters, and wetlands.

4. Moved the Forest Flyer to the Mid-Mountain into the Resort Core

The Forest Flyer complements the existing development at the mid-mountain core of the resort. Existing uses at the project site include the Mid-Mountain maintenance shop, Big Springs Daylodge, existing mountain roads, snowmaking, ski runs and ski lifts, and summer hiking and biking trails.

5. Minimal Disturbance

Grading and disturbance associated with this project is minimal since the supporting structure sits directly on the earth surface and is held in position with a steel plate and galvanized nails. Portions of the project are located within and adjacent to existing resort infrastructure (roadways, ski runs). Excavation is anticipated at the top and bottom stations, utility installation and relocation, and for the concrete foundations necessary at the circle, ski trail and roadway spans, and the uphill line turn station.

6. Aesthetics

The Forest Flyer will not be visible from the Interstate 80, Highway 267, or Northstar Drive view sheds. The bottom station cart storage building and lower portions of the Forest Flyer will be visible only from the mid-mountain area. Architectural design, color, and materials will be consistent with the surrounding area. The upper portion of the facility is located through the forest and between ski runs and existing roadways with much of the facility buffered by trees. Therefore, visual impact is considered minimal as the project will be visible solely from the mid-mountain area where it is consistent with existing infrastructure. Where possible, trees will be retained for visual screening.

7. Will additional parking for the Forest Flyer be available on the mountain?

No additional parking is proposed for the project and no additional parking will be available on the mountain. Guests will park in the existing Village or Castle Peak parking lots and access the facility from the Village via the Big Springs Express Gondola to mid-mountain. A paved ADA accessible pathway is proposed from the top of the gondola to the loading area of the Forest Flyer.

8. What are the noise impacts associated with the project?

An independent noise study has been prepared for the proposed project. The report concludes that the proposed project will comply with the Placer County 55 dB Leq and 70 dB Lmax exterior noise levels at the adjacent sensitive receptors. Additionally, the report concludes that the proposed project will not increase ambient noise levels by more than 5 dBA over existing ambient noise levels ("A change in level of at least 5 dBA is required before any noticeable change in human response would be expected" pg. 3, Brennan 2013).

At a distance of 50 feet, the Forest Flyer is anticipated to have a noise level of 51 dB Leq (Leq is a measurement of average sound level). Since this noise level is similar to existing ambient noise levels in the mid-mountain area, we believe that the noise created by the proposed project is inconsequential. The new project location at mid-mountain eliminates potential impacts on sensitive residential receptors.

9. Is Northstar complying with the California Environmental Quality Act (CEQA) laws?

Yes. Placer County has determined a Mitigated Negative Declaration and a Conditional Use Permit will be required for the project. The entitlements require a 30-day public review period through California State Clearinghouse circulation and approval by the Placer County Planning Commission. Public input will be accepted by Placer County during the 30-day public review period 4/22/13 – 5/22/13. For more information on the County review process please visit: <http://www.placer.ca.gov/Departments/CommunityDevelopment/EnvCoordSvcs/NegDec.aspx>.



PLACER COUNTY PLANNING SERVICES DIVISION

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PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

RECEIVED
SEP 10 2014
CDRA

-----OFFICE USE ONLY-----

Last Day to Appeal _____ (5 pm) Appeal Fee \$ _____
Letter _____ Date Appeal Filed _____
Oral Testimony _____ Receipt # _____
Zoning _____ Received by _____
Maps: 7-full size and 1 reduced for Planning Commission items Geographic Area _____

-----TO BE COMPLETED BY THE APPLICANT-----

1. Project name Northstar Basin Retrofit Project (Permanent)
2. Appellant(s) Aspen Grove Condominium Association (530) 582-2280 (530) 582-2281
Address 10008 S.E. River Street Telephone Number Truckee CA Fax Number 96161
City State Zip Code
3. Assessor's Parcel Number(s): 110-400-006

4. Application being appealed (check all those that apply) Application Number
 Administrative Approval
 Use Permit
 Parcel Map
 General Plan Amendment
 Specific Plan
 Environmental Review ESD14-00104/PLN15-0014
 Minor Boundary Line Adjustment
 Tentative Map
 Variance
 Design Review
 Rezoning
 Rafting Permit
 Planning Director Interpretation _____ (date)
 Other: Approval of Grading Plans - ESD14-00104/PLN15-0014

5. Whose decision is being appealed: Placer County Development Review Committee
(see reverse)

6. Appeal to be heard by: Placer County Planning Commission
(see reverse)

7. Reason for appeal (attach additional sheet if necessary and be specific):
Please see attached

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s)



PLACER COUNTY ZONING ORDINANCE SECTION 17.60.110

Rulings made by the below are considered by the Planning Commission:

- Planning Director (interpretations)
- Zoning Administrator
- Design/Site Review Committee
- Parcel Review Committee - other than road improvements which should be appealed to the Director of Public Works
- Environmental Review Committee

Rulings made by the Planning Commission are appealed directly to the Board of Supervisors.

Rulings made by the Development Review Committee are appealed to the hearing body having original jurisdiction

Note: An appeal must be filed within 10 calendar days of the date of the decision. Appeals filed more than 10 days after the decision shall not be accepted by the Planning Division.

