

**December 10, 2019**  
**Regular Meeting**  
**Item # 1**

**Public Address**

**Additional Documents:**

**Mono Lake Committee comments on  
proposed development project**



# MONO LAKE COMMITTEE

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December 10, 2019

Mono County Board of Supervisors  
c/o Clerk of the Board  
P. O. Box 715  
Bridgeport, CA 93517

Honorable Board of Supervisors,

I am writing on behalf of the Mono Lake Committee to share with you the Committee's recent comments on the proposed Tioga Inn development project, slated to be located on a highly visible ridgeline near Lee Vining.

This project will eventually be scheduled for your formal consideration, however the Committee believes the numerous significant impacts of this project warrant your attention at the current time. Mono County can help guide alternatives that successfully achieve the County's housing and economic goals while promoting the County's vision of orderly growth, minimizing land use conflicts, supporting local tourism and agriculture-based economies, and protecting the scenic, recreational, cultural, and natural resources of the area. The Committee's comments provide ideas for specific design features that would achieve a better project, as do many other comments from the community and the public.

The Tioga Inn project as currently proposed will have significant visual, aesthetic, wildlife, public service, and traffic and circulation impacts, according to the County's extensive Draft Subsequent Environmental Impact Report (DSEIR). Indeed, the DSEIR identifies seven potentially significant and unavoidable adverse impacts that the Planning Commission and your Board would be asked to approve without offsetting mitigation.

The Committee remains optimistic that a balanced project alternative can emerge, one which achieves the high standard Mono County holds itself to while also providing decision makers with realistic options. The time to craft such an alternative is now, and Mono County leaders such as yourselves are critical to this process. The project must provide benefits without imposing permanent, unacceptable impacts on the scenic Mono Basin, Lee Vining community, and Mono County economy.

Sincerely,

Bartshe Miller  
Eastern Sierra Policy Director



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August 21, 2019

Via postal mail and email to [mdraper@mono.ca.gov](mailto:mdraper@mono.ca.gov)

Wendy Sugimura, Director  
Michael Draper  
Mono County Community Development Department  
PO Box 347  
Mammoth Lakes, CA 93546

Re: Comments on the Subsequent Environmental Impact Report and Specific Plan for the Tioga Inn Project

Dear Director Sugimura and Mr. Draper,

The Mono Lake Committee is writing to provide comments on the scope and content of the Draft Subsequent Environmental Impact Report (DSEIR) for the Tioga Inn Project (Project).

## I. Introduction

The Mono Lake Committee (MLC) is a non-profit citizen's group dedicated to protecting and restoring the Mono Basin ecosystem, educating the public about Mono Lake and the impacts on the environment of excessive water use, and promoting cooperative solutions that protect Mono Lake and meet real water needs without transferring environmental problems to other areas. Founded in 1978 and headquartered in Lee Vining, the Committee is supported by 16,000 members who are passionate about Mono Lake and the natural features of Mono County. MLC has played a significant role in achieving the ecological and scenic protections that are in place today for Mono Lake, its tributary streams, and surrounding lands, forming a foundation for the Mono Basin's vibrant tourism-based economy.

Scoping for the expansion of the Tioga Inn specific plan took place in 2016 and, along with many others, MLC provided a detailed comment letter dated November 21, 2016. During the subsequent two and half years the Project expansion was reshaped in response to concerns; for example, the proposed third story of the hotel was abandoned, presumably in response to fire safety concerns and visual impacts identified during scoping.

Unfortunately, proposal modifications were not made to address the visual impacts of the proposed expansion of the site development footprint onto the highly visible ridgeline at the east side of the property, 40+ feet higher than the existing development and located prominently above Highway 395 and boldly within scenic views from South Tufa and other popular visitor destinations at the Mono Lake Tufa State Natural Reserve and Mono Basin National Forest Scenic Area. As a result the Project studied in the DSEIR continues to create major visual, aesthetic, and wildlife problems—larger, in fact, than those identified during scoping. The DSEIR concludes they are significant and, as proposed, unmitigable.

The problems that would be created by expanding the site development footprint of the Tioga Inn were well identified in 2016. The proposal was not subsequently modified to craft solutions to these problems, leaving the DSEIR to study a constrained set of alternatives and mitigations that are unable to address these issues. As a result, even the DSEIR concludes that the No Project alternative is the only way to avoid serious damage to the scenic assets of Mono Lake, scenic highways, and the gateway to Yosemite National Park.

This means that Mono County decision makers like yourself, the Planning Commission, and the Board of Supervisors are being presented with project alternatives that do not successfully achieve the county's housing and economic goals while preserving the "Wild by Nature" scenic assets that are vital to Mono County's continued prosperity. Indeed, the Project as proposed is in direct conflict with almost every element of Mono County's vision for community development.

Because the visual, scenic, aesthetic, and wildlife concerns MLC raised in 2016 have not been addressed (as well as others) MLC is greatly concerned that decision makers will be confronted with false choices between housing and scenic protection. It doesn't have to be this way, and Mono County deserves better.

MLC knows that better design alternatives exist that could eliminate unacceptable visual impacts and substantially mitigate other impacts of concern. Given that our scoping comments on these topics were not addressed with suitable alternatives and mitigations in the DSEIR, MLC has necessarily asked our legal team at Shute, Mihaly & Weinberger to review the DSEIR and evaluate its adequacy for decision-making. Their letter, submitted under separate cover, identifies significant legal deficiencies that must be addressed by preparation of a comprehensive EIR or, at minimum, the creation of new problem-solving alternatives and mitigations and recirculation of the DSEIR.

MLC is well aware that Mono County has demonstrated a commitment to both following the specific legal requirements of CEQA and to achieving the spirit of the law by daylighting project impacts and crafting and implementing alternatives that preserve the environmental and community integrity of Mono County. More than any other development project in recent years, Mono County needs better alternatives and mitigations to be created for the Tioga Inn Project. A comprehensive EIR, new alternatives and mitigations based on comments and community engagement, and recirculation of the document are a path forward to achieving the high standard Mono County holds itself to—and to providing decision makers with viable options for a project that provides desirable benefits without imposing permanent unacceptable costs on the scenic Mono Basin, Lee Vining community, and Mono County economy.

In this letter MLC reviews the DSEIR and provides comments on the alarming visual and scenic impacts that will result from the Project, as well as other topics including wildlife, water, dark skies, and community plan consistency.

## **I. Comments on the Tioga Inn DSEIR**

### **A. Visual, aesthetic, and scenic impacts**

As noted in the 1993 Final Environmental Impact Report (FEIR), the only unavoidable significant adverse impact identified was the impact on visual resources. The proposed Tioga Inn specific plan amendment expands and intensifies visual impacts outlined in that FEIR and seeks, again, for Mono County to waive consideration of these impacts.

The DSEIR notes that, despite landscaping, construction, and design mitigation to minimize offsite views, the impact to Scenic Resources and Visual Character are a “Significant and Unavoidable Adverse Impact” and that Light and Glare Effects are a “Significant and Unavoidable Adverse Impact.”

MLC concurs with this analysis; however, the analysis should contain more information and analysis in order to describe the full extent of the project’s visual impacts. Finally, the DSEIR does not adequately consider siting and design mitigation or alternatives that could significantly reduce visual impacts.

#### **1. Scenic resources and analysis**

The proposed Tioga Inn Project is located at the eastern gateway to Yosemite National Park, adjacent to world-renowned Mono Lake, the congressionally-designated Mono Basin National Forest Scenic Area, Mono Lake Tufa State Natural Reserve, and neighboring the small, rural, community of Lee Vining. This project, as proposed, has the potential to propagate “Significant and Unavoidable Adverse Impacts” well beyond the Mono Basin when considering the economic connection with Mono County and the nationally significant profile of this Mono Lake and Yosemite gateway community.

The Mono County Economic Development, Tourism & Film Commission recently updated its visitor survey results based on a 2018 tourism study and presentation by Mono County consultant Lauren Schlau at the June Lake Community Center in June 2019. According to Ms. Schlau, Mono Lake is now the overall #1 attraction in Mono County with the largest share of “Total Visitors” at 43.2% and Mono County enjoys “high visitor satisfaction” mostly due to “scenic beauty perception.” The recognition that Mono Lake is now the overall #1 attraction in Mono County is an important, additional consideration in appreciating the extent of the scenic value placed on Mono Lake for all of Mono County.

The State Scenic Highway 395 which runs from Walker, California to the Inyo County line; the eligible State Route 120 and Tioga Pass; the nationally significant eastern gateway to Yosemite National Park; the Mono Basin National Forest Scenic Area, the first congressionally designated Scenic Area in the United States; and the “Wild by Nature” Mono County Tourism marketing of

Mono County all collectively reinforce what is well-established—that the Mono Basin is a location of exceptional visual quality.

The DSEIR states accurately: “In combination with the dramatic Sierra escarpment leading into Yosemite National Park, the otherworldly beauty of Mono Lake is among the outstanding scenic vistas of the world.” However, throughout the document evaluations of visual impact often understate and underscore the effects of the Project on these remarkable and unique scenic vistas.

There is no mention of the Mono Lake Tufa State Natural Reserve within the context of the Scenic Resources. The Mono Lake Tufa State Natural Reserve is a State Park unit as listed in Section 5.5.3.2 under California Department of Parks and Recreation, encompasses the entire surface of Mono Lake, and water-based recreation (kayaking, paddleboarding, etc.) will be affected by the visual impacts, as well as from key locations on State Park land adjacent to Mono Lake. The DSEIR should specifically consider the visual impacts the Project will create within the State Reserve and mitigations. State reserves, as per the California Code, Public Resource Code § 5019.65 (2017):

“...consist of areas embracing outstanding natural or scenic characteristics or areas containing outstanding cultural resources of statewide significance. State reserve units may be established in the terrestrial or nonmarine aquatic (lake or stream) environments of the state and shall be further classified as one of the following types: (a) State natural reserves, consisting of areas selected and managed for the purpose of preserving their native ecological associations, unique faunal or floral characteristics, geological features, and *scenic qualities in a condition of undisturbed integrity*. Resource manipulation shall be restricted to the minimum required to negate the deleterious influence of man.”

## **2. Visual simulations are insufficient and do not convey the depth of impacts**

Photographic exhibits in the DSEIR fail to sufficiently analyze existing site views. As stated in MLC’s Notice of Preparation letter dated November 21, 2016, “Visual simulations should be a major component of the DSEIR so that the true visual impacts can be represented to the public.” The exhibit images do show various site views of the project, but they do not include a view from the amphitheater porch of the Mono Basin National Forest Scenic Area Visitor Center looking south toward the project area. These exhibits also do not include the view from the Mono Lake Tufa State Natural Reserve at the end of the boardwalk below Mono Lake County Park. Further, neither a representative view from Panum Crater, Lee Vining Canyon, or Mono City were included in the analysis.

Further, these images do not fully represent or include primary views that visitors will focus on when they first encounter the Project. For example, visitors to South Tufa do not take photographs or appreciate the view west in the middle of the day at the northeast corner of the South Tufa parking lot, as the DSEIR image does. Visitors typically are drawn down the path to the tufa and the lake where they focus on specific views and photography. The images taken from South Tufa (Mono Lake, tufa, and the Sierra Nevada crest are, by the greatest volume in

media, taken from South Tufa near the water's edge. Image Exhibit 5.12-5 in the DSEIR does not faithfully capture this.

Visual simulations should include three-dimensional models placed in the landscape to accurately portray the views from along the north and south-bound lanes of Highway 395 approaching and exiting Lee Vining. The simulations should also accurately communicate the scope and scale of the project from a wide range of perspectives (hiker and climber views from the Tioga Crest, flights into Lee Vining, etc.) and varied lighting conditions. The simulations should also convey valuable information about the relative height of buildings and the reach of roads and associated development fixtures.

### **3. Extent of impact on South Tufa, Mono County's iconic destination**

South Tufa is the most heavily-visited day-use site at Mono Lake. With an estimated 176,000 visitors in 2018, South Tufa provides access to sweeping views of Mono Lake, unusual tufa towers, and the Sierra Nevada escarpment. Collectively, these elements form an iconic image that is frequently used to represent Mono County, Mono Lake, the Eastern Sierra, the Mono Lake Tufa State Natural Reserve, and the Mono Basin National Forest Scenic Area. This classic image location is highlighted on social media, travel brochures, articles, fine art photography books, calendars, and more, and represents a large volume of Mono Lake images highlighted on social media, including those posted by Mono County Tourism. South Tufa is even highlighted within Mono County's own documents, such as the cover of the Mono Basin Community Plan and on the Mono County Housing Needs and Residential Survey, October 2017.

The proposed Project site exists within these images. The DSEIR does not faithfully analyze the value of this site as a world-class—let alone flagship—Mono County visual resource. Countless visitors and photographers converge at all times of the day and night, in all seasons to experience a nearly completely undisturbed landscape in a wide range of lighting conditions and weather phenomena. There is no doubt, regardless of the distance of the proposed project, that grading scars, a wastewater disposal field and wastewater treatment plant effluent irrigation area, two-story Project lighting, solar panels, and nighttime vehicle travel in and out of the proposed project area will all contribute adversely and significantly to alter the experience of visitors at South Tufa. While the DSEIR acknowledges a “Significant and Unavoidable Adverse Impact” relating to Scenic Resources, Visual Character, and Lighting and Glare effects, the DSEIR does not go far enough in describing the extent that these impacts will have for hundreds of thousands to millions of future visitors that value this classic Mono County destination. The diminished value of South Tufa is not easily calculated within the context of the tourism economy, but the DSEIR might consider evaluating the adverse impact here since this location is integral to the identity of Mono County to past and future visitors.

### **4. Extent of impact on dark sky resources in the Mono Basin**

The Mono Basin and the Eastern Sierra region is one of the remaining dark sky locations in California where visitors can appreciate stars and night-sky phenomena as they were seen

hundreds of years ago. Dark skies are a known asset that attract visitors and contribute to the economic success of Lee Vining.

The Mono Basin is particularly vulnerable to new sources of light pollution due to the unspoiled natural light landscape that has no major development projects. The towns of Lee Vining and Mono City are mostly a mix of small and medium-sized buildings, well shielded by mature vegetation, and positioned along the lower elevations of the Mono Basin relative to the new Project proposal.

The Tioga Inn development, and the cumulative impact of the Project will, due to its topographic prominence, size, scope, and position in front of and along the east-facing moraine above Highway 395, produce a more obvious visual distraction, and even cast shadows that a dark-sky adapted recreation observer could perceive at a distance. The project cascades down an elevated, east-facing promontory, extending south-southeast from the current viewpoint flagpole. This siting makes Mono County's dark sky lighting ordinance largely ineffective as shielded light will scatter out and below the development out across the Mono Basin, adding significant distraction where none was present before. Light pollution will be considerably greater than if the project was sited at the same elevation as Lee Vining. The elevated, east-facing position of the housing units, the number of lights necessary for a development of this size, and the night vehicle traffic with headlights that will move in and out of the development will dramatically alter the night sky environment across the entire Mono Basin. A new light source would be directly visible from Mono City, to the north shore of Mono Lake, to the Nevada State Line, Navy Beach, South Tufa, and Panum Crater, and the diffuse glow of the development would reach northbound visitors dropping into the Mono Basin from the south along Highway 395 from the "Sandhouse Grade."

The Mono Basin is a significant destination for night sky enthusiasts and photographers, and annually there are dozens of photography workshops that visit or stay in the Mono Basin to use South Tufa and other Mono Basin destinations. During the summer ranger-led, interpretive star-talk programs take place at South Tufa and hundreds of visitors are introduced to the panorama of the dark sky, many of whom are children, experiencing the true vibrancy of individual stars and the Milky Way for the first time in their lives. The Project will be highly visible, distracting, and alter the experience for future visitors. While there is no doubt that there will be a "Significant and Unavoidable Adverse Impact" on Light and Glare Effects, the DSEIR fails to examine the extent these impacts will have on the visitor experience, tourism, and residents.

## **5. County Scenic Combining District conflict**

The Project is located within the Mono County Scenic Combining District and is subject to the County's requirements (5.12-7). The Project is in conflict with these requirements, and new alternatives and mitigations must be explored to resolve this conflict.

Specifically, in regard to the County's Scenic Combining District Standards for State Scenic Highway 395, the Project is in conflict with Sections B, C, and F.

- Section B states: "*New structures shall be situated on the property where, to the extent feasible, they will be least visible from the state scenic highway. Structures shall be clustered when possible, leaving remaining areas in a natural state, or landscaped to be compatible with the scenic quality of the area.*" The proposed Project will be highly



visible from Highway 395 in south and northbound directions and will break the ridgeline view of the Tioga Crest, in particular, for northbound traffic. New proposed structures are two-story and are not clustered, but instead are designed in a cascading, amphitheater-like siting arrangement that appears to maximize views from the site across the Mono Basin while maximizing the views of the structures from various points in the Mono Basin, including from Highway 395.

- Section C states: *“To the extent feasible new subdivisions shall not create parcels with ridgeline building pad locations.”* The proposed Project creates building pad locations both along the restaurant ridgeline and in an adjacent natural, prominent swale above the highway facing east. This area will be fully built out and graded into the hillside from the ridgeline to the north, and will be situated with sweeping views to and from the project area across the Mono Basin and directly over Highway 395.
- Section F states: *“Light sources in exterior lighting fixtures shall be shielded, down-directed and not visible from State Scenic Highway 395.”* Despite planned compliance with Mono County Dark Sky lighting regulations, the elevated, exposed siting of the project will contribute light pollution downward and across the Mono Basin. Project light sources, including exterior and interior lighting, will be highly visible from Highway 395. The ridgeline location of the Project makes the impacts worse, as downward-facing lighting regulations do little to shield compliant lights placed 100 feet above the highway.

## **6. Scenic Highway visual impact scoring**

The DSEIR conducts a Caltrans Visual Impact Assessment to determine the visual impacts of the project on State Scenic Highway 395 and State Highway 120, the Tioga Road, which Caltrans has highlighted as eligible for Scenic designation and Mono County has designated as a County scenic highway. After review of the Questionnaire and Response in Table 5.12-3 MLC believes the Project was inaccurately evaluated and scored.

Item 1 (“Will the project result in a noticeable change in the physical characteristics of the existing environment?”) should be scored as a “3” instead of a “2” given that “Significant and Unavoidable Adverse Impacts” are attributed to Scenic Resources and Visual Character, Light and Glare Effects. While the discussion mentions low-visibility project items like subsurface irrigation and road alignment, these in no way moderate the “High” score that should be given here due to the proposed construction of two-story buildings on the currently undeveloped ridgeline adjacent to the highway.

Based on community meetings, numerous requests for a comment period extension, the high volume of public comments on the DSEIR, and the significant local concern regarding the proposed Project, item 3 (“What level of local concern is there for the types of project features”) should be scored as “High Concern,” which results in a score of “3.”

Item 6 (“What is the potential that the project proposal will be controversial within the community, or opposed by any organized group?”) should be scored a “3” “Hi Potential.” The high volume of public comments on the DSEIR support this scoring.

Item 8 (“To what degree does the project’s aesthetic approach appear to be consistent with applicable laws, ordinances, regulations, policies or standards?”) should be scored as “3,” “Low Consistency.” The project’s major visual impacts are not consistent with applicable laws, ordinances, regulations or policy standards, and are in fact in conflict with several of them as noted elsewhere in this comment letter.

This revised scoring results in 25 total points for the Visual Assessment. Twenty five points places the Project scoring in the 25–30 point range, indicating “Noticeable visual changes to the environment are proposed. A fully developed VIA is appropriate that includes photo simulations. It is appropriate to alert the Project Development Team to the potential for highly adverse impacts *and to consider project alternatives to avoid those impacts*. See Directions for the Advanced/Complex VIA Annotated Outline.” (emphasis added)

Appendix O, which currently provides a “Minor Level Visual Impact Assessment” should be revised and a “fully developed” Visual Impact Assessment prepared. In addition to addressing the scoring above, this revision will address an apparent problem that the existing Assessment was prepared in June 2018 before the visual analysis of Section 5.12 was completed and the finding of “Significant and Unavoidable Adverse Impacts” was established for Scenic Resources and Visual Character.

As emphasized above, the revised scoring means that the DSEIR should consider project alternatives that avoid these visual impacts. MLC agrees. The DSEIR must be revised to include alternatives that do not impose visual impacts on South Tufa, Mono Lake, and Highway 395.

## **7. Failure to mitigate aesthetic and visual impacts**

The DSEIR concludes that the aesthetic and visual impacts of the project are significant, and our comments above show that the impacts are even greater than shown in the DSEIR. Due to these impacts and others the DESIR concludes that the No Project alternative is environmentally superior.

Surprisingly, the DSEIR does not contain well-developed alternatives and mitigations to solve these impact problems. This is a serious failing, as CEQA requires the document to contain feasible mitigation measures and alternatives to lessen or avoid such impacts, a topic covered in the accompanying letter from Shute, Mihaly & Weinberger. This poses a serious practical problem as well for Mono County: how are decision makers supposed to do their job when no alternatives that mitigate these visual impacts are provided for their consideration? The purpose of CEQA is to provide for informed decision making. The Project analysis should be redone and recirculated to include new alternatives and mitigations that solve these impacts. To assist in this effort MLC provides suggested measures later in this letter.

### **B. Hydrology and Project water supplies**

#### **1. Project water demand**

Total annual water demand for the Project and the FEIR approval is not clearly delineated, and the “worst case” maximum daily demand further clouds the water consumption projected in the DSEIR. Two different figures are offered—40,800 gallons per day (gpd) and 60,000 gpd. The analysis should consider the total annual “worst case” or maximum potential use annually for both the FEIR and the Project. It is unclear as written at 5.2-20 how the Waste Water Treatment Package will simultaneously create an additional 50% demand while at the same time assuaging irrigation demand through subsurface irrigation.

This is an area where a LEED-certified design alternative would greatly assist with water efficiency and distribution on the property. This approach, adjacent to Mono Lake, and at the north end of the Los Angeles Aqueduct, would make a strong and thoughtful statement about how the landowner, Mono County, and California thinks about water efficiency. While the Project as a whole will be “efficient” in terms of recent building code and design standards, this is merely the baseline required for a development of this size in a situation where it is not connected to an urban supply or wastewater system. LEED certification, or at the very least, a design alternative that goes out of its way to demonstrate water efficiency, on-site treatment, and groundwater recharge at a higher design standard than the baseline, would enhance the value of this Project for Mono County, the Mono Basin National Forest Scenic Area, and the Eastern Sierra.

## **2. Groundwater impacts on Lee Vining Creek and downslope springs**

New California State Water Resources Control Board-mandated Stream Ecosystem Flows (SEFs) for Lee Vining Creek began in 2019 in order to better mimic the natural hydrograph in accordance with State Water Board-mandated stream restoration. These flows are supported by Mono Lake Committee, Los Angeles Department of Water & Power, California Department of Fish and Wildlife, and California Trout. The new flows are part of a larger settlement agreement, under the guidance of the State Water Board. In conjunction with the SEFs, winter base flows are reduced compared to previous flow regimes in Lee Vining Creek. The relevance of the DSEIR calculations converting the 0.23 cubic feet per second (cfs) daily effect on Lee Vining Creek into an annual percentage based on a 25 cfs flow are now obsolete. Pump test analysis and peer review should be reconsidered in light of this change. Lee Vining Creek can now fall between 10 cfs and 16 cfs for six months of the year from October through March (note the 25 cfs daily required minimum flow in Table 5.2-6), depending on year-type and Southern California Edison operations upstream. Consequently, the estimated potential effect on Lee Vining Creek is flawed. The study needs to take the decades-long efforts to restore the creek into consideration and be recalculated and analyzed for potential mitigation.

The lower reach of Lee Vining Creek is a transition zone between a gaining stream and a losing stream. Groundwater pumping could convert the reach from gaining to losing depending on pumping and season. This has implications for water temperatures (loss of gaining cooler groundwater) if the gaining/losing boundary moves significantly upstream. Studies of the Walker River have used fiber optic cables to measure water temperatures linearly along the river and

determine gaining/losing reaches. A similar study should be initiated because water temperature influences water quality (e.g. dissolved oxygen) and fishery conditions.

The actual impact to Lee Vining Creek would be determined by the change in the gradient of the groundwater surface elevation adjacent to the creek. Additional monitoring wells are needed to determine what the effect would be.

The cone of depression created by the wells is along the path between subsurface flow from the creek and the spring-fed tufa towers of Lee Vining Tufa. There is no discussion or analysis of the potential effect on down-gradient springs and wetlands at Mono Lake within the Mono Lake Tufa State Natural Reserve.

