

INDIAN WELLS CITY COUNCIL

November 3, 2022



To: City Council

From: City Attorney

Prepared by: Todd Leishman, City Attorney

Subject: **Adopting an EIR Addendum for the Proposed Resolution of Necessity and Acquisition of a Fee Interest in Certain Real Property, by Eminent Domain, located on the Northeast corner of Miles Avenue and Warner Trail in the City of Indian Wells, More Particularly Described as Assessor Parcel No. 633-360-002, in Riverside County, California, for an Affordable Housing, Public Parking, Recreation Facilities and Open Space Project**

RECOMMENDED ACTIONS:

Council **CONDUCTS** a hearing to consider the adoption of two resolutions: (1) a resolution adopting an Addendum to the Certified EIR for the 1996 Update to the City's General Plan and (2) a Resolution of Necessity for the acquisition of real property (APN 633-360-000); and

MAKES the following findings, as hereinafter described in this report:

- a) The public interest and necessity require the proposed project;
- b) The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
- c) The real property to be acquired is necessary for the project; and
- d) The offer of just compensation has been made to the owner; and

ADOPTS Resolution No. 2022-41 Adopting an Addendum to the Certified EIR for the 1996 Update to the City of Indian Wells General Plan (SCH# 94092037) regarding the Proposed Resolution of Necessity for the Acquisition of APN 633-360-002; and

ADOPTS Resolution of Necessity No. 2022-42 for the Acquisition of a Fee Interest in Certain Real Property, by Eminent Domain, located on the Northeast corner of Miles Avenue and Warner Trail in the City of Indian Wells, More Particularly Described as Assessor Parcel No. 633-360-002, in Riverside County, California, for an Affordable Housing, Public Parking, Recreation Facilities and Open Space Project

REPORT IN BRIEF:

The City Council is asked to consider the adoption of a resolution of necessity for the fee interest in the parcel listed below. This interest is required for an Affordable Housing, Public Parking, Recreation Facilities, and Open Space Project ("Project") that the City wishes to undertake for public benefit. The Project will include the construction of approximately 223 units of affordable housing and associated recreational amenities and open space consistent with the maximum amount of development allowed under the existing Residential, Medium Density Residential land use designation and zoning for the site. Specifically, the City proposes to develop 5 to 10 acres of the site at a location to be determined based on the results of discussions with those Native American tribes who are consulting with the City regarding the final disposition of cultural resources at the site.

The City obtained an appraisal of the affected property from John G. Ellis, MAI, CRE, FRICS and William Larsen, SR/WA of Integra Realty Recourses – Los Angeles. The appraisal was reviewed by City staff and discussed with the Council before the Council authorized staff to make an offer of just compensation to the property owner in accordance with California Government Code section 7267.2. Property profiles were ordered to determine the identity of the record owner. Following standard public records and due diligence searches for ownership information, a notice of this public hearing was mailed to the property owner.

The power of eminent domain is used by the City only as a last resort to obtain interests necessary for projects after (1) negotiations have stalled; or (2) the owner has requested that the City proceed directly to eminent domain for tax or other advantages; or (3) the eminent domain process is necessary to clear the title to the property. In this case, an offer of just compensation has been made to the owners for the full Fair Market Value as determined by the appraisal. City staff attempted to negotiate a voluntary acquisition in good faith, and will continue to do so throughout the process. California's definition of

Fair Market Value is one of the most inclusive definitions in the United States and requires the appraiser to consider the highest and best use of the property and the appraiser to consider the highest price a willing buyer and seller would agree to. The City's appraisals must use this definition of Fair Market Value.

California eminent domain law provides that a public entity may not commence with eminent domain proceedings until its governing body has adopted a Resolution of Necessity, which may only be adopted after the governing body has given each party with an interest in the affected property, or their representatives, a reasonable opportunity to appear and be heard on the following matters:

- 1) The public interest and necessity require the proposed project;
- 2) The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
- 3) The real property to be acquired is necessary for the project; and
- 4) The offers of just compensation have been made to the property owner.

