Appeal 01-16

35009 / 35448

Memorandum

EXHIBIT 1

BY HAND

To: Mayor and City Councilmembers **File No.:** 30839.00001

From: Mr. and Mrs. Edy P. Adkison and Ms. Martha Martell

Date: December 6, 2016

Re: Statement of Reasons in Support of Appeal

INTRODUCTION

The purpose of this Memorandum is to provide a detailed statement of reasons to explain why Edy P. Adkison and Judith Elizabeth Adkison, trustees of the Adkison Family Revocable Living Trust, and Martha Ruiz-Snell (a.k.a, Martha Martell) (collectively, "Appellant") appeal the Planning Commission's denial of First Extension of Time – Tentative Tract Maps 35009 & 35448, located West of State Route 62 within the Rancho Royale Specific Plan ("RRSP") encompassing most of Section 20, Range 4 East, Township 2 South, San Bernardino Baseline and Meridian (the "Denial"). This Memorandum is Exhibit 1 to Appellant's appeal form and is responsive to the section of the form requesting "Specific Reason for Appeal".

In order to resolve this matter as soon as possible, Appellant respectfully requests that the City Council hear Appellant's appeal of the Denial at the next available City Council meeting on **January 17, 2017**. (See *Hunt v. County of Shasta* (1990) 225 Cal.App.3d 432, 442 [acknowledging that the patent legislative objective of the Subdivision Map Act's short statutes of limitation is to ensure prompt resolution of land use matters].)

Appellant urges the City Council to: (1) wholly overturn the Planning Commission's Denial and (2) approve the Extension of Time for Tentative Tract Maps 35009 and 35448 for the time period requested (three years). As is demonstrated below, the administrative record provides substantial evidence to support the findings necessary to grant the Extension of Time and that, in denying the requests, the Planning Commission has violated the No Net Loss in Density law and rendered a decision unsupported by substantial evidence. On that basis, Appellant respectfully requests that the City Council make a final decision on the project on **January 17, 2017** and direct staff to bring back implementing resolutions at the next City Council meeting.[1]

[1] According to Government Code section 66452.6(e), when a subdivider files a request for an extension of time on a tentative tract map, "the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved or denied, whichever occurs first" subject to potential appeal. Therefore, if the City Council directs staff to bring back implementing resolutions, the City Council will not run afoul of the Permit Streamlining Act requirements or the time limits imposed on Tentative tract Maps 35009 and 35448 themselves.

BACKGROUND

History of Entitlements

The RRSP was originally submitted to the County of Riverside in 1990. During the County of Riverside's processing of the RRSP, the City of Desert Hot Springs, under pressure from the City of Palm Springs' continual encroachment, approached several landowners and asked that they annex into the City of Desert Hot Springs. The then-property owner of the approximately 8,000 acres agreed to annex into and process the RRSP in the City of Desert Hot Springs. The RRSP, as well as the Draft Environmental Impact Report (EIR) were submitted to the City in 1992. The project was approved and the EIR certified on April 6, 1993 (SP No. 1-92, City Council Ordinance No. 92-9 & City Council Resolution No. 92-55 (EIR)). The approximately 8,000 acre annexation was approved by the Local Agency Formation Commission (LAFCO) on August 25, 1994 (LAFCO 93-09-3 – Annexation 22).

In March 1995, EIR Addendum No. 1 was approved by the City of Desert Hot Springs. EIR Addendum No. 1 addressed the acquisition of right-of-way for the re-alignment of Pierson Boulevard and the construction of Highland Falls Drive, an offsite connection to Highway 62 for the benefit of the westerly approximately 970 acre portion of the RRSP that later became Vesting Tentative Tract Map (TTM) 30616[2].

