

Vista Del Agua - City Council Comment Letter No. 2

Rutan & Tucker, LLP
Shadow View Owners (2-26-2020)

(Note: In an effort to conserve resources, Attachments to Comment Letter No. 2 are not included below; the entire Letter is attached electronically to these Responses)



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February 26, 2020

**VIA E-MAIL AND
FEDERAL EXPRESS**

Honorable Mayor Steven Hernandez
Mayor Pro Tem Emmanuel Martinez
and City Council Members Philip Bautista, Megan
Beaman Jacinto, and Josie Gonzalez
Mr. Luis Lopez, Development Services Director
City of Coachella
1515 6th Street
Coachella, CA 92236

LLopez@coachella.org

Re: Vista del Agua City Council Public Hearing - February 26, 2020

Dear Honorable Mayor Hernandez and City Council Members:

This letter is submitted jointly by DiMare/Shadow View T.I.C. (“DiMare”) and Shadow View Land and Farming, LLC, an affiliate of Reading International, Inc. (“Reading”). Collectively, DiMare and Reading (“Shadow View Owners” or “Owners”) own the property comprising the Shadow View Specific Plan, immediately north of the proposed Vista del Agua Project (“Project”). 2.1

The Shadow View Owners have consistently voiced serious concerns regarding the proposed Vista del Agua development and how its off-site infrastructure and environmental effects will impact the Shadow View Owners’ property. Specifically, the Shadow View Owners submitted detailed written comments dated: July 20, 2018, September 20, 2018, March 18, 2019, and June 19, 2019. Those comments are incorporated by reference into this letter. While the Agenda package for the Project contains copies of the first three of these letters, the package omits the June 19, 2019 letter and fails to contain any response to that letter. Among other things, that letter explained in detail why the City’s so-called responses to the comments submitted by the Shadow View Owners were not responsive or are incomplete. Since the City Council does not have the benefit of that letter, it is Attachment 1 hereto. The City Council should request a detailed response to that letter before considering the Project. 2.2

The Shadow View Owners’ concerns arise from the remote location of the Project. The applicant’s proposed hopscotch development will necessitate the construction of some 29-acres of off-site improvements. Unfortunately, those improvements are proposed on land that neither the applicant nor the City owns. Instead, that 29 acres is owned by the Shadow View Owners. 2.3

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Neither the City nor the developer has responded to Owners' concerns about how the infrastructure and the other components of the Project would impact the Owners' property. To the contrary, the City has purportedly commissioned a study that supposedly demonstrates that in order to allow this remote development to proceed, the City must take portions of the private property owned by the Shadow View Owners. This so-called study is referenced throughout the staff report as the "Discussion of Alternatives to Shadow View Boulevard as Either Primary or Secondary access to the Vista Del Agua Project, January 31, 2020." (E.g., see Findings, p. 172, p. 411 of agenda package.) The Staff Report claims that the new report is included as Attachment 11 to the agenda report. (Executive Summary, p. 207.) Yet it is not identified in the list of attachments at the end of the report, and is not included in the nearly 700 pages of attachments. Nor is the report available with the Project information on the City's webpage. The City's withholding of this information deprives the City Council, the public and the Shadow View Owners of critical information necessary to assess the proposed factual findings that the City Council is being asked to adopt. For example, the missing report is cited as the supporting evidence for no less than eight critical factual findings necessary for compliance with CEQA. (See, e.g., pp. 407 to 412 of staff report.) More fundamentally, why were the Shadow View Owners not notified that the City was conducting an analysis involving their private property or at least provided with a copy of the analysis when it was completed?

2.4

The answer to these questions appears pretty obvious: the applicant and City staff have opted to keep their planned use of the Shadow View private property for the Project as uncertain as possible, leaving the Shadow View Owners to guess as to where, when and how their property will be confiscated. Yet this is an undeniable component of the Project, and disclosure of the "where, when, and how" is required by law, including CEQA as well as the City's own Municipal Code.

2.5

The Project's proposed Specific Plan and the related documents continue to assume that the Project applicant and/or the City will have free reign over the private property of the Shadow View Owners. The City concedes that the EIR does not cover the use of eminent domain. (Agenda package, p. 523.) The applicant has made it clear that it is relying on the City to solve its access issues. The applicant's representative noted at the Planning Commission Workshop that the City "can start eminent domain proceedings. We're only taking the roadway. Nothing can be built there anyway because of the way it's written in the General Plan." (Attachment 1, Transcript, p. 16.) Referencing or relying upon the General Plan in this manner is legally risky. (See e.g., *Jefferson Street Ventures, LLC, v. City of Indio* (2015) 236 Cal.App.4th 1175.) Neither the City nor the Project applicant should rely on any right of way being granted over the property owned by the Shadow View Owners, as none has been granted or contemplated. The City's approval of the Project, as proposed, would create a cloud on title for the Shadow View properties that is compensable, as it would create the aura of limitations on how the Shadow View properties might be able to be developed, i.e. that the use of the Shadow View properties is beholden to and constrained by the Project and the impacts that it would impose. The Shadow View Owners

2.6

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reserve their right to plan and develop their properties in a configuration that is not currently contemplated, but that will respond to future market forces. | 2.6
cont.

The figures in the Project’s Specific Plan and EIR continue to depict the carving up of the Shadow View Specific Plan property with public infrastructure to serve what can best be described as a hoppershot and sprawling development. The Project applicant has not made any material efforts to acquire a right of way through any portion of the Shadow View properties. The continued attempt to obtain approval of the Project seems to amount to nothing more than an effort at deriving some speculative increase in value at the implied expense of the Shadow View Owners. | 2.7

The Shadow View Owners continue to object to the Project and the EIR. The EIR does not comply with the mandates of CEQA and is inconsistent with the City’s General Plan. In addition, because the Shadow View Owners (and the public) have been denied access to key Project documents, such as the new January 31, 2020 analysis regarding the access issue referenced above, as well as to a planned but not provided, proposed Development Agreement, the Shadow View Owners due process rights will be violated if this matter proceeds to decision. | 2.8

1. No Access to Key Documents.

As explained above, the staff report heavily relied upon the new analysis regarding access to the Project which is extensively cited in the staff report, and is relied upon as the supporting evidence for at least eight significant CEQA findings. Yet that report has not been made public or provided to the Shadow View Owners. Given that their property is the subject of the report, we find this “hide the ball” approach appalling. | 2.9

Because the Shadow View Owners have been denied access to this information, in order to preserve their rights, the Shadow View Owners object to the City not recirculating the EIR with the new analysis. | 2.10

In addition, one of the key Project entitlements continues to be missing. The Development Agreement is identified as one of the key components of the Project. The DEIR says that the “physical improvements associated with the [Development Agreement] have been described in Subchapters 3.4.1, 3.4.2, and 3.4.3, above.” (DEIR, p. 3-8.) Because we have no ability to review the Development Agreement, there is no way to verify that this is correct. In addition, we expect that the Development Agreement will have extensive information about the 29 acres of off-site improvements referenced in the Project Description. Without this information, it is not possible to verify that the EIR has captured all of the potential impacts arising from the installation and operation of those improvements. Further, without this information relating to the responsibility for and timing of the off-site improvements, how can the City Council or the public provide meaningful input on this Project? | 2.11

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2. The City has failed to provide meaningful responses to the Comments submitted by the Shadow View Owners.