In summary, a more thorough and detailed area hydrologic analysis, beyond the pump test, is necessary to determine the impacts to winter flows in Lee Vining Creek and any downslope impacts on spring production, wetlands, and tufa formation at Lee Vining Tufa.

### **3. Groundwater impacts on neighboring properties**

MLC is aware of concern in the community regarding impacts on wells on neighboring properties, in particular parcels 021130043 and 021130044. The existing Mobil Mart has reportedly had such impacts, and the significant proposed expansion could potentially cause serious problems with water supply at these residences. The document does not analyze this situation; an analysis should be conducted and possible mitigation, such as improving wells on neighboring property, presented if necessary.

### **4. Drainage and erosion**

Page 5.2-18 states the design storm for stormwater facilities is 1 inch in 1 hour (20-year rainstorm). What happens to the stormwater from storms that exceed this rain rate? Page 5.2-18 goes on to say "all other flows will be allowed to enter drainages that flow to Mono Lake." The paths of these flows must be disclosed. When the stormwater exceeds the systems' capacity (especially the retention system on the steeper slope), does it erode the slopes below and flow across highways? An acceptable method of conveying water from larger events must be incorporated into the plan/design. These extreme events are becoming more common, they will happen, and must be planned for.

Page 5.2-19 states, "It must be demonstrated that the stormwater system is designed in such a way that when the retention capacity is exceeded, runoff leaves the site in keeping with pre-project drainage patterns, and will not cause the design capacities of any downstream drainage facilities to be exceeded," however, those designs and calculations are not disclosed.

### **C. Biological Resources**

The proposed siting and scope of the Project will be detrimental to the Casa Diablo Mule Deer herd. This herd is already impacted and constrained by the existing Mobil Mart, deli, and projected hotel and restaurant development. While deer regularly visit the Mobil Mart lawn and

can often be observed nibbling aspen leaves next to the building and grazing on lawns and landscape around the existing residential housing, these animals can currently safely retreat into surrounding sagebrush scrub and navigate substantial open space to the south. The original 1993 approval process found that there would be significant unmitigated impacts on the deer and the Specific Plan was allowed to proceed. Here the Project asks for more and proposes to add new, significant and unmitigated impacts on deer.

### **1. Extent of impacts on Mule Deer**

Future development will further fragment and restrict mule deer habitat with additional roads and parking. Visitors' and residents' vehicles and pets, and residents traveling to and from workforce housing will force deer to scatter more readily, increasing vehicle impacts with deer on-site, despite the designation of "Open Space—Preserve" as shown in Exhibit 5.3-6. The designation of roadways as "Open Space—Facilities" appears to be an empty designation in regard to the protection of deer. While not a vertical obstacle to deer, paved roadways do create an open, unnatural barrier that deer are more hesitant to cross, and the traffic along these roads poses a significant hazard for the animals, even at lower speeds.

The deer issue at Convict Lake Resort poses an interesting comparison that should be analyzed for the Tioga Inn. At the Convict Lake Resort restaurant, lodging, and employee housing site deer encounter roads, buildings, and other human-constructed obstacles, but also find artificially placed lawns, aspen trees, and other landscaping forage. Deer linger, grow habituated to humans, and are occasionally hand-fed and encouraged by human activity. Deer become increasingly docile, lose fear of motor vehicles, and are easily hit on roads when surprised by evening traffic/headlights or chased into roadways by the occasional off-leash dog.

Deer will be increasingly constrained by the current proposed Project, yet it is also likely they will encounter additional forage opportunities. This difficult and unnatural situation may benefit some deer, but the overall effect could potentially lead to additional vehicle impacts with these animals along Highway 120, Highway 395, and within the project area as deer loiter unnaturally close to human activity and on roads. As the DSEIR states in Section 5.3.5, "Operation of the new workforce housing facilities could have impacts that will reach beyond the construction footprint, mainly due to expected changes and increases in human activity." A reasonable attempt to anticipate and analyze these impacts must be made.

### **2. Mitigation BIO 5.3(a-5) (Pet Enclosure, Pet Leashing, Eviction for Noncompliance)**

This mitigation measure is impractical to enforce unless the lead agency can enforce or intervene directly. Both visitors and residents will have pets that occasionally escape. The site manager will not have eyes on up to 294 residents and their pets at all times. Concurrently, visitors and residents will be unable to be vigilant 100% of the time regarding pet restraint. There is no way to monitor compliance by the proponent in terms of effective pet restraint, nor is there any specific monitoring or oversight by the lead agency that would ensure compliance with this mitigation. The DSEIR states in 5.3.5, "Domestic pets, especially dogs and cats, are expected

with the new housing tenancy. It is unrealistic to expect that these animals will be restrained, and wandering pets potentially will be an important new predatory limitation that is imposed on the environment stretching for some distance beyond the project footprint... Dogs could harass terrestrial wildlife including American badger and mule deer, and cause increased crossings and potential for collision at US 395.”

### **3. Mitigation BIO 5.3(d-3) (Protected Corridor along US 395)**

This is deferred mitigation with no performance standards to evaluate its success. There is no monitoring or evaluation plan for the “Open Space-Preserve.” This mitigation states, “Mule deer mortality along US 395 adjacent to the project site can be minimized by ensuring that the corridor between US 395 and all Tioga Inn Project elements (including the hotel, full-service restaurant, and workforce housing) remains entirely free of linear barriers, brightly lit signs, and new surface structures (excepting one new above-ground sewage/reclaimed water pump control structure with no more than 100 feet of building area), with no future devegetation of native plant materials. This mitigation measure applies only to lands owned by the project applicant and outside of the approved hotel and restaurant uses.” This is purely speculative mitigation, as there are no clear objectives and no baseline data to determine whether future monitoring (not described) will make this mitigation effective at all. It is possible that this proposed mitigation may have the opposite of the intended effect—exacerbating deer mortality by inviting deer to use open space in greater proximity to Highway 395, consequently increasing vehicle collisions with deer and other wildlife.

### **4. Mitigation BIO 5.3(d-4) (Waste Receptacles)**

This mitigation is passive, and does not specifically state who will design waste receptacles, and how this design will be evaluated so that they are successful in preventing the bears and ravens from accessing them. Rental agreements are mentioned as a means to mitigate against unsecured food items outside residences and vehicles, but again there is no substantive description of how this will be enforced, who will enforce it, how the mitigation can be ensured to be successful through meeting specific objectives and monitoring.

### **5. Mitigation BIO 5.3(d-5) (Deer Passage; Cumulative Impact Mitigation Measure)**

This deferred mitigation does not consider the increased development footprint of the new Southern California Edison (SCE) substation. There is no natural corridor immediately adjacent to Lee Vining Creek north of Highway 395 along the SCE property. The current culvert has no room for any deer movement unless the deer are capable of crossing long distances along a submerged creekbed composed of large granite rocks. Further, the culvert, if extensively modified and widened, would also require cooperation, concessions, and financial commitment from SCE to extensively augment the creekbed corridor through their substation development. This mitigation, while in the Project area, is widely separated by Highway 120. The expectation that deer would travel south and east of the Tioga Inn Project area, follow the “Open Space-Preserve” northwest, cross Highway 120 at the intersection of Highway 395, and then efficiently traverse beneath Highway 395 through a Deer Passage is unrealistic.

Finally, this deferred mitigation is potentially cost-prohibitive. The “applicant intends to collaborate with Mono County Community Development Department to submit a Sustainable Communities grant application under the Rural Innovation Project Area (RIPA) program. A priority use of program funds, if awarded, will be to develop a safe pedestrian and cycling access route between the project area and the community of Lee Vining. This access route will be designed to incorporate a deer passage along the US 395 culvert at Lee Vining Creek.” While it is clear that this is deferred mitigation, the fact that it is linked with pedestrian and cycling access could complicate implementation.

If the Project proponent and lead agency are sincere with this potential mitigation, the Project proponent should be required to contribute to a mitigation fund that will cover the cost of this project (with at least potential matching funds of 50% of projected cost in 2019 dollars). Further, additional crossing locations should be analyzed for effectiveness, for example, an undercross location beneath Highway 395, ¼-mile south of the junction of Highway 395 and Highway 120.

## **6. Significance after mitigation**

The DSEIR states, “However, only Caltrans has authority to create a deer passage along US 395. There is no assurance that that Caltrans would undertake this measure, nor can it be assured that a grant application will be successful. The potential for increased deer mortality due to a project-related increase in unsafe highway deer crossings is therefore considered to be a *significant and unavoidable adverse project impact*” (emphasis added). MLC agrees with this finding, and this is a much larger impact than just on the deer. The potential for additional highway impacts would likely result in even further impacts to traveler safety and place further strain on the resources of the Lee Vining Volunteer Fire Department. This potential adverse project impact feedback loop is a hidden and unanalyzed project impact.

The conclusion here is flawed: “Implementation and enforcement of mitigation measures recommended above would reduce all other potential project impacts on biological resources to *less than significant levels*.” (emphasis added) A number of these mitigation measures, as outlined above, have incomplete descriptions of implementation and vague references to who would enforce them and how they would be enforced. The mitigation measures lack clear objectives and monitoring. Consequently, as written, the DSEIR does not sufficiently reduce all other potential project impacts on biological resources to “less than significant levels.”

## **D. Land use planning**

### **1. Mono Basin National Forest Scenic Area**

While the proposed Project is not located within the Mono Basin National Forest Scenic Area (Scenic Area), it is located 1,000 feet from its boundary, and the scope and overlooking scale of the project has a number of direct visual impacts within this congressionally-designated, first of its kind, National Forest Scenic Area. As a result the development is in conflict with management goals and elements of the Scenic Area Management Plan.

Consideration of Scenic Area goals, given the Project's proximity to the Scenic Area, would show an intent to make the Project compatible with the scenic values of the Mono Basin and help mitigate direct impacts to visual character.

The Scenic Area Management Plan contains specific management direction that supports the overall legislative goals. Consultation with the US Forest Service would allow for discussion of these goals. Here MLC highlights that protection of visual resources is at the core of the Scenic Area Plan, as captured in the goal "Manage the Scenic Area to maintain and enhance the visual resource."

The Inyo National Forest assigns Visual Quality Objectives (VQOs) for various areas in the Scenic Area. These are so important to the integrity of the Scenic Area that any action that deviates from a previously assigned value must obtain the Forest Supervisor's approval. If a visual resource at any time fails to meet its originally-assigned VQO, it must be rehabilitated. Special emphasis is given to foregrounds and middle-grounds of scenic corridors of travel routes, including highways officially designated by the State as California State and County Scenic Highways, which include State Highway 120 (West of 395), and US 395.

The DSEIR should include new mitigations and alternatives that eliminate permanent visual impacts, and the Scenic Area Plan should be used as part of the method to evaluate their effectiveness.

## **2. Physically dividing an established community**

The DSEIR states in section 5.5.5: "The Tioga Mart development is located about one-half mile south of the community of Lee Vining. The site is physically separated from Lee Vining and from Mono Lake by US 395 (which defines most of the northern property boundary) and by SR 120 (which defines most of the western property boundary). Proposed uses would be integrated into the layout of existing and approved onsite uses and none of the proposed uses would have the potential to physically divide established community areas in other locations. No impacts have been identified, and no mitigation is required."

The DSEIR correctly identifies the separation of the site from Lee Vining and yet reaches a perplexing and incorrect conclusion. The DSEIR is incorrect to conclude that there are no significant impacts associated with LU 5.5(a). Instead, the document should identify that the project produces significant impacts and be revised to explore new Project alternatives and mitigations to reduce those impacts.

The existing Tioga Gas Station and Whoa Nellie Deli frequently demonstrate the physical divide already created by the project in Lee Vining. Social gatherings for live music and residents dining at the Whoa Nellie Deli necessitate driving out of Lee Vining to the project site (or walking/biking at peril to unsafe traffic exposure). The addition of a hotel, restaurant, and now workforce housing, and the resulting quadrupling of Lee Vining population will magnify this division and essentially create an entirely new, separate, and self-contained development with a high density of people and services separated by .63 miles of highway travel and no coherent



physical relation or connection to the town of Lee Vining except those assigned by political construct.

For all practical, common-sense description, the development site is “down the road” and not physically a part of the small, rural, town of Lee Vining. The project proposes to house the majority of the future community on its site, thus dividing the community by virtue of growing the community significantly on the other side of the existing divide.

### **3. Inconsistency with Community Plan**

The Mono Basin Community Plan was approved in 2012 and is an Area Plan in the Mono County General Plan. CEQA requires that the DSEIR be consistent with the Mono Basin Community Plan. Unfortunately the Project as proposed has numerous serious conflicts with the Mono Basin Community Plan goals, policies, and actions. The DSEIR is incorrect to conclude that there are no significant impacts associated with LU 5.5(b). Instead, the document should identify that the project produces significant impacts and be revised to explore new project alternatives and mitigations to achieve Project compatibility with the Community Plan.

Although the DSEIR (5.5-17) states that the “Mono Basin Community Plan was developed by the Mono Basin RPAC,” it is more accurate to state that the RPAC supported the development of the Mono Basin Community Plan by the community members of Lee Vining through a focused collective facilitated process that included broad participation in multiple meetings, surveys, and detailed consensus-based drafting and editing to achieve a final plan that—for the first time—represents the goals the community of Lee Vining holds for itself.

As an integral part of the Lee Vining community, the Mono Lake Committee recognizes the Community Plan as a carefully crafted expression of the values of shared goals of the diverse residents. Consistency with the Community Plan is a critical ingredient to assuring community compatibility of any project, especially one as large and impactful as the Tioga Inn Project studied in the DSEIR.

In the following section MLC reviews the DSEIR’s problematic evaluation of the Project’s compatibility with the Community Plan, and we provide suggestions of specific mitigations and alternatives later in this letter. However, MLC emphasizes that to evaluate Community Plan consistency it is critical that input from the many members of the Lee Vining community be carefully considered and MLC urges Mono County to thoroughly catalog community comments to create a complete and comprehensive roster of concerns that point out project inconsistencies with the Community Plan.

**Compatibility with Community Plan Goal 10: Maintain the spectacular natural values of the Mono Basin and rural, small-town character of communities by managing growth, ensuring high-quality aesthetics, and providing for community development to enhance the quality of life for residents.**

*Plan Objective 10.A: Provide for the orderly growth of Lee Vining in a manner that retains the small-town character by directing future development to occur in and adjacent to Lee Vining.*

The DSEIR claims that “the project would be consistent with the objective to pursue orderly development in and around Lee Vining, as well as the policies to prioritize existing built uses over new lands.” This claim is unsubstantiated and incorrect.

Because the Project proposes to quadruple the current population of Lee Vining, create Significant Adverse Impacts to visual character, and does not address pedestrian connectivity impacts that threaten the safety of residents and visitors, the project clearly does not “maintain the spectacular natural values of the Mono Basin and rural small town character of communities by managing growth, ensuring high-quality aesthetics, and providing for community development to enhance the quality of life for residents.”

In regard to Objective 10.A, the proposed Project is perhaps orderly in chronology, but it does not retain the small town character of Lee Vining. This proposed development is down the road and separate from the town of Lee Vining. The Significant Adverse Impact on pedestrian safety created by the Project’s lack of foot and bicycle connection to town is evidence that the Project does not constitute orderly growth “in and adjacent to Lee Vining.” The Project quadruples the population of Lee Vining—likely overwhelming school resources, fire protection, and emergency medical services—which is neither orderly nor consistent with small-town character. And despite the DSEIR’s claim to the contrary, the very purpose of the Project being studied is to convert ridgeline land placed off limits to development in 1993 into a housing project, which is clearly in contradiction to the Community Plan’s interest in avoiding new land development.

***Plan Objective 10.C: Encourage building types, architectural design compatible with scenic & natural attributes of Mono Basin.***

The DSEIR states regarding Objective 10.C, “New uses will incorporate the colors, materials and rustic design elements of the existing Tioga Mart development. The siting of new uses incorporates recommendations of the project biologist as well as visual perspectives gained from the schematic renderings. Green energy will be integral to project infrastructure. The workforce housing will be designed as a residential community located inside a commercial development. All project lighting will conform with dark sky regulations that were enacted after the original Specific Plan was approved.”

While the proposed Project partially satisfies a few elements of Objective 10.C, it is in obvious conflict with the majority of the Policies and Actions listed under Objective 10.C. This is true for the current FEIR and the DSEIR. The following are notable Policy and Actions conflicts:

- Policy 10.C.1: While there is a clear edge and division with Lee Vining, and the Project is partially enclosed by a thin margin of open space, the Project brings significant adverse visual impacts to visual character of the area.
- *Action 10.C.1.a*: Project dramatically expands existing footprint of FEIR and does not preserve open space in the true spirit of the intention.
- *Action 10.C.1.b*: Project is a high intensity use and it clearly adversely impacts the area’s scenic resources and natural (mule deer) resources as per the Significant Unavoidable Adverse Impacts outline in the DSEIR.

- Policy 10.C.2: While the DSEIR states that green energy will be integral to the Project infrastructure, the Project is, in no way, as proposed, protective of scenic vistas. The Project does not follow Mono County's ridgeline design guidelines and the Project has Significant Unavoidable Adverse Impacts to visual character in large part related to its prominent siting exposure on the moraine facing east across the Mono Basin.
- *Action 10.C.2.a*: Project does not preserve scenic vistas with its current siting and visual impacts.
- *Action 10.C.2.b*: Project is not visually connected to the community from any perspective, and while there is no known "public view corridor" designated, the project creates adverse visual impacts along the Highway 395 Scenic Byway.
- *Action 10.C.2.d*: The current business does not promote recycling, and there is no mention of expanding recycling in the DSEIR.
- Policy 10.C.3, *Action 10.C.3.a*: While the Project proposal is required to comply with Dark Sky Regulations, the siting of the project high on the ridgeline, facing east, creates a Significant Unavoidable Adverse Impact to Light and Glare. Dark Sky compliant lighting is not sufficient to overcome the aggregate, additional light pollution that the Project will bring from a prominent site over the Mono Basin.
- Policy 10.C.4, *Action 10.C.4.a*: Project does not improve the visual appearance of Lee Vining and it brings Significant Unavoidable Adverse Impact to Visual Character and Light and Glare. Mono County guidelines, including Mono County Ridgeline Design Guidelines and the County's Scenic Combining District, are not followed.

***Objective 10.D: Maintain, protect and enhance the natural, historical and recreational attributes of the Mono Basin.***

The DSEIR states in regard to Objective 10.D, "Onsite trails will be provided, and the applicant and county have indicated they will jointly seek grant funding for safe trail linkage from the project vicinity to the Lee Vining Community."

While onsite trails might be specifically valuable to the Project, they are private land amenities that do not contribute to the overall recreational attributes of the Mono Basin, and currently, there are no trails indicated on the DSEIR site plans. The DSEIR does not guarantee any safe pedestrian or bicycle interconnectivity with Lee Vining, thus reducing the current recreational assets of the Mono Basin, and the current analysis indicates Mono County will be asked to accept an unmitigated Significant and Potentially Unavoidable Impact regarding this deficiency.

Policy 10.D.3, *Action 10.D.3.(a, b, c)*: Project is self-contained and has no convenient or accessible connection with the town of Lee Vining and its associated trails except by motor vehicle travel. While there could be the possibility of implementing new connectivity, there is no current coordination with any land management or transportation agencies to plan and execute mitigation for pedestrian and bike travel. Currently the project poses an increasing volume of use with existing barriers to connectivity with Lee Vining. As a result, the local recreational choices with the increased population will be up Lee Vining Canyon and along the Lee Vining Creek Trail. The Project does not analyze use at these specific sites relative to clearly articulated thresholds of significance for these locations.

***Objective 10.E: Promote well-planned and functional community uses that retain small-town character and increase the quality of life.***

The DSEIR discussion incorrectly implies the project is compatible with Community Plan Objective 10.E.

By proposing to add three more Lee Vinings to Lee Vining, the Project scale would decidedly *not* retain the small town character of Lee Vining. While the town would remain small relative to much larger towns, any project that suddenly triples a small community population is not retaining small-town character.

The DSEIR claims that “the project would increase the housing supply available to local workers, and occupancy would be linked to eligibility criteria.” MLC has heard this claim made in public meetings but the DSEIR document itself is quite clear that the project purpose is to provide housing to on-site employees at the Tioga Inn (3-5) and the DSEIR anticipates the housing to be full with Tioga Inn workers in the summer, the key time when community housing is needed in Lee Vining. The Project contains no binding restrictions that are enforceable regarding reservation of space or priority placement for workers in Lee Vining, thus this cannot be considered a benefit to Lee Vining.

The Community Plan specifically calls out requirements for workforce housing which include “establish tenant eligibility criteria, including a time requirement as a local resident and/or local employee, for workforce housing units, and identify the entity that applies, manages, and enforces the criteria.” The Community Plan also directs proponents to “promote workforce housing opportunities that connect the community with housing programs.” The Project does not satisfy these plan components.

The DSEIR states that “Trails would be provided onsite for walking and bicycles, and efforts will be made to obtain grant funds for development of a walking/biking trail that would safely link the project site to the Lee Vining community.” This statement is not concrete and does not prioritize pedestrian safety and travel to and from activity centers, including connectivity of project area to the town of Lee Vining. The Project does not offer substantive antidotes to conflicts with the Mono Basin Community Plan, specifically “providing safe and convenient pedestrian and biking facilities, working with Caltrans when applicable, to reduce vehicular traffic, increase local livability, and encourage visitors to explore town.” The Project falls short in this regard as proposed mitigations are linked to the *possibility* only of a future grant with the onus on Mono County and not the project proponent.

The DSEIR discussion concludes with an entirely incorrect claim that “The 1993 project design was developed to optimize public access to the scenic resources and views around the US 395/SR 120 junction, and the newly proposed uses will be largely screened from offsite views.” As discussed throughout this letter, the newly proposed uses actually create tremendous visual impacts, a point the DSEIR supports in numerous places in direct contradiction to the DSEIR discussion here.

In fact, the visually intrusive design of the Project is directly at odds with the Community Plan which, when considering a different project, clearly states as Policy 3 “recognize the junction of

Highways 395 and 120 as an important viewshed for the community and its visitors, and therefore, a project should avoid potential impacts to that viewshed.”

***Objective 10.F: Provide appropriate public infrastructure and service capability expansion to support development, public safety, and quality of life.***

The DSEIR discussion states that “the project incorporates partnership opportunities including increased airport utilization (through rental car availability);” which apparently is a reference to hotel expansion amendment concepts proposed during scoping and dropped from the current proposed project. This suggests other elements of the discussion of Community Plan compatibility, for example visual impacts which we note here, may also be outdated and incorrect due to being developed too early in the document process prior to full project analysis.

The DSEIR discussion further claims that “the site serves as a staging area during emergencies, and provides space adequate for helicopter landings.” MLC could not locate any DSEIR discussion of the site serving as a formal staging area during an emergency, and with the Lee Vining Airport just across the highway it seems of limited use as a helicopter landing site. While the discussion may be referring to the ability of the private development to handle its own private on-site emergencies, the Community Plan is focused on providing public infrastructure to meet shared needs of the public community.

The Community Plan Policy 1 directs that “future development should coincide with infrastructure and service capability expansion.” The Project as proposed stands to quadruple the population of Lee Vining, yet there is no discussion or plan on how local community services such as volunteer fire departments, post office capacity, or public parking will be able to accommodate the sudden surge in community population.

**Compatibility with Community Plan Goal 11: Grow a sustainable local economy with diverse job opportunities that offers year-round employment and wages that reflect the cost of living in the area.**

***Objective 11.A: Plan for a diversified, sustainable economy.***

The DSEIR discussion claims “the proposed workforce housing will support continued development of a diversified, sustainable economy in the Mono Basin” but provides no support for this single sentence of analysis. As explained throughout this letter, the visual and aesthetic impacts of this project will be far reaching and will undermine the sustainable economy of the Mono Basin which is based on natural area tourism and driven by the exceptional scenic assets that the Project will impair.

***Objective 11.B: Enhance and support the existing tourism-related economy.***

The DSEIR discussion states “The applicant has communicated with USFS regarding the potential availability of housing for Yosemite employees, and has communicated with Mono County regarding the possibility of providing rental cars to airport customers.”

Again, this discussion appears to be an attempt to imply Community Plan compatibility using incomplete and dated information. MLC’s understanding is that the Tuolumne River Plan

approved in 2014 addressed the bulk of Yosemite National Park's housing need through a reconfiguration of their existing facilities in Tuolumne Meadows, thus removing significant need for seasonal Park housing in Lee Vining. Communicating with the US Forest Service about this, as stated in the discussion, may be the problem since the National Park Service is a different agency in a different department of government. The discussion again references "providing rental cars to airport customers," raising the concern that multiple project activities and objectives are planned that are not included or analyzed in the DSEIR.

