

Joel Ellinwood, AICP
Lawyer-Planner



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

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

March 1, 2013

Hon. Ron Briggs
Hon. Norma Santiago
Hon. Ray Nutting
Hon. Ron Mikulaco
Hon. Brian Veerkamp
El Dorado County Board of Supervisors
330 Fair Lane, Building A
Placerville, California 95667

Dear Members of the Board of Supervisors:

Please be advised that I represent the Shingle Springs Community Alliance and No San Stino, two volunteer, grass roots unincorporated community organizations working to preserve and improve the character of Shingle Springs as a pleasant rural community. On their behalf I want to thank you for your courageous action in unanimously voting (with one member absent) to deny entering into contracts with San Stino, LLP and LSA Associates for the preparation of an Environmental Impact Report for the San Stino development project, which includes a General Plan Amendment, a Zoning Ordinance Amendment, and approval of a Tentative Subdivision Map.

The project as proposed is so neglectful of the many environmentally-sensitive features of the 645-acre site, ignores the inadequacy of the water, sewer and road infrastructure needed to serve a project of this magnitude, and is so completely out of context with the surrounding development pattern and community character, that no further study is needed to conclude that the project as proposed is wrong for Shingle Springs and wrong for El Dorado County. The developer's proposal has indeed, in Supervisor Veerkamp's words, "put the cart before the horse."

Before preparing a development plan for a site such as this, an experienced and responsible developer would have conducted the necessary studies to determine the carrying capacity of the site, given the many constraints that affect it. Several months ago I met personally with the developer and they admitted to me that they had not done so. Based on my experience representing many California large and small developers as well as cities and counties throughout the state, it is my judgment and recommendation that thorough and comprehensive analysis prior to advancing development plans should be the preferred approach to responsible land development.

By delaying this analysis until the preparation of an EIR, the developer puts the spotlight on its proposal as the baseline for the project, and more appropriate plans that fully consider the limitations of the existing infrastructure and the environmental constraints of the site under the County's existing General Plan policies, and state and federal law, would only be considered as alternatives to the project as proposed, with a necessarily more limited review and analysis.

The County has a right to insist that developers do their homework before advancing such an ill-conceived proposal, by demonstrating that they have analyzed the carrying capacity of the surrounding road network and the availability of public water and sewer services to serve the project before preparing their plan. (CEQA Guidelines § 15004 (b)(3).) The County's General Plan policy and state and federal law require that projects that may impact wetlands prepare a wetlands delineation study in accordance with the Army Corps of Engineers protocols to identify the exact location and boundaries of protected wetlands, including seasonal wetlands, on the site which must be avoided. These same authorities mandate that environmentally-sensitive sites, such as the properties involved in this proposal, be thoroughly surveyed by qualified independent professionals using established scientific protocols for observations made during seasons appropriate for the species under consideration. The site appears to have significant areas of oak woodlands, and there is no indication that the developer has engaged a qualified arborist to survey the nature and extent of the oak woodland. The developer's proposed tentative map has avoided some areas where these constraints are present, but has some of the most dense lotting patterns directly affecting others. These impacted areas can be readily identified by looking at time-series aerial views of the site. By putting off these studies until the EIR, the developer has truly "put the cart before the horse."

As Mr. Trout pointed out to the Board at its meeting Tuesday, land owners and developers have a right to propose General Plan Amendments, Zoning Ordinance Amendments and Tentative Subdivision Maps to allow a change in the established permitted uses and intensities, however ill-conceived they may be. The County may not *approve* changes of the magnitude proposed for the San Stino development project without first preparing and certifying an Environmental Impact Report. California Public Resources Code ("PRC") § 21080. If the EIR finds that the project has significant impacts which cannot feasibly be avoided or mitigated to a level less than significant, the Board may still approve the project if there is substantial evidence in the record that there are overriding social or economic benefits from the project which in the judgment of the Board outweigh the adverse environmental effects. PRC § 21081.

However, it is also well-established, black letter law under CEQA that **NO environmental review is required to deny a project.** (PRC § 21080 (b)(5), § 21083, Guidelines § 15270, *Sunset Sky Ranch Pilots Association v. County of Sacramento* (2009) 47 Cal.4th 902; *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal.App.4th 1371, 1380, *See*, pp. 1383-1384, in which the court noted,

"Our state legislators evidently concluded that public agencies should not be forced to commit their resources to the costly and time-consuming environmental review

process for proposed private development projects slated for rejection, whatever the reason for agency disapproval.”

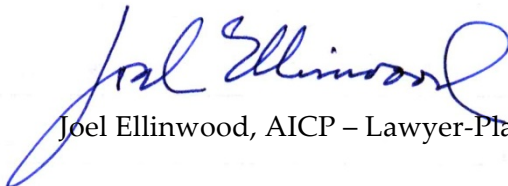
See also, Native Son/Lyon Communities v. City of Escondido (1993) 5 Cal.App.4th 892, 906-907; *City of National City v. State of California* (1983) 140 Cal.App.3rd 598, 602)

In the comments made at the Board hearing on the EIR contract approval and in the correspondence sent to the Board concerning this project there is ample evidence that the San Stino project proponents have not met the standard of due diligence necessary for a project of this scale and magnitude of change of intensity, and involving such an environmentally sensitive site. To use a rather earthy metaphor, when the trash can starts to stink badly, you don't need to take off the lid, stick your head in the barrel and poke around to know that it is past time to empty it. Accordingly, the County Board of Supervisors have the discretion to deny the applications outright without further environmental review. Of course, before taking such a step the Board will have to give public notice of its intention to vote on denial of the San Stino development applications and hold a public hearing, before voting on the matter. The developer has no legal right to insist that an EIR be prepared before a project is denied.

The members of the Shingle Springs Community Alliance and No San Stino, many of whom addressed the Board last Tuesday, respectfully request that the El Dorado County Board of Supervisors put on its agenda at the earliest possible date a public hearing for consideration of denial of the proposed San Stino General Plan Amendment, Zoning Ordinance Amendment and Tentative Subdivision Map applications. Shingle Springs Community Alliance and No San Stino will provide additional evidence and testimony supporting denial of the applications at or before the hearing, and will provide the County Counsel with a draft of proposed findings in support of denial.

Thank you again for listening to the concerns raised by the residents of Shingle Springs, and taking strong action that is responsive to those concerns. There is no need to string out a lengthy, expensive and contentious CEQA process when the Board can follow its decision not to contract for the preparation of an EIR with a decision to deny the San Stino project applications. Once the County and Shingle Springs community completes the community identity and review of the Community Region Line for Shingle Springs, the developer or landowner is free to file another application that is consistent with the policies established by the Board of Supervisors.

Very truly yours,



Joel Ellinwood, AICP – Lawyer-Planner

cc: Edward Knapp, County Counsel