



MEMORANDUM

To: Planning Commission

From: Kinarik Shallow, Associate Planner

Date: December 8, 2021

Re: Response to Robert and Jane Maccione’s Comments on the Initial Study/Mitigated Negative Declaration for the Sierra View Subdivision Project (File #PL21-0162)

During the 30-day public review period of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Sierra View Subdivision project, City staff received a letter dated December 5, 2021 from Robert and Jane Maccione, owners of 1004 Shasta Street. The letter is included as Attachment 1 to this memorandum. The letter states that they object to the proposed Mitigated Negative Declaration and that it is deficient. The letter claims that a more detailed and independent study of the environmental impacts of the proposed development of Parcels 3 and 100 is necessary and additional mitigation measures beyond those proposed in the MND are required. However, the letter does not provide any substantial evidence to support these claims. As clearly stated in CEQA Guidelines Section 15384, “argument, speculation, [and] unsubstantiated opinion or narrative” is not substantial evidence. The topics of concern include impacts to biological resources, water quality, greenhouse gas emissions, and density. These concerns are summarized and addressed below.

Biological Resources

The letter claims that the MND does not disclose, discuss, nor provide mitigation for: 1.) the destruction of nesting and breeding habitat of birds protected by the Migratory Birds Act; 2.) the loss of habitat for the native bat population, and 3.) the loss of forage for river otters.

Section IV (Biological Resources) of the Initial Study checklist discusses that special-status and migratory bird species have the potential to occur onsite and because the project requires the removal of several native oak trees, this has the potential to disrupt the nesting of special-status birds and migratory birds. Therefore, as disclosed and required in the IS/MND, a pre-construction nest survey is required to ensure that no special-status nesting birds or migratory birds are harmed during tree removal or construction of any kind (see Mitigation Measure BIO-2 of the Mitigation Monitoring and Reporting Program, which is included with the December 16, 2021 Planning Commission Staff Report (“Staff Report”) as Exhibit K, Attachment 15).

The General Plan (GP) EIR discussed the potential for pallid bats and Townsend’s big-eared bats to occur in the Planning Area. It was determined that the Planning Area is within the species’ range, but no occurrences of the species have been recorded within the Planning Area; however, suitable habitat for the species is present and recorded occurrences of the species are generally present in the vicinity (see Table 4.8-3 of the GP EIR). The pre-construction survey would also ensure that roosting bats are not harmed by implementing the project. Though there would be some loss of unoccupied roosting habitat, the lost acreage is not significant.

As disclosed in the IS/MND, the GP EIR shows that the northern portion of the project site contains a narrow band of riparian woodland surrounding the intermittent tributary (GP EIR, p. 4.8-3). This riparian woodland has the potential to contain habitat, although, there is a low likelihood that it contains habitat

for any sensitive-status species (see Attachment 4 and Attachment 7 of Staff Report Exhibit H and I). The drainage is too minor of a tributary to provide forage for river otters, as their diet consists primarily of fish and other aquatic species that are not supported by the drainage due to its intermittent nature. In addition, river otters are not listed as endangered or threatened under the Endangered Species Act, and thus are not protected by that statute, as the letter suggests. Any construction that would occur on the bed and bank of a stream or other water body, including drainage canals, must comply with Section 1602 of the California Fish and Game Code, which will require the developer obtain a Lake and Streambed Alteration Agreement. There are no known other sensitive natural communities onsite. Any potential impacts to riparian habitat would be less than significant with implementation of MM BIO-3. MM BIO-3 would ensure that all conditions of approval and/or mitigation measures within these permits are followed.

Finally, the letter suggests that the Migratory Bird Treaty Act of 1918 (MTBA) and its implementing regulations have a broader reach than is actually the case. The MTBA does not protect *all* potential breeding habitat of the birds mentioned in the letter. Rather, the Act protects the birds themselves, along with their nests, eggs, and parts. The MTBA makes it unlawful to pursue, hunt, take, capture, or kill protected birds, their parts, their nests, or their eggs; to attempt to take, capture, or kill the protected birds, their parts, their nests, or their eggs; to possess, offer for sale, offer to barter, offer to purchase, or purchase the protected birds, their parts, their nests, or their eggs; to deliver for shipment, ship, import, or export the protected birds, their parts, their nests, or their eggs; or to deliver for transportation, transport, or cause to be transported the protected birds, their parts, their nests, or their eggs. Thus, to the extent that land surrounding a nest might contribute to breeding, the MTBA does not protect all such land.

