

**TRANSMITTAL
of the
FINAL
ENVIRONMENTAL IMPACT REPORT
for the
VENTANA SPECIFIC PLAN**

Date: July 8, 2021

To: Commenting Agencies/Parties

From: Nicole Sauviat Criste, Principal
Terra Nova Planning & Research

Subject: Final EIR/Response To Comments on the Draft EIR (SCH No. 2021010037) Prepared for the City of Indio, Indio, California

Thank you for taking the time to review the above referenced Draft EIR. Enclosed please find a copy of the Final Environmental Impact Report/Response to Comments (FEIR) for this project. The Final EIR includes your verbatim comments and responses to same. Your correspondence and those of other agencies/parties are included in Section II.

A Public Hearing by the Indio City Council on this matter is scheduled for 5:00 PM on July 21, 2021 in the City Council Chambers at City Hall, 150 Civic Center Drive, Indio, California 92201.

The proposed project and Draft/Final EIR, will be considered at that time. As appropriate, the Council may certify, continue or reject the EIR.

If you have any questions, please contact Leila Namvar, Principal Planner at the City of Indio (760) 541-4258.

Thank You!



NSC/kc
Enclosure

cc:
Leila Namvar, City of Indio
File



**CITY OF INDIO
VENTANA SPECIFIC PLAN**

**FINAL
ENVIRONMENTAL IMPACT REPORT**

PREPARED FOR

**CITY OF INDIO
100 CIVIC CENTER MALL
INDIO, CA 92201**

PREPARED BY



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June 2021

TABLE OF CONTENTS

| | Page |
|--|------|
| 1.0 INTRODUCTION | 1 |
| 1.1 Introduction | 1 |
| 1.2 Organization of the Final EIR | 1 |
| 1.3 Draft EIR Public Review Period | 1 |
| 1.4 Certification of the Environmental Impact Report and Project Selection Process | 2 |
| 1.5 Consideration of Recirculation | 2 |
| 2.0 RESPONSE TO COMMENTS | 3 |
| 2.1 Introduction | 3 |
| 2.2 Response to Comments | 4 |
| A. Governor’s Office of Planning & Research, State Clearinghouse | 4 |
| B. California Department of Conservation, Division of Land Resource Protection | 5 |
| C. City of La Quinta | 9 |
| D. Law Offices of Matt H. Morris | 10 |
| E. Rick and Venessa Neff | 35 |
| F. Sam Kyle | 36 |
| G. Tom Moon | 37 |
| H. Stewart Marlborough | 38 |

APPENDICES

| | |
|---|----|
| Appendix A Comment Letters | 39 |
| Appendix B Response to Comments for Ventana Initial Study | 40 |



1.0 INTRODUCTION

1.1 Introduction

This Final Environmental Impact Report (EIR) has been prepared in accordance with the California Environmental Quality Act (Public Resources Code §§21000-21189.3) and the State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, §§15000-15387).

The City of Indio (City) prepared this EIR to evaluate the potential environmental impacts associated with the construction and operation of the proposed VENTANA Specific Plan project. The City is the Lead Agency for the Project. The Final EIR includes the Draft EIR, written comments received during the public comment period, and responses to those comments.

According to State CEQA Guidelines §15089, the requirements for a Final Environmental Impact Report are:

- a) *The Lead Agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these Guidelines.*
- b) *Lead Agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.*

1.2 Organization of the Final EIR

As directed by CEQA Guidelines §15132, the Final EIR consists of two sections:

Section 1 – Introduction. This Section provides an introduction and summarizes the CEQA requirements for preparation of responses to substantive public comments on the Draft EIR.

Section 2 – Response to Comments. This Section includes comments received during the public comment period and the City’s response to each comment. Where the same question or concern has been raised by multiple commenters, the first instance when the comment was addressed is referenced in the response.

1.3 Draft EIR Public Review Period

The Draft EIR was released for public comment on March 24, 2021. The public comment period extended through May 7, 2021. The document was sent to the California State Clearinghouse, public agencies, and individuals who had expressed an interest or requested the Draft EIR. In

addition, a Notice of Completion/Notice of Availability was published in the Desert Sun. The Notice of Completion/Notice of Availability was also sent to the Riverside County Clerk. Copies of the Draft EIR were also made available at City Hall and on-line at the City's website.

The City received eight comment letters or emails during the public comment period. These are included in their entirety in Appendix A of this document.

1.4 Certification of the Environmental Impact Report and Project Selection Process

The City of Indio City Council will consider the EIR in its consideration of the Project, at a public hearing on July 21, 2021. In order to certify the Final EIR, CEQA Guidelines §15090 prescribe that the City Council must find that:

- a) The Final EIR has been completed in compliance with CEQA;
- b) The Final EIR was presented to the decision-making body and that the decision-making body reviewed and considered the information contained in the Final EIR; and
- c) The Final EIR reflects the Lead Agency's independent judgment and analysis.

If the City Council certifies the Final EIR, it can then consider approving the project, in whole or in part.

1.5 Consideration of Recirculation

CEQA Guidelines §15088.5 requires a Lead Agency to recirculate a revised EIR only if significant new information is identified following the release of the Draft EIR. "Significant new information" can include changes in the project or environmental setting as well as additional data or other information (for example, a new significant environmental impact or a substantial increase in the severity of an environmental impact). New information is not considered significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the proponent has declined to implement that was not analyzed in the Draft EIR.

The City has evaluated the information contained in this Final EIR as well as all other information in the record, and has determined that no significant new information has been added to the EIR after public notice was given of the availability of the Draft EIR for public review. Therefore, CEQA does not require recirculation of the Draft EIR.

2.0 RESPONSE TO COMMENTS

2.1 Introduction

The Response to Comments on the Draft EIR for the Project has been prepared in accordance with CEQA Guidelines Sections 15088, 15089 and 15132. Table 2-1 lists comments received on the Draft EIR from various public agencies and interested parties. These comments address aspects of the Project or Draft EIR, including clarification of information, comments upon the adequacy of environmental analysis, and similar issues. The complete letter or email is included Appendix A. If the letter or email included attachments, these are provided as well. Each letter or email has been provided brackets identifying each specific comment for which a response is provided and a corresponding comment identification number. Following each comment is a specific response that matches the comment number.

| Table 2-1 Master List of Comments Received | | |
|---|-----------------------|--|
| Assigned Letter | Commenter Name | Agency / Affiliation / City of Residence |
| A | | State of California Governor's Office of Planning and Research State Clearinghouse and Planning Unit |
| B | Monique Wilber | California Department of Conservation, Division of Land Resource Protection |
| C | Sijifredo Fernandez | City of La Quinta Design and Development Department |
| D | Matt H. Morris | Law Offices of Matt H. Morris |
| E | Rick and Venessa Neff | Indio |
| F | Sam Kyle | Indio |
| G | Tom Moon | Indio |
| H | Stewart Marlborough | Indio |

2.2 Response to Comments

A. Governor's Office of Planning & Research, State Clearinghouse

The State Clearinghouse website printout is provided to demonstrate that the Draft EIR was distributed by the Clearinghouse to State agencies, and that the Department of Conservation provided a letter commenting on the Draft EIR (see comment letter B, below). No further response is required.

B. California Department of Conservation, Division of Land Resource Protection

Comment B-1 Project Description

The project proposes a low-density residential development consisting of 103 residential units, a dog park, pedestrian trails, and open space common areas. A General Plan Amendment is proposed concurrent with the project that would create a new residential land use designation that allows a residential density of up to three dwelling units per acre.

The entire project area, approximately 45 acres, is currently designated as Prime Farmland by the Department of Conservation's Farmland Mapping and Monitoring Program.

Response B-1 Comment noted. The commenter correctly describes the Project.

Comment B-2 Department Comments

Although conversion of agricultural land is often an unavoidable impact under CEQA analysis, feasible alternatives and/or feasible mitigation measures must be considered.

In some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and therefore, mitigation is not required. However, reduction to a level below significance is not a criterion for mitigation under CEQA. Rather, the criterion is feasible mitigation that lessens a project's impacts. As stated in CEQA guidelines, mitigation includes, "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."

The conversion of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department advises the use of permanent agricultural conservation easements on land of at least equal quality and size as compensation for the loss of agricultural land. Conservation easements are an available mitigation tool and considered a standard practice in many areas of the State. The Department highlights conservation easements because of their acceptance and use by lead agencies as an

appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

<http://www.calandtrusts.org/resources/conserving-californias-harvest/>

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

Response B-2

The City has designated the Project site for residential development, with or without the proposed Project. The General Plan and General Plan EIR were adopted and certified, respectively, in September of 2019. The General Plan EIR considered the impacts of the General Plan's conversion of agricultural land throughout the City, including lands in the Desert Estates designation. As stated in the General Plan EIR:

"The GPU allows agricultural activities within the Desert Estates (DE) designation. The designation is intended to help preserve the character of natural features while allowing the lowest intensity and amount of residential neighborhood development. The DE areas would permit a mix of single-family residential, agriculture, and parks and recreation, as well as hospitality and recreational uses. Additionally, GPU Policy PR-5.1 supports agricultural activities, including small scale, urban agriculture and farming in residential areas if they are well designed and compatible with existing or planned land uses. The proposed land use designations that allow agricultural uses, also include other nonagricultural uses (Desert Estates designation); therefore, implementation of the GPU could result in the direct conversion of agricultural land.

Rising land values, water costs, increasing taxes, “edge effects” (discussed in Section 4.2.6 below), and other land use conflicts have contributed to a substantial reduction in agricultural viability within the Planning Area. The adopted General Plan and other planning efforts have contemplated the conversion of agricultural lands in the City’s core to non-agricultural uses. Nevertheless, development facilitated by the GPU could impact up to 520.7 acres of active farmland and 1,441.8 acres of fallow farmland, as these Important Farmlands have proposed land use types that allow non-agricultural uses. Therefore the potential exists to convert lands classified as Important Farmland. Because this land meets the criteria to be classified as Important Farmland, and is an important irreplaceable resource, the potential conversion of this land to non-agricultural uses would be a significant impact.”

As described above, the City recognized that its intent in adopting the General Plan’s land use map would result in significant impacts to agriculture, as these lands would be lost to development.

The Project Draft EIR also considered the impacts of the General Plan Amendment (GPA) and implementation of the Project on agriculturally designated lands. As described in the Draft EIR, the Project site is surrounded by urban development on all sides, including residential units on the west, north and east, and an arterial roadway and golf course country club community on the south. The Project site is one-half mile from neighborhood commercial shopping centers and heavily populated areas of Indio and La Quinta.

The GPA, as described in the Draft EIR, would result in the loss of 45 acres of farmland. Although the provision of conservation easements could have been considered by the City as mitigation in its adoption of the General Plan, the City found that no feasible mitigation was available to reduce the impacts associated with the loss of agricultural lands. However, as described in the Draft EIR, the General Plan EIR, from which the Project EIR tiered, determined that there was no feasible mitigation for the loss of farmland resulting in the approval of the General Plan, including the Project site. In its certification of the General Plan EIR, the City Council determined that:

“Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained

workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”¹

The Project, as with the rest of the City, will result in significant impacts to agricultural resources. However, consistent with the City’s Findings in Resolution No. 10106, the Project’s loss of agricultural land is overridden by the economic and social benefits associated with the provision of high quality housing on the Project site, which will increase the diversity of housing stock in the City, and increase property values in the area.

¹ Resolution No. 10106, of the City Council of the City of Indio Certifying the Final Environmental Impact Report and Adopting Findings and a Statement of Overriding Considerations for the Indio 2040 General Plan and City of Indio Climate Action Plan. September 18, 2019.

C. City of La Quinta

Comment C-1 Attached are the comments from the City of La Quinta based off the Environmental Impact Preport (sic) prepared for the Ventana Project. Thank you.

Response C-1 The City thanks the City of La Quinta for participating in the review of the EIR.

Comment C-2 The traffic impacts are not great with this project, but they do add traffic to the intersection of Jefferson and Avenue 50. It would be beneficial as mitigation if the project could include the install a WB Right turn overlap phase to accommodate the additional am traffic, they contribute to, and it would be beneficial to have when events unload from the polo grounds.

Response C-2 The commenter acknowledges that the proposed Project will not have significant impacts on traffic, in particular at the intersection of Jefferson Street and Avenue 50, which La Quinta and Indio share. As detailed in the Draft EIR and the Project's Traffic Impact Analysis (Appendix K of the Draft EIR), the proposed Project will not significantly impact this intersection. As shown in Table 2.18.3 of the Draft EIR, the GPA, which represents the worse-case condition, would increase delay by 4/10th of a second in the morning peak hour, and 5/10th of a second in the evening peak hour. This increase is marginal, and well below both La Quinta's and Indio's standard for determining an impact to an intersection (3 seconds). Therefore, under CEQA, the Project cannot be asked to mitigate an impact that it does not create or worsen. However, the City will continue to work with the City of La Quinta in making improvements to this shared intersection to assure acceptable long term operation.

Comment C-3 The intersection of Verano Drive is conditioned to have a signal some day in the future when it meets warrants. However, the project should also be conditioned to install full WB LT improvements for Verano Drive immediately.

Response C-3 The City concurs with this comment, and the conditions of approval prepared for this Project by the City Engineer include the construction of the raised center median, including a west-bound left turn pocket at Verano Drive.

D. Law Offices of Matt H. Morris

Comment D-1 Attached please find our comments regarding the Ventana project Draft EIR. I will be sending the 5/5/21 letter's exhibit - my prior letter - in a separate email.

Let me know if you have any questions.

Response D-1 The City acknowledges receipt of the commenter's two letters. The first, dated May 5, 2021, is the basis of the comments below. The second, dated July 29, 2020, was previously addressed by the City, and it and the City's responses are attached to this Final EIR as Appendix B. The commenter's comments and City responses begin at page 15 of that Appendix.

Comment D-2 This firm represents the Kincaid family and the interests of numerous other neighbors and adjoining neighbors of the proposed Ventana project. We previously sent you a letter about this project (attached) when it was proposed to be adopted with a negative declaration. The issues raised in that letter were not adequately addressed by the developer. Many are still not adequately addressed in the Draft Environmental Impact Report (DEIR).

The following comments on the Ventana Specific Plan (VSP) and DEIR are being submitted by adjacent residents and (sic) who strongly oppose changing the recently adopted City of Indio General Plan land use designation of the approximate 45-acre property from very low-density residential use (Desert Estate Neighborhood) to a proposed land use designation (Transitional Neighborhood) that will allow up to 3 dwelling units (du) per acre. These comments are also submitted after extensive consultation and review with retained environmental specialists.

The VSP appears to be an elaborate effort to assign a "spot" land use designation to accommodate a single individual to the detriment of the existing low density, high quality neighborhood that already exists in the area. There are already many suburban neighborhoods in the City of Indio and the General Plan's objective in establishing the Desert Estate land use designation was to allow a limited amount of land in the City to be set aside for high quality residences on large lots that wish to continue a rural agricultural tradition on their property. The new Indio General Plan was adopted in September 2019, less than two years ago, and removing a substantial portion of one of the nicer neighborhoods in the City for more suburban development is unreasonable. We found the DEIR to be self-serving and not an objective evaluation of potentially significant adverse impacts. Due to certain flaws that we have identified in the document, we highly recommend revising the DEIR and recirculating it to address the identified errors.

Response D-2 The City acknowledges the commenter’s representation of neighboring property owners, including himself. The commenter’s previously submitted letter, and the City’s responses to same are provided in Appendix B.

The City acknowledges the commenter’s opinion regarding the proposed GPA. The GPA is a policy decision that will be considered by the Planning Commission and City Council in public hearings for the Project.

The Draft EIR thoroughly analyzes the impacts of the GPA and the proposed Project, includes those comments raised by the commenter for the previously proposed Project. As demonstrated throughout this Response to Comments, the EIR does not contain any flaws or errors that would require revision and/or recirculation of the Draft EIR.

Comment D-3 General Comments

We carefully reviewed the entire DEIR and did not find a copy of the VSP in the document or appendices and thus were unable verify the statements in the Project Description. Also, a Specific Plan by law must contain details ranging from land use and design guidelines, to infrastructure and funding sources to implement the plan. Without access to the VSP it was not possible to examine each element of the Plan to determine if the information in the DEIR Project Description encompassed the whole of the project. We consider the failure to provide the VSP for public review a fatal flaw in the DEIR that requires correction and recirculation

Response D-3 It is neither required under CEQA nor customary for a Specific Plan to be appended to an EIR document. The Specific Plan is a public document which has been available at City Hall since prior to the release of the Draft EIR. As the commenter is aware, having done so on repeated occasions, City staff has been fully available to send documents to the commenter at his request. At no time during the Draft EIR’s comment period did City staff receive a request from the commenter for the Specific Plan document.

Comment D-4 There is second major error in the DEIR that affects much of the analysis. Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zone for the site is about 30 units, not 45. This finding is based on the fact that the 45-acre site is zoned CEIR-1 and CEIR-2. Under CEIR-2 the maximum number of units is one unit per two (2) acres, not one acre. The current baseline for evaluation of potential impacts is not the current General Plan designation, but the actual number of dwelling units that

can be constructed under both the General Plan designation and the zone classification for the property. We raised this issue in our original comments for this project and the issue has been ignored. Thus, the delta between the existing number of units that can be constructed and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. All elements of the DEIR that rely upon quantitative evaluation are in error because of this analytical flaw. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying on a baseline of 45 units requires reevaluation.

Response D-4 The commenter is incorrect. Under California law, the General Plan is the governing document for land use. The Zoning Ordinance implements the land uses of the General Plan. In addition, under CEQA, the analysis of impacts is directed at the worse-case condition, in order to assure that the impacts associated with any particular project are considered at their maximum potential level. In this case, the General Plan assigned a density maximum of 1 unit per acre to the Project site, allowing up to 45 dwelling units to occur. This is also the intensity of development considered in the General Plan EIR, from which the Draft EIR tiered. Therefore, the analysis in the Draft EIR considered the correct level of impact and the correct density for the Project site.

Comment D-5 The third major issue of concern is that the project description indicates that the proposed General Plan designation, Transitional Neighborhood, would allow "hospitality" uses, but this topic is never discussed again in the document and certainly what activities are allowed is not presented or discussed. For example, if "hospitality" uses are permitted, this issue requires evaluation at least in the Vehicle Miles Traveled section of Traffic and the Noise section of the DEIR. It appears that this topic was intentionally avoided throughout the DEIR and it must be given full consideration in a re-circulated DEIR.

Response D-5 The hospitality use has been included in the description of permitted land uses because it is currently included in the Desert Estates Neighborhood designation, and as a transitional land use designation, was considered an appropriate inclusion in the GPA. Because it is included in the Desert Estates Neighborhood designation which currently applies to the property, it was also studied in the General Plan EIR. As a tiered document, the Draft EIR does not, therefore, need to analyze the impacts of that land use, since the General Plan EIR addressed them, and since no hospitality land use is proposed for the Project.

Comment D-6 Specific Comments

p.2.3-4 Are the SRF homes to the north and east one acre in size? They appear larger and many of these lots appear to be several acres. Installing suburban development in place of the currently designated 1- and 2-acre lots creates a harsh transition the character of the estate neighborhood to the north and east.

Response D-6 The properties to the north and east of the Project site vary in size. Properties to the north include undeveloped one-acre lots and developed homes on about 2 acres. Properties to the east include the commenter's home, which occurs on approximately 7 acres, and homes and vacant lots ranging from one to 5 acres. The commenter's opinion regarding the transition is noted.

Comment D-7 p.2.3-10 The analysis of Scenic Vistas portrays the change in views to surrounding mountains internally only for residences to the SE. In the future construction of the residences on the 45-acre site will cause the following adverse changes. The foreground views to Mountains will be visibly changed by allowing the number of structures disrupting background mountain views (background long distance) to more than double – substantially reducing visual access corridors and quality of scenic views.

Response D-7 The analysis of scenic vistas includes two views from the southeast (which is assumed to be the intent of the commenter's "SE" term). The first, View 1, shows the impact of the Project from the south side of Avenue 50, at the southeast corner of the Project. As shown in Exhibit 2.3-6 and described in the text, current views of the foothills are blocked by trees in adjacent development, but the mid-range and tops of the mountains are visible. With the proposed Project, the foothills will be further obstructed, but the mid-range and tops of the mountains will remains visible. The second view, View 2, was taken from the western boundary of the commenter's property, about mid-way along his property line. As shown in Exhibit 2.3-7, because existing landscaping on the west of the Project site contains mature trees, and the commenter's residence is elevated above the Project site, and his property includes a number of existing palm trees, views of the mountains to the west are currently obstructed and will remain so, but the structures resulting from the proposed Project will not significantly change the mountain vistas. It should be noted that the foreground views of vacant land are not considered a scenic vista by the City, and therefore do not bear on an analysis of scenic vistas under CEQA.

Comment D-8 p.2.3-11 Impacts on Scenic Views – statement re: private views not being subject to CEQA. Actually, they are subject to CEQA review. Specifically, *Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477* contains the following finding:

Based on this evidence, plaintiffs assert the City abused its discretion by certifying the Final SEIR without analyzing the impacts the project would have on views from their adjacent private property.

Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) Additionally, California landowners do not have a right of access to air, light and view over adjoining property. (Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.) Plaintiffs concede this authority, but claim they are merely attempting to enforce CEQA's requirement that the City identify and mitigate the significant environmental effects of a project before approving it. (CEQA Guidelines, §§ 15002, 15021.)

An EIR must identify the "significant environmental effects" of a proposed project. (§ 1100, subd. (b)(1); CEQA Guidelines, § 5126, subd. (a).) For purposes of CEQA, "environment" means physical conditions existing "within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Thus, aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project. (§ 21100, subd. (d); Ocean View Homeowners Ass'n, Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402- 403.) However, a lead agency has the discretion to determine whether to classify an impact described in an EIR as "significant," depending on the nature of the area affected. (CEQA Guidelines, § 15064, subd. (b); National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1357 [varying thresholds of significance may apply depending on nature of area affected].) In exercising its discretion, a lead agency must necessarily make a policy decision in distinguishing between substantial and insubstantial adverse environmental impacts based, in part, on the setting. (CEQA Guidelines, § 15064, subd. (b).) Where the agency determines that a project impact is insignificant, an EIR need only contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, § 15128.)

Based on the preceding impacts to private views, and to give such analysis context, the DEIR must evaluate GP policies to see if public and private views to important scenic vistas is given importance in GP.

View 1 – the analysis of the public view to the mountains (background view) is inaccurate. The current view shows a clear visual path to the mountains with some mid-ground interference from vegetation. The after-development view of the mountain background is substantially altered by development. Visual access to the mountains/hills south of San Jacinto Mountain is substantially altered. This public view clearly experiences a substantial adverse impact.

Response D-8 The commenter contends that *Mira Mar Mobil Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 stands for the proposition that the City is obligated under CEQA to study views from adjacent private property. Tellingly, the commenter only quotes that Petitioner’s argument and not the Court’s ruling. This is not surprising because the Court held the opposite of the commenter’s contention:

“neither state law nor local law protects private view from private lands and the rights of one private landowner cannot prevail over the rights of another private landowner”

The Court further held that:

*“[u]nder CEQA, the question is whether a project will affect the environment of persons in general, **not whether a project will affect particular persons.**”* (Id.; Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) (Emphasis added.)

“Additionally, California landowners do not have a right of access to air, light and view over adjoining property.” (Id.; Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.)

Despite this very clear law that private views warrant zero special treatment under CEQA, the commenter continues with an argument that private views were not considered by the City in the present case. In fact, in the present case the City undertook the required CEQA analysis precisely as described in the *Mira Mar Mobil Company* case. In the present case, the City did a thorough and comprehensive study of views and aesthetics as described in the EIR reflecting the City’s General Plan, zoning ordinances and related planning requirements (collectively the “City’s Planning Requirements”). This is exactly what is required by CEQA and what is described in the case cited by the commenter. The City has fully complied with its obligation to study aesthetics and views.

As it relates to impacts associated with View 1, see Response D-7.

Comment D-9 p.2.3-14 In View 2 homes east of the project's SE boundary currently have a rural foreground view; mid-ground is suburban with landscaping, and an almost continuous background view of the hills and mountains. The VSP development and landscaping will substantially alter the background view, only limited and sporadic visual access to the hills will be available to the residents. Whether this loss of visual access by private residents can only be determined by an analysis of GP policies.

View 3 is actually illustrative of less impact on scenic vistas. The foreground retention basin minimizes less of access from adjacent residences in View 3 highlights the degree of changes in Views 1 and 2. View 3 foreground undergoes substantial change. (sic)

View 4 foreground view is dramatically changed. Views to the mountains in far background is lost in View 4. View to nearest mountains is disturbed but retained. Still a substantial change from the present views.

Based on the preceding description of view changes, we believe that any reasonable person would conclude the change in access to scenic views from public and private vantage points is a significant change, i.e., a significant adverse impact. The photo simulations clearly demonstrate the scope of the change.

Response D-9 As it relates to View 2, please see Response D-7. The commenter's statements regarding View 3 and View 4 as they relate to foreground views are not germane to a discussion of scenic vistas. As described in the Draft EIR and in Response D-7, foreground views of vacant land are not scenic vistas. As the comment relates to views of the mountains, which are considered scenic vistas, the Draft EIR, both in its text on pages 2.3-14 and 2.3-18, and in Exhibits 2.3-8 and 2.3-9, demonstrates that the impacts to views of the mountains will be less than significant, as the foothills are currently obstructed, and although the proposed Project will further obstruct these foothills, the mid-range and tops of the mountains will remain visible. As the commenter's statements relate to private views from surrounding properties, please see Response D-8.

Comment D-10 p.2.3-19 Analysis should be on existing designation not on hypothetical Suburban Neighborhood. Also, no analysis of and data supporting how Transitional Neighborhood can be similar in visual setting to Desert Estates Neighborhood; i.e., how is a Transitional neighborhood consistent and compatible scale to development intensity on its eastern and northern boundary. Using homes in a higher density designation on the west is an invalid and erroneous visual comparison due to the open space created by the

project site. Residences to the north and east are the appropriate and pertinent analytic comparison. The conclusion at top of page 2.3- 20 is not supported by objective analysis.

VSP impact – the comparison from Avenue 50 should be between the view to the site under the existing environmental visual setting and the proposed VSP development. This change will be dramatic. When compared to the visual setting to the east, please refer to View 1 and its impacts.

Response D-10 The commenter appears unfamiliar with the City’s General Plan. The Suburban Neighborhood is not a “hypothetical” land use designation. As stated in the Draft EIR, the Suburban Neighborhood designation is an existing, adopted designation in the General Plan, and the next designation in terms of intensity after the Desert Estates Neighborhood. The analysis on the referenced page is of the text of the proposed Transitional Neighborhood designation as it relates to the existing General Plan designations, and is the appropriate analysis for a section which analyzes the GPA in the context of “would the project conflict with applicable zoning and other regulations governing scenic quality,” which is the CEQA threshold question being addressed on this page. The use of the surrounding development and the proposed GPA and Specific Plan is the correct basis for analysis of scenic quality.

As regards impacts of the Specific Plan from Avenue 50, View 1, depicted in Exhibit 2.3-6 and described on page 2.3-11 is of Avenue 50, and correctly shows impacts to the northwest from Avenue 50. The top view of the Exhibit shows the current vacant condition, and the bottom view the developed condition. As correctly concluded in the Draft EIR, the public view from Avenue 50 will not be significantly impacted by the proposed Project.

Comment D-11 p.2.4-4 Riverside County also provides independent soil classifications; were Riverside soil classifications consulted? If not, it would be appropriate to do so since Riverside data is discussed below.

Response D-11 As stated in the Draft EIR, the General Plan EIR relied on Riverside County’s farmland mapping in its Exhibit 4.2.1. The project site occurs in the City of Indio. The appropriate source of information is the City’s General Plan and General Plan EIR.

Comment D-12 p.2.4-5 Area was farmed until 2019 according to adjacent residents. The 45-acre property is designated as Prime Farmland on County’s Important Farmland Map.

Response D-12 Comment noted. The Draft EIR correctly states that the site is designated as Prime Farmland on page 2.4-5.

Comment D-13 p.2.4-6–7 The analysis of losing Prime Farmland is flawed and represents a distorted rationalization for a finding of less than significant impact. This occurs for the following reasons. Prime Farmland is very limited resource, analogous to an endangered species. The GPA reduces the size of lots and removes agriculture as an approved use; thereby eliminating potential use of the onsite soil for its highest and best use. Note that several of the adjacent residences maintain date trees on their property and have them picked each year. The GPEIR found the cumulative loss of Prime Farmland in the City to be a significant unavoidable adverse impact. Approval of the GPA removes approximately 45 acres of Prime Farmland from potential agricultural productivity. Thus, at a minimum, the proposed GPA represents a cumulatively considerable contribution to an action the City has already found to be a significant adverse environmental impact. Presenting this action as a less than significant impact when it has already been deemed by the City to be a significant impact is a disingenuous finding at best and an intentional error in conflict (inconsistent) with the current General Plan at a minimum. This issue needs to be re-evaluated and the EIR recirculated to properly disclose this significant impact.

Response D-13 The findings of the Draft EIR are in no way in conflict with the findings of the General Plan or the General Plan EIR. On the contrary, the City acknowledged that the implementation of the General Plan, as an urbanized intensification of land uses on City lands, would have a significant impact on agricultural resources. As described in Response B-2, the General Plan EIR recognized that the loss of agricultural land, including Prime Farmland, would be a significant impact. The City Council, however, in its deliberations on the matter, determined that the benefits of implementing the General Plan outweighed these significant impacts, and adopted Findings and a Statement of Overriding Considerations.

In the present case, implementation of the GPA and the proposed Project will not increase this significant impact, insofar as the General Plan EIR already accounted for and assumed it. Therefore, the Project's impacts are less than significant, but as acknowledged on page 2.4-7 and 2.4-8, the Project will contribute to the cumulative impacts identified in the General Plan EIR, from which the Draft EIR tiered. The GPA and proposed Project, therefore, can rely on the City's previous findings that impacts to agricultural resources will be cumulatively considerable, but that the benefits associated with implementation of the General Plan, including increased urbanization, outweigh these significant impacts.

Comment D-14 p.2.4-7 The amount of 21,267 of total “important farmland” is the incorrect metric to be used in evaluating the loss of 45.17 acres of Prime Farmland. The correct metric would be the 1,962.5 acres of Prime Farmland in the City used in the GPU EIR. The loss of Prime Farmland under the VSP is actually 2.3%. This absolute loss of acreage due the proposed project is clearly part of a cumulatively considerable adverse impact. Attempting to utilize the Statement of Overriding Considerations (SOOC) for the General Plan as justification for a less than significant impact finding exceeds credibility; it is a clear error in evaluation, as documented in the GPU EIR; and needs to be corrected through recirculation of the VSP DEIR to adequately correct the substantial failure to inform decision-makers and interested parties.

Section 2.4.7 – Compensatory mitigation is feasible for a specific project’s impact to loss of Prime Farmland. The loss of Prime Farmland can be compensated/offset by purchase and permanent preservation of agricultural land of comparable value. Prime agricultural land mitigation banks have been established in California (such as Elk Grove, California) and offsetting the loss of 45.17 acres of Prime Farmland at a mitigation ratio of 2:1 or 3:1 would be a reasonable and feasible measure.

Response D-14 Please see Response D-13. The Draft EIR correctly disclosed that the loss of the Project site would be part of the loss considered in the General Plan EIR, and that cumulatively, that loss would be significant.

As it related to compensatory mitigation, please see Response B-2. Offsetting the loss of 45 acres of Prime Farmland in Indio by purchasing land in Elk Grove is not a credible or feasible mitigation of the impacts to agriculture in Indio, or the Coachella Valley.

Comment D-15 p.2.4-8 The last paragraph presents flawed data. The City has already found the cumulative loss of Prime Farmland to be a cumulatively considerable adverse impact. The proposed project removes agriculture as possible use of the property. It may not add additional acreage to the loss of Prime Farmland, but the proposed project is clearly a component of the City’s cumulatively considerable impact that has been unequivocally found to be an unavoidable significant adverse impact by the City. As the implementing action that causes the loss of 2.3% of the City’s prime farmland, the proposed project clearly contributes to the City’s evaluation of this impact, and by extrapolation is also a project specific significant, cumulatively considerable impact.

Response D-15 Please see response D-13.

Comment D-16 p.2.5-13 No data are provided to support the conclusion that the increase in site occupancy emissions (about 13.5 lbs/day for NOx) from approving the GPA is not a cumulatively considerable incremental increase. 13.5 lbs of NOx per day clearly is not significant for a specific project, but please provide the context to support the conclusion that the additional emissions should not be considered cumulatively significant when added to the overall emissions generated from buildout of the City's GP.

As stated above regarding Prime Farmland, the fact that the City adopted a SOOC does not diminish the significant unavoidable adverse impact finding in the GPU EIR, it only makes a finding that the City is willing to accept this adverse impact to achieve buildout of the proposed land uses in spite of the adverse impact to which it will expose its citizens. This GPA will add to the City's identified cumulatively considerable significant impact.

Response D-16 The commenter is incorrect. Data is explicitly provided in Table 2.5-5, on page 2.5-13. As shown in that Table, the SCAQMD, the expert and responsible agency for air quality emissions in Indio has established thresholds of significance for all criteria pollutants. For NOx, that threshold is 100 pounds per day (shown on lines 2 and 5 of the Table. On line 1, the total NOx emissions expected under the current General Plan designation are shown to be 7.0 lbs. per day. The emissions for maximum build out of the GPA are provided on line 4. The total NOx emissions are shown to be 20.5 lbs. per day. Both those quantities are below the SCAQMD thresholds of significance. Therefore, the Draft EIR correctly characterizes that impacts associated with the GPA will be less than significant.

The cumulative impacts of the GPA and the proposed Project are addressed first on page 2.5-16. There, the Draft EIR states:

"The SCAQMD does not currently recommend quantified analyses of construction and/or operational emissions from multiple development projects nor provides methodologies or thresholds of significance to be used to assess the significance of cumulative emissions generated by multiple cumulative projects. However, it is recommended that a project's potential contribution to cumulative impacts should be assessed utilizing the same significance criteria as those for project-specific impacts. Furthermore, SCAQMD states that if an individual development project generates less than significant construction or operational emissions, then the development project would not generate a cumulatively considerable increase in emissions for those pollutants for which the Basin is in nonattainment."

Again, as the expert and responsible agency for air quality in the region, and for the City of Indio, the Draft EIR correctly explains that since the GPA and the proposed Project do not exceed SCAQMD thresholds, neither the GPA nor the proposed Project will result in cumulatively considerable impacts, according to SCAQMD's determination.

Comment D-17 p.2.5-21 Same comments as provided on the 2.5-13.

Response D-17 See response D-16.

Comment D-18 p.2.8-10 In the paragraph preceding "Ventana Specific Plan" a conclusion is made that "the GPA would not cause new or increased severity of impacts regarding long-term operations. However, the analysis does not provide any discussion of "what threshold" of change should be used to determine "significant impact." Please provide, i.e., if not 2.5% increase what threshold should be used and why.

Response D-18 Neither CEQA nor the City has established a threshold for significant impacts as they relate to natural gas usage. That said, the question addressed is whether the implementation of the GPA would result in "wasteful, inefficient or unnecessary consumption" of natural gas. As explained in the cited paragraph, buildings built under the GPA would be subject to the same Building Code requirements as any new building in the City, which include energy efficiency standards designed to reduce energy usage, including natural gas. Therefore, the Draft EIR correctly concludes that an increase of 2.5% in natural gas usage would not represent a significant "wasteful, inefficient or unnecessary" use of natural gas.

Comment D-19 p.2.8-12 Natural gas. Again, a threshold of significance would help understand and substantiate this finding. Also, unless required as mitigation, the use of induction?? (sic) Cooking stoves and heat pumps cannot be assumed. 0.8% increase in fuel consumption needs context regarding how much of an increase is significant.

Does the project achieve a zero net energy use? If not, how is it consistent with this GP policy?

Response D-19 See response D-18. The cited paragraph analyzes the proposed Project, where the previous comment references analysis of the GPA. The response is the same. The Draft EIR references the use of induction stoves and heat pumps as examples of energy-reducing methods suggested in the Specific Plan, and is not intended as mitigation, since none is necessary.

As it relates to zero net energy, the California Building Code is designed to result in zero net energy for new residential buildings. The proposed Project will be required to meet or exceed the standards of that Code. Therefore, the proposed Project will be consistent with General Plan policies.

Comment D-20 p.2.12-14 Throughout the discussion of water availability there is a discussion of total water in storage in the Whitewater River Basin and the volume of water extracted by the IWA. However, there is no discussion of the two key issues needed for this evaluation: how much of the 28.2 MG in storage is available for human use and most importantly, whether the Basin is in overdraft (exceeds safe yield) and if so, does an increase in GP density contribute to a cumulatively considerable adverse impact and affect long-term sustainability of groundwater supplies?

Response D-20 As it relates to the water in storage in the Whitewater Basin, the CVWD and the IWA rely, in their adopted Water Management Plans, on that number. As the experts in water management in the region, their reliance on this information is based on analysis and study of the basin, and is a credible and useful number in the analysis of water resources for the region. As it relates to overdraft, the coordinated efforts of the water agencies in the eastern portion of the Basin, through the installation of percolation ponds to recharge the aquifer, have resulted in the elimination of overdraft in 2019, ahead of that anticipated by CVWD in its Basin planning. As stated in the Draft EIR, the IWA's planning for water demand assumed 45 units on the Project site, while the proposed Project would result in 103 units on the Project site. The Draft EIR correctly identifies that the proposed Project will result in an increase of 0.18% in IWA's baseline demand. This is neither a project-related nor a cumulative impact on water resources.

Comment D-21 p.2.12-18 There is no discussion of the availability of a groundwater sustainability management plan, or when compliance with state requirements for such a plan will occur. Also, under the VSP discussion, a WQMP has no effect on water consumption issues. It does not correlate with the possible need for a sustainable groundwater management plan.

Response D-21 The proposed Project is not responsible for the preparation of a Groundwater Sustainability Plan. Due to the regional nature of the aquifer, IWA, CVWD, the Coachella Water Authority and Desert Water Agency cooperated in the development of an Alternative Groundwater Sustainability Plan for the Indio Subbasin, consistent with Section §10750, which was adopted in December 2016. IWA implements the Plan within its service area, and assures compliance with the Plan as development occurs.

The WQMP addresses the water quality, including the prevention of pollution entering surface waters. It is required of the proposed Project, and all new development, as part of the City's standard requirements for water quality control. The citation of the WQMP as a water quality control planning tool is appropriate to address that portion of the question.

Comment D-22 p.2.12-19 Cumulative impact findings are incomplete. Pleas provide

Response D-22 The commenter indicates the cumulative impact discussion is incomplete, but does not indicate how or why that is so. The cumulative impact discussion analyzes hydrology, water quality and groundwater resources, which are all of the topics addressed in that subsection. No part of the discussion was omitted, and the Draft EIR is complete.

Comment D-23 p.2.13-2 This GP EIR has studiously avoided discussion of the existing zone classifications on the 45.15-acre property. Like the General Plan designation, the zone classification establishes the maximum density of development. Yes, the GP identifies the maximum land use density, but the zoning for the property CEIR-1 and CEIR2 also establishes density, i.e., the maximum number of units that can be developed under the zone classifications at this time. In this case, CEIR-2 allows only one unit per 2 acres. Based on this designation, the project site can currently be developed with about 30 du, rather than 45. Therefore, the analysis throughout this document based on 45 units which is allowed by the General Plan land use designation, but (sic) is in error with regard to the actual land use baseline, the actual number of dwelling units that can be constructed at the present time. This is a fatal flaw in the EIR that must be corrected through revising the whole document and recirculating it for review.

Southern Neighborhood Subarea – area between the Central Neighborhoods and Festival District lifestyle rural country-side environment and existing equestrian uses, rural/resort lifestyle in a quiet and secluded living environment, maintain the area's unique character, the GPA conflicts with this objective which the local residents consider a major inconsistency.

VSP LU – 1.5 – not consistent, Southern Neighborhood Subarea strategies, no discussion of consistency with the adjacent Southern Neighborhood Subarea.

Response D-23 Please see Response D-4. The draft EIR correctly analyzes the impacts of the General Plan designation, as it supersedes the zoning on the property, and CEQA requires the analysis of the worst-case impacts of a potential project. The land use baseline is the General Plan designation, not the current zoning on the property. The Draft EIR correctly considers this baseline, and analyzes

the maximum potential units that could currently occur on the property, the increase resulting from maximum implementation of the GPA, and the increase resulting from implementation of the proposed Project. There is no flaw in the analysis, and there is no need to recirculate the Draft EIR.

The commenter's opinion regarding the Southern Neighborhood Subarea is noted. The Draft EIR addresses the Southern Neighborhood Subarea as it relates to the Specific Plan on page 2.13.4 and 2.13.5. As described in that analysis, the Project site is an infill site surrounded by development on all sides. Implementation of the proposed Project results in densities of 2.3 units per acre, consistent with the residential development which abuts the Project site on its west. Development east of the site, beyond the immediate parcels and west of Hjorth, also consists of single family homes on ½ acre lots, or a density of 2 units per acre. Neither of these existing project contain, or would be allowed to add equestrian uses. The Project proposes single family homes and common area recreational facilities. There is no substantial change in use proposed by either the GPA or the proposed Project.

- Comment D-24 p.2.13-5 The analysis here is flawed as the proposed project does not enhance the Neighborhood Subarea stability as it extends higher density suburban level development into this area.
- Multi-modal, required improvements, nothing contributory by the proposed project except the mandated improvements on the adjacent roadway (Avenue 50), such as bus stops, etc.
 - Specific Plan – The DEIR does not provide a copy of the whole VSP for independent review. It is not even clear that the VSP contains all of the required elements of a Specific Plan.
 - Further, the VSP does not create synergies with activities or events in the Festival District, at least none that were identified in this DEIR.

- Response D-24 The commenter's opinion is noted, but he provides no substantial evidence to support that opinion.

The Project will add both bicycle and pedestrian facilities to Avenue 50. Both of those are key multi-modal components in the General Plan. Whether they are mandated or not is irrelevant.

As it relates to the Specific Plan, see Response D-3.

As stated on page 2.13-5, the Project will expand the diversity of homes available in Indio, consistent with the neighborhood in which it occurs. As also stated on that page, providing activities or events consistent with the Festival District would entail providing a concert venue or similar activities, which would be disruptive to the quiet, residential atmosphere of this block.