As outlined in Attachment 1, the meager “responses” to the Shadow View Owners’ written comments fall well short of what is required under CEQA. The City has never addressed the shortcomings outlined in detail in the June 19, 2019 submittal by the Shadow View Owners.

2.12

In addition, we note that the response to comment 7v (page 526 of Agenda package) is wholly inadequate and completely misses the point. In the comment, we pointed out that with regard to the “fair share payment” mitigation contained in Mitigation Measure MM-TR-3, the City cannot rely upon a partial payment for an improvement to actually accomplish mitigation unless there is evidence that the rest of the costs will be collected and the improvement will actually be constructed within a reasonable time frame. For example, collecting 3.33% from the applicant for an improvement at Polk and 50th Ave. does not provide any assurance that the identified improvement will actually be constructed. This type of measure only works where it is part of a program specifically designed to ensure the improvement will ultimately be installed. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173.) In response to this comment, the City noted only that “[t]he responsibility to ensure all mitigation measures are implemented and fair-share contributions are paid is the responsibility of the City of Coachella.” (Staff report, p. 526.) This is not responsive. The concern expressed is not over whether the 3.33% will be paid. It is how the City plans to come up with the other 96.67%. Unless there is a program in place that is reasonable calculated to actually produce and pay for the identified improvements, the mitigation is invalid.

2.13

3. Alternatives Analysis.

In addition to the objections previously raised to the defects in the Alternatives Analysis – which objections have not been addressed – we note one additional objection. It now appears that a brand new alternative has been added which was not subject to public review. On page 411 of the Staff Report, there is now a fourth alternative relating to Tyler Street. What is this alternative and why was it not included in the DEIR? The addition of this new alternative requires recirculation of the EIR.

2.14

4. General Plan Consistency.

We note that in the Land Use section (4.10), many General Plan policies are referenced, but the following, which is one of the most critical relating to this Project, is omitted:

2.15

2.10 Contiguous development pattern. Encourage and incentivize development to occur contiguous to, or proximate to, existing built areas to facilitate delivery of City services and minimize “leapfrog” development not connected to existing urbanized areas.

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(See also General Plan p. 2-09 “New development will generally be contiguous (or proximate) to existing development and leapfrog development will be avoided.”) | 2.15
cont

In addition to this inconsistency being an issue under the Land Use Section of the EIR, these policies also preclude the City from finding that this Project is consistent with the City’s General Plan. | 2.16

5. Creation of New Parcels Without Access.

The proposed Tentative Parcel Map would create six new parcels for financing purposes. However, the Coachella Municipal Code envisions that newly created parcels have streets and right-of-way that provide legal access to the property. (*See e.g.*, Coachella Municipal Code 16.12.040.L.) Given the determination that providing access through existing streets and right-of-way is infeasible, how is access to the newly created parcels guaranteed? Neither the proposed Tentative Parcel Map nor the proposed conditions of approval provide the answer to this critical question. | 2.17

Thank you for considering these comments. Should the Project be approved, the Shadow View Owners are preserving all rights to take appropriate action. | 2.18

Very truly yours,

RUTAN & TUCKER, LLP



M. Katherine Jenson

MKJ:lr

cc: Carlos L. Campos, City Attorney (via e-mail)
Clients (via e-mail)

Attachment: Letter dated June 19, 2019, from Rutan & Tucker to Planning Commission | 2.19

June 19, 2019

VIA PERSONAL DELIVERY

Honorable Chairperson Mike Etheridge
Honorable Commissioners Mario Zamora, Denise
Delgado, Atay Ramirez and Kimberly Miranda
City of Coachella Planning Commission
1515 Sixth Street
Coachella CA 92236

Re: Public Hearing Regarding Vista Del Agua Project - June 19, 2019

Dear Honorable Chair Etheridge and Commissioners Zamora, Delgado, Ramirez and
Miranda:

This letter is submitted jointly on behalf of DiMare/Shadow View T.I.C. (“DiMare”) and
Shadow View Land and Farming, LLC, an affiliate of Reading International, Inc. (collectively,
“Reading”). DiMare and Reading (collectively, “Shadow View Owners”) own the property
comprising the Shadow View Specific Plan area, immediately north of the proposed Vista del
Agua Project (“Project”). 2.20

The Shadow View Owners were deeply disturbed by the proceeding on the Project that
took place at the March 20, 2019 Workshop. After listening to the audio recording of the
Workshop, we deemed it advisable to have the proceeding transcribed and to have the transcript
entered into the official record. 2.21

During the proceedings, the Applicant *personally attacked the Shadow View Owners*,
belittled their property rights, and made serious misrepresentations about the one and only
telephone conference that took place between one of the property owners and the Applicant.
(Transcript, pp. 7-8, 15-16.) He then *tried to shift his problem of limited access* to the City by
trying to steer the City towards exercising its power of eminent domain over the Shadow View
property to advance their private Project. (Transcript, pp. 15-16.) 2.22

To set the record straight, Charles Ellis signed a declaration, under penalty of perjury,
regarding the one and only telephone conference he had with Mr. James Kozak, the Applicant’s
representative. During that call, Mr. Kozak made no offer to purchase the right-of-way. Instead,
as Mr. Ellis explains, during that single telephone call, Mr. Kozak indicated that the applicant was
looking for the Shadow View Owners to not only dedicate the land for the roads and utilities, but
also for the Shadow View Owners to contribute to the construction of infrastructure. Mr. Ellis 2.23

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indicated that the DiMare owners were not interested in any long term commitment that would require expenditures or pigeon hole the property to a particular land use. | 2.23 cont.

Adding to these misrepresentations, the City's staff and its consultant repeatedly blurred the private/public property lines by repeatedly suggesting that public roads somehow already exist because of *expired* tract maps and references in the General Plan and Specific Plan. (Transcript, pp. 14, 15.) | 2.24

For the record, there has never been any dedication of any roadway on the Shadow View property, and the City and the public hold no access rights across the property. If the Applicant wishes to place 29-acres of infrastructure on the Shadow View property, they will need to first acquire all necessary property rights. | 2.25

Finally, we note that our prior written comments have not fully been addressed in the Final Environmental Impact Report ("Final EIR"). We have only just obtained the Final EIR with the responses to comments, and have not yet had sufficient time to review all of the responses to our comments. Those that we have reviewed have not been adequately addressed. By way of example: | 2.26

In Comment 7k, we noted that the Draft EIR was inadequate because it did not identify where the 29 acres of infrastructure improvements were to be located on the Shadow View property. We complained that this identification was being improperly deferred until the tentative tract map stage. Rather than providing the location, the response to this comment says there is nothing definitive. *Identifying the "precise" location of all project components is a fundamental part of a project description.* (CEQA Guideline § 15124.) | 2.27

Likewise Comment 7l has not been adequately addressed. That comment noted that the Draft EIR mistakenly referenced that the 29 acres of public improvement slated for the Shadow View property would be placed within "right-of-way," when no such "right-of-way" exists. Right-of-way" as defined by Webster's means "the right to pass over property owned by another." Rather than correcting this error, the response to the comment does not explain how that right exists. Rather, the City states "it is the intent of the City that these roadways be improved and open for public use." (Final EIR, p. 2-40.) The City's intention does not create "right-of-way." Moreover, the comment pointed out the Draft EIR's failure to include the right-of-way acquisition as part of the project description. Strangely, in response, the City simply acknowledges that the Draft EIR's project description does not include a description of any such acquisition, even as a potential future action, despite the fact that the need for acquisition is noted in several other locations in the Draft EIR. In fact, page 2-41 of the Final EIR states: "Right-of-way will need to be acquired in order to construct these roadways." *The project description is required to include "permits and other approvals required to implement the project."* | 2.28

The Response to Comment 7n not only misses the point, it proves the point the Shadow View Owners have been making. The Draft EIR makes no distinction between existing public | 2.29

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roadways the City already owns (e.g., Dillon) and those in which neither the City nor the Applicant have any ownership interest (e.g., Shadow View Boulevard). As the response points out, Figure 3.4.2-3 shows the desired but non-existent streets exactly the same as those that already exist. (Draft EIR, p. 3-17.) To make matters worse, readers of the Draft EIR are directed to the next figure (Figure 3.4.2-3) to see the “right-of-way.” That figure suggests the “right-of-way” for Shadow View Blvd. is 118 feet. There is no such right-of-way!

