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VIA ELECTRONIC UPLOAD

Re: Justification for CEQA Appeal of Case No. ZA-2022-2788-CU-SPP-SPPA-SPR-WDI, Conditional Use; Project Permit Compliance; Project Permit Adjustment; Site Plan Review; Waiver of Improvement and Dedication, 2282 Ventura Boulevard

Dear City Council:

This firm represents West Valley Alliance for an Optimal Living ("Association" or "Appellant"). The Association is an organization dedicated to the protection of both the community and the environment in the West Valley. This letter outlines the justifications for the CEQA Appeal for the purposes of the of the In-And-Out Project at 22822 Ventura Boulevard.

The Association brings this appeal because the Association and its members have a direct and substantial beneficial interest in ensuring that City complies with laws relating to environmental protection. Further, the Association and its members are adversely affected by City's failure to comply with CEQA, State Planning and Zoning Law and local law in approving the Project. The Association and its members' aesthetic and environmental interests are directly and adversely affected by the City's approval of the Project.

Despite the fact that the Project would be located abutting and across the street from existing residential uses, the South Valley Area Planning Commission approved the Project, with the following discretionary approvals using a Class 32 Categorical Exemption from CEQA for the Project and a Class 11 Exemption for the Project signs:¹

- A Conditional Use to permit a drive-through fast-food establishment in a C4 zoned property including the associated drive-through vehicular queuing lanes to

¹ Notice of Exemption available at:
<https://planning.lacity.gov/pdiscaseinfo/document/MTI3NzE0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>

be located in the P zone, which adjoins, is across the street from, or separated only by any alley from, any portion of a lot or lots in a residential zone or use; and,

- Pursuant to LAMC Section 12.24 W.27, a Conditional Use to permit a drive-through fast-food establishment within an Commercial Corner Development with hours of operation exceeding 7:00 a.m. to 11 :00 p.m., daily; to permit 20 percent of transparency fronting Ventura Boulevard, 9.5 percent of transparency fronting Rigoletto Street, and 2 percent of transparency fronting Del Valle Street in lieu of the required 50 percent facade transparency fronting adjacent streets pursuant to LAMC Section 12.22A23; and,
- Pursuant to LAMC Section 11.5.7 C, a Project Permit Compliance Review to permit the construction of a drive-through fast-food establishment that includes two (2) Wall signs, refacing of an existing Pole sign, and directional signs on a 39,876 square-foot lot in the Ventura/Cahuenga Boulevard Corridor Specific Plan area; and,
- Pursuant to LAMC Section 11.5.7 E, a Project Permit Adjustment to permit an 8.5-foot landscape buffer in lieu of the otherwise required 10-feet by Section 7.D.1.(c) of the Ventura/Cahuenga Boulevard Corridor Specific Plan; and,
- Pursuant to LAMC Section 16.05, a Site Plan Review for the construction of a building and a change of use that requires a building permit and results in a net increase in average daily vehicle trips as determined by the Los Angeles Department of Transportation (LADOT) ; and,
- Pursuant to LAMC Section 12.37 I, a Waiver of Dedication and Improvement of 5-foot public sidewalk for the east side of Rigoletto Street, which adjoins the project site.

As detailed herein, the proposed Project is not eligible for a Class 32 Exemption. An Initial Study must be prepared for the Project in order to determine the appropriate environmental document pursuant to the California Environmental Quality Act (CEQA).

I. CEQA STANDARD FOR USE OF A CATEGORICAL EXEMPTION

The City is improperly processing the project using an Exemption from CEQA pursuant to CEQA Guidelines, Section 15332, Article 19 (Class 32 – In-fill Development Projects). This letter provides substantial evidence demonstrating that the project is not eligible for a Class 32 – Infill Development Exemption. As detailed in CEQA Guidelines Section 15332, to use a Class 32 Exemption, a project must meet the following conditions:

15332. IN-FILL DEVELOPMENT PROJECTS

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation **and all** applicable general plan policies as well as with applicable zoning designation and regulations. (Emphasis added)

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result **in any** significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code. (Emphasis added)

As acknowledged by the City's guidance for a Class 32 Exemption the administrative record must disclose substantial evidence of every element of the contended exemption.² The City has failed to do this. As detailed in this letter, the proposed project is not consistent with **all** applicable general plan policies as well as with applicable zoning designation and regulations, and therefore does not comply with CEQA Guidelines Section 15332(a). In addition, the City has failed to demonstrate to the public that the proposed project would not result in any significant effects relating to air quality, noise and traffic and therefore the requirements of CEQA Guidelines Section 15332(d), which precludes use of a Class 32 Exemption for projects that would result in any significant effects relating to traffic, noise, air quality, or water quality, are in effect.

In addition, as detailed in CEQA Guidelines Section 15300.2, there are exceptions to when a Categorical Exemption may be used:

15300.2. EXCEPTIONS

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an

² <https://planning.lacity.gov/odocument/ad70d15e-11b8-49ef-aba3-b168f670a576/Class%2032%20Categorical%20Exemption.pdf>

environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

- (b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) **Significant Effect.** A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) **Hazardous Waste Sites.** A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) **Historical Resources.** A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

As detailed in this letter, the proposed project is not eligible for a Categorical Exemption pursuant to CEQA Guidelines Sections 15332(b) and 15332(c) due to both impacts associated with unusual circumstances and the potential for cumulative impacts. The City cannot act on the project until the appropriate environmental documentation has been prepared for the project.

II. THE PROPOSED PROJECT

The proposed Project consists of demolition the existing 6,539 square-foot single-story commercial bank building and the construction of a 3,426 square foot In-N-Out Burger with 38 indoor seats, 26 outdoor seats, 31 automobile parking spaces, and a drive-through with space for queueing of up to 24 cars on a 39,876 square foot lot³ with 137 feet of frontage on Ventura Boulevard, 274 square feet of frontage on the east side of Rigoletto Street, approximately 160 feet of frontage on the north side of Del Valle Street, and 25 feet of frontage on the west side of Fallbrook Avenue. A copy of the Project site plan is provided as **Figure 1**.

