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APPEAL FORM

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Please describe below the action for which this appeal is being filed. (You may attach a separate letter if enough space is not provided.)

Please see the attached appeal letter from Law Office of Robert Bone.

BY FAX

Signed:  Date: May 26, 2020

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Received by: _____	
Project Being Appealed: _____	
File Number: _____	
Approving Body: _____	Approval Date: _____

Law Office of
ROBERT M. BONE

May 26, 2020

VIA EMAIL ONLY

CityCouncil@roseville.ca.us

City of Roseville City Council
311 Vernon Street
Roseville, California 95678

RE: Appeal of Approval of Mitigated Negative Declaration for
WRSP PCL F-31 – The Plaza at Blue Oaks; File # PL17-0368

Dear Honorable Councilmember:

Our firm writes on behalf of an unincorporated association of Roseville community residents (the “Association”) to appeal the decision by the Roseville Planning Commission (“Planning Commission”) on the mitigated negative declaration finding for the Project defined below.

The proposed Project, located at 1950 Blue Oaks Boulevard, in the City of Roseville, Placer County, CA (APN 017-117-093-000) is a proposed retail center consisting of an approximately 35,000 square-foot anchor grocery store, a 12-pump gas station with an approximately 3,500 square-foot convenience store and car wash, and seven additional buildings ranging in size from approximately 3,750 square feet to 9,750 square feet (the “Project”). The Project approvals include a Design Review Permit to review the site design and proposed buildings, a Tree Permit to remove several native oak trees on the westerly portion of the site, and a Tentative Subdivision Map to subdivide the parcel into eight (8) lots (the “Approvals”). No building is being proposed on Lot 2 at this time, which will be located on the northeastern corner of the site and will consist of approximately 1.3 acres.

The Association includes individuals that may be adversely affected by the potential traffic, air quality, ground water quality, soil quality, noise, public health, and other environmental impacts caused by the Project. The Association includes individuals who live and work in Roseville and their families. Because they are local residents, the individual members of the Association would be directly affected by the traffic, air quality, ground water quality, noise, public health and other environmental issues created by the Project. Individual members may also work on the Project itself. As such, they would be first in line to be exposed to any health and safety hazards that exist on site.

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The Project Approvals do not conform to the Roseville General Plan, the City's Bicycle Plan, or the community's Pedestrian Plan, each of which has been carefully crafted and amended to flow together to create an aesthetically pleasing and accessible community for all Roseville residents. The Project does not support these various plans as it is currently configured in that these various development guidelines state that commercial buildings should be arranged to promote bicycle, transit and pedestrian modes. The layout of the Project does not adhere to these principles.

The Trees Should be Landscaped Into the Project, Rather Than Destroyed

As a threshold matter, the Project Approvals contemplate the removal of precious, irreplaceable oak trees. Our community needs to protect our existing trees and native foliage. Rather than being destroyed, the trees should be incorporated into the Project landscape and the structures built around them. This should not be difficult as the trees are concentrated in one area of the property.

The Roseville General Plan Contains Bicycle and Pedestrian Use Goals for Developments That are Not Supported by the Project

Roseville has several community plans that contain circulation elements that are collectively designed to create a bicycle and pedestrian-friendly community. For example, the Circulation Element of the Roseville General Plan includes Goals, Policies and Implementation Measures that guide the Bicycle Master Plan and the development of Bikeways and Trails. Likewise, the 2007 Bicycle Master Plan Update includes recommended modifications to the General Plan Circulation Element to reflect recommended changes to policies, programs and development standards to increase these "walkability" and "bikability" goals.

The overarching bikeway goals of the General Plan, as amended, include:

Goal 1: Increase the percentage of all trips made by bicyclists in Roseville.

Goal 2: Establish and maintain a safe, comprehensive, and integrated bikeway and trail system that encourages the use of bikes and walking for commuting, recreation and other trips.

Goal 3: Establish education, encouragement and enforcement programs that increase bicyclist and motorist awareness of the rights and responsibilities of bicyclists in order to create a climate of acceptance for bike riding.

Goal 4: Obtain the Bicycle Friendly Community Designation from the League of American Bicyclists.

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Other elements of the General Plan also include goals and policies that address bikeway development. These include the Open Space and Conservation Element, and the Recreation element. Importantly, both Blue Oaks Boulevard and Fiddymont Road (the majors streets flanking the Project) are designated for Class II Bike Lanes. Developments located on these streets should be designed with cyclists in mind especially when it comes to the layout and orientation of the development. Herein lies the problem with the current configuration of the Project. It does not comply with the aesthetic plans for the local community.

