

**RESOLUTION NO. 2009--**

**A RESOLUTION OF THE INYO COUNTY BOARD OF SUPERVISORS OF THE  
COUNTY OF INYO, STATE OF CALIFORNIA, CERTIFYING AND  
ADOPTING THE FINAL ENVIRONMENTAL IMPACT REPORT (EIR) AND  
STATEMENT OF OVERRIDING CONSIDERATIONS, AND APPROVING  
TENTATIVE TRACT MAP NO. 239/WALTERS  
(LOCATED 4 MILES WEST OF LONE PINE: APNS 023-270-12 & 023-270-13),**

**WHEREAS**, on March 26, 2004, Jim Walters submitted an Application for Tentative Tract Map No. 239/Walters, to subdivide 74.15 acres into twenty-seven 2.5-acre lots; and

**WHEREAS**, the Inyo County General Plan designates the subject property as “RRM” (Residential Rural Medium Density, 1 dwelling unit per 2.5 acres); and

**WHEREAS**, the Zoning for the subject property is designated as RR – 2.5 (Rural Residential, 2.5-acre minimum), and public facilities, including power, water, septic, and fire protection, are adequate to meet the needs of the proposed project; and

**WHEREAS**, the Planning Commission considered the hydrogeological study prepared for the site, including the time of year the study was conducted, the type of well used to extract water and measure its flow, the location and use of monitoring wells for the study, and, further, the Planning Commission considered the efficiencies of individual wells on each lot as opposed to a community water system, the historical availability of groundwater in the general area, the characteristics of the groundwater basin, the proposed use of individual septic systems, the location of sensitive springs and habitat near the project location, and all comments relating to the hydrogeological study; and

**WHEREAS**, the Planning Commission found that the hydrogeological study prepared for the project indicates adequate groundwater availability for full build-out of the proposed project, assuming 100% development of second dwelling units as allowed under California State Law; and

**WHEREAS**, the Planning Commission considered the visual and aesthetic impacts of this project, including the impacts from future buildings and associated water tanks and other utilities, and considered alternatives and mitigation to the project that would minimize the visual impacts of the project; and

**WHEREAS**, in compliance with the requirements of the California Environmental Quality Act (CEQA), a Draft Environmental Impact Report (DEIR) was prepared for the project and circulated to the State Clearinghouse, all affected agencies, and all interested parties for public review and comment pursuant to the provisions of CEQA; and

**WHEREAS**, the public comment period for the DEIR closed on January 7, 2005 and fifty-seven comments were received; and

**WHEREAS**, following the close of the comment period, a Final Environmental Impact Report (FEIR) was produced, consisting of the Draft Environmental Impact Report, a list of persons and organizations who made comments, comments received, and responses to comments; and

**WHEREAS**, the Inyo County Planning Commission held a noticed public hearing on April 27, 2005, to consider whether to approve Tentative Tract Map No. 239/Walters; and

**WHEREAS**, at the April 27, 2005, hearing the Planning Commission considered the report of staff, the Environmental Impact Report, and all oral and written comments regarding the proposal; and

**WHEREAS**, at the conclusion of the April 27, 2005, hearing, the Planning Commission adopted the Final Environmental Impact Report prepared pursuant to the requirements of the California Environmental Quality Act and certified that the requirements of that Act had been satisfied; and

**WHEREAS**, after adopting the Final Environmental Impact Report, the Planning Commission adopted the Statement of Overriding Considerations and Findings and approved Tentative Tract Map No. 239/Walters, subject to the noted Conditions of Approval; and

**WHEREAS**, on May 9, 2005, Shute, Mihaly & Weinberger LLP, on behalf of the Save Round Valley Alliance, appealed the Planning Commission's decision of April 27, 2005, to the Inyo County Board of Supervisors; and

**WHEREAS**, as the appellate authority the Board was the certifying body for the Environmental Impact Report and the approval authority for the project; and

**WHEREAS**, on June 7, 2005, the Board of Supervisors conducted a noticed hearing *de novo* on the appeal of the above-described actions by the Planning Commission at which the Board heard testimony, received evidence, closed the public comment portion of the hearing and continued the hearing to July 12, 2005 to enable the Board to consider evidence received to the close of public comment; and

**WHEREAS**, on July 12, 2005, the Board of Supervisors conducted and concluded the continued hearing *de novo* on the appeal of the above described actions by the Planning Commission, and received and considered public comment presented at that hearing; and

**WHEREAS**, on July 12, 2005 the Inyo County Board of Supervisors approved Tentative Tract Map #239/Walters, Whitney Portal Preserve, and certified the Environmental Impact Report that pertained to that project; and

**WHEREAS**, Save Round Valley Alliance challenged the approval in Inyo County Superior Court, resulting in a judgment upholding Inyo County's certification of the EIR and approval of the project; and

**WHEREAS**, Save Round Valley Alliance appealed that decision to the Fourth District Court of Appeal, which found for the appellants on certain issues and directed the Superior Court to issue a Writ

of Mandate ordering Inyo County to set aside its certification of the EIR and its approval of Tentative Tract Map #239/Walters; and

**WHEREAS**, the Writ of Mandate was issued on June 17, 2008 and received by Inyo County on June 30, 2008; and

**WHEREAS**, the Writ of Mandate ordered the County of Inyo to set aside its certification of the EIR, set aside its approval of the Whitney Portal Preserve project, and to take no action to further the project without completing additional CEQA processing; and

**WHEREAS**, the Inyo County Board of Supervisors complied with the Writ of Mandate on August 26, 2008 by revoking its approval of the Whitney Portal Preserve project and its certification of the associated EIR; and

**WHEREAS**, in compliance with the Writ of Mandate and the requirements of the California Environmental Quality Act (CEQA), a Recirculated Environmental Impact Report (REIR) was prepared for the project and circulated to the State Clearinghouse, all affected agencies, and all interested parties for public review and comment pursuant to the provisions of CEQA; and

