



October 27, 2020

Sent Via Email to: [\[COB@RIVCO.ORG\]](mailto:COB@RIVCO.ORG)

Riverside County Board of Supervisors
4080 Lemon Street, 1st. Floor
Riverside, California 92501

Re: Thermal Beach Club (Item 21 - PUBLIC HEARING on SUBSTANTIAL CONFORMANCE No. 3 to SPECIFIC PLAN NO. 303 (Kohl Ranch), CHANGE OF ZONE NO. 1900027, ORDINANCE NO. 348.4915, PLOT PLAN NO. 180037, and TENTATIVE TRACT MAP NO. 37269 – Intent to Consider Addendum No. 9 to Certified Environmental Impact Report No. 396 (EIR396)

Dear Supervisors:

On behalf of and in partnership with the unincorporated association ECV No Se Vende (“No Se Vende”) and its members living in the Eastern Coachella Valley,¹¹ and in partnership with the National Parks Conservation Association, we reiterate issues raised in our previous correspondence regarding the proposed Thermal Beach Club Project (“Beach Club Project” or “Beach Club”) as part of the Kohl Ranch Specific Plan (“Kohl Ranch SP”), specifically our letter to the Board of Supervisors dated November 19, 2019 (“11/19 letter”) (incorporated herein and attached for your convenience); address the County’s responses to our 11/19 letter; and raise additional items of concern. These comments are supported by expert analysis completed by EKI Environment & Water (the “EKI analysis”). We incorporate the EKI analysis herein and attach the EKI Analysis to our formal comments. (The EKI analysis begins on page 27 of the PDF attachment included with our comments.)

The Eastern Coachella Valley is home to rich natural assets and enviable human capital. Yet, severe deficiencies in basic infrastructure persist throughout the region, including within yards of

¹ We consider the Eastern Coachella Valley to include the unincorporated communities of North Shore, Oasis, Mecca, and Thermal, as well as the incorporated cities of Coachella and Indio.

the proposed Beach Club Project. Thousands of families lack access to safe drinking water, thousands live in dilapidated housing, and for many, waking up with no running water is a common occurrence. For the thousands of families that live without reliable running water, or safe water, in their homes; there isn't an abundance of water. When considering the thousands of people living in dilapidated homes within steps of the proposed Beach Club's gates, the fact that the most basic Beach Club buy-in fees (actual house not included) are six or seven *times* median household income² in Thermal would seem farcical if the situation weren't so tragic, and if the project weren't before the Board of Supervisors today.

The Thermal Beach Club website includes the following admonition:

Own a piece of paradise – an exquisite villa estate set amidst a 20-acre clear blue lagoon and surrounded by a state-of-the-art luxury playground. . . The Thermal Beach Club's lifestyle is designed for thrills, relaxation and making memories for generations to come. Many envision a life of luxury and unbridled adventure, but few truly seek it out.

There is currently no park, no playground, no pool in the town of Thermal.

Approval of Environmental Impact Report 396 Addendum No. 9 Would Violate Several Local, State, and Federal Mandates.

Riverside County must not approve Environmental Impact Report 396 Addendum No.9 (EIR 396 Addendum No.9 or Addendum No.9) and the associated land use proposals and entitlements because doing so would violate local, state, and federal mandates, including, but not limited to the California Environmental Quality Act, Water Code Section 10910 *et seq.*, California Housing Element Law, and Federal and State requirements to affirmatively further fair housing and prevent segregation. Additionally, the Beach Club Project, as proposed, constitutes waste and unreasonable use of water and threatens to violate the Public Trust Doctrine. Finally, our analysis of water use demonstrates that development and operations of the Beach Club would violate the local water district's Maximum Applied of Water Allowance (MAWA).

Approval of EIR 396 Addendum No.9 Would Violate the California Environmental Quality And Water Code Section 10910 *et seq.*

The Beach Club Project represents a substantial change to the Kohl Ranch SP in several respects, most notably the proposed change of a still lake to surf lagoon with six seven-foot waves every second, the addition of a high water use private clubhouse facility, the addition of a three acre reservoir, and changes in land uses and density. Changes of such significance and changes that implicate such intensification of water use demand a subsequent EIR and updated water supply assessment.

