



Mono Lake Kutzadika^a Tribe

P.O. Box 237, Lee Vining, CA 93541

<https://monolaketribe.us>

August 17, 2022

Dear Mono County Planning Commission:

The Mono Lake Kutzadika^a Tribe (Tribe) invited the property owner to our Tribal Council meeting to hear more about the proposed project to establish a “Hip Camp” on the parcel. The Tribe asked the property owner if cultural resources had been considered. The property owner replied that a consulting company had been hired to conduct a cultural survey and the survey did not find anything. The Tribe informed the property owner that any cultural survey must involve consultation with the Tribe, prior to any survey. No attempt at consultation by the consulting company with the Tribe was made at any time. The Tribe has knowledge of traditional uses of the area and without consultation, the consulting company did not have the background or context with which to conduct an adequate analysis of the cultural resources and cultural values of the area. Simply looking for surface artifacts, which were likely looted many years ago, does not constitute adequate cultural resource analysis. Things such as burials, travel corridors, sacred areas, and cry dance districts often do not have surface expressions and would be undetected with the type of survey conducted by the consulting company.

The Tribe informed the property owner that an adequate cultural analysis of the property was not made. There would have been sufficient time since our meeting with the property owner to have revisited the matter with the consulting company and the property owner to address this deficiency in cultural resource analysis, however the property owner did not make any effort to address the matter further.

Without adequate tribal consultation and cultural resource analysis, the Tribe feels that the Mono County Planning Commission does not have the information it needs to make an informed decision on the project. Therefore, the Tribe is requesting that the project be denied.

Please let me know if there are any questions on this matter.

Sincerely,



Charlotte Lange
Chair, Mono Lake Kutzadika^a Tribe

Heidi Willson

From: Victoria Young <vikiyou@icloud.com>
Sent: Tuesday, August 16, 2022 10:01 PM
To: CDD Comments; Bentley Regehr; Light Michael
Subject: George Swiggums's hip camp.

[You don't often get email from vikiyou@icloud.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

[EXTERNAL EMAIL]

Let me start with who I am, Victoria Scanavino Young. I am the only granddaughter left of Giuseppe and Maria Scanavino. There are only 2 grand children left alive. I am the youngest of the 13 grandchildren.

My grandfather Giuseppe [Joe] Scanavino bought into this ranch in the late 1800's. He bought it from 4 men who originally homesteaded it. It originally had 320 acres and it also already had the name of "The Goat Ranch" from the other men who had goats. He thought that this would be a great place for his wife and to raise his family.

It is on Cottonwood Canyon Rd. That is located just up the road from where Hectors stagecoach stop was. It was a very peaceful area and it has remained that way though out time. My grandfather was a very good man and a farmer. He grew produce for the neighbors and the people in Bodie. After my grandfather died in 1909 his wife and remaining 10 children ran the farm.

Absolutely NO to this rezoning

I am very opposed to this hip camp or any other type of place like it.

Reason being:

1. It has remained very peaceful area all these years. My family has worked hard all these years to keeping it that way.
2. The Cottonwood road is not really built for heavy traffic. It is very lightly paved pass my ranch but not very good.
3. This is a wrong place for commercial business. Bodie hasn't even commercialized that the town for I believe the same reason I don't think this area should be commericalize.
If this should get approved the "hip camp" will be only be the start of what the area will come too.
I understand that already a more larger camp in the same area is already being developed. In an anticipation that the Wiggum's site will be approved.
If the 'the hip camp' is approved there will not be 'saying no'. To another one and another one and so on.
4. They don't have any fresh water source there. The water would have to be trucked in.
5. Port-a-potties would have to be used. Where are they going to dump that, in the lake. We really need that.

6. This would bring unwanted people to the area. I already have a hard time keeping out lots of unwanted people off my ranch. It is well posted to stay away, keep out, private property. That doesn't mean anything to a lot of people. Signs only mean to be more sneaker about trespassing. I know this for a fact.

7. I don't want the area used for Marijuana farms either. I have the perfect place for that and that's not happening on my ranch. I have lots of land and fresh water. I also have my original water rights.

8. I have a lot of wildlife on my ranch deer and so on. They would be disturbed with more traffic, the lights and noise from their private party's. That alone really travel in open area like this.

9. The increase in fires alone and the damage it does. Fire will not be able to be contained. With no water to put it out it would spread terrible. They aren't going to run down to the lake with buckets for water. I don't want my ranch and building burned down like Bodie has been twice now.

10. They will not stop at only 3 little camps. If the committee gives him permission for 3 camps it will not stop there he will want to have more and more.

There was very good reason for these property being divided into 20 acres parcels with one home on each. It was to keep this area from becoming to populated. Why are you even considerations this now?

Heidi Willson

From: Cole Hawkins <chawkins@dcn.org>
Sent: Wednesday, August 17, 2022 7:14 AM
To: CDD Comments
Subject: Hip Camp Hearing 8-17-22

[You don't often get email from chawkins@dcn.org. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

[EXTERNAL EMAIL]

Hello,

I am opposed to the expansion of any additional campsites north of Hwy 167 in the Mono Basin. My primary concern is that increased camping will greatly increase the risk of fire in a highly flammable ecosystem. I am worried about some campers not understanding the risk of fire and the fragility of the local ecosystem in regards to disturbance and the very high probability that invasive plants could replace much of the native vegetation. We live about 2 miles from Hip Camp.

Thank you,
Cole Hawkins
PO Box 331
Lee Vining, CA, 93541

Heidi Willson

From: Amy Lewis <amy.lewis31@gmail.com>
Sent: Tuesday, August 16, 2022 9:56 PM
To: CDD Comments
Subject: Hip Camp Project Proposal

[You don't often get email from amy.lewis31@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

[EXTERNAL EMAIL]

To Whom It May Concern,

My name is Amy Lewis and I am a resident in Mono City. I am writing to express my opposition to the proposed Hip Camp site on Cottonwood Road.

My primary concern with this project is the proposed zoning change from "Rural Residential" to "Special Plan". I believe that this would set a precedent for further zoning changes in the future.

My spouse and I moved to Mono City as full time residents in 2019. Living in the Eastern Sierra was a long term dream of ours, but it didn't come easy. Due to the limited inventory of affordable housing, we chose to purchase land and build a new (manufactured) home. We were meticulous about ensuring we abided but all of the building codes set forth by the county. We never asked for a variance. I am bringing this up because we believed that if we wanted to be residents in this special place, we had to abide by the county's rules, not expect or ask them to change for us. Our #1 priority was to be thoughtful and considerate neighbors. Our property was designed so it would blend in with the neighborhood and the natural landscape. We wanted our new neighbors to be happy with the choices we made.

As I stated before, I bring this up because we built our home in the Mono Basin because of its unique beauty and peacefulness. We followed the rules set forth by the county because we believed it was a privilege to live in such an area. If someone wants to run a commercial business on their private property they need to acquire property that is zoned for that, not ask the county to change the rules for them, despite everybody else.

I agree that Mono County needs more campgrounds, but changing land designation in rural residential neighborhoods is not the answer. Private residents should not have to bare the burden for the county. It is the residents of the Mono Basin that would bare this burden, not the county itself.

Thank you for your time and consideration.

Sincerely,

Amy Lewis
Mono City Resident

Heidi Willson

From: Duncan King <nosmog@yahoo.com>
Sent: Tuesday, August 16, 2022 8:31 PM
To: CDD Comments
Subject: Hip camp

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[EXTERNAL EMAIL]

As a fifteen year resident of the Mono Basin I am strongly against this proposal.

It is counter to the very ethos of the north basin...

Any change in designation of this area would be to the detriment of those values that bring people to this unspoiled county.

Please do not accept this proposal - the precedent it would establish would start a domino effect of creeping blight!

Regards,

Duncan King

Heidi Willson

From: ek95014@aol.com
Sent: Tuesday, August 16, 2022 6:24 PM
To: CDD Comments
Subject: OPPOSITION to Swiggum Hip Camp Proposal, 228 Cottonwood Canyon Road, Lee Vining

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[EXTERNAL EMAIL]

Mono County is beautiful. The County proudly proclaims that it is "Wild by Nature". Its beauty and wildness draw visitors from around the world.

