



*via USPS and Electronic Mail*

City Council  
City of Desert Hot Springs  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240

February 10, 2017

RE: Oppose Extension of Time- Tentative Tract Maps 35009 & 35448  
within Rancho Royale Specific Plan

Honorable Mayor Matas and members of the City Council:

These comments are submitted on behalf of the Center for Biological Diversity (“Center”) on Tentative Tract Maps 35009 & 35448, located west of State Route 62 within the Rancho Royale Specific Plan. The Center and our members urge you to uphold the 4 to 1 decision of the Planning Commission denying the extension of time for Tentative Tract Maps 35009 & 35448.

It is well established that the City of Desert Hot Springs has discretion to deny the extension of the Tentative Tract Maps, which are set to expire. Tentative Tract Maps 35009 & 35448 are large-scale, dense developments that would have significant negative impact on the recently approved and adjacent Sand to Snow National Monument, and predate the City of Desert Hot Springs’ adoption of the Coachella Valley Multiple Species Habitat Conservation Plan. Both of which were not considered during earlier phases of environmental review over 10 years ago.

The current extension of Tentative Tract Maps 35009 & 35448 triggers the requirement for a subsequent Environmental Impact Report (“EIR”) because the current extension includes substantial changes to the initially proposed project, there are substantial changes to the circumstances surrounding the project, and there is new information that was not known during earlier environmental review that affects the project and the environment.

The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 1.2 million members and supporters throughout the United States, including residents in the Coachella Valley of Riverside County that would be adversely affected by development adjacent to the Sand to Snow National Monument. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the Coachella Valley.

**The City Has Discretion to Deny the Extension  
Based on the Findings Before the Planning Commission and City Council**

The City should deny the extension of Tentative Tract Maps 35009 & 35448 because the city has discretion to deny the request for an extension to the Tentative Tract Map and there are numerous negative impacts on the public welfare to the City of Desert Hot Springs from the extension. The California Government Code governing the extension of Tentative Tract Maps provides the City with discretion to deny the extension of a Tentative Tract Map. Cal Gov Code § 66452.6(e). California Courts have clearly held that an “extension of a tentative map...is discretionary.” *El Patio v. Permanent Rent Control Bd.* (1980) 110 Cal. App. 3d 915, 928 (1980). Land use permits are not simply extended as a matter of course. *Id. citing Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720. “The use of the word ‘may’ in section 66452.6 of the Government Code also supports the proposition that extension is discretionary.” *Id.* The Municipal code also authorizes the City to deny the request for an extension of a Subdivision Map and provide findings supporting its decision. City of Desert Hot Springs Municipal Code, 16.24.170 (B) (Subdivision Maps, Extensions).

The specific plan that is the basis of these Tentative Tract Maps was approved with a Final Environmental Impact Report in 1993 and an Addendum to the Environmental Impact Report in 2007. City of Desert Hot Springs, Report to the Planning Commission, November 8, 2016 (“11/8/16 PC Report”). In the ten years that have passed since the latest environmental review there have been substantial changes in the circumstances surrounding the Project. The Sand to Snow National Monument was established providing a vital new cultural, ecological, and economic driver for the City. The Coachella Valley Multiple Species Habitat Conservation Plan was adopted by the City providing a different balance for conservation and development within the City. Growth and development pressures and the housing market in the City of Desert Hot Springs has changed reducing pressure to annex and develop higher density projects on the City fringes and instead focus development closer to the town Center.

Furthermore in the 10 to 20 years since this project was initially approved there have changes in the costs and needs regarding infrastructure such as water supply availability and groundwater availability, wastewater treatment, and road and highway needs that have not been assessed to assure they meet the current resources of the City and County. There are also increased demands to the City and County regarding fire and public safety services, traffic circulation, and public schools. Should the developer decide to proceed with the project after decades of delay it must address the numerous changes to the project, the City, and the surrounding environment.

**Changes to the Project, Surrounding Circumstances, and New Information Require the  
Preparation of a Supplemental Environmental Impact Report**

The City cannot properly rely upon a twenty four year old Environmental Impact Report and a ten year old Addendum to that EIR a for a different project because reliance upon such a stale environmental review with a changed project and changed surrounding circumstances

would run afoul of the California Environmental Quality Act (“CEQA”). Should the City Council overturn the Planning Commission and approve the extension of Tentative Tract Maps 35009 & 35448 it would subject the City of Desert Hot Springs to liability for its failure to comply with CEQA before approving the extension.

A Subsequent Environmental Impact Report is required when there are substantial changes in the project, substantial changes in the circumstances surrounding the project, or new information regarding the project or environmental circumstances. Pub. Res. Code § 21166. These conditions are met here, where the proposed extension of the Tentative Tract Maps results in changes to the project proposed by the applicant and discretionarily applied by the City, which have not been analyzed and could result in significant new impacts on the environment, especially in the changed environmental, land use, and economic circumstances of the area. These changes and impacts were not known, and could not have been known when the earlier phases of the project were reviewed.

Significant changes to project design trigger the requirement for a Subsequent Environmental Impact Report. Pub. Res. Code § 21166, *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal. App. 3d 1538 (the reconfiguration of a medical research and laboratory complex); *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal. App. 4th 1062. (changes to size and nature of commercial development). The extension of Tentative Tract Maps 35009 & 35448 results in numerous changes to the initial Tentative Tract Map and Specific Plan that have not been disclosed and analyzed.

