

# **Final Recirculated Environmental Impact Report (FREIR)**

for the

## **Whitney Portal Preserve Tentative Tract Map #239/Walters**

**SCH #2004071063**

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# **CHAPTER 1 - INTRODUCTION**

## **1.1 PURPOSE**

CEQA requires that a Final EIR be prepared, certified, and considered by public decision makers prior to taking action on a project. A Final EIR provides the Lead Agency (i.e., Inyo County) an opportunity to respond to comments received on the Draft EIR during the public comment period, as well as to make any additions or revisions to the information presented in the Draft EIR.

## **1.2 SCOPE AND FORMAT**

This Final REIR document includes the following:

- Chapter 1, Introduction, which outlines the purpose, scope and format of the Final REIR.
- Chapter 2, Overview of Comments Received, which explains the public review process and lists all agencies and individuals who commented on the Draft REIRs.
- Chapter 3, Responses to Comments, which contains all the comment letters received on the REIRs. Preceding each comment letter is a summary of the comments in the letter, together with staff's responses to those comments.

Each public comment letter has been assigned a number, which is circled at the upper right-hand corner of the letter. When needed, capital letters are noted in the margins of the letters as a way of identifying and breaking down individual issues/comments.

# **CHAPTER 2 – OVERVIEW OF COMMENTS RECEIVED**

## **2.1 PUBLIC REVIEW AND COMMENT PROCEDURES**

CEQA requires public disclosure in an EIR of all project environmental effects and encourages public participation throughout the EIR process. As stated in Section 15299 of the CEQA Guidelines, the purposes of public review of environmental documents are the following:

- 1.) Sharing expertise
- 2.) Disclosing agency analysis
- 3.) Checking for accuracy
- 4.) Detecting omissions
- 5.) Discovering public concerns
- 6.) Soliciting counter proposals

Section 15201 of the CEQA Guidelines states that “Public participation is an essential part of the CEQA process.” A public review period of not less than 30 days, nor longer than 60 days, is required for a Draft EIR under Section 15087(c) of the CEQA Guidelines. If a State agency is a lead or responsible agency for the project, the public review period shall be at least 45 days. As required under CEQA, the Draft REIR (both the first and the second/revised version) was published and circulated for review and comment by responsible and trustee agencies and interested members of the public. The public review period was for 45 days (July 9, 2008 – August 30, 2008 for the first version; November 25, 2008 – January 21, 2009 for the second/revised version).

## **2.2 INYO COUNTY’S CEQA PROCEDURES**

Title 15 of the Inyo County Code includes CEQA procedures to be followed by the County in its administration of CEQA and processing environmental documents. The following sections of the Inyo County Code describe the County’s public review process for a Draft Environmental Impact Report:

- Section 15.36.050, Notice of Completion of a Draft EIR:

*“As soon as the Draft EIR is completed and ready for public circulation, the Planning Department shall file a notice of Completion with the Governor’s Office of Planning and Research.”*

- Section 15.36.060, Public Notice of a Draft EIR:

*“Within ten working days of accepting the Draft EIR, the Planning Department shall publish, in a newspaper of general circulation in the County, notification that a Draft EIR is available for public review and comment. The public notice shall specify the review period, identify any public meetings or hearings on the project, briefly describe the project and its significant environmental effects, and state where the proposed EIR and all reference documents are available for review. It must also include a statement indicating whether the project is on a listed toxics site. The Planning Department shall inform by mail interested groups and citizens who have requested such notification in writing of the availability of the Draft EIR.”*

- Section 15.36.070, Review Period for a Draft EIR:

*“The Planning Department shall establish a review period termination date that shall be observed unless conditions arise during the review period to warrant an extension of the review period. The minimum review period will be 30 days (for projects not requiring State Clearinghouse review) or 45 days (for projects requiring State Clearinghouse review), unless the Planning Commission determines that it would be in the public interest to provide a longer review period.”*

- Section 15.36.080, Public Distribution of a Draft EIR:

*“The Planning Department shall distribute copies of the Draft EIR to facilitate the public review. Copies of the Draft EIR shall be mailed to departments, agencies, groups, and individuals that may, in the Department’s judgement by reason of expertise, jurisdiction, and interest, assist the County with its review of the Draft EIR. In addition, at least one copy shall be mailed to the County library for public review. Each draft EIR shall be accompanied by a letter of transmittal indicating the end of the review period and the departmental contact person.”*

- Section 15.36.090, Public Hearing on a Draft EIR:

*“The Planning Commission shall hold a public hearing on the Draft EIR. Notice of the public hearing shall be as follows:*

- 1.) *Notification by mail to the applicant and all individuals and organizations who commented in writing during the public review period.*
- 2.) *Notification in a newspaper of general circulation in the area of the proposed project.”*

- Section 15.36.100, Comments on the Draft EIR:

*“Public comments must be received by the Planning Department within the specified review period. Failure to receive written comments by the end of the review period shall be considered a presumption of no comment. The County shall not be obligated to respond to comments received after the termination of the review period, unless the Planning Commission determines that the public interest would be served by doing so.”*

- Section 15.36.110, Evaluation of Responses to Comments:

*“After the review period for the Draft EIR closes, the Planning Department shall assemble all written comments and transcripts of comments made at the public hearing(s). These comments shall be transmitted to the consultant or public department or agency responsible for preparing the EIR. Planning Department staff shall determine which comments address environmental impacts and mitigation. These comments must be responded to.*

*Comments addressing the following issues do not require a response, but should be noted for the record:*

- 1.) *Comments addressing the merits of the project (as distinguished from environmental impacts of the project).*
- 2.) *Comments beyond the scope of environmental review (such as legal interpretations).*
- 3.) *Comments on impacts too speculative for evaluation.”*