The County Did Not Respond in any way to Several Issues Raised in Our 11/19 letter

² Base membership at Thermal Beach Club is marketed at \$175,000 according to the Thermal Beach Club website (<https://www.thermalbeachclub.com/membership>) with full membership valued at \$1,000,000. This does not cover the cost of a house - required by membership - nor does it include monthly fees. Available data shows that median household income in Thermal is between \$25,000 and \$30,000

In the County's response to our 11/19 letter, the County did not respond to our comments regarding

- Increased water use associated with the addition of the clubhouse facilities
- Inconsistencies with respect to the size of the surf lagoon in different planning documents and informational memos in which descriptions of the surf lagoon vary between 20.6 acres and 22 acres³
- Inconsistencies with respect to the size of the clubhouse facilities
- The Discriminatory *effects* of the resort, pursuant Title VIII of the Civil Rights Act of 1968.

The County's failure to provide a stable project description constitutes a CEQA violation (County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185 (1977) (“[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.”)).

Additionally, despite substantial changes to the project and despite many requests for information, neither the County nor the applicant has provided adequate information to the surrounding community, and neither has provided information in Spanish, the dominant language in the area.

The County's Responses to Comments Regarding Increased Water Use Based on the Change from a Still Lake to a Surf Lagoon Underestimate the Evaporation Rate of a Surf Lagoon

The County initiates its response to comments in our 11/19 letter by implying that there was no proposed change with respect to the nature of the water feature at Thermal Beach Club: “While it was fair to assume that the lake proposed in SP303A4 would be still, it however makes no claims to the lake being still or not.”⁴ However, the very first component of the project description in the Planning Commission packet describing proposed changes to the project is labeled: “Surf Lagoon.”⁵ Without clear and consistent project descriptions, it is impossible to assess if environmental assessments are accurate and, accordingly, if the project substantially conforms with previously approved iterations.

Riverside County responded to LCJA's comments regarding increased use of water for a wave pool as compared to a still lake, as follows:

Further, Commenter implies that the surf lagoon.....will have increased significant water demands because a still lake will be converted to a surf Lagoon. Commenter doesn't provide any evidence to consider with respect to moving water versus still water. Our analysis based on CVWD's Landscape Ordinance 1302.4, has the increased water demand for the surf lagoon as 0.43 percent of the MAWA for the TBC more than a still lake.⁶

³ The County did clarify that the description we pointed to of a 30 acre surf lagoon included the area of the surf lagoon and related amenities, however various planning documents and project descriptions include different size descriptions for the Surf Lagoon including 21 acres (PC Agenda Packet, p. 1; Riverside County Agenda for 10/27/20 description for Agenda Item 21), 22 acres (PC Agenda Packet p. 12, Specific Pan 303A4) and 20.6 Acres (Correspondence from Albert A. Webb Associates dated May 4, 2020)

⁴ County of Riverside Response to Comments included in 11/19 Letter, B-3

⁵ PC Agenda Packet, P. 1

⁶ County of Riverside Response to Comments included in 11/19 Letter, B-12

As an initial matter, Leadership Counsel did provide evidence that a moving water would significantly increase water demand. Relying on EKI's expert report, which in turn relied on CVWD's own assessments, we included the following points and calculations in our 11/19 letter.

- However, in Table A-2 of the 2011 WSA Appendix A, the unit demand for irrigated landscaping is estimated to be 3.39 AFY/ac, while that for a still lake is estimated at 8.02 AFY/acre. As such, per the 2011 WSA, the unit water demand, even for a still lake, is estimated to be more than twice that of irrigated landscaping (i.e., a park). Based on the WSA prepared by Coachella Valley Water District ("CVWD") for a similar surf lagoon located in Palm Desert (Palm Desert WSA, 2019), the unit water demand for a surf lagoon is estimated to be 13.28 AFY/ac, or roughly four times that of unit demand factor for irrigated landscaping included in the 2011 WSA. As such, it appears that the argument for "substantial conformance" in terms of Surf Lagoon water use as compared to irrigated landscaping and/or a still lake water use is flawed.
- Using surf lagoon-specific water demand factors that were recently employed by CVWD elsewhere (i.e., 13.28 acre-feet per year per acre [AFY/ac]; Palm Desert WSA, 2019), the total water demand for the planned Surf Lagoon alone is estimated to be approximately 292 AFY assuming a 22-acre lagoon. These estimated demands are significantly greater than the 500-unit equivalent demand threshold (i.e., 184.5 AFY).
- The incremental demand associated with the Surf Lagoon is estimated to be between 116 and 221 AFY relative to the water demand estimate for the equivalently-sized lake included in the 2011 WSA (i.e., 176 AFY). The addition of the Clubhouse Village is also expected to have a demand approaching 10 AFY, although no information on the Clubhouse Village demand is presented in the Agenda Packet. As such, even just considering the Surf Lagoon, the incremental volume of demand could exceed the 500-unit equivalent demand threshold (i.e., 184.5 AFY).

