

**TIOGA COMMUNITY HOUSING PROJECT
(SPECIFIC PLAN)
AMENDMENT #3**

**MONO COUNTY
BOARD OF SUPERVISORS
MEETING**

20 April 2021

Project files located at:

<https://monocounty.ca.gov/planning/page/tioga-inn-specific-plan-seir>

OVERVIEW

- **29-30 June 2020:** Discussed document availability, history, current project with a preferred alternative, public comments and testimony, Tribal Consultation, housing demands, bike/ped access to the project site and Eastern Sierra Unified School District concerns, modifications to mitigation measure for visual impacts and lighting.
- **6 August 2020:** Direction given for Alternative #7 – Hybrid Plan to further reduce visual impacts. Covered public comments and testimony, more detailed site plan, project clarifications and phasing, hydrology, grading and aesthetics, Lee Vining Fire Protection District issues, evacuation routes, bike / ped connectivity, and housing restrictions.
- **13-14 October 2020:** Refine site plan with phasing, refine Landscape Plan, clarification of proposed grading and required infrastructure for each phase, list voluntary project measures, evacuation route discuss to US 395, Lee Vining Fire Protection District concerns, the bike/ped connection to and from town and a third round of public comment and testimony.

CEQA Certification

The Board adopted Resolution R20-96 in October 2020 certifying the Tioga Inn Specific Plan Final Subsequent Environmental Impact Report (FSEIR).

- **15 December 2020:** 1) Access to the emergency egress road over LADWP property, 2) Meet with Tribe and applicant on potential voluntary measures.

PROJECT LOCATION



PROJECT HISTORY

TIOGA SPECIFIC PLAN (1993):

- **Hotel (2 stories, 120 rooms)**
- **Full-service Restaurant**
- **10 hilltop Residential Units (8 were built)**
- **Gas Station with 2 Gas Pump islands**
- **Convenience Store (4,800 square feet);**
- **Note that the expansion of the deli kitchen was approved via Director Review in 2012**
- **Infrastructure (water storage, propane, septic system)**

SPECIFIC PLAN AMENDMENT #1 (1995):

- **Allowed construction of a 2-bedroom apartment above the convenience store**
- **Shifted location of the water storage tank**
- **Revised phasing to construct convenience store before the hotel**

SPECIFIC PLAN AMENDMENT #2 (1997):

- **Clarified promontory location of full-service restaurant**
- **Affirmed that water & sanitation facilities could serve only the Tioga Specific Plan**
- **Prohibited project access onto US 395 due to grading requirements, associated visual impacts, and access limitations**
- **Clarified Specific Plan financing**
- **Allowed public restroom/shower/laundry facilities in the hotel**
- **Set development standards for the hotel and full-service restaurant**
- **Provided new details regarding Master Sign Program and night lighting**

