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February 7, 2014

SENT VIA EMAIL AND U.S. MAIL

Shane L. Silsby, Director
OC Public Works
300 N. Flower St.
Santa Ana, CA 92703

Re: Esperanza Hills Development Project (Project No. PA120037)
Denial of Request for Extension of Comment Period/ Renewal of Request

Dear Mr. Silsby:

This firm represents Protect Our Homes and Hills, an unincorporated citizens group consisting of residents and taxpayers in the City of Yorba Linda. On behalf of the organization and its members, we submitted comment letter on the deficiencies in the Draft Environmental Impact Report ("DEIR") prepared for the Esperanza Hills development project ("Esperanza").

Additionally, on behalf of the organization and its members, on January 31, 2014, we submitted a request for an extension of the comment period on the DEIR (a copy is attached hereto as Exhibit A) and have been advised that several members of the organization made similar requests. We are aware of no communications with our office or any members of the organization in response to the various requests.

Nevertheless, we are in receipt of correspondence you sent to the City of Yorba Linda in response to its request for an extension of the comment period. That letter, as well as its incorporation of a communication from the project applicant, raises serious questions as to CEQA compliance in connection with the various extension requests and the legality of the action taken in response to the extension requests.

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Under CEQA the “lead agency” is charged with evaluating and responding to comments on a DEIR. CEQA Guideline 15088 provides as follows:

(a) The **lead agency** shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The **lead agency** shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The **lead agency** shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

Your complicity in the project applicant’s agreement to “fully address and respond” to late submitted comments by government entities suggests that the lead agency in this matter has abdicated its responsibilities in an improper and unauthorized manner. In essence, OC Public Works has deferred its responsibilities to the project applicant/ developer who has been allowed to decide which comments on the DEIR will receive responses and which will not.

Furthermore, the distinction created – between government entities and private citizens – is not authorized under CEQA and violates the federal equal protection clause (U.S. Const., 14th Amend.) and its California counterpart (Cal. Const., art I, section 7, subd.(a)) which provide that persons who are similarly situated with respect to a legitimate purpose of a law must be treated alike under the law. In this instance, OC Public Works has distinguished between government entities – to whose late comments the developer will respond -- and private citizens who were held to the initial comment period despite requests for an extension of that time. Although no rationale has been provided for the distinction between the two groups, an appellate court reviewing OC Public Works’ decision would hold it to strict scrutiny as it impinges on private citizens’ fundamental right to public comment. See Fenn v. Sherriff (2003) 109 Cal.App.4th 1466; Landau v. Superior Court (1998) 81 Cal.App.4th 191.

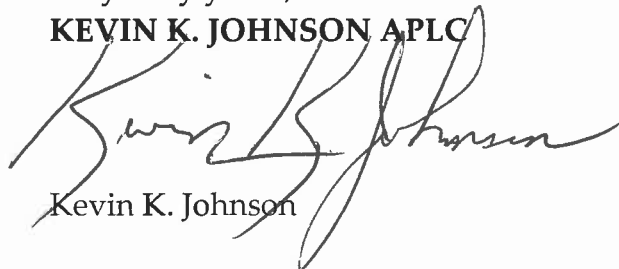
Our January 31 email stated multiple additional reasons for a comment period extension. In summary, on behalf of Protect Our Homes and Hills, we urge you to reconsider the denial of private citizens’ requests for an extension of the comment period and to reopen the comment period for an additional two weeks.

February 7, 2014

We look forward to your response.

Very truly yours,

KEVIN K. JOHNSON APLC

A handwritten signature in black ink, appearing to read "Kevin K. Johnson". The signature is written in a cursive style with a large, sweeping initial "K".

Kevin K. Johnson

cc: Supervisor Todd Spitzer via email

From: Kevin Johnson [<mailto:kevin@johnsonlawaplc.com>]
Sent: Friday, January 31, 2014 10:53 AM
To: Canning, Kevin
Cc: Spitzer, Todd [HOA]
Subject: Failure to Extend Comment Period as Independent Violation of CEQA

Dear Mr. Canning:

Thank for your recent communications on the subject of the multiple requests for extension on the comment period on the Esperanza Subdivision. We certainly appreciate your position of having to wait for a decision from your supervisors before you can pass the decision on to the public. As you know we represent Protect our Homes and Hills.

In light of the continuing delay in the decision making process, we ask that your supervisors be made aware of the fact that failure to grant an extension, under the unique circumstances presented, will be an independent and actionable violation of the California Environmental Quality Act.

The California Code of Regulations provides comment periods can be extended beyond 60 days where are "unusual circumstances" present. 14 Cal Code Regs Section 15105 (d)

Here, the members of the public, interested non-profits and at least one government agency have all asked for an extension. To our knowledge, almost all of the requests have come from individuals and entities that very recently completed work on extensive comments on the adjacent Cielo Vista subdivision.

Indeed, while we do not at this point have copies of everything submitted to the County on Cielo Vista, we consider it likely that both the County and the Applicant were quite surprised by the comprehensive scope and level of detail reflected in the extensive comments submitted.

Common sense suggests that because the Cielo Project is less than one third the size of Esperanza, but literally adjacent to the Esperanza site with many major and overlapping issues, that there is a need for detailed review and comment on the Esperanza subdivision.

By overlapping the comment periods in the first place for the two subdivisions, the County placed an unusual burden on the residents and other keenly interested parties/entities. Now those same commentators, who have demonstrated their strong interests and concerns are basically being denied the right of a reasonable opportunity to comment.

We are at a loss to opine a reasonable basis to deny the extension requests and we request a formal explanation as to why the request is being denied.

Unfortunately, it appears to our firm that the County's main goal is to reduce the number and content of comment letters that will need to be responded to. Functionally, by suppressing comments on the DEIR you are depriving the public and others of fundamental rights to fully question and critique the environmental document.

The situation is analogous to an act of voter suppression where a County, City or State unreasonably limits the number of polling places and/or the hours people can vote.

It is important to note that the interrelationship between the two subdivisions creates additional "unusual circumstances, particularly where the County has elected to treat the two subdivisions as distinct projects when in fact the two are functionally a single project under CEQA. They rely for example on the

construction of joint infrastructure. The Esperanza project relies upon a disputed secondary access through Cielo.

On numerous levels the two subdivisions are interconnected and interdependent. It is important that the County hear all concerns about both projects. Any contention by the County to the effect that "time is of the essence" is simply insufficient. In this regard, we note that there are multiple instances of deferred assessment and mitigation identification in the DEIR because impact assessment work is on-going. In other words, the basic work to be done and reflected in the DEIR is incomplete. It is not proper to rush the project through the process under these circumstances.

Unusual circumstances are also present because of the extreme and unique combination of public safety risks associated with the locations of the subdivisions. Residents are not concerned about the color of paint

on the proposed new houses, they are concerned for their lives when another wildfire rages through the area. Those with asthma and other respiratory diseases are concerned about the air they will breath both during and after construction. They are concerned about impacts that the grading on Esperanza will have on existing neighbors when the next major earthquake comes. The public safety issues list goes on and on.

It is simply inexcusable to suppress public comment under these circumstances--there are highly "unusual circumstances".

Please forward this e-mail onto your supervisors. We assume and request that this e-mail and all requests for extension will be part of the administrative record on the Esperanza subdivision. In fact please consider this e-mail a comment letter on the DEIR. Please also preserve all phone records, including notes etc., which reflect all requests for extension. Please also preserve all internal communications on or relating to the extension requests.

Once again, Kevin, thank you for your personal continuing professional courtesy and cooperation.

Very Truly Yours,

Kevin K. Johnson

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