³ The project application indicates that the lot size is 38,768 square feet. See: <https://planning.lacity.gov/pdiscaseinfo/document/MzE0MDk0/532fbe86-06a9-44b1-8001-06cd07316c90/esubmit>

As shown in **Figures 2, 3 and 4**, the Project site abuts multi-family residential to the east and is across the street from multi-family residential to the west. Despite the Project's proximity to residential uses, the City is permitting an extension of the allowable hours of operation to Sunday through Thursday 10:30 AM to 1:00 AM, and Friday and Saturday 10:30 AM to 1:30 AM. In addition, the project will have a variety of light sources, including light emanating from the interior of the restaurant; illuminated signs, including instruction signs, wall signs, and a menu board; **nine (9) 25-foot-tall lighting poles**; and a strip of red LED lighting under the building.

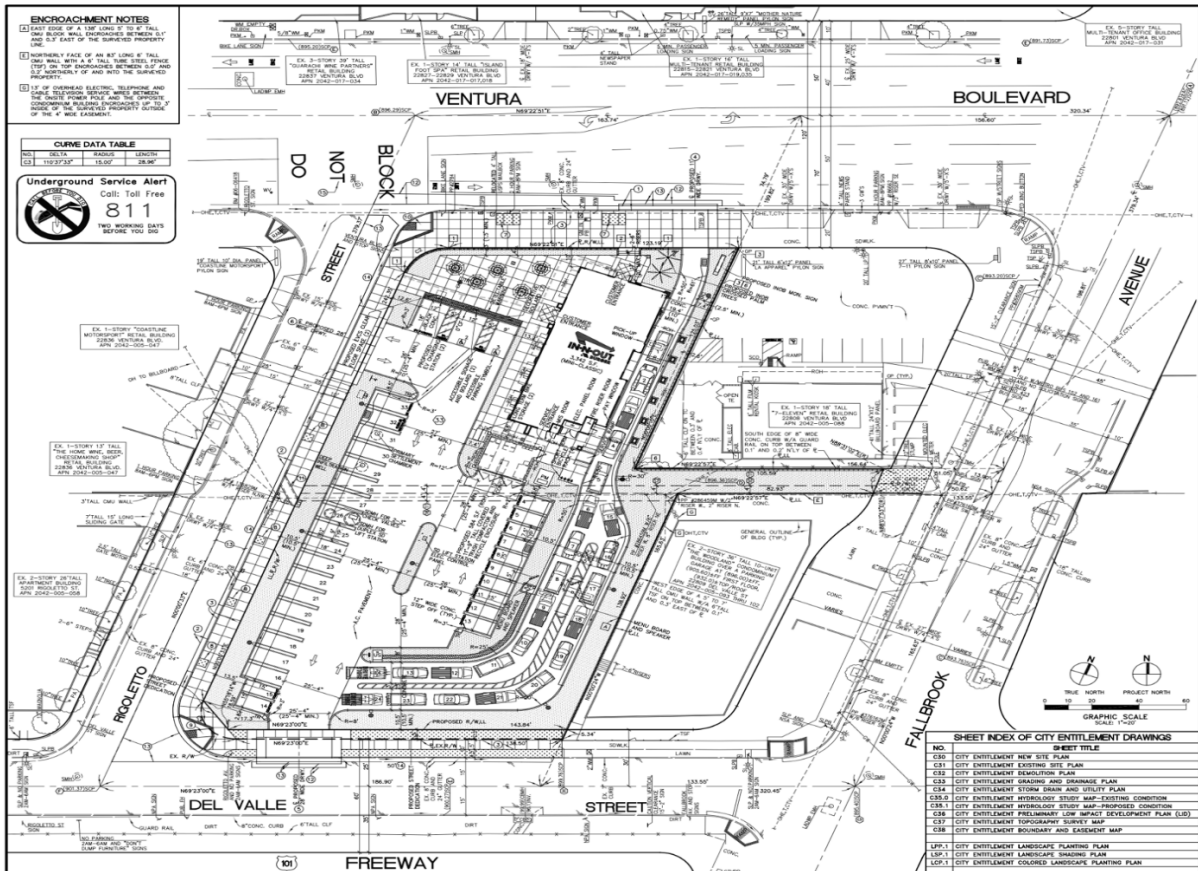


FIGURE 1 – Project Site Plan

Source: <https://planning.lacity.gov/pdiscaseinfo/document/MzE0MTc0/532fbe86-06a9-44b1-8001-06cd07316c90/esubmit>



FIGURE 2 – Proximity of Project Site to Residential Uses

Source: Google Earth



FIGURE 3 – View Across Project Site From Corner of Rigoletto Street and Del Valle Street At Residential Use To the East