Since an agreement has not been reached with the owner of the parcel, acquisition by eminent domain is the City's last option. The initiation of the eminent domain process is accomplished by the City's adoption of a resolution of necessity for the affected property.

The record owner must be afforded an opportunity to appear at the hearing and lodge objections. A notice of this hearing was sent by first class mail on October 18, 2022, to each record owner in accordance with Section 1245.235 of the California Code of Civil Procedure. The notice stated the City's intent to consider the adoption of a resolution, the right of the property owner to appear and be heard on these issues, and that failure to file a written request to appear would result in a waiver of the right to appear and be heard. The City scheduled this hearing at which all persons who filed a written request in compliance with applicable law may appear and be heard.

DESCRIPTION OF PROPERTY TO BE ACQUIRED:

The subject property is a parcel of undeveloped land located at the northeast corner of Miles Avenue and Warner Trail in the city of Indian Wells, and is most commonly identified as Assessor Parcel No. 633-360-002 ("Property"). The gross area of the property is approximately 34 acres.

The proposed acquisition consists of a full acquisition of the Property to construct the City's affordable housing, public parking, recreation facilities and open space project. The legal definitions, descriptions and depictions are attached hereto as Exhibit 2.

HEARINGS AND REQUIRED FINDINGS:

The recommended action of the City Council pertains to the acquisition of a fee interest in certain real property known as Assessor Parcel No. 633-360-002 owned by Albert O. Lissory, Jill R. Lissoy and Scott R. Lissoy, Trustees of the Lissoy Family Trust (collectively referred to as the "Property Owners").

The above four required findings are addressed as follows:

Finding 1: Public Interest and Necessity Require the Project

The Project and the acquisition of the Property will enable the City to construct approximately 223 units of affordable housing and associated recreational amenities and open space consistent with the maximum amount of development allowed under the existing Residential, Medium Density Residential land use and zoning for the site. Specifically, the City proposes developing 5 to 10 acres of the site at a location to be determined based on the results of discussions with those Native American tribes who are consulting with the City regarding the final disposition of cultural resources at the site.

Finding 2: The Project Is Planned or Located in a Manner Most Compatible with Greatest Public Good and Least Private Injury

The Property is currently unimproved and vacant. There is not another parcel in the City suited to convert to Affordable Housing, Public Parking, Recreation Facilities and Open Space on such a large scale.

To move this project elsewhere would cause a greater impact in the new location as well as to nearby residents, and be much more costly at the expense of local taxpayers. Notification of street closures and alternate route alternatives, if any (none are anticipated), will be provided in advance to all residents in close proximity of the project. All efforts will be made to pursue project completion as quickly as possible once work is begun.

Finding 3: The Real Property to Be Acquired Is Necessary for the Project

The Property is a vacant parcel in the City with the capacity for meeting the City's objectives for the construction of affordable housing, public parking, recreation facilities and open space project.

Finding 4: The Offer of Just Compensation Has Been Made

Appropriate sources, including property profiles, were used to confirm and identify the parties with an interest in the property affected by the Project. John G. Ellis, MAI, CRE, FRICS and William Larsen, SR/WA conducted an appraisal for the property and determined the fair market value of the property to be acquired. On September 16, 2022, the City made an offer of just compensation for the amount of \$12,140,000.00 to the property owners to purchase the fee interest in certain real property as established by the approved appraisal and as required by Section 7267.2 of the California Government Code.

The Property Owner has not responded to the offer.

Although a negotiated settlement may still be possible for the real property cited above, it would be appropriate to commence the procedures to acquire the property through eminent domain, to ensure that the City has possession of the real property, which is necessary in order for the City to begin construction of the Project.

