



CITY OF CHICO MEMORANDUM

TO: Chair Scott and Members of the Planning Commission
DATE: August 24, 2018
FROM: Mike Sawley, AICP
Senior Planner
SUBJECT: Agenda Report Addendum for the Stonegate Project

The purpose of this addendum is to provide the Planning Commission with two letters that were received on 8/22/18 (see attached), following completion of the agenda report. The letters rejoin the Final EIR's response to comments regarding stormwater runoff from the project site. Each letter is summarized below, followed by staff's response:

1. A letter from Robert C. Wagner, P.E., dated August 22, 2018, submitted on behalf of M&T Ranch. The letter claims that the EIR for the Stonegate Project is deficient because the hydrology analysis: (a) *“fails to quantify existing conditions related to rate, volume, and timing of storm water discharges, and it does not outline any specific storm water mitigation efforts,”* and (b) relies on implementation of existing code requirements in the future instead of performing the suggested quantification analysis. The letter claims that statements made in the EIR suggest that (c) hydrology *“impacts have not been evaluated or discussed in detail to provide necessary information to the public and decision-makers, which are among the main purposes for preparing an EIR.”* The letter concludes with a request that Stonegate and other projects in the City be (d) *“thoroughly analyzed with respect to storm water discharges and that the City’s storm drainage master plan be updated, and measures to be implemented be identified to prevent a net increase in stormwater runoff resulting from land development.”*
2. A letter from Andrew J. McClure, dated August 22, 2018, submitted on behalf of M&T Ranch. The letter claims that the City's response to Mr. Wagner's EIR comments (See MTR letter and responses, Final EIR pages III-189 to III-192): (a) does not comply with CEQA standards for EIR responses and (b) that a reasonable forecast of post-development stormwater impacts should have been quantified for the EIR. The letter also states: (c) *“Forecasts in an EIR may be based on the assumption that the project will be developed in a way that conforms to applicable legal requirements”* and (d) *“the City has a robust Stormwater Resources Plan, including a discrete ‘Post-Construction Standards Plan.’”* A remedy is suggested that (e) the *“City should have selected a reasonable portfolio of these design measures and evaluated impacts based on such a reasonable forecast.”* The letter concludes with the following language: (f) *“The City's failure to conduct any review whatsoever gravely undermines the adequacy of this EIR and leaves it vulnerable to legal challenge. [(g)] The City should remedy this defect by conducting a thorough and adequate review of the stormwater impacts of the Project, and mandating mitigation and monitoring requirements necessary to render any potential impacts less than significant.”*

Staff Response:

The EIR notes that future development within the project area will be subject to Chico Municipal Code Chapter 15.50, which requires applicants for large projects such as Stonegate to meet certain post-construction stormwater management requirements, including identification of source control measures and Low Impact Development (LID) design standards mandated by the State. The EIR explains that meeting a standard of limiting post-project runoff to pre-project flow rates for the 2-year, 24-hour storm event is required by the City prior to the issuance of building permits (DEIR page IV.I-11).

These existing stormwater regulations took effect in July 2015 and have been used on projects throughout the City in recent years, however, the vast majority of existing development in the City does not reflect compliance with LID requirements. Compliance with LID requirements is a required and known pre-condition of development, and there is a wide variety of feasible design considerations and treatment options for handling stormwater on a development site. Therefore, the EIR was able to conclude that compliance with existing regulations “*would ensure that the rate, volume, and/or duration of stormwater discharges from the project would not substantially increase during construction and operations*” (page IV.I-17).

Such a conclusion need not be supported with an example of exactly how compliance can be reached for the project, and indeed crafting a detailed development scenario to then be able to design a detailed stormwater management design would be excessively speculative, inefficient and wasteful if that development scenario and stormwater management design was not then used for the project. This was noted in the Final EIR response to Mr. Wagner’s similar comments submitted on the Draft EIR, see *Response to MTR-3* attached to Mr. Wagner’s most-recent letter.

Taking the suggestions in the letters to their conclusion, requiring as mitigation a specific set of design solutions identified for a fabricated design scenario would not be appropriate if other valid design solutions are available to achieve the same ends. Hence, any mitigation that could be applied would require compliance with existing regulations and include the full range of options for compliance provided under those regulations. This means that mitigation would not be needed since compliance with existing regulations is required regardless of mitigation.