Additionally, the County relies on analysis conducted by the Developer's consultant, Albert A. Webb Associates (Webb) which greatly underestimates evaporation from the surf lagoon. Webb argues in its correspondence to Riverside County, dated May 4, 2020⁷ that the TBC will not use as much water as the Desert Surf Project because the Surf Club anticipates draining and filling the lake less often than the Desert surf project. However, Webb's analysis obscures the fact that the replacement of evaporation water (not the draining and refilling of the pool) accounts for the majority of water use. Replacement of evaporated water accounts for 71% of the Desert Surf demand.⁸ This represents a evaporation rate of 9.54 AFY/Acre, already an extremely conservative

⁷ We have attached Webb's correspondences of May 4, 2020 to our comments and include them in our submission. The Webb correspondence begins on page 57 of the PDF attached to our comments.

⁸ EKI Analysis of 10/20/20, p. 19

factor compared to CVWD's own WSA for Desert Surf which estimates evaporation at more than 13 AFY/Ac.⁹ Applying Desert Surf's already conservative analysis for replacement of evaporated water, a 20.56 acre Surf Lagoon results in an estimated water demand of 196 AFY. This is 26% more than Webb estimates for the ETWU for the Surf Lagoon (155.46 AFY, [or 7.56 AFY / Ac based on a 20.6 acre surf lagoon]). Webb uses an inappropriately low "plant factor" of only 1.2 to represent a "moving water body" in the ETWU calculation which is inaccurate given that the Surf Lagoon will be generating significant waves and increasing evaporative water loss. The comparable plant factor used in the Desert Surf calculation was 1.5 (plant factor = ETWU (in gallon) / ETo (in inches) / Area (in square feet) / 0.62).¹⁰

We find it curious that Webb's calculations - the calculations that CVWD and the County rely on in their determination that no EIR or WSA update is necessary - anticipates *less* evaporation from the Surf Lagoon (~7.5 AFY/Ac) than the 2011 WSA estimated for a still lake at 8.02 AFY / Ac.¹¹ The calculations and assumptions in the Webb analysis simply don't add up and vary greatly from similar analyses conducted over the past ten years.

It should also be noted that the Beach Club will produce even more waves per area than Desert Surf, which in turn suggests an even greater rate of evaporation for the Beach Club Surf Lagoon as compared to Desert Surf.

The County has failed to provide an accurate or understandable accounting of the water use of the Surf Lagoon, and the County has not provided any accounting of the water use associated with a three acre reservoir or the increased water use associated with the clubhouse facilities. Our analysis, however, demonstrates significant intensification of water use, such that a subsequent EIR and an updated Water Supply Assessment is necessary.

Increased Groundwater Use Requires Development of a Subsequent EIR and an Updated Water Supply Assessment

In our 11/19 letter, we noted that EIR Addendum 9 conflicts with the relevant sustainable groundwater management plan. The County responded to and obscured our comment by focusing on the Kohl SP's original intent to infiltrate stormwater.¹² As noted by EKI, the County's response implies that the project will not be supplied with any groundwater. However, the Kohl Ranch 2011 WSA states: groundwater may be used during times that Colorado River water is not available. Further, EKI continues, CVWD is the water provider for the site and relies primarily on groundwater for potable water supplies.¹³

As discussed in our comments of 11/19/19 and these comments, and supported by EKI's various

⁹ Palm Desert WSA, 2019

¹⁰ Id.

¹¹ EKI Analysis of 10/20/20, p. 20

¹² County of Riverside Response to Comments included in 11/19 Letter, B-13

¹³ EKI Analysis of 10/20/20, p. 7

analyses, the proposed project will use substantially more water - and thus more groundwater - than the original project. Accordingly, CEQA requires development of a subsequent EIR and the Water Code Section 10910 requires an updated Water Supply Assessment with an updated analysis of groundwater use and groundwater supply.

