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

May 16, 2013 Sent via email

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

Re: Response to Letter by San Stino Attorney Craig Sandberg's letter dated 5/6/13 re. Process for Removal of Shingle Springs Community Region Line (CRL)

Dear Chairman Briggs:

Thank you for leading the discussion at the May 7 Board of Supervisors meeting regarding removal of the Community Region Line for Shingle Springs. My clients are looking forward to the workshop scheduled for June to further discuss the options available to the County. My clients are desirous that more expeditious consideration of their request will occur than that requested by the Camino area residents for which a resolution of intention was adopted in 2009, which has yet to be acted upon. It is my understanding that change of CRL boundaries is to be incorporated in the Land Use Planning Programmatic Update (LUPPU) for possible action before the end of this calendar year.

On May 7 Craig Sandberg appeared and identified himself as the attorney for the San Stino project. I understand that he also represents the developers of the proposed Tilden Park Project. He reiterated points he made in correspondence to the Board dated May 6, 2013, which was specifically written in response to my letter of April 25, 2013. I felt it appropriate to respond with this letter.

My previous letter outlined both the process and the policy reasons for removal of the Shingle Springs Community Region Line as requested by my clients, the Shingle Springs Community Alliance, No San Stino and Stop Tilden Park. Please note that both my April 25 letter and my clients' presentations to the Board at the May 7 meeting include the request that the area my clients have identified as "Central Shingle Springs" be classified as a Rural Center. The Rural Center designation includes most of the same land use policies to encourage development compact, higher density urban and suburban type development as apply to areas within the Community Region Line. It must therefore be clearly understood that my clients do not seek to ignore the classification scheme that applies to the entire County, but to modify it to more appropriately match the existing land use pattern and the wishes of the vast majority of the residents of Shingle Springs in a manner that is entirely consistent with the current General Plan.

Mr. Sandberg begins by mischaracterizing my five and a half page letter as suggesting that the process was "simple" and could be accomplished, "without the benefit of an environmental document." In fact, I outlined a lengthy process including notice to the appropriate public agencies and the public and public hearings before the Planning Commission and the Board of Supervisors, citing the relevant statutes and case law with legal analysis supporting each step. As far as compliance with the California Environmental Quality Act (CEQA) is concerned, rather than being "cavalier," (to use Mr. Sandberg's term) my letter outlined two types of environmental documents that are specifically tailored to the nature of the proposed action, with citation to legal authority and careful analysis supporting the appropriateness of each for a decision to remove or modify the Community Region Line for Shingle Springs.

On the other hand, Mr. Sandberg's letter contains no citations to legal authority or analysis. His letter may be said to follow the lawyers' axiom, "If the law is against you, argue the facts." Yet Mr. Sandberg's remaining assertions are more along the line of speculation and unsubstantiated conjecture rather than facts objectively supported by substantial evidence.

Mr. Sandberg asserts, without citation to authority, that, "the General Plan is required by State law to accommodate projected growth within the County." The General Plan law, Government Code §65300, *et seq*., contains no such mandate. A general plan is to be, "a comprehensive, long-term, general plan for the physical development of the county…" (*Ibid.*). Whether that plan accommodates or disallows any particular level of growth is a matter largely within the discretion of the Board of Supervisors, except that the mandated Housing Element (Gov. Code § 65580, *et seq.*) must include an inventory of developable parcels with the appropriate zoning that are, "adequate for housing, including rental housing, factory-build housing, mobilehomes, and emergency shelters and shall make adequate provision for the existing and projected needs of all economic segments of the community." (Gov. Code § 65583, *et seq.*) That obligation must include special analysis and a plan of action to facilitate development of the county's fair share of the regional need for low and moderate income housing. (Gov. Code §§ 65583.2, 65584-65588.8.)

The Housing Element must include goals, quantified objectives and policies relative to the maintenance, preservation, improvement and development of housing for all income levels, but the law recognizes that the total housing needs may exceed available resources and the community's ability to satisfy this need. (Gov. Code § 65583 (b).) The quantified objectives shall establish the <u>maximum</u> number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period. (*Ibid.*) Nowhere does the General Plan law or the Housing Element portion of that law mandate that the County must accommodate any minimum amount of development. In fact, the General Plan law allows counties to set annual limits on the number of housing units which may be constructed on an annual basis upon the adoption of certain specified findings. (Gov. Code § 65302.8.)

Because the Housing Element law requires the inventory and analysis of adequate housing sites be conducted on the basis of current zoning, the law has no application to, nor establishes any obligation with respect to properties within the Community Region Lines that are not already appropriately zoned for multi-family or high-density residential use. That includes all of the area within the Shingle Springs Community Region Line, except those parcels included in the area my clients refer to as "Central Shingle Springs" for which they propose the Rural Center designation under the existing General Plan Land Use Element classification scheme. Thus there is no basis in law for Mr. Sanders' assertion that State law requires that the General Plan accommodate projected growth through the Community Region Line land use designation.

Mr. Sandberg's best argument for his assertion that a full Environmental Impact Report should be required before any General Plan amendment changing the extent or location of Community Region Lines is predicated on the false assumption that alteration of vague policies to encourage future General Plan and Zoning Ordinance amendments on a project-by-project basis in certain areas (a fair characterization of what the CRL actually is and does) would or possibly could result in physical changes to the environment in other areas where those policies remain in effect due to concentration of development pressures in a more limited area of the County - a "displacement effect," so to speak. By analogy it may be argued that the demand for development is like water spread over the landscape. If it is blocked or restricted by channels or dikes in one place, it will be displaced to other areas creating potential impacts or even damages there. However, the extent and intensity of development in any given location of the County is subject to the control of the County government's land use authority and the resources available to support that development. Other areas of the County will grow only to the extent that the County's land use policies permit them to grow and there are resources available to support it, regardless of however much CRLs may be altered in other areas of the County. There is no absolute quantum of development that must be "accommodated" within the County.

The plain fact is that the CRL or Rural Center designation does not permit any quantifiable increment of development to occur as of right. The CRL and Rural Center designations are not self-executing policies that *ipso facto* permit growth to occur, however much developers may wish that it did. Before any development consistent with the CRL policy intent to encourage of certain types of development can take place, the General Plan Land Use designations and Zoning Ordinance classifications that apply to the parcel or parcels must be amended. Removal or alteration of the CRL or Rural Center areas likewise have no quantifiable impact that could be displaced. Any suggestion to the contrary can only be based on pure speculation.

CEQA is limited to evaluating, avoiding or mitigating significant effects on the environment. (Pub. Res. Code §§ 21002.1, 21068.) "Environment" is defined as, "the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance." (Pub. Res. Code § 21060.5.) The determination of whether a potential effect is significant must be based on substantial evidence in the record as a whole.

The existence of a public controversy over the environmental effects of a project is insufficient to require the preparation of an EIR absent substantial evidence that the project may have a significant impact. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impact which do not contribute to, or are not caused by, physical impacts on the environment are not substantial evidence (Pub. Res. Code § 21082.2).

It is important to bear in mind that the Legislature has declared that it is the policy of the state that,

> " all persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment." (Pub. Res. Code § 21003 (f).)

Thus, it is just as important under CEQA to avoid unnecessary costly and time-consuming EIRs for projects that are exempt or for which there is no substantial evidence that an adverse impact on the physical environment may result. (*See,* 14 Cal.Admin.Code § 15006 (*CEQA Guidelines*) regarding the obligation of public agencies to reduce delay and paperwork in complying with CEQA.)

My April 25 letter outlines the specific processes under CEQA for a preliminary review to determine if an exemption applies, or an initial study to determine if adoption of a negative declaration or an EIR is required, based on a factual analysis of the potential that physical impacts on the environment may occur, with notice, public comment and hearings prior to adoption by the Board. These processes necessitate careful analysis and documentation. These steps are necessary before anyone can appropriately conclude that an EIR should be required to amend the General Plan to alter the CRL and Rural Center boundaries. Ultimately that is a judgment that only County staff and the Board of Supervisors can make. One would hope that Mr. Trout would engage in that analysis before opining that an EIR might be required. Since he has already expressed that opinion, however tentatively, at the May 7 Board of Supervisors meeting, my clients hope that Mr. Trout will be more circumspect in his future consideration of the issues presented in this and my previous letter. I intend to request a meeting with Mr. Trout and County Counsel to further discuss the matter and explain the basis for my analysis.

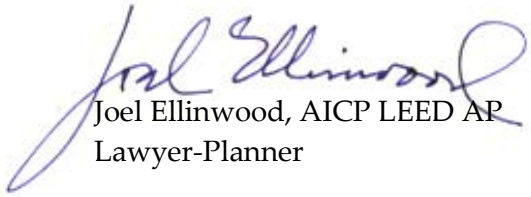
Insofar as the San Stino and Tilden Park projects are concerned, my clients recognize that no change in the CRL will preclude landowners or developers from filing applications for General Plan and Zoning Ordinance amendments for the type of development incentivized by the CRL policy, in or outside of any CRL or Rural Center boundaries. Ongoing vigilance and other measures that can reduce development pressure on Shingle Springs will always be necessary, but substitution of Central Shingle

Springs as a Rural Center for a much larger area of Shingle Springs falling within the CRL, helps set the policy agenda for preserving a more rural character for Shingle Springs.

For your information, my clients and I recently met with Mr. Korotkin. My clients are pleased by the indications that the developer may be willing to engage the broader community in an open, transparent, and public process to discuss possible alternatives to the project as now proposed. Whether or not that process will result in a project acceptable to the Shingle Springs community and that is economically viable for the developer remains to be seen.

Thank you again, and thanks also to the other Supervisors, for the time and attention given to address my clients' concerns.

Very truly yours,



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