



Los Angeles County  
Department of Regional Planning

*Planning for the Challenges Ahead*



Richard J. Bruckner  
Director

September 15, 2015

TO: Pat Modugno, Chair  
Stephanie Pincetl, Vice Chair  
Esther L. Valadez, Commissioner  
David W. Louie, Commissioner  
Curt Pedersen, Commissioner

FROM: Richard Claghorn  
Zoning Permits North Section

**Project No. R2014-02996 – Conditional Use Permit No. 201400142**  
**RPC Meeting: September 16, 2015 - Agenda Item: 7**

The above-mentioned item is a request to authorize the establishment and operation of a Taco Bell restaurant, including drive-through facilities, within the C-2-DP (Neighborhood Business-Development Program) Zone, the Soledad Zoned District and the Acton Community Standards District.

Please find enclosed a copy of a technical memorandum from Trames Solutions, the project's traffic engineering consultant, that was received subsequent to the hearing package submittal to the Regional Planning Commission. This memorandum includes a summary of revised traffic calculations using the Highway Capacity Manual (HCM) method, in response to concerns from the Acton Town Council. It concluded that the two area intersections will continue to operate at acceptable levels of service at peak hours based on the analysis using the HCM methodology. The memorandum was submitted to the Department of Public Works Traffic and Lighting Division, which forwarded it to the Department of Regional Planning and the Acton Town Council. A 15-page letter opposing the project was received from Jacqueline Ayers of the Acton Town Council today and it is also being included in this package.

If you need further information, please contact Richard Claghorn at (213) 974-6435 or [rclaghorn@planning.lacounty.gov](mailto:rclaghorn@planning.lacounty.gov). Department office hours are Monday through Thursday from 7:00 a.m. to 6:00 p.m. The Department is closed on Fridays.

RG:RC

Enclosure(s): memorandum from Trames Solutions and letter from Jacqueline Ayers

# TRAMES SOLUTIONS INC.

100 E San Marcos Blvd. Ste  
400  
San Marcos, CA 92069  
(760) 291 - 1400

August 27, 2015

Mr. Chris Czyz  
First Street Development  
2929 E. Camelback Rd., Suite 116  
Phoenix, AZ 85016

**Subject: Acton Taco Bell Response to Comments (0231-0001)**

Dear Mr. Czyz:

Trames Solutions Inc. is pleased to submit the following supplemental analysis for the traffic study prepared for the proposed Acton Taco Bell project. The traffic study dated March 2, 2015 was reviewed and approved by Los Angeles County. Comments have been provided by the Acton Community that requests that the analysis of the unsignalized intersections in the County be evaluated using the Highway Capacity Manual methodology. The County requires that the Intersection Capacity Utilization (ICU) methodology be used for analysis purposes. However, to address the concerns of the Acton Community, the following analysis has been prepared using the HCM methodology.

The HCM defines level of service as a qualitative measure, which describes operational conditions within a traffic stream, generally in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. The criteria used to evaluate Level of Service (LOS) conditions vary based on the type of roadway and whether the traffic flow is considered interrupted or uninterrupted. The HCM methodology expresses the level of service at an intersection in terms of delay time for the various intersection approaches. The HCM uses different procedures depending on the type of intersection control. The HCM analysis has been performed using the Traffic 8.0 R1 software.

The calculation of level of service is dependent on the occurrence of gaps occurring in the traffic flow of the main street. Using data collected describing the intersection configuration and traffic volumes at the study area locations; the level of service has been

Trames #0231-0001-06

calculated. The level of service criteria for this type of intersection analysis is based on average total delay per vehicle for the worst minor street movement(s).

The levels of service are defined for the unsignalized methodology as follows:

LEVEL OF SERVICE	AVERAGE TOTAL DELAY PER VEHICLE (SECONDS)
	UNSIGNALIZED
A	0 to 10.00
B	10.01 to 15.00
C	15.01 to 25.00
D	25.01 to 35.00
E	35.01 to 50.00
F	50.01 and up

Table 1 summarizes the traffic conditions analyzed in the traffic study for the intersections under the County's jurisdiction. Utilizing the ICU methodology, the intersections were forecast to operate at acceptable levels of service during the peak hours. Similarly, the analysis utilizing the HCM methodology also indicates that the intersections will operate at acceptable levels of service during the peak hours. It should be noted that the results identified in Table 1 were based on eliminating the pass-by reduction as requested by County Staff. This reflects a conservative analysis since most fast-food restaurants have a pass by reduction of up to 50%.

Respectfully submitted,  
Trames Solutions Inc.



Scott Sato, P.E.  
Senior Associate

**TABLE 1**

**INTERSECTION ANALYSIS FOR  
EXISTING AND FUTURE CONDITIONS**

ID	Intersection	Traffic Control <sup>1</sup>	Intersection Approach Lanes <sup>2</sup>												ICU <sup>3</sup> (secs.)		Level of Service		Delay <sup>4</sup> (secs.)		Level of Service		
			Northbound			Southbound			Eastbound			Westbound			AM	PM	AM	PM	AM	PM	AM	PM	
			L	T	R	L	T	R	L	T	R	L	T	R									
1	Crown Valley Rd./Sierra Hwy.																						
	Existing	AWS	1	1	1	1	1	0	1	2	0	1	1	0	0.48	0.42	A	A	12.4	11.2	B	B	
	Existing+Project	AWS	1	1	1	1	1	0	1	2	0	1	1	0	0.51	0.43	A	A	12.9	11.5	B	B	
	Existing+Cumulative+Project	AWS	1	1	1	1	1	0	1	2	0	1	1	0	0.59	0.51	A	A	15.9	13.4	C	B	
2	Crown Valley Rd./Antelope Woods Rd.																						
	Existing	CSS	1	1	0	1	1	0	0	1	0	0	1	0	0.47	0.31	A	A	13.8	14.0	B	B	
	Existing+Project	CSS	1	1	0	1	1	0	0	1	0	0	1	0	0.47	0.31	A	A	13.9	14.1	B	B	
	Existing+Cumulative+Project	CSS	1	1	0	1	1	0	0	1	0	0	1	0	0.48	0.31	A	A	14.0	14.2	B	B	

<sup>1</sup> AWS = All Way Stop; CSS = Cross Street Stop

<sup>2</sup> When a right turn is designated, the lane can either be striped or unstriped. To function as a right turn lane there must be sufficient width for right turning vehicles to travel outside the through lanes.

