

MEMORANDUM

To: David Defanti, Assistant Community Development Director
From: Bill Abbott
Date: December 9, 2013
Re: CEQA processing for Re-designation of Camino-Pollock Pines from Community Region to Rural Centers

The Board of Supervisors has directed staff to report back with respect to considerations associated with processing a re-designation in the General Plan of Camino-Pollock Pines from Community Region to three Rural Centers. This proposed amendment will not involve any modification to the plan boundaries. Staff in turn has requested that I evaluate the CEQA considerations associated with such a change. My analysis follows.

Summary

In the event that the Board of Supervisors directs staff to proceed with this change, the staff should prepare an initial study. This analysis will become the foundation to support the determination of whether the existing General Plan EIR provides sufficient CEQA analysis, or whether additional CEQA documentation is necessary. Due to potentially unique circumstances associated with the Camino-Pollock Pines area, the conversion of this area from Community Region into three Rural Centers could be found to be within the scope of the existing general plan EIR.

Analysis

Within the Camino-Pollock Pines planning area, public water and sewer services are very limited. Staff has advised me that the change in overall land designation from Community Region to three Rural Centers would not result in any changes to the underlying land use designations applicable to specific parcels, or to the region boundaries. From a planning perspective, this change, if approved, will have the effect of the County applying more rigorous planning and development standards in the future in two topical areas: allowed noise exposure (lowering the allowed noise exposure) and targeted level of service for traffic (raising the required level of service.)¹ Staff believes that these changes will not result in land uses any more

¹ These two policy considerations should be viewed as an initial, but not final list of relevant planning standards implicated by a re-designation (e.g. public safety.) As set forth in the recommendation below, the staff should prepare an initial study. This study will need to consider all relevant environmental considerations associated with the proposed re-designation.

intense from those allowed as part of the existing General Plan and EIR, and more likely than not, less intense development.

A recent appellate court decision (*Latinos Unidos De Napa v. City of Napa*; October 10, 2013; 2013 Cal.App. LEXIS 893) provides a relevant example of how CEQA might apply in this situation.² *Latinos Unidos* is noteworthy, in my assessment, because it applied Public Resources Code section 21166 to a later activity which was not consistent with the earlier approval³, a fact pattern with potential application to Camino-Pollock Pines.

In *Latinos Unidos*, the City of Napa had adopted a comprehensive general plan in December 1998. The plan had a planning horizon of 2020. With the 2020 general plan, the City certified a program EIR. In response to state mandate, the City began an update of its Housing Element in 2009. The Housing Element update in turn necessitated possible changes to the land use element of the City's general plan. These latter changes included increasing the "minimum densities in seven areas zoned as 'mixed use' or 'community commercial' from 10 to 40 residential units to 20 to 40 residential units per acre" and designation of eight sites at which multifamily uses would be allowed as a matter of right (totaling 88 units). Amendments to the City's zoning code were considered along with the proposed land use changes.

The City staff performed an initial study, addressing the required topical areas. The initial study concluded that the "project" was within the scope of the previously certified program EIR. At the time of action on the Housing Element adoption and related code amendments, the City Council adopted findings to the effect that the project would not generate new impacts not previously identified, evaluated and mitigated through the program EIR.

Both the trial court and court of appeal upheld the City's action. The appellate court decision recognized the leading cases from the Third Appellate District⁴, but declined to follow the Third on the issue of the standard of review applicable to judicial review of the decision to find the project within the scope of the prior program EIR (electing to apply the substantial evidence test, and not as a pure question of law.)

While the Third Appellate District has been conservative in its view of CEQA procedures, the potential fact pattern of finding the Camino-Pollock Pines re-designation to Rural Centers amendment within the scope of the Countywide program EIR is potentially favorable given: (1) the very limited geographical aspect of this amendment, (2) minimal change in the underlying approved land use density⁵, (3) no change to the boundaries of the planning

² Please note that the decision in *Latinos Unidos* is at odds with decisions of the Third Appellate District on the question of the standard of review. See footnote 3.

³ In contrast to Public Resources Code section 21083.3, section 21166 expressly allows for changes in the original project.

⁴ *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1297 and *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156.

⁵ Densities would be lowered for those areas designated Mixed Use.

region, and (4) the net effect of raising the environmental standards applicable to future development. In reviewing the decision in *Center for Sierra Nevada Conservation*, I identified what I believed to be distinguishing facts. These include: (1) the later action in dispute in *Sierra Nevada* was in the form of an implementation action (a mitigation measure), with much more site specific detail that had not been evaluated as part of the original programmatic EIR, (2) the County's oak strategy affected thousands of acres of land, (3) the ordinance had the indirect effect of facilitating development. In contrast, the potential re-designation to three Rural Centers does not appear to have the potential to facilitate development not previously planned for. Rather, the underlying densities largely remain the same, and the change is arguably reflective of the realities that the required infrastructure necessary to support more intense development is unlikely to be developed in the future. As a result, the change in designation from Community Center to Rural Centers will not result in a significant change in residential density which would otherwise be developed within the planning region in the future.

Potential Limitations in the application of *Latinos Unidos* as to Other Plan Changes

The foregoing analysis is specific as to Camino-Pollock Pines. The County's planning areas involve a variety of planning opportunities and constraints. I caution the County against automatically assuming that changes to other community regions would necessarily fall within the scope of the County General Plan EIR. Plan boundary expansions may increase development potential beyond that considered⁶, and contractions of boundaries may raise issues of redirected growth. Text changes to the General Plan (as compared to designations on maps) may have similar consequences. As reflected in the *Latinos Unidos* decision and as recommended below, an initial study should be utilized. Given that general plan amendments are universally recognized as "projects" for purposes of CEQA, the County would be better served to fashion a CEQA strategy that relies upon the existing General Plan EIR as the starting point rather than attempt to process any such change under the "common sense exemption" of Guidelines section 15061(b)(3).⁷

Recommendation

Should the Board direct that the staff evaluate the proposed re-designation, the recommended course of action would be to prepare a new initial study which examines the potential impacts. In light of the *Latinos Unidos* decision, staff should consider the suitability of the existing General Plan EIR for the proposed action⁸. We know from both *Center* and *Latinos*

⁶ *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263; *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156.

⁷ The "common sense exemption" applies in the narrowest of circumstances.

⁸ To the extent that a change in boundaries reduces the potential for development, possibly triggering a displacement-of-development argument, the County's CEQA analysis should consider this potential impact. Although difficult to quantify and in some circumstances may be too speculative to meaningfully examine, it nevertheless needs to be considered. See *Marin Municipal Water District v. KG Land California Corporation* (1991) 235 Cal.App. 3d 1652; *Muzzy Ranch Company v. Solano County Airport Land Use Commission* (2007) 41 Cal.

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Unidos that a properly documented supporting analysis is essential to addressing any potential legal challenges. The initial study should also address the question of whether or not the proposed re-designation has independent utility from the other general plan changes currently being considered. This analysis is called for inasmuch as the proposed re-designation is part of the current work program for updating the general plan. One possible interpretation would then be that re-designation of the Camino-Pollock Pines area is part of a larger project. If the action has “independent utility”, meaning that it is not functionally interconnected, then it can proceed subject to its own CEQA document. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

End of Memorandum