For exact specifications on an appeal, please refer to Section 17.60.110 of the Placer County Code.

ATTACHMENT TO NOTICE OF APPEAL

7. Reason for Appeal

Pursuant to Placer County Code sections 15.48.290 and 18.32.010, Aspen Grove Condominium Association (“Appellant”) hereby appeals the August 31, 2015 decision by the Placer County Development Review Committee to approve the Grading Plans and adopt the Mitigated Negative Declaration (“MND”) for the Northstar Basin Retrofit Project (Permanent), ESD14-00104/PLN15-00114 (the “Project”).

Without waiving its substantive rights under this Appeal, Appellant states that it fully supports the Applicant’s construction and completion of the Project in 2015, and specifically, **does not** seek or support a stay of any Project approvals that will result in a delay of the construction and completion of the Project.

A stay or vacation of the Project approvals is neither required nor appropriate in this case, and any stay imposed on Project construction would be an abuse of discretion. Placer County Code sections 15.48.290 and 18.32.010 do not authorize or provide for an automatic or mandatory stay of grading permit or environmental review determinations in the event of appeal.¹ In addition, CEQA specifically provides discretion to allow project activities to proceed pending CEQA compliance. (*See* Pub. Resources Code, § 21168.9; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681 (allowing CARB regulations to remain in place pending CEQA compliance based in part on finding that suspending the regulations would result in more environmental harm than allowing them to remain in effect).) If implementation of a project will not moot consideration of mitigation measures, then the project may be allowed to proceed while remedial environmental review is undertaken. (*Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal.App.4th 1, 22.)

This Appeal does not seek to overturn the Project approval. Rather, Appellant requests that the County impose enforceable mitigation measures to ensure the Project operates as intended and that Project components are appropriately implemented. These mitigation measures and conditions are intended to apply post-construction, to mitigate potentially significant project

¹ While Placer County Code section 17.60.110.C.3 provides that in the event of an appeal of certain planning and zoning decisions (made pursuant to Chapter 17 of the County Code), the decision being appealed shall be set aside and of no effect, there is no similar provision contained in the code sections providing for appeals from grading permit decisions pursuant to Chapter 15 of the County Code (Section 15.48.290) or appeals relating to environmental review determinations under Chapter 18 of the County Code (Section 18.32.010). Further, while the code sections relating to appeals from grading permit and environmental review determinations incorporate specific sections of 17.60.110, subsection C.3 is not incorporated into either of these sections, and therefore, is inapplicable to this appeal. (*See OCM Principal Opportunities Fund v. CIBC World Markets Corp.* (2008) 168 Cal.App.4th 185, 202 (“the expression of certain things in a statute necessarily involves exclusion of other things not expressed.”).)

operational impacts. Allowing the Project to proceed to construction will not prejudice the consideration of these additional mitigation measures and conditions of Project approval, which may be appropriately implemented during or after Project completion.

More importantly, a stay of Project construction would violate the Court's Interlocutory Judgment, and result in a continuing public nuisance per se pursuant to section 15.48.700 of the Placer County Code. (*See Aspen Grove Condominium Association v. CNL Income Northstar LLC* (2014) 231 Cal.App.4th 53, 66 ("The statement of decision clearly establishes the retention basin is a nuisance per se.")) The purpose of a stay of project approvals is to preserve the appellant's and public's interest while the matter is considered by the appropriate appellate body. It is in neither the Appellant's nor public's interest to stay construction during the pendency of the appeal, nor will the County or Applicant be prejudiced if a stay is not implemented. Accordingly, Appellant respectfully requests that **no stay** of Project approvals be imposed during the pendency of this Appeal, and that the Applicant complete Project construction with all necessary diligence.

This appeal is based on the matters enumerated in Appellant's August 17, 2015 letter, and for the reasons stated and summarized below:

- The MND fails to include a baseline from which to evaluate the Project impacts;
- The mitigation measures proposed in the MND will not reduce Project impacts to a less than significant level;
- Substantial evidence supports a fair argument that the Project's impacts will be significant, and an EIR should therefore be required;
- The MND should utilize the Court's Interlocutory Judgment as a threshold of significance;
- The MND impermissibly defers mitigation;
- The MND fails to impose reasonable mitigation, monitoring and performance standards as conditions of Project approval, which would lessen potentially significant project impacts;
- Environmental review of the Project is impermissibly segmented from the Northstar Mountain Master Plan. The MND therefore fails to adequately analyze the whole project, and instead, improperly segments its environmental analysis of the Project's effects;
- The findings adopted in support of the MND are insufficient and not supported by the record;
- The County failed to adopt conditions of approval or other measures ensuring that Project features, components, and mitigation measures are fully enforceable, including but not limited to conditions requiring restoration and reseeded of the Project area to achieve pre-2004 conditions;
- The Project fails to comply with Article 15.48, Part 5, of the Placer County Code;
- The Project fails to comply with the Placer County Stormwater Management Manual;
- Additional items may be raised before the Planning Commission as part of its *de novo* consideration of the Project and accompanying environmental review.

Pursuant to Placer County Code section 17.60.100(C)(1), the Appellant may submit additional explanatory materials within thirty (30) days after the filing of this notice of appeal.