

Correspondence to Planning Commission on PA120037
(received after October 26, 2016 hearing)

1. City of Yorba Linda - November 2, 2016
2. Yorba Linda Estates – November 4, 2016
 - a. Attached Amos Travis letter
3. Marlene Nelson
 - a. Attached bridge view simulation
4. Claire Schlotterbeck
 - a. Attached bridge view simulations
 - b. South Coast Plaza bridge
5. Latham and Watkins
6. KWC Engineers
7. David Gold, Morrison & Forester
8. Diane Kanne
9. Elizabeth Cox
10. Esperanza Hills – re: easement across Travis Trust property
 - a. Attachment – Glenn Lukos Associates memo
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14. Marlene Nelson
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17. Yorba Linda Estates – response to Kevin Johnson and Manatt



CITY OF YORBA LINDA

P.O. BOX 87014

CALIFORNIA 92885-8714

November 2, 2016

Planning Commission Orange County
300 North Flower
PO Box 4048
Santa Ana, CA 92702-4048

SUBJECT: YORBA LINDA ESTATES PROJECT (PROJECT NO. PA120037)

Dear Chairman and Members of the Planning Commission Orange County:

The City of Yorba Linda understands that at the October 26, 2016, public hearing concerning the above project, the Commission continued the matter to the November 9, 2016, Planning Commission. The City of Yorba Linda requests additional continuance of the public hearing to afford the City Council opportunity to meet on November 15, 2016, to discuss the revised project in order to provide input and recommendations to the County prior to a formal decision.

Thank you for your consideration. If you have any questions, or wish to discuss this matter further, I may be reached at 714-961-7110.

Respectfully submitted,

Mark Pulone
City Manager

C: Yorba Linda City Council
Todd Litfin, City Attorney

Yorba Linda Estates, LLC



7114 E. Stetson Dr. #350 Scottsdale, AZ. 85251
P: (480) 966-6900 F: (480) 994-9005

November 4, 2016

Planning Commission
County of Orange
300 N. Flower Street
Santa Ana, CA 92702

Re: Proposed easement across Travis Trust property

Dear Planning Commissioners;

I have been asked to update our negotiation status with Cielo Vista for an easement over the Travis Trust property.

As I indicated at the October 26 hearing and in my letter dated October 25, 2016, there have been no negotiations with Cielo Vista since early this year, over eight months ago. There is no value to negotiating for an easement that we cannot use in light of the multiple gnatcatcher sitings along the proposed road locations across the Cielo Vista property documented in the July 2016 Leopold Biological Report. These sitings only came to our attention this August, when we received this report from USFW, and it was the first gnatcatcher siting in this area that we were aware of in the last 30 years, other than the gnatcatcher nesting site located on the Cielo Vista property in 2014, which was well to the south. The 2014 gnatcatcher report detailed no sitings in the proposed roadway areas.

Since Option 1 Modified is the most environmentally friendly option it will be preferred by the Army Corps of Engineers, US Fish and Wildlife and California Fish and Game as it results in the least amount of disturbance to their respective jurisdictional areas. Option 2 Modified is now the most environmentally damaging of all of our options, and we have been advised that it is highly unlikely that it would be permitted by the ACOE or the other agencies, who will prefer either Option 1 or Option 1 Modified. In particular, USFW criticized our project and the adjoining Cielo Vista project for not preserving sufficient gnatcatcher habitat, and that was prior to the latest report of multiple gnatcatcher sitings.

We cannot design a roadway or WQMP basin in this area that will not have a permanent impact on the gnatcatcher, Least Bell's Vireo and other habitat on the Cielo Vista property.

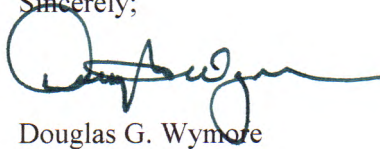
As far as we are concerned, Cielo Vista will no longer have to retain the 13 acres they referenced in the Planning Commission meeting on October 26, 2016 for a potential roadway and WQMP basin for Esperanza Hills. Instead, they can preserve existing habitat for the gnatcatcher, Least Bell's Vireo and any other wildlife that utilizes it, and avoid any grading by us on the Travis Trust property. Many of the neighbors have requested preservation of this open space in the surrounding neighborhood on Aspen

Drive and San Antonio, and the additional acreage will provide an added benefit to the agreement between the neighbors and Cielo Vista to create a conservation easement.

Not grading across the Travis Trust property should also please Mr. Travis, who sent a letter to the County in March, 2015, alleging that our proposed roadway “would provide substantial value to the Esperanza Hills developer while materially and negatively impacting the value of the Travis property.” (letter attached) The alleged negative impact will no longer occur.

Please contact me should you have any questions.

Sincerely;

A handwritten signature in blue ink, appearing to read 'Doug Wymore', with a large circular flourish at the beginning.

Douglas G. Wymore

Amos Travis, Trustee,
Travis Family Trusts
406 Calle Macho
San Clemente, CA 92673

VIA EMAIL
cob.response@hoa.ocgov.com

Clerk of the Board of Supervisors
County of Orange
Santa Ana, California

Re: Development Proposal of Esperanza Hills (Agenda #29) and Objections of Travis Family

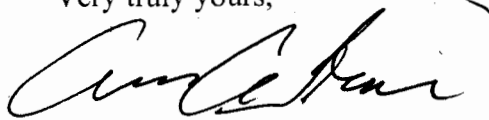
Dear Members of the Board:

I am writing to you regarding the Esperanza Hills development plans, which we understand are going to be reviewed at your meeting on March 10, 2015. My family owns the property to the west of the Esperanza Hills project. The land has been owned by my family since shortly after my great, great, great, great grandfather, Jose Antonio Yorba, arrived as a soldier with Fr. Junipero Serra and the Portola Expedition in 1769, almost 250 years ago.

You may know that we are also in the process of seeking development approvals for our land. We have now been informed that Esperanza Hills proposes to use our property for their project without our consent for certain roadways. One such roadway is of particular concern as it bisects our property. That roadway would provide substantial value to the Esperanza Hills developer while materially and negatively impacting the value of the Travis property. We would like the Board to know that we have not provided consent for that roadway or any other use of our property, and that Esperanza Hills does not have any rights or easements to cross our land.

My family has taken care to be proper stewards of the land for more than two centuries and to employ it to its highest and best use. We intend to continue that stewardship. The Travis family members are therefore opposed to approval of the Esperanza Hills project without a fair resolution of the access issue.

Very truly yours,



Amos Travis, Trustee

cc:
todd.spitzer@ocgov.com
lisa.bartlett@ocgov.com
michelle.steel@ocgov.com
shawn.nelson@ocgov.com
andrew.do@ocgov.com
nick.chrisos@coco.ocgov.com

Board of Trustees, County of Orange
March 9, 2015
Page 2

thomas.miller@coco.ocgov.com
shane.silsby@ocpw.ocgov.com
Robyn.uptegraff@ocpw.ocgov.com

November 4, 2016

Kevin Canning
County of Orange Planning
300 N. Flower
Santa Ana, CA 92701

Re: Esperanza Hills Specific Plan and EIR 616
Continued to November 9, 2016 Planning Commission Meeting

Dear Mr. Canning,

I am submitting the following comments after my review of new information recently updating the planning departments posting on Esperanza Hills.

I have reviewed the various pictures that were posted depicting the views, or lack thereof, of the proposed bridge together with an artist's conception of the bridge itself.

As to the artist's conception of the bridge itself, I believe that the depiction is inaccurate. In your comments to the Commission on October 26, you stated that the bridge would include four columns (at approximately 38:45 minute mark). The rendering provided clearly shows only two columns despite the bridge's length as you stated of 550 to 660 feet (at 37:20).

As to View 4. That pictorial depiction of the bridge's location is patently false. Upon scrutiny of Option 1 and Option 1 Modified maps (Your Attachment 15), it is clear that the bridge's northern abutment comes to the existing oil utility road just shy of the Whittier Fault. Comparing your picture to the landmark of both the utility road AND the oil tank operations you have not shown the true length and view of the proposed bridge. Even your Option 1 Modified map shows the bridge going up to the utility road. In addition, the notation "Bridge obscured by hillside" is false in that it is only trees on the proposed emergency access road/easement that are pictured obscuring a portion of the canyon, e.g., the ground elevation from the white rails goes DOWN to Blue Mud and there is no hillside going up as depicted. Those trees will obviously be removed to grade and cut the road(s) to the north which will expose Stonehaven/Agua to even more of the bridge view.

I would also like to comment that Attachment 15 is misleading and inadequate in that Option 1 and Option 1 Modified are not to equal scale map to map; Option 1 Modified does not contain the Whittier Fault Line nor the utility road which are landmarks that would have facilitated a comparison. Why is that? I have utilized geological maps and even Exhibit 5-67 (On-Site Oil Well Location Plan) to locate landmarks such as the oil operations, the utility road and fault line, etc.

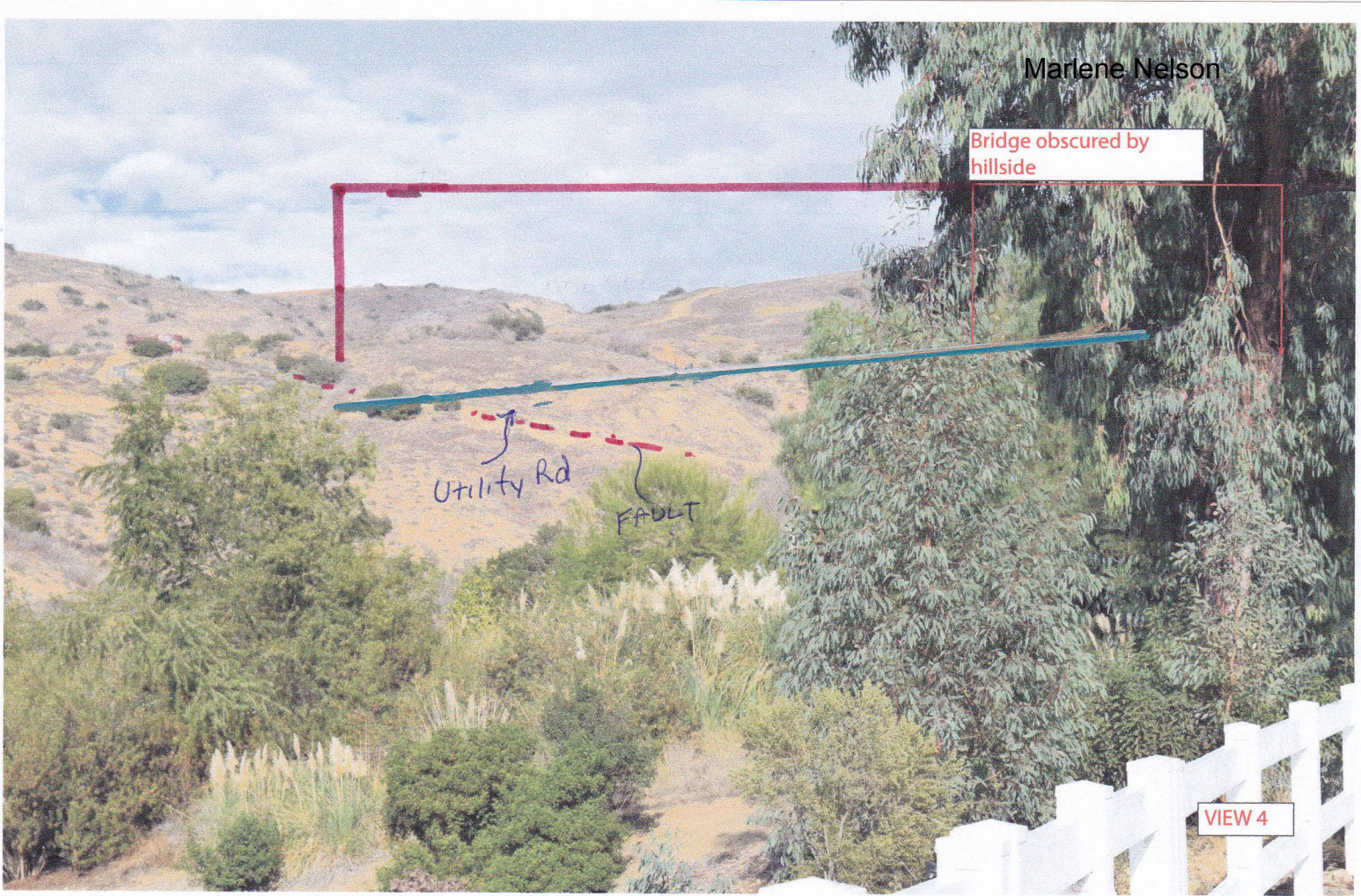
I believe the artist's conception now presented is totally inaccurate and misleading and minimizes the visual and aesthetic impacts of Option 1 Modified. And of course, where did the notion that only the roadway views of this massive bridge should be taken into consideration when it comes to impacts to

Aesthetics? There are far too many existing residences that will have their property values reduced due to the visual blight this new bridge scheme produces.

Sincerely,

Marlene Nelson
Protect Our Homes and Hills
4790 Via De La Roca
Yorba Linda, CA 92887

Enc. View 4 with the correct location of the bridge, noting utility road and fault line
Option 1 to include an overlay of Option 1 Modified



OPTION 1

W OPTION 1 MODIFIED
BRIDGE OVERLAP
W/ FAULT LINE INCL'D



CLAIRE W. SCHLOTTERBECK
170 Copa De Oro
Brea, CA 92823

Kevin Canning
OC Development Services Planning
300 N. Flower Street, 1st Floor
Santa Ana, California 92702-404

Dear Kevin,

Please include the two attached documents into the record regarding the Esperanza Hills project.

The first document shows *on the ground* photos from many places adjacent to, or visible from, the Esperanza Hills project where the bridge will be seen. It is a more accurate depiction of the alignment of the bridge than was submitted recently by the developer. Our photos use two existing oil tanks on the Esperanza Hills property as reference points throughout. As a reminder, his depiction only shows pre-grading.

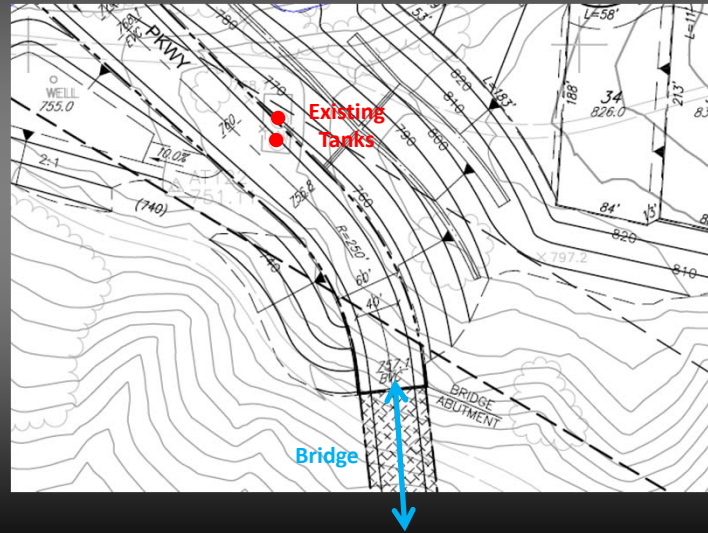
The second photos show the pedestrian bridge at South Coast Plaza and all of the “add ons” deemed necessary to prevent abuse/use of the bridge by jumpers. As I recall, only flowers were shown in the photos presented by the developer at the Planning Commission meeting on October 26, 2016.

Thank you.

Claire W. Schlotterbeck

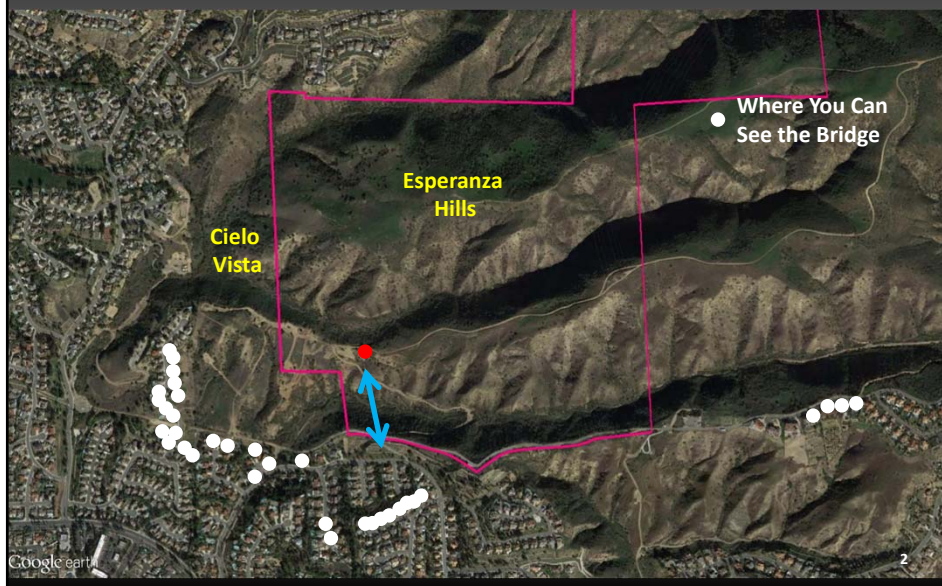
Claire Schlotterbeck

Location of the Bridge and Reference Points



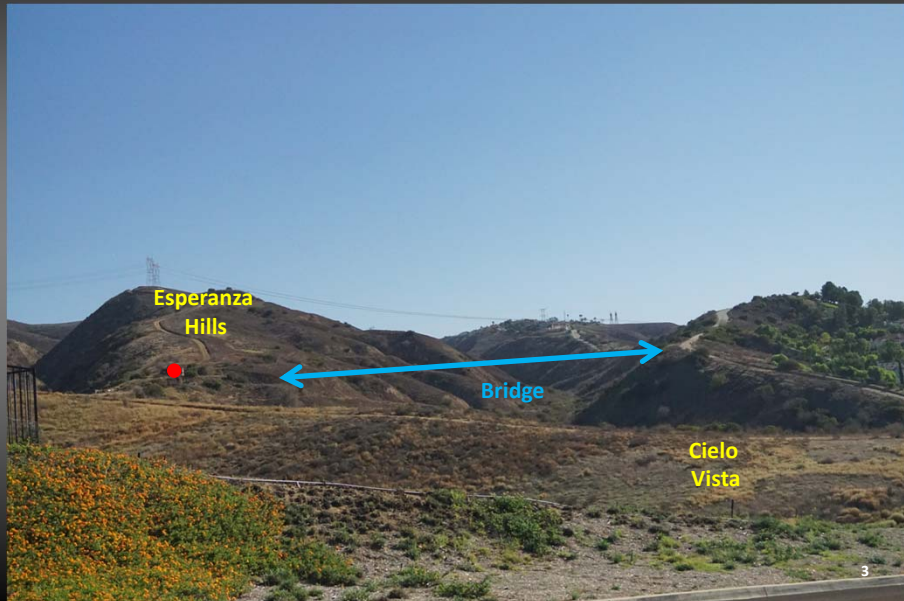
1

You Can See the Bridge From All Over



2

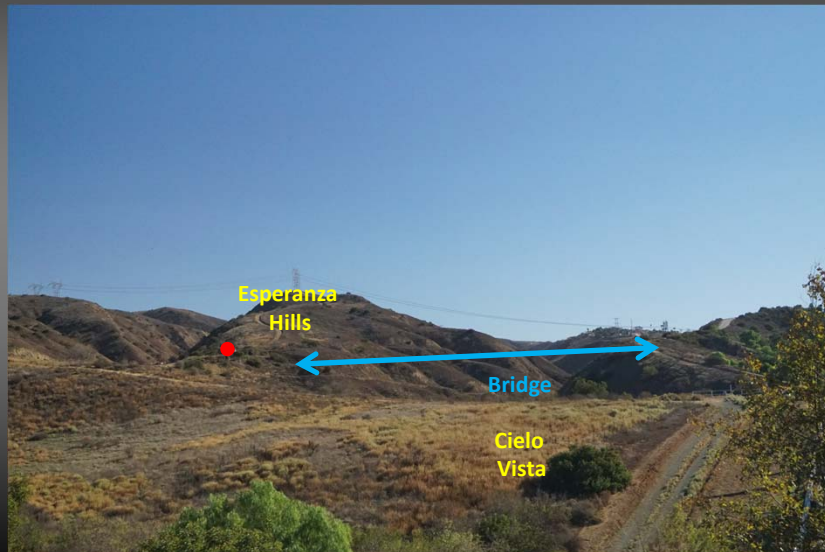
4640 Dorinda



4665 Dorinda



4675 Dorinda



4800 Via De La Roca



4800 Via Del Corral



4805 Via Del Corral



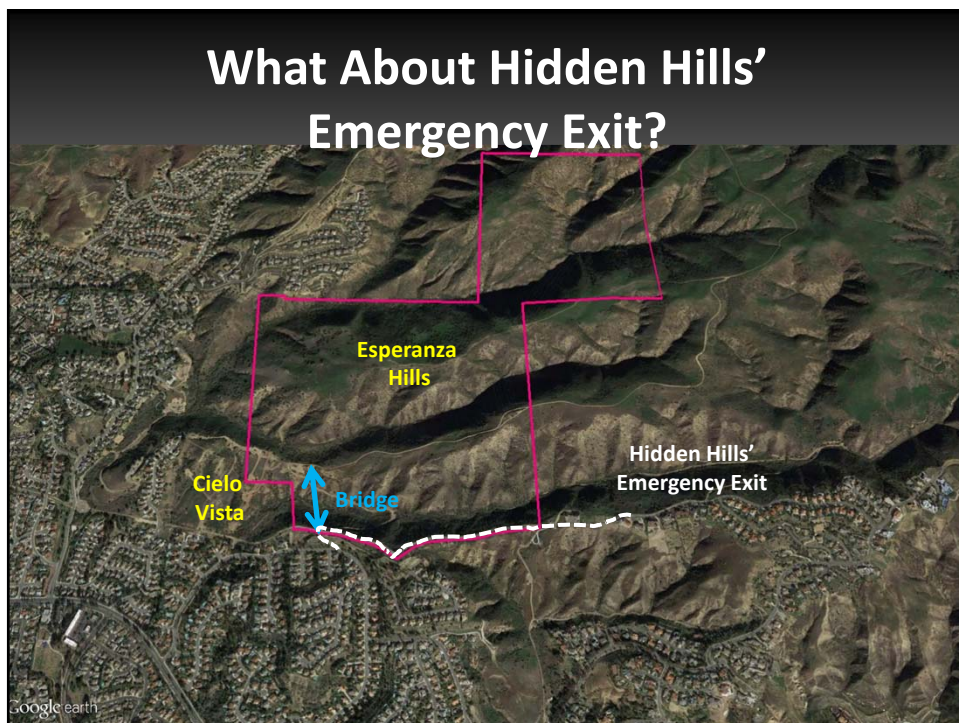
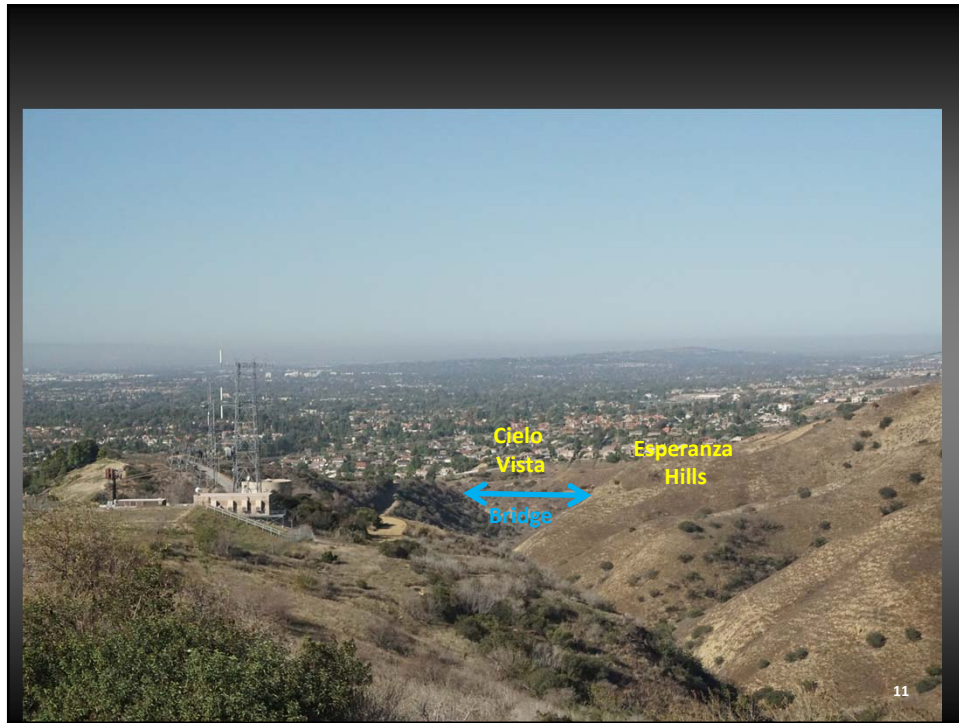
8

Peek-a-Boo, We See Green Crest



View from Green Crest





This is Pre-Grading, What Does Post-Grading Look Like?



South Coast Plaza Bridge



South Coast Plaza Bridge



2

FIRM / AFFILIATE OFFICES

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Frankfurt	San Francisco
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Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

File No. 056872

November 7, 2016

VIA EMAIL

Colby Cataldi
Deputy Director
OC Public Works/Development Services
300 N. Flower Street
Santa Ana, CA 92703

RE: Esperanza Hills Specific Plan Amendment

Dear Mr. Cataldi;

I am writing on behalf of Yorba Linda Estates, LLC, regarding its October 7, 2016 letter detailing the reasons why it requested elimination of the language requiring a pre-annexation agreement with the City of Yorba Linda prior to approval of a vesting tentative tract map. I understand that you have requested additional legal authority on the issue of whether the County can require a pre-annexation agreement as a condition of approval for a vesting tentative tract map. For the reasons discussed below, among others, the County lacks such authority.

I. THE SUBDIVISION MAP ACT AND COUNTY ORDINANCES VEST EXCLUSIVE JURISDICTION FOR ENTITLEMENTS IN THE COUNTY, NOT THE CITY

Government Code section 66411 vests regulation and control of the design and improvement of subdivisions in the legislative body of local agencies. Each agency shall, by ordinance, regulate, and control the initial design and improvement of land within their exclusive jurisdictions. The Subdivision Map Act (or “Map Act”) does not permit one jurisdiction to delegate this power to another jurisdiction.

The Board of Supervisors adopted Resolution 99-301 on July 27, 1999, which specifically addresses entitlement of property within the County that is also within the sphere of influence of a city, i.e., the situation with the Esperanza Hills subdivision. Resolution 99-301 provides that the “County is the local agency with ultimate responsibility for review and approval of development projects in unincorporated territory, whether or not they are located in city spheres of influence.” It further provides that it did not “confer any authority to delay or cause an increase in development application processing time.”

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At this point, the City has been unwilling to enter into a pre-annexation agreement despite the fact that it has been 17 months since Yorba Linda Estates received its entitlements and despite good-faith efforts by Yorba Linda Estates to get a pre-annexation approved. The City has not responded to a March 1, 2016 request for the terms upon which pre-annexation would be approved. Conditioning approval of a tentative tract map for Yorba Linda Estates on entry into an indefinitely delayed pre-annexation agreement violates not only the County's Resolution 99-301, but also the time limits set forth in the Permit Streamlining Act and/or the Map Act. (See generally Govt. Code, §§ 65950 *et seq.*)

Allowing the City to effectively block the approval of a vesting tentative tract map is also an illegal delegation of the County's police power to the City. (*Santa Margarita Area Residents Together v. San Luis Obispo County* (2000) 84 Cal.App.4th 221, 232 ["It is established that a city or county may not contract away its right to exercise police power in the future."]; see also *California Radioactive Materials v. Dept. of Health Servs.* (1993) 15 Cal.App.4th 841, 870–71 [exercise of authority strictly limited by scope of authority delegated from the Legislature].)

In this context, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 has occupied the field regarding the relationship between various local and municipal entities and sets forth strict requirements regarding when the authority of one local entity ends and when the authority of another local entity begins. Prior to annexation, a city does not have jurisdiction to approve or disapprove projects on land in a separate jurisdiction, such as the County. (See, e.g., Govt. Code, § 57325.) Although the County may, in its discretion, ask for and receive input from the City regarding land within its sphere of influence (but not otherwise annexed) regarding potential conditions to be imposed by the County at the time of the County's approval of a tentative tract map, the City's sphere of influence does not permit the City to exercise de facto veto authority (or any other authority) over projects on land that have not been annexed. (See *id.*; Govt. Code, §§ 56425 *et seq.*) Similarly, there is no authority in the Cortese-Knox-Hertzberg Act that permits the City to exercise such authority at a "pre-annexation" stage.

Accordingly, conditioning the County's approval of Esperanza Hills' tentative tract map on an unspecified, indeterminate action by the City violates not only the County's own procedures as set forth in Resolution 99-301 but basic principles of legislative delegation. The County's decision regarding the Esperanza Hills' tentative tract map is an exercise of the police power, and as such, it may not be delegated to the City.

No reported case under California law has upheld a County's delegation to another public agency the County's rights to review and approve subdivision maps.

II. REQUIRING PRE-ANNEXATION ABROGATES PRIVATE PROPERTY RIGHTS IN VIOLATION OF CAL GOV. CODE ON ANNEXATION

This property consists of 468.9 acres of uninhabited property. Under Government Code section 57075, subd. (b), any action to annex the Esperanza Hills property would be required to be terminated if the landowners owning 50% or more of the assessed value of the land protest the annexation.

Requiring pre-annexation into the City to complete entitlements within the County is an attempt to evade the landowner protections against hostile annexations, in violation of Government Code section 57075, subd. (b).

III. THE SUBDIVISION MAP ACT DOES NOT PROVIDE THE COUNTY WITH THE POWER TO IMPOSE PRE-ANNEXATION AS A CONDITION TO A VESTING TENTATIVE TRACT MAP

The Subdivision Map Act does not permit the County to impose pre-annexation as a requirement to approval of a tentative tract map.

Government Code sections 66413 and 66413.5 provide for city approval of a vesting tentative map only after the land subject to the approval has been incorporated or annexed into a city. Although the Map Act provides that some conditions of approval are at the discretion of the County, the County must first adopt a local enabling ordinance following the criteria set forth in the Map Act before it may impose such conditions. (See Govt. Code, § 66411; see also Barclay & Gray (2016; 35th ed.) California Land Use & Planning Law, at p. 103.) Notably, the County of Orange Code of Ordinances does not appear to contain any enabling authority that permits it to require a pre-annexation agreement with the City of Yorba Linda as a condition for the County's approval of a tentative tract map.

Although the County has some discretion to impose conditions on its development approvals under its traditional land use (i.e., police) power, such conditions must have a nexus with the potential impacts of the development that the conditions are intended to address. (See, e.g., *Ayers v. City Council of Los Angeles* (1949) 34 Cal.2d 31, 40.) In order to impose such a condition, the County must show through individualized findings the following: (1) a nexus between the condition imposed and the interest of the County advanced; and (2) that the condition (the pre-annexation agreement requirement) is "roughly proportional" to the impacts of the proposed project." It is impossible, by its very nature, for the imposition of an open-ended, non-specific requirement to enter into some sort of pre-annexation agreement with the City to meet this constitutional nexus requirement.

Furthermore, not only would the County be delegating its police power to impose such conditions at the time approval (by leaving it to the City to impose conditions as part of a pre-annexation agreement), the County would also be leaving its approval open to vicarious violations of the Map Act through conditions demanded by the City as part of the pre-annexation agreement. (See, e.g., Govt. Code, §§ 66474.2(a) ["in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code."]; 65961 ["upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of a parcel map for such a subdivision for which no tentative map was required, during the five-year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or multiple-family residential units,

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conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map.”].)

Finally, to the extent that the County may contend that the pre-annexation agreement condition is required to address a road over City property that provides access to the Esperanza Hills property, an open-ended condition to obtain such an agreement independently violates the Map Act under Govt. Code section 66462.5, which provides that the County “shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the final map is filed with the local agency, to permit the improvements to be made.” (Govt. Code, § 66462.5(a).)

At best, a condition requiring a pre-annexation agreement with the City is unenforceable as invalid under the Map Act, for the reasons noted above; alternately, such a condition would “be conclusively deemed to be waived” if the County had not taken or otherwise acquired the property subject to the pre-annexation agreement within 120 days of the filing of the final map. (*Id.* § 66462.5(a)–(b).)

Such a condition also violates the substantive due process and procedural due process rights of my client.

Please contact me should you have any questions or would like to discuss further.

Very truly yours,

Christopher W. Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP

cc Nicole Walsh
Doug Wymore
Robyn Uptegraff

November 7, 2016

2009.1200.4.02

Orange County Public Works
300 N. Flower Street, 1st Floor
Santa Ana, CA 92702

Attention: Kevin Canning

Regarding: Esperanza Hills – Yorba Linda Area - VTTM 17522
Bridle Hills Site

Kevin,

KWC was the engineering firm that prepared the proposed VTTM's for Option 2 Modified (to Aspen Drive), Option 2B (to San Antonio Road) and Option 1 (to Stonehaven Drive), three (3) of the options analyzed in the Esperanza Hills EIR.

KWC also studied a design for 40 lots on the Bridle Hills property, at the direction of the Esperanza Hills developers, who were negotiating with the owners of the property for a possible purchase. It would have required approximately 1.9 million cubic yards of import material from the Esperanza Hills site to develop the Bridle Hills property.

However, the Bridle Hills owners sold their property to another entity, so all VTTM's submitted to the County for Options 1, 2 Modified and 2B were designed to be balanced with no consideration for creating the import material for development of the Bridle Hills site. Due to the steep terrain of the Bridle Hills site, on which consists primarily of a canyon, without the import material from the Esperanza Hills site only a few houses can be constructed on the site.

Sincerely,

KWC ENGINEERS

Victor Elia

Victor Elia, P.E.
Vice President
P: 951.734.2130 Ext.220
victor.elia@kwcengineers.com

cc: Doug Wymore – Yorba Linda Estates, LLC

Strategically Engineering our Client's Vision

November 7, 2016

Writer's Direct Contact
+1 (415) 268.7205
DGold@mofo.com

Via email: Sharon.Gilliam@ocpw.ocgov.com

Chairman Jett McCormick and
Orange County Planning Commissioners
Planning Commission Room
333 W. Santa Ana Blvd., 1st Floor
10 Civic Center Plaza
Santa Ana, CA 92701

Re: Esperanza Hills: Certification of Revised FEIR

Chairman McCormick and members of the Planning Commission,

At your public hearing last Wednesday, October 26, 2016, I indicated that Morrison & Foerster has been retained to work jointly with the Manatt law firm, as legal counsel to North County BRS Project LLC, the proponent of the Cielo Vista project ("Cielo Vista"). You will recall that I raised serious objections to the Commission rushing its reconsideration of the Esperanza Hills project ("Esperanza") in its current form. Like the Commission and Yorba Linda neighbors, the Cielo Vista team also was surprised by the applicant's introduction of an entirely new, major bridge structure that is not even mentioned, let alone analyzed, in the Revised Esperanza Hills Final Environmental Impact Report ("Revised FEIR").

We were pleased that the Commission, following approximately three hours of public testimony, recognized that the act of certifying the Revised FEIR would require the Commissioners to have a meaningful opportunity to consider whether this document complies with CEQA—especially considering that three of the Commissioners were not even on the Commission when the original Esperanza EIR ("FEIR") was last recommended for certification. Still, like the Commissioners and the neighbors in attendance, we left that hearing with many unanswered questions about the Revised FEIR.

The purpose of this letter is to highlight and provide further detail why Orange County cannot lawfully certify the Revised FEIR as compliant with CEQA.

Background

As you know, Judge Claster issued a writ of mandate on August 24, 2016 ordering the County to vacate its certification of the FEIR. Judge Claster's Statement of Decision found the FEIR's analysis of greenhouse gas impacts and mitigation unlawful. The Court's subsequent writ ordered the County to vacate certification of the FEIR and related findings, and all approvals based on the environmental document and those related findings. The Court further ordered the County to revise the FEIR and reconsider certification of it and the approvals made in reliance on it. Of course, it goes without saying that the County must implement the Court's order in compliance with not only CEQA but all other laws.

Shortly before the Commission's consideration of the Revised FEIR on October 26, the applicant proposed to pursue a new primary access route and bridge option, which was radically different from any of the four options analyzed by the original FEIR (referred to as Options 1, 2, 2A, and 2B). In fact, the first time our client and the neighbors saw any written reference to a new access route was when the County Staff Report was made available to the public, just days before the October 26 hearing. We assume this radical change to the project was news to the Commissioners too.

What was particularly shocking was that this new primary access to Esperanza would depend on a major bridge structure. This substantial change was vaguely described in the Staff Report as "reconfiguring (as compared to Option 1) the main access street alignment and also the internal emergency access connection point." (Staff Report¹ at 8). The Report went on to state that this access "...would include a lengthened bridge with a more direct orientation into the gated project entry on a wider road (see Attachment 15)." (Staff Report at 8). The Staff Report candidly acknowledged that the proposed access configuration—termed "Option 1 Modified"—was "not specifically assessed in the [Prior EIR]," but asserted that the "proposed modifications to the Option 1 alignment ... do not require a subsequent or supplemental EIR." (Staff Report at 10, 11).

So what does the Commission and the public know about this new bridge option? Very little. Because the Revised FEIR and the proposed entitlements lack any meaningful information, we are left to speculate about the most basic aspects of the bridge, including the height, the span distance, the materials used, the basic location of the footings and appurtenances, lighting, safety features, and the process, duration, and equipment used for construction. In other words, while a possible concept picture with "representative landscaping" was shown at the October 26 hearing, we have no way to assess the extent of project changes. Certainly, without any mention of the bridge in the Revised FEIR, the Commission has no way to assess the CEQA impacts of the bridge. Without a project description of the proposed bridge, how can the County act on such a critical element of the overall Esperanza project?

¹ OC Development Services/Planning Division Staff Report, dated October 26, 2016, available at <http://ocplanning.net/civicax/filebank/blobdownload.aspx?blobid=59136>.

Based on statements by staff at the hearing and figures attached to the Staff Report, it appears that the bridge probably has 4 columns spanning Blue Mud Canyon and the Whittier fault at an average of 85' high and 60' wide. Beyond that, the public can only speculate that the bridge height might range from 100-180' high at a distance of 350 feet. We understand that the Option 1 road access had a small 26' long by 13' high bridge component. Given the magnitude of the change, we believe it is disingenuous and results-driven to label this new bridge proposal as Option 1 Modified. Instead, for the balance of this letter we will more accurately refer to this new bridge access and structure as "Option 5".

To support its assertion that no further CEQA review was required, the Staff Report also directed the Commission and the public to review a brief "consistency analysis" dated September 28, 2016 prepared by CAA Planning (the "CAA Memo"). The CAA Memo may list topics in a manner similar to a CEQA Initial Study, but it is necessarily conclusory as it strains to make a comparison based on a project element that has not been defined. To be clear, the CAA Memo is even not part of the Revised FEIR you are being asked to certify as legally adequate.

Moreover, and as detailed below, the cursory CAA Memo does not come close to meeting CEQA standards for an evaluation of potential impacts and mitigations, including those relating to biological resources, aesthetics, air quality, traffic, earthquake and public safety. Additionally, the "consistency analysis" between Option 5 and Option 1 misapplies the wrong CEQA standard. The CAA Memo purports to analyze the revised project with the bridge to determine whether a supplemental or subsequent EIR is required under Public Resources Code section 21166/CEQA Guidelines section 15162. Given the recent Court ruling invalidating the original FEIR, the proper test is whether the Revised FEIR meets the test for an adequate EIR *in the first instance*, not the standard that applies *after* an EIR has been properly certified.

For the reasons more fully described below, we believe the Commission's certification of the Revised FEIR as currently proposed would be an abuse of discretion. We respectfully submit that the Commission should not advance this circumvention of CEQA and instead should refuse to recommend certification of the Revised FEIR.

The Esperanza Revised FEIR Does Not Comply with CEQA.

The Revised FEIR fails to satisfy CEQA's requirements. Wholly apart from the radical change to the Esperanza project that Option 5 represents, the FEIR must be vacated, as ordered by the Superior Court—it does not remain a valid, certified EIR. However, even if the FEIR did not have to be vacated, as ordered by the Court, the County would still have to fully analyze Option 5 as a significant change.

The Prior EIR is not a valid, certified EIR.

The Superior Court issued a writ of mandate to the County requiring it to vacate certification of the FEIR and adoption of the Mitigation Monitoring and Reporting Program (“MMRP”) and Findings of Fact and Statement of Overriding Considerations, along with the Project approvals based thereon. This blanket vacatur order necessarily sent the County “back to the drawing board” for EIR preparation purposes. In other words, the County’s actions on remand are subject to and will be evaluated for compliance with CEQA’s requirements for the preparation of an EIR, not the Public Resources Code section 21166 standard for determining whether changes in the project or its circumstances, or new information, require subsequent environmental review. For 21166 to apply, there must be a valid prior environmental document. That is no longer the case here because of the Superior Court’s order unqualifiedly requiring vacatur of the FEIR.

A Court, upon finding that a CEQA document fails to comply with CEQA, need not order vacatur of the entire document. *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App. 4th 260, 286-289 (rejecting plaintiffs’ contention that “whenever a trial court finds an EIR inadequate, the trial court must decertify the EIR and vacate all related project approvals.”) Upon concluding that an agency’s determination, finding, or decision does not comply with CEQA, a court can: 1) mandate that the agency void the decision, in whole or in part, or 2) suspend certain project activities until the agency can take specific actions necessary to comply with CEQA, or 3) allow the agency to determine the specific action necessary to comply with CEQA. Pub. Res. Code section 21168.9. In this case, Judge Claster ordered vacatur of the EIR and land use approvals without qualification or limitation.

The Revised FEIR fails to meet the standards for a valid EIR.

The County’s Staff Report, and CAA Memo, assert (without explanation) that the project revisions are to be evaluated under the standards of Public Resources Code section 2166 and CEQA Guidelines section 15162, which generally require a subsequent or supplemental EIR only if there are substantial changes to the project or the surrounding circumstances, or the discovery of new information, indicating new or substantially more severe environmental effects. However, these deferential and finality-favoring standards, by their own terms, apply only *after* an EIR has been certified for a project. Here, the CEQA status of the Revised FEIR is not that of a certified Final EIR to which the 21166 triggers for subsequent review will be applied. Rather, the Revised FEIR is, at the very most, an *uncertified* Final EIR which must be evaluated under the standards applicable to all EIRs.

As the Commission is aware, the core purpose of CEQA is to advance transparent, informed decision making, through notice and a meaningful opportunity for the public to comment on and decision makers to consider the environmental impacts of a project. In order to fulfill this core purpose, lead agencies such as the County must provide not only timely analysis of the potential impacts of a project, including significant project changes like Option 5, but also an opportunity for the public and agencies to comment on both the project and its impacts, as

well as the staff's analysis of the project and its impacts. The current proposal to certify the Revised FEIR fails CEQA's core purpose.

"An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of the environmental consequences." (CEQA Guidelines [14 Cal. Code Regs.] § 15151; *see Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376.) The definition of the project should be stable, and not change from the beginning to the end of the EIR process. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 187; *see also* CEQA Guidelines § 15124.) Decision-makers such as the Board of Supervisors, the Commission and the public need sufficient information about Option 5 to provide informed comments and to make informed choices. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 356.)

Option 5 is a major change to the Esperanza project that requires an updated project description and detailed analysis in the environmental document. In this case, the last-minute and vaguely described addition of Option 5, in a staff report and not in an EIR or any other recognized CEQA document, without adequate notice and opportunity for comment, deprives the public of the information it needs to provide informed comments to the Commission and deprives the Commission of the informed public comment it needs to make informed decisions.

The proposed bridge structure is not speculative, uncertain, or presenting potential impacts that are difficult to quantify or analyze. Rather, it would be a specific physical structure that can be readily described, with direct and patent impacts that can be readily evaluated. The applicant is now clearly stating that the bridge is Esperanza's only viable option for access to the Project site. It is the County's duty as a lead agency to identify, evaluate, and disclose the environmental impacts of Option 5. Its failure to do so would be a textbook failure to proceed in a manner required by law—an impermissible abuse of the County's discretion. (*See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428.)

The County must evaluate Option 5's impacts and add the information to the EIR.

Additionally, the CAA Memo does not provide substantial evidence for the County to assess the significance of the proposed project changes. Neither the memorandum attached to the Staff Report (nor, to our knowledge, any other part of the existing public record) describes the basic design, safety profile or construction process for the Option 5 bridge. This does not come close to providing the level of detail "needed for evaluation and review of the environmental impact." (CEQA Guidelines § 15124.) Nor does the CAA Memo adequately consider the impacts or mitigations. Some of the most glaring omissions include:

- Aesthetics.** Aesthetic impacts that may result from Option 5 include a change in the visual character of the non-urbanized area, and impacts to the viewshed and ridgeline. Unlike the Draft EIR, which included “computer-generated photo simulations prepared for the Proposed Project,” here the Commission only was shown an illustrative photo of another bridge, showing “representative landscaping” for Option 5. Simplistic simulations were added, on November 3, to the agenda packet for the November 9 Planning Commission meeting, but it is unclear whether the bridge shown in this model is actually representative of the bulk or design of the proposed bridge. This lack of detail does not provide sufficient information to the public or the Commission. The CEQA Guidelines Environmental Checklist, Appendix A, contains a list of potential significant impacts for aesthetics, including substantial adverse effect on a scenic vista, substantial damage to scenic resources, substantial degradation of the existing visual character or quality of the site and its surroundings, or the creation of substantial light or glare which would adversely affect the day or nighttime views in an area. In this situation, the Commission and the public do not know whether or for how many hours the Option 5 bridge and road access would be lit, and how that would either diminish the current baseline of relative darkness, or in the alternative, create public safety issues. The Commission needs more information to make an informed analysis.
- Biological Resources.** The CAA Memo discloses that the proposed bridge will have both permanent and temporary impacts to federal and state jurisdictional waters, but dismisses these as relatively lower than Option 1. However, location is everything, and the memo provides no information about where the footing supports for Option 5 will be located, their extent or depth. The Commission also needs much more information about how the structure might affect the jurisdictional waters and surrounding habitat for species such as the gnatcatcher. While Option 5 may have less surface area on the ground than a winding road, it has unknown impacts relating to the substantial new bridge structure. The potential biological damage associated with constructing and maintaining massive bridge footings in a streambed has not been acknowledged by the County. Nor is there any discussion as to how such footings would be maintained—are permanent maintenance roads required? Light can also be a biological impact if there are nocturnal species in the area, as fish, bats and birds may all be affected by the sudden presence of light in a previously dark area; this potential impact warrants further study. From the materials before the Commission, it does not appear that any consultation has occurred with the U.S. Army Corps of Engineers or California Department of Fish and Wildlife regarding these changed impacts; indeed, CDFW may not be able to issue streambed alteration authorization on the basis of this cursory consistency memo.
- Construction-related impacts.** The CAA Memo does not disclose potential impacts relating to construction. For example, depending on the equipment and number of additional construction vehicle trips needed to construct the new bridge structure, there may be additional or more severe air quality impacts during construction. It is not disclosed whether these same activities could require road closures or related

traffic issues. And as the original FEIR was ruled void due to an inadequate greenhouse gas analysis, and Option 5 may have additional unstudied construction-related GHG emissions, the Commission should require robust analysis of these potential impacts in particular. The Commission should not let the same project applicant once again put the County in the position of defending an EIR with inadequate GHG analysis. This is a highly technical area of the law and science, it requires detailed analysis.

- **Hazards.** Safety hazards created by Option 5 also warrant further study. No discussion is provided in the CAA Letter regarding seismic features for a bridge that would cross an earthquake fault line. Some neighbors have expressed concern over the bridge as an attractive nuisance for local youth who skateboard. Would Option 5 include railings or lights to protect public safety? Additional public safety and hazards analysis might include fire risk analysis, erosion/slope stability issues relating to the bridge, and potential mitigation measures.

The County must consider whether recirculation is required.

If the required analysis, as described above, is added to the Revised FEIR before certification, then the Commission must also evaluate whether it constitutes “significant new information” that requires recirculation. (Pub. Resources Code § 21092.1, CEQA Guidelines 15088.5, *Vineyard Area Citizens* at p. 447.) Recirculation is required when the addition of new information deprives the public of a meaningful opportunity to comment on substantial adverse impacts or feasible mitigation measures. (Guidelines § 15088.5(a).) New information may include changes in the Esperanza project. Option 5 may also be considered a new alternative, which should be analyzed via the typical CEQA process.

Even if Section 21166 applied, Option 5 would still require the County to prepare a supplemental or subsequent EIR.

For the reasons previously stated, the Revised FEIR cannot be considered a “certified” EIR subject to Public Resources Code section 21166 analysis. Nevertheless, even assuming this fictional framework applied, the Revised FEIR would fail the test.

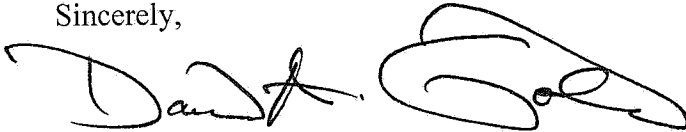
If significant changes occur to a project following certification of an EIR, then the Commission must analyze whether those changes would result in new or substantially more adverse significant environmental impacts. (Pub. Resources Code § 21166; CEQA Guidelines § 15162.) The standards for a supplemental or subsequent EIR are similar to the standards for recirculation of an EIR laid out above, but occur at a different point in the CEQA process, after certification of an EIR. The decision whether to prepare a supplemental or subsequent EIR is subject to a deferential “substantial evidence” standard of review from the courts, but even under that standard the lack of any analysis to date on Option 5 is insufficient. Option 5 remains a significant change to the project. (*See Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429.) Put simply, the County *must* analyze whether this change would cause new or more significant environmental impacts that

trigger a further EIR. The CAA Memo does not comprise substantial evidence regarding these potential impacts, for the reasons described above.

Conclusion

Cielo Vista does not wish to unnecessarily delay or prevent construction of the Esperanza project. Contrary to the inaccurate assertions by Mr. Wymore at the October 26 hearing, the Cielo Vista team has devoted countless hours to trying to resolve the Esperanza access issue in a fair and mutually beneficial manner. Our record at trying to resolve issues is clear. We worked hard to listen to our Yorba Linda neighbors and ultimately made Cielo Vista project modifications which resulted in a settlement. Similarly, the Cielo Vista team invested months in a mediation process that we thought was fair and reasonable. Unfortunately, we were subsequently informed that these efforts could not be agreed to by the Esperanza developer. We continue to prefer an amicable resolution of our issues. However, as a neighboring landowner that has itself gone through a lengthy and highly scrutinized CEQA process, our client has legitimate concerns and deserves assurances that the County will also fairly apply basic standards when considering the Esperanza approvals. Option 5 needs a much closer look, and we urge you to bring the Revised FEIR into full compliance with CEQA prior to acting.

Sincerely,



David A. Gold

cc: Honorable Orange County Supervisors (via e-mail: response@ocgov.com)
Mr. Colby Cataldi (via e-mail: Colby.Cataldi@ocpw.ocgov.com)
Mr. Kevin Canning (via e-mail: Kevin.Canning@ocpw.ocgov.com)
Leon Page, Esq. (via e-mail: leon.page@coco.ocgov.com)
Nicole Walsh, Esq. (via e-mail: nicole.walsh@coco.ocgov.com)
Robert Smith (via e-mail: rsmith@sagecommunity.com)
Sean Matsler, Esq. (via e-mail: smatsler@manatt.com)



November 8, 2016

Sent Via e-Mail

Chairman McCormick and Members of the Planning Commission
County of Orange
c/o Orange County Public Works
Kevin Canning
300 North Flower Street
Santa Ana, CA 92702

Re: Agenda Item #2 Esperanza Hills
November 9, 2016 Planning Commission Meeting

Dear Chairman McCormick and Members of the Planning Commission:

Per a request from Chairman McCormick for information about the settlement agreement between Protect Our Homes and Hills and North County BRS, the applicant for the Cielo Vista project, attached is the August 31, 2016 press release issued by Protect Our Homes and Hills concerning this agreement.

We strongly request that you do not take action on Agenda Item # 2 Esperanza Hills at your meeting on November 9, 2016. In addition to the comments, testimony, and letters concerning the developer's attempt to circumvent the CEQA process by submitting a new EIR that includes significant changes to the project proposal, we offer the following:

1. Yorba Linda Estates, LLC **has not secured access to their property.**

a.) The easement across Cielo Vista property only applies to the Yorba Linda Trails property and not the entire Esperanza Hills development.

b.) Yorba Linda Estates, LLC has discontinued negotiations with North County BRS for access across Cielo Vista land to Aspen Way, and thus, has not secured access across the Cielo Vista property.



c.) Most importantly, Yorba Linda Estates, LLC has not secured access across all property they propose to cross in their new Option 1 Modified. **The property in the City of Yorba Linda that they are proposing to cross to connect to Stonehaven is currently zoned as Open Space.** The 2016 Yorba Linda City General Plan provides for the following uses in Open Space lands: *"active and passive recreation areas, passive open space, conservation and public safety land uses."* General Plan, p. LU-25. **A road serving a residential development does not fall into any of these categories and is not approved use for Open Space land within the city of Yorba Linda.**

Without legal access secured by the developer, the County of Orange should take no action on this proposed development.

2. The City of Yorba Linda has requested in their letter to you dated November 2, 2016 that you continue the public hearing "to afford the City Council opportunity to meet on November 15, 2016 to discuss the revised project." Esperanza Hills is in the City of Yorba Linda sphere of influence. No action should be taken by the County until the City of Yorba Linda has had the opportunity to review and comment on this new project.

Finally, we request reopening of public comments. Per the Orange County Planning Commission Rules of Procedure adopted in December 2004,

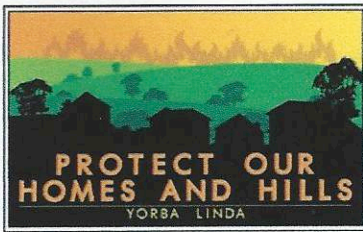
"Unless the chairman indicates otherwise at the time the matter is continued, no additional testimony shall be heard at the continued meeting."

In other words, you, Chair McCormick, have the prerogative to reopen public testimony on Wednesday for the Esperanza Hills item.

Very truly yours,

Diane Kanne

Attachment – Press Release: Landmark Agreement Reached on Hillside Project



PRESS RELEASE

—FOR IMMEDIATE RELEASE—

Contact: Marlene Nelson
Marlene@ProtectYorbaLinda.com
Cell: (714) 365-7700

Landmark Agreement Reached On Hillside Project

Yorba Linda, CA August 31, 2016 – The citizen's group Protect Our Homes and Hills (POHAH) has reached a landmark settlement agreement with North County BRS—the applicant for the Cielo Vista project, the smaller of two housing projects proposed in the hills above Yorba Linda. Having faced gridlock evacuating from the devastating 2008 Freeway Complex Fire, residents were concerned about adding another 450 houses in the hills. They have been working diligently for four years fighting both the Cielo Vista project and the larger Esperanza Hills project next to Chino Hills State Park. Both projects are located in unincorporated Orange County.

The 340-unit Esperanza Hills project on 460 acres was approved by the Orange County Board of Supervisors in June 2015. POHAH litigated this project since it went through the approval process first. Along with four other co-petitioners, POHAH won a California Environmental Quality Act lawsuit in late June 2016 overturning the Esperanza Hills project approvals, entitlements, and Environmental Impact Report.

The 87-acre Cielo Vista project, originally proposed in 2012 as 112 units, lies immediately west and south of Esperanza Hills. Working in conjunction with North County BRS, an agreement was reached that further reduces development impacts, reduces housing density, improves fire safety, ensures gravity-fed water is used and air quality standards are met, reduces visual impacts, and makes the project more compatible with existing neighborhoods.

North County BRS will place a conservation easement over nearly 30 acres of the northern most region of its property—permanently restricting its use. Brian Gass, co-chair of POHAH states, "We secured a land manager, a management endowment, and a legal defense fund, so residents can rest assured that Esperanza Hills will never be able to use the city parkland in San Antonio Canyon as a roadway. Instead, Esperanza Hills is now restricted to a narrow corridor connecting to Aspen Way." The agreement, signed in August, precludes use of the

controversial San Antonio Canyon area, which residents vehemently opposed, but the County of Orange and City of Yorba Linda wanted to use as the Esperanza Hills' primary access.

Marlene Nelson, co-chair of POHAH, relayed, "Since our involvement in the Cielo Vista project, the density has been reduced 30%. It's down to 80 units to more closely align with existing neighborhood densities." She continues, "Several lots are deed restricted to single story. North County BRS has also agreed to incorporate a visual buffer to reduce impacts along its entire southern and western border." Specific plant materials have been incorporated into the agreement that keep the community more fire safe and account for the ongoing drought.

In addition, in an unprecedented arrangement, North County BRS is funding the creation of a Community Fire Protection Plan, Fire Safe Council, and has dedicated monthly funding from the future homeowners' association to implement the Plan. Residents are confident that with these measures and the required gravity-fed water systems, existing and future homeowners will be safer than with what had been previously proposed.

The POHAH Leadership Team, consisting of residents west and south of both projects, continue to fight the Esperanza Hills battle, but have agreed to not oppose Cielo Vista due to the concessions made by North County BRS. "At a minimum we've improved the Cielo Vista project," says Ms. Nelson. "And, we remain fully engaged and now 100% focused on the Esperanza Hills project."

Protect Our Homes and Hills is a community organization based in Yorba Linda. Learn more at ProtectYorbaLinda.com.

Canning, Kevin

From: elizabeth cox <liztcox@gmail.com>
Sent: Tuesday, November 08, 2016 10:30 AM
To: Canning, Kevin
Subject: Re: Esperanza Hills - November 9 - Orange County Planning Commission - Additional Items Posted to Web Page

I just want to comment that having these important meetings during the day on a weekday make it impossible for many of us that work. We would like to show our support by being there and also by speaking. You should consider having these meetings at a different time and day in order to accommodate the most residents it effects.

Sincerely,
Elizabeth Cox

Sent from my iPhone

On Nov 8, 2016, at 10:20 AM, Canning, Kevin <Kevin.Canning@ocpw.ocgov.com> wrote:

You have previously requested email notification regarding the subject project.

On October 26, the Orange County Planning Commission continued the item to its November 9 meeting (at 1:30 in the same meeting room). Because the item was continued to a time certain a new mailed notice will not be sent.

At the October 26 hearing, Planning Commissioners requested follow-up information. As this information is completed, we are posting it on the project web page at http://ocplanning.net/planning/projects/esperanza_hills

We are using this email list to inform you that additional information has been posted.

Kevin Canning | Contract Planner | OC Development Services | Planning
300 N. Flower Street, 1st Floor | Santa Ana, California 92702-4048 |
714.667.8847 | kevin.canning@ocpw.ocgov.com

Yorba Linda Estates, LLC



7114 E. Stetson Dr. #350 Scottsdale, AZ. 85251
P: (480) 966-6900 F: (480) 994-9005

November 8, 2016

Planning Commission
County of Orange
300 N. Flower Street
Santa Ana, CA 92702

Re: Proposed easement across Travis Trust property

Dear Planning Commissioners;

I have been asked to update the commission as to the impacts of the various access options as it relates to our application to the Army Corps of Engineers ("ACOE") for a permit to construct our project.

As part of our application, we included a memo as to the effects on waters of the United States, which is within the sole jurisdiction of the ACOE. Table 3 on page 3 presents an analysis of the impacts for Option 2B, Option 1 Modified and Option 2 Modified, all of which are analyzed in the ACOE application as alternatives.

Option 1 Modified is the only option that has no permanent impacts to Wetland Waters, and it has the least impact for Non-Wetland Waters.

As I indicated in my November 4 letter, Option 2 Modified is considerably more intrusive, and also has the most impact on protected species and habitat, such as the Least Bell's Vireo and Gnatcatcher.

As set forth in my letter of November 4, 2016, we are not pursuing Option 2 Modified and do not believe that the ACOE will issue a permit as it is the most environmentally intrusive and least practicable solution.

Please contact me should you have any questions.

Sincerely;



Douglas G. Wymore

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 1050-2ESPE

TO: Gerry Salas, U.S. Army Corps of Engineers

CC: Doug Wymore, Yorba Linda Estates, LLC
Gary Lamb, Yorba Linda Estates, LLC

FROM: Lexi Kessans

DATE: October 25, 2016

SUBJECT: New Preferred Alternative for the Esperanza Hills Specific Plan Area Project, Located in Unincorporated Orange County, California (File No. SPL-2013-00853-JPL).

The purpose of this memorandum is to provide the U.S. Army Corps of Engineers (Corps) with a new preferred alternative for the Esperanza Hills Specific Plan Area Project (Project). Under the new Preferred Alternative - Span Bridge Access Alternative (Alternative 4), a total of 340 single-family residential units would be constructed on approximately 112 to 114 acres of the Project Site. Nine public parks would be provided on 12-13 acres, and 35,856 to 39,111 linear feet of trails would be provided. Single-family residences would primarily be low density and clustered to maximize open space preservation and preserve the natural ridgelines and topography to the greatest degree possible, including all major ridgelines bordering Chino Hills State Park.

Under Alternative 4, the primary roadway connection would be provided going south to Stonehaven Drive across a span bridge over Blue Mud Canyon (Drainage F) with a secondary access west of the span bridge, also spanning a tributary to Blue Mud Canyon and going south to Stonehaven Drive. Fill material would be discharged into jurisdictional drainages for mass grading of the Project Site.

The Span Bridge Access Alternative would result in permanent impacts to 0.87 acre of Corps jurisdiction, none of which consists of jurisdictional wetlands, and totals 15,925 linear feet [Table 1 and Exhibit 1 - Corps Jurisdictional Delineation/Impact Map - Alternative 4]. Permanent impacts would occur in Drainages A, D, and E. In addition, temporary impacts totaling up to 0.10 acre of non-wetland waters and 0.02 acre of wetland waters (totaling 1,189 linear feet) may occur during construction of the span bridges and for potential remedial grading [Table 2 and Exhibit 1]. No permanent impacts would occur to Drainages B, C, F, and G.

Alternative 4 reduces permanent impacts as compared to the previously preferred alternative, the San Antonio Road Access Alternative (Alternative 3), by eliminating access into the Project Site

at San Antonio Road and providing access at locations where span bridges across jurisdictional waters are feasible. Alternative 3 proposed to permanently impact 1.05 acre of non-wetland waters and 0.09 acre of wetland waters [Exhibit 2], which is a 0.18 acre reduction of non-wetland waters of the U.S. and 0.09 acre reduction of wetland waters of the U.S. Alternative 4 would also reduce impacts as compared to Alternative 2, the Aspen Way Alternative, which would permanently impact 0.97 acre of non-wetland waters and 0.15 acre of wetland waters [Exhibit 3], reducing non-wetland impacts by 0.10 acre and wetland impacts by 0.15 acre. Alternative 4 completely avoids permanent impacts to wetland waters of the U.S. Table 3 below provides an impact comparison between the three impact alternatives, including permanent and temporary impacts.

Table 1 - Alternative 4: Summary of Permanent Impacts to Corps Jurisdiction

	Total Corps Jurisdictional Impacts (acres)			
Drainage	Non-Wetland Waters	Wetland	Total	Linear Feet (ft)
A	0.10	0	0.10	2,984
D	0.38	0	0.38	6,520
E	0.39	0	0.39	6,421
Total	0.87	0	0.87	15,925

Table 2 - Alternative 4: Summary of Temporary Impacts to Corps Jurisdiction

	Total Corps Jurisdictional Impacts (acres)			
Drainage	Non-Wetland Waters	Wetland	Total	Linear Feet (ft)
B	<0.01	0	<0.01	28
D	0.04	0	0.04	646
F	0.06	0.02	0.08	515
Total	0.10	0.02	0.12	1,189

Table 3 – Impact Comparison of Alternatives 2, 3, and 4

	Permanent Impacts to Non- Wetland Waters of the U.S. (acres)	Permanent Impacts to Wetland Waters of the U.S. (acres)	Temporary Impacts to Non- Wetland Waters of the U.S. (acres)	Temporary Impacts to Wetland Waters of the U.S. (acres)
Alternative 2 - Aspen Way Alternative	0.97	0.15	0.09	0.02
Alternative 3 - San Antonio Road Access Alternative	1.05	0.09	0.09	0.02
Preferred Alternative 4 - Span Bridge Access Alternative	0.87	0.00	0.10	0.02

Should you have any questions, please contact me at (949) 837-0404 x47 or via email at lkessans@wetlandpermitting.com.

s: 1050-2/Permitting/404/REV2/Corps revised impact memo.docx

KEVIN K. JOHNSON, APLC

KEVIN K. JOHNSON
JEANNE L. MacKINNON
HEIDI E. BROWN

A PROFESSIONAL LAW CORPORATION
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703 PALOMAR AIRPORT ROAD, SUITE 210
CARLSBAD, CALIFORNIA 92011

TELEPHONE (619) 696-6211
FAX (619) 696-7516

November 8, 2016

SENT VIA EMAIL

Members of the Planning Commission
County of Orange
c/o Orange County Public Works
Kevin Canning
300 N. Flower St.
Santa Ana, CA 92702-4048

Re: Continued Agenda Item #2 - Esperanza Hills
November 9, 2016 Planning Commission Meeting

Dear Members of the Planning Commission:

This firm represents Protect Our Homes and Hills, Hills for Everyone, Endangered Habitats League, Inc., California Native Plant Society, and Friends of Harbors, Beaches and Parks, Inc. We submit the following additional comments on the Revised Environmental Impact Report ("REIR") for the Esperanza Hills project and the applicant's recent proposed, significant specific plan amendment.

For reasons unknown to the public, the County appears to be more concerned about pushing these approvals through in a haphazard, rushed and procedurally improper manner than in providing adequate public input and appropriate environmental review and comment on the serious issues raised by the REIR and the applicant's substantial proposed revisions to the specific plan.

At the previous hearing, several commissioners had questions concerning the County's process in light of the Court's Writ. The procedures employed by the County, i.e. recommendations from the Planning Commission, followed by simultaneously vacating project approvals and certification of the Final EIR and immediately adopting the REIR and reinstating the project approvals, do not comply with the express terms of the Writ issued by Judge Cluster. The Writ provides that the County

November 8, 2016

“immediately upon receipt of this peremptory writ of mandate” vacate certification the FEIR and all project approvals. The Writ was served on the County on October 12, 2016. “Immediately” does not under any reasonable interpretation mean later, in conjunction with recertification and re-approval. Indeed, the terms of the Writ indicate that the County shall notify the Court within 90 days that it has vacated certification of the FEIR and all project approvals and revised the EIR. However, by the terms of the Writ, any decisions regarding recirculation and certification of the revised EIR and reissuance of project approvals are to occur separately and are not part of this 90 day compliance period. The Writ therefore contemplates that the County will first vacate certification of the FEIR and project approvals, then remedy the CEQA deficiencies identified by the Court, and then consider whether to recirculate the revised EIR or reapprove the project. The process employed by the County rolls this process into one, providing a result oriented, post hoc rationalization and a fundamental failure to reexamine environmental impacts of this project and its approvals as commanded by the Court.

In addition, the County process continues to evade appropriate public review. After the close of public comment and only one day before the continued hearing, the County has posted new information on its website relating to the matters to be considered by the Planning Commission including: two self-serving, conclusory, unsupported opinions authored by the applicant’s land use/environmental consultant concerning the circulation of the REIR for public comment and the necessity of further environmental review for the significant new information relating to the bridge proposal known as Option 1 Modified.

These documents reach unsupported conclusions concerning environmental impacts of the massive bridge proposal but provide no specifics concerning any aspect of the bridge including its superstructure (decks, slab, girders), substructure (piers and abutments), foundation, height, span, materials, location of footings, lighting etc. In the absence of any details concerning this bridge, any conclusions reached in the CAA memos are unsupported by substantial evidence. The view simulations are of limited value in the absence of accurate renderings of the bridge actually proposed. In fact, view simulations submitted by the public demonstrate significant visual and aesthetic impacts from the proposed bridge. The memos are simply post hoc rationalizations concerning the necessity of further environmental review which clearly deprive the public and the decision-makers of any ability to have meaningful input on the issues raised at the hearing.

Nor can the REIR, which examined an entirely different access alternative in the form of Option 1, provide the necessary analysis of the bridge alternative. Information “scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.” *California Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239 (discussion of water supply issues appeared only in EIR appendix); *see also Vineyard*, 40 Cal.4th at 442 (“A reader of the FEIR could not reasonably be expected to ferret out an unreferenced discussion in the earlier [environmental document]...”).

The City of Yorba Linda, a responsible agency, has reasonably requested a continuance until after its November 15 City Council meeting in order “to discuss the revised project in order to provide

November 8, 2016

input and recommendations to the County prior to a formal decision.” This request and obtaining City input is particularly important because the City has an interest in several tracts necessary for this latest access option and related emergency access. In fact, it is our understanding that some or all of this property is zoned as open space. A road facilitating a private residential development is not an approved open space use within the City. As indicated in the City’s October 26, 2016 letter: “the County should require the applicant to prove and show all documentation that it has legal access to all property needed (including grading rights) for the primary and emergency access points prior to approving the project and provide the exact locations for any proposed streets be presented and acceptable to the City before the County issues any permits for this project.”

Instead, the County appears bent on rushing to judgment without all necessary information concerning this most recent access proposal (actually the sixth access option proposed by the applicant; an earlier related version was soundly criticized and deleted from the specific plan).

In addition to the foregoing, there is a serious issue of the new information concerning the known presence of gnatcatchers on the adjacent Cielo Vista property in jurisdictional drainages contiguous to the Esperanza Hills project site. The project site, as well as the adjacent Cielo Vista and Bridal Hills sites, are within Unit 9 of the designated Critical Habitat for the threatened California gnatcatcher. Unit 9 is described as providing “connectivity and genetic interchange among core populations and contains large blocks of high-quality habitat capable of supporting persistent populations of coastal California gnatcatchers.” The project site contains 92.02 acres of gnatcatcher habitat in the form of coastal sage scrub (“CSS”) and the project will impact over 33 acres of CSS and over 65 acres of CSS/Chaparral Ecotone.

According to comments previously submitted by USFWS on the Esperanza Hills EIR, gnatcatchers are likely to disperse through the project site and forage on this site and have been observed a mere 0.25 mile from the project site as well as within 1.5 miles east and west of the project site. In July 2016, new information in the form of focused surveys indicated gnatcatchers were present on the immediately adjacent Cielo Vista site in jurisdictional drainages contiguous to Esperanza Hills. It is highly probable that if gnatcatchers are present farther west on Cielo Vista that they are present on Esperanza Hills. According to USFWS, the primary function of the critical habitat is to “maintain connectivity and genetic interchange between significant gnatcatcher populations in the Santa Ana Mountains and those in the Chino Puente Hills” and “small patches of remaining habitat provide important stepping stones for continued gnatcatcher dispersal”. The project’s impacts on this gnatcatcher presence on Cielo Vista will further impact low elevation dispersal corridors for the gnatcatcher and USFWS previously recommended both Cielo Vista and Esperanza Hills “include low elevation corridors to maintain the function of critical habitat for gnatcatcher dispersal”.

This new information concerning gnatcatcher presence and impacts falls squarely within Public Resources Code section 21166 triggers for preparation of a subsequent or supplemental EIR. The information was not known and could not have been known at the time the FEIR for Esperanza Hills was initially certified. By its extensive grading and earth movement activities, the project will cut off

November 8, 2016

low elevation dispersal corridors which are plainly being used by the gnatcatchers present on the westerly Cielo Vista property and interrupt connectivity between gnatcatcher populations at Chino Hills State Park and Cielo Vista. The project will therefore have significant effects not evaluated in the prior EIR and/or significant effects previously examined will be substantially more severe than shown in the prior EIR. *See* CEQA Guidelines section 15162. The County should require preparation of a supplemental or subsequent EIR.

Thank you for your attention to these comments. At a minimum, a continuance, and reopening of public testimony are appropriate under the circumstances. At present, the County procedures fail to comply with the Writ issued by Judge Claster, the REIR remains inadequate under CEQA and should be formally circulated for public comment and the new access alternative should undergo appropriate environmental review. Amendment of the specific plan without additional environmental review is improper under CEQA. New information concerning the presence of gnatcatchers on Cielo Vista and impacts of the Esperanza Hills project on this threatened species require a supplemental or subsequent EIR.

Very truly yours,

KEVIN K. JOHNSON, APLC

A handwritten signature in black ink, appearing to read "Jeanne L. MacKinnon", written over a horizontal line.

Jeanne L. MacKinnon

FIRM / AFFILIATE OFFICES

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File No. 056872

November 8, 2016

VIA EMAIL AND HAND DELIVERY

Honorable Planning Commissioners
Chairman Jett McCormick
Commissioner Trung “Joe” Ha
Commissioner Thomas Tri Quach
Commissioner Kevin Rice
Commissioner Cameron Irons
Planning Commission
County of Orange
333 W. Santa Ana Blvd., 10 Civic Center Plaza
Planning Commission Room

Re: Recommendation for Certification of Revised FEIR, Esperanza Hills Project

Dear Honorable Commissioners:

I am writing on behalf of my client Yorba Linda Estates, LLC, in response to the letter dated November 7, 2016, (submitted after the close of the public hearing in the matter now pending the Planning Commission), on behalf of North County BRS Project LLC. We understand that North County Project LLC is the proponent of the Cielo Vista project. The letter was written on behalf of Cielo Vista in order to delay or oppose my client’s project. Delay or opposition to my client’s project is being sought by Cielo Vista for several improper reasons.

The November 7 Cielo Vista letter raises a number of meritless objections to the Esperanza Hills Project and County staff’s attempts to provide the Board of Supervisors with information for its upcoming decision regarding how to comply with the writ of mandate issued by the Superior Court of Orange County (Judge W.D. Claster).

It is important to note that attempts to further delay the Board’s consideration of the Esperanza Hills Project will deprive the Board of Supervisors of the documents, resources and advisory decisions that the Board needs to determine how to respond to the Superior Court’s writ of mandate. How the Board chooses to comply with the writ is within the Board’s sole discretion, as the writ clearly states that “nothing in this writ directs Respondents to exercise their lawful discretion in any particular way.” The writ directed the Board to vacate the June

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2015 certification of the Final Environmental Impact Report; however, the writ did not direct the Board on what it should do subsequent to that action. Additionally, the Petitioner in the case, dissatisfied with Judge Claster's ruling, has filed an appeal of the judgment and the writ. Accordingly, to the extent that the November 7 Cielo Vista letter suggests that, pursuant to the Superior Court writ, the County is required to prepare a supplemental EIR under Public Resources Code section 21166 or CEQA Guidelines section 15162, recirculate the revised EIR under Public Resources Code 21092.1 or CEQA Guidelines section 15088.5, or take any other inherently discretionary action, it is plainly incorrect. These actions are expressly within the County's discretion to decide.¹

The County has the discretion to consider modifications to the Project that are not strictly presented in the EIR. (*Sierra Club v. County of Orange* (2008) 163 Cal.App.4th at 523, 533 [“The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed. Decisionmakers should have the flexibility to implement that portion of the portion of the project which satisfies their environmental concerns”] [quoting from *Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 104].) Accordingly, the County has the discretion to come to a decision on Option 1-Modified even though it is a modification to the “Option 1” that was analyzed in the FEIR.²

Similarly, the County has the discretion to come to a decision on the Revised FEIR and Option 1-Modified even if all project details are not yet known. The November 7, 2016 Cielo Vista letter presents a number of speculative questions and requests for detail that may not be available at this stage of the planning process. The fact that such information may not be available does not prevent the County from coming to a decision on the Revised FEIR and Option 1-Modified. (E.g., *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055 (“Nor have the courts required resolution of all hypothetical details prior to approval of an EIR”); *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1336-37 (it was unreasonable and unrealistic to demand that an EIR “must describe in detail each and every conceivable development scenario”).

The County also has the discretion to rely on the prior environmental analysis, which the Superior Court found to be adequate except for the FEIR's analysis of the project's greenhouse gas emissions, which County staff has been working diligently to correct in the revised analysis. The November 7, 2016 Cielo Vista letter reasserts other arguments that the FEIR is defective based on its discussion of biological resources, air quality, traffic, hazard, and public safety-related impacts, but that is only true insofar as it relates to the FEIR's analysis of the Project's

¹ Though not identical, the “subsequent EIR” test under CEQA Guidelines section 15162 and the “recirculation” test under CEQA Guidelines section 15088.5 are similar in substance – in general, both require subsequent environmental review or recirculation, respectively, only if new information reveals the presence of a new significant impact or a substantially more severe environmental impact. A modification to the project does not per se require a subsequent EIR or recirculation without such a finding.

² Referred to as “Option 5,” for rhetorical flourish, in the November 7 Cielo Vista letter.

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greenhouse gas emissions. Otherwise, the Superior Court held that these other objections “are without merit.” Notably, objections related to the aesthetics of the proposed bridge were not advanced in the litigation underlying the writ and are only now resurrected in an attempt to delay the Board’s consideration of how to comply with the Superior Court writ.

Accordingly, the fact that the Option 1-Modified bridge is somewhat larger than the bridge presented in the original Option 1 does not mean that subsequent environmental analysis or recirculation of the Revised FEIR is required. Assuming, for the sake of argument, that Option 1-Modified resulted in some larger environmental impact, subsequent environmental analysis or recirculation of the Revised FEIR would not be required unless the evidence demonstrated such impact was an entirely new significant adverse environmental effect, or a *substantially* more severe significant adverse environmental effect than what already has been studied. See, e.g., River Valley Preservation Project v. Metropolitan Transit Development Board, 37 Cal. App. 4th 154 (1995) (change of transit line project design to reroute transit line on opposite of river and requiring construction of new bridges and berms did not trigger the need for recirculation, a new public comment period, or a supplemental EIR). Using the correct legal standard for recirculation under CEQA, the Superior Court in its final judgment has already rejected incorrect arguments made by project opponents that a change to a new access option on June 2, 2015 by the Board of Supervisors required recirculation of the EIR for the Yorba Linda Estates project.

The evidence before the County demonstrates that although the Option 1-Modified bridge is somewhat larger than the original Option 1 bridge, the overall impact of the project modifications being presented as part of Option 1-Modified reduces the project’s environmental impacts when compared to the specific project alternatives discussed in the Revised FEIR, and does not result in any new significant adverse effects on the environment..

Yorba Linda Estates appreciates the public feedback on the Project it has received over the four years (and counting) of processing and environmental review, since it first submitted its project application. Yorba Linda Estates, in response to that public feedback (efforts of the Cielo Vista project proponents) has re-designed the project in a manner that is environmentally sensitive and responsible. It is unfortunate that late comment letters such as the November 7, 2016 Cielo Vista letter appear calculated to delay the Board’s consideration of the Esperanza Hills Project further, including timely compliance with the Superior Court writ. We hope that this letter addresses the arguments raised by the Cielo Vista project proponents, so that they can find a way to focus on their energy on permitting the Cielo Vista project rather than opposing unrelated projects like Esperanza Hills and that the County may proceed towards its decision on how to comply with the Superior Court writ.

If you have any further questions or concerns, please contact me at christopher.garrett@lw.com and/or (858) 523-5458.

Very truly yours,

Christopher W. Garrett

Christopher W. Garrett
of LATHAM & WATKINS LLP

LATHAM & WATKINS^{LLP}

cc:

Colby Cataldi
Robyn Uptegraff
Nicole Walsh
Doug Wymore

November 8, 2016

Client-Matter: 46984-030 /

VIA E-MAIL [SHARON.GILLIAM@OCPW.OCGOV.COM]

Honorable Planning Commissioners
County of Orange
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Re: Discussion Item No. 2: Esperanza Hills Specific Plan (PA 160048)

Honorable Planning Commissioners:

This letter seeks to correct and supplement the record in response to comments made by the Esperanza Hills applicant on October 26, 2016, chiefly regarding the viability of the Option 2 Modified roadway configuration connecting to Esperanza Hills from Aspen Way. The current Esperanza Hills proposal is based on the premise that Option 1 is the applicant's only path forward because Option 2 Modified is infeasible. These are substantial assumptions given the recent opposition to Option 1 by both the Orange County Board of Supervisors and the City of Yorba Linda (not to mention the neighbors).

The applicant attributes Option 1's infeasibility to two sources: (a) my client's (alleged) resistance to Option 2 Modified, and (b) the potential existence of Coastal California Gnatcatchers within the Option 2 Modified roadway footprint. Both assumptions are false and should be rejected by this Commission:

1. Cielo Vista is Willing to Sell Option 2 Modified to Esperanza Hills

My client is willing to sell Esperanza Hills a fee interest in a parcel that would facilitate the Option 2 Modified roadway at a fair price consistent with our prior negotiations and mediations. My client's willingness to accommodate the Esperanza Hills development has not wavered. After the Board of Supervisors rejected Option 1 in June 2015, my client participated in numerous meetings with the applicant and the City in furtherance of Option 2B. The City ultimately determined that Option 2 Modified was preferable to Option 2B, so my client and the applicant pursued negotiations and mediations to enable that access configuration. Now, even though no agreement is in place, my client has prepared a parcel map so that the applicant can ultimately purchase a parcel for the Option 2 Modified roadway in fee. Also, as part of a settlement with Protect Our Homes and Hills, my client reserved the right for Esperanza Hills to utilize that parcel for the Option 2 Modified roadway.

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2. Potential Gnatcatcher Impacts Are Not Fatal to Option 2 Modified

According to the Esperanza Hills applicant's written and oral statements, potential impacts to Coastal California Gnatcatchers caused by the Option 2 Modified roadway render that roadway infeasible. No analysis has been submitted to support this claim. The question of whether or not the Option 2 Modified roadway would result in an impact to Gnatcatchers or Gnatcatcher habitat would only be resolved after the applicant has actually designed the roadway and, most likely, conducted additional Gnatcatcher surveys.

Even if the Option 2 Modified roadway would result in a potential impact to Gnatcatchers or Gnatcatcher habitat, the existence of such impacts would not prevent its development. Potential impacts to Gnatcatchers and/or Gnatcatcher habitat can and have been mitigated by this County in the past, and the existence of Gnatcatchers has not been tantamount to a ban on development.

The certification of the *Tonner Hills Planned Community* EIR (DEIR No. 581, SCH# 20011031137) is but one example where extensive impacts to both Gnatcatchers and Gnatcatcher habitat were overcome by this County. That EIR concluded that the Tonner Hills project would impact seven pairs of Gnatcatchers and 104.3 acres of Coastal Sage Scrub. Nevertheless, mitigation was required by the County (e.g., re-vegetation), its EIR was certified, and the project was ultimately approved.

This Commission deserves a better explanation as to why it should approve Option 1 against the wishes of the Yorba Linda City Council and the Board of Supervisors given my client's willingness to enter into an agreement on Option 2 Modified and the County's past practice of approving development notwithstanding Gnatcatcher impacts.

Thank you for your consideration.

Sincerely,



Sean Matsler

cc: Honorable Orange County Supervisors (via e-mail: response@ocgov.com)
Mr. Colby Cataldi (via e-mail: Colby.Cataldi@ocpw.ocgov.com)
Mr. Kevin Canning (via e-mail: Kevin.Canning@ocpw.ocgov.com)
Leon Page, Esq. (via e-mail: leon.page@coco.ocgov.com)
Nicole Walsh, Esq. (via e-mail: nicole.walsh@coco.ocgov.com)
Robert Smith (via e-mail: rsmith@sagecommunity.com)

November 9, 2016

Attn: Sharon.Gilliam@ocpw.ocgov.com

Chairman Jett McCormick and Orange County
Planning Commissioners
333 West Santa Ana Blvd., 1st Floor
10 Civic Center Drive West
Santa Ana, CA 92701

Chairman McCormick and Members of the Planning Commission:

Re: Esperanza Hills EIR 616, Option 1 Modified

Dear Commissioners,

Please include the attached letter into the record for today's meeting. I apologize for this late submission but there has been a flood of new information posted.

My comments relate to the new bridge in Option 1 Modified as it relates to Traffic.

CAA Planning states in their revised letter dated November 7, 2016, regarding Traffic on page 13 that:

“Compared to original Option 1, Option 1 Modified provides a roadway realignment that will straighten the main access road, reduce its length by **.28 miles.24 mile**, and widen it by 6 feet. Vehicle miles traveled by residents daily will be reduced, **and emergency access will be improved**. The emergency road has been extended to tie into the heart of Planning Area 1 near the fire staging area to permit more flexibility for OCFA in the event of an emergency. Compared to the San Antonio Road and Aspen Way access options, **Option 1 Modified will have only one main entrance on Stonehaven Drive** with an emergency entrance out to Via Del Agua but will again minimally reduce vehicle miles traveled **on a daily basis and provide for a shorter, wider road to Stonehaven. Drive**. The traffic analysis for Option 1 in the **FEIRREIR** remains unchanged **as, because** the number of lots and amount of traffic has not changed, except as set forth above.” (emphasis added in bold)

In the case of a fire emergency as was experienced in the 2008 Freeway Complex fire, it is well documented that the Stonehaven/Agua loop was seriously impacted with cars stalled in three lanes attempting to get out onto Yorba Linda Blvd. There **is** an impact to traffic with this new straightened bridge to an emergency evacuation in that, as stated above, the bridge will “provide a shorter, wider road to Stonehaven Drive. The result of this new roadway design option **WILL** result in a faster evacuation of Esperanza Hills’ Residents **TO THE DETRIMENT** of the safe evacuation of existing residents who, as was the case in 2008, were unable to exit existing local

roads. Traffic in an evacuation scenario considering this “shorter, wider road to Stonehaven Drive” needs to be reanalyzed.

Sincerely,

Marlene Nelson
4790 Via De La Roca
Yorba Linda, CA 92887



November 9, 2016

Chairman Jett McCormick and
Orange County Planning Commissioners
333 W. Santa Ana Boulevard, 1st Floor
Santa Ana, CA 92701

Re: Esperanza Hills - Response to Letter from Kevin Johnson

Dear Chairman McCormick and Commissioners:

In response to a letter from Kevin Johnson on behalf of the Esperanza Hills project opponents, we provide the following:

We remind Mr. Johnson that the Esperanza Hills FEIR certification occurred 20 months ago after a series of well publicized public hearings. The legal challenge filed by Mr. Johnson included a laundry list of proposed deficiencies in the Final EIR (FEIR). We also remind Mr. Johnson that the judgment rendered by Judge William Claster states:

“Petitioners’ opening brief contends that the EIR is inadequate in at least 10 different respects and that the Project is inconsistent with the County’s General Plan in several ways. After careful consideration of the arguments of all parties, as well as the administrative record, the Court finds that virtually all of these arguments are without merit.” (Emphasis added.)

The Writ of Mandate required *revision of the EIR to address two specific errors* - improper deferral of Greenhouse Gas (GHG) Mitigation Measures and the arbitrary limitation of GHG emissions reductions to 5%. Now the County is prepared to review the REIR, as revised per the Court’s mandate, at duly noticed public hearings after posting the information for the required period of time on the County’s website. Characterizing this process as “haphazard, rushed and procedurally improper” is an injustice to County staff who have worked diligently to comply with the Court decision.

Mr. Johnson’s interpretation of the timing of the process to cure the issues identified by Judge Claster is an opinion not based on anything in the Court documents. His further interpretation of what the Judge intended is not supported by anything other than a thinly veiled attempt to once again delay the County’s process for approving this project.

The assertion that the County is attempting to evade appropriate public review is also Mr. Johnson’s unsupported opinion. However, based on the fact that all pertinent and relevant information has been provided timely by the County on its website and all hearings have been noticed according to the County’s regulations, it is difficult to understand Mr. Johnson’s issue.



Chairman McCormick and
Orange County Planning Commissioners
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He and the project opponents have routinely submitted “document dumps” at the last moment before public hearings, attempting to prevent the County an informed and timely opportunity to review the information contained therein. In fact, this document responds to a last minute letter submitted by Mr. Johnson the day prior to a scheduled Planning Commission hearing. That double standard for providing information is merely a delaying tactic.

We disagree with Mr. Johnson’s opinion that documents provided in support of the Project include unsupported conclusions. The November 7, 2016 Memorandum from CAA Planning, Inc. - Esperanza Hills - Specific Plan Modified Access, CEQA Substantial Conformance Review - is based on the analysis contained in the certified FEIR and the updated Revised EIR (REIR) currently before the Planning Commission. The analysis did not show any new or more significant impacts than had previously been identified and mitigated to a less than significant level. The reduction in GHG emissions was noted as a continuing significant impact. However, the revised GHG section is in full compliance with the Court’s direction. The conclusions are based on analysis and are not discretionary in terms of quantifiable impacts.

Mr. Johnson finds fault with the view simulations provided showing the location and aesthetic impacts of the structure. Until the bridge is built, view simulations are the accepted method for portraying a future condition. And, as discussed in previous responses, aesthetics are subjective in terms of the viewer’s perspective. The difference between viewing a winding roadway vs. a bridge structure is generally a matter of opinion. Further, CEQA does not require protection of views from private property.

Mr. Johnson states that no specifics about the bridge are provided. Contrary to that opinion, the County and the public have the information required by CEQA to make an informed decision. Rather than a longer roadway with a shorter bridge (Option 1), Option 1 Modified provides a shorter, more direct roadway with less steep grades and a longer bridge. The off-site grading footprint as compared to other options and alternatives is reduced, grading from the Travis Trust property to the west (Cielo Vista) is eliminated, a road through Blue Mud Canyon is removed and the canyon is restored to open space, the development pad areas along the westernmost lots will be pulled back. Natural space on-site will be increased by 8.94 acres. Ridgelines to the east and north will remain undisturbed and light and glare will be reduced through elimination of lighting of the additional roads to the west. Engineering specifications will be required by the County prior to bridge construction and will be subject to all required codes for safety and design. The modification of the access roadway design will have no environmental impacts that are different from or greater than what is analyzed in the REIR. The proposed access is a modification of the Option 1 roadway design which was fully analyzed in the FEIR.

With regard to the City of Yorba Linda, Mr. Johnson opines that a portion of the access roadway is on City “open space” which does not permit roads. This question was raised and answered previously during public review prior to the certification of the FEIR with regard to application



Chairman McCormick and
Orange County Planning Commissioners
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of the City's Measure B. Specifically, prior to the Board of Supervisors hearing, responses were prepared to address this issue. In one instance, the response noted: "The City of Yorba Linda has not asserted that Measure B will apply to Access Configuration 2B, or to any component of the Esperanza Hills project, though other commenters did make such a claim. The project proponent will be required to secure approval from the City for said access. No City General Plan Amendment or City zone change is necessary for roadway access through City open space for the Esperanza Hills development because roadways are considered circulation elements, and not "land uses" such as parks, golf courses, residential units, offices, etc. which are regulated by zoning. Therefore, the Project is not subject to the City's Measure B since no General Plan or zoning amendments are required or sought." (Emphasis added)

In a specific response to a late letter from Mr. Johnson prior to the June 2, 2015 Board of Supervisors hearing, CAA provided the following:

Roads are not enumerated in any General Plan use designation. With respect to the uses in the Open Space category detailed in Mr. Johnson's letter, including developed parklands, private recreation facilities and recreation amenities, developed parks, golf course or educational facility sites. These uses necessarily include roads for access. The Esperanza Hills project includes a park area and trail connections at the access point on San Antonio Road. The Project will improve open space areas so that it can be accessed by the public.

Therefore, Mr. Johnson is well aware of the fact that the open space designation does not prohibit roadway access. Again, his comment is "without merit."

With respect to Mr. Johnson's comments about gnatcatchers, it should be noted that extensive biological analysis, including site visits, has been conducted for the Esperanza Hills property. The project, under access alternative Option 1 or Option 1 Modified, will not have an impact on gnatcatchers because there has never been a recorded presence on the Esperanza Hills property for gnatcatchers, as confirmed by the recent Leopold Biological Study which covered a portion of the Esperanza Hills property and confirmed, once again, that gnatcatchers are not present on Esperanza Hills, according to the surveys going back approximately 20 years. The adjacent Cielo Vista project, however, does have reported gnatcatcher habitat and sightings, but that doesn't mean that gnatcatchers are present on Esperanza Hills. The attempt to raise another issue that has been analyzed and resolved in the litigation should be dismissed as having been adequately addressed. Mitigation is more appropriately required of the Cielo Vista project, if the County determines that this is "new information" not adequately addressed in their DEIR.

Mr. Johnson continues to provide opinions on issues which the Court has determined to be "without merit." Similarly, the issues raised in his November 8 letter are without merit because they have been adequately addressed and no new information that was not previously analyzed



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Orange County Planning Commissioners
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has been introduced in the REIR. The REIR fully responds to the Court mandate for expanded information in the GHG section and, therefore, the REIR is adequate relative to all environmental analysis.

Sincerely,

CAA PLANNING, INC.

A handwritten signature in blue ink that reads "Shawna L. Schaffner". The signature is fluid and cursive.

Shawna L. Schaffner
Chief Executive Officer

c: Mr. Douglas Wymore
Mr. Gary Lamb
Mr. Kevin Canning
Ms. Laree Alonso



November 9, 2016

Chairman Jett McCormick and
Orange County Planning Commissioners
333 W. Santa Ana Boulevard, 1st Floor
Santa Ana, CA 92701

Re: Esperanza Hills - Response to Morrison Foerster Comments

Chairman McCormick and Members of the Planning Commission:

The County is in receipt of a letter from David A. Gold, of Morrison/Foerster dated November 7, 2016 commenting on the Esperanza Hills project and the certification of a Revised FEIR. Specifically, the letter attempts to support the conclusion that the Esperanza Hills Revised Environmental Report (REIR) cannot lawfully be certified as compliant with CEQA. Following are responses to the erroneous conclusions presented by Morrison/Foerster.

Background

In the section titled Background, the letter inaccurately portrays the action taken by the Court in its Statement of Decision (Superior Court Case No. 30-2015-00797300-CU-TT-CXC). The Decision document did not require recirculation. Rather, the Writ of Mandate related to the judgment required revision of the EIR to address two specific errors - improper deferral of Greenhouse Gas (GHG) Mitigation Measures and the arbitrary limitation of GHG emissions reductions to 5%. The perceived “arbitrary limit” of 5% was cured through the adoption of 40 distinct mitigation measures which were analyzed to quantify the emissions reduction. This was the extent of the inadequacies of the FEIR. On all other claims, the petitioners were denied. The REIR has been appropriately updated to present specific mitigation measures that reduce GHG emissions by 7.93% based on current available and feasible mitigation suggested in the CAPCOA “Quantifying Greenhouse Gas Mitigation Measures” document dated August 2010. The REIR was revised to cure the mitigation measure deferral issue by removing the “menu” approach to providing 40 distinct mitigation measures intended to reduce GHG emissions. Therefore, the County and the Project applicant have fully complied with the specific issues requiring revision per the Court order.

It is disingenuous of Mr. Gold and Morrison/Foerster to suggest that the entire EIR must be revisited based on the Court’s order to vacate the FEIR and recertify the EIR. If Judge Claster had ordered recirculation, which is not the case, only the revised sections of the REIR would be recirculated for public review consistent with CEQA Section 15088.5(c). While recirculation was not ordered, and is not required as detailed in the November 7 CAA Planning Memorandum on Recirculation, the same holds that only the revised portions of the REIR must be considered by the County in determining whether the GHG changes address the deferred mitigation measure and 5% limit. Since the Writ of Mandate clearly states that all other challenges by the petitioners are without merit, the FEIR remains adequate and complete in all other areas and would neither be subject to revision or recirculation had recirculation been ordered. As specifically stated in Judge Claster’s Proposed Statement of Decision: “Petitioners’ opening brief contends that the EIR is inadequate in at least 10 different respects and that the Project is inconsistent with the County’s General Plan in several ways. After careful



Chairman Jett McCormick and
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consideration of the arguments of all parties, as well as the administrative record, the Court finds that virtually all of these arguments are without merit.” The County Planning Commission and Board of Supervisors found the FEIR adequate and in compliance with CEQA in their original certification.

The following responses will detail why the County is within its legal right to recertify the REIR as compliant with CEQA.

Option 1 Modified

CEQA encourages consideration of alternatives that reduce environmental impacts and to that end two main access options were analyzed at the same level of detail within the REIR, which included an unprecedented level of detail for roadway access to a residential subdivision project within an EIR. In addition two separate project alternatives strictly related to roadway access were also analyzed within the REIR. Option 1 Modified is similar to Option 1 in that both access options originate from Stonehaven Drive and both have Emergency Only access through the existing easement through the Cielo Vista property. Option 1 includes a roadway with steep grades, a “hairpin” turn, a bridge, significant grading and an approximately 300 foot long and 35’ tall stepped retaining wall system and a bridge that crossed the Whittier Fault. The difference between Option 1 and Option 1 Modified is that fewer environmental impacts occur with Option 1 Modified as further detailed below and in CAA Planning’s September 28 (updated November 7, 2016) Esperanza Hills - Specific Plan Modified Access, CEQA Substantial Conformance Review memorandum.

Inclusion of a bridge in the proposed Option 1 Modified, which the commenter claims to be “radical” and “shocking”, provides a reduction in impacts to Air Quality (short-term construction impacts and long-term operational impacts), Biological Resources, Geology and Soils and Noise because there will be less grading, less disturbance within Blue Mud Canyon, a substantially reduced roadway footprint (over ¼ of a mile of less roadway would be constructed) and less noise impact than Option 2 Modified which noted an unavoidable significant impact for noise that is not present with either Option 1 or Option 1 Modified. While construction air quality and construction GHG emissions are already considered to be less than significant as analyzed in the REIR, the reduced grading quantity will provide an additional impact reduction in those areas. An exhibit depicting the Option 1 access compared to the Option 1 Modified access, attached hereto, shows the extensive grading and disturbance due to the roadway footprint associated with Option 1 compared to the more direct path of travel associated with Option 1 Modified.

The County, during the original approval process, received numerous comments expressing concerns about the proposed roadway through Blue Mud Canyon related to disturbance of biological resources and due to steep grades and the “hairpin” turn. The Option 1 Modified design avoids grading and placing the roadway in an area where there were concerns for the protection of sensitive habitat and species. Glenn Lukos Associates has prepared a detailed analysis of impacts to biological resources related to the Option 1 Modified configuration. Commenter is referred to the analysis, which is included as Attachment B to the Substantial Conformance Memorandum prepared by CAA Planning, Inc. (dated November 7, 2016).



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Commenter asks “What does the Commission and the public know about this new bridge option?” In response, the County and the public have the information required by CEQA to make an informed decision. Rather than a longer roadway with a shorter bridge (Option 1), Option 1 Modified provides a shorter, more direct roadway with less steep grades and a longer bridge. The off-site grading footprint as compared to other options and alternatives is reduced, grading from the Travis Trust property to the west (Cielo Vista) is eliminated, a road through Blue Mud Canyon is removed and the canyon is restored to open space, the development pad areas along the westernmost lots will be pulled back. Natural space on-site will be increased by 8.94 acres. Ridgelines to the east and north will remain undisturbed and light and glare will be reduced through elimination of lighting of the additional roads to the west. Engineering specifications will be required by the County prior to bridge construction and will be subject to all required codes for safety and design. The modification of the access roadway design will have NO environmental impacts that are different from or greater than what is analyzed in the REIR. And call it what you will, the proposed access is a modification of the Option 1 roadway design which was fully analyzed in the FEIR.

In addition, Section 13.3 of the Esperanza Hills Specific Plan includes a detailed Implementation process whereby approval is required from both the Subdivision Committee and the County Board of Supervisors for the final tentative tract map that establishes the public access roadway(s). The Specific Plan also provides for minor modifications (Section 13.4), including street alignments/connections. Therefore, the Project is subject to an on-going approval process for compliance with all County regulations but the specific environmental impacts of Option 1 Modified are documented to be less than the environmental impacts associated with Option 1 as fully detailed in the REIR and do not require additional environmental analysis.

Commenter is referred to the view simulations provided as an attachment to the Substantial Conformance Review Memorandum dated November 7, 2016. The simulations depict various locations from which the bridge can and cannot be seen. There is no regulation that protects views from private property and views of roadways, bridges and other structures are a part of the common fabric of an urban area.

The Esperanza Revised FEIR Does Not Comply with CEQA

The County, in compliance with the Superior Court decision, will vacate the FEIR in order to recertify the REIR. The REIR is in compliance with the specific direction from the Court to revise the GHG Section. All other challenges to the FEIR were found to be “without merit” and no further revision is required. The commenter seems to lack an understanding of the County’s review process. Until the County Board of Supervisors takes action to decertify the FEIR, the FEIR remains as an approved document. The commenter inappropriately portrays the process of recertifying the REIR as requiring reconsideration of each and every environmental topical area, which was already dismissed above. As stated, the REIR has been prepared in direct compliance with the Court order. Commenter states that Judge Claster “ordered vacatur of the EIR and land use approvals without qualification or limitation.” With respect to the EIR, the revisions applied to only the GHG Section and, therefore, the County is left with the discretion to decide what is required to satisfy the Court Judgment and allow recertification.



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As detailed above, the REIR does not warrant further revision, recirculation, or the preparation of a supplemental or subsequent EIR because four access options have already been analyzed in the REIR, Option 1 Modified includes no greater environmental impacts than were disclosed for Option 1 in the FEIR, and in fact reduces environmental impacts in several topical areas, and there are no new significant environmental impacts created by the Option 1 Modified access configuration. In addition, the commenter fails to provide any specific reasons for why the REIR does not comply with CEQA.

The Prior EIR is not a valid, certified EIR

The commenter seems to be unfamiliar with the County's review process whereas in this instance, the Planning Commission's role is to review the project and provide a recommendation to the Board of Supervisors. As noted previously, the Court requires that the FEIR be vacated in favor of the REIR, which process has not yet occurred because the County Board of Supervisors has not reviewed the project in light of the issuance of the judgment and writ of mandate. The County is not being sent "back to the drawing board" as claimed by the commenter, which is made clear by Judge Cluster in the June 24, 2016 Minute Order wherein the Judge noted that the "Petitioners' opening brief contends that the EIR is inadequate in at least 10 different respects and that the Project is inconsistent with the County's General Plan in several ways. After careful consideration of the arguments of all parties, as well as the administrative record, the Court finds that virtually all of these arguments are without merit." Other than complying with the specific areas of revision mandated by the Court, no further revision is required and there was no requirement for recirculation.

CAA Planning's - Esperanza Hills - Specific Plan Modified Access, CEQA Substantial Conformance Review Memorandum dated September 28, 2016 (updated November 7, 2016) further details why CEQA Section 21166 remains the appropriate standard for determining whether subsequent environmental review is required for Option 1 Modified.

The Revised FEIR fails to meet the standards for a valid EIR

Again, the Superior Court decision related to the FEIR required revision of the EIR to address two specific issues - improper deferral of GHG mitigation measures and the arbitrary limitation of GHG emissions reduction to 5%. Contrary to commenter's opinion, the REIR is required to comply with the Court mandated revisions. In addition, analysis under Public Resources Code Section 21166 and CEQA Guidelines 15162 is appropriate because, as detailed above, the FEIR remains a certified document until the Board of Supervisors acts to decertify.

Also contrary to commenter's opinion, Option 1 Modified is not a "major change" to the Esperanza Hills project that requires an updated project description and detailed analysis. As previously detailed in the CAA Planning Memorandum Esperanza Hills - Specific Plan Modified Access, CEQA Substantial Conformance Review dated November 7, 2016, CEQA Section 21166 is the appropriate standard of review because the FEIR remains certified until the Board of Supervisors decertifies the FEIR and considers the REIR. As detailed in that memorandum, the sequence of



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approvals is that the Board of Supervisors would first decertify the FEIR and rescind the project approvals, then consider the REIR and certify the REIR if deemed appropriate. Only after the REIR is considered and recertified, would the Board of Supervisors take up the question of the project approvals including the Specific Plan. If the Board of Supervisors gets to the point of considering the Specific Plan, a certified REIR will necessarily have to be in place.

While CEQA Section 15088.5 is not the appropriate standard, even if it were, recirculation of the EIR is not required as detailed below. CEQA Section 15088.5 - Recirculation of an EIR Prior to Certification provides the following criteria for recirculation prior to certification.

15088.5 (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

The REIR does not meet the thresholds identified in CEQA Guidelines Section 15088.5 requiring recirculation because there have been no changes in the project or environmental setting. Specifically, no significant new information has been introduced in the REIR which has not been previously analyzed. The Option 1 Modified roadway access is not new information. The REIR



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includes four access alternatives and all were analyzed in detail in the REIR. CEQA allows for modifications which lessen environmental impacts and the reconfiguration of Option 1 will reduce impacts in several areas as detailed herein. The only new information added to the REIR consists of refinement and further clarification to the GHG mitigation measures. The refined GHG measures and the realignment of the access roadway do not deprive the public of meaningful opportunity to comment upon substantial adverse environmental effects of the project. The mitigation measures reduce GHG emissions and the Option 1 Modified configuration reduces impacts as described herein, thereby reducing environmental effects of the project. In addition, the REIR includes an analysis of each GHG mitigation measure to determine whether any of the measures would result in a new environmental impact not previously disclosed in the FEIR. That analysis in the REIR confirms that the new mitigation measures will reduce GHG emissions and will not result in any new or more significant impacts from what was already analyzed in the FEIR. The revisions to the Greenhouse Gas Emissions section of the REIR and the implementation of Option 1 Modified do not:

- Result in a new significant environmental impact as no new environmental impacts will occur related to the amplification of mitigation measures in the GHG section of the REIR or implementation of Option 1 Modified. Rather, identification of specific mitigation results in a reduction in total GHG emissions of 7.93%, which is above the 5% reduction anticipated in the FEIR. The Judge determined that the anticipated 5% reduction was an arbitrary limit established in the FEIR. In addition, the Judge considered the GHG mitigation to be deferred mitigation because a “menu” of available measures was provided rather than a mandate for specific mitigation measures. Therefore, the Judge mandated implementation of specific mitigation measures to clarify how the reduction would be achieved. Mitigation Measures GHG-1 through GHG-40 respond to the writ of mandate requirement for a more specific list of proposed mitigation to achieve a reduction in GHG emissions, and the reduction based on the specific mitigation measures exceeds the 5% identified in the FEIR. In addition, Option 1 Modified reduces impacts in the areas of air quality, noise and biological resources and no new or more significant impacts will occur with Option 1 Modified.
- Result in a substantial increase in the severity of an environmental impact requiring mitigation measures that reduce the impact because no new or more significant impacts would result from implementation of Mitigation Measures GHG 1 through GHG-40 or Option 1 Modified. The GHG Mitigation Measures amplify and clarify proposed mitigation as required by the Court judgment and are based on current residential mitigation strategies suggested by the CAPCOA Quantifying Greenhouse Gas Mitigation Measures document (August 2010). Identifying and quantifying the CAPCOA mitigation measures resulted in a reduction of 7.93%, which was above the assumed 5% reduction in the FEIR. Therefore, the GHG revisions result in a lessening of potential impacts and do not result in an increase in the severity of GHG emissions. As identified herein, the Option 1 Modified access will reduce impacts in the areas of biological resources and geology and soils because less disturbance and grading will be required within Blue Mud Canyon, natural open space will be increased and the retaining wall required to support the roadway under Option 1 will be eliminated.
- Include a feasible project alternative or mitigation measure considerably different from others previously analyzed which the project’s proponents declined to adopt. Mitigation Measures



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GHG 1 through GHG-40 clarify the specific mitigation intended for the reduction of GHG emissions which will exceed the 5% reduction included in the FEIR. The Option 1 Modified access is a variation of Option 1 which was fully analyzed in the REIR. Option 1 Modified is not a considerably different alternative and will not require additional mitigation. Rather, the modified access will reduce the amount of grading and disturbance within the biologically sensitive area of Blue Mud Canyon, reduce grading impacts related to air quality and decrease vehicular noise. All feasible mitigation measures have been incorporated in the REIR and the project proponent has agreed to adopt and implement the measures. In addition, all feasible project alternatives have been analyzed.

- Result in a draft EIR that is so fundamentally and basically inadequate that meaningful public review and comment were precluded. The REIR was updated to analyze the GHG reduction measures identified in CAPCOA as germane to residential projects. All relevant measures were detailed and analyzed for applicability to the proposed project. The emissions reductions pertaining to the selected 40 project specific Mitigation Measures were then detailed in the REIR. The only changes to the REIR relate to GHG mitigation measures and clarification of information related to GHG emissions and mitigation measures. Four feasible access Options were analyzed in the REIR, including Option 1 on which the Option 1 Modified roadway is based. Option 1 Modified does not alter or change the previous analysis and implementation of this alternative will reduce environmental impacts. The conclusions of the FEIR remain the same in the REIR, which is that the project will result in a significant impact in the area of GHG emission. The public has been given an opportunity to review the REIR and to respond through the County's public hearing process which is duly noticed to all agencies and interested parties.

Therefore, in response to the Writ of Mandate requiring clarification and amplification of specific mitigation to achieve reductions in GHG emissions, the Project can provide a 7.93% reduction in GHG emissions which is greater than the 5% reduction included in the FEIR. Option 1 Modified will reduce impacts as detailed above. No changes to the project, as analyzed in the FEIR, have occurred. No new or more severe impacts will result from the addition of specific mitigation measures and the REIR, as revised, does not meet the CEQA criteria for recirculation.

The County must evaluate Option 5's impacts and add the information to the EIR

As noted, the Esperanza Hills Specific Plan includes a process for implementing the access roadway configuration. The process includes approval of a vesting tentative tract map, a Subdivision Committee recommendation to the Board of Supervisors and a Board hearing for map approval. Minor modifications are permitted which include street alignments/connections. The Option 1 Modified access configuration is a modification of the Option 1 access alternative which was fully analyzed in the FEIR and the REIR. Specific responses to commenter's concerns follow:

Aesthetics - As analyzed in the FEIR and REIR, the proposed project is a continuation of an existing urbanized environment. The property General Plan and zoning designations allow for the residential development proposed. Impacts to the viewshed and ridgeline were fully analyzed in the approved FEIR. The modification to the access roadway does not result in a significant impact or visually



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block, impair or obstruct protected views. The roadway/bridge view from off-site does not obstruct ridgelines. The retaining wall proposed with Option 1 would have been more visually prominent to residents than the proposed bridge. However, as previously noted, views from private residences are not protected by regulation.

Roadway lighting was analyzed in the FEIR and is considered in the design specifications in the Specific Plan. A reasonable person would consider that bridge and roadway lighting would occur from dusk to dawn. Lighting will be shielded and directed down or incorporated into the side wall railings of the bridge. As analyzed in the FEIR, lighting will be designed to protect adjacent open space areas while providing adequate safety for persons using the roadway. The Option 1 Modified access will create no new or more significant impacts than the roadway(s) fully analyzed in the FEIR and the REIR.

Biological Resources - A Glenn Lukos & Associates analysis of the Option 1 Modified roadway is included as attachment B to the Substantial Conformance Memorandum dated November 7, 2016. The REIR includes complete analysis of biological impacts in terms of CDFW and ACOE jurisdiction and lighting impacts on open space habitat. The Option 1 Modified access will result in an additional 8.94 acres of open space - a substantial addition to the already protected open space areas. Reductions in impacts to jurisdictional areas, as identified in the Glenn Lukos analysis, also provide a substantial benefit. In addition, it should be noted that biological assessments have shown that gnatcatchers have not been detected on the Esperanza Hills project site. The Cielo Vista property does have occupied areas as detailed in the "Gnatcatcher Focused Survey" dated July 8, 2016 prepared for the Cielo Vista property. The report is also included as an attachment to the Substantial Conformance Memorandum. The Esperanza Hills project will not result in impacts related to gnatcatchers. There are no new or more significant impacts to biological resources associated with a modification to the access roadway.

Construction-related impacts - The construction impacts were fully analyzed in the FEIR and REIR. Grading impacts will be reduced with the modified roadway alignment. No roadway grading will be required in Blue Mud Canyon, which was a primary concern of commenters during the public review process. The disturbed areas are within the previously designated fuel modification zones and analysis of impacts was considered in the REIR. The removal or disturbance of vegetation during construction will be mitigated by replacement in kind in all disturbed areas. With less grading, air quality and GHG emissions impacts will be reduced. It must be noted that air quality and GHG construction impacts were less than significant with mitigation as analyzed in the FEIR. Therefore, a reduction in grading will result in a further improved condition.

Hazards - The bridge included in the Option 1 access configuration crossed over the Whittier Fault. Under the Option 1 Modified access, the bridge will be located southerly of the Whittier Fault and will not cross the fault. The entire project's location with respect to the Whittier Fault was analyzed in the REIR and no new impacts will result from a modification to the roadway alignment. With respect comments about the bridge being an attractive nuisance to skateboarding children, reckless behavior can occur anywhere and it is not within the County's ability to prevent such behavior, but in this instance the bridge is part of a gated community subject to HOA regulations which will address



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safety issues. Public safety features will include railings and lighting for safety. The bridge will not result in higher fire risk, but rather will provide a more direct route for ingress and egress. A complete geotechnical analysis was included in the REIR to ensure slope stability and erosion concerns have been addressed through mitigation measures incorporated into the project.

The County must consider whether recirculation is required

As detailed above, per CEQA Guidelines Section 15088.5, recirculation of an EIR prior to certification is not required in this instance. All environmental impacts have been fully analyzed and addressed and full compliance with the Court mandated revisions have been included in the REIR. Option 1 Modified is not a new alternative. It is a roadway alignment modification that reduces impacts in several environmental topical areas.

Even if Section 21166 applied, Option 5 would still require the County to prepare a supplemental or subsequent EIR

Analysis per Public Resources Code Section 21166, as well as CEQA Guidelines Sections 15162 and 15088.5 has been provided and considered. The REIR has fully analyzed all potential environmental impacts and recirculation is not required.

Conclusion

Mr. Gold's comments are both untimely and inaccurate. The Revised EIR does not need to be recirculated. Option 1 Modified has been appropriately reviewed within the Esperanza Hills - Specific Plan Modified Access, CEQA Substantial Conformance Review Memorandum dated November 7, 2016 and no additional analysis is warranted.

Sincerely,

CAA PLANNING, INC.

Shawna L. Schaffner
Chief Executive Officer

c: Mr. Douglas Wymore
Mr. Gary Lamb
Mr. Kevin Canning
Ms. Laree Alonso

Yorba Linda Estates, LLC



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November 9, 2016

Planning Commission
County of Orange
300 N. Flower Street
Santa Ana, CA 92702

Re: Response to Kevin Johnson and Manatt letters of 11/8/16

Dear Planning Commissioners;

Yesterday we received a letter to the Planning Commission from Cielo Vista stating that they were willing to sell land for the Option 2 Modified Roadway, which states that in their opinion the existence of the impacts of the gnatcatcher habitat and gnatcatcher sitings would not prevent development of the road, although they acknowledge that any conclusions about future impact would not be known until future gnatcatcher surveys were conducted.

At or about the same time, we received a letter to the Planning Commission from Kevin Johnson, the attorneys for the petitioners in the litigation stating that there is a "serious issue of new information concerning the known presence of gnatcatchers on the adjacent Cielo Vista property in jurisdictional drainages contiguous to the Esperanza Hills project site." Mr. Johnson's letter cites the new information as a reason to prepare a subsequent or supplemental EIR.

While processing this project, we have always adapted to new information and input from various stakeholders, which is why the site plan has been re-designed at least 20 times since we first submitted our initial site plan in early 2012. OCFA has requested multiple design changes for the emergency roads and lots. The City has requested design changes for Option 2B and Option 2 Modified, as well as moving lots to the east to avoid view issues. Cielo Vista has requested design changes to move the lots to the east, and also to eliminate large retaining walls on our emergency access road. Coastkeepers has requested that we change the design of our WQMP basins. The County has requested that we change the grade of roads and various streets, as well as including more parks and changing the lot and road designs. After our geotechnical studies were completed and approved, we changed the lot and road designs again. The Bridle Hills neighbors requested that we provide road and utility access to their property, which changed the road layouts. The Yorba Linda Water District requested that we change the design of our sewer and utility access to utilize our easement across the Cielo Vista property. The Metropolitan Water District suggested that we change our road design crossing their easement south of Cielo Vista, and we have accommodated all of those changes, as well as other minor changes requested by various agencies.

We believed from the outset that a road from Aspen Drive was consistent and feasible, and it was our original Option 2. We became aware of Least Bell's Vireo and the jurisdictional delineation for the

Army Corps was expanded along the way due to additional drainage running through there, but we still believed that it was feasible, despite the neighbors opposition to it in Court, and we prevailed on that issue.

We were never able to secure an agreement for access from the property owner, Amos Travis, despite offering him \$2,000,000 for an easement in early 2016. We told him that if we were not able to reach an agreement, we would return to Option 1 and we have never heard from Mr. Travis since that date.

Supervisor Spitzer had criticized the main access road alignment for Option 1 so in response we redesigned the access to Option 1 Modified, straightening the access through a bridge, so that our main access would no longer be along a switchback road through Blue Mud Canyon. The emergency road was re-designed to lessen the grade, reduce the need for retaining walls along the easement so there would be less interference with Cielo Vista, and the emergency road was again re-designed and the lots pulled back to the east upon the request of OCFA for fire safety purposes.

In August, 2016, we first learned of the existence of multiple sitings of gnatcatchers and additional gnatcatcher habitat along our proposed road alignment. By this time, we had also discovered that a bridge across Blue Mud Canyon would be the least environmentally intrusive option that would likely be favored by the Army Corp, although it was also the most expensive solution, so we decided to amend our Specific Plan for Option 1 Modified.

We never anticipated the presence of multiple gnatcatchers in this area, as there had been no sitings in the 20 – 30 years that we were aware of, and our biologist believed that there was a very low likelihood of occurrence. That belief was incorrect.

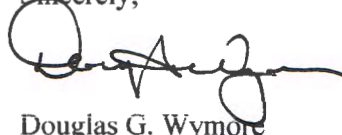
Rather than attempt to plow a road through habitat that is much more sensitive than we ever believed. We do not believe the Option 2 Modified access will be permitted, and we know it will not be favored by the various agencies.

We believe that the land currently owned by the Travis Trust in that location should be preserved as part of the conservation easement Cielo Vista has agreed to provide as part of their settlement with the neighbors. We do not believe that it would be environmentally responsible to permanently disrupt that sensitive habitat, and do not believe that the various agencies would approve it. The habitat appears to be becoming more populated, not less, and that a conservation easement would be a more appropriate use of the land. In that regard, we are willing to contribute \$10,000 to the Endangered Habitat League, one of the petitioners that have opposed our project, as an endowment to create and preserve the easement, so long as the easement is created by the end of the year.

Because we are not going to attempt to put the road through the sensitive habitat, we request that you vote on our request to recommend Option 1 Modified.

Please contact me should you have any questions.

Sincerely;

A handwritten signature in black ink, appearing to read 'Douglas G. Wymore', written over a horizontal line.