

February 20, 2018

VIA EMAIL

Craig Ewing, Consulting Planner
City of Desert Hot Springs
65-950 Pierson Blvd
Desert Hot Springs, CA 92240
cewing@cityofdhs.org

Re: Desert Land Ventures Specific Plan EIR

Dear Mr. Ewing:

This law firm represents the Southwest Regional Council of Carpenters (Southwest Carpenters) and submits this letter on the above-referenced project on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in the environmental impacts of development project, such as the Desert Land Ventures Specific Plan EIR (Project). The City of Desert Hot Springs (City) released a Draft Environmental Impact Report (DEIR) for the Project on January 5, 2018.

The Project would comprise approximately 123.4 acres of mixed uses, including industrial warehouse, agriculture, residential, agricultural, retail, restaurant, and hotel, as well as 38.7 acres of Open Space Conservation land. The Project will be centered upon cannabis production and sale and will attempt to attract I-10 traffic. In total, the Project Description states the Project will develop 1,987,799 square feet of mixed use industrial and commercial space. The Project will require several approvals, including the following:

- Adoption of a General Plan Amendment
- Adoption of a Zoning Map Amendment
- Adoption of the Desert Land Ventures Specific Plan
- Approval of Vesting Tentative Tract Map
- Approval of a Development Agreement
- Clean Water Act section 404 Permit

Below are comments regarding specific concerns regarding the content of the DEIR:

5-1

Aesthetics

The City states the Project will not substantially degrade the visual character or quality of the Project site, even absent mitigation. However, the City's only evidence to support this analysis is (1) the Project site already has power lines on it, and (2) Project mitigation will reduce any aesthetic impacts. Regarding (1), it is unclear how the presence of power lines negates the aesthetic open-space qualities the Project site otherwise has. The Project site is currently undeveloped, with views in all directions only limited by the horizon and nearby mountains (see attachment 1). As noted in the DEIR, the addition of the Project will substantially alter these expansive views with buildings of undisclosed heights. This will affect views both from I-10 traffic, as well as for local residents.

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Please provide further evidence that supports the City's determination that there will be no aesthetic impacts from the Project, without mitigation.

Project Description

The DEIR provides an inconsistent Project description. In *County of Inyo*, the court noted, "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input. Among the public comments in the final EIR were many objections and expressions of uncertainty aroused by the department's homemade project description." *County of Inyo* at 197. The Supreme Court further admonished: "The incessant shifts among different project descriptions do vitiate the city's EIR process as a vehicle for intelligent public participation." *Id.* By contrast, "If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

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At times, the City states the Project will not contain residential development, and at other times, the City states the Project will be permitted to contain dwelling units. In addition, while the Project Description simply divides Project uses into "industrial" and "commercial," elsewhere the DEIR states agricultural uses will operate on site. Furthermore, while the City states the Project site is comprised of 123.4 acres, the Project boundaries identified throughout the DEIR only seem to allocate approximately 104 acres to the Project site (see Image 1, below). 20 constitutes approximately one-sixth of the entire Project site. If the maps used throughout the DEIR are inaccurate, the City should correct these maps to reflect the true dimensions of the Project.

Please explain how the Project Description is adequate, in light of the above concerns.

Image 1:



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Land Use Issues

State and local laws discourage, and sometimes prohibit, leap-frog development, such as the Project. Leap-frog development is especially troubling from a utilities and public services viewpoint because serving the Project will require the City and other local services to extend these services across miles of undeveloped land. The DEIR does not discuss the Project from the viewpoint of its impacts as leap-frog development.

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Please address the regulatory framework surrounding leap-frog development as it relates to the Project, and provide further justification to support Project approval where, as here, the Project is proposed almost three miles away from the edge of development within the City.

Alternatives

The DEIR identifies Alternative 3, the Reduced Intensity Alternative, as the Environmentally Superior Alternative. However, it is unclear how the City arrived at this determination. Whereas Alternative 3 will still have significant and unavoidable impacts to air quality, cultural resource, and greenhouse gas emissions. By comparison, the City has determined the No Project Alternative will have no impact on the environment.

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Please provide evidence to support Alternative 3 as the Environmentally Superior Alternative.

Air Quality

The DEIR provides an analysis of mobile sources, area sources, and energy usage. However, the DEIR does not provide an analysis of other stationary sources of emissions, such as cooking, and any emissions created through the cultivation of cannabis. Please analyze the Project's creation of emissions from other stationary sources.