2.29
cont.

The response to Comment 7o raises more issues than it resolves. Throughout the Draft EIR, the Project is described as including 29-acres of offsite improvements, and Comment 7o asked for details regarding those improvements. In response, the City seems to be suggesting that the actual improvements will be just a quarter of that amount. (Final EIR 2-41.) Which acreage is correct and where is it located?

2.30

Response 7r again fails to address fundamental inconsistencies in the Project description. On one hand, the Draft EIR states that the Specific Plan will provide for “vehicular, pedestrian and bicycle circulation routes along a combination of roadways,” and it cites pages 5-1 and 5-2 of the Specific Plan. Those pages show full improvements along the public roads across Shadow View. But later, and in the response to the comment, it describes the improvements across Shadow View as nothing more than a 30-foot strip of pavement. That is not sufficient for pedestrians or bicycles! If there are no such improvements along what they are labeling as the primary and the secondary Project access points, how will bicycles or pedestrians get to and from the Project? The response never explains this, or the discrepancy in the description.

2.31

Regarding Responses 7r, 7s and 7t, it is impossible to verify the alleged conclusion of RK Engineering Group, Inc., that the new, reduced mitigation measures will be sufficient to handle the impacts of the Project, unless they show their work. What is included in the responses to comment are simply conclusions.

2.32

Regarding Response 7u, the Final EIR proposes to **totally change the Traffic Mitigation Measures**. The Draft EIR and the Traffic Study required that the Applicant put in the full roadway improvement across Shadow View. Now the staff is cutting this back and making additional changes that are not even explained. ***This wholesale modification of the key mitigation measures affecting the Shadow View property requires recirculation. (CEQA Guideline 15088.5(a)(3).) The City needs to show that the new mitigation is as effective as the prior mitigation, which was already woefully lacking.***

2.33

Comment 7w demonstrated that the Project is not consistent with General Plan Policy 2.10, which requires contiguous development patterns and discourages “leapfrog” development not connected to existing urbanized areas. Comment 7x noted that Land Use analysis needed to address this issue. In response, the City says that this Project is “anticipated to be developed in a manner and time frame consistent with the surrounding properties” (i.e., Shadow View). Yet this is not a condition or requirement of the Project. The fact that it is hopscotch is what is most

2.34

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troubling; we can't know the impacts it will have on Shadow View, because how and when Shadow View will be developed is not known. The City's statements are not responsive. | 2.34
cont.

Regarding the comments on the Alternatives analysis (comments 7y-7aa), the City's "responses" are conclusory, at best. Moreover, the City's testimony at the March 20, 2019 Workshop underscores that this so-called "alternative" was not an alternative at all. Mr. Lopez stated: "So, that's where maybe the two property owners (and) the city need to sit down and figure something out. Because there is no other way to get to the Vista Del Agua under the mitigation measures of the EIR the way they're currently written." (Transcript, p. 15; *see also* p. 19.) The Draft EIR was required to consider reasonably feasible solutions, not fiction. | 2.35

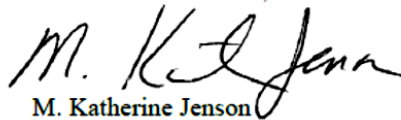
We are still very much in the process of reviewing the mountain of documents the City just released relating to this Project, and will be supplementing these comments once we have a chance to fully consider the new documents. | 2.36

We respectfully request that the City Planning Commission continue this matter so that the access and off-site infrastructure issues can be properly addressed. | 2.37

Should you have any questions regarding the foregoing, please do not hesitate to contact me at the number above. | 2.38

Respectfully submitted,

RUTAN & TUCKER, LLP



M. Katherine Jenson

MKJ:lr

Enclosures:

1. Transcript of Planning Commission Meeting, March 20, 2019 | 2.39
2. Declaration of Charles M. Ellis

Transcript of Planning Commission Meeting, March 20, 2019 | 2.40

Declaration of Charles M. Ellis | 2.41

Responses to Comment Letter No. 2

- 2.1 These are informational statements and a summary of the Project Description that do not require a response.
- 2.2 The City is aware of the concerns raised by the Shadow View Owners, specifically, the Shadow View Owners submitted written comments dated: July 20, 2018, September 20, 2018, March 18, 2019, and June 19, 2019. Responses to the July 20, 2018, September 20, 2018 and March 18, 2019 letters are included in the FEIR. Comments dated June 19, 2019 were submitted after the close of the public comment period. The June 19, 2019 letter was received on June 19, 2019 and were verbally responded to by City Staff at the June 19, 2019 Planning Commission Hearing. The City is not required to respond to late comment letters (Pub. Res. Code § 21091(d)(1); *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 972). Nonetheless, these Responses to Comments, respond to the Comment Letters submitted by the Shadow View Owners, dated February 26, 2020 (Responses 2.1 through 2.19) and June 19, 2019 (Responses 2.20 through 2.42).
- 2.3 This comment asserts the Shadow View Owners have concerns regarding the location of the Project and the necessary offsite improvements.

Development of the Project would not constitute “hopscotch development” as claimed in the comment. The Project is located immediately east of the Shadow View Specific Plan. The Shadow View Specific Plan was approved in July 2006 and an EIR certified. The Development Agreement for the Shadow View Specific Plan was recorded in March 2007, and Tentative Parcel Map 34993 and Tract Map 34865 were approved in September 2007. These maps were active at the time the NOP for the Project was released on March 2, 2015, but have since expired. The Project is also within an area slated and long-planned for urban development, as the Coachella General Plan 2035 designates the site as General Neighborhood, Urban Neighborhood, Suburban Retail District, Suburban Neighborhood, and Neighborhood Center. (General Plan Update 2035, p. O4-59, <https://www.coachella.org/Home/ShowDocument?id=3221> .)

Access to the Project is planned via Shadow View Boulevard, Avenue 47, Vista Del Sur, and Avenue 48. Although the right-of-way for Shadow View Boulevard does not exist through the Shadow View Specific Plan area at this time, the conceptual amendment for the Shadow View Specific Plan as illustrated on Figure 4-25 within the Coachella General Plan illustrates Shadow View Boulevard connecting to Dillion Road and the Vista Del Agua property via Avenue 48. The Shadow View Specific Plan and associated tentative tract maps (now expired) also show Shadow View Boulevard in the basic alignment proposed by the Project.