***Objective 11.C: Diversify the existing economic base & employment opportunities to achieve a more sustainable economy.***

The DSEIR discussion glosses over the finer points of this objective. The Project proposes redundant businesses and services and does not contribute to a mix of uses and services, nor are there additional employment opportunities beyond the range of those that already exist. This conflicts with Policy 11.C.2. The Project does not contribute to Policies 11.C.3 and 11.C.5, which seek development within the existing town area and Main street revitalization.

**Compatibility with Community Plan Goal 12: build a safe, friendly community where people feel connected, work together to resolve community issues and are involved in community activities & events.**

***Objective 12.A: Build healthy social connections & interactions that contribute to a sense of community.***

Policy 12.A.1 of the Community Plan is to "Improve interactions and support between community and the schools." The Project would impose major school impacts and the DSEIR discussion is misleading, claiming "Eastern Sierra Unified School District notes that the project would enrich the school community and that developer fees would cover the cost of new facilities for children in the workforce housing area." Additional analysis should be done as here the DSEIR misrepresents the small amount of information requested of the school district and reported elsewhere in the DSEIR, notably the ESUSD opinion that "the District anticipates that the additional student population would result in a shortage of classroom space at Lee Vining Elementary" (5.8-8) and the ESUSD calculation that developer fees would only cover "part of the cost of a new portable classroom" (5.8-9), rather than fully mitigate impacts at the two school sites.

The DSEIR does not discuss the fact that ESUSD is a Basic Aid district and thus would receive no additional per-student funding to support the large new student population resulting from the project. Because the Project would increase the student population by 30% at the elementary level and 50% at the high school level there are many impacts that should be disclosed and analyzed. The conclusion that the Project's impacts on schools would be less than significant (5.8-9) is incorrect. Significant consultation should be conducted with the school district, school principal, and any school community members they recommend to understand and evaluate these impacts and identify necessary mitigations.

***Objective 12.C: Encourage people to volunteer in the community and participate in events.***

The DSEIR discussion is again disappointing in attempting to show Community Plan compliance, offering only that the project's 300 new residents will have "A community poster board ... provided outside of the convenience store." From the fire department to the schools, historical society, churches, and many more, the Lee Vining community thrives due to dedicated community members who volunteer their time and energy. Community functionality is hinged on volunteer participation. The project intends to house 75% of the population of Lee Vining and must meet a high standard of community responsibility, including volunteerism and community participation.

**II. Mitigations and Alternatives**

The DSEIR does not offer alternatives or mitigation to avoid significant and unavoidable adverse impacts to the visual character or dark sky resource of the Mono Basin. While Mono County's dark-sky ordinance, downward pointing lights, and landscape design could shield a portion of the visual disturbance, no alternatives or mitigations are fully analyzed nor advanced in the DSEIR that could potentially hide the development from the most visually impactful perspectives. This is an area where the Project, curiously, fails to recognize and consider its location adjacent to the Mono Basin National Forest Scenic Area, the Highway 395 Scenic Byway, the nationally significant eastern gateway to Yosemite National Park, or that Mono County is a valuable scenic resource for millions of visitors. The Project, as designed, instead, appears to monopolize these assets from its location, for the exclusive economic benefit of the Project and the maximum expense to visual character. The current siting location is placed on top of a bluff, 30 feet above the existing Mobil development. The cascading placement from this position opens the entire village development to view from Highway 395 and out across the Mono Basin.

**A. Principles for solving visual and scenic impacts**

The comment period on the DSEIR does not allow time for the public to develop detailed project alternatives and mitigations. MLC expects Mono County will want to explore a variety of useful alternatives and mitigations (including our suggestions below) to include in a revised DSEIR.

To be helpful in this process, MLC offers the following simple principles for evaluating the effectiveness of any new alternatives and mitigations in resolving the visual and aesthetic concerns that we and many others have raised.

1. The proposed housing and other Specific Plan amendments *should not be visible* from South Tufa, Navy Beach, Panum Crater, and the surface waters of Mono Lake in this vicinity. This means all elements of the physical structures, up to the roof peaks, and associated development infrastructure should be entirely hidden from view of a careful observer looking for the Project from these locations.
2. The proposed housing and other Specific Plan amendments *should not be visible* from Highway 395 or Highway 120 anywhere that the existing Mobil station is not visible. On Highway 395 this is generally the stretch south of the Highway 120 junction. On

Highway 120 this is generally the stretch west of the existing development. This means all elements of the physical structures, up to the roof peaks, and associated development infrastructure should be entirely hidden from view of a careful observer looking for the Project from these locations.

3. The proposed housing and other Specific Plan amendments *should have extremely low visibility* from the Mono Basin National Forest Scenic Area Visitor Center and Mono Lake Tufa State Natural Reserve boardwalk below County Park. Although the Project site is unavoidably visible from these locations, all visual impacts must be mitigated significantly.
4. The proposed housing and other Specific Plan amendments *should not increase* night sky light pollution in excess of the amount already approved in the existing Specific Plan.

### **B. Solving the Project placement problem**

The placement of the Project on a high-profile, highly-visible bluff and ridgeline is the main cause of its Significant and Unavoidable Adverse Impacts to visual, aesthetic, and wildlife resources. The DSEIR describes the placement as follows:

As now proposed, the housing layout includes 16 separate 1-story and 2-story structures each housing a mix of studio, 1-bedroom, 2-bedroom and 3-bedroom units. The units are distributed over an area of approximately 8 acres that is directly southeast of and visible from the promontory restaurant site, but separated from the remaining public areas (gas pumps, store, and hotel) by an intervening ridge. The units are in distributed in a loosely clustered design that features two rows of units on a higher tier (elevation around 6,950') and two rows along a lower tier (at an elevation of approximately 6,915').

The decision to separate the housing from the rest of the Project (deli, hotel, etc.) results in a sprawling design that is the substantial source of detrimental unmitigated visual impacts. It appears that consideration was given to shielding the view of the housing from hotel guests and deli customers rather than the hundreds of thousands of Mono Lake visitors and highway travelers.

The DSEIR does not consider, or dismisses out of hand, multiple alternatives and mitigations that could screen all of the Project from Highway 395 and the Mono Basin National Forest Scenic Area, South Tufa, Panum Crater, and Navy Beach. Creative solutions that involve additional grading, contouring, and underground parking could offer sensible siting solutions that would reduce significant adverse impacts. Workforce housing does not have to be two-story and maintain a 30' height in all cases. A design approach suitable for achieving LEED certification would provide helpful detailed guidance suitable for mitigating many impacts.

### **C. Alternatives**

New Project alternatives should be developed that address the issues described here by MLC and in response to public comments. MLC suggests several concepts here for alternatives. Due to time constraints these are brief overviews focused on resolving the visual and aesthetic impacts



of the Project. Each of these can easily be expanded to include elements, such as phasing, that are responsive to comments from others the community and general public.

All new alternatives that are developed should be presented in greater depth than those contained in the DSEIR. To be viable for the public and decision makers alternatives must have enough detail to determine if they truly resolve public concerns. Each alternative should have a site map equivalent to Exhibit 3-3 and a grading plan. Photo simulations of each alternative should also be included.

**1. Alternative: Modified design that lowers the Project below the ridgeline**

This alternative would reduce visual impacts significantly by redesigning the Project so that housing units are not perched on the ridgeline and east slope of the bluff. Instead of the proposed two-tiered grading that maximizes visibility from the east, this alternative would develop a grading plan to place units with an orientation toward the interior of the project site (nearer the deli and hotel) with the specific goal of fully shielding them from view from the highway and Mono Lake locations noted above.

This alternative would use a combination of the mitigations described below to lower and adjust the Project such that the peak of the highest roof is not visible from the Mono Lake and highway evaluation points to the east. Grading to lower the ground elevation at the units, berming at the east of the units to shield the project from Mono Lake and highway views, structure height control, and structure siting can be combined in various ways to achieve the goal of this alternative.

Lowering the Project to a consistent ground elevation could provide additional benefits. Clustering of units in the proposal is impaired by the 30-foot differential in ground level between the west and east units. A level ground elevation would allow units to be more easily clustered.

**2. Alternative: Locate Project elsewhere on site**

This alternative would significantly reduce visual impacts by leaving the bluff undisturbed as planned and approved in 1993. The housing units would be placed in other locations on the Tioga Inn site, primarily within the area already approved for development in the existing Specific Plan. This alternative would also avoid creating new impacts on migratory deer, likely reducing the need for new wildlife mitigations. This alternative could make resolving fire safety concerns easier since housing would not be at the far end of a single access road.

A combination of the mitigations below would be needed to accomplish this. Providing underground parking for the hotel and housing, for example, would free up two acres of land to work with and reduce the footprint needed for the housing. Separation of the housing units into non-adjacent clusters would allow for placement of units at several locations on the site. Reduction of the total number of units could make siting easier. Thoughtful design of the units themselves and use of grading and berming would ensure integration with the character of the existing buildings and future hotel.

### **3. Alternative: Replace the hotel with the proposed housing**

After 26 years the approved hotel has never been built. This alternative would adjust the Specific Plan to recognize that local housing is more useful to the community and more economically viable than the hotel. The hotel element of the specific plan would be abandoned and the hotel site and its extensive parking would be repurposed for workforce housing. The bluff would be left undisturbed as planned and approved in 1993, substantially eliminating new visual, aesthetic, and wildlife impacts.

While on-site worker housing needs (the purpose of this Project) would be significantly lower without the hotel, this alternative could include provision of more certain year-round housing for off-site workers in Lee Vining and surrounding communities, subject to clear and enforceable guarantees of community benefit.

While this alternative represents a significant change to the site concept, it also solves a common community concern that the proposed bluff housing might be built without the hotel ever coming into existence. Creating permanent impacts by siting housing on the bluff while leaving empty the hotel area already approved for impacts would be a failure in planning.

MLC is well aware that, as is often pointed out in the DSEIR, the hotel was approved in 1993. However, nothing about that approval is an obstacle to this alternative. The developer is free to voluntarily include changes to the hotel and hotel site in the current proposed amendment, and indeed was initially planning to do so (in other ways) during the scoping phase of this amendment.

#### **D. Mitigations**

##### **1. Mitigation: Grading**

The DSEIR mentions up to 8 feet for grading at the housing site to reduce the ground level elevation. This amount of grading appears to have been selected solely based on the need to provide fill for the hotel site (5.12-10).

Instead, site grading could be designed to mitigate the scenic impacts of the housing by lowering the ground level to the point that the peak of the housing roof could not be seen from South Tufa or Highway 395 south of the Highway 120 junction. Fill material could be used for the hotel as planned, berms as discussed below, or elsewhere on site.

This alternative would expand on the planned 8 feet of site grading. The DSEIR notes that the Clustered Alternative was not selected “because it would require significantly more grading (and jeopardize the goal to balance cut and fill onsite), without significantly reducing visual effects or resident benefits.” In contrast, this grading mitigation would be focused precisely on reducing visual impacts. Additionally, project goals and objectives do not mention balancing cut and fill on-site and, at any rate, grading is certainly a feasible option for mitigation that must be considered.

## **2. Mitigation: Earthen berms**

Earthen berms are discussed under Table 5.12-4 in the context of Compliance with Scenic Combining District Regulations. However, there is no substantive description of these berms, nor is there any clue to their existence in the site plan or grading plan. The best that can be deduced is that these are small landscaped berms for planting trees and shrubs. The sole exception to this is the one “landscaped berm” identified on the grading plan which appears to be designed to shield restaurant patrons in the parking area from views of the Project.

Earthen berms could be constructed and contoured up to 30 feet in height to largely obscure the entire housing development from the east using grading fill from the Project site. While the approved hotel has yet to be built after 26 years, and there is reasonable uncertainty over where it will sit, the additional grading fill proposed for the hotel site might be better used to sculpt earthen berms. Revegetation with native species and additional grading, contouring, and stabilization strategies would be necessary. This simple mitigation measure is neither considered nor evaluated in the DSEIR; however, when combined with other mitigations, it could significantly help mitigate the visual impacts of the Project.

## **3. Mitigation: Setbacks and one-story housing**

As a stand-alone mitigation, or in combination with others, the Project’s adverse visual impacts might be mitigated with a greater setback from the east edge of the sloping moraine. The current proposal sites two-story buildings along the promontory ridge contour of the planned restaurant and extends them down and to the east onto a natural basin in the moraine where proposed units display conspicuously over Highway 395 and out across the Mono Basin to the east. This siting is in conflict with Mono County Ridgeline Design Guidelines, which “call for views to be preserved to the extent possible, structures to be situated away from visually prominent areas.” The Project is sited in such a way that it gives the impression of favoring the views for future occupants at the greatest impacts to visual character and dark sky resources.

If the Project considered a one-story height and modified building arrangement, as well as some reasonable setback, additional grading, and contouring, it might be possible to more completely or perhaps fully screen the Project.

## **4. Mitigation: Reduced number of units**

The Specific Plan amendment being proposed would leap from the ten approved residential housing units to 100 units and 150 bedrooms. This is an increase from scoping when 80 units were contemplated. Adjusting the number of units was considered in the DSEIR, but not in combination with other mitigations. As new alternatives and mitigations are considered it will be useful to consider adjusting the number of housing units to support feasible development of these new options.

## **5. Mitigation: Underground parking**

The Project dedicates approximately two acres of land to providing surface parking for the housing village. Underground parking would reduce the project footprint, create space for setbacks, and possibly lower the cost of other mitigations.

The hotel site dedicates over two acres of land to surface parking. Here, too, underground parking would free up land and allow for significant siting adjustments to the housing. For example, the housing could be relocated to the vicinity of the hotel, which is 40 feet lower than the bluff, fully screening it from Mono Lake and the key evaluation points identified above.

## **6. Mitigation: Separation of housing units**

The proposed housing is designed as an isolated module set away from the deli, hotel, and rest of the site. Separating the housing into different, smaller clusters would allow for placement at multiple locations across the overall site. For example, the small parking area just east of the gas pump island could be used for one of the proposed housing units.

## **7. Mitigation: LEED certification**

In six different scoping comments from 2016, LEED certification was suggested as an approach that would help mitigate a variety of environmental impacts. LEED (Leadership in Energy and Environmental Design) is the most widely used green building rating system in the world, according to the program website, and “provides a framework that project teams can apply to create healthy, highly efficient, and cost-saving green buildings. LEED certification is a globally recognized symbol of sustainability achievement.”

The DSEIR acknowledged and dismissed LEED in one sentence, stating, “The project is not expected to meet formal LEED standards because stringent adherence would reduce overall affordability of the workforce units.” There is no analysis of LEED compatibility, nor is there any consideration of the various levels of LEED certification or design. Regardless, a design process that would produce a project able to gain LEED certification is certain to resolve, mitigate, or avoid many of the visual and environmental impacts that the current proposed project proposal creates.

LEED certification is an increasingly common way for gateway community developments adjacent to world-renowned natural areas like Yosemite and Mono Lake to show a commitment to environmental sustainability and to protecting the very resources that draw in business to the site. The following section of our comment provides reference projects, including from the western gateway to Yosemite, where LEED certification is part of a responsible development project.

## **8. Mitigation: Community connectivity**

Constructing a foot and bike path to the existing town of Lee Vining is a mitigation that the Project developer could do more to explore. While it is true that sidewalks adjacent to the highway in the Caltrans right of way require agency actions independent of the Project, it is also

true that better, more pedestrian friendly options exist that the Project developer can substantially advance. A feasible mitigation is for the developer to acquire an easement from Southern California Edison for such a pathway to cross SCE's land located north of the Project. A developer-funded pathway extending from approximately opposite the Mobil entrance across SCE land to the end of the existing sidewalk at the south end of Lee Vining, including a pedestrian and bike bridge crossing Lee Vining Creek, would provide most of the connectivity necessary. Only the Highway 120 crossing from the site to the path would need to be worked out with Caltrans. The pathway easement and construction would be funded by the developer and the pathway would be public and administered by Mono County similar to sidewalks in Lee Vining.

### **9. Mitigation: Mitigation funds**

The DSEIR identifies Deer Passage (BIO 5.3(d-5)) and Pedestrian Safety (SVCS 5.8(a-1)) mitigations that are contingent on Mono County securing public funding for their implementation. In both cases the Project is the cause of the significant impacts that trigger the need for mitigation. Further analysis in a revised DSEIR will likely identify additional situations where mitigation funding is required. While the DSEIR is correct that the developer cannot construct off-site mitigations independently, the DSEIR overlooks the common practice of establishing mitigation funding mechanisms. These allow the developer to pay their fair share toward mitigation projects that will necessarily be implemented by agencies or other entities. Mono County should establish such mechanisms to allow the Project to mitigate its significant impacts.

### **III. Reference Projects**

Lee Vining is the gateway to Mono Lake, Yosemite, and Mono County. These are popular, well-known, well-publicized, major visitor destinations. Throughout this letter we have emphasized that as a result the Project should do more than the average development to explore alternatives and implement mitigations to achieve thoughtful compatibility with the special protections and high visibility of the area.

This challenge is not unique to Lee Vining and Mono County. Across the West communities that are closely tied to high-profile, protected areas are demonstrating that, with thoughtful planning and environmental commitment, projects are being carefully developed from the ground up to avoid significant damage to the natural values that make their locations special destinations.

Mono County should be among these leaders, as the Tioga Inn project will determine if Mono County qualifies for decades to come.

As County staff lead a DSEIR revision and recirculation process it will be helpful to learn from other successful projects and MLC suggests some to investigate here. Many begin their design process with commitment to the Leadership in Energy and Environmental Design (LEED) process. This certification program is one way to ensure landscape, environment, and community compatibility specifically for projects with similar scope, goals, proximity to highly valued natural landscapes, and rural community needs.

A regional example of comparable project with LEED Silver certification is the Tenaya Lodge at Yosemite in Fish Camp on Highway 41 at the western gateway to Yosemite. Tenaya Lodge achieved LEED scorecard points by reducing lighting in its exterior environment, water efficiency, minimizing onsite parking, providing alternative transportation access and parking, and taking extra effort to achieve development density and community connectivity.

The LEED website has a comprehensive list of project examples from other renowned destinations. Multiple LEED-certified employee housing developments at Yellowstone National Park, including the Old Faithful Employee Housing and Teal Dorm at Yellowstone, show that rising to meet LEED standards can be done for workforce housing.

Another regional example of a comparable project is Rush Creek Lodge and the associated Evergreen Lodge on Highway 120 west of Yosemite. Both lodges are reasonably similar in size and scope and to the Tioga Inn. Employee housing is included in their environment and community responsibility goals. Rush Creek Lodge has 143 rooms for guests and 168 workforce housing slots (which includes other programs, not just hotel staff). Both lodges advertise their environmental and community responsibility to the area and the communities in which they exist as part of the appeal of what they offer to visitors.

These facilities guarantee their commitment to these principles by operating as part of a certified B-Corporation. Certified B Corporations are legally required to consider the impact of their decisions on their workers, customers, suppliers, community, and the environment. As the Rush Creek Lodge website says, their B Corp ownership structure is “designed for long term sustainability, putting the health of our communities, environment and staff on the same level as the health of the bottom line.”

#### **IV. Conclusion**

Mono County has important work to do on this Project. Many points of concern have been raised here, in our accompanying legal letter, by the community, and by the public at large. Better alternatives and mitigations need to be created to resolve these concerns. A comprehensive EIR, new alternatives and mitigations based on comments and community engagement, and recirculation of the document are the path forward.

As Mono County works through this process MLC offers a reminder that the County Vision, prominently displayed on the Community Development website, is an excellent guide to crafting a beneficial project that is respectful of the exceptional environmental resources of the Mono Basin and the unique community of Lee Vining:

“The environmental and economic integrity of Mono County shall be maintained and enhanced through orderly growth, minimizing land use conflicts, supporting local tourist and agricultural based economies, and protecting the scenic, recreational, cultural and natural resources of the area. The small-town atmosphere, rural residential character and associated quality of life will be sustained consistent with community plans.”

Thank you for the opportunity to comment and for the responsiveness of Community Development Department staff, who have answered our questions with great knowledge and professionalism. We would be happy to answer any questions you might have about our

comments, and we would also be pleased to share our organizational knowledge of Mono Lake and the Mono Basin in any way helpful to your process moving forward.

Sincerely,



Bartshé Miller  
Eastern Sierra Policy Director



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Re: Subsequent Environmental Impact Report and Specific Plan  
Amendment for the Tioga Inn Project

Dear Mr. Draper:

On behalf of the Mono Lake Committee (“MLC”), we have reviewed the Subsequent Environmental Impact Report (“SEIR”) prepared in connection with the proposed Tioga Inn Specific Plan Amendment Number Three (“Project”). We submit this letter to express our legal opinion that the SEIR for the proposed Project, as currently drafted, fails to comply with the requirements of the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* (“CEQA”), and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 *et seq.* (“Guidelines”). In addition, the Project conflicts with the Mono County General Plan and Mono Basin Community Plan in violation of state Planning and Zoning Law, Gov. Code § 65000 *et seq.*

In light of the County’s decision to decline MLC’s request for a 30-day extension of the comment period, these comments are necessarily constrained. MLC reserves the right to submit more detailed comments prior to the County’s consideration of and final decision on the Project and SEIR.

The County cannot approve the Project in its current form because the SEIR is fatally flawed in a variety of ways. First, the County has violated CEQA in electing to proceed via an SEIR for a *portion* of the Project rather than starting again with a new EIR for the *whole* Project. The County must proceed via a new EIR because



conditions—both as to the Project itself and as to the surrounding community—have changed so significantly since 1993 that the 1993 FEIR is no longer relevant.

Second, the SEIR itself is seriously flawed. For example, the SEIR's project description contains various inconsistencies and gaps related to the particulars of the workforce housing village. The description's failure to clearly convey who the housing will serve and how the Project will impose eligibility and affordability criteria make it impossible to adequately assess the Project's environmental effects.

Further, the SEIR's analysis of and mitigation for environmental impacts is inadequate. Specifically, the SEIR fails to adequately analyze and mitigate: (1) adverse impacts to visual resources; (2) the Project's impacts related to wildfire evacuations and fire protection services; (3) adverse impacts related to biological resources; (4) adverse impacts related to vehicle miles traveled; (5) cumulative impacts related to greenhouse gas emissions; (6) population and housing impacts; and (7) adverse land use impacts related to conflicts with local land use plans, in violation of both CEQA and the State Planning and Zoning Law. Finally, the SEIR does not include an adequate analysis of alternatives to the Project.

Given these flaws, there can be no meaningful public review of the Project. The County must begin again with a new EIR for the whole Project. The new EIR (or a revised SEIR, if the County persists in following that unlawful course) must contain an adequate and legally compliant analysis in order to provide an adequate understanding of the environmental issues at stake.

**I. CEQA requires that the County prepare a new EIR for the whole Project rather than an SEIR for the workforce housing village.**

CEQA requires agencies to evaluate the environmental impacts of Projects as a whole. It is a violation of CEQA to divide a Project into several smaller pieces and analyze their environmental impacts separately. *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1346 (“[E]nvironmental 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.”).

Moreover, although Public Resources Code section 21166 requires an agency to proceed via a subsequent EIR when there are substantial changes in a project that will require major revisions to an EIR, that section does not apply when the Project and surrounding circumstances have changed so drastically that the prior environmental

document is no longer relevant to the decision-making process. *Friends of College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937, 951. Under such circumstances, “it is only logical that the agency start from the beginning.” *Id.*

The proposed Project and surrounding conditions have changed so dramatically since the 1993 FEIR was approved well over 20 years ago that that document is no longer relevant to the decision-making process. The County must therefore start again with a new EIR for the whole Project, including the workforce housing village, new gas island, hotel, and restaurant.

The changes to the Project itself since 1993 are so vast that they are a change in kind rather than a change in scale. In particular, the ten incidental residential housing units proposed in 1993 have transformed into a 150-bedroom workforce housing village that would dwarf the existing population of neighboring Lee Vining, tripling or quadrupling the size of that community in one stroke.

