



Addendum to Staff Report

To: Honorable Mayor and Council Members
Date: September 28, 2010
From: John W. Donlevy, Jr., City Manager 
Nelia C. Dyer, Community Development Director 
Subject: Addendum to Staff Report for September 29, 2010 City Council Meeting

On September 22, 2010, the City Clerk received comment letters regarding the Burger King/ARCO/ AM PM/Truck Fueling Facility from the following individuals:

- 1) Bill Yeates, Attorney for the Appellants (Winters Community Planning Association)
- 2) The Appellants (Winters Community Planning Association)
- 3) Kevin Jackson

In addition, Exhibit D of the letter from Mr. Yeates includes a letter from Abrams Associates, the traffic consultant for the Appellants.

The responses to the letters are attached. Unless otherwise noted, the staff report for the appeal addresses most of the comments from the individuals listed above.

Response to Kenyon/Yeates' Letter, dated September 22, 2010

Item A.1, page 2: There is nothing peculiar about the subject site from an environmental perspective. The Initial Study prepared for the project examined this issue, and the CEQA Exemption Verification addressed each applicable exemption section. Development at this site in the manner proposed now was assumed in both the General Plan (GP) and the GP Environmental Impact Report (EIR). The proposed 5,000 sq ft building and accessory uses on 2.3 acres falls well below the 21,250 sq ft building and accessory uses assumed/planned for on the site and analyzed in the General Plan EIR.

The GP, GP EIR, and GP Circulation Master Plan evaluated the future roadway network for impacts of future development within Winters, which included the project location. The future roadway network, identifying key roadways and intersections, was depicted on the Future Circulation Map. In the GP EIR and GP Circulation Master Plan, the following intersections were identified for evaluation and were assumed to be signalized for future build out PM peak hour levels of service using estimated projected future volumes at the key intersections:

- Grant Avenue at SB I-505 ramps
- Grant Avenue at NB I-505 ramps
- Grant Avenue at Main Street (East)
- Grant Avenue at new roadway connection from Rd33/Industrial Road to Grant Avenue west of the Baker St. terminus.

The results of the analysis, with the assumed signalization of these intersections, identified the intersections as operating at a LOS C or better. What was also assumed was a new roadway connection from Rd33/Industrial Road to Grant Avenue west of the Baker St. terminus and the widening of Grant Avenue to four lanes with center median and left turn lanes (as appropriate).

All of the above key roadways and intersections improvements are identified in the City's planning and financing documents. As development proceeds, the timing of implementation of these improvements will be evaluated.

In order to assess the timing of implementation of the above planned improvements as they relate to the Project, the Winters Burger King Access Study (traffic access study), dated September 2010 was prepared by Fehr & Peers to identify if any of the GP Circulation Master Plan planned improvements would be triggered with the Project; and to identify interim traffic improvements necessary to maintain GP LOS at the intersection of existing CR90 and SR128 for providing access until such time as the planned improvements are triggered by future development.

The traffic access study identified that with existing traffic plus the project, the installation of an interim traffic signal at the intersection of CR90 and SR128 is required to maintain GP LOS. Existing traffic plus the Project does not trigger the implementation of the identified GP Circulation Master Plan planned improvements.

Item A.2, page 2: The Initial Study examined this issue and the CEQA Exemption Verification addressed each applicable exemption section. The facts and analysis support the City's conclusions.

The Caltrans letter does not make the statement indicated. The letter is a standard form letter sent by Caltrans on most local projects. The City prepared an Initial Study and determined that none of the CEQA requirements for additional environmental impact analysis would be triggered by the project. The Caltrans letter clearly indicates that the information being sought has to do with identification of "fair share funding" for "previously identified SR 128 improvements". The letter goes on to state "the need to restrict movements at CR 90 will be necessary if CR 90 is not realigned further away from the I-505 off-ramp." The information Caltrans was seeking was addressed in the requirement for an access study. That information is now available. The study confirms that realignment of CR 90 is not triggered. An interim signal is identified, which the City has added as a condition of approval. Moreover, restricted movement at CR 90 is also a condition of approval. In other words, the City has addressed Caltrans' needs and properly conditioned the project consistent with Caltrans request.

Item B, page 3: Both the Initial Study and the CEQA Exemption Verification address this issue as does the response to the McCoy letter in the staff report to City Council. The City's analysis concludes that the proposed project will not result in any new impacts not already addressed in the prior CEQA documentation.

The access study in no way constitutes an illegal deferral of mitigation. The analysis and mitigation upon which it relies is the GP EIR. The access study examines existing and near-term conditions to determine appropriate timing of mitigation, consistent with the performance standards and requirements of the GP.

There is no delegation of environmental review authority to Caltrans. The City has ensured that the project will be consistent with the GP and provide the information Caltrans has requested.

Item C.1, page 5: The GP EIR did address specific density/intensity of development on all parcels citywide, based on the GP land use diagram designations and definitions. As applicable to the project site this is documented in the Initial Study. The project level analysis, which included the aforementioned Initial Study, is entirely consistent with the identified excerpted text from the GP EIR.

Item C.2, page 6: The final roadway improvements in the GP Circulation Element reflect the final outcome of the 1992 communications between the City and Caltrans. This project has been conditioned to implement those improvements as appropriate.

The city has been unable to find anything "peculiar" about this parcel from an environmental point of view. It appears to be a good example of exactly the sort of project intended to be covered under the identified exemptions applied by the City. As conditioned, this small project is consistent with the GP, consistent with the zoning, consistent with all applicable regulations, and proposed on a parcel with no

environmental constraints. Furthermore, it is proposed at a density/intensity considerable less than assumed in the GP EIR.

Please see attached matrix for responses to the Abrams letter (Exhibit D of Kenyon/Yeates Letter).

Item C.3, page 8: The project's conditions of approval ensure consistency with the GP and other adopted policies and regulations of the City. These are all examples of "uniformly applied development policies and standards" of the City. The conditions also recognize that there is no need to modify operational conditions at any given intersection of roadway segment unless and until the performance thresholds of the City actual trigger new improvements. This is a standard, reasonable, and practical approach.

Regarding the enforceability of conditions, this is addressed by the City's police powers and the stated timing of the specific conditions. If the applicant is unable to perform then he is not able to move forward on the project. If construction has proceeded, the certificate of occupancy would be withheld.

Item C.4, page 10: The access analysis looked at this issue.

Item D, page 11: Project specific greenhouse gases are examined on page 21 and 22 of the Initial Study. Two thresholds for significance are identified and both are found to be "less-than-significant". As noted, the existing General Plan looked at many land use issues that functionally address greenhouse gas emissions. The Initial Study points out the various policies that are recognized as minimizing adverse greenhouse gas emissions and effects. The analysis points out that the project would result in a less intense project than assumed under the GP, thus proportionately minimizing emission and precluding a conflict with AB 32.

The Initial Study (p. 42) relies on the cumulative analysis of greenhouse gases that is contained in the GP EIR prepared by the County of Yolo. Section 15130(b)(1)(B) and 15130(d) of the CEQA Guidelines allow for this.

Item E, page 12: The Initial Study examined this issue and the CEQA Exemption Verification addressed each applicable exemption section. The facts and analysis support the City's conclusions.

Item E.1, page 12: Please see response to item 11 in the appeal staff report. There is no requirement that the project be surrounded by "existing" urban uses. This issue is addressed in the Exemption Verification. The project and site appears to meet all of the requirements of Section 15332 of the CEQA Guidelines. Furthermore, it is understood that this property was originally larger and included the land on the other side of the I-505 off-ramp that lies along the current easterly border. In the late 1950s and early 1960s the larger site, including this property, was developed with a gas station and A&W restaurant. Subsequently, the gas station and A&W were demolished, apparently in conjunction with land acquisitions by Caltrans associated with I-505.

Item E.2, page 14: See responses above to Item C.1, page 2 and Item C.2, page 6. All Caltrans concerns have been addressed. The “reasonable possibility” standard to which the comment refers is not an applicable CEQA standard.

Responses to Comment Letter from Abrams Associates (Exhibit D of Kenyon/Yeates Letter)

COMMENT #	PAGE	COMMENT	NOTES
1	1	"Based on our review of the present situation there is sufficient evidence that the project would have significant adverse impacts on traffic operations and safety in the area of the I-505 interchange and SR 128."	The Traffic Access Analysis identifies an interim traffic signal that is the responsibility of the project at CR 90, and two other traffic signals that are needed based on approved development and the proposed project. The implementation of these traffic signals would result in acceptable operating conditions in the near-term.
2	1	"A focused traffic analysis, as compared to the City-wide traffic analysis done in the early '90's, must be prepared to define the traffic improvements for SR 128 that will be required to ensure adequate safety and traffic circulation in the area."	The Traffic Access Analysis addresses the need for near-term traffic improvements.
3	1	"This project-specific traffic analysis should have been completed prior to project approval in compliance with the California Environmental Quality Act."	The project is consistent with the GP and zoning and properly relies upon the CEQA clearance for those actions. An Initial Study prepared pursuant to Sec 15183 of the CEQA Guidelines revealed no additional potential for environmental impact. Based on this and other aspects of the project, it was determined that the project qualifies for either or both Statutory Exemption 15183 and/or Cat Ex Class 32. A project-level access analysis was required in order to ascertain timing for the GP already sets all relevant performance standards for traffic at this location (including the service thresholds and required physical improvements) approval of the project subject to the access analysis was appropriate and allowed. Nevertheless, subsequent to the approval and appeal, the analysis has been completed. The results are summarized in the appeal staff report, and the results are provided in Attachment D to the appeal staff report.
4	2	"In our professional opinion, it is unacceptable to rely on traffic studies almost 20 years old, especially when you consider that those previous studies were based on roadway network assumptions that have already changed."	There is no expiration period on CEQA analyses. Rather CEQA sets thresholds for whether circumstances have changed or new relevant information is known. See Section 15183.

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5	2	"The City Council must be presented with an adequate analysis to support the required traffic improvements for the "near-term plus project" and the "cumulative plus project" scenarios before the City can make any informed decisions on how to reduce or avoid the significant adverse traffic impacts to the I-505 interchange and along SR 128."	As noted above, the Traffic Access Analysis addresses the need for near-term traffic improvements. For the cumulative scenario, you can make the case that the project land use is consistent with the GP and that the GP identifies major roadway improvements and signals to address build-out See item #6 below for note about cumulative operational issues that it is not clear whether the GP adequately addressed.
6	2	"For example, if left turns end up being restricted at CR 90 and SR 128 (because safety problems are created by project traffic turning left from CR 90) then there would be a substantial increase in U-turns at the adjacent intersections on SR 128. It is our conclusion that the effects of the CR 90 turn restrictions (and/or realignment) on traffic operations and safety at nearby intersections on SR 128 must be analyzed with and without the traffic from the proposed project."	The access study confirms that the only improvement triggered by this project at the subject location is an interim traffic signal. This signal allows for traffic from all directions to continue without restriction or redirection.
7	2	"The 1992 General Plan is wholly inadequate to serve as the basis for conclusions about this project's traffic impacts."	I would not agree that it is wholly inadequate. Additional analysis may be necessary to define detailed intersection geometrics, which aren't typically identified in a GP. That doesn't mean that the GP doesn't provide a foundation for determining what major improvements are needed for the city's transportation system.
8	3	"The resulting forecasts from this area wide travel demand model (which was run almost 20 years ago) are not an appropriate substitute for the project specific traffic analysis that traffic analysts use today in the environmental review of a project's indirect, direct, and cumulative traffic impacts."	The GP forecasts remain sound. A new travel model was prepared by Fehr & Peers in 2002 and subsequently updated in 2004. This model was built using TransCad software, a current GIS based forecasting tool. The forecasts developed with this new model are not substantively different from those developed for the 1992 GP.

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9	3	<p>"Travel demand models (like MinUTP) are much better suited to modeling land use and population changes such as those found in general plan housing elements or other policy plans which have a dispersed effect over a large area. Individual projects which have a concentrated effect on local streets, such as the proposed Burger King/Arco Project, should be studied using conventional traffic engineering procedures."</p>	<p>It's perfectly acceptable to use a travel demand model to generate intersection turn volumes for project level analysis, as long as the model is properly validated. The Winters citywide model is not a multi-county regional model, but a focused citywide model. Given the small city network, the model is an appropriate tool for developing intersection forecasts. The forecasts are then evaluated to determine intersection level of service using Synchro or Synchro/SimTraffic software, a standard industry tool.</p>
10	3	<p>"The 1992 General Plan EIR did not adequately study the traffic conditions with the CR 90/SR 128 intersection in its current configuration."</p>	<p>The GP EIR analyzed performance of the citywide roadway network. The access study examined timing of improvements at the specific location.</p>
11	3	<p>"It is clear to us the timing for various traffic improvements on SR 128 cannot be based on the 1992 General Plan EIR since it used a discontinued travel demand model with outdated assumptions for the City's roadway network."</p>	<p>See responses above.</p>
12	3	<p>"One of the Planning Commission's conditions of approval for the project states: "The Applicant shall be responsible for all costs to construct necessary improvements to allow for a permanent full access intersection if approved by Caltrans." This condition is unenforceable, because there is nothing to limit the scope of these improvements."</p>	<p>Staff recommends that the following condition be added: "The applicant shall be responsible for any costs necessary to provide CEQA clearance as appropriate for permanent improvements, if required by Caltrans."</p>
13	3	<p>"It is entirely possible Caltrans could determine that the required improvements at CR 90 require turn restrictions or intersection realignment which would change the circulation patterns in the area. It is also possible that Caltrans could ultimately require improvements that involve associated reconstruction at the I-505 freeway interchange."</p>	<p>The City GP calls for the construction of Industrial Road (i.e., Timber Crest) to serve the northeast industrial area and for the restriction of turn movements at CR 90. The GP also calls for modifications to the I-505 freeway interchange. The Access Analysis, however, indicates that neither of these are needed to serve approved development and the proposed project.</p>
14	3/4	<p>"Therefore, the conditions of approval cannot presume that the applicant will be "responsible for all costs to construct the necessary improvements" since the required</p>	<p>Same comment as item #12 above.</p>

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15	4	<p>improvements have not yet been defined.”</p> <p>“In our opinion the 1992 General Plan EIR and Winters Circulation Plan never addressed the project-specific, which CEQA calls the “peculiar,” traffic impacts of the project.</p>	<p>The City prepared an Initial Study to examine the thresholds set in Section 15183 and concluded that no additional CEQA analysis was merited.</p>
16	4	<p>“The after-the-fact traffic study and recommended traffic improvements required by the conditions of approval may never be completed or may never be approved by the City and Caltrans and, therefore, like the circulation plan forecast in the Winters Circulation Plan, may never be implemented.”</p>	<p>The Access Study is completed and identifies specific improvements that are triggered by the project as well as approved development in the near-term.</p> <p>The Conditions are required to be satisfied prior to occupancy.</p>

Response to Appellants' Letter, received on September 22, 2010

Item 1, page 1-2: The GP, GP EIR, and GP Circulation Master Plan evaluated the future roadway network for impacts of future development within Winters, which included the project location. The future roadway network, identifying key roadways and intersections, was depicted on the Future Circulation Map. In the GP EIR and GP Circulation Master Plan, the following intersections were identified for evaluation and were assumed to be signalized for future build out PM peak hour levels of service using estimated projected future volumes at the key intersections:

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All of the above key roadways and intersections improvements are identified in the City's planning and financing documents. As development proceeds, the timing of implementation of these improvements will be evaluated.

In order to assess the timing for implementation of the above planned improvements as they relate to the Project, the Winters Burger King Access Study (traffic access study), dated September 2010 was prepared by Fehr & Peers to identify if any of the GP Circulation Master Plan planned improvements would be triggered with the Project; and to identify interim traffic improvements necessary to maintain GP LOS at the intersection of existing CR90 and SR128 for providing access until such time as the planned improvements are triggered by future development.

The traffic access study identified that with existing traffic plus the project, the installation of an interim traffic signal at the intersection of CR90 and SR128 is required to maintain GP LOS. Existing traffic plus the Project does not trigger the implementation of the identified GP Circulation Master Plan planned improvements.

Item 2, page 3-4: There is no expiration period on CEQA analyses. Rather CEQA sets thresholds for whether circumstances have changed or new relevant information is known. See Section 15183.

It's perfectly acceptable to use a travel demand model to generate intersection turn volumes for project level analysis, as long as the model is properly validated. The Winters citywide model is not a multi-county regional model, but a focused citywide model. Given the small city network, the model is an appropriate tool for developing

intersection forecasts. The forecasts are then evaluated to determine intersection level of service using Synchro or Synchro/SimTraffic software, a standard industry tool.

See responses to appeal items #13.a and #13.b in the City Council staff report.

Item 3, page 5: Project specific greenhouse gases are examined on page 21 and 22 of the Initial Study. Two thresholds for significance are identified and both are found to be “less-than-significant”. As noted, the existing General Plan looked at many land use issues that functionally address greenhouse gas emissions. The Initial Study points out the various policies that are recognized as minimizing adverse greenhouse gas emissions and effects. The analysis points out that the project would result in a less intense project than assumed under the GP, thus proportionately minimizing emission and precluding a conflict with AB 32.

The Initial Study (p. 42) relies on the cumulative analysis of greenhouse gases that is contained in the GP EIR prepared by the County of Yolo. Section 15130(b)(1)(B) and 15130(d) of the CEQA Guidelines allow for this.

Item 4, page 6: See Conditions of Approval 8, 9 and 77 regarding the construction of on- and off-site pedestrian improvements.

Item 5, page 7: See page 5 of the Planning Commission staff report for design review analysis, specifically, staff’s analysis of how the project satisfies Criterion “a” of Winters Municipal Code, Section 17.36.040.

To address the appellants’ concerns regarding graffiti on the retaining wall proposed for the east side of the property, staff recommends the following condition of approval:

Condition #88: The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

Item 6, page 8: The building is oriented in a north-south direction, not in an east-west direction. Staff was incorrect in stating the alternative. As it states in the Planning Commission staff report, the project site is long, narrow, irregular, and fairly small. The building is oriented to maximize exposure to the freeway and to best utilize available space. General Plan Policy III.F.1 encourages parking fields to be located behind buildings and out of view of the street, where possible. However, in this case given the planned highway commercial use and the challenges of the site, the applicant has indicated that such a reorientation would not be feasible for the economic success of the project. Again, staff supports the current site layout with the added condition to increase proposed landscaping along Grant Avenue as a way of further screening the view of the site from the roadway.

Item 7, pages 9-14: According to Winters Municipal Code Section 17.80.030 (R)(4), line of sight studies are only required when the sign is more than 65 feet in height. The proposed sign is 65 feet in height. Therefore, a line of sight study is not required for the freeway information sign.

See response to appeal item #6 regarding the sign variance in the City Council staff report

The project is not an individual business or, in other words, a "single user" sign. There are two businesses that are represented on the proposed freeway information sign. Therefore, it is consistent with the Winters Design Guidelines.

As mentioned in the Planning Commission staff report, the Winters Design Guidelines state that "the City of Winters will work with Caltrans to procure signage on both north and south-bound I-505 identifying "Winters" as well as a combined listing of the community's services." The staff report also states that City Associate Elliot Landes is working with Caltrans on plans to place signage on I-505 identifying "Winters." In addition to Mr. Landes' efforts, staff will work with Caltrans to develop and install a system of small standardized highway signs, which will identify, by easily recognized symbols, a full range of visitor services in Winters. Should the applicant want their businesses included on the sign, they will pay for the businesses to be included on the signs, as per the Winters Design Guidelines.

Item 8, pages 15-16: See response to appeal item #11 in the City Council staff report. The Adopted Winters Moody Slough Subbasin Drainage Report and Putah Creek/Dry Creek Subbasins Drainage Report constitute the City's storm drainage master plan documents. The key Project Conditions of Approval for drainage that adequately address the projects impacts from flooding are No.s 10, 65, 66, and 67.

The City has met Policy 1.A.9. The Adopted Winters Moody Slough Subbasin Drainage Report and Putah Creek/Dry Creek Subbasins Drainage Report (City's storm drainage master plan documents) constitutes the comprehensive solution to the 100 year flooding problem. The City's adopted Urgency ordinance for an interim fee to be applied to all development in the Flood Overlay Area was in place at the time of approval of the Project. The interim fee schedule is based on the "Flood Area Storm Drainage Development Impact Fee Nexus Study prepared by Economic & Planning Systems (EPS) in 2005.

Item 9, pages 17-20: See response to appeal item #8 in the City Council staff report.

Item 10, pages 21-23: See responses to appeal items #5 and #12e and f in the City Council staff report.

Item 11, pages 24-30: See response to appeal item #15 in the City Council staff report.

Item 12, pages 31-33: Primarily, the appellants misconstrue Government Code Section 6253C, and the subsections that follow. The Public Records Act requires a response by the City of Winters to PRA requests. That response was made to Appellants' attorney on September 3rd. That response cited the need to receive input from City staff and consultants as to their knowledge of the location and identity of documents requested, some going back 19 years. Please note that the section requires the response, not the production of records. The City, procedurally, is allowed up to 24 days after receipt of the request to make the documents available. This occurs where,

as here, others outside City employment may have, or may know the whereabouts, of some of the requested records. The response from the City indicated that the City would send the records in electronic format where feasible, though the City is not required to put public records into electronic format. Between September 17th and September 23rd the public records of the City of Winters sought were e-mailed in electronic format to the attorney for the appellants.

Additionally, City staff did more than simply respond to the request and provide records. In the case where there were no records, an explanation was voluntarily provided. In the specific request for a traffic study that "pre-dates" the General Plan, no such study was found in the City records. The City voluntarily provided, in electronic format, the General Plan Background Report, in two parts. Instead of a general reference to source data for estimates of tax revenue from the proposed project, the City provided a summary of the calculation methodology, and attached the source data, so that the appellants would understand the data. The traffic Access study was sent as soon as it was received by the City of Winters. In one case, appellants continued to seek the General Plan EIR, though it was in their possession two days after the request. Again, there is no requirement that the City, to satisfy the Public Records Act, put hundreds of pages into electronic format.

The City complied with the Public Records Act.