- Section 15.36.120, Recirculation of a Draft EIR:

*“If ‘significant new information’ is added to the EIR after the close of the public comment period but before certification, the County must provide a second public review period and recirculate the Draft EIR for comments. New information is considered “significant” when the EIR is changed in a way that deprived the public of a meaningful opportunity to comment. This occurs when the new information discloses:*

- 1.) *A new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented.*

- 2.) *A substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
- 3.) *A new feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt.*
- 4.) *The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment of the draft was, in effect, meaningless.*

*New information is not "significant" when it merely clarifies, amplifies, or makes insignificant modifications to an adequate EIR. Substantial evidence must support the County's decision not to recirculate an EIR."*

- Section 15.36.130, Contents of the Final EIR:

*"The Final EIR shall consist of the Draft EIR, a list of persons and organizations who made comments, comments received, and responses to comments. Alternatively, the Draft EIR may be revised to incorporate responses to comments into the text of the report. If this format is used, the Final EIR shall consist of the revised Draft EIR, a list of persons and organizations who made comments, comments received, and an indication of where each comment raised is addressed in the revised text."*

## **2.3 LIST OF AGENCIES AND INDIVIDUALS WHO COMMENTED ON THE DRAFT REIR (both the first and the second/revised recirculation)**

- Shute, Mihaly & Weinberger, LLP
- Save Round Valley Alliance (SRVA)
- Environmental Analysts, E.M. Brown
- Bureau of Land Management (BLM), Bill Dunkelberger
- California Regional Water Quality Control Board, Lahontan
- Kent Richards
- Hans-Dieter Simon
- Ore Carmi
- Paul Kuroda
- Greg Dusic
- Kim F. Floyd
- Wilma A. Wheeler
- Constance Spenger
- Guy Zahler

- Ginny Davidson
- Karla Moeller
- Curt Davidson
- Robin L. McLean
- Thera Marie Crane
- Jef Chadwick
- Dorothy Burdette
- Sean P. Logal
- Katherine Hancock
- Pete Epanchin
- Duane Warth
- Jim Walters
- Dwight F. McNaughton
- David Zetland
- Tom Mooers
- Mary K. Prentice
- Eileen E. Peterson
- Anita McProud

# **CHAPTER 3:       RESPONSES TO COMMENTS**

This section contains a summary for each of the comment letters written, staff's responses to each letter, followed by a copy of the comment letter. Comment letters that were received on both the Draft Recirculated EIR (DREIR) and the Draft Revised Recirculated EIR (DRREIR) are included.

**COMMENTS & RESPONSES ON THE  
REVISED RECIRCULATED EIR (RREIR)  
(i.e, the second/revised recirculation)**

## **Comment Letter #1 (Shute, Mihaly & Weinberger, LLP)**

Comment #1-A: Commenter states that the EIR and REIR/RREIR differ in their claims of the proposed project's aesthetic impacts.

Response #1-A: The EIR prepared for the project has always been clear on the fact that the proposed project site, while vacant and undeveloped at this time, is part of the Inyo County General Plan designated community of Lone Pine Creek, which contains a number of homes situated mainly along Lone Pine Creek, and which are located across Whitney Portal Road from the proposed project site. Additionally, the EIR and all additional recirculations have recognized that the proposed project would have a significant visual impact, even though it is contiguous to an existing community. The analysis of the visual impacts of the proposed project have not shifted.

The Horseshoe Meadows Road site shares many of the same visual characteristics as the site of the proposed project. While it is not contiguous to an existing community, it is an undeveloped site in an open and undeveloped area of the County. The Horseshoe Meadows Road site's "visual impact [is] derived from 'the significance of development within a unique area which before was notable for scenic vistas unmarred by development of any kind,' and from 'the fact of development where before there was none.'" While Horseshoe Meadows Road may be less traveled than Whitney Portal Road, a development there remains a significant visual impact, for most of the same reasons that development of the proposed project site would create a significant visual impact. Additionally, the impact would be to a larger group of residents, as the Alabama Hills community, in whose viewshed the Horseshoe Meadows Road development would be, is much larger than the Lone Pine Creek community, in whose viewshed the proposed project would be.

The County's response to Comment #1-A in the previously circulated REIR document (which was from the same commenter) concludes with two salient points:

- The Horseshoe Meadows Road site is not a feasible exchange site because it has been withdrawn under 1931 federal law, and thus is not feasibly available for exchange.
- The Horseshoe Meadows Road site would not significantly decrease any project impacts to the Sierran viewshed – it would just move them to another location that is not within a General Plan designated community (as is the project site), and which is not designated and zoned for residential development (as is the project site), and which would experience the same impacts to the Sierran viewshed.

Comment #1-B: Commenter states a land exchange and a development proposal could be processed simultaneously.

Response #1-B: Based on the history of this project, as well as other projects in the County, any such processing of a new application would involve preparation of an EIR. It is the County's experience that processing of a subdivision under the California Subdivision Map Act, with an associated EIR, would take considerably longer than one year. As stated in the REIR, it generally takes 18 months to two years to process a subdivision to approval.

Further, the applicant has no standing to pursue a subdivision of BLM land. Ownership or control over a parcel or parcels is required to process a subdivision application in Inyo County, and indeed throughout California. As a practical matter, there is no parcel to consider, since the proposed 100-acre BLM parcel is not a parcel at all. Rather, it is a portion of a 640 acre BLM parcel. Until a trade was effected between the BLM and the developer, there would be no parcel that could be the subject of a development application and no application on which to conduct a CEQA analysis.

