

KEVIN K. JOHNSON, APLC

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

A PROFESSIONAL LAW CORPORATION
ATTORNEYS AT LAW
600 WEST BROADWAY, SUITE 225
SAN DIEGO, CALIFORNIA 92101

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

January 22, 2014

SENT VIA EMAIL AND U.S. MAIL

Orange County Planning
Attn: Mr. Ron Tippetts
300 North Flower
Santa Ana, CA 92702-4048

Re: Cielo Vista Project – Draft Environmental Impact Report, EIR No. 615
Comments on Annexation and Failure of DEIR to Adequately Analyze Annexation
Scenario

Dear Mr. Tippetts:

This firm represents Protect Our Homes and Hills, an unincorporated citizens group consisting of residents and taxpayers in the City of Yorba Linda. We submit this comment letter on the deficiencies in the Draft Environmental Impact Report (“DEIR”) prepared for the Cielo Vista development project (“Cielo”). Specifically, the DEIR fails to adequately discuss the annexation scenario, associated environmental impacts upon project annexation to the City of Yorba Linda, all jurisdictional changes involved and the discretionary approvals by LAFCO and the City of Yorba Linda.

The project site is within the City of Yorba Linda sphere of influence and according to the Project Description, “[t]he Project Applicant intends to seek annexation to the City through an annexation agreement to be negotiated with the City prior to the issuance of building permits” (DEIR p. 2-2). Although the DEIR characterizes the annexation as a mere possibility elsewhere, given the applicant’s clear intention to seek annexation, all impacts, approvals and jurisdictional changes related to the annexation scenario should be fully analyzed in the DEIR. Instead, like several other areas in the DEIR, analysis of these issues is impermissibly deferred to a future date or omitted altogether.

The City of Yorba Linda and Orange County Local Agency Formation Commission (“LAFCO”) have discretionary authority for carrying out or approving the Cielo project in an annexation scenario. As such, they are responsible agencies under the California Environmental Quality Act (“CEQA”), Pub. Res. Code sec. 21000 et seq. and should have been named as such. 14 Cal.Code Regs. §15381. LAFCO presents a clear example of a responsible agency. In their discussion of responsible agencies, authors Kostka & Zischke identify as a responsible agency “the Local Agency Formation Commission (LAFCO) for any annexation or

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reorganization.” Kosta & Zischke, *Practice Under the California Environmental Quality Act §3.18* (CEB 2013).

In our experience, LAFCO generally requires that an EIR contain information about the environmental consequences of the decisions that LAFCO will be making with regard to the whole project. *Habitat And Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277. This information includes: a discussion of the required jurisdictional and sphere of influence changes subject to LAFCO discretionary approval(s); the project’s conformance with LAFCO statutory requirements and local policies; a description of the ability of existing agencies to provide services; a detailed description of existing and proposed infrastructure; and a discussion of the proposed provision of public services to the subject territory. The Project Description does not even mention LAFCO approvals (DEIR p. 2-37, 2-38) among the various approvals and permits and is inadequate on its face.

Likewise, the DEIR’s description of approvals from the City of Yorba Linda appears incomplete and therefore inadequate (DEIR p. 2-38). The DEIR acknowledges that an annexation scenario “would include discretionary approvals on the part of the City” including possible changes to the Yorba Linda General Plan and zoning designations (DEIR p. 4.9-16). None of these possible discretionary approvals is listed in the approvals and permits listings (DEIR pp. 2-38, 4.9-7).

LAFCO has discretionary authority for approval of the annexation to the City of Yorba Linda and any concurrent annexations and/or detachments involving special district water, sewer, and/or fire protection service providers for the project. Discretionary authority for jurisdictional changes is statutorily reserved to LAFCO. Cal. Gov. Code §§56100(a) and 56375. Therefore, at a minimum, the DEIR should identify all discretionary actions related to the applicant’s plan to seek annexation to the City of Yorba Linda by the type of jurisdictional change (annexation), the affected parcels and total acreage for each jurisdictional change, and the subject agency involved in the jurisdictional change. At present, the DEIR does not fulfill these most basic requirements and should be revised.

This failure to include discussion of all agency approvals in the Project Description presents a foundational problem that impacts other sections of the DEIR. For example, the Land Use and Planning section at 4.9 also contains an incomplete list of approvals and permits (DEIR pp. 4.9-6, 7). More seriously, the section’s discussion of thresholds of significance is inadequate and incomplete because it fails in the first instance to identify all agencies with jurisdiction over the project. If an agency such as LAFCO has not been identified in the first instance, then discussion of conflicts with applicable plans, policies or regulations of that agency has not occurred and is inadequate on its face.

Moreover, to the extent the DEIR discusses consistency thresholds and conflicts with existing Yorba Linda zoning or land use plans, policies or regulations at pp. 4.9-5, 7, 13-16, it attempts to gloss over clear conflicts with the Yorba Linda land use designation (low density residential 0-1.0 dwelling unit per acre) and zoning designation (UNC-Unincorporated Area) which will require a land use designation and/or zoning change. The DEIR characterizes the necessary Orange County zoning change as making the project “essentially consistent” with the

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changed Yorba Linda zoning, not the existing Yorba Linda zoning. Likewise, the DEIR indicates “the Project with approval of its requested discretionary actions would be potentially consistent with the applicable goals and policies in the [Yorba Linda] General Plan (DEIR p. 4.9-14). The proper issue for analysis is the project’s consistency with the **current** Yorba Linda zoning and land use designations, not the consistency of the project with its discretionary approvals. The DEIR cannot properly avoid a significance determination by using the potentially changed zoning or land use designations which are part of the proposed project as a baseline. The Land Use and Planning section of the DEIR must be revised to employ the proper baseline and provide an open and forthright consistency analysis.

The discussion also refers the reader to other sections of the DEIR instead of setting out the full consistency analysis in the Land Use and Planning section (DEIR p. 4.9-17) (consistency with Yorba Linda’s Hillside Development Zoning Code Regulations and consistency of residential development with oil production discussed in section 4.1 Aesthetics). The Land Use and Planning section should include the consistency discussion in its entirety and not refer the reader to another DEIR section which may not contain an adequate consistency analysis.

In this regard, the DEIR in both the Land Use and Planning section and the Aesthetics section fails to acknowledge that one effect of maintaining consistency with the hillside protection provisions in both the Yorba Linda General Plan and the zoning code may be reduced density and yield for this project. Under these circumstances, the proposed project density appears to be patently inconsistent with these policies.

The Recreation and Resource Element of the Yorba Linda General Plan seeks to “permanently preserve and protect sensitive hillside areas”, “[r]espect the natural landform as a part of site planning”, and “[p]reserve significant natural features, including sensitive hillsides” (DEIR p. 4.1-30). Similarly and consistent with these goals and policies, the Land Use Element contemplates and seeks “[l]ow density residential development in the hillside areas” and targets “lower densities to hillside areas with yield based on slope severity and stability, topographic conditions” (DEIR p. 4.1-30). Application of these Yorba Linda policies will likely result in a much lower density than that proposed by the project and this inconsistency must be acknowledged and analyzed in the DEIR.

In view of the foregoing identified inadequacies in the Cielo DEIR, the document should be substantially revised and re-circulated for public comment.

Very truly yours,
KEVIN K. JOHNSON APLC



Jeanne L. MacKinnon

Cc: Supervisor Todd Spitzer via email