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TO: Board of Supervisors

FROM: Lillian MacLeod, Senior Planner

DATE: July 20, 2009

RE: **Design Review Appeal DR00-0011-A-2: 76 Gas Station/Circle K Mini Mart**

Recommendation

Planning Services recommends the Board of Supervisors take the following actions:

1. Certify that the Final EIR, as based on the findings in Attachment 3 of the staff report:
 - a. Has been completed in compliance with CEQA;
 - b. Was presented to the Commission and that the Commission reviewed and considered the information contained in the Final EIR prior to approving the project; and
 - c. That it reflects Planning Services' independent judgment and analysis;
2. Adopt the Mitigation Monitoring and Reporting Program in Attachment 4 of the staff report; and
3. Deny the appeal and uphold the conditional approval of the Design Review application by the Planning Commission on June 25, 2009, subject to the conditions of approval in Attachment 1, based on the findings in Attachments 2 of the staff report.

Project History

Staff refers the Board of Supervisors to the extensive project history discussed in the "Background" section of the staff report. Subsequent history regarding the public hearing of May 14, 2009 can be obtained from the memo to the Planning Commission dated June 8, 2009. At the hearing on June 25, 2009, the Commission approved the project based on the

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recommendation of staff subject to the proposed corrections and revisions. The staff report, conditions of approval, CEQA Findings of Fact (Attachment 3), Mitigation Monitoring and Reporting Program (Attachment 4), and Final EIR that are before you reflect the corrections and revisions approved by the Commission on that date.

Analysis

This technical memorandum prepared by Pacific Municipal Consultants (PMC) provides responses to issues identified in the appeal dated July 9, 2009 submitted by Friends of Shingle Springs Interchange, Inc. (FSSI), as well as those related to the analysis in the EIR that have been submitted since the original release of the Final EIR in September 2008, to include the following correspondence:

- Alfa Omega Associates correspondence dated October 23, 2008, October 28, 2008, November 4, 2008, November 6, 2008 (Updated December 2, 2008), January 15, 2009, May 12, 2009 (two letters), June 15, 2009, and July 9, 2009 (appeal).
- Smith Engineering & Management correspondence dated November 4, 2008 (two letters) and June 18, 2009.

As identified in the analysis and discussion provided below, the Draft EIR and Final EIR adequately address the potential environmental and traffic impacts of the proposed 76 Gas Station & Circle K Mini-Mart consistent with the requirements of the California Environmental Quality Act (CEQA) and associated published case law. None of the issues identified meet the requirements of recirculation of the Draft EIR, as set forth under CEQA Guidelines Section 15088.5.

A summary of concerns regarding the adequacy of the EIR analysis and response to those concerns is provided below:

1. Lack of Adequate Response to Comments in Final EIR.

FSSI argues that the Final EIR fails to provide adequate responses to comments made on the Draft EIR and specifically identifies correspondence submitted by Smith Engineering & Management (e.g., correspondence dated November 4, 2008) as evidence of this. It should be noted that all comments received during the Draft EIR comment review period were responded to in the Final EIR.

State CEQA Guidelines Section 15088(c) specifically identifies that following for the requirement of the content and extent of responses to comments on a Draft EIR:

“The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response.”

Each comment provided to the Draft EIR was responded to consistent with Section 15088(c). As further described below regarding traffic safety impacts, there is a difference in opinion among experts regarding whether this impact is significant under CEQA. The analysis and conclusions in the Draft and Final EIR is based on traffic modeling, site review by traffic engineers (KD Anderson) and professional environmental consultants (PMC) and the professional opinion of these resources, as well as review and approval by the County Department of Transportation, which meets the definition of “substantial evidence” under State CEQA Guidelines Section 15384. In addition, disagreement among experts regarding the analysis in an EIR does not result in an EIR being determined to be inadequate as long as details regarding the disagreement have been disclosed.

2. Late Provision of Final EIR Figures 2.0-1 though 2.0-4.

It is acknowledged that the County and EIR consultant discovered that the production of the Final EIR accidentally omitted Final EIR Figures 2.0-1 through 2.0-4. These figures were subsequently provided in May 2009 in a document titled “76 Gas Station & Circle K Mini-Mart Corrections to the Final EIR” and were made available for public review by the County prior to certification of the Final EIR by the El Dorado County Planning Commission. The provision of these figures does not trigger the requirements for recirculation of the Draft EIR as provided under State CEQA Guidelines Section 15088.5.