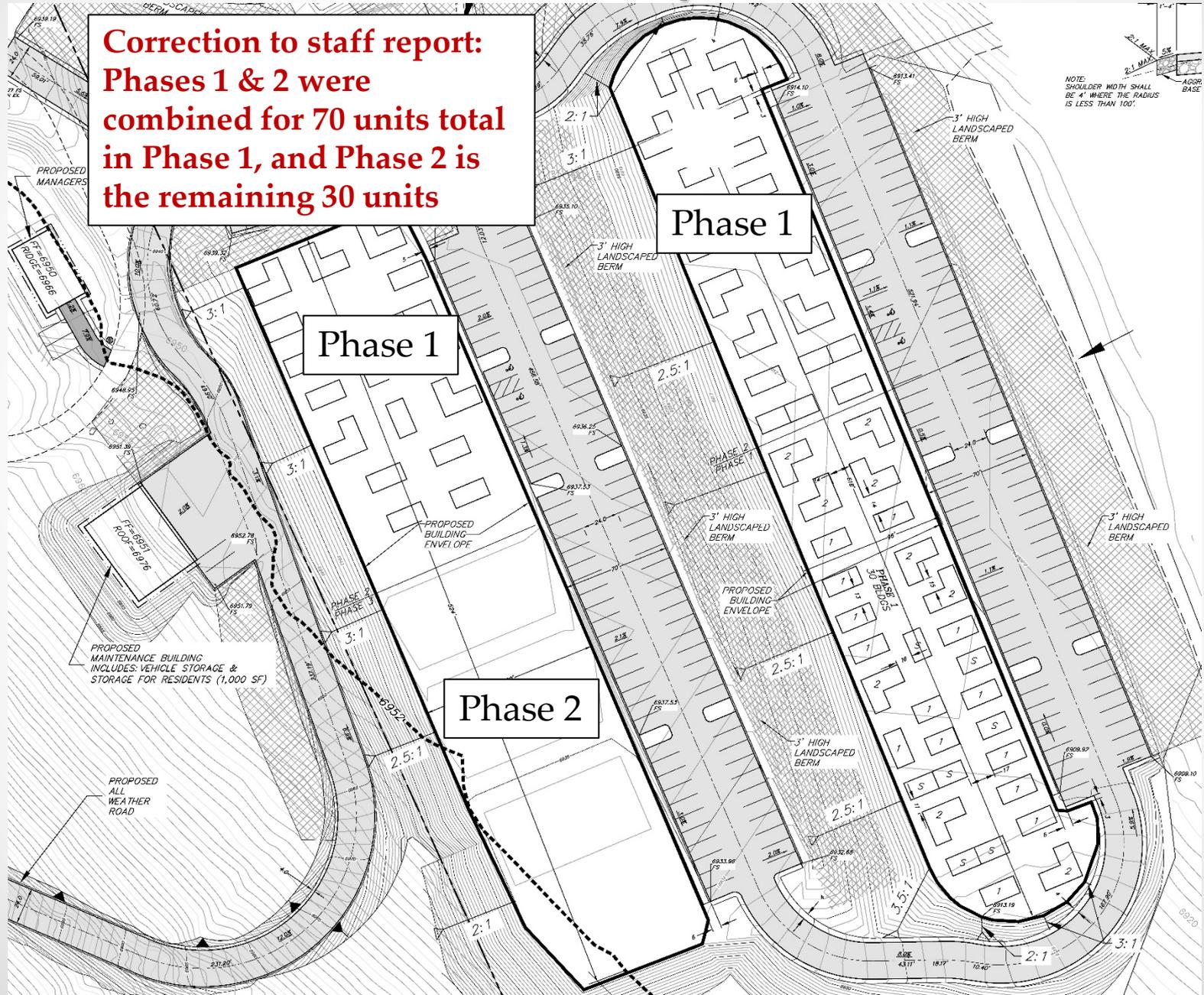
PROJECT DESCRIPTION

Note that the hotel, restaurant, and 10-unit residential components are existing entitlements and are not a part of Amendment #3.

1. **Community Housing:** Allow up to 150 new community housing bedrooms in up to 100 units (including one manager's unit with up to 4 bedrooms);
2. **Day Care Center:** Allow construction of a staffed day care center for use by community housing residents and residents of the Mono Basin;
3. **Gas Island:** Allow construction of a third gas pump island with 4 new fueling stations, one new underground gasoline storage tank and an overhead canopy and lighting;
4. **Water Storage:** Allow demolition of the existing 300,000-gallon water storage tank and its replacement with a new 300,000-gallon water storage tank on a pad located in the same approximate location as the existing tank;
5. **Parking:** Allow additional parking to serve oversize and park & ride vehicles, ESTA & Yosemite transit;
6. **Internal Access:** Realign the road providing access to the existing hilltop residential area and reconfigure lanes and turning areas near the main entry to eliminate conflict between the hotel and the gas station/convenience store;
7. **Sanitation & Reuse:** Replace the septic tank with a new package wastewater treatment facility including new subsurface irrigation facilities and retention of the existing leach field for disposal of surplus treated water;
8. **Parcel Boundaries:** Modify the acreage and boundaries of the four parcels;
9. **Propane:** Replace the five existing propane tanks (combined 2,500-gallon capacity) with a new 30,000-gallon propane tank to meet demand for onsite heating;
10. **Equipment & Personal Storage:** Construct a new building for storage of residents' items and maintenance vehicles and equipment;
11. **Open Space:** Allow a change in the location of designated open space areas including a 13.0-acre increase in Open Space-Preserve acreage, a 0.9-acre decrease in Open Space-Facilities, and an 11.4-acre decrease in Open Space-Support.