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The City found the Project conflicts with the goals and policies of the regional Air Quality Management Plan (AQMP). However, the City found the Project did not conflict with Criterion 2 of the AQMP because the City's General Plan amendment will ensure Project "consistency with the land use designation in the City's General Plan." (DEIR p. 4.3-20). The purpose of the AQMP is to evaluate Project consistency with the AQMP, not Project consistency with the General Plan. If the AQMP simply required General Plan consistency to comply with Criterion 2, this analysis would be redundant. Criterion 2 requires a more thorough analysis with the policies of the AQMP.

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Please provide further information, including mitigation and alternatives, if any, that could cause the Project to comply with federal, state, and regional air quality laws and limitations. Specifically, the DEIR should detail in plain language the quantitative significance thresholds it employs when assessing consistency with AQMP Criterion 2.

Finally, the City does not provide an adequate discussion of cumulative air quality impacts. "Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal. Code Regs. §15355. "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." 14 Cal. Code

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Regs. §15355(b). “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” 14 Cal. Code Regs. §15355(b). “The full environmental impact of a proposed [] action cannot be gauged in a vacuum.” *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408-409; *Akers v. Resor* (W.D.Tenn. 1978) 443 F.Supp. 1355. “An agency may not . . . [treat] a project as an isolated ‘single shot’ venture in the face of persuasive evidence that it is but one of several substantially similar operations, each of which will have the same polluting effect in the same area.” *Whitman v. Board of Supervisors, supra*, 88 Cal.App.3d at 408-409 (quoting *Natural Resources Defense Council v. Callaway* (2d Cir. 1975) 524 F.2d 79.) Ignoring prospective cumulative effects “could be to risk ecological disaster.” *Id.* Furthermore:

the significance of an activity depends upon the setting. (Guidelines § 15064, subd. (b)). The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

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Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718.

Instead of analyzing the cumulative impacts of past, present, and reasonably foreseeable future development, as required, the DEIR instead focuses on the *Project's* impacts. The DEIR concludes the Project will not have cumulative impacts during the construction phase because this phase will be conducted “in accordance with SCAQMD methodology.” Regarding the operation of the Project, the DEIR summarily states “implementation of the DLVSP would create significant cumulative impacts to air quality.

Here, the City’s cumulative impacts analysis fails to satisfy the purpose of disclosing the Project’s impacts in relation to other nearby development. This analysis fails to adequately quantify or otherwise explain the Project’s contribution to cumulative air quality impacts.

Biological Resources

The City’s evaluation of biological resources fails to provide adequate species baseline, and it fails to supply adequate mitigation for the Project.

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The City does not discuss the potential for occurrence of several species the U.S. Fish and Wildlife Service (USFWS) has identified as being potentially present on the site, including the southwestern willow flycatcher and various migratory birds. (See Attachment 2). The City rightly recognizes the burrowing owl is a California Species of Special Concern, as well as a

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migratory bird protected by the Migratory Bird Treaty Act (DEIR p. 4.4-5). However, the DEIR fails to mention or otherwise address the potential for several other migratory birds to use the Project site as nesting and feeding habitat. Please provide all required information regarding the potential presence of all species not mentioned in the DEIR, as well as any necessary mitigation to avoid or reduce impacts to these species.

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The DEIR does not mention the need for the Project applicant to obtain an Incidental Take Statement or Incidental Take Permit prior to commencing development activities on the Project site. Although the portion of the Project that falls within the Willow Hole Conservation Area may have already received authorization to incidentally take certain state and federally protected species, no such authorization has been obtained for the remainder of the Project site. As indicated by the presence of land that falls within the Coachella Valley Multi-Species Habitat Conservation Plan (CVMSHCP), the Project contains land suitable as habitat for a variety of protected species. If development were to occur prior to obtaining federal and state approval, this would likely result in the unauthorized take of species protected under the state and federal Endangered Species Acts.

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Finally, the DEIR states the Project applicant must undergo later Joint Project Review to ensure MSHCP implementation. After the Project applicant submits its application to relevant agencies, "impacts to covered species within the Conservation Area would be discussed." (DEIR p. 1-15). First, it is unclear why the City considers simply discussing impacts to be sufficient mitigation. Second, the City appears to propose deferred mitigation regarding impacts to species protected under the CVMSHCP. Without providing further detail regarding proposed mitigation to address any potential impacts, decisionmakers and members of the public are unable to understand or provide commentary on the suitability of any mitigation the City or other agencies may eventually propose. The City must provide detailed and binding mitigation for any potential environmental impact.

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Greenhouse Gas Emissions

As an initial matter, the City has not provided Section 4.7 in the copy of the DEIR circulated to the Public online. The online version of the DEIR jumps from Section 4.6 (Geology and Soils) to 4.8 (Hazards and Hazardous Materials). The City should recirculate the DEIR with Section 4.7 contained therein and provide members of the public additional time to review and comment on this section.

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Appendix B contains a cursory analysis of greenhouse gas impacts, but does not provide an analysis or full discussion of these impacts, or any of the proposed mitigation. Appendix B

cannot be considered a substitute for the City's full analysis on one of the most important aspects of the Project.

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The limited information contained in Appendix B is troubling. For instance, Appendix B states the Project will generate 29,954 tons of CO₂-equivalent annually. The City's Greenhouse Gas Plan requires the City to reduce its greenhouse gas emissions by roughly 51,000 metric tons of CO₂-equivalent each year. (See Attachment 3). In contrast, the Project proposes *adding* approximately 30,000 tons of CO₂ emissions annually, effectively negating the majority of the City's planned reductions required to meet its AB-32 and Greenhouse Gas Plan goals:

When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

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14 Cal. Code Regs. §15064 (h)(3) (emphasis added).

Instead of maintaining a constant rate of GHG emissions reductions after 2020, as required by Executive Order No. S-3-05, the County admits that GHG emissions will instead increase after 2020. Thus, the County's own documents demonstrate that the CAP and Thresholds project will not meet the requirements of Assembly Bill No. 32 and Executive Order No. S-3-05 and thus will have significant impacts that had not previously been addressed in the general plan update PEIR.

Sierra Club v. County of San Diego (2014) 231 Cal.App.4th 1152, 1175.

Regardless of the Project's negation of 60 percent of the City's Greenhouse Gas Plan reductions, Appendix B determines the Project is consistent with this plan, based on analysis of eleven of the Plan Policies. In reaching this conclusion, Appendix B fails to address the Project's consistency with several other applicable policies. For instance, although the City states a large part of the Project's emissions will be created through transportation, Appendix B does not assess the Project's consistency with any of the City's transportation policies. There is also no discussion of consistency with any Additionally, Appendix B does not discuss the potential for the Project to be subject to energy audits, the summer discount program, or residential or hotel reduction goals:

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The City must provide additional analysis of projected emissions, and assess whether the Project could, under any circumstances, be consistent with the City's Climate Action Plan goals. See *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

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Hazards and Hazardous Materials

The City's proposed mitigation in the Hazards and Hazardous Materials section unacceptably defers the formulation of much of this mitigation to a later date. CEQA demands that the City analyze the impacts associated with the Parks Master Plan and not defer the analysis. The CEQA Guidelines state that "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency..." 14 Cal. Code Regs. § 15378(a). A project is defined broadly in order to maximize environmental protection. *City of Santee v. County of San Diego (Santee)* (1989) 214 Cal.App.3d 1438, 1452; *McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds). A project must be defined and accurately described to ensure an "intelligent evaluation of the potential environmental effects of a proposed activity." *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592 (citing *McQueen v. Bd. of Directors, supra*, 202 Cal.App.3d at 1143-44). "A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole." *Id.*

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The City makes conclusory statements regarding environmental impacts without any analysis, and illegally defers the analysis. It must address the potential impacts associated with the improvements contemplated by the Project, even if the exact alignment of the trails or location of dog facilities are unknown. An "agency should not be allowed to hide behind its own failure to gather relevant data." *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408.

CEQA advances a policy of requiring an agency to evaluate the environmental effects of a project at the earliest possible stage in the planning process. We conclude that, by failing to accurately describe the agency action and by deferring full environmental assessment of the consequences of such action, the County has failed to comply with CEQA's policy and requirements.

Id., at 410 (emphasis added). "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. [Citations]." *Sundstrom v. County of Mendocino*

(1988) 202 Cal.App.3d 296, 307. “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Citations].” *Id.* at 307; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

Courts have consistently held that

it is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved.

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Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, 906 (citing *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621; *Sundstrom v. County of Mendocino, supra*, 202 Cal.App.3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1359).

Here, while the City states hazardous waste management may be required, the City defers the formulation of this waste management mitigation to a later date. This is true for any proposal to recycle onsite water, to dispose of toxic cannabis production byproducts, for the creation of a Storm Water Pollution Prevention Plan, the Hazardous Materials Business Emergency Plan, and the Spill Prevention Countermeasures Contingency Plan. The City knows what uses are proposed for the Project, and which toxic materials the Project may produce, transport, and manage. It is unacceptable to defer disclosure of these potential hazards until after Project approval, and to not set binding mitigation to address these impacts now.

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Hydrology and Water Quality

The DEIR provides two “options” for the provision of water to the Project. “Option 1” would require the Mission Springs Water District to request LAFCo annexation of the Project site to provide water service to the Project. “Option 2” would involve the Project applicant to receive all its water onsite by drilling and pumping its own well. To add to the confusion, the City also discusses the possibility of the Project being supplied by the water district with jurisdiction over the Project but at some point (and without an adequate explanation) dismisses this as an option.

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The Public cannot adequately or fairly comment on the Project’s water impacts because the City has failed to analyze which option the Project will be permitted under. The City’s

failure to require one possible water source for the Project is troubling, because members of the public and decisionmakers are unable to ascertain the true impacts of the Project without this information.

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To add to these concerns, the DEIR does not provide an adequate discussion of cumulative impacts. In place of a discussion that would provide the scope and potential for cumulative impacts, the City summarily states, “the project would contribute to a cumulative increase in groundwater demand that could result in overdraft if no countermeasures are enforced.” (DEIR p. 4.9-17). This impacts analysis does not identify, quantitatively or qualitatively, or with evidence, the extent of or potential for these cumulative impacts.

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Finally, the City assumes that 30% of the water the Project uses for cannabis cultivation would be recycled as a “standard practice in medical marijuana cultivation.” However, the City does not require water recycling as mitigation. Because this will not be required as mitigation, the City cannot rely on this water savings.

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Population and Housing

The City determined the Project will not contribute significantly to population and housing impacts. In 2016 the City had an approximate population of 28,500. The Project, alone, is projected to increase this population by almost 7,000, which would account for a 25 percent increase from the City’s baseline population. (DEIR 4.13-3). Yet, the City determined the Project would have a less than significant impact prior to mitigation.

It is difficult to imagine a scenario where a 25 percent increase in a City’s population based on the creation of one project would *not* have a significant impact on population and housing. Regardless, the analysis in the DEIR is fundamentally lacking because it fails to assess cumulative impacts from other present and reasonably foreseeable development projects in the City. Even assuming the City has sufficient housing for the Project, which it does not, the City has provided no evidence to suggest the Project, in conjunction with other permitted and future cannabis projects, would have no cumulatively significant impact on population and housing in the City. As the City is well aware, its permissive stance towards cannabis cultivation and its attempts to become a tourist destination have attracted cannabis-related businesses to the City in droves. (See Attachment 4). The City’s statement that there are no cumulative growth-inducing impacts from these other projects cannot be supported by substantial evidence, as all evidence suggests the opposite. (See, *e.g.*, DEIR p. 4-3).

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Utilities and Public Services

Finally, the City states impacts to other utilities and public services will be less than significant, prior to mitigation. In the Public Services section, the City states the Project would not impact public services because it “would not substantially impact population growth in the City because there is no residential development proposed within the DLVSP.” (DEIR pp. 4.14-7—4.14-8). This statement is incorrect for at least two reasons. First, there *is* residential development proposed within the DLVSP. First, the Project would be permitted to construct dwelling units. (See, e.g., DEIR p. 6-9). Second, the fact that the Project does not propose housing to accommodate the approximately 7,000 residents speaks volumes to the impacts to utilities and public services the Project *will* place on the City, not the opposite.

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The Project is noteworthy for its relative distance from public services. Police and fire stations are miles away from the Project, yet the Project would add an approximate 2,212 workers on-site, not counting any cannabis tourism. The DEIR fails to provide City and regional labor statistics, but the operation of the Project, alone, would represent over seven percent of the entire population of the City today. Because the Project will provide a hub for marijuana purchase and consumption, the Project has the potential to require higher than normal public service use.

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Conclusion

Southwest Carpenters thanks the City for the opportunity to comment on its DEIR and look forward to commenting on the City’s subsequent environmental review documents when these documents are released for public review.

Moving forward, please send all future notices relating to this Project to Nicholas Whipps at nwhipps@wittweparkin.com. Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP



Nicholas Whipps

Mr. Craig Ewing, Consulting Planner
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Attachments:

1. Google Maps views from Project site.
2. USFWS Information for Planning and Consulting Report
3. Summary of City of Desert Hot Springs Climate Action Plan Measures
4. Articles re: City of Desert Hot Springs' Attempts to Attract Cannabis Businesses