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February 24, 2015

SENT VIA EMAIL AND U.S. MAIL

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

Mr. Steven K. Harris, AICP
Director of Community Development
City of Yorba Linda
P.O. Box 87014
Yorba Linda, CA 92885-8714

Re: Esperanza Hills Development Project
Abandonment of Public Open Space; Compliance with Public Vote Requirements
Project Alternative 2 – Option 2A Access Alternative
Project Alternative 3 – Option 2B Access Alternative

Dear Mr. Canning and Mr. Harris:

This firm represents Protect Our Homes and Hills, an unincorporated citizens group consisting of residents and taxpayers in the City of Yorba Linda. We submit this letter regarding Project Alternative 2 – Option 2A Access Alternative (“Option 2A”) and Alternative 3 – Option 2B (“Option 2B”) outlined in the Environmental Impact Report (“EIR”) for the above referenced Esperanza Hills Development Project. **This letter identifies the legal requirements, including a zone change, compliance with the City’s Measure “B” and formal abandonment of this open space which must be satisfied by the City of Yorba Linda before the City-owned open space identified for road use and project access may be used in this fashion.**

The necessary City of Yorba Linda approvals were not identified or analyzed in the EIR. Discussion of these approval requirements must be incorporated into the document and will necessitate recirculation of the document for additional public comment and review. Nor have the full

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range of significant impacts of placing a road in publically owned open space been properly identified or analyzed including noise, biological resource, aesthetic and land use impacts.

Option 2A proposes to provide access to the project “via a main access roadway connected to San Antonio Road approximately 1,850 feet south of Aspen Way. **This connection would cross open space owned by the City of Yorba Linda** and the adjacent Cielo Vista property” (Draft EIR p. 6-12). This option is illustrated at Exhibit 6-1 in the Draft EIR and attached hereto as Exhibit A.

Option 2B is similar and would also provide access via San Antonio Road and through open space owned by the City of Yorba Linda as well as secondary access via Stonehaven Drive (Draft EIR p. 6-50 and Exhibit 6-19 at p. 6-51 (attached hereto as Exhibit B)).

As indicated in the Draft EIR, under either of these options, the project access road would cross land which is designated as Open Space and owned by the City of Yorba Linda. An excerpt from the City’s Land Use Diagram shows the area at issue in green and designated as Open Space adjacent to the Cielo Vista property which, along with the Esperanza Hills site, appear in gray as Area Plan C – Murdock Property. A true and correct copy of this excerpt from the City’s Land Use Map is attached hereto as Exhibit C.

The current Land Use Element in the Yorba Linda General Plan (currently in the process of being updated) provides the following description of appropriate uses for the Open Space category:

The Open Space category includes 4,033.9 acres of the planning area which are intended for active and passive recreation areas, passive open space, conservation and public safety land uses, either public or private in nature. Such uses include: developed parklands, private recreation facilities and recreation amenities, flood control areas, natural resource and conservation areas, and open space lands that may be contained within private ownerships, which, due to topographical constraints, are not to be improved or developed....Other potential was [sic] may include developed parks, golf course or educational facility sites.

Yorba Linda General Plan Page LU-48 attached hereto as Exhibit D.

Critically, road construction to access private development is not one of the enumerated uses for open space.

In addition, the recently approved City of Yorba Linda Parks and Recreation Master Plan identifies this property and trails thereon as part of the city’s trail network at Figure A-2 of the Master Plan.

In view of the property’s publically owned, open space status, there are a number of statutory and procedural requirements involving City of Yorba Linda discretionary approvals which

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must occur before this public open space may be used for road purposes to access a private development. These requirements and discretionary approvals, including a zone change, compliance with the City's Measure "B" and formal abandonment of this open space, have not been identified or analyzed in the subject EIR.

Failure to Identify or Analyze California Municipal Park Abandonment Law

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

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

None of these requirements have been identified or analyzed in the subject EIR for Options 2A and 2B which will require abandonment of this protected open space.

Failure to Identify or Analyze California Law re: Surplus Land

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

Therefore, any local agency disposing of "surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows"(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent: (1) To any park or recreation department of any city within which the land may be situated. (2) To any park or recreation department of the county within which the land is situated. (3) To any regional park authority having jurisdiction within the area in which the land is situated. (4) To the State Resources Agency or any agency that may succeed to its powers."