Source: Google Earth

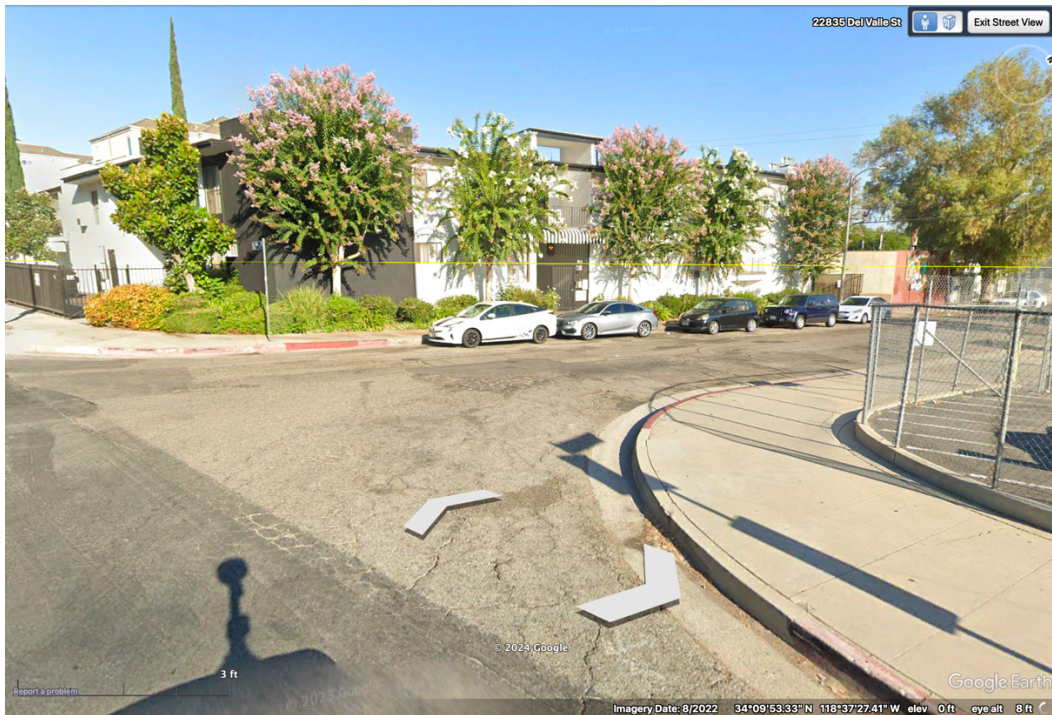


FIGURE 4 - View of Corner of Project Site From Corner of Rigoletto Street and Del Valle Street Looking At Residential Use To the West

Source: Google Earth

Despite this, the proposed Project would have only a 6-foot-high masonry wall between the Project site and the existing abutting residential use which wrap the east, southeast and south property line. No buffer is provided for residential uses across the street to the west. According to page 38 of the original Letter of Decision issued by the Zoning Administrator:

There are three (3) driveways proposed locating on Ventura Boulevard, Rigoletto Street, and on Del Valle Street. The parking lot is buffered from residential uses to the east and west by the drive-through queuing lanes and Rigoletto Street. The queuing lane winds around the perimeter of the site and comes to within approximately 15 feet of the nearest residential building, which is the residential building to the east, and approximately 120 feet from the residential building on the property to the west.

The project proposes several features aimed at preventing potential disturbances to nearby residents, including a six (6)-foot-high solid masonry wall around the perimeter of the subject site where it abuts residential uses, an 8.5-foot-wide landscape buffer between the queuing

lane and the easterly residential property, and a 10-foot-wide landscape buffer between the queuing lane along the west and south property lines, with three (3) trees to be planted along the west property line, four (4) trees along the south property line, and 11 trees along the west property line of which four (4) are located on the public right-of-way. As a condition of approval, the applicant will be required to install signs requesting that drive-through patrons keep noise levels down as a courtesy to neighboring residents. All of these design features and operational measures will reduce disturbances to occupants of nearby residential uses and enhance their privacy.

The City thus apparently considers queueing lanes to be a buffer for residential uses; a six-foot-high wall adequate to avoid impacts from 25-foot-tall lighting poles; a 10-foot-wide landscaped area with eleven trees an adequate buffer between the queueing lanes and parking and residential uses to the west; and, a sign asking patrons to keep noise levels down and signage asking patrons to avoid left turns out of the Project site adequate to avoid impacts. This is ridiculous on its face, when dealing with an In-N-Out Burger drive-through restaurant.

Despite the fact that the Project is located adjacent to residential uses, Project access would be through a bike lane, In-N-Out Burger has higher trip generation and more queueing than similarly sized fast-food restaurants, and In-N-Out customers are notorious for making illegal turns into and out of In-N-Out facilities, the City has approved the project with augmented hours and with various waivers and exceptions from Municipal Code (LAMC) requirements intended to protect adjacent properties and to provide for safe operation. The Project is therefore not eligible for a Categorical Exemption.

III. THE PROJECT IS NOT ELIGIBLE FOR A CATEGORICAL EXEMPTION

A. Unusual Circumstances

A Class 32 Categorical Exemption cannot be used due to the presence of the following unusual circumstances:

- In-N-Out burger fast food restaurants have higher trip generation and queueing lengths than other fast-food restaurants;
- the Project site abuts and is located across the street from residential uses;
- the Project site is located within 1,000 feet of a Freeway;
- idling cars in close proximity to existing residential use would further exacerbate air toxics exposure;
- Patrons of In-N-Out restaurants are documented to ignore turn restrictions when accessing the restaurant;
- there is a bike lane along Ventura Blvd. in front of the Project site and Project patrons would cross thorough the bike lane when entering and leaving the Project site; and,

- the Project site is located within the Ventura/Cahuenga Boulevard Corridor Specific Plan area.

Queueing Hours and Trip Generation

As documented in a study prepared for a proposed In-N-Out in Monrovia by Ganddini Group in 2022, In-N-Outs have near constant queueing from opening until closing.⁴ The study looked at the following seven existing In-N-Out drive-throughs:

Survey Location	Weekday Count Dates	Weekend Count Dates
Corona - 2305 Compton Avenue, Corona, CA 92881	12/4-8/2017	12/2-3/2017
Highland - 28009 Greenspot Road, Highland, CA 92346	12/4-8/2017	12/2-3/2017
Indio - 82043 Highway 111, Indio, CA 92201	6/27/2019	6/22/2019
La Quinta - 78611 Highway 111, La Quinta, CA 92253	6/27/2019	6/22/2019
Long Beach - 6391 E Pacific Coast Hwy, Long Beach, CA 90803	5/16/2012	5/19/2012
Los Angeles - 9149 S Sepulveda Blvd, Los Angeles, CA 90045	5/16/2012	5/19/2012
Thousand Palms - 72265 Varner Rd, Thousand Palms, CA 92276	6/27/2019	6/22/2019

⁴ Available at:
<https://www.cityofmonrovia.org/home/showpublisheddocument/29567/637982457181130000>

Table 1 shows the lunch and dinner weekday and weekend queueing in 15-minute increments.