The Project Does Not Comply With the Roseville Site Design Guidelines

Site planning is intended to respect and enhance the natural environment, to connect a project to its surroundings, to promote "walkability" of developments, and to ensure effective site access and traffic circulation within and around a project. This includes adding green design features, and providing for essential services and storage.

In order to support these goals, the Roseville Site Planning and Building Siting Design Guidelines provide:

CC-1 Buildings should be arranged to define, connect, and activate pedestrian edges and public spaces.

CC-2 Buildings should be arranged to provide convenient access to transit stops.

CC-3 The relationship and orientation of buildings to arterial and other prominent roadways should be considered to enhance street frontage.

The Site Plan for the Project shows that the buildings are oriented toward the inside of the Project, leaving the back of the buildings facing the street. Firstly, the bicycle lanes near the Project must be properly striped and provision must be made for bikes and pedestrians to safely access the Project, and traverse around it. Secondly, as the Project is currently configured, in order for bicyclists and pedestrians to access the retail stores inside the Project, they must traverse a driveway that is intended for vehicle traffic, and then ride or walk through the parking lot to access the stores. This creates a potentially dangerous situation.

The Project and the Approvals must be evaluated in light of Roseville's existing General Plan, Bicycle Plan and Pedestrian Plan to ensure that the Project meets the community's development goals. The Approvals must be set aside and the above-referenced impacts on the environment must be fully and appropriately studied before any permits may be issued.

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The Project Approvals Fail to Adequately Inform the Public About Environmental Impacts

Based upon our review of the Project Approvals, we feel the Approvals fail to comply with California Environmental Quality Act (“CEQA”) requirements in the following ways. CEQA is designed to inform decisionmakers, and the public about the potential significant environmental effects of a project. CEQA Guidelines §15002(a)(1). CEQA requires that an agency analyze potentially significant environmental impacts in an [environmental impact report (“EIR”)]. Pub. Resources Code §21000; CEQA Guidelines §15002. Specifically, that EIR should result from “extensive research and information gathering,” including consultation with state and federal agencies, local officials, *and the interested public*. (emphasis added.) Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm. (2001) 91 Cal.App.4th 1344, 1367 (Berkeley Jets); Schaeffer Land Trust v. San Jose City Council (1989) 215 Cal.App.3d 612, 620.

CEQA also directs public agencies to avoid, or reduce, environmental damage when possible by requiring alternatives, or mitigation measures. CEQA Guidelines §15002(a)(2)-(3); Berkeley Jets, supra, 91 Cal.App. 4th at 1354. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines §15002(a)(2). If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA §21081. CEQA Guidelines §15092(b)(2)(A)-(B).

The IS/MND begins with a Declaration, on page 2, that states:

The Planning Manager has determined that the above project will not have significant effects on the environment and therefore does not require preparation of an Environmental Impact Report. The determination is based on the attached initial study and the following findings [(“Findings”)]

A. The project will not have the potential to degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, reduce the number or restrict the range of rare or endangered plants or animals or eliminate important examples of the major periods of California history or prehistory.

B. The project *will not have the potential to achieve short-term, to the disadvantage of long-term, environmental goals. (emphasis added.)*

C. The project *will not have impacts, which are individually limited, but cumulatively considerable. (emphasis added.)*

D. The project *will not have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly. (emphasis added.)*

E. *No substantial evidence exists that the project may have a significant effect on the environment. (emphasis added.)*

F. The project incorporates all applicable mitigation measures identified in the attached initial study.

G. This Mitigated Negative Declaration reflects the independent judgment of the lead agency.

Substantial evidence exists to support the assertion that the Findings, noted above, were incorrectly reached. It defies imagination how the construction of a 12-pump gas station, with its attendant underground gasoline storage tanks, a car wash that will undoubtedly wash chemicals into the soil, and potentially into the ground water, and other commercial uses *will not cause any impact* to the environment such that a fulsome environmental review is unnecessary. The planned uses will have considerable cumulative, long-term, adverse impacts on the environment and nearby residents, either directly, or indirectly. Approving the Project without a full environmental review amounts to achieving a short-term goal to the disadvantage of long-term environmental goals.

The initial study/mitigated negative declaration (“IS/MND”) incorporates a checklist of potential environmental impacts. Although the analysis considered various impacts as provided in the checklist, and as required by CEQA, the IS/MND found in the vast majority of the analysis that the Project would have “No Impact,” or a “Less Than Significant Impact” on the environment. Thus, mitigation measures were not adequately considered.