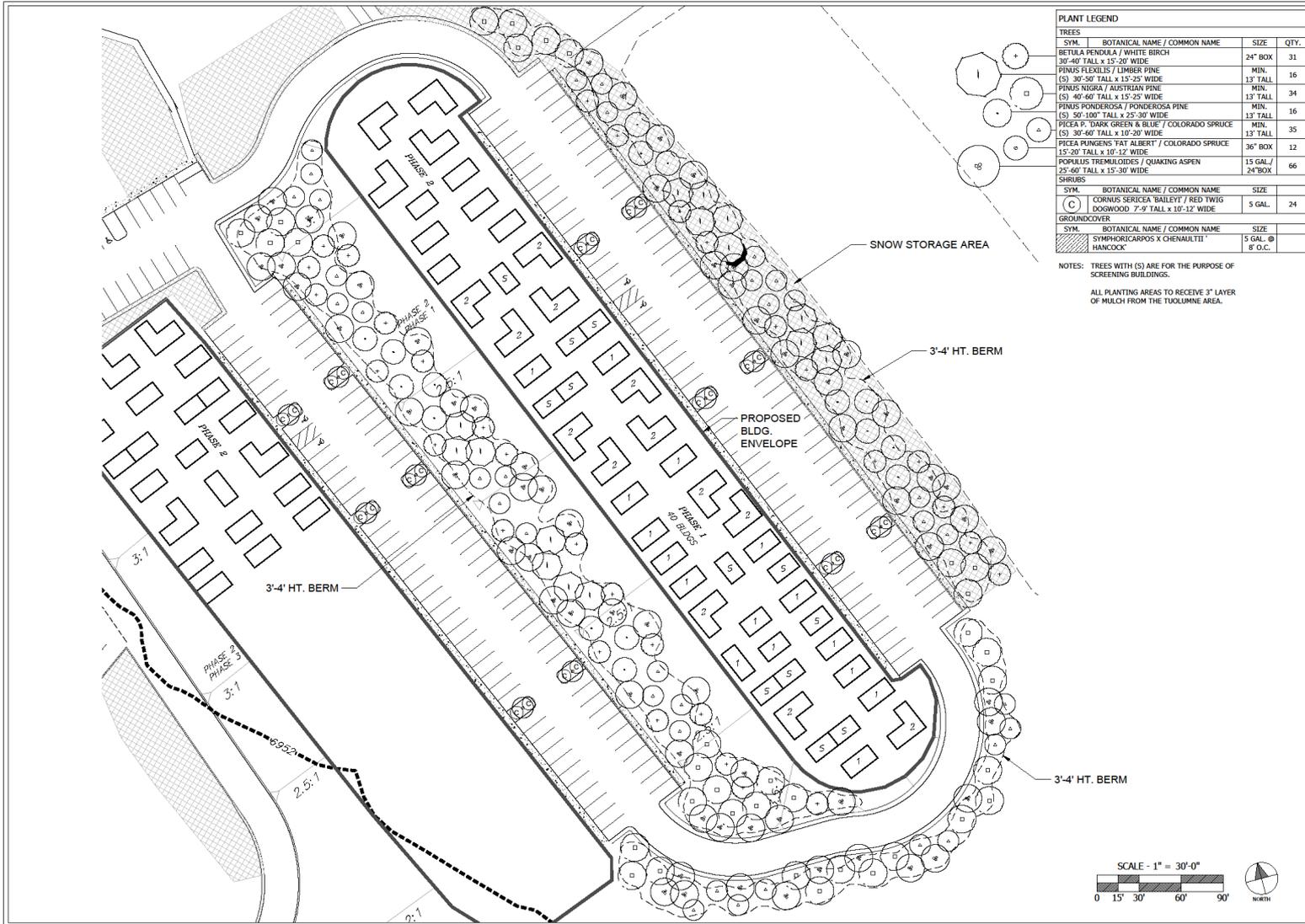
PREFERRED ALTERNATIVE #7 CONCEPT SITE PLAN