In August 2002, EIR Addendum No. 2 (City Council Resolution No. 2002-36) was prepared for an amendment to the Specific Plan ("SPA"). This SPA (City Council Resolution No. 2002-38) affected the westerly approximately 970 acres of the RRSP area, which included 2,145 single-family homes, 1,342 multi-family homes, one hotel and ancillary retail services, two golf courses and ancillary recreational/retail facilities. The EIR Addendum No. 2 also analyzed the environmental impacts of: (1) removing the internal circulation pattern for Pierson Boulevard and shifting it to its present planned location, south of the subject site and (2) removed the provision of three school sites, two neighborhood parks and a 20-acre sports park. The City Council also approved a General Plan Text and Map Amendment for the project (City Council Resolution No. 2002-37), Vesting TTM 30616 (City Council Resolution No. 2002-39) and a Development Agreement (DA), DA 01-02 for the approximately 970 acre project (City Council Resolution No. 2002-12). Further, in September 2002, the City Council approved Zoning Text and Map Amendment No. ZMA 02-02 to change the zone of the approximately 970 acre project. (Desert Hot Springs Municipal Code, Chapter 159 (Zoning) was amended (City Council Resolution No. 2002-11).)

In August 2007, EIR Addendum No. 3 and Tentative Tract Maps 35009 and 35448 were approved by the City Council (City Council Resolution No. 2007-71). EIR Addendum No. 3 included additional studies that, at the time, were newly required by the California Environmental Quality Act. Modifications to the RRSP included a reduction in density (a reduction of 372 units), reconfiguration of roadways and removal of the previously planned golf course and replace it with a system of trails and natural drainage courses, in the area defined by the subject tract maps.

[2] Vesting TTM 30616 is owned by Walton California, LLC and is sometimes referred to as the Walton Property.

Subdivisions' Consistency with General and Specific Plans

The record before the Planning Commission shows that the Mission Creek Trails project[3] is consistent with the City of Desert Hot Springs Comprehensive General Plan ("General Plan") and the RRSP. The project's single-family and multi-family residential densities are 4.4 du/ac and 12.47 du/ac. The Planning Commission ignored the fact that the site is suitable for the proposed density of development in that the proposed densities for the lots within the Medium High and Very High Residential land uses are below the maximum ***permitted*** (5-8 du/ac & 8-14 du/ac) densities.

The design of the subdivision is consistent with residential and commercial design standards and policies set forth on the General Plan and the RRSP. The lot sizes, street layout and landscapes, circulation patterns and open space are consistent with the RRSP.

The Planning Commission did not consider that the design of the subdivision or the proposed improvements are not likely to cause environmental damage and that the project approved in 2007 included an Environmental Impact Report (EIR) and Addendum No. 3, which fully addressed the environmental impacts and feasible mitigation measures for the subdivision. Moreover, the Planning Commission completely ignored the fact that the RRSP includes a detailed infrastructure plan with which Tentative Tract Maps 35009 and 35448 comply. The Planning Commission's vague comments about the lack of infrastructure, the fact the area is currently on septic and uses propane gas, failed to take into account that the approved maps show exactly where the project's infrastructure would be placed.

In sum, the Planning Commission did not make "very specific findings" as advised by its legal counsel and has denied the project based only on personal "beliefs" and suspicions without any basis in fact, pertinent history or how/if potential changes may or may not negatively impact the environment.

REASONS FOR APPEAL

First Reason the Denial is Appealed

The first reason why the Planning Commission's Denial is appealed is that it violates the No Net Loss in Density Law. Government Code section 65863(b) states: "No city . . . shall, by administrative, quasi-judicial, legislative, or other action, ***reduce***, or require or permit the reduction of, the residential ***density*** for any parcel to . . . a ***lower*** residential density, as defined in paragraphs (1) and (2) of subdivision (g), unless the city . . . makes written findings supported by substantial evidence of both of the following:

1. The reduction is consistent with the adopted general plan, including the housing element.

2. The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to [Government Code] Section 65584."

[3] Tentative Tract Maps 35009 and 35448 are also referred to collectively as the "Mission Creek Trails" project.

The definition for "lower residential density" depends on whether the city has an adopted Housing Element for the current planning period. The City of Desert Hot Springs does not have a Housing Element adopted for the current planning period (2014-2021). (See: http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/status.pdf.) Thus, the definition for "lower residential density" in jurisdictions without a current Housing Element applies. That definition provides that "lower residential density" means: (a) for a residentially zoned site, "a density that is lower than 80 percent of the maximum allowable residential density for that parcel"; (b) for sites where residential and nonresidential uses are permitted, a use that would result in the development of fewer than 80 percent of the number of residential units that would be allowed under the maximum residential density for that site". (Gov. Code, § 65863(g)(1), (2).)

