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February 24, 2011

By Hand-Delivery

Joanne Marchetta, Executive Director  
Nicole Rinke, General Counsel  
Tahoe Regional Planning Agency  
128 Market Street  
Stateline, NV 89449

Re: Statement of Appeal - Notice of Appeal of Soil Hydrologic Approval dated  
January 5, 2011 for Homewood Mountain Resort

Dear Ms. Marchetta and Ms. Rinke,

On January 26, 2011, Friends of the West Shore and Susan Gearhart (collectively "Friends") filed a Notice of Appeal challenging the Executive Director's soil hydrologic approval for the Homewood Mountain Resort dated January 5, 2011 and signed by Senior Planner and Program Manager Heather Beckman. The following is Friend's Statement of Appeal pursuant to TRPA's Rules of Procedure, § 11.4. Given the substantive issues raised by this appeal, Friends respectfully requests the TRPA Governing Board to overturn the January 5, 2011 Soil Hydrologic Approval.

Friends of the West Shore is a non-profit, community organization consisting of residents of the West Shore, including numerous residents of Homewood, concerned about the rural quality of life and the environment on the western shores of Lake Tahoe. Friends promotes sustainable communities and policies that enhance the natural resources and the beauty of the West Shore. A core function of the group is to evaluate new development plans, including the proposed Homewood Ski Area expansion, and instituting a Community Plan that protects neighborhoods on the West Shore. Susan Gearhart owns property and is a seasonal resident in Homewood. Mrs. Gearhart serves as the President of Friends.

Friends has a substantial interest in the validity of staff's approval of an exception to Ordinance § 64.7(A)(1) as well as the other approvals issued by the January 5th letter. Members of Friends, including Susan Gearhart, live adjacent to the location of the proposed project and the parking garage proposed by Homewood Ski Resort. Members of Friends already experience flooding of their properties bordering the proposed garage site which currently contains a graveled parking area. Mrs. Gearhart already was included as a party to a land capability challenge initiated by Homewood

and, based on the Gearhart's objections, resulted in an expansion of the stream environment zone along the southside of the parking area. Friend's members recreate throughout the Homewood area including hiking on the existing trails at Homewood and kayaking or strolling along the shores of Lake Tahoe. Staff's decision facilitates, in part, the possible construction of a three-story (perhaps four-story, according to the EIS) parking garage in a currently rural community. The project, including the large garage, will be plainly visible to Friend's members and adversely affect their recreational activities in and around Homewood. In addition, the proposed ordinance amendment cited by staff in the Hydrologic Soil Approval would allow a substantial increase in the current height limitations applicable to the proposed Homewood project. That potential increase in height also will drastically affect the recreational and aesthetic interests of Friend's members.

A. Neither TRPA Nor Its Staff Has Any Authority To Approve An Exception to Code of Ordinance 64.7's Prohibition On Intercepting Groundwater Based On Speculative, Future Changes To The Ordinance.

The January 5th approval letter states that "this soil hydrologic review approves the interception of SHGW [seasonal high groundwater] as it relates to subterranean garages (as shown on the site plans), contingent on the TRPA Board approving and adopting an amendment to Ordinance § 64.7.A(2)(i) proposed by Homewood. Approval Letter, p. 2. Without the proposed amendment, staff appears to concede that Homewood's proposed multi-story garage does not qualify for the existing exception to the Code's prohibition on intercepting or interfering with groundwater. Staff's approval is based on a future ordinance that does not currently exist.

Neither TRPA nor its staff have any authority to approve an exception to Ordinance § 64.7(A)(1) based on some potential, future version of the Code of Ordinances. TRPA's Rules of Procedure, the Code of Ordinances and the Compact all prohibit staff from approving a project based on possible future versions of the Code of Ordinances. Article V, § 5.1 of TRPA's Rules of Procedure states unequivocally that "[t]he purpose and scope of review for proposed projects shall be to determine compliance with applicable provisions of the Compact, Goals and Policies, Code, other TRPA plans, maps and programs, and Rules." Compliance with *inapplicable*, possible *future*, Code provisions is neither a purpose nor within the scope of review either TRPA or its staff are authorized to conduct. Article II, § 2.4(b) also makes clear that TRPA's decisions "shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with *applicable ordinances*, rules and regulations of the agency." (emphasis added).

