



November 12, 2015

City of Yorba Linda
4845 Casa Loma
Yorba Linda CA, 92886-3364

To Whom it May Concern:

On behalf of Protect our Homes and Hills and Hills For Everyone, please find enclosed the City form appealing to the City Council the Planning Commission's October 28, 2015 decision that a conceptual road on certain City property would be consistent with the City General Plan. I am also including a CD containing supporting materials that should be entered into the record.

As City staff has not responded to inquiries regarding the appeal fee, we are submitting the standard \$90 fee. If the City determines that a greater fee is required, please inform me immediately and do not process this appeal and or take any action to incur fees without my further consent.

Sincerely,

Marlene Nelson
Protect Our Homes and Hills
714-777-4815

Enclosures: Appeal Form
 Memo Outlining Justifications for Appeal
 CD with Materials to Be Entered into the Record (Items 1 – 14)



APPLICATION TO APPEAL DECISION OF THE PLANNING COMMISSION

Note: An appeal must be filed within 15 days of the action for which a review is sought.

Filing Fees: Set Fee Application: \$90
Actual Cost Application: filing fee deposit dependant upon application type. Actual Cost Applications are billed at \$108/hr. Please see Community Development Department Deposit and Fee Schedule for Set Fee and Actual Cost Application types, as well as amount of deposit required for processing appeal of Actual Cost Applications.
Fee waived if appealed by a City Councilmember.

APPELLANT: **Name:** Marlene Nelson (Protect Our Homes and Hills) and Hills For Everyone
Address: 4790 Via de la Roca, Yorba Linda
Telephone: 714-777-4815

APPEALING THE DECISION OF THE PLANNING COMMISSION RELATIVE TO THE ACTION TAKEN ON: October 28, 2015
(date)

ACTION BEING APPEALED: (Case No., Property Location)
GOVERNMENT CODE FINDING 65402 RE: POTENTIAL ACCESS ROAD/TRAIL ON CITY PROPERTY

REASONS FOR APPEAL: (Why are you appealing the decision? Please provide detailed reasons.)
See the attached memo that outlines the reasons for appealing this decision.

Marlene Nelson Date 11/12/15
Signature of Appellant

FOR OFFICE USE ONLY

Please forward the application to the City Clerk's Department.

Date Appeal filed: _____ Fee received: _____

Hearing Date. An appeal shall be scheduled for a public hearing before the City Council at the next available meeting unless both applicant and appellant or reviewing body consent to a later date (YLMC Sec. 18.36.820)

cc: Appellant
Community Development Dept. (furnish one set of mailing labels for mailing)
File

**Appeal of the October 28, 2015 Yorba Linda Planning Commission
decision on the 65402 finding**

By: Marlene Nelson (Protect Our Homes and Hills)
Hills For Everyone

Date: November 12, 2015

This determination is being appealed to the YL City Council on the following grounds:

1. This is a CEQA project, therefore the City must comply with CEQA. CEQA requires environmental review of “discretionary projects proposed to be carried out or approved by public agencies.” (Pub. Resources Code, § 21080, subd. (a).) While the lead agency is in charge of preparing the EIR (CEQA Guidelines, § 15050(a), 15367), a responsible agency must also make certain CEQA findings. Specifically, before reaching a decision on a project, a responsible agency has to consider the EIR and make its own conclusions on whether and how to approve a project or part of a project. (CEQA Guidelines, § 15096(a), (f); *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1207.) The CEQA Guidelines define “approval” to mean “the decision by a public agency which commits the agency to a definite course of action in regard to a project.” (CEQA Guidelines, § 15352, subd. (a).) “Approval” occurs when the agency “*first* exercises its discretion,” not necessarily when the agency makes its “*final* approval.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.) Here, Orange County is the lead agency and has prepared an EIR for the Esperanza Hills project. But Yorba Linda is a responsible agency, and must consider the project’s environmental consequences, as described in the EIR and make independent findings as to the project’s environmental effects. The road is part of the project. By finding the road consistent with Yorba Linda’s General Plan, the Planning Commission has exercised its discretion and taken the first step in a series of approvals that authorizes this access. (See Yorba Linda Mun. Code, pt. 18.36.670.) The Planning Commission was required to make CEQA findings first.
2. The Planning Commission’s consistency finding must be supported by substantial evidence. (See Code Civ. Proc., § 1094.5(c).) But there is currently no project before the Planning Commission. The only description of the road in question was the two conceptual sketches attached to the staff report. They include no reliable description of the road, its uses, the proposed materials, its alignment, or its landscaping—all factors essential to determining whether the road is consistent with the parcels’ designations. The City’s Director of Community Development suggested at the 10/29/15 Planning Commission that the Commission was