**WHEREAS**, pursuant to the court's order, the portion of the EIR that was recirculated (as the REIR) related to the feasibility of a land exchange between Mr. Walters and the Bureau of Land Management (BLM) for BLM lands, and comments and analysis were limited to that subject; and

**WHEREAS**, the public comment period for the REIR closed on August 30, 2008 and 27 comments were received; and

**WHEREAS**, upon review of the comment letters received, additional information was gathered and the portion of the EIR that related to the feasibility of a land exchange between Mr. Walters and the Bureau of Land Management (BLM) for BLM lands was again recirculated (as the Revised Recirculated EIR (RREIR)), which document incorporates the REIR; and

**WHEREAS**, the public comment period for the RREIR closed on January 21, 2009 and 10 comment letters were received; and

**WHEREAS**, following the close of the comment period for the RREIR, a new Final Environmental Impact Report (FEIR) was produced, consisting of the previously approved FEIR (which approval was subsequently revoked), the Revised Recirculated Environmental Impact Report (RREIR), a list of persons and organizations who made comments on the REIR and RREIR, comments received, and responses to comments (FREIR), which new FEIR is referred to herein as the EIR or Environmental Impact Report; and

**WHEREAS**, the Inyo County Planning Commission held a noticed public hearing on March 25, 2009, to consider whether to approve Tentative Tract Map No. 239/Walters and whether to certify the EIR; and

**WHEREAS**, at the March 25, 2009, hearing the Planning Commission considered the report of staff, the Environmental Impact Report, and all oral and written comments regarding the proposal; and

**WHEREAS**, the analysis of the EIR, including the RREIR, supported the previous findings and Statement of Overriding Considerations made by and conditions of approval imposed by the Planning Commission on April 27, 2005.

**WHEREAS**, the Planning Commission considered the facts and conclusions in the RREIR that a trade between Mr. Walters and the BLM for an alternative site for development is infeasible for a number of reasons and that the project would not significantly affect the climate; and

**WHEREAS**, on April 2, 2009, the approval of the Planning Commission was appealed to the Inyo County Board of Supervisors by Shute, Mihaly & Weinberger LLP, on behalf of the Save Round Valley Alliance; and

**WHEREAS**, the Inyo County Board of Supervisors held a noticed public hearing on May 19, 2009, to consider the FEIR for and Tentative Tract Map #239/Walters; and

**WHEREAS**, at the May 19, 2009, hearing the Board of Supervisors considered the report of staff to the Board and to the Planning Commission, written comments to the Planning Commission, the Environmental Impact Report, and all oral and written comments regarding the project.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that, based on all of the written and oral comment and input received at the May 19, 2009, hearing, including the Planning Department Staff Report, written comments to the Planning Commission, and the Environmental Impact Report for the project, the County of Inyo Board of Supervisors makes the following findings regarding the Environmental Impact Report (EIR):

1. The EIR provided meaningful analysis of the environmental effects of the project and provided for meaningful public review and comment which is evidenced by the extensive comments submitted in response to the Draft EIR, REIR, and RREIR and the numerous comments made at the public hearings on the project and EIR.
2. The project description for the proposed project is accurate and led to appropriate analysis of the project. The project will create 27 lots on which the General Plan and County Ordinances would allow the construction of 27 primary dwelling units. State law would allow lot owners to construct secondary residences of limited size on each lot as well. Where appropriate, the Environmental Impact Report studied and considered the effects of the potential secondary residences, particularly but not exclusively in water use, traffic studies and aesthetic considerations. This Board has considered the fact that secondary residences of limited size may be constructed on each parcel that will be created in making all findings and decisions relating to this project.
3. The project will not have a significant effect on the world or local climate. The original EIR for this project evaluated the effect of the project on air quality and determined that the project would have no significant effect on air quality. Although the climate change effect had been identified at that time, no comments were received to indicate that the project would have a significant cumulative or other effect on climate. During the recirculation, commenters identified that the climate might be affected by this project. Although the recirculation related strictly to the court-ordered analysis of the land trade alternative, an analysis of the project's effect on the climate was conducted. The analysis identified that a significant impact might

occur if the project conflicted with the implementation of Assembly Bill 32 which requires the reduction of the generation of greenhouse gasses in California, but concluded that the project would not conflict with the AB 32 goals and therefore could not have a significant impact on the climate. The study and the facts therein support this conclusion. The project is insignificant in relation to the scope of climate change and will be developed in full compliance with current and future regulations governing building and transportation efficiency. Although any new project is likely to increase greenhouse gasses to some extent, AB 32 envisions offsetting reductions that would result in a statewide reduction in such gasses. Any small increase in emissions resulting from the project will be offset and accounted for with the implementation of AB 32 in Inyo County and throughout California. This project will not conflict with the implementation of AB 32 and could not individually or cumulatively significantly affect the climate.

4. The requirements of the California Environmental Quality Act (CEQA) have been met.

**BE IT FURTHER RESOLVED** that this Board makes the following findings required by California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15091 regarding potentially significant impacts identified in the EIR:

- 1.) Stormwater Drainage Hazard Impact: Impact 3.3 - #1, as identified in the EIR

Facts: Stormwater flow through the existing gullies/drainage pathways on the project site can exceed 200 cfs, with resulting impacts to structures, roadways, or driveways located within, or too closely adjacent to, such drainage pathways.