The Code of Ordinances also makes clear that approvals by TRPA, including those delegated to the Executive Officer and staff, must be based on current regulations – not potential, future regulations. "Projects shall be reviewed by TRPA in accordance with TRPA's Rules of Procedure and *pursuant to the applicable Code provisions*. Ordinances, § 4.7 (emphasis added).

Looking to the specific Ordinance pursuant to which staff purports to approve an exception to the Code's prohibition on groundwater interference, it plainly does not authorize the approval of an exception based on anything but the existing language of the Ordinance. The Ordinance provides that:

(2) TRPA may approve exceptions to the prohibition of groundwater interception or interference if TRPA finds that:...(i) It is necessary to provide below grade parking for projects, qualifying for additional height under Subsection 22.4.D, to achieve environmental goals including scenic improvements, land coverage reduction, and areawide drainage systems; and measures are included in the project to prevent ground water from leaving the project area as surface flow and that groundwater, if any is interfered with, is rerouted into the groundwater flow to avoid adverse impacts to hydrologic conditions, SEZ vegetation, and mature trees.

Ordinance, § 64.7.A(2). Staff's "approval" does not make the required finding. Instead, without authority, staff replaces the required finding with a different finding, projecting the possibility that TRPA may adopt Homewood's proposed amendment to the Ordinance. Section 64.7.A(2) only authorizes an exception approval based on the current required finding, not some speculative, future changes to that finding requirement.

Lastly, the Compact also precludes staff's anticipatory approval of a proposed exception based on possible, future amendments to the Ordinances. Article VI(b) of the Compact provides that "no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations **enacted** pursuant to a subdivision (a) to effectuate that plan." (emphasis added). Staff's approval does not refer to an "enacted" ordinance. Instead, staff relies on a possible, future ordinance drawn up by Homewood Mountain Resort. Staff's approval of a fictitious exception to Ordinance, § 64.7.A(1)'s prohibition on interfering or intercepting groundwater is plainly premature, without any authority and an abuse of discretion. The Governing Board should vacate that approval.

B. The Exception Approval Also Is Without Authority Because The Compact Prohibits TRPA From Adopting A Project-Specific Ordinance As Envisioned In The Approval.

Assuming that staff has authority to issue approvals based on possible future amendments to the Ordinances, staff's approval also should be vacated because the referenced amendment also is without authority and illegal pursuant to the Compact. Staff's approval references a change to the existing Ordinance that refers to Section 22.4.G, an ordinance that does not yet exist. Although not referenced in the January 5th letter, the proposed amendment apparently is the same as that set forth in Appendix F of the recently released draft EIS for the Homewood Resort project. That proposed

amendment sets forth a special height exception solely for Homewood Ski Area, allowing that one ski resort to measure the height of its proposed buildings using the average base elevation of a building rather than its lowest exterior point. DEIS, App. F (“The maximum height specified in Table A may be increased to a maximum height of 50 feet for projects located in special areas within the Homewood Ski Area Master Plan designated for additional height. In these special areas, the maximum height may be measured from average natural grade, which is the average grade between the lowest point and highest points of natural grade along an exterior wall of the building”). Compare Ordinance, § 22.2.A-.B. The Compact expressly precludes such sweetheart deals for specific projects. Article VI of the Compact sets forth TRPA’s powers. Those powers include adopting all necessary ordinances, rules and regulations to effectuate the adopted regional plan. Article VI(a). However, the Compact restricts such ordinances, rules and regulations to those applying **throughout the region**. “Except as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region.” *Id.* This point is reiterated again at the end of that Compact section: “Whenever possible without diminishing the effectiveness of the regional plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, . . .” *Id.* Because the speculative, future amendment relied upon by staff in issuing the January 5th approval neither applies throughout the region nor establishes a standard applicable throughout the region, the future amendment is inconsistent with the Compact. Even assuming staff was justified in relying upon a future, inapplicable ordinance, because that proposed ordinance is inconsistent with the Compact, the Governing Board must vacate staff’s approval.

C. TRPA And Staff Have No Authority To Approve This Portion of the Homewood Project Prior to Adoption of a Final Environmental Impact Statement.