On the west side of Highway 62 there are approximately 1,451 acres. Of those 1,451 acres, Walton California, LLC controls approximately 970 acres, which have been approved for subdivision pursuant to Vesting Tentative Tract Map 30616 and the Rancho Royale Specific Plan Amendment (the "SPA"). The SPA authorizes development of up to 6,079 residential units on the west side of Highway 62, and 3,487 residential units are permitted on the Walton property. The SPA reduced the overall residential development density on those approximately 970 acres west of Highway 62.

In 2007, the city approved Tract Maps 35009 and 35448, which cover approximately 481 of the 1,451 acres on the west side of Highway 62. Overall, Tentative Tract Map 35009 called for the development of approximately 1,126 single family residential lots, 8 multi-family residential lots that would accommodate a maximum of 923 units, and a 32 acre lot designated for commercial and residential uses (171 residential units). Thus, the total maximum number of residential units allowed on the 481 acres covered by Tentative Tract Maps 35009 and 35448 was: 2,220 (1,126 + 923 + 171 = 2,220).

Here, Commissioner Voss moved to deny the Extension of Time because he "did not like the density" of the project. He argued that a project of this density did not belong on the west side of Highway 62. In fact, he specifically said this is a good project but in the wrong place. Commissioner Voss, and the majority of the Planning Commission voting in favor of the Denial, ignored the fact that the Rancho Royale SPA designates these areas for residential development and allows up to 2,220 residential dwelling units in this very location.

By denying the Extension of Time on the basis of density, Commissioner Voss and the majority of the Planning Commission violated the No Net Loss in Density Law because they did not make the two ***written*** findings supported by substantial evidence required by Government Code section 65863. Commissioner Voss' motion effectively reduced the residential density for these sizes to zero, which is well below the 80 percent threshold called out in Government Code section 65863(g)(2)[4]. Commissioner Voss did not explain why a reduction in density for these two maps is consistent with the adopted general plan, including the housing element; and, he did not identify any remaining sites in the housing element that are adequate to accommodate the city's regional housing need. Therefore, the Planning Commission in approving Commissioner Voss'

[4] Government Code section 65863(g)(2) applies because Tentative Tract Maps 35009 and 35448 contemplate a mix of residential and commercial uses on the acreage covered by the maps.

motion did not satisfy its legal obligations under the No Net Loss in Density law. For this reason, the City Council must overturn the Planning Commission's Denial.

Second Reason the Denial is Appealed

The second reason the Denial is appealed is that the Planning Commission did not make the correct findings to support the Denial. Rather than denying the Extension of Time for reasons related to the duration of the map (i.e., discussing whether something less than a three year extension would be appropriate), the Planning Commission denied the Extension of Time because – among other reasons – the Planning Commission did not like the density of the project. The density and intensity of land use for the parcels covered by Tentative Tract Maps 35009 and 35448 were approved in the RRSP. It was ***impermissible*** for the Planning Commission to modify the zoning density and intensity of the use on these parcels by denying the Extensions of Time. (See Gov. Code § 65463 [outlining procedures for specific plan amendments.) For this reason, the City Council must overturn the Planning Commission's Denial.

Third Reason the Denial is Appealed

The third reason the Denial is appealed is that the administrative record is chock full of evidence demonstrating that the findings necessary for ***approval*** of the Extension of Time can be made. As explained in the November 22, 2016, Report to the Planning Commission, each of the findings for approval of the Extension of Time ***could*** be made. Substantial evidence in the record showed that:

1. Appellant has satisfied all of the requirements of Desert Hot Springs Municipal Code section 16.24.170. Namely, Appellant filed with the City's Community Development Department a written request to extend the duration of Tentative Tract Maps 35009 and 35448. The written request was filed on May 31, 2016, which is not less than thirty (30) days before Tentative Tract Maps 35009 and 35448 were set to expire. In its written request, Appellant provided written reasons to support the extension of time. Therefore, according to Desert Hot Springs Municipal Code section 16.24.170, subdivision (d), the Commission had authority to extend Tentative Tract Maps 35009 and 35448 for a period not exceeding a total of 3 years.