**Correction to staff report:
Phases 1 & 2 were
combined for 70 units total
in Phase 1, and Phase 2 is
the remaining 30 units**



LANDSCAPE SCREENING PLAN

Tioga Inn SP3 - Attachment 3, Concept Plans



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TIOGA INN
 LANDSCAPE CONCEPT PLAN

REVISIONS	DATE



DATE: 09/08/20
 SCALE: SEE SHEET
 JOB # 20-077
 DRAWN BY: NL
 SHEET: 1 OF 1

EMERGENCY EGRESS ROAD TO SR 120



EMERGENCY EGRESS ROAD & LADWP

- LADWP provided a letter of consent granting access via the Gibbs Siphon Road
- Conditions:
 - Allow LADWP to install lock on the gate
 - LADWP reserves right to revoke access, road must be vacated in six months (applicant would then access via SCE easement)
 - Indemnify and hold harmless clause
- Mutual interest in providing access
- Recommended condition of approval:

Any gate(s) installed on the emergency egress road shall be designed as a break-away gate to ensure locks do not impede egress access.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

Staff report and Attachment 5 (Memorandum RE: Mono County Compliance with AB 52 and SB 18) provide complete chronology of tribal outreach from 2016 to present.

At December meeting, three concerns were raised by the public or the Board:

1. Tribal consultation
2. More time for Tribe to meet with applicant
3. State Attorney General office's inquiry into project compliance

**No intent to lay blame, be disrespectful, or judge; response primarily recounts the records as extracted from written documentation. Documentation available by request from the Mono County Community Development Department.*

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

1. Tribal Consultation – Overview and History

- **AB 52 Compliance:** AB 52 letters sent to Washoe and Kuzadika'a Tribes in April 2018. No responses received within 30 days. The County has complied with AB 52.
- **SB 18 Compliance:** May not apply; County sent SB 18 letter in June 2019, Tribe requested consultation in August 2019, consultation held from August 2019 to January 2020.
 - Tribe identified consultation topics in an email to the County: 1) compensation for tribal monitors, 2) potential impacts to well of tribal member.
 - Tribe formally accepted mitigation measure (voluntarily provided by applicant) of 50-hours of compensation for tribal monitors and tribal approval of archaeologist evaluating discovered resources.
 - Responses to concerns about impact to nearby well addressed in FSEIR, August 2020 staff report, direct email to Chairwoman Lange in September 2020. No further concerns or requests for discussion raised.
 - Consultation concluded under the definition that "the parties agree to measures to avoid or mitigate a significant effect, if a significant effect exists to a tribal cultural resource."
 - **No significant effect to a tribal cultural resource (TCR) existed and no substantial evidence of a TCR or impact was provided during consultation → above and beyond.**
- **Mono County has consulted with the Tribe and complied with state law; Tribe may submit public comment.**

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant

- Tribe first requested to meet with applicant at October 2020 Board meeting
 - A surprise to staff and the applicant, no known consultation framework applies
- Applicant and Tribe scheduled meetings
 - 18 November 2020: Cancelled due to inclement weather, Tribe sent email rescheduling meeting to 4 December, staff emailed both to confirm new date in order to attend.
 - 30 November 2020: Tribe canceled 4 December meeting. "The Tribe appreciates Mr. Domaille's willingness to meet with the Tribe, but requires additional time to prepare for the meeting..."
 - 7 December 2020: Tribe requested delay of 15 December Board hearing "...until such time that the Tribe ... [has] had an opportunity to meet with the Project developer..." and citing Tribe's need for "additional time to consider what issues it believes should be focused on at the meeting and a desired outcome." Letter cited COVID-19 Regional Stay-At-Home order as barrier; County Counsel explained at 15 December meeting this order did not apply to the Tioga Inn project.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant (continued)