Northeast of Lee Vining and the seasonal chaos of a town that is the eastern gateway to Yosemite National Park, the North Mono Basin is an amazing landscape, not only for its wild beauty but also for the fact that it has remained relatively unscathed by humans. The County should seek to protect, not threaten, its "Wild by Nature" places.

I strongly encourage you to deny the Swiggum Hip Camp proposal. Thank you.

Ellen King
Mono City resident

Heidi Willson

From: Heidi Hopkins <h2hopkins@gmail.com>
Sent: Tuesday, August 16, 2022 5:11 PM
To: CDD Comments
Subject: Mono Basin Hip Camp Specific Plan

You don't often get email from h2hopkins@gmail.com. [Learn why this is important](#)

[EXTERNAL EMAIL]

Re: Mono Basin Hip Camp Specific Plan

I write to express my concern about and opposition to the Mono Basin Hip Camp Specific Plan. I am a 20-year landowner and part-time resident of Mono City. My primary concern is the online strategy that underpins the Hip Camp venture. Both here in Mono County and all over the state of California (and elsewhere!) communities are struggling with the damaging changes brought by the online Short-Term rental platforms. Homes are being lost to investment firms, communities are losing permanent residents. Instagram has led to hoards of people flooding sensitive sites, causing unbelievable resource damage, litter, traffic headaches -- you name it! I know that you commissioners are as aware of these online-driven trends as we all are. While the Mono Basin Hip Camp proposal presents a picture of serene and contained camping, the very nature of its advertising platform suggests it will entice a clientele – hoards of them! – who have their own “hip” concept of camping. Big fires, music, hip celebration. I can imagine ancillary impacts from this project (and not addressed by the Specific Plan) to include those many who could not get a reservation but would like to participate in evening festivities turning to dispersed camping in the north Mono Basin area. Dispersed camping is legal but here – as in many places in the state – it is getting way out of hand. I’m sure we are all aware of its increasing impacts in our rural area, most worryingly the danger of fire.

I fear that approving this kind of online commercial venture in the rural north Mono Basin will lead to ancillary effects not considered in this proposal or addressed by planning oversight. Please reject the proposal or run it through some more rigorous analysis that considers ancillary impacts.

I agree that the Mono Basin could benefit from increased public camping opportunities. I believe that the USFS model of quiet, rural camping is a better way to expand the opportunities for the visiting public. Mono County Wild by Nature... keep it wild!

Heidi Hopkins

Mono City

Heidi Willson

From: Lisa Cutting <lcutting@schat.net>
Sent: Tuesday, August 16, 2022 8:44 PM
To: CDD Comments
Cc: Bob Gardner
Subject: Mono Basin Hip Camp Specific Plan Proposal

You don't often get email from lcutting@schat.net. [Learn why this is important](#)

[EXTERNAL EMAIL]

August 16, 2022

Mono County Planning Commission
C/o Bentley Regehr
PO Box 347
Mammoth Lakes, CA 93546

Submitted by email to: cddcomments@mono.ca.gov

Dear Mono County Planning Commissioners,

For the reasons listed below I urge the Mono County Planning Commission to deny the Mono Basin Hip Camp Specific Plan application.

Members of the public and residents near the project area have repeatedly outlined several issues related to this project. I agree that these concerns are problematic. They include but are not limited to:

- Changing the character of the Cottonwood Canyon Road from exclusively residential to transient recreational visitors
- Increased wildfire risk in an already remote, underserved fire protection area
- Impacts to residents from noise and increased traffic

But my fundamental concern and rationale for opposition to this project is that it would change the Mono County General Plan land use designation associated with the property from Rural Residential to the Specific Plan as outlined.

First, changing an already existing land use designation should never be considered except in the most extenuating of circumstances. This would include things like a situation where there is overwhelming public benefit and universal support. Land use designations were established for a reason, protecting characteristics that fit a particular parcel when inventoried. They are meant to keep areas cohesive in nature and similar in use. A land owner's use of their property should fit within the designation or they should seek an alternate parcel and location that allows their plans to go forward.

Second, approving this Hip Camp Specific Plan proposal would set a bad precedent for future development in Mono County. It would essentially send the signal that anything is fair game for property owners and established land use designations don't matter.

Furthermore, Specific Plans exist in perpetuity once approved and a proponent could and will likely, over time, piece-meal and add additional components to the project if approved. This fact alone fails to give Mono County decision makers and residents any sort of certainty for the future regarding a Specific Plan project.

Please support the current Mono County General Plan and current land use designation for this property and deny this project.

Thank you,

Lisa Cutting

PO Box 67
Lee Vining, CA 93541

Heidi Willson

From: Margaret Eissler <rockwren@att.net>
Sent: Tuesday, August 16, 2022 9:59 PM
To: CDD Comments
Subject: Mono Basin Hip Camp Specific Plan

You don't often get email from rockwren@att.net. [Learn why this is important](#)

[EXTERNAL EMAIL]

Mono County Planning Commission

Attention: Bentley Regehr

P.O. Box 347

Mammoth Lakes, CA 93456

August 16, 2022

RE: Opposition to the Mono Basin Hip Camp Specific Plan, 228 Cottonwood Canyon Road

Dear Bentley and Mono County Planning Commissioners,

I write in strong opposition to the Hip Camp request to amend the Mono County General Plan by changing the land use designation from Rural Residential to Specific Plan. Amending the General Plan is a big deal, an action not to be taken lightly. And I've learned that approval of a Specific Plan lasts forever—that even when circumstances change many years later, the Specific Plan stands and amendments can continue to be added and transferred to the next property owner. It's a piecemeal approach to planning. It's not appropriate to the Cottonwood Canyon Road community nor the Mono Basin.

Wildfire is a major concern in the Mono Basin. The proposed Hip Camp sites have fire pits. Campers love to have fires. If anything should go wrong, help is far away. The Mono Basin Fire Safe Council has specifically discussed fire risk in the Cottonwood Canyon area and that was *before* the Hip Camp proposal which exacerbates this risk.

Approving the Hip Camp request would open the door to other Mono County property owners who might feel constrained in their current zonings and want to change uses on their land. Zonings were originally set up with a land-use vision appropriate for the place. Choosing to change zonings here and there disregards the very reasons they were set. If approved, this project would be precedent setting. Changing land use designations would become the norm.

A commercial camping development is not compatible with the Cottonwood Canyon community character. Residents moved there specifically for the solitude and tranquility associated with living off-the-grid.

It is my understanding from attending previous meetings that many in the Cottonwood Canyon residential area have significant concerns related to this project. As members of a unique, off-the-grid, solitude-seeking community, their concerns need to be honored and taken seriously. I support their objections to this proposal. As a Mono Basin resident, I also ask that you deny approval of General Plan Amendment 22-01 and the Mono Basin Hip Camp Specific Plan.

Sincerely,

Margaret Eissler
Lee Vining

August 16, 2022

Mono County Planning Commission / Bentley Regehr

To Whom It May Concern:

The purpose of this letter is to express our opposition to the Swiggum's Hip-Camp proposal on the Cottonwood Road off highway 167 in Mono County.

Our concerns include the following:

- **FIRE (Public Safety):** We're talking not only about the increased risk of catastrophic fire, but also the potential for the homeowner's insurance of neighbors to be compromised. We've lived in Mono City for 17 years and recently had our homeowner's insurance dropped due to the high fire danger rating in our area. The only fire coverage we've been able to get is through the California Fair Plan which quadrupled our premium. New home buyers are in the same boat. Put a campground with campfires in your neighborhood and good luck with homeowner's insurance. **THIS NEEDS TO BE CAREFULLY LOOKED INTO.** We have friends in the Cottonwood community and this is indeed a community.
- **OWNER:** The owner of this property has a clear history of violating fire and noise regulations with multiple complaints of large campfires and loud music. Both character and common sense are in question here. His track record speaks for itself.
- **ENVIRONMENT:** The Mono Basin is a sacred land. We've been walking, biking, skiing, and swimming in the basin for many years and we've seen plenty of change - both good and bad. I've seen sage grouse off the cottonwood road many times in addition to a wide variety of other wildlife. I've also seen illegal fires and offroading. There is no need for additional camping in this area specifically as camping opportunities abound in the area including Lundy Campground (which we've never seen completely full) in addition to hundreds of miles of dirt roads to camp on. Let's protect our land and our communities.

