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September 22, 2025

VIA EMAIL

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Re: Comment on Addendum to Mitigated Negative Declaration and Environmental Assessment 2002-453 (SCH No. 1999081020) for the SilverRock Resort Project
September 22, 2025 City Council Special Meeting Agenda Item 1

Dear Mayor Evans, Mayor Pro Tem McGarrey, Honorable Councilmembers and Ms. Flores:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the SilverRock Resort Project (Development Agreement 2025-0001 (Reinstated and Amended DA 2014-0001) Environmental Assessment 2025-0002 (Addendum No. 3 To EA 2002-453)), which proposes to develop one hotel with approximately 154 keys, 55,000 square foot banquet/shared use facilities, 445 residences, 40,000 square foot commercial area, 17,000 square foot public golf clubhouse, 20,000 square foot residential amenities building, and a 18-hole golf course on a partially vacant site south of Avenue 52 and west of Jefferson Street ("Project"), to be heard as Agenda Item 1 at the City Council's Special Meeting on September 22, 2025.

SAFER objects to the City's action for two reasons. First, the City has failed to provide adequate notice of this action under the Brown Act. The City is taking action at a special meeting of the City Council today, Sept. 22, 2025 at 4:00 p.m. However, the City did not provide any adequate notice of this hearing. Notice was allegedly posted on Friday, September 19, 2025 at an unspecified time. However, the notice is not in the normal section of the City's website for City Council Agendas are posted. In fact, the City's website indicates that there is no City Council meeting at all today, and that the next meeting is on

October 7, 2025. This is plainly inadequate notice under the Brown Act. The City should reschedule the City Council meeting and provide legally adequate public notice.

Second, SAFER objects to the City's reliance on an Addendum to a 2002 Mitigated Negative Declaration ("MND") and Environmental Assessment 2002-453 (SCH No. 1999081020), certified in 2002 for the Project. Under the California Environmental Quality Act ("CEQA"), an addendum is not appropriate because the Project is not within the scope of the prior MND and there is new information available since certification of the 2002 MND indicating new significant impacts and/or the availability of new mitigation measures. Therefore, SAFER requests that the City Council refrain from taking any action on the Project at this time and, instead, direct staff to prepare an initial study for the Project, followed by a project-specific EIR or negative declaration as required by CEQA.

I. THE CITY FAILED TO PROVIDE ADEQAUTE NOTICE OF TODAY'S MEETING UNDER THE BROWN ACT.

The City proposes to approve the Project today, September 22, 2025 at 4:00 p.m. at a special meeting of the City Council. However, the City has not provided adequate notice under CEQA and the Brown Act. Therefore, the City should reschedule the meeting and provide adequate public notice.

The City's office website has a link to City Council meetings and agendas:

https://www.laquintaca.gov/business/city-council/city-council-agendas/

That official web page lists no meeting at all for today, and states that the next City council meeting will be held on October 7, 2025. Any reasonable member of the public would be led to believe that there is no City Council meeting today at all.

After contacting the City Clerk, our staff was informed that the meeting was listed on a different, obscure section of the City's website sometime on Friday, September 19, 2025. This web link is very difficult to find and is not on the official City Council agenda's section of the website. Also, even if this were adequate public notice (which it is not), it was posted less than two business days prior to the meeting, instead of the minimum of 72-hours' notice required by the Ralph M. Brown Act ("Brown Act") for posting an agenda before the regular meeting of a local agency's legislative body. (AR887; Cal. Gov. Code § 54954, subd. (a); *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140; Cal. Gov. Code §§ 54954, subd. (a), 54954.2.) Also, even if the notice were minimally adequate under the Brown Act, it did not provide the "ample notice" required by CEQA.