- Comment D-25 p.2.13-6 Balanced land uses, (sic) this project unbalances the land uses established less than 2 years ago in the new General Plan. The VSP may increase the range of single- family residential structures on the site, but it diminishes (sic) range of housing choices within the City by eliminating/reducing the 45 acres of rural country-side and rural/resort lifestyle acreage in the City. This designation is already very limited within the City of Indio. LU-2.2
- Response D-25 The commenter's opinion is noted. As described in Response D-2, the GPA is a policy decision that will be considered by the Planning Commission and City Council. The Draft EIR correctly evaluates both the GPA and the proposed Project in the context of General Plan policies.
- Comment D-26 p.2.13-9 The development does not protect views to the mountains. For this section the analysis has focused on the incorrect issue. For example, the Southern Neighborhood Subarea is designed for a lifestyle of a rural countryside environment to support equestrian uses and rural/resort lifestyle in a quiet secluded living environment. The proposed project is the antithesis of this lifestyle. 45 acres are proposed to be removed from this rural/resort lifestyle designation to be replaced by a traditional suburban neighborhood. Thus, both in terms of balancing land uses in the City as a whole and how much suburban residential acreage (2+ units/ac) exists in the City, the assessment should focus on how much land designated for large acreage lots will remain in the City if the VSP is approved. Balance is achieved in the City by providing a full range of residential options, expanding standard suburban, cookie-cutter lots, does not maintain the balance that the City Council included in the recently adopted General Plan which is less than two years old. Having 30 lots on 45 acres supports a balanced mix of residential development more than does reducing the total acreage of the City allocated to large-lot rural residential land use.
- Response D-26 It is unclear what section the commenter is addressing. The bulk of this page analyzes a General Plan Goal and policies relating to enhancing existing neighborhoods through the construction of sustainable housing and high quality landscaping and fencing. The analysis correctly considers the proposed Project's plans for the residences and landscaping. Mountain views are not germane, and are addressed in Responses D-7 through D-10. The commenter's opinion regarding balanced neighborhoods is noted.
- Comment D-27 p.2.13-13 Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can

be developed under the current zoning for the site is about 30 units, not 45. Thus, the delta between the existing number of units and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying solely on a baseline of 45 units requires reevaluation.

Response D-27 See Response D-4.

Comment D-28 p.2.13-14 For the existing large lot residences the 45-acre site with a designation of 1 dwelling unit per one- or two-acre parcel makes sense as a buffer between the larger lot residents to the east and the suburban residences to the west. This was the obviously the intent of the City Council when it adopted the 2019 General Plan. The VSP will destroy this logical buffer area and bring suburban level development directly adjacent to the large lot properties to the east. This is certainly not consistent with the current General Plan

Response D-28 The commenter's opinion is noted. As described in Response D-23, there are ½ acre subdivisions both west and east of the Project site and the commenter's residence. Therefore, the argument that the properties immediately east of the Project site represent the beginning of a large-lot area in Indio is false. Rather, the large lots immediately east of the Project site are the exception, and are contrary to the General Plan's goals of developing a more urban, vibrant community. The proposed Project represents a fractional increase in the density of the existing subdivisions from 2.0 per acre to 2.3 per acre.

Comment D-29 p.2.14-1 First paragraph on page ends with no text conclusion, needs to be rewritten in the final.

Response D-29 The City apologizes for the mis-placed phrase. The words "The analysis and findings of" are hereby stricken from page 2.14-1.

Comment D-30 p.2.14-15 The noise analysis focuses on how the proposed project will contribute to future noise levels during construction and on adjacent roadways. However, the noise analysis fails to address two important issues: onsite occupancy noise impacts on adjacent sensitive noise receptors to the east and north and impacts of noise from Avenue 50 on the 5 homes adjacent to Avenue 50 in Planning Area 1. Regarding future onsite noise, there are seven homes between Avenue 49 and Avenue 50 that are currently separated from traditional suburban residential densities by several hundred feet under

present conditions. Developing the VSP will bring suburban noise levels to be directly adjacent to those several larger lot residences. The current noise monitoring data for NM3 is a Leq of 41.6 dBA and the current noise monitoring data for NM4 is a Leq of 45.9. These Leq values need to be converted to CNEL, but it would appear that noise levels may increase at the seven residences by 5 decibels or more. This degree of change in noise qualifies as significant and merits disclosure to the adjacent residents and decision makers.

Regarding noise exposure at the 5 future residences closest to Avenue 50, the future noise level from traffic is forecast to be above the existing 72.1 Leq measured at NM5. Policy NEA 2.4 states: "Implement the policies listed under Goal 1 to reduce the impacts of roadway noise on noise-sensitive receptors where roadway noise exceeds the normally compatible range shown in the City's Noise Compatibility Matrix shown in Table 3." The normally compatible range for residential use is a maximum of 60 decibels CNEL. With existing noise along Avenue 50 already at 72.1 Leq and higher when converted to CNEL, it will require 12.1 decibel reduction at the property line of the 5 residences. The City's roadway noise mitigation requirements were identified as reducing noise by (sic) 10 dBA, which would leave a residual noise exposure of 62.1 Leq which would result in a significant adverse noise level at the 5 residences. The noise evaluation needs to be redone and expanded to address this impact. As it currently stands the noise evaluation of the VSP is inadequate and the VSP is inconsistent with General Plan noise requirements.

Response D-30 Noise generated by the project is addressed on page 2.14-15 and 2.14-16. As described on page 2.14-8 and 2.14-9, and in Table 2.14.3, noise levels on the Project site currently are well below City limits for noise. With implementation of the proposed Project, noise levels on Avenue 50, east of Jefferson Street, are expected to increase 0.1 dB CNEL at 50 feet from centerline. This increase is imperceptible and impacts will be less than significant.

As regards noise from the proposed Project on surrounding lands, which is described on page 2.14-16, the City's standard for sensitive receptors is 60 dBA CNEL. Current conditions at the site range from 41.6 dB Leq to 50.5 dB Leq. A residential subdivision at 2.3 units per acre will not result in noise that is any greater or different from the noise currently generated by the residential subdivisions to the west and east of the Project site developed at 2 units per acre. Even if the increase were to be 5 dB, as speculated by the commenter, the increase would not result in noise levels that exceed 60 dBA CNEL.

As regards the impacts of noise from Avenue 50 on the homes located immediately adjacent to Avenue 50 within the Project site, the commenter mixes apples and oranges. The assumption that Leq noise levels are lower than

CNEL is false. As shown in Table 2.14-7 the noise levels east of Jefferson Street with the proposed Project are computed at 68.4 dBA CNEL at 50 feet from centerline. 50 feet from centerline will be the edge of the public right-of-way in this case. The nearest home will occur at a distance of 60 feet (40 feet of landscaped parkway and 20 feet of setback). Noise decreases, without obstruction, at a rate of 6 dB with doubling of distance. Therefore, at a distance of 50 feet from the right-of-way, noise levels will be 63.4 dB, without any mitigating obstruction. The Project includes a 6 foot, solid construction perimeter wall. Because noise is linear and is blocked by solid construction walls, the Project's perimeter wall will provide a noise reduction of 8 to 12 dB, reducing the noise levels in the back yards of the homes adjacent to Avenue 50 to between 51.4 and 55.4 dBA CNEL. None of these calculations factor in the General Plan policy relating to noise-reducing pavement construction. Because the City's standard for single family homes is 60 dBA CNEL, the impact to these homes will be less than significant.

Comment D-31 p.2.15-5 By adding new residential units, it is obvious that the proposed project will contribute to the housing resources. What isn't obvious is whether more units in the Above Moderate Income category are needed. Such an analysis would look at what number of units in each income category have actually developed between 2014- 2021 and look at whether the proposed project contributes to meeting the number of units within each income category. Further, we believe new RHNA numbers have been issued by SCAG and the analysis should examine these values in addition to whether the City met the RHNA goals for the past 7 years. Also, the 341 new residents should not be compared to the 126,300 value but to the remaining population growth feasible through 2045, i.e., $129,300 - 90,751 = 38,549$ which is 0.9% of forecast growth.

Response D-31 An analysis of the housing built in the City between 2014 and 2021, the currently expiring planning period for the City's Housing Element, is irrelevant, given that the Project will not be constructed during this planning period. The statistics provided in the Draft EIR (page 2.15-2) are consistent with the General Plan EIR's analysis, but not with the future need for housing in the City. The City's RHNA for the upcoming planning period, 2021-2029, totals 7,812 units, of which 3,534 units are to be for above moderate, or market rate homes². Given that 45% of the City's RHNA is allocated to above moderate income homes, it is clear that SCAG believes that the City has a need for these homes. The Project will contribute to this allocation, and assist the City in meeting its RHNA allocation for the 6th Cycle planning period.

The commenter's alternate calculation of population growth is noted.

² Southern California Association of Governments, "6th Cycle Final RHNA Allocation Plan."

Comment D-32 p.2.17-7 Please explain how passive open space, primarily designed for stormwater management (the majority of the 7.15 acres of landscape open space) is counted as part of the 3 acres of park space per 1,000 residents identified as the City standard. It does not make sense as the 3-acre criterion is for active, not passive, park space. It is also not clear whether onsite passive open space will be available to the public other than residents of the development. Please explain.

Response D-32 The commenter is incorrect. Parks are parks, regardless of whether they are “active” or “passive.” The Quimby Act, and the City’s standards, do not require that parkland be active. As shown in the Project’s landscaping plans, a combination of passive and active park uses is proposed at the Project’s two primary park areas: a walking path, shade structure, open lawn and dog park. Furthermore, the use of retention areas as park land, both active and passive, is a common practice in the Coachella Valley, where rain events are infrequent, and the retention area is useable most days. The practice is also encouraged by both the US Army Corps of Engineers and the California State Water Resources Control Board.

Park facilities will be available to residents of the Project, but will not be open to the public.

Comment D-33 p.2.17-9 According to the preceding analysis, the City is 297 acres short on adequate parkland acreage to meet the 3 acres of park per 1,000 population. With about 38,800 in population growth (including the proposed project) through 2045, the total park acreage that must be created to meet the City’s park standard is 335.8 acres (297 ac + 38.8 ac = 335.8 acres). It is reasonable to assume that creation of 335.8 acres, particularly water consumption, could result in a significant cumulative impact on the City’s environment. The proposed project contributes to this potentially cumulatively considerable recreation impact.

Response D-33 The commenter’s speculation that City parks would have a significant impact on water resources is not supported by substantial evidence. The City’s parks, as with all other development, is subject to the water conservation requirements of the City’s Municipal Code, which tier from State requirements for water efficient landscaping.

Comment D-34 p.2.18-22 The discussion regarding “Alternative Transportation Planning” is misleading because it gives the impression that future residents will have “improved pedestrian” access along Avenue 50 and access to mass transit when the project is completed and occupied. This statement is not accurate.

Transportation alternatives like sidewalks, bike paths and reasonable access to mass transit may be years away due to the fact that the project construction will create isolated, stranded infrastructure improvements until or if other development along Avenue 50 installs such facilities as part of their development. This point should be made clear in the text as it could be years before actual connectivity to safe alternative modes of transportation is available for VSP residents.

Response D-34 The comment is noted. The progression of future improvements on the north side of Avenue 50 is not known. It could occur as development occurs, or through a City-sponsored effort. The Draft EIR correctly states that the Project will contribute to improved pedestrian and bicycle facilities in the area, consistent with General Plan goals and policies.

Comment D-35 p.2.18-23 VMT. Existing local residents have heard reports that the VSP residences will be used during major events at nearby venues in the Festival District for rentals (hospitality uses). If this is possible, then the VMT evaluation should address the miles traveled by such renters. Alternatively, the City could condition the project to not allow short-term vacation rentals, which would eliminate the potential for this impact on VMT.

Response D-35 The Project consists of single family homes for sale to individuals. Whether the Project's Homeowners' Association allows short term rentals is not known, and addressing it would be speculative. However, given that VMT analysis is directly tied to lowering the number and length of vehicle trips, the use of Project residences would contribute to a reduction, likely marginal, in VMT as it relates to the events in the Festival District.

Comment D-36 p.2.18-24 Emergency access. The City Fire Department has accepted a single site access point, with a divided road as an adequate emergency access. Although this may be acceptable to the City, it does not constitute an actual secondary emergency access. Although a low probability, a large truck-trailer accident at the access roadway and Avenue 50 could hypothetically close all emergency access to the site with no secondary alternative alignment as normally required. The City is assuming a substantial risk that such a circumstance will not occur and result in harm to a future resident during an emergency. We are surprised the City is willing to accept such a risk.

Response D-36 The commenter is incorrect. The Project's drives are entirely independent of each other and provide two separated points of access. The commenter's theoretical scenario is noted, but the Fire Marshall, as the City's expert in these matters, has determined that the proposed access is acceptable.

- Comment D-37 p.2.20-8 Same issue as previously raised under hydrology. If the GPU EIR relied on qualitative data to conclude buildout development water resource impacts would be less than significant, how can this analysis conclude that water resources will be sustainable over the long term? There is no factual foundation for this conclusion. Actual data and analysis of the water data is needed to justify conclusion regarding less than significant impact.
- Response D-37 Qualitative data was not used to determine impacts on water resources. On the contrary, as stated on page 2.20-8, the water demand created by both full build out of the GPA, and the proposed Project are quantified, and compared to the Urban Water Management Plan prepared by IWA, the water purveyor for the Project site and much of the City. As described in this section, IWA has sufficient supply to accommodate the GPA or the Project during normal, single dry and multiple dry years. IWA pumped 18,208 acre-feet in 2015, and has a projected 2040 water supply of 42,910 acre-feet. The proposed Project will increase water demand by 0.18% over the 2015 baseline, and will not result in significant impacts to the IWA supply (pages 2.20-11 and 2.20-12).
- Comment D-38 p.2.20-9 Instead of looking at annual capacity, it would be appropriate to provide data on daily capacity. Is the 5 mg/d treatment capacity exceeded on a daily basis. And if so, does Plant WRP-7 have adequate storage capacity to balance inflows into the plant over a reasonable period?
- Response D-38 As stated on page 2.20-9, WRP-7 is currently operating at 53.9% of its capacity, and the proposed Project would require 0.4% of the treatment plant's capacity. With the proposed Project, the plant will operate at 54.3% of capacity. Also as stated on that page, WRP-7 has a daily capacity of 5 million gallons, and the proposed Project will generate 20,600 gallons per day. Clearly, the proposed Project will not significantly impact wastewater treatment capacity.
- Comment D-39 p.2.20-10 The discussion of submitting a future drainage plan to identify if any offsite drainage system improvements are needed constitutes deferral. Because this project consists of a specific project, the VSP and tract map in addition to a GPA, it is necessary to identify all offsite improvements for evaluation now, not in the future. Concluding that drainage system impacts are less than significant without any evidence is an error in the analysis.
- Response D-39 The discussion on page 2.20-10 addresses the GPA, not the proposed Project. The EIR correctly states that if a project were proposed at GPA maximum density, it would be required to submit the same hydrology study as any project in the City. Since no project is proposed at GPA maximum density, an analysis of what would be required is appropriate. On page 2.20-13, where the

Draft EIR analyzes the proposed Project, the analysis includes a description of the project-specific hydrology study, including the design of retention basins to meet City standards. No off-site improvements are necessary, since the Project will retain the 100 year storm on-site. There is no deferral, and the Draft EIR thoroughly analyzes the impacts of both the GPA and the Project on the City's drainage system.

Comment D-40 p.3-5 Please provide data to support the statement that "no alternative site was available for sale or met the project objectives in the area of the City." As presented, this is a conclusory finding with no data to support it.

Response D-40 At the time that the applicant was searching for property to build the proposed Project, a search was conducted of properties in Indio. A target of 40 to 60 acres of land was sought, in order to assure project feasibility. For market capture, the applicant centered his search on properties within ½ to 1 mile of commercial services. Smaller parcels were available, but were not contiguous and could not be assembled. The Project site fit the parameters required for Project feasibility.

Comment D-41 p.3-6 Alternative 1 would require a zone change to achieve the 45 units on the site. The current CEIR-1 and CEIR-2 zoning would only allow up to about 30 residential units. This condition represents the current CEQA baseline for evaluation in this DEIR. This issue also applies to significance threshold c) on p.3.3-4.

Response D-41 Please see Response D-4.

Comment D-42 p.3.4-2 The conclusion stated in paragraph 1 on this page is flawed as previously indicated. The loss of prime farmland at the project site is part of the cumulatively considerable impact identified in the GPU EIR. Therefore, it cannot be less than significant as concluded in this unsupported statement.

Response D-42 Please see Response D-13.

Comment D-43 p.3.14-3 Note that if only 30 residences are built on the project site, this would allow for setbacks from Avenue 50 to eliminate any exposure to significant noise from traffic.

Response D-43 Comment noted. Please see Response D-4.

Comment D-44 p.3.17-4 Within a noise setback area for Alternative 1, a larger park area, perhaps even a public park, could be established.

- Response D-44 The comment does not raise a CEQA issue, and no further response is required.
- Comment D-45 p.4-1. Based on the preceding comments, we submit to the City that the proposed VSP project will cause significant unavoidable adverse impacts under the following environmental issues: Aesthetics, Agriculture, Hydrology and Water Quality, Land Use, and Noise.
- As previously noted, a full copy of the Specific Plan is not provided in the DEIR, therefore, it was not possible to verify the content of the Specific Plan and compare it with the impact forecasts in this document.
- Response D-45 Please see Response D-3. As demonstrated throughout the Draft EIR and this response to comments, neither the GPA nor the proposed Project will result in impacts which cannot be mitigated to a less than significant level. The findings of the Draft EIR are correct, and with the implementation of the mitigation measures enumerated in the Draft EIR, impacts of the Project will be less than significant.
- Comment D-46 Based on our review, this DEIR was prepared to support the proposed project, not to make an unbiased evaluation of the project's environmental impacts. Existing City residents and our decision-makers deserve a better environmental document to properly inform everyone about the real consequences of approving the proposed project. The proposed project seeks to change a vision of the City that was embodied by the 2019 General Plan. We submit that it is too soon to make this degree of change in the General Plan's vision in a manner that will reduce the diversity of future residences, not enhance it. We have identified many errors and flaws in the current DEIR that need to be corrected before this project is brought before the City's decision-makers. We request that the City revise the DEIR using unbiased analysis and re-circulate the document to ensure the actual impacts are fully characterized. Thank you for the opportunity to submit these comments.
- Response D-46 The commenter's opinion is noted. As detailed in the Draft EIR, quantified, defined analysis and thresholds were evaluated which are consistent with the standards required under the California Environmental Quality Act. The Draft EIR provides the public and City decision-makers with a comprehensive analysis of the impacts associated with both the General Plan Amendment and its full build out, and the reduced intensity represented by the proposed Project. The GPA is a policy decision which will be considered by the Planning Commission and City Council. The Draft EIR provides both bodies with an impartial analysis of the environmental consequences associated with it, as well as those associated with the less-intense proposed Project.

As described throughout this response to comments, there are no errors or flaws in the Draft EIR. No information that was not known at the time the EIR was circulated has come to light. No impacts identified in the EIR have increased in severity. No expert testimony has been provided by this commenter or any other commenter which would change the findings of the Draft EIR. As a result, consistent with the provisions of CEQA, no recirculation is necessary.

Comment D-47 The commenter appended his letter of July 29, 2020 to his current comment letter.

Response D-47 The letter of July 29, 2020 had been fully addressed in the Response to Comments prepared for the Initial Study/Mitigated Negative Declaration circulated for the Project in July of 2020. That Response to Comments is attached in its entirety as Appendix B. Since comments were prepared for that letter and published by the City in its Planning Commission packet of September 23, 2020, and the Project has changed, no further response is required.

E. Rick and Venessa Neff

Comment E-1 We would like to voice our support against the Ventana project and would like this letter to be entered into the record.

I can't live with this going on behind my property!!

Who will be responsible for cleaning my backyard, Pool and our privacy??

This needs to be addressed immediately or we will have may issues. Not to mention out investments on our existing properties that we have built as Estate Living.

Response E-1 The commenter's opinions are noted. The commenter attached Mr. Morris' letter. Responses to that letter can be found in Responses D-1 through D-46.

F. Sam Kyle

Comment F-1 We have retained an Environmental Consultant to review the Draft EIR in conjunction with the Ventana Project that borders (sic) us and 20-30 other very concerned neighbors.

The attached letter from Mr Morris is the results (sic) of our Consultant and Mr Morris review of the Draft EIR.

Please make this a part of the records on the Draft EIR.

Response F-1 Please see Responses D-1 to D-46.

G. Tom Moon

Comment G-1 We would like to voice our support against the Ventana project and would like this letter to be entered into the record.

Thank you for your consideration.

Response G-1 Please see Responses D-1 to D-46.

H. Stewart Marlborough

Comment H-1 I have been advised that the Ventana project is again being resubmitted for consideration by the Planning Commission. As a neighbor to the proposed development I would like to submit my objection to this development and the proposed modifications to the Master Plan. This proposal had been previously retracted because of community opposition and a complete failure by the developer to secure any form of emergency fire exit route, although the developer had inaccurately stated to the Commission that all fire exits had been secured when none had been.

I am attaching the letter previously written by Sam Kyle in January 2021 and entered into the record then for re-entry into the record for the new submission. I would like the opportunity to speak at any Planning Commission meeting where the Ventana Proposal is discussed.

Response H-1 The commenter's objections are noted. The project was not retracted. The applicant considered the comments made by the Planning Commission and the public at hearings held in the summer of 2020. The applicant modified the application to create a new Transitional Neighborhood designation to limit the range of units which could be constructed on the Project site in response to these comments, and requested that the City prepare an Environmental Impact Report to analyze the proposal's impacts. The fire access route had been agreed to by the Fire Chief, and has since been modified to the satisfaction of the Fire Marshall.

The commenter submitted Sam Kyle's comment letter on the Notice of Preparation. That letter was received, and is included in Appendix A of the Draft EIR. Its concerns were addressed in the Draft EIR. No additional comment is required.

Appendix A
Comment Letters

A

VENTANA SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT

Summary

SCH Number

2021010037

Lead Agency

City of Indio

Document Title

VENTANA SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT

Document Type

EIR - Draft EIR

Received

3/23/2021

Present Land Use

GP: Desert Estates (up to 1 DU/AC); Zoning: Country Estates Indio Ranchos Zone(s) (CEIR-1 & CEIR-2)

Document Description

The VENTANA Specific Plan proposes a low-density residential development consisting of 103 residential units, a dog park, pedestrian trails, and open space common areas. The SP establishes design, building and development standards for the entire site. A General Plan Amendment (GPA) is proposed concurrent with the VENTANA Specific Plan that would create a new residential land use designation that allows a residential density of up to 3 dwelling units per acre (DU/AC). The proposed

Project will result in an overall average density of 2.3 (DU/AC). TTM 37884 will subdivide the site for the 103 lots.

Contact Information

Leila Namvar, Senior Planner

City of Indio

Lead/Public Agency

100 Civic Center Mall
Indio, CA 92201

Phone : (760) 541-4252

lnamvar@indio.org

Location**Coordinates**

33°41'18"N 116°15'28"W

Cities

Indio

Counties

Riverside

Cross Streets

North side of Avenue 50 between Jefferson Street and Madison Street

Zip

92201

Total Acres

45.17

Parcel #

602-070-004-1, 602-080-001-9 & 602-080-002-0

State Highways

111

Railways

>2 mi. Union Pacific

Airports

>2 mi. Bermuda Dunes Airport

Schools

Coachella Valley Unified

Waterways

La Quinta Evacuation Channel, CV Stormwater Channel

Township

5

Range

7

Section

33

Notice of Completion

Review Period Start

3/24/2021

Review Period End

5/7/2021

Development Type

Residential (Units 103, Acres 45.17)

Local Action

General Plan Amendment Specific Plan Site Plan Land Division (Subdivision, etc.)

Project Issues

Aesthetics Agriculture and Forestry Resources Air Quality Biological Resources Cultural Resources Energy Flood Plain/Flooding

[Geology/Soils](#)
[Growth Inducement](#)
[Hazards & Hazardous Materials](#)
[Hydrology/Water Quality](#)
[Land Use/Planning](#)
[Noise](#)
[Population/Housing](#)
[Public Services](#)
[Recreation](#)
[Schools/Universities](#)
[Solid Waste](#)
[Transportation](#)
[Utilities/Service Systems](#)

Reviewing Agencies

[California Air Resources Board \(ARB\)](#)
[California Department of Fish and Wildlife, Inland Deserts Region 6 \(CDFW\)](#)
[California Department of Forestry and Fire Protection \(CAL FIRE\)](#)
[California Department of Parks and Recreation](#)
[California Department of Transportation, District 8 \(DOT\)](#)
[California Department of Transportation, Division of Aeronautics \(DOT\)](#)
[California Department of Transportation, Division of Transportation Planning \(DOT\)](#)
[California Department of Water Resources \(DWR\)](#)
[California Governor's Office of Emergency Services \(OES\)](#)
[California Highway Patrol \(CHP\)](#)
[California Native American Heritage Commission \(NAHC\)](#)
[California Natural Resources Agency](#)
[California Public Utilities Commission \(CPUC\)](#)
[California Regional Water Quality Control Board, Colorado River Basin Region 7 \(RWQCB\)](#)
[Colorado River Board](#)
[Department of Toxic Substances Control](#)
[Office of Historic Preservation](#)
[State Water Resources Control Board, Division of Drinking Water](#)
[California Department of Conservation \(DOC\)](#)

Attachments

Draft Environmental Document [Draft IS, NOI_NOA_Public notices, OPR Summary Form, Appx,]

[VENTANA SP - DEIR APP A - NOP](#) [PDF](#) [63149 K](#)
[VENTANA SP - DEIR APP B - AQ AND GHG](#) [PDF](#) [2989 K](#)
[VENTANA SP - DEIR APP C - BIOLOGICAL RESOURCES ASSESSMENT & CVHSHCP COMPLIANCE Rpt](#) [PDF](#) [2731 K](#)
[VENTANA SP - DEIR APP D - CULTURAL RESOURCES STUDY](#) [PDF](#) [3049 K](#)
[VENTANA SP - DEIR APP E - PHASE 1 AND 2 REPORTS](#) [PDF](#) [33309 K](#)
[VENTANA SP - DEIR APP F - FIRE DEPARTMENT - SECONDARY ACCESS](#) [PDF](#) [535 K](#)
[VENTANA SP - DEIR APP G - GEOTECHNICAL INVESTIGATION](#) [PDF](#) [7462 K](#)
[VENTANA SP - DEIR APP H - HYDROLOGY - PRELIMINARY DRAINAGE RPT](#) [PDF](#) [7096 K](#)
[VENTANA SP - DEIR APP I - NOISE IMPACT STUDY](#) [PDF](#) [1914 K](#)
[VENTANA SP - DEIR APP J - PALEONTOLOGICAL RESOURCE ASSESSMENT](#) [PDF](#) [11452 K](#)
[VENTANA SP - DEIR APP K - TRAFFIC IMPACT ANALYSIS](#) [PDF](#) [22302 K](#)
[VENTANA SP - DRAFT ENVIRONMENTAL IMPACT REPORT \(DEIR\)](#) [PDF](#) [178470 K](#)
[VENTANA SP - NOTICE OF AVAILABILITY](#) [PDF](#) [79 K](#)

Notice of Completion [NOC] Transmittal form

[VENTANA SP DEIR NOC](#) [PDF](#) [167 K](#)

State Comment Letters [Comments from state reviewing agencies]

[2021010037_Conservation Comment](#) [PDF](#) [245 K](#)

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APRIL 6, 2021

VIA EMAIL: LNAMVAR@INDIO.ORG

Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

Dear Ms. Namvar:

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE VENTANA SPECIFIC PLAN PROJECT,
SCH# 2021010037

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Environmental Impact Report for the Ventana Specific Plan Project (Project). The Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's potential impacts on agricultural land and resources.

Project Description

The project proposes a low-density residential development consisting of 103 residential units, a dog park, pedestrian trails, and open space common areas. A General Plan Amendment is proposed concurrent with the project that would create a new residential land use designation that allows a residential density of up to three dwelling units per acre.

The entire project area, approximately 45 acres, is currently designated as Prime Farmland by the Department of Conservation's Farmland Mapping and Monitoring Program.¹

Department Comments

Although conversion of agricultural land is often an unavoidable impact under CEQA analysis, feasible alternatives and/or feasible mitigation measures must be considered.

B-1

B-2

¹ California Department of Conservation, Division of Land Resource Protection, Farmland Mapping and Monitoring Program, California Important Farmland Finder, <https://maps.conservation.ca.gov/DLRP/CIFF/>

In some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and therefore, mitigation is not required. However, reduction to a level below significance is not a criterion for mitigation under CEQA. Rather, the criterion is feasible mitigation that lessens a project's impacts. As stated in CEQA guidelines, mitigation includes, "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."²

The conversion of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department advises the use of permanent agricultural conservation easements on land of at least equal quality and size as compensation for the loss of agricultural land. Conservation easements are an available mitigation tool and considered a standard practice in many areas of the State. The Department highlights conservation easements because of their acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

<http://www.calandtrusts.org/resources/conserving-californias-harvest/>

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

B-2
cont.

² California Code of Regulations, Title 14, Division 6, Chapter 3, Article 20, Section 15370(e), [https://govt.westlaw.com/calregs/Document/I07DD0C819A19416D9A128AAC4B52ADD9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I07DD0C819A19416D9A128AAC4B52ADD9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Conclusion

Thank you for giving us the opportunity to comment on Draft Environmental Impact Report for the Ventana Specific Plan Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner via email at Farl.Grundy@conservation.ca.gov.

Sincerely,

Monique Wilber

Monique Wilber
Conservation Program Support Supervisor

Subject: Fwd: City of La Quinta Response to Ventana Project
Date: Monday, May 10, 2021 at 8:20:32 AM Pacific Daylight Time
From: Leila Namvar <lnamvar@indio.org>
To: Nicole Criste <ncriste@terranovaplanning.com>, Mario Gonzales <Mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovaplanning.com>
Attachments: image001.png, City of La Quinta Comment Letter 5-7-21.pdf

FYI

Sent from my iPhone

Begin forwarded message:

From: Siji Fernandez <sfernandez@laquintaca.gov>
Date: May 7, 2021 at 4:37:51 PM PDT
To: Leila Namvar <lnamvar@indio.org>
Subject: City of La Quinta Response to Ventana Project

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Hi Leila,

Attached are the comments from the City of La Quinta based off the Environmental Impact Preport prepared for the Ventana Project. Thank you.

C-1

Sincerely,

Siji Fernandez | Associate Planner
Design and Development
City of La Quinta
78495 Calle Tampico | La Quinta, CA 92253
Ph. 760.777.7086
www.laquintaca.gov<https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fwww.laquintaca.gov%2f&c=E,1,tTro-7rXUfk9P9ZGt5OO2P0KHeNyVt0fiu4sijmhxEL1QmrASAFZM2SH6YIglL2JVJB4WD2PVAQv8imjGSXS06YyQHUAwPnLUDQgvNepU_vGBA,,&typo=1>
www.playinlaquinta.com<https://linkprotect.cudasvc.com/url?a=http%3a%2f%2fwww.playinlaquinta.com%2f&c=E,1,rVtZ9vLPOF0lrnBH9pu1_xpY3DXtLbUsXIFHZeOyEC7UsXzUI9s-wuw3NRWzNFammMhNCzJ5Wr8WegA-ttkONKHBFgn0vCOckdH7PUA560WswZ1NUIsc5LWD30mG&typo=1>

PLEASE NOTE: Due to current State Orders regarding COVID-19, City Hall is closed to the public. All services are available via phone, email or our eTrackit portal <https://laquitrk.aspgov.com/etrakit/><<https://linkprotect.cudasvc.com/url?a=https%3a%2f%2flaquitrk.aspgov.com%2fetrakit%2f&c=E,1,RPi3arZSQjiPL85KUe7ngjHpKkQ7mEeWdLXpgKCQDzM1x9etfcNwL6W77P7bcOCXQOVQan-bfr13SwatCE1eiQk0aHiIEIA1B7r7bgxKsA8,&typo=1>>.

May 7, 2021

Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

SUBJECT: NOTICE OF AVAILABILITY—ENVIRONMENTAL IMPACT REPORT FOR VENTANA SPECIFIC PLAN

Dear Ms. Namvar,

Thank you for the opportunity to review and comment on the Environmental Impact Report for the Ventana Specific Plan Project located on the north side of Avenue 50 between Jefferson Street and Madison Street in the City of Indio. The City of La Quinta has the following comments:

1. The traffic impacts are not great with this project, but they do add traffic to the intersection of Jefferson and Avenue 50. It would be beneficial as mitigation if the project could include the install a WB Right turn overlap phase to accommodate the additional am traffic, they contribute to, and it would be beneficial to have when events unload from the polo grounds. C-2
2. The intersection of Verano Drive is conditioned to have a signal some day in the future when it meets warrants. However, the project should also be conditioned to install full WB LT improvements for Verano Drive immediately. C-3

Staff is available to discuss the comments outlined in the letter. If you have any questions, please contact me at 760-777-7086 or sfernandez@laquintaca.org.

Sincerely,



Sijifredo Fernandez
Associate Planner
Design and Development Department

CC: Design and Development Director
Public Works Director
Traffic Engineer

Subject: FW: Ventana limited neighbor correspondence
Date: Wednesday, May 5, 2021 at 1:59:07 PM Pacific Daylight Time
From: Leila Namvar
To: Nicole Criste, Mario Gonzales, Kimberly Cuza
Attachments: image001.jpg, 5.5.21 Letter.pdf

Hi all and FYI. Thanks, Leila



Leila Namvar, Senior Planner
Community Development Department
City of Indio
100 Civic Center Mall
Indio, CA 92201
(760) 541-4258 (Direct)
(760) 399-7887 (Cell phone)
www.indio.org | [GIS Map](#) | [Applications & Forms](#)

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[Schedule Inspections](#) | [Upload Applications](#) | [Pay Fees](#)

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Please consider the environment before printing my email

From: Matt Morris <matt@mhmorrislaw.com>
Sent: Wednesday, May 5, 2021 1:45 PM
To: Leila Namvar <lnamvar@indio.org>; kdc@olypen.com
Cc: Kevin Snyder <ksnyder@indio.org>; Evelyn Beltran <ebeltran@indio.org>; Matt Morris <matt@mhmorrislaw.com>; Tom Moon <tmoon13@gmail.com>
Subject: Re: Ventana limited neighbor correspondence

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Dear Ms. Namvar,

Attached please find our comments regarding the Ventana project Draft EIR. I will be sending the 5/5/21 letter's exhibit - my prior letter - in a separate email.

Let me know if you have any questions.

Regards,

Matt H. Morris Esq.

Law Offices of Matt H. Morris APC

D-1

47040 Washington St, Suite 3201
La Quinta, CA 92253
Office: 760-777-7941
Fax: 760-777-8533
matt@mhmorrislaw.com

D-1
Cont.

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On 4/6/2021 11:05 AM, Leila Namvar wrote:

Sam. The public record has been provided to Mr. Moon. Please see attached emails and let me know if you have any additional questions. thanks, Leila



**Leila Namvar, Senior Planner
Community Development
Department**

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P Please consider the environment
before printing my email

From: kdc@olypen.com <kdc@olypen.com>
Sent: Monday, April 5, 2021 6:28 PM
To: Leila Namvar <lnamvar@indio.org>

Cc: Kevin Snyder <ksnyder@indio.org>; Evelyn Beltran <ebeltran@indio.org>; Matt Morris <matt@mhmorrislaw.com>; Tom Moon <tmoon13@gmail.com>
Subject: Fwd: Ventana limited neighbor correspondence

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Leila

See email below that you sent out to Tom Moon after he requested the public information that was submitted to the City and Development Commission !!

Why is the City not complying and providing ALL of the information that has been submitted by all the people that have either sent letters or emails to file complaints about this project.

I know several owners from Croquet Ct had submitted including the two letters that I sent and none of these are provided in the documents you sent Mr Moon??

Were my letters submitted to the Development Commission and read into the meeting minutes??

Sam Kyle

----- Original Message -----

Subject: Ventana limited neighbor correspondence
Date: 2021-04-05 16:09
From: Tom Moon <tmoon13@gmail.com>
To: kdc@olypen.com, Matt Morris <Matt@mhmorrislaw.com>, Darren Moon <darren@reobroker.com>

Happy Post Easter Sunday gentlemen:

Following are the two links Leila sent us regarding citizen correspondence on the Ventana project. We asked our next door neighbor to write in and we are glad to see he did. Sam, I am surprised to see your three page letter was not one of the mentioned below?

Best Regards,
Tom Moon

Mr. Moon,

Here the public record on the correspondence that the City had received:

http://weblink.indio.org/pub_weblink/Browse.aspx?id=1157789&dbid=0&repo=Indio

<https://www.indio.org/civicax/filebank/blobdload.aspx?t=56140.31&BlobID=31488>

Please let me know if you have any additional questions.

Thanks,



**Leila Namvar, Senior Planner
Community Development
Department**

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www.indio.org | [GIS Map](#) | [Applications
& Forms](#)

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(714) 925-5544

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Tom Moon
Pacific Moon R.E. Inc.
18377 Beach Blvd. #333 HB
(714) 925-5544

LAW OFFICES OF
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May 5, 2021

City Planning Commission
C/O Ms. Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

Dear City Planning Commission and Ms. Namvar:

This firm represents the Kincaid family and the interests of numerous other neighbors and adjoining neighbors of the proposed Ventana project. We previously sent you a letter about this project (attached) when it was proposed to be adopted with a negative declaration. The issues raised in that letter were not adequately addressed by the developer. Many are still not adequately addressed in the Draft Environmental Impact Report (DEIR).

The following comments on the Ventana Specific Plan (VSP) and DEIR are being submitted by adjacent residents and who strongly oppose changing the recently adopted City of Indio General Plan land use designation of the approximate 45-acre property from very low-density residential use (Desert Estate Neighborhood) to a proposed land use designation (Transitional Neighborhood) that will allow up to 3 dwelling units (du) per acre. These comments are also submitted after extensive consultation and review with retained environmental specialists.

The VSP appears to be an elaborate effort to assign a "spot" land use designation to accommodate a single individual to the detriment of the existing low density, high quality neighborhood that already exists in the area. There are already many suburban neighborhoods in the City of Indio and the General Plan's objective in establishing the Desert Estate land use designation was to allow a limited amount of land in the City to be set aside for high quality residences on large lots that wish to continue a rural agricultural tradition on their property. The new Indio General Plan was adopted in September 2019, less than two years ago, and removing a substantial portion of one of the nicer neighborhoods in the City for more suburban development is unreasonable. We found the DEIR to be self-serving and not an objective evaluation of potentially significant adverse impacts. Due to certain flaws that we have identified in the document, we highly recommend revising the DEIR and recirculating it to address the identified errors.

D-2

General Comments

We carefully reviewed the entire DEIR and did not find a copy of the VSP in the document or appendices and thus were unable verify the statements in the Project Description. Also, a Specific Plan by law must contain details ranging from land use and design guidelines, to infrastructure and funding sources to implement the plan. Without access to the VSP it was not possible to examine each element of the Plan to determine if the information in the DEIR Project Description encompassed the whole of the project. We consider the failure to provide the VSP for public review a fatal flaw in the DEIR that requires correction and recirculation

D-3

There is second major error in the DEIR that affects much of the analysis. Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zone for the site is about 30 units, not 45. This finding is based on the fact that the 45-acre site is zoned CEIR-1 and CEIR-2. Under CEIR-2 the maximum number of units is one unit per two (2) acres, not one acre. The current baseline for evaluation of potential impacts is not the current General Plan designation, but the actual number of dwelling units that can be constructed under both the General Plan designation and the zone classification for the property. We raised this issue in our original comments for this project and the issue has been ignored. Thus, the delta between the existing number of units that can be constructed and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. All elements of the DEIR that rely upon quantitative evaluation are in error because of this analytical flaw. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying on a baseline of 45 units requires reevaluation.

D-4

The third major issue of concern is that the project description indicates that the proposed General Plan designation, Transitional Neighborhood, would allow “hospitality” uses, but this topic is never discussed again in the document and certainly what activities are allows is not presented or discussed. For example, if “hospitality” uses are permitted, this issue requires evaluation at least in the Vehicle Miles Traveled section of Traffic and the Noise section of the DEIR. It appears that this topic was intentionally avoided throughout the DEIR and it must be given full consideration in a re-circulated DEIR.

D-5

Specific Comments

p.2.3-4 Are the SRF homes to the north and east one acre in size? They appear larger and many of these lots appear to be several acres. Installing suburban development in place of the currently designated 1- and 2-acre lots creates a harsh transition the character of the estate neighborhood to the north and east.

D-6

p.2.3-10 The analysis of Scenic Vistas portrays the change in views to surrounding mountains internally only for residences to the SE. In the future construction of the residences on the 45-acre site will cause the following adverse changes. The foreground views to Mountains will be visibly changed by allowing the number of structures disrupting background mountain views (background long distance) to more than double – substantially reducing visual access corridors and quality of scenic views.

D-7

p.2.3-11

Impacts on Scenic Views – statement re: private views not being subject to CEQA. Actually, they are subject to CEQA review. Specifically, *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 contains the following finding:

Based on this evidence, plaintiffs assert the City abused its discretion by certifying the Final SEIR without analyzing the impacts the project would have on views from their adjacent private property.

Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) Additionally, California landowners do not have a right of access to air, light and view over adjoining property. (Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.) Plaintiffs concede this authority, but claim they are merely attempting to enforce CEQA's requirement that the City identify and mitigate the significant environmental effects of a project before approving it. (CEQA Guidelines, §§ 15002, 15021.)

An EIR must identify the "significant environmental effects" of a proposed project. (§ 1100, subd. (b)(1); CEQA Guidelines, § 5126, subd. (a).) For purposes of CEQA, "environment" means physical conditions existing "within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Thus, aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project. (§ 21100, subd. (d); Ocean View Homeowners Ass'n, Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402-403.) However, a lead agency has the discretion to determine whether to classify an impact described in an EIR as "significant," depending on the nature of the area affected. (CEQA Guidelines, § 15064, subd. (b); National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1357 [varying thresholds of significance may apply depending on nature of area affected].) In exercising its discretion, a lead agency must necessarily make a policy decision in distinguishing between substantial and insubstantial adverse environmental impacts based, in part, on the setting. (CEQA Guidelines, § 15064, subd. (b).) Where the agency determines that a project impact is insignificant, an EIR need only contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, § 15128.)

D-8

Based on the preceding impacts to private views, and to give such analysis context, the DEIR must evaluate GP policies to see if public and private views to important scenic vistas is given importance in GP.

View 1 – the analysis of the public view to the mountains (background view) is inaccurate. The current view shows a clear visual path to the mountains with some mid-ground interference from vegetation. The after-development view of the mountain background is substantially altered by development. Visual access to the mountains/hills south of San Jacinto Mountain is substantially altered. This public view clearly experiences a substantial adverse impact.

p.2.3-14

In View 2 homes east of the project's SE boundary currently have a rural foreground view; mid-ground is suburban with landscaping, and an almost continuous background view of the hills and mountains. The VSP development and landscaping will substantially alter the background view, only limited and sporadic visual access to the hills will be available to the residents. Whether this loss of visual access by private residents can only be determined by an analysis of GP policies

D-9

View 3 is actually illustrative of less impact on scenic vistas. The foreground retention basin minimizes less of access from adjacent residences in View 3 highlights the degree of changes in Views 1 and 2. View 3 foreground undergoes substantial change.