L = Left; T = Through; R = Right; 1! = Shared Left-Through-Right Lane; 0.5 = Shared Lane; d = Defacto Right Turn Lane; 1 = Lane Improvement (Project Driveway)

<sup>3</sup> ICU = Intersection Capacity Utilization - Methodology

<sup>4</sup> Delay = Highway Capacity Methodology (HCM)

Richard Claghorn, Planner  
Los Angeles County Department of Regional Planning  
Electronic Submittal of fifteen (15) pages  
(sent to RClaghorn@planning.lacounty.gov)

September 15, 2015

and

The Regional Planning Commission  
320 West Temple Street  
Los Angeles, CA 90012  
Electronic Submittal of fifteen (15) pages  
(sent to Commission Secretary rruiz@planning.lacounty.gov)

Subject: The Staff Report and Hearing Package Prepared for the Taco Bell/First Street  
Development Proposal in Acton.

References: September 16, 2015 Regional Planning Commission Meeting Agenda Item #7.  
Project Number R2014-02996; RCUP # T2014-00142.

Dear Commissioners and Mr. Claghorn;

I have reviewed the Staff Report included in Hearing Package prepared by the Department of Regional Planning ("DRP") for the referenced Agenda Item, and am substantially concerned by the errors that it contains. I am equally concerned by the substantive information that it omits and the lack of response provided to issues and matters raised by the Acton Town Council. Though I have not completed my evaluation of the entire Hearing Package, I have attached a summary of the concerns found thus far, which I submit today in the hope that there is sufficient time for you to review before the hearing. If you have any questions or wish further clarification of the issues presented below, please do not hesitate to email me at [AirSpecial@aol.com](mailto:AirSpecial@aol.com).

Sincerely,

A handwritten signature in black ink, appearing to be 'Jacqueline Ayer', written over a horizontal line.

Jacqueline Ayer  
Acton resident AND  
Opponent of the Taco Bell drive-through development proposed in Acton

**THE STAFF REPORT INCORRECTLY SUMMARIZES THE SITE ZONING HISTORY AND OMMITS KEY DECISIONAL FACTORS IN THE REZONE APPROVAL.**

The staff report states that "This Zone Change was done as part of Project 90368, which included CUP 90-368, which was approved on March 25, 1992 for a 30,000 square foot retail center on an 8.3 acre site, including the current Project Site" [see page 3, paragraph 2]. This is incorrect. The 30,000 square foot retail center referred to here (which underlies the proposed Taco Bell drive-through project) was *not* part of the retail center CUP approved in Case #90-368 [see Finding #3 in RPC hearing package]. Records indicate it was also excluded in Case #93-118. In fact, it does not appear that this 30,000 square foot area was ever approved for any commercial development other than the existing commercial building constructed in the 1920's. The 30,000 square foot area was only included in the zone change and plan amendment actions in Case #90-368. These actions modified the Taco Bell site as follows: 1) It secured a "Community Commercial" land use designation; 2) It downgraded the zoning from C-3 (unlimited commercial) to C-2 (neighborhood commercial); and 3) It added the "-DP" addendum to specifically ensure that any commercial development on the site would be in accord with the needs and desires of the community.

The staff report also includes an incorrect and incomplete summary of events surrounding the approval of Case# 90-368 and the subsequent denial of CUP 93-118. The report erroneously states [page 3] that "CUP 90-368 was never used", and that "CUP 93-118 was filed in 1993 for a market with beer and wine sales at the current Project Site, but this permit was withdrawn on March 8, 1994". This is incorrect. The following facts were obtained from BOS and RPC records and historical data: Before Case #90-368 was approved by the RPC, the developer assured the community that the proposed commercial structures and development plan would include a community-serving market and other locally needed retail businesses such as a pharmacy that were not freeway-oriented and which 1) Were secured by a C-2 "Neighborhood Commercial" zoning designation to ensure the development was community-serving and not freeway-serving; 2) Would have limited hours of operation; and 3) Would be subject to a "Director's Review" process which would rely substantially on community input on proposed tenancies. All of these commitments were made to ensure that only neighborhood-oriented development intended to serve the community would be approved on the project site, and they are embodied in the RPC's ZC Finding #9 adopted by the BOS which states: "The use of the recommended "DP" addendum along with the required conditional use permit and the recommended change from C-3 on a portion of the property to C-2-DP will ensure development in a manner that is compatible with the surrounding land uses and in accord with the needs and desires of the community." It was based solely on these commitments made by the developer that the community did not oppose Case #90-638 at the RPC hearing. However, sometime during the 4 months following the RPC's approval of Case #90-368, the community learned that the development restrictions previously agreed to were no longer acceptable to the developer, that the development would be designed and operated to serve the freeway, and it would operate 24 hours per day without limit or restriction on the hours of operation. On that basis it was opposed by residents at the BOS hearing, which caused confusion because the BOS had the impression that the community supported the project. For the sole purpose of "using" CUP 90-368, the developer applied for a liquor license under CUP 93-118, at which point the Community renewed its opposition to the development in general, and the liquor license in particular. Apparently, more than one hundred Acton residents attended the 1993 RPC hearing

on Case #93-118, which was *denied*. The staff report errs in stating that the permit requested under Case# 93-118 was withdrawn by the applicant; it was never withdrawn and was in fact denied. Subsequently, the applicant filed an appeal with the BOS and requested a de novo hearing, but then withdrew this request in early 1994. Without a liquor license, the applicant chose not to pursue the commercial development authorized under CUP 90-368.

