

KEVIN K. JOHNSON, APLC

Letter O3d

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August 9, 2013

VIA EMAIL

Mark Slovick  
County of San Diego Planning and  
Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123  
Email: mark.slovick@sdcounty.ca.gov

**Subject:** DEIR Public Comment to the Proposed Accretive Lilac Hills Ranch General Plan Amendment and Specific Plan PDS2012-3800-12-001(GPA),PDS2012-3810-12-001 (SP), Waste Water Management Alternatives Study

Dear Mr. Slovick:

Our firm represents Heart of Valley Center, a California Non-Profit Corporation. We have the following comments on the Waste Water Management Alternatives Study. By way of brief summary, the proposed Lilac Hills Ranch Project does not have valid easements for the Sewer and Recycled Water Pipeline Route labeled as Alternative 3. This fundamental problem must be specifically addressed in the DEIR both in terms of the feasibility and impacts of the project and in terms of appropriate avoidance and mitigation strategies.

O3d-1

Offsite Pipeline Route/Pipeline Right of Way(Alternative 3)

We have performed an analysis of the Waste Water Management Alternatives Study reviewing the preferred offsite route (Alternate 3) for sewer and recycled water pipelines. This route proposed by Accretive Investments **does not have legal** right-of-way easement to transport recycled water or sewer pipelines across the route depicted in Figure 3-4 "Offsite Sewer Collection System."

O3d-2

This conclusion is supported in a July 8, 2013 letter from the Valley Center Municipal Water District (VCMWD) to Mark Jackson. See Exhibit "A" attached hereto. The District therein **confirms that VCMWD has inadequate legal easements** along the route analyzed (Alternate 3) for the purposes indicated in the Waste Water Management Alternatives Study.

Please address the entire content of the subject letter including the section regarding the highly unlikely use of Eminent Domain powers by the District to secure utility easements.

Also, it is highly unlikely that Accretive, on its own, has the ability to obtain the necessary rights for the preferred Alternate 3 route. We are not aware of any neighbors being

O3d-1 This comment is an introduction and overview summary of the specific comments to follow. Responses to each of the specific comments are provided below.

O3d-2 The project has studied several options for wastewater service – both on-site and off-site. The on-site options are fully contained within the project. The offsite option would require improvements to connect to the Lower Moosa Treatment Plant. The VCMWD will ultimately select which option the project would implement. In response to the offsite options, which would connect to the existing off-site Lower Moosa Treatment Plant, the project studied four Alternatives. As the commenter points out, Alternative 3 would be located within the Mountain Ridge Road private road easement. If the project implements Alternative 3, the project may need to clarify existing easement rights within Mountain Ridge Road. In any event, a fourth off-site alternative pipeline alternative (Alternative Alignment 4) has been added to Appendix S of the FEIR (Wastewater Management Alternatives Report). Alternative 4 utilizes private easements and IODs that benefit the project along Covey Lane, and public road rights-of-way along West Lilac Road and Circle R Drive, in which the VCMWD has statutory rights under Public Utilities Code sections 12808 and 10101 to use any public right-of-way for the installation of water and sewer system improvements and facilities to reach the Lower Moosa Wastewater Treatment Facility.

With respect to the assertion that it is highly unlikely that the VCMWD would use Eminent Domain powers to secure utility, VCMWD Administrative Regulations Sec. 200.3[d] provides that properties requiring an off-site line extension that do not have adequate easements to extend water lines may petition the VCMWD Board of Directors to initiate proceedings to acquire the easements through eminent domain. Ultimately, it is in the discretion of the Board of Director's to decide whether to initiate proceedings to acquire the easements. The letter referenced from staff of the VCMWD does not preclude the Board of Directors from initiating such proceedings and the process is available should the Board choose.

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willing to convey easement rights to enable a project that is dramatically inconsistent with the General Plan and local Community Plans

O3d-2 cont.