Please also refer to the follow Responses to Comments in the FEIR:

- Response to Comment 7w, p. 2-43;
- Response to Comment R4d, p. 2-83;
- Response to Comment 7b, p. 2-38;
- Response to Comment PCb, p. 2-92.

No additional response is required.

- 2.4 Contrary to the Shadow View Owners' assertion, the Draft EIR does consider the Project's potential impacts to the Shadow View property. See, e.g., DEIR pp. 4.5-9, 4.8-2 – 4.8-3, 4.11-42.) Further, in response to comments raised by the Shadow View Owners, the City re-examined the three Alternatives discussed in the DEIR, as well as a fourth Alternative, set forth in the "Discussion of Alternatives to Shadow View Boulevard as Either Primary or Secondary Access to the Vista Del Agua Project," dated January 31, 2020 ("Alternatives Memo"), as well as on pages 172 through 174 of the CEQA Findings of Fact and Statement of Overriding Considerations attached as Exhibit A to proposed Resolution 2020-02.

As stated above, the Alternatives Memo was completed in response to comments made by the Shadow View Owners after the close of the public comment period. The City had the option to respond to the Shadow View Owners' proposal of a new alternative (Alternative 4), but it was not required to do so. (State CEQA Guidelines, § 15207.) The City is also not required to attach it to the Staff Report. Although not required to respond to a late suggestion of an additional alternative, the City can reject such a newly proposed alternative in its findings approving the Project, although, again, it is not required to do so. (See *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 333.) Here, the City was presented with proposed specific findings rejecting the newly proposed Alternative 4 and explaining why the Alternative will not significantly reduce impacts and is also infeasible. The City therefore went above and beyond CEQA's requirements.

Nonetheless and to ensure greater transparency, and as it is public record, a copy of the Alternatives Memo dated January 31, 2020, will be provided in the agenda packet for the May 13, 2020 City Council hearing. Additionally, the January 31, 2020 Alternatives Memo has been updated to include additional technical analysis and to clarify additional points in response to Shadow View's comments. This updated Alternatives Memo, dated April 24, 2020, will also be included in the May 13, 2020 agenda packet.

- 2.5 The commenter expresses the opinion that the applicant and City staff have opted to keep their planned use of the Shadow View private property for the Project as uncertain as possible, and assumes that the Shadow View Owners' property will be "confiscated."

First, the use of the Shadow View property is not uncertain. As stated in the DEIR, approximately 11,600 feet of off-site street improvements are required. The location of such improvements is illustrated in Figure 3.4-2.3. Roadway cross-sections are illustrated in Figure 3.4-2.4. The Project is responsible for a 30 foot paved section of these improvements. (DEIR, p. 3-5). The alignment of Shadow View Boulevard in Figure 3.4-2.3 is substantially the same alignment of Shadow View Boulevard as has been contemplated in numerous planning documents, including in the very Specific Plan previously proposed by the Shadow View Owners and approved by the City.

For example, the Shadow View Specific Plan shows Shadow View Boulevard as a proposed street crossing the Shadow View Specific Plan area (see Shadow View Specific Plan, p. 3-11 [Exhibit 3-5]). The Shadow View Specific Plan also includes Shadow View Boulevard cross sections, indicating that Shadow View Boulevard will ultimately be constructed to a 120-foot right of way (see Shadow View Specific Plan, p. 3-12 [Exhibit 3-6]). Finally, the Shadow View Specific Plan shows Shadow View

Boulevard as a road to be constructed by the residential developer of Shadow View (see Shadow View Specific Plan, pp. 3-9 and -10). As shown in the Specific Plan, improvements are anticipated to take place on privately owned property of the Shadow View Owners.

Further, the City of Coachella General Plan 2035 shows Shadow View Boulevard as part of the City's Circulation Element, as an arterial street (see General Plan, p. O5-7 [Figure 5-1], and p. O5-3 [Table 5-1, Street Typologies]). General Plan Figure 5-1 illustrates that Shadow View Blvd is designated as a Major Arterial with Bicycle Facility (to be developed to a 118-foot right-of-way with six travel lanes) and is planned to connect Dillon Road easterly to Avenue 48.

City administrative practice allows minor re-alignments of Section-Line streets. Shadow View Boulevard is currently aligned with the Avenue 48 section line and the old section-line street easement will be adjusted to connect northwesterly to Dillon Road, pursuant to the General Plan.

Lastly, Tentative Parcel Map 34993, which approved the residential villages subdivision for Shadow View, recorded the street right-of-way through the Shadow View properties. However, the owners let the tentative map expire. (See City Resolution No. 2007-73 for Tentative Tract Map No. 34865 [adopted September 12, 2007].) Shadow View Boulevard is described as running from Dillon Road to the intersection of Tyler Street and Avenue 48 on this Tentative Map.

Establishment of Shadow View Boulevard has already been analyzed under the California Environmental Quality Act as part of the Coachella General Plan 2035 Program EIR, which was certified by the City Council on April 22, 2015 via Resolution 2015-03. Thus, the extension of Shadow View Boulevard, as proposed by the Project, is consistent with the City's plan for its ultimate development. There is no question as to "where" the improvements will occur.

The Project is conditioned to complete extensive circulation improvements prior to the issuance of the first occupancy permit. Specifically, Conditions of Approval for Specific Plan 14-01 Vista Del Agua include the following:

- Condition No. 8: Mitigation measures included in the project Mitigation Monitoring and Reporting Program are hereby incorporated by reference as project conditions of approval.
- Condition No. 15: The first Master Subdivision Map must provide for all requisite on-site and off-site easements, rights-of-way and alignments for vehicular access and extension of utility infrastructure, including reclaimed water facilities, to the project site.
- Condition No. 16: The Shadow View Blvd. access shall be designed as approved by the City Engineer and the Fire Department. Timing of the ultimate improvement shall be in accordance with the requirements of the Specific Plan and EIR.
- Condition No. 25: Prior to or concurrent with approval of a Builder's Tentative Map or Commercial Map, traffic related improvements shall be constructed in accordance with Mitigation Measures TR1, TR2, TR 3, TR 4 and TR 5.

With regards to the construction of Shadow View Blvd that connects Dillon Road to

Avenue 48, Mitigation Measure MM-TR-1 states “construct a new extension of Shadow View Boulevard from Dillon Road prior to the 1st occupancy permit. The City Public Works Department is the responsible party that will plan check the engineering plans submitted by the Applicant for this improvement. Accordingly, before an occupancy permit can be issued for the Project, the extension of Shadow View Boulevard must be constructed. This is reinforced in Conditions 15, 16, and 25. Through the traffic mitigation measures and conditions of approval, the EIR adequately discloses “when” construction of Shadow View Boulevard will occur.

As to “how” right-of-way will be acquired, the commenter states the Shadow View Owners’ property will be “confiscated.” How the acquisition of necessary right-of-way will take place is not certain at this time; however, the EIR and the record discloses that such acquisition is necessary in order for the Project to be implemented.

- 2.6 Please reference Responses to Comments 2.3 and 2.5 as they pertain to approved planning documents which show future locations and roadway dimensions for Shadow View Boulevard. It is not certain at this time whether the necessary right-of-way for the Project can be acquired through a negotiated agreement. However, the City would comply with all legal prerequisites, as needed, associated with any acquisition.