To briefly address other claims in the letters:

- Potential impacts from stormwater runoff were evaluated and discussed in sufficient detail to inform decision-makers of the anticipated effects from implementation of the project. In this case, enforcing existing regulations would ensure that stormwater run-off rates would remain at or below pre-construction levels.
- The letters do not contend that future compliance with existing storm water regulations is infeasible, and no reasons are provided to suggest that future compliance with these regulations will not be met.
- The burden of demonstrating compliance with existing storm water regulations entails recursive design work until calculations for the post-project run-off rate falls below the calculated pre-project rate. An example showing one of the many ways this can be achieved for the project is not needed to understand that the result will avoid impacts associated with increasing storm water runoff rates.

- The City has initiated a Capital Project to update the City's Storm Drain Master Plan and is currently in the process of gathering the funding to move forward.
- The Final EIR's *Response to MTR-3*, included in the attached letters, provides detailed reasons why the suggestions to quantify existing storm water discharges and specify mitigation efforts were not implemented, and those reasons represent a good faith, reasoned analysis supported by factual information. The detailed reasons state that accommodating the request would require unreliable speculation at this stage of the project, and that quantification of pre- and post-construction discharge rates to demonstrate compliance will be required when detailed plans become available, prior to construction. Examples of the types of features that could be brought to bear to achieve compliance are also provided in the earlier response.
- The claim that it would not be speculative to select a "reasonable portfolio" of design measures and evaluate impacts based on such a reasonable forecast ignores the fact that the design measures are selected based on a specific site design (with known horizontal and vertical constraints, amounts of impervious surfaces, end-user demands, and other relevant details that factor into selecting the most-preferred stormwater management solutions) and such specific site design details and end-user preferences are not available at the tentative map stage of a project.
- Regarding forecasting, the EIR does forecast that the future development will be required to meet City standards to avoid increasing stormwater runoff rates. The EIR does not specify which specific design measures will be used to achieve compliance with the requirements because those details are unforeseeable at this stage of the project.
- Regarding the use of a reasonable worst-case scenario, in this instance it would not be particularly helpful to decision-makers to devise a detailed project design scenario and then identify a suite of stormwater management features that barely meet minimum code requirements. It is sufficient to state that there are existing requirements that will be met, that there is a variety of design approaches to achieve compliance, and that achieving compliance with the existing requirements will ensure that increases to stormwater runoff rates are less than significant.

In conclusion, potential impacts from the project due to increases to stormwater runoff rates were evaluated in the EIR, the EIR explained that meeting certain existing regulations would ensure that the project would not substantially increase stormwater discharges, responses to EIR comments were provided in compliance with CEQA, and the EIR provides an adequate analysis of the project's potential to increase stormwater runoff rates without including speculative development scenarios and solutions involving project details that are unknown at this time.

Wagner & Bonsignore

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August 22, 2018

Mr. Mike Sawley, Senior Planner
City of Chico
Community Development Department, Planning Division
411 Main Street, 2nd Floor
Chico, CA 95928

Re: Response to Comments on Draft Environmental Impact Report for Stonegate Vesting Tentative Subdivision Map and General Plan Amendment/Rezone (Sch # 201606204)

Dear Mr. Sawley:

On behalf of M & T Ranch, this letter is to address the inadequacy of the response in the Final Environmental Impact Report (FEIR) to comments we provided on behalf of M & T Ranch in a May 24, 2018 letter discussing concerns about Draft Environmental Impact Report (DEIR) Section IV.I *Hydrology and Water Quality*. The FEIR incorporates the DEIR as modified in FEIR Section 5 - *Errata*. The FEIR includes the following:

Impact HYDRO-5: Create or Contribute Runoff Water that Exceeds the Capacity of the Existing or Planned Stormwater Drainage Systems or Provide Substantial Additional Sources of Polluted Runoff

Stormwater runoff from subdivisions on APNs 021-190-041, 018-510-009, and 018-510-008 would be discharged to the existing storm drains along Fremont Street, Bruce Road, and Skyway Road. As discussed above, compliance with the Construction General Permit and Small MS4 General Permit would ensure that the rate, volume, and/or duration of stormwater discharges during project construction and operation activities would be similar to existing conditions. Therefore, the proposed project would have a less-than-significant impact related to an exceedance of the City of Chico's existing stormwater drainage system.

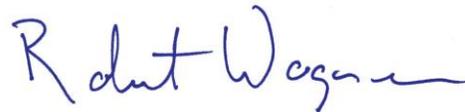
As stated in the May 24 comment letter, the DEIR (now FEIR) fails to quantify existing conditions related to rate, volume, and timing of storm water discharges, and it does not outline any specific storm water mitigation efforts. Rather than quantifying and discussing the impact of the proposed project on runoff and mitigation for the impact, the above excerpt from the FEIR describes the impact as less-than-significant because there are permitting requirements.

