

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

February 3, 2014

SENT VIA EMAIL AND U.S. MAIL

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

Re: Esperanza Hills Development Project
Comments regarding Draft Environmental Impact Report 616

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 comment letter on the deficiencies in the Draft Environmental Impact Report ("DEIR") prepared for the Esperanza Hills subdivision ("Esperanza").

Esperanza is only one of four planned subdivisions in the area known as the "Murdock Property" (DEIR p. 5-395) which also includes Cielo Vista (also referred to as the Sage project), Bridal Hills LLC (also referred to as the Friend project) and Yorba Linda Land LLC (See DEIR p. 4-3). These four interdependent subdivisions rely on the same infrastructure and access yet they have not been analyzed in any comprehensive, unified manner. Cielo is the subject of a separate EIR and is being processed concurrently with Esperanza. Passing and sometimes inconsistent reference is made to Bridal Hills (alternately referred to as the Friend project) and Yorba Linda Land in the DEIR but no real analysis of the combined, cumulative impacts of development of these four properties is attempted. This segmentation and piecemeal environmental review of what should properly be considered one project is impermissible under the California Environmental Quality Act ("CEQA"), Pub. Res. Code sec. 21000 et seq.

February 3, 2014

Specifically, the CEQA Guidelines define “project” to mean “the whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. 14 Cal. Code Regs. § 15378(a). “Project” is given a broad interpretation in order to maximize protection of the environment.” *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1186, 1143. In performing its environmental analysis, an agency should not “piecemeal” or “segment” a project by splitting it in to two or more segments. This ensures that “environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

This failure to both comprehensively analyze and plan these areas is also fundamentally inconsistent with the Yorba Linda General Plan. According to the DEIR, the Murdock Property area consists of 6 properties totaling 630 acres. Esperanza makes up 468.9 acres of the Murdock Property with the Bridal Hills, Yorba Linda Land and Cielo Vista properties making up the remaining acreage (DEIR p. 5-401). The Yorba Linda General Plan preferred alternative for the Murdock Property is annexation into the City of Yorba Linda and contemplates “one or more specific plans, **composed of all eight properties, or compatible combinations of property owners, to provide a comprehensive development and circulation system**” (DEIR p. 5-401).

This notion of comprehensive planning for the Murdock property is further evidenced in the Yorba Linda Land Use Element which provides at Policy 7.5 that the City:

Require the delineation of permanent open space areas within the Shell and Murdock Area Plans through more detailed development planning so that the steep slopes and important natural resource areas can be properly preserved and protected through specific plans or other appropriate development regulations.

Instead, development of the Murdock property is being handled separately and in a piecemeal fashion inconsistent with the Yorba Linda General Plan. As such, the project presents a patent conflict with the Yorba Linda General Plan. This inconsistency has not been adequately analyzed, acknowledged or mitigated in the DEIR generally or in the Land Use Chapter specifically.

This failure to comprehensively analyze development impacts and plan the Murdock Property as a whole as envisioned by the Yorba Linda General Plan has a host of related

February 3, 2014

impacts and missed opportunities for mitigation and alternatives including, open space planning, optimization and contiguity, underestimation of significant impacts, particularly cumulative and growth-inducing impacts, and avoidance of statutory requirements such as the preparation of a Water Supply Assessment due to the likely total number of homes on these properties exceeding 500 (*See* Senate Bill 610 and Water Code § 10910 and 10912).

Project Description

The list of Discretionary Approvals at p. 4-26 is incomplete and inadequate. For example, annexation to the City of Yorba Linda is a probable component of this project. The DEIR indicates an “application for annexation has been filed between the City of Yorba Linda and LAFCO and is in the process of review as of this date” (p. 5-409, 436). However, the list of discretionary approvals does not even mention either Local Agency Formation Commission (“LAFCO”) approval or City of Yorba Linda approvals. Other agency approvals are incorrectly placed in the “Intended Uses of the EIR” section of the Project Description chapter (p. 4-28). All discretionary approvals should be discussed in a comprehensive and accurate approvals and permits section in order to apprise the public and the decisionmakers of the true scope of this project.

The City of Yorba Linda and LAFCO have discretionary authority for carrying out or approving the Esperanza project in an annexation scenario. As such, they are responsible agencies under CEQA and should have been named as such. 14 Cal.Code Regs. §15381. LAFCO presents a clear example of a responsible agency. In their discussion of responsible agencies, authors Kostka & Zischke identify as a responsible agency “the Local Agency Formation Commission (LAFCO) for any annexation or reorganization.” Kosta & Zischke, *Practice Under the California Environmental Quality Act* §3.18 (CEB 2013).

LAFCO requires that an EIR contain information about the environmental consequences of the decisions that LAFCO will be making with regard to the whole project. *Habitat And Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277. This information includes: a discussion of the required jurisdictional and sphere of influence changes subject to LAFCO discretionary approval(s); the project’s conformance with LAFCO statutory requirements and local policies; a description of the ability of existing agencies to provide services; a detailed description of existing and proposed infrastructure; and a discussion of the proposed provision of public services to the subject territory. Since the Project Description does not even mention LAFCO approvals under the Discretionary Approval section, it is inadequate on its face (p. 4-26) and it is unclear whether the required information described above is in the DEIR.

February 3, 2014

More seriously, Orange County LAFCO recognized the interdependent and related nature of the Cielo and Esperanza subdivisions and other Murdock properties and specifically requested in scoping comments that “all aspects of both projects should be considered in one environmental document prepared by the County.” (DEIR Appendix B NOP Comment Letters). The DEIR fails to comply with this request or explain why such comprehensive review is not required.

LAFCO has discretionary authority for approval of the annexation to the City of Yorba Linda and any concurrent annexations and/or detachments involving special district water, sewer, and/or fire protection service providers for the project. The DEIR recognizes that discretionary authority for jurisdictional changes is statutorily reserved to LAFCO. Cal. Gov. Code §§56100(a) and 56375. At a minimum, the DEIR Project Description chapter should identify all discretionary actions related to the annexation application. At present, the DEIR does not fulfill these most basic requirements and should be revised.

Likewise, the DEIR’s Discretionary Approval section does not mention approvals from the City of Yorba Linda but makes vague reference in the “Intended Uses” section to encroachment permits, discretionary authority over access through City open space and potential annexation (p. 4-28). This list is incomplete and does not reflect all discretionary actions to be undertaken by the City of Yorba Linda.

Impermissible Deferral of Formulation of Mitigation Measures

The DEIR impermissibly defers formulation of a number of mitigation measures related to biological resource impacts. For example, mitigation measures Bio-1 through Bio-4, Bio-6 through Bio-7, and Bio-10 all defer formulation of revegetation and restoration plans, a Habitat Mitigation and Monitoring Program (“HMMP”) and a Resident Awareness Plan to some time in the future, after project approval and after any opportunity for public review and comment on these proposed plans. These mitigation measures do not include any specific performance standards for the unformulated plans. These plans and in particular, the HMMP, should be part of the DEIR circulated for public review and comment, not deferred till after project approval.

An EIR must describe feasible measures that could minimize significant adverse impacts. (14 Cal.Code Regs. § 15126.4(a)(1)). An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project's significant effects and may be accomplished in

February 3, 2014

more than one specified way. (14 Cal.Code Regs. § 15126.4(a)(1)(B)). As stated by the court in *Preserve Wild Santee v. City of Santee*, 210 Cal. App. 4th 260 (2012), thus, “for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated” (quoting *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275–1276). Conversely, “[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236).

All of the identified mitigation measures put off analysis and order plans without setting a single performance standard. For example, Bio-7 relating to the Habitat Mitigation and Monitoring Program (“HMMP”) indicates: “The Project Applicant shall be fully responsible for the implementation of the Habitat Mitigation and Monitoring Program until the restoration areas have met the success criteria outlined in the approved plan” (p.9-4). However, the mitigation measure provides only that a HMMP shall be prepared but does not provide any description of success criteria. Mitigation measures Bio-1 through Bio-4, Bio-6 and Bio-10 all suffer from the same inadequacy and evidence precisely the type of deferral of mitigation found to be impermissible by multiple courts interpreting CEQA.

The DEIR must be revised to include the relevant, required revegetation, restoration and HMMP plans called for in mitigation measures Bio-1 through Bio-4, Bio-6 through Bio-7, and Bio-10 in their entirety or, at a minimum, provide specific performance criteria in the mitigation measures demonstrating how the biological resource impacts can be mitigated. The DEIR should be recirculated for public comment on these plans and performance criteria.

Failure to Adequately Analyze Cumulative Impacts

If a project’s incremental impacts are significant when viewed 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)), then 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

February 3, 2014

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 DEIR fulfills none of these CEQA informational roles.

The DEIR lists other projects in Chapter 7 (p. 7-2) but focuses any discussion in the Cumulative Impacts Summary Table 7-1-2 solely on the adjacent Cielo Vista project. The discussion ignores the Bridal Hills development (which is characterized as "a reasonably foreseeable development" (p. 7-1)) and probable development of the adjacent Yorba Linda Land LLC. The summary makes no effort to reasonably analyze the impacts of the 17 other identified projects in the cumulative impacts discussion. Table 7-1-2 references the "Friend" development in the Utilities and Service Systems section of the table (p. 7-8) but this development does not appear under this name on either the list on p. 7-2 or the map at p. 7-3. Please correct this omission or identify this project consistently throughout the DEIR and/or by the name under which it appears at pp. 7-2 and 3.

Overall, the DEIR's discussion of cumulative impacts lacks even a "minimal degree of specificity or detail" and is inadequate under CEQA. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397 (Discussion lacking even a "minimal degree of specificity or detail" is inadequate and the discussion must be more than a conclusion "devoid of any reasoned analysis." 88 Cal.App.3d at 411. These analytical deficiencies must be corrected.

The DEIR also makes no reference to additional information concerning these projects and where that information is available. Clearly, many of these projects have reached the level of permit processing or environmental review such that information concerning their specific impacts is readily available either online or accessible through the respective agencies. This information should properly be part of the cumulative impacts analysis. Instead, these analytical and informational omissions render the DEIR insufficient as an informational document.

In addition, the DEIR includes an unduly restrictive geographic range of projects within only 2 miles of Esperanza and fails to include pending projects in the nearby incorporated cities of Brea and Chino Hills. If it is "reasonable and practical to include the projects" in the cumulative impacts analysis, they should be included. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723. These projects are within 5 miles of the Cielo project and should be included in any cumulative impacts analysis:

February 3, 2014

Madrona (Canyon Crest)

Project Type: 162 homes on 367 acres

Location: Eastern Brea (off Carbon Canyon Road – Hwy 142)

Lead Agency: City of Brea

CEQA Status: FEIR released November 2012

(five year anniversary of the Freeway Complex Fire)

Last Action: Appeal Hearing 1/21/14

Learn More: <http://www.ci.brea.ca.us/index.aspx?NID=180>

Foremost Community (Canyon Hills)

Project Type: 76 homes on 141 acres

Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)

Lead Agency: City of Chino Hills

CEQA Status: EIR approved 1987

Last Action: Awaiting Tract Home Design Review by Planning Commission

Learn More: <http://www.chinohills.org/index.aspx?NID=847>

Pine Valley Estates

Project Type: 98 homes on 192 acres

Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)

Lead Agency: City of Chino Hills

CEQA Status: Final Map Recorded 2009

Last Action: Revised Design Review by Planning Commission approved 2009

Learn More: <http://www.chinohills.org/index.aspx?NID=847>

Stonefield Development

Project Type: 28 homes on 34 acres

Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)

Lead Agency: City of Chino Hills

CEQA Status: Website is unclear, appears approved

Last Action: Website is unclear, appears approved

Learn More: <http://www.chinohills.org/index.aspx?NID=853>

February 3, 2014

Failure to Adequately Analyze Growth-Inducing Impacts of the Project

The DEIR's discussion of growth inducing impacts of the project in Chapter 8 is inconsistent and inaccurate. First, the growth inducing impacts chapter contains a series of incorrect assumptions: (1) a growth inducing impacts analysis is based on the potential for other projects of the size and scope of Esperanza; (2) if population growth associated with the project was considered in a governing general plan, it is not growth inducing; (3) infrastructure improvements will not be used to serve further residential development; (4) infrastructure improvements will not foster population growth beyond the project (pp. 8-1,2). None of these assumptions is correct or properly part of a forthright growth inducing impacts analysis under CEQA.

CEQA Guideline section 15126.2(d) provides that an EIR must:

Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

The Esperanza subdivision will foster economic and population growth and the construction of additional housing both directly and indirectly by extending water and road infrastructure into an undeveloped, unserved area.

The DEIR acknowledges that there are "currently no existing master planned water facilities available to service the upper pressure zones of the project site and adjacent developments" (p. 5-629). The Esperanza subdivision, along with the directly adjacent, concurrently processed, related Cielo Vista subdivision, currently lack any water infrastructure and will rely on the extension of the water infrastructure by the Yorba Linda Water District ("YLWD"). The Esperanza DEIR incorrectly states: the "Yorba Linda Water District provided input for the design and capacity requirements for the proposed water reservoirs and the sewer system, **which have been designed to accommodate the Proposed**

February 3, 2014

Project only, and the infrastructure improvements will not be used to serve further residential development beyond that identified herein” (p. 8-1). This statement is incorrect and should be revised to reflect the reality that the water infrastructure improvements described in the Northeast Area Planning Study (“NEAPS”) dated March 2013 authored by YLWD will serve both the Cielo and Esperanza subdivisions.

These two projects will require the construction of connections to the Yorba Linda Water District (“YLWD”) water distribution system, storage infrastructure, pumping facilities, upgrades to booster stations and offsite improvements. These types of infrastructure improvements are by definition growth inducing (*see* 14 Cal.Code Regs. §15126.2(d)), are part of the projects and the projects are not possible without these improvements.

The projects present a situation similar to the EIR found to be inadequate in *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713 in which a housing development could not go forward without a sewer expansion project. Because the DEIR therein told the public and decision makers nothing about how the impacts of the infrastructure improvements would combine with the impacts of the houses, the EIR was found inadequate. According to the court, “If that information had been clearly set forth in the beginning, it could have significantly affected how the County considered mitigation measures and overall alternatives to the project.” *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th at 734.

The DEIR acknowledges the probability of development on the adjacent Bridal Hills property (“a reasonably foreseeable development” (p. 7-1)) and development of the adjacent Yorba Linda Land LLC is likewise probable. However, the DEIR avoids any analysis of the growth inducing impacts of the extension of roads and infrastructure on the project site as directly facilitating growth and development in these adjacent, undeveloped areas. The DEIR engages in diversionary “word smithing” such as the “Proposed Project, in itself, will not extend infrastructure improvements into adjacent areas” and the “proposed improvements will not foster population growth beyond the project, unless adjacent planned developments extend such facilities to serve the development area” (DEIR p. 8-1).

By developing roads and infrastructure which adjacent undeveloped lands can use for access and infrastructure connection, Esperanza directly facilitates growth in this area and the DEIR should acknowledge and analyze this reality. Moreover, these statements in the DEIR avoiding growth inducing impacts conclusions are directly contradicted in other chapters in the DEIR as indicated below.

February 3, 2014

DEIR Inconsistencies Between Utilities and Service Systems and Growth-Inducing Impacts Chapters

The DEIR contains fundamental inconsistencies which must be corrected in order to provide an accurate analysis of the project. The Utilities and Service Systems chapter indicates: “[b]ased on technical reports for water and wastewater facility demands, the Proposed Project will not require construction or expansion of facilities to accommodate the Proposed Project” (p. 5-650). However, two paragraphs later the document inconsistently acknowledges “the combination of the proposed off-site YLWD water system improvements and the Proposed Project water infrastructure improvements will not only meet the demands of the future developments in the area but also improve the water service reliability and fire protection for the surrounding area” (p. 5-650). The chapter then details the various water infrastructure improvements which will accommodate the project (pp. 5-632, 633; 5-642).

In addition, the sentence indicating water system improvements will meet the demands of future developments in the area is inconsistent with contrary statements in the Growth-Inducing Impacts chapter described above claiming no growth inducement. These inconsistencies must be corrected if the document is to serve its fundamental informational purpose and accurately and fully analyze environmental impacts of the Esperanza project, including its growth inducing impacts.

Inconsistencies Regarding Existence of a Development Agreement

The DEIR alternately indicates that: (1) a Development Agreement with YLWD for the provision of water facilities and service will be required as part of the project mitigation measures prior to issuance of building permits (p. 5-649); and (2) “YLWD is obligated by an existing development agreement to provide the necessary backbone facilities to supply and service the Proposed Project Area..” (p. 5-629). Please clarify the present status of any development agreement concerning the provision of water facilities. If no such agreement presently exists, or if a new or amended agreement is required, this should be clearly addressed in the DEIR and any agreement included as an appendix to the DEIR. Likewise, if an agreement must be approved by YLWD, this should be included in the list of Discretionary Approvals in the Project Description Chapter and be subject to public review and comment.

The Greenhouse Gas Emissions Chapter Omits Discussion of Key Aspects of the Regulatory Setting

The Greenhouse Gas Emissions (“GHG”) chapter contains an incomplete discussion of

February 3, 2014

the applicable regulatory setting omitting discussion of the Southern California Association of Government's ("SCAG") sustainable communities strategy ("SCS"); fails to discuss project inconsistency with the SCAG SCS; fails to identify that the Orange County Council of Governments ("OCCOG") has its own SCS applicable to this project; and fails to discuss project consistency with OCCOG's SCS. OCCOG's SCS is incorporated into the SCAG SCS but is not even mentioned in the GHG Chapter of the DEIR.

The DEIR fails to discuss how the project is or is not consistent with these reduction targets or the sustainable communities strategies outlined in the OCCOG SCS at pp. 77-149 (<http://occog.com/pdf/OCSCS20110614.PDF>). Some of these GHG reduction strategies outlined in the OCCOG SCS include:

- Promoting a land use pattern that accommodates future employment and housing needs.
- Using land in ways that make developments more compact and better links jobs, housing and major activity centers.
- Protecting natural habitats and resource areas.
- Implementing a transportation network of public transit, managed lanes and highways, local streets, bikeways, and walkways built and maintained with available funds.
- Managing demands on the transportation system (TDM) in ways that reduce or eliminate traffic congestion during peak periods of demand.
- Managing the transportation system (TSM) through measures that maximize the efficiency of the transportation network.
- Utilizing innovative pricing policies to reduce vehicle miles traveled and traffic congestion during peak periods of demand.

This multi-faceted analysis is particularly important for this project located in Yorba Linda's sphere of influence and likely to be annexed to Yorba Linda because the OCCOG SCS identifies Yorba Linda as one of the most dense Traffic Analysis Zones by year 2035 (p. 37 <http://occog.com/pdf/OCSCS20110614.PDF>).

Formulation of GHG Mitigation Is Impermissibly Deferred

The GHG Chapter generally discusses a range of possible reasonable control measures without committing to or articulating any specific GHG reduction measures (p. 5-271). The DEIR defers formulation of specific GHG reduction measures indicating "[p]rior to construction of [the] project, the developer shall implement or develop a plan for

February 3, 2014

implementation of one or more mitigation strategies for the reduction of greenhouse gas (GHG) emissions from the report 'CEQA and Climate Change' prepared by [CAPCOA] as updated in 2010" (DEIR p. 5.272). The DEIR takes the unsupported and legally unsupportable position that if "it can be demonstrated that more than adequate options exist to attain the local mitigation responsibility of 5%, mitigation would not be considered deferred even if the development plan is not yet finalized." This statement is filled with legally unfounded assumptions, including the erroneous assumption that a 5% reduction target from new development can in any way meet the requirements of AB32.

As previously discussed in connection with deferred mitigation for biological resource impacts, "[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.) The GHG Chapter suffers from this latter infirmity; it fails to demonstrate how the significant GHG impacts of this subdivision, coupled with the significant, cumulative impacts of the Cielo subdivision and other projects in the immediate vicinity, can be mitigated through the vague, unspecified measures to be developed post project approval.

The GHG chapter also refers the reader to alleged GHG mitigation measures found in the Air Quality chapter of the DEIR but upon examination of the pages cited, the measures relate to mitigation of NO_x emissions, dust control and construction practices in the SCAQMD Handbook, not GHG mitigation measures (p. 5-88, 89).

There Is No Substantial Evidence Supporting The Conclusion That The Undefined 5 % Emissions Reduction Target Is Sufficient To Meet AB32 Requirements

The AB32 Scoping Plan indicates that overall emissions must be cut by "approximately 30% from business-as-usual emission levels projected for 2020" to comply with AB32 requirements. The DEIR relies on CAPCOA's "CEQA and Climate Change" (2010) white paper but fails to include key aspects of the document and its recommendations. CAPCOA has acknowledged that "greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources." (CAPCOA, CEQA & Climate Change p. 33). The California Attorney General has indicated "it seems that new development must be more GHG efficient than this [29% reduction] average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit." Attorney General Letter to San Joaquin Valley Air Pollution Control District, Nov. 4, 2009.

February 3, 2014

The Sacramento Metropolitan Air Quality Management District has recognized the importance of new development achieving its “fair share” of reductions in GHG emissions when it indicated in its CEQA Guide December 2009, Revised April 2011, Revised April 2013:

AB 32 demonstrates California’s commitment to reducing the rate of GHG emissions...Thus, to achieve the goals of AB 32, which are tied to GHG emission rates of specific benchmark years (i.e., 1990), California will have to achieve a lower rate of emissions per unit of population and per unit of economic activity than it has now...Thus, future land use development projects that will not encourage new development to achieve its fair share of reductions in GHG emissions will conflict with the spirit of the policy decisions contained in AB 32, thus impeding California’s ability to comply with the mandate.

<http://www.airquality.org/ceqa/ceqaguideupdate/Ch6ghgFINAL.pdf>.

The DEIR is patently inconsistent with AB32 requirements and this weight of authority by arguing that the project need only achieve a 5% GHG reduction because statewide GHG reduction programs will cover the remaining 23.9%. As recognized by CAPCOA, the Attorney General and air pollution control districts, this is not the intention of AB32 nor will such reductions comply with AB32’s mandates. The DEIR’s conclusion that undefined mitigation measures seeking a mere 5% reduction in GHG emissions will fulfill AB32’s emission reduction objectives is simply not supported by any evidence. It is a bare, unsubstantiated conclusion. “Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous” does not constitute substantial evidence. *See* Pub. Res. Code § 21082.2.

Even the San Joaquin Valley Air Pollution Control District which the Attorney General took to task in the November 4, 2009 letter described above requires that new development demonstrate that project specific GHG emissions have been reduced or mitigated by at least 29%. The San Joaquin Valley Air Pollution Control District’s Guidance for Valley Land Use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA indicates:

[L]and use agencies adopting this guidance as policy for addressing GHG impacts under CEQA, as a lead agency will require all new projects with increased GHG emissions to implement performance based standards, or otherwise demonstrate that project specific GHG emissions have been reduced or mitigated by at least 29%.

February 3, 2014

<http://www.valleyair.org/Programs/CCAP/12-17-09/3%20CCAP%20-%20FINAL%20LU%20Guidance%20-%20Dec%2017%202009.pdf>

The DEIR's attempt to avoid AB32 reduction requirements by employing a local 5% target with no clearly articulated GHG reduction measures flies in the face of CEQA prohibitions against deferral of mitigation and provides no scientific or factual basis supporting a conclusion of consistency with AB32 requirements. The DEIR must conduct a full and fair analysis and examine whether this project achieves the reduction mandates in AB32. Its failure to do so renders it inadequate as an informational document and its conclusions regarding compliance with AB32 mandates are unsupported by substantial evidence.

The DEIR's Land Use Consistency Conclusions Are Unsupported By Substantial Evidence

The DEIR analyzes the consistency of the project with its proposed Suburban Residential (1B) land use designation, not the current open space designation. The proper issue for analysis is the project's consistency with the **current** Orange County zoning and land use designations for the project site, not the consistency of the project with its discretionary approvals. The DEIR cannot properly avoid a significance determination by using the potentially changed zoning or land use designations which are part of the proposed project as a baseline. The Land Use and Planning section of the DEIR must be revised to employ the proper baseline and provide an open and forthright consistency analysis.

The DEIR Fails to Conduct Any Consistency Analysis of the City of Yorba Linda Right To Vote Amendment

Although the DEIR identifies the Yorba Linda Right to Vote Amendment and Land Use Right to Vote ordinances (p. 5-403) as part of the Regulatory Setting for the project, it fails to analyze the application of these ordinances to the project and its various approvals. These ordinances require a public vote for certain major amendments to any planning policy document. This analytical omission is of particular concern because as indicated in the beginning of this letter, the County's failure to both comprehensively analyze and plan the Murdock Property as envisioned by the Yorba Linda General Plan is fundamentally inconsistent with Yorba Linda's General Plan.

The Yorba Linda General Plan preferred alternative for the Murdock Property is annexation into the City of Yorba Linda and contemplates "one or more specific plans, **composed of all eight properties, or compatible combinations of property owners, to provide a comprehensive development and circulation system**" (DEIR p. 5-401). Instead, the

February 3, 2014

net effect of approval of this subdivision, separate and apart from the other Murdock properties, is to avoid this plan and its preferred alternative and a public vote under the Yorba Linda ordinances. This inconsistency and effective avoidance of Yorba Linda's Right to Vote ordinances should be acknowledged and analyzed in the DEIR.

In this regard, the DEIR in both the Land Use and Planning section and the Alternatives section fails to acknowledge that one effect of maintaining consistency with the preferred alternative for the Murdock Property and consistency with the hillside protection provisions in both the Yorba Linda General Plan and the zoning code may be reduced density and yield for this project. Under these circumstances, the proposed project density appears to be patently inconsistent with these policies. In addition, the conclusion in the Alternatives chapter that the Yorba Linda General Plan Alternative would result in the addition of 129 residences (p. 6-86), likewise ignores the effect of the preferred alternative and the hillside protection provisions in calculating this alternative's density.

The Recreation and Resource Element of the Yorba Linda General Plan seeks to "permanently preserve and protect sensitive hillside areas", "[r]espect the natural landform as a part of site planning", and "[p]reserve significant natural features, including sensitive hillsides" (DEIR p. 5-441). Similarly and consistent with these goals and policies, the Land Use Element contemplates and seeks "[l]ow density residential development in the hillside areas" and targets "lower densities to hillside areas with yield based on slope severity and stability, topographic conditions" ("DEIR p. 5-437 Policy 8.1). Application of these Yorba Linda policies will likely result in a much lower density than that proposed by the project and/or identified in the Alternatives discussion; this inconsistency must be acknowledged and analyzed in the DEIR.

Failure to Include an Off-Site Alternative

The DEIR fails to include any off-site alternative including an infill site which avoids the urban sprawl and safety impacts produced by this project. It is both reasonable and feasible to include such an alternative. Information about one such alternative is attached hereto as Exhibit A which depicts an infill site in the City of Santa Ana which would accommodate the number of units proposed by the project, is adjacent to Interstate 5, is vacant, and is zoned District Center. According to the Santa Ana General Plan, District Centers are allowed at a density of up to 90 units per acre when developed as an integral component of a master planned mixed use project.

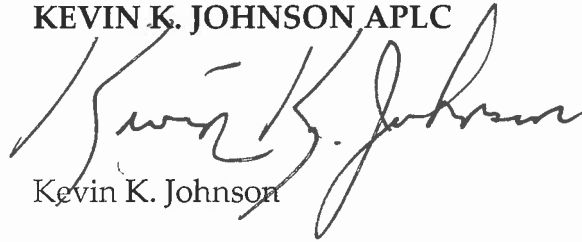
In view of the foregoing identified inadequacies in the Esperanza DEIR, the document

February 3, 2014

should be substantially revised and re-circulated for public comment.

Very truly yours,

KEVIN K. JOHNSON APLC

A handwritten signature in black ink, appearing to read "Kevin K. Johnson", written over the printed name.

Kevin K. Johnson

Cc: Supervisor Todd Spitzer via email

EXHIBIT A

Land Use Designations

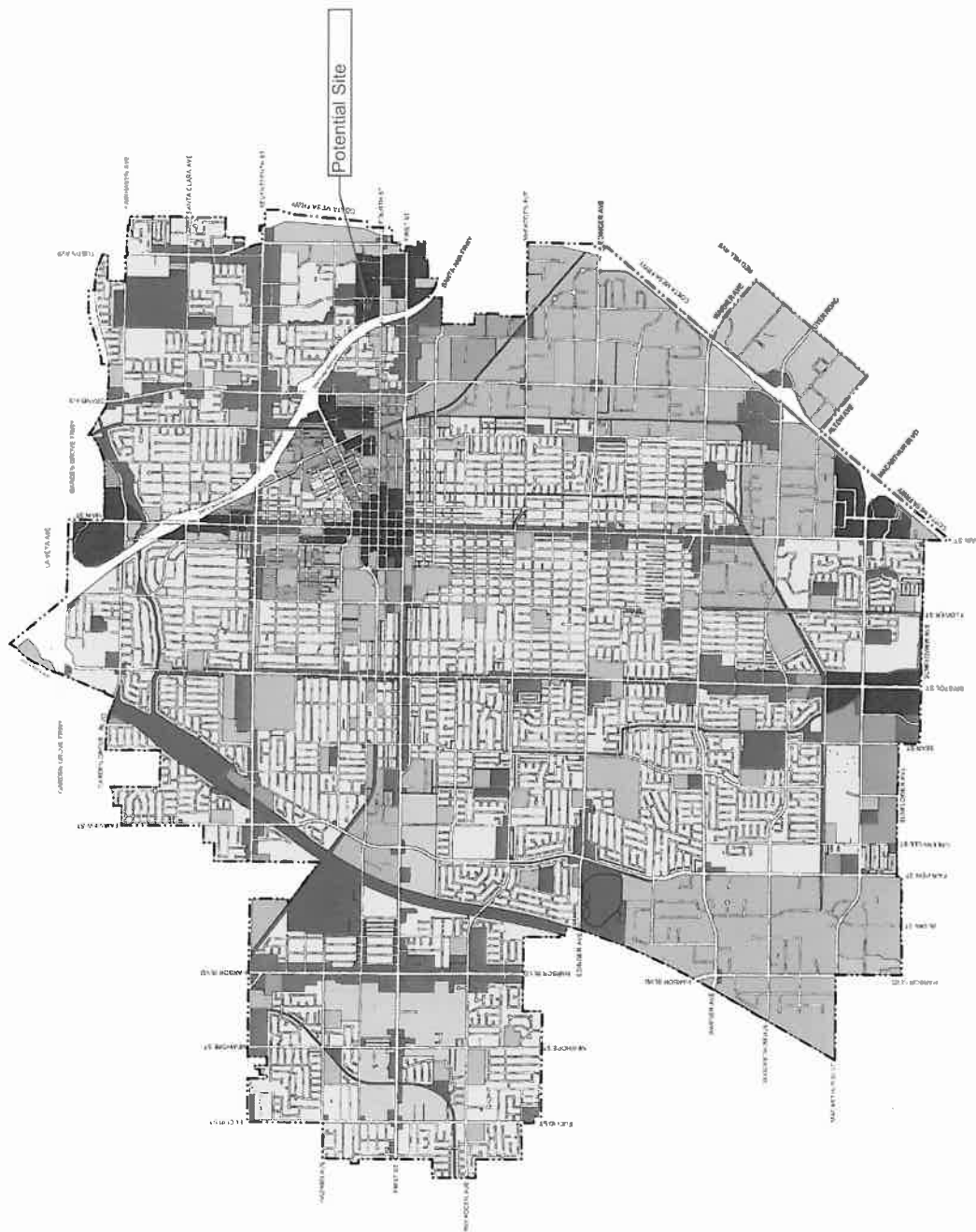
- | | |
|--|--|
| LD-7 (Low Density Residential) | LD-7 (Low Density Residential) |
| IMR-11 (Low-Medium Density Residential) | IMR-11 (Low-Medium Density Residential) |
| IMR-13 (Medium Density Residential) | IMR-13 (Medium Density Residential) |
| UM (Urban Neighborhood) | UM (Urban Neighborhood) |
| GC (District Center) | GC (District Center) |
| CC (General Commercial) | CC (General Commercial) |
| IND (Industrial) | IND (Industrial) |
| INS (Institution) | INS (Institution) |
| O (Open Space) | O (Open Space) |
| PAO (Professional & Administrative Office) | PAO (Professional & Administrative Office) |
| OBPOC (One Broadway Plaza District Center) | OBPOC (One Broadway Plaza District Center) |

Land Use Plan



Exhibit 2

Land Use Element





Google Earth

© 2013 Google

1994

33°45'00.70" N 117°50'26.65" W elev 145 ft eye alt 4709 ft