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July 23, 2020

VIA EMAIL ONLY

CityCouncil@roseville.ca.us

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

**RE: WRSP PCL F-31 - The Plaza at Blue Oaks (File #PL17-0368)
Response to SWAPE Comments for WRSP PCL F-31 – The Plaza at Blue Oaks
(File #PL17-0368)**

Dear Council Members:

This office represents West Roseville Project Development Company, Inc., the project owner (“Owner”), and Signature Management Company, the project developer (“Developer”), of the above-referenced project. The purpose of this letter is to provide a response to the June 26, 2020 letter from the Law Offices of Robert M. Bone, and accompanying comments from SWAPE, a technical consultant, representing an unincorporated association of Roseville community residents (the “Association”), to the City Council (“Council”) in support of the Association’s appeal of the May 14, 2020 decision of the Planning Commission to approve the Project’s Initial Study/Mitigated Negative Declaration (“IS/MND”) (the “Appeal”).

In its comments, SWAPE identifies alleged inadequacies with the following sections of the Initial Study checklist: Section IX (Hazards and Hazardous Materials), Section III (Air Quality), and Section VIII (Greenhouse Gases). Planning staff prepared a detailed Response to SWAPE Comments dated July 15, 2020.

Owner and Developer agree with the Planning Commission’s well-supported conclusion that the Initial Study adequately evaluates, discloses, and mitigates the Project’s environmental impacts and a Mitigated Negative Declaration is the appropriate environmental determination for the Project. Owner and Developer also assert that all aspects of CEQA with regard to the IS/MND have been fully complied with and that an Environmental Impact Report (“EIR”) is not required for the Project. Owner and Developer further assert that the Project is consistent with the General Plan, Bicycle Master Plan, Pedestrian Master Plan; City site design guidelines; and tree protection ordinances.

Simply put, the Association fails to meet the established legal threshold for requiring the preparation of an EIR. CEQA requires the preparation of an EIR whenever an agency proposes to approve or implement a project that "may have a significant effect on the environment." (§§ 21100, 21151.) "If there is no substantial evidence of any significant environmental impact, however, the agency may [instead] adopt a negative declaration." (City of Redlands v. County

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of San Bernardino, (2002) 96 Cal.App.4th 398, 405.) A *mitigated* negative declaration may be utilized by an agency when a project as initially proposed may have a significant effect on the environment but will not have a significant environmental effect because changes have been made or agreed on that mitigate such potential effects. (Cal. Code Regs. tit. 14, § 15071(e)). In evaluating a claim that an agency improperly approved a project by using a negative declaration, rather than preparing an EIR, a trial court applies the "fair argument" test. (Porterville Citizens for Responsible Hillside Development v. City of Porterville, (2007) 157 Cal.App.4th 885, 899.) "Under this test, the agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment." (Gentry v. City of Murrieta, (1995) 36 Cal.App.4th 1359, 1399-1400.) In that instance, a trial court's function is to decide whether substantial evidence supports the agency's conclusion as to whether a fair argument of environmental impact could be made. (Id. at 1399.)

Like any petitioner challenging an agency's decision to proceed by negative declaration, the Association bears the burden of proof "to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact." Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359, 1379. The Association cannot meet this burden.

As shown by the planning staff's analysis, *substantial evidence* in the record does not exist that would support a *fair argument* that the proposed project may have a *significant impact* on the environment. To the contrary, the substantial evidence shows that the proposed project will have a less-than-significant impact, an EIR is not required nor necessary, the MND is appropriate and sufficient, and the Planning Commission's conclusion as to same is correct.

Thank you for your consideration.

Sincerely,

IRONHORSE LAW GROUP PC

A handwritten signature in cursive script that reads "Nathan Scheg".

Nathan L. Scheg, Esq.

cc: Client (via email only)