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Via Electronic Mail Only

Board of Supervisors of Mono County
c/o Shannon Kendall, Clerk of the Board
PO Box 715
Bridgeport, CA 93517
E-Mail: skendall@mono.ca.gov

Re: Tioga Inn Specific Plan Amendment #3

Dear Members of the Mono County Board of Supervisors:

We submit these comments on behalf of the Mono Lake Committee (“MLC”), a non-profit citizens’ group dedicated to protecting and restoring the Mono Basin ecosystem. Since 1978, MLC has not only defended Mono Lake and its surroundings from environmental degradation, it has also educated the world about the area’s stunning beauty and wildlife, inspiring hundreds of thousands of visitors to journey to the Mono Basin each year. In short, MLC has a demonstrated record of commitment to both the environment and the community in the Mono Basin.

It is in this same spirit that MLC submits these comments, expressing grave concerns about the proposed amendments to the Tioga Inn Specific Plan. These amendments would allow the owner to double—or *quadruple*, depending on the population estimates used, *see* Final Supplemental Environmental Impact Report (“FSEIR”) at 93—the population of Lee Vining without following even the most basic smart-growth planning concepts, such as providing a safe path for occupants to walk or bike the 0.5 miles into town. Moreover, while the applicant has pitched this project variably as “workforce housing” and “affordable housing,” there is simply no guarantee that the project will provide either.

In exchange for the questionable benefits of this project, the County is asked to accept numerous significant, unmitigable environmental impacts, including significant aesthetic impacts on scenic and visual resources, light and glare, exposure of pedestrians and cyclists to unsafe travel conditions between the project site and Lee

Vining, and cumulative impacts to deer movement. These impacts will directly affect the very resources that bring people to the area in the first place. Moreover, there is substantial evidence in the record that the project lacks an adequate route to safety in the event of a wildfire.

MLC has long been engaged with the County and the applicant on this project. MLC submitted comments during the scoping phase, on the Draft Supplemental Environmental Impact Report (“DSEIR”), and on the FSEIR. But despite MLC describing all of the issues listed above and offering additional feasible mitigation measures that could further reduce the Project’s significant adverse impacts, the Planning Commission recommended certification of the SEIR and approval of the project, including approval of findings that the benefits of the project outweigh its significant, unavoidable impacts. We re-submit these comments for your consideration as you review the SEIR and project documents. Our prior comments are attached as Exhibits 1 and 2 to this letter and are incorporated by reference herein.

In addition, we submit the following new comments, which respond to issues that arose during the Planning Commission meeting. This meeting lasted approximately 7.5 hours and saw more than 100 commenters express similar concerns about this project. (By our count, only three public speakers, other than the applicant, supported approval of the project.)

MLC, as a non-profit with 20 employees and seasonal interns, and many volunteers, understands the need for affordable housing in the region. However, there is no guarantee the proposed project will provide such housing. Moreover, the significant and unavoidable environmental and safety impacts associated with this Project will hurt the very community it is purportedly designed to serve.

As a result, the County cannot make the override findings required under CEQA, and must deny the project as proposed.

I. The Asserted “Benefits” of the Project Do Not Outweigh Its Environmental Impacts.

The California Environmental Quality Act (“CEQA”) prohibits the County from approving a project with significant environmental impacts unless the County adopts all feasible mitigation measures and finds that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” Public Resources Code (hereinafter, “CEQA”) § 21081. The Planning Commission adopted a resolution recommending approval of the Project and

has sent a draft statement of overriding considerations to the Board for its approval. The Planning Commission's draft statement identified four assertedly overriding benefits: housing, economic development, conservation of open space, and "social benefits." However, most of these asserted benefits are actually mitigation measures that only become necessary due to the Project's impacts. And the remaining benefits are not supported by substantial evidence.

A. The Project Will Not Benefit Conservation.

The primary flaw in this proposed override finding is the assertion that, with the Project, "open space acreage will increase, with a near doubling of acreage in the most-protected Open Space-Preserve category." PC Override Findings at 23. While the amount of land designated for open space may increase compared to the existing General Plan, the Project will allow significantly more development than the current Specific Plan does. Moreover, as is clear from this specific plan amendment process, General Plan designations are not permanent; there is no reason the applicant could not come back in the future to amend the specific plan again to develop even more.

