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# MEMORANDUM

## PUBLIC WORKS - DEVELOPMENT SERVICES

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P19CU00005

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### **FOR BOARD OF SUPERVISORS MAY 21, 2019 PUBLIC HEARING**

**TO:** HONORABLE BOARD OF SUPERVISORS

**FROM:** Jim Portner, Hearing Administrator

**DATE:** April 12, 2019 [*minor staff administrative edits – April 15, 2019*]

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**DOCUMENT:** P19CU00005

### **CONDITIONAL USE PERMIT REQUEST FOR PUBLIC HEARING:**

Request of El Cortijo, LLC, represented by Mike Marks, for a **Type II Conditional Use Permit for a minor resort** in the SR (Suburban Ranch) Zone, on property located at **3700 S. Old Spanish Trail**. (District 4)

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### **CASE BACKGROUND AND PARTICULARS**

The applicant proposes to construct and operate a minor resort, which has become colloquially known as the “Bike Ranch”, on 19.26 acres located on S. Old Spanish Trail just north of its intersection with E. Escalante Road. The Resort would contain forty-nine (49) one and two-story casita lodging units for visitors, together with a complement of related uses, including a bike rental, repair & sales shop and café that would all be open to the public, together with fitness classes and performance training/instruction that would be available for resort guests only. The applicant indicates an intention to pursue LEED certification for the project.

### **SUMMARY OF THE HEARING ADMINISTRATOR MEETING**

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 4, 2019. The owner’s representative, Mr. Michael Marks of MJM Consulting, presented the case to the satisfaction of the hearing administrator and fully answered his various questions.

A rough head count indicates that approximately one hundred seventy-five (175) members of the public attended the hearing, thirty-three (33) of whom chose to speak on the matter. Five (5) speakers expressed support of the request, with the remaining twenty-eight (28) expressing opposition in one form or another. The hearing lasted approximately three and one-half hours.

Many of the speakers in opposition expressed a unilateral and outright rejection of the request. Most of the others in objection stated more specific reasons for their position, the primary ones of which were: 1) a perceived negative and potentially devastating impact upon Saguaro National Park, its resources, and its visitor experience; 2) the belief that the proposed minor resort will destroy the low-density residential lifestyle and personality of the surroundings; 3) the belief that the introduction of a new non-residential/commercial use into the existing low-density residential and national park context will set a precedent for the inevitable introduction of many unwanted commercial enterprises into the area, thus wholly transforming its entire character; 3) concerns regarding safety on the adjacent roadways due to the mixing of existing high-speed vehicular traffic with an increased volume of bicyclists; 4) noise and general nuisance from resort guests, commercial trash collection, maintenance vehicles, etc.; and 5) destruction of wildlife and obstruction of their primary movement corridors.

Speakers in support stressed the fact that Tucson has established itself as an international cycling destination and that the proposed facility would further build this reputation and provide expanded cycling opportunities for both visitors and local enthusiasts.

Staff indicated that, prior to the hearing, approximately 155 letters of opposition had been received and 53 letters of support. Additional letters of objection were also submitted at the hearing, together with multiple pages of petition signatures (in opposition), a rough count of which yields approximately three hundred (300) signatures. Staff has not completed a detailed analysis of the signatures nor determined whether duplicates, etc. may be contained therein.

After hearing all of the above and thanking all in attendance for their testimony, the Hearing Administrator closed the public hearing.

Subsequent to the hearing, staff forwarded to the Hearing Administrator copies of all letters and documents that were entered into the record at the public hearing, together with supplemental letters that were submitted after the hearing. In total, the submitted materials comprised nearly four hundred pages. Same were duly read and contemplated in the decision rendered below.

