

EXHIBIT C



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VIA EMAIL

George Carpenter
Winn Communities
3001 I Street, Suite 300
Sacramento, California 95816

Re: Hawkview, Bell Woods and Bell Ranch
Bass Lakes Specific Plan

CEQA Application to Update of the Bass Lake Hills Specific Plan Public Facilities
Financing Plan

Dear George:

We understand that Winn Communities (through its holding company BL Road, LLC) is working with the County of El Dorado ("County") on a proposed update to the Bass Lake Hills Specific Plan Public Facilities Financing Plan ("PFFP"). You asked us to evaluate a question that arose during your recent discussions with County staff: would CEQA apply to the proposed PFFP update? For the reasons discussed below, we believe CEQA does not apply to the PFFP update.

I. BACKGROUND

We briefly set forth the background facts as we understand them to provide context for our analysis.

The Bass Lake Hills area is approximately 1,200 acres in unincorporated El Dorado County. The area is covered by the Bass Lake Hills Specific Plan ("BLHSP"). On March 17, 1992, the County certified an EIR for the BLHSP. Thereafter, an addendum to the EIR was prepared in conjunction with a Planning Commission hearing on the BLHSP. On November 7, 1995, the County Board of Supervisors held a public hearing on the BLHSP, after which the Board made findings, certified the Program EIR with the addendum thereto and approved the BLHSP (Resolution No. 288-95).

Pursuant to Section 9.4 of the BLHSP, on June 8, 2004, the County Board of Supervisors approved a Public Facilities Financing Plan ("PFFP") for the BLHSP. According to the information we have received, it does not appear the County performed any CEQA with respect to the 2004 PFFP.

Since 2009, Winn Communities, which now owns three properties in the BLHSP, has been working with the County to address significant issues concerning the financing of public infrastructure.

While working with the County staff, Winn Communities submitted multiple drafts of a PFFP update, most recently in July 2013. County staff agreed to submit this latest draft PFFP update to the County Board of Supervisors to receive direction from the Board. County staff prepared a staff report for the hearing, which hearing was held on August 27, 2013. At the conclusion of the hearing, the Board, among other things, directed staff to work with Winn Communities to address certain questions, and report back in sixty days. In a recent meeting with staff, one of the questions raised was whether CEQA would apply to this PFFP update.

II. ANALYSIS

Based on our analysis, we think that approval of the PFFP update would not require CEQA.

CEQA only applies to an agency's discretionary approval of a "project." A "project" is an activity "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Cal. Pub. Res. Code § 21065. Although courts construe "project" broadly, it does have limitations. A "project" is not a discretionary approval that is merely a "funding mechanism" or "other government fiscal activities which do not involve any commitment to any specific project." Cal. Code Reg., tit. 14, § 15378(b)(4); *see also Sustainable Transp. Advocates of Santa Barbara v. Santa Barbara County Ass'n of Governments*, 179 Cal. App. 4th 113, 123 (2010) (measure that imposed a retail sales and use tax to fund transportation projects in Santa Barbara County was not a "project" under CEQA but was a "mechanism for funding proposed projects that may be modified or not implemented depending upon a number of factors, including CEQA environmental review"); *Parchester Village Neighborhood Council v. City of Richmond*, 182 Cal. App. 4th 305, 316 (2010) (municipal services contract was "a mechanism for funding proposed projects that may be modified or not implemented at all" and was thus not a project under CEQA).

Based on our review, we believe that the changes proposed in the PFFP update do not constitute CEQA "projects." The PFFP is a funding mechanism. It adjusts costs to reflect development that has occurred and reassigns responsibility for construction of certain improvements that are already required. It does not commit the County or an agency to any specific project. When the County approved the 2004 PFFP, it does not appear the County performed CEQA, likely because the County correctly viewed the PFFP is simply a funding mechanism. Moreover, the majority of the proposed changes in the update involve either deleting certain activities or altering the phasing or funding mechanisms for activities already contemplated in the 2004 PFFP. They do not involve new impacts, new circumstances, or new information that would require major revisions to the existing EIR.

You indicated that County staff has a concern that the environmental impacts of the proposed sewer facilities, and particularly the options for a sewer line in light of information that a lift station is not feasible, were not previously analyzed, and that CEQA might need to be done for

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these projects. In our view, this proposed change in the PFFP involves funding only. While the proposed sewer facilities, whatever they end up being, may require CEQA before they are actually approved, the PFFP update does not require CEQA. It does not commit the County or any agency to projects. To the contrary, the PFFP update states that there are "two offsite gravity sewer alignments currently contemplated The [updated PFFP] contemplated funding either of these alternatives, but the final determination as to which offsite alignment will actually be constructed will be the subject of a future Master Facility Plan Report." PFFP Update, p. 46 (emphasis added).

In short, the PFFP is purely about funding, does not commit to implement the projects discussed, and does not fall within the definition of a CEQA "project."

We would be happy to discuss the foregoing in more detail at your convenience.

Very truly yours,



Michael H. Zischke

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