2. As stated at the bottom of page 2 and top of page 3 of the November 22, 2016, Report to the Planning Commission, Appellant has made ***no changes*** to Tentative Tract Maps 35009 and 35448 since the date that they were first approved. Both Tract Maps are fully consistent with the Rancho Royale SPA and its associated development regulations and infrastructure plan. Therefore, there have been no changes – let alone substantial changes – to the tentative tract maps since they were originally approved.

3. Appellant has presented good cause for requesting the extension of time. As explained in the November 22, 2016, Report to the Planning Commission, economic conditions over the past several years, the size of the project, and the extent of the required improvements have made it

impossible to market the maps. Currently, market conditions are shifting and Appellant believes that the extension will enable it to re-energize the project. In addition, the current process for preparing a final map requires more than a year's time and in order to be done correctly, three years is necessary.

4. According to the November 22, 2016, Report to the Planning Commission, there has been no change to environmental circumstances surrounding the Tentative Tract Maps. Both the certified Environmental Impact Report (EIR) for the Rancho Royale Specific Plan (SCH #92042024) and Addendum #3 to the certified EIR fully disclose, analyze, and mitigate (to the extent feasible) the environmental impacts of the proposed subdivision maps. There have been no changes to the project that warrant additional environmental review.

Therefore, the written findings in the November 22, 2016, Report to the Planning Commission supported ***approval*** of the Extension of Time and the Planning Commission ignored these findings and supporting evidence. Appellant acknowledges that the city has authority to condition to the requested Extension of Time with respect to the duration of the extension. (*El Patio v. Permanent Rent Control Bd.* (1980) 110 Cal.App.3d 915.) Appellant respectfully requests that the City Council approved the requested three year extension, which time is necessary for Appellant to effectively prepare and record final maps.

Fourth Reason the Denial is Appealed

The fourth reason why the Denial is appealed is that the Planning Commission's verbally recited findings are not based on substantial evidence. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 510 [administrative findings must be supported by substantial evidence][5].) To be legally sufficient, written findings must bridge the analytic gap between raw evidence and the ultimate decision; the findings must be based on substantial evidence. (*Ibid.*) Here, the Planning Commission's findings were completely devoid of raw evidence. Instead, the findings were based on conjecture, hyperbole, speculation, and unsubstantiated opinion about a series of generalized "areas of concern". "'Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence ....' [Citation.]." (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 [emphasis in original].)

Commissioner Voss moved to deny the Extension of Time due to the project's: (1) density, (2) access through Highway 62, (3) traffic issues, (4) the Sand to Snow Monument's proximity to the project site, (5) watershed issues and (6) fire issues. City Attorney Mizrahi confirmed that the findings for denial were based on what Commissioner Voss presented during the Planning Commission meeting. The topics that Commissioner Voss listed are not topics related to the findings that need to be made for an Extension of Time. Commissioner Voss did not tie any of the generalized "areas of concern" to any of the four requisite findings. Moreover, these generalized "areas of concerns" are not backed up by data or evidence. Instead, the "areas of

[5] Although *Topanga* involved a zoning ordinance, California courts have applied its test in determining the sufficiency of findings supporting the approval or denial of a tentative map. (*McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175).

concern" are based on Commissioner Voss' personal belief that the project that the City Council approved in 2002 and again in 2007 was unwise and does not belong in this area.

To the extent that Commissioner Voss' "concerns" regarding traffic/access, the Sand to Snow Monument, watershed issues, and fire issues relate to environmental topics, they do not rise to the level of an environmental change in circumstances. (Pub. Resources Code § 21166; State CEQA Guidelines § 15162.)

According to CEQA, once an environmental impact report (EIR) for a project has been certified no further EIR shall be required unless substantial changes are proposed in the project, substantial changes occur with respect to circumstances under which the project is undertaken, or new information becomes available which would require major revision to the EIR. (*Ibid.*) The State CEQA Guidelines amplify this statutory provision by explaining that the major revisions to the EIR must be of the type that reveal a new or more severe significant environmental effect. (State CEQA Guidelines § 15162(a).) Commissioner Voss did not present any such evidence and the Planning Commission's Denial, which was predicated upon Commissioner Voss' comments, was not supported by substantial evidence. (See *Federation of Hillside & Canyon Ass'ns v City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1200 [no supplemental EIR required because petitioners had not shown that change in circumstances would result in new or substantially more severe impact].)