All of this history and the findings adopted by the RPC and subsequently by the BOS are substantially relevant to the Taco Bell proposal now before the Commission, yet none of it is reflected in the staff report, which gives the impression that community participation in Case #90-368 and CUP 93-228 was negligible. The fact is, Case #90-368 was a *transformative event* for the community of Acton, because it brought into sharp focus the fact that Acton residents cannot rely upon developer commitments to secure the low-intensity, community-centered commercial development that was guaranteed for Acton by the County in the 1986 AV Area Plan and further secured in the newly adopted "Town and Country" ("AV Area") Plan. For this reason, the Community of Acton has actively, resoundingly, and steadfastly opposed each and every freeway-dependent commercial development that has been brought to the Commission since Case #90-638. The Community has also actively, firmly, and steadfastly supported commercial development in Acton that is clearly community-dependent and resident-serving.

The community-dependent development restrictions imposed by the rezone decision in Case #90-368 still exist today and they must inform and direct the Commission's decision in RCUP #T2014-00142. The developer is aware of these restrictions and of Acton's unwavering commitment to ensure they are implemented. Nonetheless, and despite the project zoning history and community concerns, the developer unabashedly proposes a commuter-serving commercial development that is entirely freeway-dependent and specifically configured as such.

**TACO BELL IS A "HIGHWAY ORIENTED COMMERCIAL DEVELOPMENT" THAT IS INCONSISTENT WITH A "COMMUNITY COMMERCIAL" LAND USE DESIGNATION.**

On page 4, the staff report states that the project site is located within the Community Commercial land use category of the 1986 AV Area Plan, and that "the subject Taco Bell restaurant is considered to be consistent with this land use category of the 1986 Area Plan". This statement is contrary to the Commercial Land Use Policy Classifications established by the 1986 AV Area Plan [see page VI-6], which addresses the commercial land uses that are recognized by the plan. As evidenced by the plain language of the plan, the proposed Taco Bell drive-through project does not meet the "Community Commercial" land use designation requirements. To the contrary, it is designated as a "Highway-Oriented Commercial" land use because it is a roadside facility that is devoted entirely to "serving the traveling public". Though this distinction is discussed further below, it is noted here that the Taco Bell project is clearly not a "Community Commercial" land use that is "intended to serve adjoining neighborhoods", as evidenced by the project traffic study which indicates that neighborhood residents would comprise less than 1% of the project customer base even if they all visited Taco Bell at least once per month. None of these facts are addressed or even mentioned in the staff report, which must be revised to properly identify the proposed Taco Bell project as a "Highway Oriented Commercial" land use which is distinctly different from, and intrinsically incompatible with, the property's underlying "Community Commercial" land use designation".

**PURSUANT TO THE 1986 AV AREA PLAN, THE PROPOSED TACO BELL PROJECT IS SUBJECT TO THE RURAL COMMERCIAL ZONING ORDINANCE.**

The Community of Acton is a "Designated Rural Community" under the 1986 AV Area Plan. Therefore, any commercial development in Acton which seeks authorization under the 1986 AV Area Plan must comply with the rural protection policies contained in the Plan, as well as the policy implementation programs mandated by the Plan. The Implementation Program (referred to as the "Action Plan") that was adopted in the 1986 AV Area Plan is found in Chapter VII, and it requires that general plan policies pertaining to rural communities like Acton be implemented through the adoption of a "Rural Commercial" zoning ordinance to "recognize and provide for the special needs of rural residents". Fortunately, the County recently adopted such an ordinance [section 22.28.350, et seq.]. Therefore, and through operation of Chapter VII of the 1986 AV Area Plan, the proposed Taco Bell drive through project is subject to this "Rural Commercial" zoning ordinance, which requires (among other things) a CUP for any proposed "drive-through" services. Notably, the applicant has not applied for a CUP to authorize the drive-through element of the proposed Taco Bell project, therefore the "drive-through" element of the proposed Taco Bell project cannot be approved.

**"INTENSITY OF COMMERCIAL USE" IS NOT THE SAME AS "INTENSITY OF COMMERCIAL DEVELOPMENT"**

Page 5 of the staff report states that the "CR land use category's purpose is for 'limited, low-intensity commercial uses that are compatible with rural and agricultural activities, including retail, restaurants, and personal and professional offices". Then, and without further analysis, the staff report simply declares that "The proposed restaurant use is consistent with this category". The facts show otherwise. As a preliminary comment, it appears that staff have confused the "*intensity of a commercial development*" with the "*intensity of a commercial use*", and mistakenly use these terms interchangeably. To clarify: the "*intensity of a commercial development*" (referred to as "development intensity" in the new Countywide General Plan, and "non-residential density" in the new AV Area Plan) pertains to the size of commercial development in relation to the land. It is typically quantified by a ratio of the commercial floor space to the lot area and identified as the "floor to area ratio" – or "FAR". Conversely, the "*intensity of a commercial use*" refers to the level of activity (i.e. noise, traffic, pollution, etc.) that the use generates, and it is dependent on the *type* of use, not the *size* of use. For example, a 2,000 sq. ft. commercial fast food "drive-through" project which generates more than 1,000 vehicle trips per day is a "high-intensity commercial use" compared to a similarly sized commercial office project which generates only 40 vehicle trips per day. The distinction between the "Intensity of development" and the "intensity of use" is clearly set forth in California's Planning and Zoning Statutes<sup>1</sup>, and it is a crucial factor in determining whether or not a proposed development meets the "low-intensity commercial use" restriction established for Acton in the new AV Area Plan.

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<sup>1</sup> California Government Code Section 65850 recognizes that the "Intensity" of a land use is separate and distinct from "the percentage of a lot that can be occupied by a building" and is also different from the "size of buildings or structures".