View 4 foreground view is dramatically changed. Views to the mountains in far background is lost in View 4. View to nearest mountains is disturbed but retained. Still a substantial change from the present views.

Based on the preceding description of view changes, we believe that any reasonable person would conclude the change in access to scenic views from public and private vantage points is a significant change, i.e., a significant adverse impact. The photo simulations clearly demonstrate the scope of the change.

D-9
Cont.

p.2.3-19

Analysis should be on existing designation not on hypothetical Suburban Neighborhood. Also, no analysis of and data supporting how Transitional Neighborhood can be similar in visual setting to Desert Estates Neighborhood; i.e., how is a Transitional neighborhood consistent and compatible scale to development intensity on its eastern and northern boundary. Using homes in a higher density designation on the west is an invalid and erroneous visual comparison due to the open space created by the project site. Residences to the north and east are the appropriate and pertinent analytic comparison. The conclusion at top of page 2.3-20 is not supported by objective analysis.

VSP impact – the comparison from Avenue 50 should be between the view to the site under the existing environmental visual setting and the proposed VSP development. This change will be dramatic. When compared to the visual setting to the east, please refer to View 1 and its impacts.

D-10

p.2.4-4

Riverside County also provides independent soil classifications; were Riverside soil classifications consulted? If not, it would be appropriate to do so since Riverside data is discussed below.

D-11

p.2.4-5

Area was farmed until 2019 according to adjacent residents. The 45-acre property is designated as Prime Farmland on County's Important Farmland Map.

D-12

p.2.4-6-7

The analysis of losing Prime Farmland is flawed and represents a distorted rationalization for a finding of less than significant impact. This occurs for the following reasons. Prime Farmland is very limited resource, analogous to an endangered species. The GPA reduces the size of lots and removes agriculture as an approved use; thereby eliminating potential use of the onsite soil for its highest and best use. Note that several of the adjacent residences maintain date trees on their property and have them picked each year. The GPEIR found the cumulative loss of Prime Farmland in the City to be a significant unavoidable adverse impact. Approval of the GPA removes approximately 45 acres of Prime Farmland from potential agricultural productivity. Thus, at a minimum, the proposed GPA represents a cumulatively considerable contribution to an action the City has already found to be a significant adverse environmental impact. Presenting this action as

D-13

a less than significant impact when it has already been deemed by the City to be a significant impact is a disingenuous finding at best and an intentional error in conflict (inconsistent) with the current General Plan at a minimum. This issue needs to be re-evaluated and the EIR recirculated to properly disclose this significant impact.

D-13
Cont.

p.2.4-7

The amount of 21,267 of total “important farmland” is the incorrect metric to be used in evaluating the loss of 45.17 acres of Prime Farmland. The correct metric would be the 1,962.5 acres of Prime Farmland in the City used in the GPU EIR. The loss of Prime Farmland under the VSP is actually 2.3%. This absolute loss of acreage due the proposed project is clearly part of a cumulatively considerable adverse impact. Attempting to utilize the Statement of Overriding Considerations (SOOC) for the General Plan as justification for a less than significant impact finding exceeds credibility; it is a clear error in evaluation, as documented in the GPU EIR; and needs to be corrected through recirculation of the VSP DEIR to adequately correct the substantial failure to inform decision-makers and interested parties.

D-14

Section 2.4.7 – Compensatory mitigation is feasible for a specific project’s impact to loss of Prime Farmland. The loss of Prime Farmland can be compensated/offset by purchase and permanent preservation of agricultural land of comparable value. Prime agricultural land mitigation banks have been established in California (such as Elk Grove, California) and offsetting the loss of 45.17 acres of Prime Farmland at a mitigation ratio of 2:1 or 3:1 would be a reasonable and feasible measure.

p.2.4-8

The last paragraph presents flawed data. The City has already found the cumulative loss of Prime Farmland to be a cumulatively considerable adverse impact. The proposed project removes agriculture as possible use of the property. It may not add additional acreage to the loss of Prime Farmland, but the proposed project is clearly a component of the City’s cumulatively considerable impact that has been unequivocally found to be an unavoidable significant adverse impact by the City. As the implementing action that causes the loss of 2.3% of the City’s prime farmland, the proposed project clearly contributes to the City’s evaluation of this impact, and by extrapolation is also a project specific significant, cumulatively considerable impact.

D-15

p.2.5-13

No data are provided to support the conclusion that the increase in site occupancy emissions (about 13.5 lbs/day for NOx) from approving the GPA is not a cumulatively considerable incremental increase. 13.5 lbs of NOx per day clearly is not significant for a specific project, but please provide the context to support the conclusion that the additional emissions should not be considered cumulatively significant when added to the overall emissions generated from buildout of the City’s GP.

D-16

As stated above regarding Prime Farmland, the fact that the City adopted a SOOC does not diminish the significant unavoidable adverse impact finding in the GPU EIR, it only makes a finding that the City is willing to accept this adverse impact to achieve buildout of the proposed land uses in spite of the adverse impact to which it will expose its citizens. This GPA will add to the City’s identified cumulatively considerable significant impact.

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| p.2.5-21 | Same comments as provided on the 2.5-13 | D-17 |
| p.2.8-10 | In the paragraph preceding “Ventana Specific Plan” a conclusion is made that “the GPA would not cause new or increased severity of impacts regarding long-term operations. However, the analysis does not provide any discussion of “what threshold” of change should be used to determine “significant impact.” Please provide, i.e., if not 2.5% increase what threshold should be used and why. | D-18 |
| p.2.8-12 | Natural gas. Again, a threshold of significance would help understand and substantiate this finding. Also, unless required as mitigation, the use of induction?? Cooking stoves and heat pumps cannot be assumed. 0.8% increase in fuel consumption needs context regarding how much of an increase is significant. Does the project achieve a zero net energy use? If not, how is it consistent with this GP policy? | D-19 |
| p.2.12-14 | Throughout the discussion of water availability there is a discussion of total water in storage in the Whitewater River Basin and the volume of water extracted by the IWA. However, there is no discussion of the two key issues needed for this evaluation: how much of the 28.2 MG in storage is available for human use and most importantly, whether the Basin is in overdraft (exceeds safe yield) and if so, does an increase in GP density contribute to a cumulatively considerable adverse impact and affect long-term sustainability of groundwater supplies? | D-20 |
| p.2.12-18 | There is no discussion of the availability of a groundwater sustainability management plan, or when compliance with state requirements for such a plan will occur. Also, under the VSP discussion, a WQMP has no effect on water consumption issues. It does not correlate with the possible need for a sustainable groundwater management plan. | D-21 |
| p.2.12-19 | Cumulative impact findings are incomplete. Please provide | D-22 |
| p.2.13-2 | This GP EIR has studiously avoided discussion of the existing zone classifications on the 45.15-acre property. Like the General Plan designation, the zone classification establishes the maximum density of development. Yes, the GP identifies the maximum land use density, but the zoning for the property CEIR-1 and CEIR2 also establishes density, i.e., the maximum number of units that can be developed under the zone classifications at this time. In this case, CEIR-2 allows only one unit per 2 acres. Based on this designation, the project site can currently be developed with about 30 du, rather than 45. Therefore, the analysis throughout this document based on 45 units which is allowed by the General Plan land use designation, but is in error with regard to the actual land use baseline, the actual number of dwelling units that can be constructed at the present time. This is a fatal flaw in the EIR that must be corrected through revising the whole document and recirculating it for review. | D-23 |

Southern Neighborhood Subarea – area between the Central Neighborhoods and Festival District lifestyle rural country-side environment and existing equestrian uses, rural/resort lifestyle in a quiet and secluded living environment, maintain the area’s unique character, the GPA conflicts with this objective which the local residents consider a major inconsistency.

D-23
Cont.

VSP LU – 1.5 – not consistent, Southern Neighborhood Subarea strategies, no discussion of consistency with the adjacent Southern Neighborhood Subarea.

p.2.13-5

The analysis here is flawed as the proposed project does not enhance the Neighborhood Subarea stability as it extends higher density suburban level development into this area.

- Multi-modal, required improvements, nothing contributory by the proposed project except the mandated improvements on the adjacent roadway (Avenue 50), such as bus stops, etc.
- Specific Plan – The DEIR does not provide a copy of the whole VSP for independent review. It is not even clear that the VSP contains all of the required elements of a Specific Plan.
- Further, the VSP does not create synergies with activities or events in the Festival District, at least none that were identified in this DEIR.

D-24

p.2.13-6

Balanced land uses, this project unbalances the land uses established less than 2 years ago in the new General Plan. The VSP may increase the range of single-family residential structures on the site, but it diminishes range of housing choices within the City by eliminating/reducing the 45 acres of rural country-side and rural/resort lifestyle acreage in the City. This designation is already very limited within the City of Indio. LU-2.2

D-25

p.2.13-9

The development does not protect views to the mountains. For this section the analysis has focused on the incorrect issue. For example, the Southern Neighborhood Subarea is designed for a lifestyle of a rural countryside environment to support equestrian uses and rural/resort lifestyle in a quiet secluded living environment. The proposed project is the antithesis of this lifestyle. 45 acres are proposed to be removed from this rural/resort lifestyle designation to be replaced by a traditional suburban neighborhood. Thus, both in terms of balancing land uses in the City as a whole and how much suburban residential acreage (2+ units/ac) exists in the City, the assessment should focus on how much land designated for large acreage lots will remain in the City if the VSP is approved. Balance is achieved in the City by providing a full range of residential options, expanding standard suburban, cookie-cutter lots, does not maintain the balance that the City Council included in the recently adopted General Plan which is less than two years old. Having 30 lots on 45 acres supports a balanced mix of residential development more than does reducing the total acreage of the City allocated to large-lot rural residential land use.

D-26

p.2.13-13

Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zoning for the site is about 30 units, not 45. Thus, the delta between the existing number of units and proposed GP is (135-30) = 105, not 91. Also, the delta

D-27

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| | between the actual number of units proposed under the VSP & TTM 37884 (103-30) = 73, not 58. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying solely on a baseline of 45 units requires reevaluation. | D-27 Cont. |
| p.2.13-14 | For the existing large lot residences the 45-acre site with a designation of 1 dwelling unit per one- or two-acre parcel makes sense as a buffer between the larger lot residents to the east and the suburban residences to the west. This was the obviously the intent of the City Council when it adopted the 2019 General Plan. The VSP will destroy this logical buffer area and bring suburban level development directly adjacent to the large lot properties to the east. This is certainly not consistent with the current General Plan | D-28 |
| p.2.14-1 | First paragraph on page ends with no text conclusion, needs to be rewritten in the final. | D-29 |
| p.2.14-15 | <p>The noise analysis focuses on how the proposed project will contribute to future noise levels during construction and on adjacent roadways. However, the noise analysis fails to address two important issues: onsite occupancy noise impacts on adjacent sensitive noise receptors to the east and north and impacts of noise from Avenue 50 on the 5 homes adjacent to Avenue 50 in Planning Area 1. Regarding future onsite noise, there are seven homes between Avenue 49 and Avenue 50 that are currently separated from traditional suburban residential densities by several hundred feet under present conditions. Developing the VSP will bring suburban noise levels to be directly adjacent to those several larger lot residences. The current noise monitoring data for NM3 is a Leq of 41.6 dBA and the current noise monitoring data for NM4 is a Leq of 45.9. These Leq values need to be converted to CNEL, but it would appear that noise levels may increase at the seven residences by 5 decibels or more. This degree of change in noise qualifies as significant and merits disclosure to the adjacent residents and decision makers.</p> <p>Regarding noise exposure at the 5 future residences closest to Avenue 50, the future noise level from traffic is forecast to be above the existing 72.1 Leq measured at NM5. Policy NEA 2.4 states: "Implement the policies listed under Goal 1 to reduce the impacts of roadway noise on noise-sensitive receptors where roadway noise exceeds the normally compatible range shown in the City's Noise Compatibility Matrix shown in Table 3." The normally compatible range for residential use is a maximum of 60 decibels CNEL. With existing noise along Avenue 50 already at 72.1 Leq and higher when converted to CNEL, it will require 12.1 decibel reduction at the property line of the 5 residences. The City's roadway noise mitigation requirements were identified as reducing noise by 10 dBA, which would leave a residual noise exposure of 62.1 Leq which would result in a significant adverse noise level at the 5 residences. The noise evaluation needs to be redone and expanded to address this impact. As it currently stands the noise evaluation of the VSP is inadequate and the VSP is inconsistent with General Plan noise requirements.</p> | D-30 |

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| p.2.15-5 | By adding new residential units, it is obvious that the proposed project will contribute to the housing resources. What isn't obvious is whether more units in the Above Moderate Income category are needed. Such an analysis would look at what number of units in each income category have actually developed between 2014-2021 and look at whether the proposed project contributes to meeting the number of units within each income category. Further, we believe new RHNA numbers have been issued by SCAG and the analysis should examine these values in addition to whether the City met the RHNA goals for the past 7 years. Also, the 341 new residents should not be compared to the 126,300 value but to the remaining population growth feasible through 2045, i.e., $129,300 - 90,751 = 38,549$ which is 0.9% of forecast growth. | D-31 |
| p.2.17-7 | Please explain how passive open space, primarily designed for stormwater management (the majority of the 7.15 acres of landscape open space) is counted as part of the 3 acres of park space per 1,000 residents identified as the City standard. It does not make sense as the 3-acre criterion is for active, not passive, park space. It is also not clear whether onsite passive open space will be available to the public other than residents of the development. Please explain. | D-32 |
| p.2.17-9 | According to the preceding analysis, the City is 297 acres short on adequate parkland acreage to meet the 3 acres of park per 1,000 population. With about 38,800 in population growth (including the proposed project) through 2045, the total park acreage that must be created to meet the City's park standard is 335.8 acres ($297 \text{ ac} + 38.8 \text{ ac} = 335.8 \text{ acres}$). It is reasonable to assume that creation of 335.8 acres, particularly water consumption, could result in a significant cumulative impact on the City's environment. The proposed project contributes to this potentially cumulatively considerable recreation impact. | D-33 |
| p.2.18-22 | The discussion regarding "Alternative Transportation Planning" is misleading because it gives the impression that future residents will have "improved pedestrian" access along Avenue 50 and access to mass transit when the project is completed and occupied. This statement is not accurate. Transportation alternatives like sidewalks, bike paths and reasonable access to mass transit may be years away due to the fact that the project construction will create isolated, stranded infrastructure improvements until or if other development along Avenue 50 installs such facilities as part of their development. This point should be made clear in the text as it could be years before actual connectivity to safe alternative modes of transportation is available for VSP residents. | D-34 |
| p.2.18-23 | VMT. Existing local residents have heard reports that the VSP residences will be used during major events at nearby venues in the Festival District for rentals (hospitality uses). If this is possible, then the VMT evaluation should address the miles traveled by such renters. Alternatively, the City could condition the project to not allow short-term vacation rentals, which would eliminate the potential for this impact on VMT. | D-35 |
| p.2.18-24 | Emergency access. The City Fire Department has accepted a single site access point, with a divided road as an adequate emergency access. Although this may be acceptable to the City, it does not constitute an actual secondary emergency | D-36 |

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| | access. Although a low probability, a large truck-trailer accident at the access roadway and Avenue 50 could hypothetically close all emergency access to the site with no secondary alternative alignment as normally required. The City is assuming a substantial risk that such a circumstance will not occur and result in harm to a future resident during an emergency. We are surprised the City is willing to accept such a risk. | D-36 Cont. |
| p.2.20-8 | Same issue as previously raised under hydrology. If the GPU EIR relied on qualitative data to conclude buildout development water resource impacts would be less than significant, how can this analysis conclude that water resources will be sustainable over the long term? There is no factual foundation for this conclusion. Actual data and analysis of the water data is needed to justify conclusion regarding less than significant impact. | D-37 |
| p.2.20-9 | Instead of looking at annual capacity, it would be appropriate to provide data on daily capacity. Is the 5 mg/d treatment capacity exceeded on a daily basis. And if so, does Plant WRP-7 have adequate storage capacity to balance inflows into the plant over a reasonable period? | D-38 |
| p.2.20-10 | The discussion of submitting a future drainage plan to identify if any offsite drainage system improvements are needed constitutes deferral. Because this project consists of a specific project, the VSP and tract map in addition to a GPA, it is necessary to identify all offsite improvements for evaluation now, not in the future. Concluding that drainage system impacts are less than significant without any evidence is an error in the analysis. | D-39 |
| p.3-5 | Please provide data to support the statement that "no alternative site was available for sale or met the project objectives in the area of the City." As presented, this is a conclusory finding with no data to support it. | D-40 |
| p.3-6 | Alternative 1 would require a zone change to achieve the 45 units on the site. The current CEIR-1 and CEIR-2 zoning would only allow up to about 30 residential units. This condition represents the current CEQA baseline for evaluation in this DEIR. This issue also applies to significance threshold c) on p.3.3-4. | D-41 |
| p.3.4-2 | The conclusion stated in paragraph 1 on this page is flawed as previously indicated. The loss of prime farmland at the project site is part of the cumulatively considerable impact identified in the GPU EIR. Therefore, it cannot be less than significant as concluded in this unsupported statement. | D-42 |
| p.3.14-3 | Note that if only 30 residences are built on the project site, this would allow for setbacks from Avenue 50 to eliminate any exposure to significant noise from traffic. | D-43 |
| p.3.17-4 | Within a noise setback area for Alternative 1, a larger park area, perhaps even a public park, could be established. | D-44 |
| p.4-1 | Based on the preceding comments, we submit to the City that the proposed VSP project will cause significant unavoidable adverse impacts under the following environmental issues: Aesthetics, Agriculture, Hydrology and Water Quality, Land Use, and Noise. | D-45 |
| | As previously noted, a full copy of the Specific Plan is not provided in the DEIR, | |

therefore, it was not possible to verify the content of the Specific Plan and compare it with the impact forecasts in this document.

D-45
Cont.

Based on our review, this DEIR was prepared to support the proposed project, not to make an unbiased evaluation of the project's environmental impacts. Existing City residents and our decision-makers deserve a better environmental document to properly inform everyone about the real consequences of approving the proposed project. The proposed project seeks to change a vision of the City that was embodied by the 2019 General Plan. We submit that it is too soon to make this degree of change in the General Plan's vision in a manner that will reduce the diversity of future residences, not enhance it. We have identified many errors and flaws in the current DEIR that need to be corrected before this project is brought before the City's decision-makers. We request that the City revise the DEIR using unbiased analysis and re-circulate the document to ensure the actual impacts are fully characterized. Thank you for the opportunity to submit these comments.

D-46

Very truly yours,

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July 29, 2020

City of Indio Planning Commission
Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

**RE: Ventana Project in City of Indio:
General Plan Amendment, Tentative Tract Map and Specific Plan**

Dear Chairperson Franz and Members of the City of Indio Planing Commission:

This law firm represents Michael and Lynn Kincaid, among others, who oppose the Ventana Project. ("Project") The Project is opposed because it represents a whole-sale repudiation of decades of promises by the City of Indio to protect and preserve the nature and integrity of the County-Estates area in south Indio.

Pursuant to the Initial Study ("IS"), the City proposes to grant the Developer a site specific general plan amendment, a special site specific zoning, along with a specific plan and tentative tract map so it can build something *radically* different than anything in the area. If allowed, the Project will be the death knell for the Country Estates area. It will effectively drop the significantly higher density housing in the middle of 5, 7, 1½ and 1 acre ranch properties. All of the properties surrounding the Project site were developed consistent with, and in reliance on, City of Indio General Plans and zoning.

THE VENTANA PROJECT AND RELATED GENERAL PLAN AMENDMENT REQUIRE AN EIR.

The planning department has identified many potential significant impacts the Project will have on the environment and surrounding neighbors. Nevertheless, the planning department proposes to take the drastic step of not requiring an Environmental Impact Report (EIR) to address these impacts. Despite significant impacts, the Planning Department believes that if it

changes the general plan, zoning, site plan and tract map to please the Developer, and requires the Developer to build consistent with these unwarranted concessions, the impacts on the surrounding properties will be mitigated.

For example, this Project will create negative effects of light pollution, noise, poor air quality, destruction of special species habitat, traffic congestion and hazzards. The Planning Department proposes to mitigate these impacts by simply changing all the standards for the Project Developer. According to the IS, everyone in the Country Estates area is required to build a maximum of one house per acre, but the Ventana Developer will be allowed to cram up to 8 units per acre, and the City does not believe this will have any negative impact on the surrounding community.

The Planning Commission and City should *not* allow this project to be developed in its current form. This is not a punishment to the Developer. The Developer knew what was allowed to be built on the project site when the property was purchased. If the Project is developed as proposed, all of the surrounding properties will become isolated islands in a sea of houses. What is proposed now is an aberration.

Based on the Project's radical departure from the existing General Plan and zoning, an EIR should be prepared for this massive project. The California Environmental Quality Act (CEQA) requires a governmental agency to prepare an EIR instead of a negative declaration (mitigated or otherwise) whenever there is "**substantial evidence supporting a fair argument that a proposed Project may have a significant effect on the environment.**" (*Citizens for Responsible & Open Government v City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1332.) The "fair argument standard" is a "**low threshold**" test for requiring the preparation of an EIR. (Id. [citing *Pocket Protectors v City of Sacramento* (2004) 124 Cal.App.4th 903.928].) As explained below, given the obvious likelihood that the Project will have sufficient effect on the environment by additional vehicle trips, significant construction impacts including noise and air impacts, disturbing prime farmland, destroying habitat for protected species, and obstructing the view of existing land owners with an overly dense mega-project, an EIR is required.

THE PROJECT SITE IS NOT IN AN URBAN AREA:

Those opposed to this Project (names at the end) object to the planning departments mis-characterization of the Project site as being in an "urban environment." (IS at p. 19) The area is most definitely not urban. The closest commercial development (Ralph's Center) is a half mile away. Between Ralphs and the project site on the north side of Avenue 50 is a vacate 20 acre parcel, a 2½ acre parcel (one home) four five acre parcels each with one home or outbuildings. South of the project site is a 7 acre parcel and a five acre parcel each with one house and outbuilding. East of the project are 3 five acre parcels each with one home, and a 1½ acre parcel development that is not completely built out. North of the project there are 1½ and 1 acre parcels. Along the north-west portion of site are 6 half acre parcels with one home each. Virtually all of the

D-47
Cont.

surrounding property owners oppose the Project.

Across the street on 50th, starting at Jefferson and proceeding east, is a 20 acre parcel, 15 acre parcel and an 8 acre parcel all with one home and outbuildings. Directly south across the street is a low density golf course community. To the south-east are 2½ acre polo estates. These border on a square mile of polo fields and horse ranches. This is *not* an “urban” area. In fact the IS itself proposes a “*suburban*” zoning change designation. Clearly, the Project site is planned directly in the middle of extremely low density housing. Most existing houses were constructed on vacant desert or where farming used to occur.

The Project site itself was designated as “**Prime Farmland**” on the 2016 Riverside County Important Farmland map. (IS at p. 27) The property was used for farming purposes until 2019 when it was purchased by the Developer. The Developer shut down the farming operations.

The next closest farming operation is not the Shields Date Garden on Hwy 111 as reported by the IS, but is the Morris ranch immediately next to the project site, where dates and ornamental trees are farmed. There is also active farming occurring on the other side of Avenue 50 (north-west) from the Project.

What the IS proposes is that “prime farmland” in an area zoned for farming, be completely eliminated by a site specific general plan and zoning that precludes farming. The IS says this is acceptable because: “the proposed Project will not conflict with zoning for agricultural uses, because it is designated for residential use, and is located in a rapidly urbanizing environment.” In other words, there will be no zoning conflict because the City will change the zoning for the Developer, and allow rapid urbanization of the only Country Estates area in the City. There is no explanation of how the significant impact of converting prime farmland in the middle of a low density ranches is going to be mitigated.

Even the EIR conducted by the City in adopting the last General Plan changes, “concluded that build out of the General Plan will result in *significant* and unavoidable *impacts* regarding conversions of farmland to non-agricultural uses.” That General Plan and zoning, which currently controls the Country Estates area, allows for agricultural uses. Obviously, completely removing prime farmland and changing the General Plan and zoning will, by virtue of the City’s own EIR, result in a “significant impact” requiring serious Project modifications along with a site specific EIR.

THE PROJECT WILL HAVE A SIGNIFICANT IMPACT ON THE AESTHETICS OF THE AREA

Based on the false premise that the Project is in an “urban” environment, the IS concludes that the negative impact on aesthetics can be mitigated. The IS is limited almost exclusively to discussing whether the Project interferes with views of the surrounding mountains. The real negative impact of this Project, however, is its affect on the aesthetics of the area.

D-47
Cont.

What someone approaching this Project on Avenue 50 from the east or the west sees is a series of small ranches with abundant open space - until one arrives at the Project. In the middle of all these ranches will be a high density building complex of 5 - 6 small units per acre. The units are so small that it will have the appearance of a two story condo or apartment complex. This is totally inconsistent with the aesthetics of the area.

A. The Projects' High Density "Housing" Will Be Used As A Commercial Enterprise.

A major concern is that these small "houses" are intended to be used by the Developer and/or buyers, as short term vacation rentals ("STVR") during the Coachella Festival and other Valley events. This type of construction and use is anathema to all of the surrounding existing uses.

The bottom line with STVRs is that they turn residential areas into commercial centers. "Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or joining in the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow - without engaging in the sort of activities that weld and strengthen a community." (California Court of Appeal decision in *Ewing vs. City of Carmel By The Sea*)

STVRs are a commercial business. They are an incompatible use in areas planned for residential use.

By their very nature, STVRs are noisy and invite problems affecting residents' quality of life. Transient strangers come to vacation and have fun; residents are not on vacation - they are here to live and work. No amount of regulation or enforcement can change the inherent nature and constant turnover of strangers here to have fun in STVRs.

It is a red herring to think that relying on regulations and enforcement will make STVRs acceptable in the Project. No matter what improvements are made to enforcement, the onus is always on the resident to be the first responder. By the time residents contact code enforcement or the police, their quality of life has already been disrupted. Quality of life is degraded by neighbors being woken up during the middle of the night, trash being left behind by uncaring visitors, tight parking spaces and streets being taken up by out of town transients, etc.

STVRs remove housing units from the city stock and make housing less available or affordable for people who want to live in the city. They lower property values. They result in loss of a portion of TOT to the City. And they strain code enforcement and police resources. For these and many other reasons cities all across California are strictly limiting or banning STVRs.

B. The Project's Proposed Homes Are Not Consistent With Existing Housing.

The IS states, without factual support, that "The proposed homes will be consistent in scale

and mass to those already occurring in the area surrounding the Project, and will not change the visual character of the area.” One need only drive through the area to see that this is a false claim.

There are only 21 homes in the approximately 92 acres north of Avenue 50 which surround the Project. (This includes 7 homes in Desert River bordering the Project) **That is an average of 1 home per 4.3 acres.** The smallest of these lots is one half acre in size. The small 5-6 per acre units the Developer proposes are nothing like the homes in area surrounding the Project. The Project will have a significant negative impact on the visual character of the area. Once again, the City’s only mitigation measure is to change the general plan and zoning so the Developer’s plans can be carried out.

C. Light Pollution From The Project Site Will Have A Significant Negative Impact On The Surrounding Area.

The IS correctly reports that: “Currently, there are no existing sources of light on the Project site.” There is zero night time light coming from the project site. (IS at p. 24)

The existing minimal light in the area is generated by 21 homes scattered over 90 plus acres. There are *no* street lights on Avenue 50 except at its intersection with Jefferson and Madison a half mile away. (The IS a p. 24 erroneously states there is “street lighting” on Avenue 50.)

What the Project proposes is night time lighting from over 100 units, laid out on 10 new streets, all of which will have street lighting according to “City Public Work Engineering Standards (Indio - 200, Street Light Residential Area).” (IS at p. 25) This will be like setting off low level fire works every night compared to the zero light generated on the site for the last 100 plus years.

This Project will create a new source of substantial light and glare which will adversely affect nighttime views in the area. It is specious for the IS to conclude that because the zoning will be changed to allow the light pollution generated by the Project, that there will be a less than significant impact on the Project’s neighbors. Once again, the Project proposes a significant negative departure from what is currently in the area.

PROJECT CONSTRUCTION WILL HAVE A SIGNIFICANT IMPACT ON AIR QUALITY

The IS states that: “Under CEQA, a significant air quality impact could occur if the [Project] is not consistent with the applicable Air quality Management Plan.” (IS at p. 30) The IS admits that the Project will contribute to an increase in regional ozone and PM10 emissions. (Id.) Nevertheless, the planners believe that the Project Developer will comply with City air quality construction requirements so there should be no negative impact.

The IS analysis, however, does not seriously address the fact that this Project site presents significant challenges related to air quality. The site is not like a typical construction site. It contains

D-47
Cont.

both natural and built up sand dunes containing almost 75,000 cubic yards of blow sand and dirt. (IS at p. 31) That sand/dirt has to be removed from the site or the developer will significantly change the topography of the site. In turn, this could significantly alter water courses and view sheds.

Blowing sand and fine dirt from the site has been a significant problem with just the minor farming operations on the site. The wind typically blows from west to east across the property, causing extreme air quality issues for properties east of the site. Property owners have experienced poor breathing conditions that prevented being outdoors, reduced visibility due to blowing sand, rapidly depleted air filters, destroyed AC units, filled pool filters, roof top dust accumulation, etc.

In addition to grading and removing 75,000 cubic yards of dirt from the site, the Developer will be grading and making roads for over double the amount of homes allowed by the current General Plan. That means more street grading, more house pad grading, more curb and gutter, etc.

Another serious concern is that this particular Developer does not have a good track record in complying with air quality standards. Past construction by this Developer north of Avenue 48 created serious air quality and dust buildup issues for properties around that project site.

In conclusion, in discussing air quality health impacts the IS states: the extent to which the Project poses a health risk is uncertain but unavoidable. (Id. at p. 33.) This simply is not a sufficient CEQA analysis, especially in light of the fact that no EIR has been prepared.

D-47
Cont.

TRAFFIC GENERATED BY THE PROJECT WILL CREATE A SIGNIFICANT NEGATIVE IMPACT.

Perhaps the weakest part of the IS is its failure to address the significant impacts caused by an increased traffic. Currently there are zero trips per day occurring in and out of the Project site. When it was actively being farmed, trips per day were approximately two to four.

The Project will generate a staggering 1000 percent increase of traffic in and out of the Project.¹ This is almost 1000 trips in and out of the Project everyday. This adds the noise, glare from headlights and pollution generated by 1000 cars/trucks. This problem is not restricted to onsite noise, light and other pollution. All the property owners east and west of the Project on Avenue 50 will have to listen to 1000 additional cars and trucks slow down and speed up as they enter and exit the Project. *No mitigation measures are proposed for this 1000 % increase in traffic on what is now a relatively quite two lane road.*

The amazing increase in traffic also present a serious health and safety issue for property owners in the area. The Country-Estates area was developed with the intent that area owners could

¹The IS reports that: "According to the Traffic Report, the proposed Project will generate approximately 972 daily trips." (IS at p. 31)

in engage in agricultural and equestrian activities. Between Jefferson Street and Madison Street there are many people who own approximately **70** horses. During the winter months the horse population can be significantly higher.

Many of the owners/riders use trails on the south side of Avenue 50 that extend as far as Lake Cahuilla and beyond. In the past, Indio has made provision for trails on the north side of 50th but those trails - like the one agreed upon for the north-east corner of Madison and 50th - have not been developed.

The prospect of 1000 additional car/truck trips on 50th creates a health and safety hazzard for horse owners. Given that all the traffic for the Project will exit and enter at one location off of 50th, the Project entrance will be extremely busy. The IS is silent on how area horse owners are supposed to safely navigate 50th with all the additional traffic, noise and congestion.

The IS provides no mitigation measures to ensure the safety of horse riders, or to protect the integrity of the area for equestrian activities. There are no people who own horses in the area that are in favor of the Project. The Project's "urban" plan is decidedly anti-horse and anti-horse ownership. The Project is planned contrary to longstanding General Plan and zoning in the area. Current zoning allows horse to be kept on Country-Estates properties. The Project has a significant negative impact on historical recreation activities in the area.

What will the City do the first time a horse, or horse and rider, is killed by someone speeding into or out of the Project? How will the City protect against such an accident? This should be explored in an EIR.

THE PROJECT WILL HAVE POTENTIALLY SIGNIFICANT IMPACT ON BIOLOGICAL RESOURCES.

The IS reports that "special-status" species of birds are located on the Project site. One is "a locally rare species" and the other is a "California species of special concern." (IS at p. 36) The IS also identifies special-status plant species. No mitigation is proposed to protect these species or their habitat except to require the developer to pay money to the CVMSHCP. In other words, the IS is asking the City and Planning Commission to destroy this habitat, without an EIR.

Additionally, the IS reports that another species of special concern, the burrowing owl could be within the Project site. The IS says that if present on the property, "a significant impact would occur." Construction is not allowed where these owl burrow. (IS at p. 37) Although the Developer's investigators claim they didn't see any owls, the area neighbors commonly see owls on the Project site.

The IS also lists several other bird “species of special concern” that could nest in the Project site on a seasonal basis and otherwise. (Id.) In point of fact, one such bird seen in the Project site is the Cooper’s hawk, and well as many other types of hawks, including nesting Red Tails hawks. The IS reports that “under the provisions of the MBTA, impacts to covered nesting birds would be *considered significant*.” (Id.)

The IS plan to mitigate impacts on these special concern species is for the developer to get geared up to start construction, and then look in the bushes and on the ground for burrowing owls or nests. If the developer does not see any nests or burrows then it is allowed to proceed to destroy the habitat so the birds can not come back. Apparently the IS/Mitigated Negative Declaration authors believe that once the habitat is destroyed the bird problem will be mitigated. In other words, let’s put the fox in charge of the hen house. Once again, all of this mitigation for “special species” is proposed without an EIR.

THE PROJECT POSES A POTENTIALLY SIGNIFICANT IMPACT ON CULTURAL RESOURCES

The IS states that archaeological resources may be encountered in area that have been developed or farmed but have not been subject to extensive subsurface disturbance. (excavation).” (IS at p. 40) This is an accurate description of the Project site. The site contains a significant natural dune that has never been farmed or excavated.

The IS said that during a Phase I cultural resource study the Developer’s investigators did not see any “historical resources”, but still recommended “archaeological monitoring” due to sensitivity of the Project location for subsurface cultural remains of prehistoric origin. In other words, the investigators believe that the Project site is an area where such remains are likely, but they didn’t see any.² In point of fact, in the 1970s, one could see cooking pits and bone fragments on the natural dune.

The IS said “the City is conducting Tribal Consultation in conformance with both SB 18 and AB 52 requirements and contacting the tribes in writing. Should the Tribes request consultation and provide input on the potential impacts, they will be included in conditions of approval and/or added to this Initial Stud.” It is clear from the IS that the City has yet to hear from the Tribes. Accordingly, the IS is incomplete on this point. Without hearing from the Tribes, how can the planning commission make an informed decision about approving the Project.

Despite the foregoing concerns, the IS recommends that the Project be approved without an EIR. The mitigation proposed is that as while the Developer’s earth moving equipment operators

²“Applied Earth Works suggested that the Project area has high **potential for significant paleontological resources**, both near the ground surface and at greater depths.” (IS at p. 47, emphasis added.)

are in the middle of moving 75,000 cubic yards of dirt, and doing the rough grading, they should be on the lookout from their machine perches to see if they are disturbing any historical resources.

THE PROJECT'S GENERATION OF HAZARDOUS MATERIAL AND AFFECT ON WATER QUALITY POSE A SIGNIFICANT NEGATIVE IMPACT

Lack of water to this Project is a potentially significant impact. It appears that the Project needs/requires two water sources. One is a proposed connection to an existing CVWD 18 inch irrigation lateral under Avenue 50. (IS at p. 60) This lateral carries All American Canal water. The water is not potable. Why the Project would be connecting to this line is a mystery.

The second possible source mentioned is an "8 inch water main located north of the project site. No new wells or additional water infrastructure are proposed." (Id.) No indication is given where this connection will take place or whether the Project Developer has permission to cross existing private property to connect with the water main. Further, is it not clear how the Developer is going to provide potable water to 45 acres of homes and attendant landscaping, etc., through one 8 inch water main. The City has to seriously question whether there is sufficient water available to the site, and whether proposed usage will impact water resources in the area.

All of the existing ranches in the area receive water from their own or shared wells. There is no indication what the affect of the Project water usage will have on existing small farm/home wells in the area. The demand for so much additional water could have a devastating impact on all the surrounding properties. This should be the subject of an EIR.

The IS states that: Development of the proposed Project will increase impermeable surfaces on-site, and therefore increase on-site storm flows. Recent storm flows from the site, without the increases from impermeable surfaces, caused significant flooding to surrounding property. An EIR should be conducted to address this issue.

The developer proposes to catch all storm and run off water in "6 onsite retention basis." All of these basins, except one, are located along the Project's southern boundary immediately next to the Kincaid and Morris properties, and down the east boundary of the Morris property. In essence, the Project will take the accumulated storm flow of the 45 acre development, along with all the fertilizer and pesticides from the homes/yards, all the roof top dust and debris, and all the street and gutter oil and contaminants, and dump it in holding ponds along two neighbors' property lines.

Obviously a major concern is that if the retention basins fail the neighboring properties will be flooded. Of equal or greater concern, is that the storm water refuse and over irrigating byproducts will be dumped and allowed to sink into the soil virtually on top of wells (within 20 feet) used by neighbors for drinking and other household uses. The potential negative impact of retention basis capacity and location, and their affect on neighboring water wells, needs to be thoroughly and completely investigated by the City. An EIR should be required.

PROJECT NOISE WILL HAVE A SIGNIFICANT IMPACT ON THE AREA.

Some of the Project noise issues have already been addressed. Noise from the site will go from an occasional coyote to the noise generated by 1000 vehicle trips and 103 housing units - 25% of which will be from extremely high density building.

The IS does not bother to address operational noise generated by the Project at build out. It describes the difference in noise between no traffic and thousands of daily vehicle trips as “a marginal increase.” (IS at p. 69) There are no mitigation measures for a 1000% increase in traffic noise.

The only mitigation measures included in the IS are for course of construction mitigation. Noise is a significant issue the City should address in an EIR.

THE CITY NOTICE OF INTENT AND INITIAL STUDY MATERIALS ARE DEFICIENT

It does not appear that all Project neighbors received the NOI.

An additional concern is that the IS/Mitigated Negative Declaration does not include the appendices that purportedly contain supporting scientific studies. All of the following are missing from the IS:

- CalEEMOD Air Quality and GHG modeling;
- Habitat Assessment;
- Cultural Resource Study;
- Geotechnical Investigation;
- Paleontological Resources Assessment;
- Phase I and Phase II Environmental Site Assessment; and
- Noise Impact Analysis.

The IS states that these reports are “Available at City Hall.” This method of distributing information is extremely prejudicial to persons wishing to study the Project and decide whether or how to comment. Given the current Covid concerns, going to City Hall, and the City’s hours, make obtaining these reports difficult. The Project opponents suggest that the City postpone any hearing on this Project until later in the fall, and at a time when the background information for the IS is more readily available.

Based upon our initial review, the IS contains fatal flaws and fails to acknowledge that substantial evidence of significant unmitigated impacts exist. Once Project opponents have more time to time to complete their review they may submit further comments on the inadequacies of the IS/MND.

In the past, The City has required an EIR for General Plan amendments. It is alarming that the City is considering the current GP Amendment without an EIR. If it is the Developer's position that the updated GP and zoning should apply to the Project, then the Project should not be approved through a Mitigated Negative Declaration. It is doubtful that this intense, oversized Project, would be approved in its current form, or otherwise, if an EIR is performed.

It is the City's responsibility to ensure that the overall development of the land is designed to ensure the protection of the public health, safety, and general welfare. Based on all of the foregoing, we do not believe that the Project, as planned, can be constructed or maintained in a manner that will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

The design and location of the proposed development and its relationship to neighboring existing or proposed properties, with its attendant noise and traffic is such that it will impair the desirability of investment or occupation in the surrounding area; it will unreasonably interfere with the use and enjoyment of neighboring existing or proposed developments, and it will create traffic hazards or congestion.

That the design and location of the proposed development is not in keeping with the character of the surrounding area and is detrimental to the harmonious, orderly, and attractive development contemplated by the General Plan and existing zoning.

The IS outlines a finding: "that although the proposed project could have a significant effect on the environment there will not be a significant effect in this case because revisions in the project have been made or agreed to by the project proponent." In fact, the IS is devoid of any revisions by the Developer. Instead, what is clear on the face of the City documents, is that the Developer has laid out what it wants to do, and the City is changing the General Plan, zoning and everything else necessary to accommodate the Developer. All of this is being done to the significant negative detriment of all the existing property owners. Equally disturbing, is the fact that all of this is being done without the objective and fair analysis of a site specific EIR.

Very truly yours,

LAW OFFICES OF MATT H. MORRIS

/S/

MATT H. MORRIS, ESQ.

July 29, 2020
Page Twelve

Project Opponents:

Michael Kincaid
Lynn Kincaid
Julie Reeske
Michael Reeske
Steve Mann
Todd Baker
Kelly Remmling
Erich Remmling
David Bryan
Greg Fleming
Pamela Baker
Gerald Hampton
Jessica Hampton
Kelly Cross
Terri Miller
Lee Miller
Jesse McKeever
Katie O'Malley
Nate Rucker
Sidney Rucker
Eileen Bruner-Dryden
Pat Zacker
Bruce Hughes, Esq.
Lisa Hughes, Esq.
Mike Dawson
Wanda Reese
Darwin Weeks
Joann Weeks
Arline Titone
Rex Sylvester
Tracy Sylvester
Ty Webb
Marcy Webb
Dr. Aaron Bean
David Ball
Kimberly Ball

Subject: FW: NO ON VENTANA PROJECT

Date: Thursday, May 6, 2021 at 6:52:30 PM Pacific Daylight Time

From: Leila Namvar <lnamvar@indio.org>

To: Nicole Criste <ncriste@terranovaplanning.com>, Mario Gonzales <mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovaplanning.com>

FYI

Leila Namvar, Senior Planner
Community Development Department
City of Indio
100 Civic Center Mall
Indio, CA 92201
(760) 541-4258 (Direct)
(760) 399-7887 (Cell phone)
www.indio.org | GIS Map | Applications & Forms

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-----Original Message-----

From: AZURE POOLS AND SPAS <rick@azurepoolsandspas.com>

Sent: Thursday, May 6, 2021 4:32 PM

To: Evelyn Beltran <ebeltran@indio.org>; Leila Namvar <lnamvar@indio.org>

Subject: NO ON VENTANA PROJECT

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Hello Evelyn and Leila:

>

>

> We would like to voice our support against the Ventana project and would like this letter to be entered into the record.