Water Quality

The letter alleges that in August 2021, the Sierra View Country Club and/or Westpark illegally took a backhoe onto the site and dug into the area of and/or surrounding the tree-sheltered wetlands, seasonal lakes, seasonal streambeds, and vernal pool, with the intent of destroying them. However, staff is not aware of any of these activities occurring on site. The applicant has indicated that Youngdahl Consulting Group dug test pits on site around the time stated in the letter as part of their geotechnical engineering study. This was done lawfully and with all required permits. Regardless, the CEQA process is not the appropriate venue for a party to allege that a property owner has engaged in illegal site work. (See *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.)

In addition, the letter claims that the project's mitigation through bioswales and retention pond is inadequate to replace the function of the current wetlands and to handle run-off from the golf course and the increased pollution from the proposed residential development. Lastly, the letter states the IS/MND does not adequately address impacts on down-stream salmon habitat and a more detailed environmental study is needed.

The natural drainage shed of the subject property is generally from the south and east towards the northwest; therefore, the project site does not provide for any treatment or accommodation of golf course run-off. The IS/MND discloses that the site contains several aquatic resources, including a central drainage ditch that flows south to north into an intermittent tributary that flows east to west. There are also a number of seasonal wetland and vernal pool features scattered around the site and a narrow band of riparian woodland surrounding the intermittent tributary. An Aquatic Resources Delineation Report was prepared by Madrone Ecological Consulting, a qualified biologist, and is included as Attachment 7 of Staff Report Exhibit I. Section IV (Biological Resources) of the Initial Study identifies that the seasonal wetland swale and intermittent drainage/riparian wetland on site are considered federally regulated waters of the U.S., pursuant to 33 CFR Part 328, and thusly regulated under Section 404 of the Clean Water Act (see Attachment 8 of Staff Report Exhibit J). The remaining wetlands and the ditch are State-regulated waters. A discharge permit from the U.S. Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, will be required for any impacts to the seasonal wetland swale and intermittent drainage/riparian wetland that will contain conditions of approval and/or mitigation measures to ensure a net zero loss of wetland resources and a less-than-significant impact to any special-status species that

may occur on or near the affected wetland resources. Similar permitting will be required for any State-regulated aquatic resources that may be impacted. State-issued Waste Discharge Requirements, pursuant to Division 7, Chapter 4, Article 4 of the Water Code established by the Porter-Cologne Water Quality Control Act, will be required for all impacted wetland resources that are not regulated by the Clean Water Act (see GP EIR, p. 4.8-74). MM BIO-4 would ensure there would be no net loss of wetlands and that all conditions of approval and/or mitigation measures within these permits are followed.

Section X (Hydrology and Water Quality) of the Initial Study checklist evaluates whether the project would violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality. This section also evaluates whether the project would substantially alter the existing drainage pattern of the site or area in a manner which would result in substantial erosion or siltation on- or off-site, substantially increase the rate or amount of surface runoff in a manner which result in flooding on- or off-site, or create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

The City's adopted CEQA Implementing Procedures indicate that compliance with the City's Design/Construction Standards (Resolution 07-107), Urban Stormwater Quality Management and Discharge Control Ordinance (RMC Ch. 14.20), and Stormwater Quality Design Manual (Resolution 16-152) will prevent significant impacts related to water quality or erosion. The standards require preparation of an erosion and sediment control plan for construction activities and include designs to control pollutants within post-construction urban water runoff. The developer is required to treat and detain all stormwater onsite using stormwater swales and other methods which slow flows and preserve infiltration.

The project will require approval of a grading permit and improvement plans from the City prior to the start of construction, which are required to incorporate mitigation measures for dust and erosion control. In addition, the City has a National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit issued by the Central Valley Regional Water Quality Control Board that requires the City to reduce pollutants in stormwater to the maximum extent practicable. The City does this, in part, by means of the City's 2016 Design/Construction Standards, which require preparation and implementation of a Stormwater Pollution Prevention Plan for the project. All permanent stormwater quality control measures must be designed to comply with the City's Manual for Stormwater Quality Control Standards for New Development, the City's 2016 Design/Construction Standards, Urban Stormwater Quality Management and Discharge Control Ordinance, and Stormwater Quality Design Manual. A preliminary storm drainage evaluation was prepared for the project by MacKay & Soms (see Attachment 11 of Staff Report Exhibit J). The evaluation includes specific detail on storm drain infrastructure and detention proposed as part of the project to ensure compliance with all applicable measures, permits, and programs by improving drainage and reducing impacts, including installing a network of drainage pipes, large box culverts, a detention basin, vegetated swales, disconnected impervious surfaces, and bioretention facilities.