- On 8 Jan. 2020, applicant sent meeting invitation to Chairwoman Lange; she declined, citing COVID concerns and stated she is "working on another way to meet."
- 14 Jan. 2021 meeting initiated by staff, offered to invite applicant, Tribe declined. Follow-up tasks identified in meeting:
 - Develop an AB 52 Tribal Consultation Policy/Protocol
 - Seek funding for a Mono Basin-wide (or larger) tribal cultural resources study
 - Tribal members and counsel to review meeting points and reconvene whole group for follow up discussion
 - If Tribe confirms interest in requesting voluntary measures from property owner, then schedule a meeting with property owner
 - Identify cry dance location
 - Tribe to request policy consideration from Board to prepare subsequent or supplemental EIR
- County later clarified via email with Tribal Counsel and in 19 February Board memorandum on County compliance with AB 52 and SB 18 that County does not have discretion to reopen the FSEIR because the trail and cry dance district were known but not timely presented prior to certification.
- County advised a cry dance location on Conway Ranch could be considered.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant (continued)

- County asked about scheduling another meeting, including a meeting with Applicant, on 22 January, 4 February, 9 February.
- Tribal Counsel indicated on 9 February that the Tribe is “hesitating” about having to work through issues with the Applicant and expressed understanding about their decision impacting overall project process.
- Tribe and Mono Lake Committee submitted joint letter dated 8 March 2020 now expressing that “...the Tribe objected to working the applicant and not the County...”
- Because the letter indicated 1) an objection to meeting with the applicant, 2) non-responsiveness to the County’s earlier inquiries to meet again, and 3) non-responsiveness to the follow-up items from the 14 January meeting except the request for further environmental analysis, meeting further was not warranted.
- Board meeting arrangements initiated; all staff and Supervisors were contacted for scheduling and consent.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant (continued)

- 19 March 2021: Supervisor Gardner informed Director Sugimura that the Tribe wishes to meet with the applicant and would do so by mid-May. Director Sugimura expressed confusion given the record of communication and asked for the request in writing.
- 24 March 2021 letter from Tribe addressed comments from Mr. Dondero but contained no meeting request.
- Written request to meet with Applicant received 30 March 2021 after business hours. Due to County holiday on 31 March, response to Tribe provided on 1 April. Meeting arrangements had already been made.
 - Tribe cited COVID concerns and snow on the ground at the site as reasons to delay meeting to May.
 - Applicant provided current site photos of no snow on ground that would impede a site visit.
 - COVID is a legitimate concern; County does not have luxury of stopping work on “essential business” during pandemic. Meeting outdoor with masks and physical distancing is very low risk, vaccinations have become widely available, and delay has been over nearly 5-month period. Regardless, County is sensitive to risk and a remote meeting to further understanding and cooperation until an on-site meeting could be held would have helped make progress.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant (continued)

- Decision to delay or proceed should be made by full Board, not just Chair or staff. Board can only discuss in open session due to Brown Act.
 - Given staff and applicant have offered to meet multiple times without success, the response to 30 March letter requested Tribe initiate a meeting invitation when the Tribe is ready. Staff has always indicated the intention to attend, even when not involved in scheduling.
- 6 April 2021: Board received letter from the Mono Lake Committee with a new request for a workshop on the joint 8 March letter and citing the “long-pending meeting of the tribe and developer to discuss the project” as a reason for delay. Chair Kreitz responded the Board would discuss on April 20.
- 13 April 2021: Board received letter from Tribe that the site is wet and muddy, and the Tribe remains concerned about COVID given two Tribal Council members have just had five family members test positive, and the Tribe stands by the May schedule agreed to with Supervisor Gardner.
- 18 April 2021: Public comment letter submitted by Tribe, expressing concern about lack of consultation (which has already been conducted) and requesting additional analysis/mitigation or project denial. The comment is silent on meeting with the applicant.