ENVIRONMENTAL ANALYSIS:

The proposed acquisition would not involve any change to the site's existing land use and zoning or the associated development potential contemplated by the General Plan and analyzed in the General Plan FEIR, as modified by the 2007 Addendum to FEIR and the 2013 Addendum to FEIR. Consistent with the analysis and conclusions of the General Plan FEIR, future development of the Project site would be required to comply with the applicable General Plan policies and General Plan FEIR mitigation measures specific to biological resources, noise, air quality, public services and utilities, cultural resources, and paleontological resources, ensuring that potential environmental impacts are reduced to a less than significant level, with the exception of short- and long-term air quality impact, which the General Plan FEIR found would be significant even after the implementation of General Plan policies as mitigation.

A Historical/Archaeological Resources Survey Report (Phase I) and a Phase II Archaeological Testing have been prepared specific to the site. During the preliminary

research conducted for the Phase I, researchers found that two archaeological sites were previously recorded as lying within or partially within the site (Recorded Sites). Due to the possibility of buried cultural remains, further investigations, including test excavations were recommended to assess the archaeological data potential and the historic significance of the Recorded Sites. Phase II archaeological testing was conducted in June 2022 and identified significant cultural resources on the Recorded Sites.

These steps were taken consistent with the General Plan FEIR, which includes mitigation to reduce potential significant impacts to cultural resources by requiring that sites proposed for future development be evaluated for archaeological resources either through a literature search or by a certified archaeologist in accordance with CEQA. To the extent that the General Plan FEIR recommends avoiding potential impacts to cultural resources by requiring sites proposed for future development be evaluated for archaeological resources in accordance with CEQA, this mitigation measure has been complied with through preparation of these studies. The specific location for future development of affordable housing within the site will be determined based on the results of ongoing discussions with consulting Native American tribes regarding the final disposition of cultural resources.

The environmental effects of the acquisition of the subject site for purposes of affordable housing and associated recreational amenities and open space consistent with the land use and zoning for the site were contemplated and analyzed in the General Plan FEIR, as modified by the 2007 Addendum to FEIR and the 2013 Addendum to FEIR. Accordingly, and pursuant to the criteria of Section 15162 of the CEQA Guidelines and Section 21166 of the Public Resources Code, and based on assessment of the site, no substantial changes have occurred in the site, no substantial changes have occurred in the circumstances under which the proposed development would be undertaken, and the City has obtained no new information of substantial importance that would require further environmental analysis. Thus, no further CEQA review is required. The General Plan FEIR, as modified by the 2007 Addendum to FEIR and the 2013 Addendum to FEIR, is adequate to satisfy the requirements of CEQA for the proposed acquisition of the subject site.

FISCAL IMPACT:

The associated cost for said acquisition to the City is the appraised value of the Property, which presently is \$12,140,000.00. The City has the funds to pay for the acquisition, but the Indian Wells Housing Authority is going to either pay for the acquisition directly or reimburse the City for the acquisition in exchange for a binding commitment by the City

to develop the Property for affordable housing. The Housing Authority also has the funds to pay for the acquisition.

ACTION REQUESTED BY THE CITY COUNCIL:

ADOPT Resolution of the City Council of the City of Indian Wells, California, Adopting an Addendum to the Certified EIR for the 1996 Update to the City of Indian Wells General Plan (SCH# 94092037) with Regard to the Proposed Resolution of Necessity for the Acquisition of APN 633-360-002; and

ADOPT Resolution of Necessity for the Acquisition of Fee Interest in Certain Real Property, by Eminent Domain, located on the Northeast corner of Miles Avenue and Warner Trail in the City of Indian Wells, More Particularly Described as Assessor Parcel No. 633-360-002, in Riverside County, California, for an Affordable Housing, Public Parking, Recreation Facilities and Open Space Project.

ATTACHMENTS:

1. Resolution Adopting an Addendum to the Certified EIR
2. Resolution Necessity for the Acquisition of Fee Interest
3. Legal Definitions, Description and Map