Table 1
Weekday Drive Through Queue Survey Summary

Time	Peak Queue Observed within 15-Minute Increment								85th- %ile
	Corona	Highland	Indio	La Quinta	Long Beach	Los Angeles	Thousand Palms	Average	
LUNCH									
11:00 AM	17	14	5	8	3	6	15	10	15
11:15 AM	17	17	7	7	6	12	16	12	17
11:30 AM	16	16	12	12	7	16	18	14	16
11:45 AM	17	17	12	13	14	19	14	15	17
12:00 PM	23	19	12	21	15	20	17	18	21
12:15 PM	24	21	10	22	15	18	16	18	22
12:30 PM	23	21	9	19	13	21	16	17	21
12:45 PM	17	20	12	18	8	19	20	16	20
1:00 PM	16	19	16	18	12	22	10	16	19
1:15 PM	18	14	12	20	13	21	12	16	20
1:30 PM	17	16	10	18	8	20	13	15	18
1:45 PM	15	18	8	16	7	20	10	13	18
2:00 PM	16	17	7	14	8	21	19	15	19
DINNER									
4:00 PM	17	15	7	15	6	17	7	12	17
4:15 PM	16	19	4	21	5	15	10	13	19
4:30 PM	17	17	7	20	3	12	9	12	17
4:45 PM	16	18	7	20	6	10	11	13	18
5:00 PM	23	19	6	22	5	9	10	13	22
5:15 PM	23	19	12	18	7	14	14	15	19
5:30 PM	23	19	10	21	7	17	13	16	21
5:45 PM	18	21	9	19	5	19	9	14	19
6:00 PM	23	23	10	16	12	20	12	17	23
6:15 PM	24	22	8	22	7	19	16	17	22
6:30 PM	24	19	11	23	10	20	18	18	23
6:45 PM	24	18	10	21	12	18	18	17	21
7:00 PM	23	19	7	21	10	17	19	17	21
7:15 PM	18	21	10	16	11	18	20	16	20
7:30 PM	23	21	12	7	7	19	17	15	21
7:45 PM	24	19	7	17	6	20	16	16	20
8:00 PM	23	18	15	16	8	21	10	16	21
8:15 PM	17	17	12	17	6	19	17	15	17
8:30 PM	16	17	10	15	9	19	15	14	17
PEAK	24	23	16	23	15	22	20	20	23

Source: Queue observations at existing In-N-Out restaurants; see Attachment B.

Time	Peak Queue Observed within 15-Minute Increment								
	Corona	Highland	Indio	La Quinta	Long Beach	Los Angeles	Thousand Palms	Average	85th-%ile
LUNCH									
11:00 AM	9	9	6	8	7	8	8	8	9
11:15 AM	13	14	4	11	8	11	8	10	13
11:30 AM	17	16	7	16	9	12	12	13	16
11:45 AM	19	18	8	11	16	18	14	15	18
12:00 PM	17	18	11	10	16	20	11	15	18
12:15 PM	18	20	8	14	14	16	12	15	18
12:30 PM	23	20	9	18	16	20	18	18	20
12:45 PM	24	21	11	16	10	20	16	17	21
1:00 PM	24	19	16	15	15	23	15	18	23
1:15 PM	23	20	7	14	16	22	15	17	22
1:30 PM	24	20	6	18	10	20	18	17	20
1:45 PM	23	22	8	15	9	20	18	16	22
2:00 PM	22	17	12	16	12	21	14	16	21
DINNER									
4:00 PM	20	14	10	14	8	10	12	13	15
4:15 PM	18	15	15	17	10	14	11	14	17
4:30 PM	17	16	15	17	8	18	12	15	17
4:45 PM	17	18	16	20	5	8	11	14	18
5:00 PM	23	19	20	21	9	8	12	16	21
5:15 PM	24	20	22	18	10	9	11	16	22
5:30 PM	24	22	22	19	10	20	6	18	22
5:45 PM	23	18	24	12	9	19	16	17	23
6:00 PM	24	23	21	11	13	20	19	19	23
6:15 PM	24	21	16	10	9	19	17	17	21
6:30 PM	25	20	10	17	10	20	15	17	21
6:45 PM	25	19	11	18	14	18	20	18	21
7:00 PM	24	21	8	10	12	19	19	16	21
7:15 PM	24	19	7	12	13	20	13	15	20
7:30 PM	23	18	6	11	9	21	12	14	21
7:45 PM	23	19	9	8	9	22	14	15	22
8:00 PM	15	20	12	15	10	21	13	15	20
8:15 PM	16	19	9	16	9	22	17	15	19
8:30 PM	17	21	8	16	11	18	17	15	18
PEAK	25	23	24	21	16	23	20	22	24

Source: Queue observations at existing In-N-Out restaurants; see Attachment B.

Table 2 shows the queueing over the full course of daily operations for an In-N-Out in Corona in 2017.

