

(handed out
at meeting)

PC 6/25/09
#11

SMITH ENGINEERING & MANAGEMENT



June 18, 2009

Ms. Lillian MacLeod, Senior Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

RECEIVED
PLANNING DEPARTMENT
09 JUN 19 PM 2:52

Subject: **SCH No. 2002042112**

Dear Ms. MacLeod:

I am a civil and traffic engineer engaged by the Friends Of Shingle Springs for purposes of providing them with professional assistance in their review the subject project captioned above (hereinafter "the Project"). My qualifications to comment in this matter include registration as a Civil and Traffic Engineer in the State of California and 40 years professional consulting practice in these fields. My resume is attached as Exhibit A hereto. I have previously formally commented on several occasions in this matter.

County Has Failed To Address Substantive Comments On the Project EIR

The staff report for the June 25th continuation of the Planning Commission's May 14 hearing on the subject Project has belatedly attaches our November 3, 2008 letter of comment on the proposed Final Environmental Impact Report (hereinafter the "FEIR"). The staff report also incorporates technical corrections to the FEIR and supplies 4 key figures missing from the FEIR, the absence of which is noted in our letter of November 3, 2008. As will be seen in subsequent sections herein, the correction to Mitigation Measure 4.12.16 and the content of the "missing" figures are both highly significant because they bolster the concerns we identified about the lack of adequate provision for the turning needs of large vehicles and combination vehicles and also regarding the non-conformity of driveway placement with respect to relevant design standards. However, the main point of this section is to note that, other than supplying the missing turning circle figures, the FEIR has failed to respond in any way to the majority of the content of our letter of November 3, 2008, a letter which points out in detail the inadequacies of the FEIR response to our previous comments on the Draft Environmental Impact Report (hereinafter the "DEIR") on the Project. The content of our November 3, 2008 speaks for itself, so we will not revisit all its

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details herein except to note for the record the lack of an adequate response. Because these points have not been adequately addressed, the FEIR is inadequate under CEQA and cannot be certified.

Belatedly Supplied Figures from FEIR and Modified Mitigation Measure 4.12.16 Provide Evidence Supporting Our Comment that Project Provisions for Turning of Large Vehicles and Combination Vehicles Is Inadequate

Our prior comments on this subject are to the effect that the limited size of the Project site combined with the extent of development proposed on the site resulted in difficult maneuvering constraints around the fuel dispenser islands and parking areas, particularly for large vehicles and vehicle combinations. The FEIR response introduced Figures 2.0-1 through 2.0-4 which were said to display the swept areas of various turning vehicles produced by the CADD-based software Autoturn. The FEIR's narrative response, although admitting some maneuvering difficulties, claimed that the Figures showed the proposed Project would not be more problematic in that regard than at many service stations. However, the referenced figures were never presented for review until at the Planning Commission's hearing of May 14, 2009, and were only placed in circulation for public review on June 11, 2009 with the Staff Report for the scheduled June 25, 2009 continuation of the May 14 hearing.

On inspection, what the missing figures actually show is something quite different than claimed in the FEIR response narrative. Consider Figure 2.0-4 which shows the turning path of a double-flask fuel tanker typical of the vehicles that would deliver fuel to the Project. On entry, the fuel tanker would require use of almost the full width and the unusually wide flare of the driveway ramp to Mother Lode (a point of consequence in a subsequent section of these comments). As the tanker passes through the Project on its path over the fill points to the underground storage tanks and on to its exit point onto South Shingle, the Figure shows that the tanker will barely miss, apparently just by inches, contacting the raised island that protects parking near the northwest corner of the mini-mart building and the raised island and concrete-filled steel guardpipe that protects the east end of the most southeasterly fuel dispenser. In other words, the fuel tanker operator must take a perfect path through the station with no margin for error or the tanker will hit something it is not supposed to hit, or the driver will have to engage in dangerous back-and-forth maneuvers to get clear. When positioned over the underground fuel tanks to actually deliver fuel, the tanker would block access or egress to/from 8 of the 12 fueling positions and almost completely block flow-through circulation on the site.

What is not mentioned in the FEIR narrative, but obvious in the Figure 2.0-4 is that the figure shows the tanker's turn only from the existing configuration of Mother Lode. When Mitigation Measure 4.12.16 or the planned overall

Ponderosa interchange improvement is implemented, there will be an additional eastbound through lane and an eastbound deceleration lane to the right of where Figure 2.0-4 shows the tanker starting its turn. The tanker could not successfully turn into the station from either of the added through or deceleration lanes, because, starting from these lanes, the tanker's turn would take it through the trash enclosure, raised islands and parking areas north of the mini-mart building. So to access the station once Mitigation Measure 4.12.16 is in place, the tanker would have to turn right from the eastbound lane closest to the median, turning across any traffic in the second eastbound through lane and in the deceleration lane. This is a dangerous maneuver for a fuel tanker under any circumstance and exceptionally and unacceptably so at a location just a few feet downstream from a freeway off-ramp terminus.

Figure 2.0-2, representing a recreation vehicle (RV) towing a sport-utility vehicle (SUV) (also reasonably representative of an RV towing a moderate sized boat or large utility trailer), shows a similar, though somewhat less severe pattern. As shown, with the vehicle turning in from the existing configuration of Mother Lode, the combination negotiates the driveway entry more readily than the tanker, but still has very minimal clearance from the island and parking at the west side of the mini-mart building and from the island and guardpipe protecting the east end of the southeasterly fuel dispenser. However, if the RV-trailer combination were to make the turn from the second eastbound lane or the deceleration lane that would be created under Mitigation Measure 4.12.16, its turn onto the site would be bowed easterly and it could not clear the combined obstacles of the parking and fuel dispenser island without making a dangerous back-and forth maneuver.

Contrary to the narrative in the FEIR response to our comments on the DEIR, our concern is not with inconveniences on site. It is with operational safety difficulties at the driveways and on street near the driveways – the stoppages and back-ups into the driveways - that would be caused by the constraints to internal circulation imposed by the site plan of the proposed use on this limited site.

For the County to waive its own driveway separation standards, it must find that relaxation of the standards would not cause a significant safety problem, something County staff heretofore have asserted. However, with the fuel tanker turn pattern displayed on Figure 2.0-4 interpreted in the context of the added through and deceleration lanes that Mitigation Measure 4.12-6 would add, no reasonable person can maintain that the Project would not cause a significant traffic safety hazard.

Belatedly Supplied Figures from FEIR and Modified Mitigation Measure 4.12.16 Provide Evidence Supporting Our Comment that the Project' Driveway to Mother Lode Violates Mandatory Caltrans Design Standards

The nature of the mandatory Caltrans Highway Design Manual (HDM) topic 504.8. standards for separation of driveways and intersections has been already established in the record of these proceedings – 50 feet from the near curb return of a ramp terminus intersection. At the May 14 hearing, a representative of the applicant presented an obsolete version of the site plan dated 3-10-06 which shows the driveway from the site to Mother Lode at a typical minimal flare – .its lines more-or-less at right angles to the alignment of Mother Lode. The Project's representative claimed that version of the driveway would not violate the referenced Caltrans mandatory standards. However, the current version of the site plan, dated 1-15-08, shows the driveway with a radical flare to the west and also with a somewhat less radical flare to the east. Inspection of Figure 2.0-4 that was missing in the FEIR shows that the applicant's assumptions regarding fuel tanker access depend on the flared driveway feature of the 1-15-08 site plan and make evident that fuel tanker trucks that would supply the Project could not enter the site without crashing well over the curbs on the driveway in the version of the 3-10-06 site plan that the applicant's representative testified as demonstrating that the site plan meets the Caltrans mandatory standards for separation of driveways from ramp terminus intersections. The applicant can't have it both ways. Either the fuel tanker trucks cannot properly turn into the site via the actual driveway or the driveway fails to meet the mandatory standards for separation of the driveway from the ramp terminus intersection. The Planning Commission must find that the Project design is deficient from the standpoint of fuel tanker access or relative to Caltrans mandatory standards for driveway separation or both. The evidence in this section and the preceding section of this letter support findings of deficiency on both counts.

Other Truck Turning/Unloading Difficulties Not Addressed By the FEIR

We have extensively highlighted and documented the operations, circulation and safety compromises that the Project site plan would engender for some of the larger vehicle combinations that would frequent the Project (as well as, in consequence, the operations and safety consequences to other members of the public frequenting the site or just passing by. However, despite our comments, the FEIR has failed to document reasonable turning and loading patterns for other large vehicles that would frequent and unload at the site, such as the SU-30 single unit trucks and the WB 50 tractor-trailer units that would typically deliver non-fuel products to be sold at the mini-mart. The FEIR site analysis is deficient in failing to address this subject.

Staff Testimony at May 14, 2009 Planning Commission Hearing Misinterprets Driveway Separation Standards

In our letter of comment on 5-11-09, we commented that the Project's proposed driveways did not comply even with Caltrans advisory design standards for

separation of driveways from ramp terminus intersections. At the May 14 hearing, both County staff and representatives of the applicant gave testimony to the effect that the Project's driveways were in compliance with those Caltrans standards. That testimony is incorrect because the County staff member and the applicant's representative were measuring the separation distance from an incorrect point of reference. The problem is that County staff and the applicant are errantly treating the point of reference for measurement as the side of the intersection where the ramp meets the intersection. The true point of measurement is the nearest point of the ramp terminous intersection, the nearest curb return to the proposed driveway. This is made clear in Caltrans letter of comment on the Project from Alice Begley dated January 5, 2009.. Hence, the Project's driveways remain out of compliance with Caltrans design standards.

Proposed Mitigation Measure to Add Deceleration Lane Would Be Substandard and Ineffective

Mitigation Measure 4.12.16 includes a deceleration lane on eastbound Mother Lode that purports to mitigate the operational and safety impacts posed by the combination of the site plan's constraints on ease of traffic movements and the extremely close location of Project's the Mother Lode driveway to the intersection of Ponderosa, Mother Lode, South Shingle and the eastbound US 50 off ramp. However, as we have shown above, the deceleration lane component of the proposed mitigation measure would be ineffective because, as documented above, large vehicle combinations would not be able to make unobstructed turns onto the Project site from this deceleration lane. Furthermore, the length of the deceleration lane that is possible given the Project's proposed driveway location is substandard and insufficient to allow appropriate deceleration of vehicles within the deceleration lane.

California *Highway Design Manual* Table 405.2B gives necessary deceleration lane lengths (including transition distance to enter the deceleration lane) for various design speeds. Since the speed limit on Mother Lode is 35 mph, that would be a minimum design speed for the deceleration lane; Since vehicles with the green light frequently enter Mother Lode from the off ramp at speeds in excess of 45 to 50 mph, those speeds might be more desirable reasonably conservative design speeds for the deceleration lane. According to the referenced Caltrans *Highway Design Manual* table, the required deceleration lane length would be approximately 280 feet for 35 mph, 370 feet for 45 mph and 435 feet for 50 mph. Available distance for the deceleration lane and transition to it (which can count the width of the South Shingle – Mother Lode intersection) is from the stop line on the off ramp to the Project's driveway is 145 feet in the existing roadway configuration; it would be approximately 155 feet with the configuration of the interchange improvement proposed by the County and

Caltrans. Hence, the available distance to develop the deceleration lane falls far short of the length needed to make the deceleration lane effective, even at the lowest design speed that might be considered.

In fairness to the Project, we must give recognition to the fact that the deceleration lane lengths given by *Highway Design Manual* Table 405.2B assume that the vehicles using it must come to a stop before making their turn. In reality, vehicles using the deceleration lane would need to decelerate to a very low speed, but not a complete stop before the Project site; hence, the length of the deceleration lane actually needed would be slightly less than given by the referenced *Highway Design Manual* table. Fortunately, the American Association of State Highway and Transportation Officials (AASHTO) *Policy on Geometric Design of Highways and Streets*, the official design guide of the Federal Highway Administration and the official reference source for Caltrans *Highway Design Manual*, contains a more elaborate table (Exhibit 10.73) of required deceleration lane lengths where vehicles are able to make turns at the end of the deceleration lane without coming to a full stop. If eastbound vehicles were always able to safely turn into the Project site from Mother Lode at a speed of 15 mph, according to the referenced AASHTO table, the required deceleration lane length for an approach design speed of 35 mph is 250 feet; for an approach design speed of 45 mph the required deceleration lane length is 350 feet and for an approach design speed of 50 mph, the required length is 405 feet. Thus, even assuming that traffic can always turn into the site at a reasonable speed without fully stopping (which may not always be the case because of the circulation constraints within the site), the available distances for the deceleration lane (145 feet in the existing configuration; 155 feet with the proposed interchange improvement) still fall far short of the lengths needed for an effective deceleration lane.

Hence, based on all of the foregoing, the deceleration lane component of Mitigation Measure 4.12.16 is demonstrated to be ineffective and the safety concerns posed by the Project's Mother Lode driveway would remain unmitigated.

Why Caltrans Standards Are Relevant To the County

At the 5-14-09 hearing, one of the Planning Commissioners appeared to question why Caltrans *Highway Design Manual* standards would apply in this matter. One reason is that the Caltrans *Highway Design Manual* is a primary reference and source basis for the content of El Dorado County's own Highway Design Manual (as is AASHTO's *Policy On Geometric Design of Highways and Streets*) and the County's manual specifically defers to the Caltrans *Highway Design Manual* on design of interchanges (the chapter (5) containing the specific access control

provisions at off ramps referenced herein) and on the subject of deceleration lane lengths.

In addition, in the relatively short term the County is planning to undertake a major improvement to the Ponderosa Interchange, a facility owned by Caltrans. Caltrans has design approval over the County's plan. If the County waives its own driveway placement standards in order to approve this Project and ignores the Caltrans access control provisions for driveways, it could find itself in the position of needing to reacquire the access rights – in essence, acquiring the whole property at its value after the Project is completed – in order to gain design approval for the interchange improvement plan. Caltrans officials have informally indicated Caltrans would grant a "design exception" if the Project's driveways were placed at the extreme limits of the Project's property lines away from the intersection. However, this would require a complete revision to the site plan, which the applicant has not attempted.

Caltrans has a vital interest and duty with respect to the safety and functionality of the intersections where the interchange ramps terminate and for the safety and functionality for the roadway segments providing the immediate approaches and departures to those intersections. For this reason, the County should clearly comply with Caltrans requests and guidance in this matter.

County Rationalization for Waiver of Driveway Separation Standards Flawed

The County's rationalization for waiver of its standards for separation of driveways from intersections is deeply flawed. The County's rationalization for waiving the standards is based on two considerations: 1) the parcel was created by approved subdivision before the driveway separation standards were adopted so the County has some obligation to allow access for reasonable development of the parcel, and 2) a subjective judgment that allowing the Project's driveways as proposed.