Changed Circumstances Require Development of a Subsequent EIR and Updated Water Supply Assessment

Additionally, several substantial changes in circumstances have occurred, and new information has become available, since the County certified the Kohl Ranch EIR, including introduction of SGMA, changes in agreements regarding water allocations from the Colorado River, identified drinking water needs in the eastern Coachella Valley, and continued degradation of the Salton Sea.

The first part of Riverside County's response to LCJA's 11/19 comment regarding changed circumstances implies that the project will not rely on groundwater but will rather rely on recycled water and water from the Colorado River. "As such, the proposed Project will utilize a combination of Colorado River water from the All-American Canal and recycled water for landscaping and Colorado Riverwater from the All-American Canal for the lagoon. Domestic water will be provided from CVWD to serve the proposed homes. This potable water is available from allocation of Colorado River water to serve the project's water needs."¹⁴ However, the Kohl Ranch 2011 WSA itself states that groundwater may be used during times that Colorado River water is not available.¹⁵ Additionally, the EIR states that CVWD is the water provider for the site and relies primarily on groundwater for potable water supplies.¹⁶ CVWD's website also states that All drinking or domestic water provided by CVWD comes from the groundwater basin, a source usually referred to as the aquifer.¹⁷

Riverside County goes on to respond with a description of amounts of water available to CVWD pursuant to various contracts. The description is unclear as to CVWD's specific allocation of surface water and focuses on contracted water rights as compared to likely water availability during average and low water years.

Contrary to the County's summary conclusions, the Beach Club will have substantial impacts that have not been analyzed by a EIR. As noted throughout these comments and in previous comments, a substantial change in the Kohl Ranch Specific Plan to change a still water feature into a wave pool, introduction of a three-acre reservoir, and introduction of a clubhouse with a pool, spa and commercial kitchen represent a significant intensification of water use. Even conservative estimates demonstrate a 20% increase in water use for just the surf lagoon. No EIR or other analysis has assessed the impact of water use associated with the clubhouse, the three acre reservoir, or water treatment for the lagoon.

¹⁴ County of Riverside Response to Comments included in 11/19 Letter, B-15

¹⁵ EKI Analysis of 10/20/20, p. 10

¹⁶ Id.

¹⁷ <https://www.cvwd.org/154/Where-does-my-water-come-from>

Finally, we'd like to point out that there are inconsistencies with respect to reasons given for CVWD's extension of the Water Supply Assessment. CVWD's letter of May 5, 2020¹⁸ to Riverside County states the following on page 2:

“On January 12, 2018, CVWD received a memorandum from Webb confirming that there were no significant changes to the Project's WSA / WSV as approved, except for one specific subdivision being prepared for development called the Thermal Beach Club. Pursuant to Water Code Section 10910(h)...CVWD extended the WSA/WSV through January 2023.”

However, in the County's response to Comments states, “Thus, in January 2018, CVWD determined there to be definite physical evidence that construction on the Kohl Ranch had begun prior to the end of the 5-year review deadline and CVWD was notified when the project began construction.”¹⁹

As noted above and repeated throughout, a subsequent EIR and updated Water Supply Assessment are necessary to evaluate the substantial changes to the project and intensified uses of the project, especially with respect to water. Additionally, pursuant to Public Resources Code Section 21166 a new Environmental Impact Statement that includes a revised WSA is required here because there has been substantial changes in the project, environmental impact report and new information has become available.

The County has Failed to Demonstrate Substantial Conformance with Specific Plan 303 (The Kohl Ranch Specific Plan)

As noted in previous comments, the proposed changes to the project represent substantial changes that make a finding of substantial conformance. The Surfing Lagoon will use substantially more water than the still lake and thus represents a significant change and an intensification of use. Additionally, the introduction of a three-acre reservoir and clubhouse facilities represents a substantial modification to the Kohl Ranch SP. Finally, the modified intent of the Beach Club - for use as a vacation resort as opposed to residential neighborhood is a substantial modification to the Kohl Ranch SP.

Inconsistencies with General Plan Programs, Land Use Policies, and Housing Element Requirements

We reiterate our comments that the County has failed to demonstrate how the Beach Club Project, as proposed, complies with specific Housing Element and Land Use Programs.