E-1

I can't live with this going on behind my property!!

Who will be responsible for cleaning my backyard, Pool and our privacy??

This needs to be addressed immediately or we will have may issues. Not to mention out investments on our existing properties that we have built as Estate Living.

Rick and Venessa Neff
49440 Colorado St.
Indio, Ca 92201.

760-578-7665

Best Regards,

Rick Neff

E-1
Cont.

Subject: FW: Re: Ventana limited neighbor correspondence
Date: Wednesday, May 5, 2021 at 3:07:20 PM Pacific Daylight Time
From: Leila Namvar <lnamvar@indio.org>
To: Nicole Criste <ncriste@terranovaplanning.com>, Mario Gonzales <mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovaplanning.com>
Attachments: image001.jpg, 5.5.21 Letter.pdf

FYI

The same letter sent by Mr. Sam Kyle. Thanks, Leila



Leila Namvar, Senior Planner
Community Development Department
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From: kdc@olyphen.com <kdc@olyphen.com>
Sent: Wednesday, May 5, 2021 2:53 PM
To: Leila Namvar <lnamvar@indio.org>
Cc: matt@mhmorrislaw.com
Subject: Fwd: Re: Ventana limited neighbor correspondence

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Leila Namvar

Senior Planer

We have retained an Environmental Consultant to review the Draft EIR in conjunction with the Ventana Project that borders us and 20-30 other very concerned neighbors.

The attached letter from Mr Morris is the results of our Consultant and Mr Morris review of the Draft EIR.

F-1

Please make this a part of the records on the Draft EIR.

Sam Kyle

----- Original Message -----

Subject:Re: Ventana limited neighbor correspondence

Date:2021-05-05 13:44

From:Matt Morris <matt@mhmorrislaw.com>

To:Leila Namvar <lnamvar@indio.org>, "kdc@olypen.com" <kdc@olypen.com>

Cc:Kevin Snyder <ksnyder@indio.org>, Evelyn Beltran <ebeltran@indio.org>, Matt Morris <matt@mhmorrislaw.com>, Tom Moon <tmoon13@gmail.com>

Dear Ms. Namvar,

Attached please find our comments regarding the Ventana project Draft EIR. I will be sending the 5/5/21 letter's exhibit - my prior letter - in a separate email.

Let me know if you have any questions.

Regards,

Matt H. Morris Esq.

Law Offices of Matt H. Morris APC
47040 Washington St, Suite 3201
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On 4/6/2021 11:05 AM, Leila Namvar wrote:

Sam. The public record has been provided to Mr. Moon. Please see attached emails and let me know if you have any additional questions. thanks, Leila

Leila Namvar, Senior Planner



Community Development Department

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P Please consider the environment
before printing my email

From: kdc@olyphen.com <kdc@olyphen.com>

Sent: Monday, April 5, 2021 6:28 PM

To: Leila Namvar <lnamvar@indio.org>

Cc: Kevin Snyder <ksnyder@indio.org>; Evelyn Beltran <ebeltran@indio.org>; Matt Morris <matt@mhmorrislaw.com>; Tom Moon <tmoon13@gmail.com>

Subject: Fwd: Ventana limited neighbor correspondence

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Leila

See email below that you sent out to Tom Moon after he requested the public information that was submitted to the City and Development Commission !!

Why is the City not complying and providing ALL of the information that has been submitted by all the people that have either sent letters or emails to file complaints about this project.

I know several owners from Croquet Ct had submitted including the two letters that I sent and none of these are provided in the documents you sent Mr Moon??

Were my letters submitted to the Development Commission and read into the meeting minutes??

Sam Kyle

----- Original Message -----

Subject: Ventana limited neighbor correspondence

Date: 2021-04-05 16:09

From: Tom Moon <tmoon13@gmail.com>

To: kdc@olypen.com, Matt Morris <Matt@mhmorrislaw.com>, Darren Moon <darren@reobroker.com>

Happy Post Easter Sunday gentlemen:

Following are the two links Leila sent us regarding citizen correspondence on the Ventana project. We asked our next door neighbor to write in and we are glad to see he did. Sam, I am surprised to see your three page letter was not one of the mentioned below?

Best Regards,
Tom Moon

Mr. Moon,

Here the public record on the correspondence that the City had received:

http://weblink.indio.org/pub_weblink/Browse.aspx?id=1157789&dbid=0&repo=Indio

<https://www.indio.org/civicax/filebank/blobload.aspx?t=56140.31&BlobID=31488>

Please let me know if you have any additional questions.

Thanks,

**Leila Namvar, Senior Planner
Community Development
Department**

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Indio, CA 92201
(760) 541-4258 (Direct)
(760) 399-7887 (Cell phone)
www.indio.org | [GIS Map](#) | [Applications & Forms](#)



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May 5, 2021

City Planning Commission
C/O Ms. Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

Dear City Planning Commission and Ms. Namvar:

This firm represents the Kincaid family and the interests of numerous other neighbors and adjoining neighbors of the proposed Ventana project. We previously sent you a letter about this project (attached) when it was proposed to be adopted with a negative declaration. The issues raised in that letter were not adequately addressed by the developer. Many are still not adequately addressed in the Draft Environmental Impact Report (DEIR).

The following comments on the Ventana Specific Plan (VSP) and DEIR are being submitted by adjacent residents and who strongly oppose changing the recently adopted City of Indio General Plan land use designation of the approximate 45-acre property from very low-density residential use (Desert Estate Neighborhood) to a proposed land use designation (Transitional Neighborhood) that will allow up to 3 dwelling units (du) per acre. These comments are also submitted after extensive consultation and review with retained environmental specialists.

The VSP appears to be an elaborate effort to assign a "spot" land use designation to accommodate a single individual to the detriment of the existing low density, high quality neighborhood that already exists in the area. There are already many suburban neighborhoods in the City of Indio and the General Plan's objective in establishing the Desert Estate land use designation was to allow a limited amount of land in the City to be set aside for high quality residences on large lots that wish to continue a rural agricultural tradition on their property. The new Indio General Plan was adopted in September 2019, less than two years ago, and removing a substantial portion of one of the nicer neighborhoods in the City for more suburban development is unreasonable. We found the DEIR to be self-serving and not an objective evaluation of potentially significant adverse impacts. Due to certain flaws that we have identified in the document, we highly recommend revising the DEIR and recirculating it to address the identified errors.

General Comments

We carefully reviewed the entire DEIR and did not find a copy of the VSP in the document or appendices and thus were unable to verify the statements in the Project Description. Also, a Specific Plan by law must contain details ranging from land use and design guidelines, to infrastructure and funding sources to implement the plan. Without access to the VSP it was not possible to examine each element of the Plan to determine if the information in the DEIR Project Description encompassed the whole of the project. We consider the failure to provide the VSP for public review a fatal flaw in the DEIR that requires correction and recirculation.

There is a second major error in the DEIR that affects much of the analysis. Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zone for the site is about 30 units, not 45. This finding is based on the fact that the 45-acre site is zoned CEIR-1 and CEIR-2. Under CEIR-2 the maximum number of units is one unit per two (2) acres, not one acre. The current baseline for evaluation of potential impacts is not the current General Plan designation, but the actual number of dwelling units that can be constructed under both the General Plan designation and the zone classification for the property. We raised this issue in our original comments for this project and the issue has been ignored. Thus, the delta between the existing number of units that can be constructed and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. All elements of the DEIR that rely upon quantitative evaluation are in error because of this analytical flaw. This is a fatal flaw in the DEIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying on a baseline of 45 units requires reevaluation.

The third major issue of concern is that the project description indicates that the proposed General Plan designation, Transitional Neighborhood, would allow "hospitality" uses, but this topic is never discussed again in the document and certainly what activities are allowed is not presented or discussed. For example, if "hospitality" uses are permitted, this issue requires evaluation at least in the Vehicle Miles Traveled section of Traffic and the Noise section of the DEIR. It appears that this topic was intentionally avoided throughout the DEIR and it must be given full consideration in a re-circulated DEIR.

Specific Comments

- p.2.3-4 Are the SRF homes to the north and east one acre in size? They appear larger and many of these lots appear to be several acres. Installing suburban development in place of the currently designated 1- and 2-acre lots creates a harsh transition the character of the estate neighborhood to the north and east.
- p.2.3-10 The analysis of Scenic Vistas portrays the change in views to surrounding mountains internally only for residences to the SE. In the future construction of the residences on the 45-acre site will cause the following adverse changes. The foreground views to Mountains will be visibly changed by allowing the number of structures disrupting background mountain views (background long distance) to more than double – substantially reducing visual access corridors and quality of scenic views.

p.2.3-11

Impacts on Scenic Views – statement re: private views not being subject to CEQA. Actually, they are subject to CEQA review. Specifically, *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 contains the following finding:

Based on this evidence, plaintiffs assert the City abused its discretion by certifying the Final SEIR without analyzing the impacts the project would have on views from their adjacent private property.

Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) Additionally, California landowners do not have a right of access to air, light and view over adjoining property. (Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.) Plaintiffs concede this authority, but claim they are merely attempting to enforce CEQA's requirement that the City identify and mitigate the significant environmental effects of a project before approving it. (CEQA Guidelines, §§ 15002, 15021.)

An EIR must identify the "significant environmental effects" of a proposed project. (§ 1100, subd. (b)(1); CEQA Guidelines, § 5126, subd. (a).) For purposes of CEQA, "environment" means physical conditions existing "within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Thus, aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project. (§ 21100, subd. (d); Ocean View Homeowners Ass'n, Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402-403.) However, a lead agency has the discretion to determine whether to classify an impact described in an EIR as "significant," depending on the nature of the area affected. (CEQA Guidelines, § 15064, subd. (b); National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1357 [varying thresholds of significance may apply depending on nature of area affected].) In exercising its discretion, a lead agency must necessarily make a policy decision in distinguishing between substantial and insubstantial adverse environmental impacts based, in part, on the setting. (CEQA Guidelines, § 15064, subd. (b).) Where the agency determines that a project impact is insignificant, an EIR need only contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, § 15128.)

Based on the preceding impacts to private views, and to give such analysis context, the DEIR must evaluate GP policies to see if public and private views to important scenic vistas is given importance in GP.

View 1 – the analysis of the public view to the mountains (background view) is inaccurate. The current view shows a clear visual path to the mountains with some mid-ground interference from vegetation. The after-development view of the mountain background is substantially altered by development. Visual access to the mountains/hills south of San Jacinto Mountain is substantially altered. This public view clearly experiences a substantial adverse impact.

p.2.3-14

In View 2 homes east of the project's SE boundary currently have a rural foreground view; mid-ground is suburban with landscaping, and an almost continuous background view of the hills and mountains. The VSP development and landscaping will substantially alter the background view, only limited and sporadic visual access to the hills will be available to the residents. Whether this loss of visual access by private residents can only be determined by an analysis of GP policies

View 3 is actually illustrative of less impact on scenic vistas. The foreground retention basin minimizes less of access from adjacent residences in View 3 highlights the degree of changes in Views 1 and 2. View 3 foreground undergoes substantial change.

View 4 foreground view is dramatically changed. Views to the mountains in far background is lost in View 4. View to nearest mountains is disturbed but retained. Still a substantial change from the present views.

Based on the preceding description of view changes, we believe that any reasonable person would conclude the change in access to scenic views from public and private vantage points is a significant change, i.e., a significant adverse impact. The photo simulations clearly demonstrate the scope of the change.

p.2.3-19 Analysis should be on existing designation not on hypothetical Suburban Neighborhood. Also, no analysis of and data supporting how Transitional Neighborhood can be similar in visual setting to Desert Estates Neighborhood; i.e., how is a Transitional neighborhood consistent and compatible scale to development intensity on its eastern and northern boundary. Using homes in a higher density designation on the west is an invalid and erroneous visual comparison due to the open space created by the project site. Residences to the north and east are the appropriate and pertinent analytic comparison. The conclusion at top of page 2.3-20 is not supported by objective analysis.

VSP impact – the comparison from Avenue 50 should be between the view to the site under the existing environmental visual setting and the proposed VSP development. This change will be dramatic. When compared to the visual setting to the east, please refer to View 1 and its impacts.

p.2.4-4 Riverside County also provides independent soil classifications; were Riverside soil classifications consulted? If not, it would be appropriate to do so since Riverside data is discussed below.

p.2.4-5 Area was farmed until 2019 according to adjacent residents. The 45-acre property is designated as Prime Farmland on County's Important Farmland Map.

p.2.4-6-7 The analysis of losing Prime Farmland is flawed and represents a distorted rationalization for a finding of less than significant impact. This occurs for the following reasons. Prime Farmland is very limited resource, analogous to an endangered species. The GPA reduces the size of lots and removes agriculture as an approved use; thereby eliminating potential use of the onsite soil for its highest and best use. Note that several of the adjacent residences maintain date trees on their property and have them picked each year. The GPEIR found the cumulative loss of Prime Farmland in the City to be a significant unavoidable adverse impact. Approval of the GPA removes approximately 45 acres of Prime Farmland from potential agricultural productivity. Thus, at a minimum, the proposed GPA represents a cumulatively considerable contribution to an action the City has already found to be a significant adverse environmental impact. Presenting this action as

a less than significant impact when it has already been deemed by the City to be a significant impact is a disingenuous finding at best and an intentional error in conflict (inconsistent) with the current General Plan at a minimum. This issue needs to be re-evaluated and the EIR recirculated to properly disclose this significant impact.

p.2.4-7 The amount of 21,267 of total “important farmland” is the incorrect metric to be used in evaluating the loss of 45.17 acres of Prime Farmland. The correct metric would be the 1,962.5 acres of Prime Farmland in the City used in the GPU EIR. The loss of Prime Farmland under the VSP is actually 2.3%. This absolute loss of acreage due the proposed project is clearly part of a cumulatively considerable adverse impact. Attempting to utilize the Statement of Overriding Considerations (SOOC) for the General Plan as justification for a less than significant impact finding exceeds credibility; it is a clear error in evaluation, as documented in the GPU EIR; and needs to be corrected through recirculation of the VSP DEIR to adequately correct the substantial failure to inform decision-makers and interested parties.

Section 2.4.7 – Compensatory mitigation is feasible for a specific project’s impact to loss of Prime Farmland. The loss of Prime Farmland can be compensated/offset by purchase and permanent preservation of agricultural land of comparable value. Prime agricultural land mitigation banks have been established in California (such as Elk Grove, California) and offsetting the loss of 45.17 acres of Prime Farmland at a mitigation ratio of 2:1 or 3:1 would be a reasonable and feasible measure.

p.2.4-8 The last paragraph presents flawed data. The City has already found the cumulative loss of Prime Farmland to be a cumulatively considerable adverse impact. The proposed project removes agriculture as possible use of the property. It may not add additional acreage to the loss of Prime Farmland, but the proposed project is clearly a component of the City’s cumulatively considerable impact that has been unequivocally found to be an unavoidable significant adverse impact by the City. As the implementing action that causes the loss of 2.3% of the City’s prime farmland, the proposed project clearly contributes to the City’s evaluation of this impact, and by extrapolation is also a project specific significant, cumulatively considerable impact.

p.2.5-13 No data are provided to support the conclusion that the increase in site occupancy emissions (about 13.5 lbs/day for NOx) from approving the GPA is not a cumulatively considerable incremental increase. 13.5 lbs of NOx per day clearly is not significant for a specific project, but please provide the context to support the conclusion that the additional emissions should not be considered cumulatively significant when added to the overall emissions generated from buildout of the City’s GP.

As stated above regarding Prime Farmland, the fact that the City adopted a SOOC does not diminish the significant unavoidable adverse impact finding in the GPU EIR, it only makes a finding that the City is willing to accept this adverse impact to achieve buildout of the proposed land uses in spite of the adverse impact to which it will expose its citizens. This GPA will add to the City’s identified cumulatively considerable significant impact.

- p.2.5-21 Same comments as provided on the 2.5-13
- p.2.8-10 In the paragraph preceding “Ventana Specific Plan” a conclusion is made that “the GPA would not cause new or increased severity of impacts regarding long-term operations. However, the analysis does not provide any discussion of “what threshold” of change should be used to determine “significant impact.” Please provide, i.e., if not 2.5% increase what threshold should be used and why.
- p.2.8-12 Natural gas. Again, a threshold of significance would help understand and substantiate this finding. Also, unless required as mitigation, the use of induction?? Cooking stoves and heat pumps cannot be assumed.
0.8% increase in fuel consumption needs context regarding how much of an increase is significant.

Does the project achieve a zero net energy use? If not, how is it consistent with this GP policy?
- p.2.12-14 Throughout the discussion of water availability there is a discussion of total water in storage in the Whitewater River Basin and the volume of water extracted by the IWA. However, there is no discussion of the two key issues needed for this evaluation: how much of the 28.2 MG in storage is available for human use and most importantly, whether the Basin is in overdraft (exceeds safe yield) and if so, does an increase in GP density contribute to a cumulatively considerable adverse impact and affect long-term sustainability of groundwater supplies?
- p.2.12-18 There is no discussion of the availability of a groundwater sustainability management plan, or when compliance with state requirements for such a plan will occur. Also, under the VSP discussion, a WQMP has no effect on water consumption issues. It does not correlate with the possible need for a sustainable groundwater management plan.
- p.2.12-19 Cumulative impact findings are incomplete. Please provide
- p.2.13-2 This GP EIR has studiously avoided discussion of the existing zone classifications on the 45.15-acre property. Like the General Plan designation, the zone classification establishes the maximum density of development. Yes, the GP identifies the maximum land use density, but the zoning for the property CEIR-1 and CEIR2 also establishes density, i.e., the maximum number of units that can be developed under the zone classifications at this time. In this case, CEIR-2 allows only one unit per 2 acres. Based on this designation, the project site can currently be developed with about 30 du, rather than 45. Therefore, the analysis throughout this document based on 45 units which is allowed by the General Plan land use designation, but is in error with regard to the actual land use baseline, the actual number of dwelling units that can be constructed at the present time. This is a fatal flaw in the EIR that must be corrected through revising the whole document and recirculating it for review.

Southern Neighborhood Subarea – area between the Central Neighborhoods and Festival District lifestyle rural country-side environment and existing equestrian uses, rural/resort lifestyle in a quiet and secluded living environment, maintain the area's unique character, the GPA conflicts with this objective which the local residents consider a major inconsistency.

VSP LU – 1.5 – not consistent, Southern Neighborhood Subarea strategies, no discussion of consistency with the adjacent Southern Neighborhood Subarea.

- p.2.13-5 The analysis here is flawed as the proposed project does not enhance the Neighborhood Subarea stability as it extends higher density suburban level development into this area.
- Multi-modal, required improvements, nothing contributory by the proposed project except the mandated improvements on the adjacent roadway (Avenue 50), such as bus stops, etc.
 - Specific Plan – The DEIR does not provide a copy of the whole VSP for independent review. It is not even clear that the VSP contains all of the required elements of a Specific Plan.
 - Further, the VSP does not create synergies with activities or events in the Festival District, at least none that were identified in this DEIR.
- p.2.13-6 Balanced land uses, this project unbalances the land uses established less than 2 years ago in the new General Plan. The VSP may increase the range of single-family residential structures on the site, but it diminishes range of housing choices within the City by eliminating/reducing the 45 acres of rural country-side and rural/resort lifestyle acreage in the City. This designation is already very limited within the City of Indio. LU-2.2
- p.2.13-9 The development does not protect views to the mountains. For this section the analysis has focused on the incorrect issue. For example, the Southern Neighborhood Subarea is designed for a lifestyle of a rural countryside environment to support equestrian uses and rural/resort lifestyle in a quiet secluded living environment. The proposed project is the antithesis of this lifestyle. 45 acres are proposed to be removed from this rural/resort lifestyle designation to be replaced by a traditional suburban neighborhood. Thus, both in terms of balancing land uses in the City as a whole and how much suburban residential acreage (2+ units/ac) exists in the City, the assessment should focus on how much land designated for large acreage lots will remain in the City if the VSP is approved. Balance is achieved in the City by providing a full range of residential options, expanding standard suburban, cookie-cutter lots, does not maintain the balance that the City Council included in the recently adopted General Plan which is less than two years old. Having 30 lots on 45 acres supports a balanced mix of residential development more than does reducing the total acreage of the City allocated to large-lot rural residential land use.
- p.2.13-13 Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zoning for the site is about 30 units, not 45. Thus, the delta between the existing number of units and proposed GP is $(135-30) = 105$, not 91. Also, the delta

between the actual number of units proposed under the VSP & TTM 37884 (103-30) = 73, not 58. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying solely on a baseline of 45 units requires reevaluation.

p.2.13-14 For the existing large lot residences the 45-acre site with a designation of 1 dwelling unit per one- or two-acre parcel makes sense as a buffer between the larger lot residents to the east and the suburban residences to the west. This was the obviously the intent of the City Council when it adopted the 2019 General Plan. The VSP will destroy this logical buffer area and bring suburban level development directly adjacent to the large lot properties to the east. This is certainly not consistent with the current General Plan

p.2.14-1 First paragraph on page ends with no text conclusion, needs to be rewritten in the final.

p.2.14-15 The noise analysis focuses on how the proposed project will contribute to future noise levels during construction and on adjacent roadways. However, the noise analysis fails to address two important issues: onsite occupancy noise impacts on adjacent sensitive noise receptors to the east and north and impacts of noise from Avenue 50 on the 5 homes adjacent to Avenue 50 in Planning Area 1. Regarding future onsite noise, there are seven homes between Avenue 49 and Avenue 50 that are currently separated from traditional suburban residential densities by several hundred feet under present conditions. Developing the VSP will bring suburban noise levels to be directly adjacent to those several larger lot residences. The current noise monitoring data for NM3 is a Leq of 41.6 dBA and the current noise monitoring data for NM4 is a Leq of 45.9. These Leq values need to be converted to CNEL, but it would appear that noise levels may increase at the seven residences by 5 decibels or more. This degree of change in noise qualifies as significant and merits disclosure to the adjacent residents and decision makers.

Regarding noise exposure at the 5 future residences closest to Avenue 50, the future noise level from traffic is forecast to be above the existing 72.1 Leq measured at NM5. Policy NEA 2.4 states: "Implement the policies listed under Goal 1 to reduce the impacts of roadway noise on noise-sensitive receptors where roadway noise exceeds the normally compatible range shown in the City's Noise Compatibility Matrix shown in Table 3." The normally compatible range for residential use is a maximum of 60 decibels CNEL. With existing noise along Avenue 50 already at 72.1 Leq and higher when converted to CNEL, it will require 12.1 decibel reduction at the property line of the 5 residences. The City's roadway noise mitigation requirements were identified as reducing noise by 10 dBA, which would leave a residual noise exposure of 62.1 Leq which would result in a significant adverse noise level at the 5 residences. The noise evaluation needs to be redone and expanded to address this impact. As it currently stands the noise evaluation of the VSP is inadequate and the VSP is inconsistent with General Plan noise requirements.

- p.2.15-5 By adding new residential units, it is obvious that the proposed project will contribute to the housing resources. What isn't obvious is whether more units in the Above Moderate Income category are needed. Such an analysis would look at what number of units in each income category have actually developed between 2014-2021 and look at whether the proposed project contributes to meeting the number of units within each income category. Further, we believe new RHNA numbers have been issued by SCAG and the analysis should examine these values in addition to whether the City met the RHNA goals for the past 7 years. Also, the 341 new residents should not be compared to the 126,300 value but to the remaining population growth feasible through 2045, i.e., $129,300 - 90,751 = 38,549$ which is 0.9% of forecast growth.
- p.2.17-7 Please explain how passive open space, primarily designed for stormwater management (the majority of the 7.15 acres of landscape open space) is counted as part of the 3 acres of park space per 1,000 residents identified as the City standard. It does not make sense as the 3-acre criterion is for active, not passive, park space. It is also not clear whether onsite passive open space will be available to the public other than residents of the development. Please explain.
- p.2.17-9 According to the preceding analysis, the City is 297 acres short on adequate parkland acreage to meet the 3 acres of park per 1,000 population. With about 38,800 in population growth (including the proposed project) through 2045, the total park acreage that must be created to meet the City's park standard is 335.8 acres ($297 \text{ ac} + 38.8 \text{ ac} = 335.8 \text{ acres}$). It is reasonable to assume that creation of 335.8 acres, particularly water consumption, could result in a significant cumulative impact on the City's environment. The proposed project contributes to this potentially cumulatively considerable recreation impact.
- p.2.18-22 The discussion regarding "Alternative Transportation Planning" is misleading because it gives the impression that future residents will have "improved pedestrian" access along Avenue 50 and access to mass transit when the project is completed and occupied. This statement is not accurate. Transportation alternatives like sidewalks, bike paths and reasonable access to mass transit may be years away due to the fact that the project construction will create isolated, stranded infrastructure improvements until or if other development along Avenue 50 installs such facilities as part of their development. This point should be made clear in the text as it could be years before actual connectivity to safe alternative modes of transportation is available for VSP residents.
- p.2.18-23 VMT. Existing local residents have heard reports that the VSP residences will be used during major events at nearby venues in the Festival District for rentals (hospitality uses). If this is possible, then the VMT evaluation should address the miles traveled by such renters. Alternatively, the City could condition the project to not allow short-term vacation rentals, which would eliminate the potential for this impact on VMT.
- p.2.18-24 Emergency access. The City Fire Department has accepted a single site access point, with a divided road as an adequate emergency access. Although this may be acceptable to the City, it does not constitute an actual secondary emergency

access. Although a low probability, a large truck-trailer accident at the access roadway and Avenue 50 could hypothetically close all emergency access to the site with no secondary alternative alignment as normally required. The City is assuming a substantial risk that such a circumstance will not occur and result in harm to a future resident during an emergency. We are surprised the City is willing to accept such a risk.

- p.2.20-8 Same issue as previously raised under hydrology. If the GPU EIR relied on qualitative data to conclude buildout development water resource impacts would be less than significant, how can this analysis conclude that water resources will be sustainable over the long term? There is no factual foundation for this conclusion. Actual data and analysis of the water data is needed to justify conclusion regarding less than significant impact.
- p.2.20-9 Instead of looking at annual capacity, it would be appropriate to provide data on daily capacity. Is the 5 mg/d treatment capacity exceeded on a daily basis. And if so, does Plant WRP-7 have adequate storage capacity to balance inflows into the plant over a reasonable period?
- p.2.20-10 The discussion of submitting a future drainage plan to identify if any offsite drainage system improvements are needed constitutes deferral. Because this project consists of a specific project, the VSP and tract map in addition to a GPA, it is necessary to identify all offsite improvements for evaluation now, not in the future. Concluding that drainage system impacts are less than significant without any evidence is an error in the analysis.
- p.3-5 Please provide data to support the statement that “no alternative site was available for sale or met the project objectives in the area of the City.” As presented, this is a conclusory finding with no data to support it.
- p.3-6 Alternative 1 would require a zone change to achieve the 45 units on the site. The current CEIR-1 and CEIR-2 zoning would only allow up to about 30 residential units. This condition represents the current CEQA baseline for evaluation in this DEIR. This issue also applies to significance threshold c) on p.3.3-4.
- p.3.4-2 The conclusion stated in paragraph 1 on this page is flawed as previously indicated. The loss of prime farmland at the project site is part of the cumulatively considerable impact identified in the GPU EIR. Therefore, it cannot be less than significant as concluded in this unsupported statement.
- p.3.14-3 Note that if only 30 residences are built on the project site, this would allow for setbacks from Avenue 50 to eliminate any exposure to significant noise from traffic.
- p.3.17-4 Within a noise setback area for Alternative 1, a larger park area, perhaps even a public park, could be established.
- p.4-1 Based on the preceding comments, we submit to the City that the proposed VSP project will cause significant unavoidable adverse impacts under the following environmental issues: Aesthetics, Agriculture, Hydrology and Water Quality, Land Use, and Noise.

As previously noted, a full copy of the Specific Plan is not provided in the DEIR,

therefore, it was not possible to verify the content of the Specific Plan and compare it with the impact forecasts in this document.

Based on our review, this DEIR was prepared to support the proposed project, not to make an unbiased evaluation of the project's environmental impacts. Existing City residents and our decision-makers deserve a better environmental document to properly inform everyone about the real consequences of approving the proposed project. The proposed project seeks to change a vision of the City that was embodied by the 2019 General Plan. We submit that it is too soon to make this degree of change in the General Plan's vision in a manner that will reduce the diversity of future residences, not enhance it. We have identified many errors and flaws in the current DEIR that need to be corrected before this project is brought before the City's decision-makers. We request that the City revise the DEIR using unbiased analysis and re-circulate the document to ensure the actual impacts are fully characterized. Thank you for the opportunity to submit these comments.

Very truly yours,

LAW OFFICES OF MATT H. MORRIS

MATT H. MORRIS, ESQ.

MHM:dch

Subject: FW: Opposition to proposed Ventana project
Date: Thursday, May 6, 2021 at 6:42:14 PM Pacific Daylight Time
From: Leila Namvar <lnamvar@indio.org>
To: Nicole Criste <ncriste@terranovaplanning.com>, Mario Gonzales <mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovaplanning.com>
Attachments: image001.jpg, 5.5.21 Letter.pdf

FYI

Same letter from Mr. Tom Moon. Thanks, L



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Planning Division Online Submittal Instructions:
[Schedule Inspections](#) | [Upload Applications](#) | [Pay Fees](#)

EFFECTIVE MARCH 30, 2020: Indio City Hall is temporarily closed to help prevent the spread of COVID-19. City Hall will continue to offer online services and limited by appointment only services. Visit www.indio.org for more information.



From: Tom Moon <tmoon13@gmail.com>
Sent: Thursday, May 6, 2021 5:12 PM
To: Evelyn Beltran <ebeltran@indio.org>; Leila Namvar <lnamvar@indio.org>
Subject: Opposition to proposed Ventana project

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Hello Evelyn and Leila:

We would like to voice our support against the Ventana project and would like this letter to be entered into the record.

Thank you for your consideration.

Tom Moon
 80685 Wicket Lane

G-1

Indio, Ca. 90201

G-1
Cont.

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47040 Washington Street, Suite 3201
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May 5, 2021

City Planning Commission
C/O Ms. Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

Dear City Planning Commission and Ms. Namvar:

This firm represents the Kincaid family and the interests of numerous other neighbors and adjoining neighbors of the proposed Ventana project. We previously sent you a letter about this project (attached) when it was proposed to be adopted with a negative declaration. The issues raised in that letter were not adequately addressed by the developer. Many are still not adequately addressed in the Draft Environmental Impact Report (DEIR).

The following comments on the Ventana Specific Plan (VSP) and DEIR are being submitted by adjacent residents and who strongly oppose changing the recently adopted City of Indio General Plan land use designation of the approximate 45-acre property from very low-density residential use (Desert Estate Neighborhood) to a proposed land use designation (Transitional Neighborhood) that will allow up to 3 dwelling units (du) per acre. These comments are also submitted after extensive consultation and review with retained environmental specialists.

The VSP appears to be an elaborate effort to assign a "spot" land use designation to accommodate a single individual to the detriment of the existing low density, high quality neighborhood that already exists in the area. There are already many suburban neighborhoods in the City of Indio and the General Plan's objective in establishing the Desert Estate land use designation was to allow a limited amount of land in the City to be set aside for high quality residences on large lots that wish to continue a rural agricultural tradition on their property. The new Indio General Plan was adopted in September 2019, less than two years ago, and removing a substantial portion of one of the nicer neighborhoods in the City for more suburban development is unreasonable. We found the DEIR to be self-serving and not an objective evaluation of potentially significant adverse impacts. Due to certain flaws that we have identified in the document, we highly recommend revising the DEIR and recirculating it to address the identified errors.

General Comments

We carefully reviewed the entire DEIR and did not find a copy of the VSP in the document or appendices and thus were unable to verify the statements in the Project Description. Also, a Specific Plan by law must contain details ranging from land use and design guidelines, to infrastructure and funding sources to implement the plan. Without access to the VSP it was not possible to examine each element of the Plan to determine if the information in the DEIR Project Description encompassed the whole of the project. We consider the failure to provide the VSP for public review a fatal flaw in the DEIR that requires correction and recirculation.

There is a second major error in the DEIR that affects much of the analysis. Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zone for the site is about 30 units, not 45. This finding is based on the fact that the 45-acre site is zoned CEIR-1 and CEIR-2. Under CEIR-2 the maximum number of units is one unit per two (2) acres, not one acre. The current baseline for evaluation of potential impacts is not the current General Plan designation, but the actual number of dwelling units that can be constructed under both the General Plan designation and the zone classification for the property. We raised this issue in our original comments for this project and the issue has been ignored. Thus, the delta between the existing number of units that can be constructed and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. All elements of the DEIR that rely upon quantitative evaluation are in error because of this analytical flaw. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying on a baseline of 45 units requires reevaluation.

The third major issue of concern is that the project description indicates that the proposed General Plan designation, Transitional Neighborhood, would allow "hospitality" uses, but this topic is never discussed again in the document and certainly what activities are allowed is not presented or discussed. For example, if "hospitality" uses are permitted, this issue requires evaluation at least in the Vehicle Miles Traveled section of Traffic and the Noise section of the DEIR. It appears that this topic was intentionally avoided throughout the DEIR and it must be given full consideration in a re-circulated DEIR.

Specific Comments

- p.2.3-4 Are the SRF homes to the north and east one acre in size? They appear larger and many of these lots appear to be several acres. Installing suburban development in place of the currently designated 1- and 2-acre lots creates a harsh transition the character of the estate neighborhood to the north and east.
- p.2.3-10 The analysis of Scenic Vistas portrays the change in views to surrounding mountains internally only for residences to the SE. In the future construction of the residences on the 45-acre site will cause the following adverse changes. The foreground views to Mountains will be visibly changed by allowing the number of structures disrupting background mountain views (background long distance) to more than double – substantially reducing visual access corridors and quality of scenic views.

p.2.3-11

Impacts on Scenic Views – statement re: private views not being subject to CEQA. Actually, they are subject to CEQA review. Specifically, *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 contains the following finding:

Based on this evidence, plaintiffs assert the City abused its discretion by certifying the Final SEIR without analyzing the impacts the project would have on views from their adjacent private property.

Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) Additionally, California landowners do not have a right of access to air, light and view over adjoining property. (Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.) Plaintiffs concede this authority, but claim they are merely attempting to enforce CEQA's requirement that the City identify and mitigate the significant environmental effects of a project before approving it. (CEQA Guidelines, §§ 15002, 15021.)

An EIR must identify the "significant environmental effects" of a proposed project. (§ 1100, subd. (b)(1); CEQA Guidelines, § 5126, subd. (a).) For purposes of CEQA, "environment" means physical conditions existing "within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Thus, aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project. (§ 21100, subd. (d); Ocean View Homeowners Ass'n, Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402-403.) However, a lead agency has the discretion to determine whether to classify an impact described in an EIR as "significant," depending on the nature of the area affected. (CEQA Guidelines, § 15064, subd. (b); National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1357 [varying thresholds of significance may apply depending on nature of area affected].) In exercising its discretion, a lead agency must necessarily make a policy decision in distinguishing between substantial and insubstantial adverse environmental impacts based, in part, on the setting. (CEQA Guidelines, § 15064, subd. (b).) Where the agency determines that a project impact is insignificant, an EIR need only contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, § 15128.)

Based on the preceding impacts to private views, and to give such analysis context, the DEIR must evaluate GP policies to see if public and private views to important scenic vistas is given importance in GP.

View 1 – the analysis of the public view to the mountains (background view) is inaccurate. The current view shows a clear visual path to the mountains with some mid-ground interference from vegetation. The after-development view of the mountain background is substantially altered by development. Visual access to the mountains/hills south of San Jacinto Mountain is substantially altered. This public view clearly experiences a substantial adverse impact.

p.2.3-14

In View 2 homes east of the project's SE boundary currently have a rural foreground view; mid-ground is suburban with landscaping, and an almost continuous background view of the hills and mountains. The VSP development and landscaping will substantially alter the background view, only limited and sporadic visual access to the hills will be available to the residents. Whether this loss of visual access by private residents can only be determined by an analysis of GP policies

View 3 is actually illustrative of less impact on scenic vistas. The foreground retention basin minimizes less of access from adjacent residences in View 3 highlights the degree of changes in Views 1 and 2. View 3 foreground undergoes substantial change.

View 4 foreground view is dramatically changed. Views to the mountains in far background is lost in View 4. View to nearest mountains is disturbed but retained. Still a substantial change from the present views.

Based on the preceding description of view changes, we believe that any reasonable person would conclude the change in access to scenic views from public and private vantage points is a significant change, i.e., a significant adverse impact. The photo simulations clearly demonstrate the scope of the change.

p.2.3-19 Analysis should be on existing designation not on hypothetical Suburban Neighborhood. Also, no analysis of and data supporting how Transitional Neighborhood can be similar in visual setting to Desert Estates Neighborhood; i.e., how is a Transitional neighborhood consistent and compatible scale to development intensity on its eastern and northern boundary. Using homes in a higher density designation on the west is an invalid and erroneous visual comparison due to the open space created by the project site. Residences to the north and east are the appropriate and pertinent analytic comparison. The conclusion at top of page 2.3-20 is not supported by objective analysis.

VSP impact – the comparison from Avenue 50 should be between the view to the site under the existing environmental visual setting and the proposed VSP development. This change will be dramatic. When compared to the visual setting to the east, please refer to View 1 and its impacts.

p.2.4-4 Riverside County also provides independent soil classifications; were Riverside soil classifications consulted? If not, it would be appropriate to do so since Riverside data is discussed below.

p.2.4-5 Area was farmed until 2019 according to adjacent residents. The 45-acre property is designated as Prime Farmland on County's Important Farmland Map.

p.2.4-6-7 The analysis of losing Prime Farmland is flawed and represents a distorted rationalization for a finding of less than significant impact. This occurs for the following reasons. Prime Farmland is very limited resource, analogous to an endangered species. The GPA reduces the size of lots and removes agriculture as an approved use; thereby eliminating potential use of the onsite soil for its highest and best use. Note that several of the adjacent residences maintain date trees on their property and have them picked each year. The GPEIR found the cumulative loss of Prime Farmland in the City to be a significant unavoidable adverse impact. Approval of the GPA removes approximately 45 acres of Prime Farmland from potential agricultural productivity. Thus, at a minimum, the proposed GPA represents a cumulatively considerable contribution to an action the City has already found to be a significant adverse environmental impact. Presenting this action as

a less than significant impact when it has already been deemed by the City to be a significant impact is a disingenuous finding at best and an intentional error in conflict (inconsistent) with the current General Plan at a minimum. This issue needs to be re-evaluated and the EIR recirculated to properly disclose this significant impact.

p.2.4-7 The amount of 21,267 of total “important farmland” is the incorrect metric to be used in evaluating the loss of 45.17 acres of Prime Farmland. The correct metric would be the 1,962.5 acres of Prime Farmland in the City used in the GPU EIR. The loss of Prime Farmland under the VSP is actually 2.3%. This absolute loss of acreage due the proposed project is clearly part of a cumulatively considerable adverse impact. Attempting to utilize the Statement of Overriding Considerations (SOOC) for the General Plan as justification for a less than significant impact finding exceeds credibility; it is a clear error in evaluation, as documented in the GPU EIR; and needs to be corrected through recirculation of the VSP DEIR to adequately correct the substantial failure to inform decision-makers and interested parties.

Section 2.4.7 – Compensatory mitigation is feasible for a specific project’s impact to loss of Prime Farmland. The loss of Prime Farmland can be compensated/offset by purchase and permanent preservation of agricultural land of comparable value. Prime agricultural land mitigation banks have been established in California (such as Elk Grove, California) and offsetting the loss of 45.17 acres of Prime Farmland at a mitigation ratio of 2:1 or 3:1 would be a reasonable and feasible measure.

p.2.4-8 The last paragraph presents flawed data. The City has already found the cumulative loss of Prime Farmland to be a cumulatively considerable adverse impact. The proposed project removes agriculture as possible use of the property. It may not add additional acreage to the loss of Prime Farmland, but the proposed project is clearly a component of the City’s cumulatively considerable impact that has been unequivocally found to be an unavoidable significant adverse impact by the City. As the implementing action that causes the loss of 2.3% of the City’s prime farmland, the proposed project clearly contributes to the City’s evaluation of this impact, and by extrapolation is also a project specific significant, cumulatively considerable impact.

p.2.5-13 No data are provided to support the conclusion that the increase in site occupancy emissions (about 13.5 lbs/day for NOx) from approving the GPA is not a cumulatively considerable incremental increase. 13.5 lbs of NOx per day clearly is not significant for a specific project, but please provide the context to support the conclusion that the additional emissions should not be considered cumulatively significant when added to the overall emissions generated from buildout of the City’s GP.

As stated above regarding Prime Farmland, the fact that the City adopted a SOOC does not diminish the significant unavoidable adverse impact finding in the GPU EIR, it only makes a finding that the City is willing to accept this adverse impact to achieve buildout of the proposed land uses in spite of the adverse impact to which it will expose its citizens. This GPA will add to the City’s identified cumulatively considerable significant impact.

- p.2.5-21 Same comments as provided on the 2.5-13
- p.2.8-10 In the paragraph preceding “Ventana Specific Plan” a conclusion is made that “the GPA would not cause new or increased severity of impacts regarding long-term operations. However, the analysis does not provide any discussion of “what threshold” of change should be used to determine “significant impact.” Please provide, i.e., if not 2.5% increase what threshold should be used and why.
- p.2.8-12 Natural gas. Again, a threshold of significance would help understand and substantiate this finding. Also, unless required as mitigation, the use of induction?? Cooking stoves and heat pumps cannot be assumed. 0.8% increase in fuel consumption needs context regarding how much of an increase is significant.
- Does the project achieve a zero net energy use? If not, how is it consistent with this GP policy?
- p.2.12-14 Throughout the discussion of water availability there is a discussion of total water in storage in the Whitewater River Basin and the volume of water extracted by the IWA. However, there is no discussion of the two key issues needed for this evaluation: how much of the 28.2 MG in storage is available for human use and most importantly, whether the Basin is in overdraft (exceeds safe yield) and if so, does an increase in GP density contribute to a cumulatively considerable adverse impact and affect long-term sustainability of groundwater supplies?
- p.2.12-18 There is no discussion of the availability of a groundwater sustainability management plan, or when compliance with state requirements for such a plan will occur. Also, under the VSP discussion, a WQMP has no effect on water consumption issues. It does not correlate with the possible need for a sustainable groundwater management plan.
- p.2.12-19 Cumulative impact findings are incomplete. Please provide
- p.2.13-2 This GP EIR has studiously avoided discussion of the existing zone classifications on the 45.15-acre property. Like the General Plan designation, the zone classification establishes the maximum density of development. Yes, the GP identifies the maximum land use density, but the zoning for the property CEIR-1 and CEIR2 also establishes density, i.e., the maximum number of units that can be developed under the zone classifications at this time. In this case, CEIR-2 allows only one unit per 2 acres. Based on this designation, the project site can currently be developed with about 30 du, rather than 45. Therefore, the analysis throughout this document based on 45 units which is allowed by the General Plan land use designation, but is in error with regard to the actual land use baseline, the actual number of dwelling units that can be constructed at the present time. This is a fatal flaw in the EIR that must be corrected through revising the whole document and recirculating it for review.