Because the Planning Commission's Denial findings were not supported by substantial evidence, the City Council must reverse the Planning Commission's action.

APPELLANT SUFFERED HARM BY THE PLANNING COMMISSION'S DENIAL

A. The Commission did not fully grasp or properly consider the project, namely; its proposed density, lot size, it's inclusion within an approved Specific Plan it's adherence to the allowable General Plan densities or the fact that the project meets the goals set forth in the City's General Plan.

First, the Planning Commission seemed to not clearly understand what they were being asked to approve at the meeting on November 22, 2016. The Planning Commission seemed to think that it had jurisdiction over the land use but it really only had jurisdiction over the duration of the map. The Planning Commission was only being asked to approve, conditionally approve or deny an extension of time.

Deviating from the authority it had, the Planning Commission did not consider that the master planned project was a portion of the overall adopted RRSP. The majority of the Planning Commission ignored the fact there is an approved ***Vesting*** TTM (Vesting TTM 30616) and development agreement for the Walton property. The developer has a vested right to proceed with the project on the Walton property subject to the terms and conditions of the development agreement for the Walton property. Vesting TTM 30616 is approved and will consist of 2,145 single family homes, 1,342 multiple-family homes for a total of 3,487 residential units together with a hotel and retail services, and is directly adjacent to the subject Tentative Tract Map 35009. The approval of Vesting TTM 30616 is important to consider, as it depicts the inception of the development pattern of the RRSP and how Tentative Tract Map 35009 sits within the SP. Exhibit 2, attached hereto, reflects these two Tentative Tract Maps in their locale.

The Planning Commission, in their findings stated "density" as a finding in support of the Denial. This is clearly a misunderstanding of the project and the fact that the project, as approved, is actually 372 units below what the city's General Plan (General Plan) allows for this area. The General Plan would allow a density of 5-8 du/ac & 8-14 du/ac. With the amount of open space provided within the approved Tentative Tract Map 35009 the overall density of the map is 2,220 units/481 gross acres or 4.62 units per acre. Alternatively, and as stated before, the project's single-family and multi-family residential densities are 4.4 du/ac and 12.47 du/ac, respectively, which is lower than the density allowed.

Further, the Planning Commission confused density with lot size[6], ignoring the fact that, to achieve a mix of housing types, as encouraged by the General Plan Goals, there are a variety of lots sizes and well as multi-family housing planned for the subject Tentative Tract Map 35009 area. During the public hearing there was some discussion regarding the desire to have larger lots in this location, which would be more in-keeping with the City's R-L (0-5 du/ac) designation. This line of reasoning is problematic, however, because the City was looking at the RRSP as a master planned community that provides housing types for a variety of residents. It is for this reason that the city has an approved General Plan designation for the property at 5-8 du/ac and 8-14 du/ac, and a SPA that allows for a mix of 4.4 du/ac and 12.47 du/ac.

Also, the Planning Commission failed to consider the General Plan Land use Goals as shown within the City's General Plan:

Goal 1 - A balanced mix of functionally integrated land uses meeting general social and economic needs of the community through simplified, compatible and consistent land use zoning designations.

The Mission Creek Trails master plan clearly achieves this goal by providing a mix of housing types single family residential lots, high density housing and at least 20% senior housing.

Goal 2 – A resort residential community of desirable neighborhoods, a complementary employment base and a variety of community facilities.

The Mission Creek Trails neighborhood has provided a desirable neighborhood for a variety of residents. It provides for a trail system with over five miles of trails for hiking and biking opportunities and connections to the west and north. The plan provides for a community recreation center, fifteen pocket parks and a linear park system and a commercial center with opportunities for small services businesses (i.e. delis/coffee shops). The inclusion of a mixed use component within the project is a good example of how this project was forward thinking, as mixed use areas are becoming more and more popular today.

B. <u>The Commission did not discuss, vet or properly consider the basis for the finding "Due to the access through Highway 62" and "because of the impact of monument traffic"</u>

[6] As a side-note, there are 1,126 single family lots within the Mission Creek Master Planned Community as it was approved in 2007 and its smallest residential lot is 4,041 square feet (SF) and its largest residential lot is 20,704 SF within 4,000, 5,000, 6000 and 7,000 SF minimum planning areas.