#### HEARING ADMINISTRATOR'S COMMENTS

The following comments are offered so that all readers understand the basic framework and rationale which underlies the Hearing Administrator's recommendation rendered below, and to ensure that there is no ambiguity in interpreting that which follows. In a case like this that, despite its current revised form, still remains as controversial and as polarizing as this one, the Hearing Administrator believes he is duty-bound to clearly state his position and stance on multiple issues that have been repeatedly raised and which are at the center of the matter for many. With that in mind, the following are asserted:

- This Hearing Administrator does not embrace the notion that the only land use which is acceptable and appropriate at this location adjacent to Saguaro National Park East (SNPE) is low-density residential comparable to that which is already in place. To the

contrary, the Hearing Administrator believes that several alternative uses could not only be acceptable and appropriate at this location, but even be complementary, beneficial and symbiotic to SNPE, as long as they are thoughtfully and sensitively designed and are in accordance with all prescriptions of the Buffer Overlay Zone Ordinance (Section 18.67.050).

- This Hearing Administrator does not embrace the notion that the use as proposed is, and will be, inherently and irreparably harmful to the character and function of Saguaro National Park East, and even more strongly dismisses the notion the proposed use will irreversibly damage (or, in the eyes of some, even destroy) same. To the contrary, the Hearing Administrator believes that the proposed use is one of those, alluded to above, that can actually be complementary to and symbiotic with SNPE.
- This Hearing Administrator does not embrace the notion that approving this request creates a damaging precedent that will inevitably and automatically open the door to manifold undesirable non-residential and commercial uses in and around Saguaro National Park East. Every conditional use permit and/or rezoning request is evaluated on a case-by-case basis in light of the specific circumstances that frame it and the particular context in which it is located. Stating that approval of the present case is an automatic path to future convenience stores, gas stations and national chains is a specious claim.
- This Hearing Administrator does not embrace the notion that the minor resort requested here is nothing more than an intensive, bustling commercial hotel in disguise. The proposed use is no more a conventional hotel than is Canyon Ranch, Miraval Resort, or Tanque Verde Guest Ranch, all of which provide lodging to a specialized clientele in a quiet, low-key setting that promotes their mission and respects nearby natural beauty.
- This Hearing Administrator does not embrace the notion that the proper decision here is one that should be driven by the raw size or vocal nature of one side versus the other. It is not a policy decision best made by straw poll or mere head count. It is one wherein a reasoned consideration of adopted Pima County policies and goals is appropriate, together with a willingness to consider proposals that build positively upon Tucson's past while embracing and nurturing new opportunities for its future.

In rendering a prior recommendation to deny the same petitioner's 2014 request, this Hearing Administrator clearly stated then that the vision behind the proposed use was found to have significant merit. Nothing has changed in this respect. The project as proposed represents an opportunity to further Tucson's growing national and international reputation as a cycling destination, and to do so in bold fashion. This is a positive for our community.

The reasons behind the prior 2014 recommendation of denial focused heavily on the lack of sufficient design detail and restrictions being offered, together with a clear lack of effort with respect to neighborhood and stakeholder outreach. In the current proposal, the Hearing Administrator is satisfied that: 1) the applicant has demonstrated that the required prescriptions of the Buffer Overlay Zone can be met; 2) they have offered additional detail and specific design guidelines to provide a framework for the project's constructed product; 3) they have made a sufficient good-faith effort to engage the surrounding property owners; and 4) have specifically interacted with Saguaro National Park East and, as a result, obtained a letter of support from its Superintendent, constituting a full reversal of the Park's 2014 formal position on the matter.

With all of the above in mind, and after having amply experienced at public hearing the temperament of those who sit in ardent opposition to this project, it is clear to this Hearing Administrator that this is a request where splitting the proverbial baby will simply not work. Opponents have alleged that the developer and their consultant are inflexible to opposition demands. In hearing and reading the extensive testimony of those who oppose, this Hearing Administrator sees no more flexibility on that side of the equation. There is simply precious little middle ground here.

### HEARING ADMINISTRATOR'S RECOMMENDATION

After having visited and walked the subject property several times prior to the April 4, 2019 public hearing, after contemplating the facts and the testimony presented at same, and after having subsequently read and contemplated the written correspondence and documents that were entered into the record at the hearing, the Hearing Administrator recommends **APPROVAL** of this request for a Type II conditional use permit to operate a minor resort, subject to the *Special Conditions* below. The applicant is advised that this is a *recommendation* to the Board of Supervisors, who will make the ultimate and final decision on this CUP request.