Southern Neighborhood Subarea – area between the Central Neighborhoods and Festival District lifestyle rural country-side environment and existing equestrian uses, rural/resort lifestyle in a quiet and secluded living environment, maintain the area's unique character, the GPA conflicts with this objective which the local residents consider a major inconsistency.

VSP LU – 1.5 – not consistent, Southern Neighborhood Subarea strategies, no discussion of consistency with the adjacent Southern Neighborhood Subarea.

- p.2.13-5 The analysis here is flawed as the proposed project does not enhance the Neighborhood Subarea stability as it extends higher density suburban level development into this area.
- Multi-modal, required improvements, nothing contributory by the proposed project except the mandated improvements on the adjacent roadway (Avenue 50), such as bus stops, etc.
 - Specific Plan – The DEIR does not provide a copy of the whole VSP for independent review. It is not even clear that the VSP contains all of the required elements of a Specific Plan.
 - Further, the VSP does not create synergies with activities or events in the Festival District, at least none that were identified in this DEIR.
- p.2.13-6 Balanced land uses, this project unbalances the land uses established less than 2 years ago in the new General Plan. The VSP may increase the range of single-family residential structures on the site, but it diminishes range of housing choices within the City by eliminating/reducing the 45 acres of rural country-side and rural/resort lifestyle acreage in the City. This designation is already very limited within the City of Indio. LU-2.2
- p.2.13-9 The development does not protect views to the mountains. For this section the analysis has focused on the incorrect issue. For example, the Southern Neighborhood Subarea is designed for a lifestyle of a rural countryside environment to support equestrian uses and rural/resort lifestyle in a quiet secluded living environment. The proposed project is the antithesis of this lifestyle. 45 acres are proposed to be removed from this rural/resort lifestyle designation to be replaced by a traditional suburban neighborhood. Thus, both in terms of balancing land uses in the City as a whole and how much suburban residential acreage (2+ units/ac) exists in the City, the assessment should focus on how much land designated for large acreage lots will remain in the City if the VSP is approved. Balance is achieved in the City by providing a full range of residential options, expanding standard suburban, cookie-cutter lots, does not maintain the balance that the City Council included in the recently adopted General Plan which is less than two years old. Having 30 lots on 45 acres supports a balanced mix of residential development more than does reducing the total acreage of the City allocated to large-lot rural residential land use.
- p.2.13-13 Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zoning for the site is about 30 units, not 45. Thus, the delta between the existing number of units and proposed GP is $(135-30) = 105$, not 91. Also, the delta

between the actual number of units proposed under the VSP & TTM 37884 (103-30) = 73, not 58. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying solely on a baseline of 45 units requires reevaluation.

p.2.13-14 For the existing large lot residences the 45-acre site with a designation of 1 dwelling unit per one- or two-acre parcel makes sense as a buffer between the larger lot residents to the east and the suburban residences to the west. This was the obviously the intent of the City Council when it adopted the 2019 General Plan. The VSP will destroy this logical buffer area and bring suburban level development directly adjacent to the large lot properties to the east. This is certainly not consistent with the current General Plan

p.2.14-1 First paragraph on page ends with no text conclusion, needs to be rewritten in the final.

p.2.14-15 The noise analysis focuses on how the proposed project will contribute to future noise levels during construction and on adjacent roadways. However, the noise analysis fails to address two important issues: onsite occupancy noise impacts on adjacent sensitive noise receptors to the east and north and impacts of noise from Avenue 50 on the 5 homes adjacent to Avenue 50 in Planning Area 1. Regarding future onsite noise, there are seven homes between Avenue 49 and Avenue 50 that are currently separated from traditional suburban residential densities by several hundred feet under present conditions. Developing the VSP will bring suburban noise levels to be directly adjacent to those several larger lot residences. The current noise monitoring data for NM3 is a Leq of 41.6 dBA and the current noise monitoring data for NM4 is a Leq of 45.9. These Leq values need to be converted to CNEL, but it would appear that noise levels may increase at the seven residences by 5 decibels or more. This degree of change in noise qualifies as significant and merits disclosure to the adjacent residents and decision makers.

Regarding noise exposure at the 5 future residences closest to Avenue 50, the future noise level from traffic is forecast to be above the existing 72.1 Leq measured at NM5. Policy NEA 2.4 states: "Implement the policies listed under Goal 1 to reduce the impacts of roadway noise on noise-sensitive receptors where roadway noise exceeds the normally compatible range shown in the City's Noise Compatibility Matrix shown in Table 3." The normally compatible range for residential use is a maximum of 60 decibels CNEL. With existing noise along Avenue 50 already at 72.1 Leq and higher when converted to CNEL, it will require 12.1 decibel reduction at the property line of the 5 residences. The City's roadway noise mitigation requirements were identified as reducing noise by 10 dBA, which would leave a residual noise exposure of 62.1 Leq which would result in a significant adverse noise level at the 5 residences. The noise evaluation needs to be redone and expanded to address this impact. As it currently stands the noise evaluation of the VSP is inadequate and the VSP is inconsistent with General Plan noise requirements.

- p.2.15-5 By adding new residential units, it is obvious that the proposed project will contribute to the housing resources. What isn't obvious is whether more units in the Above Moderate Income category are needed. Such an analysis would look at what number of units in each income category have actually developed between 2014-2021 and look at whether the proposed project contributes to meeting the number of units within each income category. Further, we believe new RHNA numbers have been issued by SCAG and the analysis should examine these values in addition to whether the City met the RHNA goals for the past 7 years. Also, the 341 new residents should not be compared to the 126,300 value but to the remaining population growth feasible through 2045, i.e., $129,300 - 90,751 = 38,549$ which is 0.9% of forecast growth.
- p.2.17-7 Please explain how passive open space, primarily designed for stormwater management (the majority of the 7.15 acres of landscape open space) is counted as part of the 3 acres of park space per 1,000 residents identified as the City standard. It does not make sense as the 3-acre criterion is for active, not passive, park space. It is also not clear whether onsite passive open space will be available to the public other than residents of the development. Please explain.
- p.2.17-9 According to the preceding analysis, the City is 297 acres short on adequate parkland acreage to meet the 3 acres of park per 1,000 population. With about 38,800 in population growth (including the proposed project) through 2045, the total park acreage that must be created to meet the City's park standard is 335.8 acres ($297 \text{ ac} + 38.8 \text{ ac} = 335.8 \text{ acres}$). It is reasonable to assume that creation of 335.8 acres, particularly water consumption, could result in a significant cumulative impact on the City's environment. The proposed project contributes to this potentially cumulatively considerable recreation impact.
- p.2.18-22 The discussion regarding "Alternative Transportation Planning" is misleading because it gives the impression that future residents will have "improved pedestrian" access along Avenue 50 and access to mass transit when the project is completed and occupied. This statement is not accurate. Transportation alternatives like sidewalks, bike paths and reasonable access to mass transit may be years away due to the fact that the project construction will create isolated, stranded infrastructure improvements until or if other development along Avenue 50 installs such facilities as part of their development. This point should be made clear in the text as it could be years before actual connectivity to safe alternative modes of transportation is available for VSP residents.
- p.2.18-23 VMT. Existing local residents have heard reports that the VSP residences will be used during major events at nearby venues in the Festival District for rentals (hospitality uses). If this is possible, then the VMT evaluation should address the miles traveled by such renters. Alternatively, the City could condition the project to not allow short-term vacation rentals, which would eliminate the potential for this impact on VMT.
- p.2.18-24 Emergency access. The City Fire Department has accepted a single site access point, with a divided road as an adequate emergency access. Although this may be acceptable to the City, it does not constitute an actual secondary emergency

access. Although a low probability, a large truck-trailer accident at the access roadway and Avenue 50 could hypothetically close all emergency access to the site with no secondary alternative alignment as normally required. The City is assuming a substantial risk that such a circumstance will not occur and result in harm to a future resident during an emergency. We are surprised the City is willing to accept such a risk.

- p.2.20-8 Same issue as previously raised under hydrology. If the GPU EIR relied on qualitative data to conclude buildout development water resource impacts would be less than significant, how can this analysis conclude that water resources will be sustainable over the long term? There is no factual foundation for this conclusion. Actual data and analysis of the water data is needed to justify conclusion regarding less than significant impact.
- p.2.20-9 Instead of looking at annual capacity, it would be appropriate to provide data on daily capacity. Is the 5 mg/d treatment capacity exceeded on a daily basis. And if so, does Plant WRP-7 have adequate storage capacity to balance inflows into the plant over a reasonable period?
- p.2.20-10 The discussion of submitting a future drainage plan to identify if any offsite drainage system improvements are needed constitutes deferral. Because this project consists of a specific project, the VSP and tract map in addition to a GPA, it is necessary to identify all offsite improvements for evaluation now, not in the future. Concluding that drainage system impacts are less than significant without any evidence is an error in the analysis.
- p.3-5 Please provide data to support the statement that “no alternative site was available for sale or met the project objectives in the area of the City.” As presented, this is a conclusory finding with no data to support it.
- p.3-6 Alternative 1 would require a zone change to achieve the 45 units on the site. The current CEIR-1 and CEIR-2 zoning would only allow up to about 30 residential units. This condition represents the current CEQA baseline for evaluation in this DEIR. This issue also applies to significance threshold c) on p.3.3-4.
- p.3.4-2 The conclusion stated in paragraph 1 on this page is flawed as previously indicated. The loss of prime farmland at the project site is part of the cumulatively considerable impact identified in the GPU EIR. Therefore, it cannot be less than significant as concluded in this unsupported statement.
- p.3.14-3 Note that if only 30 residences are built on the project site, this would allow for setbacks from Avenue 50 to eliminate any exposure to significant noise from traffic.
- p.3.17-4 Within a noise setback area for Alternative 1, a larger park area, perhaps even a public park, could be established.
- p.4-1 Based on the preceding comments, we submit to the City that the proposed VSP project will cause significant unavoidable adverse impacts under the following environmental issues: Aesthetics, Agriculture, Hydrology and Water Quality, Land Use, and Noise.

As previously noted, a full copy of the Specific Plan is not provided in the DEIR,

therefore, it was not possible to verify the content of the Specific Plan and compare it with the impact forecasts in this document.

Based on our review, this DEIR was prepared to support the proposed project, not to make an unbiased evaluation of the project's environmental impacts. Existing City residents and our decision-makers deserve a better environmental document to properly inform everyone about the real consequences of approving the proposed project. The proposed project seeks to change a vision of the City that was embodied by the 2019 General Plan. We submit that it is too soon to make this degree of change in the General Plan's vision in a manner that will reduce the diversity of future residences, not enhance it. We have identified many errors and flaws in the current DEIR that need to be corrected before this project is brought before the City's decision-makers. We request that the City revise the DEIR using unbiased analysis and re-circulate the document to ensure the actual impacts are fully characterized. Thank you for the opportunity to submit these comments.

Very truly yours,

LAW OFFICES OF MATT H. MORRIS

MATT H. MORRIS, ESQ.

MHM:dch

Subject: FW: Ventana Project - Resubmission
Date: Monday, May 3, 2021 at 10:57:00 AM Pacific Daylight Time
From: Leila Namvar <lnamvar@indio.org>
To: Nicole Criste <ncriste@terranovalplanning.com>, Mario Gonzales <mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovalplanning.com>
Attachments: HPSCAN_2021011923525828_2021-01-19_235434429.pdf

Hi all and FYI. Thanks, L

Leila Namvar, Senior Planner
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www.indio.org | GIS Map | Applications & Forms

Planning Division Online Submittal Instructions:
[Schedule Inspections](#) | [Upload Applications](#) | [Pay Fees](#)

EFFECTIVE MARCH 30, 2020: Indio City Hall is temporarily closed to help prevent the spread of COVID-19. City Hall will continue to offer online services and limited by appointment only services. Visit www.indio.org for more information.

 Please consider the environment before printing my email

-----Original Message-----

From: stewart marlborough <smarborough@yahoo.com>
Sent: Monday, May 3, 2021 9:52 AM
To: Leila Namvar <lnamvar@indio.org>
Subject: Ventana Project - Resubmission

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Ms. Namvar,

Hope all is well.

H-1

I have been advised that the Ventana project is again being resubmitted for consideration by the Planning Commission. As a neighbor to the proposed development I would like to submit my objection to this development and the proposed modifications to the Master Plan. This proposal had been previously retracted because of community opposition and a complete failure by the developer to secure any form of emergency fire exit route, although the developer had inaccurately stated to the Commission that all fire exits had been secured when none had been.

I am attaching the letter previously written by Sam Kyle in January 2021 and entered into the record then for re-entry into the record for the new submission. I would like the opportunity to speak at any Planning Commission meeting where the Ventana Proposal is discussed.

Thanks as always for your assistance,

Stewart Marlborough

H-1
Cont.

January 19, 2021

Via email (Lnamvar@indio.org)

Lela Namvar, Senior Planner
City of Indio
Community Development Services Department

**RE: Ventana Project ("Project")
Comments on the Draft Initial Study/Notice of Preparation of an Environmental Impact Report**

Dear Ms. Namvar:

My wife and I own the real property located at 49275 Croquet Court in the City of Indio ("City") as well as the one-acre vacant lot immediately south of the Project. This is the second time that the applicant has proposed a General Plan Amendment for the Project. In 2020, the applicant proposed a General Plan Amendment that would designate the property as "Suburban Neighborhood" which allows residential density of up to eight (8) units/acre and a Specific Plan that would permit development of 103 units ("2020 Proposal"). The most recent proposal is, as far as we can tell, identical to the 2020 Proposal except that the General Plan Amendment would allow three (3) units/acre ("Current Proposal").

By letter dated July 24, 2020 we noted our objection to the 2020 Proposal and the City's Mitigated Negative Declaration. We appreciate that the City has determined, correctly, that the Current Proposal will have a significant impact on the environment and that an Environmental Impact Report ("EIR") is required. We write to continue to note our objection to the Current Proposal and to provide comment on the Initial Study/Notice of Preparation ("IS").

Continued Objection to the General Plan Amendment and Proposed Specific Plan

It is simply too soon for the City to be considering site specific amendments to the General Plan. Less than 16 months ago the City finalized a multi-year, comprehensive review of its General Plan. That effort engaged community neighborhood groups, businesses, local organizations and members of the public to develop a city-wide vision to guide future development and land use in the City. Had there been a valid public policy reason to change the General Plan to increase the planned density to allow the Project, it is reasonable to assume that the City would have made the appropriate amendments as part of the City's comprehensive General Plan update. It did not, and the City should not consider a site-specific amendment so close to the last update.

There has not been a significant change in development patterns, demographics, or circumstances since the City's last General Plan update to justify a site-specific amendment to the General Plan that is needed for the Project. The City should allow development to proceed under the existing General Plan so it can gain a better understanding of development patterns and their related impacts under the current General Plan before considering site specific amendments like the one proposed.

The applicant has developed projects in and around the City in the past and must have been aware of the City's effort to update its General Plan. If Applicant felt that higher density was needed in certain areas of the City it could have and should have made those positions known during the City-wide comprehensive update. This would have allowed debate on the propriety of the changes through the city-wide stakeholder group that the City assembled. It seems that the applicant made a calculated

decision that is stood a better chance of increasing density by sliding through site-specific amendments than it did proposing changes that would have faced greater scrutiny during the general update.

For these reasons, accepting the applicant's attempt to circumvent that City-wide General Plan update by proposing a site-specific amendment less than 16 months after the update is ill-advised, misguided, and inconsistent with the expectations of the citizens of the City. We respectfully request that the City deny application to amend the General Plan and require that development proceed as envisioned by the community of stakeholders that participated in updating the General Plan.

Comments on Initial Study and Notice of Preparation and Initial Study

We appreciate that the City decided to withdraw MND for the Project and, instead, issue a Notice of Preparation of Environmental Impact Report. The impacts of this Project are significant both individually and cumulatively. As a preliminary matter, for the reasons noted above, we believe it is poor public policy to allow site-specific amendments to the General Plan so close to the last update. If the City agrees, which it should, we believe the City should advise the applicant that it is unlikely that the City will approve its general plan amendment before the applicant embarks on a timely and costly EIR.

We noticed a disconnect in the Initial Study between the City's determination of which categories of the environment have the potential to be significantly impacted by the Project and which categories of the environment will be assessed in the EIR. For example, the City concludes (wrongfully in our view) that it is "unlikely that the Project will have a substantial adverse effect on the scenic vistas" in the area. (Initial Study at 21). Nevertheless, the IS states that the potential effects to scenic vistas will be "further analyzed in the forthcoming EIR." (Initial Study at 22). We agree that impacts to scenic vistas from the Project should be analyzed in the EIR and request that the City align its decision on the significance of the impact to correspond to its determination that the category will be assessed in the EIR. Our concern is that if the impact is not identified as "Potentially Significant Impact" that the project proponent may use that determination to try to evade review of the categories in the EIR or the imposition of mitigation measures identified in the EIR. We agree with all of the categories that the IS concludes must be studied in the EIR and request that each of these categories also be identified as having "Potentially Significant Impacts" from the Project.

In our July 24, 2020 comment letter we identified that the applicant mischaracterized the allowed density for the CEIR-1 and CEIR-2 zones. It is disappointing to see that the IS continues to mischaracterize the allowed density under the current zoning for the property. According to the City's GIS Map the property is zoned CEIR-1 and CEIR-2. The minimum lot sizes in these zones allow 1 du/ac for CEIR-1 and 0.5 du/ac for CEIR-2 (or 1 dwelling unit per two acres). Yet, the IS continues to mischaracterize the density as CEIR-1/2. (IS at 25). Likewise, the IS summarily and wrongfully concludes in a footnote that the total allowed density under current zoning is 1 DU/AC when assessing the baseline for assessment of impacts of the proposal. (IS at 28, fn. 3). A substantial portion of the property is zoned CEIR-2 which allows 0.5 DU/AC. There is no way that the 45-acre site can develop up to 45 DU under the current zoning as the IS asserts. This wrongfully overstates the actual allowed density under the current zoning which will inevitably lead to inaccurate assessment of the actual impacts from this proposal.

It is also disappointing that the applicant continues to ignore the significant risks to public safety posed by the plan to drastically increase density while only providing a single point of ingress and egress to the 45-acre project site. During the hearings on the 2020 Proposal, that applicant noted that the City

Fire Marshall required an alternate emergency access to the Project Site. The applicant represented to the Planning Commission during the September 23, 2020 hearing that an alternate emergency access point south of Lot 76 would be extended south through adjoining property to 50th Avenue. The applicant has not, however, included plans to extend the emergency access to South 50th in the Current Proposal. Additionally, the applicant has not demonstrated that it is acquired the requisite legal rights needed to lawfully extend the emergency access through adjoining private property to south to 50th Avenue. Dr. Thorton who owns the property stated during the Planning Commission hearing that there were no legal rights to cross her property to access the Project Site—emergency or otherwise. And, it is our understanding that the applicant has been unable to secure those legal rights. Rather than change the site plan to add a true emergency access point that physically connects to South 50th, the applicant has stuck to the same, vague plan perhaps hoping no one will realize that the proposed “emergency access” will be a dead end. Likewise, the IS fails to identify the significant impact a single-access site design will have on public health and safety and proposes to “study” potential impacts to emergency access in the EIR. (See IS at 44 and 57). With the increase in density proposed the applicant must provide a second means of ingress and egress to the project site.

Finally, approving this general plan amendment will create a precedent for approval of similar proposals to other areas the impacts of which must also be assessed in this EIR. The City and applicant cannot evade comprehensive environmental review of the impacts associated with similar plan amendments by conducting a piecemealed environmental review. When assessing the impacts the EIR must also assess the increase in density if other areas of the City designated Desert Estate Neighborhood are redesignated to allow 3 DU/AC.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Sam & Patti Kyle". The signature is written in a cursive, flowing style.

Sam and Patti Kyle

Subject: FW: Ventana Project - Resubmission
Date: Wednesday, May 5, 2021 at 4:47:28 PM Pacific Daylight Time
From: Leila Namvar <lnamvar@indio.org>
To: Nicole Criste <ncriste@terranovalplanning.com>, Mario Gonzales <mario@ghacompanies.com>, Kimberly Cuza <kcuza@terranovalplanning.com>
Attachments: image001.jpg, 5.5.21 Letter.pdf

Hi all. One more. Thanks, Leila



Leila Namvar, Senior Planner
Community Development Department
City of Indio
100 Civic Center Mall
Indio, CA 92201
(760) 541-4258 (Direct)
(760) 399-7887 (Cell phone)
www.indio.org | [GIS Map](#) | [Applications & Forms](#)

Planning Division Online Submittal Instructions:
[Schedule Inspections](#) | [Upload Applications](#) | [Pay Fees](#)

EFFECTIVE MARCH 30, 2020: Indio City Hall is temporarily closed to help prevent the spread of COVID-19. City Hall will continue to offer online services and limited by appointment only services. Visit www.indio.org for more information.



Please consider the environment before printing my email

From: stewart marlborough <smarlborough@yahoo.com>
Sent: Wednesday, May 5, 2021 4:24 PM
To: Leila Namvar <lnamvar@indio.org>
Cc: Sam Kyle <kdc@olympen.com>
Subject: Re: Ventana Project - Resubmission

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Thanks!

Apologies for being a pain, but could you please also attach the following letter as an additional part of my request to be entered into the record.

Thanks again,

Stewart

> On May 3, 2021, at 10:55 AM, Leila Namvar <lnamvar@indio.org> wrote:

>

> Stewart. I have received your email and letter and it will be part of the record. I will share it with the applicant as well.
thanks, Leila

>
>
>
>
> Leila Namvar, Senior Planner
> Community Development Department
> City of Indio
> 100 Civic Center Mall
> Indio, CA 92201
> (760) 541-4258 (Direct)
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> https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.indio.org&c=E,1,GI0R-zoEkjONjCQjOYifCnbdTd-QbHBjOsTOsE9POSdq0ZAm_VuQezQLKclqAXRPQ3C7fFs5SuQzYytDoK7RqdhHxxROCjR0WxWowCcUx_Evo2e3bX7WjQ.,&typo=1 | GIS Map | Applications & Forms
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> Planning Division Online Submittal Instructions:
> Schedule Inspections | Upload Applications | Pay Fees
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> EFFECTIVE MARCH 30, 2020: Indio City Hall is temporarily closed to help prevent the spread of COVID-19. City Hall will continue to offer online services and limited by appointment only services. Visit https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.indio.org&c=E,1,c1FnORL0dtjKCw6WfRxs141aC711cqkDyZhpgh-3-fbKbgfjFT01NCK_9LdKkeZDK3uONBM44ekZbbll-AWtbYEpsZJSaT-HjqPmxWTv7WZw.,&typo=1 for more information.
>
>
> P Please consider the environment before printing my email
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> -----Original Message-----
> From: stewart marlborough <smarlborough@yahoo.com>
> Sent: Monday, May 3, 2021 9:52 AM
> To: Leila Namvar <lnamvar@indio.org>
> Subject: Ventana Project - Resubmission
>
> WARNING: External email. Please verify sender before opening attachments or clicking on links.
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>
> Ms. Namvar,
>
> Hope all is well.
>
> I have been advised that the Ventana project is again being resubmitted for consideration by the Planning Commission. As a neighbor to the proposed development I would like to submit my objection to this development and the proposed modifications to the Master Plan. This proposal had been previously retracted because of community opposition and a complete failure by the developer to secure any form of emergency fire exit route, although the developer had inaccurately stated to the Commission that all fire exits had been secured when none had been.
>
> I am attaching the letter previously written by Sam Kyle in January 2021 and entered into the record then for re-entry into the record for the new submission. I would like the opportunity to speak at any Planing Commission meeting where the Ventana Proposal is discussed.
>
> Thanks as always for you assistance,
>
> Stewart Marlborough
>

LAW OFFICES OF
MATT H. MORRIS

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matt@mhmorrislaw.com

May 5, 2021

City Planning Commission
C/O Ms. Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

Dear City Planning Commission and Ms. Namvar:

This firm represents the Kincaid family and the interests of numerous other neighbors and adjoining neighbors of the proposed Ventana project. We previously sent you a letter about this project (attached) when it was proposed to be adopted with a negative declaration. The issues raised in that letter were not adequately addressed by the developer. Many are still not adequately addressed in the Draft Environmental Impact Report (DEIR).

The following comments on the Ventana Specific Plan (VSP) and DEIR are being submitted by adjacent residents and who strongly oppose changing the recently adopted City of Indio General Plan land use designation of the approximate 45-acre property from very low-density residential use (Desert Estate Neighborhood) to a proposed land use designation (Transitional Neighborhood) that will allow up to 3 dwelling units (du) per acre. These comments are also submitted after extensive consultation and review with retained environmental specialists.

The VSP appears to be an elaborate effort to assign a "spot" land use designation to accommodate a single individual to the detriment of the existing low density, high quality neighborhood that already exists in the area. There are already many suburban neighborhoods in the City of Indio and the General Plan's objective in establishing the Desert Estate land use designation was to allow a limited amount of land in the City to be set aside for high quality residences on large lots that wish to continue a rural agricultural tradition on their property. The new Indio General Plan was adopted in September 2019, less than two years ago, and removing a substantial portion of one of the nicer neighborhoods in the City for more suburban development is unreasonable. We found the DEIR to be self-serving and not an objective evaluation of potentially significant adverse impacts. Due to certain flaws that we have identified in the document, we highly recommend revising the DEIR and recirculating it to address the identified errors.

General Comments

We carefully reviewed the entire DEIR and did not find a copy of the VSP in the document or appendices and thus were unable to verify the statements in the Project Description. Also, a Specific Plan by law must contain details ranging from land use and design guidelines, to infrastructure and funding sources to implement the plan. Without access to the VSP it was not possible to examine each element of the Plan to determine if the information in the DEIR Project Description encompassed the whole of the project. We consider the failure to provide the VSP for public review a fatal flaw in the DEIR that requires correction and recirculation.

There is a second major error in the DEIR that affects much of the analysis. Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zone for the site is about 30 units, not 45. This finding is based on the fact that the 45-acre site is zoned CEIR-1 and CEIR-2. Under CEIR-2 the maximum number of units is one unit per two (2) acres, not one acre. The current baseline for evaluation of potential impacts is not the current General Plan designation, but the actual number of dwelling units that can be constructed under both the General Plan designation and the zone classification for the property. We raised this issue in our original comments for this project and the issue has been ignored. Thus, the delta between the existing number of units that can be constructed and proposed GP is $(135-30) = 105$, not 91. Also, the delta between the actual number of units proposed under the VSP & TTM 37884 $(103-30) = 73$, not 58. All elements of the DEIR that rely upon quantitative evaluation are in error because of this analytical flaw. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying on a baseline of 45 units requires reevaluation.

The third major issue of concern is that the project description indicates that the proposed General Plan designation, Transitional Neighborhood, would allow "hospitality" uses, but this topic is never discussed again in the document and certainly what activities are allowed is not presented or discussed. For example, if "hospitality" uses are permitted, this issue requires evaluation at least in the Vehicle Miles Traveled section of Traffic and the Noise section of the DEIR. It appears that this topic was intentionally avoided throughout the DEIR and it must be given full consideration in a re-circulated DEIR.

Specific Comments

- p.2.3-4 Are the SRF homes to the north and east one acre in size? They appear larger and many of these lots appear to be several acres. Installing suburban development in place of the currently designated 1- and 2-acre lots creates a harsh transition the character of the estate neighborhood to the north and east.
- p.2.3-10 The analysis of Scenic Vistas portrays the change in views to surrounding mountains internally only for residences to the SE. In the future construction of the residences on the 45-acre site will cause the following adverse changes. The foreground views to Mountains will be visibly changed by allowing the number of structures disrupting background mountain views (background long distance) to more than double – substantially reducing visual access corridors and quality of scenic views.

p.2.3-11

Impacts on Scenic Views – statement re: private views not being subject to CEQA. Actually, they are subject to CEQA review. Specifically, *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 contains the following finding:

Based on this evidence, plaintiffs assert the City abused its discretion by certifying the Final SEIR without analyzing the impacts the project would have on views from their adjacent private property.

Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (Association for Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 734.) Additionally, California landowners do not have a right of access to air, light and view over adjoining property. (Wolford v. Thomas (1987) 190 Cal.App.3d 347, 358.) Plaintiffs concede this authority, but claim they are merely attempting to enforce CEQA's requirement that the City identify and mitigate the significant environmental effects of a project before approving it. (CEQA Guidelines, §§ 15002, 15021.)

An EIR must identify the "significant environmental effects" of a proposed project. (§ 1100, subd. (b)(1); CEQA Guidelines, § 5126, subd. (a).) For purposes of CEQA, "environment" means physical conditions existing "within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Thus, aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project. (§ 21100, subd. (d); Ocean View Homeowners Ass'n, Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402-403.) However, a lead agency has the discretion to determine whether to classify an impact described in an EIR as "significant," depending on the nature of the area affected. (CEQA Guidelines, § 15064, subd. (b); National Parks & Conservation Assn. v. County of Riverside (1999) 71 Cal.App.4th 1341, 1357 [varying thresholds of significance may apply depending on nature of area affected].) In exercising its discretion, a lead agency must necessarily make a policy decision in distinguishing between substantial and insubstantial adverse environmental impacts based, in part, on the setting. (CEQA Guidelines, § 15064, subd. (b).) Where the agency determines that a project impact is insignificant, an EIR need only contain a brief statement addressing the reasons for that conclusion. (CEQA Guidelines, § 15128.)

Based on the preceding impacts to private views, and to give such analysis context, the DEIR must evaluate GP policies to see if public and private views to important scenic vistas is given importance in GP.

View 1 – the analysis of the public view to the mountains (background view) is inaccurate. The current view shows a clear visual path to the mountains with some mid-ground interference from vegetation. The after-development view of the mountain background is substantially altered by development. Visual access to the mountains/hills south of San Jacinto Mountain is substantially altered. This public view clearly experiences a substantial adverse impact.

p.2.3-14

In View 2 homes east of the project's SE boundary currently have a rural foreground view; mid-ground is suburban with landscaping, and an almost continuous background view of the hills and mountains. The VSP development and landscaping will substantially alter the background view, only limited and sporadic visual access to the hills will be available to the residents. Whether this loss of visual access by private residents can only be determined by an analysis of GP policies

View 3 is actually illustrative of less impact on scenic vistas. The foreground retention basin minimizes less of access from adjacent residences in View 3 highlights the degree of changes in Views 1 and 2. View 3 foreground undergoes substantial change.

View 4 foreground view is dramatically changed. Views to the mountains in far background is lost in View 4. View to nearest mountains is disturbed but retained. Still a substantial change from the present views.

Based on the preceding description of view changes, we believe that any reasonable person would conclude the change in access to scenic views from public and private vantage points is a significant change, i.e., a significant adverse impact. The photo simulations clearly demonstrate the scope of the change.

p.2.3-19 Analysis should be on existing designation not on hypothetical Suburban Neighborhood. Also, no analysis of and data supporting how Transitional Neighborhood can be similar in visual setting to Desert Estates Neighborhood; i.e., how is a Transitional neighborhood consistent and compatible scale to development intensity on its eastern and northern boundary. Using homes in a higher density designation on the west is an invalid and erroneous visual comparison due to the open space created by the project site. Residences to the north and east are the appropriate and pertinent analytic comparison. The conclusion at top of page 2.3-20 is not supported by objective analysis.

VSP impact – the comparison from Avenue 50 should be between the view to the site under the existing environmental visual setting and the proposed VSP development. This change will be dramatic. When compared to the visual setting to the east, please refer to View 1 and its impacts.

p.2.4-4 Riverside County also provides independent soil classifications; were Riverside soil classifications consulted? If not, it would be appropriate to do so since Riverside data is discussed below.

p.2.4-5 Area was farmed until 2019 according to adjacent residents. The 45-acre property is designated as Prime Farmland on County's Important Farmland Map.

p.2.4-6-7 The analysis of losing Prime Farmland is flawed and represents a distorted rationalization for a finding of less than significant impact. This occurs for the following reasons. Prime Farmland is very limited resource, analogous to an endangered species. The GPA reduces the size of lots and removes agriculture as an approved use; thereby eliminating potential use of the onsite soil for its highest and best use. Note that several of the adjacent residences maintain date trees on their property and have them picked each year. The GPEIR found the cumulative loss of Prime Farmland in the City to be a significant unavoidable adverse impact. Approval of the GPA removes approximately 45 acres of Prime Farmland from potential agricultural productivity. Thus, at a minimum, the proposed GPA represents a cumulatively considerable contribution to an action the City has already found to be a significant adverse environmental impact. Presenting this action as

a less than significant impact when it has already been deemed by the City to be a significant impact is a disingenuous finding at best and an intentional error in conflict (inconsistent) with the current General Plan at a minimum. This issue needs to be re-evaluated and the EIR recirculated to properly disclose this significant impact.

p.2.4-7 The amount of 21,267 of total “important farmland” is the incorrect metric to be used in evaluating the loss of 45.17 acres of Prime Farmland. The correct metric would be the 1,962.5 acres of Prime Farmland in the City used in the GPU EIR. The loss of Prime Farmland under the VSP is actually 2.3%. This absolute loss of acreage due the proposed project is clearly part of a cumulatively considerable adverse impact. Attempting to utilize the Statement of Overriding Considerations (SOOC) for the General Plan as justification for a less than significant impact finding exceeds credibility; it is a clear error in evaluation, as documented in the GPU EIR; and needs to be corrected through recirculation of the VSP DEIR to adequately correct the substantial failure to inform decision-makers and interested parties.

Section 2.4.7 – Compensatory mitigation is feasible for a specific project’s impact to loss of Prime Farmland. The loss of Prime Farmland can be compensated/offset by purchase and permanent preservation of agricultural land of comparable value. Prime agricultural land mitigation banks have been established in California (such as Elk Grove, California) and offsetting the loss of 45.17 acres of Prime Farmland at a mitigation ratio of 2:1 or 3:1 would be a reasonable and feasible measure.

p.2.4-8 The last paragraph presents flawed data. The City has already found the cumulative loss of Prime Farmland to be a cumulatively considerable adverse impact. The proposed project removes agriculture as possible use of the property. It may not add additional acreage to the loss of Prime Farmland, but the proposed project is clearly a component of the City’s cumulatively considerable impact that has been unequivocally found to be an unavoidable significant adverse impact by the City. As the implementing action that causes the loss of 2.3% of the City’s prime farmland, the proposed project clearly contributes to the City’s evaluation of this impact, and by extrapolation is also a project specific significant, cumulatively considerable impact.

p.2.5-13 No data are provided to support the conclusion that the increase in site occupancy emissions (about 13.5 lbs/day for NOx) from approving the GPA is not a cumulatively considerable incremental increase. 13.5 lbs of NOx per day clearly is not significant for a specific project, but please provide the context to support the conclusion that the additional emissions should not be considered cumulatively significant when added to the overall emissions generated from buildout of the City’s GP.

As stated above regarding Prime Farmland, the fact that the City adopted a SOOC does not diminish the significant unavoidable adverse impact finding in the GPU EIR, it only makes a finding that the City is willing to accept this adverse impact to achieve buildout of the proposed land uses in spite of the adverse impact to which it will expose its citizens. This GPA will add to the City’s identified cumulatively considerable significant impact.

- p.2.5-21 Same comments as provided on the 2.5-13
- p.2.8-10 In the paragraph preceding “Ventana Specific Plan” a conclusion is made that “the GPA would not cause new or increased severity of impacts regarding long-term operations. However, the analysis does not provide any discussion of “what threshold” of change should be used to determine “significant impact.” Please provide, i.e., if not 2.5% increase what threshold should be used and why.
- p.2.8-12 Natural gas. Again, a threshold of significance would help understand and substantiate this finding. Also, unless required as mitigation, the use of induction?? Cooking stoves and heat pumps cannot be assumed. 0.8% increase in fuel consumption needs context regarding how much of an increase is significant.
- Does the project achieve a zero net energy use? If not, how is it consistent with this GP policy?
- p.2.12-14 Throughout the discussion of water availability there is a discussion of total water in storage in the Whitewater River Basin and the volume of water extracted by the IWA. However, there is no discussion of the two key issues needed for this evaluation: how much of the 28.2 MG in storage is available for human use and most importantly, whether the Basin is in overdraft (exceeds safe yield) and if so, does an increase in GP density contribute to a cumulatively considerable adverse impact and affect long-term sustainability of groundwater supplies?
- p.2.12-18 There is no discussion of the availability of a groundwater sustainability management plan, or when compliance with state requirements for such a plan will occur. Also, under the VSP discussion, a WQMP has no effect on water consumption issues. It does not correlate with the possible need for a sustainable groundwater management plan.
- p.2.12-19 Cumulative impact findings are incomplete. Please provide
- p.2.13-2 This GP EIR has studiously avoided discussion of the existing zone classifications on the 45.15-acre property. Like the General Plan designation, the zone classification establishes the maximum density of development. Yes, the GP identifies the maximum land use density, but the zoning for the property CEIR-1 and CEIR2 also establishes density, i.e., the maximum number of units that can be developed under the zone classifications at this time. In this case, CEIR-2 allows only one unit per 2 acres. Based on this designation, the project site can currently be developed with about 30 du, rather than 45. Therefore, the analysis throughout this document based on 45 units which is allowed by the General Plan land use designation, but is in error with regard to the actual land use baseline, the actual number of dwelling units that can be constructed at the present time. This is a fatal flaw in the EIR that must be corrected through revising the whole document and recirculating it for review.

Southern Neighborhood Subarea – area between the Central Neighborhoods and Festival District lifestyle rural country-side environment and existing equestrian uses, rural/resort lifestyle in a quiet and secluded living environment, maintain the area's unique character, the GPA conflicts with this objective which the local residents consider a major inconsistency.

VSP LU – 1.5 – not consistent, Southern Neighborhood Subarea strategies, no discussion of consistency with the adjacent Southern Neighborhood Subarea.

- p.2.13-5 The analysis here is flawed as the proposed project does not enhance the Neighborhood Subarea stability as it extends higher density suburban level development into this area.
- Multi-modal, required improvements, nothing contributory by the proposed project except the mandated improvements on the adjacent roadway (Avenue 50), such as bus stops, etc.
 - Specific Plan – The DEIR does not provide a copy of the whole VSP for independent review. It is not even clear that the VSP contains all of the required elements of a Specific Plan.
 - Further, the VSP does not create synergies with activities or events in the Festival District, at least none that were identified in this DEIR.
- p.2.13-6 Balanced land uses, this project unbalances the land uses established less than 2 years ago in the new General Plan. The VSP may increase the range of single-family residential structures on the site, but it diminishes range of housing choices within the City by eliminating/reducing the 45 acres of rural country-side and rural/resort lifestyle acreage in the City. This designation is already very limited within the City of Indio. LU-2.2
- p.2.13-9 The development does not protect views to the mountains. For this section the analysis has focused on the incorrect issue. For example, the Southern Neighborhood Subarea is designed for a lifestyle of a rural countryside environment to support equestrian uses and rural/resort lifestyle in a quiet secluded living environment. The proposed project is the antithesis of this lifestyle. 45 acres are proposed to be removed from this rural/resort lifestyle designation to be replaced by a traditional suburban neighborhood. Thus, both in terms of balancing land uses in the City as a whole and how much suburban residential acreage (2+ units/ac) exists in the City, the assessment should focus on how much land designated for large acreage lots will remain in the City if the VSP is approved. Balance is achieved in the City by providing a full range of residential options, expanding standard suburban, cookie-cutter lots, does not maintain the balance that the City Council included in the recently adopted General Plan which is less than two years old. Having 30 lots on 45 acres supports a balanced mix of residential development more than does reducing the total acreage of the City allocated to large-lot rural residential land use.
- p.2.13-13 Throughout this document it has been stated that the current land use designation allows one unit per acre, which the General Plan does. What this whole document ignores is that the maximum number of units that can be developed under the current zoning for the site is about 30 units, not 45. Thus, the delta between the existing number of units and proposed GP is $(135-30) = 105$, not 91. Also, the delta

between the actual number of units proposed under the VSP & TTM 37884 (103-30) = 73, not 58. This is a fatal flaw in the EIR analysis and if the DEIR is not corrected and recirculated, it may lead to a legal challenge. The maximum number of units that could be constructed under the current land use baseline is about 30 units, and all impacts forecast relying solely on a baseline of 45 units requires reevaluation.

p.2.13-14 For the existing large lot residences the 45-acre site with a designation of 1 dwelling unit per one- or two-acre parcel makes sense as a buffer between the larger lot residents to the east and the suburban residences to the west. This was the obviously the intent of the City Council when it adopted the 2019 General Plan. The VSP will destroy this logical buffer area and bring suburban level development directly adjacent to the large lot properties to the east. This is certainly not consistent with the current General Plan

p.2.14-1 First paragraph on page ends with no text conclusion, needs to be rewritten in the final.

p.2.14-15 The noise analysis focuses on how the proposed project will contribute to future noise levels during construction and on adjacent roadways. However, the noise analysis fails to address two important issues: onsite occupancy noise impacts on adjacent sensitive noise receptors to the east and north and impacts of noise from Avenue 50 on the 5 homes adjacent to Avenue 50 in Planning Area 1. Regarding future onsite noise, there are seven homes between Avenue 49 and Avenue 50 that are currently separated from traditional suburban residential densities by several hundred feet under present conditions. Developing the VSP will bring suburban noise levels to be directly adjacent to those several larger lot residences. The current noise monitoring data for NM3 is a Leq of 41.6 dBA and the current noise monitoring data for NM4 is a Leq of 45.9. These Leq values need to be converted to CNEL, but it would appear that noise levels may increase at the seven residences by 5 decibels or more. This degree of change in noise qualifies as significant and merits disclosure to the adjacent residents and decision makers.

Regarding noise exposure at the 5 future residences closest to Avenue 50, the future noise level from traffic is forecast to be above the existing 72.1 Leq measured at NM5. Policy NEA 2.4 states: "Implement the policies listed under Goal 1 to reduce the impacts of roadway noise on noise-sensitive receptors where roadway noise exceeds the normally compatible range shown in the City's Noise Compatibility Matrix shown in Table 3." The normally compatible range for residential use is a maximum of 60 decibels CNEL. With existing noise along Avenue 50 already at 72.1 Leq and higher when converted to CNEL, it will require 12.1 decibel reduction at the property line of the 5 residences. The City's roadway noise mitigation requirements were identified as reducing noise by 10 dBA, which would leave a residual noise exposure of 62.1 Leq which would result in a significant adverse noise level at the 5 residences. The noise evaluation needs to be redone and expanded to address this impact. As it currently stands the noise evaluation of the VSP is inadequate and the VSP is inconsistent with General Plan noise requirements.