While it may superficially sound like a practical suggestion to process an application to subdivide the Horseshoe Meadows Road site prior to a trade, attempting to subdivide a parcel that has not been created and that is owned by the United States is not a practical proposition at all. It is not legally or practically possible.

Comment #1-C: Commenter states that the developer's sunk costs in the proposed project site should not be considered in the feasibility analysis for alternative sites.

Response #1-C: The commenter agrees with the County's analysis insofar as the County includes the cost to the developer of holding his land while pursuing a trade with the BLM. At a minimum, these expenses include interest on the purchase of the proposed property; taxes paid annually on the property; as well as costs and analysis required to ascertain that a trade must be pursued. These costs are substantial and set forth in the REIR and of themselves make a trade economically infeasible. A typical developer, in Inyo County at least, does not have the resources to invest substantial sums in property and project expenses with no expectation of return for six or more years. This is a real and substantial cost of the proposed alternative of pursuing a trade of land with the BLM.

Further, the County does not agree that additional investments by a developer in his property are irrelevant to the feasibility of an alternative under CEQA simply because those investments will have to be made again for an alternate parcel. CEQA does not require that an EIR make the false assumption that the developer comes to the alternate without any history with the preferred project. The County must necessarily evaluate the alternate site through the lens of a developer having invested in one site and then being required by CEQA to consider investing in a second site. This is inherent in the CEQA alternatives analysis. There are costs inherent with the original investment and investigation of the project site. CEQA does not require an analysis that is divorced from the reality of the situation. The EIR need not ignore the expenses of doing exploratory analysis of the preferred project site, and those expenses have an impact on whether the alternative is economically viable.

Taken separately and cumulatively, the expenses, risk and uncertainty of pursuing a trade for a BLM parcel renders the reduced profitability of the land exchange alternative sufficiently severe as to render it impractical to proceed with the project.

Comment #1-D: Commenter states that a denial of the proposed project does not mean that the proposed project site could not still be developed in some fashion, and also states that the issue of certainty in development issues is not correctly addressed.

Response #1-D: The comment misapprehends the purpose of this recirculation and the context of the project. The County is aware that the developer could place a house on each of his parcels without further discretionary approval of the County. This is the no action alternative. However, two houses on the developer's parcels is not the vision of the County for this property, as expressed in its general plan. The County, through its general plan, encourages that property be developed to its maximum potential. In the case of the proposed project, the County has planned for decades that the property be developed to a maximum of 2 ½ acre lots in a rural subdivision. The developer designed his project to comply with the County's plans. This is not a situation in which the County has conceded to the developer's wishes. It is a situation in which a developer has agreed to implement the County's plan. Because the commenter apparently believes that this "is a bad project offering a retrogressive vision of community planning," the commenter would have the County disregard decades of planning and reject a project that was designed to comply with the County's vision. CEQA does not require the County to do so.

The County also understands that if it does not approve this project, the developer will not be required to trade his parcels for a BLM parcel. However, the sole purpose of this recirculation is to determine whether it is feasible for the developer to trade his parcels for a BLM parcel. For the purpose of determining whether such a trade is feasible, the analysis assumes that the developer would cooperatively attempt to bring about such a trade. As the appellate court held, the fact that the developer might not wish to trade his land away is not a determining factor in evaluating an alternative.

The developer in this instance has made a considerable investment in his property based on County policies that encourage development and that specifically designated his land for the exact use he proposes. The planning process is designed to offer a roadmap for property owners as to what uses they may make of their property and to invest accordingly. The commenter posits that the fact that an alternative would do violence to the planning process, and the County's general plan, should not be factored into the feasibility analysis for an alternative. The County disagrees and does not believe that it is required to ignore an alternative's effect on its general plan policies and the business environment of the County. However, the County also recognizes that these policies may not be determinative in this CEQA context, either to allow a significant visual impact to occur or to determine whether an alternative is feasible.

Comment #1-E: Commenter states that the County should not limit its analysis of alternative sites to just BLM-owned parcels.

Response #1-E: The County has, with the preparation of the REIR, responded to the precise issue required by the Court – namely, to more fully examine the project’s environmental impacts “with respect to the analysis of the feasibility of the alternative of a land exchange with the BLM (REIR/RREIR, p.1).” As a result, and as noted in both the REIR/RREIR (p. 1): “In accordance with CEQA Guideline provisions on recirculation of an EIR, the County of Inyo requests that reviewers limit their comments to this revised portion of the EIR. The County of Inyo will respond only to comments that relate to this revision (14 CFR 15088.5(f)(2)).”

The FEIR examined a full range of alternatives to the project, including a no project alternative, different site configurations and the use of other sites. The FEIR examined the possibility of land exchanges with both LADWP and BLM, the two agencies with land that would potentially be suitable for exchange. It concluded that a trade for an alternative site was not feasible. The commenter challenged the adequacy of the alternatives analysis in the FEIR in the superior court, which upheld the analysis, and in the appellate court, which faulted a narrow portion of the analysis. The appellate court found only that the County had failed to sufficiently independently evaluate the possibility of a land exchange with the BLM. The County has now done that independent evaluation.

Comment #1-F: Commenter states that proposed project does not comply with AB 32.

Response #1-F: The development of the proposed 27-lot new lots would have some impact on climate change just by nature of their existence. However, and as confirmed by the study prepared on this issue for the RREIR, the impact would not in any way be a significant impact, individually or cumulatively, nor does the project conflict with the goals of AB 32. The project does not conflict with any rules or regulations promulgated pursuant to AB 32, and is required to comply with all state building codes, which will implement AB 32. The Commenter’s interpretation of AB 32 (in the second paragraph under comment #1-F) is unreasonable in its implication that any development – whether on the project site or on an alternate site – would result in obstruction of AB 32.

