

RESOLUTION 2024-2

Downhill Ski Lodge Replacement Project Final Decision

WHEREAS, the duties of the Tahoe Donner Board of Directors include, among other things:

The duty to act as fiduciaries for the Association, which requires the Board to make decisions about what it believes to be in the best interest of the Association and its membership as a whole. This fiduciary duty includes the duty of care, the duty to act within the scope of the Board’s authority under the law and the Association’s governing documents, and the duty of loyalty.¹

The duty to maintain and repair the Association’s Common Areas and Common Facilities, and the duty to replace the Association’s Common Areas and Common Facilities when, at the end of their useful life, they can no longer be reasonably or practically maintained and repaired.²

The duty to operate the Association, including its Common Facilities, the power “to terminate the operation of any of the Association recreational Common Facilities” being reserved exclusively to the Members by means of “The affirmative vote by written ballot of a majority of the total voting power of the Members.”³

The duty to provide funding for the Association’s Common Expenses, which include “all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, or Other Association Real Property,” as well as “any amounts reasonably necessary to fund reserves for the maintenance, repair, expansion and replacement of the Common Areas and Common Facilities and Other Association Real Property.”⁴

The duty to conduct periodic reserve studies to identify “the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years,” and to establish a reserve funding plan “to meet the association’s obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less.”⁵

¹ See Resolution 2021-4, Board of Directors Code of Conduct.

² First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article III, Section 6(a); Article VII, Section 1; Article VIII, Section 1(b); and California Civil Code §4775.

³ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article VIII, Section 1(b); Restated Bylaws of Tahoe Donner Association, Article IX, Section 2(b)(i); Article XII, Section 3.

⁴ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article 1, Section 9.

⁵ California Civil Code §5550. This section further provides that “components that the board has determined will not be replaced or repaired” may be omitted from this funding plan, provided that, per California Civil Code §5300, the Annual Budget Report includes a “statement as to whether the board has determined to defer or not undertake

The duty to prepare annual budgets “to fund the Association’s anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities).”⁶

The duty to establish a regular Assessment to fund the Association’s Common Expenses.⁷

The duty to ensure that all Assessment funds are used exclusively for the following purposes: “(a) to promote the recreation, health, safety and welfare of the Owners and other residents within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants and guests; and (c) to provide for the repair, maintenance, replacement, protection and expansion of the Common Area and Common Facilities.”⁸

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WHEREAS, per Resolution 98-7, which was adopted on June 11, 1998, it is the “policy of the Tahoe Donner Association to plan for, and make investments necessary to provide for, an available level of member access to the amenities at the point of practical ‘build-out’ of the residential properties which will ensure enjoyable, comfortable experiences for all members.”⁹

In 2007, Tahoe Donner’s “General Plan” acknowledged questions about “the long-term viability of the downhill ski lodge,” and in 2011, Tahoe Donner’s “2030 General Plan” recommended the Association “completely replace” the Downhill Ski Lodge facility by 2015 “rather than wait 10 or 15 additional years to address currently identified shortfalls.”

In 2009, Tahoe Donner completed remodel upgrades to the Downhill Ski Lodge to prolong the facility’s useful life and to temporarily defer the potential need to replace this Common Facility.

repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.” However, as noted above, under the Governing Documents, the board is obligated “to operate the Association, including its Common Facilities,” and therefore may not defer or abandon repairs, improvements, or replacement if the board reasonably believes that deferring or abandoning repairs, improvements, or replacement will jeopardize the board’s ability to fulfill its obligation to continue to operate the Association’s Common Facilities. See also California Civil Code §4177, §4178, §5300, §5560, and §5565.

⁶ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 2(a). See also California Civil Code §5300.

⁷ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 2(b).

⁸ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 6.

⁹ Tahoe Donner Resolution 98-7, General Resolution Regarding Capital Investments in Association Amenities; See also First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article VIII, Section 1(b).

In 2017, Tahoe Donner retained Ecosign Consultants to complete a master plan study for the Downhill Ski Hill, and established the Downhill Ski Subcommittee under the General Plan Committee to research options to address continuing concerns about the Downhill Ski Lodge's long-term viability.