During the November 22, 2016, Planning Commission meeting, the Planning Commission stated that it had traffic concerns with the subdivisions. This was a broad statement and the Planning Commission did not articulate any reasons why it had specific traffic concerns about the maps. The Appellant's representative explained to the Planning Commission that the EIR prepared for the RRSP, as well as the EIR Addendum No. 3 prepared for the Mission Creek Trail Project, evaluated the traffic impacts associated with the development. Those traffic studies were reviewed and approved through the entitlement process. According to the 2007 traffic study, Highway 62, with its current improvements, operates at a Level of Service (LOS) of varying from B to F at its intersections with roads in the area of the Mission Creek Trail project. But after improvements to Highway 62, the LOS varies from B to D at those same intersections. Although the Mission Creek Trails project will not single handedly improve these intersections, the developers will be paying their fair share for the planned improvements where impacts were identified in the traffic studies. Additionally, the Mission Creek Trails project would improve Mission Creek Boulevard from Highway 62 to its tract boundary, which will enable a secondary access to the north giving the pubic multiple ways to access the vacant lands to the north, including access to the Wildlands Conservancy's Mission Creek Preserve.

Without the partnership with developers of projects like the Mission Creek Trails project, necessary improvements to existing facilities, including existing roadways, will not be financially viable for the City.

C. <u>The Commission did not discuss, yet, or properly consider the basis for the finding of "fire concerns" and the belief that "there are watershed issues"</u>

There was no discussion, let alone specifics, regarding the concerns raised about fire or watershed issues. The Planning Commission did not ask staff or the applicant to address these concerns at all. Commissioner Voss included these issues in his motion without the benefit of discussion or considering the information provided in the staff report. The Appellant is aggrieved by this because it was not given an opportunity to respond to misinformation about its project and its associated impacts.

1. **FIRE** – Impacts to Fire service were analyzed and mitigated in the original EIR and considered in the 2007 EIR Addendum. In 2007 the City was constructing the fire station located at 11535 Karen Avenue in response to the growth in this western part of the City. Regarding the Extension of Time, Staff received a very detailed letter from Cal Fire that included conditions of approval from Cal Fire. Nowhere in that letter did Cal Fire indicate concerns regarding the project. The letter states:

> "The Proposed project may have a cumulative adverse impact on the Fire Department's ability to provide an acceptable level of service. These impacts include an increase in the number of emergency and public service calls due to the increased presence of structures, traffic and population. **The project proponents/developers will be expected to provide for proportional mitigation to these impacts via capital improvements and/or impact fees.**"

In addition to this, the Mission Creek Trails project incorporates 55 to 60-foot buffers that are not only for drainage conveyance but that act as a buffer/fuel mod areas for protection for the future residences per EIR Mitigation Measure EIR pg. III-100.

2. **WATERSHED** – The project site is impacted by three offsite watershed areas. According to the latest Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the project site is located in Zone X, indicating that it is not within a 100-year or 500-year floodplain. The Mission Creek Trails project implemented EIR Mitigation Measures that required that all incremental increases in storm flow be detained in-site so that post-construction flows will not be greater than pre-construction flows. The project has also been designed so that the future site will be protected from the 100-year storm flows, as required. Permits from the California Department of Fish and Wildlife and the Army Corps of Engineers will be required for this work.

   The Mission Creek Trails Project, as proposed, does not cause nor exhibit 'watershed' issues as mitigated per the certified EIR and Addendum No. 3.

D. <u>The Commission did not properly consider the basis for the finding of "negative impact on the location"</u>

During the November 22, 2016, Planning Commission meeting, the Planning Commission stated that it did not think that this is the "right" place for this project. "Nice project in the wrong location" was how one Commissioner described it. Understanding that this is a discretionary approval and that the Planning Commission has some limited authority to impose conditions on an Extension of Time, the Planning Commission completely ignored the larger entitlement context. The Planning Commission ignored the fact that the Mission Creek Trails Project has proposed a density ***lower*** than that allowed by the City's Specific Plan/General Plan densities for that area.