If the County wants actual, concrete conservation benefits, it should require the applicant to dedicate a conservation easement over the areas designated as open space. Only then will the public be guaranteed that these lands will be conserved and the development envelope of the property fixed.

B. The Project Will Not Alleviate Mono County's Affordable Housing Crisis.

Contrary to the draft override finding, the proposed units are not affordable and will not address the County's affordability crisis. The housing needs assessment cited in the proposed override finding, *see* PC Override Findings at 22, n.5, states that housing growth in the County is currently "driven by second homeownership and . . . vacation rentals." BBC Research & Consulting, *Mono County Housing Needs Assessment and Residential Survey*, § 1, p. 3. High-quality affordable housing options remain out of reach for most residents. *Id.*, § 1, p. 4. The report concludes that, to avoid a loss of workers and middle-income residents, the County must "facilitate the creation of *permanently affordable housing units.*" *Id.*, § 1, p. 5.

The Project, however, does not contain any guarantees that the proposed housing will be affordable. With no income restrictions or other eligibility criteria, there is no evidence that the Project will provide workforce or community housing. Instead, the

Project may become an additional source of market-rate rentals that will only further increase housing stress in the County.

C. The Project Will Not Support Economic Development.

The proposed override finding concerning economic development is not supported by substantial evidence. The override finding assumes that the projected employees of the hotel and restaurant “will exist regardless of whether the Project is approved.” PC Override Findings at 22-23. It then concludes that the Project will help provide housing to those employees, purportedly contributing to the success of the hotel and restaurant. *Id.* The hotel and restaurant, however, have been approved since 1993, but they have never been built. Especially in light of the recent economic downturn and the impacts to tourism due to COVID-19, there is no reason to suspect that the hotel and restaurant will suddenly pencil out now. Because there is no concrete evidence that the hotel and restaurant will be built, there is no reason to expect the Project to benefit those uses.

D. The Project Will Not Have Social Benefits.

The purported social benefits of the Project are not benefits at all, but merely mitigation measures necessitated by the Project itself. For example, the override findings tout a secondary emergency access route as a benefit. *See* PC Override Findings at 23. But that secondary access is only necessary to mitigate substantial safety risks caused by earlier designs of the proposed housing only having a single route for access and egress. Similarly, the findings claim as a benefit the reservation of a right-of-way to connect with a potential future trail linking the Project site with Lee Vining. PC Override Findings at 23. But not only will a reserved right-of-way only be a benefit if a trail is ultimately constructed—something that the FSEIR does *not* commit to, despite (1) evidence that a trail is feasible, *see* Section VII, below; *see also* Response to Supervisor Stump’s Information Request, Attachment B2 (“Richard Fujikawa at SCE. . . confirmed that there is potential for SCE to grant a 3-foot wide trail easement.”), and (2) the requirement that the County incorporate all feasible mitigation measures into the Project, Cal. Code Regs. § 15126.4(a)(1) (“An EIR *shall* describe feasible measures which could minimize significant adverse impacts[.]”) (emphasis added)—the trail itself is only necessary to mitigate pedestrian safety impacts associated with the proposed housing. Finally, the proposed phasing plan (PC Override Findings at 23) which will temporarily delay the most egregious aesthetic impacts of the Project is not a benefit. It merely postpones the Project’s aesthetic impacts—but only temporarily. Like the other asserted “benefits,” it would not be necessary if not for harm caused by the Project itself.

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The Statement of Overriding Considerations represents a judgment by the Board of Supervisors that the Project's purported benefits outweigh its significant impacts on the environment. Here, the Project will create real, lasting damage to the environment in Mono County. In contrast, the Project's supposed benefits are illusory, consist of mitigation measures necessitated to address damage caused by the Project, and/or are not supported by substantial evidence. In short, the Project's benefits do *not* outweigh its significant environmental impacts.

II. The Housing Element's References to the Proposed Project Do Not Justify Approving the Project.

At the Planning Commission meeting, staff implied that the Project should be approved because the 100 units proposed for the site are already incorporated into the County's Housing Element. *See* Mono County Planning Commission, Draft Special Meeting Minutes, April 16, 2020, at page 9. However, the Housing Element's references to the site do not mean that the Board must approve the project.