All of these measures, permits, and programs, which are required for the project, are put in place to ensure that impacts to surface water quality are negligible or less than significant. Therefore, impacts to these resources would be less than significant and no mitigation is required.

Greenhouse Gas

The letter states there does not appear to be any calculation of the increase of greenhouse gases (GHGs) from the establishment of the residential neighborhood, nor the loss of GHG reduction capacity with the removal of the native oak trees and other currently existing flora.

Section VIII (Greenhouse Gases) of the Initial Study checklist discusses the project's potential impacts to GHG. The principal GHGs that enter the atmosphere because of human activities are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and fluorinated gases. A technical memo was prepared by Raney Planning and Management, Inc. that presents the anticipated GHG emissions associated with construction and operation of the project, and compares these estimates to the applicable thresholds of

significance established by the Placer County Air Pollution Control District (PCAPCD) (see Attachment 10 of Staff Report Exhibit J). The PCAPCD thresholds were designed to analyze a project's compliance with applicable State laws including Assembly Bill 32 (AB 32) and Senate Bill 32 (SB 32). As noted in Appendix A, Implementation Measures (operation Air Quality and Greenhouse Gas Emissions), of the City's General Plan, the City of Roseville relies on PCAPCD thresholds for determining significance conclusions. PCAPCD recommends that lead agencies use the California Emissions Estimator Model (CalEEMod) to quantify operational emissions for criterial air pollutants, which evaluates operational emissions from area and mobile sources, energy use, solid waste, and water. The estimated operational GHG emissions in the first year of full buildout were found to be below the PCAPCD's operational screening threshold of significance. Thus, operations of the proposed project would not be considered to result in a cumulatively considerable contribution to global climate change.

Density

The letter states that Single-Family Residential (R1) zoning is more appropriate for the property for purposes of density in order to match the surrounding neighborhoods. However, the density of a property is determined based on the land use designation. The project is proposing to reduce density on the site by amending the current land use designation from Medium Density Residential (MDR) to Low Density Residential (LDR), which is consistent with the adjacent subdivisions to the north and east. The proposed RS zone is an implementing zone for the LDR land use. Per the Zoning Ordinance, the RS zone district is intended to allow either attached or detached single-family dwellings. The proposed tentative subdivision map is designed with larger lots to that will better accommodate a variety of single-story and two-story home plans consistent with the adjacent LDR subdivision.

Conclusion

As previously stated, Robert and Jane Maccione do not provide substantial evidence to support the claims in their letter. Staff is confident that the Initial Study adequately discloses, evaluates, and mitigates the Project's environmental impacts and a Mitigated Negative Declaration is the appropriate environmental determination for this project; the Initial Study provides substantial evidence to support this finding.

1004 Shasta St.
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December 5, 2021

Kinark Shallow
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Re: Objection to Proposed Mitigated Negative Declaration
Sierra View Country Club & Sierra Visit Specific Plan Redesignation and Rezoning Project,
File #PL21-0162 and # PL21-0161

Dear Mr/Ms. Shallow:

We are owners of a property bordering the proposed project, reference above. We object to the proposed Mitigated Negative Declaration for the above-referenced project. It is deficient as follows:

- 1) With respect to Parcels 3 and 100, the proposed MND does not disclose, discuss, nor provide for mitigation of the destruction of nesting and breeding habitat of birds protected by the Migratory Birds Act, including mallards, Canada geese, great horned owls, red shouldered hawks, yellow-billed magpies, northern mockingbirds, and Steller's jays, among others. The Migratory Birds Act prohibits the destruction of the breeding habitats of birds protected thereunder.
- 2) The proposed MND does not disclose that Parcels 3 and 100 serve as forage for river otters, which are protected by the federal Endangered Species Act. There is no provision for mitigation of this loss.
- 3) The proposed MND does not provide for mitigation of the loss of habitat for the native bat population. Currently, Parcels 3 and 100 provide shelter and food for native bats that take advantage of the large oaks and the insect population breeding in the seasonal lakes and vernal pools.
- 4) The proposed MND does not disclose that on or about August 27, 2021, after the development of the Sierra View property was announced and public meetings held, Sierra View Country Club and/or its developer, WestPark, illegally took a backhoe onto Parcel 100 and dug into the area of and/or surrounding the tree-sheltered wetlands, seasonal lakes, seasonal streambeds, and vernal pools, with the intent of destroying them by draining them of all or part of their water supply. They then caused to be erected a low containment fence to prevent the land and water from reverting to its natural state. It is believed that Sierra View/WestPark also altered the sites of the natural seasonal lakes/stream beds/wetlands/vernal pools located behind the bordering homes on