#### *Special Conditions*

The *Special Conditions* recommended below utilize those offered by the Development Services Department (DSD) in its staff report, but have been materially modified and significantly amended by the Hearing Administrator to suitably address a larger universe of pertinent issues:

1. This approved conditional use permit is for a "bike ranch" minor resort only, as described in the applicant's submittal materials, together with those related functions as articulated therein, to include to the proposed casitas, a bike rental, repair & sales shop, café, fitness classes, performance training/instruction, meeting rooms and any ancillary activity not specifically mentioned here but which is in keeping with the project's focus, purpose, and operations. No other more intensive commercial uses are permitted or implied.
2. The resort's bike rental/repair & sales shop and café will be open to the public. The fitness classes and performance training/instruction will be for resort guests only.
3. The development shall comply with all Suburban Ranch (SR) zone development standards per Sec. 18.17.040), all Buffer Overlay Zone Ordinance performance requirements (including lighting) per Sec. 18.67.050, and all Minor Resort Regulations per Sec. 18.07.030.F).
4. The 19.26-acre minor resort site shall be divided as a separate, stand-alone parcel. No further lot split or subdividing of the minor resort site is allowed without the written approval of the Board of Supervisors.
5. The development shall substantially conform with the *Preliminary Development Plan* accompanying the applicant's submittal package and as presented at public hearing.
6. A formal Development Plan in accordance with Zoning Code Chapter 18.71 is required, which shall clearly demonstrate satisfaction of all Code requirements delineated in *Special Condition No. 3* above, as well as the additional items below as appropriate.

7. A minimum of fifty percent (50%) of the site shall be open space, a minimum thirty percent (30%) of which shall be natural open space. The remaining twenty percent (20%) may be comprised of natural or functional open space, the latter of which can include areas which are graded and landscaped, pedestrian ways, outdoor gathering areas, etc. Compliance with these open-space prescriptions shall be demonstrated on the required Development Plan.
8. All structures and the septic system(s) and leach field(s) shall be located outside regulatory floodplains and any associated Erosion Hazard Setbacks.
9. Private vehicles shall be confined to the proposed parking lot as shown on the *Preliminary Development Plan*, together with the on-site, north-south driveway from which the parking lot derives its access. The only vehicular traffic allowed west of the parking lot shall be for fire/emergency vehicles and for project service & maintenance vehicles (including motorized shuttles to ferry guests to and from their lodging).
10. The project's northern driveway entry onto Old Spanish Trail is for emergency access purposes only and will physically prevent use by private vehicles. The specific method of access control for this purpose (e.g. gate or chain system) will be detailed on the required Development Plan and will be reviewed by staff at that time for proper signage and turn-around provisions.
11. As part of the aforementioned Development Plan review process, a Tier One Traffic Impact Study (TIS) will be submitted and reviewed by the Department of Transportation to identify any associated impacts to street improvements within the Pima County right-of-way. The TIS shall not only evaluate vehicular impacts, but bicycle and pedestrian impacts as well. Any required mitigation and/or new improvements needed to address the development's impacts shall be constructed by the developer at their expense.
12. All parking pertaining to the minor resort, its various functions and/or events shall occur on-site. No on-street parking for the resort is allowed within the public rights-of-way of Old Spanish Trail or Escalante Road.
13. The following height limits shall apply: 1) the two-story bike barn building is limited to thirty feet (30'); 2) the one-story ranch house is limited to twenty-four feet (24'); 3) the two-story casitas structures are limited to twenty-five feet (25'); and 4) all other one-story buildings (including the casitas) are limited to no more than twenty feet (20').
14. The development shall adhere to the "Bike Ranch Design Guidelines" as offered by the applicant and which, by this reference, are made a material part of this conditional use permit. Same have been attached to this memorandum and shall be considered a formal component of these *Special Conditions*. The Development Services Department shall confirm compliance with the design guidelines as part of the building permit review process.
15. No outdoor amplification of sound or any public-address system is allowed. All outdoor activities shall be exclusively acoustic in nature, including music, outdoor gatherings, instruction, etc.
16. The resort shall operate a private van/shuttle system for its guests to provide an alternative mode of transportation to and from Tucson International Airport (TIA) and other destinations within the metropolitan area.
17. In the event that human remains, including human skeletal remains, cremations, and/or ceremonial objects and funerary objects are found during excavation or construction,

ground disturbing activities must cease in the immediate vicinity of the discovery. State Laws ARS 41-865 and/or ARS 41-844 require that the Arizona State Museum be notified of the discovery at (520) 621-4795 so that appropriate arrangements can be made for the repatriation and reburial of the remains by cultural groups who claim cultural or religious affinity to them. The human remains will be removed from the site by a professional archaeologist pending consultation and review by the Arizona State Museum and the concerned cultural groups.

### **REQUIRED STANDARDS AND FINDINGS**

Following are the Hearing Administrator’s findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

**1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Pima County Comprehensive Plan designates this site as *Resource Sensitive (RS)*, the purpose of which is to, “designate key larger parcels and land holdings with environmentally sensitive characteristics in close proximity to public preserves or other environmentally sensitive areas. Development of such land shall emphasize design that blends with the surrounding natural desert and provides connectivity to environmentally sensitive linkages in development areas.” The entire one-mile area between S. Old Spanish Trail and the Melpomene Road alignment carries this same designation as a buffer to Saguaro National Park East.

It is the Hearing Administrator’s finding that the proposed minor resort is consistent with the Resource Sensitive (RS) designation as long as it is designed, constructed and operated in accordance with the prescriptions and requirements of the Buffer Overlay Zone. *Special Conditions* have been crafted and recommended to achieve same.

**2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

It is the Hearing Administrator’s position that, unlike the past 2014 request, this current application has sufficiently addressed important design issues and has made the requisite good-faith effort at neighborhood and stakeholder outreach. *Special Conditions* have been crafted to suitably safeguard the legal permitted uses of adjacent properties.

**3. It has adequate accessibility to the County road network.**

The site has direct access to Old Spanish Trail and, by extension, to Escalante Road, both of which are paved, major streets on the Pima County *Major Streets & Routes Plan (MSRP)*. Multiple independent traffic assessments have concluded that these adjacent

roadways have more than sufficient capacity to accommodate the proposed use. In addition, the Pima County Department of Transportation (PCDOT) has also reviewed this application, has no objection to it, and has stipulated that a Tier One Traffic Impact Study be completed/furnished at the time of formal Development Plan review. In consideration of all of the above, access is found to be adequate.

**4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.**

Required parking is matter that is verified at the time of formal *Development Plan* review and processing. *Special Conditions* also provide additional parking parameters.

**5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.**

It is the Hearing Administrator’s finding that any of the issues from the above list which might be of potential harm to nearby properties have been addressed in the recommended *Special Conditions*.

**6. Hours of operation will not be detrimental to adjoining residents.**

Hours of operation are found to not be the central issue here; *Special Conditions* have been recommended to properly regulate the resort’s operations and noise containment during both daytime and night-time hours.

**7. Landscaping will be fully in conformance with zoning code regulations.**

Conformance with Code-required landscaping/buffering regulations is a matter that is verified at the time of formal *Development Plan* review and processing. The applicant’s submitted site plan would appear to show buffers that satisfy all Code requirements.

**SONORAN DESERT CONSERVATION CONCEPT PLAN/ENVIRONMENTAL ISSUES**

**Comprehensive Plan Regional Environmental Policies — Conservation Lands System**

In December, 2001 the Board of Supervisors incorporated the Maeveen Marie Behan Conservation Lands System (MMB-CLS) into the Comprehensive Plan 2001 Update as the Regional Environmental Policies. The MMB-CLS is the heart of the Sonoran Desert Conservation Plan (SDCP). On June 21, 2005, the Board of Supervisors amended the Comprehensive Plan Regional Environmental Policies and the MMB-CLS to reflect recommendations from the SDCP Science Technical Advisory Committee that were based on new scientific and technical data. As adopted, Conservation Guidelines associated with the MMB-CLS establish conservation objectives for a variety of projects (e.g. rezoning actions, comprehensive plan amendments, Type II and Type III conditional use permits, etc.) that require a discretionary decision by the Board of Supervisors. Conservation objectives include:

1. Important Riparian Areas — 95% undisturbed natural open space
2. Biological Core Management Areas — 80% undisturbed natural open space
3. Special Species Management Areas — 80% undisturbed natural open space
4. Multiple Use Management Areas — 66-2/3% undisturbed natural open space

The entire subject site is **OUTSIDE OF** the Maeveen Marie Behan Conservation Lands System (MMB-CLS). A portion of the adjacent property to the south, along Escalante Road, is designated as ***Important Riparian Area (IRA)*** by the SDCP's Biologically-Preferred Reserve System. This designated *IRA*, however, lies off-site of the subject property and will not be affected or impacted by this proposed development.

### **Staff Commentary on Biological Impacts**

As mentioned above, the entire subject property lies outside of the Conservation Lands System. Given that, and given that the proposed project satisfies the Buffer Overlay Zone minimum for natural open space preservation, this application is not expected to negatively affect any resources essential to Pima County's biological conservation priorities and would not be in conflict with the Regional Environmental Policies in the *Pima Prospers* Comprehensive Plan Update. The Pima County Office of Sustainability and Conservation – Environmental Planning Division has reviewed this application and offers no additional comments or objections. The Hearing Administrator concurs with this position.

This application does propose new construction on property that has been partially disturbed. New developed areas will be subject to the normal regulatory and mitigation requirements of the Pima County *Native Plant Preservation Ordinance (NPPO)*. Beyond native plants, the project design is also found to be sufficiently sensitive to the established minor wildlife-movement corridors on the site. The most important wildlife corridor in the area correlates with the aforementioned CLS *Important Riparian Area (IRA)* located along Escalante Road. As mentioned, this *IRA* is off-site to the proposed project and will not be impacted by it.

### **Facts Regarding Endangered and Protected Species**

The following facts are confirmed by the Pima County GIS and the Sonoran Desert Conservation Plan maps with respect to this conditional use permit request:

**Cactus Ferruginous Pygmy Owl.** The subject property is located within an area that is not designated as former critical habitat or draft recovery area. It is within Survey Zone 2. This site is within the Priority Conservation Area (PCA 1) for this species. No specimens have been found or reported on the site.

**Western Burrowing Owl.** The subject property is not located within the Priority Conservation Area (PCA) for this species.

**Pima Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Pima Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**Needle-Spined Pineapple Cactus.** The subject property is located within a general area that is outside of the known range for the Needle-Spined Pineapple cactus. It is not within the Priority Conservation Area (PCA) for this species.

**DEPARTMENT OF TRANSPORTATION, REGIONAL FLOOD CONTROL DISTRICT  
RECOMMENDATIONS:**

The Department of Transportation and the Regional Flood Control District have reviewed this project and offered their comments; neither objects to the request. Their respective input is documented in the staff report included in the Board of Supervisors packet on this item.

attachments

cc: Carla Blackwell, Director, Development Services  
Dan Ice, Chief Building Official  
Chris Poirier, Planning Official  
Tom Drzazgowski, Chief Zoning Inspector  
El Cortijo, LLC, Property Owner  
Michael Marks, MJM Consulting, Applicant

## **BIKE RANCH RESORT DESIGN GUIDELINES**

**1<sup>st</sup> Revision – April 3, 2019**

The purpose is to provide design and siting guidelines for the design and development of the BIKE RANCH RESORT.

These guidelines encourage the compatibility and integration of the BIKE RANCH RESORT with the existing landscape, topography, and natural preserves. The design of buildings shall allow architectural expression including the relationship to public streets, the semipublic character of common areas and the hospitality nature of the buildings.

Where there are conflicts between these guidelines and the Pima County zoning code, the more restrictive shall apply.

**1. Facades and Exterior Walls**

Facades should be articulated to reduce the massive scale and the uniform, impersonal appearance of large buildings and provide visual interest that will augment the community's identity, character and scale with emphasis on compatibility with Saguaro National Park.

**Guideline:** All building facades that are visible from Old Spanish Trail and adjacent neighbors shall comply with the following requirement:

A. Facades greater than 100 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending, cumulatively, at least twenty percent of the length of the facade.

**2. Roofs**

Roof shapes, slopes and features shall be used to add interest and character, to reduce the visual scale of buildings, and to create variations in the roofline.

**Guideline:** A variety of parapets, mansard roofs, gable roofs, hip roofs of dormers may be used to add visual interest and to conceal flat roofs and roof top equipment from public view. Alternating lengths and designs shall be acceptable.

A. Roofs shall comply with the following features:

- Parapets shall conceal flat roofs and rooftop equipment, such as air-handling units, from public view. Such parapets shall not at any point exceed one third of the height of the supporting wall.
- Overhanging eaves, shall extend no less than three feet past the supporting walls.
- Sloping roofs shall have a minimum slope greater than or equal to one foot of vertical rise for every three feet of horizontal run and shall have a maximum slope less than or equal to one foot of vertical rise for every one foot of horizontal run.

### 3. Materials and Colors

Exterior building materials shall be aesthetically pleasing and compatible with materials used in adjoining neighborhoods. The following standards are intended to ensure that exterior building materials comprise a significant part of the visual impact of a building.

**Guideline:** Predominant exterior building materials shall be high quality materials, earthtone colored and not exceeding a light reflectivity value of prescribed by the sixty percent. These include, without limitation:

- Brick
- Wood
- Sandstone
- Native stone
- Rammed earth
- Rammed earth block
- Stucco
- Adobe
- Exterior insulation and finish systems (EIFS)
- Rusted metal
- Oil rubbed metal
- Corrugated metal
- Tinted, textured, concrete masonry units or block

A. Building trim and accent areas may feature brighter colors, including primary colors for building trim or accent areas.

B. Predominant exterior building materials shall not include tilt-up concrete panels.

#### 4. Lighting

The standards for outdoor lighting provide lighting in outdoor public places where public health, safety and welfare are potential concerns, protect neighbors and the night sky from nuisance glare and stray light from poorly aimed, placed, applied, maintained or shielded light sources.

**Guideline:** To prohibit the nuisance created by outdoor lighting installations that result in glare and light trespass onto neighboring properties. Outdoor lighting is required for safety and personal security in areas where public assembly and traverse take place during hours of darkness. The glare-control requirements herein contained apply to lighting on all structures, including but not limited to architectural features, signs, and landscaping.

Light trespass is the presence of undesirable illumination coming from an off-property source. It includes the following examples: the classic "light shining in a window," unwanted light on ones property or excessive brightness in the normal field of vision (nuisance glare).

The following elements should be considered when submitting a lighting plan as required in chapter 15.12:

- A. Outdoor lighting, on private residential, commercial, industrial, recreational or institutional property, is to be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property.
- B. Outdoor lighting fixtures are to be installed in such a manner that no light will be emitted above a horizontal plane passing through the lowest point of the light emitting element, so that direct light emitted above the horizontal plane is eliminated. All individual outdoor lighting fixtures that illuminate the area under outdoor canopies will be subject to this requirement. (See section 15.12.5.1B)
- C. Lighting proposed for use after 10 P.M., or after the normal hours of operation for commercial, industrial, institutional or municipal applications, should be reduced by seventy-five percent from then until dawn.
- D. Lighting fixtures should not be mounted in excess of ten feet above grade when adjacent to residential uses.
- E. Directional fixtures such as flood lights, spot lights and sign lights should be installed or aimed so that they do not shine directly into the window of a neighboring residence, directly into a roadway, or skyward.
- F. Fixtures will be equipped with or be modified to incorporate light directing and/or shielding devices such as shields, visors, skirts or hoods to redirect offending light distribution and/or reduce direct or reflected glare. (See section 15.12.4.7)