

November 12, 2020

VIA E-MAIL

William Coffee
Songstad Randall Coffee Humphrey LLP
3200 Park Center Drive, Suite 950
Costa Mesa, CA 92626

Re: GP20-013 Rough Grading Plan VTTM 17522 (Esperanza Hills)

Dear Mr. Coffee:

I am the City Attorney for the City of Yorba Linda ("City"). This letter responds to your letters dated August 28, 2020, and November 3, 2020.

The property owner of Tract No. 12850 dedicated to the City of Yorba Linda Lot A for open space purposes as shown on said map. On May 4th, 1987, the City accepted Lot A for open space purposes as dedicated. Tract No. 12850 was recorded June 17, 1987, and on file in Book 579, Pages 46-47, of Tract Maps. The City Clerk certified on the recorded tract map that the City accepted the dedication.

The property owner of Tract No. 12877 dedicated to the City of Yorba Linda Lot A for open space purposes as shown on said map. On May 4th, 1987, the City accepted Lot A for open space purposes as dedicated. Tract No. 12877 was recorded June 17, 1987, and on file in Book 580, Pages 21-26, of Tract Maps. The City Clerk certified on the recorded tract map that the City accepted the dedication.

In your letters, you reference the "ADI Easement". The ADI Easement is between David H. Murdock, doing business as Murdock Investment Company, and Ahmanson Developments, Inc. and is dated August 24, 1987. The ADI Easement was signed by the various parties on September 29, November 5, and November 19, 1987. The ADI Easement was recorded December 12, 1988, as Instrument No. 88-644036 of Official Records. The City is not bound by the ADI Easement.

California follows the "first in time, first in right" system of priorities with regards to property rights. Different interests in the same property have priority among themselves according to the time of their creation. (Civ. Code, §§ 1107, 1214, 1215, 2897.) When a person has notice of a prior interest, either from recordation or otherwise, the interest created first is generally granted priority. That prior interest is conclusive against the grantor and any subsequent grant in

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the same property. (Civ. Code, § 1107.) An offer of dedication on a final map is effective when the final map is filed in the office of the county recorder. (Gov. Code, § 66477.3.)

Therefore, it is clear that the City's open space easements have priority over the ADI Easement. Hence, the ADI Easement cannot authorize actions such as a roadway and related structures that interfere with the City's open space easements on Tract Map No. 12850, Lot A, and Tract Map No. 12877, Lot A.

In your letter of November 3, you now reference an easement recorded August 17, 1978, as Book 12803, Page 703-704, of Official Records to Pacific American Properties, Inc. ("Pacific American Easement"). The Pacific American Easement is limited to "... an easement for ingress and egress over the existing private roads ...". Esperanza Hills' proposed roadway and related improvements exceed the "existing private roads" referenced at the time of the Pacific American Easement. However, to the extent Esperanza Hills proposes improvements within the scope of its legal rights that have priority over the City's rights on the properties, the City will review any such proposal in compliance with any and all legal requirements.

In your correspondence, you raise additional issues that warrant a response. First, the issue of whether a roadway is allowed in the City's open space easements is a different issue than whether a roadway is allowed in an area designated Open Space in the City's General Plan. As reflected in many areas within the City, roadways are allowed in areas designated Open Space in the City's General Plan. However, pursuant to applicable law, roadways are not allowed on properties where the City itself has an open space easement.

Second, the City's prior General Plan did not anticipate a roadway across the respective Lot As of Tract Map Nos. 12850 and 12877 to Stonehaven Drive. Instead, one of the prior General Plan recommendations for the Murdock Property (of which Esperanza Hills is a part) was to "Require circulation improvements to San Antonio Road and Via de la Agua Road." Indeed, the neighboring Cielo Vista project (which is also within the overall area designated the Murdock Property in the City's General Plan) is taking access to City streets at Via de la Agua.

Third, any roadway connection to a City street requires an encroachment permit. Therefore, if Esperanza Hills submits a proposed roadway within the scope of its legal rights it will need to go through the City's encroachment permit process.

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If you have any questions on these matters, do not hesitate to contact me.

Very truly yours,

RUTAN & TUCKER, LLP



Todd O. Litfin