The fact that the parcel was created before the driveway separation standards were adopted may create for the County an obligation to allow access for a reasonable use of the site. This consideration does not, however, obligate the County to approve driveways to the most traffic-intense use an applicant attempts to cram onto the site. The proposed gas station/mini-mart combination is about as traffic-intense a use as could be crammed onto the site. As we have noted in previous letters, the Project's trip generation is the equivalent of that of a 16 to 25-story office building on this site, depending on whether one considers the peak hour or daily trip generation. No rational person would argue that a 16 or 25-story office building on this site is a reasonable use for which the County should waive standards to make access provision. It appears that County staff

has confused obligation to accommodate access to reasonable use with obligation to accommodate any use. In fact, there are many reasonable non-traffic-intense uses that could be viable on the site. Examples of these include a small one- or two-story medical, dental, chiropractic, legal or real estate office. These low traffic intensity uses could probably be sustained from a single driveway access on the less hazardous South Shingle frontage.

County staff's proposed finding of fact that "the impacts associated with potential design hazards is less than significant because there are no specific design features that would result in undue accident patterns" is contradicted by substantial evidence.

- The existence of County and Caltrans standards for separation of driveways from intersections are de-facto evidence that driveways located too close pose operational problems and safety hazard. This consideration is magnified by the Project's driveway location downstream from a freeway off ramp where traffic will be traveling at high speed.
- The constraints of the site plan are such that, in the ultimately planned configuration of Mother Lode, eastbound fuel tankers would have to turn right into the site from the left through lane, cutting across the right through lane and the deceleration lane to the project driveway. This is an unacceptably hazardous maneuver that will be unavoidable under the proposed designs. Again, this consideration is magnified by the Project's driveway location downstream from a freeway off ramp where traffic will be traveling at high speed. In addition to fuel tankers, other large vehicles serving or using the site may be similarly affected.
- The deceleration lane proposed to mitigate the hazardous location of the Project's Mother Lode driveway is too short for adequate deceleration of vehicles attempting to access the driveway. Hence, the deceleration lane will be ineffective in allowing drivers intending to access the Project to safely decelerate outside the line of travel of high speed traffic emerging from the freeway off ramp and substantial hazard of collision will remain.
- Constraints to on-site circulation will cause Project traffic to back up into the Project's driveways. This will compound the safety hazard associated with the insufficient length of the proposed deceleration lane.
- Obviously, the frequency of collisions is related to the numbers of opposed vehicles arriving at points of hazardous conflict simultaneously. If the use of the Project site were a very low traffic-intensity use, the probability of opposed vehicles arriving at the inherent hazardous conflict points simultaneously would be very low and it might be appropriate to conclude that the design hazards were less than significant. But when the proposed land use is a very high traffic-intensity use, the probability of hazardous meetings is proportionately greater and cannot be casually dismissed.

- Due to the adoption of Measure Y, implementation of Project mitigation measures intended to offset traffic operations and safety impacts will be deferred until carried out within the context of the County's CIP Program.

County staff's conclusion with respect to potential design hazards cannot be sustained as reasonable given the evidence on record.

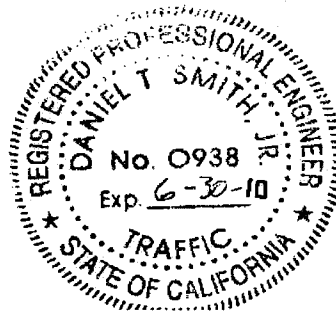
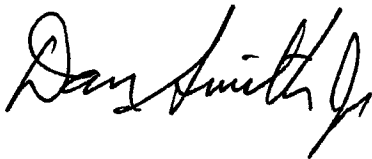
Conclusion

The findings of fact regarding traffic in the current staff report are incomplete, defective and incorrect.

As a consequence, the action and the supporting environmental documentation for the action the County proposes in this matter is defective. The County cannot reasonably certify the EIR or approve the Project as proposed and should instead direct the applicant to propose a use of the property that can be served from a single driveway on South Shingle that would not be in violation of mandatory design standards or as inherently hazardous as the use and access currently proposed.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

Attachment A

DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Ms. Lillian MacLeod, Senior Planner
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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

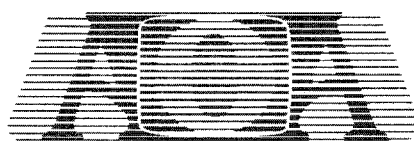
Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.



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PC 6/25/09
#11

Rec'd by e-mail
6/15/09

June 15, 2009

Ms. Lillian MacLeod
El Dorado County Planning Department

Ms. Claudia Wade, P. E.
El Dorado County Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Ref: Comments on 6-8-09 meeting with Staff; Comment letter/memo with objections regarding the upcoming PC Hearing; and Other Matters.

The 6-8-09 Staff Meeting

In addition to commenting on and objecting to the upcoming PC hearing, this letter/memo is to confirm several points about the meeting Jim Kidder, as a member of FSSI, Inc., and myself, as an FSSI consultant, had on 6-8-09 with EDC's Ms. MacLeod and Ms. Wade.¹

One purpose of the meeting was to get clarification on a number of points and to delineate the documents that we still do not have to prepare for the 6-25-09 Planning Commission Hearing. To date, we never received the additional documents. However, we're not requesting, and we strongly object to, a further continuance of, or a further delay in holding, a hearing where an absolutely final decision on the project is made.²

At the 6-8-09 meeting, Ms. MacLeod confirmed, and the record shows, that **Cal/Trans** did not reply to -- or submit comments regarding -- the DEIR (and FEIR) submitted to the State Clearing House by EDC until long after the period for submitting DEIR comments ran out.

Ms MacLeod confirmed that in late 2008 or early 2009, long after the 2005 expiration of the DEIR public comment period, she discovered **Cal/Trans** had never submitted any DEIR comments and contacted -- or was contacted by -- **Cal/Trans'** Alyssa Begley about the matter. It's pretty clear that even though it is a CEQA Responsible Agency, **Cal/Trans'** first comment on the project was Ms.

¹ We renew any and all objections and comments about **Project DR0011- 0011** previously made, as though fully restated here.

² Rather than a hearing before an advisory body whose decision is not final because it is appealable to the BOS.

Project DR0011- 0011
Comments on 6-8-09 meeting with Staff; Comment letter/memo with objections
Regarding the upcoming PC Hearing; and Other Matters - Pg. 2 of 6

Begley's 1-5-09 letter.³ Indeed, EDC Staff didn't even realize **CalTrans** had not commented on the project, and had not been asked to comment on the project until late 2008 or early 2009.

Ms. MacLeod and Ms. Wade repeatedly mentioned that under the new Measure Y rules, whatever Mitigation fees have to be paid, do not need to be paid for at least five years when the CIP improvements are under way. The clear impression was given that the Mitigation Measures -- and particularly safety measures for commercial driveways -- need not be seriously considered until then. We believe this is erroneous and misleading.

Ms. Wade stated that due to the Measure Y changes in the General Plan, only one Mitigation Measure, designated "MM4.12.6," is required. But MM4.12.6 does not directly address the unsafe driveways issue. In addition, MM4.12.6 calls for a "deceleration lane for turning into the project site from Mother Lode Drive ... [which] will require the addition of a through lane on the departure leg of Mother Lode Drive (Eastbound) and a right-turn deceleration lane into the project site,"⁴ but there is nothing to indicate this so called mitigation measure is feasible. We believe that this so called Mitigation Measure is simply not feasible and creates additional congestion and safety problems.

This and other aspects of the County's CEQA review are "inconsistent" with various General Plan goals and policies, as well as County regulations, like Goal 6.9 of the Highway Safety provisions, at page 22 of the 1996 GP. Provisions such as these -- as well as CEQA itself and the County's own regs -- require a liberal interpretation to maximize environmental protection, particularly protection from adverse impacts on human health & safety. However, the County has adopted an interpretation of its own driveway safety standards that ignores or trivializes safety impacts and favors approval of the DR0011-0011 project in order to maximize the substantial "fair share" fees the applicant is required to pay to get the project through.⁵

³ Although only a short paragraph dealt with the unsafe driveways issue, the **CalTrans**/Begley letter played an important part in the hearing of 5-14-09. See also the letter/report being submitted separately by FSSI's traffic & circulation expert, Dan Smith.

⁴ In full, MM4.12.6 states: "*Prior to issuance of certificate of occupancy, the project applicant shall modify the right only lane along the US 50 Eastbound off ramp at Mother Lode Drive to a through lane as well as provide a deceleration lane for turning into the project site from Mother Lode Drive. This will require addition of a through lane on the departure leg of Mother Lode Drive (Eastbound) and a right-turn deceleration lane into the project site; these improvements can be dropped after the project driveway. The project should complete this improvement.*"

⁵ To remedy the present situation, we have suggested, and hereby repeat, that (1) the present proceedings be terminated with a determination disapproving the project as presently proposed, (2) the applicant be required to withdraw the present application, and if it intends to pursue the matter further, submit a new, comprehensively updated version, and (3) recirculation of the updated DEIR to the public, including other public agencies, particularly **CalTrans**.

Project DR0011- 0011
Comments on 6-8-09 meeting with Staff; Comment letter/memo with objections
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Comments & Objections to Date⁶

With this comment, FSSI would like to make it clear that it is strongly in favor of the planned improvements to the US Hwy. 50 Ponderosa freeway, and FSSI does not oppose the gas station and mini-mart project. What FSSI opposes is the project as presently proposed, particularly its increase in the risk of harm to motorists and pedestrians -- including school children, the elderly and the infirm -- by ignoring, misinterpreting and misapplying safety standards in the face of unprecedented growth (e.g., the new Indian Casino) in the project area.

What follows is a summary of many of FSSI's objections to the present EDC proceedings, including:

- 1) In regard to the unsafe driveways issue:
 - a) Making and applying an interpretation of section 504.8 of the Highway Design Manual that under the circumstances of this case is unreasonable⁷ and mistaken. This is specially true in regard to the third paragraph of HDM 504.8 and of the illustrations in Figure 504.8.⁸
 - b) The failure to make and adopt a reasonable interpretation of the HDM that maximizes environmental protection -- including and particularly the protection of human health & safety -- as a Mitigation Measure for the project.⁹
- 2) The continued failure to recirculate the DEIR. This includes not requiring recirculation on the unsafe driveways issue even though at the 5-14-09 PC Hearing, at pages 37 line 19 to page 38 line 3 of the Hearing Transcript, County Counsel acknowledged recirculation was required to address the "figures" (i.e., the site plans) newly submitted by the new applicant. In addition, EDC failed to recirculate even though at the 5-14-09 PC hearing:

⁶ FSSI reserves the right to supplement or otherwise revise this list.

⁷ It is inherently unreasonable (if not flat-out illegal) to lower safety standards in the face of a vast increase in traffic & circulation caused by existing conditions that include a huge new Indian Casino one freeway interchange away.

⁸ The distance is properly measured from the point of meeting of the ramps with the intersection rather than from the curb return at the near side of the intersection, which is based on a reasonable interpretation that maximizes environmental protection and mitigates health & safety risks.

⁹ Other than the reasonableness factor, there is as much authority in support of the new applicant's interpretation of the third paragraph of HDM 504.8 as there is in support of FSSI's expert's interpretation.

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a) Staff acknowledged (see page 3 lines 13 to 16 of the Hearing Transcript) that "[f]urther analysis is required to address on-site turning movements of vehicles, like field tankers and RVs who [*sic.*] are pulling boats, and things like that."

b) The applicant disclosed that Convenience Retailers, LLC¹⁰ is now the owner of the DR00-11 project site, having "purchased this entity ... from Conoco Phillips at the end of January of this year."¹¹ (Hearing Transcript, page 10 lines 8 to 14.)

c) The applicant's expert announced that, in regard to the Mother Lode driveway, new "engineering drawings" were being submitted showing that based on various changes in measurement the driveway is more than the minimum distance from the intersection.¹² (Hearing Transcript, page 27 line 17 to page 28 line 14.)

d) Staff (Ilene Crawford) stated that the Cal/trans discussion about compliance with driveway standards was in regard to state, not county standards: "With the county standard, we do have a design standard ... where we like to see those intersections. It does state in there that the county engineer can waive those if the engineering is appropriate and sees that everything ... meets the criteria."¹³ (Hearing Transcript, page 32 lines 5 to 11.)

e) Ms. Crawford first disclosed that "deceleration lane improvements" were being added as item 10 of the Conditions of Approval. (Hearing Transcript, page 32 line 14 to page 33 line 3.)

¹⁰ A subsidiary of Pacific Convenience and Fuels, 2603 Camino Ramon in San Ramon, California. FSSI requests the current application and the EIR be amended to include this information. FSSI will rely on this new information in identifying the Real Party in Interest in any litigation stemming from the present CEQA review proceedings.

¹¹ It's CEQA law that FSSI and other members of the public have a right to investigate whether this change of ownership has any bearing on whether the new owner is capable of adequately performing Mitigation Measures and conditions of approval. For example, the new owner may have a history of non-compliance with laws and regulations requiring special monitoring and enforcement provisions.

¹² Our traffic and circulation expert, Dan Smith, is responding to these and related topics in a separate letter/report. This letter/memo and Dan's letter/report are being submitted by FSSI long enough before the 06-25-09 hearing date to allow the Commissioners to thoroughly review these documents.

¹³ In other words, as to the driveway distance of the second driveway, it is admitted the only way it can meet the County standard is if the County Engineer waives the minimum distance requirement. It is FSSI's position that this would be an abuse of discretion because it is unreasonable to lower safety standards in the project area in the face of unprecedented growth fueled by the new Indian Casino that is now in full operation.

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f) Ms. Frantz with County Counsel's Office stated "the final EIR that was circulated is missing three figures. And before you propose that it be certified as adequate ... you're going to need to have the figures before you and included in the EIR, and the public will be given time to comment with those figures in it ..." (Hearing Transcript, page 37 line 19 to page 38 line 3 (underlining provided).)

3) FSSI also objects to these proceedings, and to certification of the EIR and approval of the project, on grounds articulated or supported by the various letters/reports submitted by Smith Engineering & Management, and by the County's responses to this and related material.

4) Not requesting **Cal/Trans** input, and ignoring Responsible Agency **Cal/Trans'** failure to comment on the DEIR and otherwise participate in the purported CEQA review process until long after the DEIR (and FEIR) comment period ended.

5) Carrying out a confusing & misleading EIR review process that has caused, and continues to cause, actual prejudice to the public's right to participate in the proceedings in an informed and meaningful manner, including dragging out the purported CEQA review over a period that far exceeds the time limitations and other restrictions prescribed by CEQA and its Guidelines, and the policies behind those limitations and restrictions.

6) Carrying out an EIR review process that allows the applicant to revise and supplement documentation at the time of or in conjunction with public hearings, and has allowed the applicant to further delay the proceedings for years while negotiating with the County over the payment of -- or refusal to pay -- Mitigation fees.