On December 14, 2019, after extensive research, the Board concluded that the existing Downhill Ski Lodge facility can no longer be reasonably or practically maintained, repaired, or improved, and voted to cease investigating remodel options and "to move forward with a complete replacement/new structure for the downhill ski lodge."¹⁰

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WHEREAS, the Tahoe Donner Ski Hill is known as "The Best Place to Begin," the vision statement for the Downhill Ski Lodge Replacement Project is:

Create a welcoming, enjoyable, and inclusive ski lodge experience for all generations by connecting up-to-date design standards with learner needs and legacy service offerings.

Consistent with this vision, the Downhill Ski Lodge Replacement Project's essential purposes are to:

- Provide a safe, up-to-date, inclusive, and fully code-compliant facility
- Fulfill the Association's stewardship obligation to replace a Common Facility that has reached the end of its useful life, and which can no longer be reasonably or practically maintained, repaired, or improved
- Avert critical, high-cost component failures that may jeopardize the Association's ability to fulfill its obligation to operate the facility
- Provide enjoyable and comfortable experiences for members of all generations
 - Enable easy lift access from the south-side sun deck
 - Increase restroom capacity
 - Improve ticketing and rental area flow
 - Address food and beverage crowding
- Address deficiencies to enhance the ski school experience by consolidating the existing dispersed, unconditioned ski school facilities into an integrated, dedicated, conditioned space for learners
- Improve operational, maintenance, and other building life-cycle cost efficiencies
- Align the facility with current environmental and energy efficiency standards
- Modernize the facility to implement contemporary industry standards
- Unify lodge design with existing business unit and service level requirements

¹⁰ Tahoe Donner Board of Directors, Regular Meeting, December 14, 2019.

- Align lodge capacity with existing ski hill and lodge usage volume

Between 2020 and 2023, the Association worked first with Ward-Young Architecture and then with Bull Stockwell Allen to develop a space-efficient 23,988 square foot final construction design that fulfills this vision and these purposes.¹¹

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WHEREAS, the Downhill Ski Lodge has completed the Town of Truckee’s permitting approval process.¹²

The Town of Truckee’s permitting approval process confirmed the existing use permits under which the Downhill Ski Lodge serves and may continue to serve Tahoe Donner’s members as a downhill ski lodge during the winter months and as a site for day camps and administrative offices during the summer months.¹³

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WHEREAS, on April 23, 2022, assuming a Spring 2023 construction start date, the Board voted to “proceed into design and construction with Option D, a lodge size of approximately 24,490 square feet with a total cost not to exceed \$23,419,661, with a continued effort to value engineer through the next design phase for cost reductions that do not impact building functionality.”¹⁴

On September 22, 2023, the Association’s President informed the membership that, “with the permitting process delays and regional labor and construction cost trends, the Downhill Ski Lodge project will not come in at the estimated budget used to draft the original funding plan, which assumed a spring 2023 construction start.”¹⁵

¹¹ See Tahoe Donner Board of Directors, Special Board Meeting, December 4, 2023.

¹² See Tahoe Donner Resolution 2023-7, Downhill Ski Lodge Pre-Construction Services Agreement and Construction Bidding Services.

¹³ See Town of Truckee Resolution 2023-62, A Resolution Of The Town Council Of The Town Of Truckee Upholding The Planning Commission’s Decision, Denying The Appeal Of The Tahoe Donner Downhill Ski Lodge Replacement, Approving The Tahoe Donner Downhill Ski Lodge, And Adopting A Mitigated Negative Declaration And Associated Mitigation Monitoring And Reporting Program.

¹⁴ Tahoe Donner Board of Directors, Regular Meeting, April 23, 2022.

¹⁵ Downhill Ski Lodge Replacement Project Update and Planning Commission, Email to the Tahoe Donner membership, September 22, 2023.

On October 30, 2023 and on November 20, 2023, the Board communicated to the members that, “after the Board receives competitive contractor bids, the Board will revisit the April 2022 decision in an open session to consider whether to proceed, alter, or abandon the project.”¹⁶

On December 21, 2023 the Board approved Resolution 2023-7, directing staff to execute a pre-construction services agreement with SierraCon and to issue a notice to proceed with construction bidding services.¹⁷

In March 2024, the Association received SierraCon’s competitive bid information. This information was reviewed and vetted through an “open-book” process to select the most qualified subcontractors at the best value. This process was completed by staff and BSA, with assistance from volunteer member advisors with professional expertise in the fields of large-scale commercial construction and procurement.