- p.2.15-5 By adding new residential units, it is obvious that the proposed project will contribute to the housing resources. What isn't obvious is whether more units in the Above Moderate Income category are needed. Such an analysis would look at what number of units in each income category have actually developed between 2014-2021 and look at whether the proposed project contributes to meeting the number of units within each income category. Further, we believe new RHNA numbers have been issued by SCAG and the analysis should examine these values in addition to whether the City met the RHNA goals for the past 7 years. Also, the 341 new residents should not be compared to the 126,300 value but to the remaining population growth feasible through 2045, i.e., $129,300 - 90,751 = 38,549$ which is 0.9% of forecast growth.
- p.2.17-7 Please explain how passive open space, primarily designed for stormwater management (the majority of the 7.15 acres of landscape open space) is counted as part of the 3 acres of park space per 1,000 residents identified as the City standard. It does not make sense as the 3-acre criterion is for active, not passive, park space. It is also not clear whether onsite passive open space will be available to the public other than residents of the development. Please explain.
- p.2.17-9 According to the preceding analysis, the City is 297 acres short on adequate parkland acreage to meet the 3 acres of park per 1,000 population. With about 38,800 in population growth (including the proposed project) through 2045, the total park acreage that must be created to meet the City's park standard is 335.8 acres ($297 \text{ ac} + 38.8 \text{ ac} = 335.8 \text{ acres}$). It is reasonable to assume that creation of 335.8 acres, particularly water consumption, could result in a significant cumulative impact on the City's environment. The proposed project contributes to this potentially cumulatively considerable recreation impact.
- p.2.18-22 The discussion regarding "Alternative Transportation Planning" is misleading because it gives the impression that future residents will have "improved pedestrian" access along Avenue 50 and access to mass transit when the project is completed and occupied. This statement is not accurate. Transportation alternatives like sidewalks, bike paths and reasonable access to mass transit may be years away due to the fact that the project construction will create isolated, stranded infrastructure improvements until or if other development along Avenue 50 installs such facilities as part of their development. This point should be made clear in the text as it could be years before actual connectivity to safe alternative modes of transportation is available for VSP residents.
- p.2.18-23 VMT. Existing local residents have heard reports that the VSP residences will be used during major events at nearby venues in the Festival District for rentals (hospitality uses). If this is possible, then the VMT evaluation should address the miles traveled by such renters. Alternatively, the City could condition the project to not allow short-term vacation rentals, which would eliminate the potential for this impact on VMT.
- p.2.18-24 Emergency access. The City Fire Department has accepted a single site access point, with a divided road as an adequate emergency access. Although this may be acceptable to the City, it does not constitute an actual secondary emergency

access. Although a low probability, a large truck-trailer accident at the access roadway and Avenue 50 could hypothetically close all emergency access to the site with no secondary alternative alignment as normally required. The City is assuming a substantial risk that such a circumstance will not occur and result in harm to a future resident during an emergency. We are surprised the City is willing to accept such a risk.

- p.2.20-8 Same issue as previously raised under hydrology. If the GPU EIR relied on qualitative data to conclude buildout development water resource impacts would be less than significant, how can this analysis conclude that water resources will be sustainable over the long term? There is no factual foundation for this conclusion. Actual data and analysis of the water data is needed to justify conclusion regarding less than significant impact.
- p.2.20-9 Instead of looking at annual capacity, it would be appropriate to provide data on daily capacity. Is the 5 mg/d treatment capacity exceeded on a daily basis. And if so, does Plant WRP-7 have adequate storage capacity to balance inflows into the plant over a reasonable period?
- p.2.20-10 The discussion of submitting a future drainage plan to identify if any offsite drainage system improvements are needed constitutes deferral. Because this project consists of a specific project, the VSP and tract map in addition to a GPA, it is necessary to identify all offsite improvements for evaluation now, not in the future. Concluding that drainage system impacts are less than significant without any evidence is an error in the analysis.
- p.3-5 Please provide data to support the statement that “no alternative site was available for sale or met the project objectives in the area of the City.” As presented, this is a conclusory finding with no data to support it.
- p.3-6 Alternative 1 would require a zone change to achieve the 45 units on the site. The current CEIR-1 and CEIR-2 zoning would only allow up to about 30 residential units. This condition represents the current CEQA baseline for evaluation in this DEIR. This issue also applies to significance threshold c) on p.3.3-4.
- p.3.4-2 The conclusion stated in paragraph 1 on this page is flawed as previously indicated. The loss of prime farmland at the project site is part of the cumulatively considerable impact identified in the GPU EIR. Therefore, it cannot be less than significant as concluded in this unsupported statement.
- p.3.14-3 Note that if only 30 residences are built on the project site, this would allow for setbacks from Avenue 50 to eliminate any exposure to significant noise from traffic.
- p.3.17-4 Within a noise setback area for Alternative 1, a larger park area, perhaps even a public park, could be established.
- p.4-1 Based on the preceding comments, we submit to the City that the proposed VSP project will cause significant unavoidable adverse impacts under the following environmental issues: Aesthetics, Agriculture, Hydrology and Water Quality, Land Use, and Noise.

As previously noted, a full copy of the Specific Plan is not provided in the DEIR,

therefore, it was not possible to verify the content of the Specific Plan and compare it with the impact forecasts in this document.

Based on our review, this DEIR was prepared to support the proposed project, not to make an unbiased evaluation of the project's environmental impacts. Existing City residents and our decision-makers deserve a better environmental document to properly inform everyone about the real consequences of approving the proposed project. The proposed project seeks to change a vision of the City that was embodied by the 2019 General Plan. We submit that it is too soon to make this degree of change in the General Plan's vision in a manner that will reduce the diversity of future residences, not enhance it. We have identified many errors and flaws in the current DEIR that need to be corrected before this project is brought before the City's decision-makers. We request that the City revise the DEIR using unbiased analysis and re-circulate the document to ensure the actual impacts are fully characterized. Thank you for the opportunity to submit these comments.

Very truly yours,

LAW OFFICES OF MATT H. MORRIS

MATT H. MORRIS, ESQ.

MHM:dch

Appendix B
Response to Comments for Ventana Initial Study

City of Indio

Ventana Specific Plan, General Plan Amendment, Tentative Tract Map and Design Review

Response to Comments

The City received four comment letters during the public review period for the Ventana Specific Plan and associated applications. Letters were received from the Imperial Irrigation District (IID), the City of La Quinta, Sam and Patti Kyle, and Matt Morris, on behalf of Michael and Lynn Kincaid.

The following provides responses to these comment letters. For each letter, the comment is reproduced verbatim below, followed by the City's response. The comment letters are attached in their entirety to this document (Attachment 1).

A. Imperial Irrigation District

Comment A-1: On July 9, 2020, the Imperial Irrigation District received from the City of Indio Community Development Department, a request for agency comments on the Ventana (Specific Plan) residential project. The proposed subdivision would result in 103 single-family homes on 45.17 acres of vacant land located on the north side of Avenue 50 between Jefferson Street and Madison Street in the City of Indio, CA. The project consists of three Planning Areas, with three lot sizes: 7,000 sq. ft., 11,000 sq. ft. and 13,500 sq. ft.

The Imperial Irrigation District has reviewed the project information and, in addition to the district's July 1, 2020 *Will Serve Letter* (see attached letter), has the following remarks:

Response A-1: Comment noted. The commenter accurately describes the scope of the project.

Comment A-2: IID will not begin any studies, engineering or estimate costs to provide electrical service to the project until the applicant submits a customer project application (available at <http://www.iid.com/home/showdocument?id=12923>, detailed loading information, panel sizes, project schedule and estimated in-service date. Applicant shall bear all costs associated with providing electrical service to the project, including but not limited to the construction of any additional facilities needed to extend electrical service to the proposed development such as backbone feeders, distribution overhead and/or underground line extensions, the re-configuration of distribution circuits, transmission line extensions or other upgrades as well as applicable permits, zoning changes, landscaping (if required by the City) and rights-of-way and easements.

- Response A-2: Comment noted. The commenter provides information on its review and approval process for construction projects. No CEQA issue is raised. No further response is required.
- Comment A-3: However, based on the preliminary information provided to the IID, and as a result of the completion of the loading and feasibility study to serve the area of Avenue 50 between Jefferson and Madison Streets, the district can extend electrical facilities to serve the project under the terms and conditions set forth herein. The district's ability to provide service from existing infrastructure is based on currently available capacity, which may be impacted by future development in the area.
- Response A-3: Comment noted. The commenter provides information on its capacity to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-4: It is anticipated that IID can accommodate the project's power requirements by reconfiguring existing circuitry in the area; requiring line extensions with a loop configuration, in addition to implementing a tie to existing pull box 1086134 west of the project and to existing facilities to the north of the project. It's important to reiterate that the district's ability to provide service from existing infrastructure is based on current available capacity and is contingent upon the construction progress of the planned development in the area of Avenue 50 between Jefferson and Madison Streets.
- Response A-4: Comment noted. The commenter provides information on its ability to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-5: Underground infrastructure that includes trenching, conduits, pull boxes, switch boxes and pads shall be installed following IID approved plans. Physical field installation of underground infrastructures shall be verified and approved by an IID inspector prior to cable installation as per IID Developer's Guide (available at the district website <https://www.iid.com/home/showdocument?id=14229>).
- Response A-5: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.

- Comment A-6: For additional information regarding electrical service for the development area, the applicant should be advised to contact the IID Energy - La Quinta Division Customer Operations, 81-600 Avenue 58 La Quinta, CA 92253, at (760) 398-5841 and speak with the project development (sic) planner assigned to the area.
- Response A-6: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-7: It is important to note that IID's policy is to extend its electrical facilities only to those developments that have obtained the approval of a city or county planning commission and such other governmental authority or decision-making body having jurisdiction over said developments.
- Response A-7: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-8: The applicant will be required to provide rights-of-way and easements for any power line extensions and overhead or underground infrastructure needed to serve the project.
- Response A-8: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-9: Line extensions are made in accordance with IID Regulations: No. 2 (<http://www.iid.com/home/showdocument?id=2540>), No. 13(<http://www.iid.com/home/showdocument?id=2553>), No. 15(<http://www.iid.com/home/showdocument?id=2555>), No. 20(<http://www.iid.com/home/showdocument?id=2560>) and No. 23(<https://www.iid.com/home/showdocument?id=17897>).
- Response A-9: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.
- Comment A-10: Any construction or operation on IID property or within its existing and proposed right of way or easements including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities; will require an encroachment permit, or encroachment agreement (depending on

the circumstances). A copy of the IID encroachment permit application and instructions for its completion are available at <http://www.iid.com/departments/real-estate>. The IID Real Estate Section should be contacted at (760) 339-9239 for additional information regarding encroachment permits or agreements.

Response A-10: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.

Comment A-11: Relocation of existing IID facilities to accommodate the project and/or to accommodate street widening improvements imposed by the City will be deemed project-driven and all costs, as well as securing of rights of way and easements for relocated facilities, shall be borne by the applicant.

Response A-11: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.

Comment A-12: IID requires the dedication of public utility easements over all private and public roads and an additional ten (10) feet in width on both side of these roads for the construction, operation and maintenance of its electrical infrastructure.

Response A-12: Comment noted. The commenter provides information on its requirements to serve the project. No CEQA issue is raised. No further response is required.

Comment A-13: Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, etc.) need to be included as part of the project's CEQA and/or NEPA documentation, environmental impact analysis and mitigation. Failure to do so will result in postponement of any construction and/or modification of IID facilities until such time as the environmental documentation is amended and environmental impacts are fully mitigated. **Any mitigation necessary as a result of the construction, relocation and/or upgrade of IID facilities is the responsibility of the project proponent.**

Response A-13: The Initial Study (IS) addresses the need for IID electric service at pages 5, 31, 43, 44 and 87. The IS identifies the location of existing facilities on the north and south sides of Avenue 50, and that, consistent with Comment A-4, above, no new or additional electrical

infrastructure will be required. The improvements will occur within existing right of way, or within the streets proposed in the project. The impacts associated with installation of service will be consistent with those associated with build out of these roadways for the project. The mitigation required of the project as a whole, including monitoring of earth moving activities and construction noise mitigation measures, will apply to the electrical work required for the project. No additional mitigation measures are required.

Comment A-14: Dividing a project into two or more pieces and evaluating each piece in a separate environmental document (Piecemealing or Segmenting), rather than evaluating the whole of the project in one environmental document, is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies. In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve the project objectives, or a reasonably foreseeable consequence of approving the project, then it should be considered an integral project component that should be analyzed within the environmental analysis. The project description should include all project components, including those that will have to be approved by responsible agencies. The State CEQA Guidelines define a project under CEQA as "the whole of the action" that may result either directly or indirectly in physical changes to the environment. This broad definition is intended to provide the maximum protection of the environment. CEQA case law has established general principles on project segmentation for different project types. For a project requiring construction of offsite infrastructure, the offsite infrastructure must be included in the project description. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App. 4th 713..

Response A-14: In the present case, the proposed Mitigated Negative Declaration and the supporting IS "tier" off of the recently adopted 2040 General Plan Environmental Impact Report ("EIR") prepared by the City consistent with the requirements of CEQA. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR, like the 2040 General Plan in the present case, must assume that all phases of the project will be built

and must identify impacts and mitigation measures determined by the first-tier (the 2040 General Plan) approval. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J. “Tiering” off a an earlier “master document” such as the 2040 EIR is not “piecemealing” or “segmenting” but is instead a favored practice under CEQA.

The IS addresses all of the impacts associated with build out of the project, and the City’s General Plan. No segmenting has occurred. The need for IID electric service is included at page 5, and discussed in the IS as described in Response A-13.

Comment A-15: Applicant should be advised that landscaping can be dangerous if items are planted too close to IID’s electrical equipment. In the event of an outage, or equipment failure, it is vital that IID personnel have immediate and safe access to its equipment to make the needed repairs. For public safety, and that of the electrical workers, it is important to adhere to standards that limit landscaping around electrical facilities. IID landscaping guidelines are available at <https://www.iid.com/energy/vegetation-management>.

Response A-15: Comment noted. The commenter provides information on the installation of landscaping for safe operations of its facilities. No CEQA issue is raised. No further response is required.

B. City of La Quinta

Comment B-1: Thank you for the opportunity to review and comment on the Mitigated Negative Declaration for the Ventana Specific Plan Project located on the north side of Avenue 50 between Jefferson Street and Madison Street in the City of Indio. The City of La Quinta has the following comments:

Response B-1: Comment noted. The commenter accurately describes the proposed project.

Comment B-2: This segment of Avenue 50 is part of La Quinta’s General Plan image corridor (see Circulation Element Exhibit II-4) and there is a concern that the overhead utilities are not expected to be undergrounded.

Overhead utility lines, power lines, transformers, cable, etc. should be buried and not visible from adjacent streets and sidewalks. Threats to the City's scenic image corridors include inappropriate and unattractive overhead power lines that degrade views (see Circulation Element page II-57).

Response B-2: As noted more fully above, the IS/MND is tiered off of the recently approved City of Indio 2040 General Plan. Given that tiering, the City only needs to examine the delta (difference) between what is proposed in the Project and what is proposed in the new application. That is exactly what the City has done throughout the CEQA process for this Project. Pub Res C §21068.5; 14 Cal Code Regs §§15152(a), 15385. See *In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43 C4th 1143, 1170, 1173; *Chaparral Greens v City of Chula Vista* (1996) 50 CA4th 1134; *Stanislaus Natural Heritage Project v County of Stanislaus* (1996) 48 CA4th 182; *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 CA4th 729; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 CA4th 351; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 CA3d 300, 307.

The City of Indio's General Plan requires that all electric lines of 92kv or less be placed underground with the construction of development projects. The proposed project will be subject to this requirement. As a result, there will be no impact to City of La Quinta image corridor and no degradation of views will occur.

Comment B-3: The north half of the roadway should be widened to provide a continuous bike lane, sidewalk and right turn lanes in and out the project. The street design should match the proposed Crossing project which is located 800 feet west of this project.

Response B-3: As shown in the Tentative Tract Map, Avenue 50 will be widened to its ultimate General Plan half-width, including two lanes of traffic, a bicycle lane, curb, gutter and sidewalk. The Crossing project is not adjacent to the proposed project. Therefore, although the improvements required for the proposed project will be consistent with those required of the Crossings, the two will not connect until intervening development occurs.

Future expansion or other action related to a project that is not a reasonably foreseeable consequence of the project, need not be included in an EIR's (or in this case an IS's) project description. See, e.g., *Paulek v Department of Water Resources* (2014) 231 CA4th 35, 46; *Banning Ranch Conservancy v City of Newport*

Beach (2012) 211 CA4th 1209, 1224; Communities for a Better Env't v City of Richmond (2010) 184 CA4th 70; Save Round Valley Alliance v County of Inyo (2007) 157 CA4th 1437.

Comment B-4: With the widening of the street, the westbound left turn lane entering Verano needs to be restriped. The raised median needs to be reconstructed with an eastbound left turn lane pocket.

Response B-4: Comment noted. As described in Response B-3, full half width improvements will be completed on Avenue 50. These improvements will include an eastbound to northbound left turn pocket, and improvements to the median.

Comment B-5: City of La Quinta owns the south half of the Avenue 50 and this intersection at the corner of Jefferson and Avenue 50 currently operates at LOS D. Striping and construction plans shall be submitted to the City of La Quinta prior to approval to ensure staff concerns are addressed and the design is satisfactory.

Response B-5: Comment noted. The City of Indio will continue to involve the City of La Quinta when processing development proposals on shared roadways. Please note that this project does not occur at the intersection of Jefferson Street and Avenue 50, and is approximately 2,965 feet east of that intersection. The project will not be restriping or constructing improvements at that intersection.

Future expansion or other action related to a project that is not a reasonably foreseeable consequence of the project, need not be included in an EIR's (or in this case an IS's) project description. See, e.g., *Paulek v Department of Water Resources (2014) 231 CA4th 35, 46; Banning Ranch Conservancy v City of Newport Beach (2012) 211 CA4th 1209, 1224; Communities for a Better Env't v City of Richmond (2010) 184 CA4th 70; Save Round Valley Alliance v County of Inyo (2007) 157 CA4th 1437.*

C. Sam and Patti Kyle

Comment C-1: My wife and I own the real property located at 49275 Croquet Court in the City of Indio as well as the one-acre vacant lot immediately south of this property. Please note our objection to the proposed Mitigated Negative Declaration for the Ventana Project. The Ventana Project will have a significant effect on the environment. The City should require preparation of an Environmental Impact Report or require that the Ventana Project be revised to allow a maximum of 1 dwelling unit/acre per the City's 2040 General Plan designation for Project Site.

Response C-1: The commenter's objection is noted. As detailed in the responses below, the Initial Study (IS) analyzed all potential impacts associated with the proposed project and found that impacts would be less than significant with the imposition of the mitigation measures included in the IS. An Environmental Impact Report (EIR) is not required.

As regards the commenter's statement that the project be developed at a density of one unit per acre, the application includes a General Plan Amendment to allow the project's proposed density of 2.3 units per acre. The impacts of the General Plan Amendment are analyzed in the Initial Study. The City Council will have the ultimate decision authority to approve or deny the General Plan Amendment.

In the present case, use of a Mitigated Negative Declaration is both reasonable and appropriate. If an IS demonstrates that the Project may have one or more significant effects on the environment without mitigation, a Mitigated Negative Declaration is entirely appropriate when the project applicant revises the project to eliminate or avoid all significant impacts by incorporating mitigation measures into the Project. Pub.Res. Code Sections 21064.5, 21080(c)(2); 14 Cal. Code Regs Sections 15064(f)(2), 15070(b).

Comment C-2: The Draft Study mischaracterizes the intensity of the change from CEIR-1 and CEIR-2 zoning to Suburban Neighborhood. The Draft Study states that the CEIR-1 and CEIR-2 allow for residential development of 1-2 dwelling units per acre. This is not correct. The minimum lot size for CEIR-1 is one acre (43,560 square feet). The minimum lot size for CEIR 2 is two acres (87,120 square feet). (Table of Comprehensive Development Standards in CEIR Zones). Thus, the current zoning allows for a maximum of 1 DU/acre and much of the property zoned CEIR-2 is limited to .5 DU/acre.

Response C-2: The commenter is correct that a mis-statement is made on page 4 of the IS. For clarity, the IS will be amended to read (deletion in strike-through, addition in bold):

"The City's Zoning Map, which was last updated in 2009, currently designates the subject site as "Country Estates Indio Ranchos Zone(s)" (CEIR-1 & CEIR-2) and allows for low density residential developments of 4-2 **0.5 to 1** DU/AC.

Comment C-3: The Ventana Project more than doubles the allowed density in the CEIR 1 zone and quadruples the density on the property zoned CEIR 2. This is far from a "minor" increase in density that the Initial Study

relies upon repeatedly in its assessment of the project's impacts on various areas of the environment. I cannot imagine that the City would view quadrupling the number of homes in an area as a "minor" increase. The error in assessing the current allowed density as compared to the proposed density is relied upon repeatedly to justify conclusions that there are no impacts or less than significant impacts to the environment and invalidates the entire Initial Study. A new Draft Initial Study must be prepared to accurately account for and assess the true increase in density over existing conditions.

Response C-3: The IS characterizes the increase in density as "minor" at page 60 and 86, in its discussion of water demand, which will increase IWA demand by 0.18% compared to 2015 actual demand. The IS does not otherwise characterize the increased density as "minor." The IS considers and analyzes quantitatively the impact of the General Plan Amendment based on the total potential increase, should the project develop at a density of 8 units per acre (the maximum allowed under the Suburban Neighborhood land use designation), and the 2.3 units per acre resulting from the build out of the proposed project.

The IS/MND is tiered off of the recently approved City of Indio 2040 General Plan. Given that tiering, the City only needs to examine the delta (difference) between what is proposed in the Project and what is proposed in the new application. That is exactly what the City has done throughout the CEQA process for this Project. Pub Res C §21068.5; 14 Cal Code Regs §§15152(a), 15385. See *In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43 C4th 1143, 1170, 1173; *Chaparral Greens v City of Chula Vista* (1996) 50 CA4th 1134; *Stanislaus Natural Heritage Project v County of Stanislaus* (1996) 48 CA4th 182; *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 CA4th 729; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 CA4th 351; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 CA3d 300, 307.

Comment C-4: The Project will have significant impacts on not only the views from our own home and adjoining lot but also views of our neighbors and the community at large. We presently enjoy views of the Santa Rosa Mountains from our Property. The increase in density and the proposal will have a significant impact on views from our property and those of our neighbors. Likewise, permitting buildings in excess of the current 25-foot height limit exacerbates this impact. Development consistent with the current zoning would allow fewer homes thereby preserving views of the mountains - for everyone -- through corridors. Also, it is not clear how the City can make a less

than significant impact determination when it did not prepare a view analysis that would depict the before and after views from vantage points around the Project Site. At a minimum, the City should prepare a view analysis so that impacts to views from relevant vantage points may be properly analyzed and mitigated.

Response C-4: The IS analyzes, at pages 19 through 25, the impacts associated with scenic vistas, scenic resources and visual character. As described in those pages, views of the Santa Rosa mountains from the project and its surroundings are to the south and west.

The height limit proposed in the Specific Plan for Planning Areas 2A and 2B, adjacent to the commenter's resident, is 24 feet (less than what would be allowed in the CEIR district). The height limit allowed in Planning Area 1, located at the southwest corner of the project site and approximately 1,475 feet (1/4 mile) southwest of the commenter's property, is 28 feet. Further, the elevations provided in the IS for the homes proposed as part of the project show that maximum structure height for Planning Area 1 is 24 feet, and maximum structure height in Planning Area 2 is 17 feet. In both Planning Areas, therefore, the proposed project building height would be less than allowed in the Specific Plan, and less than allowed in the CEIR zone.

The IS considers the height limits allowed on surrounding properties, compares them to the maximum and proposed height allowed in the Specific Plan, describes the current environment in the vicinity, which includes residential and commercial development, and correctly concludes that the foothills of the mountains to the west and south will be partially blocked for viewers to the north and east of the project, as they currently are by existing development. The IS further describes that the mid-range and peaks of the mountains will still be visible above the homes. In the case of the commenter, given the existing approximately 40-foot rear yard setback on his property, and the minimum 25-foot rear yard setback required on lots 85, which abuts the commenter's residence, the closest structure would occur at 65 feet from the existing residence, at a height of 17 feet. The impact to the commenter's views, because of distance and the height of the single-family homes proposed in this area, will not be significant.

The IS correctly analyzed the viewshed impacts associated with the proposed project, and correctly concluded that impacts would be less than significant.

The IS/MND is tiered off of the recently approved City of Indio 2040 General Plan. Given that tiering, the City only needs to examine the delta (difference) between what is proposed in the Project and what is proposed in the new application. That is exactly what the City has done throughout the CEQA process for this Project. Pub Res C §21068.5; 14 Cal Code Regs §§15152(a), 15385. See *In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43 C4th 1143, 1170, 1173; *Chaparral Greens v City of Chula Vista* (1996) 50 CA4th 1134; *Stanislaus Natural Heritage Project v County of Stanislaus* (1996) 48 CA4th 182; *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 CA4th 729; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 CA4th 351; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 CA3d 300, 307.

Comment C-5: Likewise, the Ventana Project will have significant light and glare impacts as compared to current zoning. Even if residences use low intensity lighting the cumulative impact of increasing the number of houses with such lighting will create a significant light and glare impacts and create a light island that is in stark contrast to that which would be produced by residences on acre lots.

Response C-5: The commenter's opinion is noted. The commenter provides no substantial evidence that the project's lighting would substantially increase light and glare in the area. The IS, however, correctly described that the project's lighting will be regulated by the Municipal Code, including on-site lighting and street lights, which requires that lighting be shielded, and that lighting not be allowed past the property line. These standards will be imposed on the project as they are with all projects in the City. The IS correctly concludes that lighting and glare impacts will be less than significant.

In the present case, the proposed Mitigated Negative Declaration and the supporting IS "tier" off of the recently adopted 2040 General Plan Environmental Impact Report ("EIR") prepared by the City consistent with the requirements of CEQA. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR, like the 2040 General Plan in the present case, must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier (the 2040 General Plan) approval. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general

discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J. “Tiering” off a an earlier “master document” such as the 2040 EIR is not “piecemealing” or “segmenting” but are instead a favored practice under CEQA.

Comment C-6: The Initial Study's conclusion that the Project will have no groundwater impacts is flawed. The IWA bases its water planning needs on the original General Plan Designation of 1 DU/acre. As noted above, the Project more than doubles that density resulting in 0.18% increase in demand over 2015 baseline levels. This percentage, while small, is significant when viewed in the context of the demands on the groundwater supplies. Groundwater levels in the lower portion of the Whitewater River Subbasin "have been declining since 1980." ¹ The Coachella Valley Water District identifies the "serious consequences" that result from "overdraft" including drilling deeper wells, increased water costs, "irreversible degradation of water quality" and land subsistence.² None of these impacts are assessed in the Initial Study. Authorizing additional density that increases groundwater withdrawals beyond those covered in applicable planning documents without an equivalent reliable source of recharge to offset the increase in withdrawal is a *per se* significant impact.

Response C-6: The IS does not state that there will be no impact to water resources as a result of the proposed project. The IS does determine, following analysis of the IWA's 2015 Urban Water Management Plan, that the impact will be less than significant. The IS identifies the total potential water demand for the General Plan Amendment at 0.3% of the IWA's 2015 demand (the last update of its Urban Water Management Plan), and the project's increased demand at 0.18% more than demand in 2015. Given that the Urban Water Management Plan determined that that IWA had sufficient supply to meet demand in average and dry years, as required by law, the conclusion of the IS that impacts will be less than significant is supported by substantial evidence.

The commenter cites Coachella Valley Water District documentation from 2010 and 2012, which stated at the time that the groundwater basins were in overdraft. That information was correct at that time. However, the District has, since 2010, been implementing programs to eliminate overdraft. The District's 2014, 2016 and 2018 Coachella Valley Water Management Plan Status Reports show that inflows

(additions to the groundwater basin through recharge basins located in several locations throughout the district, and percolation and returns from use) exceed outflows, and that the basin is no longer in overdraft.¹

Comment C-7: Finally, the Initial Study does not conduct a cumulative impact analysis of the impacts to the environment from other similar proposals to up-zone property zoned CEIR-1 and CEIR-2. There are large swaths of property zoned CEIR-1 and CEIR-2 to the east of the Project Site along Avenue 50. In light of the City's position to allow an increase in density for this Project it is reasonably likely that these lands will also be developed in excess of the current densities in the foreseeable future. The Final Study must conduct a cumulative analysis of the impacts created by similar proposals on these lands.

Response C-7: The commenter asserts that the IS should have analyzed the cumulative impacts of all CEIR lands in this part of the City being converted to more intense land uses. There is no plan by the City to increase densities to the east of the project site, and as such no analysis of such an increase is required. Should the City, or individual property owners initiate General Plan Amendments for one or more property to the east of the proposed project, the impacts of such an Amendment would be studied at the time it was proposed. The IS currently under review is not required to engage in speculation, and on the contrary should be based on the facts known at this time. On that basis, the IS correctly analyzed the impact of the General Plan Amendment that is part of the proposed project, and did not speculate on whether other General Plan Amendments might be proposed in the future, consistent with the requirements of CEQA.

A mitigated negative declaration need not speculate about the effects of contingent future events relating to a project. When future actions that may follow from a project are uncertain, the mitigated negative declaration need not address the environmental consequences that might result. *Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 CA4th 1036, 1058. A mitigated negative declaration also need not evaluate the possibility that a project might be expanded when there is no evidence in the record that the expansion and the impacts that might result are reasonably foreseeable. *Save Round Valley Alliance v County of Inyo* (2007) 157 CA4th 1437, 1451. An analysis of a speculative worst-case scenario is not required. *High Sierra Rural Alliance v County of Plumas* (2018) 29 CA5th 102, 126.

¹ Coachella Valley Water District CVWMP Status Reports, 2014, 2016 and 2018.

D. Matt Morris

Comment D-1: This law firm represents Michael and Lynn Kincaid, among others, who oppose the Ventana Project. (“Project”) The Project is opposed because it represents a whole-sale repudiation of decades of promises by the City of Indio to protect and preserve the nature and integrity of the County-Estates area in south Indio.

Pursuant to the Initial Study (“IS”), the City proposes to grant the Developer a site specific general plan amendment, a special site specific zoning, along with a specific plan and tentative tract map so it can build something *radically* different than anything in the area. If allowed, the Project will be the death knell for the Country Estates area. It will effectively drop the significantly higher density housing in the middle of 5, 7, 1½ and 1 acre ranch properties. All of the properties surrounding the Project site were developed consistent with, and in reliance on, City of Indio General Plans and zoning.

Response D-1: The MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

The commenter’s opinion is noted. Lands to the south of the project site, in the City of La Quinta, are zoned Low Density Residential, which allows a density of 4 units per acre. Lands to the west of the project site are zoned CEIR-2 and CEIR ½, which allow one unit per 2 acres and 2 units per acre, respectively. Lands to the north of the project site are zoned CEIR-1, which allows one unit per acre. Lands to the east of the project site are zoned CEIR-1 and CEIR-2, allowing one unit per acre and one unit per 2 acres, respectively. Lands east of the commenter’s residence, and his client’s residence, are zoned CEIR-1/2, allowing 2 units per acre.

Comment D-2: The planning department has identified many potential significant impacts the Project will have on the environment and surrounding neighbors. Nevertheless, the planning department proposes to take the drastic step of not requiring an Environmental Impact Report (EIR) to address these impacts. Despite significant impacts, the Planning Department believes that if it changes the general plan, zoning, site plan and tract map to please the Developer, and requires the Developer to build consistent with these unwarranted concessions, the impacts on the surrounding properties will be mitigated.

For example, this Project will create negative effects of light pollution, noise, poor air quality, destruction of special species habitat, traffic congestion and hazzards (sic). The Planning Department proposes to mitigate these impacts by simply changing all the standards for the Project Developer. According to the IS, everyone in the Country Estates area is required to build a maximum of one house per acre, but the Ventana Developer will be allowed to cram up to 8 units per acre, and the City does not believe this will have any negative impact on the surrounding community.

The Planning Commission and City should *not* allow this project to be developed in its current form. This is not a punishment to the Developer. The Developer knew what was allowed to be built on the project site when the property was purchased. If the Project is developed as proposed, all of the surrounding properties will become isolated islands in a sea of houses. What is proposed now is an aberration.

Response D-2: Please see Response C-1. The commenter's characterization of the planning department's position on this project is incorrect. The City's Planning Department accepted applications for a General Plan Amendment, Specific Plan, Tentative Tract Map and Design Review for privately owned property within its limits, as allowed in the City's Municipal Code, and enabled by California Government Code. The Planning Department is not allowing this change. It is responsible for analyzing the planning and environmental impacts associated with the application, and reporting their findings to the Planning Commission and City Council. After due consideration of all of the facts on the record, the City Council will determine whether to approve or deny the proposed project.

The MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comment D-3: Based on the Project’s radical departure from the existing General Plan and zoning, an EIR should be prepared for this massive project. The California Environmental Quality Act (CEQA) requires a governmental agency to prepare an EIR instead of a negative declaration (mitigated or otherwise) whenever there is “**substantial evidence supporting a fair argument that a proposed Project may have a significant effect on the environment.**” (*Citizens for Responsible & Open Government v City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1332.) The “fair argument standard” is a “**low threshold**” test for requiring the preparation of an EIR. (Id. [citing *Pocket Protectors v City of Sacramento* (2004) 124 Cal.App.4th 903.928].) As explained below, given the obvious likelihood that the Project will have sufficient effect on the environment by additional vehicle trips, significant construction impacts including noise and air impacts, disturbing prime farmland, destroying habitat for protected species, and obstructing the view of existing land owners with an overly dense mega-project, an EIR is required.

Response D-3: The IS analyzed the potential impacts of the proposed project based on substantial evidence provided in each environmental issue area. The IS concluded that the impacts would be less than significant with the imposition of mitigation measures contained in the document. The IS correctly concluded that a Mitigated Negative Declaration should be prepared for the project.

The commenter fails to provide any substantial evidence of site-specific significant impacts that may result from the project. Indeed, substantial evidence under CEQA “includes facts, reasonable

assumptions predicated upon facts, and expert opinion supported by facts.” (State CEQA Guidelines, § 15384(b).) In contrast, substantial evidence does not include “[a]rgument, speculation, unsubstantiated opinion, or narrative, evidence which is clearly erroneous, or inaccurate.” (State CEQA Guidelines, § 15384(a).) Substantial evidence of significant impacts also does not include generalized information that fails to connect a project to the alleged impacts identified by a commenter. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 528 [an agency “cannot be expected to pore through thousands of documents to find something that arguably supports [the commenter’s] belief the project should not go forward”]; see also State CEQA Guidelines, § 15204(c) [commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments”].) In this case, the commenter provided no reports or supporting documentation to provide facts to the City for its consideration.

Detailed responses to the commenter’s statements regarding individual environmental issue areas are provided below.

Comment D-4:

Those opposed to this Project (names at the end) object to the planning departments (sic) mis-characterization of the Project site as being in an “urban environment.” (IS at p. 19) The area is most definitely not urban. The closest commercial development (Ralph’s Center) is a half mile away. Between Ralphs and the project site on the north side of Avenue 50 is a vacate (sic) 20 acre parcel, a 2½ acre parcel (one home) four five acre parcels each with one home or outbuildings. South of the project site is a 7 acre parcel and a five acre parcel each with one house and outbuilding. East of the project are 3 five acre parcels each with one home, and a 1½ acre parcel development that is not completely built out. North of the project there are 1½ and 1 acre parcels.

Along the north-west portion of site are 6 half acre parcels with one home each. Virtually all of the surrounding property owners oppose the Project.

Across the street on 50th , starting at Jefferson and proceeding east, is a 20 acre parcel, 15 acre parcel and an 8 acre parcel all with one home and outbuildings. Directly south across the street is a low density golf course community. To the south-east are 2½ acre polo estates. These border on a square mile of polo fields and horse ranches. This is *not* an “urban” area. In fact the IS itself proposes a

“suburban” zoning change designation. Clearly, the Project site is planned directly in the middle of extremely low density housing. Most existing houses were constructed on vacant desert or where farming used to occur.

Response D-4: The commenter’s description of surrounding land uses is noted. Land to the west of the project site is fully developed, with single family homes on lots of less than ½ acre (18,000 square foot lots). Low density residential and Country Estate Transition (densities of up to 4 and 3 units per acre, respectively), occur on the north side of Avenue 49, 600 feet north of the project site. The area is within the City’s corporate limits, and is an urban environment.

Almost all of the issues raised by the commenter in this comment were addressed by the City of Indio at the time that it adopted its 2040 General Plan. The MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J

Comment D-5: The Project site itself was designated as “**Prime Farmland**” on the 2016 Riverside County Important Farmland map. (IS at p. 27) The property was used for farming purposes until 2019 when it was purchased by the Developer. The Developer shut down the farming operations.

The next closest farming operation is not the Shields Date Garden on Hwy 111 as reported by the IS, but is the Morris ranch immediately next to the project site, where dates and ornamental trees are farmed. There is also active farming occurring on the other side of Avenue 50 (north-west) from the Project.

What the IS proposes is that “prime farmland” in an area zoned for farming, be completely eliminated by a site specific general plan and zoning that precludes farming. The IS says this is acceptable because: “the proposed Project will not conflict with zoning for agricultural uses, because it is designated for residential use, and is located in a rapidly urbanizing environment.” In other words, there will be no zoning conflict because the City will change the zoning for the Developer, and allow rapid urbanization of the only Country Estates area in the City. There is no explanation of how the significant impact of converting prime farmland in the middle of a low density ranches is going to be mitigated.

Even the EIR conducted by the City in adopting the last General Plan changes, “concluded that build out of the General Plan will result in **significant** and unavoidable **impacts** regarding conversions of farmland to non-agricultural uses.” That General Plan and zoning, which currently controls the Country Estates area, allows for agricultural uses. Obviously, completely removing prime farmland and changing the General Plan and zoning will, by virtue of the City’s own EIR, result in a “significant impact” requiring serious Project modifications along with a site specific EIR.

Response D-6: The IS identifies the Date Gardens as the closest commercial farming operation to the project site. The City was not aware that the commenter was involved in commercial agriculture, and his comment is noted.

The IS discloses that the General Plan EIR, certified in 2019, identified the loss of agricultural land in the City as a potentially significant impact. Case law has made clear that implementing projects subsequent to an EIR that identified significant and unavoidable impacts may proceed forward without a further EIR where those subsequent implementing projects do not involve new significant impacts of their own. (E.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 604, 616-617 [Where an EIR identified significant and unavoidable impacts, it was nonetheless appropriate to forego further CEQA review for a subsequent implementing project where the subsequent project’s “cumulative impacts would not be greater than those identified in the [prior] EIR”].)

Ultimately, the IS fully documents that the impacts of the project will not be greater than those previously analyzed and disclosed in the General Plan EIR, and the commenter provides no substantial

evidence showing that this project will result in new significant unavoidable impacts of its own. Accordingly, the commenter is incorrect that this subsequent project requires another EIR.

The commenter has ignored that the MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comment D-7: Based on the false premise that the Project is in an “urban” environment, the IS concludes that the negative impact on aesthetics can be mitigated. The IS is limited almost exclusively to discussing whether the Project interferes with views of the surrounding mountains. The real negative impact of this Project, however, is its affect (sic) on the aesthetics of the area.

What someone approaching this Project on Avenue 50 from the east or the west sees is a series of small ranches with abundant open space - until one arrives at the Project. In the middle of all these ranches will be a high density building complex of 5 - 6 small units per acre. The units are so small that it will have the appearance of a two story condo or apartment complex. This is totally inconsistent with the aesthetics of the area.

Response D-7: As is required under CEQA, the IS analyzes the impacts on scenic vistas, scenic resources and visual character. As described on page 24 of the IS, the view of the project from the public right of way on Avenue 50 will be of the landscaping provided in the 40-foot-wide parkway on the south boundary of the site. The closest residential structure will occur at a distance of 60 feet from the Avenue 50 right of way, which is consistent with the depth of landscaping, where it occurs, on surrounding properties on both sides of Avenue 50. There

will be a total of 5 residential units along the project's Avenue 50 frontage, which extends a distance of over 500 feet. In addition, without an easement (and none exist in the current case), property owners have no inherent right to prevent other property owners from obstructing their view. *Mira Mar Mobile Community v City of Oceanside* (2004) 119 CA4th 477.

As regards the commenter's characterization of the residential units, the proposed project, as shown in the Tentative Tract Map and Design Review application, will result in a density of 2.3 units per acre. Most homes are proposed to be single story. One model in Planning Area 1 proposes a "pop up" second story, depicted in Exhibit 7A of the IS, which comprises less than 30% of the home's footprint, and is at 24 feet in height, which is lower than the building height permitted in the CEIR zones. The commenter's characterization of the project as "a high density building complex" is not supported by substantial evidence.

Comment D-8:

A major concern is that these small "houses" are intended to be used by the Developer and/or buyers, as short term vacation rentals ("STVR") during the Coachella Festival and other Valley events. This type of construction and use is anathema to all of the surrounding existing uses.

The bottom line with STVRs is that they turn residential areas into commercial centers. "Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or joining in the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow - without engaging in the sort of activities that weld and strengthen a community." (California Court of Appeal decision in *Ewing vs. City of Carmel By The Sea*)

STVRs are a commercial business. They are an incompatible use in areas planned for residential use.

By their very nature, STVRs are noisy and invite problems affecting residents' quality of life. Transient strangers come to vacation and have fun; residents are not on vacation - they are here to live and work. No amount of regulation or enforcement can change the inherent nature and constant turnover of strangers here to have fun in STVRs.

It is a red herring to think that relying on regulations and enforcement will make STVRs acceptable in the Project. No matter what improvements are made to enforcement, the onus is always on the resident to be the first responder. By the time residents contact code enforcement or the police, their quality of life has already been disrupted. Quality of life is degraded by neighbors being woken up during the middle of the night, trash being left behind by uncaring visitors, tight parking spaces and streets being taken up by out of town transients, etc.

STVRs remove housing units from the city stock and make housing less available or affordable for people who want to live in the city. They lower property values. They result in loss of a portion of TOT to the City. And they strain code enforcement and police resources. For these and many other reasons cities all across California are strictly limiting or banning STVRs.

Response D-8: The commenter's objection to short term vacation rentals is noted. However, he provides no evidence that the project is planned as such a use, and there is no provision in the Specific Plan which would require such a use. Short term vacation rentals are regulated by the City in Title III, Chapter 37 of the Municipal Code. Should any of the homes be used as such by their buyers, those buyers would be subject to those regulations. In contrast to the commenter's assertion that vacation rentals are "anathema to all of the surrounding existing uses," one vacation rental web sites shows five (5) vacation rentals immediately adjacent to the project site, to the north and east of the property. The commenter's statement, therefore, is not supported by substantial evidence.