7) Adopting a so called "Terminology of Findings," which includes the definitions and statements asserted in County Staff reports, hearings and meetings. This is particularly true in regard to a narrow, incomplete, inaccurate and misleading definition of what constitutes the "administrative record" (e.g.'s, the "Documents and Record" provisions, and section C of the Staff Report for the 11-4-08 hearing).

8) In specific response to a County email dated 6-4-09, not requiring the applicant to provide estimates of mitigation costs, as well as funding estimates and related information concerning the effectiveness or feasibility of Mitigation Measures and Alternatives.

9) Additional defects in the alternatives analysis, including ignoring additional alternatives that include a specific potential project site(s) identified by FSSI or other members of the public. And, most significantly, ignoring or trivializing safety impacts from commercial driveways too close to adjoining intersections.

10) Categorizing potential traffic & circulation impacts as "Less than Significant" when that is clearly not the case.

11) Improperly handling Mitigation Measures, including by deferring mitigation without the requisite foundation (e.g., no attempt to adopt performance standards), and failing to determine whether adequate and reasonably foreseeable future funding exists.

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12) Failing to recognize that interpreting language in HDM 504.8 and in County regulations liberally to maximize environmental protection constitutes a reasonable and feasible Mitigation Measure that must be adopted.

13) Relying on inaccurate, incomplete and misleading information and data provided by the applicant, Staff or others in performing the CEQA review.

14) Acting beyond its police power (and that of **Cal/Trans**) by unreasonably waiving, deferring or diluting safety standards for driveways at intersections, which is particularly unreasonable due to existing traffic and circulation conditions, not the least of which is the completion and operation of the nearby Indian Casino with its own Hwy. 50 freeway interchange, and the significant, reasonably foreseeable, cumulative growth-inducing impacts occurring at an unprecedented rate in the project area.

Other Matters

As previously cautioned in these proceedings, after prevailing FSSI will seek an award of attorney fees and costs under section 1021.5 of the Code of Civil Procedure for all work done on this matter going all the way back to June 2001.¹⁴

Although it will have a court reporter attend to memorialize the proceedings, FSSI will not be appearing at the 6-25-2009 Planning Commission hearing. By so doing, FSSI is not waiving or in any manner relinquishing its legal rights under CEQA or any other law or regulation, including and particularly the right to notice of further proceedings on the DR0011-0011 project. In addition to being overly complex, redundant, confusing, misleading, expensive and ineffective (e.g., repeated hearings before and advisory body lacking power or authority to make a final decision on the project), FSSI believes these continuing proceedings are null and void *ab initio*.¹⁵

Sincerely yours,

D

Dale Smith for the
Friends of Shingle Springs Interchange, Inc.

¹⁴ Please again be advised that the amounts involved will be quite substantial.

¹⁵ In addition, as previously noted (see footnote 4 at page 2, above) FSSI requests the project application be denied and revoked, and if the new applicant seeks to go forward an updated application and DEIR by properly circulated to the public including **Cal/Trans**.



"Dr. Dale
Smith@aoaconsult.net"
<drdalesmith@aoaconsult.net
>

06/15/2009 10:35 AM

To "Lillian MacLeod" <lmacleod@co.el-dorado.ca.us>
cc "Claudia Wade" <claudia.wade@edcgov.us.>, "James R.
Kidder" <jaskidder@att.net>, "Dan T. Smith"
<Dantsmithj@aol.com>, "John Gabrielli"

bcc

Subject Sending Letter for DR00-11/76 Gas Str/Circle K minimart

History: This message has been forwarded.

Monday, June 15, 2009

To: Lillian MacLeod
El Dorado County Planning Department
Via Email

Dear Ms. MacLeod,

Am forwarding an email of June 11, 2009 from Dan T. Smith to Gabriel Corley, **Cal/Trans** DOT for the Administrative Record - DR00-11/76 Gas Station/Circle K Mini Mart - ConocoPhillips.

----- Original Message -----

From: Dantsmithj@aol.com
To: gabriel_corley@dot.ca.gov
Sent: Thursday, June 11, 2009 3:17 PM
Subject: US 50 - Ponderosa Interchange

Gabriel:

My name is Dan Smith. I'm a civil and traffic engineering consultant in California. I spoke with you briefly earlier this afternoon. I'm working with Dr. Dale Smith (no relation), with whom you have exchanged phone and e-mail communications. Dr. Smith and I are working on behalf of a group of citizens who are advocating in favor of the planned improvements to the US 50 Ponderosa interchange. A particular concern of the group is the proposed gas station and mini-mart on the southeast corner of the intersection of South Shingle, Mother Lode, Ponderosa and the US 50 eastbound on and off ramps. The US 50 eastbound on and off ramps form the west leg of this intersection.

The concern is that the location of the driveways to the proposed gas station/mini-mart would have operational and safety effects that would compromise the proposed improvements to the Ponderosa interchange. In the apparently most current version of the site plan for the gas station/mini-mart project, the driveway to Mother Lode is within 45 feet of the near (southeast) curb return of the subject ramp terminus intersection. The project's proposed driveway to South Shingle is within 72 feet of the near curb return of the subject ramp terminus intersection.

At the May 14 hearing of the El Dorado Planning Commission, there was testimony to the effect that these distances were compliant with the 100-foot advisory standard for access control described in Highway Design Manual Section 504.8 Access Control based on an interpretation that the distance is measured from the point of meeting of the ramps with the intersection rather than from the curb return at the near side of the intersection. In all my experience, I have understood the measurement to be from the near side curb return of the ramp terminus intersection. This is certainly the implication of the underlined first sentence in the third paragraph of HDM section 504.8 and of the illustrations in Figure 504.8, although none of the illustrations displays a configuration similar to this particular interchange.

Please advise me of the proper point(s) of measurement for determining compliance with HDM 504.8 on

09-1018.M.18

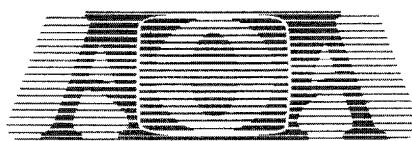
frontages on the opposite side of the intersection from the ramps.

One further question concerns the next Planning Commission hearing on this matter which will take place on June 24. Will Caltrans be directly commenting further in this matter? Our own thought is that there needs to be some access to allow reasonable use of the parcel on the southeast corner of the intersection. But reasonable use in the geometric circumstances that prevail would be some kind of low traffic intensity use like a small real estate office, small legal office, medical office or chiropractic office for example. But reasonable use in this circumstance does not include the kind of extremely traffic-intense usage that a gas station/mini-mart combination would constitute.

I appreciate your help in this matter.

Dan Smith

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

PC 6/25/09
#11

Rec'd by e-mail
6/17/09

June 11, 2009

Ms. Lillian MacLeod
El Dorado County Planning Department

Ms. Claudia Wade, P. E.
El Dorado County Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Ref: Meeting held at the Ed Dorado County Department of Transportation Conference Room with James R. Kidder and Dale Smith on the matter of DR0011-0011 and the two of you - Matters for insertion into the Administrative Record for this project placed there on the behalf of FSSI, Inc.

Because of the importance of this meeting, I am going through my notes and other significant details germane to this Project both historic and current which are all a part of the Administrative Record on this project as a function of exhausting our administrative remedies.¹

Our reason for being there on June 8, 2009 was to get clarification on a number of points on the DR0011-0011 project and to delineate the documents that we still do not have that are important to us for preparation for the 6-25-09 Planning Commission Hearing. It is the securing of these documents that is of paramount concern to us at this time.

Lillian, you were concerned about how the *CalTrans* DOT ever got involved in this as they had not replied to the Clearing House DEIR or FEIR notifications on the project over one or more years ago. It was unclear to me, but it seems to me that you called Alyssa Begley to as her opinion on a very narrow area to which she responded with that specific paragraph the County is now using to carry this questionable project forward. I think that Jim Kidder made it very clear that his request at Cal/Trans DOT for information was several years ago, so that was not the source.

It is also quite clear that Cal/**Trans** did not respond to the DEIR with any comments, much less written comments, and as a matter of fact Ms. Begley's 1-5-1009 letter was not timely for comments on the FEIR.

Since this Begley letter did play an important part in the hearing of 5-14-09, it does have a very strong bearing on this issue of Mandatory Distance Standards . Mr. Kidder showed you several Plot Plans, and carefully pointed out how the newest ones submitted to the Planning Commission

¹ As an introductory matter once again "for the record," FSSI and others have consistently objected to and hereby renew those objections to approval of this project as presently proposed, based on all the grounds stated by any person or party throughout the CEQA and Planning & Zoning Law proceedings. All these past, present and future objections, grounds and comments concerning the project are hereby incorporated by this reference as if fully restated here.

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
Lillian MacLeod and Claudia Wade 11-8-09 on Project DR0011- 0011
Memo for the Administrative Record from AOA/FSSI - Pg. 2 of 8**

Hearing on 5-14-09 appeared not to be the latest, but an older Plot Plan that had been modified to make some new point about the acceptability of these driveways. This is a very important issue for discussion and clarification.

Mr. Kidder spent some time showing vital factors of contention on these Plot Plans. He explained that the Mother Lode driveway location falls woefully short of the County's Design Standard requirement of 250 ft. radius to driveway requirement. The end of curve radius to the driveway on Mother Lode Dr. is only 45 feet.

This is extremely dangerous. Cars going in or out of the driveway may collide with cars coming off the freeway ramp or making a right turn from South Shingle Rd. or a left turn from Ponderosa Rd. onto Mother Lode Dr. The further the driveway is removed from the corner the greater distance between cars entering or leaving the site and the cars coming onto Mother Lode Drive and therefore allowing more time for drivers have to react to stop, change course or vary their speed to avoid a collision.

One of the more discouraging things that happened in this meeting, Ms. Wade is that you told us several times about how new you were to this project, and that therefore did not have answers to our questions. We found this extremely difficult to believe, and I asked you several times for the answers to questions and for ALL documents to support the County position. You said you would contact me by Wednesday, the 10th to inform me of what was to happen next. It is now 5:45p.m. on the 11th, and I have not heard from you.

At the time of our meeting, we did not yet have the legal transcript of that hearing, but we now have it and there is a section in there that very well illustrates the problems, the confusion and the uncertainty of the position of El Dorado County on this project. Please read this Hearing transcript to know why we are so determined to get solid answers in this matter.

COMM. TOLHURST: It (unintelligible) (unintelligible) a question. It was referring to several different standards, and there's the state standard, clearly, which is, CalTrans requires that a right-in/right-out driveway be located at least 200 feet from the intersection.

And then there's another standard which is a county standard. That is, county standard, driveway would need to be located 150 feet, more likely 250 feet from the intersection.

And then the next paragraph after says county staff has discretion to waive county standards. And, so, I'm looking for some clarity on which standard applies.

Do they both apply, and which one are we following, or are we ignoring all of them.

MS. CRAWFORD: Okay. And to start with, what I've done is I've gone through the CalTrans highway design manual, and one side is the actual standard that we're discussing. And the other side is the diagram showing intersections. So, I have one of those.

COMM. TOLHURST: Okay. So, the first question is, does the CalTrans standard apply to Mother Lode or to Shingles Road, or both.

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
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MS. CRAWFORD: Well, I think that -- what you have to look at is that -- one of the accesses that they talk about, the 100 feet, is what is alongside of the ramp.
So, it would be -- we have the off-ramp that is coming off of the freeway, and the 100 feet would be the distance down the street from that ramp, not necessarily across the street from it.

So -- and this separate diagram here shows where the 50 feet and the 100 feet are in relation to the interchange ramps that we're discussing.

And as the applicant has said, they're in conformance with this, and -- that you have a letter in your packet that is from CalTrans. It's towards the back of your packet. I don't have a page number on it.

But, it's some -- response from District 3, Alyssa Bagely from the Office of Transportation, Planning South, and she states in her letter that the mandatory standards require that CalTrans access controls to the proposed project located opposite the eastbound off-ramp shall extend at least 50 feet beyond the end of the curb ramp, ramp raise or taper. I'm not sure how I did this.

In evaluating not only access at the very extreme east and south ends of the project, an advisory standard of 100 feet beyond the ramp intersection is acceptable. They'd like to get 200, but 100 is acceptable. So, again, the applicant's project is within those standards.

With the county standard, we do have a design standard (unintelligible) where we like to see those intersections. It does state in there that the county engineer can waive those if the engineering is appropriate and sees that everything is -- meets the criteria.

Several times according to my notes, we talked about the SAFETY FACTORS involved and how important they are, but when it came to providing solid answers to our questions and our concerns, neither one of you were able to do that. We asked then, and we ask again, what was the purpose of inserting four new Site Plan Drawings into that Hearing, and hence into the Administrative Record? We told you then that this was never properly contested in the Hearing, so the Commissioners were not operating on TRUE information.

Since the *CalTrans* letter from Ms. Begely was so important to the County as evidenced on how it was introduced into the Record in the 5-14-09 Planning Commission hearing, we must make note of the fact that Ms. Begely's DOT District 3 Chief's letter seems to approve of the driveway locations, however the radius of the ramp is not taken into consideration for the South driveway resulting in less than the required 100 ft. distance which Mr. Kidder pointed out to you on the Site Plan he had prepared to show all these County idiosyncrasies.

Ms. Begely also qualifies her statement with this saying, "Ideally, however, access points should be installed as far as possible from the ramp intersection at a minimum of 200 ft. from the ramp." **This is further qualified by requesting plans for review. See paragraph on next page.**

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
Lillian MacLeod and Claudia Wade 11-8-09 on Project DR0011- 0011
Memo for the Administrative Record from AOA/FSSI - Pg. 4 of 8**

We specifically ask for the documents showing **when and how** these plans were provided to Alyssa Begley at **CalTrans** in response to her letter of January 2, 2009. Please have them available for my scanning of documents at EDC DOT as per my request to set an early date for me to come to the DOT offices to examine and scan all pertinent documents.

While we did not discuss the following material in any detail, we feel that it is important to give this information to you now so you can consider these important facts. The State DOT Design Manual Section 504.8 Access Control seems to deal with two different scenarios, one for new construction and one for new construction or major reconstruction. The Ponderosa Interchange proposed work is major reconstruction so the 200 ft. from ramp to driveway would apply.

We think this is important enough to have it in this document - that this section of the Begely Cal/Trans letter is lifted from the Pdf File, so is intact as it is and can not be manipulated.

