

KEVIN K. JOHNSON, APLC

KEVIN K. JOHNSON
JEANNE L. MacKINNON
HEIDI E. BROWN

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW
600 WEST BROADWAY, SUITE 225
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 696-6211
FAX (619) 696-7516

March 5, 2015

SENT VIA EMAIL AND U.S. MAIL

Kevin Canning
Orange County Public Works/Orange County Planning
300 N. Flower St.
Santa Ana, CA 92702-4048

Re: Esperanza Hills Development Project
Inadequate Responses to Comments -Final Environmental Impact Report
Project No. PA120037
SCH#2012121071

Dear Mr. Canning:

This firm represents Protect Our Homes and Hills, an unincorporated citizens group consisting of residents and taxpayers in the City of Yorba Linda. We submit this letter regarding inadequate responses to public comments in connection with the above referenced Environmental Impact Report ("EIR").

When a significant environmental issue is raised in public comments that object to a draft EIR's analysis, the agency response must be detailed and must provide a reasoned, good faith analysis. As stated in *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that the public participation in the environmental review process is meaningful.

Conclusory statements unsupported by specific references to empirical information, scientific authorities, or explanatory information are insufficient as responses to comments. 14 Cal. Code Regs. §15088(c).

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Unfortunately, as detailed below, many of the responses to comments fail to provide the reasoned, good faith analysis required by CEQA, contain conclusory, unsubstantiated statements and fundamentally fail to serve the informational purposes outlined in the *City of Long Beach* case.

L3-4: The agency response does not address the significant issues raised in the Wildlife Agency comment regarding substantial footprint conflicts between the subject EIR and the documents for the adjacent Cielo Vista project as they relate to access routes, changes in topography and fuel modification zones. If the information regarding these matters is inconsistent as between the subject EIR and the adjacent Cielo Vista EIR, the significant and cumulative impacts of these projects cannot have been adequately identified or analyzed, and any analysis is likely defective until these matters are made consistent and clarified.

L3-17: The agency response fails to respond to Wildlife Agency concerns regarding cumulative impacts to the Golden Eagle population from this project coupled with the Cielo Vista project. The response fails to address the presence of Golden Eagles on the site and their active use of the property for foraging. The response instead minimizes impacts by characterizing the loss of foraging habitat from this project alone as affecting 1.5% of the eagles' territory. The conclusion regarding the loss of 1.5% of a territory as not representing a "substantial adverse effect" is the writer's conclusory opinion and is not supported by the cited Appendix G of the CEQA Guidelines, empirical evidence or any scientific authority.

L3-19: The response focuses only on wildlife corridors and ignores impacts identified by the Wildlife Agency to live-in habitat, nursery areas, and local movement paths and the need for analysis and mitigation for such impacts. Appendix G speaks not only to interference with wildlife corridors but interference with movement of any native resident and impediments to the use of native wildlife nursery sites. The response does not address these significant impacts.

L4-10: The agency response fails to address significant cumulative impacts on raptor foraging areas identified by the commenter.

L5-2: The agency response fails to address the issue raised. The issue is not whether the County has discretion to approve or disapprove the reasonably foreseeable Cielo Vista, Bridal Hills, and Yorba Linda Land developments. This issue is whether the EIR has adequately addressed the cumulative impacts of these related, foreseeable projects. Pub. Res. Code §21083(b); 14 Cal. Code Regs. §§15064(b)(1), 15065(a)(3).

L5-16: The agency response fails to address the issue raised. The comment raises the issue of a number of specific unanalyzed edge effects on Chino Hills State Park ("CHSP") which surrounds the entire northern and eastern perimeters of the project site, not solely impacts of fuel breaks in Blue Mud Canyon. Adequate analysis of edge effects on CHSP is critical in view of the DEIR's omission of material, critical information concerning both the location and total acreage of CHSP in relation to the

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project. This failure is comprehensive and pervasive throughout the entirety of the EIR and its exhibits. As detailed in our letter to you of February 18, the DEIR understated the size of CHSP by 2,330 acres and completely omitted this additional acreage from numerous DEIR exhibits and the project impact analysis. This omission renders the DEIR's analysis of the project's edge effects, wildland urban interface, and project impacts to aesthetics, biology, and hazards inadequate.

L14-3: The agency response relies on the separate ownership of the concurrently processed, infrastructure sharing, adjacent Esperanza Hills and Cielo Vista projects to avoid the appropriate analysis of the "whole of the action" and LAFCO's conclusion that the projects are "inextricably tied."

L14-7 and L14-8: The agency response to LAFCO's request for inclusion of an Annexation Alternative and No Annexation Alternative fails to provide the CEQA mandated reasonable range of alternatives and is not an adequate substitute for the level of alternatives analysis requested by this public agency.

L45-3, L45-8: See L14-3 above. In addition, ownership interest in participating in development or cooperating in a comprehensive development and circulation system is not the proper determiner of what constitutes the project. The project is the "whole of the action" that may result in either a direct or reasonably foreseeable indirect physical change in the environment. Commenters and the City of Yorba Linda have been virtually unanimous in recognizing the interrelationship of the Esperanza Hills, Cielo Vista, Bridal Hills and Yorba Linda Land comprising the Murdock Property as it relates to shared infrastructure and significant impacts. (Comment Letters L3 p.78, L4 p. 98, L5 p. 104, L14 p. 186, L50 pp. 804, 812). This interrelationship has not been appropriately or adequately analyzed in the EIR.

This failure of the EIR to address this interrelationship renders the document fundamentally flawed. See e.g., *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 395; See also 14 Cal. Code Regs. §15126 (impact analysis must consider all phases of the project). A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. Kostka & Zischke, Practice Under the California Environmental Quality Act §12.9 at p. 12-11 (CEB 2014).

L45-10: This response is a conclusory statement unsupported by specific reference to empirical information or explanatory information concerning the existence of performance standards and is insufficient as a response to the specific comments regarding the lack of performance standards in the specifically identified mitigation measures. See 14 Cal. Code Regs. §15088(c).

L45-11: This response simply refers to the inadequate response above and fails to address the absence of success criteria or provide specific reference to empirical information or explanatory information regarding same.

L45-13: This response directing interested parties to the relevant websites provided by the commenter for projects not addressed in the DEIR fails to address the cumulative impacts of the subject

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project in connection with the effect of other past, present and reasonably foreseeable or probable future projects. Pub. Res. Code §21083(b); 14 Cal. Code Regs. §§15064(b)(1), 15065(a)(3). The DEIR should provide a “summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and...A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.” 14 Cal. Code Regs. § 15130(b)(4-5). The EIR remains deficient and fulfills none of these CEQA informational roles.

L45-15: Under well-established CEQA principles, extension of infrastructure into a previously undeveloped area is considered a classic example of growth inducement. The agency is directed to Appendix G of the CEQA Guidelines which provides in relation to Population and Housing Impacts:

XIII. POPULATION AND HOUSING -- Would the project: a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

The Esperanza Hills project satisfies both elements of the CEQA checklist and the agency response fails to squarely address the EIR's failure to adequately address the growth inducing impacts of the project.

Moreover, the growth inducing impacts analysis required by CEQA is not based on the project's tendency to foster projects of similar size and scope or whether the population growth was considered as part of a governing general plan, or incorrect DEIR statements failing to acknowledge extension of infrastructure to serve adjacent parcels (which the agency acknowledges at L45-18 – “Potential development of the adjacent parcels will be accommodated by connections to the Proposed Project infrastructure based on Development Agreements”).

L45-18: The responding agency cannot avoid the growth inducing impacts analysis required by CEQA by reference to and reliance on general plan projections alone.

L45-24: The comment relates to the failure of the project to meet AB32's mandates by adopting a 5% reduction target. This position is contrary to the clear weight of authority requiring new development to achieve its fair share of GHG emissions reductions by implementation of performance standards or a demonstration that the project specific GHG reductions have been reduced or mitigated by a least 29%, or the AB32 benchmark. The response fails to address this inconsistency and feasibility of further GHG reductions; the agency's conclusion that such impacts are unavoidable, i.e. it's infeasible to mitigate for these impacts is not supported by substantial evidence, current GHG science or standards of air quality districts discussed in the comment letter.

L45-25: The issue of the appropriate baseline is a legal question, not a factual issue. The agency

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response indicating that the commenting party must provide a factual basis for stating that the existing designation must be used as the appropriate baseline is flatly incorrect. The prevailing rule is found at CEQA Guideline 15125(a) which provides that the environmental setting as it exists when the EIR is being prepared should ordinarily be treated as the baseline for gauging changes to the environment caused by the project. In the vast majority of cases, this means the EIR must “compare what will happen if the project is built with what will happen if the site is left alone.” *Woodward Park Homeowners Ass’n v. City of Fresno* (2007) 150 Cal.App.4th 683, 707. At present, the property is undeveloped and zoned as open space. These are the present, existing conditions against which all impacts must be gauged, not the proposed amended land use designation.

L50-3, 4, 5, 6, 11: These responses suffer from the same infirmities identified in L14-3, L45-3, and L45-8 and described above.

L50-26, 27, 28, 29 and 30: The commenter has identified specific informational and analytical omissions concerning secondary faults which render the analysis of seismic risks incomplete and inadequate. The response simply refers the reader to the technical report without any specificity or reference to empirical information, scientific authorities, or explanatory information curing this analytical omission. If such analysis exists, the agency should cite to its specific location in the EIR or technical studies. The fact that the response fails to provide this information renders the response and the EIR inadequate.

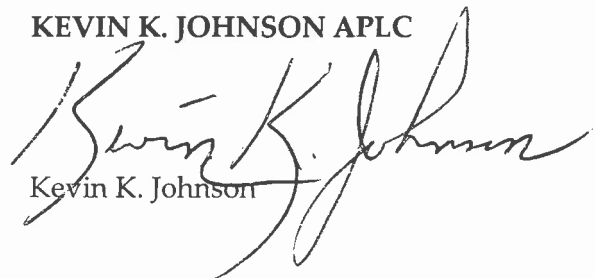
L50-47: The response fails to address the failure of the project to include a Transportation Demand Management Plan as required by the OCGP Transportation Element Policy 6.7 and the resulting inconsistency with the OCGP and instead simply refers the reader to the DEIR’s incomplete discussion of general plan consistency.

L50-68, 69: The response suffers from the same infirmities identified in L45-15 above.

The foregoing discussion represents a sampling of inadequate responses to comments by the agency. Protect Our Homes and Hills respectfully requests that the County correct these infirmities and recirculate the subject EIR for public review and comment. It is only through correction and recirculation that the EIR can serve its primary purpose as an informational document and apprise both the public and the Board of Supervisors of the true significant impacts of this project and formulate mitigation and alternatives to avoid these impacts.

Very truly yours,

KEVIN K. JOHNSON APLC



Kevin K. Johnson

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cc: Supervisor Todd Spitzer
Protect Our Homes and Hills