The County's Land Use Policy 28.9 “requires residential Projects to be designed to maximize integration with and connectivity to nearby community centers, rural villages, and neighborhood centers.” This Beach Club project continues to be inconsistent with LU28.9. The County's response

¹⁸ CVWD's May 5th letter to the County is included in the attachment that accompanies our comments. The letter begins on page 65 of the PDF

¹⁹ County of Riverside Response to Comments included in 11/19 Letter, B-16

to LCJA’s 11/19 comment regarding the County’s failure to demonstrate how the project would maximize integration and connectivity to surrounding community centers, rural villages, and neighborhood centers is insufficient. The County mistakenly claims that since there is no development within the Project’s surrounding area to provide connectivity, the project need not provide any connection. However, the County fails to recognize the Surrounding General Plan Land Use Designations north and west of the Project.²⁰ Specifically, the North and West encompass Medium Density Residential designations and the West encompasses Commercial Retail designations. Also, the Project’s site location is located within the Kohl Ranch Specific Plan, whose General Plan Foundation Component is Community Development.²¹ The goal of Community Development designated areas is to accommodate a balance of jobs, housing, and services within communities.²² Therefore, because there is in fact development within the project’s surrounding area and the Project’s designated area is Community Development, the County once again has failed to show how it will connect to surrounding community centers, rural villages, and neighborhood centers as required.

The County has failed to sufficiently show efforts to implement Housing Element Program 1.2e which requires the County to provide for the inclusion of mixed-income housing in future new growth areas of the county through development agreements and other mechanisms. The County responded by stating that “through the County’s efforts to designate lands for high density and mixed used development, it has the ability to provide housing stock for such households”.²³ However, the County did disclose which particular effort it was referring to. Also, the County stated that “these land use efforts are supplemented with other efforts by the County and in coordination with groups and affordable housing developers to provide the housing stock to meet the needs of lower income households” but it nevertheless failed to specifically name those efforts for reference. Without such critical information, the County has failed to implement Housing Element Program 1.2e.

Finally, the County states that it is currently processing an amendment to the General Plan (GPA No. 190004) to integrate Environmental Justice policies and mapping into the Land Use Element and Healthy Communities Element, pursuant to Senate Bill (SB) 1000.²⁴ It is our understanding that the SB 1000 process has stalled as we have not received any updates as to progress since 2019.

Failure To Comply CVWD Ordinance 1302.4

The County and the Coachella Valley Water District rely on developer’s consultant to assess the proposed Beach Club project’s compliance with CVWD Ordinance 1302.4. Webb’s calculations rely on inaccurate estimates of the Surf Lagoon’s water use (see above) and don’t provide calculations to support estimated water use of clubhouse facilities and a three-acre reservoir. Additionally, as noted in the EKI analysis, Webb relies on extremely aggressive water use estimates for landscaping.

²⁰ PC Agenda Packet, p. 16

²¹ Id., p. 3

²² Riverside County General Plan, Land Use Element, p. LU-58

²³ County of Riverside Response to Comments included in 11/19 Letter, B-32

²⁴ Id.

Webb's own analysis - even including conservative irrigation and inaccurately low water use for recreational activities - shows that the estimated water use will be less than 7 acre feet (or 1%) below the Maximum Applied Water Allowance MAWA pursuant to CVWD's Ordinance 1302.4. Accordingly, the true water use associated with recreational uses will tip the Beach Club project over the MAWA and draw it out of compliance with the 1302.4. Even assuming Webb's evaporation assumptions, a surf lagoon of just 1 acre larger than the 20.6-acre lake Webb assumes (thus the size of the surf lagoon as described in several planning documents) would push the Beach Club over the limit.

Thus, not only does it appear that the Beach Club violates CVWD's water ordinance, but in doing so, the project will also violate CEQA's mandate that the analysis of the project ensures consistency with local ordinances designed to protect the environment.

Failure to Adequately Assess Air Quality Impacts

Addendum No. 9 discloses significant new air quality impacts. EIR396 did not analyze the proposed project's compliance with the South Coast Air Quality Management District's (SCAQMD) 2016 Air Quality Management Plan (AQMP). *See* Addendum No. 9, Environmental Assessment (E.A.) p. 24. The AQMP thresholds, of course, did not exist when the original EIR was certified. In Addendum No. 9, the County acknowledges that the proposed project's "emissions of NO_x will exceed the SCAQMD threshold" under the 2016 AQMP. *Id.* The addendum proposes new mitigation measures to address the NO_x exceedances. However, the mitigation measures need only be implemented "[w]here physically and economically feasible" These exceedances of regulatory emissions levels and proposed mitigation measures were not discussed in EIR396.