Due to permitting process delays, regional labor trends, a high-demand subcontractor market, and inflationary construction cost increases, the March 2024 SierraCon guaranteed maximum price proposal (“GMP”) is \$29,253,341.¹⁸

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WHEREAS, Tahoe Donner’s Governing Documents restrict the Association’s authority to borrow money, with funding for capital improvements intended to be provided through the Association’s two reserve funds.¹⁹ The Replacement Reserve Fund portion of the reserves is intended to fund facility maintenance and the routine replacement of building components.²⁰ The Development Fund portion of the reserves is intended to pay for community improvements and building replacements.²¹

Reserve funding adequate to address the Association’s capital improvement obligations is intended to be supported by the regular Assessment, with the Association’s Governing Documents explicitly stating that “The Special Assessment power conferred hereunder is not intended to diminish the Board’s obligation to plan and budget for normal maintenance, replacement and repair of the Common Area, existing Common Facilities or Other Association

¹⁶ Message from the Board President, Email to the Tahoe Donner membership, October 30, 2023; Message from the Board of Directors, Email to the Tahoe Donner membership, November 20, 2023.

¹⁷ Tahoe Donner Resolution 2023-7, Downhill Ski Lodge Pre-Construction Services Agreement and Construction Bidding Services.

¹⁸ The GMP does not include soft costs and other Tahoe Donner Association project carrying costs.

¹⁹ Restated Bylaws of Tahoe Donner Association, Article IX, Section 2(a)(v).

²⁰ Tahoe Donner Resolution 2019-1, Replacement Reserve Fund Policy Resolution.

²¹ Tahoe Donner Resolution 2017-3, Development Fund Policy Resolution.

Real Property through Regular Assessments (including the funding of reasonable capital repair and replacement reserves).”²²

The Development Fund portion of the reserves has historically been underfunded. Beginning with the 2021 budget, the Board corrected this underfunding by establishing a four-year plan to increase the Development Fund contribution by 25% annually. The 2024 budget completed that plan.

The Replacement Reserve Fund portion of the reserves includes funding for building components that will be replaced as part of the Downhill Ski Lodge Replacement Project. After holding these component costs steady for several years despite rising construction costs, the 2024 budget correctly adjusted the ski lodge component cost estimates to reflect replacement cost estimate information at that time, and appropriately applied new reserve study standards recently published by the Community Associations Institute (“CAI”).²³

As explained in the October 1, 2021 letter to the membership from the Association’s legal counsel, a member vote is not required for the Downhill Ski Lodge Replacement Project.²⁴

Because the Board increased funding for the Development Fund and correctly updated component cost estimates in the Reserve Replacement Fund, and despite Downhill Ski Lodge Replacement Project costs that are higher than originally expected, the Association has enacted a funding plan consistent with the Governing Documents to fund the Downhill Ski Lodge Replacement Project capital expenditures:

- Without the need for a special assessment
- Without the need for additional project-specific assessment increases
- Without borrowing from the Replacement Reserve Fund

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IN accordance with its duties and as promised to the members, the Board must now complete its obligation to decide whether to proceed, alter or abandon the Downhill Ski Lodge Replacement Project.

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[INSERT CONCLUSION & MOTION HERE. OPTIONS BELOW.]

²² First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 3(ii).

²³ Community Associations Institute, 2023, Reserve Study Standards, CAIOnline.org.

²⁴ Law Offices of Deon Stein, Re: Downhill Ski Lodge Building Renovation Issues, October 1, 2021.

ACCEPTED AND DATED: March 21, 2024

DON KOENES, President

COURTNEY MURRELL, Secretary

BENJAMIN LEVINE, Vice President

STEVE MAHONEY, Treasurer

JIM ROTH, Director

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-- OPTION 1 -- PROCEED WITH CURRENT DESIGN --

CONSISTENT with the Board’s duty to act as fiduciaries for the Association by making decisions about what it believes to be in the best interest of the Association and its membership as a whole;

With the Board’s duties to operate the Association’s Common Facilities and to maintain, repair, and replace them as necessary;

With the Board’s duties to provide funding for the Association’s Common Expenses, to prepare annual budgets, and to establish regular Assessments to fund those Common Expenses;

With the Board’s duty to use Assessment funds exclusively “to promote the recreation, health, safety and welfare of the Owners and other residents within the Properties,” “to promote the enjoyment and use of the Properties by the Owners and their families, tenants and guests,” and “to provide for the repair, maintenance, replacement, protection and expansion of the Common Area and Common Facilities”,²⁵

