

# 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

January 22, 2014

## SENT VIA EMAIL AND U.S. MAIL

Orange County Planning  
Attn: Mr. Ron Tippets  
300 North Flower  
Santa Ana, CA 92702-4048

Re: Cielo Vista Project – Draft Environmental Impact Report, EIR No. 615  
Comments on Greenhouse Gas Emissions Chapter Section 4.6

Dear Mr. Tippets:

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 Greenhouse Gas Emissions chapter of the Draft Environmental Impact Report (“DEIR”) prepared for the Cielo Vista development project (“Cielo”).

The Greenhouse Gas Emissions (“GHG”) analysis is deficient in a number of fundamental and serious respects undermining the validity of any significance conclusions reached therein.

The GHG chapter consists of 23 pages of boilerplate and general background information followed by 3 ½ pages of “analysis” (see DEIR pp. 4.6-1 through 4.6-27). The entire chapter appears to simply be a copy of the equally inadequate and inaccurately named Appendix F – Greenhouse Gas Study which also provides 26 pages of background information followed by 6 pages of “analysis”. This cursory, once over lightly treatment of GHG impacts is inadequate on its face.

Specifically, the “analysis” is deficient under the California Environmental Quality Act (“CEQA”), Pub. Res. Code sec. 21000 et seq. and the CEQA Guidelines, 14 Cal. Code Regs. sec. 15000 et seq. in numerous, specific respects as outlined below.

**1. The GHG chapter fails to adequately discuss the existing conditions on the Cielo site or the appropriate baseline.**

The DEIR does not measure the significance of the Project’s GHG emissions by comparing them to the existing conditions as CEQA requires. In fact, CEQA Guideline section

January 22, 2014

15064(b) indicates that when evaluating whether the impacts of a project's GHG emissions are significant, an agency should consider whether the project "may increase or reduce greenhouse gas emissions compared to the existing environmental setting."

The GHG chapter fails to provide any baseline description of the existing environmental setting as it relates to GHGs. The chapter includes a single paragraph entitled "Existing Greenhouse Gas Emissions" at p. 4.6-18 which describes five operating oil wells and a recitation of regulations applicable to these operating wells as well as the abandoned wells onsite and concludes without any evidence or any effort to quantify or measure current GHG emissions that "existing CO<sub>2</sub> e emissions are minimal."

This failure to adequately describe the current environmental setting provides no baseline with which to compare the project impacts. This omission is particularly troublesome for two reasons. First, oil production is one of the top GHG producers and in particular produces large amounts of methane. Although carbon dioxide is a much more abundant greenhouse gas, methane has a far bigger impact on climate change with more than 20 times the global warming potential of carbon according to the Environmental Protection Agency.<sup>1</sup> Accordingly, in order to properly analyze GHG impacts, the DEIR should quantify current GHG emissions in order to provide some valid basis for comparison with overall project impacts. However, the DEIR also fails to quantify emissions from reconsolidated wells (p. 4.6-25). In the absence of any effort to quantify or compare current well emissions levels with emissions of new or reconsolidated wells and overall project emissions, significance conclusions are of no value whatsoever and are not supported by substantial evidence.

Second, the GHG chapter contains inconsistent discussion of new wells planned as part of the project. The chapter acknowledges that the project includes development of a drilling pad for continued oil operations including consolidation of wells relocated from the rest of the project site and slant drilling of **new wells** below ground (pp. 4.6-24) but then, in the very next sentence, inconsistently claims that the Project "is not proposing new oil wells and as such, would not drill new wells." The DEIR alternately refers to new wells versus reconsolidated wells without quantification of impacts of either and concludes without any substantial evidence that "operational GHG impacts associated with the potential new oils [sic] wells would be less than significant". In order to serve its purpose as an informational document, the DEIR must include meaningful discussion of current GHG emissions from the operating and abandoned wells and how the project, including the drilling pad and the new and/or reconsolidated wells, may increase or reduce these impacts. As currently drafted, the discussion of GHG emissions from existing and planned wells is inadequate, contradictory and not supported by substantial evidence.

## **2. The GHG chapter fails to conduct any cumulative impacts analysis.**

In an effort to avoid a significance determination on the issue of cumulative impacts, the DEIR's cumulative impacts discussion makes passing reference to the adjacent Esperanza Hills project, omits any discussion of 18 related projects discussed in the Traffic/Transportation

---

<sup>1</sup> <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2013-ES.pdf>

January 22, 2014

section of the DEIR, and inappropriately tries to minimize the incremental cumulative impact of this project by stating “[o]n a global scale, no single project alone will measurably contribute to a noticeable incremental change in global average temperature” (p. 4.6-26). Changes on a global scale are not necessary in order to meet a CEQA threshold of significance. The DEIR fails to conduct even a minimal cumulative impacts analysis as required under CEQA.

CEQA requires discussion of cumulative impacts of a project when the project’s incremental effect is cumulatively considerable. 14 Cal. Code Regs. sec. 15130(a). “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. 14 Cal. Code Regs. sec. 15065(a)(3). An adequate discussion of cumulative impacts will include either: (1) a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency; or (2) a summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. 14 Cal. Code Regs. sec. 15130(1).

The Cielo GHG chapter fails to conduct any cumulative impacts analysis consistent with the foregoing Guideline sections. Even the DEIR for the adjacent Esperanza Hills Project recognizes the “addition of the adjacent Cielo Vista project and the 18 related projects identified in the Traffic Analysis will further contribute to an exceedence of GHG [emissions] and, therefore, cumulative impact remains significant and unavoidable” (DEIR Esperanza Hills p. 5-273).

The GHG chapter bases its conclusions on the draft, non binding Southern California Air Quality Management District (“SCAQMD”) threshold of significance. Relying exclusively on these thresholds to reach a cumulative impacts conclusion results in a situation where if all 18 related projects individually fell below the SCAQMD threshold, they would not collectively be considered cumulatively considerable, even though their combined emissions vastly exceeded the threshold. This logically cannot represent proper reasoning or analysis under CEQA.

Although it may be appropriate to rely on thresholds of significance that are formally adopted for general use, the SCAQMD thresholds have not been adopted by regulation, rule, resolution or ordinance, as required by CEQA. 14 Cal. Code Regs. sec. 15064.7 (b). The fact that the thresholds were first proposed in 2008 and still have not been adopted further undermines their reliability as valid indicia of significance.

Even if application of the threshold were considered appropriate under these circumstances, the County would still need to consider other evidence that the project may cause a significant GHG impact. As stated in *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met.” An EIR is required to evaluate a particular environmental impact if it is “reasonably feasible” to do so. (14 Cal. Code Regs. sec. 15151). It is reasonably feasible to

January 22, 2014

evaluate the cumulative GHG impacts of this project in conjunction with the other related projects and appropriate mitigation or alternatives formulated and analyzed for such impacts.

The GHG chapter also cites to the much lower Bay Area Air Quality Management District's Proposed Air Quality CEQA Thresholds of Significance in support of the statement that "other air districts within the state have established that projects which are consistent with project-level GHG thresholds would not be 'cumulatively considerable'" (p. 4.6-27). However, and importantly, the Bay Area Air Quality Management District ("BAAQMD") set a much lower threshold of significance for analyzing project level GHG emissions. The BAAQMD threshold recognizes that a residential or mixed-use development will normally have a significant GHG related impact if its emissions exceed **1,100 metric tons of CO<sub>2</sub> equivalent per year**. The Cielo project GHG emissions clearly exceed this threshold and are considered significant under the BAAQMD threshold requiring mitigation for the project's GHG impacts.

**3. The GHG chapter fails to compare GHG emissions impacts under various alternative scenarios.**

The GHG chapter makes no attempt to evaluate the comparative merits of the alternatives identified in the DEIR from a GHG impacts standpoint. 14 Cal. Code Regs. sec. 15126.6(a). Given the analytical deficiencies identified herein, the DEIR should be revised and re-circulated to include quantification and comparison of GHG emissions under the alternatives analysis in the DEIR (The alternatives section, commented upon under separate cover, is woefully inadequate on independent grounds).

**4. The GHG chapter relies on draft, non-binding thresholds of significance and fails to properly apply the County significance analysis.**

Neither SCAQMD nor the County of Orange have adopted significance thresholds for GHG emissions from non-industrial development projects (DEIR p. 4.6-20). As previously indicated, although it may be appropriate to rely on thresholds of significance that are formally adopted for general use, the thresholds employed by the County and SCAQMD have not been adopted by regulation, rule, resolution or ordinance, as required by CEQA. 14 Cal. Code Regs. sec. 15064.7 (b).

Even if application of a draft threshold were considered appropriate under these circumstances, the DEIR fails to fully analyze the County's current significance methodology which includes not just the SCAQMD draft thresholds but also "an analysis of the Project's consistency with plans, policies, and regulations adopted for the purpose of reducing GHG emissions" (DEIR p. 4.6-20). As indicated in sections 5 and 6 below, the DEIR fails to include this required analysis.

**5. The GHG chapter omits discussion of applicable regulations and plans.**

The GHG chapter contains an incomplete and cursory discussion of SCAG's sustainable communities strategy ("SCS"); fails to discuss project consistency with the SCAG SCS; fails to identify that the Orange County Council of Governments ("OCCOG") has its own SCS

January 22, 2014

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 DEIR.

Senate Bill 375 (SB 375) was enacted to reduce greenhouse gas emissions from automobiles and light trucks through integrated transportation, land use, housing and environmental planning. Under the law, SCAG was tasked with developing a Sustainable Communities Strategy (SCS), a newly required element of the 2012 Regional Transportation Plan (RTP) that provides a plan for meeting emissions reduction targets set forth by the California Air Resources Board (ARB). On September 23, 2010, ARB issued a regional 8% per capita reduction target for the planning year 2020, and a conditional target of 13% for 2035.

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 holding 3,000 housing units or more by year 2035 (p. 37 <http://occog.com/pdf/OCSCS20110614.PDF>).

## **6. The GHG chapter conflicts with AB 32 and Executive Order S-3-05.**

The DEIR attempts to avoid the required consistency analysis and the conclusion that this project is inconsistent with the emission reduction mandates of AB 32 and EO S-3-05 by employing faulty logic and unfounded assumptions without any supporting evidence or authority. The DEIR asserts that SCAQMD's draft significance threshold was designed to ensure compliance with AB 32 emissions reduction requirements and therefore if a project doesn't meet the threshold, "it can be assumed to comply with AB 32" (DEIR p. 4.6-25). How a permissive emissions threshold equates with a mandated reduction in GHGs is not explained.

January 22, 2014

If the threshold was a performance standard requiring that every development project reduce GHG emissions by a certain percentage and this percentage represented compliance with AB 32's requirements, such a threshold could possibly be considered as designed to ensure compliance with AB32. One air pollution control district employs such a performance standard. 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%.

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

However, equating an emissions threshold with a reduction mandate without any supporting evidence does not provide evidence of consistency with either AB 32 or Executive Order S-3-05.

In addition, thresholds of significance and consistency determinations are two entirely different inquiries as recognized by the County of Orange which uses two, separate approaches in analyzing GHG impacts: (1) the draft SCAQMD threshold; and (2) "an analysis of the Project's consistency with plans, policies, and regulations adopted for the purpose of reducing GHG emissions" (DEIR p. 4.6-20).

The DEIR acknowledges Executive Order S-3-05 but fails to analyze the project's consistency with this official state policy. This gubernatorial order has not been withdrawn or modified by a subsequent governor. The DEIR fails to examine how or if the project complies with the Executive Order's policy to reduce GHG emissions to 1990 levels by 2020 and to 80% below 1990 levels by 2050.

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.

January 22, 2014

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

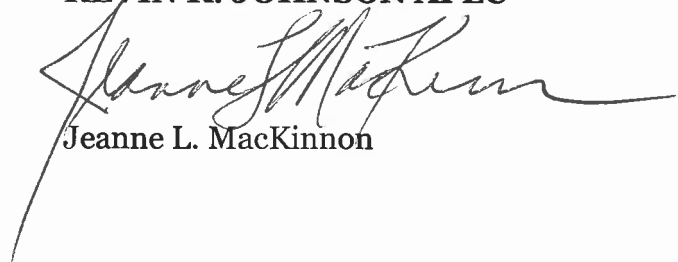
Likewise, the County of Orange has recognized that not exceeding a threshold is not the end of the significance inquiry. The DEIR must conduct a full and fair consistency analysis and examine whether this project achieves the reduction mandates in AB 32 and EO S-3-05. Its failure to do so renders it inadequate as an informational document and its conclusions regarding the significance of GHG impacts are unsupported by substantial evidence.

**7. The GHG chapter avoids a significance determination by segmenting the drilling pad impacts from the residential operational impacts.**

Although the project includes development of a drilling pad for continued oil operations including consolidation of wells relocated from the rest of the project site and slant drilling of new wells below ground (pp. 4.6-24), the DEIR treats GHG impacts from this drilling pad and associated wells separately from other operational impacts, makes no attempt to measure, estimate or quantify these GHG impacts or compare them with existing GHG emissions concluding without any supporting evidence that “GHG emissions from the reconsolidated wells would not be greater than under existing conditions and in consideration of the factors cited above, operational GHG impacts associated with the potential new oil wells would be less than significant” (DEIR p. 4.6-25). In the absence of quantifiable emissions data, this “take our word for it” approach is not permissible or adequate under CEQA.

In view of the foregoing inadequacies in the Cielo GHG analysis, the DEIR should be revised and re-circulated, significance conclusions reexamined and appropriate, feasible mitigation measures formulated for the GHG impacts resulting from this and other related projects.

Very truly yours,  
**KEVIN K. JOHNSON APLC**



Jeanne L. MacKinnon