To determine whether a proposed project is indeed a "low intensity commercial use", it is first necessary to identify a parameter which properly measures the "intensity" of a commercial use. Given that the "intensity" of a commercial use correlates directly with the human activity at the commercial use, it seems traffic generation is the most appropriate parameter for this determination. Small (2,000 sq. ft.) medical offices, clothing stores, and nice cafes are reasonable examples of the "retail, restaurant, and personal and professional office" uses contemplated by the CR land use category, and these uses generate traffic levels ranging from 70 to 180 vehicle trips per day according to the Institute of Traffic Engineers<sup>2</sup> ("ITE"). Thus, a reasonable threshold for establishing what constitutes a "low-intensity commercial use" in Acton is  $\leq 200$  vehicle trips per day. Applying this threshold to the proposed Taco Bell drive-through business, and using ITE traffic data, it becomes instantly obvious that the proposed Taco Bell drive-through project is not a "low-intensity commercial use" at all. To the contrary, it will generate more than 1,000 vehicle trips per day, which is 500% greater than other commercial uses of similar size.

Among all the commercial uses that have been analyzed by ITE, fast food businesses are demonstrated to be the *highest* intensity uses and are second only to convenience stores because they generate *the highest* traffic loads per unit area. ITE data establish that fast food businesses such as the proposed Taco Bell drive-through project are clearly not "low-intensity commercial uses". In fact, they are the antithesis of "low-intensity commercial uses" and are **NOT** consistent with the CR land use category.

To further illustrate the fact that the "intensity of a commercial development" (or FAR) has little bearing on the "intensity of a commercial use", staff is reminded that up to 80% of Taco Bell's customers will use the "drive-through" window<sup>3</sup>, therefore, it is the "drive through" element of the business which contributes the most to traffic and (by extension) to the overall "intensity" of the use. None of these "drive-through" customers actually enter the Taco Bell business, so the size (or FAR) of the Taco Bell building is irrelevant to the traffic generated. In other words, the FAR of a fast food drive through development is transparent to the traffic (or intensity) it generates. The staff report must be revised to that fast food businesses are "high-intensity commercial uses" because they generate the highest traffic loads of any commercial uses. As such, they DO NOT QUALIFY as "limited, low-intensity commercial uses" under the CR land use designation category.

Interestingly, the traffic study prepared for the proposed Taco Bell project provides the most compelling evidence that "intensity of commercial development" differs entirely from "intensity of commercial use". Page B-17 of the traffic study reports the morning peak traffic load generated by two adjacent commercial uses which both have FAR values that are much less than 0.5. These pages show that one commercial use (a community-dependent retail store) generates a "peak" traffic load of 3 vehicle trips per hour, while the second commercial use (a freeway-

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<sup>2</sup> The Los Angeles County Department of Public Works relies on traffic generation rates data that is published by the Institute of Traffic engineers, which is why ITE daily trip rate data are cited here.

<sup>3</sup> Data collected at the Taco Bell drive through business located in San Clemente demonstrate that the percentage of customers that use the drive through window ranges anywhere from 61% to 81% depending on the time of day.

dependent fast food drive-through business) generates a “peak” traffic load of 188 vehicle trips per hour. Though the “intensity of commercial development” is well below 0.5 for both of these commercial businesses, the “intensity of commercial use” *differs by 2 orders of magnitude*. These data clearly illustrate the substantial difference in “intensity of use” between a freeway–dependent fast food drive-through business and a rural community-dependent retail use. The staff report must be revised to reconcile these facts and to address the “bright line” difference between the “intensity of a commercial development” and the “intensity of a commercial use”.

### **THE TACO BELL PROJECT IS A HIGH INTENSITY REGIONAL USE**

Page 6 of the staff report states: “The Town & Country Plan prohibits ‘high-intensity regional commercial uses’ within this area of Acton. However, the Project is not considered to be high-intensity or a regional use”. Putting aside the fact that this conclusion ignores the General Plan language which prohibits such uses “that serve travelers along State Route 14”, it is noted that this conclusion is based entirely on an improper reading of the project traffic study and on the erroneous assumption that the proposed Taco Bell project is not a “high- intensity” development simply because it is “small in size”. From this conclusion, it appears that staff have failed to read the traffic study properly, and have improperly construed the plain language of the newly adopted AV Area Plan properly. To clarify these issues and ensure that staff does not misconstrue the new AV Area Plan in future, the following corrections are provided:

1. Table 4-2 of the Taco Bell project traffic study shows that the project will adversely impact traffic in at least 2 of the 4 intersections that were studied. It further projects a significant drop in the traffic “Level of Service” (from “C” to “D”) as a result of increased traffic from cumulative developments. Yet, the staff report asserts (wrongly) that the traffic generated by Taco Bell “will not exceed” established traffic thresholds, and therefore finds that the project is not a “high intensity” use. This conclusion must be revisited and also reconciled with supplemental traffic count data which indicates that the Taco Bell Project will generate much higher traffic levels than what is projected by the applicant’s traffic study. Some of these data were provided to the Department of Public Works in a meeting on August 18, 2015 which focused on noted deficiencies found in the traffic study (such as the use of v/c analysis methods at unsignalized intersections and the failure to assess project impacts on two-lane roadways). DPW staff indicated that they would seek corrections of these deficiencies from the developer. .
2. According to the staff report , the proposed Taco Bell drive-through project is not a “high intensity” use because it is “small in size... occupying only four percent of the Project Site....” and because the “floor area ratio (FAR) is 0.04, compared with the maximum FAR of 0.5 allowed...” Again, staff mistakenly equate the “intensity of a commercial use” with the “intensity of a commercial development” and on this faulty basis, erroneously concludes that the Taco Bell project is not “high-intensity”. As discussed previously, the “intensity of a commercial development” pertains merely to the relative size (or FAR) of the commercial buildings, which is not in any way indicative of the “intensity of a commercial use” which pertains to the level of activity (i.e. traffic) generated by the development. There is no doubt that the proposed Taco Bell project is, *by definition*, a “high-intensity” use.