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

2. More time for Tribe to meet with applicant (continued) → SUMMARY

1. October 2020: Tribe requested to meet with applicant, Tribe and applicant scheduled meetings
2. Nov/Dec 2020: Tribe canceled meeting, citing need for more time to determine discussion points and COVID
3. Tribe requested delay of December meeting in order to meet with applicant
4. January 2021: Tribe met with County, declined meeting with applicant (due to COVID), and asked the applicant not be invited to Tribe-County meeting
5. Feb. 2021: Tribe expressed hesitancy about meeting with applicant, did not respond to County's multiple offers for a follow-up meeting
6. 8 March: Tribe sent letter stating objection to meeting with applicant
7. 30 March: Tribe sent letter requesting to meet with applicant, citing COVID and snow on site as reasons for delay

**County staff has complied with Board direction
with above-and-beyond due diligence.**

BOARD REQUESTED FOLLOW UP ISSUES

Kutzadika'a Tribe

3. Attorney General Office's Concerns

- AG's office provided with 19 February memorandum to Board regarding Mono County compliance with AB 52 and SB 18, and timeline chart in staff report.
- AG's office not taking a position on the project at this time and has no further information to provide.

Tribal Comment Letters

Five comment letters received:

1. **Mr. John Dondero:** Identifies different ancestral trail connecting Mono Basin with Yosemite off project site, states cry dance locations are unique to each individual and family and that a centralized location is not appropriate, identifies the cry dance in project area as that of a family member and the site was across SR 120 on the Southern California Edison (SCE) parcel.
2. **Joint Letter from MLC and Tribe (8 March):**
 - A. **MLC/Tribe:** Tribe's concerns regarding impacts to cultural resources have not been resolved.
County: Tribal consultation requirements were met. The County has addressed, and resolved where feasible, all Tribal concerns that were timely raised. The County does not have the discretion to reopen the FSEIR or require preparation of a supplemental EIR because the trails and Cry Dance District information were not timely submitted.
 - B. **MLC/Tribe:** New information shows that Caltrans supports development of a pedestrian trail into town, and therefore supplemental environmental review is required.
County: The FSEIR indicates Caltrans is cooperative. The impact is existing, therefore not entirely attributable to project, therefore funding gap exists, among other issues.

Tribal Comment Letters

3. Tribe Response to Mr. Dondero's Comments (24 March)

- **Tribe:** Mr. Dondero does not represent the Tribe.
- The substantive nature of Mr. Dondero's comments on tribal cultural resources and his credibility, given he was raised on lands in the area and has a personal connection to the cry dance in the area, are not diminished by the fact he does not individually represent the Tribe.

4. Tribal Request to Meet with Developer (30 March)

- Addressed above; the Board has discretion to continue public hearing (Option 3 in staff report).

Tribal Comment Letters

5. 18 April 2021 Letter

- **Tribe:** Tribe's concerns regarding impacts to cultural resources have not been resolved. "...we ... cannot be ignored..."
County: The County has heard the Tribe's comments, responded many times, and presented potential solutions to discuss further. The Tribe has not been ignored.
- **Tribe:** Lack of consultation; interested in being involved in pedestrian trail.
County: The County has consulted with the Tribe. The Tribe is welcome to be involved in future efforts on the pedestrian trail.
- **Tribe:** County must first invest in infrastructure to support increased population.
County: The population is primarily generated by the 1993 approvals, not the current proposal. No impacts to utility and service system infrastructure was identified.
- **Tribe:** Not an affordable housing project; tribal members not eligible.
County: Inaccurate statement. Units are not income-restricted but are intended for employees of the hotel and restaurant. Employees have first priority, and then the housing units could be available to community members, including tribal members, based on the prioritization list which was added to address community concern.
- **Tribe:** Requests additional analysis and mitigation, or project denial.
County: County has responded many times that the County does not have the discretion to re-open the environmental analysis. The Board may deny the project if it cannot make the findings for the statement of overriding considerations.