In addition, a mitigated negative declaration need not speculate about the effects of contingent future events relating to a project. When future actions that may follow from a project are uncertain, the mitigated negative declaration need not address the environmental consequences that might result. *Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 CA4th 1036, 1058. A mitigated negative declaration also need not evaluate the possibility that a project might be expanded when there is no evidence in the record that the expansion and the impacts that might result are reasonably foreseeable. *Save Round Valley Alliance v County of Inyo* (2007) 157 CA4th 1437, 1451. An analysis of a speculative worst-case scenario is not required. *High Sierra Rural Alliance v County of Plumas* (2018) 29 CA5th 102, 126.

Comment D-9: The IS states, without factual support, that “The proposed homes will be consistent in scale and mass to those already occurring in the area surrounding the Project, and will not change the visual character of the area.” One need only drive through the area to see that this is a false claim.

There are only 21 homes in the approximately 92 acres north of Avenue 50 which surround the Project. (This includes 7 homes in Desert River bordering the Project) **That is an average of 1 home per 4.3 acres.** The smallest of these lots is one half acre in size. The small 5-6 per acre units the Developer proposes are nothing like the homes in area surrounding the Project. The Project will have a significant negative impact on the visual character of the area. Once again, the City’s only mitigation measure is to change the general plan and zoning so the Developer’s plans can be carried out.

Response D-9: The IS provides elevations and floor plans of the proposed homes, thereby demonstrating their size and appearance. The 11 homes (not 7 as stated by the commenter) that border the project site within Desert River Estates are 11 of a project of 180+ homes on lots of 18,000 square feet, not ½ acre, as stated by the commenter. As stated in Response C-4, the proposed homes, as depicted in the IS, the Design Review application and the Specific Plan, will be less high than is permitted in the CEIR zone. The project proposes 23 homes, located closest to Avenue 50, a major arterial roadway, on lots ranging from 7,150 to 7,300 square feet. 80 homes are proposed on lots ranging from 12,000 to 15,000 square feet in Planning Area 2A, and 13,000 to 20,000 square feet in Planning Area 2B, along the east and north boundaries of the project site. As stated in Response D-7, the project proposes 5 units along its 500-foot frontage on Avenue 50. As described in the IS, supported by substantial evidence, the project will not significantly impact the visual character of the area.

The commenter has ignored that the MND is “tiered” off the recently adopted City of Indio 2040 General Plan and that many of the impacts he describes were studied in that EIR and are beyond the time to challenge. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating

general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comment D-10: The IS correctly reports that: “Currently, there are no existing sources of light on the Project site.” There is zero night time light coming from the project site. (IS at p. 24)

The existing minimal light in the area is generated by 21 homes scattered over 90 plus acres. There are *no* street lights on Avenue 50 except at its intersection with Jefferson and Madison a half mile away. (The IS a p. 24 erroneously states there is “street lighting” on Avenue 50.)

What the Project proposes is night time lighting from over 100 units, laid out on 10 new streets, all of which will have street lighting according to “City Public Work Engineering Standards (Indio - 200, Street Light Residential Area).” (IS at p. 25) This will be like setting off low level fire works every night compared to the zero light generated on the site for the last 100 plus years.

This Project will create a new source of substantial light and glare which will adversely affect nighttime views in the area. It is specious for the IS to conclude that because the zoning will be changed to allow the light pollution generated by the Project, that there will be a less than significant impact on the Project’s neighbors. Once again, the Project proposes a significant negative departure from what is currently in the area.

Response D-10: Please see Response C-5.

Comment D-11: The IS states that: “Under CEQA, a significant air quality (sic) impact could occur if the [Project] is not consistent with the applicable Air quality Management Plan.” (IS at p. 30) The IS admits that the Project will contribute to an increase in regional ozone and PM10 emissions. (Id.) Nevertheless, the planners believe that the Project Developer will comply with City air quality construction requirements so there should be no negative impact.

The IS analysis, however, does not seriously address the fact that this Project site presents significant challenges related to air quality. The site is not like a typical construction site. It contains both natural

and built up sand dunes (sic) containing almost 75,000 cubic yards of blow sand and dirt. (IS at p. 31) That sand/dirt has to be removed from (sic) the site or the developer will significantly change the topography of the site. In turn, this could significantly alter water courses and view sheds.

Blowing sand and fine dirt from the site has been a significant problem with just the minor farming operations on the site. The wind typically blows from west to east across the property, causing extreme air quality issues for properties east of the site. Property owners have experienced poor breathing conditions that prevented being outdoors, reduced visibility due to blowing sand, rapidly depleted air filters, destroyed AC units, filled pool filters, roof top dust accumulation, etc.

Response D-11: The IS correctly analyzed the impacts to air quality. First, the IS included the required removal of 74,383 cubic yards of soil from the site, both in its PM10/PM2.5 analysis, and in the number of haul trips required to remove this amount of soil (see Initial Study Appendix A, CalEEMod model runs). Issues associated with watercourses and viewsheds are addressed in Section I and X, respectively.

Second, the anecdotal statements by the commenter regarding previous agricultural activities on the site have no bearing on the proposed project. Agricultural activities are not proposed. The project's grading activities will be strictly regulated by the City, as stated in the IS, through the implementation of a PM10 management plan, required for all projects in Indio and the Coachella Valley to curtail blowing dust under the Coachella Valley SIP. These requirements serve to mitigate impacts associated with blowing dust, and have been found sufficient by SCAQMD, as the expert and responsible agency for air quality impacts throughout southern California, to mitigate these impacts.

Third, once graded and constructed upon, the landscaping, hardscape and homes resulting from the proposed project will eliminate the previously occurring dust from agricultural operations, thus resulting in a beneficial impact to down-wind properties, including the commenter's and the commenter's client's homes.

Comment D-12: In addition to grading and removing 75,000 cubic yards of dirt from the site, the Developer will be grading and making roads for over double the amount of homes allowed by the current General Plan. That means more street grading, more house pad grading, more curb and gutter, etc.

Another serious concern is that this particular Developer does not have a good track record in complying with air quality standards. Past construction by this Developer north of Avenue 48 created serious air quality and dust buildup issues for properties around that project site.

In conclusion, in discussing air quality health impacts the IS states: the extent to which the Project poses a health risk is uncertain but unavoidable. (Id. at p. 33.) This simply is not a sufficient CEQA analysis, especially in light of the fact that no EIR has been prepared.

Response D-13: As stated in Response D-11, the IS analyzed air quality impacts using models and assumptions prescribed by the expert authority for the region, the SCAQMD. The results of the analysis demonstrated that the impacts associated with the project, both during construction and long-term operation of the project, would not exceed any of the SCAQMD thresholds, and would therefore be less than significant.

As regards the commenter's reference to health effects, the citation is taken out of context. Pursuant to the IS's full text, the document discloses that the health effects associated with air emissions are not known, and cannot be fully ascertained. The IS correctly states, however, that since the project will not exceed SCAQMD thresholds, the impacts are expected to be less than significant.

Comment D-14: Perhaps the weakest part of the IS is its failure to address the significant impacts caused by an (sic) increased traffic. Currently there are zero trips per day occurring in and out of the Project site. When it was actively being farmed, trips per day were approximately two to four.

The Project will generate a staggering 1000 percent increase of traffic in and out of the Project. This is almost 1000 trips in and out of the Project everyday (sic). This adds the noise, glare from headlights and pollution generated by 1000 cars/trucks. This problem is not restricted to onsite noise, light and other pollution. All the property owners east and west of the Project on Avenue 50 will have to listen to 1000 additional cars and trucks slow down and speed up as they enter and exit the Project. *No mitigation measures are proposed for this 1000% increase in traffic on what is now a relatively quite (sic) two lane road.*

Response D-14: Avenue 50 is classified as a Boulevard in the Indio General Plan. It is projected to carry 19,600 trips per day between Jefferson Street and Madison Street at General Plan build out (General Plan EIR,

Table 4.15-2). The IS correctly analyzed traffic impacts, supported by a traffic impact analysis whose scope was reviewed and approved by the City's traffic engineer. The analysis correctly calculated the number of trips that will be generated by a single-family home development of 103 units, based on the recognized standard for trip generation, the Institute of Traffic Engineers' Trip Generation Manual. As shown in Table 11 of the IS, page 79, single family detached housing generates 9.4 trips per day, over a 24-hour period. Also, as shown in that table, the project will generate 76 trips during the morning peak hour, and 102 trips during the evening peak hour, entering and leaving the project site. The analysis also shows that all of the intersections studied will operate at a level of service that exceeds the City's Level of Service standard of LOS E.

Therefore, since the City has established thresholds for traffic operations, and since the IS and traffic impact analysis utilized these thresholds to analyze traffic impacts associated with build out of the project, the IS's conclusion that impacts associated with traffic will be less than significant is correct, and no mitigation measures are required.

The commenter has ignored that the MND is "tiered" off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analyses cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comment D-15: The amazing increase in traffic also present a serious health and safety issue for property owners in the area. The Country-Estates area was developed with the intent that area owners could in (sic) engage in agricultural and equestrian activities. Between Jefferson Street and Madison Street there are many people who own approximately **70** horses. During the winter months the horse population can be significantly higher.

Many of the owners/riders use trails on the south side of Avenue 50 that extend as far as Lake Cahuilla and beyond. In the past, Indio has made provision for trails on the north side of 50th but those trails - like the one agreed upon for the north-east corner of Madison and 50th - have not been developed.

The prospect of 1000 additional car/truck trips on 50th creates a health and safety hazard (sic) for horse owners. Given that all the traffic for the Project will exit and enter at one location off of 50th, the Project entrance will be extremely busy. The IS is silent on how area horse owners are supposed to safely navigate 50th with all the additional traffic, noise and congestion.

The IS provides no mitigation measures to ensure the safety of horse riders, or to protect the integrity of the area for equestrian activities. There are no people who own horses in the area that are in favor of the Project. The Project's "urban" plan is decidedly anti-horse and anti-horse ownership. The Project is planned contrary to longstanding General Plan and zoning in the area. Current zoning allows horse to be kept on Country-Estates properties. The Project has a significant negative impact on historical recreation activities in the area.

What will the City do the first time a horse, or horse and rider, is killed by someone speeding into or out of the Project? How will the City protect against such an accident? This should be explored in an EIR.

Response D-15: The IS correctly identifies the non-vehicular improvements provided for on Avenue 50 in the General Plan. They consist of a Class IV bicycle lane, which the project will construct along the entire Avenue 50 frontage. There are no other General Plan improvements proposed on Avenue 50. As shown in Figure 4-1 of the General Plan, trails are proposed on the south side of Avenue 50, between Madison Street and Jackson Street. No trails are proposed on Avenue 50 west of Madison Street. As described in the IS, a multi-purpose trail occurs on the south side of Avenue 50, in the City of La Quinta. Multi-purpose trails in La Quinta provide access to pedestrians, bicycles and equestrians. No connection to the La Quinta facilities is proposed in the Indio General Plan. Under current conditions, equestrians currently must illegally cross Avenue 50 to reach the La Quinta trail. The proposed project will not change that condition. If Horse riders choose to cross Avenue 50, they must, because it is illegal, do so at some, unguarded point on that roadway. The commenter's assumption that all crossings will occur at the project

site is not supported by substantial evidence. Given that there is ½ mile from the project site to Madison Street, crossing of Avenue 50, if not undertaken at crosswalks at existing intersections, will continue to be distributed throughout this half mile length. No change in existing conditions would occur.

The commenter has ignored that the MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the subsequent project. Environmental analysis cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comment D-16: The IS reports that “special-status” species of birds are located on the Project site. One is “a locally rare species” and the other is a “California species of special concern.” (IS at p. 36) The IS also identifies special-status plant species. No mitigation is proposed to protect these species or their habitat except to require the developer to pay money to the CVMSHCP. In other words, the IS is asking the City and Planning Commission to destroy this habitat, without an EIR.

Response D-16: The commenter’s conclusion is incorrect. As correctly stated in the IS, the species with potential to occur on the project site are covered species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). The purpose of the Plan was to establish the impacts to almost 30 species of concern and endangered species, and provide mitigation for these species that would apply to all development. The mitigation, in the form of a development mitigation fee, is collected for all projects, and used to purchase and preserve habitat at several locations in the Coachella Valley for these species. The potential species of concern that could occur on the project site (although not sighted during extensive field surveys) are all “covered species” in the Plan. As a result, the payment of the mitigation fee is the appropriate and correct

requirement for the project, and does mitigate the impact to these species. A project's contribution of its fair share of fees to such a program will be treated as adequate mitigation if specific mitigation projects have been identified and the implementing agency has agreed to allocate fees to those projects. *Schenck v County of Sonoma* (2011) 198 CA4th 949.

Fee-based programs, such as programs that will fund infrastructure as mitigation, can be particularly useful when the impact results from cumulative conditions and not solely from the development of a single project. *Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors* (2001) 91 CA4th 342, 363. The CEQA Guidelines specifically recognize that requiring a project to implement or fund its fair share of a measure designed to mitigate a cumulative impact is an effective way to address the project's contribution to the impact. 14 Cal Code Regs §15130(a)(3). Fair-share contributions to a mitigation fund are adequate mitigation if they "are part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." *Anderson First Coalition v City of Anderson* (2005) 130 CA4th 1173, 1187.

Comment D-17: Additionally, the IS reports that another species of special concern, the burrowing owl could be within the Project site. The IS says that if present on the property, "a significant impact would occur." Construction is not allowed where these owl burrow. (IS at p. 37) Although the Developer's investigators claim they didn't see any owls, the area neighbors commonly see owls on the Project site.

Response D-17: The commenter's anecdotal report that owls occur on the project site does not represent substantial evidence. As stated in the IS and the biological resource report, no presence or sign of burrowing owl was found on the project site. The IS correctly indicated that impact to the species, should they locate on the site prior to construction, would be significant, and correctly required mitigation, consisting of pre-construction protocol-compliant surveys no more than 5 days prior to the initiation of construction (Mitigation Measure BIO-1). This mitigation measure assures that impacts to the species will be less than significant, as reported in the IS.

Comment D-18: The IS also lists several other bird "species of special concern" that could nest in the Project site on a seasonal basis and otherwise. (Id.) In point of fact, one such bird seen in the Project site is the Cooper's hawk, and well as many other types of hawks, including nesting Red Tails hawks. The IS reports that "under the provisions of the MBTA, impacts to covered nesting birds would be **considered significant**." (Id.)

The IS plan to mitigate impacts on these special concern species is for the developer to get geared up to start construction, and then look in the bushes and on the ground for burrowing owls or nests. If the developer does not see any nests or burrows then it is allowed to proceed to destroy the habitat so the birds can not come back. Apparently the IS/Mitigated Negative Declaration authors believe that once the habitat is destroyed the bird problem will be mitigated. In other words, let's put the fox in charge of the hen house. Once again, all of this mitigation for "special species" is proposed without an EIR.

Response D-18: The commenter's assertions are incorrect. The IS correctly identified the potential for nesting birds covered by the Migratory Bird Treaty Act (MBTA) to nest on the site. The IS further described that disturbance of these nests would represent a significant impact prohibited under the MBTA. The IS concluded that mitigation was necessary to assure that these impacts were reduced to less than significant levels, and required the preparation of an MBTA-compliant survey by a qualified biologist (Mitigation Measure BIO-2). The commenter's assertion that the developer is to "look in the bushes" for nesting birds is not supported by substantial evidence, and is directly contradicted by the content of the IS.

Comment D-19: The IS states that archaeological resources may be encountered in area (sic) that have been developed or farmed but have not been subject to extensive subsurface disturbance. (sic) (excavation)." (IS at p. 40) This is an accurate description of the Project site. The site contains a significant natural dune that has never been farmed or excavated.

The IS said that during a Phase I cultural resource study the Developer's investigators did not see any "historical resources", but still recommended "archaeological monitoring" due to sensitivity of the Project location for subsurface cultural remains of prehistoric origin. In other words, the investigators believe that the Project site is an area where such remains are likely, but they didn't see any. In point of fact, in the 1970s, one could see cooking pits and bone fragments on the natural dune.

The IS said "the City is conducting Tribal Consultation in conformance with both SB 18 and AB 52 requirements and contacting the tribes in writing. Should the Tribes request consultation and provide input on the potential impacts, they will be included in conditions of approval and/or added to this Initial

Stud.(sic)” It is clear from the IS that the City has yet to hear from the Tribes. Accordingly, the IS is incomplete on this point. Without hearing from the Tribes, how can the planning commission make an informed decision about approving the Project.

Despite the foregoing concerns, the IS recommends that the Project be approved without an EIR. The mitigation proposed is that as while the Developer’s earth moving equipment operators are in the middle of moving 75,000 cubic yards of dirt, and doing the rough grading, they should be on the lookout from their machine perches to see if they are disturbing any historical resources.

Response D-19: The City correctly conducted Tribal Consultation in compliance with SB 18 and AB 52 while the IS was circulated. The timing of Tribal consultation is not tied to the public comment period for the IS, but rather to the project’s consideration by the Planning Commission and City Council. The City received one request for consultation from the Agua Caliente Band of Cahuilla Indians (ACBCI). On August 10, 2020, the City held a consultation meeting with the ACBCI, during which the Tribe’s concerns regarding cultural resources in the area, and potentially on the project site were discussed. The Tribe concluded that the IS mitigation measures were sufficient, with the modification from “Tribal monitor” to ACBCI monitor. On that basis, and on the same day, the ACBCI sent a letter to the City, indicating that the Tribe’s concerns have been addressed, and proper mitigation is being applied to satisfy SB 18 and AB 52 (please see the ACBCI’s letter of August 10, 2020, Attachment 2). The City and IS, therefore, adequately and correctly analyze cultural and Tribal resources, and correctly conclude that the potential impacts of the project can be mitigated to less than significant levels.

If, following tribal consultation, the mitigation measures identified during that consultation are adopted into the Project and incorporated into the mitigation measures for the Project’s CEQA document (the Mitigated Negative Declaration), that is fully compliant with CEQA. Pub.Res. Code Section 21082.3.

Comment D-20: Lack of water to this Project is a potentially significant impact. It appears that the Project needs/requires two water sources. One is a proposed connection to an existing CVWD 18 inch irrigation lateral under Avenue 50. (IS at p. 60) This lateral carries All American Canal water. The water is not potable. Why the Project would be connecting to this line is a mystery.

The second possible source mentioned is an “8 inch water main located north of the project site. No new wells or additional water infrastructure are proposed.” (Id.) No indication is given where this connection will take place or whether the Project Developer has permission to cross existing private property to connect with the water main. Further, is it not clear how the Developer is going to provide potable water to 45 acres of homes and attendant landscaping, etc., through one 8 inch water main. The City has to seriously question whether there is sufficient water available to the site, and whether proposed usage will impact water resources in the area.

All of the existing ranches in the area receive water from their own or shared wells. There is no indication what the affect (sic) of the Project water usage will have on existing small farm/home wells in the area. The demand for so much additional water could have a devastating impact on all the surrounding properties. This should be the subject of an EIR.

Response D-20:

The project can connect to canal water for landscaping purposes. The line occurs within the Desert River Estates project, and the developer will be required to install it prior to the initiation of construction. The IWA indicated that this alternative will provide a better system connection, in the context of their overall distribution system in this area. The developer is securing agreement from the homeowners’ association for that purpose. As described in the IS, the IWA has sufficient supply, according to its Urban Water Management Plan, to serve the site, and the increased density will increase water demand one tenth of one percent over 2015 conditions. The proposed project will have no effect on existing water wells. Water delivered to the site will be pumped from any number of wells in IWA’s system, and conveyed to the site via its distribution system.

The commenter provides no substantial evidence that the use of water will have any impact on surrounding wells, and given the nature of municipal water systems and the requirements of law regarding Urban Water Management, the IS correctly and adequately analyzes the impacts associated with domestic water, and correctly concludes that the impacts will be less than significant.

Comments must be supported by an adequate factual foundation to constitute substantial evidence. Mere speculation is insufficient. See *Bowman v City of Berkeley* (2004) 122 CA4th 572, 583

(neighbor testimony about hazards was not substantial evidence because neighbors had no expert background on complex subject of migration of chemicals); *Clews Land & Livestock v City of San Diego* (2017) 19 CA5th 161, 195 (neighbors' predictions about project's traffic impacts were not supported by specific factual foundation); *Gabric v City of Rancho Palos Verdes*(1977) 73 CA3d 183, 199 (testimony by neighbor that views would be blocked by proposed new home was not substantial evidence, because she did not testify that she had personally examined and measured view and line of sight).

Comment D-21: The IS states that: Development of the proposed Project will increase impermeable surfaces on-site, and therefore increase on-site storm flows. Recent storm flows from the site, without the increases from impermeable surfaces, caused significant flooding to surrounding property. An EIR should be conducted to address this issue.

The developer proposes to catch all storm and run off water in “6 onsite retention basis.” All of these basins, except one, are located along the Project’s southern boundary immediately next to the Kincaid and Morris properties, and down the east boundary of the Morris property. In essence, the Project will take the accumulated storm flow of the 45 acre development, along with all the fertilizer and pesticides from the homes/yards, all the roof top dust and debris, and all the street and gutter oil and contaminants, and dump it in holding ponds along two neighbors’ property lines.

Obviously a major concern is that if the retention basins fail the neighboring properties will be flooded. Of equal or greater concern, is that the storm water refuse and over irrigating byproducts will be dumped and allowed to sink into the soil virtually on top of wells (within 20 feet) used by neighbors for drinking and other household uses. The potential negative impact of retention basis capacity and location, and their affect (sic) on neighboring water wells, needs to be thoroughly and completely investigated by the City. An EIR should be required.

Response D-21: First, as it relates to the commenter’s assertion that storm flows have created a flooding hazard on surrounding properties, the commenter provides no substantial evidence that this has occurred. Although possible, the development of the site will eliminate this hazard.

The commenter also fails to note that a project-specific hydrology study and water quality management plan were prepared for the project. His statement that the retention basins will fail and inundate his and his clients' property are not supported by substantial evidence.

As stated in the IS, these documents used standards and requirements imposed by the City, as a co-permittee with the County in the implementation of the National Pollution Elimination System (NPDES), to assure that impacts associated with flooding and polluted runoff will be less than significant. For the hydrology analysis, the study used the City's standard of containing the 100 year storm. This standard is used by every city in the Coachella Valley, and throughout Riverside County. For the WQMP, the analysis used Best Management Practices (BMPs) prescribed by the City to implement protection of surface waters during construction and operation of the project. These standards and requirements are specifically designed to meet Clean Water Act standards for surface water protection, including bio-swales, screen filters and other means. The City will enforce the BMPs during construction and operation of the project. Therefore, impacts associated with both flooding and surface water pollution have been correctly and thoroughly analyzed in the IS, and the IS correctly concluded that impacts would be less than significant.

Comments must be supported by an adequate factual foundation to constitute substantial evidence. Mere speculation is insufficient. See *Bowman v City of Berkeley* (2004) 122 CA4th 572, 583 (neighbor testimony about hazards was not substantial evidence because neighbors had no expert background on complex subject of migration of chemicals); *Clews Land & Livestock v City of San Diego* (2017) 19 CA5th 161, 195 (neighbors' predictions about project's traffic impacts were not supported by specific factual foundation); *Gabric v City of Rancho Palos Verdes* (1977) 73 CA3d 183, 199 (testimony by neighbor that views would be blocked by proposed new home was not substantial evidence, because she did not testify that she had personally examined and measured view and line of sight).

Comment D-22: Some of the Project noise issues have already been addressed. Noise from the site will go from an occasional coyote to the noise generated by 1000 vehicle trips and 103 housing units - 25% of which will be from extremely high density building.

The IS does not bother to address operational noise generated by the Project at build out. It describes the difference in noise between no traffic and thousands of daily vehicle trips as “a marginal increase.” (IS at p. 69) There are no mitigation measures for a 1000% increase in traffic noise.

The only mitigation measures included in the IS are for course of construction mitigation (sic). Noise is a significant issue the City should address (sic) in an EIR.

Response D-22: The proposed project consists of single family residential units on lots ranging from 7,000 square feet to 20,000 square feet. The project site occurs on a major roadway. A project-specific noise analysis was prepared for the project. That analysis correctly found that the primary source of noise generated by the project will be from vehicular traffic. The development of homes will result in an increase in on-site noise, as disclosed in the IS, from daily activity of residents. There is no substantial evidence, however, that this level of noise would be any more intense than that experienced in any residential neighborhood, nor does the commenter provide any such evidence.

The noise study, and the IS correctly describe that traffic noise will increase on Avenue 50, both as a result of the project and of regional growth. That was also disclosed in the General Plan and its EIR, referenced in this section of the IS. The IS discloses that the noise levels on Avenue 50 will increase by 0.2dBA as a result of the project. Noise increases are barely perceptible at 3 dBA, and generally perceptible at 5 dBA. Given that the project’s increase in the noise level will be less than one tenth of one percent, it will most certainly not be perceptible. The IS correctly analyzed noise, and correctly concluded that operational noise impacts will be less than significant.

The commenter has ignored that the MND is “tiered” off the recently adopted City of Indio 2040 General Plan. Tiering is the process of analyzing general, often policy-based, projects such as general plans in a broad EIR, followed by subsequent environmental documents that are narrower in scope. Pub Res C §21068.5; 14 Cal Code Regs §15385. A first-tier EIR must assume that all phases of the project will be built and must identify impacts and mitigation measures determined by the first-tier approval, in the present case, the City of Indio 2040 General Plan. *Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 C4th 412, 431. Rather than repeating general discussions, later documents in the sequence of reviews may incorporate those discussions by reference and focus on issues specific to the

subsequent project. Environmental analysis cannot tier from a future environmental document. 40 C4th at 440. See Pub Res C §21094; 14 Cal Code Regs §15152 and CEQA Guidelines App J.

Comments must be supported by an adequate factual foundation to constitute substantial evidence. Mere speculation is insufficient. See *Bowman v City of Berkeley* (2004) 122 CA4th 572, 583 (neighbor testimony about hazards was not substantial evidence because neighbors had no expert background on complex subject of migration of chemicals); *Clews Land & Livestock v City of San Diego* (2017) 19 CA5th 161, 195 (neighbors' predictions about project's traffic impacts were not supported by specific factual foundation); *Gabric v City of Rancho Palos Verdes* (1977) 73 CA3d 183, 199 (testimony by neighbor that views would be blocked by proposed new home was not substantial evidence, because she did not testify that she had personally examined and measured view and line of sight).

Comment D-23: It does not appear that all Project neighbors received the NOI.

An additional concern is that the IS/Mitigated Negative Declaration does not include the appendices that purportedly contain supporting scientific studies. All of the following are missing from the IS:

CalEEMOD Air Quality and GHG modeling; Habitat Assessment; Cultural Resource Study; Geotechnical Investigation; Paleontological Resources Assessment; Phase I and Phase II Environmental Site Assessment; and Noise Impact Analysis.

The IS states that these reports are "Available at City Hall." This method of distributing information is extremely prejudicial to persons wishing to study the Project and decide whether or how to comment. Given the current Covid concerns, going to City Hall, and the City's hours, make obtaining these reports difficult. The Project opponents suggest that the City postpone any hearing on this Project until later in the fall, and at a time when the background information for the IS is more readily available.

Response D-23: As regards the neighbors' receipt of the NOI, CEQA (Section 15072) requires that an NOI be made available in one of three ways: publication in a newspaper of general circulation; posting on and off the project site; direct mailing to contiguous property owners. Compliance with any one of these three means of providing notice is sufficient. *California Aviation Council v County of Amador* (1988) 200

CA3d 337. The City's practice, over many years of distributing CEQA documents, is the publication of the notice in the Desert Sun, as was done in this case. It is not the City's practice to either post the notice on property, or mail to contiguous neighbors. The City fulfilled the requirements of law.

As regards the availability of the technical reports associated with the IS, the commenter's remark is disingenuous. On July 22, 2020, the commenter requested, by email, a copy of the IS. On the same day, by return email, the City's Senior Planner, Leila Namvar, provided links to the NOI and IS. At no time on the 22nd of July or thereafter did the commenter request the technical studies. Since it can be presumed that he successfully downloaded the IS based on Ms. Namvar's return email, he had an equivalent capacity to request technical studies if he wished to view them. The commenter, therefore, was provided every opportunity to completely and thoroughly review the record in this case, and there is no need to postpone the hearing for the project.

Comment D-24: Based upon our initial review, the IS contains fatal flaws and fails to acknowledge that substantial evidence of significant unmitigated impacts exist. Once Project opponents have more time to time (sic) to complete their review they may submit further comments on the inadequacies of the IS/MND.

In the past, The City has required an EIR for General Plan amendments. It is alarming that the City is considering the current GP Amendment without an EIR. If it is the Developer's position that the updated GP and zoning should apply to the Project, then the Project should not be approved through a Mitigated Negative Declaration. It is doubtful that this intense, oversized Project, would be approved in its current form, or otherwise, if an EIR is performed.

Response D-24: The comment is noted. The substantial evidence provided in the IS, and cited in the Responses above, demonstrate that the proposed project will result in less than significant environmental impact, with the inclusion and implementation of mitigation measures. In the present case, the project will be revised to eliminate or avoid all significant potential environmental impacts by incorporating mitigation measures into the project, and the City properly, and in full compliance with CEQA, can adopt a Mitigated Negative Declaration. Pub.Res. Code Sections 21064.5, 21080(c)(2); 14 Cal Code Regs §§15064(f)(2), 15070(b).

The commenter's opinion regarding the approvability of the project if an EIR were prepared is noted. CEQA provides the City with discretion in determining the level of analysis required for each project, regardless of the type of permit or entitlement requested. In this case, based on the preparation of an Initial Study that found that all potential impacts could be reduced to less than significant levels, the City correctly determined that a Mitigated Negative Declaration was the correct determination for this project.

Comment D-25: It is the City's responsibility to ensure that the overall development of the land is designed to ensure the protection of the public health, safety, and general welfare. Based on all of the foregoing, we do not believe that the Project, as planned, can be constructed or maintained in a manner that will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

The design and location of the proposed development and its relationship to neighboring existing or proposed properties, with its attendant noise and traffic is such that it will impair the desirability of investment or occupation in the surrounding area; it will unreasonably interfere with the use and enjoyment of neighboring existing or proposed developments, and it will create traffic hazards or congestion.

That the design and location of the proposed development is not in keeping with the character of the surrounding area and is detrimental to the harmonious, orderly, and attractive development contemplated by the General Plan and existing zoning.

The IS outlines a finding: "that although the proposed project could have a significant effect on the environment there will not be a significant effect in this case because revisions in the project have been made or agreed to by the project proponent." In fact, the IS is devoid of any revisions by the Developer. Instead, what is clear on the face of the City documents, is that the Developer has laid out what it wants to do, and the City is changing the General Plan, zoning and everything else necessary to accommodate the Developer. All of this is being done to the significant negative detriment of all the existing property owners. Equally disturbing, is the fact that all of this is being done without the objective and fair analysis of a site specific EIR.

Response D-25: The commenter's opinions are noted. As described in detail in all of the Responses above, the City has conducted a thorough and complete analysis of the potential impacts of the proposed project, and correctly determined that these impacts can be reduced to less than significant levels. The IS, technical studies and all other contributions to the record will be provided to the Planning Commission and City Council, so that as is required by CEQA, they can make an informed decision regarding the project. Any and all potentially significant effects on the environment that were identified in the IS were then mitigated to a level of insignificance. This is completely consistent with the blackletter law of CEQA:

"Mitigated negative declaration' means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. Pub.Res. Code Section 21064.5.

Attachment 1

Comment Letters



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July 29, 2020

Ms. Leila Namvar
Senior Planner
Community Development Department
City of Indio
100 Civic Center Mall
Indio, CA 92201

SUBJECT: Ventana Residential Project (Specific Plan) in Indio, CA

Dear Ms. Namvar:

On July 9, 2020, the Imperial Irrigation District received from the City of Indio Community Development Department, a request for agency comments on the Ventana (Specific Plan) residential project. The proposed subdivision would result in 103 single-family homes on 45.17 acres of vacant land located on the north side of Avenue 50 between Jefferson Street and Madison Street in the City of Indio, CA. The project consists of three Planning Areas, with three lot sizes: 7,000 sq. ft., 11,000 sq. ft. and 13,500 sq. ft.

The Imperial Irrigation District has reviewed the project information and, in addition to the district's July 1, 2020 *Will Serve Letter* (see attached letter), has the following remarks:

1. IID will not begin any studies, engineering or estimate costs to provide electrical service to the project until the applicant submits a customer project application (available at <http://www.iid.com/home/showdocument?id=12923>, detailed loading information, panel sizes, project schedule and estimated in-service date. Applicant shall bear all costs associated with providing electrical service to the project, including but not limited to the construction of any additional facilities needed to extend electrical service to the proposed development such as backbone feeders, distribution overhead and/or underground line extensions, the re-configuration of distribution circuits, transmission line extensions or other upgrades as well as applicable permits, zoning changes, landscaping (if required by the City) and rights-of-way and easements.
2. However, based on the preliminary information provided to the IID, and as a result of the completion of the loading and feasibility study to serve the area of Avenue 50 between Jefferson and Madison Streets, the district can extend electrical facilities to serve the project under the terms and conditions set forth herein. The district's ability to provide service from existing infrastructure is based on currently available capacity, which may be impacted by future development in the area.

3. It is anticipated that IID can accommodate the project's power requirements by reconfiguring existing circuitry in the area; requiring line extensions with a loop configuration, in addition to implementing a tie to existing pull box 1086134 west of the project and to existing facilities to the north of the project. It's important to reiterate that the district's ability to provide service from existing infrastructure is based on current available capacity and is contingent upon the construction progress of the planned development in the area of Avenue 50 between Jefferson and Madison Streets.
4. Underground infrastructure that includes trenching, conduits, pull boxes, switch boxes and pads shall be installed following IID approved plans. Physical field installation of underground infrastructures shall be verified and approved by an IID inspector prior to cable installation as per IID Developer's Guide (available at the district website <https://www.iid.com/home/showdocument?id=14229>).
5. For additional information regarding electrical service for the development area, the applicant should be advised to contact the IID Energy - La Quinta Division Customer Operations, 81-600 Avenue 58 La Quinta, CA 92253, at (760) 398-5841 and speak with the project development planner assigned to the area.
6. It is important to note that IID's policy is to extend its electrical facilities only to those developments that have obtained the approval of a city or county planning commission and such other governmental authority or decision-making body having jurisdiction over said developments.
7. The applicant will be required to provide rights-of-way and easements for any power line extensions and overhead or underground infrastructure needed to serve the project.
8. Line extensions are made in accordance with IID Regulations:
No. 2 (<http://www.iid.com/home/showdocument?id=2540>),
No. 13 (<http://www.iid.com/home/showdocument?id=2553>),
No. 15 (<http://www.iid.com/home/showdocument?id=2555>),
No. 20 (<http://www.iid.com/home/showdocument?id=2560>) and
No. 23 (<https://www.iid.com/home/showdocument?id=17897>).
9. Any construction or operation on IID property or within its existing and proposed right of way or easements including but not limited to: surface improvements such as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities; will require an encroachment permit, or encroachment agreement (depending on the circumstances). A copy of the IID encroachment permit application and instructions for its completion are available at <http://www.iid.com/departments/real-estate>. The

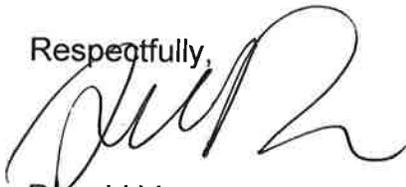
IID Real Estate Section should be contacted at (760) 339-9239 for additional information regarding encroachment permits or agreements.

10. Relocation of existing IID facilities to accommodate the project and/or to accommodate street widening improvements imposed by the City will be deemed project-driven and all costs, as well as securing of rights of way and easements for relocated facilities, shall be borne by the applicant.
11. IID requires the dedication of public utility easements over all private and public roads and an additional ten (10) feet in width on both side of these roads for the construction, operation and maintenance of its electrical infrastructure.
12. Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, etc.) need to be included as part of the project's CEQA and/or NEPA documentation, environmental impact analysis and mitigation. Failure to do so will result in postponement of any construction and/or modification of IID facilities until such time as the environmental documentation is amended and environmental impacts are fully mitigated. **Any mitigation necessary as a result of the construction, relocation and/or upgrade of IID facilities is the responsibility of the project proponent.**
13. Dividing a project into two or more pieces and evaluating each piece in a separate environmental document (Piecemealing or Segmenting), rather than evaluating the whole of the project in one environmental document, is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact. Segmenting a project may also hinder developing comprehensive mitigation strategies. In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve the project objectives, or a reasonably foreseeable consequence of approving the project, then it should be considered an integral project component that should be analyzed within the environmental analysis. The project description should include all project components, including those that will have to be approved by responsible agencies. The State CEQA Guidelines define a project under CEQA as "the whole of the action" that may result either directly or indirectly in physical changes to the environment. This broad definition is intended to provide the maximum protection of the environment. CEQA case law has established general principles on project segmentation for different project types. For a project requiring construction of offsite infrastructure, the offsite infrastructure must be included in the project description. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App. 4th 713.

14. Applicant should be advised that landscaping can be dangerous if items are planted too close to IID's electrical equipment. In the event of an outage, or equipment failure, it is vital that IID personnel have immediate and safe access to its equipment to make the needed repairs. For public safety, and that of the electrical workers, it is important to adhere to standards that limit landscaping around electrical facilities. IID landscaping guidelines are available at <https://www.iid.com/energy/vegetation-management>.

Should you have any questions, please do not hesitate to contact me at (760) 482-3609 or at dvargas@iid.com. Thank you for the opportunity to comment on this matter.

Respectfully,



Donald Vargas
Compliance Administrator II

Enrique B. Martinez – General Manager
Mike Pacheco – Manager, Water Dept.
Marilyn Del Bosque Gilbert – Manager, Energy Dept.
Sandra Blain – Deputy Manager, Energy Dept.
Charles Berry – Mgr., Energy Dept., Distr. Services & Maintenance Operations
Enrique De Leon – Asst. Mgr., Energy Dept., Distr., Planning, Eng. & Customer Service
Jesus Martinez – Engineer Principal, Energy Dept., Transmission Planning
Jamie Asbury – Asst. General Counsel
Vance Taylor – Asst. General Counsel
Michael P. Kemp – Superintendent, Regulatory & Environmental Compliance
Laura Cervantes – Supervisor, Real Estate



IID

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July 1, 2020

Joe Martinez
GHA Companies
30875 Date Palm Drive, #C2
Cathedral City, CA 92234

Subject: Will Serve Letter for TTM 37884 Ventana Indio, APN 602-080-004-1, 602-080-001-9 and 602-080-002-0.

Dear Mr. Martinez:

The purpose of this letter is to provide a response to your correspondence dated June 3, 2020, regarding a Will Serve letter for TTM 37884 Ventana Indio development located on the north side of Avenue 50th between Jefferson and Madison Streets, in the city of Indio.

The Imperial Irrigation District (IID) policy is willing to extend its electrical facilities to those developments that have obtained the approval of the City or County Planning Commission or such other governmental authority having jurisdiction over said developments. For the purpose of this Will Serve letter, the project is as described on Attachment A.

1. Based on the preliminary information provided to the Imperial Irrigation District (IID), and as a result of the completion of the loading and feasibility study to serve the area of Avenue 50 between Jefferson and Madison Streets, we have concluded that we can extend electrical facilities to serve your project under the terms and conditions set forth herein. It is important to note that a detailed and final study will be developed once a Customer Service Proposal (CSP) and loading calculations are received. This detailed information package will allow IID to perform an accurate assessment and provide a full report of any potential impacts and mitigations. The conditions of service could change as a result of the additional studies.

Based on the preliminary analysis conducted, IID offers the following plan of service:

- I. Interim Plan of Service for Phase 1 (48 homes, with 2000 to 3,500 SQF and 200 Amp panel each):**

2. IID can accommodate your power request for project Phase 1 from existing facilities by reconfiguring existing circuitry in the area, requiring line extensions with a loop configuration in addition to implementing a tie to existing pull box 1086134 west of your development. The District's ability to provide service from existing infrastructure is based on current available capacity and is contingent upon development's construction progress in the area of Avenue 50 between Jefferson and Madison Streets.
 3. Developer shall bear all costs associated with the construction of any additional facilities needed and any upgrades needed to extend electrical service to the proposed development.
- II. Permanent Plan of Service for Phase 2 (55 homes, with 2000 to 3,500 SQF, and 200 Amp panel each:**
1. IID can accommodate your power request for project Phase 2 from existing facilities by requiring line extensions with a loop configuration in addition to implementing a tie to existing facilities, to the North of your development to be determined once final plans are received.
 2. Additional requirements are such items as environmental compliance documentation and all rights-of way and easements for the distribution line extensions or reconfigurations needed, all of which are at the expense of the developer.
 3. Developer shall bear all costs associated with the construction of any additional distribution overhead and/or underground backbones, line extensions, upgrades or reconfigurations needed to extend electrical service to the proposed development.
 4. Underground infrastructure that includes trenching, conduits, pull boxes, switch boxes and pads should be installed following IID approved plans and within the public utility easement (PUE) or a dedicated easement if applicable. Physical field installation of underground infrastructures should be verified and approved by an IID inspector prior to cable installation as per IID Developer's Guide.
 5. Line extensions to serve your development will be made in accordance with IID Regulation No. 15, Regulation No. 2 and Regulation No.13. The final cost will be determined once the developer/builder submits a Customer Service Proposal application and final design is completed.
 6. Any construction or operation on IID property or within its existing and proposed right of way or easements including but not limited to: surface improvements such

as proposed new streets, driveways, parking lots, landscape; and all water, sewer, storm water, or any other above ground or underground utilities; will require an encroachment permit, or encroachment agreement (depending on the circumstances). The IID Real Estate Section should be contacted at (760)339-9239 for additional information regarding encroachment permit or agreements.

7. Any new, relocated, modified or reconstructed IID facilities required for and by the project (which can include but is not limited to electrical utility substations, electrical transmission and distribution lines, etc.) need to be included as part of the project's CEQA and/or NEPA documentation, environmental impact analysis and mitigation. Failure to do so will result in postponement of any construction and/or modification of IID facilities until the environmental documentation is amended and environmental impacts are fully mitigated. Any and all mitigation necessary as a result of the construction, relocation and/or upgrade of IID facilities is the responsibility of the project proponent.

Due to unforeseen development, other projects could impact existing resources, which could affect our ability to serve this load, if not completed in a timely manner.

Accordingly, by a date no later than July 1, 2021, you must provide the following documentation to IID: 1) Evidence of issuance of all local authorizations required to initiate construction, 2) Application for the installation of underground infrastructure system and payment of accompanying fees and 3) Application for service and payment of accompanying fees. Absent receipt of such evidence by the referenced date, a new study will be required including a revised Plan of Service.