Table 2 – Carona In-N-Out, 2017

Time	Corona In-N-Out							Peak
	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	
	12/2/2017	12/3/2017	12/4/2017	12/5/2017	12/6/2017	12/7/2017	12/8/2017	
10:30-10:45	7	5	6	5	6	5	6	7
10:45-11:00	14	11	14	7	12	7	8	14
11:00-11:15	7	9	17	11	12	9	10	17
11:15-11:30	9	13	14	15	12	11	17	17
11:30-11:45	9	17	14	15	15	16	16	17
11:45-12:00	11	19	17	10	14	16	15	19
12:00-12:15	13	17	12	13	18	15	23	23
12:15-12:30	16	18	17	13	18	14	24	24
12:30-12:45	20	23	20	13	16	13	23	23
12:45-1:00	22	24	15	17	13	14	17	24
1:00-1:15	22	24	14	11	13	16	14	24
1:15-1:30	23	23	11	14	16	18	15	23
1:30-1:45	24	22	11	11	15	17	16	24
1:45-2:00	23	17	10	10	13	14	15	23
2:00-2:15	22	18	15	11	16	10	15	22
2:15-2:30	23	17	17	16	16	13	13	23
2:30-2:45	24	23	18	15	12	13	13	24
2:45-3:00	20	14	12	14	10	13	15	20
3:00-3:15	20	18	18	23	17	14	16	23
3:15-3:30	17	14	15	19	18	14	18	19
3:30-3:45	17	16	18	17	11	16	17	18
3:45-4:00	15	17	16	12	15	14	15	17
4:00-4:15	18	20	12	9	12	15	17	20
4:15-4:30	16	18	16	10	9	11	11	18
4:30-4:45	16	17	17	14	10	9	11	17
4:45-5:00	16	17	14	12	16	15	13	17
5:00-5:15	23	15	16	13	23	18	13	23
5:15-5:30	24	17	23	12	18	21	16	24
5:30-5:45	24	23	16	13	16	16	23	24
5:45-6:00	23	23	15	13	17	18	15	23
6:00-6:15	18	24	12	12	18	23	19	24
6:15-6:30	23	24	15	17	23	24	17	24
6:30-6:45	23	25	23	23	23	24	18	25
6:45-7:00	20	25	24	17	17	23	15	25
7:00-7:15	23	24	23	18	14	13	17	24
7:15-7:30	15	24	16	15	16	17	18	24
7:30-7:45	14	23	12	14	13	16	23	23
7:45-8:00	16	23	14	12	13	20	24	24
8:00-8:15	15	15	14	12	14	17	23	23
8:15-8:30	16	15	15	13	12	14	17	17
8:30-8:45	17	16	14	14	10	15	16	17
8:45-9:00	14	14	14	10	14	15	13	15
9:00-9:15	17	12	14	12	11	13	15	17
9:15-9:30	12	10	15	9	11	15	15	15
9:30-9:45	16	13	11	8	8	10	16	16
9:45-10:00	12	15	9	8	11	13	11	15
10:00-10:15	13	12	14	7	12	13	12	14
10:15-10:30	12	9	9	6	11	13	15	15
10:30-10:45	14	13	11	6	7	11	15	15
10:45-11:00	19	11	9	7	8	9	14	19
11:00-11:15	20	8	8	6	6	8	13	20
11:15-11:30	16	12	6	5	5	7	11	16
11:30-11:45	14	10	7	4	4	5	11	14
11:45-12:00	12	8	5	4	5	6	11	12
12:00-12:15	11	5	5	3	4	4	11	11
12:15-12:30	11	7	4	3	3	3	11	11
12:30-12:45	13	6	3	3	2	3	11	13
12:45-1:00	13	4	2	2	2	2	11	13
Day Peak	24	25	24	23	23	24	24	25

Adjacent residential units and the residential units across the street will experience a steady stream of traffic during operating hours, and these number do not account for users that enter and leave the site by car, but park, rather than make use of the drive-through. The volume of idling cars throughout the day constitutes an unusual circumstance with the potential to result in impacts.

Furthermore, it has been well documented that In-N-Outs have much higher trip-generation than other fast-food restaurants. For example, page 96 of an Initial Study for an In-N-Out restaurant in the City of Santa Rosa, and the associated Traffic Study found the following rates for 3,900 square-foot In-N-Out.⁵

Table 3 – In-N-Out Trip Generation – Study 1

TABLE 12: TRIP GENERATION SUMMARY											
Land Use		Daily		AM Peak Hour				PM Peak Hour			
		Rate	Trips	Rate	Trips	In	Out	Rate	Trips	In	Out
In-N-Out Specific	3.9 ksf	772.37	3,012	-	-	-	-	57.32	224	116	108
Typical Fast Food Restaurant	3.9 ksf	470.95	1,837	40.19	157	80	77	32.67	127	66	61

Source: Traffic Impact Study for Yolanda Mixed-Use, prepared by W-Trans, February 7, 2019.

Notes: Table modified to reflect proposed In-N-Out independent of the 252 residential project, which was analyzed as part of the IS/MND for Yolanda Apartments Project (SCH #2019069009).

Trip rates used for analysis are in **bold**, rates for a typical fast food restaurant with drive-thru window are included as reference only.

A Traffic Analysis by Linscott, Law & Greenspan for an In-N-Out in San Juan Capistrano derived the following trip generation rates based on observations of In-N-Out restaurants conducted on Thursday (7/22/21) and Friday (7/23/21) at two locations, Rancho Mission Viejo (30655 Gateway Place) and Laguna Niguel (27380 La Paz Road) for the Midday and PM peak periods.⁶ The highest trip generation rate calculated from the collected data was used for the Midday and PM peak hours in order to be conservative.

Table 4 – In-N-Out Trip Generation – Study 2

PROJECT TRIP GENERATION RATES AND FORECAST ¹⁹							
Description	Daily 2-Way	MD Peak Hour			PM Peak Hour		
		Enter	Exit	Total	Enter	Exit	Total
<u>Trip Generation Rates:</u>							
▪ Empirical Trip Generation Estimation for In-N-Out (TE/TSF)	731.50 ²⁰	51%	49%	81.39	48%	52%	73.15
▪ 932: High Turnover Sit-Down Restaurant (TE/TSF)	112.18	52%	48%	17.41 ²¹	62%	38%	9.77

⁵ <https://www.srcity.org/DocumentCenter/View/30340/In-N-Out-Burger---2532-Santa-Rosa-Ave---Mitigated-Negative-Declaration>

⁶ See: <https://www.sanjuancapistrano.org/DocumentCenter/View/840/Traffic-Impact-Analysis-Report-PDF>

Using these slightly lower rates, the 3,426 square-foot Project can be expected to generate the following number of trips:

Table 5 – Projected Project Trip Generation							
	Daily	MD Peak Hour			PM Peak Hour		
	2-Way	Enter	Exit	Total	Enter	Exit	Total
Empirical TE/TSF	731.5	0.51	0.49	81.39	0.48	0.52	73.15
3,426 Square feet (3.426 TSF)	2,506.119	142	137	279	120	130	251

The 7th Edition ITE trip generation rates for a fast-food restaurant with the drive-through window (934) are: 53.11 trip ends per TSF (range 6.54-163.33) on a weekday peak hour between 7 and 9 a.m. with 51% entering and 49% exiting.⁷ This higher trip generation and consistent queueing are unusual circumstances with the potential to result in impacts.