Mitigation Measures:

- **Mitigation Measure #1:** The existing culvert underneath Whitney Portal Road shall be replaced with a single 36-inch culvert, with culvert details to be provided on final maps.
- **Mitigation Measure #2:** The minimum setback for all permanent structures shall be 175 feet for Lots 1 and 5; 200 feet for Lots 2 and 6; 225 feet for Lots 3 and 4; 275 feet for Lot 7; 300 feet for Lot 8; and 350 feet for Lot 9 (lot fronting Whitney Portal Road). The minimum setback shall be 50 feet for all permanent structures from lot lines that are common to other lot lines or from road rights of way located within the development, with exceptions as noted on the tract map. No building permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #3:** The developer shall pay a \$10,000 impact fee to the Inyo County Public Works Department to fund maintenance (“Maintenance & Enforcement Fund” established by the CC&Rs) to the Arizona Crossings and related drainage areas. This fund shall be replenished through the CC&R Architectural Committee as needed.
- **Mitigation Measure #4:** All drainage protection areas shall be defined on the Tentative Tract Map, all Final Maps, and shall be included in the CC&Rs. No building or grading permits shall be issued for properties that conflict with these requirements.
- **Mitigation Measure #5:** CC&Rs shall require all driveways which cross existing drainage pathways shall be constructed at grade, and building and grading permits shall reflect these requirements. Lots having driveways that cross the central drainage pathway (Lots 13-15, 26) shall have easements providing an emergency/secondary access route to those lots.

- **Mitigation Measure #6:** All lots are required to submit individual grading and drainage plans, to be reviewed and approved by the Inyo County Public Works Department prior to issuance of any building or grading permit.
- **Mitigation Measure #7:** All of the following permits shall be accompanied by submission of a Best Management Practices (BMP) plan: U.S. Army Corps of Engineers, State of California Regional Water Quality Control Board – Lahontan Region, California Department of Fish & Game, Inyo County Public Works Department.
- **Mitigation Measure #8:** Drainage and street plans shall be to the satisfaction of the Inyo County Public Works Department. Streets shall be offered in dedication to the County.

Finding: Changes or alterations have been required in, or incorporated into the project, which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

2.) Fire Protection Hazard Impacts: Impact 3.3 - #2, as identified in the EIR.

Facts: The project site is located within a “Very High Fire Zone,” outside the existing boundaries of the Lone Pine Fire District.

Mitigation Measures:

- **Mitigation Measure #1:** The project shall be annexed into the Lone Pine Fire District, thus providing 24/7 fire protection services. Annexation into the fire protection district is subject to approval of the Inyo Local Agency Formation Commission (LAFCO).
- **Mitigation Measure #2:** CC&Rs shall require a 3,500 gallon water storage tank for each home.
- **Mitigation Measure #3:** CC&Rs and conditions of approval shall require dedication of Lot A for use as a future fire substation, with installation of electricity, a well, pump, and 20,000 gallon water storage tank to be provided for subdivision fire protection purposes. The water storage tank shall be filled and kept in a ready state prior to any development commencing (i.e., prior to approval of the first Final Map). Ownership of Lot A shall be transferred to the Lone Pine Fire District. These measures shall take place prior to approval of any Final Map.
- **Mitigation Measure #4:** CC&Rs shall require “fire safe” construction methods for homes to include non-combustible roofs, enclosed eaves and decks, and a defensible space around all buildings in which all vegetation is removed or modified. No building permit shall be approved that does not incorporate such fire safe construction methods.
- **Mitigation Measure #5:** The developer shall contribute \$5,000 per lot to an escrow fund to be used for the future building of a fire substation on Lot A. This fund will be established and available prior to approval of any Final Map.

Finding: Changes or alterations have been required in, or incorporated into the project, which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

3.) Cultural/Historical Resources Impacts: Impact 3.9 - #1, as identified in the EIR

Facts: Refuse sites from movie crews filming in the Alabama Hills area (1920s-1960s) exist on the project site. Items within these sites may be historically significant, and would be lost/destroyed with the development of the site.

Mitigation Measures:

- **Mitigation Measure #1**: An archival & documentary information search on the use of the site by the motion picture industry shall be completed to the satisfaction of the Inyo County Planning Department prior to approval of any Final Map.
- **Mitigation Measure #2**: Developer shall have a more thorough field inventory of refuse deposits performed.
- **Mitigation Measure #3**: Developer shall arrange to have construction crew staff to be trained to identify significant artifacts. If any such artifacts are disturbed, or if human remains are found, the Inyo County Planning Department staff shall be contacted and work shall cease until a qualified archaeologist and a local Native American monitor (if necessary) can be consulted.

Finding: Changes or alterations have been required in, or incorporated into the project, which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

4.) Noise Impacts: Impact 3.12 - #1, as identified in the EIR

Facts: Noise may exceed noise level standards during construction activities.

Mitigation Measures: The following noise abatement measures are required by the Inyo County General Plan of any construction equipment if affecting sensitive receptors within 500 feet of the project site:

- **Mitigation Measure #1**: Generators shall be enclosed.
- **Mitigation Measure #2**: Proper mufflers shall be installed on all construction vehicles.
- **Mitigation Measure #3**: Hours of operation shall be restricted to the hours of 7:00 a.m. to 7:00 p.m.
- **Mitigation Measure #4**: These measures shall be inspected in the course of permitting for grading and construction activities.

Finding: Changes or alterations have been required in, or incorporated into the project, which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

5.) Visual Resources Impact: Impact 3.1 - #1, as identified in the EIR

Facts: The proposed project will impact the visual resources of the project area by placing development within a previously undeveloped noted environmental area.

