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June 15, 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  
Request for Determination/Interpretation  
Yorba Linda Municipal Code §18.36.800

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 request pursuant to the procedures outlined at Article IX §18.36.800 et seq. of the Yorba Linda Municipal Code and formally request a written determination, interpretation, decision or similar action by the Director of Community Development within 30 days concerning the following:

**Applicability of Measure B, the Citizens' Right to Vote Amendment, Yorba Linda Municipal Code § 18.01.020 et seq. to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

**Applicability of California Municipal Park Abandonment Law to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

**Applicability of California Law re: Surplus Land to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

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In a letter to the Orange County Board of Supervisors dated May 22, 2015, Mayor Gene Hernandez indicated the "City requests that the County require Option 2B for the Project." Option 2B will provide access via San Antonio Road and through open space owned by the City of Yorba Linda as well as secondary access via Stonehaven Drive. We further understand that the City is currently in discussions/negotiations with the Esperanza Hills project applicant for access rights through the city-owned Open Space to facilitate this private development. In view of these significant project developments, we request a formal determination by the City on the following issues:

1. **Applicability of Measure B, the Citizens' Right to Vote Amendment, Yorba Linda Municipal Code § 18.01.020 et seq. to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

Our client has maintained throughout the environmental review and approval process for Esperanza Hills that the use of the publically owned, designated and zoned open space for a private road to service the proposed adjacent private development would trigger a Measure B vote.

Measure B provides for a public vote in the event a "Major Amendment" of any Planning Policy Document is proposed. Major amendments are defined in section 18.01.030 of the Yorba Linda Municipal Code. Subsection 18.01.030 A(6) of the Right to Vote Amendment defines a "Major Amendment" as an amendment which: "Provides for the private development of land owned by a government entity within five years of the date of the approval to develop the land."

Access Option 2B proposes to use land owned by the City of Yorba Linda that is currently zoned open space for a private road to service the proposed adjacent private development. This constitutes a "Major Amendment" under Measure B requiring a public vote because Option 2B proposes private development of city-owned land.

The addition of this access road will also trigger changes to the City's Circulation Element. Per state law, the Circulation Element must correlate with the remaining elements of the General Plan (Gov. Code §65302), including the City's Land Use Element and of course, the two elements cannot be inconsistent. *Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County* (1985) 166 Cal.App.3d 90, 94. Correlation means closely, systematically or reciprocally related. *Id.* Under the circumstances, in order for this road to be added to the City's Circulation Element, both the Circulation and Land Use Elements of the City's General Plan will need to be amended, clearly triggering a Measure B public vote.

Of course, the City must also consider the impact of annexation of the Esperanza Hills project and necessary zoning changes associated with the annexation in analyzing these issues. The City should be mindful of avoiding inconsistencies with the City's previously articulated and litigated

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position that a Measure B vote was required in connection with Tentative Tract Map 17262 – Sage Community Group, Orange County Superior Court Case no. 30-2008-00108598. This map related to the adjacent, proposed Cielo Vista project which is also part of the larger Murdock Property Area Plan.

We also wish to reiterate our position articulated in our letter to you of February 24, 2015 concerning Option 2B. That letter, relevant portions of which are excerpted below, identified additional legal and procedural requirements, including formal abandonment of city-owned open space, which must be satisfied by the City of Yorba Linda before the City-owned open space may be used for road use and project access.

**2. Applicability of California Municipal Park Abandonment Law to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

According to California’s Municipal Park Abandonment Law, found at Government Code section 38501 et seq., a legislative body “may only abandon all or any portion of a park and sell the land comprising it,”...“if it finds that all or any portion of the purported park has not been used by the public for park purposes, that no consideration has been paid for the land except by the city, and that no public funds have been expended to improve the land as a park.” Cal. Gov. Code §38501. This open space and the trails thereon have historically and consistently been used by the public for open space and recreational purposes. The City of Yorba Linda cannot make the first necessary finding in order to abandon this open space.

In addition, “[b]efore abandoning all or part of such park, the legislative body shall adopt a resolution of intention, describing the park or the portion of it proposed to be abandoned and fixing a time, at least 30 days after adoption of the resolution, when it will meet to take final action.” Cal. Gov. Code §38503. The resolution must be published in a newspaper of general circulation and posted conspicuously along the boundaries of the park. Cal. Gov. Code §38504. Of course, the city must also hold a public hearing in connection with the proposed abandonment. Cal. Gov. Code §38505.

**3. Applicability of California Law re: Surplus Land to the Implementation of Esperanza Hills Access Alternative 3 – Option 2B.**

In addition, California Government Code provisions concerning surplus land may also come into play should this publically owned, open space be used for road purposes to access a private development. Government Code section 54220(b) reaffirms the California legislature’s “belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes.”

Therefore, any local agency disposing of “surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows” ....(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent: (1) To any park or recreation

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department of any city within which the land may be situated. (2) To any park or recreation department of the county within which the land is situated. (3) To any regional park authority having jurisdiction within the area in which the land is situated. (4) To the State Resources Agency or any agency that may succeed to its powers.”

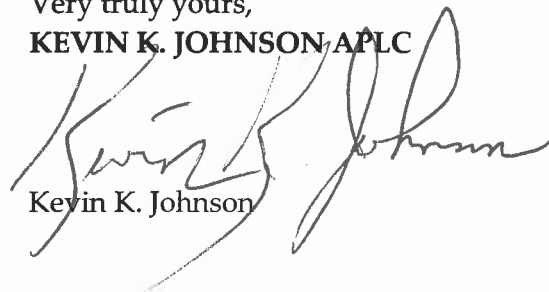
In regard to issues 2 and 3, please find attached correspondence from Melanie Schlotterbeck submitted to the County which includes City of Yorba Linda documents outlining the history of the relevant parcels which are proposed for Access Option 2B. These documents establish that the parcels in question were consistently considered public parkland or designated open space, never contemplated for development, and required as mitigation for environmental impacts of previous development. If the City effectively seeks to delete or modify this previously required mitigation, the law is clear that there must be a statement of a legitimate reason for deleting a mitigation measure and substantial evidence to support the deletion. *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 590-591. Furthermore, a mitigation measure cannot be deleted without a showing that it is infeasible. *Id.* See also *Katzeff v. California Dept. of Forestry and Fire Prot.* (2010) 181 Cal.App.4th 601, 614; and *Sierra Club v. v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1174.

In view of the property's publically owned, open space, parkland status, there are a number of statutory and procedural requirements involving City of Yorba Linda determinations and approvals which must occur before this public open space may be used for road purposes to access a private development. These requirements and approvals, including compliance with the City's Measure B and formal abandonment of this open space, have not been analyzed by the City. Per Municipal Code section 18.36.800, Protect Our Homes and Hills formally requests that the Community Development Director issue in writing a determination of the applicability of Measure B, California Municipal Park Abandonment Law and Government Code provisions regarding surplus land to the implementation of Esperanza Hills Access Alternative 3 – Option 2B.

With this formal demand pending, we request that the City cease and desist from any and all discussions with the project applicant on any issue related to ingress and egress across the City-owned property related to Option 2B.

Thank you for your consideration.

Very truly yours,  
KEVIN K. JOHNSON, APLC



Kevin K. Johnson

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Cc: Greg Rehmer  
Todd Litfin, Esq.  
Kevin Canning  
Todd Spitzer  
Protect Our Homes and Hills

Enc.