Similarly, EIR396 failed to address the proposed project's localized air quality impacts on sensitive receptors including several schools near the project. *See* E.A. p. 25. Addendum No. 9 finds that the proposed project's "emissions of PM-10 will exceed [SCAQMD's localized significance threshold]." E.A. p. 26. This impact was not disclosed in EIR396 and is not a minor or technical change to the original analysis. These new air quality impacts should be subject to public review in a subsequent EIR.

Changed Circumstances Require an Updated Analysis of Impacts to Biological Resources.

EIR396 determined that the project would not impact biological resources. "However, since the adoption of EIR396, Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) was adopted. The project is now located within the boundaries of the CVMSHCP." E.A. p. 28. In other words, the project's location within the boundaries of a federal Endangered Species Act conservation plan was not analyzed in EIR396. Moreover, Addendum No. 9 acknowledges that there may be significant impacts on protected and special status species and proposes mitigation measures. E.A. p. 30-31. This is not a minor or technical change to EIR396, which did not analyze

these impacts or propose mitigation measures. Thus, the County should prepare a subsequent tEIR to analyze the new impacts on biological resources.

The EIR Fails to Adequately Assess Greenhouse Gas Emissions.

Addendum No. 9 admits that the proposed project’s greenhouse gas emissions (GHG) were not analyzed in EIR396. E.A. at p. 50. The failure to analyze GHG emissions in an EIR is a significant omission that cannot be cured through a GHG analysis in an addendum. Moreover, it is not true that “all the information necessary to evaluate GHG emissions generated by the Project was available in EIR396.” On the contrary, EIR396 did not disclose any GHG emissions from the proposed project. The County’s unsupported assumption that the proposed project will comply with the 2018 “Riverside CAP” is insufficient. Although agencies may rely in part on numerical thresholds to determine if GHG emissions are significant, such thresholds “do not relieve the lead agency of its duty to determine the significance of an impact independently.” *Ctr. for Biological Diversity v. Dept. of Fish & Wildlife*, 361 P.3d 342, 357 (Cal. 2015). Thus, the County should conduct a GHG analysis in a subsequent EIR.

Failure to Comply with Fair Housing and Civil Rights Mandates

We reiterate comments from our 11/19 in which we noted that approval of the Thermal Beach Club, and development and operations of the Beach Club itself may violate both state and federal Fair Housing and Civil Rights laws.

We also would like to point to this Board’s unanimous vote declaring racism and inequity a public health crisis at its August 4, 2020 meeting.²⁵ The resolution (No. 2020-179), among other things, condemns systemic racism and commits to prioritize investment of time in promoting equity to address social determinants of health; identify and implement solutions to eliminate systemic inequity in all external services provided by the County including, but not limited to, the following sectors: health, social services, housing, homelessness and workforce, business and community, public works, land use and environment, finance and government and public health; and, implement community-based alternatives to address harms and present trauma. The County further resolved to assess and apply an equity lens to internal policies and practices, adopt preventative measures, develop initiatives and programs to fight systemic racism and implicit bias to further health, wellness and equity in all aspects of community life.

Approval of the Thermal Beach Club runs contrary to the County’s own stated commitment of eliminating systemic racism.

²⁵ http://riversidecountyca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2289

Perpetuation of segregation

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601–3619) prohibits discriminatory effects in the area of housing. Such discriminatory effects can take the form...creating, increasing, reinforcing, or perpetuating segregated housing patterns.³² Segregative-effect claims focus on the harm done to the local community and on how a challenged action affects residential segregation in the area. Courts have found that segregative-effect claims can arise from a defendant’s actions to either oppose or support a project. (*Shannon v. United States Dep’t of Housing & Urban Development* (3d Cir. 1970) 436 F.2d 809.) HUD’s discriminatory-effect regulation requires two elements for a segregative-effect claim: (1) there must be “segregated housing patterns because of race [or other protected characteristic]” in the relevant community; and (2) the defendant’s challenged practice must “create[], increase[], reinforce[], or perpetuate[]” those segregated housing patterns. (24 C.F.R. § 100.500(a).)

