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Comments on Agenda Item 1 of the November 14, 2023, Planning Commission Meeting

Mae Ryan Empleo <Legal@semlawyers.com> Tue, Nov 14, 2023 at 11:28 AM

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Dear Members of the Planning Commission:

These comments are submitted on behalf of the Alberta Hale Land Trust regarding Agenda Item 1 of the November 14, 2023, Planning Commission meeting. Should you have questions please do not hesitate to contact our office. Thank you for your attention to this matter.

Sincerely,

Mae Ryan Empleo

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November 14, 2023

SENT VIA EMAIL
(planning@amadorgov.org)

Amador County Planning Commission
810 Court Street
Jackson, California 95642

RE: Agenda Item 1 of the November 14, 2023 Planning Commission Meeting

Dear Members of the Planning Commission:

These comments are submitted on behalf of the Alberta Hale Land Trust regarding Agenda Item 1 of the November 14, 2023, Planning Commission meeting ("Project"). As explained in more detail below, the Project is not subject to any categorical or other exemption from CEQA. The Planning Commission should send the Project back to staff in order to analyze the "whole of the action" proposed by the applicant and investigate the recently discovered unlawful construction activity presumably by the project applicant.

1. CEQA Guidelines section 15183 does not apply to the Project.

The Project's staff report asserts that the Project is subject to the "exemption" provided by CEQA Guidelines section 15183. Setting aside that Guidelines section 15183 is not an exemption but rather a process for streamlining review, section 15183 is not applicable to the Project. Guidelines section 15183 is only applicable to projects that are "consistent" with the development density set forth in an agency's General Plan. (CEQA Guidelines, § 15183, subd. (i)(2).) Here, however, the Project would <u>increase</u> development density above the level provided for in the County's General Plan.

The Project site's General Plan land use designation is "AG (Agricultural-General)." General Plan Table LU-1 specifies a "density or Intensity" range of "0.025 unit/acre (40-acre minimum)." The Project would rezone to R-A two different parcels totaling 23.5 acres. This would allow at minimum a single-family dwelling on each of the two legal parcels for a total density of two units on 23.5 acres. This is significantly more dense than one dwelling on 40 acres. Because the Project would provide for a

density that is greater than provided by the General Plan, the Project is not "consistent" with the General Plan and therefore not subject to Guidelines section 15183.

2. The "Common Sense" Exemption is inapplicable.

The so-called "common sense" categorical exemption is also inapplicable here. CEQA has established "a three-tier process to ensure that public agencies inform their decisions with environmental considerations." (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 380.) The first step requires the public agency to determine whether the proposed activity is a "project." CEQA defines a project as, "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]" (Pub. Resources Code, § 21065.) The second step is to determine whether the project falls under a statutory or categorical exemption. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 286.) Once the agency has approved a "project," environmental review must be completed unless an exemption properly applies and is not subject to one or more recognized exceptions to using them.

Categorical exemptions, even if otherwise applicable, are also "subject to important exceptions based on factors such as location, cumulative impact, or unusual circumstances." (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1105; see also CEQA Guidelines, § 153002.) For example, categorical exemptions "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (CEQA Guidelines, § 153002, subd. (c).)

Here, the project applicant acknowledges that the Project site is a former mine site: "The parcel was mined in the early days of the gold Rush period and has naturally reclaimed." The applicant gives no explanation of what is meant by "naturally reclaimed," and so the Project may exacerbate latent environmental issues or hazardous conditions. Indeed, the Environmental Information Supplement discloses, "There is a filled-in adit adjacent to the County road and several shall prospect shafts and adits. The remnant of the historic Volcano Ditch traverse the property from north to south." The fact that the Project site is a former mine site that was only "naturally" reclaimed and still includes unaddressed mine shafts and adits constitute "unusual circumstances" that would make any categorical exemption inapplicable and certainly the "common sense" exemption as well.

The "common sense" exemption is also inapplicable because, contrary to the applicant's false representations, physical development is contemplated and actually occurring as explained immediately below.

3. **The County is engaged in unlawful piecemealed Project review.**

CEQA's conception of the term "project" is broad to maximize protection of the environment. (*Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147 Cal.App.4th 643, 653.) "This big picture approach to the definition of a project (i.e., "the whole of an action") prevents a proponent or a public agency from avoiding CEQA requirements by dividing a project into smaller components which, when considered separately, may not have a significant environmental effect." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 270-271.) While issues of piecemealing typically arise in the context of whether two different physical activities should be analyzed as a single project, improper piecemealing can also occur where an agency fails to analyze reasonably foreseeable future development. (CEQA Guidelines, § 15144 ["While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can"]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 397 ["there is telling evidence that the University, by the time it prepared the EIR, had either made decisions or formulated reasonably definite proposals as to future uses of the building. At a minimum, it is clear that the future expansion and the general types of future activity at the facility are reasonably foreseeable"].)

The staff report improperly ignores reasonably foreseeable residential development. While the Environmental Information Supplement asserts, "There are no proposed structures," a letter by the applicant plainly asserts, "A proposed use is as a residential parcel." (Letter dated September 14, 2023.) Further, and incredibly, the applicant appears to be actively constructing the contemplated residential development without building, grading, or other required permits. Setting aside the applicant's flagrant illegality — which we trust will be addressed by a prompt County Code Enforcement action — that confirms that the Project is not a mere hypothetical "rezoning" action uncoupled from any physical development. The County has a duty to "use its best efforts to find out and disclose all that it reasonably can" about the physical development embraced within the Project's "whole of the action" and its environmental impacts.

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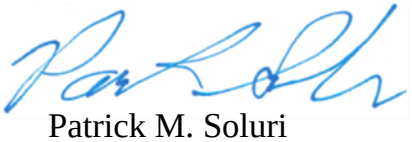
We encourage the Planning Commission to recommend denial of the Project and further exercise its authority to refer the applicant's unauthorized construction activity to staff for investigation and enforcement activity.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

PS/mre

cc: Craig Bonneau