Mitigation Measures:

- **Mitigation Measure #1:** The minimum setback for all permanent structures shall be (as measured from the centerline of Whitney Portal Road) 175 feet for Lots 1 and 5; 200 feet for Lots 2 and 6; 225 feet for Lots 3 and 4; 275 feet for Lot 7; 300 feet for Lot 8; and 350 feet for Lot 9 (lots fronting Whitney Portal Road). The minimum setback shall be 50 feet for all permanent structures from lot lines that are common to other lot lines or from road rights of way located within the development, with exceptions as noted on the tract map. No building permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #2:** The maximum height of residential units shall be 22 feet for Lots 1-9, and 30 feet for the remainder of the lots. No building permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #3:** The development area for each lot, with the exception of those lots designated equestrian lots (Lots 10, 11, 17-27), shall not exceed 27% of each lot (2/3 acre). Any and all structures erected on a lot must be contained within the building envelope development area. No building permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #4:** Drainage and habitat preservation areas are noted in Exhibit A to the subdivision CC&Rs. No alteration of the natural topography or vegetation shall be permitted, nor shall any structures or barriers of any sort be permitted within said areas, except for construction of driveways. No building or grading permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #5:** Landscaping is required. Owners of lots on the periphery of the subdivision, who shall be required to plant and maintain trees in the locations designated, and with species indicated, in Exhibit B of the subdivision CC&Rs. All lot owners shall be required to landscape lots within six months of issuance of a Certificate of Occupancy.
- **Mitigation Measure #6:** Light fixtures shall be fully shielded and attached to buildings. No exterior lighting shall be allowed on the East side of buildings on Lots 1, 10, and 19, and on the west side of lots 9, 18, and 27. Lighting shall be limited in number, duration, and intensity to accommodate security purposes and to reduce impacts to wildlife, and subject to subdivision Architectural Committee review/approval. No building permits shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #7:** Exterior building materials shall consist of brick, rock, wood, and/or stucco, to be in natural colors/earth tones to blend in with the landscape. Roofing materials shall be noncombustible tile, slate, non-reflective metal, or composition. Window frames shall be wood clad, painted steel or anodized aluminum. No building permit shall be issued for structures that do not comply with these requirements.
- **Mitigation Measure #8:** Language within the CC&R document shall identify what provisions of the CC&Rs are conditions of approval, and shall give the County authority to enforce those provisions.
- **Mitigation Measure #9:** No revisions of the CC&Rs which exist as conditions of approval for the project shall be allowed, and it shall be required that all such provisions shall be included in any subsequent CC&Rs.
- **Mitigation Measure #10:** CC&Rs that meet the County's approval shall be developed prior to approval of the Final Map for the project.

Finding: Changes or alterations have been required in, or incorporated into the project, which mitigate to the maximum extent feasibly possible, but do not completely avoid, the significant

environmental effects thereof as identified in the completed environmental impact report. Specific economic, social, or other considerations make infeasible the project alternatives identified in the environmental impact report.

**BE IT FURTHER RESOLVED** that this Board makes the following findings regarding alternatives to the proposed project evaluated in the EIR:

- 1.) **“No Project” Alternative:** This alternative would not meet project objectives, since no development project would take place.
- 2.) **Alternative Site – Land Exchange Alternative:** This alternative is infeasible. During the preparation of the original draft and final EIRs for this project, the County examined land exchanges for private parcels and consulted with the United States Forest Service and Bureau of Land Management, and the Los Angeles Department of Water and Power regarding their lands. The appellate court found the evaluation of the potential for trade with the BLM to be inadequate and the County underwent extensive additional analysis of that option. None of the land exchange alternatives were feasible for the following reasons:

Private Parcels: Neither the developer nor Inyo County own or have access to private parcels that could be used for the project. Additionally, no conservation group that contacted the County or that was contacted by the County had ownership or control of parcels to trade with the developer for his project.

Neither the County nor any individual have located appropriate private parcels for trade. Such a trade is not likely to be successful. Any person who traded for the project parcel would face the same difficulties gaining project approval as the developer, since the County already proposes to impose all practical measures to reduce the visual impact of the project. Any significant development of the project parcel would likely have a significant impact on the aesthetics of the area. There would be no motivation for the owner of a developable parcel to trade that parcel to the project proponent for a parcel that would not be developable. This makes such a trade infeasible.

Forest Service Parcels: The Forest Service was contacted in regard to any of its lands that might be available for trade. The Forest Service does not hold lands that are adjacent or close to existing communities in the County or that are appropriate for development. A trade with the Forest Service is not feasible.

LADWP Parcels: The LADWP proposed one parcel in the Lone Pine area for potential trade. The parcel was located in an undesirable location for a residential neighborhood and was too small to be an equitable trade for the project site. This potential trade was found infeasible in the original EIR for the reason that it could not meet project objectives and did not offer the proponent an equitable and economic value for his land. A trade with the LADWP is not feasible.

BLM Parcels: In certifying and approving the original EIR, this Board found that a trade with the BLM was not feasible. This Board has extensive knowledge of land use issues in its jurisdiction which it felt justified its opinion that land trades with federal agencies, while often discussed, are

generally not feasible in execution. The appellate court found that the Board's rationale for making its previous finding was not sufficiently supported. At this time, in reviewing the EIR, including the extensive evaluation contained in the re-circulated portions of the EIR, this Board finds that its original determination that such a trade is infeasible was well-founded. The court, and the commenters to the REIRs, have concentrated on two BLM parcels as potential trades, which are individually addressed below:

Horseshoe Meadows Road Parcel: This parcel is located on Horseshoe Meadows road about one half mile from the Alabama Hills community. It was discussed in the original EIR and by the appellate court. This parcel of land was withdrawn from disposition by the United States Congress decades ago in order to protect water-shed for the City of Los Angeles. For this reason it is not available or feasible for trade. The project proponent would have to embark on a minimum four- to eight-year process to garner agency support for such a trade and then gain the approval of Congress to remove the protection provided for this land. This is infeasible due to its speculative nature and uncertainty of success.

Additionally, this parcel shares many of the visual impacts of the project parcel, in that it is located in a sensitive view shed and would impose a visual impact where there was none before. Moving the project to this parcel would essentially shift the visual impact to a different population, therefore failing of the purpose to eliminate or reduce the significance of the visual impact. Developing the site would also violate tenants of the County General Plan, as the site is not contiguous to an established community, is not designated in County plans for development, and would encourage leap-frog development. On the other hand, the project site is designated in the County General Plan for development and is contiguous with an existing community.