Here, the expansion of a resort community that draws affluent vacationers to the almost entirely Latino community of Thermal³³ threatens to perpetuate segregation.

Failure to Affirmatively Further Fair Housing

California Gov. Code 8899.50(a) states that:

Affirmatively furthering fair housing” means *taking meaningful actions*, in addition to combating discrimination, that overcome patterns of segregation and *foster inclusive communities free from barriers that restrict access to opportunity* based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, *replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity*, and fostering and maintaining compliance with civil rights and fair housing laws. (*emphasis added*)

³² 78 FR 11460, 11469 [Implementation of the Fair Housing Act's Discriminatory Effects Standard].

³³ According to the U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Thermal is over 99% Latino.

In contrast to these requirements, the Beach Club Project is likely to exacerbate patterns of segregation.

Waste and Unreasonable Use

Notably, the County's response notes that CVWD puts its water allocation to "reasonable and beneficial use." In reviewing the project and in the context of an increasingly precarious situation for tens of thousands of residents in the eastern Coachella Valley who rely increasingly strained surface water imports, contaminated and / or intermittent groundwater supplies or who are impacted by a subsiding Salton Sea, we contest the conclusion that the use of more than 200 acre feet per year of water for a members-only surf lagoon constitutes a reasonable and beneficial use of water.

The "reasonable and beneficial use" doctrine is codified in the California Constitution. It requires that "the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."²⁶ A determination of reasonableness of a use "cannot be resolved in vacuo isolated from statewide considerations of transcendent importance."²⁷

We find *Joslin v. Marin Municipal Water District* instructive on the present matter. In *Joslin*, the court was weighing the relative importance of water and the conservation thereof with the use of water to mine gravel and sand.

Is it "reasonable," then, that the riches of our streams, which we are charged with conserving in the great public interest, are to be dissipated in the amassing of mere sand and gravel which for aught that appears subserves no public policy? We cannot deem such a use to be in accord with the constitutional mandate that our limited water resources be put only to those beneficial uses "to the fullest extent of which they are capable," that "waste or unreasonable use" be prevented, and that conservation be exercised "in the interest of the people and for the public welfare." (Cal. Const., art. XIV, § 3.) We are satisfied that in the instant case the use of such waters as an

²⁶ Cal Const, Art. X § 2; see also Water Code § 100; *United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 105 ["...superimposed on those basic principles defining water rights is the overriding constitutional limitation that the water be used as reasonably required for the beneficial use to be served."].

²⁷ *Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132, 140.

agent to expose or to carry and deposit sand, gravel and rock, is as a matter of law unreasonable within the meaning of the constitutional amendment.²⁸

We believe that a court would similarly find that the use of more than (and likely much more than) 200 acre feet per year of water to be an unreasonable use in the context of increased drought, dwindling surface water supplies, precarious drinking water supplies, and withering Salton Sea. We similarly contend that allocation of more than 200 acre feet per year, impacting navigable surface waters, for recreational privileges to members of an exclusive club that is cost prohibitive to the surrounding community (just membership, exclusive of monthly dues and the cost of property, *starts* at \$175,000 - between six and seven times the median household income in Thermal) violates public trust doctrine.²⁹

Alleged Community Outreach Was Inadequate

On November 19, 2019, Riverside County and the developer's consultant committed to conducting ongoing and meaningful community outreach and engagement to understand and address the community's concerns with the project. However, these commitments were not met. Meetings with the developer's consultant and individual organizations or agencies were held privately. No open or public community meetings that specifically invited residents were held.

The open community meetings that were held, known as the "Visioning Sessions" were meant to discuss general concerns and hopes that residents from Thermal and Oasis had regarding the future development of and investment in their communities. These meetings were not publicized as meetings to discuss Thermal Beach Club, and Thermal Beach Club was not discussed during those meetings³⁰. Only two of those community visioning sessions were held even though Riverside County committed to continuing them and including the communities of Mecca and North Shore. They were discontinued abruptly after those two sessions.

The only open community meeting meant to directly discuss the project was held on October 14, 2020 at the Thermal and Oasis Community Council. Testimony provided at this special meeting was overwhelmingly in opposition of the project. We are still awaiting minutes and recordings from that meeting, but we estimate that approximately twenty people made comments in opposition to the project; no members of the public (beyond members of the Thermal Oasis Community Council) spoke in support.