Conditions in the surrounding community have also changed so significantly that the 1993 analysis is no longer relevant. To name a few examples:

- The onsite deli now attracts up to 3,000 people per day to the Project site during peak periods. SEIR 4-11. These visitors were not envisioned in the 1993 FEIR, which did not contemplate a popular deli as part of the convenience store.
- In 1993, Mono Lake had not yet been protected from its then-threatened status due to excessive water diversions. In a 1994 decision, the State Water Resources Control Board protected the Lake from ecological collapse, leading to an increase in lake levels of 9 feet over the next 25 years and allowing the Lake to become a major tourist destination. Thus, the 1993 FEIR considered the visual and aesthetic impacts of the hotel and restaurant in an entirely different context from the one that exists at present. Today, visual impacts must be considered in the context of Mono Lake as a major, pristine scenic resource and attraction.
- The Mono Basin has experienced a large number of significant wildfires since 1993. Before that time, large wildfires were less common, as was the case in much of California. The State as a whole has experienced some of the most devastating wildfires in its

history in the last several years. As a result, the context for the wildfire risk analysis has completely changed.

- Finally, in 1993, there was no Mono Basin Community Plan (“Community Plan”). That document, developed in 2012 and incorporated into the Mono County General Plan, describes the needs and aspirations of the Mono Basin community to better guide decision-makers in evaluating future land use decisions. Community Plan 1. The 1993 FEIR does not account for this significant statement of the community’s own goals and values.

Completing a new EIR for the Project as a whole would allow the County to understand the full range of the Project’s environmental impacts and thus enable it to consider a more complete range of alternatives. For example, one alternative to be considered is siting all of the contemplated uses within the original development footprint approved in 1993. This feat could be accomplished without compromising Project objectives by relocating hotel parking underground to make room for additional housing in its place. In addition to achieving Project objectives, this alternative would reduce environmental impacts—e.g., by relocating workforce housing off of the bluff, thereby lessening visual impacts. This alternative, and others, are discussed in greater detail in Section II.C of this letter, below.

In sum, because the 1993 FEIR is no longer relevant, the County must start again and proceed with a new EIR that addresses the environmental impacts of the Project as a whole—including the restaurant, hotel, workforce housing village, and additional gas island. Without a new EIR considering all of these elements at once, the County would be improperly segmenting the Project and failing to evaluate all of its potentially significant environmental impacts, as well as feasible mitigation measures and alternatives to lessen or avoid such impacts.

## **II. The SEIR’s analysis of and mitigation for the impacts of the proposed Project are inadequate.**

Although the County should have proceeded with a new EIR for the entire project, even if the County could proceed with an SEIR for the workforce housing alone, the document still does not comply with CEQA for the reasons described below. Subsequent EIRs are governed by CEQA’s standards for initial environmental impact reports. *Friends of College of San Mateo Gardens*, 1 Cal.5th at 952, fn.3.

The environmental impact report is “the heart of CEQA.” *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 (citations omitted) (*Laurel Heights*). It “is an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ Because the EIR must be certified or rejected by public officials, it is a document of accountability.” *Id.* (citations omitted). Where, as here, an EIR fails to fully and accurately inform decision makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of the statute. *See* Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”). Here, the SEIR places Mono County decision-makers in the untenable position of rendering judgment on the Project without the information they need to truly understand its environmental impacts. CEQA does not permit this outcome.

**A. The SEIR’s incomplete and inconsistent project description undermines the analysis of the Project’s environmental effects.**

An “accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730, quoting *County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 193. Such a description is “necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.*, quoting *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143. An inaccurate or incomplete project description may infect every subsequent section of the EIR and render the analysis of significant environmental impacts inherently unreliable.

Project descriptions that are internally inconsistent or incomplete are inadequate as a matter of law. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 83, 89 (holding that an EIR was inadequate because its project description was “inconsistent and obscure” as to the extent of project activities). An inconsistent description sends “conflicting signals” that may mislead the public and decisionmakers about the project’s scope, preventing informed decision-making about the project’s environmental consequences. *Id.* at 82-84, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-56.

The SEIR's description of the workforce housing and who it will serve is internally inconsistent. For example, the objective of the workforce housing project is to "provide sufficient workforce housing on the project site to accommodate a majority of employees of the hotel, the full-service restaurant and other onsite land uses." SEIR 3-5. Thus, the Specific Plan Amendment and SEIR, in many places, express a commitment to housing on-site employees. SEIR 4-1 (stating that the Project "has a primary goal of facilitating the construction of up to 100 workforce housing units . . . to accommodate employees of the previously approved hotel and full-service restaurant"); SEIR 4-11 ("These units will . . . provide affordable housing for onsite employees."). Indeed, the provision of onsite employee housing is described as a Project feature in various sections of the impact analysis. The SEIR suggests that onsite housing supports compliance with the County's General Plan, SEIR 5.5-15 ("Provision for onsite employee housing will increase the likelihood that employees will have access to affordable housing near their place of work"), and could reduce fuel consumption and traffic associated with commuting, SEIR 5.8-11 (describing "[p]rovision of onsite workforce housing" as a feature that would "reduce the fuel costs associated with commuting").

In other places, however, the SEIR and Specific Plan Amendment indicate that housing will be made available to people who are employed elsewhere. SEIR 4-9 (stating that the Project's objective is to provide housing for employees of onsite uses "as well as [employees of] offsite land uses in the larger community"); SEIR 5.5-16 ("The workforce housing would, if approved and if units are available, be offered to Lee Vining residents."). During many months of the year, for example, the housing would be "made available to offsite workers, such as ski industry employees." SEIR 5.6-13. In addition to suggesting that the workforce housing will serve off-site employees, the SEIR indicates that the "onsite" employees may not necessarily be employed by any of the uses proposed in the Project: "Home businesses . . . shall be permitted." SEIR 4-20.<sup>1</sup>

In addition to its inconsistent description of *whom* the workforce housing will serve, the SEIR's description of *when* the workforce housing will be constructed relative to the other project elements is internally inconsistent. For example, the original 1993 Specific Plan established a sequence of construction in which the workforce housing would follow the hotel. 1993 Specific Plan and FEIR 12-13. In some places, the SEIR and Specific Plan Amendment adhere to this sequence. Exhibit 3-3 states that the

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<sup>1</sup> The notion that the workforce housing will serve off-site workers has also been publicly promoted as a benefit of the Project. See Rea, *Tioga Inn In The Works*, The Sheet (Nov. 5, 2016), attached hereto as Exhibit 1 (quoting Project applicant Dennis Domaille as saying: "I hesitate to call it employee housing. . . . It's just rental housing.").

workforce housing “will not be constructed until need is demonstrated or when [the] hotel is built.” SEIR 3-4.

But the Specific Plan Amendment also contains contradictory statements about the timing of workforce housing construction. For example, the Specific Plan Amendment’s discussion of phasing rejects the sequence described above, stating that “[S]ome or all of the proposed workforce housing area may be developed in advance of the hotel and the full-service restaurant.” SEIR 3-9; *see also* SEIR 4-13 to -14. Similarly, the aesthetic impacts section of the SEIR assumes that the workforce housing will be constructed either before or concurrently with the hotel. SEIR 5.12-10 (stating that grading will shift material from the housing pad to the hotel site).

These inconsistencies raise the question of whether the workforce housing will actually meet the project objectives. The Project’s workforce housing objective is to “provide sufficient workforce housing on the project site to accommodate a majority of employees of the hotel, the full-service restaurant and other onsite land uses.” SEIR 3-5. But if the workforce housing is built before the hotel and restaurant are constructed, and if it is made available to off-site employees, it will not serve employees of the hotel, restaurant, and other land uses. Instead, it would be just another housing development, with no discernible relationship to the other elements of the Project or the Project’s objectives.

The Specific Plan Amendment and SEIR compound this problem by failing to provide sufficient detail regarding eligibility criteria for the workforce housing. For example, while the SEIR states that occupancy of workforce housing “would be linked to eligibility criteria,” SEIR 5.5-20, its references to such criteria are vague and insufficiently complete. As an initial matter, the reference to eligibility criteria cited in the previous sentence is entirely conclusory and contains no additional explanation. To find additional detail, members of the public must go hunting through the lengthy SEIR document to different sections. In those sections, the SEIR states only that the workforce housing would be available to “employees (whether on the Tioga site or other locations),” SEIR 5.6-7; *see also* SEIR 4-20, and that some form of preference would be given to “employees of the project site.” SEIR 5.6-7. The SEIR does not provide any detail about how these preferences or criteria will operate. For example, if the housing is built before the hotel, will offsite employees be evicted if an onsite employee requests housing once the hotel is built? After the hotel and restaurant are constructed, will hotel or restaurant employees be evicted if they are laid off after the peak summer months, when on-site employment would drop from 187 to as few as 20? *See* SEIR 5.6-13. The document does not answer these questions, nor does it describe how any eligibility criteria would be administered or enforced.

Related to eligibility criteria, the SEIR and Specific Plan Amendment fail to provide a consistent and complete description of whether the workforce housing will be affordable. Although the SEIR frequently references affordability and assumes that the workforce housing will be affordable, *see, e.g.*, SEIR 1-4 (noting that the Project would satisfy the County's goal to provide affordable housing for employees); SEIR 4.11 (stating that workforce housing units will "provide affordable housing for employees"), it does not provide any guarantees as to affordability. Although the SEIR states vaguely that rents are "anticipated to be at or below 30% of household income," it does not *require* affordability or any particular rent. Further, it is not clear whether there will be any income restrictions. Without rent restrictions or income restrictions, there is nothing in place to ensure that the workforce housing is (a) actually affordable for onsite employees, and (b) not a gift to wealthier residents.

In addition to raising questions about whether the workforce housing will meet the Project objectives, these vague and inconsistent descriptions make it impossible for members of the public to analyze the Project's effects on the environment. For example, the Project's traffic and greenhouse gas impacts will depend entirely on whether employees are working on-site or commuting to and from remote locations. *See, e.g.*, SEIR 4-14 ("The provision of onsite workforce housing will minimize home-to-work traffic and fuel consumption."). The Project's compliance with County land use policies regarding affordability will depend on the income and rental restrictions described above. Further, population and housing impacts as well as growth-inducing impacts will depend on whether onsite employees will be adequately served by the workforce housing. If offsite employees have occupied the Project housing, forcing onsite employees to find housing elsewhere, the population of Lee Vining could increase beyond the SEIR's estimates, and the Project could either put a strain on area housing and/or induce new housing and infrastructure to be built. Additionally, demands on public services would be different if the workforce housing were to reach capacity without meeting the needs of onsite employees.

To correct these problems, the SEIR must provide an accurate, consistent, and complete project description. Such a description must include clear eligibility criteria describing in greater detail how the system of preferences and eligibility would operate to ensure that the workforce housing serves onsite employees. Further, the description must guarantee that workforce housing construction will be tied to construction of the hotel and/or restaurant. If the workforce housing is built first, with no guarantee that hotel and restaurant construction will follow—and the last 26 years without construction of these uses suggests that such an outcome is not only possible, but perhaps even likely—the Project will entirely fail to meet its objectives. It will be revealed as simply a façade for a

new housing development that would dwarf the existing community and would have nothing to do with providing local businesses with workforce housing.

**B. The SEIR fails to analyze and mitigate the Project's significant environmental impacts.**

CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. Guidelines § 15151. The document should provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.*; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 355, 358 (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment).

Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights*, 47 Cal.3d at 392. To accomplish this purpose, an EIR "must contain facts and analysis, not just an agency's bare conclusions." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agric. Assn.* (1986) 42 Cal.3d 929, 935. Nor may an agency defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07. An EIR's conclusions must be supported by substantial evidence. *Laurel Heights*, 47 Cal.3d at 392-93.

As documented below, the SEIR fails to identify, analyze, or support with substantial evidence its conclusions regarding the Project's significant environmental impacts, and also fails to consider feasible mitigation for the Project's significant impacts. These deficiencies render the SEIR inadequate under CEQA.

The SEIR suffers from several major problems and is insufficient to support a decision on the Project. In some cases, the SEIR fails altogether to provide the necessary analysis. In other cases, the SEIR provides insufficient mitigation measures, or ignores feasible mitigation measures that could lessen some of the project's substantial impacts. The document also substantially understates the severity and extent of a range of environmental impacts, including but not limited to significant impacts related to visual resources, wildfire evacuations and fire protection services, biological resources, vehicle miles traveled, cumulative greenhouse gas emissions, population and housing, and conflicts with local land use plans. This failure defeats CEQA's purpose of creating a process by which the public and decision-makers can fully appreciate the consequences of Project approval. *See* CEQA Guidelines, § 15002(a)(1) (listing as one of the "basic



purposes” of CEQA to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

To ensure that the public and the County’s decision-makers have adequate information to consider the effects of the proposed Project—as well as to comply with the law—the County must prepare and recirculate a revised SEIR that properly describes the Project, analyzes its impacts, and considers meaningful alternatives and mitigation measures that would help ameliorate those impacts.

**1. The SEIR must revise its analysis of visual and aesthetic impacts and consider additional feasible mitigation measures to reduce significant adverse impacts to visual resources.**

Under CEQA, it is the state’s policy to “[t]ake all action necessary to provide the people of this state with . . . enjoyment of *aesthetic*, natural, scenic, and historic environmental qualities.” Pub. Res. Code § 21001(b) (emphasis added). “A substantial negative effect of a project on view and other features of beauty could constitute a significant environmental impact under CEQA.” *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 401. No special expertise is required to demonstrate that the Project will result in significant aesthetic impacts. *Id.* at 402 (“Opinions that the [project] will not be aesthetically pleasing is not the special purview of experts.”); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937 (“[N]o special expertise is required on this topic.”).

The SEIR recognizes the impressive and important visual resources at stake: “In combination with the dramatic Sierra escarpment leading into Yosemite National Park, the otherworldly beauty of Mono Lake is among the outstanding scenic vistas of the world.” SEIR 5.12-4. Further, the SEIR correctly recognizes that the Project’s irreversible changes to scenic and visual resources constitute a significant impact. SEIR 5.12-22.

The Project’s visual impacts are a great source of concern to the Mono Lake Committee and its members. As the SEIR acknowledges, the Project’s impacts are likely to be significant and unavoidable. Given the importance of the Mono Basin’s visual characteristics—as a point of community identity and pride, as a central element of the area’s tourist economy, and as a unique and inherently valuable resource in itself—it is of paramount importance that the County fully and correctly analyze the Project’s impacts to visual resources and consider *all* feasible mitigation measures to lessen those impacts.

The SEIR's analysis, however, falls short in several significant respects. In addition to the numerous deficiencies detailed in the contemporaneously-filed letter from the Mono Lake Committee, the SEIR contains a contradictory and inadequate analysis of impacts from light and glare.

The SEIR's conclusion that light and glare impacts would be significant and unavoidable is not supported by facts or analysis in the SEIR, as required by CEQA. The SEIR first implies that the Project would have a "less than significant impact" related to light and glare. SEIR 5.12-26. The SEIR gestures toward this conclusion based on the Project's compliance with local dark sky and scenic by-way regulations. For example, the SEIR states: "[t]he [Project's] potentially significant light and glare impacts would be reduced to less than significant levels through mandatory compliance with the [dark sky regulations]". *Id.* But after this "analysis," and without any explanation, the SEIR nevertheless concludes that the Project's lighting and glare impacts will be "significant and unavoidable." 5.12-27. This conclusion does not follow logically from the SEIR's purported analysis. As a result, the SEIR is inadequate as a matter of law. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514 ("[T]he adequacy of an EIR's discussion of environmental impacts is an issue distinct from the extent to which the agency is correct in its determination whether the impacts are significant. 'An EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect.'" (citation omitted)). Even though the SEIR correctly concludes that light and glare impacts would be significant, the County must correct its analysis to explain to the public *why* and *how* the Project would affect visual resources. A correct analysis would lead to a more informed discussion of the Project and potential mitigation measures to reduce its impacts.

Furthermore, the SEIR may not correct the analytical error above simply by concluding, based on the same analysis, that the Project's light and glare impacts would be less than significant. As stated above, the SEIR gestures toward that conclusion because of its assertion that light and glare impacts would be "reduced to less than significant levels" based on compliance with local regulations. SEIR 5.12-26. But compliance with local regulations alone is not enough to support a determination that an impact would be less than significant. Instead, the EIR must independently analyze the Project's impacts. *E. Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302-03 (agency improperly used city's general plan standard as sole threshold to avoid finding significant traffic impacts); *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-20 (reliance on safety regulations "is inadequate to address environmental concerns under CEQA"). For example, the SEIR must analyze whether compliance with dark sky

regulations will be effective given the placement of the Project on an elevated bluff, where even downward-facing lights will be highly visible from the surrounding area.

When an EIR identifies a Project's impact as severe, the agency must consider all potentially feasible mitigation to lessen the Project's effects on the environment. Guidelines § 15126.4(a)(1) ("An EIR *shall* describe feasible measures which could minimize significant adverse impacts[.]") (emphasis added); § 15126.4(a)(1)(B) ("Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."). Here, the agency must consider the following feasible mitigation measures to reduce the Project's significant adverse impacts to visual resources:

- Design site grading to mitigate the scenic impacts of the workforce housing village by lowering the ground level until the roofs of the housing structures are not visible from the South Tufa site, near the shores of Mono Lake, or from Highway 395 south of the junction with SR 120.
  - Use fill from the Project site to construct larger earthen berms to obscure the workforce housing village or other Project elements from scenic vantage points.
  - Require greater setbacks from the eastern edge of the sloping moraine on the Project site.
  - Limit building heights. In combination with the other mitigation measures listed here, height limits could effectively reduce the visibility of the workforce housing from the surrounding areas.
  - Require underground parking to reduce the footprint of the site and create additional options for siting structures that may have less significant aesthetic impacts.
  - Separate the housing structures into smaller units. Separating the housing into smaller structures, rather than consolidating the units into a handful of large buildings, could allow for different siting options that could reduce the Project's visual effects.
2. **The SEIR fails to adequately analyze the Project's impacts related to wildfire evacuations and fire protection services.**

As proposed, the Project would site 100 residential units and a previously-approved 120-unit hotel and promontory restaurant on rugged hillside terrain near a windy canyon surrounded by open, wild sagebrush scrub and forested lands. *See generally* SEIR. In so doing, the Project would both create and be located in a wildland urban interface in what the California Department of Forestry and Fire Protection has identified as a moderate fire hazard severity zone. SEIR 5.7-5. Indeed, the history of the area reveals a close call with a wildfire in the recent past. As the SEIR discusses, a wildfire swept down Lee Vining Canyon in 2000, leaving scars on the Project site and coming close to the convenience store. *See* SEIR 5.3-2, 5.3-5. The 2000 wildfire also jumped Highway 395 and resulted in the temporary closure of both roads serving the Project site, Highway 395 and SR 120. *See* Mono Lake Newsletter, *The Lee Vining Canyon Fire* (Summer 2000), attached as Exhibit 2.

Yet despite these hazardous conditions, the SEIR does not identify wildfire-related risk as a significant impact and its analysis is flawed. As an initial matter, the SEIR fails to include any standards or thresholds for assessing the significance of impacts relating to wildfire evacuation. A threshold is a numeric or qualitative level at or below which impacts are normally less than significant. CEQA Guidelines §15064.7(a); *see also* *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1107. This flaw leads to a cascade of other failures: without a threshold, the EIR cannot do its job. Thus, for example, while the SEIR asserts that the Project would not interfere with an adopted emergency evacuation plan, it provides no standard by which to evaluate this impact's significance. SEIR 5.7-21.

In place of a well-reasoned analysis, the SEIR simply concludes that the Project would not impair implementation of an emergency response or evacuation plan because the site has access to SR 120. SEIR 5.7-21. But the site's access to evacuation routes alone does not mean that these routes or the roadways provided for people on the Project site to access those routes can safely handle an evacuation of the site during a natural disaster. And although the SEIR includes a mitigation measure—the development of an evacuation plan—it does not contain any explanation or analysis of whether or how such an evacuation plan would be effective.

Alarmingly, the SEIR contains no analysis of whether US 395, SR 120, or the access road on the Project site have the capacity to handle emergency evacuations in light of the greatly increased population of the workforce housing village and the population of tourists and out-of-town visitors attracted by the hotel and restaurant. Common sense dictates that an EIR should *at least* consider (1) the number of cars attempting to evacuate the project area, along with the significant impacts incident to such an evacuation; (2) the amount of time it would take for all residents and visitors to

clear the site; and (3) the significant impacts to emergency personnel attempting to respond while an evacuation is underway; not to mention (4) whether the County Community Center in Lee Vining that is currently used as an emergency evacuation center could handle the potential increase in evacuees. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 (“Common sense . . . is an important consideration at all levels of CEQA review.”) Especially in light of the single paved entrance to the site and the placement of the housing at the far end of the single access road, the SEIR’s conclusions that the Project would not impair an evacuation plan is not supported by substantial evidence. As such, the County cannot approve the Project unless it recirculates a revised SEIR that adequately analyzes the aforementioned wildfire evacuation impacts. Once an adequate analysis is provided, the SEIR must evaluate feasible mitigation to lessen any significant impacts. The development of such mitigation may not be deferred until a later date as the SEIR currently attempts.

Related to fire impacts, the SEIR fails to adequately analyze and mitigate the Project’s public-services-related impacts to the Lee Vining Fire Protection District. Neither the public services section nor the wildfire risk section discusses the Project’s impacts on the services available from the Lee Vining Fire Protection District (“LVFPD”). But the Project could have significant adverse impacts related to the LVFPD. The Project, by potentially tripling or quadrupling the population of the Lee Vining area, could significantly increase the demand for the fire protection and emergency medical services that the LVFPD provides. This increased demand could create a need for an expansion of LVFPD facilities or equipment in order to maintain acceptable service ratios and/or response times. The SEIR, however, does not contain any analysis of the Project’s impacts related to fire protection services. While the wildfire-risk section of the SEIR discusses the construction of fire hydrants on-site, SEIR 5.7-23, the number of hydrants onsite has nothing to do with demand for the LVFPD’s services or the Project’s potential to generate a need for additional or modified LVFPD facilities.

These impacts could be especially severe given the volunteer status of the LVFPD. Additional calls related to new development, including both fire-related and emergency-medical-related calls, could stretch volunteers thin and reduce levels of safety in the community. And maintaining existing levels of service despite new demand could cause fundamental changes to LVFPD operations. As a volunteer department, LVFPD cannot simply “scale up” and hire additional firefighters due to new development. Instead, the LVFPD would have to significantly change its mode of operation to hire even a single paid firefighter as an employee. The County should consider, as a mitigation measure, creating a new paramedic unit based in Lee Vining and requiring the Project to pay fees for its fair share of the costs of providing the needed service.

We understand that the LVFPD is preparing a comment letter responding to the SEIR. The County must recirculate a revised SEIR that adequately analyzes the Project's impacts related to fire protection services, including a clear analysis of the points raised above, as well as those submitted by the LVFPD. The recirculated SEIR should also contain feasible mitigation for any impacts identified. For example, the SEIR should impose mitigation fees that require the Project proponents to pay for their fair share of the increased service costs caused by the Project.

**3. The SEIR fails to adequately analyze and mitigate significant adverse impacts related to biological resources.**

The SEIR correctly concludes that the Project will have a significant and unavoidable impact related to the migratory patterns of wildlife, including mule deer. SEIR 5.3-21. Nevertheless, the SEIR must still adequately and accurately describe the nature of the Project's impacts on the mule deer, *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514 (“An EIR’s designation of a particular adverse environmental effect as ‘significant’ does not excuse the EIR’s failure to reasonably describe the nature and magnitude of the adverse effect.”), and it may not rely on ineffective and unenforceable mitigation measures. The SEIR falls short on both accounts, as explained in letter submitted contemporaneously by the Mono Lake Committee. That letter’s comments regarding impacts to mule deer, the inadequacy of the SEIR’s proposed mitigation measures, and proposals for additional feasible mitigation measures are incorporated by reference herein.

**4. The SEIR fails to adequately analyze and mitigate significant adverse impacts related to vehicle miles traveled.**

CEQA is an information-forcing statute, and its purpose is to inform the public about a Project’s potential environmental impacts. Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment . . .”). An EIR’s discussion of impacts is legally acceptable “if it provides sufficient information and analysis to allow the public to discern the basis for the agency’s impact findings.” *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 13.