The FEIR includes a response to the comment letter, which does not quantify the baseline condition or project impacts with respect to storm water discharges. The response explains that evaluation of pre-project and post-project storm discharges is not appropriate at the tentative map stage of development, and the evaluation will be required at later stages of the project when detailed infrastructure plans are developed. The response states, "The DEIR does not need to be exhaustive in level of detail of future impacts, it must only show that a potential impact can occur and that there are means to reduce that impact to a less than significant level." This statement suggests that the impacts have not been evaluated or discussed in detail to provide necessary information to the public and decision-makers, which are among the main purposes for preparing an EIR.

M & T Ranch's comments on the DEIR have not been adequately addressed in the FEIR. M & T Ranch requests that Stonegate and other proposed projects under City of Chico jurisdiction be thoroughly analyzed with respect to storm water discharges and that the City's storm drainage master plan be updated, and measures to be implemented be identified to prevent a net increase in stormwater runoff resulting from land development. Given that M & T Ranch is the recipient of stormwaters from urban development, and therefore dependent on the City's stormwater management system, we expect that the City will not only evaluate this current project, but also update the City's outdated storm drainage master plan.

Very truly yours,

WAGNER & BONSIGNORE
CONSULTING CIVIL ENGINEERS



Robert C. Wagner, P.E.

Encl. ✓

cc: Les Heringer (M&T Chico Ranch)
Andrew McClure (Minasian, Meith, Soares, Sexton & Cooper, LLP)

Via: U.S. Mail

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Henry S. Matsunaga

May 24, 2018

Re: Comments on Draft Environmental Impact Report for Stonegate Vesting Tentative Subdivision Map and General Plan Amendment/Rezone (Sch # 201606204)

Dear Mr. Sawley,

I am writing to you on behalf of the M&T Ranch, Chico CA. We have reviewed the “Stonegate Vesting Tentative Subdivision Map and General Plan Amendment / Rezone” by WRA Environmental Consultants, dated April 2018 (DEIR). This letter provides comments on issues related to potential increases in storm water runoff and impacts from the project to areas downstream. The M&T Ranch is located downstream of the project by way of Comanche and Little Chico creeks. The DEIR makes no evaluation of impacts to these waterways, nor addresses any potential impacts to the properties downstream along these creeks.

1

The proposed Stonegate project will develop approximately 313 acres of currently undeveloped grasslands. The proposed project will create housing and a series of access roadways. Urban development such as the proposed project has significant impacts on storm water runoff and discharge due to the use of impervious surfaces. As acknowledged by the DEIR, precipitation falling on hardscape (roofs, asphalt, concrete, etc.) becomes runoff instead of percolating into the ground, which increases storm water discharge, shortens the time of concentration of that discharge, and increases peak flows. The DEIR indicates that areas of development resulting in 5,000 square feet (0.12 acres) of impervious cover requires mitigation. The City of Chico requires that there be no net increase in runoff from the project. The DEIR cites the City’s General Plan, “Policy PPF-6.2 (Storm Water Drainage) – Continue to implement a storm water drainage system that results in no net increase in runoff” (DEIR, page IV.1-11).

2

Section IV.I *Hydrology and Water Quality* provides a brief overview of the pre-developed landscape and hydrology, outlines regulatory statutes and programs, and provides an outline on environmental impacts related to hydrology and water quality. The DEIR fails to quantify existing conditions related to rate, volume, and timing of storm water discharges. Further, the DEIR does not outline any specific storm water mitigation efforts, instead noting that future compliance with the NPDES Construction General Permit and Small MS4 General Permit will mean that “violation of any water quality standards or waste discharge requirements would be less-than-significant.” Without quantifying baseline and post-development conditions, the DEIR’s conclusion that impacts are “less-than-significant” is unsupported.

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The subsection *Impact HYDRO-3* states that existing surface water systems located on the west and northwest portion of the project will be removed. Currently, surface water is conveyed through a network of braided streams and vernal pools, recharging a portion of the water to the groundwater table, and discharging excess runoff into existing storm drains. The proposed project will remove the stream network and pipe storm flow through the subdivision where it will discharge into existing storm water inlets on Fremont Street, Bruce Road, and the Skyway. This will likely increase storm water discharge due to the reduction of recharge potential from the removal of the stream network and vernal pool complex.