²⁸ *Id.* at 140-41

²⁹ *United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 106; *see also Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 426 ["before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests."].

³⁰ https://planning.rctlma.org/Portals/14/AP/ECV/TO_VisioningFlyer_01.18.20_S_E.pdf

The Purported Community Benefits Don't Correct for a Fundamentally Flawed Project and Environmental Assessment

The Developer has touted a variety of “community benefits” that will accompany this project through either incidental benefits to nearby parcels and commitments to provide certain investments and services at some point in the future. The Developer and county have identified certain incidental results of Kohl Ranch’s past developments including expanded water and wastewater infrastructure which in turn has facilitated housing development. While we do not dispute the importance of basic infrastructure and housing, we do dispute that the County, the service provider, affordable housing developers, and community members must rely on the incidental benefits of luxury development for basic necessities of safe drinking water and wastewater service. There are millions of dollars available for basic infrastructure from a variety of state and federal funding sources including the community development block grant program, the state’s infill infrastructure grant program, the state / federal clean water and drinking water revolving loan program (which provides grants to disadvantaged communities), state SB 2 funds, bond funds, and the SAFER program. Additionally, local funds in the form of property taxes, the County’s General Fund, and the County’s allocations of CDBG and other HUD funds. A concerted effort to draw resources to the eastern Coachella Valley could and would surpass the incidental and accidental benefits previous Kohl Ranch developments provided in the area of basic infrastructure.

Kohl Ranch has agreed - or agreed to agree - to provide certain services and investments should development of the Thermal Beach Club proceed. For example, written materials suggest that the Thermal Beach Club is committed to following the lead of other private surf facilities who are working with nearby schools to offer surf curriculum to students by providing surf curriculum to students of the schools located at Avenue 66 and Tyler. No information other than a commitment to consider some access for certain students is provided. More information is necessary to understand the scope of access that people in Thermal and surrounding communities will have to the surf lagoon and / or the extent to which students can access surf facilities at any of the numerous surfing facilities in the Coachella Valley.

Kohl Ranch has also agreed to provide \$2,300 per housing unit planned at Thermal Beach Club for community needs. Our understanding is that these funds would support capacity fees to facilitate connection to water and wastewater services. Two issues of note. The \$2,300 per housing unit totals \$750,000, or 75% of the cost of 1 full membership at Thermal Beach Club. Additionally, as noted above, funds to pay for connection fees for lower income residents are available from state and local funding sources.

Kohl Ranch will also consider identifying sites for affordable housing development but available materials are unclear as to where or when actual units of affordable housing would be built. Developers have made it clear that no affordable housing sites would be identified within either the Thermal Beach Club portion of the Kohl Ranch SP or the Quintana area - an area planned for workforce housing. It is unclear to us why there will be no areas identified for affordable housing within either the Thermal Beach Club or the Quintana area and we remain unclear as to the estimated

timeline for development of housing pursuant to this agreement.

Kohl Ranch also purports that Thermal Beach Club will generate 1000 to 2000 construction jobs and 200-400 permanent jobs, including many high paying management positions for local residents. Despite such assertion, Kohl Ranch fails to provide detailed documentation supporting job creation estimates, local hire and living wage guarantees or detailing what high paying management position will be provided to local residents. Additionally, the County’s response to our comment letter of 11/19/19 with the following statement which undermines the claim of significant employment opportunities: “While the project may include some amount of employment for managing and maintain the proposed facilities, the amount of employment anticipated is not substantial that would be generated from this project.”³¹

Finally, Kohl Ranch and Thermal Beach Plans assert that a full build out, the project will generate 22 million per year for the Coachella Valley. Again, the project proponent makes such an assertion without evidence or detailed documentation as to how it arrived at this conclusion.

In short, the accidental, incidental, and limited benefits that Thermal Beach Club will provide do not and cannot correct for the deleterious impact this project would have on the surrounding community and environment.

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Based on the foregoing, Riverside County cannot legally approve Addendum 9 or the other land use approvals related to the Beach Club Project.

Sincerely,

Phoebe Seaton
Leadership Counsel for Justice and Accountability

ECV No Se Vende

Demi Espinoza
National Parks Conservation Association

CC: Chairman, Victor Manuel Perez
Vice Chair Karen Spiegel
Supervisor Kevin Jeffries
Supervisor Chuck Washington
Supervisor, Jeff Hewitt

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