For these reasons, and the additional facts and analysis in the EIR, this Board finds that a land trade with the BLM for the Horseshoe Meadows Road Parcel is not feasible.

Central Wilkerson Site: This site is located in the Bishop area and would mitigate the visual impact of the project site.

The FREIR contains an analysis of the development costs of this site, by an engineering firm, and an analysis of the potential sales prices for the resulting parcels, by an established real estate broker. Within a reasonable margin of error, the sales price of the resulting parcels might meet, but would not exceed, the development costs of the parcel. There is no likelihood that the project proponent would realize a return on his investment for developing the parcel. If his investment in the currently proposed project site was factored into the analysis, he would lose money as a result of this trade. These facts make this alternative infeasible.

Additionally, the developer does not have control over this parcel or the ability to use it as an alternative to his project. He would have to undertake a lengthy and expensive process to pursue a trade with the BLM, with no certainty of success. Given the uncertainty involved with this two- to eight-year process and the expense of pursuing the trade, the trade scenario is infeasible. Further, such a trade would eliminate an economic development opportunity from the Lone Pine area. Given the lack of private, developable land in that area, the loss of

the development would not be easily replaced and would violate General Plan policies encouraging the use of private property in communities of the County. Finally, the Central Wilkerson site lacks key objectives of the project – proximity to a watercourse, a location adjacent to popular public lands and a notable view shed for the large estate-type parcels.

For these reasons and the facts and analysis set forth in the EIR, this Board finds that a trade of the Central Wilkerson parcel for the project parcel is not feasible.

Other BLM Parcels: The EIR evaluates several other BLM parcels for trade: North Wilkerson; Rossi Hill 1 & 2; Bishop 1 & 2. All were less feasible than the Central Wilkerson and Horseshoe Meadow Road parcels. All would entail a lengthy and expensive trade process with uncertain results. None were located adjacent to existing communities, as encouraged by the County General Plan. The Bishop and Rossi Hill parcels are located in undisturbed view sheds and would contribute to a significant visual impact. Additionally, all would violate General Plan policies that encourage development in *each* community in the County because they are not located near Lone Pine and a trade for the parcels would remove a development opportunity from the Lone Pine area. For these reasons and the facts and analysis set forth in the EIR, this Board finds that a trade of any of the additional available BLM parcels for the project parcel is not feasible.

- 3.) **Reduced Project Density Alternative:** Any substantial development on the project site would result in a significant unmitigable environmental impact, since any development would intrude on the visual resource at the site. This alternative did not significantly reduce or minimize project impacts, as development would still occur on the project site, and is not preferable to the proposed project.
- 4.) **Community Water & Sewer System Alternative:** This alternative is impractical in that the requirements of a community system are deemed infeasible for such a phased, small project covering a relatively large area. Furthermore, there are no significant or potentially significant impacts identified or foreseeable resulting from the use of individual wells and septic systems. Therefore, this alternative would not address any impact resulting from the use of water or disposal of sewage in the project. This alternative also would not significantly reduce or minimize the project impacts to aesthetic resources, since wells and septic systems have a negligible visual impact .
- 5.) **Clustered Lots with Low-Moderate Income Housing:** Any substantial development on the project site would result in a significant unmitigable environmental impact, since any development would intrude on the visual resource at the site. This alternative did not significantly reduce or minimize project impacts, as development would still occur on the project site, and is not preferable to the proposed project.

**BE IT FURTHER RESOLVED** that the County of Inyo Board of Supervisors makes the following findings regarding the project’s compliance with the County of Inyo General Plan:

- 1.) The Inyo County General Plan specifically designates the project site as one appropriate for Residential Rural Medium Density development. The General Plan designates such

development as that allowing one dwelling unit for each 2.5 acres. The proposed project is in compliance with the specific General Plan designation for the property.

- 2.) Although the project will affect the visual resources of the County, the project will be developed adjacent to an existing community, will increase the housing stock in the County and will allow the landowner to develop the landowner's private property. Therefore, besides complying with the specific land use designation for the property, the project will comply with the goals and policies of the General Plan.
- 3.) The Inyo County General Plan encourages opportunities for reasonable expansion of communities in a logical and contiguous manner, and the General Plan designation of the Whitney Portal project site for development furthers that goal. Moving that development opportunity from the Lone Pine area to another area of the County would remove an opportunity for reasonable expansion in the Lone Pine area and violate an important General Plan goal. This is particularly true due to the scarcity of alternative private land in the County in general and Lone Pine in particular.
- 4.) It is an important General Plan Policy to create an environment in which property owners are free to develop their properties in compliance with County rules and regulations. General Plan Policy LU-2.12 specifically preserves the right of property owners to construct homes on property designated for residential uses. Creating an environment in which property owners are unable to ascertain the permitted uses of their property and invest in the property accordingly represents a direct threat to the economic well-being of the citizens of Inyo County because investors will be less willing to invest in any property in Inyo County and violates General Plan Policy LU-2.12.
- 5.) The project is consistent with the Inyo County General Plan.
- 6.) The site is physically suited for the proposed type and density of development.
- 7.) The design or proposed improvements are not likely to cause substantial environmental damage (excepting those visual impacts delineated), or substantially and avoidably injure fish, wildlife, or their habitat, or cause serious public health problems.
- 8.) There is a sufficient water supply available for the subdivision.
- 9.) The design of the subdivision or types of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision, or alternate equivalent easements have been provided.
- 10.) The design of the subdivision, to the extent feasible, provides for future passive or natural heating or cooling opportunities in the subdivision.