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Failure to Identify or Analyze Zone Change and Necessity of Public Vote Under City's Measure "B"

Chapter 18.01 of the City of Yorba Linda Municipal Code provides for a public vote in the event "Major Amendments" are proposed. Major amendments are defined in section 18.01.030. Subsection 18.01.030 A(6) thereunder defines a "Major Amendment" as an amendment which: "Provides for the private development of land owned by a government entity within five years of the date of the approval to develop the land."

Options 2A and 2B propose to use city-owned land near San Antonio Road that is currently zoned open space for a road to service the proposed adjacent private development. This constitutes a "Major Amendment" under Measure "B" requiring a public vote because Options 2A and 2B propose private development of city-owned land.

Also, as previously described, the enumerated land uses for open space contained in the City's General Plan do not include roads to access and facilitate private development. Options 2A and 2B propose to rezone open space. The proposed rezone therefore also falls under the definition of "Regular Amendment", appearing in Municipal Code section 18.01.040 which must be approved by ordinance adopted by the City Council. Adoption of a zone change will result in the amendment of several "Planning Policy Documents" as defined in 18.01.020 and per section 18.01.040, as a "Regular Amendment", this change cannot "be effective unless and until it is approved by an ordinance adopted by the City Council...."

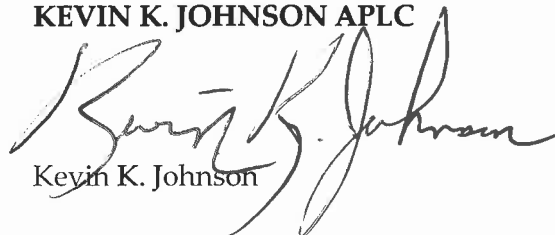
These issues are relevant to the City's duties as a Responsible Agency for the project under the California Environmental Quality Act and to the adequacy of the Final EIR for the project and should be properly identified and analyzed therein.

In short, the City of Yorba Linda must comply with the procedures outlined in Government Code section 38501 et seq., section 54220 et seq. and Measure "B" before the publically owned open space necessary for implementation of either Option 2A or Option 2B occurs. These procedures, as well as significant impacts of these alternatives, should be identified and analyzed in the EIR and the document recirculated by public review and comment.

Thank you for your consideration of this information.

Very truly yours,

KEVIN K. JOHNSON APLC

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

Kevin K. Johnson

February 24, 2015

cc: Supervisor Todd Spitzer
Protect Our Homes and Hills

Attachments

Exhibit A – Exhibit 6-1 of Draft EIR Esperanza Hills

Exhibit B – Exhibit 6-19 of Draft EIR Esperanza Hills

Exhibit C – City of Yorba Linda Land Use Diagram Excerpt

Exhibit D - Yorba Linda General Plan Page LU-48

EXHIBIT A

DESIGN CONCEPT

THE IRISH IN CHINA ARE SPREADING A MESSAGE TO ENCOURAGE YOUR ARRIVAL TO AN EXCLUSIVE BELLE EPOQUE RESORT AND COMPANY ASSISTED BY ONE OF THE MOST PRESTIGIOUS AND REPUTABLE HOTELS FOR GENTLEMEN IN CHINA TODAY.