The requirement to exhaust administrative remedies does not apply when an agency finds that a project is exempt from CEQA review and files a notice of exemption without providing the public "ample notice" of the exemption or an opportunity to express objections to the claimed exemption before project approval. (*Hines v. Cal. Coastal Comm'n* (2010) 186

Cal.App.4th 830, 854-55; *Tomlinson v. Cnty. of Alameda* (2012) 54 Cal.App.4th 281, 290; *City of Pasadena v. State* (1993) 14 Cal.App.4th 810.) This rule should apply equally to CEQA addenda, since the addendum is essentially a finding that no further CEQA review is required for a project modification. The exhaustion requirement applies only when the agency provides a CEQA public comment period or there is a public agency hearing before the notice of agency determination is filed. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1210.) Thus, when an agency holds a public hearing for a project but does not provide the public with adequate notice that a CEQA exemption will be considered, the requirement to exhaust remedies on the CEQA claim does not apply. (*Los Angeles Dept. of Water & Power v. Cnty. of Inyo* (2021) 67 Cal.App.5th 1018, 1034 ("*LADWP v. Inyo*") ("When an agency holds a hearing but does not provide adequate notice that a CEQA exemption will be considered, the requirement to exhaust remedies on the CEQA claim does not apply.")) To trigger the exhaustion requirement, the agency must provide an adequate "'opportunity for members of the public to raise ... objections' to County's reliance on the two CEQA exemptions." (*Id.* at 1034-5, citing § 21177(e).) The exhaustion does not apply at all, "When an agency holds a hearing but does not provide adequate notice that a CEQA exemption will be considered, the requirement to exhaust remedies on the CEQA claim does not apply." (*Id.* at 1034.)

The *Tomlinson* court held that exhaustion of administrative remedies was required when the petitioner had four months' notice that the county intended to exempt the project from CEQA review. (*Tomlinson*, 54 Cal.App.4th at 290.) Likewise, in *Arcadians for Env't Pres. v. City of Arcadia* (2023) 88 Cal.App.5th 418, 433 (*Arcadians*), the court held that a general request for an EIR was insufficient exhaustion of administrative remedies to challenge a CEQA exemption when the public had over three months' notice of the city's intention to exempt the project from CEQA review. By contrast, in *LADWP v. Inyo*, the agency did not mention CEQA until only a few days before the final hearing. Under those circumstances, the court held that there was not "ample opportunity" for the public to raise CEQA comments, and no exhaustion was required. (*LADWP v. Inyo*, 67Cal.App.5th at 1035.)

Here, as in *LADWP v. Inyo*, the City did not provide the public with "ample notice" of their intent to avoid CEQA review through the use of an addendum. Whereas the petitioners in *Tomlinson* and *Arcadians* had months of notice of the agencies' intent to exempt the projects from CEQA review, here, the City failed to provide any notice of the special city council meeting on the City's official website listing City Council meetings and agendas. Any reasonable person looking at the City's office website would believe that there is no meeting until October 7, 2025.

Even if the City's notice on Friday, September 19, 2025, on an improper location of the City's website, was found to be adequate, it failed to provide the requisite 72-hours notice. The inadequate notice was posted less than two business days before the night of the vote. The public thus had at most two business days' notice of the City's intent to exempt the Project from CEQA review using a CEQA addendum, which does not constitute "ample

time" for the public to exhaust its administrative remedies. Until that time, the public had no idea that the City intended to exempt the Project entirely from all CEQA review, or the basis for the City's CEQA exemptions. No reasonable person could have responded to these claims for exemption over the weekend. Therefore, the public cannot be held to a high standard of exhaustion.

II. THE CEQA ADDENDUM IS LEGALLY INADEQUATE.

The City proposes to approve the Project based on an addendum to a mitigated negative declaration prepared in 2002. This is despite the fact that the revised Project will add 1690 people to the City, increasing the City's population by 9.9 percent, which will have environmental effects on traffic, public services (schools, police, fire, sewage, etc.), air quality, water supply, growth inducement and almost all other effects analyzed in the 2002 mitigated negative declaration ("MND"). A supplemental CEQA document is required to analyze the Project and to mitigate its increased impacts.