By denying based on "location" it appeared that the Planning Commission meant to deny the Extension of Time because of the recent designation of the Sand to Snow National Monument and the adjacent Mission Creek Preserve, both of which are proximate to the site.

The fact that the Sand to Snow Monument was designated nine years after the Mission Creek Trails Project was approved by the City and its certified EIR ***is*** a change of circumstances. However, there was no discussion at the November 22 hearing about any environmental impacts that would result from the Project as a result of the recent designation of the monument. Exhibit 2 reflects the Mission Creek Trails project and its relationship to the Sand to Snow Monument and the Preserve. The project site is not within the monument area and only the very northwest corner of the project site touches the very corner of the monument area.

The Appellant was aggrieved by this procedure because it did not have the opportunity to fully research the expressed concerns, explain the proximity of the project site to the Sand to Snow Monument, or produce exhibits that reflect the maps' locale.

The Appellant was not given the opportunity to explain, that, according to the US Forestry Service the **"national monument designation will not impact the rights of private landowners within or adjacent to the national monument, including existing access within the national monument boundary."** They also add that **"the non-Federal lands within the national monument boundary would not be part of the national monument unless subsequently and voluntarily acquired by the Federal Government".** (See Exhibit 3, Sand to Snow Monument Q&A.)

The Denial based on the Mission Creek Trails Project's proximity to the Sand to National Monument is an impact to private landowner's rights. Private landowner's have the right to develop their property in keeping with the applicable agency's Comprehensive General Plan and/or Specific Plans.

The only public testimony during the November 22, 2016, Planning Commission hearing was from two gentlemen from The Wildlands Conservancy (TWC). They asked that the hearing be continued for 30 days so that they could research the project's impacts on the Preserve, as well as the National Monument. Its location with respect to both as well impacts to the Coachella Valley Multi Species Habitat Plan, if any. The Planning Commission discussed the possibility of continuing the hearing so that more information could be provided, including if the Conservancy opposed the 2007 approvals. But made the decision to deny the extension instead, without the benefit of additional information regarding the preserve. Exhibit 2 reflects the location of the Mission Creek Preserve and its' proximity to the Mission Creek Trails Project site. The Preserve is a large site (approximately 4,760 acres, according to the TWC Website). But is located almost a mile (as the crow flies) to its closest corner of ownership. The preserve's stone house is located about 2.5 miles from the Mission Creek Trails Project site to its closest corner. There are also several hundred acres separating these two sites making impacts to the preserve highly unlikely, and negligible at best.

During the November 22, 2016, public hearing, Carrie Puckett of the Wildlands Conservancy spoke against the Extension of Time. He asserted that he was sure that the Wildlands Conservancy would have objected to Tentative Tract Maps 35009 and 35448 when they were approved in 2007. We have reviewed our historical files on Tentative Tract Maps 35009 and 35448, and have not found any evidence that the Wildlands Conservancy, or any other environmental agency or group wrote a letter or otherwise indicated concern over the approval of the Mission Creek Trails Project during the 2007 entitlement process. In fact, the 2007 City Council Staff Report only mentioned one letter received and that was from the adjacent developer, regarding access to his property. It seems clear that if communication from the any other member of the public or agency occurred it would have been mentioned in that staff report to the council.

E. <u>The Appellant pays significant public safety tax voted in by the people based on the General Plan designation for the property</u>

Subsequent to the public safety initiative, Appellant has paid nearly $9.00 ***per residential*** unit permitted by the General Plan designation for public safety taxes on its property, subject to cost of living increases each year. The public safety tax was voted in by the people and is due annually based on the number of units permitted by the general plan designation for a parcel. With approximately 2,500 units permitted by the General Plan designation, Appellant has paid nearly $23,000 a year for public safety purposes for ***vacant*** land. By denying the map extensions,

the Planning Commission has divested the Appellant of this significant investment that it made into the community.

CONCLUSION

For the foregoing reasons, Appellant urges the City Council to: (1) wholly overturn the Planning Commission's Denial, (2) approve the Extension of Time for Tentative Tract Maps 35009 and 35448 for the time period requested (three years), and (3) direct staff to bring back implementing resolutions at the next City Council meeting.