The Housing Element's references to the potential for up to 100 units on the project site do not constitute an approval of those units, nor does it commit the Board to approving them. In fact, when the Housing Element was adopted, it was clear that the County anticipated completing CEQA review of the proposed project—and deciding whether or not to approve it—at a later date. The Housing Element itself acknowledges uncertainty about whether the units will be approved. For example, the document mentions that the specific plan amendment is “proposed,” and repeatedly notes that additional analysis is needed. *See* Mono County Housing Element, 2019-2027, at page 62 (“further analysis required”); *id.*, page 63 (“Impacts and constraints will be analyzed as part of Tioga Inn Specific Plan Amendment #3”). Thus, the Housing Element recognizes that the “impacts and constraints” related to the proposed housing may prevent the Board from approving it.

Moreover, the County could not have lawfully “pre-approved” the specific plan amendment now under consideration when it adopted the Housing Element. In that document, the County stated that CEQA review for the Project would be completed later. For the County to have approved the project under those circumstances would violate CEQA's core requirement that public agencies evaluate the environmental effects of their actions *before* approving those actions.

To the extent the County is concerned that the site's inclusion in the Housing Element means that the County will not be able to make the findings required by Government Code Section 65863, these concerns are misplaced. Section 65863(b) requires counties that reduce a parcel's residential density from what is identified in their Housing Elements to make written findings that (1) the reductions are consistent with the General Plan, and (2) remaining sites identified in the Housing Element are adequate to meet the jurisdiction's share of regional housing needs. As an initial matter, these findings are not required, because, to the extent the Housing Element "designated" the site for up to 100 units, that "designation" was contingent on approval of the very specific plan amendment that is before the Board today.

But even if the findings *are* required, the County can easily make them. For example, the Regional Housing Need Allocation ("RHNA") for Mono County is 85 units for 2018-2027. Housing Element at 49. Even if the 100 units on the proposed site are eliminated, the other key sites highlighted in the Housing Element include over 1,000 potential units. *See* Housing Element at 58-77. Ample alternative sites remain for the County to meet its regional housing obligations. Thus, Government Code Section 65863 does not provide a reason to reject or reduce the scale of the proposed project.

Moreover, unlike other recent state housing laws, these provisions of the Government Code do not provide any exemption from the requirements of CEQA. *Compare* Gov. Code § 65913.4(c)(2). Because CEQA applies to this Project, and the Project would have significant, unavoidable impacts, the Board of Supervisors may not approve the Project unless it finds that the Project's benefits outweigh its permanent negative effects on the environment. CEQA § 21081. It simply cannot make these findings here.

Finally, approving the Project because the Housing Element stated the County might approve it in the future would deny the public an opportunity to meaningfully participate in decision-making. The Housing Element was not presented to the public as the forum in which this Project would be debated and approved. Instead, the Housing Element indicated that further study would be required as part of the Tioga Inn specific plan amendment process. Relying on the Housing Element to make approval a foregone conclusion would deprive the public of the very opportunity to comment promised in the Housing Element.

III. The Project Description Remains Confusing and Inconsistent: Despite Contrary Representations, the Project is Intertwined With Construction of the Hotel and Restaurant.

Under CEQA, the EIR must contain a clear, consistent project description. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 83, 89. Our prior letters describe the various flaws in the project description at length. The hearing before the Planning Commission emphasized an additional inconsistency.

At the hearing, County staff suggested that the Project is independent from the hotel and restaurant, and that the Planning Commissioners should consider the proposed housing as a fully independent Project. *See* Recording of Planning Commission meeting at 5:39:48 (“This project is a housing project.”). This assertion is inconsistent with text in the SEIR showing the interdependent nature of the housing and hotel/restaurant uses. For example, a central objective of the proposed Project is to provide housing *for the anticipated employees of the hotel and restaurant*. Further, the phasing plan links (or purports to do so) construction of housing with milestones associated with the hotel and restaurant.

In another example, some mitigation for the proposed Project is tied to construction of the *hotel* rather than to the *housing* itself. Mitigation Measure SVCS 5.8(a-3) is intended to address the impacts of the project housing on public services and pedestrian safety. The measure adds a shuttle service between the project site and Lee Vining. The shuttle service, however, will only commence “when the Tioga Inn *hotel* receives an occupancy permit,” Updated Final/Draft Subsequent EIR at 5.8-12 (emphasis added), despite the fact that this mitigation measure is purportedly intended to mitigate the impacts of the *housing*.

In short, the hotel and restaurant are intertwined with the proposed housing, and the conflicting signals the SEIR sends on this issue constitute a significant flaw in that document.