**BE IT FURTHER RESOLVED** that this Board makes the following Statement of Overriding Considerations:

Pursuant to the California State Public Resources Code Section 21081 (b) and the California Environmental Quality Act (CEQA) Guidelines Sections 15091 and 15093, the

Board of Supervisors of the County of Inyo has balanced the benefits of the proposed project against potential unavoidable adverse impacts associated with the proposed project and has adopted all feasible mitigation measures with respect to these impacts.

However, even with the proposed mitigation measures, significant impacts to visual resources will still exist. The Board of Supervisors has also examined project alternatives, as described in the EIR prepared for the project, and found that none of the alternatives are feasible. The alternatives that would allow development on the proposed site do not address the visual impact of the project, which is the only unmitigated significant impact from the project. The alternative site alternative could negate the visual impact of the project. However, there is no alternative site that is feasible for the project. This Board makes extensive findings regarding the feasibility of this latter alternative above.

As a result, the Board of Supervisors, after balancing the specific economic, legal, social, technological, and other benefits of the proposed project, has determined that the potential unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations, which outweigh the unavoidable, adverse environmental impacts of the proposed project. Each of the separate benefits of the proposed project, as stated herein, is determined to be, unto itself and independent of the other project benefits, a basis of overriding all unavoidable adverse environmental impacts identified in these findings.

Project benefits include:

- 1.) Development of residential property so designated by both the Inyo County General Plan and the Inyo County Zoning Ordinance.

The subject property is designated Residential Rural Medium Density (RRM) as stated in the General Plan:

*“This designation provides for large-lot single-family housing in rural residential neighborhoods, public and quasi-public uses, and similar and compatible uses. Residential densities shall be a maximum of 1 dwelling unit per 2.5 acres. This designation is used around the fringes of urban communities where large parcel sizes are preferred, and for those rural communities that lack complete sewer and water systems. Individual water wells and individual sewage disposal systems are allowed, but community water systems are encouraged.”*

Further, the subject property is zoned under the Inyo County Zoning Ordinance as Rural Residential and is, by nature and definition, outside of existing urban communities such as the nearby town of Lone Pine. The Inyo County General Plan provides for Rural Residential development, which the Inyo County Zoning Ordinance defines as follows:

*“The RR (Rural Residential) Zone is intended to be applied to the areas outside the urban communities of Inyo County which are without fully*

*developed services and where individual residences are expected to be largely self-sustaining, particularly for water and sewage disposal.”*

2.) Provision of needed housing and economic benefits to the County of Inyo.

The Inyo County General Plan’s Housing Element notes that:

*“Less than two percent of the land in Inyo County is available for development due to large public land holdings. Limited land resources thus severely restrict the amount of residential development that is able to occur in the County. The County will need to play an active role in identifying land suitable for new housing.”*

The project site, being designated for Rural Residential development since the 1970s, has been clearly identified by the County as suitable for residential development. Being one of few parcels of privately held land within the County, and one which is already designated for residential development, the subject parcel is uniquely valuable in its ability to be used to provide housing, and the resulting associated economic benefits, to the County. Such benefits include the economic activity created in the County from designing and building the residences as well as the economic activity created by additional residents.

Further, because the amount of privately held land is so small within the County, including the subject Alabama Hills area, residential development is by necessity restricted to limited areas, with any resulting development impacts likewise restricted due to limited developable acreage.

3.) Implementation of the objectives established for the proposed project.

The proposed project satisfies the project actions and objectives for the Whitney Portal Preserve, as stated in the Draft Environmental Impact Report for Tentative Tract Map #239/Walters, Chapter 1, Page 1:

*“To divide 74.15 acres into twenty-seven 2.5-acre lots for development as single family homes...as Residential Rural Medium Density (RRM) development, allowing 1 dwelling unit per 2.5 acres.”*

Other alternatives identified for the project, such as the land exchange and reduced project density alternatives, respectively, either are infeasible or do not make use of the exceptional benefits and site characteristics of the subject parcel or do not allow development of the full housing potential of the site while failing to remedy the visual effects.

4.) Conclusion.

For the foregoing reasons, the Board of Supervisors of the County of Inyo, serving as the Lead Agency, concludes that Tentative Tract Map #239/Walters will result in

beneficial economic activity and the addition of residential development on land so designated under the Inyo County General Plan and Zoning Ordinance, which benefits outweigh the unavoidable environmental impacts of the project. Therefore, the County of Inyo adopts this Statement of Overriding Considerations.

**THEREFORE, BE IT FURTHER RESOLVED** that the County of Inyo Board of Supervisors hereby approves Tentative Tract Map No. 239/Walters subject to the conditions of approval that follow:

- 1.) Conformance with Tentative Map: The developer shall submit all Final Tract Maps for the proposed phased development in substantial conformance with the approved Tentative Tract Map, and shall comply with all applicable provisions of Inyo County Code Section 16.40 “Subdivisions: Improvements and General Requirements.” All Final Tract Maps for the proposed phased project shall be recorded within two years from the date of approval by this Board, unless a request for a time extension is received prior to that date.
- 2.) Compliance with the California Subdivision Map Act and Inyo County Code: The developer shall comply with all applicable provisions of the California Subdivision Map Act (Government Code 66410 et seq.) and Inyo County Code.
- 3.) Taxes and Assessments: The developer shall pay any delinquent and/or due taxes or special assessments to the satisfaction of the Inyo County Treasurer-Tax Collector prior to the recordation of the first Final Tract Map.
- 4.) Annexation into the Lone Pine Fire Protection District: The developer shall coordinate with the Lone Pine Fire Protection District and the Inyo Local Agency Formation Commission (LAFCO) to annex the project site into the Lone Pine Fire District prior to approval of any Final Map.
- 5.) Visual Resources & Drainage Preservation: The developer shall include the following elements within the CC&Rs for the proposed subdivision as mandatory visual mitigation for the project and Inyo County will comply with these measures as specified:
  - **Setbacks**: The minimum setback for all permanent structures shall be 175 feet for Lots 1 and 5; 200 feet for Lots 2 and 6; 225 feet for Lots 3 and 4; 275 feet for Lot 7; 300 feet for Lot 8; and 350 feet for Lot 9 (lot fronting Whitney Portal Road). The minimum setback shall be 50 feet for all permanent structures from lot lines that are common to other lot lines or from road rights of way located within the development, with exceptions as noted on the tract map. The setbacks from Whitney Portal Road noted for Lots 1-9 are measured from the centerline of Whitney Portal Road, and not measured from property boundaries. No building permits shall be issued for structures that do not comply with these requirements.
  - **Structure Height**: The maximum height of residential units shall be 22 feet for Lots 1-9, and 30 feet for the remainder of the lots. No building permits shall be issued for structures that do not comply with these requirements.
  - **Lot Development Area Restrictions**: The development area for each lot, with the exception of those lots designated equestrian lots (Lots 10, 11, 17-27), shall not exceed 27% of each lot (2/3 acre). Any and all structures erected on a lot must be contained within the building envelope development area. No building permits shall be issued for structures that do not comply with these requirements.
  - **Drainage Areas & Habitat Preservation Areas**: These areas are noted in Exhibit A to the subdivision CC&Rs. No alteration of the natural topography or vegetation shall be permitted,

not shall any structures or barriers of any sort be permitted within said areas, except for construction of driveways. No building or grading permits shall be issued for structures that do not comply with these requirements.

- **Landscape Requirements:** Owners of Lots on the periphery of the subdivision shall be required to plant and maintain trees in the locations designated, and with species indicated, in Exhibit B of the subdivision CC&Rs. All lot owners shall be required to landscape lots within six months of issuance of a Certificate of Occupancy.
- **“Dark Skies” Lighting Requirements:** light fixtures shall be fully shielded and attached to buildings. No exterior lighting shall be allowed on the East side of buildings on Lots 1, 10, and 19, and on the west side of lots 9, 18, and 27. Lighting shall be limited in number, duration, and intensity to accommodate security purposes and to reduce impacts to wildlife, and subject to subdivision Architectural Committee review/approval. No building permits shall be issued for structures that do not comply with these requirements.
- **Structure Design Issues (materials, colors, etc.):** Exterior building materials shall consist of brick, rock, wood, and/or stucco, to be in natural colors. Roofing materials shall be noncombustible tile, slate, non-reflective metal, or composition. Window frames shall be wood clad, painted steel or anodized aluminum. No building permit shall be issued for structures that do not comply with these requirements.
- **Language within the CC&R document** shall identify what provisions of the CC&Rs are conditions of approval, and shall give the County authority to enforce those provisions.
- **No revisions of the CC&Rs** which exist as conditions of approval for the project shall be allowed, and it shall be required that all such provisions shall be included in any subsequent CC&Rs.
- **CC&Rs that meet the County’s approval shall be developed** prior to approval of the Final Map for the project.

6.) Fire Protection Measures: The following measures shall be implemented by the developer:

- The project shall be annexed into the Lone Pine Fire District prior to any Final Map approval, thus providing 24/7 fire protection services. Annexation into the fire protection district is subject to approval of the Inyo Local Agency Formation Commission (LAFCO).
- CC&Rs shall require a 3,500 gallon water storage tank for each home.
- CC&Rs shall dedicate Lot A for use as a future fire substation, with installation of electricity, a well, pump, and a 20,000 gallon water storage tank to be provided for subdivision fire protection purposes. The water storage tank shall be filled and kept in a ready state prior to any development commencing (i.e., prior to approval of the first Final Map). Ownership of Lot A shall be transferred to the Lone Pine Fire District. These measures shall take place prior to approval of any Final Map.
- CC&R shall be revised to require “fire safe” construction methods for homes to include non-combustible roofs, enclosed eaves and decks, and a defensible space around all buildings in which all vegetation is removed or modified. No building permit shall be approved that does not incorporate such fire safe construction methods.
- The developer shall contribute \$5,000 per lot to an escrow fund to be used for the future construction of a fire substation on Lot A. This fund will be established and available prior to approval of any Final Map.

7.) Drainage Protection Measures: The developer shall install the following:

- The existing culvert underneath Whitney Portal Road shall be replaced with a single 36-inch culvert, including concrete headwalls and lined channel entrance, with culvert details to be provided on final maps.
  - The proposed project drainage plan for the project shall maintain the existing parameters of the natural drainage pathways through the gullies/drainage areas. Building envelopes shall be specified, restricted, and located in areas away from drainage areas, and specified on Exhibit A of the CC&Rs. The plan shall include three Arizona Crossings where roadways traverse drainage pathways, rip rap or erosion protection where scour and erosion potential exists, headwalls above the culvert underneath Whitney Portal Road, and preservation of the parameters of the existing drainage pathways, allowing stormwater to flow along historic routes.
  - The developer shall pay a \$10,000 impact fee to the Inyo County Roads Department to fund maintenance (“Maintenance & Enforcement Fund” established by the CC&Rs) to the Arizona Crossings. This fund shall be replenished through the CC&R Architectural Committee as needed.
  - All drainage protection areas shall be defined on the Tentative Tract Map, all Final Maps, and shall be included in the CC&Rs. No building or grading permits shall be issued for properties that conflict with these requirements.
  - CC&Rs shall require all driveways which cross existing drainage pathways shall be constructed at grade, and building and grading permits shall reflect these requirements. Lots having driveways that cross the central drainage pathway (Lots 13-15, 25, 26) shall have easements providing an emergency/secondary access route to those lots; no driveways shall cross the northwest drainage area, as alternate easement areas for driveways have been provided (Lots 6 & 9); driveways which cross the southern drainage area (Lots 19 & 20) shall not require emergency/secondary access routes, as the drainage area is considered inactive.
  - All lots are required to submit individual grading and drainage plans, to be reviewed and approved by the Inyo County Public Works Department prior to issuance of any building or grading permit.
  - All of the following permits shall be accompanied by submission of a Best Management Practices (BMP) plan: U.S. Army Corps of Engineers, State of California Regional Water Quality Control Board – Lahontan Region, California Department of Fish & Game, Inyo County Public Works Department.
  - Drainage and street plans shall be to the satisfaction of the Inyo County Public Works Department. Streets shall be offered in dedication to the County.
- 8.) Water Quality Protection Measures: the developer shall comply with the following water quality assurance measure requirements, as outlined by the Regional Quality Water Quality Control Board, Lahontan Region, prior to issuance of any grading or building permits:
- Application for a National Pollutant Discharge Elimination System (NPDES) permit shall be made, to include a Storm Water Pollution Prevention Plan (SWPPP).
  - Application for a 404 Water Quality Permit through the U.S. Army Corps of Engineers shall be made, to include 401 Water Quality Certification pursuant to the Clean Water Act.
  - Application for a 1601 Permit from the California Department of Fish and Game shall be made for any work done in the blueline stream/gully areas.
  - Submission of a Best Management Practices (BMP) Plan shall accompany all permit applications, to address on-site stormwater retention. All lots will require individual drainage and grading plans to insure on-site infiltration of stormwater; any waste drainage waters in