The SEIR’s uniquely uninformative discussion of vehicle miles traveled (“VMT”) falls far short of this standard. The SEIR simply states that Mono County has not yet adopted a threshold of significance for VMT. 5.9-10. It then indicates that the annual VMT for the Project is estimated to be 872.133 miles, and that the cumulative

VMT for the Project with the already-approved elements is estimated to be 3,277.43 miles. *Id.*

The SEIR provides no analysis of these figures. There is no baseline presented regarding VMTs absent the Project. *See* CEQA Guidelines § 15125 (“An EIR must include a description of the physical environmental conditions” to constitute “the baseline . . . by which a lead agency determines whether an impact is significant.”). There is no discussion of the relationship between any particular amount of VMTs and the corresponding effect on the environment. Nor is there any explanation of what the VMT figures actually represent or the assumptions that went into their calculation, which makes it impossible to assess their accuracy. For example, did the VMTs include the addition of 60-mile round-trip commutes from the workforce housing to Mammoth Mountain Ski Area, given the acknowledged availability of workforce housing to ski area employees? The SEIR does not say. Such a bare presentation of uncontextualized figures, untethered to any information that might help the public reach a conclusion about the Project’s environmental effects, is inadequate.

Further, the SEIR’s conclusion that the Project would have a less than significant impact related to VMTs is inadequate because the SEIR’s qualitative analysis is flawed. The SEIR assumes that VMTs will be insignificant because the Project is adjacent to a public transit stop and because the applicant “intends” to provide space for an Eastern Sierra Transit Authority (“ESTA”) bus stop onsite if the project is approved. SEIR 5.9-10. The SEIR, however, does not provide any evidence or analysis to support its assumption that workforce housing residents will take public transportation. And the SEIR cannot rely on an applicant’s mere “intent” without more. For the SEIR to rely on the presence of an ESTA bus stop onsite in reaching its conclusion that the Project would have a less than significant effect on VMTs, the SEIR must *require* that the Project include such a feature.

Nor may the SEIR “presume” that the Project would cause a less than significant transportation impact pursuant to Guidelines section 15064.3, which the SEIR adopts as a threshold for significance. SEIR 5.9-8. Section 15064.3(b)(1) states that such a presumption may apply to a project within one-half mile of an existing major transit stop or a stop along an existing high quality transit corridor. But the SEIR does not identify whether either of these factors is present. *See* Pub. Res. Code § 21064.3 (defining “Major transit stop” as “the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less” during peak commute times); Pub. Res. Code § 21155(b) (defining a “high-quality transit corridor” as a corridor with bus service with service intervals no longer than 15 minutes during peak commute times). ESTA in particular, while it does provide a valuable service, does not support the site’s

meeting the criteria for a major transit stop or a high quality transit corridor. *See* Exhibit 3, ESTA Transit Schedule, Lone Pine to Reno Route.

Finally, it is not clear from the analysis of VMT whether the SEIR has taken into account the fact that the workforce housing units may be inhabited by offsite employees, some with significant commutes to Mammoth Lakes, ski areas, Yosemite National Park, or more remote locations. *See* SEIR 5.6-13. Thus, considering all of the above, the SEIR's conclusion related to VMTs is not supported by substantial evidence.

**5. The SEIR fails to analyze cumulative impacts related to greenhouse gas emissions.**

CEQA requires the lead agency to analyze and mitigate a Project's potentially significant cumulative impacts. CEQA defines cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Guidelines § 15355. An effect is "cumulatively considerable" when the "incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Guidelines § 15065(a)(3). A proper cumulative impact analysis is "absolutely critical," *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217, as it is a mechanism for controlling "the piecemeal approval of several projects that, taken together, could overwhelm the natural environment," *Las Virgenes Homeowners Federation, Inc. v. County of L.A.* (1986) 177 Cal.App.3d 300, 306. GHG emissions in particular are inherently cumulative. In evaluating GHG emissions, the County must focus on the Project's "incremental contribution" to climate change, which may be "cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions." Guidelines § 15064.4(b).

The SEIR fails to analyze the GHG impacts of the Project in combination with the GHG impacts from the previously approved elements (i.e., the hotel and restaurant), either as part of the stand-alone GHG section or in the cumulative impact analysis section. This flaw is particularly problematic in light of the fact that the 1993 FEIR did not include any analysis of climate change.<sup>2</sup> Because of these omissions, there is *no analysis* of the GHG emissions resulting from the hotel and restaurant available to the public.

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<sup>2</sup> Nor is there any evidence that the GHG emissions from the already approved but not constructed elements of the Specific Plan are included in the SEIR's GHG baseline.



The unstudied GHG impacts could be independently as well as cumulatively considerable. The hotel and restaurant alone are anticipated to draw robust tourist traffic, often from distant locations, resulting in potentially significant transportation-related emissions. Indeed, as the SEIR's VMT analysis indicates, the Project's cumulative VMTs are almost four times more considerable than the VMTs generated by the workforce housing alone. SEIR 5.9-10. Because this analysis is absent, however, and cumulative GHG emissions from already-approved elements are not included in the County's GHG calculations, the County's conclusion that the Project will not meet the 3,000 MT CO<sub>2</sub>e threshold of significance is not supported by substantial evidence. The County must re-do these calculations taking into account all of the Project's elements.

The SEIR's silence as to the cumulative GHG emissions impacts of the previously approved and newly proposed Project elements is not permissible. CEQA Guidelines § 15130(a) (setting forth the requirement that an EIR shall discuss cumulatively considerable effects and "briefly describe its basis for concluding that [an] incremental effect is not cumulatively considerable."). The SEIR must be revised to calculate the Project's cumulative increase in GHG emissions and assess its significance.

**6. The SEIR's analysis of population and housing impacts is inadequate.**

Under CEQA, a project has significant impacts if it would "induce substantial unplanned population growth in an area, either directly . . . or indirectly[.]" Guidelines, Appendix G, section XIV.a. This Project will cause a significant impact in Lee Vining by effectively tripling or quadrupling the population of the area. As the SEIR states, Lee Vining proper has a current population of about 90, SEIR 5.6-4, and the workforce housing village—not including the transient residents of the hotel—will increase the population of Lee Vining by 194 to 293 people, SEIR 5.6-10, an increase of more than 300%, SEIR 5.6-14.

The SEIR's analysis of population and housing impacts has several significant flaws that render it legally deficient. First, the SEIR incorrectly analyzes the Project's population and housing impacts in relation to projected theoretical growth in the Mono Basin area. *See* 5.6-11 to -12. But because the population impacts will directly impact Lee Vining, the town of Lee Vining, and not the Mono Basin area, is the correct framework for this analysis.

Second, the SEIR erroneously compares the Project's population and housing impacts against a future baseline, rather than a baseline of current conditions,

without justifying its choice. Conditions existing “at the time the notice of preparation is published . . . will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines section 15125. An agency *may* select a baseline of projected future conditions if such a decision “is justified by unusual aspects of the project or the surrounding conditions.” *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 508-09. The SEIR does not identify any such unusual circumstances or conditions here, nor does it otherwise justify the selection of projected future growth as a baseline. In fact, the only unusual circumstances present—a Project that would quadruple the population of a town in one stroke—suggest that a baseline of current conditions is more appropriate.

Additionally, the selection of the “practical build-out” scenario described in the General Plan as a baseline or a threshold of significance for population growth is grossly inappropriate, *see* SEIR 5.6-11, given the General Plan EIR’s description of what that scenario describes. The “practical build-out” scenario is based on the theoretical maximum build-out of all parcels in the County—i.e., a scenario that assumes that “build-out will include 100% of the total dwelling units that could potentially be built.” Mono County General Plan EIR 4.12-6. The practical build-out scenario takes into account known constraints related to hazards, infrastructure limitations, and agricultural preservation. But “even the ‘practical’ [scenario] overstates development.” *Id.* Notably, the General Plan EIR states that one of the reasons the practical scenario overstates development is because it fails to account for “environmental concerns” that would effectively limit development. *Id.*, 4.12-6 to -7.

The SEIR cannot legitimately determine that a current Project will have no significant adverse environmental effects related to population growth because it compares favorably to a hypothetical future scenario that overstates development and *fails to account for environmental concerns*. Such a hypothetical future scenario cannot be said to represent “planned” growth, making the SEIR’s use of that scenario in evaluating whether a project would “induce substantial unplanned population growth” arbitrary and capricious. *See* SEIR 5.6-7. Further, in relying on the practical build-out scenario, the SEIR fails to analyze the Project’s actual population impacts: to name one example, there is no discussion of how Lee Vining will absorb quadrupled parking demand when parking is already a scarce resource, and the greater demand for parking could result in greater traffic and related emissions from visitors circling for parking or the environmentally-damaging construction of new parking infrastructure (especially given the acknowledged uncertainty as to whether pedestrian and bicycle improvements would be implemented, *see* SEIR 5.9-9).

The SEIR must re-do its analysis of population and housing impacts using an appropriate baseline and incorporating an appropriate and well-supported analysis of *actual* impacts related to population growth.

**7. The SEIR fails to identify the Project's significant adverse land use impacts related to conflicts with local land use plans in violation of both CEQA and the State Planning and Zoning Law.**

CEQA requires that environmental impact reports analyze the consistency of a project with applicable local plans. *See Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356; Guidelines § 15125(d). Inconsistencies with a general plan or other local plan goals and policies that were enacted in order to protect the environment are significant impacts in and of themselves and can also be evidence of other significant impacts.

Furthermore, the State Planning and Zoning Law (Gov. Code § 65000 et seq.) requires that development decisions—including specific plans and amendments of specific plans—be consistent with the jurisdiction's general plan. Gov. Code §§ 65359, 65454. “Under state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. The requirement of consistency with the general plan includes consistency with provisions of local land use plans incorporated into the general plan. *See Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153. Accordingly, “[t]he consistency doctrine is the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.” *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

It is an abuse of discretion to approve a project that “frustrate[s] the General Plan's goals and policies.” *Napa Citizens*, 91 Cal.App.4th at 379. The project need not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan's goals and policies.” *Id.* at 379. As discussed in more detail below, the Project is directly inconsistent with numerous provisions in the General Plan and documents incorporated into the General Plan.

Because the SEIR fails to identify various conflicts and inconsistencies with local land use plans as a significant adverse impact, the SEIR is legally deficient.

The Project conflicts with local land use plan goals related to preserving aesthetic and scenic values. The Mono Basin Community Plan (“Community Plan”) contains a goal stating that the County should “[m]aintain the spectacular natural values of the Mono Basin and rural, small-town character of communities by managing growth[ and] ensuring high-quality aesthetics . . . .” Community Plan at 17. To implement this goal, the Community Plan sets forth a policy to “support design practices that protect scenic vistas,” which may be implemented by “[e]ncourag[ing] the siting and design of buildings to preserve scenic vistas.” Community Plan at 18. The values reflected in these goals and actions are at the heart of the Community Plan, and they appear throughout the document. *See* Community Plan at 13 (emphasizing “small, compact communities” and “low-density limited development patterns lead[ing] to a small-town rural character,” as well as “a healthy natural environment with clean air and water, scenic grandeur, dark night skies, pristine wilderness and open space. We protect and cherish the natural character of the land by minimizing the intrusiveness of structures, protecting our natural assets, and being environmentally responsible.”). The Project conflicts with these goals and policies. As the SEIR acknowledges, and as discussed at greater length in Section II.B.1 of this letter, the Project will have a significant adverse impact on scenic vistas. SEIR 5.12-22.

In light of this conflict, the SEIR incorrectly concludes that the Project will have a less than significant impact related to conflicts with local land use plans. *See* SEIR 5.5-24. This conclusion is not supported by substantial evidence, as the SEIR itself acknowledges that aesthetic impacts will be significant. SEIR 5.12-22. Further, the SEIR’s attempt to explain away this conflict is inadequate. *See* SEIR 5.5-16. The SEIR states that the newly proposed project uses will not conflict with maintaining scenic values because they will not “substantively change the rural character and scenic values of the site *relative to existing approvals*.” SEIR 5.5-16 (emphasis added). The SEIR further responds to Community Plan policies to preserve scenic vistas by stating that the Project’s design elements will be in harmony with existing development onsite, and siting of new uses “incorporate[] . . . visual perspectives gained from the schematic renderings.” SEIR 5.5-18. But the SEIR later concludes that the newly proposed workforce housing itself would be visible from the southern and eastern portions of Mono Lake, disturbing scenic vistas independent of any disturbances from approved uses. SEIR 5.12-13.<sup>3</sup>

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<sup>3</sup> The Project’s placement and visibility from scenic viewpoints and from Highway 395 also conflict with the County’s Ridgeline Development Design Guidelines (“Structures should not be located on or near visually prominent areas . . . or ridgelines”), *see also*

For similar reasons, the SEIR is legally deficient because it fails to recognize conflicts with traffic/circulation and public safety policies as significant adverse land use impacts. For example, the Community Plan includes a policy related to providing “safe and convenient pedestrian and biking facilities.” Community Plan 23. But, despite the fact that the Project will have significant adverse pedestrian safety impacts, and there is no guaranteed mitigation to address those impacts, SEIR 5.8-9, the SEIR fails to identify a conflict with the Community Plan’s policy.

The SEIR also fails to recognize inconsistencies between the Project and local land use plan policies related to workforce housing and affordable housing. The Community Plan sets forth a goal to increase workforce housing, and notes that the County should “[e]stablish tenant eligibility criteria, *including a time requirement as a local resident and/or local employee*, for workforce housing units.” Community Plan at 21. Yet despite the SEIR’s assurances that the Project would increase workforce housing and contain eligibility criteria, *see* SEIR 5.5-20, the SEIR and Specific Plan Amendment contain insufficient eligibility criteria, *see* Section II.A, *supra*. Further, the document’s vague references to tenant eligibility do not include any time requirements. In fact, the SEIR’s statements that workforce housing could serve off-site ski industry employees suggests that the housing may not serve “local employee[s]” at all.

In terms of affordable housing policies, the General Plan’s housing element requires development projects to comply with County Code requirements for affordable housing. Housing Element 73 (“Program 2.9: Development projects shall comply with the Mono County Housing Requirements (Mono County Code 15.40), which requires development projects to include affordable housing.”).<sup>4</sup> But the SEIR does not contain any description of guaranteed income or rent restrictions and thus does not ensure either that all of the housing will be affordable or that the Project will be in compliance with the County Code’s requirements for affordable housing.

These inconsistencies and inadequacies may lead to the Project’s workforce housing serving off-site employees working dozens of miles away, with no guarantee that the housing will be affordable. Such an outcome would frustrate the goals and policies of

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SEIR 5.12-10, and Mono County Scenic Combining District regulations, *see* SEIR 5.12-20 (“New structures shall be situated where, to the extent feasible, they will be least visible from the state scenic highway.”).

<sup>4</sup> Although it appears as though the County’s inclusionary housing ordinance is temporarily suspended, SEIR 5.6-7, the SEIR should still analyze these policies because they are in the General Plan, and the ordinances may be re-instated.

the General Plan and Community Plan to provide affordable workforce housing, and approval of the SEIR would thus violate the Planning and Zoning Law.

**C. The SEIR Fails to Adequately Analyze Alternatives to the Project.**

The SEIR does not comply with the requirements of CEQA because it fails to undertake a legally sufficient study of alternatives to the Project. CEQA provides that “public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects.” Pub. Res. Code § 21002. As such, a “major function of an EIR is ‘to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.’” *County of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 203 (citation omitted). To fulfill this function, an EIR must consider a “reasonable range” of alternatives “that will foster informed decision making and public participation.” Guidelines § 15126.6(a). “An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR . . . .” *Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 733.

Here, the SEIR’s analysis of alternatives is legally deficient in several ways. First, the analysis of the Optional Siting Alternative is arbitrarily constrained. Although the SEIR’s discussion of the Optional Siting Alternative from the 1993 Specific Plan acknowledges that “it is still potentially feasible to consider alternative siting layouts” because the hotel and restaurant have not yet been developed, the SEIR duplicates errors in the 1993 FEIR’s alternatives analysis and arbitrarily rejects alternative sites. For example, the SEIR rejects alternative sites for the hotel and restaurant that would mitigate visual and aesthetic impacts because alternative sites “would [not] meet the project objective to deliver outstanding views.” SEIR 7-5. But “delivering outstanding views” has never been a Project objective. The Project’s objectives are, rather, to “draw upon” tourist traffic through Mono County and “provide a complete range of services” to visitors. SEIR 3-3. There are no objectives related to providing visitors with views. Rather, the visual objective of the Project is “to blend into the natural setting through careful structure siting.” SEIR 3-3. Thus, the SEIR’s conclusion that the Optional Siting Alternative fails to meet Project objectives is arbitrary.

Second, the analysis of the Reduced Development Alternative is arbitrary, and the SEIR’s analysis is flawed and incomplete. As an initial matter, although the SEIR identifies the Reduced Development Alternative as environmentally superior, SEIR 7-7, the SEIR fails to explain its seemingly nonsensical conclusion that “this alternative would reduce the acreage designated for Open Space-Preserve compared to the project as

proposed.” SEIR 7-5. It violates common sense that a less intensive development would decrease the amount of open space available on the Project site, and the SEIR does not provide any evidence or analysis to support its conclusion.

Similarly, the SEIR does not provide any explanation for its conclusions that the Reduced Development Alternative would be less effective in meeting Project objectives. For example, the SEIR does not explain how reducing the amount of workforce housing available onsite would reduce the Project’s ability to “provide [a] full range of tourist/traveler/resident services,” to “optimize customer views” (though note, as argued above, that this is not properly a Project objective), to “strengthen [the] area economy,” or to “[u]pgrade infrastructure sizing to meet needs.” SEIR 7-7 to -8. Because there is no apparent reason why reducing the size of the workforce housing village would impair these objectives, and the SEIR does not provide any explanation, the SEIR has arbitrarily rejected the environmentally superior alternative.

Finally, the SEIR should consider additional feasible alternatives that would meet the Project objectives and be more effective in reducing environmental impacts. A discussion of several such alternatives is included in the contemporaneously-submitted letter by the Mono Lake Committee. The discussion of alternatives in the Mono Lake Committee’s letter is adopted and incorporated by reference herein.

### **III. Conclusion**

For all of the foregoing reasons, we respectfully submit that the County cannot lawfully approve the SEIR and Project in their current form. The County must start environmental review again and prepare a new EIR for the whole Project, rather than an SEIR for a portion of the Project. But even if the County (unlawfully) elects to proceed via an SEIR, the proposed SEIR is deeply flawed and fails to inform the public of the full impacts of the Project. Before considering this Project further, the County should fully analyze the Project’s numerous significant impacts, develop adequate mitigation measures, and properly analyze a reasonable range of alternatives that would avoid or substantially lessen impacts.

Michael Draper  
August 21, 2019  
Page 25

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker



Aaron M. Stanton

1149883.10

SHUTE MIHALY  
& WEINBERGER LLP



# **EXHIBIT 1**

# the sheet

News, Views & Culture of the Eastern Sierra



Lucy (left) and Molly Jacoby chow down at Dave Easterby's State Farm office on Friday, October 28. For more photos, see p. 12.

Saturday, November 5, 2016

FREE

Vol. 14, No. Pedro

## BISHOP GETS EXTRA!

Expanded grocery store is all the rage

By James

Shoppers in Bishop are flocking to the newly renovated and greatly expanded Smart & Final Store in Bishop. All around town people are enthusiastically asking friends if they "have been to the new Smart & Final," and going on about how great it is.

Local competitors are waiting to see what impact the bigger store will have on business, says Manor Market owner Kyle Oney.

The Bishop store, now dubbed a "Smart & Final Extra!" has more options than ever. There is a large dairy and fresh meat section, a greatly expanded liquor section, and most striking is the large produce section and an extensive bulk foods department in which nuts and other dry goods are sold from self-service bins.

The new store's manager said that it will employ approximately 40 employees and are still accepting job applications.

Smart & Final's appeal has always been its low prices on selected items—it has long been the store of choice for operators of small restaurants, catering companies, businesses, clubs and civic organizations looking to buy food products in bulk. It also offers low prices on household goods such as cleaning products. Smart & Final are seen as the preferred location for stocking kitchens and preparing for holidays, parties and events.

The limited selection available at the small store in Bishop also limited the number of shoppers. Local shoppers often prefer neighboring Vons out of convenience for its much larger selection of brand-name foods, even if prices were higher.

Parking at Vons is also much more convenient.

Smart & Final's main competitor in Bishop is Vons, which also made some

see SMART, page 10



PHOTO: JAMES

Sierra Wave's Bill LeFever is about to break character and go nuts at the expanded Smart & Final in Bishop.

## BAD BEARS, WHAT YA GONNA DO?



"Steve Searles" (Hannah DeGoey) arrests a problem bear (Krystle Stewart) on Halloween. Remember, bears are still active at this time of year and are looking to bulk up for winter. Lock up your dumpsters and keep any leftover Halloween candy out of their paws. See more Halloween photos, p. 13.

## NEW POLICIES, OLD SUSPICIONS

LADWP lease changes create anxiety

By Bodine

The Los Angeles Department of Water and Power (LADWP) Board of Commissioners finalized new ranch leases for Inyo County at its October 27 meeting. The leases contain brand new language and policies, including leases being made transferable between family members. However, a lease, typically a five-year agreement, can only be sold to a third party, once.

Once a rancher could sell his or her lease to another party, but when the new lease is up, it will go out to bid. This leaves little incentive for the lessees to invest in their busi-

ness if they know they won't be able to recoup their capital investments.

The one-time transfer devalues the lease and nullifies investments and improvements (like structures) lessees have put into the property or business.

"If they're not sure they can make their money back on capital improvements there's not much incentive to grow and invest," said Nathan Reade, Inyo-Mono County Agricultural Commissioner.

The one-time transfer appears to be in direct violation of the Charles Brown Act, California Senate Bill 883, that grants existing lessees

right of first refusal before the lease goes out to bid but applies only if an entity owns more than 50 percent of private land in another county.

James Yannotta, Manager of the Aqueduct for LADWP, told The Sheet in an email that LADWP sells and leases City of Los Angeles property located in Inyo County in accordance with the Charles Brown Act, Los Angeles City Charter, and LADWP policies and procedures.

The City of Los Angeles owns about 251,958 acres in Inyo County, or about 89 percent of the private land, and 62,501 acres, or just under

see LEASES, page 8

The sound of music

/p. 11/

Dirt lots

/p. 10/

Some game!

/p. 19/

High on life

/p. 7/

Can't stop progress

/p. 6/

# TIOGA INN IN THE WORKS

After sitting on the shelf for twenty years, plans develop for a hotel at the site of the Tioga Gas Mart

By Rea

When Dennis Domaillie bought the property overlooking Mono Lake that eventually became the Tioga Gas Mart, he had plans to build a hotel there, he told The Sheet in July as the Gas Mart (also known as simply "The Mobil") neared its 20th anniversary.

"To make a long story short," he said at the time, "the gas station got built and has turned out to be incredibly successful—to the point that I didn't need to really do any more...development. I had my hands full..."

It seems the time for that development is here after all. Dennis and Jane Domaillie submitted a Notice of Preparation to the Mono County Community Development Department on October 21 for the proposed "Tioga Inn," a 120-room hotel with a 200-seat restaurant that will be built adjacent to the current Tioga Gas Mart.

Their application to build the hotel and restaurant was approved in 1993, but they have reworked the design and added a few features in the 20 years since they opened the Tioga Gas Mart.

The proposed acreage of the entire compound is reduced from 73.7 acres (in 1993) to 67.83 acres, but the hotel is now a proposed three stories, as opposed to two stories in 1993.

"My motivation for that is twofold," Dennis Domaillie told The Sheet on Wednesday, November 2. "One, a three

story building is more energy efficient. And the other thing is that by making the footprint of the hotel smaller, we maintain views from the gas station... the gas station is probably much more important to the people of the Eastern Sierra than the hotel is," he said with a laugh, referencing the Tioga Gas Mart's iconic views and role as a summer watering hole and music venue for both east and west siders alike.

The Domaillies also want to boost the restaurant's capacity from 100 to 200 seats and build up to 80 workforce housing units onsite.

"I hesitate to call it employee housing," Domaillie said. "It's just rental housing. But my goal is to make it affordable. Which for single people are small, compact, energy-efficient units so it doesn't cost them a fortune to live there. It seems that's what the kids and the millennials kind of want. They don't want to tie up all their income in rent."

Domaillie said that the Tioga Gas Mart currently employs 38 people in the height of summer, and that the hotel is projected to need about 50 employees. He hopes that the Tioga Inn will bring more life to the small, seasonally-booming town of Lee Vining and fill its school with more children whose parents have year-round employment.

A scoping meeting at the Lee Vining

Community Center on October 27 brought about 50 community members out to hear Domaillie's proposal, said Janet Carle, co-founder of 350 Mono, a climate change activism group.

"There is a certain amount of concern about whether or not the infrastructure of Lee Vining can handle the impact of the increased visitation," said Ellen King, Membership Coordinator for the Mono Lake Committee. "[There could be] a big jump in the use of water, fire [protection services], and possibly schools and things like that," she told The Sheet on Wednesday. However, she said, "Dennis was very upfront, he was there and spoke at length at the meeting" about the future of the project.

