

RESOLUTION NO. 2011-151

Adopted by the Sacramento City Council

March 15, 2011

ADOPTING THE MITIGATED NEGATIVE DECLARATION ADDENDUM AND THE MITIGATION MONITORING PLAN FOR THE 8151 SHELDON COMMERCIAL REZONE PROJECT (P10-060)

BACKGROUND

- A. On January 13, 2011 the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve with conditions the 8151 Sheldon Commercial Rezone Project.
- B. On March 15, 2011 the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(2)(a) and (c) (publication and mail (500 feet)), and received and considered evidence concerning the 8151 Sheldon Commercial Rezone.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds as follows:

- A. On February 7, 2007, pursuant to the California Environmental Quality Act (Public Resources Code §21000 *et seq.* ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 *et seq.*), and the City of Sacramento environmental guidelines, the City Council adopted a mitigated negative declaration (MND) and a mitigation monitoring program and approved 8151 Sheldon Subdivision (P05-044) (Project).
- B. The 8151 Sheldon Commercial Rezone Project (P10-060) (Project Modification) proposes to modify the previously approved Project as follows: A request to amend the General Plan Designation from Suburban High Density Residential to Suburban Center and zoning re-designation from RE-1/4 to C-2R for approximately 3.8 acres for properties located at 8151 Sheldon Road. This request requires a General Plan Amendment and a Rezone. There are no building specific proposals at this time.
- C. The initial study on the Project Modification determined that the proposed changes to the original Project did not require the preparation of a subsequent environmental impact report or negative declaration. An addendum to the previously adopted MND was then prepared to address the modification to the Project.

Section 2. The City Council has reviewed and considered the information contained in the previously adopted MND for the Project, the addendum, and all oral and documentary evidence received during the hearing on the Project Modification. The City Council had determined that the previously adopted MND and the

addendum constitute an adequate, accurate, objective, and complete review of the proposed Project Modification and finds that no additional environmental review is required based on the reasons set forth below:

- A. No substantial changes are proposed by the Project Modification that will require major revisions of the previously adopted MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- B. No substantial changes have occurred with respect to the circumstances under which the Project Modification will be undertaken which will require major revisions to the previously adopted MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- C. No new information of substantial importance has been found that shows any of the following:
 - 1. The Project Modification will have one or more significant effects not discussed in the previously adopted MND;
 - 2. Significant effects previously examined will be substantially more severe than shown in the previously adopted MND;
 - 3. Mitigation measures previously found to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the Project Modification; or
 - 4. Mitigation measures which are considerably different from those analyzed in the previously adopted MND would substantially reduce one or more significant effects on the environment.

Section 3. Based on its review of the previously adopted MND for the Project, the addendum, and all oral and documentary evidence received during the hearing on the Project Modification, the City Council finds that the MND and addendum reflect the City Council's independent judgment and analysis and adopts the MND and the addendum for the Project Modification and readopts the findings of fact in support of the MND.

Section 4. The mitigation monitoring program for the Project is adopted for the Project Modification, and the mitigation measures shall be implemented and monitored as set forth in the program, based on the following findings of fact:

- 1. The mitigation monitoring program has been adopted and implemented as part of the Project;
- 2. The addendum to the MND does not include any new mitigation measures, and has not eliminated or modified any of the mitigation measures included in the mitigation monitoring program;

3. The mitigation monitoring plan meets the requirements of CEQA section 21081.6 and CEQA Guidelines section 15074.

Section 5. Upon approval of the Project, the City's Environmental Planning Services shall file or cause to be filed a Notice of Determination with the Sacramento County Clerk and, if the project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to section 21152(a) of the Public Resources Code and the State EIR Guidelines adopted pursuant thereto.

Section 6. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Section 7. Exhibit A Mitigation Monitoring Program is a part of this Resolution.

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Exhibit A: Mitigation Monitoring Program

Adopted by the City of Sacramento City Council on March 15, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember McCarty.

Attest:


Shirley Concolino, City Clerk



Mayor Kevin Johnson

**8151 SHELDON SUBDIVISION (P05-044)
MITIGATION MONITORING PLAN**

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Compliance Standards	Timing	Verification of Compliance (Initials and Date)
<p>Biological Resources: Mitigation Measures for nesting birds and foraging habitat: BR-1 The applicant/developer/constructor shall submit to the City of Sacramento, Department of Development Services verification from the California Department of Fish and Game (DFG) that the applicant has satisfied DFG requirements for mitigating loss of Swainson's hawk foraging habitat. The project applicant shall purchase compensatory Swainson's hawk foraging habitat at a ratio acceptable to DFG from an approved mitigation bank or develop other arrangements acceptable to the DFG prior to building/grading permits being issued.</p> <p>BR-2 If any construction or grading activity is going to occur during the nesting season of February to August, a qualified biologist shall prepare a pre-construction survey within thirty (30) days prior to any grading or construction activity to determine if any special status species or species of special concern are present (that is, nesting raptor species [including Swainson's hawk] and western burrowing owls).</p> <p>BR-3 If active raptor nests are found on the site, the applicant/developer/contractor shall work with the DFG to determine the</p>	<p>Project Applicant/ Developer</p>	<p>City of Sacramento - Development Services Department; Development Engineering and Finance Division, Environmental Planning Services</p> <p>Ca. Dept. of Fish and Game (DFG)</p> <p>US Fish and Wildlife Service (USFWS)</p> <p>Army Corps of Engineers (ACOE)</p>	<p>Measures shall be included with construction specifications</p>	<p>Construction specifications shall be included on the construction plans prior to the issuance of a grading permit.</p> <p>Measures shall be implemented prior to and during construction activities.</p>	