3. The Taco Bell drive-through project is intended to be a heavily trafficked, freeway-dependent commercial development that is proposed for the sole purpose of serving regional customers from major urban centers such as the Antelope Valley, the Santa Clarita Valley, and the greater Los Angeles Area. The project is not neighborhood-dependent or even community-dependent; in fact there are not enough households in Acton's entire 100 square mile footprint to furnish even a small fraction of Taco Bell's projected customer load. The developer has informed the community that the project is *intended* to serve commuters on the 14 Freeway, and that the project site was chosen specifically to effect this purpose. These daily commuters travel to and from distant urban and suburban regions located many miles from Acton. There is no doubt that the proposed Taco bell drive-through project is, *by definition*, a regional commercial use that is explicitly designed to serve travelers on the 14 Freeway.

These facts clearly establish the proposed Taco Bell drive-through project as a regional commercial development and a high-intensity use which is intended solely to serve travelers on the 14 freeway. It conclusively and blatantly displays all of the elements of commercial development that are specifically prohibited in Acton by the newly adopted AV Area Plan, and staff's conclusion to the contrary is *absurd on its face*.

#### **THE NUMBER OF SEATS IN A COMMERCIAL DEVELOPMENT DOES NOT ESTABLISH WHETHER THE DEVELOPMENT IS A "REGIONAL USE".**

On page 6, the staff report states that the proposed Taco Bell drive through project has only 57 seats, which is less than the adjacent "McDonalds" drive through (with 125 seats) and the nearby "Jack in the Box" drive through (with 98 seats). Based on this data, the staff report concludes that the Taco Bell project is "not a regional use". This non-sequitur is followed by the almost comical conclusion that "due to the location near a freeway exit for State Route 14 it [the project] will inevitably be used by travelers from outside the local community". Incredibly, DRP seems unaware that "use" of the Taco Bell by "travelers from outside the local community" is not merely an incidental "inevitability", rather it *is the foundational precept* upon which the entire project is proposed. And, like the "Jack in the Box" and the "McDonald's", the proposed Taco Bell project is a regional use intended to serve customers from outside the local community. In fact, the "success" (or economic viability) of the Taco Bell business rests *entirely* on customers from major urban centers north and south of Acton. The number of seats maintained at these fast food businesses is clearly irrelevant, particularly since up to 80% or more of the customers never sit down anyway because they use the drive-through. The staff report must be revised to clarify that Taco Bell is entirely dependent on customers from major urban centers outside of Acton, and therefore the Taco Bell project is indeed a "regional use" in every possible sense.

#### **THE ONLY "HIGH-INTENSITY" USES IN ACTON ARE FREEWAY-DEPENDENT DRIVE-THROUGH BUSINESSES.**

On page 6, the staff report states (incorrectly) that "In addition to the previously mentioned fast food restaurants and automobile service stations, the existing surrounding commercial uses within 500 feet include other uses which are much higher in intensity than the proposed Taco Bell", and it goes on to site the square footage of various adjacent uses such as the 17,000 sq.

ft. commercial development south east of the proposed Taco Bell site. Once again, staff have confused the "size" of a project with the "intensity" of a project; which are two entirely different and mutually exclusive parameters. Drawing from the data provided in the staff report, consider the 17,000 square foot commercial development, which consists entirely of uses that are community-focused and community-based, such as a pharmacy, offices, and a "sit-down" sushi restaurant (where patrons eat their meal *before* they pay for it). Applying ITE traffic standards to this community-dependent development (which is nearly 10 times larger than Taco Bell) shows that none of the uses exceed the 200 vehicle trips per day "intensity threshold", and that the combined "intensity" of all the various uses is less than 500 vehicle trips per day, *well below half* of what Taco Bell will generate as a single use. The community supported the CUP that was approved for this 17,000 sq. ft. development because it provided community-dependent commercial uses that would not (and do not) rely on freeway commuters for the customer base. More importantly, history shows that the uses accommodated by this large commercial development are demonstrably community-dependent, convenient for the community, and "low-intensity" in terms of traffic, trash, and odor. Conversely, the Taco Bell drive through-project is demonstrably freeway-dependent, inconvenient, and high-intensity due the traffic, trash and odor it will generate. The staff report must be corrected to accommodate these facts.

#### **THE PURPOSE, LOCATION AND DESIGN OF THE TACO BELL PROJECT IS INCONSISTENT WITH ADOPTED COUNTYWIDE AND AREA PLANS.**

Beginning on page 7, the staff report identifies provisions of the new AV Area Plan and the 1980 Countywide General Plan, and declares that the Taco Bell project is consistent with these Plans because it "complies" with the cited provisions. The facts show otherwise:

- The Taco Bell drive-through project includes garish neon pink and purple signs that are internally lit and do not constitute "Old West Design Elements". Therefore, they are inconsistent with Chapter 7 of the new AV Area Plan.
- Unlike other commercial projects in the area (such as the pharmacy, feed store, print shop, etc. which "serve the daily needs of rural residents"), the entire purpose of the Taco Bell drive-through project is to "serve the daily needs" of regional customers from urban centers north and south of Acton. Therefore, the Taco Bell project is explicitly inconsistent with Land Use Policy LU 1.4, which is intended to ensure appropriate commercial lands in the AV to "serve the daily needs of rural residents". In fact, and contrary to Policy LU 1.4, the Taco Bell project actually *displaces* an existing feed-store commercial business which is devoted entirely to serving "the daily needs of rural residents". Therefore, the proposed Taco Bell project actually *reduces* the amount of commercial land available to serve the daily needs of rural residents, and is therefore utterly contrary to Land Use Policy LU 1.4.
- It is not certain that existing roadway infrastructure is adequate to handle the projected Taco Bell traffic. In fact, it appears that some road improvement (widening, restriping, or even signalization) are needed because the traffic study demonstrates that cumulative projects reduce the service level from "C" to "D" in at least one intersection, ***which is entirely unacceptable to the community of Acton.*** Therefore, it appears that the Taco Bell project *does not* comply with Land Use Policy 4.1 established by the new AV Area Plan.