3. Turning Movements Into to the Project Site Inadequate and Have Safety Impacts.

Correspondence by FSSI and Smith Engineering & Management (specifically June 18, 2009 correspondence) express concerns regarding the ability for large vehicles to access the site and that the lack of the ability to access the site would result in traffic safety impacts on Mother Lode Drive and South Shingle Springs Road. The following responses are based on information provided in the Final EIR.

While it is acknowledged that the ability for a tanker and recreational vehicle with a trailer to move freely within the site is limited, Figures 2.0-1, 2.0-2 and 2.0-4 clearly demonstrate that there is adequate turn radius available for these vehicle types as well as other large vehicle types such as delivery trucks for the mini mart (based on Autoturn analysis). The commenters have not provided any countering analysis of turn movements to counter this analysis.

Occasional visits by fueling trucks would result in temporary and infrequent blockage of some fueling stations. However, some of the fuel stations would still be available for use. Should all the available fuel stations be utilized and/or blocked, potential customers would likely divert to other available gas stations in the immediate area or continue along US 50 to the next available gas station rather than wait on Mother Lode Drive or South Shingle Springs Road. Thus, no safety issues are expected from this infrequent circumstance.

Commenters believe that the dedicated deceleration lane would not allow for tankers or recreational vehicles to make a correct movement into the site. The addition of the dedicated lane would actually provide additional roadway width on Mother Lode Drive for the occasional large vehicle to make a successful movement into the site as compared to existing conditions. However, it is acknowledged that such a movement could temporarily block eastbound through traffic on Mother Lode Drive as the turn is being made. This circumstance would be infrequent and result in a short delay that would be plainly visible to vehicles on Mother Lode Drive as they

approached the site (see Appendix A of the Final EIR regarding sight distances). Thus, no safety issues are expected from this infrequent circumstance.

It should also be noted that the Final EIR provided an extensive analysis of collision history in the project area and their cause which was identified as being primarily associated with driver error and weather conditions.

4. Mitigation Measure MM 4.12.3 and MM 4.12.6 Ineffective at Addressing Operational and Safety Impacts.

Correspondence by FSSI and Smith Engineering & Management (specifically June 18, 2009 correspondence) express concerns regarding the adequacy of Mitigation Measure MM 4.12.3 and MM 4.12.6 to address operational and safety impacts on Mother Lode Drive and South Shingle Springs Road. The following responses are based on information provided in the Final EIR.

As identified on Final EIR pages 2.0-38 through-40, Mitigation Measure MM 4.12.3 specifically addresses sight distance issues for access along South Shingle Springs Road. This mitigation measure requires that the driveway access be design to ensure that any landscaping, signage or other objects that could obstruct sight distance be prohibited prior to issuance of building permits. This mitigation measure would ensure a safe driveway access point and includes performance standards consistent with State CEQA Guidelines Section 15126.4(a) (1) (B).

Mitigation Measure MM 4.12.6 would require the provision of a dedicated deceleration lane along Mother Lode Drive for vehicles accessing the project and would remove them from eastbound through traffic along Mother Lode Drive, resulting in improved traffic flow and a preventative measure for avoiding rear-end collisions from inattentive drivers. The commenters provide information how long such a dedicated lane should be based on the speeds of vehicle traffic coming from the US 50 eastbound off-ramp and that MM 4.12.6 is inadequate (commenters cite speeds ranging from 35 to 50 mph – see Smith Engineering & Management June 18, 2009 correspondence pages 5 and 6). However, the commenters fail to factor in the fact that traffic from the US 50 eastbound off-ramp is controlled by a traffic signal that will stop traffic exiting US 50 and result in queuing of vehicles at the intersection. This condition will result in most vehicles traveling across the intersection at substantially slower speeds (as a result of the signal and/or queued vehicles that have started moving from a stopped position) than cited by the commenters and allow for safe use of the deceleration lane. In addition, the grade of the off-ramp will also slow traffic exiting US 50. Lastly, Mitigation Measure MM 4.12.6 includes specific details regarding the design of the dedicated lane and requires that the improvement be made prior to issuance of certificates of occupancy consistent with State CEQA Guidelines Section 15126.4(a)(1)(B) .