There are numerous changes to the Project noted in the November 8, 2016 Report to the Planning Commission. Changes to the project, roadway design, and layout require supplemental environmental review and approval. 11/8/16 PC Report [“The Applicant is requesting modifications to... Arterial Highway, Collector Highway, Local Street, and Minor Collector Road cross sections”.] The Public Works Engineering and Planning Departments have reviewed and made discretionary determinations regarding changes to the roadway construction such as designs for the arterial and collector highway connection, local street layout, minor collector roads, and staff have modified the project and conditions of approval as a result of the changes. 11/8/16 PC Report. There is no analysis and disclosure of whether and to what degree those changes will affect the environment.

There are also additional changes necessary to protect public safety. “The Fire Department is requiring that two points of access to a major circulatory roadway be provided..[However the] General Commercial/Medium High land use designations located along the northeast corner of the project has only one major access point to a major circulatory roadway (egress purposes).” 11/8/16 PC Report. The necessary changes have not been disclosed or analyzed. The Proposed extension further notes that there are issues related to emergency vehicle access for and through the project site and the adjacent Snellenberger site. It notes that the emergency vehicle access may affect the project and that this may require changes to the project, lots, stormwater drainage and coordination with adjacent developments. 11/8/16 PC

Report. However, that analysis and determination is deferred to a later date without disclosure of analysis of what it would be or what effects would result.

Other changes include revisions to the roadway design and corner lots adjacent to collector streets that can affect traffic flow and impacts; changes in landscaping that can affect the aesthetic impacts from the project; potential changes to the design of “flag lots” in order to address public safety issues related to the visibility of structures for access by the Fire Department that can affect public safety; and changes in grading activities, revised language in the CC&Rs regarding retaining walls or development into rear yard sloped areas, changes to the water tank elevations, and changes in the landscape design that can affect aesthetics. 11/8/16 PC Report. Furthermore, the “applicant has noted that the project may be developed completely as a senior community. This would have impacts related to types of open space amenities and on the provision of future school facilities.” 11/8/16 PC Report. The project design would also require a change to the location of a 15 acre school required by the Palm Springs Unified School District. 11/8/16 PC Report. Finally, the Public Works Engineering and Planning Departments have reviewed and made discretionary determinations regarding changes to the roadway construction such as designs for the arterial and collector highway connection and design, local street layout and design, minor collector roads and staff have modified the project and conditions of approval as a result of the changes. 11/8/16 PC Report.

Approving the Tentative Tract Map extension while deferring the evaluation of a changed project, its environmental impacts, and mitigation measures also runs contrary to CEQA. Deferring evaluation until after project approval amounts to a *post hoc* rationalization and skirts the required procedure for public review and agency scrutiny of potential impacts. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307-09. The Report to the Planning Commission recognizes that the analysis will be deferred to a later date without justification. It requires that the applicant “shall submit an Addendum to the Final Certified Environmental Impact Report prior to the submittal of any building plans, along with any proposed changes to the Conditions of Approval.” 11/8/16 PC Report.

The proposed extension request also defers certain changes in the project design and aesthetics to a later phase, “specific details of the walls/fencing in relationship to location and function” and the “design and aesthetics of the bridges have not been provided.” 11/8/16 PC Report. Further “site plans, wall elevations and engineering calculations shall be provided for review by the HOA and City of Desert Hot Springs” at a later date and also reviewed during the Development and Design Review Permit process. 11/8/16 PC Report. The extension request proposes to defer the design and analysis to the “Development and Design Review Permit.” 11/8/16 PC Report. Moreover, it defers the determination on the location and details for a 15 acre school site to a later stage to be determined by the Palm Springs Unified School District. 11/8/16 PC Report.

Approving the extension of the Tentative Tract Map without analyzing how the numerous project modifications have changed a range of environmental impacts resulting from the project including, but not limited to, impacts to traffic, aesthetics, land use, biological resources, water

quality, hydrology, cumulative impacts, noise, cumulative impacts, and others runs afoul of CEQA.

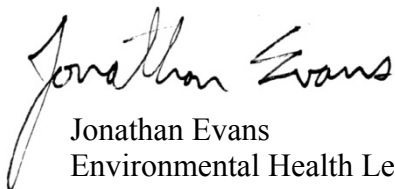
A subsequent EIR is required because substantial changes have occurred in the circumstances surrounding the project and new information has become available regarding the project or environmental circumstances. Pub. Res. Code § 21166. In the ten years that have passed since the latest environmental review there have been substantial changes in the circumstances surrounding the Project. The Sand to Snow National Monument was established directly adjacent to the project site providing a vital new cultural, ecological, and economic driver for the City. The Coachella Valley Multiple Species Habitat Conservation Plan was adopted by the City providing a different balance for conservation and development within the City. Furthermore, CEQA now clearly requires the analysis of greenhouse gas emissions and climate change during environmental review, which was not adequately addressed in earlier phases of environmental review. These new designations create new ecological, aesthetic, traffic, noise, and recreational impacts, which were not, and could not have been, analyzed during the earlier, outdated environmental review.

Growth and development pressures and the housing market in the City of Desert Hot Springs has changed reducing pressure to annex and develop higher density projects on the City fringes and instead focus development closer to the town Center. Nearby projects now include energy infrastructure from wind and solar generating facilities or groundwater recharge areas to increase groundwater supply and availability. The direct and cumulative impacts of the changed growth and development pressures, land uses, infrastructure needs, and traffic demands were not, and could not have been, analyzed during the earlier, outdated environmental review. This discretionary review of changes to the project, modification of the project, and deferral of project design and analysis triggers further environmental review under CEQA.

### **Conclusion**

The Center urges the City Council to uphold the decision of the Planning Commission to deny the extension request and that any future approvals of Tentative Tract Maps 35009 & 35448 fully comply with CEQA through the preparation of a Subsequent Environmental Impact Report.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Evans". The signature is fluid and cursive, with the first name "Jonathan" written in a larger, more prominent script than the last name "Evans".

Jonathan Evans  
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