- The staff report asserts that, under the 1980 Countywide Plan, the Taco Bell development is subject to General Plan Policy LU 9 pertaining to "*neighborhood commercial facilities*". Then it asserts that the Taco Bell development is subject to General Plan policy LU 10 pertaining to "*highway-oriented commercial facilities*". DRP is confused, because "neighborhood commercial" land uses and "highway-oriented commercial" land uses reflect two entirely different land use categories established by 1980 Countywide Plan, therefore a single commercial development like Taco Bell cannot be in both. To clarify: The 1980 Countywide Plan established two separate and distinct commercial land use categories in non-urban (i.e. rural) areas: 1) "Highway-Oriented Commercial" land uses that serve travelers; and 2) "Local Commercial" land uses that serve local residents [see page III-24]. The 1980 Countywide Plan also provides specific guidance regarding what constitutes a "Local Commercial" land use, and it establishes that the "Local Commercial" Land Use category was established specifically to serve both neighborhood and community residents by providing neighborhood and roadside conveniences, goods and services [see page III-34]. It further requires that the scale of such "Local" uses be limited strictly to "that which the can be justified by local community and neighborhood needs" [see page III-35]. The 1980 Countywide Plan did not map these land uses, rather it left such details to local planning documents such as the 1986 AV Area Plan [see page III-34]. Correspondingly, the 1986 AV Area Plan accommodated the separate and distinct "Local Commercial" and "Highway-Oriented Commercial" land use categories established by the 1980 Countywide Plan via the following land use mapping and policy elements:

1. The 1986 AV Area Plan established the "C-Community Commercial" land use category to govern community-oriented commercial development, and it mapped the locations where such community-serving commercial development was deemed appropriate [VI-6]. The "C-Community Commercial" land use category established by the 1986 AV Area Plan implements the "Local Commercial" land use goals and policy provisions contained in the 1980 Countywide Plan.
2. The 1986 AV Area Plan established the "Highway-Oriented Commercial" land use category to govern roadside facilities "providing a service to the traveling public". It did not map these locations, but required that "Highway-Oriented Commercial" uses would be established in areas "other than", and "in addition to", those areas designated for C-Community Commercial land uses [see page VI-6]. ]. The "Highway-Oriented Commercial" land use category established by the 1986 AV Area Plan implements the "Highway Oriented Commercial" land use goals and policy provisions contained in the 1980 Countywide Plan.
3. The 1986 AV Area Plan established the "Neighborhood Commercial" land use category consisting of facilities intended to serve the local residential neighborhood. It did not map these locations, but required that such "Neighborhood Commercial" uses would be established in areas "other than" and "in addition to" those areas designated for C-Community Commercial land use [see page VI-7]. The "Neighborhood Commercial" land use established by the 1986 AV Area Plan furthers the "Local Commercial" land use goals and policy provisions contained in the 1980 Countywide Plan.

- The existing “Jack in the Box” and “McDonald’s” fast food drive-through businesses are “Highway Oriented Commercial” land uses under the 1986 AV Area Plan, and were approved as such even though the underlying land use designation was “C-Community Commercial” (Note: this approval was explicitly contrary to 1986 AV Area Plan provision that require “Highway-Oriented Commercial” land uses be established in areas “other than” and “in addition to” areas designated as “C-Community Commercial”). Nonetheless, these businesses were approved due to the flexibility of the underlying “C-3 -Unlimited” zoning designation (which allows virtually unrestricted commercial development). Like “Jack in the Box” and “McDonald’s”, the proposed Taco Bell drive-through project is a “Highway-Oriented Commercial” land use under the 1986 AV Area Plan and it is similarly precluded from development on lands designated with a “C-Community Commercial” land use. The Commission is advised that the site selected for the proposed Taco Bell project has a “Community Commercial” land use designation that was specifically and intentionally established by the BOS in Case #90-368. In addition, it has an inflexible C2-DP “Neighborhood Commercial” zoning designation that was also established by the BOS in Case #90-368 through a rezone request that actually *downgraded* the zoning from C3 to C2. Therefore, under both the 1980 Countywide Plan and the 1986 AV Area Plan, the land use and zoning designations underlying the Taco Bell site will allow the proposed Taco Bell “Highway Oriented Commercial” land use.
- Because a few Acton residents may use the Taco Bell or McDonald’s or Jack in the Box businesses, the staff report concludes that such businesses “serve the local community”. However they do not meet the definition established for “Local Commercial” land uses in rural (non-urban communities), and are therefore not deemed to “serve the local community” under the 1980 Countywide Plan and, by extension, the 1986 AV Area Plan. These plans establish an indisputable and “bright line” distinction between “Local Commercial” land uses and “Highway-Oriented Commercial” land uses. The 1980 Countywide Plan defines a “Local Commercial” Land Use as an “individual enterprise serving the needs of the local community” [III-34] **and it strictly limits the scale of all such uses** (in terms of acreage and floor area) to specifically “that which can be justified by local community and neighborhood needs” [III-35]. Accepting for a moment staff’s contention that the businesses in Acton which serve “fast” food (i.e. food that is available immediately and is paid for before it is eaten) are indeed “Local Commercial” businesses, then the scale of such businesses is limited to only that needed to serve Acton’s small population of 7,500. Acton already has more than 10 “fast” food establishments which serve thousands of customers per day, so CLEARLY there are already more “fast” food businesses than is justified by Acton’s small population. Under such circumstances, the County is precluded from exacerbating the already non-compliant situation in Acton by approving yet another “Local Commercial” fast food business. Therefore, Taco Bell cannot be approved as a “Local Commercial” land use in Acton even if (hypothetically speaking) it were actually a “Local Commercial” land use (which it is not.) The staff report must be revised to at least explain how the Taco Bell project meets the definition of a “Local Commercial” land use under the 1980 Countywide Plan and as such, how it complies with the scale and floor area restrictions that are cumulatively imposed by the 1980 Countywide Plan on such uses in Acton.