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<p>appropriate mitigation actions needed prior to proceeding. A copy of the pre-construction study and DFG concurrence with proposed actions shall be submitted to the Department of Development Services prior to issuance of grading or construction permits.</p> <p>BR-4 If an adults-only active burrowing owl burrow(s) nest is discovered during the pre-construction survey the monitoring biologist shall install a one-way door on the burrow(s) and monitor and inspect per Department of Fish and Game Guidelines. If an active nest with chicks is encountered one-way doors shall not be used unless authorized by DFG in writing. No construction shall occur near the nest until the monitoring biologist has consulted with the DFG on the allowing construction to proceed. The monitoring biologist shall through consultations with DFG determine an appropriate buffer between the nest and any construction activity allowed to proceed on the project site prior to the fledging of the chicks. No construction or grading activities shall begin until the monitoring biologist has submitted a written clearance to the Department of Development Services that the burrowing owl(s) have vacated or been safely relocated by the monitoring biologist.</p>					

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<p>BR-5 After active burrows are vacated, the burrow must be destroyed completely by the monitoring biologist prior to grading or construction activity.</p> <p>Mitigation Measures for Invertebrates:</p> <p>BR-6 Prior to the issuance of a grading permit, the Applicant shall provide to the City of Sacramento Development Services Department evidence of compliance with Federal Endangered Species Act (FESA). The following measures shall be implemented and documented for compliance with FESA:</p> <p>a. The Applicant will provide compensatory mitigation as required by USFWS for VPFS and VPTS.</p> <p>b. Under the consultation process, the Applicant will be required to prepare a mitigation plan for submittal to USFWS. The mitigation plan will include the following components for direct and indirect impacts:</p> <ul style="list-style-type: none"> o Avoidance Component. Demonstrate how the project has been designed to minimize impacts to federal-listed vernal pool crustaceans and their habitat (e.g. ESA, biological monitor, and special-status species training for construction personnel). o Preservation 					

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<p>Component. For every acre of habitat directly or indirectly affected, at least two (2) vernal pool credits will be dedicated within a USFWS-approved ecosystem preservation bank (2:1 ratio).</p> <p>o Conservation Component. For every acre of habitat directly affected, at least one (1) vernal pool creation credit will be dedicated within a USFWS-approved habitat mitigation bank.</p> <p>o In the event that preservation or conservation credits are not available for purchase at the time of mitigation implementation, the deposit of funds, the amount of money to be deposited determined by USFWS, into a USFWS Species Fund in lieu fee program shall be acceptable to satisfy both the preservation and conservation components of the mitigation plan.</p> <p>c. The USFWS will review the mitigation plan and issue a Biological Opinion. The Biological Opinion will include an incidental take statement and approval of the mitigation plan.</p> <p>d. The Applicant will notify the City of Sacramento Development Services Department that VPFS and VPTS mitigation is complete by submitting a copy of the Biological Opinion and bill of sale for the mitigation credits to the City of Sacramento.</p>					

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<p>BR-7 Prior to the issuance of a grading permit the Owner shall provide to the City of Sacramento Development Services Department evidence of compliance with FESA. The following measures will be implemented to document for the City the Owner's compliance with FESA:</p> <p>BR-8 The Owner will provide compensatory mitigation as required by USFWS for VPFs and VPTS.</p> <p>BR-9 Under the consultation process, the Owner will be required to prepare a mitigation plan for submittal to USFWS. The mitigation plan will include the following components for direct and indirect impacts:</p> <p>a. Avoidance Component. Demonstrate how the project has been designed to minimize impacts to federal-listed vernal pool crustaceans and their habitat (e.g. ESA, biological monitor, and special-status species training for construction personnel).</p> <p>b. Preservation Component. For every acre of habitat directly or indirectly affected, at least two (2) vernal pool credits will be dedicated within a USFWS-approved ecosystem preservation bank (2:1 ratio).</p> <p>c. Conservation Component. For every acre of habitat directly affected, at least one (1) vernal pool creation credit</p>					

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<p>will be dedicated within a USFWS-approved habitat mitigation bank.</p> <p>d. In the event that preservation or conservation credits are not available for purchase at the time of mitigation implementation, the deposit of funds, the amount of money to be deposited determined by USFWS, into a USFWS Species Fund in lieu fee program shall be acceptable to satisfy both the preservation and conservation components of the mitigation plan.</p> <p>BR-10 The USFWS will review the mitigation plan and issue a Biological Opinion. The Biological Opinion will include an incidental take statement and approval of the mitigation plan.</p> <p>BR-11 The Owner will notify the City of Sacramento Development Services Department that VPFS and VPTS mitigation is complete by submitting a copy of the Biological Opinion and bill of sale for the mitigation credits to the City of Sacramento.</p> <p>Mitigation Measures for Wetlands subject to Section 404 CWA jurisdiction:</p> <p>BR-12 Prior to issuance of a grading permit, the Developer shall provide verification of status of the wetlands from the Corps.</p> <p>BR-13 The Developer shall submit a wetland</p>					

