Law Offices of Matthew Emrick

A Professional Corporation
6520 Lone Tree Blvd., #1009
Rocklin CA 95765
(916) 337-0361 (Direct)
matthew@mlelaw.com

November 12, 2023

Via Email Only
Amador County Planning Department
810 Court Street
Jackson, CA 95642
(209) 223-6380
planning@amadorgov.org

Re: Nov. 14, 2023 Agenda Item 1 - Request for a Zone Change (ZC-23;9-1) from the M, Manufacturing district to the R1-A, Single Family Residential and Agricultural zoning district for an approximate 23.5 combined acres to establish consistency with the AG, Agriculture General Plan classification (APNs 030-020-102 and 030-020-108).

Dear Planning Commission Members:

Thank you for the opportunity to provide comments on the above-referenced Project scheduled for consideration by the Amador County Planning Commission on November 14, 2023.

Comments

1. The Proposed Project is Not Exempt from CEQA

The County's staff report and proposed Notice of Exemption claim the proposed Zone Change is exempt from CEQA under Guidelines sections 15061(b)(3) and 15183. As set forth below, the Project is not exempt from CEQA review.

The proposed Zone Change from Manufacturing to single family residential and agricultural zoning is clearly a "project," as defined under CEQA. A proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171. A 'reasonably foreseeable' indirect physical change is one that a project is capable of causing whether such impacts would actually occur. *Id.*

In the present case, it is reasonably foreseeable that the proposed Zone Change is "capable" of resulting in numerous environmental impacts due to changes in land uses,

land use patterns, and water use including but not limited to impacts on water development, local watersheds, drainage, traffic, and future residential growth. (See Comments of Leslie Bonneau dated Nov. 6, 2023 as well as the applicant's own Environmental Information Supplement). *Muzzy Ranch Co. v. Solano County Airport Land Use Com*. (2007) 41 Cal.4th 372.

The applicant's claim that there are no current plans to develop the property after rezoning (e.g., residential, farming, livestock etc.) appears to be a disingenuous attempt to avoid proper environmental review. As the courts have stated: "Presumably no one goes to the trouble of" requesting a zoning change for their property "just for the sake of the process." The goal of a zoning change is to make that property more useable. And with the potential for greater or different use comes the potential for environmental impacts from that use. See *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.

The claim in the staff report and proposed Notice of Exemption that the project is exempt from CEQA under CEQA Guidelines section 15183 is legally incorrect. Section 15183 is not exactly an exemption from CEQA, rather it allows for a streamlined environmental review for certain projects that are consistent with a general plan or zoning. Even if applicable, the Staff Report fails to provide any evidence that any direct or indirect impacts from the proposed Zone Change were already analyzed in a prior general plan EIR. Since this proposed Zone Change is a substantial change from the zoning regulations currently in place such impacts could not have been analyzed, or adequately analyzed, in any prior EIR.

Further, section 15183 anticipates that an agency demonstrates "in an initial study or other analysis" whether certain listed criteria are met. (CEQA Guidelines, § 15183, subd. (b).) The County does not appear to have provided any such required analysis. Subdivision (b) also provides that agencies must analyze potentially significant offsite or cumulative impacts which were not discussed in a prior plan EIR. This analysis also appears absent from the Staff Report and supporting documentation. Conformity with a general plan does not by itself insulate a project from environmental review. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332

Planning Staff's claim that the project is exempt from CEQA under the "common sense" exemption also fails. The so-called common-sense exemption is not applicable where there is any evidence that a project may impact the environment – even theoretically. *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171. As set forth in detail below, there is more than enough evidence to demonstrate the Zone Change from manufacturing to residential is capable of impacting the environment. As noted above, it is "common sense" that the change in zoning to residential is likely to lead to future development of the property even where there is no present plan for development.

Even more significantly, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency is required to prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. CEQA Guidelines § 15064. Here, as discussed further below, there is more than enough evidence to support a "fair argument" that the Zoning Change may have significant environmental impacts. As a result, not only are the proposed exemptions invalid, but the evidence before the Planning Commission demonstrates that an EIR should be prepared under the fair argument standard. *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 371.

2. The Proposed Project is Capable of Impacting the Environment

Changing from manufacturing to a potential residential or agricultural use has growth inducing impacts requiring CEQA analysis. Even where there is no present plan for development, the lead agency must consider the possibility of impacts from potential future development. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332. It is certainly not speculative that potential future development will result from a change in zoning from manufacturing to residential.