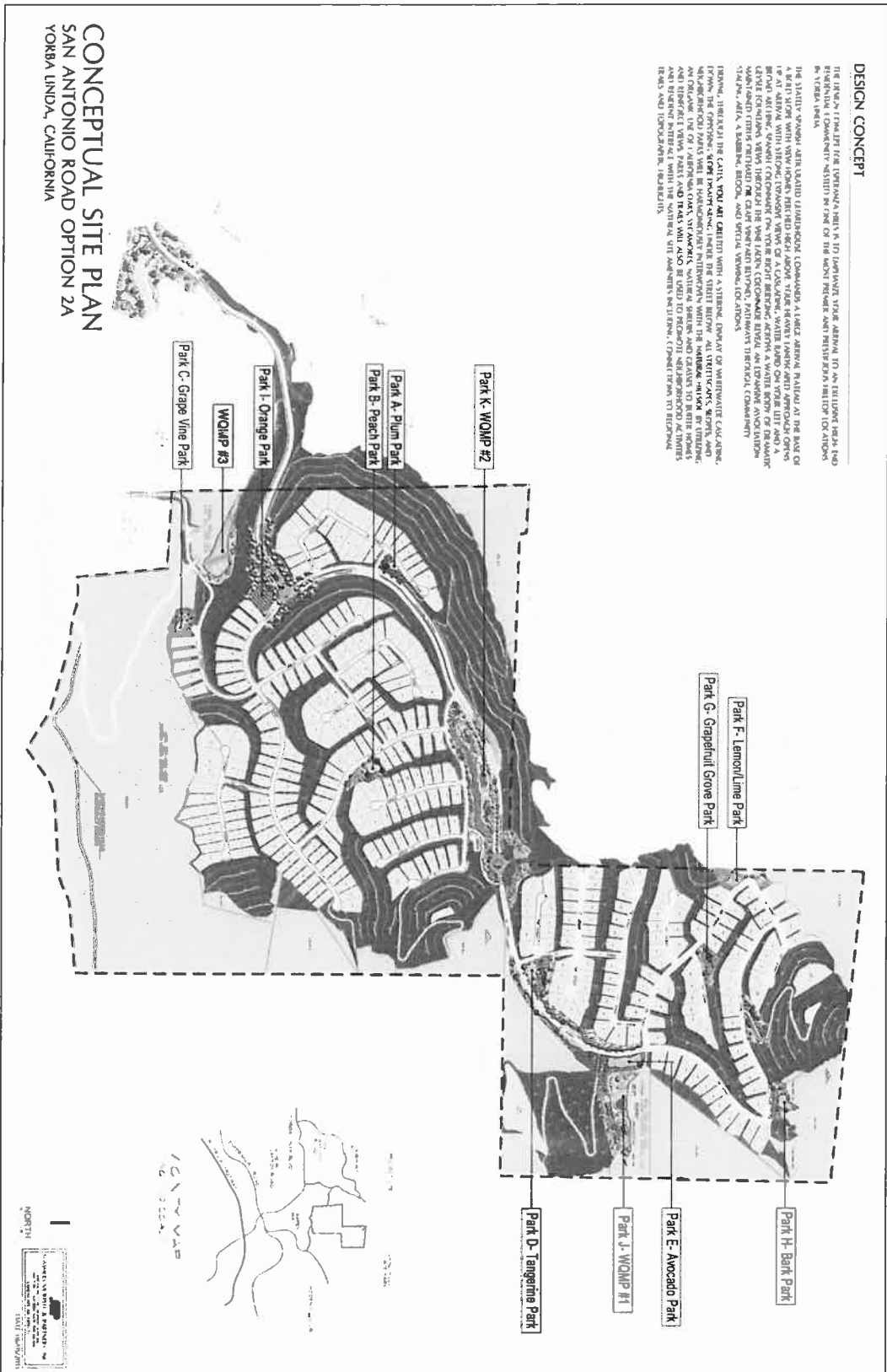
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Exhibit 6-1 – Conceptual Site Plan, Option 2A - San Antonio Road