Potential impacts were found in only two cases. In one case, the IS/MND found the Project may create significant impacts on the resources of California Native American tribes. Of greater concern to the Association, however, is the fact that the analysis found noise impacts would occur only during construction of the Project, but dismissed the noise impacts caused by operation of the Project after the construction is completed. This effect was considered to be “Less Than Significant With Mitigation” if such mitigation measures were implemented during construction. Little attention was paid to the fact that the Project will flank two existing residential neighborhoods. The

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permanent noise levels that will be generated by a 12-pump gas station, an automatic car wash and convenience store, and 35,000 a foot grocery store, in addition to other anticipated commercial uses, are certain to increase substantially over current ambient noise levels in the neighborhood. This is hardly a “Less Than Significant” impact. This impact, and potential mitigation measures to lessen the impact, warrants further study.

Other than the two instances noted above, the IS/MND noted no significant impacts to the environment caused by the Project. The Association disagrees. The subdivision of a single parcel into 8 parcels and the construction of more than 48,000 square feet of commercial structures in that footprint absolutely creates significant negative impacts on the surrounding residential community. These impacts to the traffic, air quality, ground water quality, soil quality, noise and other aspects of the community must be properly determined and studied.

Air quality issues were not properly considered in the IS/MND. Many of the residents near the Project are older and/or are otherwise considered to be sensitive receptors. The dust, soot, exhaust, fumes and other particulate matter that will necessarily increase due to large construction vehicles, and further due to permanently increased traffic and idling vehicles in the area, will create negative health impacts on residents, who are sensitive receptors, for an unknown period of time. These sensitive receptors may experience prolonged and significant impacts to their health.

The negative health effects on area residents caused by the Project will be exacerbated by the construction of a 12-pump gas station as the site. Not only will this increase poor air quality, ground water quality, and soil contamination during construction, but nearby residents will be permanently negatively impacted by known carcinogens that will be pumped into underground tanks, as well as exhaust and fumes created by cars idling and using the gas station. Additionally, detergents, waxes and other chemicals used by the car wash will be rinsed away, and may flow into the ground, eventually reaching the water table. This will have deleterious effects on the water table and the health of nearby residents. These issues were found to cause either “No Impact,” or “Less Than Significant Impact” in the IS/MND. These deleterious impacts must be properly studied so that their true impacts on nearby residents can be determined and mitigated.

The Project Approvals Fail to Consider Feasible Mitigation Measures That Alleviate Negative Environmental Impacts

The Approvals were granted in error because there are feasible mitigation measures available which would substantially lessen one, or more, of the Project’s significant environmental effects. Pub. Resources Code, § 21002. For example, morning, afternoon and other peak-hour commute times will be permanently greatly increased throughout the area if the Project is developed as currently proposed. The IS/MND failed to propose mitigation measures to alleviate this significant impact.

The Environmental Noise Assessment, included as Attachment 6 to the IS/MND, states, in pertinent part, on Page 6 that the “Noise Element of the City of Roseville General Plan establishes non-transportation noise exposure limits as summarized...in Table 1 (Table IX-3 of the Noise

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Element). These limits are applicable to non-transportation noise sources (i.e., on-site truck movements, loading docks, and car wash operations) affecting existing noise-sensitive land uses.” The report suggests that a 6-foot sound barrier be constructed and that construction trucks be limited in their hours of operation. The report dubiously suggested this 6-foot sound barrier is enough to mitigate the significant impact the operation of the gas station, the loading dock, the car wash and the other commercial uses will cause to adjacent neighborhoods after construction.

The noise assessment in the IS/MND dismissed operations noise that will be caused by idling vehicles and traffic at the 12-pump gas station and ignores the Project’s other commercial uses. Instead, although the document recognized the fact that the nearest noise-sensitive land uses to the Project site are existing and future residential developments located north, south, and east of the Project site, significant impacts to these receptors was minimized by the report. It was assumed that each of the evaluated noise sources would only operate during limited, mostly daytime, hours. Based on this assumption, Roseville’s daytime and nighttime noise level standards for noise-sensitive residential land were applied to the Project’s noise sources. This represents a serious underestimation of the noise levels to be generated by the commercial uses in this Project.

Due to the fact that the IS/MND wholly dismissed the vast majority of the potential environmental impacts caused by the Project, mitigation measures were inadequately considered or completely ignored. For this reason, the Project Approvals fail to adequately disclose, evaluate, and mitigate the Project’s environmental impacts, resulting in a legally deficient CEQA review. The City Council must order the Planning Commission to conduct an appropriate environmental review that addresses these inadequacies and must circulate the document for public review to consider these critical issues.

The Association has commissioned an environmental report and a traffic report. We will submit it to the City Council in support of our position as soon as they are available. Thank you for your attention to this matter.

Sincerely,



Robert M. Bone, Esq.

BY FAX