Proposed Condition to Address Tribal Concerns

Project Condition:

If desired, the Kutzadika'a Tribe may extend an invitation to the applicant to meet and consider measures to address the Tribe's concerns, and the applicant shall accept. Any agreement(s) submitted to the County within six months of the approval of the Tioga Inn Specific Plan Amendment #3 that is/are 1) legal, 2) within the County's jurisdictional authority, 3) signed by both the Tribe and applicant shall be retroactively incorporated into and enforceable through the approved Specific Plan, and 4) do not result in changes to the project that would require additional environmental review shall be retroactively incorporated into and enforceable through the approved Specific Plan. ~~under CEQA unless such review has been completed to the satisfaction of the County or the applicant makes a binding commitment to fund and participate in such review prior to the new measure being added to the Specific Plan.~~

Mono Lake Committee Comment Letter

6 April Comment Letter requested focused discussion of three topics separate from a scheduled public hearing:

1. Authorization of supplemental environmental analysis to address significant new information on tribal cultural resources and the feasibility of pedestrian safety mitigations,
2. The long-pending meeting of the tribe and developer to discuss the project. The COVID pandemic has caused understandable delays, yet the MLC understands a meeting in May is possible.
3. Resolution of the concerns raised by the Attorney General's office at the December hearing. These have not yet returned to the Board for further discussion and resolution in a public forum.

Requiring a separate workshop is outside the standardized process and cannot be imposed on the project. Issues #2 and #3 have already been addressed in the presentation.

19 April Comment Letter:

- Same points as above; disagrees with staff analysis that pedestrian pathway is not feasible; "fair share" cost attributable to developer should be identified now; County should require trail be completed before housing units are occupied.

Mono Lake Committee Comment Letter: County Response

- The County has met tribal consultation requirements.
- The County has addressed, and resolved where feasible, all Tribal concerns that were timely raised, including indication of a cry dance “in the area.” The County does not have the discretion to reopen the FSEIR or require preparation of a supplemental EIR because the trails and Cry Dance District information were not timely submitted.
- The FSEIR and October staff report indicate Caltrans is willing to work cooperatively and collaboratively with the County on connectivity options. The MLC referenced document is a “letter of support” for a planning grant application to analyze alignments and options for the pedestrian connection in a good-faith effort to address this community concern and overcome infeasibility barriers, which is now being used against the project. Caltrans has not approved the project.
- The October staff report explains the pedestrian connectivity issue is an existing condition and therefore the entire trail cannot be attributed solely to the proposed project, resulting in a funding gap that makes the pathway infeasible. The MLC letter indirectly acknowledges by referencing “fair share” costs, which will be required of the applicant. Cost cannot be determined without a feasible alignment and an engineering cost estimate.
- Potential barriers to pathway feasibility (besides the funding gap) include no initial feasibility study of alignments and compliance with Americans with Disability Act (ADA) standards; access easement not granted by SCE (likely to take several years); engineering feasibility of pedestrian underpass crossing; no initial project analysis to identify other constraints/barriers.
- The County and taxpayers will not have to pay for the entire cost of the trail; statement is misleading. The project would be out of compliance with the Specific Plan and enforcement would ensue.
- Because the trail is not entirely attributable to the project and infeasible, the County cannot require it be completed prior to occupancy.

Other Public Comment

- Many letters cite various environmental impact and project concerns that have already been addressed in previous Board meetings or the FSEIR. The FSEIR was certified in October and is now closed.
- Several letters cite the need to consult with the Kutzadika'a Tribe and properly honor their culture and heritage, and accuse the County of being disrespectful.
 - The County has consulted with the Tribe and the Tribe defined the consultation topics. The above-and-beyond efforts by the County to meet and find resolutions with the Tribe grants the Tribe's concerns recognition and respect well beyond that required by the process even if the Tribe is not receiving the answer they want. Options have been offered to the Tribe to address concerns.
 - Respecting diversity and equity does not mean all parties agree, or that any party is unilaterally granted their request. The Tribe's concerns have been taken seriously and elevated above the typical process, and significant effort has been dedicated to trying to meet and resolve them within the legal framework by which the County is bound. This effort is consistent with the County's commitment to diversity and equity.
 - The County has not received a substantive response to the list of follow-up items from the 14 January meeting (except for the one the County has no discretion to undertake). The County also has legal obligations and requirements for processing projects, and the developer has private property rights.