Thank you for the opportunity to review and comment on the Design Review of the Final Environmental Impact Report for the proposed ConocoPhillips Circle K Mini Mart and 76 Gas Station. This proposed 2,976 square foot project includes a mini mart, gas station with 6 fuel stations, for a total of 12 fueling positions under a 4,000 square foot canopy on 0.64 acres. The project is located on the south side of the US Highway 50 (US 50)/Ponderosa interchange at the southeast corner of the Mother Lode Drive and South Shingle Road intersection in the Shingle Springs area. Our comments are:

- Mandatory standards require that Caltrans access control to the proposed project located opposite the eastbound off-ramp shall extend at least 50 feet beyond the end of the curb return, ramp radius or taper. A right in-right out only access at the very extreme east and south ends of the project at the advisory standard of 100 feet beyond the ramp intersection is acceptable. Ideally, however, access points should be installed as far as possible from the ramp intersection, at a minimum of 200 feet from the ramp. To ensure these recommendations are considered and implemented, please provide any future plans for review.

In the course of the conversation that morning there are a number of issues where we could not get clear, concise answers. I stressed two times that the Planning Commissioners were making decisions without complete information or on erroneous information but this did not seem to faze either one of you.

Jim told you that this was not a very responsible way to do business. He cited instances from previous experiences with EDC on other projects he was working on as a developer.

Ms. Eileen Crawford, P.E. was conspicuously absent from this meeting and not available, when earlier she told me in an email that she would be, if we were going to discuss the **Cal/Trans** rights

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
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of way, and all the other information on the proposed interchange. It would have helped for her to be at that meeting.

There was an extensive discussion about the Mitigation Measures and the Measure Y modifications done by the BOS last year. The net effect of this is that the proponent will have to pay some TIM fees as follows:

Tim - \$96,480.00 Hwy 50 TIM - \$41,640.00 which is a total of \$215,585.28 - See the Sheet provided by the EDC on 6-8-09 which is their "fair share" of these overall fees.

We believe we should advise you, Lillian that you seemed to be unaware that the distance from the corner to the driveway is measured from the end of the curve radius to the drive, and not to the cross street itself. This is incorrect, and while it was Eileen Crawford, P.E. who made most of the statements on these issues, the fact remains that the Commission operated on the wrong information.

Most importantly, the official legal transcript of that hearing will show that the Planning Commission operated on incorrect information even after Commissioner Tolhurst asked several times for verification that those dimensions presented by Staff were correct.

It seems only proper that this and other erroneous information given to the Planning Commission on 5-14-09 should be corrected as a condition of going ahead with this approval process.

When we talked to you two, your answers seemed to confirm what we thought was the case, and that is that the **Cal/Trans** letter and the new Measure Y rules would be the backbone of the EDC new program to push through approval of DR0011 - 0011

Here is how we understood the situation is according to what you told us: **Under the new Measure Y rules, whatever Mitigation fees that have to be paid, do not need to be to be paid for at least five years or when the CIP improvements are done.**

Again and again, you told us that this was the case, but even when we protested, that if they were granted the permits to go ahead with this, the mitigation designed to relieve the problems of safety, would essentially be ignored until the State and or the County went forward with these CIP improvements.

In the meanwhile they could build their project without adhering to the necessary safety standards.

Claudia, you said that the Measure Y changes in the General Plan, and the only mitigation measure that will be in place upon completion of the project is:

"MM4.12.6 Prior to issuance of certificate of occupancy, the project applicant shall modify the right only lane along the US 50 Eastbound off ramp at Mother Lode Drive to a through lane as well as provide a deceleration lane for turning into the project site from Mother Lode Drive. This will require addition of a through lane on the departure leg of Mother Lode Drive (Eastbound)

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and a right-turn deceleration lane into the project site; these improvements can be dropped after the project driveway. The project should complete this improvement.”

The Staff Report is inaccurate because a reading of the proposed mitigation MM 4.12 gives the impression that the 4 mitigation measures will be constructed prior to issuance of building permits. The language in the last paragraph of this section essentially says that they will be built later in the Capital Improvement Plan.

Further, the TIM Fess only will be paid. However, the language in the Timing Colum “Prior to issuance of building permits” leads a reader to believe these mitigation measures will be in place before the project is permitted.

This should be corrected, and the Staff Report should be re-circulated and the Planning Commission appraised of these discrepancies.

Mr. Kidder talked to you two ladies about the due diligence that the new proponent had to do to be able to go forward with this project, but you both kept coming back to this whole measure Y thing as being the reason that the safety elements did not matter.

We did not agree with that position then and we do not agree with it now. Looking back at our files we find that may times we have made statements about SAFETY in this location, even calling attention in our documents filed with EDC, what your own County says in your own laws and manuals on this subject. In particular, we cite Section 5.4, page 8, Traffic Safety, which is an area of the past and present studies, policies and measures that is totally inadequate, and we respectfully request--nay, demand--that these vital matters be properly dealt with:

“Traffic Safety - The recent accident history for El Dorado County roadways (excluding state highways) was researched to identify locations with high accident rates. The County considers a location to have a high accident rate if the rate exceeds 1.0 accident per million vehicle miles (mvm) over the past 3 years. Exhibit 5.4-6 shows the locations with accident rates based on the County’s criterion. The County considers these locations in developing roadway improvements. In some cases, the primary cause of an accident is related to driver behavior or weather, which would not be eliminated by a physical improvement.”

A rather thorough search of the SAFETY elements of Circulation and Transportation again turned up a problem cited previously – the difficulty to finding things in the various Alternatives. An excellent example is the following policy found on page 229 of the 1996 General Plan. Search as we did, we could not find a comparable statement on this all important issue of Highway Safety in the other Alternatives.

This is extremely significant, because it is at the heart of our presentation on the failure of El Dorado County to properly analyze & present traffic data. Notice how each of these EDC Policies speak to this:

**HIGHWAY SAFETY
GOAL 6.9: HIGHWAY SAFETY**

Provide highways within the County that provide for the safe movement of goods and people throughout the County.

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
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OBJECTIVE 6.9.1: SAFETY HAZARDS REDUCTION PROGRAM

Create a program to reduce safety hazards on County roadways especially at locations with a history of frequent accidents.

Policy 6.9.1.1 The County shall identify those roadways with existing or projected safety problems, prioritize them in terms of the immediacy of the need for improvements, and develop programs for financing needed improvements.

Policy 6.9.1.2 Recognize that substandard road conditions exist in some rural areas of the County and include feasible roadway, pedestrian, and bicyclist safety improvements in the roadway improvement priority list.

Policy 6.9.1.3 New roads connecting to County roads shall be designed to provide safe access as required by the County Design and Improvement Standards Manual.

This or similar material stressing these safety issues may be mentioned in the other alternatives, but **in addition to being inadequate**, we do not find them in the Traffic and Circulation category where they belong. **This is wrong. It is confusing, and it prevents well-informed and meaningful public participation.** We find it disturbing that these extremely vital elements of safety were not easily found or properly addressed and are omitted from some of those Alternatives.

Mr. Kidder talked to you about the due diligence that the new proponent had to do to be able to go forward with this project, but you both kept coming back to this whole measure Y thing as being the reason that the safety elements did not matter.

This seemed to be borne out with what we heard at the Planning Commission as the five Commissioners seem determined to proceed this way.

We had some heated discussion concerning the deceleration lane, and you admitted that you had not looked at this at all, that the public safety issues have not been addressed, etc., etc. We tried to impress you both that it is your responsibility to see that this was done.

Because seem to be counting on the Cal/Trans letter and the whole issue of THE CIP PROJECT FIVE YEARS LATER (PERHAPS?) - for the basis for the new process to push this through, we again ask for the documents to back this up, you did not produce them, nor did you seem to know where they might be.

Another factor of that meeting that caused me some concern is when confronted by Jim, Lillian admitted that she does not review these documents, but if she is not responsible to do this, who is?

WE WENT AROUND IN CIRCLES ON THESE ISSUES. But they could not or would not provide adequate answers.

You did admit that none of the Mitigation Measures were in place, neither was your mitigation monitoring program in place.

**Meeting at the EDC DOT Conference Room with James R. Kidder, Dale Smith,
Lillian MacLeod and Claudia Wade 11-8-09 on Project DR0011- 0011
Memo for the Administrative Record from AOA/FSSI - Pg. 8 of 8**

It was interesting to watch both of you when Jim gave a short speech about his long-standing experience with the many El Dorado County departments the problems he has faced over the years. Don't forget that he told you that he has gotten out of the development business in EDC for these very reasons, they are impossible to overcome.

However, remember also that Jim assured you that he was in this one for the long term, and that he would see it through and talked about legal action. I hope this helps you to realize that this is a very real possibility and that both of you carry some responsibility in all of this.

I don't possibly see how you could have mistaken his strong meaning in all of this as Jim gave this with such power and sincerity. Jim Kidder has developed many properties in El Dorado County over the years so he has the experience, the knowledge and the drive to get things accomplished.

You'll remember that I finished with a brief statement about how disappointed I was about never being able to get the documents we needed to take this to our Traffic Expert so we can make the proper presentation on the 25th, and suggested to Jim, that perhaps we ought to short cut this all and get the legal actions moving. By the way, nether one of you would make good poker players.

We did not get anywhere on Monday, we were not able to take a single document away from that meeting. Thank you Ms. Wade when you said you would be back to me by Wednesday with further information on the documentation we are seeking. Now it is Thursday, and I'll mail this document tomorrow.

Specifically these are the documents we are seeking.

1a) - As outlined on bottom of page 3, top of page 4 - documents showing that you provided the requested details Alyssa Begley at **CalTrans** in response to her letter of 1-2-09. 1b) - All correspondence between any EDC Employee and **CalTrans** on this project since 2000.

2) - Paragraph 4, page 2 - ALL documents to support the County position.

3) - All County Documents having to do with Traffic Safety. If you do not have them, tell us where they may be found.

4) - Because you seem to be counting on the Cal/Trans letter and the whole issue of THE CIP PROJECT FIVE YEARS LATER please provide all documents to back this up.

5) - Please set an early date for me to come to the DOT offices to examine and scan all pertinent documents.

Sincerely yours,

Dale Smith for the
Friends of Shingle Springs Interchange, Inc.

AOA-FSSILtr - for A.R. from Mtg of 6-8-09 MacLeod & Wade.doc

09-1018.M.27

#8

(handed ~~out~~ to clerk at meeting)

**DS Presentation to El Dorado County Planning Commission - Hearing - DR00-0011
9:00 a.m. - May 14, 2009**

Good Morning, Planning Commissioners, I am Dr. Dale Smith and in addition to myself and other members of the public, I represent the *Friends of Shingle Springs Interchange, Inc.*, a California, not-for-profit, public benefits corporation established in May 2002. I am a consultant specializing in land-use, environmental & historic preservation issues.

I will be as brief as possible today because I consider this a rather meaningless exercise, and I do not mean that in a disparaging way to you Commissioners because you are just doing your job. And I have to do mine. My greater experience is in media, 25 plus years as an ABC Correspondent plus many years in radio and TV management. I script all my public speaking and I'll move fast.

Why do I call this a meaningless exercise? I'll deal in facts, seven of them and here is the first one -- this hearing is not correct, this issue should never have been sent back to the Commission. Nothing I have seen from the County since that date explains that action, in 16 years of work in this field, I've never seen this happen.

Second Fact - we have lodged a formal protest on the notification of this meeting by the County Planning Department. I hope that those three letters sent out on the 12th have reached you. The County initially circulated to the general public that notice on or about 29th of April for this hearing which was scheduled for 15 days later - Today. Significant new information & substantial evidence was presented in the Staff Report conveying the notice.

The general public had less than 15 days to study and respond to that new and substantial information and evidence. 15 days are not enough. It's not reasonable nor fair to deprive petitioners and other project opponents of a full opportunity to participate. And even though they understand this will further delay this matter, petitioners are not willing to waive these fundamental & vital constitutionally based procedural violations.

Fact Nr. 3 - The notice should have been for at least 30 days (*see* CEQA Guidelines) and as petitioners we respectfully demanded proper notice & recirculation. The public is being deprived of their constitutionally based right to adequately review and comment on several new factual findings or legal opinions given by Caltrans for the first time in a letter to the County, and also some important new information the Planner included in the Staff Report for this hearing.

The only thing that will adequately remedy this situation is recirculation with an adequate period for further review and investigation before any final decisions are made.

Fact Nr. 4 is that none of the information provided by the Staff Report or the matters described in Attachments of the Report alter the basic facts about that property. Dan Smith sums it up in

one brief paragraph and **it is literally** the whole reason why we have contested this project from the outset: (Quote)

“Traffic safety research reveals several salient facts about traffic safety at driveways along major roads that affect the reasonableness of the proposed approval of the subject project’s driveways and provide the basis for the County’s and Caltrans standards that would require denial of the proposed driveways.”

This is one of the major facts in the documents produced by Daniel T. Smith, Smith Engineering, Union City, CA and filed in the Administrative Record starting in November, 2002 and many times since and we remind the County again that all materials previously submitted by any party whatsoever has been and remains incorporated by reference as though set out in full here. This has never been questioned and the County has never indicated it may take the position that only the material set out in its Staff Report is "before" this Commission

We cannot and do not waive our continuing objections to these improperly conducted CEQA proceedings.

Please keep in mind that CEQA is all about maximizing environmental protection to the fullest extent reasonably feasible.

And also please keep in mind that what we're dealing with in these CEQA proceedings is potentially grave harm and even death due to the failure to comply with safety standards and regulations regarding commercial driveways adjacent to freeway interchanges.

The County has yet to adequately respond to petitioners' claims and warnings in this regard. **And my 5th fact is this. Esteemed Commissioners, you should find it most amazing that The County has never, never controverted our expert's most significant factual assertions and opinions.**

Indeed, the County's position on the safe driveways issue seems to be that although local safety standards and regulations apply, they can be modified or waived altogether by the County -- even though those safety standards are being influenced by the huge impacts generated by the new Indian gambling Casino now fully operating in the area.

Thus, for example, the County would significantly reduce these safety measures while allowing the other cumulative safety risks to significantly increase.

Petitioners have taken the position, and hereby repeat that the County has neither the jurisdiction nor the legislatively mandated power to make a trade-off between human safety in exchange for hefty mitigation.

This is perhaps the most significant issue in this case and the answer must be that this project as presently proposed, based on existing conditions and factors, **can not be approved, and its EIR can not be certified.**

The Sixth Fact is even more mysterious. It's called **the delay factor** in this case and it is incredible and should play a central role in how the case proceeds from here.

This project was started April 14, 2000, and now here we are still undergoing a CEQA review process at a lower level.

That's more than nine years later, more than 109 months, more than 490.5 weeks, and the Administrative Record will show that it was not the public that made these delays happen.

And there will be even more delays because no matter what happens at this hearing, final approval of a project and certification of its EIR can only be given by the Board. We find it extremely irregular that the *FSSI, Inc.* appealed the original Planning Commission approval, and that resulted in the Board Decision that the project required a full EIR. Then when it came time for the showdown on the certification of the FEIR, the Board sends it back to you. If necessary, the *FSSI, Inc.* will appeal your action of approval, though the whole process is highly irregular.