## **Comment Letter #2 ( Save Round Valley Alliance (S.R.V.A.))**

Comment #2-A: Commenter states that the developer's sunk costs into the proposed project site is not a valid consideration under CEQA, nor to be taken into consideration when considering alternative project sites.

Response #2-A: See Response #1-C. The comment is correct that CEQA nowhere states that a feasible land exchange must provide a site for a development identical to that which was originally proposed, or even that the new site must provide the developer with profits equal to what would have theoretically been netted had the original development been allowed, pursued, and completed. The County's CEQA analysis does not propose this standard.

Comment #2-B: Commenter states a reasonable range of alternatives were not considered.

Response #2-B: The Court directed that the County should more fully examine the project's environmental analysis "with respect to the analysis of the feasibility of the alternative of a land exchange with the BLM" (REIR/RREIR, p.1). The parcels reviewed and analyzed (with the exception of the Horseshoe Meadows parcel), were those BLM parcels that were identified by BLM as eligible for exchange and of a size large enough to be somewhere near equitable with the size of the proposed project site, as explained in the previously circulated REIR. Also, see Response #1-E.

Comment #2-C: Commenter states the Lubken Ranch property should be fully analyzed as a project site.

Response #2-C: See response #1-I in the REIR/RREIR, 3<sup>rd</sup> paragraph. Please note that the proposal concerning the Lubken Ranch is highly speculative in that there is still no offered or known information on the property's availability, its value in relation to the proposed project site, or its ability to be successfully subdivided. Further, it is entirely unclear why the owners of the Lubken Ranch property would trade a portion of their working ranch for Mr. Walter's property, which they would be unable to develop without creating a visual impact and which appears unsuitable for ranching. A trade for a portion of the Lubken Ranch appears infeasible from its conception.

### **Comment Letter #3 (David Zetland)**

Comment #3-A: Commenter states that feasibility analysis was only performed for one alternative site.

Response #3-A: The REIR examines six BLM-approved/sanctioned exchange sites, in addition to the Horseshoe Meadows site (which is not available for exchange through the BLM, as it was withdrawn under 1931 federal law). Of the six BLM sites, only the central Wilkerson site showed any initial realistic potential to be successfully developed. As a result, that was why that one site, out of the six reviewed in the REIR, was targeted for further specific intense review and analysis in the RREIR (see the analysis of the other five BLM exchange sites in the REIR/RREIR at pages 19-28).

Comment #3-B: Commenter states that adequate comparable properties were not used in the analysis of the central Wilkerson alternative site.

Response #3-B: The residential real estate market in Owens Valley is quite small in comparison to more developed/urban areas, and of the available real estate figures, those that were most applicable were used as the best information that was available on the issue. An experienced real estate professional with extensive experience in the Owens Valley performed the analysis and was able to evaluate the Wilkerson parcel. While it is true that property values may have changed, given the uncertain market at this time, the change should be roughly comparable throughout the valley.

Comment #3-C: Commenter states that sunk costs into the proposed project site should not be considered when exploring alternative project sites.

Response #3-C: See response #1-C. The commenter notes that developers expect to recover their “sunk” costs in projects they do not complete from the profits of those projects they do complete. In his opinion then, the developer here should be able to recover his investments in the project site from any alternative considered. This is a heavy cost burden to place on the economic viability of the alternative site. While the County did not go this far in its economic analysis, this letter does support the County’s approach.

Comment #3-D: Commenter states the developer should show that adequate water supplies are available for 50+ years.

Response #3-D: The issue of adequate water availability was addressed in the EIR for the project. The EIR is being recirculated on just one issue: the feasibility of the land exchange with the BLM. (14 CFR 15088.5(f)(2)).

Water availability varies from year to year, and varying degrees of drought can be said to be a cyclical environmental phenomena that exists as a backdrop to all development in

Inyo County. The hydrological analysis in the original EIR demonstrates adequate water supplies for the project, considering this inherent backdrop of water variability. Further, the project will obtain its water from an aquifer that is directly fed by Sierra runoff, with no appropriation of water between it and the source. There is no likelihood that the general drought in the state will affect this project.

Comment #3-E: Commenter indicates his support for a less dense project.

Response #3-E: Reduced project density was an alternative addressed in the EIR for the project. Commenters support for a reduced density project is noted.

#### **Comment Letter #4 (Constance Spenger)**

Comment #4-A: Commenter states the RREIR's analysis for global warming is deficient for a number of reasons, including that it doesn't address alternatives to the project, it relies on compliance by residents and construction crews, it does not address land use and sprawl issues, it does not address desert soil as a carbon sink, and it doesn't discuss man-made aerosols in raising the earth's temperature..

Response #4-A: The study analyzing the project's impact on global warming, and in particular its compliance with AB 32, was prepared in response to a comment letter on the REIR. The study analyzes the effects of the proposed project and, as a result, it is not intended – nor is it necessary – that the study analyze other project alternatives. The climate change study addresses the impacts of both the construction of the project and the use of buildings that might be constructed. The County assumes that construction crews and residents will comply with laws and regulation regulating their use of the property. It is not clear what the commenter means by the effects of “sprawl”, since the project is adjacent to an established community and only four miles from the town of Lone Pine. However, the study does address the effects of transportation, which is the major effect of homes that are distant from a commercial center. The effect of building on desert soils is necessary included in the evaluation of construction and use of the buildings and is a very minor contributor to climate change as compared to building the structures, using gas, electricity and water, removing vegetation and disposing of solid waste. Approving the project should not lead to an increase in world population and would be unlikely to lead to an increase in the use of aerosols for personal use. (Emissions resulting from painting and construction are addressed in the study.)

**Comment Letter #5 (Sierra Watch, Tom Mooers)**

Comment #5-A: Commenter references the Save Round Valley Alliance (SRVA) comment letter.