Alternative Routes 1 and 2

We have only had time to analyze the Preferred Route. There are two other candidate routes indicated in the study. Given the underlying problems with Alternative 3, very specific evidence is needed to show that Accretive has the necessary rights to build along these routes. If not, all sewage treatment and water recycling functions must be performed on-site at the proposed Lilac Hills Ranch Subdivision.

O3d-3

The DEIR should include all relevant easement documents. It should also Geo locate on a map (showing relevant APN numbers and boundaries) all of the claimed easement rights and tracing all offsite routes for sewer and recycled water pipelines identified in Figures 3-2 and 3-4. This analysis is necessary to determine if legal right-of-way exists. If there is legal right of way, these offsite routes potentially disturb Sec. 404 wetlands and other natural resources. Accordingly, specific mapped locations of the proposed pipeline routes are required to properly assess impacts. A detailed and comprehensive natural resource map, with pipeline route overlays should also be prepared and there should be a specific discussion of avoidance and mitigation measure options.

O3d-4

In the event there are no feasible off site routes for the subject pipelines, there will be multiple and serious issues associated with on-site treatment. These include but are not limited to, odor, hazardous chemical usage and storage, heavy vacuum truck traffic for residual solids removal, and depending on location, there are likely to be significant, direct biological impacts. There is also the major issue of growth inducement by a new onsite treatment plant.

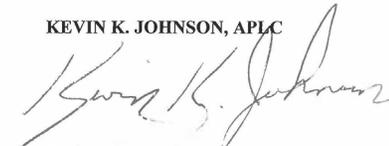
O3d-5

Given the complexity of these issues, we request that the DEIR be rewritten and recirculated for public review and comment. As noted earlier, there has not been time to study the easement rights to Alternatives 2 and 3. The public deserves the opportunity to look at and comment upon whatever new evidence is developed regarding the easement rights and related environmental impacts. There should also be written responses by the County to those comments otherwise there will be denial of the right of the public to meaningfully participate in the planning process.

O3d-6

Very Truly Yours,

KEVIN K. JOHNSON, APLC



Kevin K. Johnson

O3d-3 The commenter questions whether the applicants have legal rights to access necessary areas for the routes identified. Refer to the Global Response: Off-site Improvements – Environmental Analysis and Easement Summary Table included in the introduction to these responses to comments. See response to comment O3d-2, above.

O3d-4 Off-site sewer line and recycled water line areas of impact are illustrated on FEIR exhibits 2.5-2b and 2.5-2c. These figures include a detailed and comprehensive natural resource map, with pipeline route overlays. FEIR subchapter 2.5.2.2 discusses biological impacts of proposed off-site sewer line improvements for the preferred option. Mitigation is included in FEIR subchapter 2.5.5. Also see Figures 3.1-7a through 3.1-7c-1 that depicts the utility cross sections including, relevant APN numbers and the Global Response: Off-site Improvements – Environmental Analysis and Easement Summary Table included in the introduction to these responses to comments.

O3d-5 Impacts associated with odor are discussed in FEIR subchapter 2.2.2.5. The project’s water reclamation facility (WRF) is designed to include measures to reduce any potential odor impacts to the surrounding areas. As required by Section 6318 of the County of San Diego Zoning Ordinance, odor control units would be designed to treat odorous air from within treatment structures so not to “emit matter causing unpleasant odors which are perceptible by the average person at or beyond the lot line” of the WRF. Foul air from the plant headworks would be treated on-site prior to discharge. There are multiple technologies that are available to treat odors which are generated within a treatment plant. Some technologies are most efficient at reducing only specific odor generating compounds (for example wet scrubbers are efficient at the removal of H2S only). Industry standard treatment process of foul air treatment is achieved by activated carbon towers, which would be employed at the WRF, and included as a project design consideration (see Table 1-3). Based on Appendix G of the CEQA Guidelines, the project would have a significant impact if it would: create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials; or create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment; or if it would emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within

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CC: Claudia Anzures, Esq. (via email)  
Mark Mead, Esq. (via email)

Exhibit "A" – July 8, 2013 Valley Center Municipal Water District to M. Jackson letter

} O3d-7

O3d-5 (cont.)

one-quarter mile of an existing or proposed school, in non-compliance with existing hazardous substance regulations. FEIR subchapter 2.7.2.1 discusses the impacts of the on-site WRF relative to the above threshold. Due to the strict requirements that regulate the handling and operation of hazardous substances outlined above, and the fact that the initial planning, ongoing monitoring, and inspections would occur in compliance with local, state, and federal regulation, the project would not result in any potentially significant impacts related to the routine transport, use, and disposal of hazardous substances or related to the accidental explosion or release of hazardous substances.