IV. The Baseline for Analysis of the Project’s Environmental Impacts Does Not Include the Hotel and Restaurant Proposed in 1993.

At the Planning Commission meeting, many commenters stated that the Project would exacerbate the County’s housing crisis because of the interrelationship between the housing and the hotel/restaurant. That is, even if each of the 100 units of proposed housing went to an employee of the hotel or restaurant, there would still be 50 additional anticipated employees of those uses thrust into the broader Mono County

housing market. Thus, rather than alleviating housing stress by increasing supply relative to demand, the Project would have the opposite effect: increasing housing demand more than supply.

In response to these arguments, County staff instructed the Planning Commission that the CEQA baseline for the Project included the hotel and restaurant approved in 1993, even though these uses have never been constructed. Thus, staff asserted, in determining whether to approve the proposed housing, the Planning Commission should assume that 150 new employees of the hotel and restaurant would exist regardless of whether the housing is constructed. *See* PC Override Findings at 22-23 (making a similar assumption that the hotel and restaurant employees would exist regardless of whether the Project is approved). This instruction violated CEQA.

The baseline for an environmental analysis under CEQA should generally be “physical environmental conditions as they exist at the time the notice of preparation is published.” 14 Cal. Code Regs. § 15125. An agency may only use future conditions as the sole baseline for analysis “if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public.” *Id.*

Here, the baseline should be existing conditions on the Project site—i.e., conditions *without* the hotel and restaurant and their hypothetical 150 employees. The County has not demonstrated with substantial evidence that use of existing conditions would be misleading or uninformative. The hotel and restaurant have been approved for 27 years with no progress toward their construction. And the record does not include any concrete evidence suggesting that these uses *will* be constructed: for example, the developer has not asserted that he has applied for any permits for these uses. Thus, there is no substantial evidence supporting the use of speculative future conditions, including the hotel and restaurant, as a baseline.

The Planning Commission erred in comparing the Project’s impacts against a baseline that included the hotel and restaurant and their anticipated employees. Instead, the Board should compare the proposed Project to the largely undeveloped site and housing conditions in the County as they currently exist. Artificially inflating housing demand by assuming the existence of 150 employees who may never materialize is improper under CEQA.

V. The Project Would Result in Unfunded Mandates for Local Services, Including Schools and Fire Protection.

As noted in the FSEIR, the Project would likely result in a substantial increase in the population of school children in the Lee Vining area. FSEIR at 196. This increase, however, would come without a corresponding increase in funding for education services. Despite the FSEIR's assertion that the Project's impacts on school facilities would be fully addressed by development fees, the development fees only address "construction or reconstruction of school facilities." Educ. Code § 17620(a); Gov. Code § 65996. As the Superintendent of the Eastern Sierra Unified School District stated in a letter to the Planning Commission dated April 14, 2020 (attached hereto as Exhibit 3), the School District cannot use fees from the developer to hire additional teachers. Thus, the new development will likely stress the School District's already limited funds.

The Project would have a similar effect on the small, volunteer Lee Vining Fire Protection District ("LVFPD"), vastly increasing the population the LVFPD must serve without providing adequate resources to meet these new needs. The LVFPD itself submitted a letter expressing concerns that the Project would place an unreasonable burden on its resources. *See* FSEIR 153-56.

VI. The County Should Revise the Phasing Plan to Make It Effective.

As noted in our prior letter, the phasing plan proposed in the FSEIR allows the project applicant to build all three phases of housing without making *any* actual progress on the hotel and restaurant. At the Planning Commission meeting, the phasing plan was revised in response to these concerns—but even with the revisions, the phasing plan still allows all housing to be built without requiring any construction of the hotel and/or restaurant. For example, the trigger for phase 2 housing was changed from *submission* of a building permit application for the hotel to the application being deemed *complete*. *See* Updated Final/Draft Subsequent EIR at 4-15.¹ But even the submission of a complete application does not require any actual construction to occur.

This toothless phasing plan will hinder the Project's ability to achieve the objective of serving employees of the hotel and restaurant. It also undermines the

¹ Note, however, that the phasing plan on page 3-10 of the Updated Final/Draft Subsequent EIR does not reflect this revision.

applicant's insistence that the housing is intended to serve employees of the hotel and restaurant rather than vacationers or individuals commuting to Mammoth Lakes.