Domaillie told The Sheet he's not particularly interested in acting as a hotel operator, and most likely would go through the process of getting the Subsequent Environmental Impact Report (SEIR) approved and then sell the project to the right developer.

Carle told The Sheet that "the community needs to be a watchdog... and say, 'this is what we want,'" regarding the project, especially if it is not being developed by the Domaillies themselves.

"Let's make this a project we can all be proud of, that the community can be proud of, that will be a signature project for the eastern Sierra...it's a big deal for the [Mono] Basin especially."

Both Carle and King mentioned the desire to have sustainable components integrated into the facility, such as solar panels and greywater systems. Carle wrote a letter to Gerry LeFrancois, Land Use and Transportation Planner for Mono County, urging that the project be energy efficient and that the proposed workforce housing

be built apartment-style, rather than cabin-style as the current employee dwellings at the Tioga Gas Mart are designed. "The current proposal is for 80 small cabins," Carle wrote. "This is inefficient in a mountain climate with major energy demands for heating in the winter. Two or three apartment-style buildings could be more energy efficient."

She also said that water conservation is of utmost importance. This project should be a showcase for using water wisely," she wrote. "Native, drought-tolerant landscaping throughout this new project is desirable. This is the future."

Domaillie told The Sheet that the state of California has come a long way in allowing things like grey water systems (where water draining from sinks and showers can be recycled for underground use in landscaping, for instance) to be used in new projects. Other than in Mammoth, Domaillie said, "this is probably the first hotel that will be built in the eastern Sierra in 60 years." California also now has "solar-ready" building requirements for any new nonresidential structures in the state, which require "solar zones" calculated based on the size of buildings. "We would like to see enough solar installation and energy saving design elements to [make the Tioga Inn] a net zero energy user," Carle wrote in her letter.

Domaillie told The Sheet that he is currently installing solar panels on the Tioga Gas Mart, and was expecting the panels to be installed before the weekend. He expects that the panels will provide 75-80 percent of the current building's energy needs. "It just makes sense," he said. "Solar technology has just come so far in the last decade."

The comment period for the SEIR for the Tioga Inn runs through November 21. However, LaFrancois told The Sheet that the public will have three more opportunities for public comment.

Public comment can be directed to Mono County c/o Gerry LeFrancois. P.O. Box 347 Mammoth Lakes, CA. 93546. Email: gtlefrancois@mono.ca.gov.

MMSO ANNUAL

# SPORTS SWAP

November 5

Mammoth Middle School • 1600 Meridian Blvd

11am - 2pm

\$10 Family Entry

↳ MAMMOTH MOUNTAIN confirmed seller ◀

**\*\*Early Bird Tickets\*\***  
 \$20.00  
 10:30 am Entry  
 LIMITED QUANTITY

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 for supporting  
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Family Table - \$25.00  
 Business Table - \$50.00

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\*\*Please note all sellers are responsible for removal of all their unsold items at the end of the event\*\*

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# **EXHIBIT 2**

## The Lee Vining Canyon fire

In the morning on May 29, 2000, a wildfire broke out in Lee Vining Canyon, near route 120 to Yosemite. The cause is unknown and under investigation but suspected to be human-caused, possibly a campfire. The fire was not the result of any prescribed burn activity.

No structures were burned, or people injured, but the fire came quite close to the Forest Service Ranger Station and the Tioga Gas Mart and temporarily closed both Highways 120 and 395. Generally, it burned the south moraine slopes in Lee Vining Canyon, going up and over the top to Horse Meadow. It also burned eastward from the moraine crest, and jumped Highway 395, burning a small area east of the highway.

Six hand crews, twelve fire engines, five water tenders, and two helicopters worked to control the fire. Many local

fire agencies were involved in the effort.

Happily, the winds did not push the fire north into Lee Vining, but the fire was only a mile away! Avid Mono Lake WebCam watchers noticed the smoke in Sunday's WebCam images.

The following images were taken the day of the fire. 



Photos by Arya Degenhardt

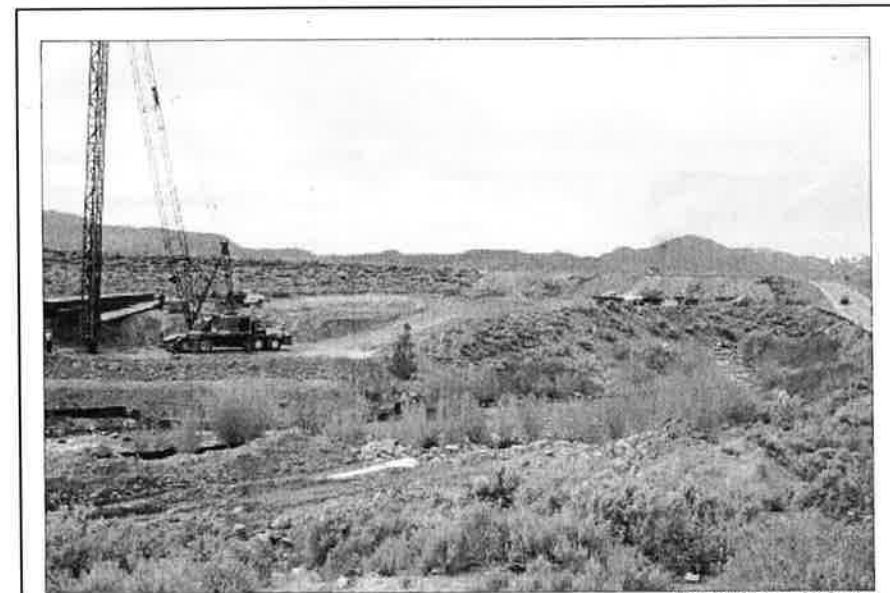


Photo by Geoffrey McQuilkin

A long-planned expansion project is currently in progress on Highway 395 just south of Lee Vining turning the two-lane section into a four-lane split highway. Although highway expansions have many associated issues, Caltrans' four-lane project will be better than the existing highway for Rush, Walker, Parker, and Lee Vining creeks. The new bridge on Rush Creek (construction shown above) and the culverts on the other streams are designed to improve fish passage and handle higher flows. The Committee is keeping an eye on construction disturbance along the stream banks during the peak flow period this summer. Flows should be relatively low in this just-under-normal year.

### Correction

In the Spring 2000 *Newsletter*, we reported that the Mono Lake Committee had been awarded a \$25,000 grant from the Commission for Environmental Cooperation (CEC) to integrate migratory bird studies with restoration activities in the Mono Basin. In fact, the Committee was awarded \$19,500 from the North American Fund for Environmental Cooperation (NAFEC).

The CEC created NAFEC in 1995 as a means to fund community-based projects in Canada, Mexico and the United States that promote conservation, protection, and enhancement of the North American environment.

Funding from NAFEC and Mono Lake Committee Members' made it possible for the Committee to launch the initial version of the Mono Basin Clearinghouse Website

[www.monobasinresearch.org](http://www.monobasinresearch.org). The Clearinghouse is growing into a comprehensive source of scientific and historical information on the Mono Basin.

We thank NAFEC for supporting the Committee's work.

# **EXHIBIT 3**



No Service on Weekends

Home / Routes & Schedule / 395 Routes / Lone Pine to Reno

## Lone Pine to Reno Route

### Schedule: Lone Pine to Reno (northbound route)

Stop	Monday – Friday	Address/Location
Lone Pine	6:15 am Beginning 9/16/2019: 6:10 am	McDonald's (601 S. Main Street)
Independence	6:30 am Beginning 9/16/2019: 6:27 am	In front of Courthouse (168 Edwards Street)
Aberdeen	6:45 am Beginning 9/16/2019: 6:35 am	Aberdeen Store Stop requires 24 hour advance notice. Call (760) 872-1901
Big Pine	7:00 am Beginning 9/16/2019: 6:53 am	Bartel & Newman
Big Pine	7:02 am Beginning 9/16/2019: 6:53 am	Main Street bus shelter
Big Pine	7:05 am Beginning 9/16/2019: 6:53 am	Reynolds Road
Bishop	7:30 am Beginning 9/16/2019: 7:25 am	Vons/Kmart; 1200 N. Main Street
Tom's Place	7:55 am	Bus shelter just west of store/café; 8180 Crowley Lake Pl. Stop requires 24 hour advance notice. Call (760) 872-1901
Crowley Lake	8:05 am	Bus shelter at Community Center; 529 S. Landing Rd.
Mammoth Lakes	8:20 am	<b>Stop 25 just west of Vons (481 Old Mammoth Rd.)</b>
June Lake Junction	8:40 am Beginning 9/16/2019: 8:50 am	Hwy 395 at CA Hwy 158 Stop requires 24 hour advance notice. Call (760) 872-1901
Lee Vining	8:50 am Beginning 9/16/2019: 9:00 am	In front of Caltrans yard, across from Chevron
Bridgeport	9:20 am Beginning 9/16/2019: 9:36 am	121 Emigrant St, (by the park)
Walker	10:00 am Beginning 9/16/2019: 10:12 am	Walker Country Store, 107700 US 395
Coleville	10:05 am Beginning 9/16/2019: 10:15 am	U.S. Post Office Stop requires 24 hour advance notice. Call (760) 872-1901
Gardnerville	10:45 am Beginning 9/16/2019: 10:50 am	Smiths; 1341 US Hwy 395N Stop requires 24 hour advance notice. Call (760) 872-1901
Carson City	11:10 am Beginning 9/16/2019: 11:17 am	Hot Springs & Retail/Walmart (JAC Stop): Just west of Walmart (3200 Market Street) As of 2/1/2018
Reno-Tahoe International Airport	12:00 pm	Ground Transportation Area outside Door "D"
Reno/Sparks Greyhound (Centennial Plaza Transit Center)	12:15 pm Beginning 9/16/2019: 12:10 pm	Northwest corner of Victorian Ave. and Victorian Plaza Cir. (1408 Victorian Ave., Sparks, NV) *ESTA bus does NOT stop inside of Centennial Plaza Transit Center. It stops on the North side

Stops marked with a telephone icon require 24-hour advance notice. Please call (760) 872-1901 to request this stop.

[REQUEST A RESERVATION](#)

[HOLIDAY SCHEDULE](#)

### Schedule: Reno to Lone Pine (southbound route)

Translate »

Stop	Monday – Friday	Address/Location
Reno/Sparks Greyhound (Centennial Plaza Transit Center)	1:10 pm Beginning 9/16/2019: 1:30 pm	Northwest corner of Victorian Ave. and Victorian Plaza Cir. (1408 Victorian Ave., Sparks, NV 89501) *ESTA bus does NOT stop inside of Centennial Plaza Transit Center. It stops on the North side
Reno-Tahoe International Airport	1:30 pm Beginning 9/16/2019: 1:40 pm	Ground Transportation Area outside Door "D"
Carson City	2:05 pm Beginning 9/16/2019: 2:15 pm	Hot Springs & Retail/Walmart (JAC Stop): Just west of Walmart (3200 Market Street) <i>As of 2/1/2018</i>
☎ Gardnerville	2:30 pm Beginning 9/16/2019: 2:45 pm	AM/PM mini-market; 1338 Hwy 395 <i>Stop requires 24 hour advance notice. Call (760) 872-1901</i>
☎ Coleville	3:05 pm Beginning 9/16/2019: 3:25 pm	U.S. Post Office <i>Stop requires 24 hour advance notice. Call (760) 872-1901</i>
Walker	3:10 pm Beginning 9/16/2019: 3:30 pm	Walker Country Store, 107700 US 395
Bridgeport	3:55 pm Beginning 9/16/2019: 4:05 pm	121 Emigrant St. (by the park)
Lee Vining	4:25 pm Beginning 9/16/2019: 4:41 pm	In front of Chevron
☎ June Lake Junction	4:35 pm Beginning 9/16/2019: 4:51 pm	Hwy 395 at CA Hwy 158 <i>Stop requires 24 hour advance notice. Call (760) 872-1901</i>
Mammoth Lakes	5:15 pm	<b>Stop 25 just west of Vons (481 Old Mammoth Rd.)</b>
Crowley Lake	5:30 pm	Bus shelter at Community Center; 529 S. Landing Rd.
☎ Tom's Place	5:35 pm	Bus shelter just west of store/café; 8180 Crowley Lake Pl. <i>Stop requires 24 hour advance notice. Call (760) 872-1901</i>
Bishop	6:30 pm Beginning 9/16/2019: 6:15 pm	Vons/Kmart; 1200 N. Main Street
Big Pine	6:50 pm Beginning 9/16/2019: 6:30 pm	Main Street bus shelter
☎ Aberdeen	7:10 pm Beginning 9/16/2019: 6:40 pm	Aberdeen Store <i>Stop requires 24 hour advance notice. Call (760) 872-1901</i>
Independence	7:25 pm Beginning 9/16/2019: 6:55 pm	In front of Post Office (101 S. Edwards St.)
Lone Pine	7:40 pm Beginning 9/16/2019: 7:15 pm	McDonalds (601 S. Main Street)

☎ Stops marked with a telephone icon require 24-hour advance notice. Please call (760) 872-1901 to request this stop.

**REQUEST A RESERVATION**

**HOLIDAY SCHEDULE**

**BUS FARES**

**CONTACT ESTA**

PO, Box 1357 Bishop, CA 93515  
Toll Free: 1-800-522-1950  
Phone: 760-872-1901  
Fax: 760-784-9566

Office Locations & Contact Forms

Title VI Program and Civil Rights (PDF)

ADA Paratransit Eligibility Policy (PDF) & Paratransit Application (PDF)

ADA Notice Under the Americans with Disabilities Act (PDF)

**RFP'S & ESTA IN THE NEWS**

> FTA 5310 Notice of Public Hearing  
July 24, 2019

> REDS MEADOW SHUTTLE OPENING  
2019  
June 27, 2019

> Lakes Basin Policy begins June 24, 2019  
June 21, 2019

>> READ ALL NEWS

**OUR OPERATIONS**

> How to Ride

> About ESTA

> Minutes and Agendas

> RFPs

> Jobs

> Employee Portal

> Privacy Policy

**RIDE EASTERN SIERRA TRANSIT**

> Fares

> 395 Bus Routes

> Community Buses

> Dial-A-Ride

> Mammoth Lakes

> Seasonal Bus Routes

> Print & Download

Translate »



**December 10, 2019**  
**Regular Meeting**  
**Item # 4**

**Department Report**

**Additional Documents:**  
**Public Health – Press Release**



## MEDIA RELEASE

Mono County Health Department  
PO Box 3329  
437 Old Mammoth Road, Suite Q  
Mammoth Lakes, Ca 93546  
760.924.1830

Inyo County Health & Human Services  
Public Health & Prevention Division  
207 A West South Street  
Bishop, CA 93514  
760.873.7868



FOR IMMEDIATE RELEASE

December 9, 2019

### **Mono County Resident Dies of Hantavirus Infection**

A Mono County resident recently died of hantavirus infection (North American hantavirus is also called Sin Nombre Virus). This is the first fatality caused by hantavirus this year in California, and the third confirmed hantavirus case in Mono County in 2019.

This tragic loss is a reminder of the risk of hantavirus in the Sierra, a known region of exposure in the United States. People may catch hantavirus by inhaling virus that is shed in mouse waste (urine and feces) of infected deer mice. About one in three people with hantavirus infection die. One cannot catch this virus from another person.

Exposure to hantavirus typically occurs indoors where mouse waste may have accumulated. Opening up seasonally closed cabins, homes, and outbuildings during late spring and summer poses our most common risk of infection, however, this case and a non-fatal one which occurred in January of this year demonstrate that infection can occur all year around. State and county health department experts have investigated the case-patient's residence and place of employment, finding evidence of mice in and around the home. Exposure at the workplace in Inyo County was found to be unlikely because minimal signs of mice were found.

Hantavirus illness begins with a fever and flu-like symptoms, such as headache and body aches, typically one to five weeks after inhaling the virus. Gastrointestinal symptoms such as vomiting, diarrhea and abdominal pain are common in the early part of the illness. Respiratory symptoms, including cough and feeling short of breath, are not present at first, but may develop after a few days, signaling increased chance of deadly respiratory and heart failure. When people start having trouble breathing their condition may rapidly worsen to become critical. There is no specific treatment for hantavirus infection, but high-level intensive care has allowed many people with life-threatening illness to survive.

Diagnosis and timely transfer to higher level hospitals is challenging as the disease can progress rapidly before diagnostic testing can be completed.

Most people who become ill with hantavirus report some exposure to rodents in the preceding weeks, typically while cleaning a room or a shed that has been closed-up for some time with mice living there.

To decrease risk of hantavirus infection open windows and doors of a potentially contaminated area and allow it to air out for at least 30 minutes before cleaning. Sweeping, vacuuming or other activities that stir up dust and dirt that may contain mouse waste should be avoided. Spray rodent carcasses, nests, droppings, and other potentially contaminated items and surfaces with a 10% bleach solution (1 part bleach with 10 parts

water) or a disinfectant made to kill viruses (check the label). Allow the solution to sit on the material for at least 5 minutes before wiping. Mice incursion in vehicles may also pose some hantavirus risk, especially if mice infest the heating and air conditioning system. Inspect vehicles for rodents.

It is prudent to minimize mouse entry points at home and at work, although it may be challenging to completely mouse-proof some buildings. Mice may enter through very small gaps under doors or around windows and where conduits and vents pass through walls. Heating and air conditions ducts should be periodically inspected for holes.

The California Department of Public Health has more hantavirus information at:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/HantavirusPulmonarySyndrome.aspx>.

County Health Department and Environmental Health staff can provide advice about dealing with specific situations encountered at home or at work.

FOR MORE INFORMATION CONTACT:

Dr. Tom Boo, Mono County Public Health Officer

tboo@mono.ca.gov

760.924.1828

Dr. James Richardson, Inyo County Health Officer

healthofficer@inyocounty.us

760.873.7868

**December 10, 2019**  
**Regular Meeting**  
**Item # 7a**

**Mono Lake Tufa State  
Natural Reserve**

**Additional Documents:**  
**Letter from Bodie Foundation /  
Newsletter**



**BODIE FOUNDATION**

P.O. Box 278  
Bridgeport, CA 93517  
760-932-7574  
[www.Bodie Foundation.org](http://www.Bodie Foundation.org)

December 9, 2019

Mono County Board of Supervisors

The Bodie Foundation supports the re-instatement of the State Park Ranger at Mono Lake Tufa State Natural Reserve located in Mono County California.

Since the Bodie Foundation began working with California State Parks in 2010 we have provided support for the State Reserve, Grover Hot Springs State Park, and Bodie State Historic Park. The Bodie Foundation, working as a DBA, The Friends of Mono Lake Tufa State Natural Reserve (FoMLNR) has provided funds for replacement of interpretive panels, exotic species removal, the Osprey Program, funded the State Park Interpreter I in excess of \$20,000.00, seasonal aid positions, worked with State Parks to implement an on your honor fee program, which helped to keep the State Reserve open and operating, and developed an interpretive program at the Old Marina site. Annual budgets provided by the Bodie Foundation have ranged from \$10K to \$20K. Mostly raised through donations and brochure sales.

As a former Acting Superintendent and Supervising Ranger for the State Reserve I have first hand knowledge of finding off road vehicle use into sensitive areas, illegal camping and ground fires, and trespass issues. The California State Park Ranger position was generally the only law enforcement officer available in Mono Basin to respond to incidents that may occur at Mono Lake or the Mono Basin Scenic Area Visitor Center.

I ask you to consider a resolution to re-instate the California State Park Ranger position at Mono Lake Tufa State Natural Reserve.

Sincerely,

J. Brad Sturdivant  
Executive Director, Bodie Foundation  
(760) 932 – 7574

**December 10, 2019**  
**Regular Meeting**  
**Item # 7b**

**Community Development**

**Additional Documents:**  
**Amended Resolution**



RESOLUTION R19-\_\_

**A RESOLUTION OF THE MONO COUNTY BOARD OF SUPERVISORS ADOPTING FEES PURSUANT TO TITLE 15 CHAPTER 15.40 OF THE MONO COUNTY CODE AND SPECIFYING THAT THE FEES COLLECTED PURSUANT TO CHAPTER 15.40 WILL BE HELD IN A DESIGNATED FUND FOR HOUSING MITIGATION USES**

**WHEREAS**, pursuant to its authority to regulate the use of land under its broad police power, the County of Mono is authorized to impose inclusionary requirements or to charge a fee to address affordable housing (“in-lieu fees”); and

**WHEREAS**, courts have found that the purpose of in-lieu fees is not to defray costs of increased demand on public services, but rather to combat the overall lack of affordable housing; and

**WHEREAS**, in as much as the courts have held that this type of fee is not for the purpose of mitigating the adverse impact of new development but rather to enhance the public welfare by promoting the use of available land for the development of housing that would be available to low- and moderate-income households, these fees are not subject to the Mitigation Fee Act; and

**WHEREAS**, notwithstanding the above, the in-lieu fees recommended by this resolution do not exceed the actual affordable housing impacts attributable to the development projects on which the fee is imposed, as determined by a nexus study, which was prepared in 2018, by Economic Planning Systems (“Nexus Study”); and

**WHEREAS**, the Nexus Study employed widely used, appropriate methodology to determine the maximum amount needed to fully mitigate the burdens created by residential and non-residential development on the need for affordable housing; and

**WHEREAS**, the completed Nexus Study found that fees from \$16.50-\$21.43 per square foot for residential development, \$26.40 per square foot for storage and warehouse development, \$71.30 for commercial development, \$8.60 for industrial/service commercial development and \$94.74 for visitor accommodation development were warranted to offset impacts from new development; and

**WHEREAS**, to ensure that development projects remain economically feasible, the recommended inclusionary requirements and fees as shown in the attached Exhibit A are lower than the maximum amount needed to fully mitigate the burdens created by new development on the need for affordable housing as determined in the Nexus Study; and

**WHEREAS**, this Resolution is intended to implement the language found in Chapter 15.40 of the Mono County Code and that language is hereby incorporated in its entirety by this reference; and

1           **WHEREAS**, State legislation (Assembly Bill 1505), reverses the *Palmer* decision and thereby  
2 allows jurisdictions to require inclusionary units (and in-lieu fees) in rental residential development  
3 projects; and

4           **WHEREAS**, the proposed in-lieu fee structure reflects the following policy of the Mono County  
5 Board of Supervisors:

- 6           • Requiring market-rate development projects to bear the full financial burden of their  
7 impact on affordable housing is economically unviable. Instead, a lesser percentage of  
8 that burden shall be required, and an adjustment mechanism shall be applied to reflect  
9 market changes.
- 10          • Compact, higher density development within existing communities and where  
11 infrastructure is available, consistent with General Plan policies and regulations, is  
12 favored over single-family subdivisions that tend to contribute to less compact and lower  
13 density development patterns.

14           **WHEREAS**, the County will not expend any associated fees collected pursuant to its Housing  
15 Mitigation Ordinance (Chapter 15.40 of the Mono County Code) or this Resolution on a development  
16 prior to the completion of any required environmental review for such specific development, thus the  
17 adoption of this resolution is not a project under the California Environmental Quality Act guidelines  
18 found in Title 14 of the California Code of Regulations at Section 15378(b)(4); and

19           **WHEREAS**, notice of the time and place of the meeting at which this resolution is proposed for  
20 adoption, including a general explanation of the matter to be considered, and a statement inclusive of the  
21 data required by the applicable statute, was published and made available to the public; and

22           **WHEREAS**, notice of the hearing on the proposed fees was published twice in a newspaper of  
23 general circulation; and

24           **WHEREAS**, a duly and properly noticed public hearing was conducted by the Mono County  
25 Board of Supervisors on December 10, 2019.

26           **NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MONO**  
27 **RESOLVES** as follows:

28           **SECTION ONE:** That the declarations set forth above are hereby adopted as findings of the  
29 Board.

30           **SECTION TWO:** Mono County hereby establishes a 5% inclusionary requirement for single-  
31 family residential developments and 3.33% inclusionary requirement for multi-family residential  
32 developments, as set forth in Exhibit A attached hereto and incorporated herein by reference.

**SECTION THREE:** Effective March 1, 2021, and each March 1 thereafter that this Resolution  
remains in effect, the fee schedule shall be adjusted based on the Construction Price Index for New  
Single-Family Houses Under Construction for the preceding twelve-month period ending January 31<sup>st</sup> and  
revisited periodically by the Board of Supervisors as needed.