With Tahoe Donner’s long-standing policy to make capital investments in its Common Facility amenities to ensure enjoyable and comfortable experiences for all members;

With the Downhill Ski Lodge Replacement Project’s vision and essential purposes;

With the Association’s Governing Documents, its financial and reserve policies, and all applicable laws;

With the staff analysis and recommendation presented at a special open meeting of the Board on March, 21, 2024; and

For the sake of completing a capital investment planning and construction process begun in 2007 with Tahoe Donner’s first General Plan;

NOW, THEREFORE, BE IT RESOLVED, that the Tahoe Donner Association Board of Directors does hereby move to proceed with the Downhill Ski Lodge Replacement Project with the following updated parameters and directions:

1. Adopt the document attached to this Resolution as Exhibit A as the detailed budget of the total Downhill Ski Lodge Replacement Project.

²⁵ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 6.

2. Accept SierraCon's \$29,253,341 guaranteed maximum price ("GMP") construction proposal.
3. Authorize staff to complete negotiations and the General Manager to execute a Construction Services Agreement ("CSA") between the Tahoe Donner Association and SierraCon for the purpose of proceeding with the construction of a replacement Downhill Ski Lodge of approximately 23,988 square feet.
 - a. Among other provisions, to protect the Association's interests, the completed CSA shall include a GMP no greater than the GMP accepted by this resolution, and provisions for cost improvement, liquidated damages, and penalties for failure to perform.
4. Direct the General Manager to issue a notice to proceed with the construction services described in the executed CSA as soon as possible after executing the CSA with SierraCon.

-- OPTION 2 -- RESTART CONCEPTUAL DESIGN --

CONSISTENT with the Board's duty to act as fiduciaries for the Association by making decisions about what it believes to be in the best interest of the Association and its membership as a whole;

With the Board's duties to operate the Association's Common Facilities and to maintain, repair, and replace them as necessary;

With the Board's duties to provide funding for the Association's Common Expenses, to prepare annual budgets, and to establish regular Assessments to fund those Common Expenses;

With the Board's duty to use Assessment funds exclusively "to promote the recreation, health, safety and welfare of the Owners and other residents within the Properties," "to promote the enjoyment and use of the Properties by the Owners and their families, tenants and guests," and "to provide for the repair, maintenance, replacement, protection and expansion of the Common Area and Common Facilities",²⁶

With Tahoe Donner's long-standing policy to make capital investments in its Common Facility amenities to ensure enjoyable and comfortable experiences for all members;

With the Board's December 14, 2019 conclusion that the existing Downhill Ski Lodge facility can no longer be reasonably or practically maintained, repaired, or improved and must be replaced; and

For the sake of completing a capital investment planning and construction process begun in 2007 with Tahoe Donner's first General Plan;

NOW, THEREFORE, BE IT RESOLVED, that the Tahoe Donner Association Board of Directors does hereby:

1. Rescind the April 23, 2022 decision to "proceed into design and construction with Option D, a lodge size of approximately 24,490 square feet with a total cost not to exceed \$23,419,661, with a continued effort to value engineer through the next design phase for cost reductions that do not impact building functionality."
2. Direct staff to begin a new conceptual design process for a replacement ski lodge, either by:
 - a. Negotiating with Bull Stockwell Allen ("BSA") for additional architectural and engineering conceptual design services, or by

²⁶ First Restated Declaration of Covenants and Restriction of Tahoe Donner, Article IV, Section 6.

- b. Circulating an RFP for architectural and engineering conceptual design services to qualified firms.
3. Direct staff to return to the board for review and authorization to execute an agreement for architectural and engineering conceptual design services.
4. Direct staff to work with the design services consultants to prioritize the project purposes listed above, and to design a new ski lodge proposal:
 - a. That is consistent with the project vision
 - b. That achieves the highest priority project purposes
 - c. With the goal of commencing construction no later than the Spring of 2027 and completing construction no later than the Fall of 2028.

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-- OPTION 3 -- ABANDON THE PROJECT --

Staff Commentary: No motion is provided by staff to abandon the project. In staff's opinion, this option is not in the best interest of the Association and may also conflict with the Board's legal and fiduciary duties described in the first section of this Resolution.

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