- As the developer has clarified on multiple occasions, the Taco Bell project is intended to provide convenience and service to the 100,000 daily commuters that travel the 14 freeway, and it is specifically configured for this purpose. It is not convenient for Acton residents because it increases traffic in an area frequented by equestrians and it increases the risk of injury to students walking from the nearby middle school. The developer also admits that location of the proposed Taco Bell business was selected specifically to provide a service to these 100,000 commuters. The location was *not* selected to serve Acton residents because most Acton residents live miles away. The staff report must be revised to correctly state that the proposed Taco Bell project will not serve Acton and is in fact a hazard and a major inconvenience for the community of Acton.
- The staff report further contends that the Taco Bell project is "community-serving" because it provides "a convenient place for residents of Acton to purchase and eat affordable fast food" and it "increases the dining options available to community residents" and it is "in a location that is well suited to the purpose" and designed to "blend into the community". These statements ignore relevant provisions of the 1980 Countywide Plan and the 1986 AV Area Plan. These conclusions also ignore the fact and are simply flat-out wrong, to wit:
  1. The bright, internally lit, and garishly colored neon green and purple signage on the project is not designed to "blend in" to the community; to the contrary it is specifically designed to stand out from the community and be highly visible from the freeway; and
  2. The location is NOT well suited to Acton's purpose because it substantially increases traffic and traffic hazards along roadways and at intersections that are frequented by both equestrians and middle-school students; and
  3. The addition of yet another freeway-serving drive-through fast food business in Acton constitutes a substantial *inconvenience* because of the significant traffic, trash, and odor that it generates;
  4. Acton has 3 Mexican restaurants, so adding a Mexican fast food business does not in fact "increase the dining options" available (if indeed "fast food" even qualifies as a legitimate "dining option" in the first place).

For decades, the Community of Acton has consistently demonstrated to DRP staff that additional freeway-oriented, fast food drive-through businesses are neither convenient for Acton residents, nor complementary to Acton's rural and equestrian community character. It has been repeatedly explained to DRP that the traffic, odor and trash generated by such businesses are intrinsically incompatible with Acton's lifestyle. Community input regarding what constitutes "convenient" and "complementary" development in Acton has been completely *ignored* by DRP, and replaced with DRP's uninformed and unsubstantiated opinions. DRP's conclusion that an additional freeway-serving fast food drive-through business provides convenience to Acton residents is ***absurd on its face***. If DRP persists with this mistaken opinion, then the staff report must be expanded to specifically explain the manner and extent to which Acton residents will be "convenienced" and "served" by the traffic, trash, and odor that will be generated by the

proposed Taco Bell project. It must also explain how this heavily trafficked project is compatible with Acton's established equestrian and pedestrian uses, and in particular it must address the added danger posed to middle school students forced to negotiate the increased traffic. It must also reconcile DRP's conclusion that "a new fast food drive-through project provides a convenient dining option" with the community's steady and unwavering position that such developments are neither convenient nor appropriate anywhere in rural and equestrian Acton.

### **THE DESIGN OF THE TACO BELL PROJECT VIOLATES ADOPTED ZONING ORDINANCES AND REQUIRES VARIANCE APPROVALS.**

Beginning on page 8, the staff report discusses the various zoning code provisions that apply to the proposed project, and concludes that the project complies with all applicable zoning ordinance. The facts suggest otherwise, to wit:

- As clearly stated in Zoning Code Sections 22.04.030, the purpose of DP zoning is to ensure that development which occurs *after* a property is rezoned will conform to plans and exhibits that "constitute a critical factor in the decision to rezone". The proposed Taco Bell project site was rezoned from C-3 (unlimited commercial) to C-2 (neighborhood commercial) in 1992 pursuant to final approval of Case #90-368, which (among other things) relied upon the "Burden of Proof" exhibit provided by the applicant. According to the record in Case #90-368, the "Burden of Proof" exhibit explains that downgrading the existing zoning from C-3 (unlimited commercial) to C-2 (neighborhood commercial) with an attendant DP addendum was necessary because C-3 zoning allows "inappropriate" development of the property for "uses that are inconsistent with the long range land use goals and objectives of the community". The Burden of Proof also clarifies that the C-3 zoning designation "permits urban uses that are not intended by area plan land use goals", whereas the C-2 zoning designation accommodates the "community commercial" development that Acton seeks. On the basis of this evidence, Case #90-638 was approved *There is no doubt* that achieving Acton's long term land use goals and objectives is the centerpiece element of the applicant's "Burden of Proof" exhibit. There is also no doubt that achieving Acton's long term land use goals and objectives was a critical factor in the decision to rezone the Taco Bell project site from C-3 to C-2-DP. Therefore, and pursuant to 22.04-030, the County has a continuing obligation to ensure that any development on the Taco Bell site is consistent with, and specifically furthers, Acton's long term land use goals and objectives. These long term goals and objectives were clearly set forth by the Community of Acton decades ago, and were recently incorporated in the newly adopted AV Area Plan. These long term goals and objectives definitively establish that freeway oriented, drive-through businesses are intrinsically incompatible with Acton's rural and equestrian profile, and they create significant and unacceptable traffic, odor, and trash problems. In other words, the proposed Taco Bell drive-through development is utterly contrary to Acton's long term land use goals and objective, thus it fails to "conform" to an exhibit which constituted a critical factor in the 1992 decision to rezone the property. Therefore, and through operation of 22.040.030, the proposed Taco Bell drive-through project is inconsistent with the existing DP zoning designation on the subject property, and cannot be approved.