Response #5-A: See responses #2-A through 2-C.

Comment #5-B: Commenter states neither the REIR nor the RREIR analyzes the alternative of a land exchange for the project.

Response #5-B: See responses #1-A through 1-E.

Comment #5-C: Commenter states climate change issues were not adequately addressed.

Response #5-C: See responses #1-F and response #4.

**Comment Letter #6 (Sierra Club, Mary K. Prentice)**

Comment #6-A: Commenter states alternative exchange sites were not adequately addressed.

Response #6-A: See response #1-A through 1-E, 2-B, 2-C, and 3-A.

Comment #6-B: Commenter states the DEIR does not adequately analyze environmental impacts or mitigation measures.

Response #6-B: See response #2-B. The Draft and Final EIRs extensively analyzed environmental impacts of the project and mitigation measures. Furthermore, the analysis was challenged on appeal to the Inyo County Board of Supervisors and to the superior and appellate courts. They were not found lacking. This recirculated portion of the EIR addresses the feasibility of a trade with the BLM specifically and is not intended to reanalyze matters that were thoroughly and appropriately analyzed in the FEIR.

Comment #6-A: Commenter references comment letters #1 and #2.

Response #6-A: See responses to comment letters #1 and #2.

## **Comment Letter #7 (Dorothy Burdette)**

Comment #7-A: Commenter states only one alternative site is examined in any detail.

Response #7-A: See response to comment #3-A.

Comment #7-B: Commenter states that it is not justified to consider the developer's previously expended project funds when examining alternative sites.

Response #7-B: See response #1-C.

Comment #7-C: Commenter states that the REIR did not conclude that the Wilkerson site is infeasible or impractical.

Response #7-C: The central Wilkerson site was not addressed in the original EIR for the project, but was examined in the REIR and RREIR. The later documents specifically concluded that a land exchange for the Wilkerson site is infeasible. As noted in those documents (pages 16-19 for both), the cost, time, risks and uncertainties involved in doing an exchange with the BLM, the existence of the earthquake fault which will necessitate finding additional BLM exchange acreage elsewhere, the difference in land valuations between the Wilkerson site and the proposed project site due to surrounding development on smaller sized lots in Wilkerson, and the lack of amenities that are available to the proposed project site all contribute to making the parcel infeasible as a land exchange alternative.

**Comment Letter #8 (Eileen E. Peterson)**  
**Comment Letter #9 (Thera Marie Crane)**

Comment: These letters are the same as comment letter #7.

Response: See response to comment letter #7.

**Comment Letter #10 (Anita McProud)**

Comment: This letter is the same as comment letters #7 - #9, with the exception of the last paragraph which questions general plan issues.

Response: The general plan designation and zoning for the proposed project site have been in place since the 1970s, and the proposed project complies with them. See response #1-A, 1-D, and response #7.

**COMMENTS & RESPONSES ON THE  
RECIRCULATED EIR (REIR)**

## **Comment Letter #1 (Shute, Mihaly & Weinberger LLP)**

Comment 1-A: Commenter states that using the Horseshoe Meadows road site as an alternative project site would decrease the proposed project's visual impacts.

Response 1-A: While the Whitney Portal road may have higher traffic counts and lead to the more significant tourist site, both the Whitney Portal road and the Horseshoe Meadows road lead west out of Lone Pine and provide access across the valley floor and up into the Sierra to trailheads that allow access to the back country. In this sense, both roadways and both development sites (the proposed project site and the Horseshoe Meadows road site) present visual impacts to the larger Sierra backdrop.

Contrary to statements in the comment letter, the project site is not located on undeveloped land far from any settled community. Rather, it is located within the community of Lone Pine Creek and is directly across Whitney Portal Road from several residences. The visual impact from the proposed project does not arise from the fact it is isolated from other residences, but from the fact that it will impact views toward the Sierra of traffic as it passes by on Whitney Portal Road. The Horseshoe Meadow Road site is not within, and is at least a half mile from, any established community (i.e., the Alabama Hills community) – it will stand alone. For this reason, it presents an impact. Even were the Horseshoe Meadow Road site available for trade, developing it would only serve to shift the same type of visual impact from one population to another. The visual impact would not be significantly decreased.

*The EIR does not state that exchanging the project site for the Horseshoe Meadows Road site would decrease the visual impact of the project. The EIR states that the land trade alternative, in general, could decrease the impacts of the project. This conclusion presupposes that there are parcels available for exchange that do not have the same or similar impacts as the proposed project. That supposition, of course, is addressed by the EIR and this REIR, which conclude that there is no feasible land exchange alternative. The Horseshoe Meadow Road site, in particular, besides being an infeasible option, also would not significantly decrease the visual impacts of the project.*

Comment 1-B: Commenter states that the infeasibility of the Horseshoe Meadows site as an alternative is not adequately justified.

Response 1-B: The feasibility of an alternative must be evaluated in light of economic, legal, social and other factors and whether it may be accomplished in a reasonable period of time. The REIR analyzes the Horseshoe Meadows Road site on all these criteria, which both individually and collectively demonstrate that the site is not a feasible alternative to the project site.

One legal issue is of paramount importance and is not addressed in the comment. The Horseshoe Meadows road site has been withdrawn from entry and disposal under a 1931 federal law. This is a Congressional determination that the site should not be used for development purposes. As a result, the site is not listed among the parcels BLM has available for exchange, as confirmed in letters from BLM (Appendix K of REIR, Appendix L of REIR, and Comment Letter #4 attached to this staff report). The fact that the BLM lacks the authority to trade the Horseshoe Meadows site for the project site weighs heavily against its feasibility, since it means that any developer would have to change Congress' mind on the matter to effect a trade. It would quite literally take an act of Congress to make the site available.