With regard to the commenter’s “confiscation” comment, and as stated in *Selby Realty Co. v City of San Buenaventura* (1973) 10 Cal.3d 110, 119, the mere enactment of a general plan for future development of an area, indicating potential public streets through the plaintiff’s land, does not amount to inverse condemnation. A general plan is necessary for orderly community progress and growth, and it is subject to alteration or abandonment. Here, Shadow View Boulevard is depicted in the City’s General Plan and this same alignment is used in the Vista Del Agua Specific Plan. It is still subject to alteration or abandonment.

Additionally, the approval of the Vista Del Agua Specific Plan does not constrain development of the Shadow View Owners’ property such that an “aura of limitations” on how the Shadow View properties might be developed exists. In , the court denied precondemnation damages for a 2-year period between a city’s notice of intention to condemn and the date of judgment, notwithstanding a pending application for development. In that case, the owner did not file a complete subdivision application until after the city adopted its resolution of necessity and there was no evidence that the property had decreased in value. There is no current plan pending before the City for development of the Shadow View Owners’ property. Further, the City has not precluded the Shadow View Owners from submitting an application for development on their property.

The Vista Del Agua Project included access via Shadow View Boulevard in the alignment it existed on Tentative Parcel Map 34993, which was active at the time the NOP was released for the Project. The Project conservatively anticipates approximately 29 acres of off-site improvements on the Shadow View property, a small fraction of the 540.39 acre Shadow View Specific Plan area, which would benefit from the access Shadow View Boulevard would provide.

- 2.7 Please reference Responses to Comment 2.3, 2.5 and 2.6 as it pertains to approved planning documents which show future locations and roadway dimensions for Shadow View Boulevard. These documents were not created by the applicant. The applicant

utilized existing information to create these exhibits. Development of the Project would not constitute a hopped and sprawling development as claimed in the comment. The Project is located immediately east of the Shadow View Specific Plan, which was approved in 2006 and Tentative Parcel Map 34993 and Tract Map 34865 approved in 2007, which were active at the time the NOP for the Project was released on March 2, 2015, but the Shadow View Owners have since let expire. At the time the NOP was released for this Project, it was contemplated to be a complementary project to the Shadow View Specific Plan project. The Project is also within an area slated and planned for urban development, as the Coachella General Plan 2035 designates the site as General Neighborhood, Urban Neighborhood, Suburban Retail District, Suburban Neighborhood, and Neighborhood Center. (General Plan Update 2035, p. O4-59, <https://www.coachella.org/Home/ShowDocument?id=3221> .)

The applicant seeks approval of the Project to implement an aesthetically pleasing and functional community with a balanced mix of economically viable commercial and residential uses and provide a diverse mix of housing options for the people of Coachella.

- 2.8 Comment noted about objections raised by Shadow View Owners. As demonstrated in the DEIR, Final EIR, Specific Plan, and these Responses to Comments, the City, in exercising its discretion as lead agency has determined that the Project complies with the mandates of CEQA and is consistent with the City's General Plan. Please reference Response to Comment 2.4 as it relates to the January 31, 2020 Alternatives Memo and Response to Comment 2.11 below as it pertains to the Development Agreement. No additional comment is required.
- 2.9 Please refer to Response to Comment 2.4. The Alternatives Memo is a public record and has been included in the agenda packet for the May 13, 2020 hearing.
- 2.10 As stated in Response to Comment 2.4, the Alternatives Memo reexamines the three Alternatives discussed in the DEIR and does not alter the conclusions of the DEIR. Alternative 4 was not included in the DEIR as it was developed in response to comments made by the Shadow View Owners. A new alternative suggested in comments on a draft EIR may be evaluated in a final EIR without triggering recirculation of the final EIR unless the discussion in the final EIR involves "significant new information." *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 547. As illustrated in the Alternatives Memo as revised April 24, 2020, Alternative 4 fails to avoid or substantially reduce significant environmental impacts. In fact, by increasing the distance that must be traveled to access the Project site, the air quality (NOx) and GHG impacts of Alternative 4 are increased as compared to the Project due to the increase in VMT (Alternatives Memo, pp. 8-9.) Additionally, Alternative 4 is infeasible as it does not include construction of Shadow View Boulevard as set forth in the City's Circulation Element.

The Alternatives Memo therefore does not add new information that deprives the public from commenting on a feasible mitigation measure that is not adopted, but rather reconfirms and elaborates upon the conclusions already presented in the Draft EIR. State CEQA Guidelines, Section 15088.5; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112. Therefore, the DEIR does not meet the criteria listed in State CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification) that would necessitate a revised and recirculated EIR.

2.11 This comment pertains to the availability of a Development Agreement (DA) for the Project. No DA is currently available. As stated in Response to Comment 7i of the FEIR (p. 2-39):

“At this time, the Applicant and the City are still negotiating the terms of the Development Agreement (DA) and therefore no DA is currently before the City for review and approval. When and if a DA is completed, it will come before the City for consideration, review and approval at a duly noticed public hearing. However, the DA terms will focus on administrative and financial issues associated with the Project, and therefore the terms are not anticipated to result in any physical environmental impacts different from those analyzed and disclosed in the EIR. Regardless, if and when a DA is brought forward, its terms will be compared against the EIR for consistency with the Project Description provided in the EIR, and to ensure that the terms will not result in any new or substantially more severe environmental impacts. As required by CEQA, in the unanticipated event that the terms of a DA are determined to result in potentially significant impacts different than those disclosed in the EIR, supplemental environmental review would be required prior to execution of the DA.”

In addition, as stated in Response to Comment PCe of the FEIR (p. 2-92):

“The Development Agreement (DA) is one of the 5 entitlements included in the EIR (see Chapter 3 – Project Setting and Project Description, p. 3-8). The DA was not included in the appendices of the EIR, as it was not available at the time of the public circulation of the EIR. Comment noted on the chronology provided pertaining to request for copies of the DA.”

Lastly, as stated in Response to Comment PCf of the FEIR (pp. 2-92 and 2-93):

“As stated in response to comment 7i of the July 20, 2018 letter, provided in Section 2.0 a. of the FEIR, the EIR anticipated the submittal/approval of a DA, and the analysis of the EIR factored in a development agreement. Upon submittal of a DA, it will be reviewed for consistency with the EIR. If the DA is consistent with the analysis contained in the EIR, then no further analysis will be required. This response represents the City’s independent judgment as it pertains to the scope of any anticipated DA. The remainder of this comment entirely or partially consists of the expression of an opinion not supported by factual evidence or legal argument. The comment is too vague and does not lend itself to further explanation. The City notes this comment, but no further discussion is required by CEQA.

There are no changes to these Responses in the FEIR. As provided in the prior Responses to Comments cited above, it is common for DAs to follow project entitlements as a subsequent project approval, and the EIR identifies the Development Agreement as such. Ultimately, the DA would have to be consistent with the Project analyzed in the EIR, and no changes to the Project are anticipated. In the unforeseeable and unanticipated event that a future DA were to propose changes to the Project, then further CEQA review would be required prior to any approval of the DA. The purpose of the DA is not to modify the Project or to change mitigation, *but to implement it* by addressing administrative and financial issues that are unrelated to

physical impacts on the environment, and which are still being negotiated. No additional response to comment is required.