considering an “access agreement that would allow at some future date the construction of a roadway,” but there is no such agreement, nor even a description of its terms, in the materials provided to the Commission; and the resolution the Commission adopted does not make any determination about such an agreement. The Planning Commission merely considered the idea of a road, not the road that may actually be built. Without an actual project proposed and described in the record, there can be no substantial evidence to support the Planning Commission’s finding that the road is consistent with the YL General Plan.

3. A road is NOT consistent with the City’s General Plan, Land Use/Zoning Map, or Municipal Code. Residents have provided substantial evidence, that confirms that the Planning Commission’s determination was incorrect. This evidence includes:
 - a. Records including, but not limited to, Vesting Tract Map 9813 and its designation of the land as parkland and open space, purchase disclosures to future homeowners referring to the land as an “open space zone,” and the City’s own correspondence that the land was indeed open space and would remain so in perpetuity.
 - b. City statements indicating that the only approved use for the land is natural, unaltered open space, and that any other uses require a zone change and a public hearing. In two additional instances, the City concluded that the land is parkland. Despite the City’s 2012 Land Use Map, which lists Lot A as Low Density Residential, there is no evidence that Lot A ever underwent a zoning change altering its earlier designation as a park site.
 - c. The City’s General Plan Housing Element, adopted in 2013, indicating that a Planned Development Zone (i.e. Tract 9813) facilitates a single comprehensively planned community. Since Tract 9813 did NOT include in its Planned Development a road down San Antonio Canyon, there is an inconsistency with this zone, as it is facilitating a different development. This is an inconsistency with Yorba Linda’s Planning Documents.
 - d. Municipal Code part 18.16.430, specifically excluding roadways as acceptable uses within open space zones.
 - e. The map relied on by planning staff during the 10/29/15 Planning Commission meeting, purporting to show that roads have routinely been built through YL open space. This map, however, erroneously included at least two examples of roads that had not actually been built through the City’s designated open space.
 - f. The Planning Commission Staff Report, dated October 28, 2015, stating that neither “the Land Use Element nor the Recreation and Resources Element [of the General Plan] prohibits the construction and maintenance of roads in areas that have been designated by the Land Use Element as Open Space or the Recreation and Resource Element as Public Open Space.” This statement is in direct conflict with Municipal Code part

18.16.430. Thus, there is a plain inconsistency in YL's Planning Documents.

- g. Several policies throughout the City's General Plan expressing a preference for preserving open space, such as Policies 1.3, 1.5, 7.1, and 7.5 in the Recreation and Resource Element,

It is important to note that this proposal involves the private development of City-owned land. Because the proposed road is inconsistent with current zoning and General Plan designations, any approval of the road will require zoning and General Plan amendments. These which would require a vote of the people pursuant to Measure B, the Yorba Linda Right-to-Vote Amendment.

4. The description of the project on the Yorba Linda Planning Commission agenda was lacking. All of the other items on the agenda had descriptions of the site location, Assessor Parcel Number (APNs), and a brief paragraph describing the project and issue to be decided. The lack of information regarding the Planning Commission's consistency finding, such as APNs, association to the Esperanza Hills project, and a brief description of the issue, precluded residents from finding it in document searches and unfairly precluded residents from attending the hearing, because they didn't realize it concerned Esperanza Hills and the proposed road access.

Attachments for the record:

1. Speeches from the 10/29/15 YL Planning Commission hearing.
2. The PowerPoint from the 10/29/15 YL Planning Commission hearing.
3. Orange County's EIR on the Esperanza Hills project.
4. Vesting Tract Map for Tract 9813.
5. Purchase disclosures from Warmington Homes to future homeowners regarding Tract 9813.
6. Correspondence between the City and Warmington Homes regarding Tract 9813.
7. Planning Commission Resolution on Tract 9813.
8. City Manager Report regarding potential equestrian facility sites.
9. City Resolution regarding lot line adjustment of Lot H.
10. The City's 1993 General Plan.
11. The City's 2013 Zoning Map.
12. The City's 2012 Land Use Map.
13. The City's General Plan Housing Element.
14. Maps relied on by planning staff during the 10/29/15 Planning Commission meeting.