CEQA requires a lead agency identify and disclose water supply sources intended to support a project at the earliest phase of a project. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431. The identified water source must bear a likelihood of actually proving available to supply the project. (*Id*. at 431-432.) Speculative sources of water supply and unrealistic allocations are insufficient for the purpose of complying with CEQA. (*Ibid*.) Where a water supply is uncertain, the lead agency needs to disclose and analyze the potential impacts of identifying potential alternative sources and the impacts of obtaining water from such sources. (*Ibid*.) Here, the Staff Report and supporting documents are devoid of any such information.

The applicant fails to provide any information on whether the water sources identified could supply adequate water for future uses after rezoning. There is no information regarding pumping capacity of the well or the quality of water from the well or whether the well is pumping groundwater from a basin or a fractured rock system (and if a fractured rock system, what the recharge rate is, if any). It is simply not possible to even speculate if the well is capable of supplying water to a new use such as residential due to the lack of information. This is significant because if the well cannot provide adequate water, then the applicant will have to, at some point, identify potential alternative water sources and analyze the impacts of supplying water to the property from those alternative sources.

The applicant's "claim" of riparian rights to overflow from the Cleveland Tunnel does not constitute substantial evidence of a water source (see pg. 28, *Environmental Information Supplement*, Item 5). The applicant fails to provide any information on this claim of right. There is no information to confirm whether all the water is natural flow or whether the parcels are "riparian" to the water source. In fact, the applicant's own information provided to the Planning Commission indicates the property is hilly in parts, potentially indicating that not all of the property is within the watershed of the identified water source and thus not riparian.[1]

Additionally, there does not appear to be any filing for this alleged water right registered with the State Water Resources Control Board pursuant to a Statement of Diversion and Use according to the water rights data base (eWRIMS). By law, anyone claiming a riparian right to divert water from a stream or underflow must file a Statement of Diversion and Use with the State Water Resources Control Board. California Water Code §5101. Notably, the Deeds attached to the Staff Report relating to the Property do not indicate any water rights were reserved to the Property.

Alternatively, the applicant indicates water would come from the Cleveland Tunnel with no claim of right (see pg., 21, Iten 5). This alone invalidates the application as it fails to properly inform the public as to the basis of the water source the application is based on (claim of right, agreement, or utility service). Further, if water will come from the Cleveland Tunnel without a claim of right, how will water be secured from the Tunnel for the property? By contract? And would additional diversion and transmission facilities be required? How would any new utility lines impact the environment and the potential for future growth in the area of the Property? These issues alone indicate the Project is capable of potential impacts to the environment.

Additionally, there is no information regarding any competing uses to groundwater or water from the Cleveland Tunnel. Therefore, it is not possible to assess whether there is a reasonable possibility any such water would be available for any future new uses on the property after the Zone Change or whether such use would have impacts on other water rights users.

The applicant's own information attached to the staff report indicates the potential for significant environmental impacts from the Zone Change as follows:

1. The applicant indicates that much of the property is sloping. This indicates that use for residential or farming under the new zoning would potentially require leveling and grading as well as potential short-term use of trucks and equipment. Such work would have corresponding impacts on traffic, noise, air, and aesthetics.

[1] See *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501 [property not within the watershed of the stream is not riparian even if other portions of the property abut the stream].

2. The applicant indicates the property is currently used for wildlife, open space, and oak woodland. A Zone Change allowing residential or farming use would obviously have the potential to significantly impact these present uses.
3. The applicant claims there are no cultural aspects or remaining artifacts associated with the property, and yet, indicates the present of historic mining operations (shafts and adits) and that a "historic" ditch runs through the property.
4. The applicant indicates the mined portions of the Property were reclaimed "naturally." Does the applicant have any knowledge of any existing contamination on the property due to its mining history? If so, how does that impact residential use or farming under the new zoning. Does the Applicant have any knowledge regarding the potential existence of any other tunnels, shafts, or adits that could impact future residential or agricultural use of the property? Are any mined slopes on the property stabilized or capable of being stabilized to accommandate further residential or agricultural development of the property?

Conclusion

Based on the foregoing, the proposed CEQA Exemptions do not apply to this Project. Further, there is substantial evidence both from the comments and from the applicant demonstrating that the Zone Change could result in significant impacts to the environment. The Planning Commission must therefore reject the Project application, and not recommend the Project for approval by the Board of Supervisors.

Thank you for your consideration.

LAW OFFICES OF MATTHEW EMRICK

Matthew Emrick

By: ______________________________

Matthew L. Emrick