



March 8, 2021

Via E-Mail

Board of Supervisors of Mono County
c/o Michael Draper, Community
Development Department
PO Box 347
Mammoth Lakes, CA 93546
E-Mail: mdraper@mono.ca.gov
cddcomments@mono.ca.gov

Re: Tioga Inn Specific Plan Amendment #3

Dear Members of the Mono County Board of Supervisors:

The Mono Lake Kutzadika Tribe (“Tribe”) and the Mono Lake Committee (“Committee”) jointly submit this letter to express their continuing concerns about the proposed Tioga Inn Specific Plan Amendment #3 (“Project”). While our concerns are distinct, they all relate to significant inadequacies in the Final Subsequent Environmental Impact Report (“FSEIR”), including missing information, analysis, and mitigation. When the Board certified the FSEIR in October 2020, the Tribe had presented its ongoing concerns with remaining cultural resources that had not been analyzed and properly mitigated. Additionally, since the certification of the FSEIR, the County has received information demonstrating that certain mitigation measures once found infeasible are now feasible. To avoid prolonging the community conflict that has arisen over this Project, the County must undertake supplemental environmental review before taking the matter back up for consideration.

I. The Tribe’s Concerns Regarding Impacts to Cultural Resources Have Not Been Resolved.

Since the last Project hearing, the Tribe has not been able to resolve its concerns over the lack of proper analysis and mitigation measures for cultural resources, including a Cry Dance District and traditional trails that are located in the Project area. Evidence of these specific resources and a discussion of their lack of attention in the FSEIR was submitted to the County by individual tribal members and the Tribe’s legal counsel in a letter dated December 14, 2020. Although the Board’s actions last fall—i.e., to certify the FSEIR but take no action on the Project itself—were taken to encourage the Tribe and the applicant to work together to address the cultural resources not addressed or mitigated in the Archeological Study, the Tribe objected to

working with the applicant and not the County on its concerns as set forth in its December 14th letter. County Counsel has now informed the Tribe that, because the County certified the FSEIR in October, the County cannot conduct any additional CEQA analysis of the cultural resource issues. This has left the Tribe with no option other than negotiating directly with the developer.

Such negotiations cannot satisfy the County's obligation to consult with the Tribe. *See Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior* (S.D. Cal. 2010) 755 F.Supp.2d 1104, 1110 (meeting with private applicant does not constitute consultation); Pub. Res. Code § 21080.3.2 (stating that “the *lead agency* shall” consult with a California Native American tribe) (emphasis added); *see also* Cal. Office of Planning and Research, *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* (June 2017)¹ (“Consultation concludes when either: (1) the parties”—i.e., the lead agency and the tribe—“agree to measures to mitigate or avoid a significant effect . . . on a tribal cultural resource, or (2) a party, acting in good faith and after a reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code, § 21080.3.2(b)(1) & (2).)”). Discussions with the developer have also proven to be logistically difficult, given the sensitive nature of the discussions, which are more conducive to in-person meetings, the winter weather, and, of course, the pandemic.

Moreover, it is clear the County and applicant could agree to prepare a supplemental EIR on these issues as a means of avoiding future legal disputes. If the applicant is not even willing to allow this additional, targeted review, it seems unlikely he would agree to any concrete measures to protect these resources as a result of independent discussions with the Tribe.

II. New Information Shows that Caltrans Supports Development of a Pedestrian Trail into Town, and Therefore Supplemental Environmental Review Is Required.

Supplemental environmental review is also needed to consider new information from Caltrans indicating that a safe pedestrian trail from the Project site into town is, in fact feasible. Under CEQA, after an EIR has been certified the lead agency must prepare a subsequent or supplemental EIR if new information shows that mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt them. CEQA Guidelines § 15162.

Here, the FSEIR concluded that a pedestrian trail would reduce impacts related to pedestrian safety (under the public services and utilities heading), but that it was not feasible because the County did not exercise legal control over Caltrans, Caltrans was (“until recently”) unwilling to cooperate, the trail would lead pedestrians to a SR 120 at-grade crossing, and because of funding uncertainty. Resolution R20-96, A Resolution of the Mono County Board of Supervisors Certifying the Final Subsequent Environmental Impact Report for Tioga Inn Specific Plan Amendment #3, § 2(T) (Oct. 20, 2020). But, on December 8, Caltrans wrote to the

¹ The Technical Advisory is available at <http://nahc.ca.gov/wp-content/uploads/2017/06/Technical-Advisory-AB-52-and-Tribal-Cultural-Resources-in-CEQA.pdf>.