Lastly, staff’s approval of the Foundation/Footings, the Chapter 64 exception, and the Bioretention Areas should be vacated because they seek to approve portions of a project for which an EIS is required. Article VII of the Compact states that whenever TRPA acts “upon matters that have a significant effect on the environment,” the agency shall (2) [p]repare and consider a detailed environmental impact statement **before deciding to approve or carry out any project.**” (emphasis added). See also Ordinance, § 5.1. By approving components of the proposed project, including in the case of the exception to the groundwater interference prohibition, components that require TRPA to apply its discretion, staff has improperly piecemealed the proposed

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Homewood Resort project and approved a portion of the project without the benefit of a final EIS.

For all of the above reasons, Friends requests that the Governing Board schedule their appeal for consideration and vacate staff's January 5, 2011 approvals.

Respectfully submitted,



Michael R. Lozeau

Lozeau Drury LLP

Attorneys for Friends of the West Shore and Susan Gearhart

cc: Ellison Folk, Shute, Mihaly & Weinberger

FRIENDS OF THE WEST SHORE

HMR - <sup>SIX</sup> ~~TWO~~ Major Discussion Points

FRIENDS SUPPORTS DEVELOPMENT that is reasonably sized and fits in with the community. We DEFINITELY support a revitalized Homewood Mountain Resort but the current proposal is simply too big. The height, density, increase in traffic and change in groundwater run-off could all negatively impact the environment and community character. The primary concerns we hear from residents are about traffic congestion and incompatibility with the character of the West Shore. We need a project that is much smaller in size and scope, conforms with current codes and, as a CEP project, follows the CEP guidelines.

I CODE AMENDMENTS

1 The project, as currently proposed, requires height, multi-residential use and groundwater amendments. We have documentation from West Shore residents agreeing that HMR should follow all current codes, without amendments.

II SIZE AND SCALE OF CURRENT PROJECT IS NOT COMPATIBLE WITH THE LONG-STANDING CHARACTER OF HOMEWOOD AND THE WEST SHORE - concerns:

- 2 1. Density - project expected to add 329 units with approximately 700 bedrooms and 1,400 additional people at peak times, plus employees. This project would increase the population of Homewood substantially and change Homewood from a small village to more of an urban center.
- 2 2. Height - Proposed height (up to 77 ft) requires a code amendment from the current 48 ft restriction. These will be the tallest buildings on the West Shore between Tahoe City and South Shore.
- 3 3. The three level parking garage will hold 272 vehicles and will be the first large parking structure on the West Shore.
- 4 4. The peace and serenity of the community will be negatively impacted by noise and this project will increase lighting throughout the night, from new population activity.
- 5 5. This project is the largest development ever proposed on the West Shore.

3 We have many unanswered questions on this project. For instance, the number of bedrooms and population by building does not seem to appear in the EIR/EIS. This information is helpful to evaluate parking, traffic and other issues.

III LACK OF A COMMUNITY PLAN

- 4 1. Currently, there is no Community Plan for Homewood or other West Shore communities. Yet this proposed development will have a huge impact on the entire West Shore. The lack of a Community Plan makes the scale & character of Homewood even more of a concern because residents don't have a Plan upon which to rely.

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TAHOE REGIONAL PLANNING AGENCY

#### IV TRAFFIC CONGESTION

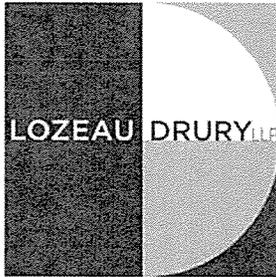
- 5 [ 1. We have estimated about 1,400 people at peak times. This could easily result in 600 - 700 additional vehicles at the resort. This does not include service and employee vehicles, boats/trailers in the summer or full use of the 400 day-skier parking spaces in the winter. This is a significant impact.
- 6 [ 2. Hwy 89 is only a TWO-LANE ROAD. It cannot be expanded and cannot handle so many additional vehicles from the resort. People are still dependent on cars to sightsee, visit recreational areas, check out the nightlife and do errands, particularly in summer. Traffic is already backed up, going north to Tahoe City, during summer weekends, and the resort will exacerbate this problem. Also the close proximity of the resort entrance to Hwy 89 could cause backup on the hwy during peak activity.
- 7 [ 3. Pedestrian Safety - with new population, need to consider a stop sign/light in Homewood, for pedestrians who wish to cross the street to visit the beach, café or for other reasons