If you have any questions, please do not hesitate to contact Jose Gerardo, Distribution Supervisor at (760) 398-5823. We look forward to working closely with you to facilitate the success of your project.

Sincerely,

**Barraza,
Guillermo**

Digitally signed by Guillermo Barraza
DN: cn=Guillermo Barraza, o=City of Anaheim
Engineering and Construction
Planning and Engineering, ou=City of Anaheim
Engineering and Construction, email=guillermo.barraza@cityofanaheim.org, c=US
Date: 2020.07.01 12:34:30-0700

Guillermo Barraza
Superintendent, Distribution System Planning and Engineering

cc: Mr. Enrique De Leon, Assistant Manager, Energy Department
Mr. Jose Gerardo, Supervisor, Customer Project Development Services
Mr. Donald Vargas, Compliance Administrator

ATTACHMENT A



April 21st, 2020

Re: Tract 37844 Ventana

Ivan Lopez
Imperial Irrigation District
81600 Ave 58
La Quinta Ca 92253

RE: Request for Will serve letter on Parcel 1 APN 602-070-004-1, Parcel 2 APN 602-080-001-9 & Parcel 3 APN 602-080-002-0 in the City of Indio on the north side of 50th Avenue East of Jefferson.

Dear Mr. Lopez,

This letter is our request to obtain a Will Serve Letter for Parcels 1,2 & 3 (exhibit A) which is tentative Map 37844, the project consist of 45.17 Acres and will be subdivided into 103 single family lots with 5 floor plans that range from 2,000 sq. ft to 3,600 sq. ft the project will most likely be phased in 2 portions (exhibit B) which will have 48 units in phase 1 and 55 units in phase 2 see attached breakdown of K.W
Per Unit Type: Unit 1: 55.4kW, Unit 2: 54.5kW, Unit 3: 51.9kW, Unit 4: 59.3kW, Unit 5: 60.8kW

Per Phase:

Anticipated total connect load Phase 1: 2671.4kW with anticipated in service date end of 2020 -early 2021

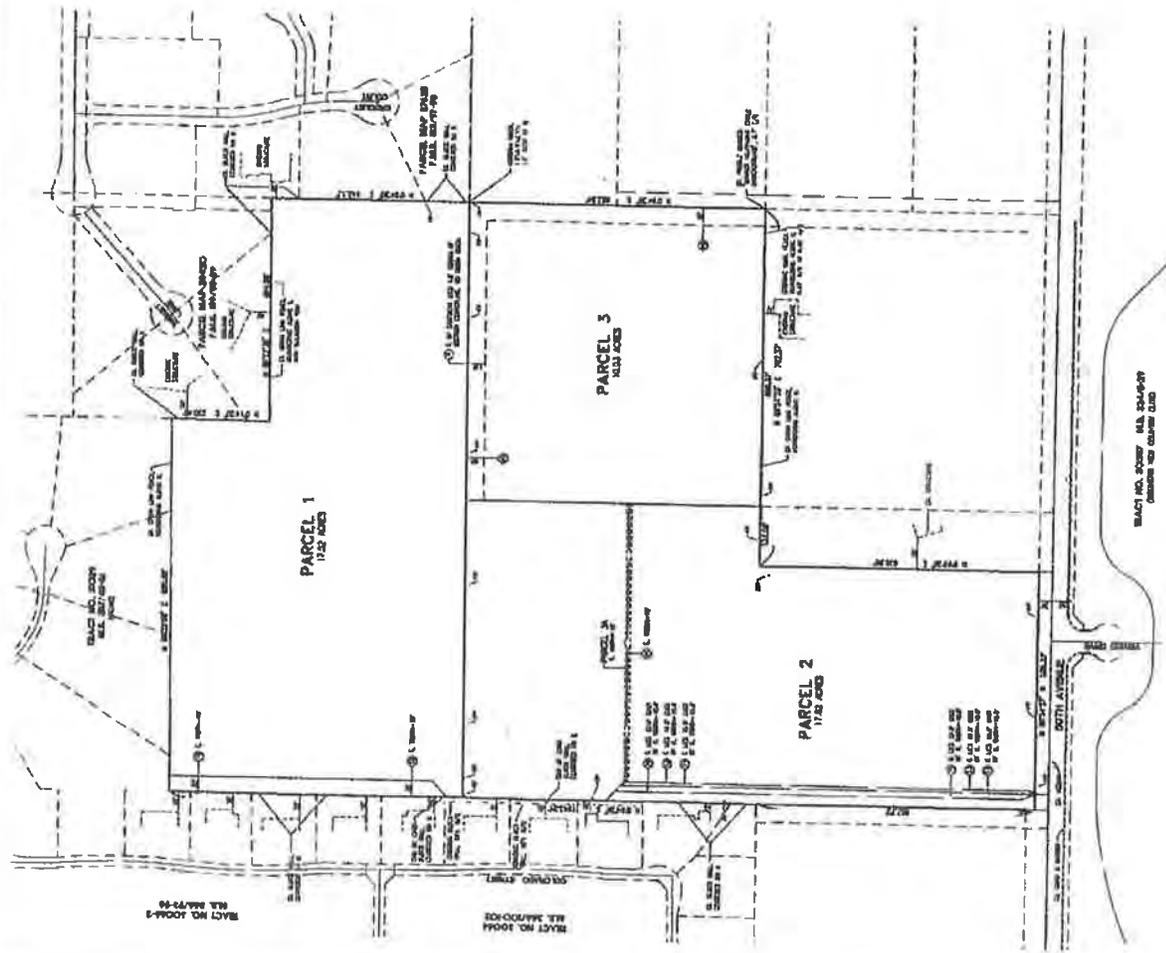
Anticipated total connect load Phase 2: 3181.9kW with anticipated in service date end of 2021 -early 2022

Please let me know if you should need any additional information to complete this request. And we appreciate your time and guidance in obtaining the request.

Sincerely,

Joe Martinez
V.P of Operations
GHA Companies

Exhibit A



LEGAL DESCRIPTIONS:

PARCEL 1: 17.22 ACRES...
 PARCEL 2: 17.82 ACRES...
 PARCEL 3: 14.53 ACRES...

EXISTING EASEMENTS:

1. EASEMENT FOR CONCRETE DRIVE...
2. EASEMENT FOR TRUCK TRAIL...
3. EASEMENT FOR TRUCK TRAIL...
4. EASEMENT FOR TRUCK TRAIL...
5. EASEMENT FOR TRUCK TRAIL...
6. EASEMENT FOR TRUCK TRAIL...
7. EASEMENT FOR TRUCK TRAIL...
8. EASEMENT FOR TRUCK TRAIL...
9. EASEMENT FOR TRUCK TRAIL...
10. EASEMENT FOR TRUCK TRAIL...

SUBMITTED NOTES:

1. ALL EASEMENTS SHOWN ON THIS PLAN ARE BASED ON THE RECORDS OF THE COUNTY OF RIVERSIDE, CALIFORNIA.

OWNER:
 AVE 50 INDIO, LLC
 46 Alhambra Lane, Suite 110
 San Dimas, CA 91773
 PH: 916-350-9000
 FAX: 916-350-9001

BUILDERS:
 CHIA COMPANIES
 4675 Dore Point Drive, Suite 1, 1
 Colton, CA 92324
 PH: 951-261-1000

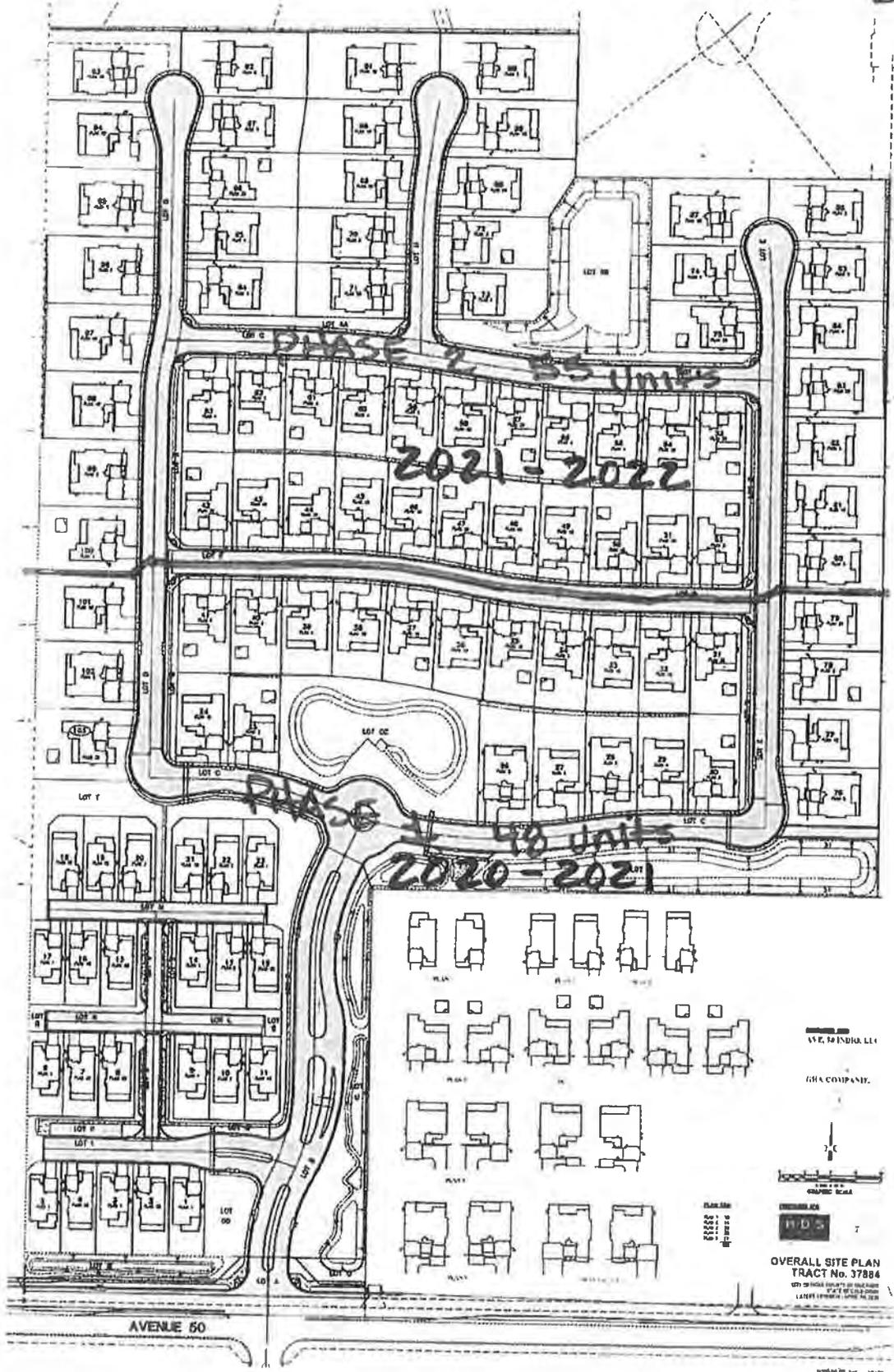
PREPARED BY:



TENTATIVE TRACT MAP NO. 37884
 EXISTING BOUNDARY, EASEMENTS
 AND TOPOGRAPHY
 CITY OF INDIO, COUNTY OF RIVERSIDE
 STATE OF CALIFORNIA
 MARCH 11, 2020

SHEET 2 OF 5 SHEETS

EXHIBIT B



AVENUE 50
GHA COMPANY



OVERALL SITE PLAN
TRACT No. 37884
CITY OF INDIANAPOLIS
LATE 1991 EDITION

July 28, 2020

Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

**SUBJECT: NOTICE OF AVAILABILITY—MITIGATED NEGATIVE DECLARATION
FOR VENTANA SPECIFIC PLAN**

Dear Ms. Namvar,

Thank you for the opportunity to review and comment on the Mitigated Negative Declaration for the Ventana Specific Plan Project located on the north side of Avenue 50 between Jefferson Street and Madison Street in the City of Indio. The City of La Quinta has the following comments:

1. This segment of Avenue 50 is part of La Quinta's General Plan image corridor (see Circulation Element Exhibit II-4) and there is a concern that the overhead utilities are not expected to be undergrounded. Overhead utility lines, power lines, transformers, cable, etc. should be buried and not visible from adjacent streets and sidewalks. Threats to the City's scenic image corridors include inappropriate and unattractive overhead power lines that degrade views (see Circulation Element page II-57).
2. The north half of the roadway should be widened to provide a continuous bike lane, sidewalk and right turn lanes in and out the project. The street design should match the proposed Crossing project which is located 800 feet west of this project.
3. With the widening of the street, the westbound left turn lane entering Verano needs to be restriped. The raised median needs to be reconstructed with an eastbound left turn lane pocket.
4. City of La Quinta owns the south half of the Avenue 50 and this intersection at the corner of Jefferson and Avenue 50 currently operates at LOS D. Striping and construction plans shall be submitted to the City of La Quinta prior to approval to ensure staff concerns are addressed and the design is satisfactory.

Staff is available to discuss the comments outlined in the letter. If you have any questions, please contact me at 760-777-7086 or sfernandez@laquintaca.org.

Sincerely,



Sijifredo Fernandez
Associate Planner
Design and Development Department

Attachments: 2035 La Quinta General Plan Circulation Element

CC: Design and Development Director
Public Works Director
Traffic Engineer

July 24, 2020

Via email (Lnamvar@indio.org)

Lela Namvar, Senior Planner
City of Indio
Community Development Services Department

RE: Ventana Project—Comments on the Draft Initial Study/Mitigated Negative Declaration

Dear Ms. Namvar:

My wife and I own the real property located at 49275 Croquet Court in the City of Indio as well as the one-acre vacant lot immediately south of this property. Please note our objection to the proposed Mitigated Negative Declaration for the Ventana Project. The Ventana Project will have a significant effect on the environment. The City should require preparation of an Environmental Impact Report or require that the Ventana Project be revised to allow a maximum of 1 dwelling unit/acre per the City's 2040 General Plan designation for Project Site.

The Draft Study mischaracterizes the intensity of the change from CEIR-1 and CIER-2 zoning to Suburban Neighborhood. The Draft Study states that the CEIR-1 and CEIR-2 allow for residential development of 1-2 dwelling units per acre. This is not correct. The minimum lot size for CEIR-1 is one acre (43,560 square feet). The minimum lot size for CEIR 2 is two acres (87,120 square feet). (Table of Comprehensive Development Standards in CEIR Zones). Thus, the current zoning allows for a maximum of 1 DU/acre and much of the property zoned CEIR-2 is limited to .5 DU/acre.

The Ventana Project more than doubles the allowed density in the CEIR 1 zone and quadruples the density on the property zoned CEIR 2. This is far from a "minor" increase in density that the Initial Study relies upon repeatedly in its assessment of the project's impacts on various areas of the environment. I cannot imagine that the City would view quadrupling the number of homes in an area as a "minor" increase. The error in assessing the current allowed density as compared to the proposed density is relied upon repeatedly to justify conclusions that there are no impacts or less than significant impacts to the environment and invalidates the entire Initial Study. A new Draft Initial Study must be prepared to accurately account for and assess the true increase in density over existing conditions.

The Project will have significant impacts on not only the views from our own home and adjoining lot but also views of our neighbors and the community at large. We presently enjoy views of the Santa Rosa Mountains from our Property. The increase in density and the proposal will have a significant impact on views from our property and those of our neighbors. Likewise, permitting buildings in excess of the current 25-foot height limit exacerbates this impact. Development consistent with the current zoning would allow fewer homes thereby preserving views of the mountains – for everyone -- through corridors. Also, it is not clear how the City can make a less than significant impact determination when it did not prepare a view analysis that would depict the before and after views from vantage points around the Project Site. At a minimum, the City should prepare a view analysis so that impacts to views from relevant vantage points may be property analyzed and mitigated.

Likewise, the Ventana Project will have significant light and glare impacts as compared to current zoning. Even if residences use low intensity lighting the cumulative impact of increasing the number of houses with such lighting will create a significant light and glare impacts and create a light island that is in stark contrast to that which would be produced by residences on acre lots.

The Initial Study's conclusion that the Project will have no groundwater impacts is flawed. The IWA bases its water planning needs on the original General Plan Designation of 1 DU/acre. As noted above, the Project more than doubles that density resulting in 0.18% increase in demand over 2015 baseline levels. This percentage, while small, is significant when viewed in the context of the demands on the groundwater supplies. Groundwater levels in the lower portion of the Whitewater River Subbasin "have been declining since 1980."¹ The Coachella Valley Water District identifies the "serious consequences" that result from "overdraft" including drilling deeper wells, increased water costs, "irreversible degradation of water quality" and land subsistence.² None of these impacts are assessed in the Initial Study. Authorizing additional density that increases groundwater withdrawals beyond those covered in applicable planning documents without an equivalent reliable source of recharge to offset the increase in withdrawal is a *per se* significant impact.

Finally, the Initial Study does not conduct a cumulative impact analysis of the impacts to the environment from other similar proposals to up-zone property zoned CEIR-1 and CEIR-2. There are large swaths of property zoned CEIR-1 and CEIR-2 to the east of the Project Site along Avenue 50. In light of the City's position to allow an increase in density for this Project it is reasonably likely that these lands will also be developed in excess of the current densities in the foreseeable future. The Final Study must conduct a cumulative analysis of the impacts created by similar proposals on these lands.

Thank you for considering these comments.

Sincerely,



Sam and Patti Kyle

¹ Coachella Valley Water District, Engineer's Report on Water Supply and Replenishment Assessment: Lower Whitewater River Subbasin Area of Benefit (April 2010).

² Coachella Valley Water District, CVW Management Plan Update (January 2012) at ES-4.

LAW OFFICES OF
MATT H. MORRIS

47040 Washington Street, Suite 3201
La Quinta, California 92253

Matt H. Morris, Esq.
Dyan Flyzik, Esq., of Counsel

Telephone. 760.777.7941
Facsimile. 760.777.8533
matt@mhmorrislaw.com

July 29, 2020

City of Indio Planning Commission
Leila Namvar, Senior Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

**RE: Ventana Project in City of Indio:
General Plan Amendment, Tentative Tract Map and Specific Plan**

Dear Chairperson Franz and Members of the City of Indio Planing Commission:

This law firm represents Michael and Lynn Kincaid, among others, who oppose the Ventana Project. ("Project") The Project is opposed because it represents a whole-sale repudiation of decades of promises by the City of Indio to protect and preserve the nature and integrity of the County-Estates area in south Indio.

Pursuant to the Initial Study ("IS"), the City proposes to grant the Developer a site specific general plan amendment, a special site specific zoning, along with a specific plan and tentative tract map so it can build something *radically* different than anything in the area. If allowed, the Project will be the death knell for the Country Estates area. It will effectively drop the significantly higher density housing in the middle of 5, 7, 1½ and 1 acre ranch properties. All of the properties surrounding the Project site were developed consistent with, and in reliance on, City of Indio General Plans and zoning.

THE VENTANA PROJECT AND RELATED GENERAL PLAN AMENDMENT REQUIRE AN EIR.

The planning department has identified many potential significant impacts the Project will have on the environment and surrounding neighbors. Nevertheless, the planning department proposes to take the drastic step of not requiring an Environmental Impact Report (EIR) to address these impacts. Despite significant impacts, the Planning Department believes that if it

changes the general plan, zoning, site plan and tract map to please the Developer, and requires the Developer to build consistent with these unwarranted concessions, the impacts on the surrounding properties will be mitigated.

For example, this Project will create negative effects of light pollution, noise, poor air quality, destruction of special species habitat, traffic congestion and hazzards. The Planning Department proposes to mitigate these impacts by simply changing all the standards for the Project Developer. According to the IS, everyone in the Country Estates area is required to build a maximum of one house per acre, but the Ventana Developer will be allowed to cram up to 8 units per acre, and the City does not believe this will have any negative impact on the surrounding community.

The Planning Commission and City should *not* allow this project to be developed in its current form. This is not a punishment to the Developer. The Developer knew what was allowed to be built on the project site when the property was purchased. If the Project is developed as proposed, all of the surrounding properties will become isolated islands in a sea of houses. What is proposed now is an aberration.

Based on the Project's radical departure from the existing General Plan and zoning, an EIR should be prepared for this massive project. The California Environmental Quality Act (CEQA) requires a governmental agency to prepare an EIR instead of a negative declaration (mitigated or otherwise) whenever there is "**substantial evidence supporting a fair argument that a proposed Project may have a significant effect on the environment.**" (*Citizens for Responsible & Open Government v City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1332.) The "fair argument standard" is a "**low threshold**" test for requiring the preparation of an EIR. (Id. [citing *Pocket Protectors v City of Sacramento* (2004) 124 Cal.App.4th 903.928].) As explained below, given the obvious likelihood that the Project will have sufficient effect on the environment by additional vehicle trips, significant construction impacts including noise and air impacts, disturbing prime farmland, destroying habitat for protected species, and obstructing the view of existing land owners with an overly dense mega-project, an EIR is required.

THE PROJECT SITE IS NOT IN AN URBAN AREA:

Those opposed to this Project (names at the end) object to the planning departments mis-characterization of the Project site as being in an "urban environment." (IS at p. 19) The area is most definitely not urban. The closest commercial development (Ralph's Center) is a half mile away. Between Ralphs and the project site on the north side of Avenue 50 is a vacate 20 acre parcel, a 2½ acre parcel (one home) four five acre parcels each with one home or outbuildings. South of the project site is a 7 acre parcel and a five acre parcel each with one house and outbuilding. East of the project are 3 five acre parcels each with one home, and a 1½ acre parcel development that is not completely built out. North of the project there are 1½ and 1 acre parcels. Along the north-west portion of site are 6 half acre parcels with one home each. Virtually all of the

surrounding property owners oppose the Project.

Across the street on 50th, starting at Jefferson and proceeding east, is a 20 acre parcel, 15 acre parcel and an 8 acre parcel all with one home and outbuildings. Directly south across the street is a low density golf course community. To the south-east are 2½ acre polo estates. These border on a square mile of polo fields and horse ranches. This is *not* an “urban” area. In fact the IS itself proposes a “*suburban*” zoning change designation. Clearly, the Project site is planned directly in the middle of extremely low density housing. Most existing houses were constructed on vacant desert or where farming used to occur.

The Project site itself was designated as “**Prime Farmland**” on the 2016 Riverside County Important Farmland map. (IS at p. 27) The property was used for farming purposes until 2019 when it was purchased by the Developer. The Developer shut down the farming operations.

The next closest farming operation is not the Shields Date Garden on Hwy 111 as reported by the IS, but is the Morris ranch immediately next to the project site, where dates and ornamental trees are farmed. There is also active farming occurring on the other side of Avenue 50 (north-west) from the Project.

What the IS proposes is that “prime farmland” in an area zoned for farming, be completely eliminated by a site specific general plan and zoning that precludes farming. The IS says this is acceptable because: “the proposed Project will not conflict with zoning for agricultural uses, because it is designated for residential use, and is located in a rapidly urbanizing environment.” In other words, there will be no zoning conflict because the City will change the zoning for the Developer, and allow rapid urbanization of the only Country Estates area in the City. There is no explanation of how the significant impact of converting prime farmland in the middle of a low density ranches is going to be mitigated.

Even the EIR conducted by the City in adopting the last General Plan changes, “concluded that build out of the General Plan will result in *significant* and unavoidable *impacts* regarding conversions of farmland to non-agricultural uses.” That General Plan and zoning, which currently controls the Country Estates area, allows for agricultural uses. Obviously, completely removing prime farmland and changing the General Plan and zoning will, by virtue of the City’s own EIR, result in a “significant impact” requiring serious Project modifications along with a site specific EIR.

THE PROJECT WILL HAVE A SIGNIFICANT IMPACT ON THE AESTHETICS OF THE AREA

Based on the false premise that the Project is in an “urban” environment, the IS concludes that the negative impact on aesthetics can be mitigated. The IS is limited almost exclusively to discussing whether the Project interferes with views of the surrounding mountains. The real negative impact of this Project, however, is its affect on the aesthetics of the area.

What someone approaching this Project on Avenue 50 from the east or the west sees is a series of small ranches with abundant open space - until one arrives at the Project. In the middle of all these ranches will be a high density building complex of 5 - 6 small units per acre. The units are so small that it will have the appearance of a two story condo or apartment complex. This is totally inconsistent with the aesthetics of the area.

A. The Projects' High Density "Housing" Will Be Used As A Commercial Enterprise.

A major concern is that these small "houses" are intended to be used by the Developer and/or buyers, as short term vacation rentals ("STVR") during the Coachella Festival and other Valley events. This type of construction and use is anathema to all of the surrounding existing uses.

The bottom line with STVRs is that they turn residential areas into commercial centers. "Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or joining in the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow - without engaging in the sort of activities that weld and strengthen a community." (California Court of Appeal decision in *Ewing vs. City of Carmel By The Sea*)

STVRs are a commercial business. They are an incompatible use in areas planned for residential use.

By their very nature, STVRs are noisy and invite problems affecting residents' quality of life. Transient strangers come to vacation and have fun; residents are not on vacation - they are here to live and work. No amount of regulation or enforcement can change the inherent nature and constant turnover of strangers here to have fun in STVRs.

It is a red herring to think that relying on regulations and enforcement will make STVRs acceptable in the Project. No matter what improvements are made to enforcement, the onus is always on the resident to be the first responder. By the time residents contact code enforcement or the police, their quality of life has already been disrupted. Quality of life is degraded by neighbors being woken up during the middle of the night, trash being left behind by uncaring visitors, tight parking spaces and streets being taken up by out of town transients, etc.

STVRs remove housing units from the city stock and make housing less available or affordable for people who want to live in the city. They lower property values. They result in loss of a portion of TOT to the City. And they strain code enforcement and police resources. For these and many other reasons cities all across California are strictly limiting or banning STVRs.

B. The Project's Proposed Homes Are Not Consistent With Existing Housing.

The IS states, without factual support, that "The proposed homes will be consistent in scale

and mass to those already occurring in the area surrounding the Project, and will not change the visual character of the area.” One need only drive through the area to see that this is a false claim.

There are only 21 homes in the approximately 92 acres north of Avenue 50 which surround the Project. (This includes 7 homes in Desert River bordering the Project) **That is an average of 1 home per 4.3 acres.** The smallest of these lots is one half acre in size. The small 5-6 per acre units the Developer proposes are nothing like the homes in area surrounding the Project. The Project will have a significant negative impact on the visual character of the area. Once again, the City’s only mitigation measure is to change the general plan and zoning so the Developer’s plans can be carried out.

C. Light Pollution From The Project Site Will Have A Significant Negative Impact On The Surrounding Area.

The IS correctly reports that: “Currently, there are no existing sources of light on the Project site.” There is zero night time light coming from the project site. (IS at p. 24)

The existing minimal light in the area is generated by 21 homes scattered over 90 plus acres. There are *no* street lights on Avenue 50 except at its intersection with Jefferson and Madison a half mile away. (The IS a p. 24 erroneously states there is “street lighting” on Avenue 50.)

What the Project proposes is night time lighting from over 100 units, laid out on 10 new streets, all of which will have street lighting according to “City Public Work Engineering Standards (Indio - 200, Street Light Residential Area).” (IS at p. 25) This will be like setting off low level fire works every night compared to the zero light generated on the site for the last 100 plus years.

This Project will create a new source of substantial light and glare which will adversely affect nighttime views in the area. It is specious for the IS to conclude that because the zoning will be changed to allow the light pollution generated by the Project, that there will be a less than significant impact on the Project’s neighbors. Once again, the Project proposes a significant negative departure from what is currently in the area.

PROJECT CONSTRUCTION WILL HAVE A SIGNIFICANT IMPACT ON AIR QUALITY

The IS states that: “Under CEQA, a significant air quality impact could occur if the [Project] is not consistent with the applicable Air quality Management Plan.” (IS at p. 30) The IS admits that the Project will contribute to an increase in regional ozone and PM10 emissions. (Id.) Nevertheless, the planners believe that the Project Developer will comply with City air quality construction requirements so there should be no negative impact.

The IS analysis, however, does not seriously address the fact that this Project site presents significant challenges related to air quality. The site is not like a typical construction site. It contains

both natural and built up sand dunes containing almost 75,000 cubic yards of blow sand and dirt. (IS at p. 31) That sand/dirt has to be removed from the site or the developer will significantly change the topography of the site. In turn, this could significantly alter water courses and view sheds.

Blowing sand and fine dirt from the site has been a significant problem with just the minor farming operations on the site. The wind typically blows from west to east across the property, causing extreme air quality issues for properties east of the site. Property owners have experienced poor breathing conditions that prevented being outdoors, reduced visibility due to blowing sand, rapidly depleted air filters, destroyed AC units, filled pool filters, roof top dust accumulation, etc.

In addition to grading and removing 75,000 cubic yards of dirt from the site, the Developer will be grading and making roads for over double the amount of homes allowed by the current General Plan. That means more street grading, more house pad grading, more curb and gutter, etc.

Another serious concern is that this particular Developer does not have a good track record in complying with air quality standards. Past construction by this Developer north of Avenue 48 created serious air quality and dust buildup issues for properties around that project site.

In conclusion, in discussing air quality health impacts the IS states: the extent to which the Project poses a health risk is uncertain but unavoidable. (Id. at p. 33.) This simply is not a sufficient CEQA analysis, especially in light of the fact that no EIR has been prepared.

TRAFFIC GENERATED BY THE PROJECT WILL CREATE A SIGNIFICANT NEGATIVE IMPACT.

Perhaps the weakest part of the IS is its failure to address the significant impacts caused by an increased traffic. Currently there are zero trips per day occurring in and out of the Project site. When it was actively being farmed, trips per day were approximately two to four.

The Project will generate a staggering 1000 percent increase of traffic in and out of the Project.¹ This is almost 1000 trips in and out of the Project everyday. This adds the noise, glare from headlights and pollution generated by 1000 cars/trucks. This problem is not restricted to onsite noise, light and other pollution. All the property owners east and west of the Project on Avenue 50 will have to listen to 1000 additional cars and trucks slow down and speed up as they enter and exit the Project. *No mitigation measures are proposed for this 1000 % increase in traffic on what is now a relatively quite two lane road.*

The amazing increase in traffic also present a serious health and safety issue for property owners in the area. The Country-Estates area was developed with the intent that area owners could

¹The IS reports that: "According to the Traffic Report, the proposed Project will generate approximately 972 daily trips." (IS at p. 31)

in engage in agricultural and equestrian activities. Between Jefferson Street and Madison Street there are many people who own approximately **70** horses. During the winter months the horse population can be significantly higher.

Many of the owners/riders use trails on the south side of Avenue 50 that extend as far as Lake Cahuilla and beyond. In the past, Indio has made provision for trails on the north side of 50th but those trails - like the one agreed upon for the north-east corner of Madison and 50th - have not been developed.

The prospect of 1000 additional car/truck trips on 50th creates a health and safety hazard for horse owners. Given that all the traffic for the Project will exit and enter at one location off of 50th, the Project entrance will be extremely busy. The IS is silent on how area horse owners are supposed to safely navigate 50th with all the additional traffic, noise and congestion.

The IS provides no mitigation measures to ensure the safety of horse riders, or to protect the integrity of the area for equestrian activities. There are no people who own horses in the area that are in favor of the Project. The Project's "urban" plan is decidedly anti-horse and anti-horse ownership. The Project is planned contrary to longstanding General Plan and zoning in the area. Current zoning allows horse to be kept on Country-Estates properties. The Project has a significant negative impact on historical recreation activities in the area.

What will the City do the first time a horse, or horse and rider, is killed by someone speeding into or out of the Project? How will the City protect against such an accident? This should be explored in an EIR.

THE PROJECT WILL HAVE POTENTIALLY SIGNIFICANT IMPACT ON BIOLOGICAL RESOURCES.

The IS reports that "special-status" species of birds are located on the Project site. One is "a locally rare species" and the other is a "California species of special concern." (IS at p. 36) The IS also identifies special-status plant species. No mitigation is proposed to protect these species or their habitat except to require the developer to pay money to the CVMSHCP. In other words, the IS is asking the City and Planning Commission to destroy this habitat, without an EIR.

Additionally, the IS reports that another species of special concern, the burrowing owl could be within the Project site. The IS says that if present on the property, "a significant impact would occur." Construction is not allowed where these owl burrow. (IS at p. 37) Although the Developer's investigators claim they didn't see any owls, the area neighbors commonly see owls on the Project site.

The IS also lists several other bird “species of special concern” that could nest in the Project site on a seasonal basis and otherwise. (Id.) In point of fact, one such bird seen in the Project site is the Cooper’s hawk, and well as many other types of hawks, including nesting Red Tails hawks. The IS reports that “under the provisions of the MBTA, impacts to covered nesting birds would be *considered significant*.” (Id.)

The IS plan to mitigate impacts on these special concern species is for the developer to get geared up to start construction, and then look in the bushes and on the ground for burrowing owls or nests. If the developer does not see any nests or burrows then it is allowed to proceed to destroy the habitat so the birds can not come back. Apparently the IS/Mitigated Negative Declaration authors believe that once the habitat is destroyed the bird problem will be mitigated. In other words, let’s put the fox in charge of the hen house. Once again, all of this mitigation for “special species” is proposed without an EIR.

THE PROJECT POSES A POTENTIALLY SIGNIFICANT IMPACT ON CULTURAL RESOURCES

The IS states that archaeological resources may be encountered in area that have been developed or farmed but have not been subject to extensive subsurface disturbance. (excavation).” (IS at p. 40) This is an accurate description of the Project site. The site contains a significant natural dune that has never been farmed or excavated.

The IS said that during a Phase I cultural resource study the Developer’s investigators did not see any “historical resources”, but still recommended “archaeological monitoring” due to sensitivity of the Project location for subsurface cultural remains of prehistoric origin. In other words, the investigators believe that the Project site is an area where such remains are likely, but they didn’t see any.² In point of fact, in the 1970s, one could see cooking pits and bone fragments on the natural dune.

The IS said “the City is conducting Tribal Consultation in conformance with both SB 18 and AB 52 requirements and contacting the tribes in writing. Should the Tribes request consultation and provide input on the potential impacts, they will be included in conditions of approval and/or added to this Initial Stud.” It is clear from the IS that the City has yet to hear from the Tribes. Accordingly, the IS is incomplete on this point. Without hearing from the Tribes, how can the planning commission make an informed decision about approving the Project.

Despite the foregoing concerns, the IS recommends that the Project be approved without an EIR. The mitigation proposed is that as while the Developer’s earth moving equipment operators

²“Applied Earth Works suggested that the Project area has high **potential for significant paleontological resources**, both near the ground surface and at greater depths.” (IS at p. 47, emphasis added.)

are in the middle of moving 75,000 cubic yards of dirt, and doing the rough grading, they should be on the lookout from their machine perches to see if they are disturbing any historical resources.

THE PROJECT'S GENERATION OF HAZARDOUS MATERIAL AND AFFECT ON WATER QUALITY POSE A SIGNIFICANT NEGATIVE IMPACT

Lack of water to this Project is a potentially significant impact. It appears that the Project needs/requires two water sources. One is a proposed connection to an existing CVWD 18 inch irrigation lateral under Avenue 50. (IS at p. 60) This lateral carries All American Canal water. The water is not potable. Why the Project would be connecting to this line is a mystery.

The second possible source mentioned is an "8 inch water main located north of the project site. No new wells or additional water infrastructure are proposed." (Id.) No indication is given where this connection will take place or whether the Project Developer has permission to cross existing private property to connect with the water main. Further, is it not clear how the Developer is going to provide potable water to 45 acres of homes and attendant landscaping, etc., through one 8 inch water main. The City has to seriously question whether there is sufficient water available to the site, and whether proposed usage will impact water resources in the area.

All of the existing ranches in the area receive water from their own or shared wells. There is no indication what the affect of the Project water usage will have on existing small farm/home wells in the area. The demand for so much additional water could have a devastating impact on all the surrounding properties. This should be the subject of an EIR.

The IS states that: Development of the proposed Project will increase impermeable surfaces on-site, and therefore increase on-site storm flows. Recent storm flows from the site, without the increases from impermeable surfaces, caused significant flooding to surrounding property. An EIR should be conducted to address this issue.

The developer proposes to catch all storm and run off water in "6 onsite retention basis." All of these basins, except one, are located along the Project's southern boundary immediately next to the Kincaid and Morris properties, and down the east boundary of the Morris property. In essence, the Project will take the accumulated storm flow of the 45 acre development, along with all the fertilizer and pesticides from the homes/yards, all the roof top dust and debris, and all the street and gutter oil and contaminants, and dump it in holding ponds along two neighbors' property lines.

Obviously a major concern is that if the retention basins fail the neighboring properties will be flooded. Of equal or greater concern, is that the storm water refuse and over irrigating byproducts will be dumped and allowed to sink into the soil virtually on top of wells (within 20 feet) used by neighbors for drinking and other household uses. The potential negative impact of retention basis capacity and location, and their affect on neighboring water wells, needs to be thoroughly and completely investigated by the City. An EIR should be required.

PROJECT NOISE WILL HAVE A SIGNIFICANT IMPACT ON THE AREA.

Some of the Project noise issues have already been addressed. Noise from the site will go from an occasional coyote to the noise generated by 1000 vehicle trips and 103 housing units - 25% of which will be from extremely high density building.

The IS does not bother to address operational noise generated by the Project at build out. It describes the difference in noise between no traffic and thousands of daily vehicle trips as “a marginal increase.” (IS at p. 69) There are no mitigation measures for a 1000% increase in traffic noise.

The only mitigation measures included in the IS are for course of construction mitigation. Noise is a significant issue the City should address in an EIR.

THE CITY NOTICE OF INTENT AND INITIAL STUDY MATERIALS ARE DEFICIENT

It does not appear that all Project neighbors received the NOI.

An additional concern is that the IS/Mitigated Negative Declaration does not include the appendices that purportedly contain supporting scientific studies. All of the following are missing from the IS:

CalEEMOD Air Quality and GHG modeling;
Habitat Assessment;
Cultural Resource Study;
Geotechnical Investigation;
Paleontological Resources Assessment;
Phase I and Phase II Environmental Site Assessment; and
Noise Impact Analysis.

The IS states that these reports are “Available at City Hall.” This method of distributing information is extremely prejudicial to persons wishing to study the Project and decide whether or how to comment. Given the current Covid concerns, going to City Hall, and the City’s hours, make obtaining these reports difficult. The Project opponents suggest that the City postpone any hearing on this Project until later in the fall, and at a time when the background information for the IS is more readily available.

Based upon our initial review, the IS contains fatal flaws and fails to acknowledge that substantial evidence of significant unmitigated impacts exist. Once Project opponents have more time to time to complete their review they may submit further comments on the inadequacies of the IS/MND.

July 29, 2020
Page Eleven

In the past, The City has required an EIR for General Plan amendments. It is alarming that the City is considering the current GP Amendment without an EIR. If it is the Developer's position that the updated GP and zoning should apply to the Project, then the Project should not be approved through a Mitigated Negative Declaration. It is doubtful that this intense, oversized Project, would be approved in its current form, or otherwise, if an EIR is performed.

It is the City's responsibility to ensure that the overall development of the land is designed to ensure the protection of the public health, safety, and general welfare. Based on all of the foregoing, we do not believe that the Project, as planned, can be constructed or maintained in a manner that will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

The design and location of the proposed development and its relationship to neighboring existing or proposed properties, with its attendant noise and traffic is such that it will impair the desirability of investment or occupation in the surrounding area; it will unreasonably interfere with the use and enjoyment of neighboring existing or proposed developments, and it will create traffic hazards or congestion.

That the design and location of the proposed development is not in keeping with the character of the surrounding area and is detrimental to the harmonious, orderly, and attractive development contemplated by the General Plan and existing zoning.

The IS outlines a finding: "that although the proposed project could have a significant effect on the environment there will not be a significant effect in this case because revisions in the project have been made or agreed to by the project proponent." In fact, the IS is devoid of any revisions by the Developer. Instead, what is clear on the face of the City documents, is that the Developer has laid out what it wants to do, and the City is changing the General Plan, zoning and everything else necessary to accommodate the Developer. All of this is being done to the significant negative detriment of all the existing property owners. Equally disturbing, is the fact that all of this is being done without the objective and fair analysis of a site specific EIR.

Very truly yours,

LAW OFFICES OF MATT H. MORRIS

/S/

MATT H. MORRIS, ESQ.

July 29, 2020
Page Twelve

Project Opponents:

Michael Kincaid
Lynn Kincaid
Julie Reeske
Michael Reeske
Steve Mann
Todd Baker
Kelly Remmling
Erich Remmling
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Greg Fleming
Pamela Baker
Gerald Hampton
Jessica Hampton
Kelly Cross
Terri Miller
Lee Miller
Jesse McKeever
Katie O'Malley
Nate Rucker
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Mike Dawson
Wanda Reese
Darwin Weeks
Joann Weeks
Arline Titone
Rex Sylvester
Tracy Sylvester
Ty Webb
Marcy Webb
Dr. Aaron Bean
David Ball
Kimberly Ball

Attachment 2

ACBCI Tribal Consultation Letter, August 10, 2020



03-002-2020-001

August 10, 2020

[VIA EMAIL TO:Lnamvar@indio.org]
City of Indio
Ms. Leila Namvar
100 Civic Center Mall Drive
Indio, CA 92373

Re: AB 52 and SB 18 Consultation for the Ventana Project in the City of Indio

Dear Ms. Leila Namvar,

The Agua Caliente Band of Cahuilla Indians (ACBCI) appreciates your efforts to include the Tribal Historic Preservation Office (THPO) in the Avenue 50 Indio LLC project. The project area is not located within the boundaries of the ACBCI Reservation. However, it is within the Tribe's Traditional Use Area. For this reason, the ACBCI THPO requests the following:

*The presence of an approved Agua Caliente Native American Cultural Resource Monitor(s) during any ground disturbing activities (including archaeological testing and surveys). Should buried cultural deposits be encountered, the Monitor may request that destructive construction halt and the Monitor shall notify a Qualified Archaeologist (Secretary of the Interior's Standards and Guidelines) to investigate and, if necessary, prepare a mitigation plan for submission to the State Historic Preservation Officer and the Agua Caliente Tribal Historic Preservation Office.

*At this time the concerns of the ACBCI THPO have been addressed and proper mitigation measures have been proposed to ensure the protection of tribal cultural resources. This letter shall conclude our AB52 consultation efforts.

*At this time the concerns of the ACBCI THPO have been addressed and proper mitigation measures have been proposed to ensure the protection of tribal cultural resources. This letter shall conclude our consultation efforts under SB 18.

Again, the Agua Caliente appreciates your interest in our cultural heritage. If you have questions or require additional information, please call me at (760)699-6907. You may also email me at ACBCI-THPO@aguacaliente.net.

Cordially,

Patricia Green-Peterson

AGUA CALIENTE BAND OF CAHUILLA INDIANS



Pattie Garcia-Plotkin
Director
Tribal Historic Preservation Office
AGUA CALIENTE BAND
OF CAHUILLA INDIANS