5. Concerns Regarding Implementation of Mitigation Measures MM 4.12.1a, b and c.

The comments expressed concerns that changes to mitigation measures MM 4.12.1a through c that requires payment of fees associated with the TIM and consistent with General Plan Policy TC-Xa does not meet the requirements of CEQA and is deferral of mitigation.

As specifically noted in the CEQA Findings of Fact pages 57 and 58, the improvements identified in mitigation measures MM 4.12.1a through c are part of County programmed roadway improvements associated with the US 50/Ponderosa/North and South Shingle Springs Roads Realignment and Interchange Improvement Projects (CIP Project Nos. 71333, 71338 and 09-1017.C.4

71339). These projects are expected to be fully funded and are planned to be built by the County. Thus, participation in the funding of these improvements is considered adequate mitigation (CEQA Guidelines Section 15126.4[a] [1] [B]).

6. Caltrans Input in the EIR Analysis.

The commenters suggest that the County and EIR failed to comply with CEQA by not compelling participation of Caltrans in the EIR review process.

Caltrans received notice of both the Notice of Preparation for the Draft EIR, as well as notice for the Draft EIR itself through State Clearinghouse. While this notice was provided, there is nothing under CEQA that requires Caltrans to respond to EIRs received or for the County to compel Caltrans to respond.

7. Draft EIR Requires Recirculation.

The commenters state that the Draft EIR requires recirculation as a result of the inclusion of new information in the Final EIR since release of the Draft EIR, as well as modifications to the project design since release of the Draft EIR.

State CEQA Guidelines Section 15088.5 specifically identifies when recirculation of a draft EIR is required, as follows:

“(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term ‘information’ can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. ‘Significant new information’ requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.”

Additional and new information provided in the Final EIR further supports conclusions in the EIR as well as provides further mitigation to address areas of concern, while minor modifications

in the project design do not result in new significant environmental effects or a substantial increase in the severity of environmental impacts identified in the Draft EIR. The commenters have provided no evidence that any of the circumstances requiring recirculation under Section 15088.5 have occurred.

8. Failure to Consider Alternative Site Locations in the EIR.

Comments were provided that the EIR failed to address off-site locations as alternatives to the project.

Draft EIR Section 6.0 considered two off-site alternatives to the project, which consisted of the Ponderosa Road Location Alternative (see Draft EIR pages 6.0-6 through -8) and the South Shingle Springs Road Location Alternative (see Draft EIR page 6.0-11). Findings have been made regarding alternatives considered in the EIR (see CEQA Findings of Fact pages 6 through 8).

9. Inadequate Review Process under CEQA.

Comments were received that the County has failed to meet the environmental review process under CEQA.

The County has adequately met the EIR review process requirements of CEQA. This includes:

- Compliance with public review and comment periods for the Notice of Preparation and the Draft EIR.
- Provision of Draft and Final EIRs that meet the CEQA content requirements set forth in State CEQA Guidelines Sections 15120 through 15132.
- Provisions of an adequate and complete EIR project description under State CEQA Guidelines Section 15124 (see Draft EIR Section 3.0)
- Adequate description of setting conditions as required under State CEQA Guidelines Section 15125. This includes a complete description of existing traffic conditions in the project area (see Draft EIR pages 4.12-1 through -7).
- Adequate cumulative impact analysis for year 2025 based on traffic projections from the 2004 El Dorado County General Plan, as well as US 50/Ponderosa/North and South Shingle Springs Roads Realignment and Interchange Improvement Projects and improvements to Durock Road (see Draft EIR page 4.12-19 and -29).
- Consideration of potential traffic safety impacts associated with project driveway design (see Draft EIR pages 4.12-28 and -29, Final EIR pages 2.0-37 through -48 and responses in this memo).
- Reliance on adequate traffic impact analyses prepared for the Draft EIR (see Draft EIR Section 4.12 and Appendix E). No traffic impact analysis countering the conclusions of the Draft EIR traffic analysis has been provided.

The commenters also bring up concerns that the Draft EIR fails to provide information regarding roadway improvement costs or financial ability of the project applicant to implement the project with the mitigation measures required. State CEQA Guidelines Section 15131 specifically identifies that economic or social effects of a project shall not be treated as significant effects on the environment.