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April 2, 2015

SENT VIA EMAIL AND U.S. MAIL

Mr. Steven K. Harris, AICP
Director of Community Development
City of Yorba Linda
P.O. Box 87014
Yorba Linda, CA 92885-8714

Re: Esperanza Hills Development Project
Un-agendized Discussion of Project by City Council and Mayor

Dear Mr. Harris:

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 in response to the un-agendized discussion of the above titled project at the March 17, 2015, City of Yorba Linda City Council meeting by the mayor and a city council member. Not only was the project not on the City Council agenda but the comments made reflect: (1) a fundamental misunderstanding of the Orange County Board of Supervisors' action on March 10, 2015 in connection with this project; and (2) an erroneous understanding concerning the City of Yorba Linda's role in approving the project as a Responsible Agency under the California Environmental Quality Act ("CEQA").

Regarding item 1, at the beginning of the meeting, Council Member Young and Mayor Hernandez recount the "project approval" from the March 10th Board of Supervisors meeting before public comments begin. Then, at the end of the public comment section of the agenda, Council Member Young and Mayor Hernandez tell the residents "you lost".

The Board of Supervisors did not vote to approve any of the project components such as the Esperanza Hills General Plan Amendment, Zone Change, or Specific Plan. The only vote taken was to certify the EIR for the project. A review of the relevant resolution and minutes of the meeting make this clear. To date, no Notice of Determination has been filed in connection with this vote. Therefore, comments made by City of Yorba Linda decision-makers to the contrary are incorrect and reflect a

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predisposition on the merits of this project and bias concerning this project that are of serious concern to our clients. These comments potentially justify recusal of these decision-makers from any future project decisions. We also request this matter be brought to the attention of the city attorney for analysis of any potential Brown Act violations.

Regarding item 2, the comments also reflect a fundamental misunderstanding of the city's role under CEQA as a responsible agency.

1. The City of Yorba Linda must reach its own conclusions on whether and how to approve the project and not act as a rubber stamp for the County.

A responsible agency complies with CEQA "by considering the EIR...prepared by the lead agency and **by reaching its own conclusions on whether and how to approve the project involved.**" CEQA Guideline §15096(a).

The City cannot and should not abdicate its CEQA responsibilities and avoid these duties. As a responsible agency, the City of Yorba Linda has "discretionary approval power over the project." CEQA Guideline §15381. A failure to exercise discretion can, in and of itself, constitute an abuse of discretion. See *e.g. Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051, 1062-1063.

2. The City has both the authority and an affirmative duty to find feasible alternatives and mitigation measures to substantially lessen or avoid significant project impacts.

A responsible agency "shall not approve the project as proposed if" it "finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guideline §15096(g)(2).

The responsible agency has authority to require mitigation and "may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve." CEQA Guideline §15041(b).

Since upon annexation the City of Yorba Linda will be called on to carry out the project as a whole, its authority to require changes in the project is quite broad.

3. Most importantly, the City has the authority to disapprove the project.

"A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve." CEQA Guideline §15042.

Again, since upon annexation the City of Yorba Linda will be called on to carry out the project as a whole, its authority to refuse approval of the Esperanza Hills project is quite broad.

4. The City must make its own findings required under CEQA and such findings must be supported by substantial evidence.

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A “responsible agency shall make the findings required by section 15091 for each significant effect of the project and shall make the finding in section 15093 if necessary. CEQA Guideline §15096(h).

A responsible agency “must...issue its own findings regarding the feasibility of relevant mitigation measures or project alternatives that can substantially lessen or avoid significant environmental effects. Furthermore, where necessary, a responsible agency must issue its own statement of overriding considerations.” *Riverwatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App.4th1186, 1207. Therefore, “as with a lead agency”, the responsible agency must “find either that the project’s significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by project benefits.” *Id.* at 1207.

We also wish to reiterate our position articulated in our letter to you of February 24, 2015 concerning EIR Project Alternative 2 – Option 2A Access Alternative (“Option 2A”) and Alternative 3 – Option 2B (“Option 2B”). As you are aware, that letter identified additional legal and procedural requirements, including a zone change, compliance with the City’s Measure “B” and formal abandonment of city-owned open space which must be satisfied by the City of Yorba Linda before the City-owned open space identified for road use and project access may be used in this fashion.

The necessary City of Yorba Linda approvals were not identified or analyzed in the EIR. The full range of significant impacts of placing a road in publically owned open space have not been properly identified or analyzed including noise, biological resource, aesthetic and land use impacts.

As such, the City would be within its powers as a responsible agency to require supplemental environmental review under these circumstances. According to CEQA Guidelines section 15162(a), 3 factors may establish the need for supplemental environmental review: substantial changes in the project, substantial changes with respect to the circumstances under which the project is undertaken requiring major revisions in the previous EIR, or where new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete... shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

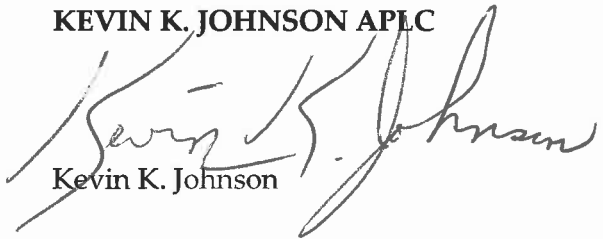
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At a minimum, and in view of the property's publically owned, open space status, there are a number of statutory and procedural requirements involving City of Yorba Linda discretionary approvals which must occur before this public open space may be used for road purposes to access a private development. These requirements and discretionary approvals, including a zone change, compliance with the City's Measure "B" and formal abandonment of this open space, were not identified or analyzed in the subject EIR and supplemental environmental review is required under the circumstances.

In view of the foregoing, Council Member Young and Mayor Hernandez appear to have a fundamental misunderstanding of both the Board of Supervisors' March 10 decision and the City of Yorba Linda's proper role in reviewing the EIR for this project and fulfilling its responsibilities as a responsible agency. We encourage the Community Development department to correct these misunderstandings.

Thank you for your consideration.

Very truly yours,
KEVIN K. JOHNSON APLC



Kevin K. Johnson