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Comment Letter L45
Johnson, Kevin K.
February 3, 2014

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February 3, 2014

SENT VIA EMAIL AND U.S. MAIL

Mr. Kevin Canning, Planner
Orange County Public Works/Orange County Planning
300 N. Flower St.
Santa Ana, CA 92702-4048

Re: Esperanza Hills Development Project
Comments regarding Draft Environmental Impact Report 616

Dear Mr. Canning:

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 Draft Environmental Impact Report ("DEIR") prepared for the Esperanza Hills subdivision ("Esperanza").

Esperanza is only one of four planned subdivisions in the area known as the "Murdock Property" (DEIR p. 5-395) which also includes Cielo Vista (also referred to as the Sage project), Bridal Hills LLC (also referred to as the Friend project) and Yorba Linda Land LLC (See DEIR p. 4-3). These four interdependent subdivisions rely on the same infrastructure and access yet they have not been analyzed in any comprehensive, unified manner. Cielo is the subject of a separate EIR and is being processed concurrently with Esperanza. Passing and sometimes inconsistent reference is made to Bridal Hills (alternately referred to as the Friend project) and Yorba Linda Land in the DEIR but no real analysis of the combined, cumulative impacts of development of these four properties is attempted. This segmentation and piecemeal environmental review of what should properly be considered one project is impermissible under the California Environmental Quality Act ("CEQA"), Pub. Res. Code sec. 21000 et seq.

L45-1

L45-2

**Response to
Comment Letter L45
Johnson, Kevin K.
February 3, 2014**

L45-1 The County acknowledges receipt of a letter from Kevin Johnson dated February 3, 2014, representing the Protect Our Homes and Hills citizens group.

L45-2 As stated on page 4-1 of the DEIR, the Friend family owns the property known as and referred to herein as Bridal Hills, LLC. The references are not inconsistent. Because Bridal Hills was assumed to be developed in the future, and access to the site would likely be through Esperanza Hills, Bridal Hills was included in the DEIR for analysis of cumulative and growth-inducing impacts. An agreement has been entered into between the Project Applicant and Bridal Hill, LLC regarding grading. The Proposed Project has incorporated designs to accommodate the potential development of Bridal Hills. The landowners were approached and declined to participate in development at this time. As noted, analysis with respect to impacts, however speculative it may be at this time, were analyzed in the DEIR.

The proposed Cielo Vista project has been adequately considered in the topical chapters of the DEIR and in Chapter 7 - Summary of Cumulative Impacts and Chapter 8 – Growth-Inducing Impacts.

With regard to Yorba Linda Land LLC, given the topographic constraints of the property, independent of the Proposed Project development would be difficult. Therefore, there is no segmentation or piecemealing with regard to these properties. Refer to Topical Response 5 – Segmentation-Piecemealing (beginning on page 38).

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Specifically, the CEQA Guidelines define “project” to mean “the whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. 14 Cal. Code Regs. § 15378(a). “Project” is given a broad interpretation in order to maximize protection of the environment.” *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1186, 1143. In performing its environmental analysis, an agency should not “piecemeal” or “segment” a project by splitting it in to two or more segments. This ensures that “environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

L45-2
cont'd

This failure to both comprehensively analyze and plan these areas is also fundamentally inconsistent with the Yorba Linda General Plan. According to the DEIR, the Murdock Property area consists of 6 properties totaling 630 acres. Esperanza makes up 468.9 acres of the Murdock Property with the Bridal Hills, Yorba Linda Land and Cielo Vista properties making up the remaining acreage (DEIR p. 5-401). The Yorba Linda General Plan preferred alternative for the Murdock Property is annexation into the City of Yorba Linda and contemplates “one or more specific plans, **composed of all eight properties, or compatible combinations of property owners, to provide a comprehensive development and circulation system**” (DEIR p. 5-401).

L45-3

This notion of comprehensive planning for the Murdock property is further evidenced in the Yorba Linda Land Use Element which provides at Policy 7.5 that the City:

Require the delineation of permanent open space areas within the Shell and Murdock Area Plans through more detailed development planning so that the steep slopes and important natural resource areas can be properly preserved and protected through specific plans or other appropriate development regulations.

L45-4

Instead, development of the Murdock property is being handled separately and in a piecemeal fashion inconsistent with the Yorba Linda General Plan. As such, the project presents a patent conflict with the Yorba Linda General Plan. This inconsistency has not been adequately analyzed, acknowledged or mitigated in the DEIR generally or in the Land Use Chapter specifically.

This failure to comprehensively analyze development impacts and plan the Murdock Property as a whole as envisioned by the Yorba Linda General Plan has a host of related

L45-5

- L45-3 The Murdock Property is subdivided and under the ownership of more than one entity. The Proposed Project consists of 469 acres, the proposed Cielo Vista project is 83 acres, Yorba Linda Land is 40 acres, and Bridal Hills is 40 acres. Not all owners have expressed interest in participating in development at the present time or cooperating to provide a comprehensive development and circulation system. Further, the Proposed Project is not governed by the Yorba Linda General Plan but to the extent that the General Plan recognizes that one or more specific plans might be required, the Proposed Project includes a Specific Plan.
- L45-4 As noted above, the Proposed Project is not governed by the Yorba Linda General Plan. However, to the extent that the Land Use Element recognizes that permanent open space should be provided, the Proposed Project provides substantial open space, as shown on the Project site plans (Exhibits 4-9 and 4-10). A Specific Plan has been prepared which includes development regulations that protect the designated open space areas. As shown in Section 5.1 – Aesthetics, the Proposed Project has been designed to preserve the upper ridgelines and topography of the site and be compatible with surrounding residential neighborhoods. The Proposed Project has met the policies identified in the Yorba Linda General Plan Policy 7.5.
- L45-5 Commenter provides no specific information regarding what mitigation, alternatives, or impacts are the basis for the comment. Water supply has been addressed in Section 5.15 - Utilities and Service Systems. The Project Applicant will enter into a development agreement with the Yorba Linda Water District for provision of water facilities and service. The Proposed Project does not meet the requirements of Senate Bill 610 for development size. Even with the development of the proposed Cielo Vista project (112 units) and Bridal Hills (38 units), the projected number of homes does not exceed the 500 minimum threshold for preparation of a Water Supply Assessment per SB 610. Regardless, the Northeast Area Planning Study prepared by the Yorba Linda Water District (YLWD) and the YLWD Water Master Plan estimate adequate water supply availability up to year 2035. Refer to Topical Response 4 – Water Provision/Capacity (beginning on page 36).

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impacts and missed opportunities for mitigation and alternatives including, open space planning, optimization and contiguity, underestimation of significant impacts, particularly cumulative and growth-inducing impacts, and avoidance of statutory requirements such as the preparation of a Water Supply Assessment due to the likely total number of homes on these properties exceeding 500 (See Senate Bill 610 and Water Code § 10910 and 10912).

L45-5
cont'd

Project Description

The list of Discretionary Approvals at p. 4-26 is incomplete and inadequate. For example, annexation to the City of Yorba Linda is a probable component of this project. The DEIR indicates an "application for annexation has been filed between the City of Yorba Linda and LAFCO and is in the process of review as of this date" (p. 5-409, 436). However, the list of discretionary approvals does not even mention either Local Agency Formation Commission ("LAFCO") approval or City of Yorba Linda approvals. Other agency approvals are incorrectly placed in the "Intended Uses of the EIR" section of the Project Description chapter (p. 4-28). All discretionary approvals should be discussed in a comprehensive and accurate approvals and permits section in order to apprise the public and the decisionmakers of the true scope of this project.

L45-6

The City of Yorba Linda and LAFCO have discretionary authority for carrying out or approving the Esperanza project in an annexation scenario. As such, they are responsible agencies under CEQA and should have been named as such. 14 Cal.Code Regs. §15381. LAFCO presents a clear example of a responsible agency. In their discussion of responsible agencies, authors Kostka & Zischke identify as a responsible agency "the Local Agency Formation Commission (LAFCO) for any annexation or reorganization." Kosta & Zischke, *Practice Under the California Environmental Quality Act* §3.18 (CEB 2013).

LAFCO requires that an EIR contain information about the environmental consequences of the decisions that LAFCO will be making with regard to the whole project. *Habitat And Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277. This information includes: a discussion of the required jurisdictional and sphere of influence changes subject to LAFCO discretionary approval(s); the project's conformance with LAFCO statutory requirements and local policies; a description of the ability of existing agencies to provide services; a detailed description of existing and proposed infrastructure; and a discussion of the proposed provision of public services to the subject territory. Since the Project Description does not even mention LAFCO approvals under the Discretionary Approval section, it is inadequate on its face (p. 4-26) and it is unclear whether the required information described above is in the DEIR.

L45-7

L45-6 Commenter is referred to page 2-3 for a list of discretionary actions anticipated with implementation of the Proposed Project. Anticipated future annexation to the City of Yorba Linda is included. Page 3-1, paragraph 5, recognizes that LAFCO is the responsible agency for annexations within the County of Orange. The City of Yorba Linda and LAFCO are again referenced on page 4-28:

- LAFCO for potential annexation
- City of Yorba Linda for encroachment permits, access through City open space and potential annexation

Therefore, all approving agencies and required approvals have been identified. Additional potential annexation information has been included in Section 5.9 (Land Use and Planning). However, in order to respond to commenter's concern, the approvals shown on page 4-26 and the approvals listed on page 4-28 are hereby consolidated.

L45-7 Section 5.9 - Land Use and Planning, contains a discussion regarding LAFCO and annexation beginning on page 5-452. The discussion includes details regarding the application and what information is required. With regard to existing services (infrastructure, utilities) please refer to Section 5.15 (Utilities and Service Systems). The section details the coordination efforts between the Project Applicant and the service providers. With regard to public services (police/fire) please refer to Section 5.12 (Public Services). See response to Comment L45-6 above.

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More seriously, Orange County LAFCO recognized the interdependent and related nature of the Cielo and Esperanza subdivisions and other Murdock properties and specifically requested in scoping comments that “all aspects of both projects should be considered in one environmental document prepared by the County.” (DEIR Appendix B NOP Comment Letters). The DEIR fails to comply with this request or explain why such comprehensive review is not required.

L45-8

LAFCO has discretionary authority for approval of the annexation to the City of Yorba Linda and any concurrent annexations and/or detachments involving special district water, sewer, and/or fire protection service providers for the project. The DEIR recognizes that discretionary authority for jurisdictional changes is statutorily reserved to LAFCO. Cal. Gov. Code §§56100(a) and 56375. At a minimum, the DEIR Project Description chapter should identify all discretionary actions related to the annexation application. At present, the DEIR does not fulfill these most basic requirements and should be revised.

Likewise, the DEIR’s Discretionary Approval section does not mention approvals from the City of Yorba Linda but makes vague reference in the “Intended Uses” section to encroachment permits, discretionary authority over access through City open space and potential annexation (p. 4-28). This list is incomplete and does not reflect all discretionary actions to be undertaken by the City of Yorba Linda.

L45-9

Impermissible Deferral of Formulation of Mitigation Measures

The DEIR impermissibly defers formulation of a number of mitigation measures related to biological resource impacts. For example, mitigation measures Bio-1 through Bio-4, Bio-6 through Bio-7, and Bio-10 all defer formulation of revegetation and restoration plans, a Habitat Mitigation and Monitoring Program (“HMMP”) and a Resident Awareness Plan to some time in the future, after project approval and after any opportunity for public review and comment on these proposed plans. These mitigation measures do not include any specific performance standards for the unformulated plans. These plans and in particular, the HMMP, should be part of the DEIR circulated for public review and comment, not deferred till after project approval.

L45-10

An EIR must describe feasible measures that could minimize significant adverse impacts. (14 Cal.Code Regs. § 15126.4(a)(1)). An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project’s significant effects and may be accomplished in

- L45-8 Please refer to responses to Comments L45-3 and L45-6 and above. Also refer to Topical Response 5 - Segmentation/Piecemealing.
- L45-9 Please refer to response to Comment L45-6 above. The commenter does not provide specific information regarding “all discretionary actions” to be undertaken by the City of Yorba Linda. As noted, the DEIR has identified the approvals potentially required, including the potential annexation, and agencies having jurisdiction over the project.
- L45-10 Final approval of plans by various agencies cannot occur until after the Proposed Project is entitled and formal applications are submitted to the agencies. Plans that include performance standards are included herein in the Habitat Mitigation and Monitoring Program (HMMP) (Appendix C herein). The HMMP establishes clear, enforceable performance standards. Therefore, pursuant to the requirements of CEQA, the mitigation measures are not deferred mitigation.

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more than one specified way. (14 Cal.Code Regs. § 15126.4(a)(1)(B)). As stated by the court in *Preserve Wild Santee v. City of Santee*, 210 Cal. App. 4th 260 (2012), thus, “for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated” (quoting *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275–1276). Conversely, “[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236).

L45-10
cont'd

All of the identified mitigation measures put off analysis and order plans without setting a single performance standard. For example, Bio-7 relating to the Habitat Mitigation and Monitoring Program (“HMMP”) indicates: “The Project Applicant shall be fully responsible for the implementation of the Habitat Mitigation and Monitoring Program until the restoration areas have met the success criteria outlined in the approved plan” (p.9-4). However, the mitigation measure provides only that a HMMP shall be prepared but does not provide any description of success criteria. Mitigation measures Bio-1 through Bio-4, Bio-6 and Bio-10 all suffer from the same inadequacy and evidence precisely the type of deferral of mitigation found to be impermissible by multiple courts interpreting CEQA.

L45-11

The DEIR must be revised to include the relevant, required revegetation, restoration and HMMP plans called for in mitigation measures Bio-1 through Bio-4, Bio-6 through Bio-7, and Bio-10 in their entirety or, at a minimum, provide specific performance criteria in the mitigation measures demonstrating how the biological resource impacts can be mitigated. The DEIR should be recirculated for public comment on these plans and performance criteria.

Failure to Adequately Analyze Cumulative Impacts

If a project’s incremental impacts are significant when viewed in connection with the effect of other past, present and reasonably foreseeable or probable future projects (Pub. Res. Code §21083(b); 14 Cal. Code Regs. §§15064(b)(1), 15065(a)(3)), then the DEIR should provide a “**summary**” of the expected environmental effects to be produced by those projects with **specific reference** to additional information stating where that information is available, and...A **reasonable analysis** of the cumulative impacts of the relevant projects. An EIR shall

L45-12

L45-11 Please refer to response to Comment L45-10 above.

L45-12 A cumulative impacts section is included in the DEIR under each topical analysis. In addition, Chapter 7 of the DEIR - Summary of Cumulative Impacts - provides a table (Table 7-1-2) that discusses the project specific impact and conclusion regarding cumulative impacts for each environmental topic. The related projects (Table 7-1-1) were considered in the traffic analysis (Section 5.14). Section 5.11 - Population and Housing also considers related projects (Table 5-11-8) with regard to cumulative impacts. As shown on the Related Projects map (Exhibit 7-1), other than the proposed Cielo Vista project, the remaining projects listed are significantly distant from the Project site. Any cumulative impacts with regard to air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, recreation and utilities are discussed in the DEIR in Subsections 5.1.8 (Aesthetics), 5.2.7 (Air Quality), 5.3.8 (Biological Resources), 5.4.7 (Cultural Resources), 5.5.6 (Geology and Soils), 5.6.7 (Greenhouse Gas Emissions), 5.7.9 (Hazards and Hazardous Materials), 5.8.9 (Hydrology and Water Quality), 5.9.6 (Land Uses), 5.10.7 (Noise), 5.11.7 (Population and Housing), 5.12.6 (Public Services), 5.13.7 (Recreation), 5.14.6 (Transportation and Traffic), and 5.15.16 (Utilities and Service Systems), as well as Chapter 7, Summary of Cumulative Impacts. Public services (police/fire) are provided through contracts with the County and such contracts are in place with the City of Yorba Linda. The Proposed Project is required to secure agreements with emergency service providers independently since it is in an unincorporated area. The DEIR has identified significant unavoidable impacts with respect to greenhouse gas emissions and noise which condition exists regardless of related projects. Contrary to commenter's statement, discussion of cumulative impacts in the DEIR represents significantly more than a "minimum degree of detail."

As a point of clarification, the Friend family owns the property known as and referred to herein as Bridal Hills, LLC as stated on page 4-1 of the DEIR.

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examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." 14 Cal. Code Regs. § 15130(b)(4-5). The DEIR fulfills none of these CEQA informational roles.

The DEIR lists other projects in Chapter 7 (p. 7-2) but focuses any discussion in the Cumulative Impacts Summary Table 7-1-2 solely on the adjacent Cielo Vista project. The discussion ignores the Bridal Hills development (which is characterized as "a reasonably foreseeable development" (p. 7-1)) and probable development of the adjacent Yorba Linda Land LLC. The summary makes no effort to reasonably analyze the impacts of the 17 other identified projects in the cumulative impacts discussion. Table 7-1-2 references the "Friend" development in the Utilities and Service Systems section of the table (p. 7-8) but this development does not appear under this name on either the list on p. 7-2 or the map at p. 7-3. Please correct this omission or identify this project consistently throughout the DEIR and/or by the name under which it appears at pp. 7-2 and 3.

Overall, the DEIR's discussion of cumulative impacts lacks even a "minimal degree of specificity or detail" and is inadequate under CEQA. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397 (Discussion lacking even a "minimal degree of specificity or detail" is inadequate and the discussion must be more than a conclusion "devoid of any reasoned analysis." 88 Cal.App.3d at 411. These analytical deficiencies must be corrected.

The DEIR also makes no reference to additional information concerning these projects and where that information is available. Clearly, many of these projects have reached the level of permit processing or environmental review such that information concerning their specific impacts is readily available either online or accessible through the respective agencies. This information should properly be part of the cumulative impacts analysis. Instead, these analytical and informational omissions render the DEIR insufficient as an informational document.

In addition, the DEIR includes an unduly restrictive geographic range of projects within only 2 miles of Esperanza and fails to include pending projects in the nearby incorporated cities of Brea and Chino Hills. If it is "reasonable and practical to include the projects" in the cumulative impacts analysis, they should be included. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723. These projects are within 5 miles of the Cielo project and should be included in any cumulative impacts analysis:

L45-12
cont'd

L45-13

L45-14

- L45-13 Table 7-1-1 in Chapter 7 provides a list of related projects and the projected occupancy in year 2020. As shown, all projects with the exception of Mountain Park in Anaheim (1,675 single-family units, 825 condos/townhomes) are projected to be 100% occupied. As noted by commenter, interested parties can obtain information through the cities where the projects are located. Adequate identification of the related projects is provided for that purpose.
- L45-14 As noted on page 5-557 of the DEIR, areas considered were Yorba Linda, Anaheim, Brea, Placentia and Orange as well as unincorporated Orange County. The list was compiled with input from planning staff at the cities of Yorba Linda, Anaheim, Brea, Placentia, Orange, and the County (see footnote for Table 5-14-6). CEQA provides that lead agencies should define the geographic scope of the area affected by the cumulative effect (§15130(b)(3)).

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Madrona (Canyon Crest)

Project Type: 162 homes on 367 acres
Location: Eastern Brea (off Carbon Canyon Road – Hwy 142)
Lead Agency: City of Brea
CEQA Status: FEIR released November 2012
(five year anniversary of the Freeway Complex Fire)
Last Action: Appeal Hearing 1/21/14

Learn More: <http://www.ci.brea.ca.us/index.aspx?NID=180>

Foremost Community (Canyon Hills)

Project Type: 76 homes on 141 acres
Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)
Lead Agency: City of Chino Hills
CEQA Status: EIR approved 1987
Last Action: Awaiting Tract Home Design Review by Planning Commission

Learn More: <http://www.chinohills.org/index.aspx?NID=847>

Pine Valley Estates

Project Type: 98 homes on 192 acres
Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)
Lead Agency: City of Chino Hills
CEQA Status: Final Map Recorded 2009
Last Action: Revised Design Review by Planning Commission approved 2009

Learn More: <http://www.chinohills.org/index.aspx?NID=847>

Stonefield Development

Project Type: 28 homes on 34 acres
Location: Western Chino Hills (off Carbon Canyon Road – Hwy 142)
Lead Agency: City of Chino Hills
CEQA Status: Website is unclear, appears approved
Last Action: Website is unclear, appears approved

Learn More: <http://www.chinohills.org/index.aspx?NID=853>

L45-14
cont'd

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Failure to Adequately Analyze Growth-Inducing Impacts of the Project

The DEIR's discussion of growth inducing impacts of the project in Chapter 8 is inconsistent and inaccurate. First, the growth inducing impacts chapter contains a series of incorrect assumptions: (1) a growth inducing impacts analysis is based on the potential for other projects of the size and scope of Esperanza; (2) if population growth associated with the project was considered in a governing general plan, it is not growth inducing; (3) infrastructure improvements will not be used to serve further residential development; (4) infrastructure improvements will not foster population growth beyond the project (pp. 8-1,2). None of these assumptions is correct or properly part of a forthright growth inducing impacts analysis under CEQA.