#### V FIRE SAFETY

- 8 [ 1. We are concerned about evacuation in the event of a major fire on the West Shore, especially during peak summer months. Adding another 1,000 to 1,400 people (during peak times) with perhaps 600 cars, to a 2 lane hwy with no other road exit routes, is very dangerous. In the event of a major fire or other emergency, people will want to evacuate in their cars and this will cause dangerous traffic gridlock. What is the evacuation plan?
- 9 [ 2. Also, in the case of traffic gridlock, how will emergency vehicles get through to provide emergency medical care to those who need it?

#### VI ENVIRONMENTAL IMPACTS

- 10 [ 1. Water run-off from the mountains will be blocked and diverted by the development. This would require a code amendment. This project is in very close proximity to the lake and the creeks, watersheds and wetlands could be negatively impacted by the project as proposed.
- 11 [ 2. Vehicle Miles Traveled (VMT) as a result of increased traffic will substantially increase, causing air and water pollution. The lasting long term effects of this project will be: increased exhaust from autos & other vehicles, increased exhausts from the new residents' boats, and all the employee and service vehicles that go along with development of this magnitude. HMR will be paying an air quality mitigation fee to offset pollution impacts. However, pollutant impacts cannot be mitigated by paying fees. The only way to truly mitigate pollution from traffic is to reduce the number of units and vehicles.
- 12 [ Overall as a group, Friends of the West Shore hopes that JMA Ventures can find a profitable way that the project can be meaningfully downsized to reduce the traffic and scale of the resort.



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February 11, 2011

Via E-mail – Hard Copy to Follow

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Re: Homewood Mountain Resort Ski Area Master Plan, Community Enhancement Program Project, Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS): **Inadequacy of Notice of Availability and Request for Documents Pursuant to the California Environmental Quality Act and Public Records Act.**

Dear Messrs. Finley, Landry, Breuch and Ms. Krach:

Thank you for Mr. Finley's response to my letter of January 31, 2011 on behalf of Friends of the West Shore and Susan Gearhart (collectively "Friends") requesting access to documents referenced in the draft EIR/EIS prepared for the Homewood Mountain Ski Resort Project and our concerns about the January 21, 2011 notice of availability. In his letter, Mr. Finley indicates that the County is reviewing the request to extend the comment deadline which Friends requested in order to allow time to cure the deficiency in the notice of availability and for the public to access the documents. I have had additional feedback from my clients as well as other members of the public who are beginning to tackle reviewing the draft EIR/EIS and I wanted to adjust the extension request in hopes that Friends of the West Shore and others would be able to avoid any supplemental requests in the future.

In addition to awaiting the documents requested in our letter of January 31 and our concerns about the notice, Friends and others are concerned that, given the size of the draft EIR/EIS and the numerous issues people are interested in reviewing, 60-days will not be adequate time for the public to review and prepare substantive comments. In our January 31 letter, Friends requested that the County extend the comment deadline to be 60-days from the date the documents are available for review in one location. Friends would like to revise that request and ask the County and TRPA to extend the comment deadline to 90-days from the date when the documents referenced in the draft EIR/EIS are available for review by the public. That requested extension

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also will help to assure that residents returning to Lake Tahoe in the spring also will have an opportunity to participate in the commenting process.

Friends is committed to reviewing the EIR/EIS as thoroughly as possible and expect their input will help assure a robust record on which both the County and TRPA will be able to deliberate. We believe that the public's awaiting the availability of the referenced documents, the concern regarding the adequacy of the notice of availability, the size of the draft EIR/EIS, the range of issues to be reviewed, and the fact that more interested people may hear about the opportunity to comment on the draft EIR/EIS as they begin returning to their summer homes in the spring are all good cause for allowing an extension of time to comment on the draft EIR/EIS pursuant to TRPA Rules of Procedure 6.13(e) and consistent with the County's review timelines set forth in County Ordinance § 18.20.050(G)(1).

Thank you for considering this request.

Sincerely,



Michael Lozeau  
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cc via e-mail:

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