The proposed on-site WRF would be located within the project (refer to FEIR Figure 1-4). Biological impacts associated with grading of the site and improvements associated with the WRF are included in the discussion of the project's on-site impacts in subchapter 2.5 of the FEIR.

The growth inducing impact discussion contained in FEIR subchapter 1.8 has been revised from the previous draft EIR. Potential for growth inducement associated with an on-site WRF is discussed in FEIR subchapter 1.8.4.3. The FEIR concludes that while the project proposes facilities sized only to meet the requirements to serve the project, VCMWD could decide to improve facilities and/or increase capacity after project approval. Therefore, the on-site WRF could remove barriers to future growth.

O3d-6 CEQA requires recirculation if significant new information is added to the document after public review, per the definitions of "significant new information" in Section 15088.5(a)(1) through (4) as listed in the comment. The County finds that the new information added to the FEIR does not meet the definitions of significant new information requiring recirculation. The FEIR has not been modified in such a way that recirculation of the document is necessary.

O3d-7 Attachment is acknowledged and included in the administrative record.



**VALLEY CENTER  
MUNICIPAL WATER DISTRICT**

A Public Agency Organized July 12, 1954

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Director  
Randy D. Haskell  
Director

July 8, 2013  
(Revised from original letter dated July 2, 2013)

Mark Jackson  
9550 Covey Lane  
Escondido, CA 92026

Dear Mr. Jackson;

We enjoyed meeting with you on Friday, June 28, 2013 concerning the Lilac Hills Ranch Project. During our meeting, you asked a number of questions to which we have provided the answers as follows:

**Question:** "The Developer has indicated his intent to run sewer force mains on three offsite routes for which I believe the District does not have easement rights to place sewer lines in. The information and my assessment are below.

Route	APN's	Easement Doc.	Dimensions	VCMWD right
Covey Lane Parcels	128-290-76 and 128-290-77	1968-155521	20' Easement	Water Only

Route	APN's	Easement Doc.	Dimensions	VCMWD right
West Side of Mountain Ridge – SBDN boundary to Circle R	Various North approx. 1320'	1965-214916	20' Easement	Water Only
	Various South approx. 1260'	1965-206816	20' Easement	Water Only

Route	APN's	Easement Doc.	Dimensions	VCMWD right
East Side of Mountain Ridge – SBDN boundary to Circle R	Various North approx. 1320'	1992-0253368	20' Easement	Water and Sewer
	Various South approx. 1260'	1965-214912	20' Easement	Water Only

Am I correct?"

**Answer:** VCMWD does not presently have sewer or recycled water easement rights across the Covey Lane parcels or the West side of Mountain Ridge private road from the Lilac Hills Subdivision Boundary to the Circle R Public Road.

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On the East side of Mountain Ridge private road, VCMWD lacks sewer easement rights for the southern approx. 1260 feet to connect to Circle R public road.

In order for Accretive to use these routes for sewer and/or recycled water routes, additional rights will need to be secured from existing property owners for the selected route.

**Question: (Added for revised letter of 7/8/13)** *“Since the Developer does not have easement rights for sewer on the Mountain Ridge route indicated in their Waste Water Management Alternative studies, does VCMWD have powers to acquire the rights via Eminent Domain?”*

**Answer: (Added for revised letter of 7/8/13)** VCMWD does have the Power of Eminent Domain and has used it on limited occasions for its own projects. California law does provide that at the governing board’s discretion a public agency can acquire easements or property by eminent domain for facilities that the agency has required on behalf of private developers at the full expense of the developer. Using eminent domain to acquire property or easements has an intrinsically controversial nature which would certainly be amplified by the prospect of using the easement being acquired on behalf of a private interest. It is likely that the Board would require the developer to clearly document and demonstrate that it has made a significant effort to acquire the required easement through private means and/or that the developer has explored all reasonable alternatives or alternative routes before it would even entertain using its eminent domain powers to acquire these rights of way. ***Ultimately it is not mandatory for the Board to use its powers of eminent domain to acquire easements for private development interests.***

**Question:** *“What are the Pipeline horizontal separation requirements for placement of Potable Water, Recycled Water, and Sewer lines?”*

**Answer:** Typically, sewer must be separated by 10 feet from a potable water line. Sewer and Recycled Water must be separated from each other by 5 horizontal feet to allow access for pipeline maintenance and repair. Separation requirements for water/sewer lines may be decreased to 4-feet using special construction materials and placing the sewer line below the waterline. In extremely rare cases, the Department of Health may allow new sewer lines 1-foot from potable waterlines. However, due to operational and maintenance access needs, VCMWD would only allow less than 5-feet of separation between potable/non-potable lines if no other feasible alternative were available.

By using special construction materials and with special approval from the Department of Health Services, VCMWD understands that sewer and recycled water may be placed within the same trench using special construction materials and placement of the lines at different depths. VCMWD would review the separation of the non-potable lines in terms of access for pipeline maintenance and repair. Please refer to the attached

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Figures 1 and 2 of the Department of Health Services Guidance Memo dated April 14, 2003 for more information.

**Question:** *"What is the wet weather recycled water retention on-site storage requirement?"*

**Answer:** Typically, 84 days of estimated average 24 hour recycled water generation storage is required. This can vary depending upon the ratio of irrigation area to recycled water produced. The final determination is made by the San Diego Regional Water Quality Control Board.

**Question:** *"I understand that VCMWD and Accretive have entered into a phased agreement that defines the steps to incrementally evaluate Water and Wastewater services. Could a copy be provided?"*

**Answer:** The agreement, which was approved by our Board, but yet unsigned by Accretive, is attached for your review.

Subsequent to our meeting on Friday, June 28, 2013, you posed additional questions via an e-mail sent later that day. Those questions and our responses are as follows:

**Question:** *"Did I understand you correctly that all recycled water (tertiary treated to Title 22 standards) generated by the Development must be used on-site for appropriate purposes (park and common area irrigation, agricultural irrigation, etc.)? Key concept being 'on-site'. Could Accretive sell the recycled water to Welk Resorts and Castle Creek Country Club for golf course irrigation? Or must they use the water within their 608 acre project?"*

**Answer:** The project will be required to provide secure, long-term suitable beneficial use areas for the recycled water to off-set potable use within the project limits. Typically these areas are properties that may utilize recycled water on a long-term basis in place of potable water such as parks, agricultural land, and landscaped areas. The beneficial use areas may be within or outside the limits of the project. Accretive may not sell recycled water; VCMWD will own all recycled water generated from the project and will own and operate the recycled water transmission and distribution systems. Prospective recycled water users include on-site parks, landscaping, and agricultural areas and off-site agricultural and landscaped areas fronting the recycled lines.

**Question:** *"Could you please provide contact information for the appropriate individual at the San Diego Regional Water Quality Board to discuss Lilac Hills Ranch water quality issues?"*

**Answer:** The RWQCB contact is as follows:

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**Fisayo Osibodu**  
**WRC Engineer**  
**Southern California Regional Water Quality Control Board**  
**San Diego Region**  
**(858) 637-5594**

If you have additional questions or require additional information, please feel free to contact us at your earliest convenience.

Sincerely;



Dennis Williams,  
Project Manager/Deputy Eng. Dept. Director

Attachments  
*(Please see attachments sent with original letter dated July 2, 2013)*

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