Thank you for considering our concerns in regard to our opposition of this campground.

Sincerely,

Jim Tabb and Elysia Fischbach

Heidi Willson

From: Priscilla Hawkins <phawkins@dcn.org>
Sent: Wednesday, August 17, 2022 7:25 AM
To: CDD Comments
Subject: Notes on zoning changes East of 395

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[EXTERNAL EMAIL]

Dear Sir,

I am against any zoning changes East of 395 along Hwy. 167. This is specifically concerning at the present time any expansion at the Hip Camp. There is no water nor sanitary facilities at that site which makes it not suitable for camping. A zoning change would open up this whole area to more development which we do not want. We are property owners along Hwy. 167. I vote No.

Thank You,
Priscilla Hawkins
phawkins@dcn.org

Heidi Willson

From: garland@cruzio.com
Sent: Tuesday, August 16, 2022 6:04 PM
To: CDD Comments
Subject: Opposition to Swiggum Hip Camp proposal

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[EXTERNAL EMAIL]

Dear Bentley Regehr and Mono County Planning Commissioners:

I am writing to voice my opposition to the Swiggum Hip Cam Proposal at 228 Cottonwood Canyon Road.

I own a house on Cottonwood Canyon road : up the hill from the proposed site.

It is zoned Rural Residential, which to me, is in perfect harmony with the quiet, wide open space.

My main concerns are:

1) This application describes a very big change in the use of the property : 21 Campers, multiple tent camping RV's with generators: it's a big commercial enterprise. Isn't that Rural Resort zoning???

This seems totally out of line with setting all the rest of us currently love.

2) Fire Danger!!! This area is windy and dry especially later in the season when the camping would be in full swing.

I would never have an open fire on my property at that time of year. Fire rings won't help when it's windy.

Our distance from the nearest fire stations at Lundy and Mono City make supression problematic.

3) We are far from Emergency services : Medical, or Law Enforcement.

4) Is there any possibility the "Special Use" designation would be transferable to a future property owner???

Is there any requirement that George Swiggum personally manage the "hip camp" himself?? The way all the rest of us care for and acess risks on our properties?

Sincerely

Glenn R Garland

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& WEINBERGER LLP

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WINTER KING
Attorney
King@smwlaw.com

August 17, 2022

Via Electronic Mail Only

Mr. Scott Bush, Chair and members of the
Mono County Planning Commission
PO Box 347
Mammoth Lakes, CA 93546
E-Mail: wsugimura@mono.ca.gov

Re: Specific Plan for 228 Cottonwood Canyon Road

Dear Chair Bush and Planning Commissioners:

This firm represents the Friends of North Mono Basin, a group of long-time residents in the community concerned about potential land use changes in the north Mono Basin area. In particular, they are concerned about the current proposal for a change in land use designation from Rural Residential-20 (“RR-20”) to Specific Plan to facilitate a commercial campground development at 228 Cottonwood Canyon Road (“Project”). The Project includes approval of an exemption from full environmental analysis under the California Environmental Quality Act (“CEQA”) based on a streamlined environmental analysis (“CEQA Analysis”) that purports to tier off of the County’s 2015 environmental impact report (“EIR”) for the County Of Mono Regional Transportation Plan & General Plan Update (“General Plan Update”).

As an initial matter, the County has not provided adequate time for public review of the proposed Project. The County released the draft Specific Plan and CEQA Analysis on August 3, 2022, allowing insufficient time for the public to review and comment on the Project documents prior to the Planning Commission hearing on August 18. We submit the comments below based on our initial review, but may provide additional comments if warranted.

We have followed the County’s processing of the proposed Project closely, submitting extensive comments on the County’s initial plan to process a zone change to up-zone the property from RR (rural residential) to RU (rural resort). *See*, letters from SMW to the County Planning Department dated July 23, 2021 and March 1, 2022,

attached for your reference as Attachment A and Attachment B. Now, County Planning proposes to process the proposed Project through a Specific Plan. As discussed in detail below, the proposed Specific Plan is inappropriate for the Project.

Moreover, the CEQA Analysis cannot support approval of the Specific Plan or approval of the Project under CEQA. It is our conclusion that the document fails to comply with even the most basic requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. The Specific Plan and CEQA Analysis are riddled with errors and omissions. Most egregiously, the Project documents state that the site has a minimum parcel size of one acre, when the County Land Use Designation Map clearly indicates the site is designated as RR-20, i.e., minimum parcel size is 20 acres. *See*, <https://gis.mono.ca.gov/apps/pv/parcel/013210026000>

The proposed Project would increase the density and intensity of uses on the site, which will, in turn, result in potentially significant environmental impacts that have not yet been analyzed. Given the remote location of the site, these impacts could include, but are not limited to, impacts to aesthetics (e.g., visible features such as water tanks, and light and glare), hazards (e.g., wildfire), noise, public services, and utilities and service systems. None of these impacts were adequately analyzed in the 2015 General Plan Update EIR in terms of analyzing the more intensive uses proposed by this Project.

In addition, as discussed further below, processing the Project with a Specific Plan conflicts with the County’s General Plan and Development Code, in violation of state Planning and Zoning Law, Govt. Code § 65000 et seq. For all of these reasons, the County cannot approve the Specific Plan and the Project.

I. The Streamlined CEQA Analysis Mischaracterizes the Project Setting

The Project site is located within Mono County on Cottonwood Canyon Road off Highway 167 north of Mono Lake. Contrary to the Specific Plan’s claim that the minimum parcel size on the Project site is one acre, the site is designated and zoned RR-20 for rural residential uses with a 20-acre minimum parcel sizes. *See*, the County’s Land Use Designation Map indicating the parcel is designated as RR-20 (i.e., Rural Residential with minimum parcel size of 20 acres). *See*, <https://gis.mono.ca.gov/apps/pv/parcel/013210026000>. The Project site is surrounded by at least a dozen parcels designated as RR-20, RR-40, AG-20 (i.e., Agriculture with

minimum parcel size of 20 acres), or RM or Resource Management.¹ Id. As intended by the County's RR-20 designation and zoning, the area is sparsely developed with single-family residences on large lots with some agricultural uses. Contrary to statements in the Specific Plan, CEQA Analysis, and the Staff Report to the Planning Commission for the August 18, 2022 (Specific Plan at Table 2 at p. 9, CEQA Analysis at p. 2, Staff Report at p. 7), the area is **not** served by any utilities, including electricity, water, and sewer service. Personal communication between C. Borg, urban planner with SMW and neighboring resident, M. Light, August 11, 2022. All residents in the area instead rely on solar power, individual wells, and septic systems.

Moreover, as the proposed Project's environmental review document acknowledges, all of the existing uses on the site aside from the single-family residence are unpermitted and therefore illegal. Environmental Analysis at p. 6. Now, because the applicant wishes to establish a commercial use on the site, he is requesting that the County ignore his history of noncompliance with County requirements and approve a Specific Plan that would allow further expansion of uses. Id. But, as we explained in our letter dated March , 2022, doing so for what is essentially an individual, single lot development would be an inappropriate end-run around the County's General Plan and would set a dangerous precedent: any landowner with even a single lot who wants to develop a project that is not allowed under the current land use designation could simply apply for a "specific plan." Such a precedent is inconsistent with sound planning and calls into question the validity of the County's entire General Plan.

The County should not reward the applicant's errant behavior by allowing the unpermitted uses and granting further expansion. The County should instead maintain the limits spelled out by the RR-20 General Plan designation and zoning and preserve the rural character and unspoiled nature of the area.

If the County wishes to provide more camp sites for visitors, it should thoughtfully identify appropriate sites to locate this use, rather than accommodating such a use in a rural residential area. The job of community leaders in evaluating projects such as this one is to achieve a balance between protection of resources, which represents the long

¹ Interpreting the 2015 General Plan to have upzoned every RR-20 parcel to allow one-acre minimum lots, rather than 20-acre minimum lots, would result in a massive upzoning across the County. No such upzoning was analyzed in the EIR for the General Plan, which indicates that impacts related to land use changes would be less than significant. Mono County 2015 RTP and General Plan Update EIR at 4.1-27 and 4.1-31. Had the General Plan designation for the proposed site and other designated RR-20 been intended to allow smaller minimum parcel sizes, such a drastic up-zoning would have been considered a significant impact. Thus, the site clearly remains designated and zoned as RR-20.

term interest of the entire community, from the short term interest and gain of one individual. As discussed throughout this letter, the County determined years ago that the proposed Project site and surrounding area would be designated for 20-acre minimum, rural residential and agricultural uses. As discussed further below, the proposed Project is inconsistent with the County's General Plan and the designated use of the site.

II. The Proposed Specific Plan Is Inappropriate for the Project.

As we explained in our prior comments to the County, the decision to process this project as a "Specific Plan" rather than redesignate/rezone the site to allow campgrounds and RV parks is a clear end-run around coherent planning practice. As described below, the County's General Plan is its "constitution for development," and is intended to be a coherent, internally consistent vision for development in the County. While it appears the County now wishes to avoid the necessary consequences (and required environmental review) associated with the prior plan to up-zone the Property from RR to RU, it is nonetheless inappropriate to use the "SP" designation to essentially allow a specific use that plainly conflicts with the existing (and surrounding) RR-20 and AG-20 designation.

Under state law, specific plans must include details about (1) the location and extent of the uses of land uses proposed within the plan area; (2) the extent and intensity of major components of the project (e.g., transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities) proposed and needed to support the land uses described in the plan; (3) standards and criteria the development will follow; and (4) a program of implementation measures. California Government Code § 65451; and (*Chandis Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475, 481 (*Dana Point*)) "[Among other things, a specific plan must contain standards and criteria by which development will proceed, and a program of implementation including regulations, programs, public works projects, and financing measures."]. These requirements describe larger sites proposed for intensive development, requiring design standards, and implementation measures to ensure consistency with general plan requirements, not a single lot development for private campsites.

Similarly, guidance from the Governor's Office of Planning and Research ("OPR") describes specific plans as complex documents for intensive developments on larger sites. See *The Planner's Guide to Specific Plans* (Jan. 2001) at pps. 4 and 5 available at: <https://californiareleaf.org/wp-content/uploads/2019/06/OPR-A-Planners-Guide-to-Specific-Plans.pdf>.

The County General Plan's list of existing specific plans demonstrates that, in the past, the County has considered specific plans appropriate tools only for projects that are

multi-parcel, larger developments. For example, the Rock Creek Canyon Specific Plan is a 14-parcel site planned for residential development in fulfillment of the General Plan vision of development for the area. In another example, the Bodie Recreational Vehicle (“RV”) Park Specific Plan describes development of 27 RV spaces, a general store, motel, small museum, camping cabins, tent sites, restrooms, laundromat, and shower facilities on 13-acre parcel. The Tioga Inn Specific Plan is for development of residential units, a convenience market, gas station, restaurant, hotel/conference center, and open space preserve with facilities on a 67-acre site. Other specific plans included in the County General Plan cover similarly intensive development projects. Mono County General Plan at II-2.

In fact, the County’s use of the “SP” designation as a “wildcard” designation, allowing anything to be built anywhere, subject only to the preparation of a specific plan, appears to be inconsistent with State Planning and Zoning Law, which requires a General Plan to include quantifiable standards of population density for each land use category. General Plan Guidelines at page 46 (available at <http://opr.ca.gov/planning/general-plan/guidelines.html>); Govt. Code § 65302(a).

In this case, the applicant has submitted plans for vacation rental lodging, RV sites, and campsites on a 20-acre parcel. Processing the proposed Project under a specific plan is improper and will create a dangerous precedent: if you own a parcel in Mono County and want to develop a project that violates the existing designation/zoning, simply apply for a specific plan. The result will be essentially unplanned development on inappropriate sites with insufficient utilities and services.

As stated above, the Specific Plan and CEQA Analysis state that the minimum parcel size allowed on the proposed Project site is one acre. When the County updated the General Plan in 2015, it preserved the RR-20 designations on the proposed Project site and surrounding area parcels. See, General Plan Update DEIR, Table 4.1-7: Land Use Designations Countywide, 2001 Land Use Element and Proposed Land Use Element at p. 4.1-22 [indicating that the 2015 General Plan resulted in minimal changes to the maximum density allowed in the Rural Residential category; in fact the maximum number of dwelling units allowed under the 2015 General Plan went down by 84 units].

The RR-20 designation and zoning already provides for limited development away from developed communities, so the main intent of this Specific Plan appears to be to accommodate an acknowledged “incompatible land use”. CEQA Analysis at p. 5. This approach amounts to spot zoning. Spot zoning is unacceptable if it represents “irrational discrimination,” which is prohibited. When it is in the public interest, it is permissible spot zoning. Here, the Specific Plan amounts to spot zoning because it is plainly

irrational: the applicant has unpermitted/illegal uses and the Specific Plan designation, far from enforcing existing rules, allows the applicant to expand these uses.

III. The Flawed Project Description Does Not Permit Meaningful Public Review of the Project.

In order for an environmental analysis to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. The project description must be accurate, stable and finite for an environmental document to be informative and legally sufficient. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law.” *San Joaquin Raptor*, 27 Cal. App. 4th at 729–30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

Here, the project description does not come close to meeting these established legal standards. Any reasonably complete description of the Project would give the public and decision makers a sense of what the planned development would look like, how it would operate, and how it would mesh with the surrounding uses. The purported Project Description does none of this.

Instead, the draft Specific Plan and the CEQA document provide inconsistent information about the proposed Project features. For example, although the Specific Plan text states that Area 1 would include vault toilets, solar panels, and a 3,000-gallon water tank, the site plan fails to show these features. Specific Plan Table 1 at p. 8 and Specific Plan Appendix B at Figure 1. Similarly, the Specific Plan text refers to Area 2 features that include a 2,000-gallon water tank, vault toilets, a Recreational Vehicle site, and a propane tank, yet the site plan fails to show these features. Specific Plan Table 1 at p. 8 and Specific Plan Appendix B at Figure B-2.

In another example, the CEQA Analysis refers to the Project including two bunkhouses while the Specific Plan describes only one. CEQA Analysis at pps. i, 7, and 10. The water supply is equally unclear; the Specific Plan refers to use of an on-site well, while the CEQA document describes two sizeable water tanks. Specific Plan Table 2 at p. 9 and CEQA Analysis Table 2 at p. 6, respectively. The proposed building height for the

Project in the CEQA document is at odds with the description in the Specific Plan, where one says that the maximum building height is the same as for the RR designation, or 35' and the other says buildings are not to exceed one story. CEQA Analysis at p. 5 and Specific Plan at p.14.

This failure to present a consistent and stable description of the Project echoes throughout the environmental analysis; because the Project is incompletely described, none of its impacts can be fully analyzed. Indeed, critical parts of the Project are not described at all. The CEQA analysis omits information, including, but not limited to, construction activity and schedule information, location of the proposed new roadway, and the size of the proposed tent platforms in Areas 1 and 2. The CEQA Analysis likewise fails to reveal specifics about assumptions being made about various Project components, such as water consumption rates.

Lastly, both the Specific Plan and the CEQA document are silent as to whether the proposed cabin and bunkhouse(s) are to count as the allowed ADU and junior ADU or if the applicant might develop additional ADUs down the road. This detail is important information for the public and decisionmakers to understand if the proposed Project is intended to be finite or if the applicant may come back to the County, time and again, requesting even further expansion of this commercial enterprise.

Taken together, the Specific Plan and the CEQA document's repeated failures to adequately describe various aspects of the Project indicate that the applicant may be taking a piecemeal approach to environmental review. CEQA, however, prohibits such segmentation of a project. *See* Guidelines § 15378(a) (“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”). Breaking the project into smaller sub-projects or failing to consider the reasonably foreseeable consequences of a project will lead to inadequate environmental review. *See Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283-84 (CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones”); *see also Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 396 (“*Laurel Heights I*”) (“[A]n EIR must include an analysis of . . . reasonably foreseeable consequence[s] of the initial project” that “change the scope or nature of the initial project or its environmental effects”). The applicant cannot avoid these requirements simply by hiding the ball on its development plans.