excess of that which can be adequately retained on-site will be collected and treated, if necessary, before discharging from the project site.

- 9.) Air Quality Protection Measures: The developer shall comply with the following air quality assurance measures, as outlined by the Great Basin Air Quality Control Board, to be enforced by the Great Basin Air Quality Control Board and Inyo County Public Works staff:
- Lots shall not be graded and/or stripped of overlying brush until necessary for actual construction activities. Grading permits shall reflect this requirement.
  - All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering should occur at least twice daily with complete coverage.
  - All clearing, grading, earth moving, or excavation activities shall cease during periods of high winds (i.e., greater than 25 miles per hour averaged over one hour). Grading permits shall reflect this requirement.
  - Adjoining streets shall be washed or swept clean of tracked-out vehicle dirt.
  - All material transported on-site or off-site shall be sufficiently watered or securely covered to prevent excessive amounts of dust.
  - All trucks that are to haul excavated or graded material off-site shall comply with State Vehicle Code Section 23114.
- 10.) Noise Control Measures: The developer shall comply with the following noise abatement measures, which are required by the Inyo County General Plan of any construction equipment affecting sensitive receptors within 500 feet of the project site:
- Generators shall be enclosed.
  - Proper mufflers shall be installed on all construction vehicles.
  - Hours of operation restricted to the hours between 7:00 a.m. and 7:00 p.m.
  - These measures shall be inspected in the course of permitting for grading and construction activities.
- 11.) Cultural Resources Measures: The developer shall comply with the following:
- Archival & documentary information search on the use of the site by the motion picture industry shall be completed to the satisfaction of the Inyo County Planning Department prior to approval of any Final Map.
  - Developer shall have a more thorough field inventory of refuse deposits performed.
  - Developer shall arrange to have construction crew staff trained to identify significant artifacts. If any such artifacts are disturbed, or if human remains are found, the Inyo County Planning Department staff shall be contacted and work shall cease until a qualified archaeologist and a local Native American monitor (if necessary) can be consulted.
- 12.) Requirement to Provide and Fund all Public Services and Facilities:
- The developer shall provide, contract for, or otherwise obtain all necessary public services and facilities for this subdivision. These services shall include, but are not limited to, applicable fire protection, electricity, telephone.
- 13.) Adjacent Lands:
- The developer shall install a horse trail connecting the subdivision (at the western end of Mt. Langley Lane) with existing BLM trails on adjacent BLM property to the west of the

project site, as has been previously consulted and agreed upon with BLM staff persons. Installation of the horse trail shall be completed prior to approval of any final map that includes equestrian lots.

- CC&Rs shall include a provision requiring that all property adjacent to public lands shall be fenced. Fences shall be installed prior to issuance of any Certificate of Occupancy for buildings on such property.

14. Additional Conditions Imposed by the Planning Commissioners at the April 27, 2005 Hearing:

The project CC&Rs shall be amended to reflect:

- CC&R Building Materials Clause: "Earth tones" or natural colors shall be used in order that structures blend in with the site/landscape.
- CC&R Building Materials Clause: No reflective surfaces shall be allowed in construction materials.
- CC&R Storage Clause: All auto and/or recreational vehicle storage shall be roofed so as to screen their reflective surfaces.
- CC&R Landscaping Clause: All perimeter trees required by the CC&Rs are to be of a 15-gallon size.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that, upon consideration of the written information and oral testimony received at said public hearings, including all materials presented to the County of Inyo Planning Commission, and based upon the entirety of the record, the Inyo County Board of Supervisors hereby:

1. Certifies that the subject Final Environmental Impact Report was prepared in compliance with CEQA, was presented to and considered by the Board, and reflects the independent judgment of the Board.
2. Designates the Inyo County Planning Department in Independence, California, as the custodian of the documents and other materials which constitute the record of the proceedings upon which this decision is based.
3. Adopts the Mitigation and Monitoring Plan (MMP), attached hereto (see Attachment A).
4. Approves Tentative Tract Map #239/Walters based on all of the information in the public record.

**PASSED AND ADOPTED** this 19<sup>th</sup> day of May, 2009, by the following vote of the Inyo County Board of Supervisors:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Beverly Brown, Chairperson  
Inyo County Board of Supervisors

ATTEST:

KEVIN CARUNCHIO  
Clerk of the Board

By \_\_\_\_\_  
Pat Gunsolley, Assistant,