Proximity to Residential Uses

As shown in **Figures 2 – 4** above, the proposed Project is located both adjacent to, and across the street from multi-family housing. This is an unusual circumstance with the potential to result in impacts.

Proximity to a Freeway

As shown in the ZIMAS listing for the Project parcel, the Project parcel and that of the adjacent residential uses is located in an area zoned ZI-2427 Freeway Adjacent Advisory Notice for Sensitive Uses.⁸ As noted in the Advisory:

Air pollution studies indicate a strong link between the chronic exposure of populations to vehicle exhaust and particulate matter from roads and freeways and elevated risk of adverse health impacts, particularly in sensitive populations such as young children and older adults. Areas located within 500 feet of a freeway are known to experience the greatest concentrations of fine and ultrafine particulate matter (PM), a pollutant implicated in asthma and other health conditions. In 2003, the California Legislature enacted SB 352, which precludes the siting of public schools within 500 feet of a freeway, unless it can be shown that any significant health risk can be mitigated.

As noted in the Advisory:

⁷ See: https://engineering.purdue.edu/~ce361/JFRICKER/HW/ITE_LU934.pdf

⁸ Specific information about this designation is available at:
<https://zimas.lacity.org/documents/zoneinfo/ZI2427.pdf>

Existing Adopted Policies Addressing Impacts of Air Quality

The City's General Plan already contains adopted policies addressing health-based risks and outcomes. Below are a few that are directly related to freeways.

Air Quality Element Policy 4.3.1: Revise the City's General Plan/Community Plans to ensure that new or related sensitive receptors are located to minimize significant health risks posed by air pollution sources.

Housing Element Policy 4.1.9: Whenever possible, assure adequate health-based buffer zones between new residential and emitting industries.

Housing Element Policy 2.1.2: Establish standards that enhance health outcomes.

Plan for Healthy LA Policy 1.5 - Plan for Health: Improve Angelenos' health and well-being by incorporating a health perspective into land use, design, policy, and zoning decisions through existing tools, practices, and programs.

Plan for Healthy LA Policy 5.2 – People: Reduce negative health impacts for people who live and work in close proximity to industrial uses and freeways through health promoting land uses and design solutions.

Plan for Healthy LA Policy 5.4 - Noxious activities: Protect communities' health and well-being from exposure to noxious activities (for example, oil and gas extraction) that emit odors, noise, toxic, hazardous, or contaminant substances, materials, vapors, and others.

Plan for Healthy LA Policy 5.7 - Land use planning for public health and GHG emission reduction: Promote land use policies that reduce per capita greenhouse gas emissions, result in improved air quality and decreased air pollution, especially for children, seniors and others susceptible to respiratory diseases.

Idling Cars In Proximity to Residential Uses Would Further Exacerbate Air Toxics Exposure

As shown in **Figure 1**, the proposed Project would result in a queue of idling cars being located in close proximity to existing residential uses from Sunday through Thursday 10:30 AM to 1:00 AM, and Friday and Saturday 10:30 AM to 1:30 AM. The proposed Project would thus add to residents' cumulative exposure to air toxics and air pollutants from proximity to the freeway, with air toxics and air pollutant exposure from idling vehicles and vehicles accessing

the Project site. This is an unusual circumstance with the potential to result in environmental impacts.

Unsafe Turning Movements by In-N-Out Patrons

The following series of five video frames shows two cars making U-Turns to join an on-street queue for the In-N-Out Burger on Ventura Boulevard in Woodland Hills, while a third car (white) was making a left-hand turn out of the adjacent strip-mall. Between 4:55 and 5:02 on January 30, 2024, we observed 6 cars execute this U-Turn maneuver. While several cars made their U-Turn in front of the driveway to the adjacent strip-mall, as the line got longer other cars made their U-Turn mid-block. This demonstrates the willingness of In-N-Out customers in the Project vicinity to make illegal turns in a business district⁹ to access this fast-food chain and to engage in unsafe entry and exit behaviors. This is an unusual circumstance with the potential to result in impacts.



⁹ Definition of a Business District, California Vehicle Code Section 235:
<https://ranchomirageca.gov/our-city/pertinent-california-vehicle-code-sections/#:~:text=A%20%20%20business%20district%20is%20that,which%20highway%2C%20collectively%2C%20for%20a>
Prohibition on U-Turns in a Business District VEH Section 22102:
<https://codes.findlaw.com/ca/vehicle-code/veh-sect-22102/#:~:text=No%20person%20in%20a%20business,in%20accordance%20with%20Section%202021651.>

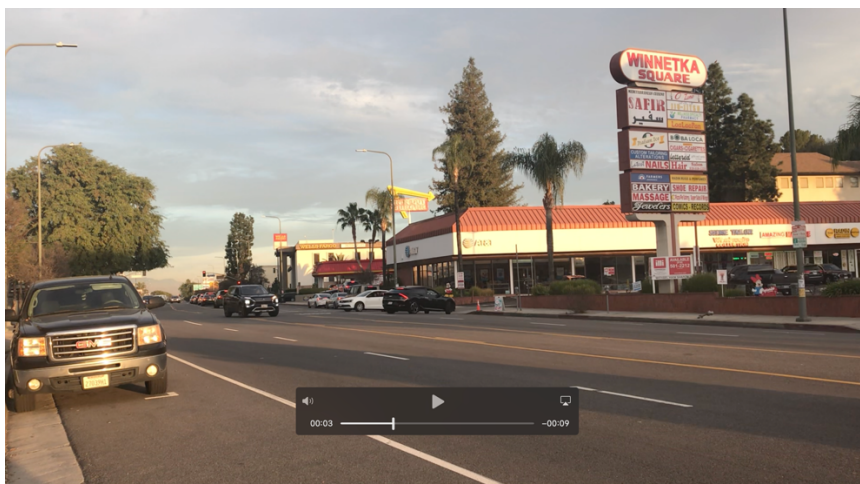




FIGURE 5 – Frames From Video Showing Two Cars Making U-Turns To Join On-Street Queue for In-N-Out Burger on Ventura Boulevard, Woodland Hills While a Car (White) Exits Adjacent Strip Mall – 4:59 PM January 30, 2024

