



Alfa Omega Associates

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Dr. Dale Smith, H.H.D., General Manager

July 27, 2009

By email at 4:00p.m. and & USPS Priority Received

Ms. Lillian MacLeod
Project Planner, El Dorado County
2850 Fairlane Court
Placerville, CA 96767

Dear Ms. MacLeod,

Re: DR00-11/76Gas Station/Circle K Mini Mart -- BOS Appeal Hearing - 8-4-2009

In the ongoing process of preparing for whatever might come in this case, we continue to find more information, further legal elements and other vital material that may or may not have been entered into the very important **Administrative Record**. For this reason, we are submitting one more letter on the behalf of our Clients, Friends of Shingle Springs Interchange, Inc.

SUPPLEMENTAL¹

GROUND, OBJECTIONS & SPECIFIC REASONS FOR BOS APPEAL²

I. CEQA violations

- A. Inaccurate, incomplete & otherwise inadequate project description
 - 1. Failure to properly describe environmental setting, including failure to provide adequate "background information on the transportation setting and regulatory and planning environments ..." (GP Transp. Element at p. 51.)
 - 2. Omitting or trivializing vital information regarding
 - a. safety standards for location of driveways.

¹ This is supplemental to and replaces or incorporates AOA's 07-09-09 letter accompanying AOA's currently pending application for BOS appeal. All issues previously raised by FSSI and others are fully incorporated by this reference.

² Needless to say, FSSI reserves the right to supplement or modify this material after the administrative record has been prepared, certified and circulated.

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- b. on-site tanker truck and RV movements.
 - c. activity in "rapidly urbanizing" area.
 - d. other, such as turning movements & queuing.
 - e. material on other prior projects such as 1997 ARCO facility.
 - f. GP,³ at p. 65, requirements for "deviation" from standards.
3. Specifically no mention of or process regarding:
 - a. waiver of or exception to safety standards.
 - b. prior litigation over huge new Indian Casino.⁴
- B. Omitted or inadequate cumulative impacts analyses, particularly traffic & circulation impacts from rapid growth in area.
- C. No good faith & full/reasonable disclosure of information:
1. Not in good faith to:
 - a. omit info or process on waiver or exception to driveway safety standards.
 - b. belatedly submit inaccurate & misleading "site plan," etc..
 - c. use & circulate inaccurate & grossly understated traffic counts.
 - d. fail to correct these & other defects raised by the public.
 2. Failing to apply CEQA's foremost interpretive principle construing statutory/regulatory language to maximize environmental protection.

Interpreting statutory/regulatory language narrowly to assure project approval, even though CEQA requires just the opposite.
 3. Refusal to supplement project application and DEIR to identify & discuss significant new info including new applicant/owner.⁵
 4. Fabricating the excuse that the reason for a 30-day continuance of the 06-25-09 hearing was "to allow the missing figures to be reviewed by the public."⁶

³ County General Plan Transportation & Circulation Element (July 2004).

⁴ Even though the relevance of such material is obvious -- e.g.'s, neighboring Hwy 50 freeway interchanges exposed to same congestion impacts; jointly applicable traffic studies/reports covering roughly same Hwy 50 freeway area.

⁵ Failure to disclose info showing new applicant/owner's history, reputation, commitment & ability to perform mitigation measures and conditions of approval. Particularly relevant given existing economic conditions.

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- D. Thwarted & caused actual prejudice to right of public participation.
1. Confusing, inaccurate, drawn out process caused interested members of the public not to participate.
 2. No informed or meaningful opportunity to participate or oppose project, including interference with ability to raise funds or take political action.
- E. Improper handling of mitigation measures & alternatives, including but not limited to:
1. Deferral of mitigation measure analysis to the future without adopting performance standards.
 2. Failure to comply with CEQA's foremost principle of construing statutory/regulatory language so as to maximize environmental protection to the fullest extent reasonably possible.
 3. Not providing mitigation and funding estimates and related info on the effectiveness of actual or potential mitigation measures or alternatives.
 4. Thus precluding, among other consequences, a proper & meaningful alternatives analysis.
 5. Inadequate consideration of "no project" alternative.
 6. Refusal to consider specific measures presented by the public, coupled with failure to determine effectiveness or feasibility of measures proposed or adopted.
 7. Relying on info shown to be inaccurate, incomplete and misleading, thus causing or contributing to actual prejudice to CEQA's staunch right of informed and meaningful public participation.
 8. Not disclosing, and failing to present substantial evidence that relocation of Durock Road is other than an unfunded concept and not a viable mitigation measure.
 9. Failure to disclose "deceleration" or "acceleration" are infeasible, inadequate & ineffective as mitigation measures.
 10. Using/adopting flawed existing traffic data base; inaccurate and unsupported traffic assumptions; & omission of proper cumulative impacts analysis.