A. LEGAL STANDARD.

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("*Laurel Heights II*") 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

Preparation of an Addendum Under CEQA

Here, the City has prepared an addendum to the previously certified 2002 MND. Pursuant to the CEQA Guidelines, "[a[n addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred." (CEQA Guidelines § 15164(b).) an addendum is not appropriate when:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to **the involvement of new significant environmental effects or a substantial increase** in the severity of previously identified significant effects;
(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously

identified significant effects; or

(3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have **one or more significant effects not discussed in the previous EIR or negative declaration**;

(B) Significant effects previously examined will be **substantially more severe** than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Importantly, where, as here, the previous CEQA document is an MND rather than an environmental impact report ("EIR"), the fair argument standard of review applies. As the California Supreme Court has explained,

> [T]he inquiry prescribed by the Guidelines is not whether the environmental impacts of the modification are significant, but whether the modification requires major revisions to the negative declaration because of the involvement of new, potentially significant environmental effects that had not previously been considered in connection with the earlier environmental study." (*Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Comm. Coll. Dist.* (2016) 1 Cal.5th 937, 958 n.6 ("*San Mateo Gardens*").)

The court in *San Mateo Gardens* further explained that an addendum is not appropriate "if the proposed modification ***may*** produce a significant environmental effect that had not previously been studied." (*San Mateo Gardens*, 1 Cal.5th at 958.)

Tiering Under CEQA

CEQA permits agencies to 'tier' CEQA documents, in which general matters and environmental effects are considered in a document "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [environmental review] which incorporate by reference the discussion in any prior [environmental review] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." (Cal. Pub. Res. Code ("PRC") § 21068.5.) "[T]iering is appropriate when it helps a public agency to focus upon the issues

ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [environmental reviews]." (*Id.* § 21093.) CEQA regulations strongly promote tiering of environmental review.

"Later activities in the program must be examined in light of the program [document] to determine whether an additional environmental document must be prepared." (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the program. (*Id.* § 15168(c)(2).) If a later project is outside the scope of the program, then it is treated as a separate project and the previous environmental review may not be relied upon in further review. (*See Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320–21.) The second consideration is whether the "later activity would have effects that were not examined in the program." (14 CCR § 15168(c)(1).) A program environmental review may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project . . . ." (*Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171 [quoting *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615].) If the program environmental review does not evaluate the environmental impacts of the project, a tiered [CEQA document] must be completed before the project is approved. (*Id.* at 1184.)

For these inquiries, the "fair argument test" applies. (*Sierra Club*, 6 Cal.App.4th at 1318; *see also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., 'the sufficiency of the evidence to support a fair argument.'" [quoting *Sierra Club*, 6 Cal.App.4th at 1318]).) Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Sierra Club*, 6 Cal.App.4th at 1316 [quotations and citations omitted].) When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (*Id.* at 1318.) "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." (*Id.* at 1319.)

B. The Revised Project Wil have Significant New Impacts.

1. Growth Inducement.

The Addendum states that the Revised Project will at 1690 new residents to the City of La Quinta, which constitutes a 9.9 percent increase in population. (Addendum 3.0-8). This is a massive percentage increase in population, despite the Addendum's conclusion to the contrary. This growth will impact the Project's impacts on water supply, traffic, schools

and other public services, air pollution and all manner of impacts. It must be analyzed in a supplemental CEQA document.

2. Traffic.

The increase in 1690 persons will increase the Project's traffic impacts. The Addendum analyzes traffic impacts using level of service (LOS) analysis and concludes the impacts would be less than significant. However, as of 2020 CEQA requires traffic impacts to be analyzed using vehicle miles travelled (VMT) analysis. CEQA was amended to require traffic analysis using vehicle miles travelled (VMT) rather than level of service (LOS). (CEQA Guidelines Section 15064.3.) By July 1, 2020, all CEQA lead agencies must analyze a project's transportation impacts using vehicle miles traveled (VMT). VMT measures the per capita number of car trips generated by a project and distances cars will travel to and from a project, rather than congestion levels at intersections (level of service or "LOS," graded on a scale of A – F). The 2002 MND and the 2025 Addendum used LOS analysis, not VMT. The Revised Project's traffic impacts must be analyzed under the new VMT methodology consistent with Section 15064.3. (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 626.) The City must apply the law as it exists at the current time, not the law from 2002. (*W. Adams Heritage Assn. v. City of Los Angeles* (2025) 106 Cal.App.5th 395, 439–40.) It is almost certain that the Project's increased population will have significant VMT impacts given the Project's remote rural location.