This fact obviously affects whether the trade could be accomplished in a reasonable period of time. The time estimates to complete a trade with BLM were provided and verified by BLM staff, as noted in the final paragraph of the BLM letter in Appendix O of the REIR, and again in Comment Letter #4 attached to this staff report. While it is possible to work through the BLM and petition Congress to change the status of a site, the process to do so extends the ordinary BLM processing time from a minimum of two years to four years, which does not include the project processing time of the County. Four years to determine if a parcel is available for development does not appear to be a workable period of time. The County has determined that two years is the approximate time it takes to perfect and approve a new project application with the County.

The amount of time required from the point of proposing a trade with the BLM, to gaining development approval of such a trade site, necessarily affects the economic feasibility of an alternative. The commenter argues that the economic feasibility of a parcel should only be evaluated assuming, up front, that a trade is possible, will occur, and that approvals for the trade site will be assumed to be granted. In other words, the property should be viewed as available and profitable to a theoretical developer. However, the REIR cannot be so limited. It must analyze the feasibility of the land trade alternative, which necessarily includes the process, timeliness and cost of pursuing the trade. Certainly, the typical developer's ability to continue to finance a project is one component of the issue of project feasibility.

Despite the commenter's economic analysis of sunk costs, the amount of money a developer must invest in achieving the alternative and the ability to finance the process are relevant and fundamental to determining whether an alternative is economically feasible. The cost to a developer of engaging in a (minimally) four to six year project delay to implement an alternative is a relevant and appropriate factor in the economic feasibility of that alternative. These costs are not sunk, they are the cost of pursuing the alternative. They may make it financially infeasible to pursue the land trade alternative. Clearly, the County is not required to assume that a developer has unlimited time and funds to accomplish his project when determining whether an alternative is feasible.

Comment 1-C: Commenter states that the County misunderstands the alternatives analyses that is required in that it is under the impression that it can compel the developer to accept a land exchange.

Response 1-C: The County understands that it cannot compel the developer to accept a land exchange. The County must, however, determine whether the developer will be allowed to develop the parcel he owns. If the County determines that the developer may not develop his parcel, then the developer will only be able to build a project on another parcel, if he should choose to do so. Whether, in that event, an observer would decide that the County compelled the developer to accept the alternative or whether the developer did so of his own choosing is a distinction without a difference as far as the feasibility analysis.

Comment 1-D: Commenter states that it is not proper to consider that disallowing project approval would create an environment in which property owners are unable to ascertain the permitted uses of their property.

Response 1-D: The REIR analyzes the issue of alternative project sites in terms of the issue of feasibility. Feasibility is in part analyzed by considering social factors. Social factors are in part incorporated in the County General Plan, in which the Board of Supervisors determined the areas of the County that are appropriate for development. The Board determined decades ago that the project site is appropriate for development and designated it as such in the General Plan and in County zoning maps. Developing the Horseshoe Meadow Road site would shift development from a parcel that is designated by the community for development to one that is not so designated. This implicates both social factors – the ability of a community to determine its character – as well as legal ones – the fact that developing the Horseshoe Meadows Road site would violate policies of the General Plan. These are both appropriate factors to consider in determining if an alternative is feasible.

Comment 1-E: Commenter states that the Horseshoe Meadows site is similar to the proposed project site in terms of its consistency with County General Plan goals and policies.

Response 1-E: The proposed project site is, unlike the Horseshoe Meadows road site, included in an existing General Plan-designated community (Lone Pine Creek). The project site is immediately adjacent to residential development. The project site has been designated and zoned since the 1970s for exactly the type of rural residential development proposed by the project. The Horseshoe Meadow Road site is neither located in a designated community, adjacent to residential development nor designated for development in the General Plan or zoning map.

In terms of the similarity of both the project site and the Horseshoe Meadows site to impact visual resources, see Response #1-A.

Comment 1-F: Commenter states that there are insufficient reasons to reject the central Wilkerson parcel as infeasible because it is error to look at the developer's sunk costs, the

time to process the trade is not sufficiently substantiated, and the County should not consider that disallowing project approval would create an environment in which property owners are unable to ascertain the permitted uses of their property.

Response 1-F: See the responses to 1-B, C, & D.

Comment 1-G: Commenter states that the central Wilkerson parcel is not adequately or correctly analyzed in terms of its economic feasibility to develop.

Response 1-G: The REIR is an environmental document and an economic cost-benefit analysis of the development potential of the central Wilkerson piece was deemed beyond the scope of such a document. However, in the interest of fully exploring and responding to the contention that the central Wilkerson parcel is a viable alternative site for the project, a development feasibility study (Triad/Holmes Associates) has been prepared for the site, as well as a market analysis (Nancy Lowthorp, Coldwell Banker). These studies do not raise new issues or affect proposed mitigation such that additional public comment on them is required. These studies are attached to, and follow, the responses to this comment letter.

These documents, taken together, indicate that the central Wilkerson site could be subdivided to yield 43 one-acre lots (the minimum lot size, as designated by the General Plan land use designation of Residential Rural High Density (RRH)), each of which could likely be sold for an average of \$125,000, yielding a profit of \$5,375,000 for all 43 lots. However, development costs for the site are estimated by the Triad study to run \$4,338,500, which averages out to \$101,00 per lot, leaving little profit margin. Added to these costs to develop the central Wilkerson parcel are the:

- a.) Costs and expenses already put into the proposed project site off Whitney Portal Road, which come to \$1,757,360. This can be thought of as the “purchase price” of the Wilkerson parcel.
- b.) Costs and expenses that would be required to hold the proposed project site parcel until a trade could be affected with the BLM for the central Wilkerson site, which are estimated to be \$471,793.