- It is also noted that the findings adopted in the County's decision to rezone the Taco Bell site state explicitly that "The use of the recommended "DP" addendum along with the required conditional use permit and the recommended change from C-3 on a portion of the property to C-2-DP will ensure development in a manner that is compatible with the surrounding uses *and in accord with the needs and desires of the community*" [emphasis added]. This finding clearly constituted a critical factor in the decision to rezone the Taco Bell site from C3 to C2-DP. Therefore, through operation of 22.40.030, the needs and desires of the Community of Acton **MUST BE ACCORDED SIGNIFICANT WEIGHT** in any development decision involving the Taco Bell project site. The Community of Acton has consistently and persistently represented to County staff that freeway-oriented drive-through businesses in Acton because are inconsistent with Acton's land use goals and objectives, and they are neither needed nor wanted because they generate significant traffic, trash, and odor.
- The project site plans provided by the developer to the Community of Acton indicates that large, garish neon pink and purple signs will be placed on 3 sides of the building (including a non-frontage side). These signs are obtrusive, do not promote a "western" style, and are clearly intended to advertise the Taco Bell business to freeway commuters. As such, they are explicitly contrary to both the Acton CSD and the attendant Architectural Guidelines. Yet, it appears from the staff report that the developer has informed DRP that the project color palette consists solely of light and dark browns, greys and a stone veneer that is a "brownish color" [see page 9]. These inconsistencies between what the developer has told DRP and what the developer has told the community must be resolved before any action is taken on this project.
- The project signage plans provided by the developer to the Community of Acton indicate that all signs utilize either internal lighting or internal halo-illumination, and therefore do not comply with the external lighting requirements imposed by the CSD. Yet, DRP staff appear to believe that all signs are externally lit [see page 9 of the staff report]. These inconsistencies between what the developer has told DRP and what the developer has told the community must be resolved before any action is taken on this project.

**THE EQUESTRIAN TRAILS PROPOSED FOR THE TACO BELL PROJECT DO NOT COMPLY WITH THE COUNTY'S ADOPTED TRAIL MANUAL.**

On page 10, the staff report states that the project provides "adequate room for the trails along Crown Valley Road and Sierra Highway required by the Department of Parks and Recreation". This is incorrect. The Department of Parks and Recreation implements multi-use trail developments in accordance with the County's adopted Trail Manual. It is clear from the Taco Bell site plan that the multi-use trails proposed for the project do not comply with the Manual and are particularly substandard. The trail bed along Sierra Highway is specifically of concern because it is only 7 feet wide (and even narrows to 5 feet as it approaches the project driveway). This trail is located on a designated major highway and it traverses a driveway that will be crossed by more than 1000 vehicle per day, so safety and prudence demands that it the trail be developed in full compliance with the County's adopted multi-use trail design provisions which (according to Figure 4.3.1-6), include a 12 foot wide trail bed. Acton community members have

been told that the trail width was truncated on the site plan in order to accommodate the parking and landscaping required for the project. However, this is incorrect, because the project includes more parking stalls than is required [page 8 of the staff report] and the amount of landscaping greatly exceeds county requirements [see page 9 of the staff report]. The project must be reconfigured to ensure that the multi-use trail complies fully with the County's adopted multi-use trail design criteria.

#### **THE -DP ZONING DESIGNATION REQUIRES CONFORMANCE TO EXHIBITS THAT CONSTITUTED A CRITICAL FACTOR IN THE REZONE DECISION**

Draft Finding 5 states (in part) that, under Section 22.40-040 of the zoning code, the -DP combining zone "allows any use permitted in the basic zone (C-2) if a CUP has been obtained". This Finding omits key zoning provisions relevant to -DP development restrictions. As discussed above, Section 22.40.030 of the zoning code ensures that development occurring on property that was rezoned as -DP conforms to the exhibits which constituted a critical factor in the decision to rezone. Therefore, Finding #5 should be corrected to state: "The -DP Combined Zone allows any use permitted in the basic zone if a CUP has been obtained and if the use conforms to exhibits that constituted a critical factor in the decision to rezone".

An additional finding should also be added which states "The "Burden of Proof" exhibit submitted in Case 90-368 was a critical element in the decision to rezone in that it establishes the need for downgrading the zoning from C-3 to C-2 since C-3 zoning allows "development of the property for uses that are inconsistent with the long range land use goals and objectives of the community". Furthermore, findings adopted in the rezone decision are relevant, and they assert "The -"DP" addendum along with the required conditional use permit and the recommended change from C-3 on a portion of the property to C-2-DP will ensure development in a manner that is compatible with the surrounding uses *and in accord with the needs and desires of the community*".

#### **DRAFT FINDING 12 IS FACTUALLY INACCURATE.**

Draft Finding 12 is incorrect. CUP 90-368 was not approved for a 30,000 square foot retail center on an 8.3 acre site. This 30,000 square foot area comprises a portion of the proposed Taco Bell project site. The 30,000 square foot area was omitted from CUP 90-368. It does not appear that this 30,000 square foot area was included in CUP 93-118, either. Also, CUP 93-118 was not withdrawn by the applicant; it was DENIED. The applicant initially appealed the denial to the BOS, but later withdrew the appeal. The applicant did not withdraw the permit.

#### **OTHER CONCERNS WITH THE HEARING PACKAGE:**

1. The staff report states that the detention basin is sufficient to retain the first  $\frac{3}{4}$  of an inch of rain. However, recent storm systems have dropped more than 2 inches of rain in Acton in just a few short hours. It must be explained how the capturing of only the first  $\frac{3}{4}$  of an inch of rain landing on the project's impervious surface area will comply with established development requirements in Acton which prohibit the alteration of either the established flow rate or the established flow pattern of surface water flowing off a project site.

2. A condition imposed by the Regional Water Quality Control Board when Case #90-368 was approved was that monitoring wells would be installed and maintained to ensure that no development would impair ground water quality [See paragraph 3 on page 1 of RWQCB letter dated July 26, 1991 to Mr. Heidt and cc'd to DRP. See also Item 7 on page 3 of RWQCB Letter to Frank Menesis dated March 22, 1992]. This condition has never been waived by RWQCB, and it imposes a requirement that must be met by the proposed project. This monitoring well requirement is an approval condition that is as valid today as it was when the zone change was approved in 1992, and perhaps even more so, given the high failure rate of septic systems at other fast food businesses in Acton coupled with the fact that the Water Boards consider the upper reaches of the Santa Clara river to be an "impaired body" as that term is contemplated in the California Clean Water Act. (see [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/01038.shtml#30286](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/01038.shtml#30286) ).
  
3. The staff report states that the "community was appropriately notified of the public hearing by mail, newspaper, property posting...". DRP is advised that the property posting does not comply with 22.60.175. Specifically, the notice on the south frontage is missing, and the notice on the west frontage was placed behind a utility pole which obscures the copy and makes it not visible from the public road [see photos below].