For over two years we heard absolutely nothing about this project, then in late 2008 this sudden flurry of EDC activity culminating in the scheduling of the BOS Hearing on November 4, 2008

Then the County Attorney and the Board of Supervisors throws the whole thing into reverse by sending it back to you.

Meanwhile, our poor clients are forced to retain counsel and experts, and to have them carefully and thoroughly prepare for each appearance they're forced to make, just to participate in the proceedings.

Or just to keep El Dorado County from allowing traffic safety standards to be lowered for some questionable reason. Could it be to use a time of unprecedented growth to shove thorough multitudes of changes to the General Plan, because that is happening right now.

And let's get in one more **unprecedented** in and that is the most serious -- **unwise risks to humans** who are being exposed to significantly greater danger in an area where better sites are readily available for the proposed use, but that solid logic seems to escape the County.

In conclusion, **Our Fact Nr. 7** is really a number of facts rolled into one brief final word. To put that project on that property as it is now would be what is what the courts call, **quote**,

... **an abuse of discretion, unquote.**

But as lay persons in this area, myself, members of *FSSI*, and other members of the public - all are of the opinion that it's not just merely a matter of unreasonableness •••

It's a matter of some kind of **mental illness!!!**

It's nothing short of insanity to increase the risk of serious harm and even death of motorists and pedestrians.

Including those most vulnerable in the community

••• **Such as children and senior citizens** •••

Just to raise money for infrastructure improvements???

With that, we close our discourse today and ask if you have any questions I can answer, in my limited capacity here today?

I have a copy of my comments to be taken into the Administrative Record, and I hand them in now. There is an extra first page to be date stamped and returned to me.

Thank you for your courtesy in hearing our Statement.



Dr. Dale Smith



PC 5/14/09
#18

Alfa Omega Associates

Management Consulting • Public Relations • Publicity
Specializing in Environmental Organizational Management

3410 Sunshine Way • Auburn, CA 95602-9284

Tel/Fax: 530-888-1523 • Cell: 530-308-2689

E-mail: drdalesmith@aoaconsult.net

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

May 12, 2009

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

Dear Ms. MacLeod,

Re: DR00-11/76 Gas Station/Circle K Mini Mart Planning Commission Hearing set for May 14, 2009 and the EDC 147 page Staff Report - Recirculation Request.

Many hours of study were necessary for me and my colleagues to dig out all of the important and conflicting issues in your staff report¹ initially circulated to the general public on or about 29 April 2009 regarding the Planning Commission hearing presently scheduled for 15 days later, 14 May 2009. As petitioners we respectfully demand notice & recirculation to those members of the general public that have been or are being deprived of their constitutionally based right to adequately review and comment on the new, significant and important factual findings or legal opinions provided by (I) the letter from Caltrans;² and (II) the "Measure Y Revisions" material included as "Attachment 5" of the staff report.

The public has not had an adequate opportunity to investigate and respond to the information contained in this newly circulated material. How we know this is that I and others have spent many hours pouring through this material, and the public simply does not have that kind of time, but they are still very concerned about this project.

For example, in its 5 January 2009 letter Caltrans now claims to have conducted a (presumably) thorough "review and comment" of the CEQA documentation, based on which certain factual findings and certain legal opinions or interpretations are made or drawn. Petitioners, and particularly members of the general public who did not previously participate in the proceedings,³ have not had a full and fair chance to investigate and test the validity of Caltrans' newly presented

¹ El Dorado County Development Services Staff Report for (Planning Commission) Design Review Agenda of 14 May 2009.

² The California (*cf.* County/local) Department of Transportation. The two-page letter is dated 5 January 2009.

³ As distinguished from FSSI members, for example, who have had a chance to participate previously.

findings and conclusions. And the same thing is true for the material on the Measure Y Revisions entered into the project's administrative record for the first time as part of the staff report for the 14 May 2009 Planning Commission hearing. The only thing that will adequately remedy this situation is recirculation with an adequate period for further review and investigation before any final decisions are made.

I will go through some of these items, and coupled with my other 11 page general letter we have tried to make a reasonable representation as to what this case is all about. Again, I want to stress that El Dorado County Planning Department was not prompt in getting out this Staff Report and as we noted on page one, there is new material and that calls for recirculation.

PRIVATE ATTORNEY GENERAL NOTICE

In these administrative proceedings, and in any writ of mandate litigation that may follow, petitioners have acted and intend to continue acting as a "private attorney general" representing all segments of the general public.⁴ Upon prevailing in these administrative proceedings, or in future writ of mandate litigation setting aside certification of the EIR and revoking approval of the public, petitioners will seek recovery of costs as well as attorney fees at their market rate, as allowed by section 1021.5 of the Code of Civil Procedure.⁵

NON-WAIVER CLAUSE

By participating further in the pending proceedings petitioners do not, in any manner whatever, waive their CEQA right to have this segment of the general public fully and meaningfully participate in the CEQA review and approval of the project that is the subject of the present proceedings.

Petitioners are acting and will seek recovery of fees and costs as a "private attorney general"⁶ in representing this segment of the general public, and by participating further in the pending proceedings petitioner do not, in any manner whatever, intend to waive their CEQA right to have all members of the general public fully and meaningfully participate in the CEQA review and approval of the project that is the subject of the present proceedings.

⁴ See section 1021.5 of the Code of Civil Procedure. Petitioners intend to actively pursue their right to attorney fees and costs upon prevailing in the present administrative as well as potential judicial proceedings.

⁵ As previously warned, petitioners will seek such a recovery even if the project applicant in the present case withdraws its application.

⁶ Section 1021.5 of the Code of Civil Procedure. Petitioners have pleaded and seek to actively pursue their right to attorney fees and costs upon prevailing in the present administrative as well as potential judicial proceedings.

INADEQUACY OF RESPONSES TO DEIR COMMENTS

It bears repeating that the County's responses to DEIR comments -- including comments submitted after the DEIR was initially circulated for public review -- has been and remains completely inadequate. I have covered that in more detail on page 9 of my other letter. Please make sure you consider those comments also. By leaving out that all important October 31, 2008 Dan Smith letter from your Staff Report M - PUBLIC COMMENTS you have deprived the Planning Commissioners of vital information on this project. As I requested in the other letter please get this Dan Smith letter to them on the 13th.

INADEQUATE ANALYSIS OF MITIGATION MEASURES

Among other major if not fatal defects, the County failed to investigate potentially feasible mitigation measures that include specific proposals submitted by petitioners and their expert(s). For example, the County was informed of an existing nearby food market with gasoline dispensing facilities that could achieve all the goals and functions of a Circle K, but, from an environmental protection standpoint, is a far preferable alternative because it eliminates the problem of driveways that are impermissibly unsafe in violation of existing safety standards that may not be lawfully ignored or modified.

Given the correct amount of time for comments on your Staff Report, we would have been able to point out many other serious errors and problems with these El Dorado County documents. We do not like to cut the corners but provide very adequate coverage on all the issues.

LACK OF GOOD FAITH DISCLOSURE & ANALYSIS

We have repeatedly raised issues and defects clearly reflecting the applicant's and the County's failure to conduct these CEQA proceedings in the reasonable and good faith manner mandated by the statutory scheme. For example, the comprehensive and detailed analysis provided by our traffic expert regarding all aspects of the present situation has been virtually ignored, without even an effort to controvert the factual findings and legal assertions provided by our highly qualified expert.

Once again, we ask why this most important document was left out of EXHIBIT M? It was not so very lengthy, but Dan T. Smith did an excellent job of answering the Comments of PMC for both the DEIR and FEIR. Do you not understand that by withholding that material you are not holding these proceedings in a reasonable and good faith approach as required by CEQA?

This is a situation where the *FSSI, Inc.*, does proper due diligence in these matters and provides very comprehensive reports, only to have them ignored by the County, or worse yet, left out of the documents given to the public. This is disheartening to citizens who make the effort to belong to groups such as ours, to put their time and money into these public causes, and it seems only reasonable that El Dorado County would meet that standard by providing timely notice and release of documents and assure that all the key documents, the important evidence, and materials that will inform the decisions makers and the general public correctly and adequately.

NOTICE RE CONTINUING ACTUAL PREJUDICE

Please also take notice that these CEQA review proceedings continue to cause petitioners actual prejudice, including the inability to fully and properly participate in said proceedings. For example, petitioners continue to have problems in retaining or enlisting new FSSI members or new donors due to the utterly confusing, redundant and unending proceedings being followed.

It was our intention that we would have a summary of other pertinent issues and points raised by petitioners in this case. This was because of the shortness of time of the issuance of the Staff Report impossible. However, we will work on that and as per the law, insert this material into the Administrative Record whenever possible.

When you find a moment, would you please prepare and send to me copies of the legal notification and all the time factors for the release of the Staff Report, and notification of the Planning Commission hearing.

Also, I would like to ask you to review my previous correspondence in which I have asked for additional documents, but did not receive any response back from you.

I must use two short paragraphs from my other letter because they are so pertinent in regard to the title for this section above. This is what I would have told the Board of Supervisors had that hearing of 11-4-2008 gone ahead as it should have.

“There is only one other TOPIC I will bring forward as we want final action taken on this project as soon as possible. If you did not gather that, from my lone appearance before you today, please understand it now.”

“The Friends of Shingle Springs Interchange, Inc., want to make this move along as quickly as possible. After all, unless the proponent is able to buy, beg, steal or manufacture a land stretcher to make that plot big enough so it can have proper distances for the driveways, they are in a very difficult position. The FSSI, Inc. has never held up this project in an irregular manner.”

How many times must El Dorado County beat a dead horse in the hope it might come alive?

Sincerely yours,

D

Dale Smith, Alfa Omega Associates for
The Friends of Shingle Springs Interchange, Inc.

AOA Letter about Conflicting Issues in Staff Report for Design Review - DR-0011
76 Gas Station/Circle K Mini Mart for 5-14-09 Planning Commission Hearing -- 5 of 5

PC 5/14/09
#8



SMITH ENGINEERING & MANAGEMENT

May 11, 2009

Ms. Lillian MacLeod, Senior Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Subject: **SCH No. 2002042112**

Dear Ms. MacLeod:

I am a civil and traffic engineer engaged by the Friends Of Shingle Springs for purposes of providing them with professional assistance in their review the 76 Gas Station and Circle K Mini-Mart Draft Environmental Impact Report SCH No. 2002042112 (hereinafter "the DEIR"). My qualifications to comment in this matter include registration as a Civil and Traffic Engineer in the State of California and 40 years professional consulting practice in these fields. My resume is attached as Exhibit A hereto. I have previously formally commented on several occasions in this matter.

The findings of fact regarding traffic in the current staff report are incomplete, defective and incorrect. This is true because the County's analysis fails to address the fact that the project's proposed driveway to Mother Lode is in violation of mandatory California Department of Transportation (Caltrans) standards for separation of driveways from freeway ramp terminus intersections. This violation of mandatory standards has been known to the County through our previous submittals in this matter and as the result of a letter to this effect dated January 5, 2009 from Alyssa Begley, Chief, Office of Transportation Planning-South, California Department of Transportation, District 3 (copy attached as Exhibit B).

The site plan for the project attached to the County's staff report as Exhibit K shows that the project's proposed driveway to Mother Lode would be located within 45 feet of the curb return of the intersection of Mother Lode, South Shingle and the U.S. 50 eastbound off-ramp. As noted in the cited Caltrans letter and in our previous communications, the mandatory minimum separation of a driveway and the curb return of a freeway ramp terminus intersection is 50 feet. Hence the

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09-1018.M.37

Ms. Lillian MacLeod, Senior Planner
City of El Dorado
May 11, 2009
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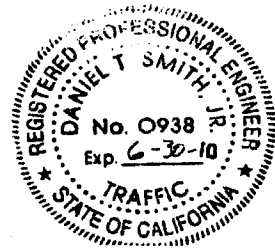
proposed project is in violation of a mandatory minimum standard of Caltrans and the *California Highway Design Manual*.

The proposed Mother Lode driveway is also in violation of County standards for driveway separation from the subject intersection. Although the County can waive its own standards for driveway separation (which in this case it is doing, though in our opinion, unreasonably), the County cannot waive the mandatory standards of Caltrans and the *California Highway Design Manual*.

As a consequence, the action and the supporting environmental documentation for the action the County proposes in this matter is defective. The County cannot reasonably approve the project as proposed and should instead direct the applicant to propose a use of the property that can be from the driveway on South Shingle that would not be in violation of mandatory design standards.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

Ms. Lillian MacLeod, Senior Planner
City of El Dorado
May 11, 2009
Page 3

Attachment A

DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.). Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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09-1018.M.39

Ms. Lillian MacLeod, Senior Planner
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May 11, 2009
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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

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09-1018.M.40

Ms. Lillian MacLeod, Senior Planner
City of El Dorado
May 11, 2009
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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ASSEMBLY BILL 1016/1017/1018 (09-08)

DEPARTMENT OF TRANSPORTATION

DISTRICT V Sacramento Area Office
VENTURE OAKS, MS 15
P. O. BOX 942878
SACRAMENTO, CA 94274-0081
PHONE (916) 227-6825
FAX (916) 224-8646
TTY (916) 221-4911



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January 5, 2009

02FD0013
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ConocoPhillips Circle K Mini Mart and 76 Gas Station
Design Review of Final Environmental Impact Report
SCH No. 2002042112

Ms. Lillian MacLeod
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667

Dear Ms. MacLeod,

Thank you for the opportunity to review and comment on the Design Review of the Final Environmental Impact Report for the proposed ConocoPhillips Circle K Mini Mart and 76 Gas Station. This proposed 2,976 square foot project includes a mini mart, gas station with 6 fuel stations, for a total of 12 fueling positions under a 4,000 square foot canopy on 0.64 acres. The project is located on the south side of the US Highway 50 (US 50)/Ponderosa interchange at the southeast corner of the Mother Lode Drive and South Shingle Road intersection in the Shingle Springs area. Our comments are:

- Mandatory standards require that Caltrans access control to the proposed project located opposite the eastbound off-ramp shall extend at least 50 feet beyond the end of the curb return, ramp radius or taper. A right in-right out only access at the very extreme east and south ends of the project at the advisory standard of 100 feet beyond the ramp intersection is acceptable. Ideally, however, access points should be installed as far as possible from the ramp intersection, at a minimum of 200 feet from the ramp. To ensure these recommendations are considered and implemented, please provide any future plans for review.
- The project should be assessed appropriate fees per the El Dorado County 2004 General Plan Traffic Impact Mitigation fee program. This program is collecting funds for improvements to US 50 in El Dorado County, including

"Caltrans is proud to help across California"

Attachment B

TRAFFIC • TRANSPORTATION • MANAGEMENT

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

09-1018.M.41

Ms. Lillian MacLeod, Senior Planner
City of El Dorado
May 11, 2009
Page 6

Attachment B

Ctd.

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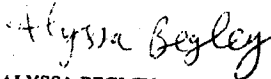
Ms. Lillian MacLeod
January 5, 2009
Page 2

future improvements to the US 50/Ponderosa interchange, and the improvements under construction at the US 50/Ponderosa interchange.

- An Encroachment Permit will be required for any work conducted in the State's right of way such as sign placement, traffic control, light installation, culvert maintenance, or drainage pattern changes. A cost estimate for the work within the State's right of way will be reviewed to determine whether it triggers the need for a "project funded by others" designation. Maintenance of landscaping or sidewalks built within the State's right of way becomes the responsibility of the local jurisdiction. To secure an application, please contact Encroachment Permits Central Office at (530) 741-4403.

Please provide our office with copies of any further actions regarding this development. If you have any questions, please call La Nae Van Valen at (916) 274-0637.

Sincerely,



ALYSSA BEGLEY, Chief
Office of Transportation Planning - South

cc: State Clearinghouse

Exhibit (1) - FSSI, Inc. Letter DR00-11 Comments - 5-14-09 #8

PC 5/14/09

SMITH ENGINEERING & MANAGEMENT



October 31, 2008

In file, dated 11/4/08

Ms. Lillian MacLeod, Senior Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Subject: **SCH No. 2002042112**

Dear Ms. MacLeod:

I am a registered civil and traffic engineer engaged by the Friends Of Shingle Springs for purposes of providing them with professional assistance in their review the 76 Gas Station and Circle K Mini-Mart Final Environmental Impact Report SCH No. 2002042112 (hereinafter "the FEIR"). I previously provided comments on the Draft Environmental Impact Report (hereinafter "the DEIR") in letters dated January 10, 2006 and January 25, 2006. My qualifications to perform this review are thoroughly documented in my letter of January 25, 2006.

The FEIR now labels my above-referenced letters of comment on the DEIR as Letters 1 and 3. In general, the FEIR responses to the substantive issues raised in those comment letters are factually incorrect and/or evasive. My detailed comments on the FEIR follow.

Comment and Response 3-2

Comment and Response 3-2 concern the fact that the County must accept a very substantial non-conformity to its' driveway separation standards contained in El Dorado County Standard 109 in order to approve the project. The response notes that the County Engineer has the discretion to permit exceptions to the standard, a point that has never been at issue. The response goes on to state that the site does not have enough frontage to possibly meet the standard, also an agreed-upon fact. Finally, the response asserts that since the driveway separation standard cannot be met on this parcel, the County is obligated to grant a relaxation of the standard in order to permit access to the site (also citing Response 1-2 that says the same thing).

This response is fundamentally wrong on two counts.

- It implies the County must grant waivers to the driveway separation standard to allow access from *both* the South Shingle frontage and the Mother Lode frontages. In fact, the County's obligation to allow some access to the parcel would be met by permitting access to the parcel from one frontage – whichever one is considered least detrimental to traffic operations and safety. Evidence presented in our prior comments and revisited subsequently herein indicate that the less detrimental access would be that from South Shingle, not Mother Lode.
- The response implies the County must grant waivers to the driveway separation standard regardless of what the traffic characteristics of the proposed land use are. This interpretation of waiver to a traffic safety related standard ignores the County's obligation to act reasonably to protect public safety in granting such a waiver. While it might be reasonable to grant a waiver to permit a low traffic intensity use on this site, a combination of gas station and convenience market is an extremely high traffic intensity use, probably the maximum traffic intensity use that could possibly fit on the site. In fact, the proposed use is the traffic equivalent of having a 15 to 25 story office building (depending on whether peak hour or daily traffic is considered) with a footprint the same size as the combination of fueling canopy and convenience market. There is no evidence the County has ever considered what traffic intensity of use on the site might be the maximum reasonable for a waiver of the driveway separation standards to be granted.

Comment and Response 3-4

Our comment now labeled 3-4 in the FEIR noted that the proposed project driveway to Mother Lode is also in violation of Caltrans standards for driveway location and that this violation would need to be addressed in the reconstruction of the U.S. 50 - Ponderosa Interchange that the County now contemplates and that the project itself counts on as a long range traffic mitigation. The FEIR response states that the subject development project would be constructed before the interchange improvement and that if Caltrans wants the interchange area to conform to design standards, Caltrans will have to acquire the access rights needed to do so.

This response is incorrect. The subject interchange improvement project is an El Dorado County sponsored initiative. Caltrans involvement is solely one of oversight and design approval. If Caltrans does not approve a design exception to its standards in the matter of the project's proposed Mother Lode driveway, *it is El Dorado County that will have to pay to reacquire the access rights*. Hence, if it waives standards to permit two driveways to the project site when its obligation to provide access to the site could be met by allowing only one non-conforming driveway, if it fails to consider the extreme traffic intensity of the proposed use and

linking the waiver of traffic safety-based driveway standards to construction of a non-traffic-intense use, if it fails to account for the fact that in the next year the County plans to initiate the formal Project Study Report and Environmental Analysis for the freeway interchange improvement project wherein it will have to recon with the non-conformity of this project's proposed Mother Lode driveway to Caltrans standards, the County will not be acting reasonably and responsibly. Instead, it will be shooting itself in the foot.

Comment and Response 3-5

This comment pointed out that the DEIR was inadequate as in information document because it failed to disclose the fact of the substantive issue discussed in 3-4 above, that the project's proposed Mother Lode driveway does not conform to Caltrans standards and the fact that would be an issue in the design and approval of the County's proposed interchange improvement. The FEIR refers to Responses 1-2, 3-2, and 3-4, implying that they correct the informational deficiency of the DEIR. This response by reference is not correct or responsive to the issue in Comment 3-5 for two reasons.

- As noted in previous sections herein, Responses 1-2, 3-2 and 3-4 are not adequate and factually correct.
- The undisclosed fact that the County's proposed action with respect to the project's Mother Lode driveway compromised the conformity, safety and increased costs of the proposed improvements to the U.S. 50 - Ponderosa Interchange is a substantial defect in the DEIR and a substantial concern for the public. When the issue is responded-to only in the context of a FEIR, the brief time period available for public review and comment on an FEIR deprives the public of adequate time to consider, understand and comment on the issues involved. The response on this matter should have been made through a recirculated DEIR that would have allowed the public a full 45 day review period.

Comment and Response 3-6

Our comment now labeled 3-6 in the FEIR response documents that driveway separation standards such as the previously cited El Dorado and Caltrans driveway separation standards are based on scientific traffic research studies. The FEIR response does not dispute this point.

The FEIR response summarizes the traffic research findings in a manner that implies that in causing slower traffic speeds on the road segment containing the project's Mother Lode driveway, the project would improve traffic safety. This is the exact opposite of the situation. By slowing traffic near a closely placed driveway, the presence of that driveway increases the speed differential between slowed vehicles and

vehicles emerging from the off-ramp at near-freeway speeds when the off-ramp has the green signal indication. This increases the potential for high-speed-differential collisions that result in injuries and serious property damage. The FEIR response does ultimately admit that the project's Mother Lode driveway would increase the potential for speed differential collisions. In response, it proposes a mitigation measure (MM 4.12.6) that requires provision of a deceleration/right turn lane on the eastbound approach of Mother Lode. Unfortunately, Exhibit E to the County's staff report for the scheduled November 4 hearing on the project reveals that the project's driveway to/from Mother Lode is less than 50 feet from the curb return of the intersection of Mother Lode with South Shingle and the freeway ramps. Therefore, the proposed deceleration lane will be less than 50 feet in length. Caltrans Highway Design Manual Topic 206.2(2) indicates that normal transition length for right turn deceleration lanes is 120 feet but that for low design speeds, shorter lengths are permissible. However, the implication of is that with the proposed deceleration/right turn lane having to be less than 50 feet long, many cars will not have fully transitioned into the deceleration lane before they reach the driveway. Hence, the proposed mitigation measure will not be effective in preventing the project driveway's impact of causing high-speed-differential collisions.

Comment and Response 3-7

This comment indicated that the cited traffic safety research provided compelling evidence that there is a fundamental traffic safety basis for the El Dorado County and Caltrans driveway separation standards and that there would likely be serious adverse safety consequences for the public if the standards were waived to permit the proposed project. The FEIR response is that enforcement or waiver of standards is some kind of abstract independent action of the County that is not a subject for the process of the environmental review of the project. This response is pure nonsense. The project could not take place without such a waiver. The waiver of driveway standards by the County is an action that is integral with the review and approval of the project. The response is incorrect and inadequate.

Comment and Response 3-8

This comment noted that the queue length projections contained in the capacity calculations sheets that were included in the DEIR indicate that excessive queue lengths on some movements of road sections in the project area. The implication is that such queues could result in operational/safety problems on road segments and at intersections used by project traffic and lower actual level-of-service conditions at the intersections than indicated in the DEIR's theoretical calculations. The DEIR response states that "*those turn lanes that would serve the project were determined to have adequate storage capacity*".

Ms. Lillian MacLeod
November 3, 2008
Page 5

This response, in focusing solely on the theoretical condition of lanes directly used by project traffic, evades the critical issue. If queue storage on lanes in the project area that do not directly serve the project obstruct access and egress to lanes that do serve the project, the lanes that do serve the project would be impaired and the addition of project traffic would compound the problem. This is the significant consideration that the FEIR response and the original analysis in the DEIR fail to address.

Comment and Response 3-9

This comment concerned a specific instance where queued traffic on lanes used by other traffic could obstruct lanes that would be used by project traffic. Contrary to the statement in FEIR Response 3-9, our comment did not recommend against installing the signal at the intersection of South Shingle and Durock that has subsequently been installed. The implication of the comment was and is that the consequences from queue backups as projected in the DEIR from a South Shingle – Durock signal on the operation of the South Shingle – Mother Lode – eastbound freeway ramps intersection made it appear that such a signal could create worse problems than those it solved. If the queues projected in the DEIR have not yet materialized, that is fortuitous. However, it remains undeniable that if the queues projected in the DEIR for this location do materialize, there will be operational problems.

Comment and Response 3-10

This comment concerned potential operational difficulties associated with queuing that would potentially affect the project's direct access from southbound South Shingle until such time as the Durock Road intersection is relocated southward as part of the interchange improvement project.

The response notes the existence of the project's other proposed access from Mother Lode, a point that is irrelevant since that Mother Lode access was considered in the DEIR traffic projections for the access from South Shingle that led to the comment. The response's observation that the problem would only exist until the interchange improvements are completed is a point that is already acknowledged.

Comment and Response 3-11

Response 3-11 misconstrues the original comment on the DEIR. The comment began with a conditional statement ("If queues in the left turn lane from southbound South Shingle to the project's access drive were projected to exceed storage capacity..."). We note that the queue analysis computation sheets appended to the DEIR failed to include any headings that would allow identification of which sheets corresponded to particular analysis scenarios, a condition that, in Comment 1-1 on January 10, 2006, we requested be rectified in an expedited manner before the period for comment on the

Ms. Lillian MacLeod
November 3, 2008
Page 6

DEIR had expired on January 27, 2006. In fact, the County never complied with this request until issuance of the FEIR in September, 2008. Hence, the conditional nature of the comment.

The County's failure to provide appropriately identified traffic calculation sheets during the period of DEIR review should be cause for circulating the current document in draft status rather than as an FEIR.

Comment and Response 3-12

This comment concerned the potential for traffic queues on northbound South Shingle blocking exit from the project's South Shingle driveway, especially for those needing to make a left turn at the intersection with Mother Lode in order to get back to the freeway eastbound.

The response does not deny that this blocking problem would exist. Instead, it claims that motorists would react to such conditions by exiting onto Mother Lode and make a U-turn at Sunset Lane in order to return to the freeway. There are two significant problems with the response. First, traffic that entered from the Mother Lode access and is moving clockwise through the service bays is unlikely to attempt to do a reverse maneuver to exit back to Mother Lode, especially given the constrained maneuvering room around the fueling positions of the layout proposed. Second, the maneuver suggested depends on pre-knowledge of traffic conditions and the layout of the local street network. While locally-based customers would be aware of this, the freeway-oriented location of the project will result in many customers being unfamiliar with traffic conditions and the layout of the local street network. Hence, the response does not adequately address the problem.

Comment and Response 3-13

This comment addressed the same lack of appropriate identification on traffic computation sheets touched on above in the discussion of Response 3-10. Response 3-12 observes that appropriately identified traffic computation sheets are now provided in the FEIR. However, this response does not address the issue that this critical data with appropriate identification should have been circulated with the report in Draft status. Circulation as part of an FEIR deprives the public of the full 45 day review period it deserves to comment on this important information.

Comment and Response 3-14

This comment cited instances where the traffic calculation sheets in the DEIR provide clear evidence where excessive queues would obstruct operations at upstream intersections.

The response acknowledges the future existence of major blockages by downstream queues, but claims the DEIR traffic analysis demonstrates that permissible LOS E conditions would not be exceeded. However, this response ignores a fundamental point: frequent queue blockages of upstream intersections can cause operational and safety problems that are significant, even if intersection LOS E conditions (conditions that tolerate everything up to complete functional breakdown of the intersection) are not exceeded.

Comments and Responses 3-15 through 3-23

Our comments now labeled Comments 3-15 through 3-23 in the FEIR response concerned the ability of various vehicles and vehicle combinations that would frequent the project site to maneuver to and from various positions on the project site. The essential point in the comments is that the tight layout of the project site makes it difficult or impossible for drivers to maneuver to or from many positions on the project site, and because maneuvering impairments are so prevalent, traffic will stack up into the project driveways where it would exacerbate the operational and safety problems that are already a concern because the driveways are at seriously substandard distances from the nearest intersection.

The response, citing use of an updated site plan and a different source of turning templates (ones that we acknowledge are also authoritative) than those relied on in the comments, claims that the site is fully navigable by the most critical vehicle combination to visit the site. In attempting to demonstrate its conclusion, the FEIR response cites FEIR exhibits **Figures 2.0-1 2.0-2 and 2.0-3**. However, these critical pieces of evidence are nowhere to be seen in the FEIR as circulated. Because of the missing Figures 2.0-1 2.0-2 and 2.0-3, the FEIR is deficient as an information document and cannot be certified.