- 2.12 Please refer to Response to Comment 2.2. Comments to the June 19, 2019 were received on June 19, 2019 and were verbally responded to by City Staff at the June 19, 2019 Planning Commission Hearing. Responses to the Comment Letter submitted by the Shadow View Owners, dated June 19, 2019, are provided below in Responses to Comments 2.20 through 2.42.
- 2.13 The State CEQA Guidelines specifically recognize that requiring a project to implement or fund its fair share of a measure designed to mitigate a cumulative impact is an effective way to address the project's contribution to the impact. State CEQA Guidelines, § 15130(a)(3). Mitigation Measure MM-TR-3 provides for fair share contributions to be made for improvements at 11 intersections in order to address cumulative conditions for Project Completion (Year 2022) and General Plan Buildout (Year 2035). As provided in the DEIR, MM-TR-3 would reduce the significant impacts by requiring the Project's fair share contribution in the form of DIF and TUMF fee payments towards the future intersection improvements, however the City cannot control the timing of when the intersection improvements for the locations on Caltrans facilities (SR-86 and I-10) are implemented. Therefore, cumulative impacts would remain significant and unavoidable. (DEIR, p. 4.14-57.)

TUMF is included in the DEIR as Standard Condition SC-TR-1, which states the following: "Regional Funding Mechanisms. The applicant shall participate in any approved transportation or development impact fees, such as TUMF fees, required by the City of Coachella per Chapter 4.40 of the City's Municipal Code." The City therefore has an established TUMF program, managed by the Coachella Valley Association of Governments.

In addition to an established TUMF program, the City also has an established DIF program, established by Ord. No. 1013, adopted February 10, 2010, and codified in Chapter 4.45 of the Coachella Municipal Code. Coachella Municipal Code section 4.45.020 sets forth the basis of calculation of development impact fees, and section 4.45.060 sets forth the use of said development impact fees. Related to traffic, section 4.45.060(D) provides the following:

Street facilities fees will be used for the following purposes:

1. Construction or installation of improvements to add or modify traffic signals and related devices to maintain service levels that are *directly impacted by specific development projects*;
2. Construction or installation of street rehabilitation and construction improvements to add or modify land and circulation capacity to maintain service levels that are *directly impacted by specific development projects*.
3. Construction or installation of bridge and grade circulation improvements to add or modify bridge and grade separation service levels for areas *specifically impacted by a development project*.
4. Construction or installation of bus shelter improvements to add or improve shelters in accordance with the regional transit plan and *specifically impacted by development projects*. (emphasis added.)

The City's DIF and TUMF programs are both established by ordinance. When a

mitigation program is established, the required evidence that the planned mitigation will occur can be provided, at least in part, through the presumption that an agency will comply with its own ordinances, and will spend the fees it collects on the purposes for which it collects them. *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 141. The City will accordingly use the Project's fair share contributions to ensure necessary improvements are made at the 11 identified intersections.

2.14 Please refer to Responses to Comments 2.4 and 2.10 above.

2.15 Please refer to Responses to Comments 2.3 and 2.7 above. Prior comments received on the General Plan Consistency have also been addressed in Response to Comments 7w, and R4d of the DEIR.

Response to Comment 7w (p. 2-43) states:

“Comment noted about General Plan Policy 2.10 (Contiguous development pattern). Key words to be noted are “encourage,” “incentivize,” and “minimize.” As it pertains to General Plan p. 2-09, key words include “will generally be” and “will be avoided.” While these are suggestive, they are not mandated. When taken into a greater context, the Project is located easterly of the Shadow View Specific Plan and within an area that is slated/planned for an urban level of development. The Project is a long-term plan and is anticipated to be developed in a manner and time frame consistent with the surrounding properties.”

This comment was also addressed in the same manner in the FEIR (Response to Comment R4d, p. 2-83).

There are no changes to these Responses in the FEIR. No additional comment is required.

2.16 Please reference Response to Comments 2.3 through 2.7. No additional analysis is required.

2.17 The Project is conditioned to complete extensive circulation improvements prior to the issuance of the first occupancy permit, such that all six parcels created through the parcel map will have legal access as required by state law. Specifically, Conditions of Approval for Specific Plan 14-01 Vista Del Agua include the following:

- Condition No. 8: Mitigation measures included in the project Mitigation Monitoring and Reporting Program are hereby incorporated by reference as project conditions of approval.
- Condition No. 15: The first Master Subdivision Map must provide for all requisite on-site and off-site easements, rights-of-way and alignments for vehicular access and extension of utility infrastructure, including reclaimed water facilities, to the project site.
- Condition No. 16: The Shadow View Blvd. access shall be designed as approved by the City Engineer and the Fire Department. Timing of the ultimate improvement shall be in accordance with the requirements of the Specific Plan and EIR.

- Condition No. 25: Prior to or concurrent with approval of a Builder's Tentative Map or Commercial Map, traffic related improvements shall be constructed in accordance with Mitigation Measures TR1, TR2, TR 3, TR 4 and TR 5.

Should the Project not obtain necessary right-of-way to access the Project site, it cannot be developed.

- 2.18 Comment noted. No further response is required.
- 2.19 Responses to the attached Comment Letter submitted by the Shadow View Owners, dated June 19, 2019, are provided below in Responses to Comments 2.20 through 2.42.
- 2.20 These are informational statements that do not require a response.
- 2.21 Comment noted. No further response is required.
- 2.22 This is an opinion provided by the commenter and does not raise an environmental issue. No further response is required.
- 2.23 This is a summary of the Declaration of Charles M. Ellis. No response is required.
- 2.24 As provided in the Transcript, p. 14, the City stated the same street *alignment* is shown on the Shadow View Specific Plan and tentative tract maps that were approved but now expired. There was no comment made that the streets themselves actually exist. (emphasis added.) Please also reference Response to Comment 2.3 and 2.5. No additional response is required.
- 2.25 These are both accurate statements. Please reference Response to Comment 2.3. No additional response is required.
- 2.26 The comment contains the commenter's opinion that prior written comments have not been fully addressed in the FEIR. Specific comments are addressed below.
- 2.27 The Commenter reiterates concerns raised in prior Comment 7k that identification of the precise location of the 29 acres of infrastructure improvements was improperly deferred until the tentative tract map stage. Response to Comment 7k of the Final EIR (pp. 2-39 and 2-40) notes in part that "the Vista Del Agua EIR used the general alignment of Shadow View Boulevard as shown on Figure 5-1, Transportation Network contained in the Mobility Element of the General Plan and Figure 4-25, Conceptual Amendments to the Shadow View Specific Plan as shown on Figure 4-25 of the Coachella General Plan for the general alignment of Shadow View Boulevard for the analysis in the EIR."

An EIR must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26. This principle applies to the description of the project location. In *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533, an EIR for a large development described the project area, showed it on a map, and indicated the area would be annexed to the city.

The court rejected claims that the EIR had to describe the area to be annexed precisely, because the information provided was sufficient to assess significant impacts and consider mitigation measures and alternatives.

The Project's depiction of the 29 acres of infrastructure improvements is akin to the area to be annexed in *City of Orange*. As previously stated, the alignment coincides with City planning documents and infrastructure improvements would be developed in accordance with the alignment depicted in Figure 3.4.2-3. Any small alterations in the alignment that would occur at the tentative tract map stage would be minor and they would not create new significant impacts. The EIR's discussion and depiction of the infrastructure improvements is sufficient to allow the City Council and the public to take account of environmental consequences, as well as consider mitigation measures and alternatives.

The commenter has also expressed concern regarding statements in the DEIR about placing 29 acres of infrastructure improvements into right-of-way because no right-of-way currently exists or is approved for acquisition. To clarify and address the commenter's concern, the following global note will be placed at the beginning of the Errata section of the Final EIR:

GLOBAL NOTE: The DEIR makes numerous references to "right-of-way" (ROW) in relation to 29 acres of Project-related infrastructure improvements including roadways. This note is to formally clarify that all DEIR references to "right-of-way" which are in reference to roadways that do not currently exist and for which there is no existing right-of-way acquired or approvals in place to be acquired mean infrastructure (including roadway) "alignment" or **future** right-of-way. These roads must also be shown in the General Plan Mobility Element. This shall be considered a global change or clarification within the entire DEIR document.

Additionally, this is a program EIR. As stated in Response to Comment 7k, "Upon submittal of future plans that have a definitive roadway alignment, said plans will be reviewed for consistency with the EIR. If they are consistent with the analysis contained in the EIR, then no further analysis will be required. If they are inconsistent, then additional analysis may be required pursuant to CEQA Sections 15162 (Subsequent EIRs and Negative Declarations) and/or 15163 (Supplement to an EIR)." This type of analysis is provided for in State CEQA Guidelines Section 15168, and therefore does not constitute an improper deferral.

2.28 Response to Comment 7l of the Final EIR (p. 2-40) states:

"Chapter 3, Project Description describes the nature and locations of the off-site Project components. According to the General Plan Circulation Element Map, Avenue 48 and Avenue 47 are shown as "New Major Corridor" and "New Minor Corridor," respectively, on Figure 2-3, Road Network Vision of the General Plan. Therefore, it is the intent of the City for these roadways to be improved and open for public use. Chapter 4 references to "rights-of-way" refer to the general locations of these roadways. At the time of the NOP, these were still potential rights-of-way on the active Shadow View maps. At the time of the circulation of the EIR, these maps had expired. Right of way will need to be acquired in order to construct these roadways. The roadway alignments for

Avenue 48, Shadow View Boulevard and Avenue 47 are conceptual at this time. However, their locations are consistent with the General Plan Circulation Element and the Shadow View Specific Plan.”

To the extent “right-of-way” is used to reference the general location of roadways in the EIR, please see the Global Note at the beginning of the Errata section of the FEIR, which corrects the usage of the term “right-of-way” and is explained in Response to Comment 2.27 above.

Response to Comment 7l also provides “As stated in Response to comment 7k, the EIR does not identify the approvals necessary for the acquisition of property within the Shadow View Specific Plan area (i.e., eminent domain).” The necessity of eminent domain in order to acquire right-of-way to serve the project is speculative at this time, and the City is not making any commitment to exercise any such power. However, we should note that the list of discretionary actions or approvals included in Draft EIR section 3.5 is not exhaustive. DEIR, p. 3-8.

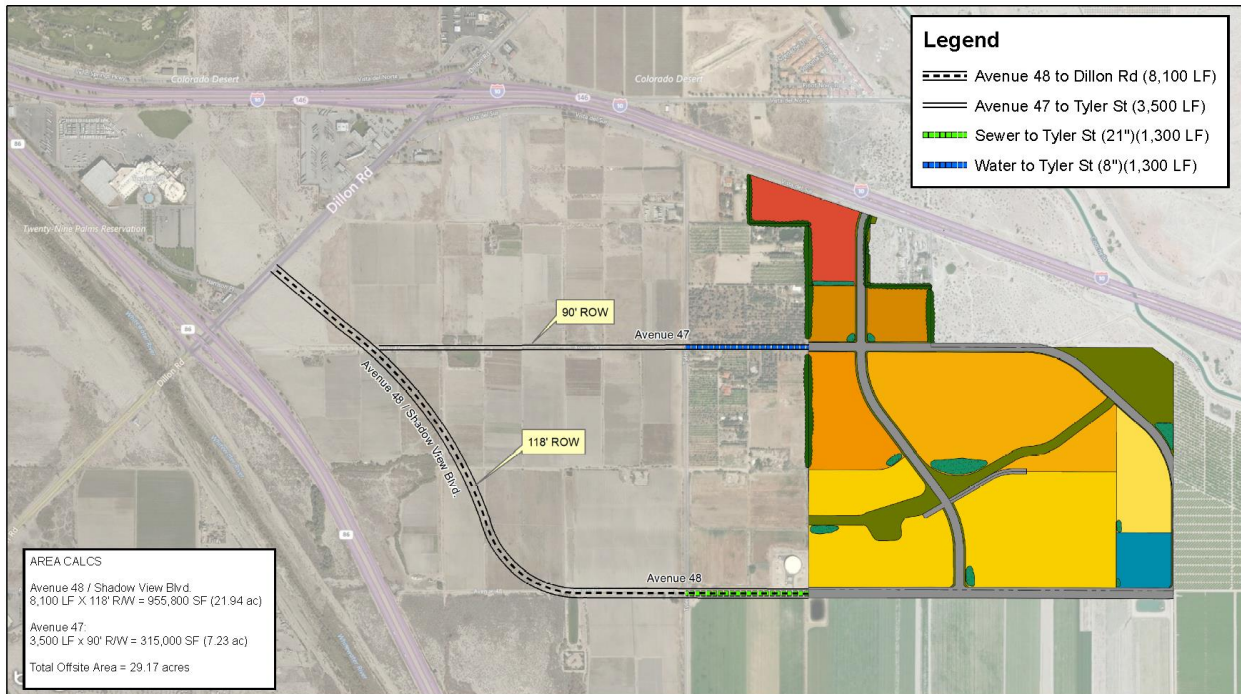
- 2.29 Figure 3.4.2-3 is the Circulation Plan of the EIR, which shows the roadways necessary to access the Project site. Roadways that do not now exist are required to be constructed prior to the issuance of the first occupancy permit for the Project, and thus should be included in the Circulation Plan for the Project. See Conditions of Approval Nos. 8, 15, 16, and 25. While Figure 3.4.2-3 does not distinguish between existing and planned roadways, as stated in Response to Comment 7n of the Final EIR (p. 2-41), “Both Avenue 48 and Avenue 47 are identified in the City of Coachella General Plan, Traffic Impact Study City of Coachella, California, prepared by RK Engineering Group, Inc., dated October 14, 2014, revised June 14, 2016 (TIS, **Appendix O**), as “Future or Unpaved Roads.” According to the General Plan Circulation Element Map, Avenue 48 and Avenue 47 are shown as “New Major Corridor” and “New Minor Corridor,” respectively, on Figure 2-3, Road Network Vision of the General Plan. Therefore, it is the intent of the City for these roadways to be improved and open for public use.”

Please refer to Response to Comment 2.27 regarding the issue of existing right-of-way versus alignment or future right-of-way as referenced in Figure 3.4.2-3 and explained in the Global Note at the beginning of the Errata section of the FEIR.

- 2.30 Response to Comment 7o of the Final EIR (p. 2-41) states:

“Please reference the Figure below, which supplements Figure 4.11.2-1, Circulation Plan, of the EIR, which depicts the approximate 29 acres for the off-site improvements. The roadway alignments for Avenue 48, Shadow View Please reference the Figure below, which supplements Figure 4.11.2-1, Circulation Plan, of the EIR, which depicts the approximate 29 acres for the off-site improvements. The roadway alignments for Avenue 48, Shadow View Boulevard and Avenue 47 are conceptual at this time and are shown on Figure 4.11.2-1, which uses a recent aerial photo base, to allow for ease of identification. However, their locations are consistent with the General Plan Circulation Element and the Shadow View Specific Plan. As shown in the Figure below, the entire right-of-way width was multiplied by the length (linear feet) to get the total approximate 29 acres for the off-site improvements. This represented a “worst-case” scenario for the scope of the off-site improvement areas. As discussed below, 30’ wide pavement is

proposed within these right-of-way areas, with the remainder of the right-of-way remaining undeveloped.”



The Figure included in Response to Comment 7o, reproduced here, supplements Figure 4.11.2-1 and Figure 3.4.2-3, which depict the Circulation Plan for the Project as it sets forth the linear feet for the roadway, sewer and water improvements. The area calculations provided in the Figure amount to approximately 29 acres, as analyzed in the DEIR. Comment 7o appears to have calculated acreage based upon the linear feet of the infrastructure improvements and 30' wide pavement. The total improvement area analyzed in the EIR, however, is based upon the ultimate width of the proposed roadways.

As previously stated in the Final EIR (pp. 2-41 and 2-62), 29 acres of off-site improvement area was analyzed as a worst-case scenario and the expected interim phase roadway improvements would be significantly less. This response is intended to further clarify the intended Project improvements and to address concerns regarding the provision and timing of bicycle and pedestrian circulation routes; the Project will provide interim phase off-site roadway improvements to accommodate bicycle lanes and sidewalks. Thus, to provide more clarity regarding pedestrian and bicycle improvements, Shadow View Boulevard will be widened to a minimum interim width of 34' including the offsite segment from Dillon Road to Avenue 48 to allow for installation of two vehicle travel lanes (12' each) and a sidewalk (5') and Class II on-street bicycle lane (5') on one side of the roadway. As the ultimate buildout of Shadow View Boulevard/Avenue 48 and Avenue 47 was analyzed in the EIR, there are no additional impacts associated with this revision to accommodate a sidewalk and Class II on-street bicycle lane as part of the off-site improvements provided by the Project.

2.31 Comment 2.31 reiterates some of the comments made in Comment 7q and Comment

7r. Response to Comment 7r of the Final EIR (p. 2-42) states:

*“RK Engineering Group, Inc., was consulted for their input regarding this comment, their calculations confirm that 30 feet of pavement would allow for a 2-lane undivided roadway with a minimum ADT capacity up to 10,400 vehicles per day. Based on the City of Coachella General Plan and the Traffic Impact Study City of Coachella, California, prepared by RK Engineering Group, Inc., dated October 14, 2014, revised June 14, 2016 (TIS, **Appendix O**), the Project would assign approximately 7,800 average daily trips (ADT) to this segment. Therefore, the interim improvements shall be adequate to accommodate the entire buildout of the Project. The 30 feet width of pavement will serve to mitigate Project impacts and is not considered a “fair share” contribution. Shadow View Boulevard will serve to mitigate Project impacts. This roadway was not slated for fair-share contribution in the EIR; rather, intersections were identified in the EIR for fair share contributions (reference MM-TR-3 p. 4.14-61 and 4.16-62). As a condition of approval, subsequent traffic analyses will be required as each phase of the development is proposed and any additional improvements, such as to widen intersections, would be identified.”*

This comment was also addressed in the same manner in the FEIR (Response to Comments R4d and PCo on p. 2-83 and p. 2-93, respectively). In addition, updated information on the installation of sidewalks and bike lanes is provided in Response to Comment 2.27 above.

There are no changes to these Responses in the FEIR.

No additional comment is required.

2.32 Installation of interim roadway improvements along Shadow View Boulevard, Avenue 48 and Avenue 47 to obtain access to the Project is not a “new, reduced mitigation measure.” As provided in footnote 1 of Table 4.14.4-5, mitigation generally consist of the minimum necessary improvements at an intersection to improve operations to LOS D or better. Installing a two-lane undivided roadway would provide the minimum necessary vehicular capacity to achieve LOS D or better along roadway segments near the Project site.

Pursuant to the City of Coachella General Plan and the Traffic Impact Study City of Coachella, California, prepared by RK Engineering Group, Inc., dated October 14, 2014, revised June 14, 2016, a 2-lane undivided roadway with a minimum ADT capacity up to 10,400 vehicles per day could accommodate the Project’s approximately 7,800 average daily trips to the segment. 24 feet of pavement would allow for a 2-lane undivided roadway with a minimum ADT of 10,400 vehicles per day. Thus, providing 24 feet of pavement is the minimum required to accommodate the Project. As provided in Response to Comment 2.30 above, to accommodate the installation of sidewalks and bike lanes, an additional minimum of 5 feet of pavement will be provided for a Class-II on-street bike lane and an additional minimum of 5 feet will be provided for sidewalks on one side of the street, for a total of 34 feet of roadway improvements under interim conditions. This will still allow for a 2-lane undivided roadway to accommodate the project.

2.33 Response to Comment 7u of the Final EIR (pp. 2-42 and 2-43) states:

“MM-TR-1 will be revised to read, “For Existing Plus Project Conditions, the Project applicant is required to make the following improvements at the following intersections and roadway segments...” Also, the first bullet point under MM-TR-1 will be revised to remove the requirement that the Project, “Construct new extension of Avenue 47/Shadow View Boulevard to Dillon Road.” Instead add the following:

- *Roadway Segment Improvements*
 - *Construct new extension of Shadow View Boulevard from to Dillon Road to Avenue 48;*
 - *Construct new extension of Avenue 47 from Tyler Street to Shadow View Boulevard; and*
 - *Construct new extension of Avenue 48 from Tyler Street to Shadow View Boulevard.*

The revisions to MM-TR-1 represent clarifications and refinements that will not require recirculation of the EIR. Shadow View Drive is identified as Avenue 48/Shadow View Boulevard in the EIR (see Section 3.4.2.4).”

This comment was also addressed in the same manner in the FEIR (Response to Comments R4d and PCr on p. 2-83 and p. 2-94, respectively).

There are no changes to these Responses in the FEIR. The City, in exercising its discretion as lead agency has determined that the DEIR does not meet the criteria listed in State CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification) that would necessitate a revised and recirculated EIR.

No additional comment is required.

- 2.34 Please refer to Responses to Comments 2.3 and 2.7.
- 2.35 The City examined three alternatives in detail in the DEIR in accordance with State CEQA Guidelines Section 15126.6. In addition to the Vista Del Sur Alternative (Alternative 3) discussed in the DEIR and cited in Comments 7y through 7aa, the City has also examined an Alternative 4 in response to comments. Please refer to the revised Alternatives Memo dated April 24, 2020.
- 2.36 Comment noted. No further response is required.
- 2.37 Comment noted. No further response is required.
- 2.38 Comment noted. No further response is required.
- 2.39 Attachments noted. These attachments to Comment Letter No. 2 are attached electronically to these Responses.
- 2.40 Attachment noted. This attachment to Comment Letter No. 2 is a Transcript of Planning Commission Meeting, dated March 20, 2019, and is attached electronically to these Responses.
- 2.41 Attachment noted. This attachment to Comment Letter No. 2 is a Declaration of Charles M. Ellis and is attached electronically to these Responses.

Attachments to Comment Letter #2 may be accessed at the link below:

<https://www.dropbox.com/s/68rksbeb0ct62c6/VDA%20%20-%20Rutan-Tucker%20Comment%20Letter-City%20Council%20-26-2020.pdf?dl=0>