4

The DEIR is deficient as it pertains to storm water discharge because it does not quantify pre- and post-development storm water discharge. The DEIR fails to establish baseline conditions to which post-development impacts can be compared to ensure no net increase in runoff. Furthermore, as the project is reliant in part on the City of Chico's existing storm water system and the City's existing storm water management plan, an analysis of the adequacy of the system and the plan is required. The DEIR should consider changes to the intensity, duration, and storm return periods, runoff coefficients, function of the Fair Street Basin and other facilities that have occurred over time. Additionally, the DEIR should investigate the cumulative storm water impacts of all existing projects, potential future projects, and the Stonegate project to assess impacts on downstream drainages.

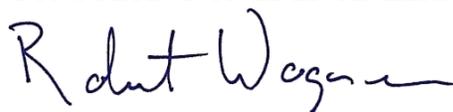
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M&T Ranch is generally supportive of development within the City of Chico, however, any such development must identify, quantify, and mitigate for impacts to downstream areas that are directly impacted by the development. M&T Ranch is the recipient of increases in storm water discharge resulting from upstream development like Stonegate. M&T requests that the City analyze the Stonegate project and others, to demonstrate compliance with the City's stated policy of no net increase in storm water runoff from development.

6

Very truly yours,

WAGNER & BONSIGNORE
CONSULTING CIVIL ENGINEERS



Robert C. Wagner, P.E.

cc: Les Heringer, M&T Chico Ranch

Via: e-mail

M&T Ranch (MTR)*Response to MTR-1*

The comment provides an introduction on the commenter and whom they are providing comments for, M&T Ranch. No response is necessary.

Response to MTR-2

The comment provides project description background in relation to impervious surfaces. No response is necessary.

Response to MTR-3

The commenter asserts that the DEIR fails to quantify existing conditions related to storm water discharges and that without quantifying baseline and post-development conditions the DEIR's conclusion that hydrology impacts are less-than-significant is unsupported.

A reliable and accurate quantification of post-development conditions for the project cannot be made at this time; to do so would require speculation about which Low Impact Development (LID) technologies would be used within the development areas to comply with City requirements to achieve no net increase to storm water runoff. These details are not required at the tentative map stage of development, however, the requested quantification of pre- and post-construction storm water discharge rates and volumes is required at each phase of development, prior to construction, once specific project components become known and detailed infrastructure plans are developed. City review of these detailed infrastructure plans prior to the improvement stage of the project's development requires the applicant to show compliance with the NPDES Construction General Permit and Small MS4 General Permit. These efforts include requirements to calculate and apply technologies that attenuate potential runoff rates/volumes prior to development permits being issued. Notably, the proposed project includes a storm water detention basin at the southern (lowest) portion of the site. The improvements plans would also provide additional details on other efforts to reduce stormwater discharge, such as storm water BMPs, underground galleys, surface basins, and LID design standards to capture and treat runoff from impervious surfaces. The DEIR does not need to be exhaustive in level of detail of future impacts, it must only show that a potential impact can occur and that there are means to reduce that impact to a less than significant level.

Response to MTR-4

The commenter expresses concern about the removal of vernal pools and braided streams, stating that removal of these features will likely increase storm water discharge.

Please refer to the response for MTR-3.

Response to MTR-5

The commenter provides further comments on the DEIR's analysis of storm water discharge. The commenter suggests that the DEIR should investigate the cumulative storm water impacts

of all existing and future projects in addition to the Stonegate project to assess impacts on downstream drainages.

Please refer to the response for MTR-3. As stated in Section V. Cumulative Impacts of the DEIR:

NPDES permit requirements apply to the cumulative projects as well as the proposed project. As such, a reduction in runoff and overall pollutant loads in stormwater in the vicinity of the project site is anticipated over time, thereby reducing cumulative impacts... The implementation of Mitigation Measures HYDRO-1 and HYDRO-2 would ensure that stormwater runoff and flood water flows from the proposed project would not result in cumulatively considerable impacts related to water quality, flooding, erosion/sedimentation, or exceeding the capacity of the existing stormwater drainage system. The required mitigation would reduce the project's contribution to any significant cumulative impact on stormwater and flooding to less than cumulatively considerable. (DEIR page V-7)

Response to MTR-6

The commenter reiterates their desire for storm water discharge rates to be analyzed in the DEIR.

Please refer to the response for MTR-3.