IV. Streamlined CEQA Review Is Not Appropriate

As the CEQA Analysis acknowledges, CEQA provides that a project may qualify for exemption under the streamlining provisions only if the project is “consistent with the development density of existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified.” CEQA Analysis at p. 7 quoting CEQA Guidelines § 15183. Here, as discussed above, the proposed Project is inconsistent with the existing allowed development density under the RM-20 designation and zoning and does not qualify for the exemption. Therefore, the County cannot rely on the environmental impact report (“EIR”) prepared for the 2015 General Plan.

As discussed in our prior letters on this Project (dated July 23, 2021 and March 1, 2022), the General Plan assumed that the site could be only minimally developed with one single-family residential unit, accessory dwelling units, and accessory buildings, and the EIR for the General Plan analyzed impacts accordingly. It did not assume that the area would be developed with vacation cabins, bunkhouses, campsites with fire rings, and RV parking spaces, as the Specific Plan would allow, nor did the General Plan EIR analyze the impacts of such uses. Because these impacts would be potentially significant, the County must prepare either a standalone EIR or a subsequent/supplemental EIR for the proposed Project.

In addition, several of the Project’s significant effects, as described below, are peculiar to the project site. For example, although Highway 167 is not officially designated as a scenic route, it is located in close proximity to the north shore of Mono Lake the southern edge of the tarmac marks the precise northern edge of the National Forest Mono Basin Scenic Area in the region. Sparse vegetation in the area allows for sweeping views of the lake and surrounding rural community. Consequently, area residents and users of Highway 167 experience a remote, rural environment. The Project would change the allowed density on the site and construct multiple structures that would change the character of the area. This impact is ‘peculiar’ to the site due to its location and rural character and would be significant. As discussed below, this impact has not been adequately analyzed.

V. The Project’s Environmental Impacts Are Potentially Significant.

A. Visual and Aesthetic Impacts

Under CEQA, a lead agency is required to conduct environmental review for any discretionary project that could have a significant, adverse effect on the environment. The fact that the existing designation and zoning for the Project site were considered in a prior

EIR does not excuse the County from conducting supplemental environmental review when considering a change in the designation and the zoning to expand uses and increase density there. Certainly, supplemental review has been required under CEQA for far less significant modifications. *See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 937 (holding that a four-acre increase in the size of an amphitheater project, a 200 percent increase in seating capacity, and the acoustic effects of modifying the placement of the stage were “certainly . . . sufficiently important to require consideration of their effects in a later EIR.”); *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 361, 364–365 (discovery after completion of the EIR that project would impact a quarter of an acre of new wetlands required the filing of a subsequent EIR); *American Canyon Cmty. United for Resp. Growth v. City of Am. Canyon*, 145 Cal.App.4th 1079-80 (increase in project from 154,000 to 173,000 square feet could create substantial environmental traffic impacts); *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 696 (change in general plan expanding heavy industrial development and eliminating certain seismic safety requirements required further environmental review).

As discussed throughout this letter and other comment letters submitted previously, the proposed increase in density and change in land uses have the potential to result in significant impacts that have not been analyzed. For instance, as discussed above, the change in designation and zoning from RR-20 to Specific Plan would allow the applicant to request additional expansions of use. Under the proposed Specific Plan, the maximum site coverage of 10 percent means that the applicant could request greatly expanded density on the site to allow up to 87,000 square feet of development.² This density could bring hundreds of additional visitors to the site, converting what is now a remote, high desert, rural, and picturesque environment into a busy commercial area with the traffic congestion, noise, air pollution, and visual impacts that go with these uses.

The visual impacts could be significant: Given the existing setting, where there is minimal development and lighting, the bunkhouses, cabin, RV’s, campfires, water and propane tanks, vault toilets, headlights, and other lighting on the site would be visible from miles around. The proposed Project site is in close proximity to the Mono Basin National Forest Scenic Area – as was the previous RU up-zoning proposal that is now withdrawn. The Project also proposes development on both sides of Cottonwood Canyon Road, despite the fact that there is ample area to develop the proposed Project on the portion of the property east of the road. Developing both sides of the road will infringe on

² Ten percent of 20 acres, or 871,200 square feet, equals 87,000 square feet.

the viewshed from residences to the south and would exacerbate visual impacts to neighbors.

The General Plan Update EIR did not analyze the impacts of a project such as the one proposed. Therefore, the County cannot rely on the General Plan Update EIR to exempt this Specific Plan from detailed review. Any further review of this Project must include a thorough analysis of visual impacts and community character.

B. Noise Impacts

Similarly, adding lodging/RV/campsite parking on the site would necessarily generate substantial noise, as visitors enter and exit the site, use amenities, etc. Moreover, as discussed above, there is no utility providing electric power in the area. All power is either created via diesel or gasoline generators, which are exceptionally noisy and emit polluting emissions. Solar energy works well to power light loads on fixed buildings but can be unreliable for providing power to RVs and campsites. Therefore, while solar is used by some nearby residences, it would likely not be a feasible option to power the lodging/RV campsite parking allowed by the proposed up-zoning.

The CEQA analysis dismisses potential noise impacts and concludes that the “project does not introduce new significant impacts that would affect noise.” CEQA analysis at p. 20. The analysis relies on the County General Plan update EIR’s conclusion that implementation of the General Plan update would result in significant unavoidable increases in ambient noise levels. *Id.* However, as discussed above the General Plan EIR analyzed noise impacts of RR-20 designation/zoning for the proposed Project area, not the increased intensity of the uses proposed under this Specific Plan. Therefore, the extent and severity of noise impacts analyzed in the General Plan EIR were lesser than would take place with implementation of the Project.

The CEQA analysis also relies on the Project’s compliance with the County’s noise ordinance, which states that the maximum exterior noise allowed for both residential and transient lodging uses is 55 decibels during both daytime and nighttime, to conclude that no new significant noise impacts would occur. CEQA analysis at p. 20. While the Specific Plan states that “no generators are proposed for the project” (Specific Plan, Table 2 at p.9), in reality, RV’s typically use generators to supply their vehicles with electrical power. Such generators produce noise that would exceed the established standards, yet the analysis glosses over these impacts. A revised analysis must consider these significant noise impacts.

C. Impacts Related to Increased Wildfire Risk

Perhaps most importantly, because the Project would include use of camp fires and because the Project site is in a very high fire risk area, the Project would exacerbate wildfire hazard risks. See Cal Fire/Fire and Resource Assessment Program Fire Hazard Severity Zone (“FHSZ”) Viewer (indicating that the Project site is considered to be located in a ‘moderate’ FHSZ for the State Responsibility Area and in a ‘high’ FHSZ for the Local Responsibility Area); CEQA Guidelines, Appendix G, Section IX(g) and XX (project would have significant impact if it exposes people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires).

The Swiggum property is located in an area susceptible to high winds. According to the fire commissioners of Mono City Fire Protection District, the Project site area is subject to high winds that travel down Lundy Canyon as well as gusts from the Bodie Hills. See, SMW Comments to W. Sugimura, dated July 23, 2022 at Exhibit A (Comments on Rea Ranch application from D. Swisher, Chair of the Mono City Fire Protection District to the Mono County Community Development Department). Wind gusts of 110 miles per hour have been recorded in the area. *Id.* Vegetation on the site and in the surrounding area consists of highly flammable species, such as sagebrush, bitterbrush, rabbitbrush, and pinion pine. Sparks carried by wind could easily ignite dry vegetation and grow into a substantial wild fire. Fires in the fragile landscape of the area severely impacts the community through highway closures, loss of tourism, and long-term scarring of the landscape. *Id.*

Moreover, the closest fire protection services in Mono City do not have adequate water and equipment needed to suppress a wildfire. *Id.* In addition, during the working week when volunteer fire fighters are likely to be unavailable in the area, the Project area would rely on fire fighters from Lee Vining or Bridgeport, which would delay service and add to the potential for wildfires to spread. *Id.* The lack of adequate fire protection services in the area points to another set of potentially significant impacts: those associated with constructing new public facilities to maintain acceptable service ratios or response times if full build-out of the site occurs. Such development could plainly have significant environmental impacts, given the sensitive resources in the undeveloped areas near the proposed Project site.

The CEQA analysis concludes that the Project would not result in new impacts not analyzed in the GP EIR. CEQA analysis, Table 2 at p.15. However, the GP EIR did not consider use of fire rings in a windy location, which constitutes a new significant effect that is unique to the Project site. Moreover, the General Plan states that, because much of the privately owned land in the county is located outside of fire protection districts, and

lacks formal emergency fire protection service, “future development in these areas without adequate fire protection will be limited.” General Plan Safety Element at VI-6. Again, the GP EIR analyzed potential wildfire safety risk impacts based on the RR-20 designation and zoning for the proposed Project site and the surrounding area. Thus, the EIR did not evaluate potential impacts from increased density and intensity in this fire-prone area.

In addition, the CEQA analysis indicates that the Mono City Fire Protection District was invited to comment on the project and declined. According to County General Plan policy Action 3.A.3.c., the County is obliged to “[R]equest the Mono County Fire Services Association...to review and comment on fire protection plans and major development proposals situated outside existing fire district spheres of influence.” The County must make greater efforts to obtain comments on the Project from the relevant fire authorities, given the fire risk in this area.

Finally, GP policies require on-site fire detection and suppression. General Plan Safety Element Action 3.A.4.c. at p. VI-13. Both the Specific Plan and the CEQA analysis fail to analyze compliance with this policy. The Specific Plan fails to address whether proposed structures would include smoke detectors and sprinklers and fail to analyze whether the project would include adequate water supply in appropriate locations for on-site fire suppression.

The General Plan Update EIR did not analyze impacts related to wildfire risk from a project such as this one, which allows open fire rings in a windy location. Therefore, the County cannot rely on the General Plan Update EIR to exempt this Specific Plan from detailed review. Any further review of this Project must include a thorough analysis of wildfire risk and associated safety risks.

D. Utility and Infrastructure Impacts

Similarly, extending necessary utilities to the site, such as water, power, and telecommunications, would have potentially significant impacts. See CEQA Guidelines, Appendix G, Section XV & XIX (lead agency must analyze if project would result in substantial environmental impacts associated with new public services facilities necessitated by the proposed project as well as the relocation or construction of new water, wastewater, power, natural gas, or telecommunications facilities). As mentioned above, none of the lots in the Cottonwood Canyon Road area have utility electric power at this time. Residences use photovoltaic panels with diesel, propane, or gasoline generator backup, which generates significant noise. Developing or extending

commercial infrastructure in the rural area of the North Mono Basin would almost certainly have significant environmental impacts.

The County is obliged to conduct comprehensive environmental review of all of the Project's foreseeable environmental impacts prior to considering approval of the Specific Plan. Because these impacts are potentially significant and were not analyzed in the 2015 General Plan EIR, they must be analyzed in an EIR for the Project.

E. Cumulative Impacts

The potential cumulative impacts of approving this Project are even greater given that approval of the proposed Project would set a precedent for other parcels in the area to request Specific Plans to allow unplanned uses. Moreover, to the extent the staff report indicates that the County now interprets the 2015 General Plan as having upzoned all RR-20 parcels to have one acre minimums, instead of 20 acre minimums, the Project would likely result in many requests for similar conversions. The cumulative effect of redesignating even one parcel, much less the larger area for more intensive uses would be significant; it could transform this remote, quiet, and open part of the County into a commercial recreation zone, with all the noise, light, glare, service demands, etc., that normally accompany such uses.

VI. The County Cannot Make the Required Findings to Approve the Project

On August 12, the County issued draft CEQA findings for the project. See Staff Report to the Planning Commission for the August 18, 2022 at Exhibit A to draft Resolution R22-09. After reviewing these findings, it is our opinion that they also do not satisfy the requirements of state law. For this reason as well, the County cannot legally approve the project at this time.

A. Substantial Evidence Does Not Support the Findings That the Proposed Change In Land Use Designation Is Consistent With The General Plan or Other Applicable Plans for the area.

Substantial evidence must support a finding that the proposed Specific Plan is Consistent with the General Plan. CEQA Guidelines § 15091(a)(1), (b). Findings cannot set forth bare conclusions; rather, they must be sufficiently detailed to reveal “the analytic route the administrative agency traveled from evidence to action.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. As detailed below, the findings fail to show how the project is consistent with General Plan policies and maps. For example, the Project site and the surrounding area consists of RR-20 and

AG-20 designation and zoning, require a minimum 20-acre parcel and limit development in the area to one residence and accessory uses. Thus, the Project, which would allow multiple lodging facilities and the potential for the applicant to request further expansion in the future, would intensify the density and uses on the site.

Because the Specific Plan and CEQA analysis proceed under the erroneous assumption that the existing designation and zoning allows a minimum parcel size of one acre and subdivision to allow 20 parcels, the County concludes that the “density proposed under the Specific Plan will be less than theoretical buildout under the RR land use designation.” Exhibit A to draft Resolution R22-09 at section A. This failure to analyze the Project using accurate assumptions and its effect on the environment is fatal. Thus, a finding that the change in land use is consistent with the General Plan is unsupported by evidence in the record.

B. Substantial Evidence Does Not Support the Findings That the Proposed Change In Land Use Designation Is Suitable For the Area, Is Reasonable and Beneficial, And Will Not Have A Substantial Adverse Effect On Surrounding Properties.

Similarly, the Finding that the proposed change in land use is suitable for the area is not supported by evidence. The RR-20 designation and zoning for the site and the surrounding uses ensures that the area remains rural in nature. The County’s draft Findings state that the Specific Plan is designed to create provisions that are similar to our more restrictive than the RR land use designation. Exhibit A to draft Resolution R22-09 at section C. As discussed in section I of this letter above, the Specific Plan does indeed increase density and the one provision that is more restrictive than the current designation, a reduction in maximum lot coverage, would still allow a significant amount of increased development.

The Findings also state that the Project would support the Mono Basin’s tourism economy in a manner that is consistent with the rural setting of the area. Exhibit A to draft Resolution R22-09 at section D. As discussed throughout the letter, the proposed use is inconsistent and incompatible with the setting and allowed uses in the area. Insofar as the proposed change in land use being beneficial, it seems that the main beneficiary will be one individual at the expense of the community of neighbors located on Cottonwood Canyon Road.

VII. Conclusion

The proposed Project doesn't qualify for an Exemption under CEQA Guidelines 15183, and therefore a project-specific EIR must be prepared. In addition, the Project would set a dangerous precedent of using the "Specific Plan" designation as a wild card, allowing any kind of development anywhere in the County. For the reasons stated in this letter, we urge the County to reject the CEQA analysis and deny the proposed Project, which is unsafe, environmentally impactful, and inconsistent with the County's own vision for this area.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

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Attachments:

- A. SMW Letter to the County Planning Department dated July 23, 2021.
- B. SMW Letter to the County Planning Department dated March 1, 2022.

ATTACHMENT A

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July 23, 2021

Via Electronic Mail Only

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Re: 228 Cottonwood Canyon Road

Dear Ms. Sugimura:

This firm represents the Friends of North Mono Basin, a group of long-time residents in the community concerned about potential land use changes in the north Mono Basin area. In particular, they are concerned about the current proposal for a change in land use designation to facilitate a campground development at 228 Cottonwood Canyon Road (“Project”). The Project includes an up-zone of the designation for the 20-acre Project site from Rural Residential (“RR”) to Rural Resort (“RU”).

The purpose of this letter is to inform you that, pursuant to the California Environmental Quality Act (“CEQA”), the County must analyze the environmental impacts associated with the proposed up-zoning as well as the proposed campground development. As discussed in more detail below, changing the designation of the Project site from RR to RU *significantly* increases the allowed density and intensity of uses there, which will, in turn, result in potentially significant environmental impacts that have not yet been analyzed. Given the remote location of the site, these impacts could include impacts to aesthetics (e.g., visible features such as water tanks, and light and glare), hazards (e.g., wildfire), noise, public services, and utilities and service systems. The potential *cumulative* impacts of approving this Project are even greater: just a few months ago, another property owner in the same area sought a similar up-zoning to RU to allow a commercial campground, event space, and ATV park. Indeed, there are numerous parcels

in the area currently designated RR that could seek a similar General Plan amendment, if the County allows the Project to move forward. The cumulative effect of redesignating even one parcel, much less the larger area, “Rural Resort” would be significant; it could transform this remote, quiet, and open part of the County into a commercial recreation zone, with all the noise, light, glare, service demands, etc., that normally accompany such uses. Before considering the proposed Project, the County must fully analyze these impacts.