**SECTION FOUR:** This resolution shall become effective 60 days from the date of its adoption  
and final passage.



1 **PASSED, APPROVED** and **ADOPTED** this \_\_\_\_\_ day of December 2019, by the  
2 following vote, to wit:

3 **AYES:**

4 **NOES:**

5 **ABSENT:**

6 **ABSTAIN:**  
7  
8

9 \_\_\_\_\_  
10 John Peters, Chair

11 **ATTEST:**

**APPROVED AS TO FORM:**

12  
13 \_\_\_\_\_  
14 Clerk of the Board

\_\_\_\_\_   
County Counsel

1 **EXHIBIT A**  
2 **TO RESOLUTION DECLARING FEE SCHEDULE BASED ON IN-LIEU FEE POLICY**  
3 **OF A 5% INCLUSIONARY REQUIREMENT FOR SINGLE-FAMILY DEVELOPMENT**  
4 **PROJECTS AND A 3.33% INCLUSIONARY REQUIREMENT FOR MULTI-FAMILY**  
5 **DEVELOPMENTS AND INDIVIDUAL SINGLE-FAMILY AND ACCESSORY**  
6 **DWELLING UNITS**

7 Residential fees apply only to conditioned space and are based on inclusionary requirements and in-lieu  
8 fees:

- 9 a. Single-family residential: 5% inclusionary requirement for single-family residential development  
10 projects consisting of multiple lots, multiple detached units on individual lots, subdivisions, or  
11 other residential developments that do not qualify under section b below, meaning one unit  
12 affordable to low- to moderate-income levels is required to be built for every 20 market-rate  
13 parcels or units. A fee shall be paid for any fractional parcel or unit equal to the fractional cost to  
14 subsidize construction of a 1200-sf unit for a low- to moderate-income household. Therefore, the  
15 in-lieu fee is set at \$4,700 per market rate lot where parcels are being subdivided or \$3.91 per  
16 square foot where units are being built.
- 17 b. Multi-family residential projects: 3.33% inclusionary requirement for multi-family residential  
18 development projects consisting of multiple attached units whether on a single parcel under one  
19 ownership or condominiumized for individual sale, meaning one unit affordable to low-income  
20 levels is required to be built for every 30 market-rate units. A fee shall be paid for any fractional  
21 unit equal to the fractional cost to subsidize construction of a 1200-sf unit for a low-income  
22 household. Therefore, the in-lieu fee is set at \$3.90 per square foot which is based on a fee of  
23 \$4,653 per market rate unit.

24 Commercial Linkage Fees are calculated based on gross square footage, except Visitor Accommodations:

- 25 • Storage and Warehouses: \$0.50/sq.ft.
- 26 • Commercial: \$1.00/sq.ft.
- 27 • Industrial/Service Commercial: \$0.50/sq.ft.
- 28 • Visitor Accommodations including, but not limited to, hotels, motels, condo-hotels, and time  
29 shares (as applicable): \$4/sq.ft.
- 30 • Short-term Rentals (STRs), including any new unit constructed as a STR or existing units  
31 converted into a STR: \$4/sq.ft. for conditioned space dedicated primarily for the use of the renter,  
32 which fee will apply at the time the building permit, Director Review or Use Permit, or business  
license (if no permit is required), is granted.

33 **ALL FEES ARE SUBJECT TO EXEMPTIONS APPROVED AND ADOPTED PURSUANT TO**  
34 **ORDINANCE 19-\_\_ AND TITLE 15 CHAPTER 15.40 OF THE MONO COUNTY CODE**

**December 10, 2019**  
**Regular Meeting**  
**Item # 7c**

**Dr. Beth Cohen**

**Additional Documents:**  
**PowerPoint Presentation**



# Workforce Health and Well-Being Project: Review, Results, & Recommendations

---

## 2019 Assessment Summary

Presented by Beth Cohen, PhD  
Organizational Mind Group, PC



# HHS National Initiative: Igniting the Potential

**Workforce Health  
& Well-Being  
Indicators  
Interventions**

**Social  
Connectedness  
Safety  
Stability  
Mastery  
Access to  
Resources**

**21<sup>st</sup> Century  
Culture  
Mindset/  
Beliefs**

**Thriving Work  
Cultures  
=  
Thriving  
Communities**



# Agenda



- ☐ Scope of Health & Well-Being Project
- ☐ Organizational & Individual Impacts
- ☐ Assessment Strategies / Limitations (Perceptions)
- ☐ Summary of Assessment / Themes
- ☐ Key Recommendations





# Assessment Respondents

Role	Board of Supervisors	County Administrative Officers (CAO)	Department Heads	Staff Members
Total	5	3	18	~ 300
Number (N) of Respondents	5	3	15	141
	100%	100%	83%	~ 47 %



# Meeting Content/ Scope/Types:

Individual.      Small Groups.      Large Groups.

**Needs  
Assessment**

**Problem  
Solving**

**Consultations**

**Referrals  
Resources**

**Coaching**

**Debriefings**

**Planning  
Collaborations**

**Restructuring**

**Staffing**

**Human  
Resources**

**Recruitments**

**Exit Interviews**

**Wellness  
Committee**

**Risk  
Management**

**Counseling**

**Evaluations**



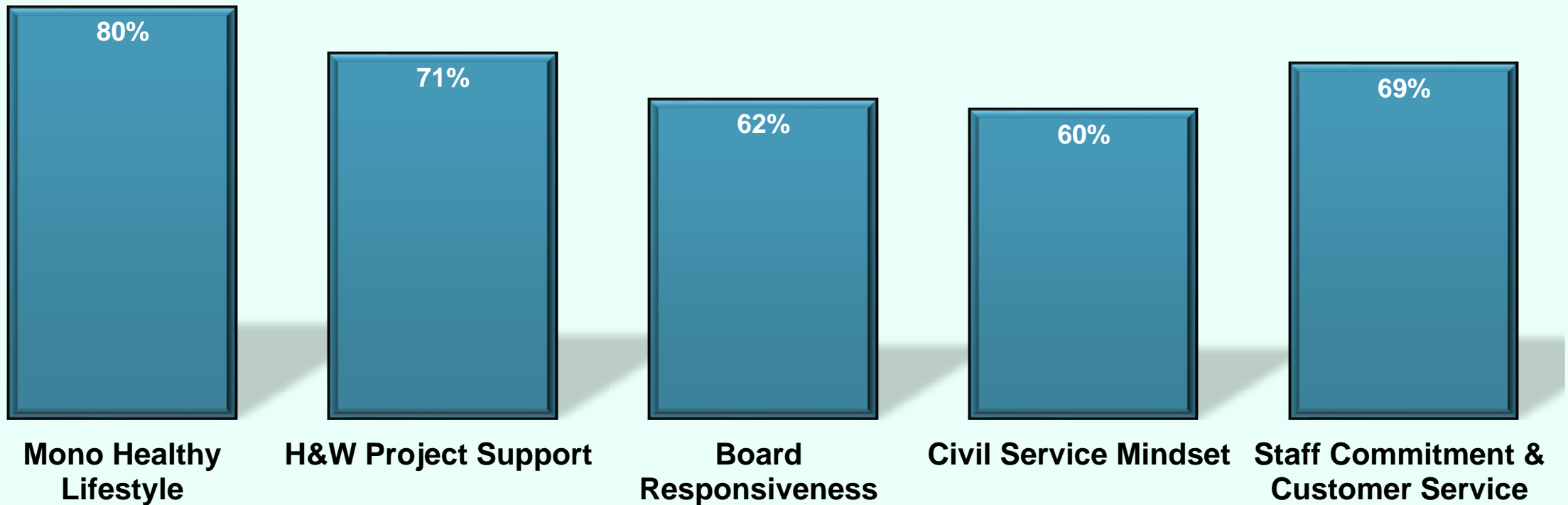
# Six Key Themes Impacting Well-Being



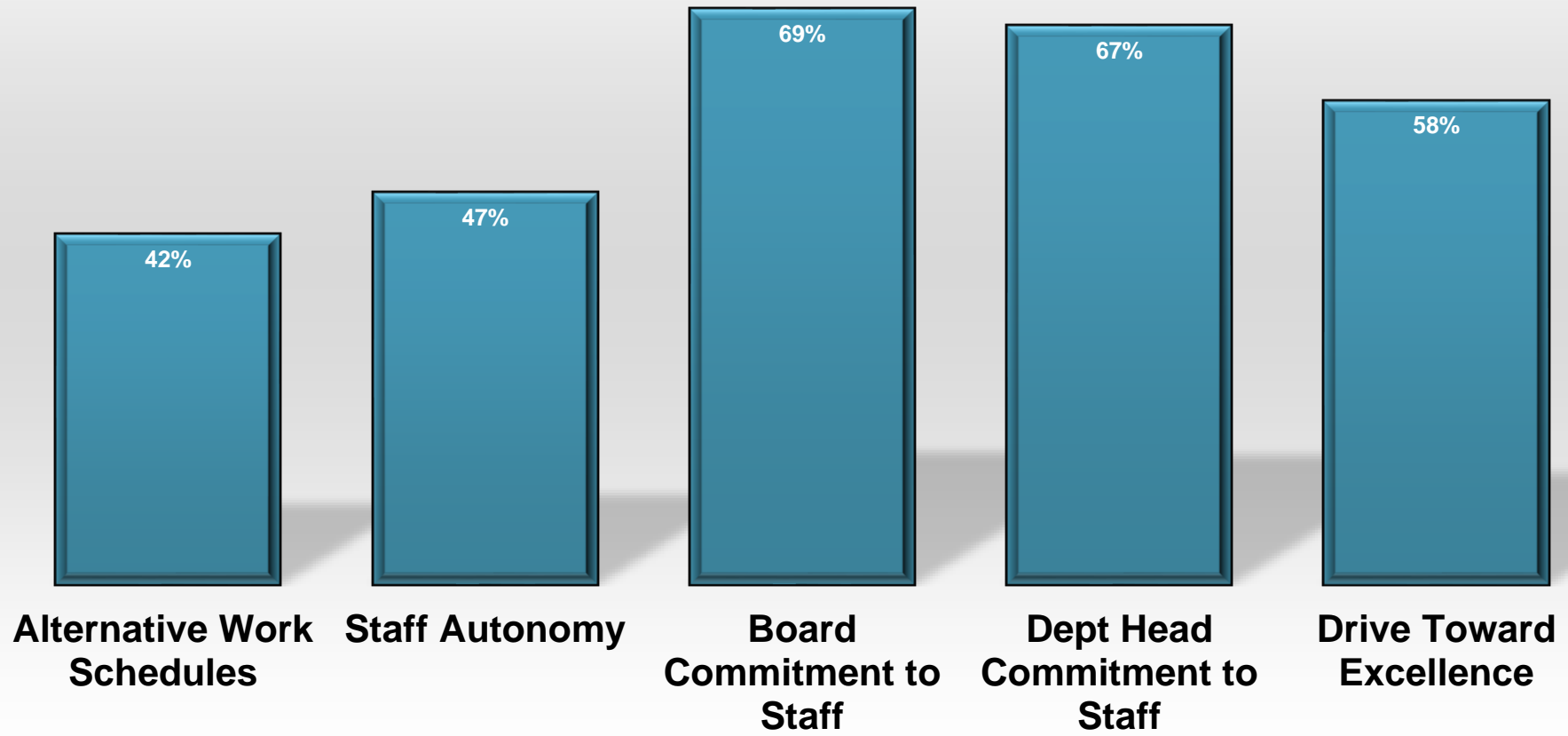
- 1) Organizational Foundation & Strengths
- 2) Organizational Culture of Urgency & Reactivity
  - Staff Impacts ○ Prioritization ○ Perceptions of Responsibility
- 3) Change Exhaustion / Uncertainty
  - Civic Center ○ CAO Turnover ○ Transitions
- 4) Department Heads:
  - Communication ○ Cohesion ○ Silos
- 5) Clarification of Board & CAO Responsibilities
  - Roles ○ Communication ○ Expectations
- 6) Health Promotion & Prevention



# Organizational Foundation & Strengths



# Further Organizational Strengths

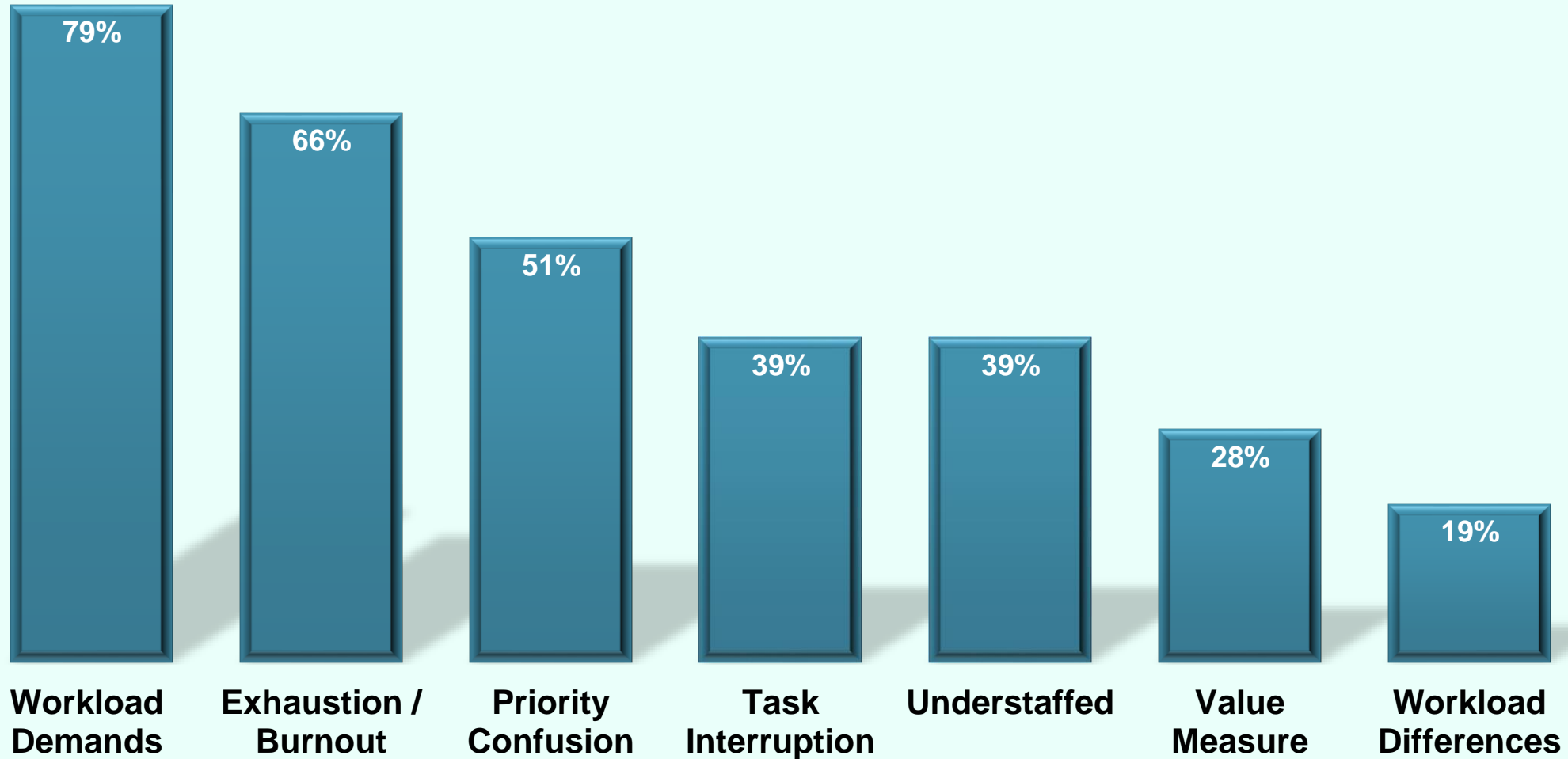


# 2

## Organizational Culture of Urgency & Reactivity



### Work Culture Concerns & Challenges





# Impacts and Recommendations



## Organizational Impacts

- Decreased Productivity, Creativity, & Engagement
- Forming Departmental Silos
- Reduced Time for Planning or Mapping Processes
- Perceived Imbalance / Distribution of Work
- Difficulty Differentiating Order of Priorities

## Recommendations

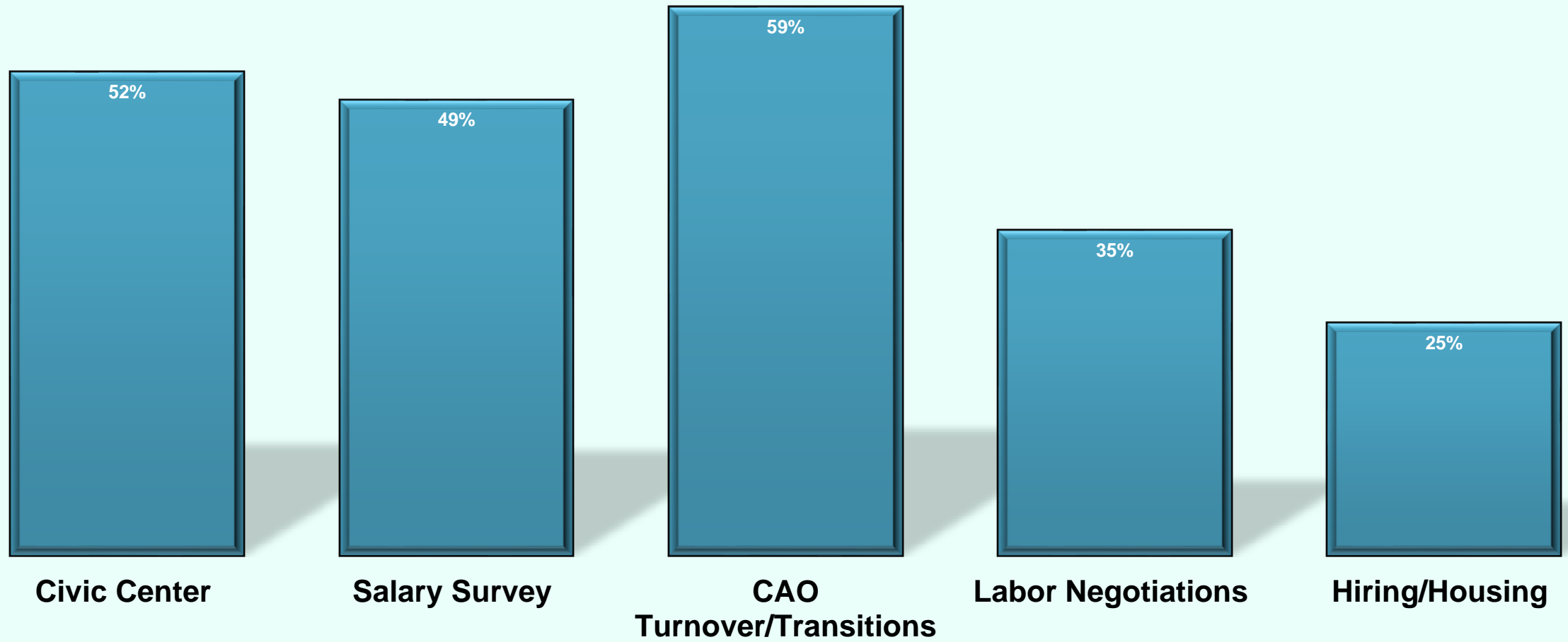
- Install Prioritization Systems
- Define and Assess Operational Expectations, Workflow & Process Improvement
- Build Operational Process through CAO
- Dept Heads Prioritize Urgent Requests for Staff
- Design Policy / Protocols
- Address Staffing: HR, Finance, CAO
- Talent Recruitment Customization

# 3

## Change Exhaustion / Uncertainty



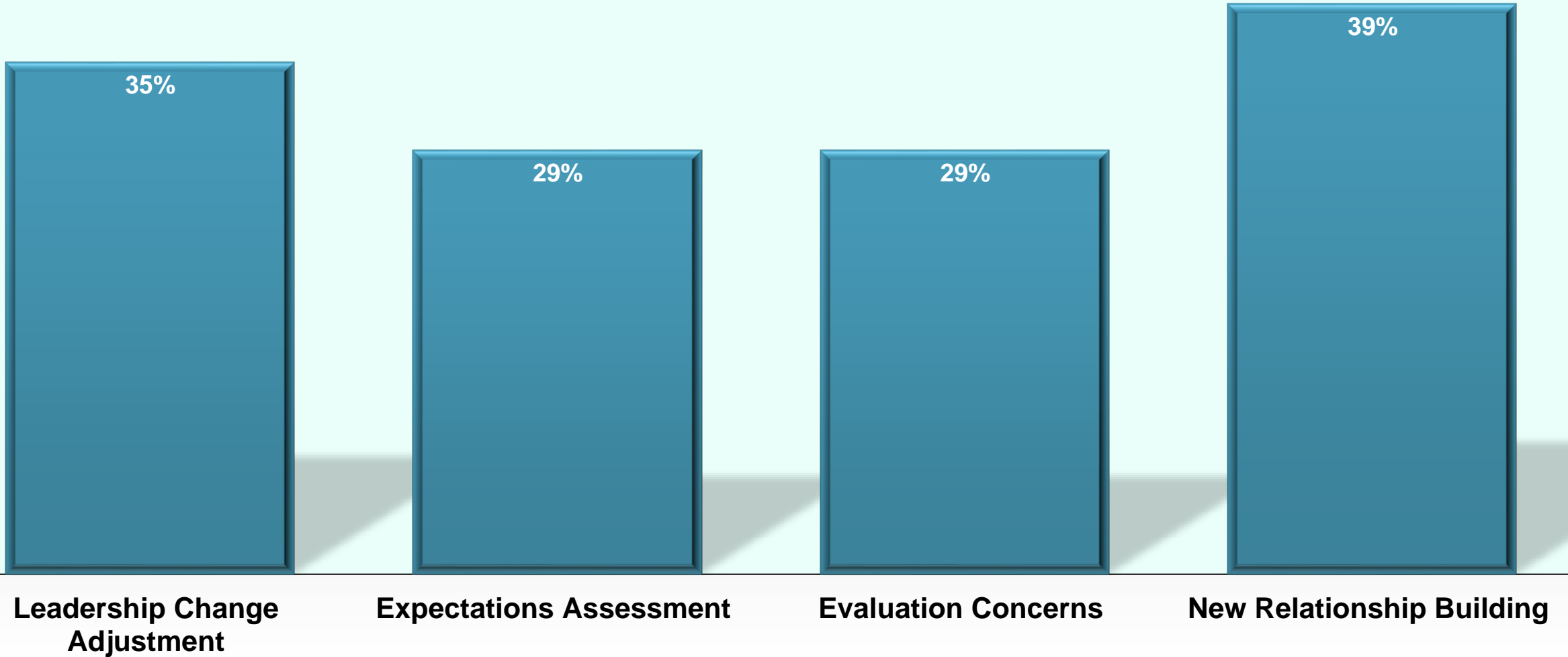
Most Frequently Reported Stressors



# CAO Turnover / Transition



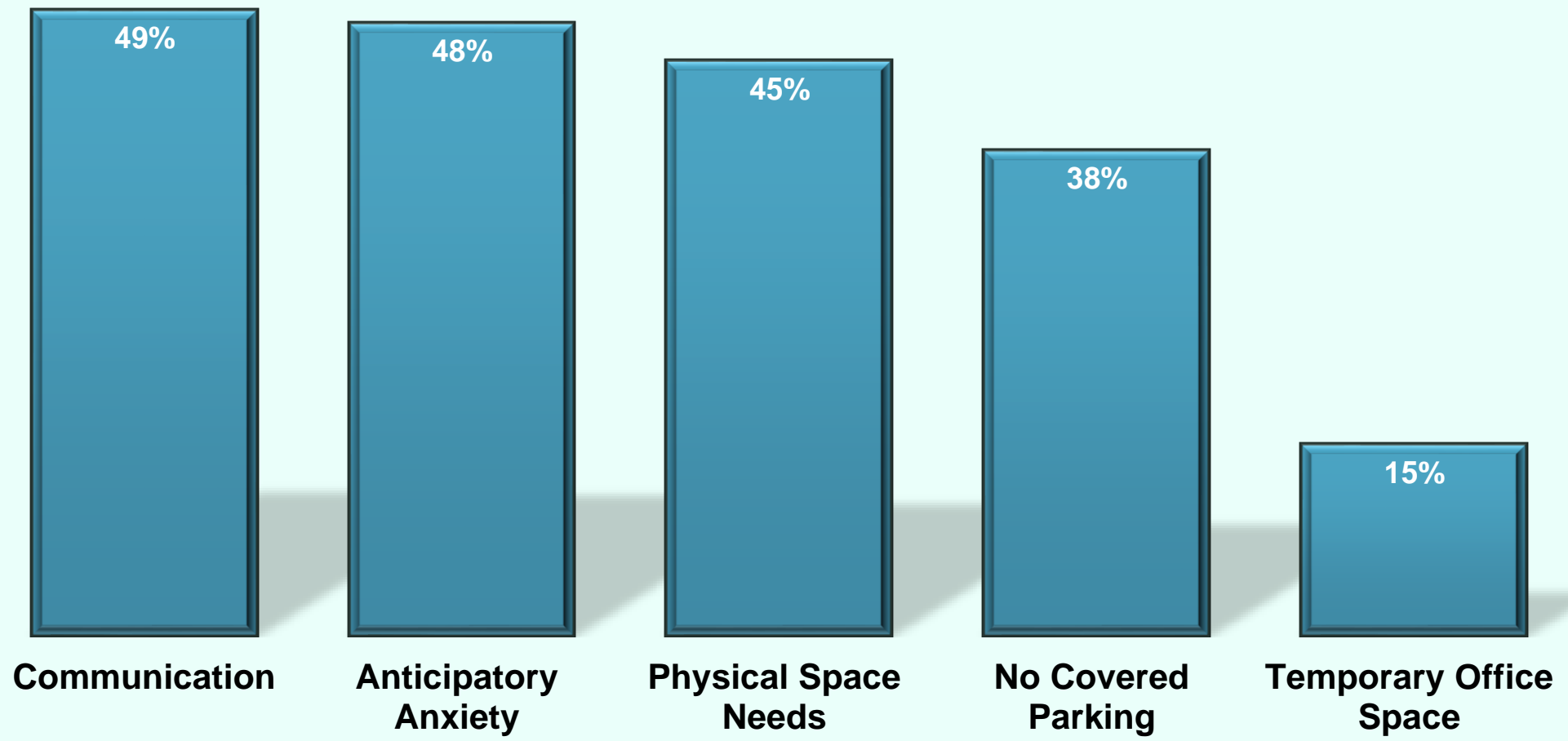
## Reported Concerns & Stressors



# Civic Center



Reported Civic Center Concerns







## Board, CAO, & Dept. Heads

- Acknowledge, Address, & Plan of Action
- Provide Stability through Communication & Processes
- Carve out Steps Forward to Manage Change
- Acknowledge Specific Concerns: Salary Increases, Civic Center, Transitions, etc.
- Increase Engagement, Inclusion, & Responsiveness
- Provide Updates
- Leverage Support Across Departments