Other Public Comment

- Several letters cite the number of letters in opposition as a reason to deny the project. If the Board wishes to deny the project, it should do so because the findings for the Statement of Overriding Considerations cannot be made based on the substance, not the number of public comments in opposition.
- Several letters appear to confuse Caltrans support for the pedestrian connectivity project as approval of the project. Caltrans was only supporting a planning grant application to begin overcoming barriers which currently cause the project to be infeasible. Caltrans has not indicated the pedestrian pathway is feasible or approved, and states they have no funding for the project in the “support letter.”
- The Lee Vining Fire Protection District submitted a comment letter repeating concerns from July 2020, which have been addressed in previous meetings and staff reports.

Recommended Project Condition Additions

Resolution includes mitigation measures and specific plan conditions incorporated since the Planning Commission recommendation as part of the MMRP. If a motion is made to approve project, the following additional conditions should be specified for inclusion:

- **Defense and indemnification as set forth in paragraph 8 of the County's "Agreement for the Provision of Project Evaluation, Environmental Review, and Processing Services," which has been signed by the applicant, is required.**
- If desired, the Kutzadika'a Tribe may extend an invitation to the applicant to meet and consider measures to address the Tribe's concerns, and the applicant shall accept. Any agreement(s) submitted to the County within six months of the approval of the Tioga Inn Specific Plan Amendment #3 that is/are 1) legal, 2) within the County's jurisdictional authority, 3) signed by both the Tribe and applicant, and 4) do not result in changes to the project that would require additional environmental review shall be retroactively incorporated into and enforceable through the approved Specific Plan.
- Any gate(s) installed on the emergency egress road shall be designed as a break-away gate to ensure locks do not impede egress access.

Resolution of Approval

Resolution Adopting Tioga Inn Specific Plan Amendment #3 and Mitigation Monitoring and Reporting Program (MMRP) includes:

1. Exhibit A: Project documents, FSEIR certification documents
2. List of refinements directed by the Board of Supervisors for MMRP *(excluding proposed project conditions in this staff report)*
3. Findings for the Statement of Overriding Considerations
4. Findings for the Tioga Inn Specific Plan Amendment #3 and Preferred Alternative (Alternative #7-Hybrid Plan)
5. Statement that recitals to the Resolution are adopted as findings
6. Statement that the Board of Supervisors adopts the MMRP, adopts Statement of Overriding Considerations, and approves the Tioga Inn Specific Plan Amendment #3, Alternative #7-Hybrid Plan.

RECOMMENDATION

Recommended Action (applies to all options):

- Receive staff report and presentation, hold public hearing, and receive public testimony on the Tioga Inn Specific Plan Amendment #3 (“Project”) and Alternative #7-Hybrid Plan (“Preferred Alternative”).

Option 1: Approve the Project and Preferred Alternative #7 or with Further Modifications.

Adopt proposed Resolution: 1) adopting the Mitigation Monitoring and Reporting Program as recommended by the Planning Commission as revised, or with further modifications; and 2) making the required findings and approving the Project (Preferred Alternative #7) as presented or with further modifications. Direct staff to file a Notice of Determination pursuant to the California Environmental Quality Act.

Option 2 – Deny the Project.

Determine that the unavoidable environmental impacts and risks identified in the Final Subsequent Environmental Impact Report (FSEIR) for the project are not outweighed by the economic, legal, social, technological, or other benefits of the project and deny the project. Additionally, the Board may determine that one or more of the Specific Plan findings in the proposed Resolution cannot be made.

Option 3 – Continue the Public Hearing.

Set a new date and time for a continued public hearing and provide specific direction to staff about actions to take prior to the Board considering the project.

COMMENTS AND QUESTIONS