Nor can the County simply rely on the environmental impact report (“EIR”) prepared for the 2015 General Plan. As discussed below, that General Plan assumed that the site could be only minimally developed with single-family residential uses and accessory buildings, and analyzed impacts accordingly. It did not assume that the area would be developed with hundreds of units of lodging and/or RV parking spaces, as the RU designation would allow, nor did the EIR analyze the impacts of such use. Because these impacts would be significant, the County must prepare either a standalone EIR or a subsequent/supplemental EIR for the proposed Project.

We are submitting these comments in advance of receiving the Project staff report and accompanying materials because we have been informed that only an addendum to the General Plan EIR is being prepared. As discussed below, an addendum is insufficient as a matter of law. We intend to provide additional comments if and when an addendum is provided for public review.

I. The Proposed Project Significantly Increases the Allowed Density and Intensity of Uses on the Site.

Under state law, the general plan is “the ‘constitution’ for future development,” to which all local land use decisions must conform. *Leshar Communications, Inc. v. Walnut Creek* (1990) 52 Cal.3d 531, 540. At the heart of any general plan is the land use element, which must set forth the standards for building density and intensity applicable to the territory covered by the plan. See Gov. Code § 65302(a); *Twain Harte Homeowners Assn., Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 696-99, superseded by statute on other grounds. These standards establish the holding capacity of the plan area and serve as a blueprint for all future development there. See *Koster v. County of San Joaquin* (1996) 47 Cal.App. 4th 28, 41. Thus, the local general plan, through the land use element, defines a jurisdiction’s commitment to a particular level of development for the area.

The County General Plan’s Land Use Element establishes the standards for building density and intensity for the County’s unincorporated areas. These standards

offer a range of allowable uses, with maximum densities/intensities for each land use designation. The proposed Project site is currently designated and zoned Rural Residential (RR). This designation and zoning allows for larger-lot single-family dwelling units with ancillary rural uses in areas away from developed communities. The RR designation requires a minimum parcel size of five acres and permits density of one dwelling unit per lot, along with an accessory dwelling unit and accessory buildings, and small-scale agriculture.

The proposed Project would amend the designation and zoning of the project site to Rural Resort (RU), which allows for one dwelling unit per 5 acres, accessory dwelling units, and accessory buildings, as well as lodging facilities and recreational vehicle parking. In particular, the RU designation allows 40 units of lodging per acre, up to a total of 150 units per site. Alternatively, lots designated RU may be developed with up to 17 recreational vehicle parking spaces per acre. Mono County General Plan at II-180. Thus, the proposed RU designation and zoning would allow much higher building density than the RR designation, *i.e.*, 4 dwelling units with accessory dwelling units and accessory buildings; or up to 150 lodging units; or approximately 255¹ recreational vehicle parking spaces. *Id.*

The draft environmental impact report (“DEIR”) for the General Plan did not evaluate potential impacts associated with development of the Project site under the RU designation. It evaluated anticipated RR uses on the site at the much lower density of one dwelling unit plus accessory buildings per lot. If the County were to approve the requested general plan amendment to up-zone the site, the applicant (or, crucially, a future owner of the property) could develop the site with hundreds of lodging units and/or RV spaces, up to the maximum allowable levels under the RU designation. As discussed below, this potential development must be analyzed under CEQA before the Project site is up-zoned, even if the applicant is only proposing a fraction of that development today.

II. CEQA Requires the County to Analyze the Potential Impacts Resulting from the Whole of the Project, Including Development Consistent with the RU Designation.

When considering how CEQA applies to land use planning enactments, such as general plans or amendments to them, courts have consistently held that lead agencies must analyze the environmental impacts that could result from the ultimate amount of development allowed by the general plan or amendment. See *City of Redlands v. County*

¹ Deducting 5 acres for the primary residence on site, 15 acres x 17 RV parking spaces per acre = 255 RV spaces.

of San Bernardino (2002) 96 Cal.App.4th at 406-09 (requiring county to prepare an EIR for general plan amendments that would allow additional development in unincorporated area within city's "sphere of influence"); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025-28 (invalidating EIR that failed to analyze reasonably foreseeable consequences of full build out under proposed development plan). As the court in *City of Redlands* explained, "CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment." 96 Cal.App.4th at 409. Thus, "an evaluation of a 'first phase-general plan amendment' must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment." *Id.* (quoting *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 193-94 (holding that city must prepare EIR for general plan amendment adopting land use designations for a landfill)).

Critically, the lead agency must review the impacts of development allowed by a proposed plan regardless of whether that development is currently proposed. *City of Carmel-by-the-Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 235,244 (rezoning was "commitment to expanded use of the property" that must be analyzed under CEQA even if "no expanded use of the property was proposed"); *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d at 194-95 ("The fact future development is not certain to occur and the fact the environmental consequences of a general plan amendment changing a land use designation are more amorphous does not lead to the conclusion no EIR is required."); *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d at 279, 282.

Here, no such analysis has been done. As noted above, the General Plan EIR did not evaluate such density for the area, and thus the County cannot rely on the General Plan EIR to satisfy CEQA when considering the proposed Project. Moreover, as discussed below, the substantial increase in the allowed density/intensity of use on the site could have significant environmental impacts not previously analyzed. As a result, an addendum to the General Plan EIR is also insufficient. CEQA Guidelines § 15162. Accordingly, the impacts from that build-out must be evaluated in an EIR.

III. The Project's Environmental Impacts Are Potentially Significant.

Under CEQA, a lead agency is required to conduct environmental review for any discretionary project that could have a significant, adverse effect on the environment. The fact that the existing designation and zoning for the Project site were considered in a prior EIR does not excuse the County from conducting supplemental environmental review when considering a change in the designation and the zoning to expand uses and significantly increase density there. Certainly, supplemental review has been required

under CEQA for far less significant modifications. *See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 937 (holding that a four-acre increase in the size of an amphitheater project, a 200 percent increase in seating capacity, and the acoustic effects of modifying the placement of the stage were “certainly . . . sufficiently important to require consideration of their effects in a later EIR.”); *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 361, 364–365 (discovery after completion of the EIR that project would impact a quarter of an acre of new wetlands required the filing of a subsequent EIR); *American Canyon Cmty. United for Resp. Growth v. City of Am. Canyon*, 145 Cal.App.4th 1079-80 (increase in project from 154,000 to 173,000 square feet could create substantial environmental traffic impacts); *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 696 (change in general plan expanding heavy industrial development and eliminating certain seismic safety requirements required further environmental review).

As discussed throughout this letter and other comment letters submitted previously, the proposed increase in density and change in land uses have the potential to result in significant impacts that have not been analyzed. For instance, as discussed above, the change in designation and zoning from RR to RU would greatly expand the allowed density of uses on the site to allow up to 150 lodging units or 340 RV spaces. This density would bring hundreds of additional visitors to the area, forever altering the character of the North Mono Basin. What is now a remote, high desert, rural, and picturesque environment would be altered to a busy commercial area with the traffic congestion, noise, air pollution, and visual impacts that go with these uses.

The visual impacts could be significant: Given the existing setting, where there is minimal development and lighting, the campfires, headlights, and other lighting from a major lodging/RV park would be visible from miles around. The proposed Project site is in close proximity to the Mono Basin National Forest Scenic Area – as was the previous RU up-zoning proposal that is now withdrawn. The Swiggum Project also proposes development on both sides of Cottonwood Canyon Road, despite the fact that there is ample area to develop the proposed Project on the portion of the property east of the road. Developing both sides of the road will infringe on the viewshed from residences to the south and would exacerbate visual impacts to neighbors.

Similarly, adding hundreds of units of lodging/RV parking on the site would necessarily generate substantial noise, as visitors enter and exit the site, use amenities, etc. Moreover, there is no utility providing electric power in the area. All power is either created via diesel or gasoline generators, which are exceptionally noisy and emit

polluting emissions. While solar is used by some nearby residences, it would likely not be a feasible option to power the lodging/RV parking allowed by the proposed up-zoning.