## Resilience Building

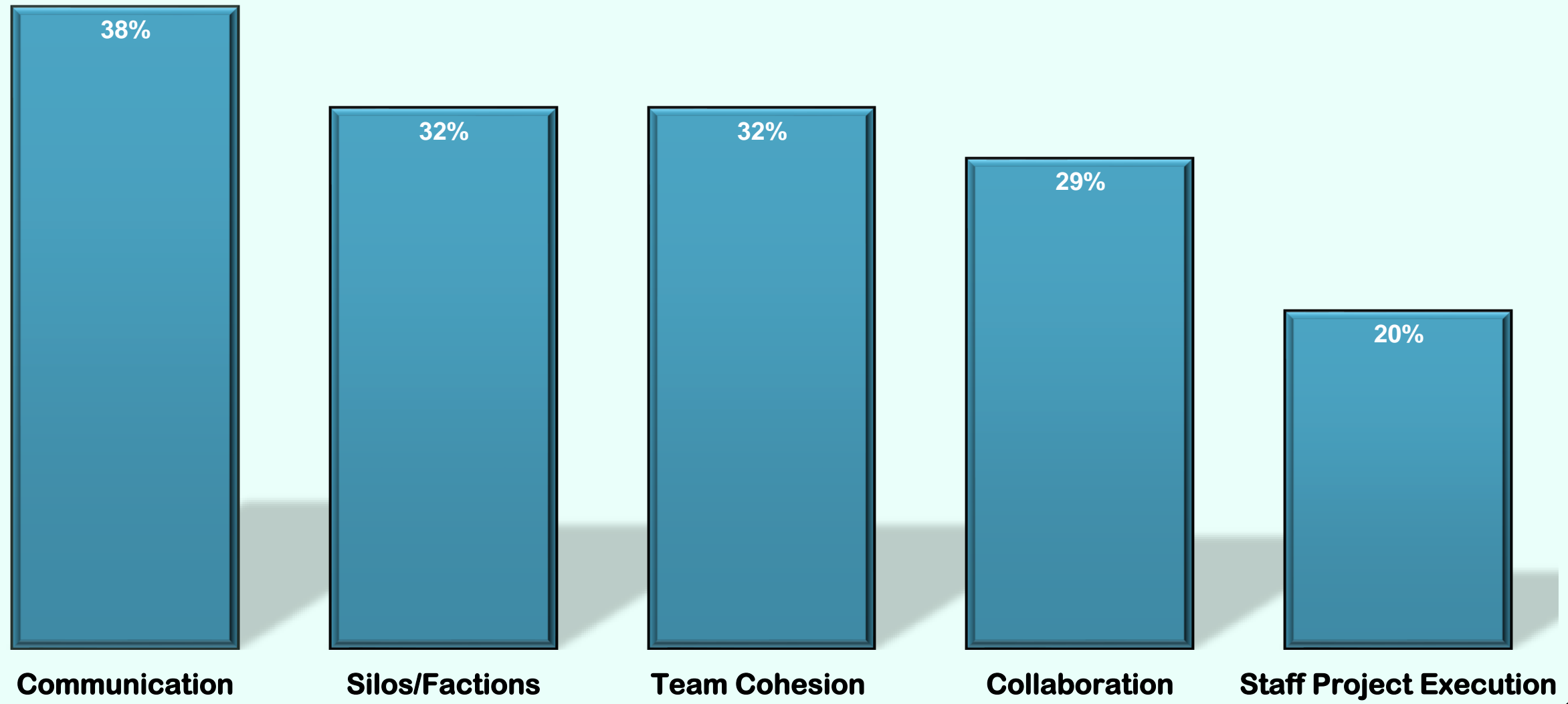
- Self-Care (scheduled breaks, activities, vacations, sick time)
- Team Building (shared activities, communications, staff mtgs)
- Talking to Supervisors, Other Leaders About Concerns
- On-Site Wellness Programs (mindfulness, resilience building, movement)
- Employee Assistance Program (EAP)
- Training & Development
- Debriefings



# 4

## Interdepartmental Relations

Perceptions of Departmental Issues



# 4



## Recommendations

- CAO** Succession Collaboration (Dave Wilbrecht),  
Team Development Priority, Interdepartmental  
Relationship Building, Adaptive Supervision,  
Address Executive Leadership Team Process  
Department Head Meetings Design
  
- Board** Perceptions of Favoritism (Inclusion/Exclusion)
  
- Dept. Heads** Facilitated Courageous & Authentic Conversations  
Address Historical “Elephants”
  
- Strategic Planning: Core Services / Collaborations / Supports**  
Leverage Departmental Strengths, Skills Diversity, Crossover



# 5



## Board of Supervisors Related Issues

<b>Clarification of Roles</b>	<b>CAO and Board</b>	<b>Communications</b>
<p data-bbox="326 564 726 749"><b>Policy / Vision vs Operations</b></p> <hr data-bbox="433 792 598 799"/> <p data-bbox="394 835 649 885"><b>Priorities</b></p> <hr data-bbox="433 928 598 935"/> <p data-bbox="407 978 637 1028"><b>Urgency</b></p>	<p data-bbox="930 564 1324 685"><b>Defining Relationships</b></p> <hr data-bbox="1006 763 1210 771"/> <p data-bbox="917 842 1337 963"><b>CAO as Bridge to Staff</b></p>	<p data-bbox="1579 549 2000 735"><b>Staff and Assignment of Parental Power</b></p> <hr data-bbox="1681 813 1898 821"/> <p data-bbox="1592 892 2000 1092"><b>Clarification of Operational Hierarchy</b></p>



# Health Promotion & Prevention

## Training & Development

Human Resources--Supervisor Training, ADA, Interactive Process, Performance Management, Disciplinary Action, Management Training, Evaluations, Documentation, Self-Care, Burnout, Resilience Building,

## Wellness Committee

Wellness Planning Team, Goals, Survey, Structure, Scope, Funding, and Membership

## Health & Well-Being Programs

Survey Driven: Mindfulness, Movement, Celebrations, Rewards

## Internal Management / Employee Assistance

Pulse of the Culture  
Early Intervention, Prevention  
Post-Trauma Response, Debriefings, Threat Assessment  
Organizational/Management Consultation  
Confidential Resource, Stay & Exit Interviews





# Next Steps: Action Planning

BOARD

CAO

DEPT. HEADS



Prioritize &  
Strategize  
Areas to  
Address

Building an  
organizational  
culture of  
Well-Being:  
3-5 Years

Problem-  
Solving  
vs  
Problem-  
Addressing

Formula:  
Prevention &  
Resilience  
Building  
+  
Harm  
Reduction

Today was the  
Start of  
Further  
Conversations...

**December 10, 2019**  
**Regular Meeting**  
**Item # 10a**

**Community Development**

**Additional Documents:**  
**PowerPoint Presentation**



# GPA 19-04: Annual Cleanup

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MONO COUNTY BOARD OF SUPERVISORS

DECEMBER 10, 2019

**Land Use Element**

**Conservation/Open  
Space Element**



# LAND USE ELEMENT

---

# COUNTYWIDE LAND USE POLICIES

---

1. Eliminate Type I, II, & III
2. Add Owner-Occupied/Not Owner-Occupied

**Policy 1.M.1.** Approvals of ~~Type I~~Owner-Occupied and ~~Type III~~Not Owner-Occupied short-term rental operations shall be specific to the property owner and non-transferrable. Sale or transfer of the property renders the approval to operate the rental null and void.

**Action 1.M.1.a.** The following permits are required to operate ~~Type I~~Owner-Occupied and ~~III~~Not Owner-Occupied short-term rentals: 1) a Use Permit pursuant to Chapter 25, and 2) a Short-Term Rental (STR) Activity Permit pursuant to Mono County Code Section 5.65. The STR Activity Permit shall be specific to the property owner and non-transferrable.

# JUNE LAKE AREA LAND USE POLICIES

---

1. Eliminate Type I, II, & III
2. Add Owner-Occupied/Not Owner-Occupied

**Policy 13.M.1.** Short-term rentals are subject to Chapter 25 of the General Plan Land Use Element and Mono County Code Chapter 5.65, with the following specifications based on the context of individual neighborhoods (see General Plan map), which vary in character.

**Action 13.M.1.a.** ~~Not Owner-Occupied Type II~~ short-term rentals are prohibited throughout June Lake in residential land use designations (e.g., SFR, ER, RR, MFR-L or RMH) ~~except in specified locations (see below).~~

**Action 13.M.1.b.** ~~Type III Not Owner-Occupied~~ short-term rentals, which are ~~non-owner occupied and~~ specific to the owner/non-transferrable (pursuant to Mono County Code Chapter 5.65), may be permitted in specific locations (see below).

**Action 13.M.1.bc.** Prohibit ~~Owner-Occupied Type I~~ and ~~Not Owner-Occupied Type III~~ rentals in the Williams Tract and Petersen Tract.

# CHAPTER 25 – SHORT-TERM RENTALS

---

## 1. Eliminate MFR-L from list of residential LUDs

### **25.015 General Requirements and Applicability.**

- A. This chapter applies to short-term rental in any single-family unit with a land use designation(s) of SFR, ER, RR, ~~MFR-L~~ or RMH in all communities except June Lake. In June Lake, this chapter applies only to SFR designations; short-term rentals in other residential land use designations in June Lake are not permitted.

# RESIDENTIAL LAND USE DESIGNATIONS

---

## 1. Require small-scale agriculture be subject to primary use

### **Estate Residential (ER)**

**INTENT:** The “ER” designation is intended to permit large-lot, single-family dwelling units with ancillary rural uses in areas adjacent to developed communities. Small-scale agriculture is permitted.

#### **PERMITTED USES**

- Single-family dwelling
- Small-scale agriculture<sup>1</sup>
- Accessory buildings and uses<sup>1</sup>

#### **NOTES**

1. Accessory buildings, small-scale agriculture, and uses customarily incidental to any of the permitted uses are permitted only when located on the same lot and constructed simultaneously with or subsequent to the main building

# COMMERCIAL LODGING

---

## 1. Clarify transient rental uses

### **PERMITTED USES**

- Single-family dwelling (manufactured homes are not permitted)
- Duplexes and triplexes
- Accessory buildings and uses<sup>1</sup>
- Animals and pets (see Animal Standards Section 04.270)
- Home occupations (see Home Occupation regulations, Section 04.290)
- Transitional and Supportive Housing<sup>5</sup>
- Outdoor cultivation of a maximum of six mature and 12 immature cannabis plants under the Compassionate Use Act
- Transient rentals (rentals for fewer than 30 consecutive days) in ~~condominium~~ developments where units are under individual ownership



**USES PERMITTED SUBJECT TO DIRECTOR REVIEW** (Director Review Processing, Ch. 31)

- Transient rentals (rentals for fewer than 30 consecutive days) **in single-family residential units, including accessory dwelling units, and multi-family units under single ownership** of up to three dwelling units

**USES PERMITTED SUBJECT TO USE PERMIT** (Use Permit Processing, Ch. 32)

- Mobile-home parks (see Dev. Standards –Mobile-home and RV Parks, Ch. 17)
- Recreational-vehicle parks (see Ch. 17)
- **Projects containing four or more units such as** ~~condominiums~~, cooperatives, townhomes, cluster developments, **and/or** apartments ~~containing four or more units~~
- Hotels, motels, lodges, bed-and-breakfast establishments, cabins and other uses found to be similar by the Commission. Ancillary uses such as limited dining, lounges and convenience retail, provided the ancillary use does not occupy more than 25% of the project's habitable space
- Transient rentals (fewer than 30 consecutive days) **in multi-family units under single ownership** of four or more dwelling units
- Conversion of five or more apartment units into transient rentals
- Conversion of existing habitable space into ancillary uses
- Parking lots and parking structures other than required off-street parking
- Construction of an accessory building prior to construction of the main building

# MULTI-FAMILY RESIDENTIAL

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## 1. Eliminate STRs from MFR-L

### **USES PERMITTED SUBJECT TO USE PERMIT** (Use Permit Processing, Ch. 32)

#### ~~**MFR L only**~~

- ~~• Short-term rentals (fewer than 30 consecutive days) in single-family residential units in compliance with Chapter 25 of the Land Development Regulations (set forth in Section VI of this Land Use Element) and with a valid Short-Term Rental Activity Permit and in compliance with all operational requirements of Chapter 5.65 of the Mono County Code and any applicable area plan policies except in the June Lake Planning Area where short-term rentals are only permissible in SFR.~~

# MULTI-FAMILY RESIDENTIAL

## 2. Correct list of nonconforming complexes

### **MFR-H only**

- Mobile-home parks (see Dev. Standards – Mobile Homes and RV Parks, Ch. 17)
- Recreational-vehicle parks (see Ch. 17)
- Social care facilities and related integrated professional offices
- Parking lots and parking structures when abutting a commercial district
- Hotels, motels, bed-and-breakfast establishments and dorms
- Transient rentals (fewer than 30 consecutive days) ~~of four or more dwelling units~~ **only**
- Manufactured housing subdivision (see Ch. 18)

Transient rentals (fewer than 30 consecutive days) are prohibited in MFR-L and MFR-M, except in the following complexes: ~~Aspen Meadows, Hideaway Down Canyon,~~ Interlaken, ~~Birch Creek,~~ Edgewater, Sierra Suns, or in complexes where transient use is not specifically addressed in the use permit and/or parcel map of an existing development and can be demonstrated as a non-conforming use prior to the adoption date of this General Plan Amendment.

# CHAPTER 4 - GENERAL

---

## 1. Update typographical errors in Table 04.120: Minimum Yards

<b>LUD</b>	Front	Rear	Side
SFR <1 acre	20'	10'	10'
SFR >1 acre	30'	30'	30'
ER <1 acre	50'	10'	10'
ER >1 acre	50'	30'	30'
RR <1 acre	50'	10'	10'
RR >1 acre	50'	30'	30'

# CHAPTER 4 - GENERAL

---

## 2. Add Mixed Use (MU) to 04.280

### **04.280 Placement of manufactured homes in conventional SFR areas.**

These standards permit the placement of manufactured, factory-built or modular housing in all areas designated for conventional single-family residential dwellings: SFR, ER, RR, MFR-L, MU, RU, RM, AG and OS. ~~In addition, they are allowed in the MU designation subject to Director Review.~~

# CHAPTER 4 - GENERAL

---

## 3. Add a new “inactive projects” policy

### **04.360 Inactive Projects.**

An inactive project is one where the project applicant has not submitted the information and/or documents requested in the most recent County correspondence within 180 days. County staff shall provide written notification of “inactive status” to the project applicant 180 days following the last correspondence. Project applicants shall have 30 days from the date of that notice to submit the information and/or documents requested. If the County does not receive a complete response within 30 days, the project will be deemed withdrawn and all application materials and a final invoice will be mailed to the applicant.

\*Planning Commission recommended adding this policy to discretionary permit applications to notify future applicants of this new policy.



# CONSERVATION/OPEN SPACE ELEMENT

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# CULTURAL RESOURCES

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## 1. California Code of Regulations §15064.5(e)

**Action 22.C.1.f.** Project grading, earthwork, and site disturbance in general shall be subject to the following standard mitigation measures if archeological evidence is encountered:

- a. Work shall be stopped and appropriate agencies will be notified if archaeological evidence is encountered during earthwork activities. A qualified consultant shall be hired and an appropriate report shall be filed with the County Planning Division which identifies acceptable site mitigation measures. If the archaeological evidence is determined to be of Native American heritage, local tribes shall be contacted and, if requested by the tribe(s), the developer shall pay a tribal cultural monitor to be on site until earthwork and site disturbance is complete.
- b. California Code of Regulations §15064.5(e) shall be followed in the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery.



**December 10, 2019**  
**Regular Meeting**  
**Item # 11**

**Board Reports**

**Additional Documents:**

**Sup Corless - Letter from FPCC**



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

November 26, 2019

Stacy Corless  
Mono County Supervisor  
P.O. Box 715  
Bridgeport, CA 93517

Re: Your Request for Advice  
**Our File No. A-19-204**

Dear Ms. Corless:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that we are only providing advice under the Act's conflict of interest provisions and not under any other conflict of interest laws. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Do the Act's conflict of interest provisions prohibit you, Mono County Supervisor Stacy Corless, from taking part in governmental decisions relating to a potential development project to build a hotel, restaurant, and approximately 100 workforce housing units, which would be permitted to be rented solely to individuals working in Mono County or Yosemite National Park, on real property owned by the developer, given that your husband is the managing partner of a resort business that operates lodging and restaurants within the County and that some employees of the resort business rent residences from the developer?

### CONCLUSION

Yes. The Act's conflict of interest provisions prohibit you from taking part in decisions relating to the project because it is reasonably foreseeable that those decisions may have a material financial effect on your financial interest in your husband's resort business by reducing that business's expenses by more than one percent of its annual gross revenues.

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS AS PRESENTED BY REQUESTER

You are a Mono County Supervisor, and your husband is the managing partner of a resort business that operates lodging and restaurants within the County. The resort business is owned and operated by a limited liability company (“LLC”), and your husband has an ownership interest of greater than 10 percent in that LLC.

A local developer owns real property approximately 10 miles from your husband’s place of business, and there are approximately five housing units currently located on that real property. Employees of your husband’s resort business rent some of those units. The developer has applied to the County for discretionary approval of a proposed development project (the “Project”) for the construction of approximately 100 additional workforce housing units, a hotel, and a restaurant on that real property (the “Project Site”). The developer has proposed that the additional housing units would be “workforce housing,” only available to be rented by individuals working in Mono County or Yosemite National Park.

You state that it is likely that employees of your husband’s resort business will continue to rent housing from the developer, and that it can be difficult for employees of the resort business to find local housing. You note that construction of additional workforce housing on the real property at issue may directly benefit the employees of your husband’s resort business and may indirectly benefit the resort business.

You provided additional information on October 22, 2019 and November 13, 2019. The annual gross revenues of your husband’s resort business are typically between \$500,000 and \$750,000. The resort business, however, has not operated since Summer 2016 due to damage suffered during the winters of 2016-17 and 2018-19. Repairs are ongoing, with the goal of the resort business resuming some operations in Summer 2020. You state that the resort business provides free onsite housing units for some employees and incurs the expense of purchasing and maintaining these units. You state that the resort business’s employment expenses could be reduced by \$10,000 to \$15,000 per year, the cost to purchase and maintain the onsite housing units, if all the resort business’s employees were instead able to rent workforce housing units at the Project Site.

## ANALYSIS

The Act’s conflict of interest provision prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.) An official’s financial interests which may give rise to a disqualifying conflict of interest under the Act are identified in Section 87103. With respect to decisions relating to Project, you have the following interests, based on the facts presented:

- An investment interest in your husband’s resort business assuming your investment in that business is worth \$2,000 or more.<sup>2</sup> (See Section 87103(a).)

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<sup>2</sup> Section 82034 provides that an individual’s investments include a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns a 10-percent interest or more.

- A source of income interest in your husband's resort business assuming you have aggregated \$500 or more in income from that business in the 12 months prior to the decision at issue.<sup>3</sup> (See Section 87103(c).)
- An interest in your personal finances and those of immediate family. (See Section 87103.)

### Foreseeability and Materiality

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision; an official's interest is "explicitly involved" if the interest is a named party in, or the subject of, the decision; and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest. In addition, an official's business interest is explicitly involved in any decision affecting the business as described in Regulation 18702.1(a)(1).

Regulation 18701(b) sets forth the foreseeability standard applicable to a decision's effect on an official's interest that is not explicitly involved in the decision and provides that the decision's effect on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

Regulation 18702.3 sets forth the materiality standards applicable to a decision's reasonably foreseeable effect on an official's source of income interest, and subdivision (a)(4) of that regulation provides that materiality is determined pursuant to Regulation 18702.1 if the source of income is a business. Regulation 18702.5 provides the materiality standard applicable to a decision's reasonably foreseeable effect on an official's interest in his or her personal finances and those of immediate family, and subdivision (c) of that regulation provides that materiality is determined pursuant to Regulation 18702.1 if the decision would affect the official's business interest. Because your source of income at issue is the resort business, and because the decisions relating to the Project would affect that business, we apply Regulation 18702.1 to determine whether you would have a disqualifying conflict of interest with respect to those decisions.

Regulation 18702.1 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's business interest, and provides that the decision's effect is material if:

- The business is a named party in, or the subject of, the decision. (Regulation 18702.1(a)(1).)
- The decision may result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than \$1,000,000.00, or five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000.00. (Regulation 18702.1(a)(2).)

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Section 82029 defines "immediate family" as the spouse and dependent children. Your husband owns more than 10 percent of the LLC that owns and operates the resort business.

<sup>3</sup> Section 82030 provides that income of an individual includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns a 10-percent interest or greater.

- The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses by equal to or more than \$250,000.00, or one percent of the business's annual gross revenues and the change in expenses is at least \$2,500.00. (Regulation 18702.1(a)(3).)
- The official knows or has reason to know that the business has a real property interest that is explicitly involved in the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.1(a)(4).)

Based upon the facts presented, Regulation 18702.1(a)(3) is dispositive of the question presented. You state that the annual gross revenues of your husband's resort business are typically between \$500,000 and \$750,000, and that the resort business's employment expenses could be reduced by \$10,000 to \$15,000 per year, the cost to purchase and maintain the resort business's onsite housing units currently provided to some employees, if those employees were instead able to rent workforce housing units located at the Project Site. Applying Regulation 18702.1(a)(3) using the most conservative figures presented, one percent of \$500,000 is \$5,000, and the resort business's employment expenses could be reduced by as much as \$15,000 per year. Therefore, it is reasonably foreseeable that decisions relating to the Project would have a material financial effect on your business interest in your husband's resort under Regulation 18702.1(a)(3) business based on the facts presented.<sup>4</sup> Thus, the Act prohibits you from taking part in those decisions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel



By: Matthew F. Christy  
Counsel, Legal Division

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<sup>4</sup> We do not analyze the applicability of Regulation 18702.2(a)(4)'s materiality standard because we have already determined that decisions relating to the Project would have a disqualifying effect on your business interest in your husband's resort business under Regulation 18702.2(a)(3).