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ARCO/AM PM/Burger King Appeal Arguments

**Hearing Before Winters City Council
September 29, 2010**

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CEQA Exemption Arguments

Traffic Circulation: Road Alignment and Turning Movements

ISSUE: The General Plan seems to have a realignment of CR90 to the West of the current Chevron Station¹. This may have been done to mitigate the effects to the I505, SR128 intersection due to GP forecast increased volumes on CR90 and pursuant to General Plan Policy III.A.6^{2,3}. This realignment is not clearly specified in the GP but this same realignment of CR90 is clearly and explicitly shown in the subsequent 1993 "Gateway Master Plan."⁴ The reason for this realignment is the very unusual location of the parcel and the alignment of CR 90 relative to the I-505 South off-ramp, I-505 South on-ramp, and HWY 128. There is less than 200 feet between CR 90 and the I-505 South ramp.

PC DECISION: CEQA Exemption.

STAFF ANALYSIS: General Plan Consistency "For all policies, the staff finds the project to be consistent." The staff report notes that the project needs substantial conditioning of these alignments and traffic movements but allows that mitigation already specified for circulation in the General Plan and "A location-specific traffic access study is underway to determine the appropriate timing and fair-share funding responsibility for the various improvements. The conditions of approval reflect this and offer mitigations but then say that mitigation will require the recommendations of the future study be implemented by the project."⁵ There is further discussion in the staff Conditions of Approval item #8 but this again is inconclusive as it offers a slightly different set of options and makes implementation dependent on approval of another agency (Caltrans).⁶

ARGUMENT: There would be a substantial increase in traffic accessing and exiting CR90 from/to HWY128. Using the trip generation rates used for McDonald's in the City of Winters 1992 Gateway Master Plan⁷ suggests 3,700 trips per day not including the AM/PM Market use or the Truck Fueling Use. In the Gateway Master Plan similar uses on the other side of CR90 were seen to be leading to Level of Service F traffic for left turns from the project site to HWY 128 which would no doubt be the same, or worse given 2010 HWY128 ADT, for CR90 left turns in response to this project. While the staff report identifies some options for mitigation it does not choose any nor dictate the timing of any it only leaves mitigation to the results of a future study.⁸ Caltrans, in its comment letter to the staff CEQA Initial Assessment, calls for a Traffic

¹ Winters General Plan Figure I-1 following pg I-4

² Winters General Plan Policy III.A.6 pg II-20

³ We do not have the Wilbur Smith Associates report upon which the EIR circulation element was based but requested a copy from the city on 8/30/2010

⁴ Gateway Master Plan pg 10 and also pdf pg 55 (pg 2 appended traffic study)

⁵ Planning Commission Staff Report, August 10, 2010, Nelia C. Dyer pg 16

⁶ Planning Commission Staff Report, August 10, 2010, Conditions of Approval dated August 5, (pg. 2 of conditions)

⁷ Gateway Master Plan Traffic Study, Table 2

⁸ Planning Commission Staff Report, August 10, 2010, Nelia C. Dyer pg 16

Impact Study which should be done prior to project approval so that needed mitigation identified in the study can become a condition of project approval. Several roads, including SR128 (Grant Ave) are already at their criteria capacity level for triggering mitigation outlined in the 1992 General Plan and General Plan EIR and no mitigation has been implemented. In this sense, the General Plan is inconsistent with itself and it is therefore not able to offer mitigation to this project.

2. Significant New Information: New Highway Capacity Manual, ASHTO Reference Documents, Modeling Procedures

ISSUE: The General Plan and the General Plan EIR rely on significantly outdated information and processes to determine traffic impacts and mitigations arising from implementation of the General Plan. CEQA exemptions are not granted in cases where substantial new information that may affect significant impact prediction and mitigation formation has become available since the conclusion of the previous EIR process.

PC DECISION: CEQA Exemption.

STAFF ANALYSIS: The staff analysis makes no mention of traffic volumes but recommends that the project have a fair share participation in improvements shown in the City's General Plan Circulation Element. The method of assessing "fair share" is not specified. The timing of improvements is not specified. These are left to a future "location-specific traffic access study," which is alleged to be underway but is not part of the record.

ARGUMENT: The staff premises their assessment of impacts and mitigation on the idea that the 1992 General Plan and General Plan EIR traffic studies are still valid, up to date and reflect current thinking in the transportation profession regarding trip generation, road capacity and traffic forecasting.

The 1992 General Plan EIR cites the 1985 Highway Capacity Manual and a 1991 traffic study which the City has not made available as of this writing.⁹ Reference is made to the use of a traffic model, MinUTP¹⁰, which is no longer used in professional practice and was replaced in Winters by a new model developed in 2002 by Fehr and Peers¹¹. This document cites the use of the much more modern TransCAD modeling software which is in current use in many California cities.¹²

There have been three major revisions to the highway capacity manual since the 1985 edition was published. Each of the revisions was based on significant new research and major changes in the transportation professions views of the treatment of pedestrians and bicycles as part of transportation planning. In referring to the 2010 version replacing the 2000 version the U.S. Transportation Research Board says, "However, since its publication great strides have been made in microscopic traffic simulation, operations analysis, and the management and control of traffic facilities. In addition, better tools are needed for evaluating context-sensitive solutions, travel-time reliability, and over-capacity conditions so that cost-effective capital and operations decisions can be made. These tools must also include non-motorized and transit modes."

⁹ We do not have the Wilbur Smith Associates report upon which the EIR circulation element was based but requested a copy from the city on 8/30/2010

¹⁰ Winters General Plan DEIR, pg 81

¹¹ City of Winters Traffic Model Development Report, Fehr and Peers, March, 2002

¹² Ibid, pg 3

Similarly when the 1994 version replaced the 1985 version the Transportation Research Board said, "The 1994 update of the third edition provided new analytical procedures in response to the increased levels of research and professional interest in this topic." Significant new information is available regarding the impacts caused by project and the feasibility and benefit of mitigations proposed for projects. The Winters General Plan and General Plan EIR has not been revised to take account of these significant new findings and approaches to transportation planning. Traffic impact studies based on the current state of knowledge have not been done and potential impacts have not been disclosed to the public.

3. Significant New Information: Climate Change, CO₂ Emissions, AB 32 and SB 375

ISSUE: The Winters General Plan makes no mention of greenhouse gas emissions, their effect on the environment, or methods to reduce or eliminate these emissions. The California Air Resources Board has proposed GHG reduction targets to all California MPOs. Winters is part of the SACOG MPO. It is proposed that SACOG is required to reduce per capita GHG emissions by seven percent by 2020 and sixteen percent by 2035¹³. SACOG is not contesting this proposal. The Winters General Plan does not address this in any way. This constitutes substantial new information about significant impacts

PC DECISION: CEQA Exemption.

STAFF ANALYSIS: Staff rely on a prior statement of overriding consideration for Air Quality effects noted in the 1992 General Plan EIR¹⁴

ARGUMENT: Since 1992 the California Legislature has enacted the California Global Warming Solutions Act of 2006, which requires the California Air Resources Board to ensure that greenhouse gases that contribute to climate change are reduced to 1990 levels by the year 2020. The California Legislature required the California Natural Resources Agency and Governor's Office of Planning and Research to prepare and approve recent changes to the CEQA Guidelines that require lead agencies to analyze the direct, indirect, and cumulative effect of the greenhouse gases generated by a proposed project. This requirement was completely overlooked by City staff and the Planning Commission. The California Senate Passed SB 375 requiring the GHG emissions from light cars and trucks be reduced on a per capita basis to meet regional targets consistent with California Global Warming Solutions Act of 2006. The California Air Resources Board, pursuant to this law, has set proposed regional targets for per capita emissions in each of California's Metropolitan Planning Organization regions. Winters is part of the SACOG region. The proposed regional target, with which the SACOG region agrees and which will likely be adopted by the ARB at their September 23rd meeting requires a per capita reduction GHG emissions by seven percent by 2020 and sixteen percent by 2035. The proposed project adds significant vehicle trips to a plan which already does not consider this important impact element. Information about Global Climate Change and its relationship to auto and truck emissions was not understood at the time of the 1992 GP and GP EIR. This constitutes substantial new information about significant impacts not available or treated in 1992. This disqualifies the project from a CEQA exemption.

¹³ ARB Staff Report Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, August 9, 2010

¹⁴ Environmental Checklist and Initial Study, City of Winters, 8-27-10, Burger King/AMPM Gas Station Minimart/Truck Fueling Facility CUP

Inconsistencies with General Plan, Design Guidelines, Zoning, and Municipal Code

4. Lack of Adequate Internal and External Pedestrian/Bicycle Access in the Site Planning

ISSUE: There is a lack of adequate internal and external pedestrian and bicycle access in the site planning.

PC DECISION: Approval of site plan

STAFF ANALYSIS: Staff report of August 10, 2010 page 4 reviews the site plan for ADA equal access compliance and notes:

ADA Accessibility

The proposed project includes a fast food restaurant with drive-through facilities. This would be the City's first such facility. State law (Government Code 65091(d)) recognizes that accessibility to various commercial establishments is "a critical statewide problem" affecting the disabled population. As such, special noticing is required in order to facilitate and encourage the disabled population to participate in deliberations regarding such facilities. The importance of this facility to the disabled community is a policy factor to be considered by the Planning Commission.

ARGUMENT: While there is ADA access required by building codes within the building, the site plan does not show any dedicated pedestrian access from the County Road 90 sidewalk to the building except through the parking lot and gas pump area. Given the site plan design will need to be modified to accommodate the outdoor seating requirement Conditions of Approval, Item 77 it is advisable that the project layout be redesigned and reviewed prior to any final approval as the changes may entail significant layout revisions.

Of major concern is the fact that there is no defined cross walk or bike passage way to the site from either Grant Street or the County Road 90. While cars have access, the disabled in wheel chairs as well as pedestrians and bicycles are required to have the same level of access. The city must address this shortfall. It is a critical public safety issue that needs to be addressed now so that any onsite requirements this may entail can be incorporate.

As approved the site plan relies solely on the Planning Director to review access compliance requirements in subsequent submissions, see Conditions of Approval, Item 77. This issue is of significant importance that it be addressed by a full review board. In addition in the shortened period allowed for public review, disabled people did not have adequate notification or the opportunity to submit comment.

CITATIONS / SOURCE DOCUMENTS

Planning Commission Staff Report, August 10, 2010

5. Lack of Adequate Massing Studies

ISSUE: What is lacking is a visual understanding and impact of the combined assemblage of structure(s).

STAFF ANALYSIS: Staff report of August 10, 2010 reviews only the building for design compliance and recommends that the project as submitted meets design criteria by the addition of landscape elements.

ARGUMENT: The current proposal provides first 10' high x 50" long concrete block wall for an above ground fuel storage bunker, then a 20' high truck fueling canopy with a yellow LED lighting strip surround, then a 24' long trash enclosure 6' high and then between the frontage road and Grant Avenue 300' linear feet of Q for a drive up window with the building placed behind. It needs to be understood that this is all sitting on 4.5' of flood mitigation fill. To accomplish this these structures are placed on the top of a 480' long concrete block retaining wall 5' high above the ground with metal rail above that that runs the length of the eastern edge of the property.

The applicant needs to provide a complete project elevation as viewed from the off ramp as well as an over all cross section through the site before an adequate understanding of the proposal can be made. We suggest that as designed the project does not meet Design Guideline Criteria; The I-505 Corridor

Structures should be oriented in an east-west direction to minimize the obstruction of views from I-505 of the town and the mountains. Structures facing I-505 should not present a blank or monolithic wall, but rather should create visual interest with doors, windows, and modulated structural setbacks. Buildings should be oriented so that human activity is visible from the highway. This can be accomplished through the orientation of building entrances, windows, outdoor patios and terraces.

We suggest that the retaining wall if absolutely required to be broken into segments, that where it does occur the wall be held back sufficiently from the property line that a irrigated planting strip be provided within the property line to cover the wall surface with vegetation. In addition we request the City provide in the Conditions of Approval a mitigation clause such that the Business / Property Owner be responsible for any graffiti removal required.

CITATIONS / SOURCE DOCUMENTS

Planning Commission Staff Report, August 10, 2010
Winters Design Guidelines, November 1999

6. North – South Orientation of Buildings with Concrete Retaining Wall

ISSUE: The buildings in the proposed project are oriented in a north-south direction with a monolithic concrete retaining wall facing I-505.

PC DECISION: Approved site plan

STAFF ANALYSIS: On page 5 of the staff report it says, "The project site is long, narrow, irregular, and fairly small. The building is oriented to the east and west to maximize exposure to the freeway and to best utilize available space."

On page 7 of the staff report it says, "The project has been reviewed and found to be consistent with the items addressed in the I-505 Corridor guidelines with the following comments. The orientation of the proposed building is north/south, however the guidelines recommend an east/west orientation. For the reasons identified earlier in this report, staff supports the proposed layout."

ARGUMENT: The staff report contradicts itself on page 5 and page 7. However, a review of the site plans verify that the building is oriented in a north-south direction. The Winters Design Guidelines for the I-505 corridor state:

Orientation: Structures should be oriented in an east-west direction to minimize the obstruction of views from I-505 of the town and the mountains. Structures facing I-505 should not present a blank or monolithic wall, but rather should create visual interest with doors, windows, and modulated structural setbacks. Buildings should be oriented so that human activity is visible from the highway. This can be accomplished through the orientation of building entrances, windows, outdoor patios and terraces.

As the very first structure off of I-505, it is important to follow the Design Guidelines and make the entrance at the gateway of the city inviting.

CITATIONS / SOURCE DOCUMENTS:

Planning Commission Staff Report, August 10, 2010

Winters Design Guidelines, November 1999

7. Signage

ISSUE: Signs proposed by the Applicant violate certain provisions of the Winters Municipal Code and are in disagreement with Winters Planning Guidelines. Variances that Staff recommended be adopted are insufficiently supported. A simple line-of-sight evaluation presented in this document shows that further study should have been conducted to explore the ramifications of the approval of the variances.

PC DECISION: To adopt the Applicant's proposal for sign size and location and the staff recommendations regarding acceptable variances.

PROPOSED SIGNAGE: The project includes two free standing signs and wall signage:

- A monument sign located near the proposed detention swale, of dimensions 9'3" tall by 8'1" wide and 23 ft² in area.
- A freeway sign located along the easterly boundary opposite one of the proposed entrances, of dimensions 65' tall and 23'4" wide at the elevated portion. The proposed area is 40-50 ft² for each individual business plus 100 ft² for the Burger King logo, for a total of up to 250 ft².
- Wall signage totaling 200 ft².

STAFF ANALYSIS: The Staff report of August 10, 2010 included the following recommendations related to the approval of the Applicant's plan for signage:

- A variance to increase wall signage from a total of 100 ft² to 200 ft² under the condition that signs be limited to the north and east elevations (identified as building frontages).
- A variance to increase the maximum freeway information sign size from 25 ft² per business to 60 ft² per business (240 ft² total) and acceptance of the 65 ft. height.
- A requirement that the Applicant provide advertising space on the freeway sign for future businesses on the north side of S.R. 128.
- Acceptance of the proposed monument sign height of 9'3" and 23 ft² area, which is deemed to be consistent with the Winters Zoning Code.
- Acceptance of the proposed freeway and monument sign locations.
- A requirement that the Applicant apply for sign permits for the wall signs and free standing sign prior to installation.

Support for the variances is cited from the Winters Zoning Code Section 17.80.080(E), which abbreviated includes:

1. Variance does not constitute a grant of special privilege
2. Special circumstances of location, surroundings, etc. deprive the property of privileges enjoyed by other similarly zoned properties

The basis of the variance is that the project is located along I-505 and that the existing Chevron sign exceeds 25 ft² as well as the 65' height. No historical information is available on the approval of the Chevron sign, which may have predated the current zoning ordinance.

ARGUMENTS (REFER TO CITATIONS LISTED):

Winters Zoning Code: Staff did not assess the line of site visibility of the current Chevron sign or the proposed freeway sign (see photos), and identify the specific special circumstances under which the variance can be applied. The "Chevron" sign, a non-conforming sign does not provide the basis to allow additional non-conformance and sets a precedence by which all other future applicants can and will use to justify additional area increases. Staff provided no justification for granting a variance for doubling the area of wall signage. This variance should have been denied as a "special privilege".

Winters Design Guidelines adopted July, 1993: This code states "signage should be kept to a minimum along I-505" and discourages signs representing individual businesses. The proposed Burger King freeway sign is dominated by their logo and businesses owned by the Applicant, making it a "single user" sign. The guidelines direct the City to procure north and south-bound signs listing community services in collaboration with Caltrans, with the businesses paying for the signs. While the staff analysis indicates the City is coordinating with Caltrans, there is no indication that the Applicant will be required to pay for the signs.

RELEVANT CITATIONS:

Winters Municipal Code

17.80.030 Signs permitted in all districts.

R. Freeway Information Signs.

Multi-business signs advertising freeway oriented business near a freeway interchange may be approved subject to obtaining a sign permit from the planning commission (if the subject sign location lies within the jurisdiction of the city) and subject to the following requirements:

1. No more than one such multi-business sign shall be allowed on the north and on the south side of State Route 128.
2. The sign shall contain space for identification of at least four businesses or centers directly served by the off-ramp.
3. No individual business identification sign shall exceed twenty-five (25) square feet.
4. Freeway information signs may not exceed a height of sixty-five (65) feet, with sign heights up to one hundred (100) feet being possible if supported by detailed line-of-sight studies, as determined by the planning commission.
5. No business identified on a multi-business sign may have an on-site free-standing sign exceeding eight feet in height.

17.80.040 Signs permitted in commercial office and industrial districts.

A. Free-standing sign. One free-standing identification sign per site allowing one-quarter foot of sign area per foot of lot frontage on which the sign is to be located, not to exceed twenty (20) square feet in

area nor six feet in height on a site where all buildings are set back at least ten (10) feet from the street curb or street pavement edge on which the use fronts. Where the subject property exceeds one acre in size, the maximum sign area may be increased to forty (40) square feet and height to ten (10) feet.

B. Wall sign. One wall sign per building frontage. Maximum wall sign area is determined as follows, not to exceed one-hundred (100) square feet:

For buildings with only one building frontage: one-half square foot of sign area for each ground-level linear foot of building frontage.

For buildings with multiple building frontages: one-half square foot of sign area for each ground-level linear foot of one building frontage and one-quarter square foot of signing for each linear foot of additional frontage. The basic sign area in a multitenant center may be reallocated between businesses by the center manager based on an overall sign plan for the center.

Winters Design Guidelines, Adopted November 1999

I-505 Corridor

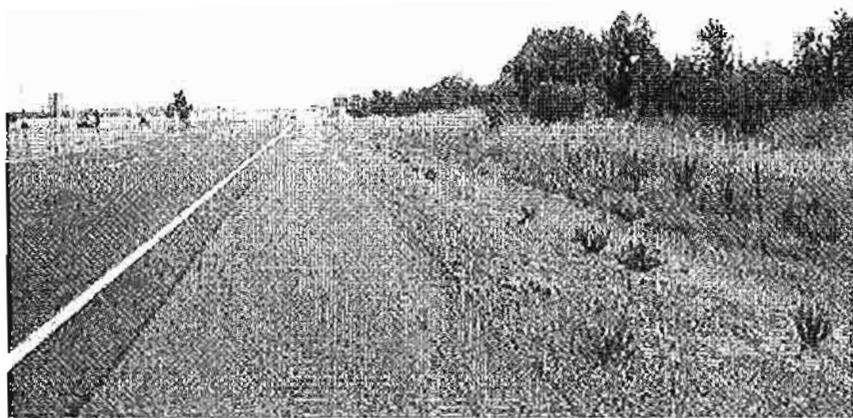
Signage should be kept to a minimum along I-505. Structures and landscaping should be the primary means of attracting attention, not signs. Multi-user signs are encouraged. Tall pole signs representing individual businesses will be discouraged. Low to the ground monument signs and small roof signage will be permitted on a case by case basis. To attract the attention of travelers on I-505, 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 Winters community identification signs will be professionally prepared and will be paid for by businesses included on the sign.

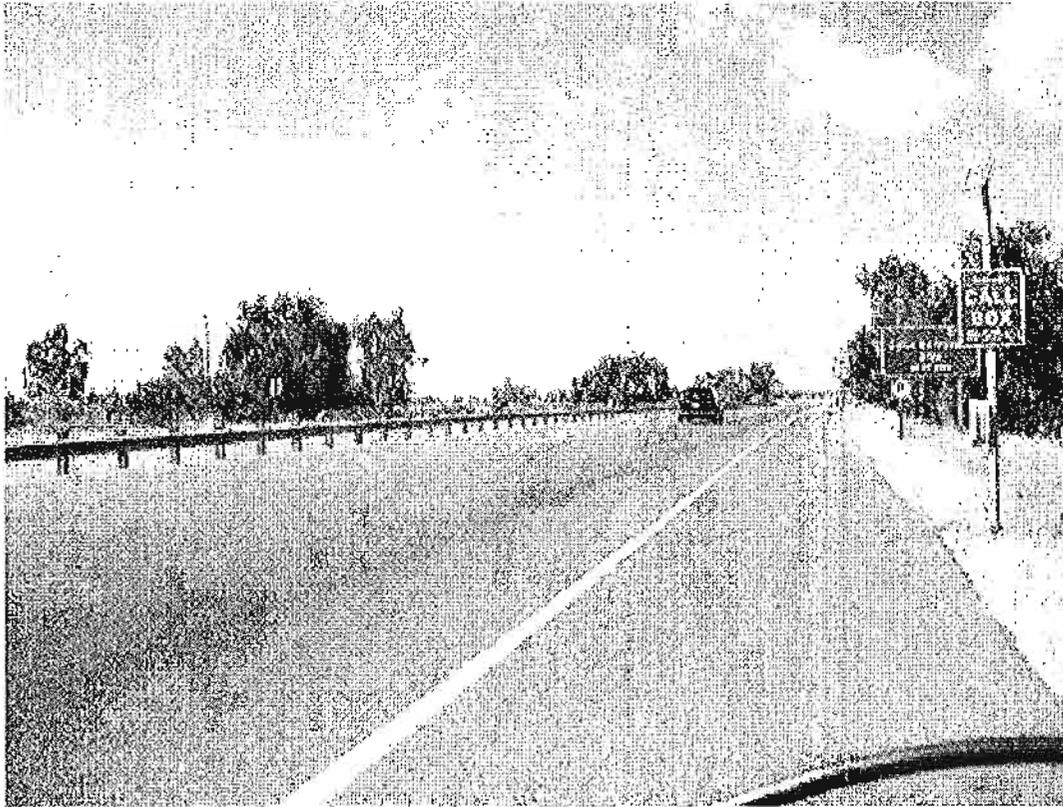
Grant Avenue Corridor

Signage should be carefully planned along Grant Avenue. Pole signs representing *individual* businesses will be discouraged. Internally lit monument signs and small roof signage will be approved through a sign permit.

PHOTO EVIDENCE:

The first two photos below show approaches from the North. The Chevron sign is completely blocked from view by trees until the exit is taken. The fourth photo is the approach from the South. The Chevron sign is not visible until the Putah Creek bridge, immediately preceding the exit. The proposed Burger King freeway pole sign, which might be 30' lower than the Chevron sign, may not even be visible from the Interstate. If true, the size of the sign is irrelevant.





The highway signs provided by Caltrans will be the best means of notifying motorists of the Winters Burger King location, making it unnecessary to exceed the zoning code with larger signs that can't be seen. The Caltrans signs should list downtown food establishments including Subway, Round Table, Steady Eddy's, the Buckhorn, and Cody's, and the service station at Berryessa Sporting Goods.

On the following page the proposed 65' high Winters freeway sign is compared to a photo of the sign for the new Davis Burger King facility off SR 113, which has an overall height of about 34'6", also built by the Applicant.

8. Flooding Impacts

ISSUE: The General Plan speaks to the flooding problem in this area and that each development will address their independent drainage issues independent of the 100 year event. The Winters Storm Drainage Master Plan (SDMP) is being developed on a parallel track from fees assessed against projects approved for development. Conditions of Approval: Each development shall have a Drainage Master Plan outlining cumulative site drainage and drainage impacts to SR 128, CR 90 and downstream facilities and public works.

CEQA Compliance: Flood Overlay Zone and the environmental checklist: Policy 1.A.9.No development in Overlay Zone until a solution to the 100 year flooding issue is in place, a fee schedule established or financing adopted. Policy 1V.D.A., City property owners in the Yolo County Flood Control & Water Conservation District are to Collectively design a solution to the 100 year flooding problem. Checklist item on Drainage & Runoff, no fee or financing for drainage improvements are currently adopted.

PC DECISION: Drainage plan and required fee arrangement in-place before issuance of Building Permits.

STAFF ANALYSIS: *The project has been conditioned to be consistent with all requirements of the Winters Storm Drainage Master Plan Therefore no impact. Project developers to pay established and agreed upon fees to the City of Winters Storm Drainage Master Plan. The amount of the fee to be determined on a development by development basis.*

ARGUMENT: City flooding zone maps of the Winters area and the FEMA Insurance Maps for Winters dated June 2010 have been reviewed. The BK project is in the flood zone classification of AO depth 2, which means that the site currently could be flooded to a depth of 1-3ft. in any major storm. The Project Site will be required to be filled and graded to a higher elevation of approximately 4.5 feet above current elevation. All on site drainage run-off is designed to be contained in 2-retention ponds. The developer will be required to contribute to the Winters Storm Drainage Plan which is still not defined. Even after a century and several decades of recorded historical flooding Winters still has not solved the flooding problem in the north and east sections of the City, Not only is this site affected by flooding but also the Gateway properties south of Grant Avenue.

What apparently is happening is that a piecemeal approach is taking place to resolve the flooding issue. Each developer is taking care to insure his / her project is protected from flooding at the possible impact to down stream / upstream development. BK can raise their development above the flood level but in turn their property obstructions can flood out the Chevron Station and the intersection of SR 128 and CR 90. However each developer is clearly warned that his / her project cannot raise the water level more than one foot upstream or down steam of said project. Also any developer who invests in flood mitigation measures outside his project such as stipulated in the SDMP is at risk of losing those improvements and invested fee share to a greater flooding solution under SDMP development.

A suggested solution that would not involve piping and underground infrastructure would be to contour a wide, graded, engineered swale,(a small scale Yolo Bypass) that would track existing open space areas, at the north portion of the City, adjacent to existing development. From CR 89 the swale would track east to the proposed north-south extension alignment of east Main Street than south crossing under (Hwy 128) Grant Avenue, (the roadway would be elevated on a short viaduct or bridge) than paralleling the Wildrose Lanes residential development. Finally, the graded swale would exit into Putah Creek. This wide swale bypass would also serve as open space, wildlife corridor, land for continuing agriculture activities, route for connecting walking / bike path and a green belt buffer between the Gateway, highway commercial development and the adjacent City residential development.

CITATIONS / SOURCE DOCUMENTS:

City of Winters General Plan, May 1992
City of Winters Storm Drainage Master Plan, Sept. 2008
City of Winters Gateway Master Plan, April 1993
FEMA Insurance Maps, June 2010

9. Truck Fueling Station as a Conditional Use in Light Industrial Zone

ISSUE: A truck fueling station is planned for the portion of the proposed project that is zoned as Light Industrial. The Planning Commission abused its discretion pursuant to Section 17.52.010(E) of the City Zoning Ordinance by allowing the proposed fueling station use as a conditional use in a Light Industrial zone. A truck fueling station is part of a service station, service stations are a listed use that is not a permitted use nor allowed as a conditional use in the Light Industrial zoning.

The Planning Commission also abused its discretion by finding that the project was exempt from CEQA review pursuant to Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) and/or pursuant to Section 15332 (In-fill Development Projects) of the CEQA Guidelines.

PC DECISION: Granted a conditional use permit

STAFF ANALYSIS:

The proposed truck fueling facility and above-ground fuel storage tank are not specifically listed as contemplated uses in the LI zone. However, pursuant to Section 17.52.010(E) of the City Zoning Ordinance, the Community Development Director may find uses not specifically listed but similar in nature (based on activity characteristics) to a listed activity, to be a consistent use in the zone.

The activity characteristics of the proposed uses on the rear of the parcel include the following: large service/commercial trucks accessing and leaving the site for short durations throughout the hours of operation of the facility. These characteristics are similar in nature to other uses allowed in the light industrial zone such as recycling collection center and minor utility services which are permitted uses, and less intense than Automobile Repair which is conditionally allowed. The application includes a request for a Conditional Use permit.

Furthermore, the proposed uses are similar in nature to a "service station" which would also be considered allowable in the adjoining HSC zone which is predominant on the site. Typically, less intense uses are allowed in more intense zones unless compatibility conflicts would occur. Compatibility conflicts are not anticipated to result from the subject project as the site is proposed to be organized complementary to the spilt zoning, by directing the more intense truck fueling activities to the rear light industrial acreage and the less intense vehicle fueling activities to the front HSC acreage.

As conditioned, the project would be consistent with the land uses and applicable policies of General Plan, and the land uses and applicable development regulations of the zoning ordinance.

ARGUMENT: The proposed project area includes 1.4 acres of land zoned as Highway Commercial and 0.9 acres of land zoned as Light Industrial.

Service stations are a listed use in the Winters' land use matrix (Code Section 17.52.020) Motor vehicle fueling is a defined function of a service station (Code Section 17.08.030):

V. Service Station. "Service station" means a place which provides for the servicing, washing and fueling of operating motor vehicles, including the sale of merchandise and supplies incidental thereto.

The City of Winters land use matrix (Section 17.52.020) shows that service stations are neither an allowed use nor a conditional use in a Light Industrial zone.

The truck fueling station is included within the "service station" use that is defined in the Winters Zoning Ordinance and is not allowed in the project area where it is proposed without a rezoning.

The CEQA Exemption for In-Fill Development Projects requires at 14 CCR Sec 15332(a) that an exempt project must be "consistent with applicable zoning designation".

The CEQA Exemption for Projects Consistent with a Community Plan, General Plan, or Zoning requires (14CCR Sec 15183(d)(1)(B)) consistency with a community plan, zoning action, or general plan.

As the proposed fueling station is not consistent with zoning, the project is ineligible for CEQA exemptions as defined in Sections 15183 and 15332 of the CEQA Guidelines.

CITATIONS / SOURCE DOCUMENTS:

Winters Code (Section 17.08.030)

V. Service Station.

"Service station" means a place which provides for the servicing, washing and fueling of operating motor vehicles, including the sale of merchandise and supplies incidental thereto.

Chapter 17.52
LAND USE REGULATIONS: ZONING MATRIX

Sections:

- 17.52.010 Range of uses.
- 17.52.020 Land Use/Zone Matrix.

17.52.010 Range of uses.

Uses within the city shall be consistent with the land use zone matrix, contained in Table 2 set out in Section 17.52.020.

A. Permitted Uses.

Permitted uses are included on the land use/zoning matrix by the letter "P" in the box defined by a use and zone designation. These uses are allowed in the zones indicated without discretionary review, subject to compliance with the development, parking, landscaping and other standards of the zoning ordinance.

B. Conditional Uses.

Conditional uses are indicated on the land use/zoning matrix by the letter "C" in the box defined by a use and zone designation. Conditional uses may be permitted subject to obtaining a use permit from the planning commission or zoning administrator, as regulated elsewhere in this title.

C. Temporary Uses.

Temporary uses are indicated on the land use/zoning matrix by the letter "T" in the box defined temporary uses. These temporary uses are allowed subject to obtaining a temporary activity permit from the zoning administrator.

D. Accessory Uses.

Accessory uses are secondary to a primary or principal use on a site. Accessory uses are permitted in all zoning districts.

E. Uses Not Listed.

The land use/zoning matrix is not intended to be a comprehensive list of all possible uses, but rather the more common uses likely to be proposed in the city. Uses not specifically covered by any use category but which appear to be similar in nature to permitted or conditional uses shall be reviewed by the community development director, who shall determine the use classification based upon activity characteristics of the proposed use. A proposed use shall otherwise be considered a prohibited use where it is not provided for within a zone. (Ord. 97-03 § 2 (part); prior code § 8-1.5201)

17.52.020 Land Use/Zone Matrix.

LAND USE/ZONE MATRIX

KEY: Zoning Designations:

C= Conditional Use (A-1) General Agricultural (R-4) High Density Residential (B/P) Business Industrial Park

P= Permitted Use (R-R) Rural Residential (C-1) Neighborhood Commercial (M-1) Light Industrial

T= Temporary Use (R-1) Single-Family Residential (C-2) Central Business District (M-2) Heavy Industrial

(R-2) One-and Two-Family Residential (C-H) Highway Service Commercial (PQP) Public/Quasi-Public

(R-3) Multifamily Residential (O-F) Office (PD) Planned Development

	A-1	R-R	R-1	R-2	R-3	R-4	C-1	C-2	C-H	O-F	B/P	M-1	M-2	PQP	P-R	O-S	P-D*
Recreational Vehicle Park									C		C						
Restaurant							P	P	P		C						
Restaurant, Drive-Through							C	C	P								
Retail Sales, General							P	P	C		C						
Roadside Stand	P	C					C	C									
Service Station							P	P	P		P						
Veterinary Hospital, Kennel	C						C	P									

14 CCR § 15332

§ 15332. In-Fill Development Projects.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.(c) The project site has no value, as habitat for endangered, rare or threatened species.(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.(e) The site can be adequately served by all required utilities and public services.

§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency

Issues with the Process

10. Cumulative Impacts (Gateway Master Plan)

ISSUE: The General Plan speaks to Cumulative Impacts (CI) in very general terms and on a regional basis. These are addressed with mitigation measures. However the GP EIR does not look at the CIs on a city, an area or neighborhood basis.

PC DECISION: CEQA Exemption.

STAFF ANALYSIS: Staff “reiterates that adequately analyzed off-site or cumulative impacts need not further analyzed.”

On General Plan Consistency “For all policies, the staff finds the project to be consistent.”

ARGUMENT: CIs are defined “as two or more individual effects which, when considered together, are considerable or which compound or increase impacts.” (CEQA Guidelines 15355; Public Resources Code 21083b); Individual effects may be changes resulting from a single project or a number of separate projects.” (CEQA Guidelines 15355a). The cumulative impacts from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines 15355b).

No legally adequate cumulative impacts analysis has been conducted since the time of the General Plan EIR. In that document the CIs were looked at on a regional level and in terms of conversion of prime agricultural land to urban uses. No account was taken for effects of multiple projects upon the city or the immediate area or neighborhood. Given that the subject parcel is zoned Highway Commercial and its neighboring zones were overlaid with the undefined “Planned Commercial” in 2003 GP Update which at this time is not fully defined and is to be addressed in some future study. In the winter of 2010 City staff discovered that the Planned Commercial designation was incomplete and undefined. Development on these parcels which encompass a majority of the available land in the Gateway area has yet to be completed. Staff reported that until such time as specific studies are concluded and accepted no development can occur on land with the PC designation.

A CI analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures and the appropriateness of project approval.” (San Francisco Reasonable Growth v. City & County of San Francisco)

With the approval of the BK/ARCO project and the lack of definition of the surrounding area, a recent development not foreseen in the GP or its EIR requires additional study and to be addressed. This is new information not available prior to the Winter of 2010. The GP EIR did not address any of the following issues which when taken in time and in multitude will add up to an Cumulative Impact:

- the proliferation of highway type commercial signage runs up against the “small town character” which the GP identifies as a desirable trait for the community to protect and maintain
- the potential for a concentration of fast-food in the Highway Commercial zone also is contrary to the “small town character” of Winters and moves the development of this area towards “highway strip commercial”.
- the visual effect of additive, unplanned, neighboring developments and the BK/ARCO project is a cumulative impact not identified nor discussed in granting the CEQA Exemption. Without an area plan informing the Gateway’s physical development the potential for visual impact from unplanned strip commercial development will be very high. This is a long term environmental impact.
- the viability of the Central Business District is put at risk without a discussion of the cumulative impact of not only The BK/ ARCO project as it relates to future, unnamed projects. The area plan should be designed to be synchronized with the Central business District and downtown.
- No record of Threshold of Significance has been put into place for assessing environmental significance of project caused environmental effects by the City as recommended by the CEQA Guidelines.

To address the cumulative impacts, this property should be included in an update of the Gateway Master Plan. While the property on which this project is slated was not included in the Gateway Master Plan that was published in April, 1993¹⁵, On January 5, 2010 at a City Council meeting, “staff is proposing an expansion of some aspects of the design scope to include the highway commercial properties along the north side of Grant Ave.”¹⁶

The document distributed at the January 5, 2010 City Council meeting included “key assumptions” about the Gateway Master Plan planning process: Both sides of Grant Ave (CH zone properties) and the Jordan/McClish Properties would be subject to the resulting design guidelines. Another “key assumption” is the idea of viewing the Gateway Properties as a “bubble” wherein key policies and goals will be defined within the scope of an infrastructure budget, performance standards, GP policy consistency, and the establish design criteria. The overall process will rely on the GP EIR.¹⁷

¹⁵ April 1993. Gateway Master Plan. Dan Figueroa, Community Planning Services, p.7 & 15.

¹⁶ January 5, 2010, Staff Report at Winters City Council Meeting.

¹⁷ January 5, 2010. Gateway Master Plan – Planning Process.

Despite a motion on May 19, 2009 by City Council instructing staff to initiate the process to review the Gateway Master Plan, a staff recommendation in January 2010 that the process include the property CH property on the north side of grant avenue, and a promise that the process would run concurrently with Caltrans Complete Streets community input process concluding in May 2010, the process never occurred and the Burger King/ARCO Project was approved on August 10, 2010 outside of the GMP.

CITATIONS/ SOURCE DOCUMENTS:

Guide to the California Environmental Quality Act (CEQA), Michael H. Remy, Tina A Thomas, James G. Moose and J. William Yeates, Solano Press Books, Point Arena, CA

Adopted and Transmitted Text of Senate Bill 97 CEQA Guidelines Amendments, Natural Resources Agency, State of California, on-line edition Notice of Proposed Changes dated October 23, 2009

11. Authority for Design Review (Economic Development Commission)

ISSUE: That the City of Winters Planning Commission abused its discretion by basing approval of site plan/design review on a design review performed by the City Manager when the Zoning Code requires design review be performed by the Economic Development Commission, and that the City Manager was without apparent authority to act as the Economic Development Commission.

That the design review performed by the City Manager was inadequate and failed to show compliance of the site plan with design review guidelines for:

- Building orientation (see other arguments)
- Traffic (see other arguments)
- Overall mass (see other arguments)
- Lot coverage
- Highway sign (see other arguments)

That the planning commission failed to make findings required by Zoning Code (Section 17.36.050) relative to compliance with the provisions of the criteria for design review (Section 17.36.040) prior to approving a site plan for design review.

PC DECISION: Approved site plan/design review

STAFF ANALYSIS: According to the Staff Report (p. 5), Winters does not currently have an Economic Development Commission, and “the City Manager fulfills this function on a project-by-project basis”.

Site Plan/Design Review

Pursuant to Section 17.36.020 of the Zoning Code, design review is required of this project. The purpose of design review to ensure that the location and configuration of structures and corollary site improvements are visually harmonious with their site and that of surrounding sites and structures. The Winters Design Guidelines are to be used as a basis for this review. The project has been reviewed and conditioned to address design review requirements.

Section 17.36.030(A) requires that site plan applications for design review involving commercial development must first be considered by the economic development commission, who may make a recommendation on the project and any conditions of approval to the planning commission. Section 17.36.030(C) mandates that the Planning Commission consider the recommendations of the economic development commission prior to taking action on a site plan for design review. The City no longer has an operating economic development commission; however, the City’s Design Guidelines (referenced later in this report) were co-authored by the Economic Development Commission in effect at that time. Currently, the City Manager fulfills this function on a project-by-project basis. The City Manager has recommended support of this project based on the anticipated economic development and tax revenue benefits to the City.

ARGUMENT: Pursuant to Section 17.36.020 of the Zoning Code, design review is required for this project. Section 17.36.030(A) requires that site plan applications for design review involving commercial development must first be considered by the Winters Economic Development Commission.

A public records request was submitted to the City of Winters on August 25, 2010 for documents showing that the City Council has given the City Manager the authority to exercise the powers of the Economic Development Commission to do design review of this project. There has been no response as of September 20, 2010.

Chapter 2.28 of the City Code provides for establishment of a Winters Economic Development Commission and appointment of members. The Code does not provide for replacement of the Economic Development Commission by the City Manager.

The Staff Report further states the “the City Manager has recommended support of this project based on the anticipated economic development and tax revenue benefits to the City”.

CITATIONS/ SOURCE DOCUMENTS:

**Chapter 17.36
DESIGN REVIEW**

Sections:

- 17.36.010 Purpose.
- 17.36.020 Requirements for design review.
- 17.36.030 Design review procedures—Site plan submittal.
- 17.36.040 Criteria for review.
- 17.36.050 Action on design review applications.
- 17.36.060 Revocation—Expiration—Modification.
- 17.36.070 Conceptual design review.

17.36.010 Purpose.

It is the policy of the city to preserve and enhance the small-town qualities of Winters, to improve property values and to conserve the overall visual character of the community. Further, the design review process is intended to ensure that the location and configuration of structures and corollary site improvements are visually harmonious with their site and that of surrounding sites and structures. To implement these policies, the city requires design review for certain types of development or when development occurs in certain locations. The design review process may include an analysis of proposed architectural styles, construction materials, colors, site landscaping and similar development criteria. The Winters design guidelines shall be used as a basis for this review. (Ord. 2001-04 (part): prior code § 8-1.4211(A))

17.36.020 Requirements for design review.

Design review shall be required before the planning commission for the following projects:

- A. Construction of nonresidential buildings or structures of five hundred (500) square feet or more, or additions of five hundred (500) square feet or more to such existing buildings;
- B. New construction of multifamily residential units;

- C. New construction of any single-family residential units is subject to design review. Design review for multiple units in a project can be approved as a group and shall occur prior to the issuance of the first building permit;
- D. If lots in a project are sold to a subsequent builder, these lots are subject to design review prior to the issuance of a building permit for these lots;
- E. Modifications to existing buildings involving collectively significant exterior changes, which may include changes of building materials, addition/deletion of doors, windows and awnings, changes to rooflines or parapet walls, etc., as determined by the community development director. In making a determination as to the significance of a proposed exterior building change, the director shall be guided by the potential for the proposed project to result in substantial visual alteration of the building in question as viewed from the street including the secondary frontage and its relative overall importance to the visual quality of the surrounding area. The review shall be at the discretion of the community development director;
- F. Metal buildings in excess of one hundred twenty (120) square feet in any district. (Ord. 2001-04 (part); prior code § 8-1.4211 (B))

17.36.030 Design review procedures—Site plan submittal.

Design review shall be accomplished pursuant to site plan review.

- A. Site plan applications for design review involving commercial development shall first be considered by the economic development commission, who may make a recommendation on the project and any conditions of approval to the planning commission.
- B. The planning commission shall also review the site plan application where site improvements involving landscaping or parking lots are proposed.
- C. The planning commission shall consider any recommendations of the economic development commission prior to taking action on a site plan for design review. The planning commission may consider a site plan for design review concurrently with other applications for a project (such as a use permit) which requires planning commission action. A public hearing shall be held to consider the site plan, noticed pursuant to the requirements contained in Section 17.16.040. (Ord. 2001-04 (part); prior code § 8-1.4211 (C))

17.36.040 Criteria for review.

The planning commission shall consider the following aspects for design review of a site plan, as applicable:

- A. The overall visible mass of the structure(s). This analysis may include review of visible building mass as it relates to property line setbacks, building height, roofline profiles, lot coverage and the overall size and scale of a building, and the orientation of the proposed building(s) to the street and adjoining properties;
- B. The proposed use and quality of exterior construction materials striving for long-term compatibility with the general setting of the subject property and visual character of the general neighborhood. Exterior building colors, on new construction only, may also be considered, but only to the extent that they may detract from the desired design theme for a neighborhood;
- C. Avoidance of buildings which are characterized by large, blank or unbroken wall planes, as well as buildings which exhibit a general lack of architectural detailing, shadow lines, etc., which

collectively lack general visual interest. Uniform treatment of all building elevations shall be required unless such treatment is found unnecessary, on a case-by-case basis;

D. Effective screening of ground- and roof-mounted mechanical equipment;

E. The use of landscaping, decorative site paving, etc. which provides effective visual screening or softening of the development, as necessary. The planning commission shall consider the appropriate mix of plant materials, plant sizes, etc. pursuant to landscaping criteria contained in Chapter 17.76.

F. Achieve conformity with the Winters design guidelines, as applicable.

G. With respect to single-family residential production housing, the above design criteria shall be considered, but with the design review focus on avoiding use of repetitive designs and site plans. Design review should encourage elements of individuality in residence design through inclusion of features such as modified front and side yard setbacks, varying architectural styles, building siding and roofing materials, creative use of fencing and landscaping, and/or other design features. To the extent possible, designs should also encourage pedestrian activity while reducing emphasis on vehicular access as the focal point of a residential lot. (Ord. 2001-04 (part): prior code § 8-1.4211 (D))

17.36.050 Action on design review applications.

The planning commission shall make findings relative to compliance with the provisions of Section 17.36.040 prior to approving a site plan for design review. The planning commission may impose conditions of approval to ensure conformance with the above design provisions. (Ord. 2001-04 (part): prior code § 8-1.4211 (E))

17.36.060 Revocation—Expiration—Modification.

Site plan approval for design review is subject to the same provisions as appears in Section 17.24.070(A) regarding revocation, use and modification of the permit. (Ord. 2001-04 (part): prior code § 8-1.4211 (F))

17.36.070 Conceptual design review.

Applicants have the option of filing conceptual (preliminary) site plans for design review in advance of formal site plan review. Conceptual design review allows for submittal of more basic site plan information (such as building elevation sketches) for an initial review by the planning commission. Conceptual design review shall be considered only as an informational item and is intended to provide informal feedback to an applicant, who could consider any comments received when preparing the formal site plans. Conceptual design review may, but is not required to, include informal review by the economic development commission, as may be requested by the applicant. Planning commission review and comments stemming from conceptual design review would be only advisory in nature. As such, and as no action would be taken by the planning commission at this stage, comments offered in conceptual design review would not affect or otherwise be binding upon a planning commissioner's vote on a subsequent application for formal design review. (Ord. 2001-04 (part): prior code § 8-1.4211 (G))

Chapter 2.28
ECONOMIC DEVELOPMENT COMMISSION

Sections:

- 2.28.010 Establishment.
- 2.28.020 Appointment.
- 2.28.030 Compensation.
- 2.28.040 Removal.
- 2.28.050 Procedure.
- 2.28.060 Functions.
- 2.28.070 Duties.

2.28.010 Establishment.

There is created and established an economic development commission for the city. This commission shall, initially, consist of nine members, not officials of the city, representing city groups including, but not limited to, retail, financial and banking, real estate and land use planning, agriculture, and manufacturing. After the first four-year term of the commission, the council shall have authority, by resolution, to increase or decrease the number of members on the commission. (Ord. 92-05 § 1; Ord. 91-04 (part); prior code § 2-5.501)

2.28.020 Appointment.

The mayor shall establish a rotating list from which council members shall be appointed to serve on a two-member council committee to conduct interviews and recommend among prospective commission candidates. The committee shall submit its recommended candidate to the full council for approval at the next regular council meeting. Commission members shall serve for a four-year term at the end of which they may apply for reappointment by submitting a letter to the council who will consider the reappointment request at their next regular meeting. The council may reappoint or consider other candidates in the same manner as an original appointment. At the end of a second four-year term the mayor shall establish another two-member council committee to conduct interviews and recommend among prospective commission candidates. Any commissioner who has served two four-year terms may request consideration for another appointment and shall be evaluated in the same manner as any candidate seeking appointment. If a vacancy occurs other than by expiration, it shall be filled by appointment for the unexpired term. (Ord. 91-04 (part); prior code § 2-5.502)

2.28.030 Compensation.

The members of the economic development commission shall receive no compensation except such expenses as are authorized by law. A mileage expense at the approved city rate for use of private vehicles to attend meetings and incidental costs incurred in carrying out the responsibilities per Section 2.28.060 shall be submitted to the city council for approval pursuant to council-approved travel policy. (Ord. 91-04 (part); prior code § 2-5.503)

2.28.040 Removal.

Members of the economic development commission shall serve, during their respective terms, at the pleasure of the city council. Any appointed member of the economic development commission may be removed at any time by the mayor, but such removal shall be subject to the approval of the council. Also, any appointed member may be removed by a majority vote of the council. Any appointed member who misses three consecutive meetings without city council approval shall be deemed to have automatically resigned, and a new member shall be appointed. (Ord. 91-04 (part): prior code § 2-5.504)

2.28.050 Procedure.

A. Each year in January, the commission shall elect a chairperson and vice-chairperson from among the appointed members. The members so elected shall take office at that time.

B. The commission shall establish a regular monthly meeting day and time.

C. Minutes of the commission shall be filed with the city clerk as soon as possible after a meeting. The city clerk shall submit a copy of the minutes to the city council at the next available regularly scheduled council meeting. Recommendations of the commission involving expenditures of city funds shall have no force and effect until approved by the city council. (Ord. 91-04 (part): prior code § 2-5.505)

2.28.060 Functions.

The economic development commission shall recommend to the city council and planning commission as follows:

A. To the city council:

1. Yearly recommendation in March of each year on projects which the council may undertake to further economic activities in the community;
2. Recommend fee levels for the business improvement district and evaluate programs and projects recommended by the Chamber of Commerce;
3. Prepare and maintain an economic profile of the community and assist new businesses in locating in appropriate locations in the city and assist existing businesses in maintaining and enhancing markets;
4. Recommend on redevelopment agency projects.

B. To the planning commission:

1. Review all development proposals involving commercial development and recommend on conditions thereof;
2. Assist commercial developers in making presentations to the planning commission.

(Ord. 91-04 (part): prior code § 2-5.506)

2.28.070 Duties.

The economic development commission shall advise the city council and planning commission in the following capacity:

A. Promotion of economic development:

1. Focus on advertising the city's overall quality of life and its unique natural and human resources;

2. Recruiting enterprises to the city by recommending to the city council packaging incentives such as tax abatement, site preparation, financing, and favorable regulatory policies to accommodate the targeted enterprise.
- B. Targeting economic growth to defined areas of the city:
 1. Review and make recommendations on the location of public infrastructure and investment;
 2. Assisting enterprises in grant application preparation.
 - C. Helping the disadvantaged of the community:
 1. Assist enterprises, schools, Chamber of Commerce in improving education, work experience, and training programs;
 2. Improving transportation access;
 3. Developing employee assistance programs, such as child care, and drug and alcohol rehabilitation.
 - D. Improving job quality: reducing cyclical instability. (Ord. 91-04 (part): prior code § 2-5.507)

12. Failure to Comply with the Public Records Act

ISSUE: Once filing the appeal, the appellants submitted requests for records to make their case. The City failed to comply with the PRA. Only one of the records was received within the 10 calendar time frame which is required by law (see table below). Half of the records still have not been received No written request was submitted by the City to extend the time limit.

ARGUMENT:

Date of Request	Latest Day Expected (10 days)	Date Received	Number of Days Overdue*	Record Requested
8/16/10	8/26/10	8/18/10		General Plan EIR
8/17/10	8/27/10		27 days	A copy of the estimate of trip generation forecast to arise from the project in question
8/25/10	9/7/10		16 days	Record of the City Council action that gave City Manager Authority to do design review on this project or any record that gave him authority to serve as the Winters Economic Development Commission
		9/17/10	11 days	A digital copy of the PowerPoint on highway signs presented by City Manager at the 8/20/10 PC hearing
		9/21/10	15 days	The billings of Heidi Tschudin for the past year
8/30/10	9/9/10	9/21/10	13 days	A copy of the City Council minutes when the Gateway Master Plan was formally adopted.
			14 days	A copy of the signed Planning Application Form for this project.
9/1/10	9/13/10		10 days	The traffic study that pre-dates the General Plan, which would be the starting assumptions. It would probably have a 1991 date and would have probably been created by WSA.
			10 days	The Thresholds of Significance document that would have been published as part of the CEQA public review process. The 2009 amendments made through SB 97 made a recommendation to agencies that this be done and adopted
9/2/10	9/13/10		10 days	All documents outside of the project staff report referencing in detail or in general, fees, charges, costs, or required dedications charged or to be charged to the developer for permits, mitigations, infrastructure shared costs, especially the East Winter's infrastructure expansion conducted last year, and any other charges.
		9/21/10	9 days	Source data for estimates of tax revenue from the proposed Burger King, AMPM/Arco Gas Station Convenience Store, and Truck Fueling Facility. We are seeking documents pertaining to what forecast(s) of revenue was (were) used and to those forecast documents themselves.

*As of the date this brief was delivered to be included in City Council packet for hearing

CITATIONS/ SOURCE DOCUMENTS

The California Public Records Act provides for two types of access.

One is a right to inspect public records: "Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided."

The other is a right to prompt availability of copies of those records:

"Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."¹⁸

The Act defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." A writing is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."¹⁹

Under no circumstances should a local agency simply not respond to a public records request. Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.²⁰

Time is critical in responding to public records requests. A local agency must respond promptly, but no later than ten calendar days from receipt of the request, to notify the requester whether records will be disclosed. If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The ten-day response period starts with the first calendar day after the date of receipt. If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request. The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester.²¹

¹⁸ *The People's Business: A Guide to the California Public Records Act*, League of California Cities, 2008, p. 2

¹⁹ *Ibid.*, p. 6

²⁰ *Ibid.*, p.11

²¹ *Ibid.*, p. 11

A local agency may extend the ten-day response period for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; and/or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.

No other reasons justify an extension of time to respond to a public records request. For example, a local agency may not extend the time on the basis that it has other pressing business, or that the employee most knowledgeable about the records sought is on vacation or otherwise unavailable. If a local agency exercises its right to extend the response time beyond the ten-day period, it must do so in writing, stating the reasons for the extension and the anticipated date of the response within the 14-day extension period. The agency does not need the consent of the requester to extend the time for response.²²

²² Ibid. p. 12