Sierra Oaks Court and Walton Way and altered the drainage of the proposed entryway across from Spanger School. It is believed that neither Sierra View nor WestPark had obtained the required Lake and Stream Alteration permits from the California Department of Fish and Wildlife before digging, or if they did, that they did so without disclosing that the purpose of the alteration was to destroy the protected permanent and seasonal wetlands, stream beds, and lake beds, and vernal pools, as well as Migratory Bird breeding habitat on the property. It is believed that in so doing, Sierra View and WestPark intentionally destroyed perennial breeding habitat of mallard ducks and Canada geese, as well as the river otter forage, in violation of the Migratory Birds Act, CEQA, and other state and federal environmental laws and regulations. Although the MND does disclose that the wetlands and vernal pools on Parcels 3 and 100 will be destroyed, it does not disclose that Sierra View and WestPark took it upon themselves in August 2021 to destroy the existing streambed, seasonal lakes, wetlands, and vernal pools to make the mitigated development they proposed appear to have no significant impact. (Photographs of the backhoe and subsequent damage are available upon request).

4) The MND does not adequately address impact on Water Quality. First, the document basically says that because Placer County has not adopted a master plan, there is no mitigation of water quality required. It also states, essentially, that because the law requires mitigation, there can be no significant impact. This is an insufficient evaluation of the actual impact that the proposed development will have on Water Quality. It is believed that the drainage of the water from Parcels 3 and 100 are into salmon habitat. Currently, Parcels 3 and 100 serve a vital wetlands filtration function in buffering and filtering run-off of chemicals used to operate and maintain the golf course. Although the MND proposes mitigation through bioswales and retention pond, the proposed measures appear to be inadequate to replace the function of the current wetlands and to handle the run-off from the golf course and the increased pollution from the establishment of a residential development in its place of the former wetlands. Nor does it adequately address impact on down-stream salmon habitat. A more detailed environmental study is needed.

5) The Greenhouse Gas Emissions report is flawed in that it addresses only the effects of “construction” and “operations.” It does not address the permanent loss of greenhouse gas filtration and conversion through the loss of canopy provided by the 158 to 168 trees that are proposed to be removed from Parcels 3 and 100. It is unclear that “operations” includes the greenhouse gas effects of furnaces, air conditioners, motor vehicles, and other internal combustion engines that come with the establishment of a residential neighborhood. There appears to be no calculation of the increase of greenhouse gases from the establishment of the residential neighborhood, nor the loss of greenhouse gas reduction capacity of the with the removal of 158 to 168 trees and other currently existing flora. A more detailed environmental study is needed.

6) Density. The MND states that medium density is appropriate for Parcel 100 because it was originally zoned in the 1950s to have greater density. But, at the time the area was so zoned, there was no development of R1 housing and a school completely occupying the eastern and

northern borders of the parcel. The only housing extant at the time the Parcel was zoned was the medium density housing located along the railroad tracks to the south of the parcel. Over the ensuing 70 years, the neighborhood bordering Parcel 100 was developed to be entirely single-family housing, except for the Sierra View property to the south, which more closely matches the 1920's bungalow housing to the south of that property. But, the entire eastern border, which comprises the bulk of the neighboring property, is R1 housing. Moreover, Parcel 3, to the north, is designated and proposed to be developed as R1. The more appropriate zoning for Parcel 100 would be as R1 density to match the surrounding subsequently established neighborhoods.

7) The MND proposed to adopt for Parcels 3 and 100 the EIR performed for the subdivision of which Parcel WB-41 is a part. That existing subdivision is more than 3 miles away and with substantially different environmental and surrounding neighborhood characteristics. Although the concept of moving density from one parcel to another may appeal, the EIR for the subdivision containing WB-41, that appears to have no streambed or wetlands, is not an adequate study of the environmental impacts of the proposed development of Parcels 3 and 100.

We believe that, pursuant to CEQA, a more detailed and independent study of the environmental impacts of the proposed development of Parcels 3 and 100 is necessary and additional mitigation measures beyond those proposed in the MND are required. Consequently, the currently proposed MND should not be approved, pending a more detailed study of multiple aspects of the proposed development.

Sincerely,



Robert Maccione



Jane Maccione