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<p>mitigation and monitoring plan to the City:</p> <p>a. The mitigation plan will be prepared in accordance with the requirements of the Army Corps of Engineer's Regulatory Guidance Letter (RGL 02-02) for compensatory wetland mitigation and the Mitigation and Monitoring Proposal Guidelines (Corps, 30 December 2004).</p> <p>b. The mitigation plan will describe how the jurisdictional wetlands in the grading plan area will be mitigated. Mitigation may include the purchase of wetland mitigation credits at a Corps approved mitigation bank.</p> <p>c. A copy of the bill of sale for the purchase of wetland mitigation credits will be submitted to the City.</p> <p>BR-14 The Grading Permit shall be conditioned to not allow grading within 250 feet of any jurisdictional wetland until the Developer provides the City of Sacramento evidence that the discharge of fill into jurisdictional wetlands is authorized under Section 404 of the Clean Water Act.</p> <p>Mitigation Measures for Isolated wetlands subject to Porter-Cologne Act:</p> <p>BR-15 Prior to issuance of a grading permit, the Developer shall provide</p>					

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<p>verification of status of the wetlands from the Corps.</p> <p>BR-16 Prior to issuance of a grading permit, the Developer will submit a wetland mitigation and monitoring plan to the City:</p> <p>a. The mitigation plan will be prepared in accordance with the requirements of the RWQCB's Water Quality Order No. 2004-0004-DWQ wetland mitigation.</p> <p>b. The mitigation plan will describe how the isolated wetlands will be mitigated. Mitigation may include the purchase of wetland mitigation credits at a mitigation bank.</p> <p>c. A copy of the bill of sale verifying the purchase will be included in the mitigation plan.</p> <p>BR-17 The Grading Permit shall be conditioned to not allow grading within 250-feet of the isolated wetlands until the Developer provides the City of Sacramento evidence that the discharge of fill into the isolated wetlands is authorized under the Porter-Cologne Act.</p> <p>BR-18 The Grading Permit shall be conditioned to require temporary fencing to be installed around the isolated wetlands and the buffer to exclude construction equipment until the Developer provides the City of Sacramento evidence that the discharge of fill into the</p>					

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isolated wetlands is authorized under the Porter-Cologne Act.					
<p>Noise: To reduce exterior sound levels in the backyards of the lots adjacent to Sheldon Road to 60 dB Ldn or less, the normally acceptable level, at a minimum the following mitigation measures shall be incorporated into the project:</p> <p>N-1. For lots adjacent to Sheldon Road (lots 35-36), a sound wall shall be constructed as follows: a. Along the south property line of Lots 35-36. b. On the east property line of Lot 36 (unless a wall is constructed first by future development west of the site). c. To a position even with the back corner of the home on the west property line of Lot 36.</p> <p>N-2. The sound walls must be constructed as follows: a. Continuous along their widths and heights with no gaps, including at the ground. b. A minimum height of seven (7) feet shall be required. c. Suitable materials for the sound wall include earthen berms, masonry block, pre-cast concrete panels, or combinations thereof, provided that it meets all of the other requirements listed above.</p>	Project Applicant/ Developer	City of Sacramento – Development Services Department; Development Engineering Division	Measures shall be included with construction specifications	Construction specifications shall be included on the construction plans prior to the issuance of a grading permit. Measures shall be implemented during construction activities	

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<p>To ensure that interior noise levels do not exceed the threshold of 45 dB L_{dn}, the following measures shall be incorporated into the development project:</p> <p>N-3. At a minimum, air conditioning shall be included for all lots where the 45 dB L_{dn} interior threshold would potentially be exceeded (lots 35-36) to allow the occupants to close doors and windows as desired to achieve acoustical isolation.</p>					
<p>Cultural Resources:</p> <ol style="list-style-type: none"> If subsurface archaeological or historical remains are discovered during construction, work in the area shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further mitigation measures to reduce any archaeological impact to a less than significant level before construction continues. If human burials are encountered, all work in the area shall stop immediately and the Sacramento County Coroner's office shall be notified immediately. If the remains are determined to be Native American in origin, both the Native 	Project Applicant/ Developer	City of Sacramento Development Services Department	<p>Incorporate the protocol and procedures into grading and construction contracts.</p> <p>If any cultural resources are discovered:</p> <ol style="list-style-type: none"> Cease all work in the immediate area Retain a qualified archaeologist or cultural resources consultant to perform a site investigation and take appropriate action. 	During grading and construction contract agreements During construction activities	

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American Heritage Commission and any identified descendants must be notified and recommendations for treatment solicited (CEQA Section 15064.5); Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and 5097.98.					