EXHIBIT B

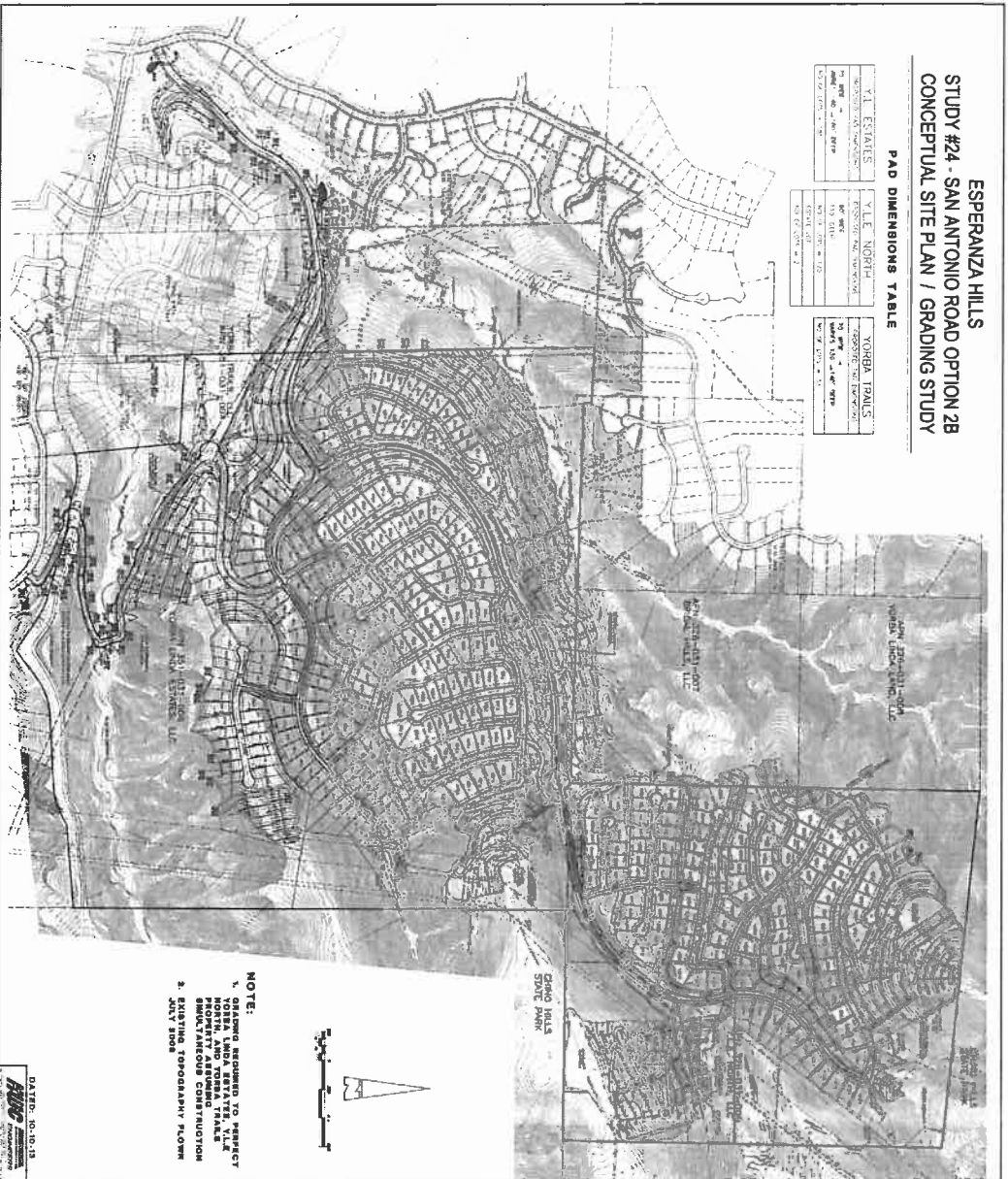


Exhibit 6-19 – Conceptual Site Plan, Option 2B

EXHIBIT C

LAND USE DIAGRAM

Residential

- R-Low
- R-Medium Low
- R-Medium
- R-Medium High
- R-High

Commercial

- C-Neighborhood
- C-General
- C-Office

Industrial

- I-Manufacturing

Open Space

- OS-General
- Water/Lake

Area Plan

- Area Plan A - Community Core
- Area Plan B - Shell Property
- Area Plan C - Murdoch Property
- Area Plan D - City Hall / Community Center
- Area Plan E - West Bastanchury