⁶ In fact (and potentially as a matter of law), recirculation was triggered by significant new info such as Caltrans material, supplemented by material submitted by new applicant/owner.

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11. Inadequately addressing analytical flaws in studies & reports regarding, *inter alia*, school traffic & attracted passers-by.
 12. Not properly bringing responsible agency Caltrans into the case/project until long after the DEIR's comment/response period ran out.
 13. Adopting or implementing inconsistent, inaccurate, inapplicable and misleading information, such as turning count and base traffic data on conditions in project area.
 15. Engaging in misleading discussions including in regard to the queuing of vehicles northbound on South Shingle extending back to the intersection with Mother Lode.
- F. Improper handling of DEIR comments & responses. Failure to properly consider and respond to comments, particularly in regard to mitigation measures & alternatives.
- G. Caused or contributed to impacts on human health & safety within the meaning of CEQA LORS that include Guidelines § 15065.
- Lowering of safety standards triggers CEQA review that was never performed -- this is also grounds for recirculation. (*see* below)
- H. Failure to recirculate in light of new & significant changes after DEIR public comment & response period expired, including but not limited to:
1. Caltrans material submitted to apparently bolster inaccurate contention that County safety standards properly complied with.
 2. New "engineering drawings" showing, *inter alia*, changes in measurements directly affecting heavily disputed issues that include driveways & vehicle movements on and off-site.
 3. New documents & information to purportedly correct the FEIR.
 4. Specific proposal(s) for improvement of Ponderosa/South Shingle Interchange.

II. Violations of Planning & Zoning Law & Other LORS⁷

⁷ LORS stands for laws, ordinances, regulations and standards in the most comprehensive sense, including federal or state constitutional provisions.

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- A. Failure to comply with the fundamental duty "to safeguard life ... health ... and public welfare ..." (Design & Improvement Standards Manual, Resolution 322-92 at p. 2.)
- B. Inconsistency with driveway and other traffic & circulation standards and authoritative sources.
- C. Inconsistency with County General Plan & County Code provisions, particularly those espousing environmental/human health & safety protection. . (e.g., GP Policy 6.9)
- D. Failure to:
 - 1. request relief under, or otherwise comply with provisions dealing with waiver of or exception to County design standards, including (by analogy) Title 17, section 17.22.020 concerning the waiver of such standards.
 - 2. comply with County GP Circulation Map goal "to provide for the *safe* and efficient movement of people and goods to and within the County to ensure *safe* and continuous access to land" (County GP at p. 63 (emphasis added); see also *id.* at p. 64 (Goal TC-1).)

III. Violations specifically involving driveway and other traffic safety standards

- A. Constitutional:
 - 1. Ignoring or lowering safety standards without due process including by depriving the public of notice and a fair opportunity to be heard.
 - 2. Abuse of the County's discretion by exercising it in an arbitrary and unreasonable manner, particularly by ignoring or lowering safety standards for the primary purpose of raising funds for infrastructure development
- B. *De facto* waiver or lowering of driveway or other safety standards:
 - 1. Waiver or lowering of safety standards without specifying or complying with applicable legal/regulatory authority.⁹

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⁸ And also depriving the public of its statutory and regulatory right to participate in the administrative proceedings in a well informed and meaningful manner

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2. For examples, in addition to driveways, standards involving existing high level of & impacts on congestion in project area.
 3. Violation of LORS that include the County Design & Improvement Standards Manual.
 4. Unreasonably exercising discretion to waive, make exceptions to or otherwise dilute safety standards; or lacking discretion to do so as an abuse of the County's police power.
- C. Other or related specific flaws, including but certainly not limited to:
1. Unreasonable on its face to lower safety standards in light of rapid urbanization of surrounding area.
 2. Ignoring and lowering safety standards without following a reasonable and open process to determine whether to do so.
 3. Ignoring queue issues related to the South Shingle driveway.¹⁰
 4. No analysis of consequences of left turn alterations on Mother Lode.
 5. Omission or violation of County Code provisions that include, without limitation: 10.04.010; 12.08.155; 12.08.250; 16.12.030; 16.12.030; 17.08.030; 17.08.040; 17.08.050; 17.14.130; 17.14.250; 17.22.220; 17.22.300; & 17.22.340
 5. Expiration of tentative subdivision map approval per County Code section 16.74.020 and/or other LORS.

Sincerely yours,

Dr. V. Dale Smith - Alfa Omega Associates

Supplement to Grounds, Objections & Specific Reasons for BOS Appeal filed 07-09-09

⁹ *E.g.*, without seeking or obtaining County Engineer determination that exception applies and basis therefore.

¹⁰ As explained in detail by FSSI's traffic expert, whose letters & reports are part of the ongoing administrative record and fully incorporated by this and other references.

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on behalf of *Friends of Shingle Springs Interchange, Inc.*