3. Air Quality.

The increase in population of 1690 new residents will increase the Project's air quality impacts. The Addendum calculates that the Revised Project will generate VOC emissions of 52.2 pounds per day – just slightly below the CEQA threshold of 55 pounds per day. This level is close enough to create a fair argument that the project may have significant air quality impacts.

4. Valley Fever.

A supplemental CEQA document is required to analyze the Project's Valley Fever impacts. The state is experiencing a significant increase in Valley Fever – increasing by over 10 times since the 2002 MND. According to the Centers for Disease Control ("CDC") (https://www.cdc.gov/features/valleyfever/index.html):

> Valley fever is a fungal lung infection that can be devastating… Valley fever is an infection caused by a fungus that lives in the soil. About 10,000 cases are reported in the United States each year, mostly from Arizona and California. Valley fever can be misdiagnosed because its symptoms are similar to those of other illnesses. Here are some important things to know about Valley fever, also called coccidioidomycosis.

From soil to lungs

The fungus that causes Valley fever, Coccidioides, is found in the southwestern United States, parts of Mexico and Central America, and parts of South America…

Many people who are exposed to the fungus never have symptoms. Other people may have flu-like symptoms, including:

Fatigue (tiredness)
Cough
Fever
Shortness of breath
Headache
Night sweats
Muscle aches or joint pain
Rash on upper body or legs

The symptoms of Valley fever can be similar to those of other common illnesses, which may cause delays in getting patients correctly diagnosed and treated. For many people, symptoms will go away without any treatment, after weeks or months. Healthcare providers prescribe antifungal medication for some people to try to reduce symptoms or prevent the infection from getting worse. People who have severe lung infections or infections that have spread to other parts of the body always need antifungal treatment and may need to stay in the hospital.

According to the Los Angeles County Department of Public Health (http://publichealth.lacounty.gov/acd/Diseases/Cocci.htm):

Blacks, Latinos, Native Americans, Filipinos, males, pregnant women, the very young (<5 years), elderly, and immunocompromised individuals are at high risk for severe disease.

According to the California Department of Public Health (CDPH), a significant increase in Valley Fever cases occurred in 2017. CDPH also states (https://www.cdph.ca.gov/Programs/OPA/Pages/NR18-041.aspx):

Most infected people will not show signs of illness. Those who do become ill with Valley Fever may have flu-like symptoms that can last for two weeks or more. While most people recover fully, some may develop more severe complications which include pneumonia, or infection of the brain, joints, bone, skin, or other organs. There is currently no vaccine, but antifungal medications are available. Individuals should specifically ask their health care provider about Valley Fever if they think they may be infected.

People who live, work, or travel in Valley Fever areas are also at higher risk of getting infected, especially if they work outdoors or participate in activities where soil is disturbed.

The 2002 MND did not analyze the significant increase in Valley Fever that the state is recently experiencing. Construction workers and others are at particular risk of contracting this disease. Supplemental CEQA review is required to analyze the impact and to adopt feasible mitigation measures.

III. CONCLUSION.

For the reasons set forth above, the City should cancel today's special meeting of the city council because the City failed to provide adequate public notice of the meeting under the Brown Act and CEQA. Supplemental CEQA review is required for the Project because it will have significant new impacts that were not analyzed in the 2002 MND because it will add 1690 new residents to the City of La Quinta, increasing the City's population by almost 10 percent.

Sincerely,

Richard Drury
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