In addition, the nearby Woodland Hills Chick-fil-A experienced so many inappropriate turning movements into and out of the site, and such disregard for turn movement signage, that it was forced to put up bollards on both Ventura Blvd. and Winnetka Avenue to restrict prohibited movements, as shown in **Figure 6**.



FIGURE 6 – Bollards on Winnetka Avenue Along Chick-Fil-A Site Installed Due to Unlawful Turning Movements By Customers, photo date - January 30, 2024

Bike Lane Along Ventura Boulevard Frontage

As shown in NavigateLA, there is an existing bike lane along Ventura Boulevard along the Project frontage.

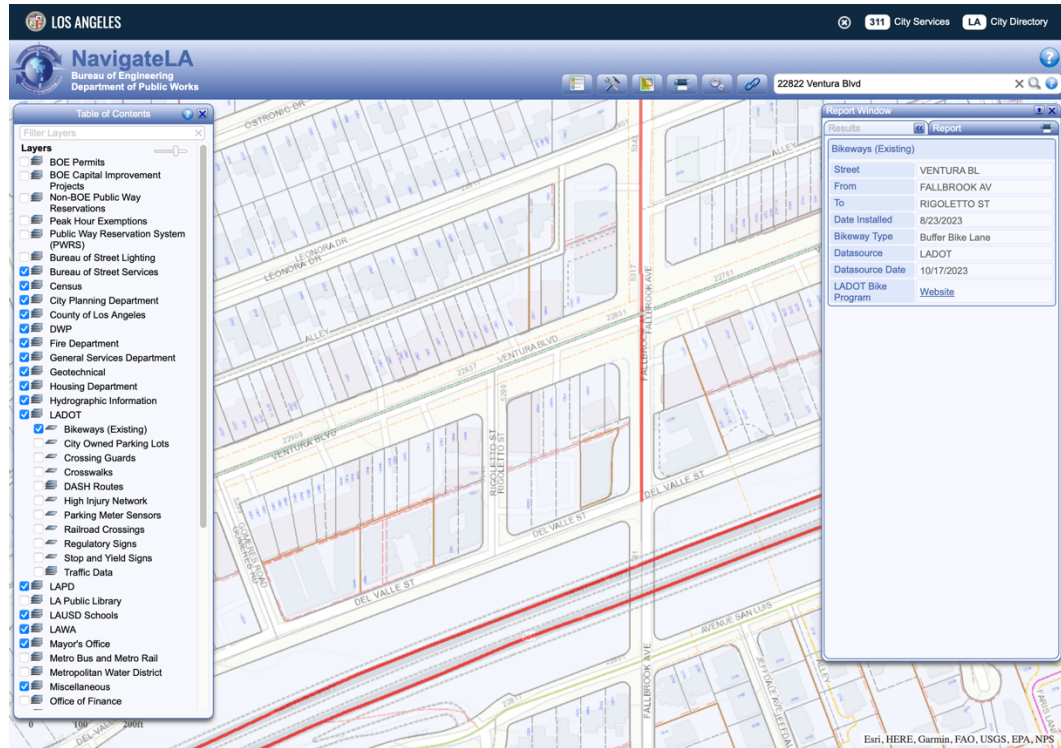


FIGURE 7 – NavigateLA listing showing Buffer Bike Lane on Ventura Boulevard along Project Frontage

Source: NavigateLA

The street configuration in the Project vicinity was redone consistent with the Reimagine Ventura Plan. A copy of the street section plan is provided in **Figure 8**. **Figure 9** shows a GoogleEarth view of the existing bike lane in front of the Project site, confirmed on January 30, 2024.

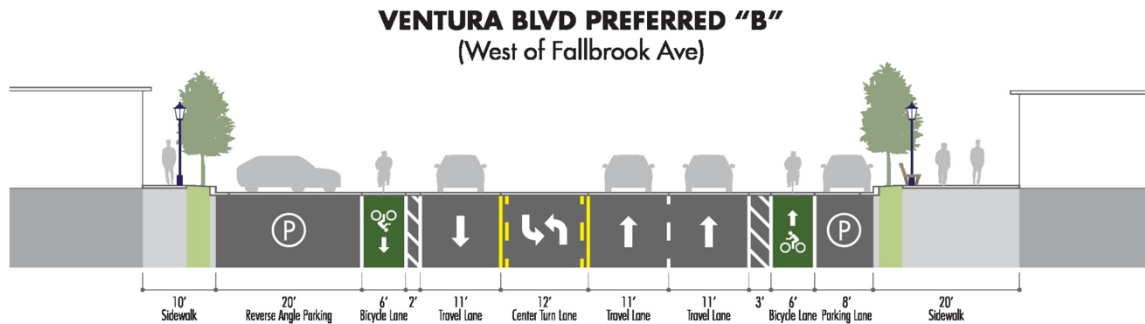


Figure 5.5: Preferred Alternative 'B' Section West (looking west)

FIGURE 8 – Reimagining Ventura Boulevard Ventura Boulevard Street Section West of Fallbrook, Looking West Showing Single Travel Lane on South Side of Ventura Boulevard

Source: https://blumenfield.lacity.org/reimagine_ventura



FIGURE 9 – View of Project Site Looking East on Ventura Boulevard Showing Bike Lane and Single Lane Increasing to Two Lanes Approaching Fallbrook Avenue

Source: Google Earth

The presence of a bike lane along the roadway in front of the proposed Project constitutes and unusual circumstance with the potential to result in significant impacts.