CEQA Guideline section 15126.2(d) provides that an EIR must:

Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

The Esperanza subdivision will foster economic and population growth and the construction of additional housing both directly and indirectly by extending water and road infrastructure into an undeveloped, unserved area.

The DEIR acknowledges that there are "currently no existing master planned water facilities available to service the upper pressure zones of the project site and adjacent developments" (p. 5-629). The Esperanza subdivision, along with the directly adjacent, concurrently processed, related Cielo Vista subdivision, currently lack any water infrastructure and will rely on the extension of the water infrastructure by the Yorba Linda Water District ("YLWD"). The Esperanza DEIR incorrectly states: the "Yorba Linda Water District provided input for the design and capacity requirements for the proposed water reservoirs and the sewer system, **which have been designed to accommodate the Proposed**

L45-15

L45-16

- L45-15 Commenter opines that analysis of growth-inducing impacts is inconsistent and inaccurate without providing a factual basis and by simply restating the findings in the DEIR. It is unclear why commenter believes that the assumptions are incorrect.
- L45-16 As stated in the Northeast Area Planning Study (NEAPS), the purpose of the study is to evaluate the capacity of existing distribution system facilities and size new infrastructure required to provide water under anticipated operations conditions for future demands. The study scope was the northeast area of the District service area and focused on the two developments currently planned for the area - Esperanza Hills and Sage. Infrastructure on the Project site will be constructed by Project Applicant and includes two underground reservoirs. An individual Development Agreement between the Project Applicant and the Yorba Linda Water District (YLWD) will be required to ensure provision of water and sewer service (page 5-630 of the DEIR). It is not incorrect to state that the improvements designed, constructed and paid for by Project Applicant will serve the Esperanza Hills Project. As stated on page 5-634 of the DEIR, storage capacity in the Proposed Project reservoirs will be available to adjacent property owners if agreements are reached and development agreements between adjoining property owners and YLWD are entered into.

There is little potential for additional growth beyond that already identified for the Proposed Project and surrounding parcels due to Chino Hills State Park and the existing residential development, all of which have been considered in the County and City General Plans.

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Project only, and the infrastructure improvements will not be used to serve further residential development beyond that identified herein" (p. 8-1). This statement is incorrect and should be revised to reflect the reality that the water infrastructure improvements described in the Northeast Area Planning Study ("NEAPS") dated March 2013 authored by YLWD will serve both the Cielo and Esperanza subdivisions.

L45-16
cont'd

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 projects present a situation 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. Because the DEIR therein told the public and decision makers nothing about how the impacts of the infrastructure improvements would combine with the impacts of the houses, the EIR was found inadequate. According to the court, "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 DEIR acknowledges the probability of development on the adjacent Bridal Hills property ("a reasonably foreseeable development" (p. 7-1)) and development of the adjacent Yorba Linda Land LLC is likewise probable. However, the DEIR avoids any analysis of the growth inducing impacts of the extension of roads and infrastructure on the project site as directly facilitating growth and development in these adjacent, undeveloped areas. The DEIR engages in diversionary "word smithing" such as the "Proposed Project, in itself, will not extend infrastructure improvements into adjacent areas" and the "proposed improvements will not foster population growth beyond the project, unless adjacent planned developments extend such facilities to serve the development area"(DEIR p. 8-1).

L45-17

By developing roads and infrastructure which adjacent undeveloped lands can use for access and infrastructure connection, Esperanza directly facilitates growth in this area and the DEIR should acknowledge and analyze this reality. Moreover, these statements in the DEIR avoiding growth inducing impacts conclusions are directly contradicted in other chapters in the DEIR as indicated below.

- L45-17 As noted in response to Comment L45-16 above, the unincorporated area of which the Proposed Project is part is land locked by Chino Hills State Park and existing development. The potential projects already identified, if developed, have been considered in the County and City General Plans. The DEIR analyzes potential access to the Bridal Hills site (see Section 5.14, Transportation and Traffic) and discusses connections to sewer and water infrastructure through development agreements.

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DEIR Inconsistencies Between Utilities and Service Systems and Growth-Inducing Impacts Chapters

The DEIR contains fundamental inconsistencies which must be corrected in order to provide an accurate analysis of the project. The Utilities and Service Systems chapter indicates: “[b]ased on technical reports for water and wastewater facility demands, the Proposed Project will not require construction or expansion of facilities to accommodate the Proposed Project” (p. 5-650). However, two paragraphs later the document inconsistently acknowledges “the combination of the proposed off-site YLWD water system improvements and the Proposed Project water infrastructure improvements will not only meet the demands of the future developments in the area but also improve the water service reliability and fire protection for the surrounding area” (p. 5-650). The chapter then details the various water infrastructure improvements which will accommodate the project (pp. 5-632, 633; 5-642).

L45-18

In addition, the sentence indicating water system improvements will meet the demands of future developments in the area is inconsistent with contrary statements in the Growth-Inducing Impacts chapter described above claiming no growth inducement. These inconsistencies must be corrected if the document is to serve its fundamental informational purpose and accurately and fully analyze environmental impacts of the Esperanza project, including its growth inducing impacts.

Inconsistencies Regarding Existence of a Development Agreement

The DEIR alternately indicates that: (1) a Development Agreement with YLWD for the provision of water facilities and service will be required as part of the project mitigation measures prior to issuance of building permits (p. 5-649); and (2) “YLWD is obligated by an existing development agreement to provide the necessary backbone facilities to supply and service the Proposed Project Area..” (p. 5-629). Please clarify the present status of any development agreement concerning the provision of water facilities. If no such agreement presently exists, or if a new or amended agreement is required, this should be clearly addressed in the DEIR and any agreement included as an appendix to the DEIR. Likewise, if an agreement must be approved by YLWD, this should be included in the list of Discretionary Approvals in the Project Description Chapter and be subject to public review and comment.

L45-19

The Greenhouse Gas Emissions Chapter Omits Discussion of Key Aspects of the Regulatory Setting

The Greenhouse Gas Emissions (“GHG”) chapter contains an incomplete discussion of

L45-20

L45-18 Commenter confuses “facilities” with “infrastructure” and, therefore, makes inaccurate assumptions about inconsistencies. The cited reference on page 5-650 clearly refers to wastewater treatment *facilities*, which have adequate capacity to accommodate the Proposed Project. The reference to page 5-650 clearly refers to *infrastructure* meaning pipes for water and sewer services. Infrastructure improvements include the recommended off-site upgrades required by YLWD for the provision of water.

Regarding water system improvements meeting the demands of future developments, please refer to response to Comment L45-16 above. Potential development of the adjacent parcels (already considered in the County and City General Plans) will be accommodated by connections to the Proposed Project infrastructure based on Development Agreements.

L45-19 The DEIR provides Mitigation for the requirement of a Development Agreement *prior to the issuance of building permits*. This has been clearly stated in the DEIR as cited by commenter (page 5-649). No such agreement currently exists. The Project site is within the YLWD service district. Therefore, provision of services is not a discretionary action.

L45-20 Commenter is referred to Section 5.9 (Land Use and Planning) for an analysis of the Proposed Project’s consistency with the SCAG 2012-2035 RTP/SCS. Analysis begins on page 5-447 of the DEIR.

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the applicable regulatory setting omitting discussion of the Southern California Association of Government's ("SCAG") sustainable communities strategy ("SCS"); fails to discuss project inconsistency with the SCAG SCS; fails to identify that the Orange County Council of Governments ("OCCOG") has its own SCS 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 GHG Chapter of the DEIR.

L45-20
cont'd

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 by year 2035 (p. 37 <http://occog.com/pdf/OCSCS20110614.PDF>).

Formulation of GHG Mitigation Is Impermissibly Deferred

The GHG Chapter generally discusses a range of possible reasonable control measures without committing to or articulating any specific GHG reduction measures (p. 5-271). The DEIR defers formulation of specific GHG reduction measures indicating "[p]rior to construction of [the] project, the developer shall implement or develop a plan for

L45-21

- L45-21 CEQA Guidelines §15126.4 - Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects, subsection (c) Mitigation Measures related to Greenhouse Gas Emissions states: Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:
1. Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
 2. Reductions in emissions resulting from a project through implementation of project features, project design, or other measures such as those described in Appendix F. *[Appendix F of CEQA Guidelines]*

As noted on page 5-271, the Proposed Project has incorporated all design features feasible to reduce impacts. Table 5-6-9 shows the reductions attainable with implementation of reasonable control measures. Mitigation measure (GHG-2) requires compliance with the mitigation strategies from the CAPCOA report. The local mitigation responsibility is a 5% reduction in GHG emissions and, coupled with statewide programs to reduce emissions by 23.9% to 28.9%, the AB 32 goal of 29.9% reduction will be met. As shown on Table 5-6-9, the Proposed Project can feasibly achieve a 10% reduction, 5% more than the local mitigation responsibility goal. Regardless, the DEIR recognizes that the Proposed Project could exceed the more stringent SCAQMD adopted interim threshold and the impact is, therefore, significant and unavoidable.

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implementation of one or more mitigation strategies for the reduction of greenhouse gas (GHG) emissions from the report 'CEQA and Climate Change' prepared by [CAPCOA] as updated in 2010" (DEIR p. 5.272). The DEIR takes the unsupported and legally unsupportable position that if "it can be demonstrated that more than adequate options exist to attain the local mitigation responsibility of 5%, mitigation would not be considered deferred even if the development plan is not yet finalized." This statement is filled with legally unfounded assumptions, including the erroneous assumption that a 5% reduction target from new development can in any way meet the requirements of AB32.

L45-21
cont'd

As previously discussed in connection with deferred mitigation for biological resource impacts, "[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.) The GHG Chapter suffers from this latter infirmity; it fails to demonstrate how the significant GHG impacts of this subdivision, coupled with the significant, cumulative impacts of the Cielo subdivision and other projects in the immediate vicinity, can be mitigated through the vague, unspecified measures to be developed post project approval.

The GHG chapter also refers the reader to alleged GHG mitigation measures found in the Air Quality chapter of the DEIR but upon examination of the pages cited, the measures relate to mitigation of NO_x emissions, dust control and construction practices in the SCAQMD Handbook, not GHG mitigation measures (p. 5-88, 89).

L45-22

There Is No Substantial Evidence Supporting The Conclusion That The Undefined 5 % Emissions Reduction Target Is Sufficient To Meet AB32 Requirements

The AB32 Scoping Plan indicates that overall emissions must be cut by "approximately 30% from business-as-usual emission levels projected for 2020" to comply with AB32 requirements. The DEIR relies on CAPCOA's "CEQA and Climate Change" (2010) white paper but fails to include key aspects of the document and its recommendations. CAPCOA has acknowledged that "greater reductions can be achieved at lower cost from new projects than can be achieved from existing sources." (CAPCOA, CEQA & Climate Change p. 33). The California Attorney General has indicated "it seems that new development must be more GHG efficient than this [29% reduction] average, given that past and current sources of emissions, which are substantially less efficient than this average, will continue to exist and emit." Attorney General Letter to San Joaquin Valley Air Pollution Control District, Nov. 4, 2009.

L45-23

- L45-22 Commenter is correct that the reference to long term operational impact Mitigation Measures omitted showing the mitigation. The text is hereby corrected to direct the reader to Section 5.6 - Greenhouse Gas Emissions, which incorporates the Mitigation Measure referenced. The omission was a clerical error.
- L45-23 Please refer to response to Comment L45-21 above.

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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.

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

The DEIR is patently inconsistent with AB32 requirements and this weight of authority by arguing that the project need only achieve a 5% GHG reduction because statewide GHG reduction programs will cover the remaining 23.9%. As recognized by CAPCOA, the Attorney General and air pollution control districts, this is not the intention of AB32 nor will such reductions comply with AB32's mandates. The DEIR's conclusion that undefined mitigation measures seeking a mere 5% reduction in GHG emissions will fulfill AB32's emission reduction objectives is simply not supported by any evidence. It is a bare, unsubstantiated conclusion. "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous" does not constitute substantial evidence. See Pub. Res. Code § 21082.2.

Even the San Joaquin Valley Air Pollution Control District which the Attorney General took to task in the November 4, 2009 letter described above requires that new development demonstrate that project specific GHG emissions have been reduced or mitigated by at least 29%. 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%.

L45-23
cont'd

L45-24

- L45-24 Please refer to response to Comment L45-21 above. As stated in the DEIR, page 5-272, local reductions to be implemented on the site would be determined prior to construction based on then-current strategies and technologies. This should not be construed as deferred mitigation any more than a mitigation measure requiring adherence to state and local codes and regulations *in effect at the time of project construction*. Rather, in light of anticipated advances and strategies in reducing GHG impacts, committing to methods in place at this time would be irresponsible if better methods are available in the near future.

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

The DEIR's attempt to avoid AB32 reduction requirements by employing a local 5% target with no clearly articulated GHG reduction measures flies in the face of CEQA prohibitions against deferral of mitigation and provides no scientific or factual basis supporting a conclusion of consistency with AB32 requirements. The DEIR must conduct a full and fair analysis and examine whether this project achieves the reduction mandates in AB32. Its failure to do so renders it inadequate as an informational document and its conclusions regarding compliance with AB32 mandates are unsupported by substantial evidence.

L45-24
cont'd

The DEIR's Land Use Consistency Conclusions Are Unsupported By Substantial Evidence

The DEIR analyzes the consistency of the project with its proposed Suburban Residential (1B) land use designation, not the current open space designation. The proper issue for analysis is the project's consistency with the **current** Orange County zoning and land use designations for the project site, not the consistency of the project with its discretionary approvals. The DEIR cannot properly avoid a significance determination by using the potentially changed zoning or land use designations which are part of the proposed project as a baseline. The Land Use and Planning section of the DEIR must be revised to employ the proper baseline and provide an open and forthright consistency analysis.

L45-25

The DEIR Fails to Conduct Any Consistency Analysis of the City of Yorba Linda Right To Vote Amendment

Although the DEIR identifies the Yorba Linda Right to Vote Amendment and Land Use Right to Vote ordinances (p. 5-403) as part of the Regulatory Setting for the project, it fails to analyze the application of these ordinances to the project and its various approvals. These ordinances require a public vote for certain major amendments to any planning policy document. This analytical omission is of particular concern because as indicated in the beginning of this letter, the County's failure to both comprehensively analyze and plan the Murdock Property as envisioned by the Yorba Linda General Plan is fundamentally inconsistent with Yorba Linda's General Plan.

L45-26

The Yorba Linda General Plan preferred alternative for the Murdock Property is annexation into the City of Yorba Linda and contemplates "one or more specific plans, **composed of all eight properties, or compatible combinations of property owners, to provide a comprehensive development and circulation system**" (DEIR p. 5-401). Instead, the

- L45-25 The Proposed Project includes a General Plan Amendment to redesignate the site. As noted in Section 5.9 - Land Use and Planning, page 5-398, the County applied a land use designation of Open Space to the Project area. The Open Space category indicates the current and near-term use of the land, but is not necessarily an indication of a long-term commitment to permanent open space uses. Due to market pressures to serve a growing County population, the areas in the Open Space category may ultimately be developed in other ways. Commenter does not provide a factual basis for stating that the existing designation must be used as the baseline in the DEIR. As noted earlier in this response, the County recognizes that the Open Space category can be amended to allow for other uses.
- L45-26 The Proposed Project is located in unincorporated Orange County and under County jurisdiction. The City's Right to Vote Amendment and the General Plan have been considered to the extent that they are applicable to the Proposed Project which is within the City's Sphere of Influence. The DEIR acknowledges that the Murdock Property, of which the Proposed Project is a part, was considered in the City's General Plan for development of a residential community with a density of one dwelling unit per acre. To that extent, the Proposed Project is consistent with the City's vision for the site. The Proposed Project is not seeking to amend any City planning policy and therefore is not subject to the Right to Vote Amendment.

With regard to the City's vision for one or more specific plans composed of all eight properties, only two property owners have submitted applications for development at this time. The County cannot compel that individual property owners combine development timelines, or require development where it is not contemplated.

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net effect of approval of this subdivision, separate and apart from the other Murdock properties, is to avoid this plan and its preferred alternative and a public vote under the Yorba Linda ordinances. This inconsistency and effective avoidance of Yorba Linda's Right to Vote ordinances should be acknowledged and analyzed in the DEIR.

L45-26
cont'd

In this regard, the DEIR in both the Land Use and Planning section and the Alternatives section fails to acknowledge that one effect of maintaining consistency with the preferred alternative for the Murdock Property and consistency with the hillside protection provisions in both the Yorba Linda General Plan and the zoning code may be reduced density and yield for this project. Under these circumstances, the proposed project density appears to be patently inconsistent with these policies. In addition, the conclusion in the Alternatives chapter that the Yorba Linda General Plan Alternative would result in the addition of 129 residences (p. 6-86), likewise ignores the effect of the preferred alternative and the hillside protection provisions in calculating this alternative's density.

L45-27

The Recreation and Resource Element of the Yorba Linda General Plan seeks to "permanently preserve and protect sensitive hillside areas", "[r]espect the natural landform as a part of site planning", and "[p]reserve significant natural features, including sensitive hillsides" (DEIR p. 5-441). Similarly and consistent with these goals and policies, the Land Use Element contemplates and seeks "[l]ow density residential development in the hillside areas" and targets "lower densities to hillside areas with yield based on slope severity and stability, topographic conditions" ("DEIR p. 5-437 Policy 8.1). Application of these Yorba Linda policies will likely result in a much lower density than that proposed by the project and/or identified in the Alternatives discussion; this inconsistency must be acknowledged and analyzed in the DEIR.

L45-28

Failure to Include an Off-Site Alternative

The DEIR fails to include any off-site alternative including an infill site which avoids the urban sprawl and safety impacts produced by this project. It is both reasonable and feasible to include such an alternative. Information about one such alternative is attached hereto as Exhibit A which depicts an infill site in the City of Santa Ana which would accommodate the number of units proposed by the project, is adjacent to Interstate 5, is vacant, and is zoned District Center. According to the Santa Ana General Plan, District Centers are allowed at a density of up to 90 units per acre when developed as an integral component of a master planned mixed use project.

L45-29

In view of the foregoing identified inadequacies in the Esperanza DEIR, the document

L45-30

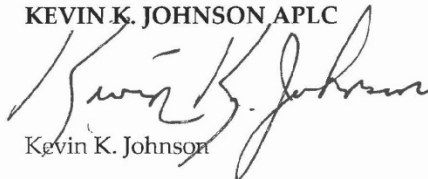
- L45-27 As previously noted, the City General Plan anticipated a dwelling unit per acre density in excess of what the Proposed Project will provide. Alternative 5 - Yorba Linda General Plan (DEIR Chapter 6 - Alternatives Analysis) provides analysis using the City's General Plan and zoning designations. It is unclear why commenter is suggesting the analysis is inconsistent. This alternative has not been identified as a preferred alternative in the DEIR.
- L45-28 The Proposed Project provides a low density residential community and preserves a substantial amount of open space, hillsides, and ridgelines. It is unclear on what basis commenter is suggesting the analysis is inconsistent with the General Plan goals.
- L45-29 Project Applicant does not own or control an off-site property to include as an alternative. A reasonable range of five alternatives is presented in the DEIR. As noted in CEQA Guidelines §15126.6(f) the range of alternatives required in an EIR is governed by a "rule of reason." Section (f)(1) states that among the factors that may be taken into account are . . . whether the proponent can reasonably acquire, control or otherwise have access to the alternative site. The suggestion by commenter that an infill site in the City of Santa Ana with a density of up to 90 units per acre should be considered is totally incongruous with the Proposed Project objectives and must be dismissed as infeasible and totally without merit as an alternative.
- L45-30 The DEIR adequately analyzes all environmental impacts associated with the Proposed Project and recirculation is unnecessary.

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should be substantially revised and re-circulated for public comment.

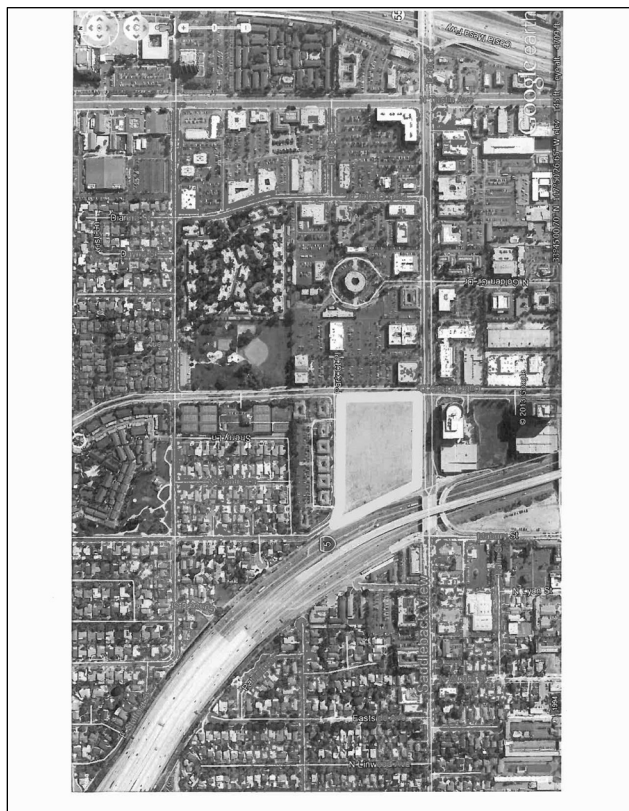
↑ L45-30
cont'd

Very truly yours,
KEVIN K. JOHNSON APLC

A handwritten signature in black ink, appearing to read "Kevin K. Johnson", written over the printed name.

Kevin K. Johnson

Cc: Supervisor Todd Spitzer via email

[illegible]

Comment Letter L46
Johnson, Kevin K.
February 3, 2014

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February 3, 2014

SENT VIA EMAIL AND U.S. MAIL

Orange County Public Works/Orange County Planning
Attn: Kevin Canning, Contract Planner
300 N. Flower
P.O. Box 4048
Santa Ana, CA 92702-4048

Re: Esperanza Hills Project – Draft Environmental Impact Report, EIR No. 616
Comments on DEIR Population and Housing Section 5.11

Dear Mr. Canning:

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 Draft Environmental Impact Report (“DEIR”) prepared for the Esperanza Hills development project (“Esperanza Hills”). Specifically, the DEIR fails to adequately analyze the potential of the sub-division to result in housing and population impacts and fails to accurately describe the existing and projected housing needs in the County of Orange and City of Yorba Linda. The type of housing proposed for Esperanza Hills -- Above Moderate Income -- is simply not needed in this region.

The DEIR identifies the proposed sub-division as providing “larger homes on large lots” for those residents with Above Moderate Income, defined by the State of California as more than 120% of Average Mean Income which in 2013 for Orange County was \$87,200. See DEIR at page 5-490. However, the analysis of housing needs is not limited to that category, and, in fact, the information provided in the DEIR indicates that there is a surplus of housing in the Above Moderate Income category.

L46-1

**Response to
Comment Letter L46
Johnson, Kevin K.
February 3, 2014**

The three exhibits referenced in Mr. Johnson's letter were not included in his transmittal and are therefore not included herein.

L46-1 The County acknowledges receipt of a letter from Kevin Johnson dated February 3, 2014 on behalf of the Protect Our Homes and Hills citizens' group related to DEIR Section 5.11 (Population and Housing).

Comment is noted regarding Mr. Johnson's statement that above moderate income housing is not needed in the region. Commenter is correct that for the 2010-2014 planning period above moderate housing allocations have been met or exceeded.

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County of Orange Analysis:

Table 5-11-4 of the DEIR (page 5-486) sets forth the projected Regional Housing Growth Needs, 2006-2104, indicating that the unincorporated areas of the county would require 3,159 Above Moderate Income units during the relevant time period. **More importantly, however, Table 5-11-5 of the DEIR (page 5-489) shows the Net Remaining Regional Housing Needs Analysis, 2010-2014. That table demonstrates that between 2006-2009, 7,347 Above Moderate units were completed or approved resulting in a substantial surplus of housing of approximately 4100 residences in that category.**

L46-2

The DEIR also discusses the updated 5th Cycle Regional Housing Needs Assessment Final Allocation Plan for 2014-2021 (see Table 5-11-16 of DEIR, page 5-490) indicating that unincorporated areas of the County will require 2,174 Above Moderate units during that time period. However, that table fails to consider those units already approved or planned. The County's September 2013 draft update to its Housing Element included Table B-3, attached hereto as Exhibit 1, "Land Inventory Summary vs. RHNA". According to OC Planning 2013, all needs for "Above Moderate" units in unincorporated areas of the County will be met – and dramatically exceeded – by The Ranch Plan planned community which will provide 5,160 units. In fact, the September 2013 draft of the Housing Element update states, "A comparison of these estimates [land inventory vs. RHNA] with the County's RHNA need shows that there is adequate capacity to accommodate the level of need in all income categories for the planning period." See Exhibit 2 attached hereto.

City of Yorba Linda Analysis:

In recognition of the probable annexation of the area into the City of Yorba Linda, the DEIR also provides limited information regarding the City's RHNA. The DEIR states that, "The City's 2008-2014 Housing Element notes a deficit of 757 units allocated by the RHNA." (page 5-492) yet the Housing Element actually shows that in the Above Moderate category of the 796 units allocated, 404 were issued building permits between 2006 and 2008 and an additional 1079 were considered "entitled" including Vista Del Verde (449 units) and North Yorba Linda Estates (630 units). See Yorba Linda 2008-2014 Housing Element, page IV-11, Table IV-2 Summary of Yorba Linda Plan Compared to RHNA 2008-2014. See Exhibit 3 hereto. The "deficit" exists only in the categories of Very Low, Low and Moderate housing units.

L46-3

Based on the 5th Cycle RHNA, the DEIR at Table 5-11-6, page 5-490, projects that from 2014 – 2021, only 270 "Above Moderate" units are deemed needed. Esperanza Hills alone

L46-4

L46-2 As noted above, the above moderate category has been exceeded in the 2008-2014 RHNA allocation for unincorporated Orange County. However, commenter is referred to page 5-490, Table 5-11-6, which depicts the RHNA allocation for years 2014-2021. The RHNA provides the number of units projected to be required and distributes the number into four income categories. RHNA acts as a tool for local governments to plan for anticipated growth. As shown on page 5-490, the above moderate allocation is 2,174 units. Commenter's assumption that the approved Ranch Plan community will provide and exceed the above moderate housing units for the planning period may give the impression that no other above moderate housing is required in unincorporated Orange County. In addition, commenter fails to note that the Ranch Plan also could provide 1,800 lower income units (Orange County Housing Element, December 10, 2013, page X-82), thus reducing the amount of RHNA allocated units in the remainder of the unincorporated area.

Because the County, as well as the City of Yorba Linda, anticipated a density of one dwelling unit per acre on the Murdock Property, of which the Proposed Project is a part, it is assumed that residential development would consist of above moderate housing due to the cost of housing generally in the area. As commenter notes, the County's Housing Element shows adequate capacity to meet the RHNA projections for the unincorporated area. The provision of above-moderate category housing in the Proposed Project will not negatively impact RHNA projections.

L46-3 Regarding the City of Yorba Linda, it is speculative on the part of commenter to assume income category designations for the identified related projects (Table 5-11-8). The DEIR analysis was based on the fact that the Proposed Project will provide Above Moderate housing units and could, therefore, fulfill the 2014-2021 projections as well as positively contribute to the 757-unit deficit for the City. Since total projected development in City far exceeds the total RHNA allocation, development during the 2014-2021 RHNA period could feasibly exceed each income category. However, because the Proposed Project is within the jurisdiction of the County, County allocations have been used for purposes of analysis.

L46-4 Refer to responses to Comments L46-2 and L46-3 above.

February 3, 2014

proposes construction of 340 "Above Moderate" units during that time period with an additional 112 units proposed for the adjacent Cielo Vista project. See DEIR, Table 5-11-7, page 5-491.

L46-4
cont'd

Table 5-11-8, page 5-492, lists additional sub-divisionss within a two-mile radius of Esperanza Hills and includes 689 more single-family residences. While the categorization of those units as "Above Moderate" or other categories is unknown, evaluation of whether they would further contribute to a surplus of "Above Moderate" units in the City of Yorba Linda should be required. For example, North Yorba Linda Estates is, according to the Housing Element, an "Above Moderate" project with at 364 single family residences still to be built.

L46-5

Conclusion:

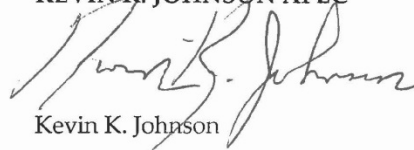
The DEIR purports to demonstrate that both the County of Orange and the City of Yorba Linda need the housing provided by Esperanza Hills. In fact, the information cited by the DEIR and additional information from the same sources concretely show that any need for "Above Moderate" housing units is more than adequately met by existing and other entitled projects. The relevant threshold of significance – inducing substantial population growth -- would clearly be significantly impacted.

L46-6

The DEIR's conclusion of no such significant impact is directly contradicted by the document's own facts and cited studies. The DEIR needs to be revised and re-circulated with the new document addressing mitigation measures for the significant impacts associated with the building more "Above Moderate" units in the region. Furthermore, proposals for other subdivisions – those already approved and those still in the process of seeking approvals – must be considered.

Esperanza Hills is not necessary to meet regional housing needs and conclusions in the DEIR to the contrary are not supported by substantial evidence.

Very truly yours,
KEVIN K. JOHNSON APLC



Kevin K. Johnson

cc: Supervisor Todd Spitzer via email

L46-5 Refer to response to Comment L46-3 above.

L46-6 Development of the Proposed Project site was considered in the County General Plan and anticipated in the City of Yorba Linda General Plan. Therefore, projected growth assuming one dwelling unit per acre for the entire Murdock Property was included in the General Plan Environmental Impact Reports for both County and City. The Proposed Project will not induce substantial population growth that was not previously analyzed.

The DEIR fully analyzed and considered the Proposed Project's contribution to the RHNA allocations for 2014-2021. There is no adverse environmental impact identified in the County General Plan or the City General Plan if market demand results in additional housing being built beyond the RHNA projections for any income category. Recirculation of the DEIR is not required.

The three exhibits referenced in Mr. Johnson's letter were not included in his transmittal and are therefore not included herein.

Comment Letter L47
Johnson, Kevin K.
February 3, 2014

KEVIN K. JOHNSON, APLC

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February 3, 2014

SENT VIA EMAIL AND U.S. MAIL

Orange County Public Works/Orange County Planning
Attn: Kevin Canning, Contract Planner
300 N. Flower
P.O. Box 4048
Santa Ana, CA 92702-4048

Re: Esperanza Hills Project – Draft Environmental Impact Report, EIR No. 616
Comments on DEIR Recreation Section 5.13 (and Fire Protection/ Emergency Evacuation)

Dear Mr. Canning:

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 Draft Environmental Impact Report (“DEIR”) prepared for the Esperanza Hills sub-division (“Esperanza Hills”). The DEIR fails to comply with the California Environmental Quality Act. Public Resources Code section 21000, et seq. (“CEQA”). Specifically, the DEIR fails to adequately analyze the potential of the sub-division to cause increased use and wear and tear on local parks and other recreation facilities outside of the proposed project area.

Additionally, parks and open spaces within the proposed sub-division should be evaluated and designed for us as buffer zones providing protection from wildfires.

- I. The proposed sub-division would significantly impact local recreational facilities and programs.**

In recognition of the probable annexation of the proposed project into the City of

L47-1

L47-2

**Response to
Comment Letter L47
Johnson, Kevin K.
February 3, 2014**

L47-1 The County acknowledges receipt of a letter from Kevin K. Johnson dated February 3, 2014 on behalf of Protect our Homes and Hills citizens' group related to Section 5.13 - Recreation of the Esperanza Hills DEIR. As noted on page 5-542, there are a number of regional parks (5 listed) in the area that are intended for use by the general public. The Proposed Project provides hiking, biking, pedestrian and equestrian trails through the site, complementing the existing County and City of Yorba Linda trails. The Proposed Project also provides on-site play lots for children (2 to 12 years of age), fitness stations, BBQ and picnic areas, and open play lawn areas.

There is no basis or requirement to support commenter's suggestion that the parks and open spaces should be evaluated and designed for use as buffer zones to provide protection from wildfires. Design of the Proposed Project includes the incorporation of wider than normal fuel modification zones, strategically placed fuel breaks, and other features internal to the structures (e.g., sprinklers, one-hour doors and walls) that are effective in preventing the rapid spread of wildland fires, both within the project site and into adjacent areas.

L47-2 Commenter provides no statistics to support the contention that at least 10 additional lighted multipurpose sports fields to meet current demands of youth and adult sports leagues. The City's General Plan park acreage requirement for new development is 4.0 acres of parkland per 1,000 persons. The Proposed Project provides in excess of the requirement. The Proposed Project also meets and exceeds the County's requirement for the provision of parkland.

The DEIR acknowledges on page 5-542 that local parks may experience additional usage due to implementation of the Proposed Project. While the Draft Report cited in commenter's letter proposes acquisition of additional parkland due to existing and projected needs, the Proposed Project is currently in compliance with existing adopted requirements. Given the amount of regional and local parkland in the area, in addition to the parks and trails provided by the Proposed Project, it is not anticipated that substantial deterioration to existing facilities will occur.

February 3, 2014

Yorba Linda, the DEIR references the City's Recreation Resources Element of its General Plan. Significantly, the City is nearing finalization of a major study and update of its Parks and Recreation Master Plan which provides substantial relevant information to assist in review of the DEIR. A copy of the Draft Report can be found at <http://ylonline.org/questys.cmx.webclient/File.ashx?id=651554&v=1&x=pdf>.

L47-2
cont'd

The updated report and master plan was based on input from the Yorba Linda community, parks and recreation staff and organized sports groups within the community. It's clear that youth and adult sports programs are a vital part of the Yorba Linda lifestyle. Based on standards from the National Recreation and Parks Guidelines for California cities with populations of 50,000 – 100,000, Yorba Linda currently needs more adult softball fields, medium and large soccer fields, a football field, outdoor basketball courts, pools, tennis courts, and outdoor volleyball courts. Based on the number of participants in sports – versus general population numbers – Yorba Linda needs at least 10 additional lighted multipurpose sports fields to meet the current high demands of the various youth and adult sports leagues. See Draft Report at pages 3-48, and 3-54 – 3-56.

The study/draft plan confirms a goal of 975 acres of total combined parkland for the City based on a recommendation of 15 acres per 1000 residents and specifically 1 acre of minipark/ greenbelt, 2 acres of neighborhood park, 2 acres of community park (5 acres of more) and 10 acres of regional park (40 acres or more) per 1000 residents. Current deficits are offset by joint-use agreements the local school district, but the draft plan proposes acquisition of additional parkland to meet the current needs of the residents of Yorba Linda. See Draft Report at pages 6-5 – 6-14.

L47-3

Given the existing shortage of parks and recreational facilities in Yorba Linda, the additional use of those facilities by residents of the proposed Esperanza Hills project would clearly have a significant impact. The DEIR acknowledges that the proposed project provides no playing fields for organized sports yet concludes without any analysis or foundation that, "The Proposed Project could **minimally** increase the use of existing neighborhood or regional parks..." See DEIR at page 5-542, section 5.13.6. All of the facts support a conclusion directly opposed to the DEIR assertions.

L47-4

It is unrealistic to assume that the residents of Esperanza Hills would not participate in the many recreation opportunities available in Yorba Linda – in fact, parents may be attracted to the proposed sub-division because of the educational and recreational opportunities

- L47-3 Please refer to responses to Comments L47-1 and L47-2 above. In any case, the draft plan has not been adopted and is not applicable, as the Project site is not located in the City.
- L47-4 Section 5.12 (Public Services) states the estimated the number of students generated by the Proposed Project is 177. This age group (elementary through high school) would be the likely participants in youth sports. It is speculative to assume that all will participate in sports. Because commenter's focus is related to sports fields and use by youth teams, it should be noted that the Proposed Project is projected to take one to two years for grading and three to seven years for phased construction of homes. Therefore, additional park use would be spread over several years until maximum occupancy of the Proposed Project is reached and impacts would be incremental over that time span.

February 3, 2014

available to families in the area. Given the size of the 11 various youth sports leagues

surveyed as part of the master plan project (ranging from 129 lacrosse players to 412 softball players to 2610 soccer players) the number of additional players from 320 large homes in the proposed sub-division could be very significant and result in deterioration of the condition of already crowded parks.

L47-4
cont'd

Furthermore, the DEIR premises the number of persons per household for Esperanza Hills on the County population factor of 3.2 persons per household. See DEIR, page 5-517. It then uses that figure to project that 1000 people will occupy the 320 units proposed for the project. The proposed sub-division, however, by admission in the DEIR contemplates "larger homes on large lots". See DEIR, page 5-490.

L47-5

US Census data from 2010 shows that 37.8 percent of households in Orange County include children under 18 (39.6 percent in Yorba Linda) – predictably many, if not most, of the households in Esperanza Hills' larger homes will include children under 18 or other variations of multi-generational families (adult children living with parents, parents living with adult children, etc.) Madrona is a housing project in nearby Brea which also abuts Chino Hills State Park and proposes lot sizes of 8,960 – 46,042 square feet compared to the Esperanza Hills' proposed lot sizes of 12,044 – 39,354 square feet. That project proposes homes of 3,600 – 4,600 square feet and 4 – 6 bedrooms per house. See Architectural Submittal at <http://www.ci.brea.ca.us/DocumentCenter/View/1049>. Common sense suggests that 1) the homes in Esperanza Hills will be similarly sized and 2) the size and configuration of the homes will support occupancy by more than 3.2 persons per household. Accordingly, to the extent that park land requirements -- and usage estimates -- are premised on persons per dwelling unit, a major upward adjustment of the amount of land required should be made.

II. The DEIR does not propose adequate mitigation.

The Orange County Local Park Code provides that 2.5 acres of land or the proportionate share thereof for each 1000 persons is required. Local Park Code Sec. 7-9-502. With 320 units and a larger than mean household size, the number of acres of parks required should much higher than the 2.7 acres the DEIR identifies as required by the Orange County Local Park Code or even the 4.4 acres under the Yorba Linda General Plan.

L47-6

Although the proposed sub-division includes 12.18 – 13.16 acres of park and WQMP land, the types of parks proposed and access to them raise serious concerns about whether

- L47-5 The County population factor of 3.2 is the appropriate number for purposes of analysis because the Proposed Project is within the County's jurisdiction and this factor is used by the County. In addition, according to the City of Yorba Linda's Housing Element, the average household size is 3.05 persons with an average family size of 3.35 persons, which is only marginally greater than the County population factor used in the DEIR. Commenter speculates on population using a comparison with nearby projects based on the difference in lot sizes. The assumption that larger lot size results in larger houses and increased occupancy is not supported by facts. CEQA does not require the speculative analysis of a project but rather relies on accepted methods, such as established population factors, to determine impacts.
- L47-6 For recreational purposes, the Proposed Project parks provide play lots for children 2 through 12 years of age, fitness stations, picnic areas and open plan lawn areas similar to other area neighborhood parks. Recreational areas also include multi-use trails for people who prefer hiking, biking and horseback riding for recreation. Commenter does not provide any specifics regarding "serious concerns about whether they in any way mitigate the use of area parks . . ." As noted, in excess of 12 acres of parks and approximately seven miles of multi-use trails far exceed parkland and recreation requirements.

February 3, 2014

they in any way mitigate the use of area parks and recreation facilities by residents of the proposed project. Of the nine active parks proposed, only two qualify as more than a minipark of up to one acre in area. The two that may qualify as neighborhood parks, Main Entry – Orange Park (1.10 – 2.03 acres) and Avocado Park (2.96 acres) are nothing more than a guardhouse to the project and an avocado orchard with bench seating and trails, located at the far end of the proposed project. See DEIR, pages 5-517 – 5-518, 5-521.

L47-6
cont'd

Only four of the proposed parks include any type of play structures; one serves as a dog park, located adjacent to Chino Hills State Park. (The park provides a home for coyotes and bobcats among other species. See California Department of Parks and Recreation at http://www.parks.ca.gov/?page_id=21970 and <http://www.chinohillsstatepark.org/natural-resources/mammals>.) Because the proposed sub-division is a “private gate-guarded community” the only access to any park within its confines for those who do not live in Esperanza Hills is via equestrian, hiking and biking trails. See DEIR, page 5-520. The DEIR assertion that the trails provide a benefit for residents of adjacent existing and planned communities (see DEIR at page 5-541) seems disingenuous.

L47-7

III. Fire Safety Concerns.

An additional concern regarding the locations of the proposed parks relates to fire safety. Five of the active parks are located within clusters of residences and provide no buffer to advancing fires. Parks can -- and should -- provide valuable buffers from advancing wildfires.

L47-8

We also note that one of the three designated -- and only large -- emergency staging areas for use by firefighting crews (Park J – WQMP #1) is located directly off of the primary access road for evacuation of the northern half of Planning Area 2 and adjacent to Chino Hills State Park. The safety of both residents attempting evacuation and fire fighters would be jeopardized by the location of that site.

Conclusion:

The DEIR concludes that because Esperanza Hills will include parks and trails in excess of the minimum required by state, county and city requirements, those parks will provide the project’s residents with “ample recreational opportunities on-site” so that the impact on neighboring recreational facilities will be less than significant. See DEIR at p. 5-517, section 5.13.4, paragraph 1. However, the DEIR fails to consider the probable real uses of recreation

L47-9

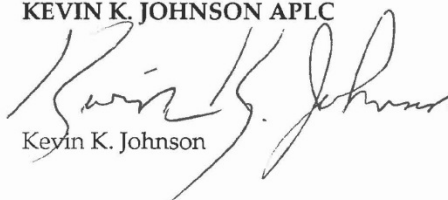
- L47-7 As indicated in DEIR Section 5.13, page 5-536, in addition to trails within the Proposed Project boundaries, which are available to the general public, an off-site trail leading to the Old Edison Trail in Chino Hills State Park will be constructed. On-site parks will also be open to the public and provide recreation opportunities to residents of Esperanza Hills, thus reducing use of City parks providing the same amenities.
- L47-8 Parks are not required to provide buffers in the event of a wildfire. The Proposed Project will provide fuel modification zones for areas adjacent to open space. Commenter is referred to Section 5.7 - Hazards and Hazardous Materials, Exhibits 5-7 and 5-8, Conceptual Fuel Modification Plan (Option 1 and Option 2) and Topical Response 1 for additional information related to fuel modification. Commenter provides no factual information regarding why the location of firefighting staging areas would jeopardize residents and firefighters.
- L47-9 Commenter is referred to responses to Comments L47-1, L47-2, L47-4, L47-6, and L47-7 above.

February 3, 2014

facilities of the members of the households within the project. Its conclusion is both unsubstantiated and unsupported by substantial evidence.

↑ L47-9
cont'd

Very truly yours,
KEVIN K. JOHNSON APLC



Kevin K. Johnson

cc: Supervisor Todd Spitzer via email

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Comment Letter L48
Johnson, Kevin K.
February 3, 2014

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February 3, 2014

SENT VIA EMAIL AND U.S. MAIL

Orange County Public Works/Orange County Planning
Attn: Kevin Canning, Contract Planner
300 N. Flower Street
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Santa Ana, CA 92702-4048

Re: Esperanza Hills Project – Draft Environmental Impact Report, EIR No. 616
Comments on Geology and Soils Section 5.5 and Hazards and Hazardous Materials
Section 5.7

Dear Mr. Canning:

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 Geology and Soils (“GS”) and the Hazards and Hazardous Materials (“HHM”) chapters of the Draft Environmental Impact Report (“DEIR”) prepared for the Esperanza Hills development project (“Esperanza Hills”), with respect to one significant issue: the complete omission of data or analysis related to the possibility and probability of injury and death not related to structural collapse in the event of a major earthquake within proximity of the Whittier Fault.

The GS and HHM chapters identify the Whittier Fault Zone as representing “one of the most prominent actively seismic hazards within southern California” (see DEIR p 5-214, section 7) address and acknowledge that the proposed project “is located in a seismically active region of southern California dominated by the intersection of the northwest-trending San Andreas Fault system and the east-west trending Transverse Ranges Fault system” and

L48-1

L48-2

**Response to
Comment Letter L48
Johnson, Kevin K.
February 3, 2014**

- L48-1 The County acknowledges receipt of a letter from Kevin Johnson dated February 3, 2014, on behalf of Protect Our Homes and Hills regarding Geology and Soils and Hazards and Hazardous Materials. The Proposed Project's geology and soil impacts were evaluated consistent with the requirements of CEQA in Geology and Soils (Section 5.5) beginning on page 5-203 of the DEIR. As described therein, the project would not result in any significant impacts under project and cumulative conditions (refer to page 5-254 and 5-255). The thresholds of significance listed on page 5-296, Hazards and Hazardous Materials (Section 5.7) do not apply to exposure of people or structures to earthquake related adverse effects. On page 5-254 (Section 5.5 - Geology and Soils), the DEIR states that although development of the Proposed Project will place housing (people) in an area that is subject to earthquakes and seismic ground shaking, strong seismic ground shaking is endemic in southern California, and future residents of Esperanza Hills will not be exempt from this risk, if it occurs. The DEIR concludes that all feasible mitigation measures (Mitigation Measures Geo-1 through Geo-19) have been incorporated into the Proposed Project and, along with adherence to state and local building and construction standards, will reduce potential impacts to the extent feasible.
- L48-2 The fault study was completed and approved by the County of Orange on March 31, 2013. An adequate disclosure of findings of the fault study was presented and discussed in Section 5.5 – Geology and Soils.

February 3, 2014

that “two principal seismically induced hazards to the property” are “damage to structures and foundations due to strong ground shaking and surface rupture of earth materials along fault traces” (see DEIR p5-204, section 3). Further, this section acknowledges that seismic waves radiate great distances in all directions from the earthquake epicenter and that strong ground motion or shaking produced by these seismic waves is the primary cause of earthquake damage.

L48-2
cont'd

Possibility of Major Earthquake in Near Future

Based on data in Appendix G to the DEIR, American Geotechnical, Inc. states that estimates regarding earthquakes at magnitudes of 6.7 and 7.2 occur every 700 and 1,000-1,500 years, respectively. The report also indicates that the **last large earthquake along the Whittier fault occurred more than 1,600 years ago** (emphasis added) (see DEIR Appendix G, pp 21-22).

L48-3

Citing the U. S. Geological Survey (“USGS”) “Uniform California Earthquake Rupture Forecast” (“UCERF”), the National Geographic News extrapolated that:

“California faces an almost certain risk of being rocked by a strong earthquake by 2037. USGS calculations reveal there is a 99.7 percent chance a magnitude 6.7 quake or larger will strike in the next 30 years. The odds of such an event are higher in southern California than northern California...The last time a jolt this size rattled California was the 1994 Northridge disaster, which killed 72 people, injured more than 9,000 and caused \$25 billion (U.S.) in damage” (Alicia Chang, AP Science Writer, Associated Press) (Attachment A).

Impact on Human Health and Survival

“The continued probability for the occurrence of large earthquakes, coupled with a growing population, increases the risk for earthquake-related mortality and morbidity”, as cited in a peer-reviewed and published study (“Northridge Study”) in the *Annals of Epidemiology*, focused on deaths and hospital admissions resulting directly and indirectly from the Northridge, CA earthquake in 1994 (Corinne Peek, ASA, PhD Marizen R. Ramirez, MPH, Kim Shoaf, DrPH, Hope Seligson, MS and Jess F. Kraus, PhD, “GIS Mapping of Earthquake-Related Deaths and Hospital Admissions for the 1994 Northridge, California Earthquake” *Annals of Epidemiology*, Vol. 10, No.1, January 2000;5-13) (Attachment B).

L48-4

The Northridge Study is highly pertinent, as it does not deal with a remote or third-world county, but with our own local area. According to the study, the “importance of research relating seismic hazard and building damage to risk of injury has long been

- L48-3 The commenter presents information from National Geographic News, dated April 14, 2008 concerning southern California in general that is not Project specific. There is no correlation presented that would link a 99.7% chance of a magnitude 6.7 quake on the Whittier Fault in the area of the Proposed Project to statements by Alicia Chang of the Associated Press. The DEIR presents comprehensive discussion of the Fault Hazard Assessment Report (Appendix H in the DEIR) on page 5-238 through 5-240 that provides project-specific analysis.
- L48-4 The commenter concludes that a meaningful risk and impact analysis is required in the DEIR because of the potential for injuries or fatality, directly or indirectly related to ground shaking during earthquakes and the cascade of events stemming therefrom based on the information from the 2000 Elsevier Science Inc. article: *GIS Mapping of Earthquake-Related Deaths and Hospital Admissions from the 1994 Northridge, California Earthquake*; concerning the 1999 Corinne Peek-ASA, et al. research (Elsevier Article). The Elsevier article identifies fatalities and injuries caused by the 1994 Northridge Earthquake that are directly and indirectly related to ground shaking and ground acceleration. Of the 30 deaths identified in the Elsevier article, 16 deaths (53%) alone were the result of one apartment building collapsing. The Proposed Project is a low-density single-family home development that will not include apartments. Residential structures will be limited to two stories. Other deaths were caused by being struck or entrapped by objects. Indirect injury from earthquake was due to fires, traffic control failures, and injuries during cleanup activities.

The California Building Code Title 14 has been revised since the 1994 Northridge Earthquake to strengthen building construction to prevent building damage and collapse due to earthquake. The Proposed Project will be constructed in conformance with the California Building Code. The 1999 Corinne Peek-ASA study recognizes the need for community earthquake preparedness beyond building structure. The Orange County Office of Emergency Management Division provides community disaster preparedness information at ReadyOC.org with a link to Earthquakecountry.org. These websites provide the community with information on disaster and earthquake emergency preparedness. Since earthquakes in southern California can happen anywhere and injuries can occur far from the epicenter, community preparedness is important to prevent death and injury.

Project Design Feature PDF 26 will be revised to include annual distribution of earthquake preparedness information from Orange County Emergency Management Division along with wildfire education as follows:

- PDF 26 The Proposed Project includes [earthquake preparedness and](#) wildfire education materials will be distributed annually to each resident and annual evacuation planning meeting will be held by the HOA.

February 3, 2014

recognized in epidemiologic literature" (Peek, et.al.).

Further, it establishes that consideration of potential for injuries or fatality, directly or indirectly related to ground shaking during an earthquake and the cascade of events stemming therefrom are essential to any meaningful risk and impact analysis (emphasis added).

The Northridge Study found that:

1. Building structure alone does not suffice to address reasonable and predictable parameters for potential risk factors for injury. Housing contents and location, human behavior or reaction, victim's activity during an earthquake, human vulnerability to injury, and/or entrapment each represents significant direct injury risks.

Indirect risk factors include consequences of earthquake damage such as fires, traffic control failures and/or injuries stemming from clean-up activities.

2. Ground shaking initiates a cascade of events leading to injury and the most current hazards models predict ground motion as "a complex relationship between such factors as earthquake magnitude, epicentral distance and depth and radius of fault activity" (Peek, et.al.).

3. Earthquake-related fatalities and hospitalized injuries extended far beyond the epicenter of the earthquake and were not equally distributed around the epicenter.¹

4. Notable outcomes from the Northridge Earthquake in 1994 included the following:

(a) Injuries resulted from PGA as low as .13g [ground shaking during an earthquake is measured as Peak Ground Acceleration ("PGA") and "g" is the acceleration of gravity or strength of the gravitational field. In the 1994 Northridge 6.7 magnitude earthquake, PGA was measured at 1.7g].

(b) Total fatal and non-survivable injuries were 55;

(c) Total non-fatal hospitalized injuries were 103;

(d) Causes of injuries included falls, cutting/piercing, hit or caught by building parts or objects, motor vehicles and burns;

L48-4
cont'd

L48-5

- L48-5 The summary of the Elsevier Article presented in the comment does not accurately represent the Elsevier article. Table 1, "Distance from epicenter and average peak ground acceleration (PGA) by fatal/non-fatal outcome and injury severity; Northridge Earthquake, California 1994," in the Elsevier Article provides a summary of the 133 studied fatal (30) and non-fatal (103) outcomes. Table 1 indicates that 98 of the 133 were minor to moderate, 10 were severe and 25 non-survivable. Table 1 indicates of the 133, 65 were from fall, 31 caused by hit/caught by building parts and 15 hit/caught by objects, 8 by burn, 6 by other, 5 by cutting/piercing and 3 by motor vehicle. Of the 133, 37 were caused by structural damage and 88 were not caused by structural damage with the remaining 8 unknown cause. Of the 133, 119 were a direct result of structural failure, or being struck or trapped by objects and 14 were an indirect result from fires, traffic control failure, and injury from cleanup activities. Table 1 indicates that of the total fatalities and injuries (133) only 28% to 34% (37 to 45) is caused by structural failure; however, the Elsevier Article does not identify the total number of fatalities caused by structural failure/damage. The Elsevier Article identifies 16 fatalities from one collapsed apartment building and that alone would result in over half (53%) of the fatalities caused by structural damage. The DEIR analysis recognizes the importance of project design features and mitigation measures to reduce to the extent feasible Project structural impacts from earthquake. Refer to response to Comment L48-4 for revision to Project Design Feature PDF 26. The Proposed Project is a low-density development that will not include apartment buildings.

February 3, 2014

(e) 89% of injuries were direct, 11% were indirect

(f) **Structural damage was noted in only 28% of injury cases (emphasis added).**

This indicates that 72% of injuries experienced as a direct or indirect result of the 1994 Northridge earthquake were not correlated to building damage.

The hazards related to the human impact of damage from a major earthquake should be anticipated based on 1) the Esperanza Hills DEIR and USGS projections regarding the active and significant nature of the Whittier fault and the potential for major earthquake activity in southern California in the near future, 2) independent evidence that epidemiologic research relating seismic hazard and building damage to risk of injury is critical and accessible and 3) the Northridge Study findings.

We believe that the critical nature of weighing earthquake impacts in terms of lives and injury rather than on brick and mortar alone reasonably demands extensive analysis as part of the EIR process.

Very truly yours,
KEVIN K. JOHNSON APLC

Kevin K. Johnson

L48-5
cont'd

L48-6

L48-6 Refer to responses to Comments L48-1, L48-3, - and L48-5.

ATTACHMENT A

NATIONAL GEOGRAPHIC NEWS
NATIONALGEOGRAPHIC.COM/NEWS

Big Quake "Guaranteed" to Hit California by 2037

Alicia Chang, AP Science Writer, in Los Angeles
Associated Press
April 14, 2008

California faces an almost certain risk of being rocked by a strong earthquake by 2037, according to the first statewide temblor forecast, released today.

New calculations reveal there is a 99.7 percent chance a magnitude 6.7 quake or larger will strike in the next 30 years.

The odds of such an event are higher in southern California than northern California—97 percent versus 93 percent.

(Related: "Major Quake May Strike Bay Area Next Year, Experts Say" [December 12, 2007].)

The last time a jolt this size rattled California was the 1994 Northridge disaster, which killed 72 people, injured more than 9,000, and caused \$25 billion (U.S.) in damage.

The analysis, titled the "Uniform California Earthquake Rupture Forecast," took three years to complete.

It represents the first comprehensive effort by the U.S. Geological Survey (USGS), Southern California Earthquake Center (SCEC), and California Geological Survey to calculate quake probabilities for the entire state using newly available data.

The report "basically guarantees it's going to happen," said Ned Field, a USGS seismologist based in Pasadena and lead author of the study.

Wake-Up Call

California is one of the most seismically active regions in the world.

More than 300 faults crisscross the state, which sits atop the meeting of two of Earth's major tectonic plates, the Pacific and the North American.

About 10,000 quakes rattle southern California each year, although most of them are too small to be felt.

Previous quake probabilities focused on specific regions and used various methodologies that made it difficult to compare.

For example, a 2003 report found the San Francisco Bay Area faced a 62 percent chance of being struck by a magnitude 6.7 quake by 2032. The new study increases the likelihood to 63 percent by 2037.

For the Los Angeles Basin, the probability is higher at 67 percent. There is no past comparison for the Los Angeles area.

Scientists still cannot predict exactly where in the state such a quake will occur or when. But they say the analysis should be a wake-up call for residents to prepare for a natural disaster.

"A big earthquake can happen tomorrow or it can happen ten years from now," said Tom Jordan, director of SCEC headquartered at the University of Southern California, who was part of the research.

Knowing the likelihood of a strong earthquake is the first step in allowing scientists to draw up hazard maps that

Page 2 of 2

show the severity of ground shaking in a particular area.

The information can also help with updating building codes and emergency plans and setting earthquake insurance rates.

Fault Overdue

Of all the faults in the state, the southern part of the San Andreas—which runs from Parkfield to the Salton Sea—appears most primed to break, scientists found.

There is a 59 percent chance in the next three decades that a Northridge-size quake will occur on the fault, compared to a 21 percent chance for the northern section.

The northern San Andreas produced the 1906 San Francisco earthquake, a recent disaster compared to the southernmost segment, which has not popped in more than three centuries.

Scientists are also concerned about the Hayward and San Jacinto faults, which each have a 31 percent chance of producing a Northridge-size temblor in the next 30 years.

The Hayward fault runs through densely populated cities in the San Francisco Bay Area. The San Jacinto fault bisects the fast-growing city of San Bernardino.

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ATTACHMENT B

GIS Mapping of Earthquake-Related Deaths and Hospital Admissions
from the 1994 Northridge, California, EarthquakeCORINNE PECK-ASA, PhD, MARZEN R. RAMIREZ, MPH, KIM SHOAF, DrPH,
HOPE SELIGSON, MS, AND JESS F. KRAUS, PhD

PURPOSE: Earthquakes pose a persistent but unpredictable health threat. Although knowledge of geologic earthquake hazards for buildings has increased, spatial relations between injuries and seismic activity have not been explained.

METHODS: Fatal and hospital-admitted earthquake injuries due to the 1994 Northridge Earthquake were identified. Geographical Information Systems software was used to map all injury locations. Injuries were analyzed with regard to distance from the earthquake epicenter, the Modified Mercalli Intensity Index, peak ground acceleration, and proportion of damaged residential buildings.

RESULTS: Injury severity was inversely related to distance from the epicenter and increased with increasing ground motion and building damage. However, injury incidence and severity were not completely predicted by seismic hazard and building damage, and injuries of all severities occurred in a large geographic area. Average distance to the epicenter was smallest for injuries related to falling building parts and largest for cutting/piercing injuries and falls.

CONCLUSIONS: The injuries from the Northridge Earthquake extended beyond the areas of highest environmental severity. Factors such as age and activity during the earthquake may be equally important in predicting injury from earthquakes as seismic features.

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KEY WORDS: Epidemiology, Injury, Disasters, Earthquakes, GIS.

INTRODUCTION

Throughout history, earthquakes have been responsible for a large number of deaths and injuries. The continued probability for the occurrence of large earthquakes, coupled with a growing population, increases the risk for earthquake-related mortality and morbidity. The recognition of this ongoing risk and the knowledge that many earthquake injuries can be prevented has led to the need for a systematic and multi-disciplinary approach to the study of risk factors and prevention measures for earthquake-related morbidity and mortality (1). Research examining risk factors for earthquake-related injury has focused on the dynamics occurring throughout the event, from pre-disaster preparedness to post-disaster response and recovery. Building structure, contents and location, human reaction, and extraneous factors have all been identified as potential risk factors for injury

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in the recent Armenian, Southern Italy, Guatemala, Loma Prieta, California, and Philippine earthquakes (2-6).

The first step in the cascade of events leading to earthquake injury is the initial ground shaking (7). According to theoretical spatial models of earthquake damage, ground shaking activity initiates a cascade of events leading to injury (8). In this cascade, ground motion, which begins and dissipates from the epicenter, correlates with building and content damage, which together increase the risk of injury (8). The first steps in this cascade have been widely studied through hazard models that determine how ground motion attenuates from the epicenter. The earliest of these models have plotted the mean trend of ground shaking intensity against distance, but did not account for the many variations from the mean (9).

More recent hazards models predict ground motion as a complex relationship between such factors as earthquake magnitude, epicentral distance, and depth and radius of fault activity (10-12). In these spatial models, the areas of ground shaking are defined by contour maps (9), concentric circles around the earthquake epicenter (8), or complex link functions predicting hazard attenuation (10-12). When considering injury as the dependent variable, these models do not account for many other factors which are important predictors of injury. These include the victim's activity and

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Selected Abbreviations and Acronyms
GIS = Geographical Information Systems
ISS = Injury Severity Score
MDR = Median Distance Ratio
MMI = Modified Mercalli Intensity
PGA = Peak Ground Acceleration

behavior at the time of the earthquake, individual vulnerability to injury, or the risk of injury from housing contents, each of which represent significant injury risk. Furthermore, the relationship between ground motion and injury must consider building damage, which is an important step in the injury cascade. Although death and severe injury in an earthquake are likely to be highly related to distance from the epicenter, the nature of this relationship has not been described.

The importance of research relating seismic hazard and building damage to risk of injury has long been recognized in epidemiologic literature (13, 14). State-of-the-art mapping techniques have now made it possible to study seismic risk factors and regional disease patterns in public health research (15-17). With the use of Geographic Information Systems (GIS), this study incorporates earthquake-related injury and geographic data to analyze the spatial and geographical relationships resulting from fatal and hospitalized injuries during the 1994 Northridge, California, earthquake. Specifically, the incidence and severity of injuries with respect to the epicenter, ground-shaking activity, and building damage are examined.

METHODS

Data on earthquake-related fatalities were identified by the Los Angeles County Coroner's Office. Data on earthquake-related hospitalized injuries were sought in the 78 hospitals in Los Angeles County, and injured patients were identified in 16 of the 78. Specific methods for identifying these hospitals have been described (18). In these 16 hospitals, all medical records for injury admissions from January 17, 1994 (the onset of the earthquake) through January 31, 1994 were individually reviewed to determine if the injury was due to the earthquake. A total of 33 traumatic fatalities and 138 hospitalized injuries were identified.

Only deaths and hospital admissions due to acute physical injury were included; patients with heart attacks or stressed-related events were excluded. Physical injuries were defined as being earthquake-related if the injury was due, directly or indirectly, to earthquake ground motion. Direct injuries resulted from structural failure, being struck or tripped by objects dislodged during the shaking or a fall during the earthquake. Indirect injuries included sequelae of earth-

quake damage such as fires or traffic control failure, and injury during clean-up activities.

Injury diagnoses, cause and location of injury, hospital treatment course for hospitalized victims, and victim demographic information was collected for each earthquake-related fatality or hospitalization. Injury diagnoses were coded according to the Abbreviated Injury Severity Scale, and Injury Severity Scores (ISS) were calculated for each victim (19). The ISS provides an estimate of overall injury severity based on all injury diagnoses. The ISS ranges from 1 to 76, with 1 being a minor injury and 76 indicating a non-survivable injury. Mild and moderate injuries include those with ISS scores of 0-24, severe injuries with ISS scores of 25-75, and lethal injuries with ISS scores of 76.

For each earthquake-related fatality or hospitalization, the address of injury was entered into ARCVIEW, the Geographic Information System (GIS) software used to visualize spatial relationships. Los Angeles County attribute and boundary data were extracted from a geographic database provided by the U.S. Bureau of the Census (20). Data for population by zip code were obtained from the 1990 U.S. Census of Population and Housing. The coordinates for the epicenter of the Northridge earthquake were obtained from the US Geological Survey.

Latitude and longitude coordinates for each injury location were assigned by the GIS system based on address. Of the 171 injuries, 133 (77.8%) were accurately geocoded. Of the 38 records that were not geocoded, 35 records had unknown or unrecognizable injury locations and three records were unspecified locations on freeways.

Latitude and longitude of the earthquake epicenter was used to calculate distances to injury locations. The following formula was used to calculate the distance in meters from each geocoded location to the epicenter:

$$\text{Distance} = \sqrt{(\text{Ycoord} - \text{epicenter latitude})^2 \times (\text{longitude conversion})^2 + (\text{Xcoord} - \text{epicenter longitude})^2 \times (\text{longitude conversion})^2}$$

Ycoord represents the latitude coordinate and Xcoord the longitude coordinate of the location of injury. The latitude and longitude conversion factors were used to convert the coordinate degrees into measures of distance in kilometers. This formula thus creates an isosceles triangle for which two of the distances are known.

Distances were calculated for all successfully geocoded injury locations. For variables of interest, distance was measured by the average, median, and range. Because the distribution of injury distances shows a wide and non-normal distribution, the median was chosen to compare distances by variables of interest.

The Median Distance Ratio (MDR) was derived by fatal/non-fatal outcome, injury severity, cause of injury, structural

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damage as a contributor to injury, and if the injury was directly or indirectly related to the earthquake. The MDR was calculated as the median distance for the variable of interest divided by the median distance for an assigned reference. The MDR is the factor by which the median distance for each variable of interest differs from the reference distance. Thus, a MDR above one indicates that the variable of interest is further away from the earthquake epicenter than the reference and an MDR below one indicates a closer median distance. For example, an MDR of 2.5 indicates that the median distance for the variable of interest is 2.5 times further from the epicenter than the reference.

Measures of ground shaking included the Modified Mercalli Intensity (MMI) scale and measure of peak ground acceleration (PGA). The MMI scale is divided into twelve continuous categories, with XII indicating the strongest ground shaking activity equal to near complete destruction (21, 22). The Northridge Earthquake MMI in Los Angeles County ranged from I-XII. MMI categories of V and less indicate minimal damage and were combined for this analysis. Level VII refers to shaking felt by all persons, heavy objects moved, and possible cracked walls. VII implies considerable damage to weak structures and broken chimneys; VIII indicates fallen chimneys, deformed walls, heavy damage to poorly built structures; and IX implies the deformation of well-designed structures, shifting of building frames, and breaking of underground pipes. PGA refers to maximum acceleration of ground motion directed by accelerographs placed throughout Los Angeles County and is measured in terms of the gravity constant (g).

These seismic hazard measures were summarized for zip code in Los Angeles County by IGE International and the California Office of Emergency Services (23). Average MMIs and average PGAs were tabulated by zip code, as determined from published maps. Modified Mercalli Intensity (MMI) estimates were taken from the official USGS MMI map (24). The distribution of MMI within each zip code was determined by a GIS overlay. For each zip code, the area falling into MMI < VI, VI, VII, VIII, and IX was computed. From this area, an area-weighted average MMI was estimated. A similar analysis was used to determine average PGA from a map of Log(PGA) created by IGE and the California Office of Emergency Services (23).

Post-earthquake inspection data was obtained from the City of Los Angeles Department of Building and Safety. The proportion of damaged residential buildings by zip code was determined by dividing the number of buildings inspected and deemed to have earthquake damage by the number of inventoried buildings in the zip code. Residential buildings were used because the inventory was not complete for non-residential buildings and because most injured victims were in residences at the time of the earthquake.

Linear regression models were run to determine the relationship between injury rates and MMI, PGA, and proportion of residential buildings damaged by zip code. Linear regression models were run in SAS.

RESULTS

Distance from the Epicenter

Figure 1 shows the locations of injuries by severity in relation to the epicenter. Of the 133 geocoded injuries, 98 were minor or moderate, 10 were severe, and 25 were non-survivable. The 133 injuries which were successfully geocoded represented 116 independent locations: one apartment complex was the site of 16 deaths, two residences had two injuries each, and 113 were single injury locations. Figure 1 includes the 116 independent locations.

Earthquake-related fatalities and hospitalized injuries extended far beyond the epicenter of the earthquake and were not equally distributed around the epicenter (Figure 1). Although all of the lethal injuries were within 20 km of the epicenter, all but two were more than 10 km away. Most of the injuries occurring within 5 km of the epicenter were minor/moderate. The lethal injury locations were clustered to the southeast of the epicenter, with one location slightly to the north and one to the northwest. Severe injuries were spread throughout the area, and only one location was directly near the epicenter. The radius of area in which severe injuries occurred was wider than that for lethal injuries, and wider still for minor/moderate injuries. However, the attenuation of injuries by severity does not show a concentric attenuation from the epicenter.

Earthquake-related hospitalizations were on average 5.2 times further from the epicenter than fatal injuries, with a median distance for fatalities of 3.451 km compared with 17.899 km for hospitalized injuries (Table 1). Fatalities also showed less variation in the range of distance. Fatal injuries occurred between 3.332 and 32.396 km from the epicenter earthquake (a range of 29.064 km) and hospitalized injuries occurred between 0.311 and 53.208 km from the epicenter (a range of 52.897 km). However, the range of fatal injuries fell entirely within the range of severe injuries, indicating no distinct trend differentiating the two.

Injury severity, as measured by the Injury Severity Score, decreased with increasing distance from the epicenter, although the ranges by injury severity had much overlap (Table 1). Severe injuries were on average 2.5 times further away from the epicenter than lethal injuries (ISS = 76), and moderate and minor injuries were more than five times further. However, the injury closest to the epicenter was a minor injury, and lethal injuries occurred as far as 14.107 km from the epicenter.

Table 2 shows the distance from the epicenter by external cause of injury. The MDR was calculated using the median

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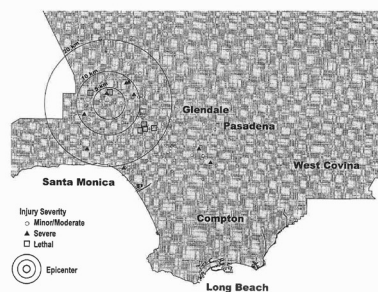


FIGURE 1. 1994 Northridge earthquake injury locations by injury severity.

distance for all injuries combined as the reference to compare with the median distance of the cause of injury categories. Injuries from being hit or trapped by building parts were the closest to the epicenter, with a median distance of 3.451 km and an MDR of 0.28 compared to the average for all injuries. Burns and being struck by household or other objects were also closer to the epicenter than combined injuries, with MDRs of 0.60 and 0.70, respectively. Cutting/piercing injuries were the furthest from the epicenter and were 1.7 times further from the epicenter than all injuries. Falls were 1.6 times further and motor vehicle injuries 1.1 times further from the epicenter than all injuries. Falls had the largest range in distance from the epicenter (from 0.311 to 43.369 km).

Injuries without concurrent structural damage were 5.6 times further from the epicenter than injuries caused by structural failures. Structurally-related injuries had a median distance of 3.451 km compared with non-structurally related injuries with a median distance of 19.423 km. The range for structurally-related injuries was smaller and closer to the epicenter than those not related to structural failure. Injuries caused directly by the ground shaking activity of the earthquake were on average 1.38 times further from the epicenter than injuries caused indirectly, which is opposite of the expected pattern. Most of the indirect injuries occurred during clean-up, and perhaps the risk for clean-up injuries is greater in areas with greater building destruction.

One factor which can greatly influence earthquake casu-

TABLE 1. Distance from epicenter and average peak ground acceleration (PGA) by fatal/non-fatal outcome and injury severity: Northridge Earthquake, California, 1994

	Number	Median distance in km (Range)	Median distance ratio	Average PGA (Range)
Outcome				
Fatal	30	3.451 (3.332-32.396)	1.00 (ref.)	0.99 (0.19-0.73)
Non-fatal	103	17.899 (0.311-53.208)	5.19	0.41 (0.14-0.75)
Injury severity (ISS)				
Minor/moderate (0-24)	98	18.826 (0.311-53.208)	5.49	0.41 (0.14-0.73)
Severe (25-75)	10	8.489 (3.332-32.396)	2.46	0.57 (0.19-0.73)
Non-survivable (76)	25	3.451 (3.409-14.07)	1.00 (ref.)	0.70 (0.42-0.72)

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TABLE 2. Distance from epicenter and average peak ground acceleration (PGA) by cause of injury and structural damage; Northridge Earthquake, California, 1994

	Number	Median distance in km (Range)	Median distance ratio	Average PGA (Range)
Total	133	12.442 (0.311-53.208)	1.00 (ref.)	0.46 (0.13-0.75)
Cause of injury				
Motor vehicle	3	13.873 (3.332-17.522)	1.12	0.53 (0.42-0.70)
Fall	65	19.505 (3.111-34.369)	1.57	0.39 (0.19-0.75)
Cutting/piercing	5	20.740 (0.710-25.611)	1.67	0.37 (0.24-0.48)
Hit/crushed by building parts	31	3.451 (2.598-27.592)	0.28	0.58 (0.19-0.75)
Hit/crushed by object	15	8.770 (1.081-29.916)	0.70	0.43 (0.19-0.70)
Burn	6	7.448 (5.024-20.932)	0.60	0.58 (0.42-0.75)
Other	6	18.804 (2.701-53.208)	1.51	0.49 (0.13-0.75)
Structural damage				
Yes	37	3.451 (2.598-27.592)	1.00 (ref.)	0.58 (0.23-0.75)
No	88	19.433 (3.111-53.208)	3.63	0.41 (0.13-0.75)
Unknown	8	13.795 (3.057-30.714)	N/A	0.42 (0.19-0.75)
Injury type				
Direct	119	13.195 (0.311-53.208)	1.38	0.45 (0.13-0.75)
Indirect	14	10.007 (3.332-20.932)	1.00 (ref.)	0.52 (0.42-0.75)

alities is population density. The Northridge Earthquake epicenter was located in the large metropolitan area of Los Angeles, which has very few uninhabited areas. The population density as measured by average persons per household ranged from one to over five, with over 90% of the county ranging between two and four. Most of the area within 20 km of the epicenter had an average household density of two or three. Similarly, 126 (94.7%) of the injuries occurred in areas with average persons per household of two or three. Injuries did not show a strong relationship with population density in this homogeneously populated area. However, injuries could have been more numerous if the epicenter had been located in an area with an average of five persons per household.

Modified Mercalli Intensity

Injuries mapped by the MMI and corresponding injury rates are presented in Figure 2. Injury rates increased more than exponentially with increased MMI. The geographical area of MMI IX, which had the strongest ground shaking intensity, was much smaller than areas of other MMI regions, and had a considerably higher injury rate (43.6 injuries per 100,000 residents) than other areas. The MMI VII region had an injury rate of 5.1 per 100,000 residents, and was not a contiguous area. Pockets of MMI VIII were located further from the epicenter than some areas of low ground shaking intensity, and these pockets had many injuries. The most notable of these was Santa Monica, which experienced heavy shaking and building damage. The MMI VII area had an injury rate of 2.1 per 100,000 residents, but the injuries were not evenly distributed throughout the region. Most injuries occurred to the southeast of the epicenter, with very

few in the northern and western areas in this MMI category. Fatal injuries, although concentrated in MMI IX and VII regions, were also found in the MMI VII region.

Peak Ground Acceleration

The average PGA measurements by zip code for all injuries was 0.46 with a range of 0.13 to 0.75. Fatal injuries were experienced in areas with a higher average PGA (0.59) than nonfatal injuries (0.42), although the average PGA values overlapped. Non-survivable injuries were found in areas with the highest average PGAs, ranging from 0.42 to 0.72. Minor/incidental injuries were found in areas with average zip code PGA ranges of 0.13 to 0.75, and overall were in areas with the lowest average PGA (0.42). The range of PGA values in areas where severe injuries were experienced was 0.19 to 0.73, with an average of 0.57. Burns and being hit or caught by building parts occurred in areas with the highest average PGA values; falls and cutting/piercing injuries in areas with the lowest. The greatest range of PGA values were for falls, being hit or caught by building parts, and being hit or caught by an object. Although being hit by building parts was related to very high PGA values, being hit by objects were, on average, in lower shaking areas. However, both types of injuries occurred in areas with a broad range of PGA values. Injuries related to structural damage occurred in areas with a higher average PGA (0.58) and also had a narrower range of PGA values than non-structural injuries. However, the areas in which structural and non-structural areas occurred had a large overlap in average PGA values. Injuries directly related to the earthquake occurred, on average, in areas with lower PGA values although the range was greater than that for indirectly-related injuries.

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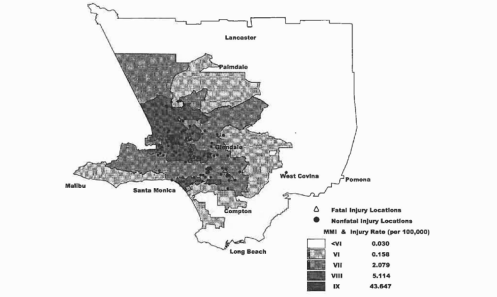


FIGURE 2. Modified Mercalli Index intensity regions and injury rates per 100,000 population in the 1994 Northridge earthquake.

Building Damage

Figure 3 shows the proportion of residential buildings damaged in the earthquake, the injury rate per 100,000 population, and the injury rate per 1000 damaged buildings. The percent of damaged buildings ranged from 0 to 12.5%. Of the 271 zip codes, 159 had no damaged residential buildings, 39 had 0.01% to 0.93% damaged, 36 had 0.94% to 3.46% damaged, and 36 had 3.47% to 12.5% damaged. Zip codes in the highest category of building damage were closest to the epicenter. Fatal or severe injuries were reported in 8.8% of zip codes with no damage, 28.2% of zip codes with minor damage, 61.1% of zip codes with moderate damage, and 89.2% of zip codes with the highest proportion of damage. Twenty-three injuries occurred in zip codes with no building damage. The injury rate was 0.48 per 100,000 population in zip codes with no damaged buildings, and increased to 6.22 in the zip codes with the highest proportion of damage. Injury rates per 1000 damaged buildings showed an inverse relationship to population-based injury rates. Areas with the highest concentration of damaged buildings had the lowest rate of 5.9 injuries per damaged building. The highest number of injuries per damaged building were among areas with less than one percent of buildings damaged. The rate per 1000 damaged buildings is undefined in areas with no building damage, but the population-based injury rates were identical

in areas with no damage and areas with less than 1% damage. This pattern occurs because most buildings which are damaged do not lead to occupant injuries and because many of the injuries were not related to building damage. Linear regression of injury rates with seismic hazards and building damage show a positive slope, which indicates that, as expected, injury rates increase with increasing building damage, PGA, and MMI (Table 3). MMI is the best independent predictor, with the model accounting for 15.1% of the variation in injury rate. The model including PGA as the independent variable accounted for 13.8% of the variation in injury rates, and the model with percent damage 11.7%. In the full model, 17.4% of the variation in injury rate was accounted by the independent variables and only MMI was significant in the full model. MMI is a subjective measure of perceived shaking activity, and incorporates many factors influencing how strongly building occupants experience the earthquake. Although these models indicate a linear relationship between injury rates and PGA, MMI, and building damage, much of the variation is unexplained.

DISCUSSION

Mapping injuries, which result from disasters such as the Northridge Earthquake, allows visualization of spatial relationships between injuries and important geophysical injury

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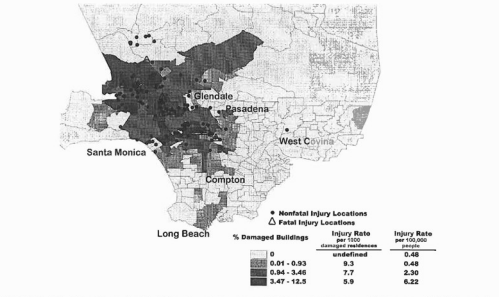


FIGURE 3. Proportion of damaged residential structures, injury rate per 1000 damaged residences, and injury rate per 100,000 population in the 1994 Northridge earthquake.

predictors. This type of analysis is important particularly in the description of potential risk factors for earthquake-related death and injury. Injury incidence and severity in the Northridge Earthquake had strong relationships to ground shaking and building damage, but injuries were widespread throughout the region. Most of the linear variation in injury rates was not explained by ground shaking and building damage alone.

Hospitalized injuries of minor and moderate severity occurred more than five times the average distance from the epicenter than severe and non-survivable injuries. Injuries unrelated to structural damage occurred with a considerably larger average distance from the epicenter than injuries involving structural damage, while injuries caused by being

struck or caught by building parts were much closer to the epicenter than other types of injuries.

Injury incidence in the Northridge Earthquake was related but not highly predicted by the distance from the epicenter, MMI, PGA, and the proportion of damaged residential buildings. Injuries of all severities occurred over a wide range of distances from the epicenter, with injuries occurring in areas far removed from high ground shaking activity. Some of these distant injuries were related to structural damage, such as fallen roadways, and according to traditional spatial models such structurally-related injuries are expected to be more closely associated with ground shaking activity. Although building damage is often cited as the most

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important predictor of fatal injury (1-4), this relationship is less strong when non-fatal injuries are included. Building damage was a less important predictor of injury rates than MMI or PGA, and injury rates per 1000 damaged residential buildings were inversely related to increasing proportions of building damage. This finding suggests that injury rescue efforts cannot be solely focused in the immediate damage zone. MMI, which measures the effects of shaking through human perception, may be the best predictor of injuries because it is most closely related to the human experience. MMI information is not readily available, and is therefore not an effective guide of rescue efforts.

These findings have important implications for earthquake preparedness. Alexander states that "one of the most important problems immediately after the [earthquake] is to clarify the geography of the disaster area, including the location of injured victims and the configuration of the impact zone." Data which can predict the boundaries for severe injuries can facilitate search and rescue efforts and help hospitals prepare for patient treatment. Injury configurations from the Northridge Earthquake indicate that although fatal and severe injuries were concentrated near the epicenter, the impacted area was quite large and did not radiate from the epicenter in concentric patterns. Agencies responding to human needs following disasters must be prepared to provide services to an area much larger than predicted by high earthquake activity.

Although this study highlights several relationships between injury and environmental factors, several limitations must be considered. The 30 injuries with unmapped injury addresses could have led to underestimated rate calculations and biased distance descriptions if addresses and injury characteristics were significantly different than those with geocoded injury locations. Since PGA measurements and MMIs were based on averages within zip codes, differences within zip code boundaries were not examined. Information about injuries of moderate severity, motor vehicle-related injuries, and cutting/piercing injuries may be imprecise because of the small number of cases.

In spite of these potential limitations, this study has shown that low median distance, high average Mercalli Index, and high average PGA, and areas with high damage to buildings are related to more severe injury, injuries caused by falling building parts, and injuries involving structural damage. Even with this information, it is difficult to predict with certainty all outcomes and causes of injury solely on these environmental characteristics. Examining distance, MMI, PGA, and building damage alone as risk factors for injury ignores other factors that would likely contribute to injury outcome and severity such as demographic characteristics (age, gender), search/rescue efforts, and speed of medical delivery. Risk factors for injuries resulting from earthquakes are complex and may involve interactions among these and many other factors.

Risk assessment models, which can incorporate both seismic hazard and individual data, will be powerful tools in the understanding of injury causation during earthquakes. As databases from earthquakes become more sophisticated, the ability to combine seismic, environmental, and behavioral risk factors will facilitate efforts to prepare and react efficiently in future earthquakes.

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Comment Letter L49

Netherton, Laurence, North County BRS Project, LLC

January 30, 2014

North County BRS Project, LLC

January 30, 2014

VIA EMAIL: Kevin.Canning@ocpw.ocgov.com.

Kevin Canning
OC Public Works/OC Planning
300 N. Flower
P.O. Box 4048
Santa Ana, California 92702-4048

Re: Esperanza Hills Draft EIR

Dear Mr. Canning:

This letter presents the comments of North County BRS Project, LLC ("North County"). North County is the proponent of the Cielo Vista project which lies immediately west and adjacent to the Esperanza Hills project for which the County of Orange has prepared and circulated a Draft EIR. We offer the following comments on the Draft EIR for the Esperanza Hills project.

North County's principal concern regarding the Draft EIR is the inclusion of North County's property as part of the Esperanza Hills project, and the infeasibility of the project. Since the inception of the Esperanza Hills project, North County has expressed concerns to the County and to the Esperanza Hills project proponent that it has not given its permission, nor does it intend to grant permission to Esperanza Hills to include North County's property as part of its project. The following is a partial list of the Esperanza Hills project elements that are located on North County's property and to which it objects:

- Access Option 1 proposes a 50-foot emergency access corridor through Cielo Vista's proposed residential development--and over proposed residential lots--in a north to south alignment that uses North County's property to connect the Esperanza Hills project site to Via del Agua and Stonehaven Drive.
- Access Option 2 proposes a main entryway connecting to Aspen Way and San Antonio Road across Cielo Vista's 36 acre open space amenity.

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L49-1

L49-2

**Response to
Comment Letter L49
Netherton, Laurence
January 30, 2014**

- L49-1 The County acknowledges receipt of a letter from Laurence Netherton on behalf of North County BRS Project, LLC dated January 30, 2014. North County is the proponent of the proposed Cielo Vista project.
- L49-2 The commenter objects to the inclusion of off-site property within the analysis of the DEIR. Specifically, the DEIR analyzes several portions of off-site property within the DEIR because the County is required to analyze all reasonably foreseeable potential options or consequences of the Proposed Project. The off-site property includes the "Potential Access Corridor" as designated on pages 31 and 33 of the Cielo Vista Area Plan, and analyzes the off-site property affected by Option 2 connecting to Aspen Drive, and also the off-site area affected by Options 2A and 2B, which North County BRS requested in a letter from Mr. Netherton dated January 30, 2013 that the County require to be analyzed in the DEIR. The off-site area also includes an area within the PacAm Easement, as further described below. All four options analyzed in the DEIR depict off-site grading on the Cielo Vista property. None of the off-site grading is necessary for the construction of lots, as Option 2B shows a lot configuration where there is 100 feet between the western border of the Esperanza Hills project and the location of the nearest house. This lot configuration can be used with any of the four options. All of the proposed off-site grading is for road or utility purposes.

Because of the potential access issues, a letter from the County dated September 21, 2012 was sent to the Project Applicant, which states: "We need appropriate documentation that depicted off-site grading will be permitted by the affected property owner." In discussions following receipt of the letter, the County explained that its position was that CEQA required that all potential access options should be analyzed in the Draft EIR, including the Potential Access Corridor proposed in the Cielo Vista Area Plan and any potential access to Stonehaven Drive. Access for Option 1 occurs through existing easements. Access for Options 2, 2A, and 2B would require agreement of the Cielo Vista developers or owners, or access may occur through other governmental actions, such as conditions placed on the Cielo Vista project as part of its entitlements, conditions placed on Esperanza Hills as part of its entitlement, or through eminent domain from a governmental agency. As any of these events may occur, it is a reasonable and feasible project component to analyze.

A clarification letter from the County dated October 4, 2012 confirmed discussions with the County on the access issues. It explained: "As we have discussed, we need you to respond to your plans and actions to date regarding off-site aspects of the project, however, actual 'documentation' will not be required until the actual grading or improvement. We note that such timing has adequate precedent in the processing and approval of subdivision maps, where off-site easements must be acquired prior to implementation." Therefore, the DEIR included information regarding the agreements and easement clarification that would be required for each option. The options and easements are identified as follows.

- Access Option 2 proposes substantial grading for the proposed entryway across Cielo Vista's open space amenity in addition to the width of the Access Option 2 entryway itself.
- The fuel modification plans for both Options 1 and 2 require locating fuel modification zones on Cielo Vista – not all of which is disclosed in the Draft EIR.
- The grading plans for both Options 1 and 2 require extensive grading and slope work on the Cielo Vista project site in order to support the Esperanza Hills residential building pads – not all of which is disclosed in the Draft EIR.

As both Options 1 and 2 of the Esperanza Hills project require development on North County's property in order to render the project both physically feasible and financially feasible (see Esperanza Hills Draft EIR at 5-310), and there is no agreement to allow any of the Esperanza Hills project elements on North County's property, it is clear that the Esperanza Hills Draft EIR is fatally flawed by presenting an inadequate project description which renders the analysis of project impacts equally flawed. The Draft EIR must be revised to describe a project that does not rely on any North County property for access, grading, fuel modification or any other project component; comprehensively analyze the environmental impacts of that project; describe legally adequate mitigation measures (and analyze the impacts of those measures) that do not defer either analysis or formulation of mitigation for significant impacts; and re-circulate the Draft EIR so that the public can review the impacts of a feasible project.

L49-2
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1. The EIR's Project Description Must Describe a Feasible Project. The Project Description is Inadequate Because the Esperanza Hills Project is Infeasible.

CEQA Guidelines Section 15121 (14 Cal. Code of Regs. § 15121) describes an EIR as "an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project." Implicit in this requirement is that the information provided to the public is accurate and complete so that the analysis provides an accurate and complete disclosure of the potential environmental impacts of a project." "The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision makers, and the public, with the information about the project that is required by CEQA." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 672 (quoting *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1221).

Fundamental to providing an adequate analysis of potential environmental impacts is an adequate project description. "[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199. It is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action.

L49-3

Option 1 provides for primary access to Stonehaven Drive consistent with the PacAm Easement and the ADI agreement, with emergency access via a 50-foot easement over the western portion of the Virginia Richards Trust property ("Richards Easement"). The Richards Easement was created through an Orange County Partition Judgment that divided the former Carrillo Ranch property ("Partition Judgment"), which also created the Virginia Richards Trust parcel and the Yorba Trail parcel that is part of Esperanza Hills. The partition judgment was dated May 20, 1958 and recorded May 28, 1958, in Book 4297, Page 93, in the records of the Orange County Recorder's office.

Option 2 was the Proposed Project's original design providing for main access to Aspen Drive, which currently dead ends into the Cielo Vista property with secondary emergency access to Stonehaven Drive along the existing unimproved road. The Option 2 access lies north of the alignment of the "Potential Access Corridor" proposed by Sage Community Development on page 31 of the Cielo Vista project Area Plan, across the middle of the Amos Travis Trust property. The Potential Access Corridor was based on a prior conceptual access design to San Antonio Road designed by KTGy and submitted to the County and the City for discussion several years ago when Gary Lamb first became involved in the design of the Esperanza Hills project. The lead designer for the KTGy conceptual access was Ken Ryan, former Mayor of Yorba Linda.

The Project Applicant researched legal entitlements for access to Stonehaven Drive, and discovered three additional easement agreements that provided access to Stonehaven Drive or Via del Agua – an agreement between Ahmanson Development and David Murdock recorded December 12, 1988 providing access directly south to Stonehaven Drive (ADI Agreement), an easement to Pacific American Properties recorded August 17, 1978 that provided historical access prior to the recordation of any of the recorded subdivision tracts directly south of the project (PacAm Easement), and an easement granted by Brighton-Bannon to the City for right of way over Lot 3 of Tract 13800, which granted a 54-foot right of way access from the southern border of the Virginia Richards land to Via del Agua. (Brighton Easement). Litigation related to the Richards Easement was settled in favor of Yorba Linda Estates, affirming the existence of a 50-foot easement for roadway and public utilities along the western border of the Cielo Vista property.

On January 30, 2013, the commenter sent a letter to the County requesting that another option be considered, which was fully analyzed in the DEIR as Alternative Option 2A. Options 2A and 2B utilize the "Potential Access Corridor" contained on pages 31 and 33 of the Cielo Vista Area Plan. Site plans and grading plans for all options have been included in the DEIR. In addition to Options 1, 2, and 2A, Option 2B was included as an Alternative in the DEIR. Option 2B pulls back residential pads, thereby eliminating the need for off-site grading at the Proposed Project's western boundary adjacent to the proposed Cielo Vista project for lot construction purposes, and also reduces the need for retaining walls and the height of retaining walls on the western border of the site. The DEIR has comprehensively analyzed the impacts related to each access option and is adequate and complete. As noted, at the request of County staff, all potential options were included in the DEIR, and measures were identified to resolve any outstanding issues relating to each access option, such as obtaining easements and agreements between the Project Applicant and adjacent property owners, resolving disputes through litigation, or resolution of disputes through other governmental action. Analysis of all access options is a requirement of CEQA, and that requirement has been satisfied here. No recirculation of the DEIR is necessary.

Silveira v. Las Gallinas Valley Sanitary Dist. (1997) 54 Cal.App.4th 980, 990; see also *San Joaquin Raptor Wildlife Rescue Center, supra*, 27 Cal.App.4th at 730; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143. However, “[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *County of Inyo, supra*, 71 Cal.App.3d at 198. “[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives” *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454. Absent a project description that describes a feasible project, the public and decision makers will not be adequately informed about the full scope and magnitude of the Project. The inaccurate description necessarily will carry over into the impact analysis, resulting in an understated and inadequate analysis of the Project’s impacts. See e.g., *San Joaquin Raptor Wildlife Rescue Center, supra*, 27 Cal.App.4th at 672-673.

An inadequate project description is precisely what is presented in the Esperanza Hills Draft EIR. The project that is described is not feasible. “Feasible” as defined by CEQA means: “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Public Resources Code § 21061.1.) Absent the landowner’s approval to grade, conduct fuel modification or provide access, the Esperanza Hills project cannot be accomplished in a successful manner within a reasonable period of time and is, in short, simply infeasible.

The County has been aware of the Esperanza Hills project infeasibility well before the Draft EIR was published. In its March 11, 2013, letter to Douglas Wymore (the Esperanza Hills project proponent), the County stated:

“[T]he County of Orange has become aware that your client may not possess the required property rights for certain alternatives that you have proposed or are contemplating analyzing in the EIR for your project. . . . The feasibility of a project includes, but is not limited to the feasibility of all offsite improvements on adjacent properties, and complete technical studies that adequately address the potential impacts of the proposed project. Both Options 1 and 2 included in the Notice of Preparation . . . include offsite grading and access for which you will need to acquire sufficient property rights. At this time, it has not been adequately demonstrated to the County that either of these project alternatives are feasible.” (Letter from Polin Modaniou, OC Public Works, County of Orange to Douglas Wymore, dated March 11, 2013, attached to and incorporated as part of this comment letter as Exhibit A.)

The County concluded by stating: “Any alternative for which an applicant does not have the required property rights will most likely be found infeasible if included in the Draft EIR.” As the Esperanza Hills project has never obtained the required property

L49-3
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- L49-3 Commenter contends that the Proposed Project as described is not feasible due to the absence of the adjacent property owners' approval to grade, conduct fuel modification, or provide access. Please refer to response to Comment L49-2 above. Under CEQA, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors (CEQA Guidelines §15364). The DEIR analyzes the various avenues through which disputes over off-site access and grading can be resolved.

An EIR must describe a reasonable range of alternatives to the project that could feasibly attain the project's basic objectives while reducing or avoiding any of its significant impacts and evaluate the comparative merits of the alternatives (*California Public Resources Code* §21100(b)(4); CEQA Guidelines §15126.6(a)-(e)). While an EIR is not required to consider alternatives that are infeasible, selection of alternatives is governed by the rule of reason (CEQA Guidelines §15126.6(a)). If a project will result in significant environmental impacts that will not be avoided or substantially lessened by mitigation measures, the agency must consider environmentally superior alternatives identified in the EIR and find that they are infeasible before approving a project (*Public Resources Code* §21081(a)(3); CEQA Guidelines §15091(a)(3)). Such a finding must be supported by substantial evidence in the record (*Public Resources Code* §21081.5; CEQA Guidelines §15091(b)). Therefore, given the range of alternatives provided in the DEIR, commenter's statement that that Proposed Project as described and analyzed in the DEIR is not feasible is inaccurate.

rights for any offsite improvements shown in the Draft EIR under the various options, both options must be found infeasible.

L49-3
(cont'd)

2. Esperanza Hills Does Not Have Rights to Construct a 50 foot Emergency Access Through the Cielo Vista Proposed Residences.

In response to the County's March 11, 2013 letter, Esperanza Hills has represented to the County that it has the legal right to cross through the Cielo Vista property to provide an emergency access route to Via del Agua by virtue of an easement. As discussed in the attached letter from Laurence Netherton to Richard Sandzimier, Deputy Director/OC Public Works, dated November 12, 2013 ("Netherton letter"), a copy of which is attached as **Exhibit B** and incorporated as part of this comment letter, no such easement exists because there is no basis for such easement legal or otherwise. More recently, concerns regarding the feasibility of the Esperanza Hills project were expressed to the County by North County's attorney. (See letter from Susan Hori, Manatt Phelps Phillips to Jack Golden, Deputy Counsel, dated November 27, 2013, attached as **Exhibit C** and incorporated as part of this comment letter.) Ms. Hori's letter raised legal concerns about moving forward with an EIR "until it can be demonstrated that the proposed project and all alternatives analyzed in the Draft EIR are feasible." Without an ability to legally provide the proposed emergency access corridor, the Esperanza Hills Access Option 1 is not feasible. Because the Esperanza Hills Access Option 1 is infeasible, all environmental analysis of this Access Option 1 is also flawed because it relies on a project description that is inaccurate and infeasible. The Draft EIR must be revised to include a project description that is feasible and accurate, the environmental analysis must be revised to reflect the corrected project description, and the Draft EIR must be re-circulated.

L49-4

3. Esperanza Hills Does Not Have the Right to Grade or Cross the Cielo Vista Project Site to Implement Access Option 2.

As discussed in the Netherton letter and Hori letter, Esperanza Hills has not established and does not have a right to cross or grade upon Cielo Vista property and therefore Access Option 2 must also be deemed infeasible. Without an ability to legally provide the proposed access to the Esperanza Hills project, Access Option 2 is not feasible and all environmental analysis of this Access Option 2 is flawed because it relies on a project description that is inaccurate and infeasible. The Draft EIR must be revised to include a project description that is feasible and accurate, the environmental analysis must be revised to reflect the corrected project description, and the Draft EIR must be re-circulated.

L49-5

4. The Analysis of Fire Hazards is Flawed Because it Depends Upon Infeasible Fuel Modification.

L49-6

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- L49-4 Commenter is referred to responses to Comments L49-2 and L49-3 above. As noted above in the response to Comment L49-2, ongoing litigation regarding the easement in question has been decided in favor of Yorba Linda Estates. The provision of four Options for ingress/egress and emergency access is adequate and complete and provides the decision makers with the required information on which to make an informed decision.

The Subdivision Map Act, at *California Government Code* §66475 states in pertinent part that: "There may be imposed by local ordinance a requirement of dedication or irrevocable offer of dedication of real property within the subdivision for streets, alleys, including access rights and abutter's rights..." In turn, Orange County Code Section 7-9-295.a. provides that the County Subdivision Committee may, as a condition to the approval of subdivision maps, "require the dedication ...(of) all real property (or interest therein) both on or off site required for public use or benefit, including but not limited to...[l]ocal streets, arterial highways and transportation corridors."

Accordingly, under these provisions the County Subdivision Committee has the right, and in fact would be expected, to condition development of the Proposed Project on the acquisition of road rights of way for the Esperanza Hills project as it is ultimately approved by the County's elected officials. The County Subdivision Committee also has the right, and would be expected, to condition development of the proposed Cielo Vista project on the requirement that it provide easements for access to the Esperanza Hills project, which would in turn provide access to the land owned by Yorba Linda Land, LLC and Bridal Hills, LLC, which adjoin the Esperanza Hills property to the northwest. Based on these reasonable expectations and discussions with the County Planning Department, Esperanza Hills has designed such access in each of its Options.

- L49-5 Please refer to response to Comment L49-4 above.

- L49-6 As shown in the DEIR, fuel modification could extend onto the Cielo Vista property depending on the option selected. However, lots located at the Project's western edge can be pulled back as shown in Option 2B (Exhibit 6-19 in the DEIR) eliminating the need for fuel modification beyond the Project boundaries on its western border.

One of the more significant environmental concerns of the Esperanza Hills project is its potential effect on wildfire hazards. Section 5.7 of the Draft EIR analyzes the proposed project and the fuel modification requirements for Site Plan Option 1 (which reflects Access Option 1) and Site Plan Option 2 (which reflects Access Option 2). It is indefensible that a Draft EIR would be distributed for public review for a project option that is not only infeasible but incomplete. Site Plan Option 1 and its associated Fuel Modification Plan (Exhibits 5-68 and 5-70) rely upon offsite improvements in order to provide the necessary protection zones for the proposed residences. Yet, rather than depict these zones and improvements, the County's EIR simply terminates the depiction of these required improvements at the project's boundary line.

L49-6
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Site Plan Option 1 should have either been re-designed such that all grading and fuel modification for the proposed residences were located within the Esperanza Hills project boundaries, or should have shown the required offsite work and disclosed that Site Plan Option 1 was infeasible because the offsite work could not be implemented. Instead, the Draft EIR simply truncated the site plan leaving the public to wonder what type of fuel modification and grading will be provided to support the residential development. Although the Draft EIR implies that an alternative fuel modification zone is available to allow for development of those lots requiring fuel modification on the Cielo Vista property, no depiction of the layout of the zones is provided to confirm that these zones can be located all within the Esperanza Hills property, nor has substantial evidence in support of the conclusion that this alternative satisfies Orange County Fire Authority requirements has been provided.

L49-7

In addition to an inadequate analysis of the fire hazard impacts, the Draft EIR also identifies an infeasible mitigation measure to address the potentially significant fire hazard impacts of the project. Mitigation Measure Haz-8 requires the Project Applicant to obtain written legal permission in the form of a Fuel Modification Easement from any off-site landowners prior to recordation of the Final Tract Map. Given the fact that North County has refused to grant such an easement, this mitigation measure's feasibility is highly questionable contrary to CEQA's mandate that "An EIR shall describe feasible measures which could minimize significant adverse impacts." (CEQA Guidelines § 15126.4(a)(1).) The Draft EIR must be revised to (1) explain to the reader how and where fuel modification zones will be provided under Site Plan Option 1; (2) what other offsite improvements, e.g., grading, are needed to implement Site Plan Option 1; (3) assess the feasibility of Site Plan Option 1; and (4) describe feasible mitigation measures.

Although Site Plan Option 2 does depict areas of offsite improvements, it too suffers from the same inadequacies as Site Plan Option 1 as the Draft EIR has failed to disclose that it is infeasible to implement the fuel modification (and grading) as depicted, and utilizes an infeasible mitigation measure to mitigate the potentially significant fire hazard impact.

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L49-7 See response to Comment L49-6 above. Option 1 has been redesigned to provide for off-site grading as follows.

First, there is off-site grading onto the Bridal Trail, LLC property to the north of the Yorba Linda Estates LLC property and the west of the Nicholas/Long property, both of which are part of Esperanza Hills. There is a Cut/Fill Agreement between Yorba Linda Estates and Bridal Trail that permits the off-site grading and benefits both properties. To be developable in the future, the Bridal Trail property needs approximately 1.3 million cubic yards of fill and access from the Esperanza Hills project. To create access, the main road was redesigned to run closer to the Bridal Trail property, and the owners of the Bridal Trail property have approved that design.

Second, there is off-site grading that will occur in the 50-foot easement area on the Virginia Richards Trust property, which will then extend south to Via del Agua. There are three easements or road dedications that allow for this off-site grading as detailed above in response to Comment L49-2.

Finally, there is off-site grading that would occur from the southern portion of the Virginia Richards Trust property to Via del Agua. Existing easements allow this, including the 50-foot easement created by the Partition Judgment that extends south beyond Via del Agua. An easement was created over the same area by the developers of Lot 3 of Tract 13800 and Tracts 13800 and 10455 a road dedication, which provides an offset road down to Via del Agua that uses part of the easement created by the Partition Judgment.

As noted in response to Comment L49-2 above, the County recognizes that “. . . actual ‘documentation’ will not be required until the actual grading or improvement. We note that such timing has adequate precedent in the processing and approval of subdivision maps, where off-site easements must be acquired prior to implementation.” Therefore, subsequent to Project approval and prior to issuance of a grading permit, the Project Applicant will seek the legal authorizations required based on the option approved. The Project construction cannot commence without the Fuel Modification Easement if an off-site Fuel Modification Easement is necessary at that time, so the Mitigation Measure will be satisfied. The lot design created as part of Option 2B moves the lots approximately 100 feet to the east, avoiding the necessity for off-site fuel modification, as shown on Exhibit 6-19 in the DEIR, and can be incorporated for Options 1, 2, 2A, or 2B.

5. The Analysis of Geological Impacts is Flawed Because it Depends Upon Infeasible Off-site Grading, and Mitigation of Impacts has been Improperly Deferred.

Site Plan Option 2's grading plan (Exhibit 5-4) depicts areas of offsite grading and improvements which cannot be implemented because the project proponent has not acquired the rights to conduct work on North County's property. Absent the ability to implement this project component, this option must be considered infeasible.

L49-8

Site Plan Option 1's grading plan (Exhibit 5-3) depicts a plan that eliminates all grading at the project boundary line but suffers from other issues of legal inadequacy. While Esperanza Hills must avoid grading on offsite areas for which they do not have the rights to do so, we question whether the grading shown on Exhibit 5-3 is feasible, and whether it is geologically safe. According to the Geology and Soils section, the abrupt termination of the fill slope along the western project boundary will require a series of tiered retaining walls. (See Esperanza Hills Draft EIR at 5-223.) The design and location of these walls are not shown in the Draft EIR, nor are the impacts of constructing these retaining walls analyzed. The Draft EIR provides only a truncated, conclusory analysis at page 5-238 disclosing that "Some walls with significant combined wall/slope heights to be constructed across steep and unstable natural slopes may not meet minimum factors-of-safety for gross stability without proper design. Some may also be underlain by landslides where gross stability is not possible without additional grading." None of these potential impacts of the retaining walls are analyzed in the Draft EIR, and the impacts are dismissed only with the statement that mitigation measures are provided to reduce potential significant impacts. There is no demonstration of where and how the retaining walls will be built, whether they will be constructed entirely within the Esperanza Hills property footprint, how high these walls will have to be, what impacts will result from construction of these walls, how these walls will work together with the adjacent fill slopes, and whether these walls will indeed mitigate the significant geological impacts to less than significant. There is also no discussion in the impact analysis section as to which mitigation measures will address which impact – an inadequacy that is present in all of the impact analysis sections, not just Geology and Soils. The reader is left with conclusory statements that significant impacts will be mitigated with no explanation of which measures will do so and how.

The mitigation measures that are listed in the Geology and Soils section also fail to meet the requirements of CEQA. The mitigation measures improperly defer analysis to a future study which CEQA does not allow. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) Mitigation Measure Geo-1 defers analysis of the actual geologic hazards of the project site to a future study by requiring a future investigation and analysis for gross stability of the site. Mitigation Measure Geo-8 requires future studies to evaluate the feasibility of retaining wall design and stability, and sets forth a number of potential geologic hazards that may be encountered without fully analyzing

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- L49-8 American Geotechnical, Inc. conducted the geological testing and authored the Geotechnical Report included as Appendix G in the DEIR and the Fault Hazard Assessment Report included as Appendix H in the DEIR, approved by the County. American Geotechnical has prepared a Summary of Geotechnical Exploration and Engineering Analysis (Summary) dated March 12, 2014 (Appendix D herein), which shows the additional site work, trenching, boring, and other exploration activities that have occurred since approval of the Fault Study. None of the data discovered as a result of the extensive testing changed any of the original conclusions of American Geotechnical, which authored the Geotechnical Report. Once the Project is approved, American Geotechnical will finalize the geotechnical cross sections and perform engineering analyses to determine slope stability and formulate conclusive remedial grading recommendations that will ensure “geological safety” as noted by commenter.

With regard to commenter’s assertion that additional future geological studies are deferred mitigation, Mitigation Measure Geo-8 ensures compliance with County regulations and coordination with staff. Geo-1, as well as Mitigation Measures Geo-1 through Geo-19) establish clear, enforceable performance standards and specify one or more actions that can meet the standard. A Mitigation Monitoring and Reporting Program (MMRP) has been prepared as part of the County approval process. The project will be conditioned to comply with the MMRP, with oversight by appropriate County departments. Therefore, pursuant to the requirements of CEQA, the mitigation measures are not “deferred” mitigation. With respect to retaining walls, moving the lot design back 100 feet, as discussed previously herein, will reduce the requirement for retaining walls and their height. Exhibit 6-19 in the DEIR depicts the heights of the proposed walls, all of which will be constructed within the Project boundaries. The proposed retaining wall designs are shown on Exhibit 5-9 – Wall Examples in the DEIR.

the environmental impacts of the mitigation measures that may be required to address the unstable slopes on the project site. In short, the Draft EIR fails to provide the required level of geotechnical investigations to identify the areas of geologic hazards on the project site, the mitigation measures needed to address those hazards, and the impacts of those measures. The Draft EIR cannot defer analysis of these hazards to future studies, and cannot simply rely upon unspecified “grading methods” to conclude that impacts will be fully mitigated without a comprehensive analysis of the impacts, the mitigation measures, and their associated impacts.

L49-8
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In the *Sundstrom* case, the lead agency’s approval allowed for the revision of project plans in the future to incorporate needed mitigation measures after approval of the project. The court firmly concluded that this procedure was contrary to law. Similarly, the mitigation measures in the Geology and Soils section defer both analysis of the impacts and design of the mitigation measures to future studies.” As stated by the *Sundstrom* court, this is contrary to law.

As noted above, the Draft EIR also fails to analyze the impacts of the mitigation measures themselves. Mitigation Measure Geo-8 refers to strengthening wall foundations, buttressing unstable slopes through grading methods, soldier pile walls, tie back or other methods. Because inadequate studies were conducted, it is not known what type of work will be required to strengthen wall foundations, and what impacts will result from that work. The CEQA Guidelines requires that the impacts of mitigation measures also be addressed in the Draft EIR. “If a mitigation would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (Stevens v. City of Glendale (1981) 125 Cal.App.3d 986.)” (CEQA Guidelines § 15126.4(a)(1)(D).)

6. The Discussion of Alternatives is Flawed Because the Alternatives are Infeasible.

The Alternatives section of the Draft EIR analyzes variations of Access Option 2 designated as Alternative Options 2A and 2B. Alternative Option 2A essentially provides the same east-west main entryway as Access Option 2, except that it proposes to connect to San Antonio Road approximately 1850 feet south of the road shown under Access Option 2. Alternative Option 2B appears to be similar to Alternative Option 2A except that under Alternative Option 2B, in addition to the proposed San Antonio entryway, there would also be a proposed Stonehaven entryway. Both Alternative Options 2A and 2B cross North County’s property and traverse Cielo Vista’s natural open space amenity. Additionally, both alternatives show substantial grading associated with these proposed entryway alternatives, as well as grading associated with Esperanza Hills residential lots within Cielo Vista’s open space amenity. (Alternative Options 2A and 2B also cross property owned by the City of Yorba Linda – the authorization for which is also not addressed in this Draft EIR.)

L49-9

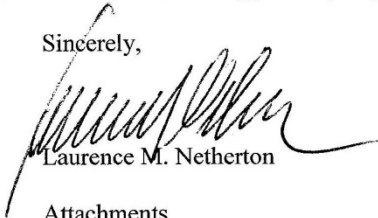
L49-9 Please refer to responses to Comments L49-2, L49-3, and L49-4 above.

Esperanza Hills has not established and does not have a right to cross or grade upon Cielo Vista property. (See Netherton letter.) Both of these alternatives are simply infeasible, and the Draft EIR is flawed for failing to describe the infeasibility of these alternatives. CEQA Guidelines Section 15126.6(a) requires the lead agency to “consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible.” The Draft EIR has ignored the direction of the CEQA Guidelines by failing to eliminate these alternatives from detailed consideration due to their infeasibility, and more importantly, has failed to accurately describe and analyze these two alternatives by not disclosing their infeasibility.

L49-9
cont'd

Thank you for the opportunity to provide these comments.

Sincerely,



Laurence M. Netherton

Attachments

311380007.1

3 Corporate Plaza, Suite 102 Newport Beach, CA 92660 (949) 644-3514 (949) 644-3977

EXHIBIT A

Letter from Polin Modanlou, OC Public Works, County of Orange to
Douglas Wymore, dated March 11, 2013



Ignacio G. Ochoa, P.E., Interim Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 667-0800
Fax: (714) 667-0896

March 11, 2013

Douglas Wymore
7114 E. Stetson Drive, Ste. 350
Scottsdale, AZ 85251

Subject: Planning Application PA120037, Esperanza Hills
21807 Old Esperanza Road, Yorba Linda CA

Project Description: General Plan Amendment from "Open Space" (S) to "Suburban Residential" (R1), and a Zone Change for the adoption of a Specific Plan to replace existing "A1" and "A1 (O)" Zoning Regulations. The Esperanza Hills plan proposes the development of approximately 340 residential units, and associated streets and infrastructure, local parks, and other recreational facilities on approximately 468 acres.

Dear Mr. Wymore:

Through the processing of the approvals and CEQA for the above-mentioned project, the County of Orange has become aware that your client may not possess the required property rights for certain alternatives that you have proposed or are contemplating analyzing in the EIR for your project. Title 14 of the California Code of Regulations (CCR), Section 15126.6(f) states that "the EIR need examine in detail only the [alternatives] that the lead agency determines could feasibly attain most of the basic objectives of the project." Section 15126(f)(1) goes on to indicate that one of the factors in determining feasibility of an alternative in the CEQA process is, "whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)."

The feasibility of a project includes, but is not limited to, the feasibility of all offsite improvements on adjacent properties, and complete technical studies that adequately address the potential impacts of the proposed project. Both Options 1 and 2 included in the Notice of Preparation (enclosed) include offsite grading and access for which you will need to acquire sufficient property rights. At this time, it has not been adequately demonstrated to the County that either of these project alternatives are feasible.

As a part of the screen-check review process for this EIR, the County will analyze and assess the feasibility of the project and all proposed alternatives. The Draft EIR will not be released for public review until it can be adequately demonstrated that the proposed project and all alternatives analyzed in the Draft EIR are feasible. Any alternative for which an applicant does not have the required property rights will most likely be found infeasible if included in the Draft EIR.

PA120037
March 11, 2013
Page 2 of 2

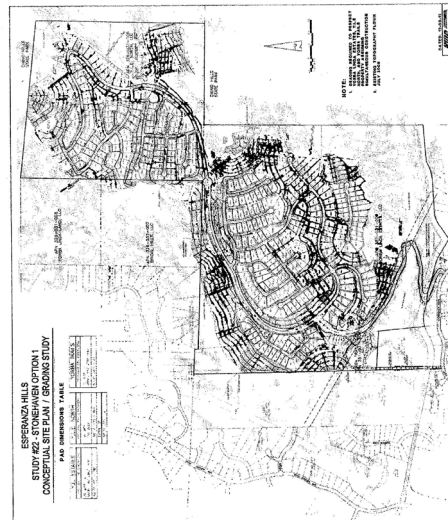
Should you have any questions regarding any of the information within this letter, please do not hesitate to contact me at (714) 667-3211 or Ms. Bea Bea Jiménez, Manager, Current & Environmental Planning at (714) 667-8852 and Ms. Jiménez's email is bea.bea.jimenez@ocpw.ocgov.com

Sincerely,

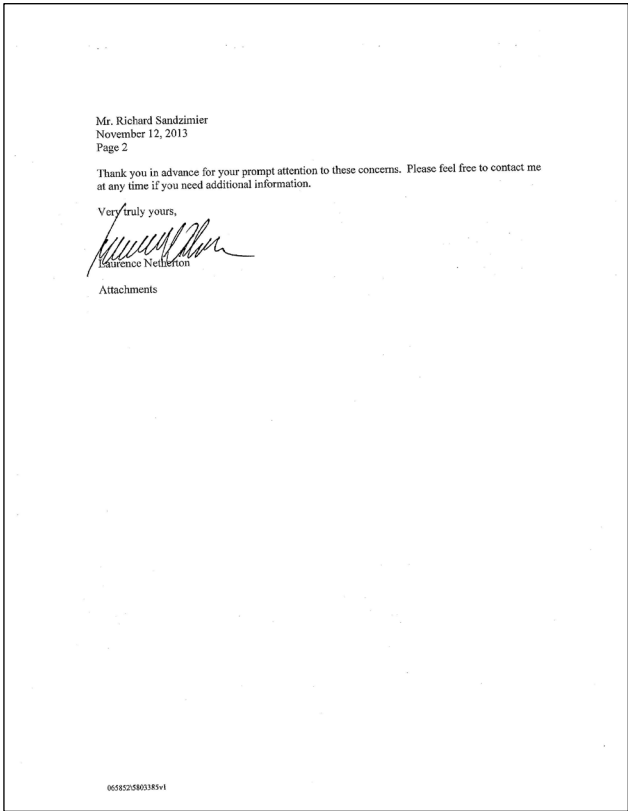
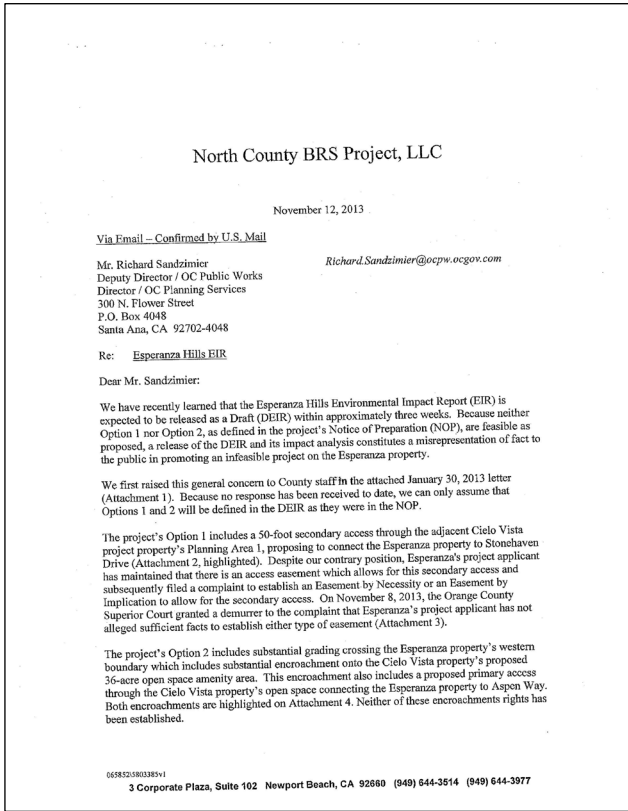
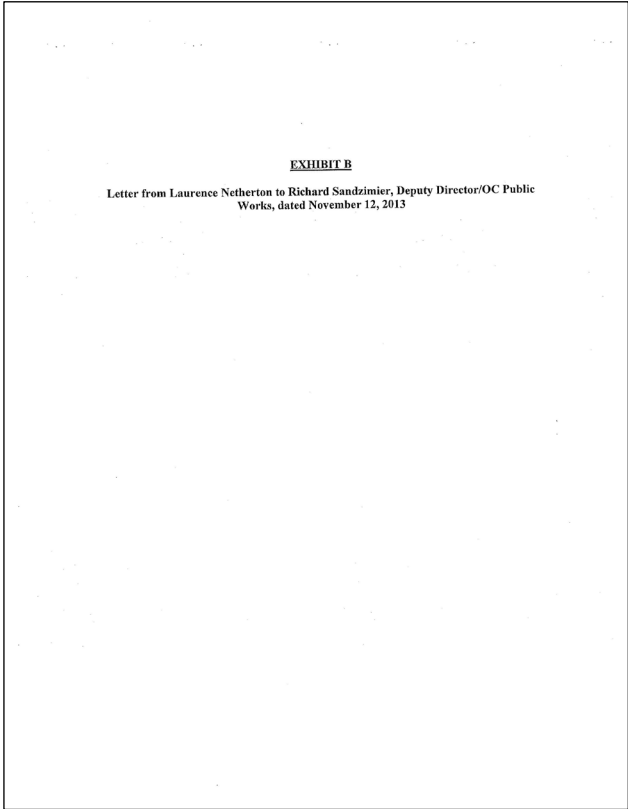
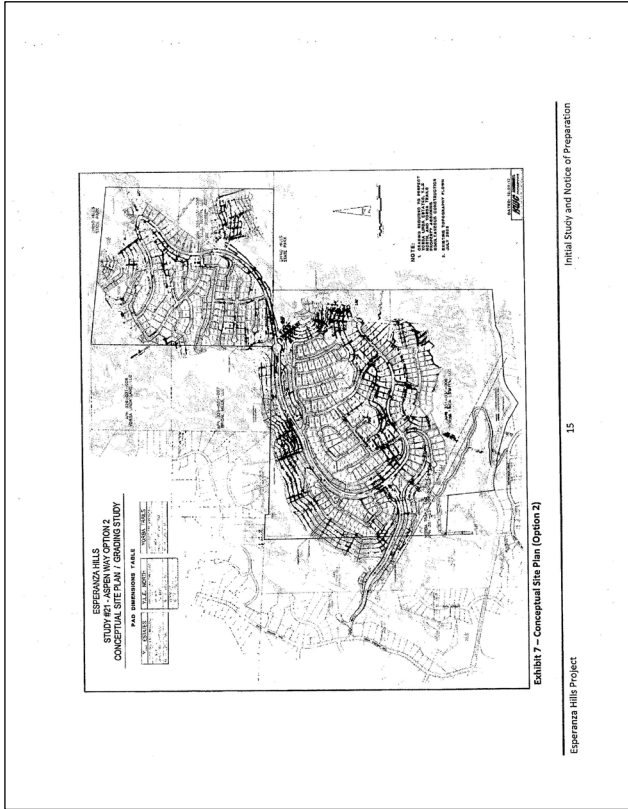
Polin Modanlou
Manager, Strategic Land Planning
OC Public Works/OC Planning Services

C: Supervisor Todd Spitzer, Third District
Thomas (Mat) Miller, Supervising Deputy County Council
Bea Bea Jiménez, Manager, OC Public Works/OC Planning Services/
Current & Environmental Planning
Kevin Canning, Project Planner, OC Public Works/OC Planning Services/
Current & Environmental Planning
Steve Harris, Community Development Director, City of Yorba Linda

Enclosure: Esperanza Hills NOP, Pages 13 and 15



Initial Study and Notice of Preparation
13
Exhibit 6 - Conceptual Site Plan (Option 1)
Esperanza Hills Project



ATTACHMENT 1

SAGE
COMMUNITY GROUP

January 30, 2013

VIA EMAIL (Kevin.Canning@ocpw.ocgov.com) & U.S. MAIL

Mr. Kevin Canning
OC Public Works/OC Planning
300 N. Flower Street
Santa Ana, CA 92702-4048

Re: Esperanza Hills Specific Plan – Notice of Preparation and Notice of Scoping Meeting

Dear Mr. Canning:

We have reviewed the Notice of Preparation and Notice of Scoping Meeting for the Esperanza Hills project and have the following comments:

Access

It appears that the major difference between Options 1 and 2 of the Conceptual Site Plan is primary and secondary access.

- Option 1 shows the primary project access connecting to Stonehaven Drive. Secondary access is shown extending through the Cielo Vista tract.

- Option 2 shows the primary access connecting to Aspen through Planning Area 2 of the Cielo Vista project, and secondary access connects to Stonehaven.

There is no existing right of easement through the Cielo Vista property where secondary access is shown on Option 1.

We would also appreciate an opportunity to review the preliminary design, engineering and grading study demonstrating feasibility of the primary access road that connects to Stonehaven and would request that the County review such document(s) and concur in the feasibility of this access before releasing a draft EIR for the Esperanza project.

Regarding Option 2, we have documented our objection to the primary access connection to Aspen because this would more create traffic issues than a less intrusive and more feasible route connecting directly to San Antonio in the draw just north of the intersection of San Antonio and Yorba Linda Boulevard. We suggest this be evaluated in the EIR as "Option 2A."

3 Corporate Plaza, Suite 102 Newport Beach, CA 92660 (949) 644-3514 (949) 644-3977

Grading and Permanent Slopes

Both Option 1 and Option 2 show substantial grading and permanent slopes, at some points in excess of 200 ft., on the Cielo Vista property. This constitutes the development of our property and would transform planned natural open space into a manufactured slope. This would diminish the value of Cielo Vista's Planning Area 2 lots, and there is no authorization for such grading.

The above comments should be addressed by the Esperanza proponents with the County. Thank you for the opportunity to comment.

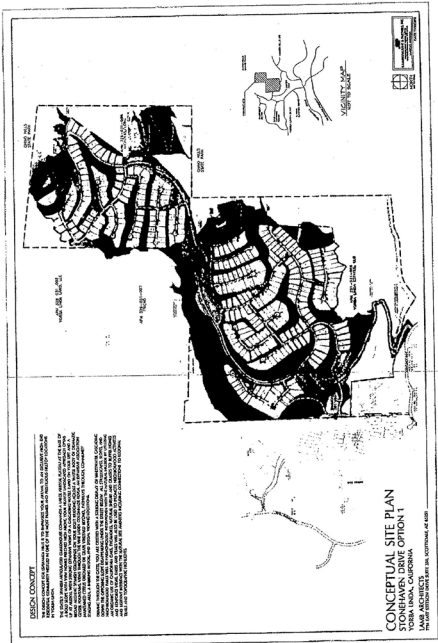
Sincerely,

Laurence Nettleton

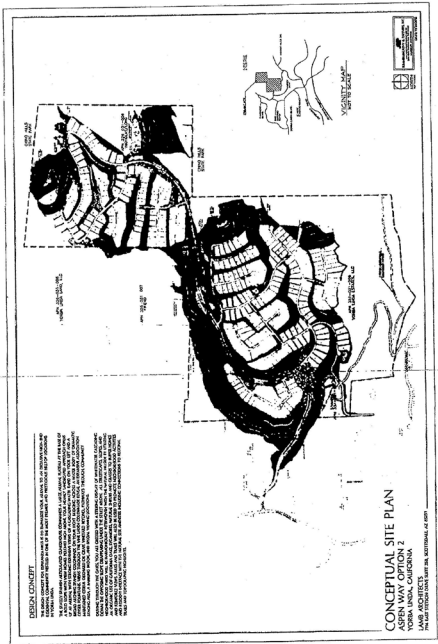
cc: John Moreland, OC Planning (via email)
Bea Bea Jimenez, OC Planning (via email)
Pelin Modanlou, OC Planning (via email)
Douglas Wynne, Esperanza Hills (via email)
Gary Lamb, Esperanza Hills (via email)

3 Corporate Plaza, Suite 102 Newport Beach, CA 92660 (949) 644-3514 (949) 644-3977

ATTACHMENT 2



ATTACHMENT 3



ATTACHMENT 4

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 11/08/2013 TIME: 10:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Robert J. Moss
CLERK: Betsy Zuanich
REPORTER/ERM: Sherri Lynn Kuebler CSR# 12339
BAIFF/COURT ATTENDANT: Mandi D Destra

CASE NO: 30-2013-00650665-CU-OR-CJC CASE INIT DATE: 05/21/2013
CASE TITLE: Yorba Linda Estates, LLC vs. Virginia Richards as Trustee of the Virginia Richards Revocable Intervivos Trust dated May 1, 1986
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 71797791
EVENT TYPE: Case Management Conference
MOVING PARTY: Yorba Linda Estates, LLC
CAUSAL DOCUMENT/DATE FILED: Complaint, 05/21/2013

EVENT ID/DOCUMENT ID: 71782298
EVENT TYPE: Demurrer to Complaint
MOVING PARTY: North County BRS Project, LLC, Linda M. Rodger and Nancy Ann Maggio as co trustees of the Virginia Richards Revocable Intervivos Trust dated May 1, 1986
CAUSAL DOCUMENT/DATE FILED: Demurrer to Complaint, 07/29/2013

APPEARANCES
William D. Coffee, from Songstad Randall Coffee & Humphrey LLP, present for Plaintiff(s).
Edward W. Racek, from GARRETT & TULLY, present for Defendant(s).

Tentative Ruling posted on the Internet.

The Court hears oral argument and confirms the tentative ruling as follows:

Defendant's demurrer to plaintiff's complaint. Demurrer sustained with leave to amend. The demurrer to the first, third, fourth and fifth causes of action is sustained with 21 days leave to amend.

The unopposed demurrer to the second cause of action for Easement by Implication is sustained without leave to amend because the Plaintiff has elected not to oppose the Demurrer as to the second cause of action for "quiet title - easement by implication."

The Plaintiff has not alleged sufficient facts to support a finding of standing required to support the causes of action pled. The complaint is not clear as to what interest the Plaintiff has in the Yorba Trail Property. As such, the court cannot determine whether the interest is sufficient to support the causes of action.

The demurrer to third cause for Easement by Necessity is further sustained on the basis that the Complaint does not allege that the property is landlocked. It alleges that it was landlocked. The Plaintiff alleges that "the partition of the Camillo Ranch Property resulted in Esperanza Allotment Parcel 3 being

DATE: 11/08/2013 MINUTE ORDER Page 1
DEPT: C23 Calendar No.

CASE TITLE: Yorba Linda Estates, LLC vs. Virginia Richards as Trustee of the Virginia Richards Revocable Intervivos Trust dated May 1, 1986
CASE NO: 30-2013-00650665-CU-OR-CJC

landlocked which gave rise to the necessity of a fifty (50) foot easement for road and public utility purposes over" the other two properties. [Complaint ¶35]. As such, it is clear that the Plaintiff is alleging that the property was landlocked at the time of the partition in 1986 but the complaint does not make an allegation that it is currently landlocked.

As such, the demurrer to the third cause is sustained with leave for this reason in addition the failure to allege standing with certainty.

The Defendants' Request for Judicial Notice in support of demurrer is granted with respect to both Exhibits 2 and 3.

CASE MANAGEMENT CONFERENCE is held.

Case Management Conference continued to 01/13/2014 at 08:30 AM in this department.

Court orders counsel for defendant to give notice.

DATE: 11/08/2013 MINUTE ORDER Page 2
DEPT: C23 Calendar No.

EXHIBIT C

Letter from Susan Hori, Manatt Phelps Phillips to Jack Golden, Deputy Counsel, dated November 27, 2013

manatt
manatt | phelps | philips

Susan K. Hori
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-5259
E-mail: shori@manatt.com

November 27, 2013

Client/Attor: 46784-060

Jack Golden
Deputy County Counsel
County of Orange
333 W. Santa Ana Boulevard, Suite 407
Santa Ana, CA 92702

Dear Jack:

I wanted to follow up on our exchange of messages yesterday regarding the Esperanza Hills project Draft Environmental Impact Report ("DEIR") and the adjacent Cielo Vista project, the developers of which I represent. I understand that the County is reviewing a screencheck DEIR for the Esperanza Hills project and will be publishing the DEIR shortly. Although I have not seen the screencheck, it is my understanding and that of our Cielo Vista project team, that the screencheck DEIR (and presumably the DEIR that will be circulated for public review) describes a project that shows development on the Cielo Vista project site for primary ingress and egress, emergency access, and extensive grading activities. This would be consistent with the plans for the Esperanza Hills project that have been discussed with the public at various workshops and presentations.

As you know, we have made clear since the inception of the Esperanza Hills project there is no consent for grading or other access on or through the Cielo Vista project site. In fact, on March 11, 2013, the County of Orange sent letters to both my client and the Esperanza Hills developer notifying them that: "The Draft EIR will not be released for public review until it can be adequately demonstrated that the proposed project and all alternatives analyzed in the Draft EIR are feasible. Any alternative for which an applicant does not have the required rights will most likely be found infeasible if included in the Draft EIR." (Copies of the letters are enclosed.) The Cielo Vista project took heed of the County's requirement and ensured that its land use plan did not propose development on land not otherwise owned, controlled or for which rights can be feasibly obtained. We assumed that Esperanza Hills would comply with the County's request to not propose infeasible development on property for which it does not have the requisite rights.

If this is indeed true that the Esperanza Hills project shows impacts or improvements on the Cielo Vista property we have serious concerns regarding the accuracy and adequacy of the Esperanza Hills DEIR because the Esperanza Hills project simply cannot be developed as proposed and is, in short, infeasible. A DEIR that analyzes an infeasible project is also flawed because those inaccuracies will result in an understated and inadequate discussion of project

695 Town Center Drive, 14th Floor, Costa Mesa, California 92626-1924 Telephone: 714.371.2500 Fax: 714.371.2550
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

manatt
manatt | phelps | phillips

Jack Golden
Chief Assistant County
November 27, 2013
Page 2

impacts in the DEIR. Because CEQA requires full disclosure of environmental impacts, the information disclosed must be accurate and the project analyzed must be feasible. "The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision makers, and the public, with the information about the project that is required by CEQA." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App.4th 645, 672 (quoting *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1221).

CEQA requires that the project description must describe a project that can actually be implemented. In this case, it would be a project that does not require grading on or the access shown across the Cielo Vista property. A feasible project will look very different and create significantly different impacts as compared to the project we believe is described and analyzed for Esperanza Hills. Among other things, in order to be feasible, the proposed project will need to be substantially reconfigured such that all grading is limited to the Esperanza Hills site, alternate primary and emergency access roads that do not require Cielo Vista property will need to be identified, and overall site circulation will significantly change. Such major changes likely will alter the environmental analysis that has been prepared for impact such as grading, air quality, and traffic.

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199. It is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. *Silveira v. Los Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 990; see also *San Joaquin Raptor Wildlife Rescue Center, supra*, 27 Cal.App.4th at p. 730; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143. However, "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." *County of Inyo, supra*, 71 Cal.App.3d at p. 198. "[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. . . ." *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454. Absent a project description that describes a feasible project, the public and decision makers will not be adequately informed about the full scope and magnitude of the Project. The inaccurate description necessarily will carry over into the impact analysis, resulting in an understated and inadequate analysis of the Project's impacts. See e.g., *San Joaquin Raptor Wildlife Rescue Center, supra*, 27 Cal.App.4th at pp. 672-673.

The omission of this critically important analysis violates CEQA's informational mandates. "The Guidelines unequivocally require the lead agency to certify a legally adequate final EIR prior to deciding whether or not to approve or carry out a contested project

manatt
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Jack Golden
Chief Assistant County
November 27, 2013
Page 3

(Guidelines, §§ 15089 to 15092.) "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision makers, and the public, with the information about the project that is required by CEQA."

We understand that the County may be choosing to defer the consideration of feasibility to after the public review of the document has concluded, however, the only authority for this in CEQA or the CEQA Guidelines is Section 15126.6 which pertains to findings an agency must make in determining the feasibility of mitigation measures and/or alternatives to lessen or avoid significant project impacts. This is not pertinent to the situation here where if the project description is inadequate because it describes development that cannot be implemented, then any environmental analysis based on such faulty assumptions also will be improper, regardless of when the determination of feasibility is formally made.

In closing, given CEQA's goal of informed decisionmaking, we do not believe the Esperanza Hills DEIR describes a feasible project or provides an accurate assessment of the environmental impacts of the project, and should be revised to describe a feasible project consistent with the March 11, 2013 letter from the County and analysis of its true impacts.

Thank you for your consideration of these comments.

Very truly yours,

Susan K. Flori
Susan K. Flori
Manatt, Phelps & Phillips, LLP

w/enclosures

cc: Richard Sandzimir w/enclosures
Thomas Mat Miller w/enclosures
Robert Smith, North County BRS Project LLC w/enclosures
Michael Recupero w/enclosures

311072364.2

ORANGE COUNTY
Public Works
Our Community. Our Commitment.

Ignacio G. Ochoa, P.E., Interim Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 867-4800
Fax: (714) 867-4886

March 11, 2013

Mr. Larry Netherton
North County BRS, LLC
3 Corporate Plaza, Suite 102
Newport Beach, CA 92660

Subject: Planning Application PA100004, Cielo Vista
Unincorporated Yorba Linda Island (APNs: 351-031-05, 351-031-17, and 351-661-10)

Project Description: General Plan Amendment from "Open Space" (S) to "Suburban Residential" (R1), Zone Change from "General Agricultural" with an "Oil Production" overlay (A1-O) to "Single-Family Residences" (R1) and "Single-Family Residence" with an "Oil Production" overlay (R1-O), and an Area Plan. The project includes 112 single-family lots on 84 acres.

Dear Mr. Netherton:

Through the processing of the approvals and CEQA for the above-mentioned project, the County of Orange has become aware that your client may not possess the required property rights for certain alternatives that you have proposed or are contemplating analyzing in the EIR for your project. Title 14 of the California Code of Regulations (CCR), Section 15126.6(f) states that "the EIR need examine in detail only the [alternatives] that the lead agency determines could feasibly attain most of the basic objectives of the project." Section 15126(f)(1) goes on to indicate that one of the factors in determining feasibility of an alternative in the CEQA process is, "whether the proponent can reasonably acquire, control or otherwise have access to the alternative site [or the site is already owned by the proponent]."

The feasibility of a project includes, but is not limited to, the feasibility of all offsite improvements on adjacent properties, and complete technical studies that adequately address the potential impacts of the proposed project. The proposed project in the Notice of Preparation (enclosed) includes offsite grading for which you will need to acquire sufficient property rights. Additionally, the County will need complete studies (such as the fault analysis) to ensure that all impacts are adequately analyzed. At this time, it has not been adequately demonstrated to the County that this proposed project alternative is feasible.

As a part of the screen-check review process for an EIR, the County will analyze and assess the feasibility of the project and all proposed alternatives. The Draft EIR will not be released for public review until it can be adequately demonstrated that the proposed project and all alternatives analyzed in the Draft EIR are feasible. Any alternative for which an applicant does not have the required property rights will most likely be found infeasible if included in the Draft EIR.

PA100004
March 11, 2013
Page 2 of 2

Should you have any questions regarding any of the information within this letter, please do not hesitate to contact me at (714) 667-3211 or Ms. Bea Jiménez, Manager, Current & Environmental Planning at (714) 667-8852 and Ms. Jiménez's email is beaeja.jimenez@ocpw.orgov.com

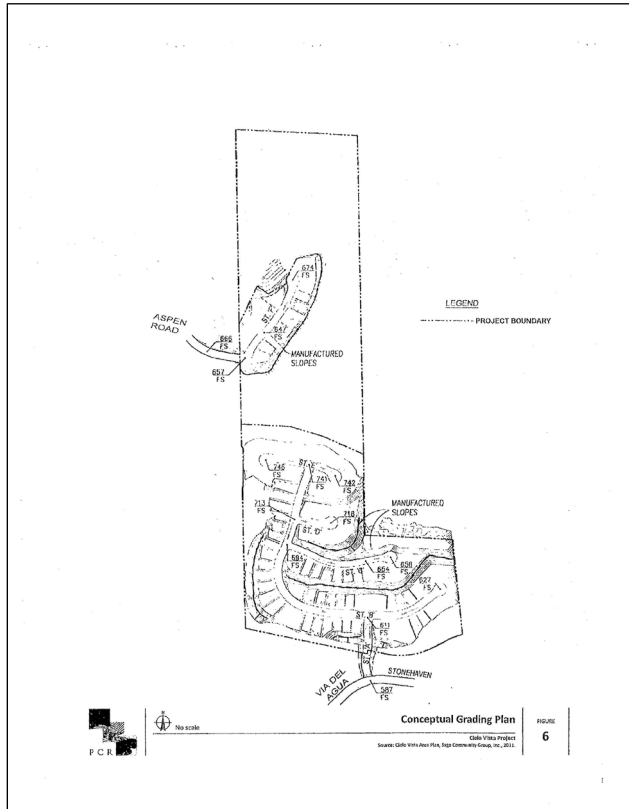
Sincerely,

Polin Modanlou

Polin Modanlou
Manager, Strategic Land Planning
OC Public Works/OC Planning Services

c: Supervisor Todd Spitzer, Third District
Thomas (Mat) Miller, Supervising Deputy County Council
Bea Bea Jiménez, Manager, OC Public Works/OC Planning Services/Strategic Land Planning/
Current & Environmental Planning
John Moreland, Project Planner, OC Public Works/OC Planning Services/Strategic Land Planning/
Current & Environmental Planning
Steve Harris, Community Development Director, City of Yorba Linda

Enclosure: Cielo Vista NOP, Figure 6



ORANGE COUNTY
Public Works
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Ignacio G. Ochoa, P.E., Interim Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 967-8800
Fax: (714) 967-0895

March 11, 2013

Douglas Wymore
7114 E. Stetson Drive, Ste. 350
Scottsdale, AZ 85251

Subject: Planning Application PA120037, Esperanza Hills
21807 Old Esperanza Road, Yorba Linda CA

Project Description: General Plan Amendment from "Open Space" (S) to "Suburban Residential" (18), and a Zone Change for the adoption of a Specific Plan to replace existing "A1" and "A1 (O)" Zoning Regulations. The Esperanza Hills plan proposes the development of approximately 340 residential units, and associated streets and infrastructure, local parks, and other recreational facilities on approximately 468 acres.

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PA120037
March 11, 2013
Page 2 of 2

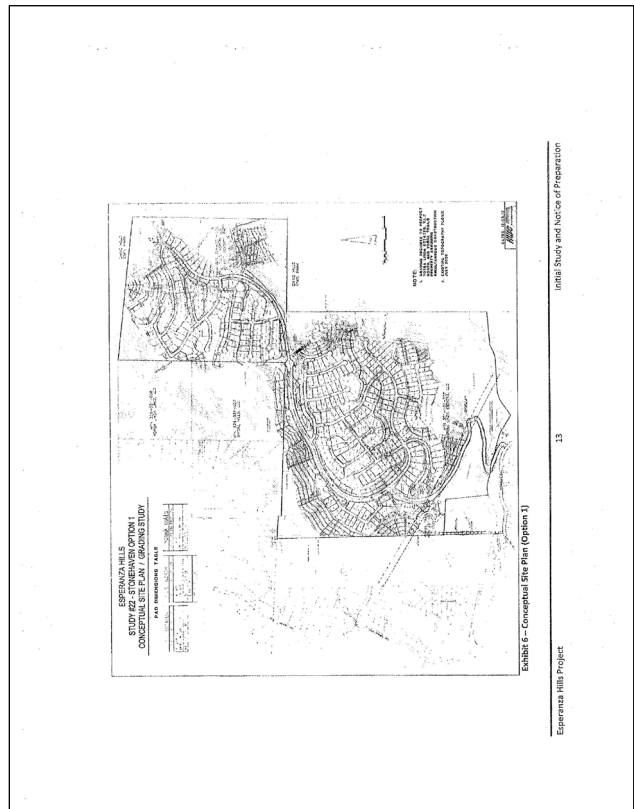
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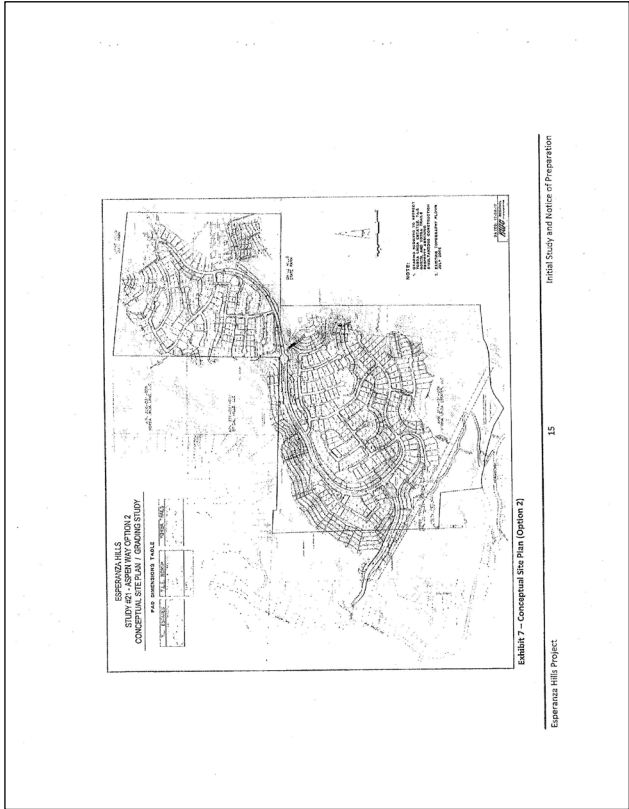
Sincerely,

Polin Modanlou
Manager, Strategic Land Planning
OC Public Works/OC Planning Services

c: Supervisor Todd Spitzer, Third District
Thomas (Mat) Miller, Supervising Deputy County Council
Bea Bea Jiménez, Manager, OC Public Works/OC Planning Services/
Current & Environmental Planning
Kevin Canning, Project Planner, OC Public Works/OC Planning Services/
Current & Environmental Planning
Steve Harris, Community Development Director, City of Yorba Linda

Enclosure: Esperanza Hills NOP, Pages 13 and 15





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