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January 22, 2014

## SENT VIA EMAIL AND U.S. MAIL

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

Re: Cielo Vista Project – Draft Environmental Impact Report, EIR No. 615  
Comments on Inadequate Project Description and Related Issues

Dear Mr. Tippetts:

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 Project Description and Cumulative Impacts and Growth Inducing Impacts Analyses in the Draft Environmental Impact Report (“DEIR”) prepared for the Cielo Vista development project (“Cielo”).

By failing to accurately include all components of the Cielo project, including water infrastructure improvements, the DEIR’s Project Description and related analyses are deficient in a number of fundamental and serious respects.

To be legally adequate, a project description must: depict the project accurately and not minimize its environmental effects; include reasonably foreseeable activities associated with the project; and be consistent throughout the EIR. Kostka & Zischke, *Practice Under the California Environmental Quality Act §12.6* (CEB 2013). A project description that omits components of the project results in an EIR that fails to disclose all project impacts. *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 (sand and gravel mine project description omitted discussion of water pipelines serving the project). An agency may not split a single large project into small pieces and thereby avoid environmental review of the entire project. *Orinda Ass’n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.

### The Project Description Omits Key Project Components and Thereby Fails to Disclose All Project Impacts

The project description for the Cielo Project fails to accurately depict all components of the project including foreseeable, growth inducing, cumulative activities related to the

January 22, 2014

expansion of the water supply infrastructure and the related Esperanza Hills project. By adopting a narrow view of the project, the DEIR overlooks “its cumulative impact by separately focusing on isolated parts of the whole” and engages in a “fallacy of division.” *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.

The Cielo project, along with the directly adjacent, concurrently processed, related Esperanza Hills project, currently lacks any water infrastructure. The Cielo and Esperanza Hills projects rely on the same water infrastructure and access. Due to their adjacency, shared infrastructure and concurrent processing, these projects are effectively one project and the totality of their environmental impacts should be comprehensively evaluated in one EIR. In particular, treatment as two separate projects without accompanying analysis of the necessary water infrastructure impacts avoids and understates project impacts, particularly growth inducing impacts and cumulative impacts.

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 DEIR presents a situation remarkably 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. The sewer expansion project was the subject of a feasibility report but the report was not included in the housing development EIR and the feasibility report contained no discussion of the environmental impacts of the sewer expansion.<sup>1</sup>

Likewise, the water infrastructure improvements necessary for both the Cielo and Esperanza Hills developments were the subject of a Northeast Area Planning Study (“NEAPS”) dated March 2013 authored by YLWD. The NEAPS is referred to in Section 4.15 Utilities and Service Systems of the DEIR but is not included as an Appendix, is not discussed in any significant detail in the DEIR and does not contain any environmental review. Under the authority of *San Joaquin Raptor*, this is legal error. The DEIR “tells the public and decision makers nothing about how the impacts of the [water infrastructure improvements] would combine with the impacts of the [ ] houses. 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 Project Description mentions the NEAPS but incorrectly minimizes the importance

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<sup>1</sup> Unlike the present situation, although an EIR was prepared for the sewer expansion project in *San Joaquin Raptor*, it also was not made a part of the housing development EIR. Here, no environmental review for the water infrastructure improvements has occurred as more fully discussed *infra*.

January 22, 2014

and relevance of this document by stating that “some” of the infrastructure improvements/upgrades detailed in the NEAPS would support the project. In fact, the need for the improvements detailed in the NEAPS was triggered by the Cielo and Esperanza Hills projects. The Cielo project is referred to in the NEAPS as the Sage development. The NEAPS states:

The purpose of the Northeast Area Planning Study is to evaluate the capacity of existing distribution system facilities and size new infrastructure required to provide water under anticipated operational conditions for future demands. The proposed Esperanza Hills Estates (EHE) and Sage (SG)[Cielo] developments are projected to add 542 acre-feet per year (afy) to the District’s annual demands, resulting in an overall system annual demand of 25,388 afy, which equates to a 2 percent demand increase.

NEAPS p. ES-1.

This Northeast Area Planning Study is primarily limited to the system evaluation surrounding the new Esperanza Hills/Sage developments and the FPS [Fairmount Pump Station].

NEAPS p. ES-3.

The District is undertaking this study to evaluate water service in the northeast are of the District. Specifically, this study is intended to evaluate the capacity of the system to supply the areas of new development...

Two developments are currently planned for the northeast area of the District’s service area, the Esperanza Hills Estates development and the Sage development.

NEAPS p. 1.

In addition to failing to acknowledge the centrality of these two projects as the reason for the NEAPS, the Cielo project description completely abdicates responsibility for environmental review of these water infrastructure improvements by: (1) characterizing the recommendations in the NEAPS as mere possibilities, i.e. improvements “could include improvements such as water tanks...”; (2) indicating that the “specific locations, designs, and extent of the improvements are not known”; and (3) effectively deferring environmental review and passing the environmental review buck to YLWD by stating “[o]nce the facilities are further planned and designed, YLWD would evaluate the potential for the construction or operation of these facilities to result in significant impacts.” DEIR p. 2-22.

The DEIR fails to properly characterize the NEAPS recommendations; they are not mere possibilities, they are necessary if this project is to go forward. The DEIR fails to acknowledge that neither the Cielo project nor the Esperanza Hills project can go forward without the water infrastructure improvements; fails to analyze the environmental impacts of the total project as including the water infrastructure improvements; and improperly defers environmental review and formulation of mitigation for significant project impacts, including cumulative impacts of the three interdependent projects.

These omissions render the DEIR inadequate and require revision and recirculation of

January 22, 2014

the document. These water infrastructure improvements are properly part of the project, should be adequately described in the project description and their significant impacts identified and fully analyzed.

#### The Growth Inducing Impacts Section Improperly Defers Environmental Review

The DEIR Growth Inducing Impacts section also improperly defers analysis of water infrastructure impacts (DEIR p. 6-1- 2) again indicating “the specific locations, designs, and extent of the improvements are not known” and “[o]nce the facilities are further planned and designed, YLWD would evaluate the potential for construction or operation of these facilities with respect resulting in any significant impacts” which would be evaluated by YLWD as an independent project. The growth inducing impacts of the Cielo project must be considered in conjunction with the growth-inducing and cumulative impacts of the water infrastructure improvements, including whether these improvements would facilitate growth elsewhere in the Northeast Area of the YLWD. *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th at 732-733.

#### The Utilities and Service Systems Discussion Is Seriously Flawed

The Utilities and Service Systems section of the DEIR (Section 4.15) fails to even include the NEAPS in its discussion of the local and regional regulatory framework (DEIR p. 4.15-2).

More seriously, the Utilities and Service Systems section fails to properly apply threshold of significance 2 related to the water infrastructure improvements. Threshold 2 asks:

Would the Project:

Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

DEIR p. 4.15-11.

The DEIR acknowledges elsewhere in the document that the Cielo project 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. Therefore, any logical reading of these facts in conjunction with the question posed by threshold 2 would result in an affirmative response, i.e., yes, the project would require and result in the construction of new water facilities and the expansion of existing facilities, the construction of which could cause significant environmental effects.

However, the Utilities and Service Systems discussion of Threshold 2 (water infrastructure) contains an incomplete and inconsistent discussion of the threshold and further promotes confusion by combining its discussion of Threshold 2 with a discussion of Threshold 4 (adequacy of water supply). These thresholds of significance should be addressed separately (DEIR p. 4.15-14). Combining the thresholds serves to undermine conclusions of significance

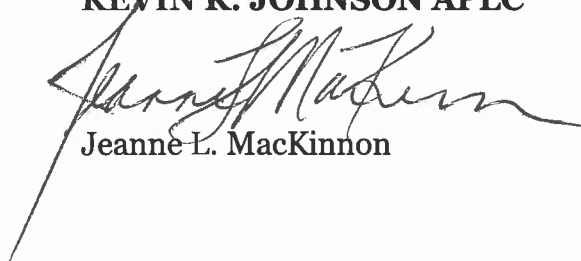
January 22, 2014

by subsuming one threshold within another. The DEIR's conclusion that impacts regarding water supply would be less than significant does not even address the significance of impacts resulting from the new and expanded water infrastructure.

This error is not corrected by the statement four pages later that "[g]iven the need for new infrastructure to support the Project, the Project would have a potentially significant impact on water storage in the area" (DEIR 4.15-18). The error is compounded by the document's failure to analyze these potentially significant impacts, provide mitigation or alternatives and by deferring any consideration of these impacts to some future date by YLWD.

The foregoing fundamental omissions in the Cielo project description, in the growth inducing and cumulative impacts analyses and in the Utilities and Service Systems section require revision and recirculation of the DEIR to include an accurate, complete project description, analysis of all impacts related to the water infrastructure improvements and formulation of mitigation and alternatives discussion for these impacts.

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

A handwritten signature in black ink, appearing to read "Jeanné L. MacKinnon". The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the name.

Jeanné L. MacKinnon

Cc: Supervisor Todd Spitzer via email