Location in the Ventura/Cahuenga Boulevard Corridor Specific Plan Area

As noted in Zimas, the Project site is within the Specific Plan area. As a result, Ordinance No. 174,052 specifies that City staff:¹⁰

Issue no building, demolition, excavation, foundation, grading, or sign permit for any construction until a clearance from the City Planning Department, Community Planning Valley Bureau is obtained, except for interior alterations to an existing building or structure that does not increase floor area or result in a change of use.

According to the Specific Plan Section 6 – Building Limitations:¹¹

c. Project Limitations Based on Trip Rates.

In addition to the limitations described in Subsection B, no building permit shall be issued for a Project which generates total Trips during the P.M. Peak Hour as calculated by the Department of Transportation, pursuant to the procedures set forth in Section 9 B of this Specific Plan, beyond the following limits:

5. Woodland/Hills Community.

2.27 total Trips per 1000 square commercially zoned lot area.

As shown in **Table 4**, the proposed Project would exceed this trip generation assuming a 38,768 square foot lot size and the empirical trip generation rates for an In-N-Out restaurant. Trip generation also exceed this rate based on ITE Land Use 934 – Fast-Food Restaurant with Drive-Through Window, based on AM peak hour rates and this lot size. PM rates were not available. The proposed Project is therefore not consistent with the Specific Plan.

The Section 8 of the Specific Plan further requires:

A. Project Approval Process. Applicants shall submit an application to the Director of Planning for Project Approval for a determination that the proposed Project meets the Design Guidelines and requirements of Sections 5, 6, 7, and 10 and that the Department of Transportation has

¹⁰ <https://zimas.lacity.org/documents/zoneinfo/ZI1729.pdf>

¹¹ A copy of the Specific Plan Ordinance is available at:
<https://planning.lacity.gov/pdiscaseinfo/document/MTE0MjA0/6d0d2d25-0f15-4c7d-b0c2-0a119627b1eb/ord>

determined in writing that the Project is in compliance with the requirements of Section 9 of this Specific Plan.

2. Action of the Director. Upon application for Project Approval, the Director, shall approve, disapprove, or approve the Project with modifications. If the Director determines, based on the recommendation of the Department of Transportation, pursuant to Subsection 9 A 2, that it is feasible to develop a smaller Project or a Project with limitations on uses which would result in a reduction of transportation impacts to a level of insignificance, then the Director may require limitations on size or uses in the Project Approval process.

Section 9 specifies that:

Sec. 9. TRANSPORTATION IMPACTS MITIGATION.

A. Individual Project Mitigation. No building, grading, or foundation permit shall be issued for any Project unless the Department of Transportation has determined in writing that the Project is in compliance with the requirements of this Subsection.

(b) Projects with More than 200 Net New Trips. In addition to the requirements applying to all Projects, the Department of Transportation may require Applicants to submit a Phasing Program for Projects which generate more than 200 Net New Trips. The Department of Transportation may require the Applicant, upon receipt and review of the proposed Phasing Program, to implement the recommendations of that proposed program. The Department of Transportation shall not approve any subsequent phase of a Project until the Department, with the concurrence of the Department of City Planning, is satisfied that the transportation impacts of the prior phase have been adequately mitigated.

c. Project Impact Assessment Fees.

1. Fee Amount for Each community.

The Project Impact Assessment Fees for Net New Trips generated by a Project after November 9, 1985 are as follows:

e. Woodland Hills: \$2,496 per Net New Trip.

2. Annual Indexing. In order that the Project Impact Assessment Fee levied pursuant to this Specific Plan keep pace with the cost of the improvements and services associated with Trip reduction, the fee shall be periodically increased (or decreased) as follows: . . .

Although pedestrian serving uses are exempt from the fee, the proposed Project with its significant trip generation should not be excluded and cannot reasonably be classified as pedestrian serving given its drive-through design.

B. Potential for Impacts

Air Quality

Given the unusual circumstances of the Project's proximity to both a freeway and residential uses, the Project's high trip generation, and constant queueing of idling cars, the Project has the potential to result in a cumulatively considerable increase in localized air toxics and air pollution in proximity to existing residential development. The Project is therefore not eligible for a Class 32 exemption.

Noise and Light Impacts

Given the height of proposed light poles in relation to existing residential uses, the Project has the potential to result in light impacts to adjacent and nearby residential units. In addition, given the usually long hours of Project operation, high Project trip generation, and large number idling queued vehicles, the Project is likely to result in noise impacts to adjacent and nearby residential units. Proposed buffering is insufficient to protect adjacent residences and residences located across Rigoletto Street from the Project. The Project is therefore not eligible for a Class 32 exemption.

Traffic Hazards

Given documented unsafe vehicular movements of customers accessing the existing In-N-Out in Woodland Hills and the Chick-Fill-A, and the location of a bike route on Ventura Boulevard in front of the proposed Project, there is a clear potential for the Project to result in significant traffic safety hazards. The Project is therefore not eligible for a Class 32 exemption.

Land Use

Project trip generation exceeds the Standard articulated in the Specific Plan for the Project areas. This constitutes a land use impact.

In addition, the Project is inconsistent with the following existing General Plan Air Quality Element, Housing Element, and Plan for Healthy LA Element policies due to the air quality impacts of its introduction of a large number of idling vehicles in close proximity to the freeway and residential units:

- **Air Quality Element Policy 4.3.1:** Revise the City's General Plan/Community Plans to ensure that new or related sensitive receptors are located to minimize significant health risks posed by air pollution sources.

- **Housing Element Policy 4.1.9:** Whenever possible, assure adequate health-based buffer zones between new residential and emitting industries.
- **Housing Element Policy 2.1.2:** Establish standards that enhance health outcomes.
- **Plan for Healthy LA Policy 1.5 - Plan for Health:** