Joel Ellinwood, AICP LEED AP
Lawyer-Planner

4036 New York Avenue #1203
Fair Oaks, California 95628
joel.ellinwood@lawyer-planner.com

California land use & environmental law; urban and regional planning policy & advocacy for a more just and sustainable future

April 25, 2013 Sent via email

Chairman Ron Briggs
El Dorado County Board of Supervisors
330 Fair Lane, Building A
Placerville, California 95667

Re: Process for Removal of Shingle Springs Community Region Line (CRL)

Dear Chairman Briggs:

Thank you for again meeting with representatives of my clients, the Shingle Springs Community Alliance and No San Stino. They informed me that in response to their request that you take action to remove the Community Region Line for Shingle Springs, you said that you would request County staff to advise you what the process would be to make that change. Please accept this letter opinion outlining the process for you to review with County Counsel and the Development Services Department.

Summary: The Shingle Springs Community Region Line can be removed by an amendment to the 2004 El Dorado County General Plan. In taking that action, Board of Supervisors can comply with the California Environmental Quality Act (CEQA) by finding that the "common sense" exemption to CEQA applies, or by adopting a negative declaration. The process is straightforward and need not incur significant expense or staff time.

Legal Discussion: The Community Region Line (CRL) designation for Shingle Springs was adopted as part of the 2004 El Dorado County General Plan Land Use Element. To remove it requires an amendment to the General Plan. (Gov. Code § 65358, General Plan Land Use Policy 2.1.1.6).

Amendments to the General Plan may be considered by the Board of Supervisors up to four times per year, however multiple changes may be considered and combined for any of the four amendments. (Gov. Code § 65358 (b)). Action to "substantially amend" a general plan must be referred to local school districts, LAFCO, SACOG, EID and appropriate California Native American tribes for review and comment or other consultation. (Gov. Code §§ 65352 - 65352.3). General plan amendments must be referred to the Planning Commission for a public hearing and report to the Board before the amendment can be set for public hearing by the Board. (Gov. Code §§ 65353 - 65356; *Environmental Defense Project of Sierra County v. County of Sierra* (3rd Dist. 2008) 158 Cal.App.4th 877). A general plan amendment of one element or section of the plan must be internally consistent with the remainder of the plan. (Gov. Code § 65300.5) Amendments to a general plan are adopted by resolution. (Gov. Code § 65356).

A determination must be made in a preliminary review whether a particular amendment may have a significant effect on the environment under the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21080, 21151). Any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance. (Pub. Res. Code § 21151 (b)).

If it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, CEQA does not apply under the "common sense" exemption. (14 Cal. Admin. Code § 15061 (b) (3) ("Guidelines"), *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3rd 247, 272; *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 124). The common sense exemption can be used "only in those situations where its absolute and precise language clearly applies." *Myers v. Board of Supervisors* (1st Dist. 1976) 58 Cal.App.3d 413, 425.

As the leading treatise[1] on CEQA explains the process for application of an exemption:

> "Under CEQA, an agency need not follow any particular procedure to determine that a project is exempt. The agency need not provide the public or other agencies with an opportunity to review, or hold a public hearing on, its exemption determination. *See* CEQA Guidelines §§ 15060 (preliminary review), 15161 (review for exemption); *see also Cal Beach advocates v. City of Solana Beach* (4th Dist. 2002) 108 Cal.App.4th 529, 538-541 . . . , *see also Magan v. County of Kings* (5th Dist. 2002) 105 Cal.App.4th 468, 477 . . . (even where an exemption is contested, an agency need not provide a hearing on the record for such contest)." (*Guide to CEQA*, pp. 112-113).

In *Davidon Homes v. City of San Jose* (6th Dist. 1997) 54 Cal.App.4th 106, the Court of Appeal reversed the City of San Jose's decision adopt a development moratorium ordinance while certain test drilling could evaluate the suitability of the land for development in reliance on the common sense exemption that was contained in a conclusionary recital in the preamble to the ordinance. A developer challenged the exemption arguing that the drilling may itself have some adverse environmental effect. The Court held that the City failed to support its exemption determination with substantial evidence in the record. As the Guide to CEQA recommends, "an agency relying upon the common sense exemption should take care to build an appropriate record supporting its exemption determination." (*Ibid.* at p. 166).

After determining that an exemption applies, and the amendment is adopted, the County may file a Notice of Exemption (NOE). (Pub. Res. Code § 21152 (b), Guidelines § 15062. The filing of a NOE triggers a 35-day statute of limitations for a legal challenge to the exemption determination.

---

[1] Remy, *et al. Guide to CEQA, 11th Ed.* (Solano Press, 2007)

If, however, it is determined that there is insufficient evidence to conclude with certainty that the common sense exemption is applicable, the appropriate CEQA process must be followed beginning with an initial study. (Guidelines §§ 15063, 15365). Even if the determination is made that CEQA may apply, where there is no substantial evidence that the amendment may have a potentially significant adverse effect on the environment, adoption of a negative declaration is the appropriate process under CEQA. (Pub. Res. Code § 21080 (c), Guidelines § 15070).

A proposed negative declaration should be prepared with the contents specified in Guidelines § 15071, and circulated for public comment by preparing, filing, posting, publishing and mailing a notice of intent to adopt a negative declaration as provided in Guidelines § 15072, to be followed by a period for public review, Guidelines § 15073. Prior to making its recommendation on a proposed general plan amendment, the Planning Commission shall consider the proposed negative declaration. Guidelines § 15074. Prior to approving a general plan amendment, the Board of Supervisors shall consider the proposed negative declaration and any comments received. If it finds on the basis of the initial study, the proposed negative declaration, and any comments received that there is no substantial evidence that the general plan amendment will have a significant effect on the environment and that the negative declaration reflects the Board's independent judgment and analysis, the Board should adopt the negative declaration prior to acting on the general plan amendment. (*Ibid*.) After the general plan amendment has been adopted, the County must file a Notice of Determination (NOD). (Pub. Res. Code § 21152 (a); Guidelines § 15075). The filing of the NOD starts a 30-day statute of limitations for any legal challenge of the CEQA determination. (Pub. Res. Code § 21167, Guidelines § 15075 (g)).

Only if there is substantial evidence that the amendment may have a significant effect on the environment would the preparation of an Environmental Impact Report (EIR) be necessary. If required, the EIR may be incorporated in the text of the general plan amendment. (Pub. Res. Code § 21151, Guidelines § 15166).

The purpose of the CRL designation in the 2004 General Plan is,

> ". . . to define those areas which are appropriate for the highest intensity of self-sustaining compact urban-type development or suburban type development within the County based on the municipal spheres of influence, availability of infrastructure, public services, major transportation corridors and travel patterns, the location of major topographic patterns and features, and the ability to provide and maintain appropriate transitions at Community Region boundaries[2]."

Because the CRL designation does not change the underlying general plan land use designations or zoning district classifications of land within the boundaries of a CRL area, implementation of a potential increase in intensity and type of use within any CRL area will itself most often require a general plan and zoning ordinance amendment before any development consistent with the CRL

[22] 2004 El Dorado County General Plan Land Use Element, Policy 2.1.1.2, p. 12

policy could be approved, as, for example, is the case with the proposed San Stino residential project within the Shingle Springs CRL area. Eliminating the CRL would eliminate the potential that would otherwise exist of possible intensification of density or type of use that might result in significant changes that might otherwise occur under the policy.

Removing the CRL from the Shingle Springs area cannot therefore result in *any* change to the physical environment. It could not result in any effect that could be consequential for any school district, LAFCO, EID, SACOG or local California Native American tribe, or result in any change, adverse or otherwise, to land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.

For this reason, removal of the CRL for Shingle Springs would not constitute a "substantial" amendment to the general plan for which outside agencies would need to be given notice or opportunity for comment, although in an abundance of caution the process could still be followed to avoid potential challenge that might result from omitting that step. Furthermore, the CEQA "common sense" exemption applies, because it may be found with certainty that there is no possibility that removal of the CRL for Shingle Springs could have an adverse effect on the environment. Only implementation of the CRL could have such effect.

Because all the unincorporated areas of El Dorado County are classified as Community Regions, Rural Centers or Rural Regions, removal of the CRL from Shingle Springs suggests that it would be appropriate to designate the existing commercial core area of Shingle Springs as a Rural Center, with the greatest extent of Shingle Springs classified as a Rural Region to maintain consistency with the remainder of the General Plan.

Consistency with the Housing Element's identification of specific locations with appropriate zoning for development of affordable low and moderate income housing to help meet the County's obligation to address its fair share of the regional need for affordable housing would not be compromised by removal of the Shingle Springs CRL. The most recent adopted housing element relies upon existing appropriate general plan land use and zoning ordinance designations to meet that requirement, rather than the generalized potential for more intensive development under the CRL policy.

In addition to the fact that over 560 Shingle Springs and other El Dorado County residents have signed my clients' petition requesting that the CRL for their community be removed, there are many sound planning policy reasons for doing so. Unlike other communities with CRL designations such as El Dorado Hills, Cameron Park and the communities adjacent to Placerville, Shingle Springs has a predominately rural, large-lot residential development pattern, with the exception of a compact, relatively small commercial core. Intense, high-density residential and mixed-use development is out of character with and conflicts sharply with this pattern. The road infrastructure in Shingle Springs, particularly the Ponderosa interchange, is already severely impacted. Because of the location of Ponderosa High School and the commercial district of Shingle Springs, it is not feasible to effectively

mitigate the traffic congestion in the area by diversion of traffic to the Shingle Springs interchange for trips to those frequent destinations for Shingle Springs residents.

Perhaps the most important reason from a County-wide perspective for reducing the amount land and more closely focusing development potential in El Dorado County to the areas best suited for more intensive urban and suburban type development is the limited supply of public water. The sole provider, El Dorado Irrigation District (EID), has consistently reported that it has only 2,000 equivalent dwelling unit (EDUs) water connections available for all potential residential, commercial or ag/rec irrigation use for the *entire western slope area of the County* other than El Dorado Hills. EID does not have general land use authority, so it makes the limited connections available on a first-come, first-served basis. The County government, on the other hand, does have the authority to direct where the limited supply of water connections are best utilized by its control of land use entitlements.

Reducing the number and scope of CRL areas in the County would help ameliorate perhaps the greatest flaw in the 2004 El Dorado County General Plan – its virtual assumption that public water supplies are essentially unlimited, and will be available to serve development where ever it may occur[3]. The facts, as set forth in detail in EID's 2001 Water Supply Master Plan Administrative Draft and annual supply assessments, starkly contradict this assumption. With the passage of SB 610 and SB 221 in 2001[4], the assessment and verification of long-range water supply over 20 years, including single and multiple dry years, is required for EIRs and tentative subdivision map approvals for residential projects of more than 500 units and similarly large-scale commercial or industrial projects. The aggregation of smaller projects that are encouraged under the 2004 general plan CRL policy could easily exceed this threshold by many times, and is no less important to adequately plan for. By applying the water supply assessment and verification policy at the general plan stage, rather than at the tentative subdivision map stage would help assure that the limited water supply is available for the highest priority development types, regardless of scale.

Prioritizing the communities and more limited areas of communities where use of the limited supply would have the greatest benefit and be most compatible with and complement the established surrounding development pattern makes sense. This would avoid a hodge-podge of isolated developments that drain the limited supply of public water and correct the current jobs/housing imbalance that predominates in the County. It makes no sense to permit the exhaustion of an essential scarce resource for yet more residential development that does not provide long-term employment and sales and use tax revenue. Eliminating the CRL for Shingle Springs is one effective and easily-accomplished means to accomplish this objective as a first step to a more rational water supply allocation in the General Plan.

---

[3] 2004 El Dorado County General Plan, Introduction, Plan Assumptions, p. 4.

[4] Codified in Water Code § 10910, *et seq.* and Government Code § 66473.7 and § 65867.5.

Conclusion: Given that the process to remove the CRL designation for Shingle Springs is clearly outlined and relatively straight-forward and not overly costly, my clients request that the Board of Supervisors exercise the political will to initiate the process in response to the broad and growing groundswell in support of this change by the residents of Shingle Springs.

I am available to discuss the process set forth in this letter in greater detail with County Counsel and the Development Services Department staff to answer any questions or concerns they may have. Once we are agreed on the process, I will prepare a draft of a proposed general plan amendment, findings in support of exemption or draft proposed negative declaration to provide a starting point for county staff.

Thank you again for your responsive interaction with my clients. They look forward to your strong support in moving this matter forward.

Very truly yours,

Joel Ellinwood, AICP LEED AP
Lawyer-Planner

cc: Hon. Ray Nutting
Hon. Ron Mikulaco
Hon. Brian Veerkamp
Hon. Norma Santiago
County Counsel
Roger Trout
clients