- BNSF Railroad
- City Boundary
- Sphere of Influence

RIVERSIDE COUNTY
ORANGE COUNTY

C

ANAHEIM

ANAHEIM

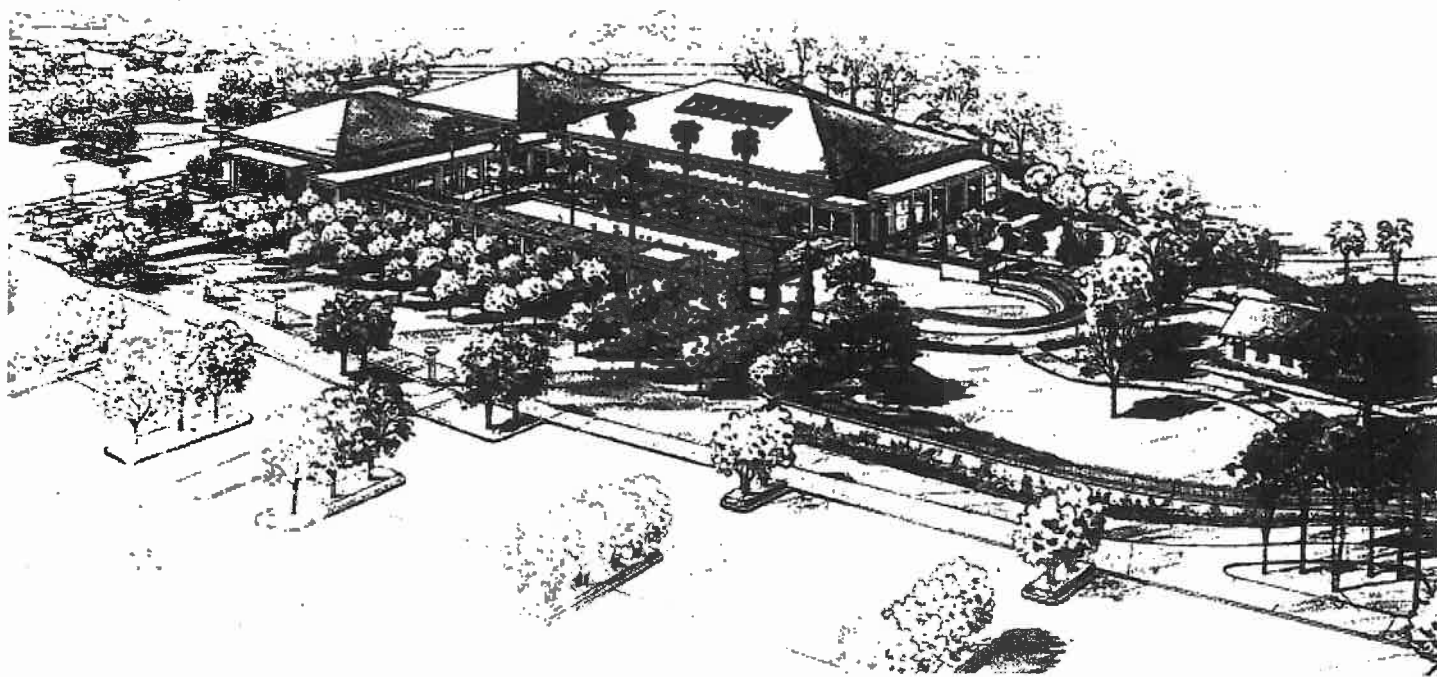
91

Revisions

EXHIBIT D

CITY OF Y O R B A L I N D A

GENERAL PLAN



THE PLANNING CENTER

3. Light Industrial/Business Park

The Light Industrial designation has been applied to 288.3 acres of land within the planning area, primarily established in the SAVI Ranch and along La Palma Avenue in the southeast portion of the City in close proximity to the AT&SF Railroad and convenient Riverside Freeway access. Industrial uses are also found in the vicinity of Prospect Avenue and Imperial Highway. Industrial uses in Yorba Linda are appropriate for research and development, assembly and/or storage of products, and wholesale facilities. The Industrial designation also permits support commercial uses, as are found in the SAVI Ranch.

4. Open Space

The Open Space category includes 4,033.9 acres of the planning area which are intended for active and passive recreation areas, passive open space, conservation and public safety land uses, either public or private in nature. Such uses include: developed parklands, private recreation facilities and recreation amenities, flood control areas, natural resource and conservation areas, and open space lands that may be contained within private ownerships, which, due to topographical constraints, are not to be improved or developed. Elementary, Junior High and High School facilities which contribute acreage to public recreation facilities are not reflected in the Open Space category. The Community College site is designated as Open Space, with potential uses such as college buildings, an equestrian center, a nature center, a sports complex, and outdoor assembly areas. Other potential uses may include developed parks, golf course or educational facility sites. Land use categories within the Open Space designation are addressed in further detail in the Recreation and Resource Element.

5. Area Plans

The California Government Code provides that "the General Plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area". It is common practice to focus special attention on selected areas of a community for customized policy treatment not generally applicable elsewhere in the jurisdiction. In the Yorba Linda General Plan, these portions of the community are referred to as "Area Plans". Some are presently within the City limits; others are in adjacent unincorporated territory within the City's Sphere of Influence.

The purpose of this special treatment is to recognize the need for targeted policy establishment where an area: