

Date: August 20, 2010

Name of Appellant: Sarah Brown\*  
Mailing Address: 24 East Main Street  
Winters, CA 95694  
Phone Number: 530-795-3617

\* See list of co-appellants attached

Property Location: 2.3 acre property located at the northwest quadrant of Interstate 505 and State Route 128 (Grant Avenue) in Winters

Present Zoning: Highway Commercial and Light Industrial

Requested Action:

- Reversal of the Planning Commission decisions to approve a Conditional Use Permit, to approve the Site Plan/Design Review, to approve the Variance to Sign Ordinance, and to direct staff to file a CEQA Notice of Exemption
- Preparation of a Gateway Master Plan that includes the subject property
- Development of a form-based code for Grant Avenue and the Gateway area
- Approval of this project subsequent to and subject to the conditions of a new Gateway Master Plan

Date of Action: Planning Commission Meeting, August 10, 2010

Type of Appeal (Check One):

- Appeal of Planning Commission Action\*
- Staff/Administration Interpretations

\*Specific actions: Plan/Design Review, Sign Permit for a Freeway Information Sign, Variance for the Freeway Information Sign, and CEQA Clearance for a proposed Burger King, Arco gas station, AM/PM mini-mart, and truck fueling facility.

Reason for Appeal (Additional Information may be attached): \*See additional comments attached.

- The public was not given a meaningful opportunity to comment on the proposed project. The City and the Planning Commission prejudicially abused its discretion by pre-determining that the project was exempt from the California Environmental Quality Act (CEQA).
- Applying section 21083.3 of the Public Resources Code (CEQA Guidelines, § 15183) to exempt the project from CEQA was inappropriate as the project is not consistent with the General Plan.
- There is evidence that Staff held serial private meetings with members of the Planning Commission in violation of the Open Meeting Law.
- The City needs a Master Plan to guide development of the Gateway area, rather than lot-by-lot, piecemeal planning, which incrementally will lead to a Burger King, a McDonalds, an Exxon station plus, a Taco Bell, Union 76 station, etc.
- A freeway sign variance was approved. If other undeveloped lots in the gateway and along Grant Avenue were given equal treatment, an unsightly, urbanizing impact of overlarge freeway signs will certainly follow.
- Written public comments that were properly submitted to the Planning Commission at the meeting were not and could not have been fairly considered in the time available prior to the Commission's action.

In order for a Notice of Appeal to be considered, it must be received by the City Clerk's office within ten (10) calendar days of the Date of Action with the \$250.00 non-refundable fee. Any Notices of Appeal received after the ten (10) calendar day deadline will not be considered.

I hereby certify that the facts and information contained in this Notice of Appeal are true and correct to the best of my knowledge.

*Sally M*

Property Owner/Official Representative

THIS SECTION FOR CITY USE ONLY:

*250.00 Cash appeal fee*

Date scheduled to be heard by City Council: \_\_\_\_\_

Date received (Stamp): *RECEIVED 8/20/10*  
*Nancy Mills*  
*City Clerk*

Date City Council heard: \_\_\_\_\_

\_\_\_\_\_ Appeal Approved \_\_\_\_\_ Appeal Denied

**Co-appellants (name and mailing address):**

Shaunie Briggs	820 Railroad Avenue, Winters, CA 95694
Kresta Daly	26778 County Rd 34, Winters, CA 95694
Eric Doud	15 Main Street, Winters, CA 95694
William (Bill) Hailey	P.O. Box 648, Winters 95694
Don Hutchins	26778 County Rd 34, Winters, CA 95694
Janice Koch	26738 County Rd. 34, Winters, CA. 95694
Ana Kormos	P.O. Box 1128, Winters, CA 95694
Michael McCoy	26738 County Rd. 34, Winters, CA. 95694
David Springer	200 Madrone Court, Winters, CA 95694
Jeffrey TenPas	24 East Main Street, Winters, CA 95694
Albert Vallecillo	210 Main Street, Winters, CA 95694

**Additional Reasons for Appeal**

**Additional Reasons for Appeal of Approval of Conditional Use Permit**

- Approving a conditional use permit authorizing a commercial use on land zoned Light Industrial violates Winters' Zoning Ordinance. The proposed truck fueling facility is a commercial use, and is fundamentally different and not similar to a light industrial use. The truck fueling station will bring frequent and 24 hr traffic truck traffic that is distinctly dissimilar from a light industrial use.

**Additional Reasons for Appeal of CEQA Exemption**

- Substantial new information shows that the proposed project will have more significant adverse impacts that were not analyzed in the prior and outdated 1992 EIR prepared and certified for the City's General Plan
- 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.
- This project does not satisfy the requirements of CEQA Guidelines section 15183 (Projects Consistent with General Plan, Community Plan, or Zoning) or section 15332 (In-fill Development Projects) to be exempt from CEQA's environmental review requirements.
  - For Guidelines section 15183:
    - The truck fueling facility proposed in the Light Industrial zone is not consistent with the Zoning Ordinance.
    - The following environmental effects were never analyzed in the prior, outdated 1992 EIR certified for the General Plan:

- As discussed above, the proposed project's generation of greenhouse gases
  - The proposed project will cause flooding impacts that were not assessed in the 1992 EIR. The proposed project will be constructed on fill that will obstruct existing flood drainage patterns, and increase flooding of upstream and adjacent properties.
  - As discussed below the current traffic and circulation impacts were not analyzed in the prior 1992 EIR.
- For Guidelines section 15332:
  - This project is not surrounded by existing urban uses, and surrounding properties on two sides are undeveloped. The staff interpretation that an undeveloped property zoned for a use is an "existing use" is not supported by the CEQA Guidelines.
- General Plan Inconsistency – Policies with the Circulation Element of the General Plan that were cited as mitigation in the GP EIR for projects creating growth in traffic volumes are not being applied to this project. The proposed project will generate increased traffic volumes at the intersection of CR90 and SR128 and I-505 that require signalization, road widening, turn pockets and other mitigation measures set forth in the General Plan. Those policies of the General Plan's Circulation Element, which should have been triggered by this project, have not been applied to this project. Without the traffic measures described in the policies of the Circulation Element of the General Plan, the proposed project is inconsistent with the General Plan. Because the Planning Commission failed to adequately evaluate the proposed project's consistency with the policies of the General Plan and because the City has never prepared a Master Plan for the "gateway" area of the city, the Planning Commission never considered the cumulative effects of the project on the City's "gateway." The cumulative impacts of freeway-access, fast food and gas station commercial developments on the City's "gateway" or the community character or aesthetics of the City were never analyzed in the 1992 EIR.
- New Information - Highway capacity manual- Much of the circulation element of the 1992 General Plan and the General Plan EIR were based on the 1985 Highway Capacity Manual. The Highway Capacity Manual contains data and information and practice recommendations for transportation planning. 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." 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.

**Additional Reasons for Appeal of Variance of Sign Ordinance**

- The freeway sign variance that was granted establishes a precedent for additional unsightly signage. The visual degradation of the City's gateway and the significant adverse aesthetic direct, indirect, and cumulative impacts were never evaluated prior to approving the variance for the proposed project. Furthermore, the variance is inconsistent with Design Guidelines and visual protection policies of the General Plan.

**Additional Reasons for Appeal of Site Plan/Design Review**

- There has been no design review (as provided for in Section 17.36.020 of the Zoning Code) by a properly constituted Economic Development Commission, and the Planning Commission was not provided with recommendations from the Economic Development Commission concerning consistency with Design Review Guidelines.
- Before development in the Gateway area, a Master Plan needs to be created to put into effect the General Plans policies for concentrations of fast food restaurants (Policy I.D.7) and limiting strip development (Policy I.D.5)

**Additional Reasons for Appeal**

- There is evidence that City staff conducted serial meetings with individual members of the Planning Commission in violation of the Brown Act (Public Open Meeting)\
- And for all of the reasons entered into the public record of the August 10, 2010 Winters Planning Commission Meeting as well as all the issues raised in the following written comments, timely and properly submitted at the Public Hearing, and not considered

Mike McCoy  
26738 County Rd. 34  
Winters, CA 95694

August 10, 2010

Winters Planning Commission

Dear Planning Commissioner,

The application for permits, variances and exemptions you have before you tonight all refer to a peculiar piece of property at the intersection of CR90, SR128 and I-505. The 2.3 acre lot is an odd shaped parcel, obviously one that is unusually difficult to plan for and to design. The staff report recognizes as much in asking for two variances from the General Plan and the zoning and ordinances that spring from the General Plan. One is a variance to allow a conditional use, truck refueling, that is not part of the zoning for the piece of the parcel in question. The other is a sign variance proposed because, in the words of the staff report, "special circumstances (such as the physical characteristics or location of the site)," require special treatment. So there is no question that this parcel is deemed to be different enough from all others to require special treatment not afforded to others under the General Plan and its subordinate documents.

Section 15183 of the California Environmental Quality Act guidelines which exempts projects that are consistent with a General Plan or Community Plan from further notes that such exemptions are available except in cases where impacts peculiar to a project or parcel were not analyzed as part of the General Plan. Already you see that two such peculiar impacts are discussed in the staff report. Besides that there is another peculiarity that disqualifies this project from exemption from further environmental review under 15183. That is that this project has peculiar impacts on traffic not particular to any other parcel treated in the general plan and therefore not treated by the General Plans generalized policies regarding traffic and circulation. To put it in the words of Caltrans Chief of the Office of Transportation Planning – South for District 3, "A traffic impact study should be completed and include an analysis of impacts to the State Highway System. The TIS should include I-505 and SR128 at a minimum. The TIS should consider all possible traffic impacts to all ramps, ramp intersections and mainline segments."

The CR 90/SR 128 intersection is less than 300 feet from the off-ramp for I-505 South. It is virtually across the street from the on-ramp for the continuance of I-505 South. This system has long been viewed as one which could accommodate "right turn only" movements from CR 90 onto SR 128. There is no plan in this project or report requiring this condition. There is no mitigation recommended to resolve issues arising from this non-standard and peculiar alignment of this parcel and these roads. As such, this project does not qualify for treatment under guideline 15183. The staff reports that "future study" must be conducted a condition of the project but CEQA has long held that "future study" is not a legally viable mitigation for anything.

Section 15183 also notes that exemptions from further review should not be granted in instances where significant impacts can be determined based on substantial new information. There were two critical pieces of information not available in 1992 nor foreseen in the 1992 General Plan EIR that are clearly known today and that lead to impacts that are more severe than those thought to arise from a project of this nature in this zone in 1992.

The first is that traffic on I-505 has nearly doubled since 1992. The current volume of traffic on I-505 was not considered in 1992. The City of Winters had little knowledge and no control over what outlying districts and events would contribute to dramatic changes in freeway uses. Likewise, traffic on SR 128 has doubled since 1992. Today's figure was not contemplated in 1992. Both of these figures add considerable to the adverse impact of building on a highly constrained corner without any mitigation measures. Again, please note that a future study of undetermined nature with undetermined responsibility for implementation of its findings is not a mitigation.

Because this site is has peculiar impacts different that those generally considered in the General Plan and because the impacts of this site are greater in light of data known today that was not known in 1992 this project is not subject to the exemption provided by CEQA Guidelines Section 15183. If the peculiar impacts of this project, taken together with the facts of higher traffic volumes were adequately treated with substantial physical mitigations as a part of the conditions of the projects approval this case might be different. But under the circumstances the Commission is under no obligation, and should not provide direction to the City staff to file a Notice of Exemption from CEQA for this project.

Sincerely,

Mike McCoy

795-3197

8.10.2010

Dear Planning Commissioners,

This is to give notice that I have not had adequate time to review and analyze the information packet on the proposed freeway franchise food & fuel facility, 117 pages of staff review and technical reports with numerous references to additional documents posted this last Thursday, August 5<sup>th</sup>, 4 working days ago. I believe that in the interest of the community at large, tonight it is appropriate to raise issues in the packet but the commissioners approval of the 5 areas of review within tonight's timeframe is not the public interest. The issues raised tonight needs at least the time necessary to be published in our local newspaper so that an informed public can discuss the merits of the proposal with each other and with you, our representatives.

I do know there has been a lot of pressure applied to make a swift decision in favor of the project for economic reasons. I do understand the reasons for this. I also know that it is your role is to strike a balance between the economic interests of the community and the careful consideration of public aesthetic, safety and welfare issues. I speak to the latter.

My background is in urban design and I practice professionally. Let me publically state that I am not against this project. In fact I make my living through development. In my profession, projects are reviewed critically and by that become better, that is the design process. And because this project is at the communities front door it is critical that we thoroughly review the proposal and make it the best we can, this is in both the developers and the community's interest.

To that end specifically wish to raise these points;

1. Conditional Use Permit;

- 1.1 The city needs to continue to develop the franchise food ordinance to insure there is not a concentration of fast food establishments at the east entrance to town as per General Plan policy statement GP 1.D.7.
- 1.2 The city needs to implement a Grant Street Area Plan so that the Grant Street Corridor does not become a strip development street as per General Plan policy statement GP 1.D.5.
- 1.3 While there is ADA access by code within the building, there does not show any pedestrian access from the County Road 90 sidewalk to the building except through the parking lot and gas pump area. Also there is no defined cross walk or bike passage way from either Grant Street or the County Road90. While cars have access, pedestrians and bicycles are required to have the same level of access. This the city must address. It is a critical public safety issue that needs to be addressed now so that any onsite requirements this may entail can be incorporated.

2. Design Review;

I would like to request a special meeting for design review to respond to the issues raised to include;

- 2.1 Per the Winters Municipal Code under Design Review, Purpose' " to preserve and enhance the small town qualities of Winters" and "the Winters Design Guidelines shall be used as a basis for this review".
- 2.2 Winters Design Guidelines, Vision Statement; see guidelines.  
The current proposal provides first 10' high 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' 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. Note that the building will be sitting on 4.5' of fill. All of this sits on a 600' long concrete block wall 6' high. I suggest that if you are to pass the project in its current form no one will be happy with it.  
The applicant needs to provide a complete project elevation as viewed from the off ramp before an adequate understanding of the proposal can be made.
- 2.3 The "Conceptual Landscape Plan" as current conceived does little to soften the image as all the site landscape is placed behind the "great wall".
- 2.4 The site plan will need to be modified to accommodate the outdoor seating requirement Conditions of Approval, Item 77. This needs to be revised and reviewed before the site plan approval as it may require significant layout changes.
- 2.5 Winters Design Guidelines, Building lighting; see guidelines.  
Currently the proposal has both LED strips around the truck and car fueling canopies as well as illuminated red parapet banding on the building. I suggest this is not in keeping the design guidelines "the small town character of Winters" and should be removed from the elevations.
- 2.6 The roofing material color is not specified which needs to be for approval.
3. Approval of Signage
  - 3.1 Monument Sign; The correct citation is 17.80.030, Section R.5. See Winters Municipal Code; The monument sign needs to be reduced to 8' high, max.
4. Variance of Sign Ordinance
  - 4.1 The original freeway signage ordinance was carefully considered. 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.  
If the applicant wants to enlarge the size of the sign I request that the commissioners first require additional line of sight studies which are required for a variance allowance for additional height, 17.80.030, Section R.4. If the case can be made for the additional size then the ordinance needs to be amended so that this variance is not seen as a special privilege that is inconsistent with the municipal code.
5. CEQA Notice of Exemption
  - 5.1 I have not had time to review the staff findings, discussion and documents and therefore wish the commissioners continue this item for a future date

Sincerely,

Eric Doud, Planner & Architect

Eric Doud M. Arch.  
Architecture + Site Planning  
15 Main Street, Winters, CA 95694  
530.795.3506 Ph / 530.795.1119 Fax  
eldoud@dcn.org email

August 10, 2010

Albert Vallecillo  
210 Main St.  
Winters, CA 95694

Planning Commission  
City of Winters  
318 Main St.  
Winters, CA 95694

Re: Commercial Project at County Road 90 & State Highway 128

Mr. Chairman & Commissioners,

As Planning Commissioners you have each been sworn into office and taken an oath to uphold and defend both the Constitution of the State of California and by extension all the laws, codes and regulations that govern our state. The California Environmental Quality Act (CEQA) is one of those and is the document which drives planning in California, in our community.

The process by which the project at County Rd. 90 & State Highway 128 is being hustled through the approval process should be of great concern to each one of you as a public representative. The serial meetings and the coercion that has taken place by the "legislative body" of the City of Winters is unprecedented in my experience of 18 years as a Planning Commissioner. I hope each of you has taken the time to read and understand these documents to see what is within them and to ask yourselves what is the rush to move this project through the approval process with so little time for review on your part and by the community, and with no further review under contemporary CEQA process. Lets us admit that five calendar days is simply insufficient to do it correctly.

The Public Resources Code section 21151 provides that "All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment."

To this end, CEQA establishes precise procedures governing the preparation of the report. "*The public agency which has the principal responsibility for carrying out or approving a project*" is charged with determining the necessity of an EIR. (Pub. Resources Code § 21067) Under the guidelines implementing CEQA, this "*lead agency*" is directed to screen permit applications for environmental issues that might require environmental investigation. (Cal. Admin. Code, tit. 14, § 15060.) "*If there is a possibility that the project may have a significant environmental effect, the agency must conduct an initial threshold study. If the initial study reveals that the project will not have such effect, the lead agency may complete a negative declaration briefly describing the reasons supporting this determination. However, if the project may have a significant effect on the environment, an EIR must be prepared.*" (Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1000, 165 Cal.Rptr. 514, fn. deleted; Pub. Resources Code, § 21080.1; Cal. Admin. Code, tit. 14, § 15063.)

In the first Supreme Court decision construing CEQA, it was held that the Legislature intended the act "*to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.*" (Friends of Mammoth v. Board of Supervisors (1972) . Later in the landmark decision *No Oil, Inc. v. City of Los Angeles*, the Court inferred that this principle of interpretation demanded "*a low threshold requirement for preparation of an EIR.*"

The test is whether "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." For purposes of judicial review, "the trial court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed 'fair argument' could be made. If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could also be 'fairly argued' that the project might have a significant environmental impact." Therefore, to depend upon an 18 year old document to evaluate a project today seems imprudent, and to rely on that 18 year old document to totally exempt this project from any environmental review seems naïve.

This project does not meet all the criteria to qualify for exemption under Provision 15183 - "Projects Consistent with General Plan, Community Plan, or Zoning" and 15332 - "In-Fill Development Projects" of CEQA as represented below:

- 15183.1: CEQA mandates that any project be consistent with the established development density established by existing, zoning, community plan, or general plan policies, however as this provision goes on to say "except as might be necessary to examine whether there are specific significant effects which are peculiar to the project or its site". Even if one determines that the project meets existing policies, there is a failure to address the issue of traffic in the area of this project which will have a significant impact and as is not discussed specifically but in the generalities of the General Plan (GP).
- 15183.3: There is a requirement to satisfy whether or not "significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the GP" have come into existence since the EIR's adoption. In 1992 climate change emissions was not a point of discussion nor was the cumulative effect of projects such as this could have on the overall environment of Winters.
- 15183.4: Addresses issues, identified in the GP EIR may have a "more severe adverse impact" than discussed in the original EIR document. Again climate change and climate change legislation as well as air & noise pollution generated by the current project indicate a greater impact than previously thought or discussed in 1992.
- 15183.10: Requires that if there are "significant off-site or cumulative impacts" and those impacts are not adequately discussed in the GP EIR, then section 15183 is not applicable. In 1992 it was hardly known or imagined what was going to take place here. I argue that with the discovery by staff in Winter of 2010 that for the adjacent Planned Commercial zones, the necessary requirements for development to proceed had not yet been completed, therefore no plan exists for that area adjacent to this project. How could the cumulative impact been discussed in any adequate and complete form? The GP discusses this area in generalities, not specifics.
- 15332: In-fill defined: *Improvements on land adjacent to and between existing development; a way to accommodate increased population in an area without spreading the boundaries of development; property development within the boundaries of an area rather than moving outward and contributing to sprawl; the concept carries with it connotations of demolition of older buildings in order to make way for new construction, usually with a greater height and/or*

*increased densities, rather than simply finally getting around to developing vacant land. In-fill development generally takes place in older neighborhoods outside the central business district but inside the ring of modern suburbs, not on vacant undeveloped land.*

The only thing about this project's site that begins to satisfy the above definition is that it is within the city limits, otherwise it is a new project on vacant, undeveloped land which satisfies one point of one definition. So I ask is it really in-fill development? Under the discussion area in CEQA it states *"This section is intended to promote infill development within urbanized areas. Is this an urbanized area? This CEQA class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects."* So, is that site truly in-fill?

- 15332d: Stipulates as a condition of qualifying for this exemption that *"approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality."* These issues are not addressed in the GP EIR although idling diesel trucks will contribute both noise and air pollution, vehicles coming, idling and going onto SH 128 and I 505 from the the project will create a traffic and safety problem that has not been looked at thoroughly with any specifics. How could it be, there is no plan. How does an 18 year old document, speaking in generalities speak to these specific issues today?
- 15332e: Site utilities were recently extended to the property across SH 128, this does not constitute being *"adequately served by all required utilities and public services."* Bringing those services to the site will take some effort and will have an impact not addressed in the CEQA Notice of Exemption.
- Also not addressed in the staff report and not dealt with in the GP is energy conservation measures. Besides LED lighting on the canopy what else is being done to mitigate this facilities high use of energy? Will modern "Smart" lighting technology being incorporated? What other measures are being undertaken?

Finally, CEQA says that *"The existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable. One major purpose of an EIR is ... to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action."* This principle is now codified in California Administrative Code, title 14, section 15064, subdivision (h) which provides: *"In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environmental effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR."* This project will produce many issues not adequately addressed in 1992 or today. The General plan's EIR, developed in 1992 had no way of knowing where we would be with this subject today and so we need to revisit our commitment to the principle of "consistency" in light of what we know today. A review of the GP provides a nice wish list in terms of policy but provides no concrete plans on how to deal with environmental issues today. Waiting for the project to go through and be built without

plans of how to mitigate is asking the community to accept issues that could be foreseen with proper environmental review today.

Conditions will continue to change. As a community we must be willing to engage that change especially in light of the fact that we expect developers/investors to come to our community and expect some certainty on how this area will be developed, which in turn will have a direct effect on their return on their investment. We want that. But without looking at the issues in a more specific and contemporary manner, and without an overall plan driven by policy, how can we assure these investors what to expect? Additionally what may have been acceptable as commercial development in 1992 is not necessarily acceptable as commercial development today. Proceeding with that twenty year old plan would be inconsistent with how we look at development now and is inconsistent in the face of CEQA and state law. Exempting this project from additional review on very slim reasoning is opening the City up to huge liabilities.

I am asking the Planning Commission to take the necessary time to stop the development clock and examine the reasoning embedded in the logic of this project so that in the end, years away, as a district it is consistent with the way we want to develop, to be consistent as a whole and to provide the community the control to truly get what it wants - viable economic development consistent with our standards and an understanding of who we are historically and where we want to go without destroying the uniqueness of our community.

Respectfully,

Albert Vallecillo

Comments on Proposed Application for Burger King, Arco, Convenience Store, and Fueling Facility

Submitted by Jeff TenPas

August 10, 2010

- 1. Comment. The proposed truck-fueling facility is not an allowed use or a consistent use in the Light Industrial Zone portion of the site, because it is a more intensive use than the allowed uses such as a recycling collection facility or minor utility services, and will result in more traffic, air pollution, and demand on public services. The proposed use in the Light Industrial Zone is not similar to the listed uses and is not a consistent use in the zone. Significant differences:**
  - **24 hr operating period**
  - **More traffic or large trucks than any typical light industrial use**

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.

- 2. Comment. A proper and legal design review has not been conducted. There has been no proper and legal finding of consistency with the City's Design Review Guidelines. Pursuant to Section 17.36.030(A) of the Zoning Code, design review is required of this project by the Economic Development Commission, with recommendation by the Economic Development Commission to the Planning Commission. The City currently lacks such a Commission, and the City Manager, without apparent authority, has taken that role to himself, and has not presented appropriate findings. If proper design review is lacking, then the Planning Commission should ensure appropriate design review before project approval.**

Pursuant to Section 17.36.020 of the Zoning Code, design review is required of this project.

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.

- 3. Comment. The lot coverage of the proposed development, at 60% coverage in impervious surfaces, is an excessively high and undesirable lot coverage that will contribute to excess urban heat buildup, deficient conditions for growing trees, and excess runoff. This issue should be addressed in a proper design review.**

Section 17.36.040 establishes the criteria for review. Each requirement of this section is addressed briefly below. Any relevant issues of note are disclosed.

*(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.*

- 4. Comment. The proposed parking is inadequate to the proposed uses of the lot. The staff's analysis includes parking spaces for cars based on restaurant seats and convenience store area, but does not include parking based on truck fueling and restaurant usage by truckers. Where truck fueling is included in the design, it is inconceivable that truckers will not also use the restaurant. The lack of parking for trucks would force them to use the streets for parking or occupy many car spaces.**

General Plan Policy III.A .13. provides that "On-street truck parking shall be prohibited where such parking restricts adequate sight distances or otherwise poses a potentially hazardous situation .

General Plan Policy III.F.1 . The City shall require provision of adequate off-street parking in conjunction with all new developments . To the extent possible, parking shall be located behind buildings, out of view from the street: When it is not possible for parking lots to be placed behind buildings, the City shall require screening to mitigate the visual impact of the lots while providing for continued police surveillance . As much as possible, parking lots should not be located at intersections .

The Staff Analysis of Parking is as follows:

#### Parking

The project includes parking for 27 vehicles. Pursuant to Table 6 of Section 17.72.020 of the Zoning Code, the parking requirement is 29 spaces calculated as follows:

- Drive-through restaurant: One space required for every 3 seats. The applicant proposes seating for 60 customers.  $60/3 = 20$  spaces
- Convenience store: One space required for every 250 square feet. The applicant proposes gross building floor area totaling 2,212 square feet.  $2,212/250 = 9$  spaces.

Of the 27 parking spaces provided, two accessible spaces (including one van space) have been proposed for the parking area. Section 17.72.030 of the Zoning Code requires 2 accessible spaces including 1 van space per 26 to 50 spaces; therefore, the 2 accessible spaces shown on the site plan are consistent with the Zoning Code.

- 5. Comment. This project requires the preparation of a traffic impact analysis consistent with General Plan Policy III.A.3 before approval. It is surely the case that this development proposal will create more traffic than a new development of 20 lots. The developer has certainly already projected the traffic his business needs. In this case the increase in traffic will occur at a particularly problematic site, without traffic control, where trucks already have problems entering State Route 128 from CR90, where accidents are relatively frequent, and where site distance for traffic coming over the I505 overpass is limited.**

III.A.3. To identify the potential impacts of new development on traffic service levels, the City shall require the preparation of traffic impact analyses at the sole expense of the developer for developments with 20 or more lots or units.

- 6. Comment. Air Quality Management has not been addressed consistent with the General Plan Policies.**

6.1 The intent of Policy VI.E.4 is clearly to minimize long vehicle delays at major intersections. This proposal will result in the CR90 and SR128 intersection becoming a major intersection. There are already long delays for traffic entering SR128 from CR90, and the volume and waiting by that traffic will expand by many many times.

VI.E.4. Major intersections shall be designed to minimize long vehicle delays which result in carbon dioxide (CO) "hot spots . "

6.2 The proposed drive-through will have the affect of increasing, not reducing automobile use, by keeping cars idling in a drive-through at a standstill contrary to General Plan Policy VI.E.8. The idling of cars in drive-throughs is an increase in use of the worst kind. Idling is the most polluting part of car operation and should be avoided. If a drive-through is allowed, it should be mitigated for its air quality affects.

VI.E.8. The City shall attempt through careful land use and site planning to reduce automobile use.

6.3 The proposed development lacks a required air quality mitigation plan pursuant to General Plan Policy VI.E.11.

VI.E.11 . In granting development entitlement, the City shall require all new industrial and commercial developments within the city projected to generate more than 500 trips per day (based on typical generation rates) to develop an air quality mitigation plan . This plan shall include an analysis of how the project would utilize site planning, mixed land uses, transportation systems management measures (e .g., carpooling, van pooling, shuttle bus service, transit incentives, etc .) to reduce by 25 percent the number of trips that would typically be projected for such development . Where this goal cannot be met by these methods, the plan shall provide for off-site mitigation through funding of air quality improvements such as new park-and-ride lots, sidewalks, bike paths, and support of transit, as deemed acceptable to the City.

- 7. Comment. This project should not be accorded a status of eligible for CEQA exemption per Statutory Exemption 15183 or 15322.**

Re: 15183. The project use is not consistent with allowed uses in the Light Industrial zoned portion of the project area. Neither is the proposed use a consistent use based on activity level as asserted by staff. Truck fueling brings higher levels of traffic, longer hours of use, higher demand for public services than the allowed uses in Light Industrial Zones.

Re: 15322. The project is neither 1) consistent with zoning, nor 2) substantially surrounded by urban uses.

- 8. Comment. The project has potentially significant impact on land use and planning. It conflicts with zoning in the Light Industrial zone, increases intensity of use, decreases available area for light industrial development. It also conflicts with specific General Plan Policies cited in comments above.**
- 9. Comment. The project has potentially significant impact on Transportation. Planning for the traffic flow and traffic control is incomplete – the project proposal is incomplete. But the proposed use in the Light Industrial zone will increase traffic above that analyzed in the General Plan EIR for that part of the project. The proposal conflicts with Traffic Policies in the General Plan as cited in previous comments.**

Good Evening Chairman & Commissioners,

10 August 2010

Name: Bill Hailey

Address: 25501 Buckeye Road

Thank you for the opportunity to appear before you and speak to the Burger King / ARCO /Am PM /Truck Fueling Facility CUP

For the record I'm in favor of highway commercial with thoughtful design sensitivity.

My Concerns of this project are as follows;

**Flooding:** I have reviewed the FEMA Insurance Maps for Winters dated June 2010 and observed that this 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 with on site run-off contained in 2-retention ponds. The developer will be required to contribute to the Winters Storm Drainage Plan which, to my understanding, is still in the making. This information is in your packet

Even after a century and decades of 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.

One suggested solution that would not involve piping and underground infrastructure would be to contour a wide, 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 Road 89 it would track east to the proposed north-south extension alignment of east Main Street than south crossing under (Hwy 128) Grant Avenue, (the arterial would be elevated on a short viaduct or bridge) than paralleling the Wildrose Lanes residential development. Finally, the graded swale would terminate at Putah Creek. This wide swale bypass would also serve as open space, wildlife corridor, land for continuing agriculture, route for a connecting walking / bike path and a green belt buffer between the Gateway, highway commercial development and the adjacent City residential development. Would make a terrific stimulus funding package project.

**Site Design;** In reviewing the site plan the layout of vehicular circulation, building and fueling aprons with canopies and remaining open space appears well thought out for a very tight site. However I'm not in favor of the drive-through lane. Sacramento County banned all proposed drive-through lanes beginning in 2006 and I feel we need to do the same. The site will already host idling cars, trucks with out adding more to the air pollution problem. The pedestrian sidewalk, shown on the plan, needs to connect to something, another sidewalk or a designated cross walk at CR90 to the Chevron Station. The side walk continuing north should logically terminate at the last vehicle entry. There is nothing to walk to beyond that. Provide pervious asphalt paving to aid drainage of the site.

**Building Design;** The building appears to be adequately proportioned to its function and the chosen style of architecture could be referenced to as Industrial Agricultural which

was one of the goals of the Gateway Master Plan. The main entries from the fueling islands appear well defined. However the "silo" which defines the Berger King portion of the building is completely out of proportion to the eve height of the north end of the building mass. Above the eve height the silo needs to extend an additional 28 feet 6 inches making the total height of the silo 46 feet 6 inches from the floor level. Now the silo and the building are mathematically and proportionally correct. Work with the silo and make this the freeway sign.

The windows of the building need an industrial treatment. They need to be steel framed, multi-paned with a projecting light shelf nine feet above the floor with the glass and frame extending another two feet above the shelf. Get rid of the awnings use the shelf for shade. The light shelf will extend natural light deep into the building diminishing the need for artificial lighting and making the building more sustainable. Increase the sloped roof areas to 8 in 12 pitches to give the buildings more reference to historical building practices in the Winters area. Consider making this a LEED project.

**Fuel Island Canopies;** Lower the underside height of the canopies. CALTrans underpass clearances are only, I believe, 15 feet. Provide hipped roofs on the canopies to help them match the building architecture.

**Signage;** The high mast freeway sign needs to be lowered to something less than currently designed. It's just too high and definitely does not say or reflect the image of Winters. City Associate Elliot Landes has been working extensively on signage and way-finding around Winters as well as getting into Winters off I-505. This is one part of this project that needs much thought and design input.

All building signage needs to be judged according to the design guidelines set forth in the Form-based Code for the downtown historic district.

**Lighting;** Reduce the height of the parking and landscaped area mast lighting to 12 feet. This will add a few more units to the lighting requirement but as the landscape trees grow tall and fill out the lighting levels will remain fairly constant.

#### **General Comments;**

- This project was put before the public too quickly to adequately review all aspects presented.
- Need to stop the clock on the projects approval in order to obtain public input.
- In the Gateway Master Plan Process dated January 2010, page 3, item #4 Conduct Public Workshop #1 in February / March 2010. This never happened. Item #6 Conduct Community Workshop in March / April 2010. This never happened.
- When will there be a community workshop on this project before you and the Gateway Master Plan?
- This is a one time opportunity to get it the design right. Are we up to the challenge?

Thank you for the opportunity to speak before you this evening.

Bill Hailey, Planner / Architect



Sally Brown  
24 East Main Street  
Winters, CA 95694

August 10, 2010

Winters Planning Commission  
Winters City Hall  
318 First Street  
Winters, CA 95694

Dear Planning Commissioners,

Winters is a unique community that has been able to maintain and capitalize on its small town charm. That is why we have chosen to make Winters our home. People initially visit and then make many return trips to Winters because of its welcoming character and charm. The Chamber of Commerce uses the following description of Winters from *Sunset Magazine* on its website:

“Neighborhoods of restored Victorians, pocket parks, a thriving downtown bursting with local art and independent restaurants make the small town of Winters a refreshing detour ...”

*Sunset Magazine*

We have but one chance at developing the gateway to our city to keep Winters as a “refreshing detour” and not like all the other small towns in California that have gone the way of strip development. Tonight you are being pressured to make a final decision about a project to develop the property at the intersection of CR90, SR128, and I-505. I’m afraid if you make this decision tonight that decision will be made in haste.

The decision will be made in haste because you are deciding on a single project without considering its place in the whole gateway area. According to a document that I took from the City of Winter’s Website (dated January 2010), the City is soon to be embarking on a Gateway Master Plan planning process for the land and planning elements of I-505/SR-128. The document states that the key elements of the process will be to include a review of planning, engineering, traffic and architectural guidelines resulting in an update of the design guidelines and the previously adopted Gateway Master Plan, which was adopted in 1992. According to this document “staff is proposing a series of meetings to combine the input from property owners, the public, and the City Council and Planning Commission to revise and modernize existing documents to facilitate the desired development within the corridor. The main objectives will be to help define key planning concepts and architectural qualities for the “gateway properties.”

Quite honestly, I am very pleased that City staff has proposed this process and I plan to participate fully. What puzzles me is why this project before you tonight is not considered part of the gateway to our city. It sits right at I-505/SR-128, which certainly seems to be in the scope of the Gateway Master Plan.

While I am no expert at CEQA, I understand that it defines a development project broadly, as the "whole of an action" and it therefore prohibits "piecemealing" or dividing one project into several. I believe that if you make a decision on this project tonight that you will be violating CEQA and thus taking an unplanned, haphazard approach to the gateway of our city. I urge you not to make that mistake.

I also understand that there are several other fast food chains being considered for the south side of SR-128 including McDonald's and Jack in the Box. I don't know what stage in the process these projects are as I can no longer locate on the City's website the planning document that used to list all the projects under review. However, I do know that in our General Plan Policy I.D.7, states that "*The City shall seek to avoid a concentration of fast food restaurants,*" and Policy I.D.5 says that, "*New commercial and office development along Highway 128/Grant Avenue shall be designed to avoid the appearance of strip development.*" We already have two franchised fast food outlets on Grant Avenue (Round Table Pizza and Subway). This project, if approved tonight, would add a third to the strip. How are you planning on assuring that these policies of the General Plan will be satisfied? This is another reason why a decision tonight would be made in haste.

I urge you to delay your decision, despite the intense pressure you are receiving to pass this project tonight. I urge you to instead include this piece of property in the Gateway Master Plan planning process. Upon completion of that planning process I am confident that then you will be able to make a better decision about how well this project fits in the vision for the gateway of our city. With an updated Gateway Master Plan you will have clear direction on the design guidelines and other elements that will make Winters "a refreshing detour." Thank you for doing the right thing for our City.

Sincerely,

Sally Brown