Mono County Local Transportation Commission indicating that Caltrans “*supports* development of a multi-use path project connecting ‘downtown’ Lee Vining with other businesses services and the transit stop along SR 120.”² See Exhibit A (emphasis added). Caltrans further stated: “We are committed to working with the County, community members, and other stakeholders toward the realization of such a project.” *Id.* The only issue is cost: Caltrans has no funding for the trail. *Id.*

This new information plainly demonstrates that the trail is feasible. Caltrans is not only willing to cooperate but supports the project, indicating that it would be an improvement for pedestrian safety. While Caltrans has noted that there must be outside funding for the project, that does not make the project infeasible. In fact, mitigation measures frequently require a project developer to pay fees or otherwise contribute a monetary “fair share” to infrastructure improvements. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188 (“Fee-based mitigation programs . . . have been found to be adequate mitigation measures under CEQA.”); see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 102-08 (rejecting arguments that payment of mitigation fees was legally and economically infeasible); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 241-42 (rejecting agency’s argument that payment of in-lieu fees was infeasible). As a result of this new information indicating that the pedestrian trail is feasible, the County must undertake subsequent or supplemental environmental review. See CEQA Guidelines § 15162 (agency must prepare a subsequent EIR when “[n]ew information of substantial importance . . . shows . . . [m]itigation measures . . . previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.”)³; *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25, 43-44 (new construction proposed after EIR certification was new information requiring subsequent EIR).

Even if this new information did not trigger subsequent review, the County still can and should reconsider the feasibility of this measure. This is because one of the conditions of the FSEIR certification was that the applicant and the County would conduct a study within 6 months to determine whether the pedestrian trail is feasible. It has already been more than three months since the FSEIR was certified. The County must conduct this study now, taking into consideration Caltrans’ recent correspondence, to ensure that the County can obtain the necessary funding from the applicant—and save County taxpayers from assuming a significant expense that should be borne by the Project—if the Project is ultimately approved.

Conclusion

In short, the Tribe and Committee continue to have serious concerns about this proposed development. Taking the time now to address these concerns could put an end to the

² The December 8 letter was also included in the agenda packet for the December 15, 2020 Board of Supervisors meeting.

³ According to this Guideline, supplemental review could be avoided if the applicant funded the trail. To date, of course, he has not agreed to that measure.

community discord this Project has caused, while, as the Committee has described in previous letters, simultaneously reducing inconsistencies with the Mono Basin Community Plan. We urge the County to conduct additional review of, and adopt additional mitigation measures for, these significant environmental impacts before taking any further action on the Project.

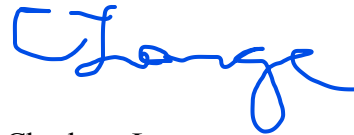
Very truly yours,

MONO LAKE COMMITTEE

MONO LAKE KUTZADIKA TRIBE

A handwritten signature in blue ink, appearing to read 'G McQuilkin', with a long horizontal flourish extending to the right.

Geoffrey McQuilkin
Executive Director

A handwritten signature in blue ink, appearing to read 'Charlotte Lange', with a large loop at the end of the name.

Charlotte Lange
Chairperson

1346731.1

Exhibit A

DEPARTMENT OF TRANSPORTATION

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*Making Conservation
a California Way of Life.*

December 8, 2020

Lynda Salcido, Chair
Mono County Local Transportation Commission (LTC)
PO Box 347
Mammoth Lakes, CA 93546

Multi-Use Path Proposal - Lee Vining to State Route 120

Dear Ms. Salcido:

The California Department of Transportation (Caltrans) District 9 supports the Departmental Safety and Health goal – to provide a safe transportation system for all and promote health through active transportation in communities. District 9 and Mono County continually engage regarding transportation decisions via the LTC, Regional Planning Advisory Committees, the Local Development-Intergovernmental review process, grant opportunities, individual projects, and community outreach efforts.

Caltrans supports development of a multi-use path project connecting “downtown” Lee Vining with other business services and the transit stop along SR 120. We are committed to working with the County, community members, and other stakeholders toward the realization of such a project. To further this effort, we request that the LTC and Mono County conduct public outreach to gather project ideas/support; and amend the Mono County Regional Transportation Plan to document outreach results and LTC support.

Currently, District 9 has no funding for project development of a multi-use path at this location. Caltrans district staff have submitted a proposal to Caltrans headquarters for Complete Streets supplemental funds and will continue to research options for additional funding sources. Any state funds could complement local, regional, and/or private developer funding dedicated for the project. Based on available funds, the Caltrans Lee Vining Road Rehabilitation project (possible construction year 2024/2025) could include a path segment from the wall to Utility Road along US 395's west side.

We value our cooperative working relationship with Mono County regarding multi-modal facilities for the transportation system. For any questions, feel free to contact Dennee Alcala at (760) 784-4236 or Dennee.Alcala@dot.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan A. Dermody".

RYAN A. DERMODY
District 9 Director