The absence of missing Figures 2.0-1, 2.0-2 and 2.0-3 makes it impossible to fully evaluate the response. However, we note that in many instances the response a) admits the constraint we identify but claim the constraint is commonplace at some gas stations, b) admits the constraint but claims it can be overcome by undesirable multi-part maneuvers, or c) admits the constraints exist but claims that drivers will overcome it by using an easier to access or egress fueling position. In one instance, the response indicates that the constraint can be overcome by the obviously hazardous maneuver of backing into the driveway. In another instance, the response indicates that the constraint can be overcome by making a tortuous U-turn across the south portion of the site to exit via the driveway of entry – a maneuver that would freeze most maneuvers on or entering the southern portion of the site while it was being completed. While the response in some way speaks to every constraint identified in the comments, it does not address the cumulative condition that emerges from these constraints. That

Ms. Lillian MacLeod
November 3, 2008
Page 8

condition is one of so many maneuvering constraints existing that at moments of peak usage, there will be frequent times when on-site traffic queues into or blocks the driveways. As noted above, this condition exacerbates the operational and safety deficiencies that exist because the driveways would be a far substandard distance from the South Shingle-Mother Lode – eastbound freeway ramps intersection.

The sequences of responses on this topic go on to state at more than one point that the ability of drivers to maneuver various vehicle types to various fueling positions on-site is not a matter subject to CEQA review. However, as we have noted, the pattern of maneuvering difficulties on this site are so extensive as to have likely effect traffic operations and safety on the public streets at the interfaces with the project's driveways. Where this potential effect exists, the consequences of on-site layout certainly are an issue subject to CEQA review.

Comment and Response 3-24

This comment noted that the lack of even approximately-to-scale conceptual drawings of the more complex mitigations deprives the public of the ability to reasonably understand and comment on the mitigation measures being proposed, rendering the DEIR inadequate as an information document.

The FEIR replies by admitting that it has not provided even conceptual illustrations of proposed roadway mitigations but claims its narrative descriptions are sufficient. The FEIR also provides no illustration of its new traffic mitigation proposal – a deceleration lane leading to the project's Mother Lode driveway. This reply is inadequate and unresponsive and the FEIR remains inadequate as an information document.

Comment and Response 3-25

This response reasonably clarifies the nature of the internal connection between the project site and the Family Chevrolet site as a mutual convenience service access not intended for public use. Thank you.

Comment and Response 3-26

This comment expressed concern that the assumed trip generation reduction for "internal capture" is inappropriate since the trip generation rate for the land use category of the combined service station – convenience market already accounts for the internal capture that takes place between these combined uses. The FEIR response, which cites trip reduction statistics allowable by other sources, does not respond to the issue involved in the comment – that the trip generation rate for the combined usage category relied upon in the DEIR traffic analysis has already taken into account 'internal capture' so that the 5 percent internal capture discount of project trip

Ms. Lillian MacLeod
November 3, 2008
Page 9

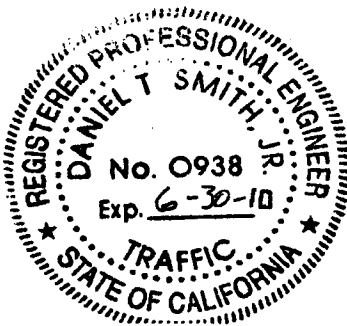

generation taken in the analysis is a double discount. Because the FEIR now shows that even with mitigation, some of the intersections near the project would remain relatively high in the LOS E range (that is, close to unacceptable conditions), the inappropriate discount of project trips could lead to an erroneous conclusion as to whether the project's traffic impacts are adequately mitigated or not.

Conclusion

This concludes our current comments on the FEIR. Based on the information described above, we do not believe the FEIR is adequate for certification.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith, Jr., P.E.
President



Alfa Omega Associates

Management Consulting • Public Relations • Publicity
Specializing in Environmental Organizational Management

3410 Sunshine Way • Auburn, CA 95602-9284

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E-mail: drdalesmith@aoaconsult.net

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

May 12, 2009

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

By Email and USPS Received Mail
Please immediately look at → Page 9

Dear Ms. MacLeod,

Re: DR00-11/76 Gas Station/Circle K Mini Mart Planning Commission Hearing set for May 14, 2009 and the EDC 147 page Staff Report - Our Summary of Issues of Conflict in between the EDC Staff Report and AOA/FSSI, Inc. to this point. Shortness of time prohibited a full analysis if these conflicts, so additional comments may be filed in the weeks to come.

Thank you for making the Staff Report available for pickup the other day. However once again, El Dorado County (County) did not submit this 149 page Staff Report in a timely manner.

While the Staff Plan includes some new and rather novel approaches to shoehorn that project into that property, none of those "paper" approaches really resolves the basic problem which has been stated many times by the FSSI, Inc., and Alfa Omega Associates, eg:

"Traffic safety research reveals several salient facts about traffic safety at driveways along major roads that affect the reasonableness of the proposed approval of the subject project's driveways and provide the basis for the County's and Caltrans standards that would require denial of the proposed driveways."

This is one of the major facts in the documents produced by Daniel T. Smith, Smith Engineering, 5311 Lowery Road, Union City, CA 94587 and filed in the Administrative Record - SCH No. 2002042112 starting in November, 2002 and many times since that initial entrance of Smith Engineering into this process. All of those reports are an integral part of the Administrative Record, regardless of how they might have been reviewed by El Dorado County or Pacific Municipal Consultants (PMC), prepares of the DEIR/FEIR

None of the actions described in Attachments 1 through 5 of your Staff Report have altered the basic facts about that property. Dan Smith sums it up in this brief paragraph:

"This response is fundamentally wrong on two counts. The response implies the County must grant waivers to the driveway separation standard regardless of what the traffic characteristics of the proposed land use are. This interpretation of waiver to a traffic safety related standard ignores the County's obligation to act reasonably to protect public safety in granting such a waiver."

09-1018.M.52

AOA Summary of Issues of Conflict on Staff Report for Design Review - DR-0011
76 Gas Station/Circle K Mini Mart for 5-14-09 Planning Commission Hearing -- 2 of 11

To compound the problem, El Dorado County all during 2008 did not give any indications that it was planning to take this project forward any time soon, even though we have asked that it be finalized quickly. We were prepared to tell the Board of Supervisors exactly that -- when the surprise move in the 11-4-09 Board Hearing was made to send this back to the Planning Commission, a dubious if not illegal move that we deal with in detail later in this document.

The County has not acted in good faith by the many complex moves shown in this Staff Report, in particular in not circulating the Staff Report in a timely manner. The DR11-0011 Environmental Impact Report (EIR) must be recirculated and new public notice given because significant new information has been added to that EIR after the draft has been available for review, but prior to certification of the final EIR as was communicated to you on May 12, 2009 by Urgent Email.

However, that being said for the record, *FSSI, Inc.* wishes to move forward in a speedy manner, because after nine years, it is time to bring this to a conclusion, but that does not mean that El Dorado County can place that project where it does not belong because of the huge threat to the health, safety and general welfare of the thousands of people who go through that area every year.

Also there are a number of items that we found lacking in this Staff Report, items that are very important to this case and the discretionary decision on the part of Planning to leave these out is a serious matter. The EDC Planning Staff Report marked "EXHIBIT M - Public Comments" omitted several crucial documents submitted on various dates by Alfa Omega Associates, Friends of Shingle Springs Interchange, Inc., and Dan T. Smith.

By excluding these documents, El Dorado County Planning has deprived Planning Commission decision makers of vital information upon which to make considered judgments and that may have strong prejudicial impact in this case.

Of course this is not a new problem for us, as we have called many of these matters to the attention of El Dorado County Planning and Board of Supervisors in the past. For instance in one of the letters that is in the Staff Report, my letter of 1-15-09 I wrote on page 2:

In view of this legal citation, we ask you to make available for pick up, not only all documents referred to in the 11/24/2008 email, but all other like documents dealing with this subject. We require copies of all documents sent to the EDC Department of Transportation (TOC) and all documents on any General Plan changes that have been made as referred to in this letter.

*Dale Smith
reviewed file
12/4 - copies
made 12/5.*

None of the documents I requested at that time have ever been given to us; in fact I do not find a record of any response from the County in my files to our 1-15-09 documents request letter. If you replied to this, please give me a copy of that communication. Our letter had an interesting written exchange between you and another person named Beth with lines that intrigue me.

Would you please make available to us the copies of all the other documents referred to in this memo? These are extremely important issues & our files are not complete on these matters because they discuss some of the very critical questions having a strong bearing on the matter of the health, safety and general welfare of the citizens.

Hi Beth:

I've reviewed the documents and have a few comments:

1. Pg 3 Para 4 states the Mother Lode driveway is to be located 120 from the intersection, when in fact both driveways will be approximately 100 from the intersection. This was an issue of concern raised by the appellants and we need to make sure the analysis is based on the right measurement.
2. I'm concerned that a significant impact involving the accident history and the potential for an increase due to the project, which was raised by the appellant, was not reviewed against the project alternatives either. It seems that that should be addressed in the Errata, as well.
3. The analysis discusses rear-end accidents occurring when right turns are made into the site, however, the proposed mitigation only covers line of sight visibility for customers leaving the site. Further, the argument that an increase in driveways contributes to this type of accident scenario, but it may also cause traffic to slow down to the point of decreasing accidents, is a weak argument at best. In other words, we'll allow the existing traffic congestion/situation to be exacerbated by the project in the hopes of reducing impacts. I'm going to pass this on to DOT for their review as well. I'll let you know as soon as they respond.

Why is the above so essential to *AOA/FSSI* and other members of the public? Is it because there seems to be a connection with that content above and the material below from the 5-14-09 EDC Staff Report? When I read memos like these, I become very curious about just what is happening behind the scenes. Next are proposed actions that I now see in writing in the Staff Report and I ask the reader to compare the ideas, the judgments, beliefs and even feelings stated above with this Staff Report for the Hearing of 5.14.2009.

Staff Report - page 12: The 76 Gas Station & Circle K Mini-Mart Environmental Impact Report (EIR) (consisting of the Draft EIR (DEIR) and Final EIR (FEIR)) identified significant impacts associated with project approval. Specifically, CEQA Guidelines Section 15091 requires lead agencies to make one or more of the following written findings:

1. Changes or alterations have been required for the project that avoid or substantially lessen the significant environmental effect as identified in the final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the findings. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, social or other considerations make infeasible the mitigation measure or project alternative identified in the final EIR.

As a result of the environmental analysis for the project, the County determined that impacts associated with aesthetics, air quality, biological resources, cultural and historic resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, population, housing and socioeconomics, public services and utilities, and traffic and circulation were projected to have potentially significant impacts based on the Initial Study prepared for the project. During the Notice of Preparation (NOP) and initial review process conducted for the EIR, it was determined that agricultural resources, mineral resources, and

AOA Summary of Issues of Conflict on Staff Report for Design Review - DR-0011
76 Gas Station/Circle K Mini Mart for 5-14-09 Planning Commission Hearing -- 4 of 11

utilities and services would not be adversely affected by the proposed project and therefore were not analyzed in the supplemental EIR (page 1 .O-6 of DEIR).

Therefore, CEQA Findings of Fact have been prepared, as required by the Board of Supervisors, to certify the EIR. During its evaluation of the proposed project, the County's review of resource issues addressed in the EIR determined that the Project would cause new potentially significant impacts, but that all impacts would be reduced to a less than significant level with mitigation. Each of these impacts, including those regarding growth inducement and cumulative impacts, are described in Attachment 3, which has been revised based on amendments to General Plan Policies TC-Xd and TC-Xf in conformance with Measure Y, subsequently approved by the voters of El Dorado County.

Regardless of the Amendments to the General Plan and the Policies TC-X and TC Xf in conformance with Measure Y the physical measurements of that project have not changed, nor can they change, and that project is as dangerous now as it has been since 4-14-2000 when this project first started, even with those highly questionable "Findings of Fact" in the new Staff Report

As we noted in an earlier email to the EDC Planning Department, the DR11-0011 Environmental Impact Report (EIR) must be recirculated and new public notice given because significant new information has been added to that EIR after the draft has was available for review, but prior to certification of the final EIR. Counsel agrees with this position taken by *AOA* on the behalf of *FSSI, Inc.* which has instructed me to write this letter calling your attention to the laws involved.

The evidence we have already put into the Administrative Record is overwhelming supporting our position that the El Dorado Board of Supervisors does not have the legal power or authority to approve the waiver of safety standards and approve the project as proposed under the present facts, conditions and circumstances.

Indeed, we have been advised and believe that under these very circumstances, a public agency such as El Dorado County Board of Supervisors lacks the **police power to take such action**. We believe this constitutes another constitutional violation that could well result in the courts setting aside the action you propose to take on this project.

Similarly, as stated and discussed in a fairly recent court of appeal case called *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, the pertinent contents of which are hereby incorporated by reference as though fully set forth here, state law preempts the field of traffic control (*see* Veh. Code §§ 21, 21101), and requires that the local ordinances and rules adopted by local agencies "shall be consistent with the responsibility of local government to provide for the health and safety of its citizens." (Veh. Code § 21101, subd. (f).) As explained in the *City of Hawaiian Gardens* case, "the proposed closure was inconsistent with [Civ. Code] section 21101(f) because closure of the roadway is likely to have a significant negative impact on residents ..." (61 Cal.App.4th 1100, 1103.)

Likewise, the waiver of safety-based commercial driveway standards for the present project (without which the project may not be constructed and operated as presently planned and designed) is inconsistent with and violates state law as we have stated many times. Of course, this line of legal authority is related to the points we previously made about potential violations of law and

statutory/constitutional violations, in particular with the "... responsibility of local government to provide for the health and safety of its citizens" as stated above.

That brings us to the very startling and highly questionable 11.4.2008 action by the Board of Supervisors to send this project back to the Planning Department. Here are the Minutes of this Action as taken from the EDC Website on 11.06.08:

2:00 P.M. - TIME ALLOCATION

22. 08-1612 Hearing to reconsider Design Review DR00-0011, following an appeal, on property consisting of 0.64 acres (APN 090-430-42) for a proposed 2,976 square foot Circle K mini-mart; and 76 gas station, with 6 fuel stations, for a total of 12 fueling positions, under a 4,000 square foot canopy, in the Shingle Springs area. Applicant: ConocoPhillips. District II (Environmental Impact Report prepared)

A motion was made by Supervisor Baumann, seconded by Supervisor Briggs, to refer this matter to the Planning Commission. Yes: 5 - Dupray, Baumann, Sweeney, Briggs and Santiago

Once again we point out the disparity between what is on the EDC website as the reason for this Hearing and what was on Page 115 of the Board of Supervisors, important information which was previously put into the administrative record and is placed in the Record once again by reference.

We also call your attention to the fact that there was much more to that Motion than is recorded on the official website version and we want to know why this, still another serious discrepancy, is put out as the "final word" on the El Dorado County website.

There was a provision that this project would be sent back to the Planning Commission for a full hearing and that it could not come back to the Board of Supervisors "unless there was another appeal filed."

It did not say by whom, nor was it clear why the BOS insisted vehemently on this condition.

I find it disingenuous at best, perhaps even a prohibited action. Because I am not an attorney, I did not protest this at the hearing time, but I found it to be extremely questionable. Just what was the motivation of El Dorado County Board of Supervisors to take this action to send back to the Commission and require an appeal?