Perhaps most importantly, because the Project would include use of camp fires and because the Project site is in a very high fire risk area, the Project would exacerbate wildfire hazard risks. See CEQA Guidelines, Appendix G, Section IX(g) and XX (project would have significant impact if it exposes people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires). The Swiggum property is located in an area susceptible to high winds. According to the fire commissioners of Mono City Fire Protection District, the Project site area is subject to high winds that travel down Lundy Canyon as well as gusts from the Bodie Hills. See, Exhibit A (Comments on Rea Ranch application from D. Swisher, Chair of the Mono City Fire Protection District to the Mono County Community Development Department). Wind gusts of 110 miles per hour have been recorded in the area. *Id.* Vegetation on the site and in the surrounding area consists of highly flammable species, such as sagebrush, bitterbrush, rabbitbrush, and pinion pine. Sparks carried by wind could easily ignite dry vegetation and grow into a substantial wild fire. Fires in the fragile landscape of the area severely impacts the community through highway closures, loss of tourism, and long-term scarring of the landscape. *Id.* Moreover, the closest fire protection services in Mono City do not have adequate water and equipment needed to suppress a wildfire. *Id.* In addition, during the week when volunteer fire fighters are unavailable in the area, the Project area would rely on fire fighters from Lee Vining or Bridgeport, which would delay service and add to the potential for wildfires to spread. *Id.*

The lack of adequate fire protection services in the area points to another set of potentially significant impacts: those associated with constructing new public facilities to maintain acceptable service ratios or response times if full build-out of the site occurs. Such development could plainly have significant environmental impacts, given the sensitive resources in the undeveloped areas near the proposed Project site.

Similarly, extending necessary utilities to the site, such as water, sewer, power, and telecommunications, would have potentially significant impacts. See CEQA Guidelines, Appendix G, Section XV & XIX (lead agency must analyze if project would result in substantial environmental impacts associated with new public services facilities necessitated by the proposed project as well as the relocation or construction of new water, wastewater, power, natural gas, or telecommunications facilities). The existing well-water is not suitable for a commercial lodging facility, as it contains high levels of arsenic. As a result, an alternate source of water would have to be developed. As mentioned above, none of the lots in the Cottonwood Canyon Road area have utility electric power at this time. Residences use photovoltaic panels with diesel, propane, or

gasoline generator backup, which generates significant noise. Developing or extending commercial infrastructure in the rural area of the North Mono Basin would almost certainly have significant environmental impacts.

All of these Project-specific impacts would also contribute to potentially significant cumulative impacts. For example, if other properties in the area also seek land use designations to allow rural resort uses, the need for new public service facilities and utilities will be even greater, as will the environmental impacts of developing this infrastructure.

As stated above, the County is obliged to conduct environmental review of all of the Project's foreseeable environmental impacts prior to considering approval of the general plan amendment. Because these impacts are potentially significant and were not analyzed in the 2015 General Plan EIR, they must be analyzed in an EIR for the Project.

VI. The County Is Obligated to Consult with Area Tribes

In 2004, the legislature adopted SB 18, Traditional Tribal Cultural Places. One of the requirements under this legislation is that any adoption or amendment of a general plan must include consultation with specified California Native American tribes and to provide them with an opportunity to consult with the local governments about their proposed action. Government Code § 65352.3(a)(1). The list of tribes that must be notified is obtained from the Native American Heritage Commission ("NAHC"). *Id.* Therefore, because the Project proposes a general plan amendment and zoning change, in addition to evaluation of potential impacts resulting from the proposed general plan amendment, the County is obliged to consult with the Mono Lake Kutzadika'a Tribe and other tribes in the area as required. If the Tribe identifies cultural resources in the area that could be affected by the Project, those potentially significant impacts must be analyzed in an EIR as well.

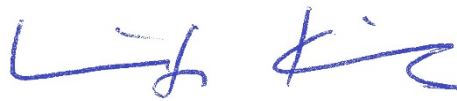
V. Conclusion

For all these reasons, it is our opinion that the County cannot move forward with the proposed Project unless and until an EIR is prepared.

Wendy Sugimura
July 23, 2021
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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

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

Winter King

WK:CB

Attachments:

Exhibit A - Letter re: Rea Ranch from Fire Commissioner

EXHIBIT A

TO: Mono County Community Development Department

RE: Rea Ranch

We, the fire commissioners of Mono City Fire Protection District have concerns regarding this project. Having reviewed the plans regarding the camping and ATV use, we raise the following issues:

(1) Camping and Sanitation

The Rea Ranch plans to have 40 campsites with no hookups for the campers and only portable bathroom facilities. We are concerned that providing sanitary facilities for possibly 200 or more people within a confined space does not promote an atmosphere favorable to tourism in Mono County or conducive to environmental regulations and concerns about cleanliness.

(2) Fire Danger

From first hand experience and second hand reporting in the Mono Basin we are aware that when people camp they will want to have fires for cooking and/or warmth. The Rea Ranch lies within an area of very high fire danger due to high winds that come off of the Sierra Crest and down Lundy canyon, as well as gusts that come from the Bodie Hills. Recently, wind gusts have been registered at 110 miles per hour. Further Rea Ranch area lies within a sandy landscape with sparse,

but highly flammable vegetation, including Sagebrush, Bitterbrush, Rabbitbrush and Pinion Pine. All it would take is one spark in dry vegetation or carried by the wind and we could potentially have a fire the size of the Mountain View Fire with problems affecting containment due to response time, weather patterns and access. Such a fire, no matter it's size, would also produce a scar on the landscape, akin to the Beach Fire within the Mono Lake Tufa State Natural Reserve and the Marina Fire just North of Lee Vining. Both of these fires resulted in highway closures, negatively affected tourism and have permanently blemished the landscape.

(3) Water Storage

There is no water storage on the property and the current well does not have the output capacity to supply enough water to fight a fire. As Mono City is the closest fire department, our trucks and crews would respond. Our two trucks together hold 1,500 gallons of water. This is not enough water to suppress a fire. Further, because Mono City Fire Protection District does not have a water tender, a vehicle and water would have to be brought in from Lee Vining or Mammoth Lakes. A delay in bringing more water to the site could further hamper efforts towards fire suppression, contribute to the potential for sparks to travel to nearby residences and other structures and increase the probability of

injuries to emergency responders and members of the public.

(4) Mono City Fire Protection District Volunteers

The Mono City Fire Protection District is a 100% volunteer fire department with one EMT. Our fire fighters work out of the area Monday through Friday. This means that medical calls at the Rea Ranch during the week will mostly be responded from Lee Vining or June Lake or Bridgeport. If an injury occurred at the ATV track it would take upwards of 30-45 minutes for a medical response.

Based on the concerns raised above, we do not feel it would be in the best interest of Mono County to approve this application.

Sincerely,

David Swisher
Chairman

ATTACHMENT B

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WINTER KING
Attorney
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March 21, 2022

Via Electronic Mail Only

Wendy Sugimura
Community Development Director
Mono County
Mammoth Lakes Office
1290 Tavern Rd., Ste 138
PO Box 347
Mammoth Lakes, CA 93546
E-Mail: wsugimura@mono.ca.gov

Re: 228 Cottonwood Canyon Road

Dear Ms. Sugimura:

As you know, this firm represents the Friends of North Mono Basin, a group of long-time residents in the community concerned about potential land use changes in the north Mono Basin area. It is our understanding that the proposed Specific Plan for 228 Cottonwood Canyon Road (“Project”) is scheduled for a Planning Commission hearing on May 19, 2022.

As we stated in our letter on this Project dated March 1, 2022, we request that the County provide a written confirmation of the review and approval process for the proposed Project should it be processed as a specific plan. In addition, we request that the public be provided a comprehensive document describing and mapping the proposed Project (to date the applicant appears to have submitted two different proposals, making it unclear exactly what is being proposed and where) in sufficient detail for the public to understand the proposal. Finally, we request that the County allow a sufficient public comment period—**at least 30 days**—to ensure adequate time for the public to review the Project and associated environmental review.

Wendy Sugimura
March 21, 2022
Page 2

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read "Winter King". The signature is stylized and cursive.

Winter King

WK:CB

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