To make the phasing plan more effective, the County should link the triggers for housing construction to *actual* milestones in the hotel and restaurant construction. For example, the trigger for issuing a building permit for phase 2 housing construction should be the completion of 50% of hotel construction (or the accomplishment of a similar milestone that approximates that level of progress). Additionally, the County should condition the issuance of a certificate of occupancy for the phase 2 housing on the prior (or concurrent) issuance of a certificate of occupancy for the hotel. This would ensure that the housing would be synced with the arrival of the employees it is intended to serve.

VII. The Project Must Be Modified to Reduce Potential Impacts.

CEQA provides that public agencies must incorporate feasible mitigation measures that could reduce a project's significant adverse impacts on the environment. 14 Cal. Code Regs. § 15126.4(a)(1) ("An EIR *shall* describe feasible measures which could minimize significant adverse impacts[.]") (emphasis added). In previous letters, this firm and the Mono Lake Committee have proposed several feasible mitigation measures that would substantially lessen the Project's significant environmental effects. These mitigation measures are incorporated by reference herein. The County must incorporate all feasible mitigation measures proposed by the Mono Lake Committee and other commenters that would reduce the Project's significant environmental impacts.

Further, the County must revise mitigation measure SVCS 5.8(a-3) so that the shuttle service is tied to occupancy of the proposed housing, rather than to occupancy of the hotel. As noted above, Mitigation SVCS 5.8(a-3), which adds a shuttle service linking the project site and Lee Vining, is intended to address the impacts of the Project—that is, the 100 proposed units of housing—on public services and pedestrian safety. The shuttle service, however, will begin "when the Tioga Inn *hotel* receives an occupancy permit." Updated Final/Draft Subsequent EIR at 5.8-12 (emphasis added). Mitigation measures must address the effects of the *Project*. Here, the Project may be completed long before the hotel receives an occupancy permit. To make this mitigation measure effective, it must be revised so that the shuttle service will serve the housing *regardless* of whether or when the hotel is constructed.

Even the shuttle service, however, is not sufficient to replace a pedestrian trail linking the project site with Lee Vining. A shuttle service likely would not have the capacity to handle the needs of all of the project residents, especially if the hotel and

restaurant are completed and their guests compete with residents for seats. A trail would be superior mitigation.

The FSEIR incorrectly concludes that a trail would be infeasible. First, it asserts that SCE resisted the concept of a trail across its property. FSEIR at 84. MLC staff, however, reports having had conversations with SCE representatives in which SCE expressed openness to discussing a license for an 8-foot-wide trail with the Mono Basin Regional Planning Advisory Committee (“RPAC”) and Mono County. Communication between B. Miller and Jennifer Farley, Right of Way Agent. County staff has also confirmed that SCE is open to a trail. According to the minutes of a May 4, 2020 conference call between Caltrans and Mono County, “Gerry [LeFrancois] confirmed that he had spoken with Richard Fujikawa at SCE, and Mr. Fujikawa had confirmed that there is potential for SCE to grant a 3-foot wide trail easement.” Response to Supervisor Stump’s Information Request, Attachment B2.

Second, despite the FSEIR’s conclusion that a trail is infeasible in part because of costs, FSEIR at 84, the County could require the project applicant to pay into a mitigation fund that would support the trail. Mitigation funds are standard for projects like this, and the FSEIR’s concern regarding costs does not make the trail infeasible. Finally, Caltrans’ concerns about pedestrians crossing SR 120 to access the trail should not stand in the way of this mitigation measure. Pedestrians are likely to enter roadways with or without a trail—that is why pedestrian safety is identified as a significant impact in the first place. *See* FSEIR at 82. A trail would reduce pedestrian exposure to traffic by providing a place to walk other than along the side of a busy highway. The County should work with the project applicant and Caltrans to make the SR 120 crossing safer.

VIII. Conclusion

The Mono Lake Committee urges the Board to protect the valuable resources of Mono Lake and the Mono Lake Basin. As currently proposed, the Project threatens those resources, and the SEIR fails to fully account for the Project’s environmental damage. We ask the Board to reject the Project or to approve it at a reduced scale that would protect the environment from significant harm.

Board of Supervisors
June 24, 2020
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to be "Winter King", written in a cursive style.

Winter King

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EXHIBITS:

Exhibit 1: Comment Letter Re Tioga Inn SPA3 with Exhibits

Exhibit 2: Comment Letter Re FSEIR for Tioga Inn SPA3 with Exhibits

Exhibit 3: ESUSD Letter