**MINASIAN, MEITH,
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COOPER, LLP**

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August 22, 2018

Via email: mike.sawley@chicoca.gov

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411 Main Street, 2nd Floor
Chico, CA 95928

Re: Inadequate EIR and Response to Comments on Draft Environmental Impact Report
for Stonegate Vesting Tentative Subdivision Map and General Plan Amendment/
Rezone (SCH # 201606204)

Dear Mr. Sawley:

This letter is sent on behalf of M&T Ranch ("M&T") to identify deficiencies in the City of Chico's ("City") Final EIR for the Stonegate Tentative Subdivision Map ("Project"), and to provide additional legal background for the comments submitted by Wagner & Bonsignore on M&T's behalf of this same date.

I. The EIR is Inadequate Because it Failed to Make Reasonable Forecasts Regarding Stormwater Discharges

In its May 24, 2018 comment letter, Wagner & Bonsignore identified that the DEIR failed to quantify existing conditions related to rate, volume, and timing of storm water discharges, and failed to outline any specific stormwater discharges. When a significant environmental issue is raised in comments that object to the draft EIR's analysis, the response must be detailed and must provide reasoned, good faith analysis. (14 Cal. Code Regs. §15088(c).) Conclusory statements unsupported by factual information are not an adequate response; questions raised about significant environmental issues must be addressed in detail. (*Cleary v. County of Stanislaus* (981) 118 Cal. App. 3d 348.)

Mike Sawley, Senior Planner

City of Chico Community Development Department, Planning Division

Re: Inadequate EIR and Response to Comments on Draft Environmental Impact Report for
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The City's Response to M&T's Comment, set forth in the Final EIR, fails to satisfy the abovementioned legal standards. The response indicates that the environmental documents did not attempt to quantify post-development stormwater conditions for the Project, in part because:

A reliable and accurate quantification of post-development conditions for the project cannot be made at this time; to do so would require speculation about which Low Impact Development technologies would be used with the development areas to comply with City requirements to achieve no net increase to storm water runoff.

The City's response, and its rationale for failing to review the potential for post-development stormwater impacts fall short of the applicable legal standard. CEQA's implementing guidelines and caselaw plainly establish that EIRs can and should make reasonable forecasts. (*San Francisco Ecology Ctr. v. City & County of San Francisco* (1975) 48 Cal. App. 3d 584, 595; *see also* 14 Cal. Code Regs. §15144, "drafting an EIR . . . necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.") If a precise technical analysis of an environmental impact is not practical, the agency must make a reasonable effort to pursue a less exacting analysis. (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, 432.)

Forecasts in an EIR may be based on the assumption that the project will be developed in a way that conforms to applicable legal requirements. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 183 Cal. App. 4th 1059, 1093.) In this case, the City has a robust Stormwater Resources Plan, including a discrete "Post-Construction Standards Plan" which has its stated purpose "to guide project proponents and municipal plan checkers through the various site design requirements of the Phase II Municipal Separate Storm Water Sewer System (MS4) Permit." The Post-Construction Standards Plan includes, among other things, a "List of Site Design Measures and Associated Sizing Criteria."

The City was not required to "speculate" as to which low impact design criteria will eventually be employed in connection with the Project – as only a limited number of such criteria have been authorized for implementation within Regulated Projects approved by the City such as Stonegate. The City should have selected a reasonable portfolio of these design measures and evaluated impacts based on such a reasonable forecast. Moreover, caselaw is clear that when uncertain future events, i.e., which precise low impact design measures will be implemented at the

Mike Sawley, Senior Planner

City of Chico Community Development Department, Planning Division

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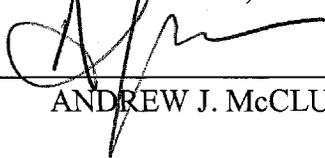
Stonegate Development, an EIR may base its analysis on a reasonable worst-case scenario. (*Planning & Conserv. League v. Castaic Lake Water Agency* (2009) 180 Cal. App. 4th 210, 244.)

Applied here, the EIR could have selected the minimal qualifying low impact design measures and determined whether such measures will adequately address stormwater impacts. The City's failure to conduct any review whatsoever gravely undermines the adequacy of this EIR and leaves it vulnerable to legal challenge. The City should remedy this defect by conducting a thorough and adequate review of the stormwater impacts of the Project, and mandating mitigation and monitoring requirements necessary to render any potential impacts less than significant.

Please do not hesitate to contact me should you wish to discuss any of the foregoing.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By 

ANDREW J. McCLURE

AJM/vlh

cc: Les Heringer, Manager
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