These figures, added together, show the total costs to the developer to develop the central Wilkerson parcel:

\$4,338,500 (cost to develop the central Wilkerson site, per the Triad study)  
\$1,757,360 (costs already expended on the proposed project site, per page 10 of  
*the REIR; if trading for the Wilkerson parcel, this could be thought of  
as the Wilkerson "purchase price"*)  
\$471,793 (costs to hold the project site until a BLM trade is completed, per pages  
11 and 16 of the REIR: \$707,689 (p. 11) - \$235,896 (p. 16) =  
\$471,793)

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\$6,567,653 = total expenditures to develop the central Wilkerson site

When compared with the estimated profit from developing the central Wilkerson site, these figures show a net loss to the developer in developing the central Wilkerson parcel as an alternative site:

\$6,567,653 (total expenditures to develop the central Wilkerson site)  
\$5,375,000 (estimated income of 43 central Wilkerson lots, at \$125,000 per lot)

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\$1,192,653 = net loss to developer in developing the central Wilkerson site

In addition, the location, size, land designation, and zoning of the central Wilkerson piece is not in line with the proposed project, which consists of large-lot, rural residential development in an exceptional location commanding Sierra range views.

Comment 1-H: Commenter states that the central Wilkerson parcel is not properly analyzed with respect to General Plan goals and policies in that it concludes that developing the Wilkerson parcel would transfer development from the area of the proposed project to the Wilkerson area.

Response 1-H: The General Plan is considered the constitution for development policies in the County. In it, the Board of Supervisors determined what areas of the County may be developed, the density to which they may be developed and the type of development that should be allowed. Decades ago, the Board of Supervisors determined that the proposed project site should be developed as a large-lot residential community. Although no specific development was approved for the site, development was planned for the site.

If development is not allowed on the project site, that would eliminate a development that was planned for by the County in its General Plan. There is a very limited amount of land available in the County for development. The elimination of this development opportunity in the Lone Pine area is unlikely to be replaced and will be a loss for that community. It is a goal of the General Plan to provide for growth in all of the County's communities. By eliminating growth in one community while encouraging it in another community, the alternative would negatively affect two General Plan goals: first, the goal to encourage the development of the Pine Creek community; and second, to remove a growth opportunity from the Lone Pine area. Although these considerations

may not be determinative of the alternative's feasibility, they are factors that may and should be considered in the feasibility analysis.

Comment 1-I: Commenter states that other off-site alternatives, other than just those owned by BLM, must also be analyzed.

Response 1-I: The FEIR examined a full range of alternatives to the project, including a no project alternative, different site configurations and the use of other sites. The FEIR examined the possibility of land exchanges with both LADWP and BLM, the two agencies with land that would potentially be suitable for exchange. It concluded that a trade for an alternative site was not feasible. The commenter challenged the adequacy of the alternatives analysis in the FEIR in the superior court, which upheld the analysis, and in the appellate court, which faulted a narrow portion of the analysis. The appellate court found only that the County had failed to sufficiently independently evaluate the possibility of a land exchange with the BLM.

The REIR, therefore, does not seek to re-analyze every and all alternative site possibilities. The Court limited the area covered by the REIR when it ordered that BLM land trade alternatives should be more fully explored. As a result, that has been the focus of the REIR document.

The County knows of no other organizations that control land that is available for trade for the project site. This includes the Conservation Fund proposal. The Conservation Fund does not own or control the Lubken Canyon Ranch property and that property is not on the market. Furthermore, the Lubken Canyon Ranch is far larger than the proposed project site and would need to be subdivided by the owners before a trade could be considered. A trade for the Lubken Ranch Property would convert agricultural property to residential property. But even were the Lubken Ranch property of appropriate size and for sale, the Conservation Fund could not trade it for the Walters parcel as the Conservation Fund does not own or control it.

Comment 1-J: Commenter states that the REIR is a subsequent EIR, not a recirculated EIR, and that the entire EIR must be completely revised because of changed conditions since the certification of the EIR. The changed conditions are a large fire that occurred in the eastern Sierra, the governor's declaration of a drought in California, and the adoption of AB 32, the California Climate Solutions Act.

Response 1-J: The original EIR was certified, but that certification was set aside by the Inyo County Board of Supervisors pursuant to order from the superior court. The subject document is appropriately classified as a recirculated EIR.

The Inyo Complex fire of 2007 did not affect either the project site, the Horseshoe Meadows road site, or any of the other BLM-owned alternative sites that were analyzed. Wildland fires will always exist as one of the threats to rural residential development, as

the project recognizes and addresses with its mitigation measures for fire hazards. The fact that there is danger from fire in the eastern Sierra is not a new or changed condition arising subsequent to the preparation of the EIR. The fact that there was a large fire does not make a fire at the project site any more likely.

Water availability varies from year to year, and varying degrees of drought can be said to be a cyclical environmental phenomena that exists as a backdrop to all development in Inyo County. The hydrological analysis in the original EIR demonstrates adequate water supplies for the project, considering this inherent backdrop of water variability. Further, the project will obtain its water from an aquifer that is directly fed by Sierra runoff, with no appropriation of water between it and the source. There is no likelihood that the general drought in the state will affect this project.

Global climate change is a phenomena that was well recognized when this project was proposed and the EIR prepared. The EIR evaluated the effects of air pollution from the project. No comments were received concerning climate change at that time and the comment period is long closed. Climate change is not a new or changed condition affecting this project. While AB 32 passed recently, there are no regulations governing preparation of CEQA documents that have resulted from its passage.

Nevertheless, the County has received and evaluated an analysis of this project's effect on global climate change, which is attached to, and follows, these responses to this comment letter. The analysis concludes that this 27-lot subdivision does not constitute a size of development which could result in any significant, or cumulatively significant, impact to global warming. This conclusion is not surprising given that the County received no comments concerning the project's contribution to global climate change when it circulated the air impacts portion of the EIR. The global climate report does not introduce evidence of any impact or affect mitigation such that further public comment on it is warranted.

## **Comment Letter #2 (Save Round Valley Alliance (SRVA))**

Comment 2-A: Commenter states that the SRVA-produced White/Working Paper was not mentioned in the REIR, and argues that other agencies and organizations beyond BLM exist that can assist in a land exchange and/or an alternate site.

Response 2-A: See response #1-I. Concerning the LADWP information, please see attached correspondence between planning staff and LADWP staff.

Comment 2-B: Commenter states that an affordable housing component to the project is never addressed/proposed, although the Eastern Sierra Housing Needs Assessment says it needs to be addressed for the area.

Response 2-B: The need for affordable housing in Inyo County is not a new or changed circumstance subsequent to the circulation of the EIR. Inyo County addresses its affordable housing needs through its general plan, in compliance with state law. The General Plan does not designate the project site as an affordable housing site and there is no requirement for the developer to include affordable housing in his project or for the County to consider an affordable housing alternative to the project. Developing the property as affordable housing would not serve to mitigate the visual impact of concern, nor would it serve to mitigate other environmental impacts of the project.

Comment 2-C: Commenter states that the Lubken Ranch property could be an alternative site for the proposed project.

Response 2-C: See response #1-I.

Comment 2-D: Commenter states that the central Wilkerson site is not infeasible due to small lots, and not less valuable economically.

Response 2-D: See response #1-G.

Comment 2-E: Commenter states that the Rossi Hill #1 site is not infeasible, and that traffic and population impacts are overstated.

Response 2-E: The REIR did not identify traffic and population impacts as major negative impacts from the Rossi Hill site. Location, topography, size, and power lines make the site infeasible as an alternative to the proposed project site.

(NOTE: the original comment letter contained, as an attachment, a copy of the Eastern Sierra Housing Needs Assessment, a 163-page document. This document has not been

attached here, but is available for review by interested parties at the Inyo County Planning Department offices at 168 N. Edwards Street in Independence or on the Department's website at [www.inyoplanning.org](http://www.inyoplanning.org))

**Comment Letter #3 (Environmental Analysts, E.M. Brown)**

Comment 3-A: Commenter states that the project's visual impacts cannot be mitigated.

Response 3-A: The EIR and Inyo County recognize that a significant visual impact will result from the project, even after a variety of mitigation measures are imposed.

Comment 3-B: Commenter argues that the stated project objectives are simply descriptions of the project not project objectives, and that the REIR should not rely heavily on economic factors resulting from the proposed land trades.

Response 3-B: The proposed project description and objectives have never been simply to provide housing on vacant available land. It has been an objective of the project from its initiation to take advantage of the amenities of the project site to create a unique subdivision. While there are other areas in the County that offer similar amenities, none appear feasible or available for trade. See response #1-I.

Comment 3-C: Commenter states that other alternative sites, other than just those owned by BLM, must also be analyzed

Response 3-C: See response #1-I.

**Comment Letter #4 (Bureau of Land Management (BLM), Bill Dunkelberger)**

Comment: Commenter states that the REIR analysis of BLM-owned alternative sites is accurate.

Response: Comments noted.

## **Comment Letter #5 (California Regional Water Quality Control Board)**

Comment: Commenter states that drainage impacts must be mitigated, that permits must be obtained, and the low impact development (LID) principles should be incorporated into the project.

Response: Comments are noted, but are not directly relevant to the REIR. These comments are similar to those received in response to the original EIR, and mitigation measures were proposed and adopted for the project which address such comments/issues.

**Comment Letter #6 (Kent Richards)**

Comment: Commenter is against the project due to its visual impacts, and supports a land trade alternative.

Response: Comments noted.

**Comment Letter #7 (Hans-Dieter Simon)**

Comment: Commenter is against the project due to its visual impacts and supports finding an alternative site. Commenter also states that the use of running water (Lone Pine Creek) on the proposed project site should be more fully analyzed/examined.

Response: Comment noted. The proposed project site does not contain running water, although it is across Whitney Portal Road from, and is thus near to, Lone Pine Creek. There is no proposal to use Lone Pine Creek as part of this project. (NOTE: an initial proposal for a park/access way to Lone Pine Creek was proposed by the applicant at one time, but was subsequently withdrawn and is not now part of the project).

### **Comment Letter #8 (Ore Carmi)**

Comment: Commenter states alternative land trade sites have not been adequately considered; that area housing needs should be addressed; that an independent economic assessment of the proposed project should be made; and that approval of the proposed project would set a dangerous precedent to area views and ecosystems.

Response: See responses #1-I and #2-B.

**Comment Letters #9 – 25 (form letter from SRVA website, sent by various commentators)**

Comment: Commenter states that alternative sites, other than those owned by BLM, must also be examined; that the project does not address the issue of affordable housing; and that a fully adequate and independent economic analysis of the alternative sites has not yet been made.

Response: See responses #1-I, #2-B, and #1-G.

The analysis of economics in the REIR is an independent analysis conducted by Inyo County. There is no requirement that such an analysis be conducted by a third party.

**Comment Letter #26 (Duane Warth)**

Comment: Commenter supports the project moving forward.

Response: Comment noted.

**Comment Letter #27 (Jim Walters & Dwight McNaughton/RAM Holdings)**

Comment: Commenters note how difficult exchanges with BLM can now be.

Response: So Noted.