My appearance at this hearing even though I did not speak, does not constitute a waiver or relinquishment of any type of the rights of the Friends of Shingle Springs Interchange, Inc., Alfa Omega Associates and other members of the public to raise these violations in any and all subsequent legal proceedings on a continuing basis as we are doing with this letter.

Had the 11-4-08 hearing gone on at the Board of Supervisors, it would have taken place on extremely questionable grounds, and in the course of my testimony you would have heard me lay out the exact details of just why that was true with the proviso that the Board would proceed at its own peril, should it choose to continue.

That "sending it back to the Planning Commission was very cleverly orchestrated by three different parties." (1) El Dorado Planning Services, (2) Supervisor Bauman of the Second District where this project is located and the (3) EDC Legal Counsel offices.

I also found it very strange to learn that a telephone call was made to the ConocoPhillips offices at around 11:00a.m. on the 11-4-08 that this move would be made in the hearing that afternoon. No such call was made by any EDC official to Attorney Gabrielli or myself, and both of our office and cell phone numbers are in the applicable EDC offices.

If the plan was to provide a shock to our side, it was only mildly successful. One does not worry much about such trivial maneuvers that have mostly the result of wasting more taxpayer money in a rather worthless action. Of course the bit in there about "... **another appeal filed**" is very much a solid tip off as to what that action was all about.

However, El Dorado County would be well served if it would stop trying to make a project fit onto a piece of property where it cannot be legally placed.

I am sure that this is language that ought to be familiar to all of you to whom this letter is addressed, and with that and all the other evidence and expert testimony that the FSSI, Inc., has placed in the Administrative Record, that the Board of Supervisors would take control of this and not play the shell game of sending this to the Planning Commission.

The Commission has ONLY an advisory capacity and while they will, more than likely, pass on this according to how the Staff Report is presented, they do not have any authority other than to recommend that the project be approved.

Anyone interested in this project should read carefully pages 2 to 4 of the Staff Report which is identified as **BACKGROUND**.

This project was started April 14, 2000, and now here we are more than nine years later, more than 109 months, more than 490.5 weeks and - it is very likely that only God himself knows how much this has cost and we are virtually at the same place as in April 2000.

Time and again we have complained publically about this. El Dorado County has had this project on the books for more than nine years. Do you think that this is a bit too long? For over two years we have heard absolutely nothing about this project, then in late 2008 this sudden flurry of EDC activity culminating in the scheduling of the BOS Hearing on November 4, 2008..

We found this to be totally unacceptable for many reasons. The main one being that it has been extremely difficult to get accurate, timely information from Planning Services, a fact pointed out by Dan T. Smith in the document we are now discussing.

To deal with this rush to judgment action I received what was at that time the newest, more comprehensive Dan Smith Report at my office at at 4:55pm November 3, 2008 while I was preparing my presentation, for the 2:00pm hearing the next day. This was an email with a nine page, detailed PMC comments to the DEIR & FEIR, and his responses, all very important and timely information which should have been considered by the Planning Commission. (See Pg 9)

**AOA Summary of Issues of Conflict on Staff Report for Design Review - DR-0011
76 Gas Station/Circle K Mini Mart for 5-14-09 Planning Commission Hearing -- 7 of 11**

This should have been one of the documents in the County Staff Report marked as EXHIBIT M. It is included in this letter for introduction once again into the County Administrative Record for the DR00-11/76Gas Station/Circle K Mini Mart Project.

I worked up two pages of highlight paragraphs as a cover document for the Dan T. Smith letter, specifically as a help to the BOS. I turned in the documents at the BOS Offices and have a date and time stamp of -- 2008 - NOV - 4 - PM12:22.

Those two documents were a single package and should have been inserted into the Project Administrative Record as it was handed out to each Supervisor, County Counsel, Planning Services and others.

Earlier when I asked Ms. MacLeod about the rush to get this on the agenda, she responded:

“The Board is holding a hearing on November 4 and as the applicant wishes this to be concluded, and we are mandated to streamline permit review, I placed it on the soonest hearing date possible.”

My observation of the actions of the Conoco/Phillips Attorney Larry C. Larson who jumped up to get to the podium to endorse this BOS sponsored provision to send the project back to the Planning Commission would lead me to believe that there could have been some agreement between the Proponent and the County. He was also quick to ask that the Board not take any further testimony as had been suggested by the lady County Counsel.

In view of the MacLeod statement above, we find it very strange that El Dorado County would take the delaying action of sending this project back to the Planning Commission. Had I been permitted to speak in a normal situation, not this contrived one; I would have told the Board near the end of my testimony, which as usual was fully scripted. There are two important excerpts:

“There is only one other TOPIC I will bring forward as we want final action taken on this project as soon as possible. If you did not gather that, from my lone appearance before you today, please understand it now.”

“The Friends of Shingle Springs Interchange, Inc., want to make this move along as quickly as possible. After all, unless the proponent is able to buy, beg, steal or manufacture a land stretcher to make that plot big enough so it can have proper distances for the driveways, they are in a very difficult position. The FSSI, Inc. has never held up this project in an irregular manner.”

How many times must the County beat a dead horse in the hope it might come alive? Dan Smith summed it up very well in two of the brief pieces I put in the two page summary:

Dan Smith Letter 1: The project involves a driveway to Mother Lode Drive that is less than 50 feet downstream of the intersection with South Shingle and the eastbound freeway off-ramp. Depending on how you interpret the relationship of the street nomenclature in the new General Plan to that in the County Standards, the driveway would need to be located at least 150 feet and more likely 250 feet from the intersection to conform.

Dan Smith Letter 2: "... the County plans to initiate the formal Project Study Report and Environmental Analysis for the freeway interchange improvement project wherein it will have to recon with the non-conformity of this project's proposed Mother Lode driveway to Caltrans standards, the County will not be acting reasonably and responsibly. Instead, it will be shooting itself in the foot."

The tragedy is that the County will not be shooting itself in the foot, but into the feet of the taxpayers is where these wild shots will go. As we stated earlier, we believe this amounts to another constitutional violation that will likely result in the courts setting aside the action you propose to take on this project.

Please see the Dan T. Smith statement in his letter of 10-30-08:

"However, this project, a gas station and mini-mart is as high a traffic intensity use as could be imagined for the site, a proposed use [that] is the equivalent of building a 15 to 25-story office building on the footprint of the mini-mart plus fueling canopy, depending on whether daily or peak hour traffic is considered."

I would have told the Supervisors that I wanted to make sure they have **that image** in mind when they vote on whether to approve this project and certify its final EIR. Perhaps with this new letter I can get my point across before it is too late. Please keep this in mind.

The image ... is a 15 to 25-story office tower on a project site in this particular location.

In his professional judgment, as a traffic and circulation expert Dan Smith is of the opinion that approving a waiver of safety standards and a project like this one being proposed by ConocoPhillips is **unreasonable**. Even with the fancy maneuvers projected in the current Staff Report with General Plan Amendments and Measure Y shenanigans, even those so called CEQA Findings of Fact cannot remove the deadly danger that this project will forever have.

Which is what the courts call ... **an abuse of discretion**.

But as lay persons in this area, myself, members of *FSSI*, and other members of the public are of the opinion that it's not just merely a matter of unreasonableness ...

... It's a matter of **insanity!!!**

It is insanity to increase the risk of serious harm, even death of motorists and pedestrians.

Including those most vulnerable in the community such as children and senior citizens.

Just to raise money for infrastructure improvements???

Based on what we've been told by legal counsel, with all due respect, we believe neither staff nor this Board have legal power or authority to approve the waiver of safety standards. The question is why was the action to send in back to the Planning Commission taken on 11.4.09?

Perhaps the Planning Commissioners will feel like they have been left holding the bag like in the proverbial Snipe hunt? Maybe the Snipes will come flying by and you can use those bags to snag a few. ¹ It is our guess that the Planning Commissioners will not even know that they did not receive vital information from the Planning Department. Yes this is a bit like a snipe hunt.

Please excuse the rather pictorial language, but I am trying to get the point across, for the total benefit of El Dorado County that this project does not, cannot and will not meet the test of the legal standards that are involved, and holding vital information back from decision makers is simply not good policy. **This document should go to the Commissioners before 5-14-09.**

➔ **This all important 2008 Dan Smith Letter is our single Exhibit.**

This letter should have been in County EXHIBIT M - to leave it out is a serious problem because it deals with the PMC Comments in the DEIR and FEIR's and Mr. Smith's Responses and these are very important considerations for the Planning Commissioners. I believe it is necessary to provide these, even if at the last minute. It comes to you as an MS Word Document of 9 pages.

Back on 11-04-2008 we wrote: As an additional matter, we have requested, and if the prior request was not received or acted upon, please consider this a new request under the California Public Records Act, copies of any and all communications between the project applicant and the County regarding this project since the Draft EIR was circulated.

We are still waiting, perhaps this is still another legal action that needs to be implemented so we can obtain the records. Federal and California laws require to be made available to the citizens.

If some of the material in this letter looks familiar to you, it surely ought to because I have repeated some of the items in my five page letter of January 15, 2009, in which I asked for considerably more documents which should be available in the El Dorado County Planning Department files. None of these very important documents requested in this letter have been given to me, or any specific reply to this letter given as to why the records are not available. This is written at this time, mainly for inclusion in the Administrative Record.

In summary we present 15 salient points why this project is wrong for that location :

¹ - A **snipe hunt**, a form of wild goose chase that is also known as a **fool's errand**, is a type of practical joke that involves experienced people making fun of newcomers by giving them an impossible or imaginary task. In the most popular version of the snipe hunt, especially in the American South, a newcomer is taken deep into the woods late at night and told to make a clucking noise while holding a large sack. The others, who are in on the joke, say that after they sneak away they will walk back towards the newcomer, thereby driving snipes towards the bag holder. The frightened snipes, they say will be attracted to the clucking noise and easily caught in the bag. The newcomer is then simply left in the dark forest, eventually to realize his gullibility and find his way home or back to camp.

http://en.wikipedia.org/wiki/Snipe_hunt

AOA Summary of Issues of Conflict on Staff Report for Design Review - DR-0011
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- 1) - Once again, El Dorado County (County) is making a highly questionable move, and included in that is, that once again the County did not submit this huge several hundred page Staff Report in a timely manner. This has greatly handicapped *AOA/FSSI, Inc.* in preparing our response.
- 2) - Traffic safety at driveways along major roads that affect the reasonableness of the proposed approval of the subject project's driveways and provide the basis for the County's and Caltrans standards that would require denial of the proposed driveways
- 3) - There are a number of items that we found lacking this Staff Report. Your discretionary decision to leave these out of that vital report are of grave concern to *AOA/FSSI*. This letter sent to you in advance of the 5-14-09 Planning Commission Hearing is to make record of this fact.
- 4) - The Staff Report EXHIBIT M - Public Comments -- omitted several crucial documents submitted n various dates by Alfa Omega Associates, Friends of Shingle Springs Interchange, Inc., and Dan T. Smith. By excluding these documents, El Dorado County Planning has deprived decision makers of vital information on which to make considered judgments and that may have strong prejudicial effect in this case.
- 5) - In my letter of 1-15-09 I wrote on page 2: "In view of this legal citation, we ask you to make available for pick up, not only all documents referred to in the 11/24/2008 email, but all other like documents dealing with this subject. We require copies of all documents sent to the EDC Department of Transportation (TOC) and all documents on any General Plan changes that have been made as referred to in this letter."

None of the documents I requested at that time have ever been given to us. We are working now to get documents from *CalTrans* which might help to bring a better understanding on why El Dorado County is now placing great weight on a 7 line paragraph in the 1-5-2009 Begley Letter.

- 6) - Our letter had an interesting written exchange between you and another person named Beth with lines that intrigue me. I wrote: "Would you please make available to us the copies of all the other documents referred to in this memo? Here are some lines from that document.

Hi Beth: I've reviewed the documents and have a few comments:

1. Pg 3 Para 4 states the Mother Lode driveway is to be located 120 from the intersection, when in fact both driveways will be approximately 100 from the intersection. This was an issue of concern raised by the appellants and we need to make sure the analysis is based on the right measurement.

In other words, we'll allow the existing traffic congestion/situation to be exacerbated by the project in the hopes of reducing impacts.. I'm going to pass this on to DOT for their review as well. I'll let you know as soon as they respond.

Where are the documents from El Dorado County DOT that support the new position of the Planning Department that there it is OK to violate the fundamental safety standards that has kept this project from going ahead all these years?

- 7) - The Planning Commission has been asked in this Staff Report to make findings that will permit this project to go forward because of Amendments to the General Plan and the Policies TC-09-1018.M.61

X and TC Xf in conformance with Measure Y. It is as if someone in Planning has waved a magic wand to make this project acceptable.

However, the physical measurements have not changed, nor can they change, and that project is as dangerous now with those highly questionable "Findings of Fact" in the Staff Report as it has been since 4-14-2000 when this project first started.

8) - The waiver of safety-based commercial driveway standards for the present project (without which the project may not be constructed and operated as presently planned and designed) is inconsistent with and violates state law as we have stated many times. Of course, this line of legal authority is related to the points we previously made about potential violations of law and statutory/constitutional violations, in particular with the ". . . responsibility of local government to provide for the health and safety of its citizens" as stated above.

9) - Regardless of the Amendments to the General Plan and the Policies TC-X and TC Xf in conformance with Measure Y the physical measurements of that project have not changed, nor can they change, and that project is as dangerous now as it has been since 4-14-2000 when this project first started, even with those highly questionable "Findings of Fact" in the new Staff Report

10) - For the record, *FSSI, Inc.* wishes to move forward in a speedy manner, because after nine years, it is time to bring this to a conclusion, but that does not mean that El Dorado County can place that project where it does not belong because of the huge threat to the health, safety and general welfare of the thousands of people who go through that area every year.

11) - Based on what we've been told by legal counsel, with all due respect, we believe neither staff nor this Board have legal power or authority to approve the waiver of safety standards. The question is why was the action to send in back to the Planning Commission taken on 11.4.09?

12) - In his professional judgment, as a traffic and circulation expert Dan Smith is of the opinion that approving a waiver of safety standards and a project like this one being proposed by ConocoPhillips is **unreasonable**.

13) - Even with the fancy maneuvers projected in the new Staff Report with General Plan Amendments and Measure Y distractions, even those so called **CEQA Findings of Fact** --- **cannot remove the deadly danger that this project will forever have.**

14) - It is insanity to increase the risk of serious harm, even death of motorists and pedestrians, including those most vulnerable in the community such as children and senior citizens just to raise money for infrastructure improvements???

15) - If this project is approve it will be what the courts call . . . **an abuse of discretion.**

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

D

Dale Smith, H.H.D. *Alfa Omega Associates*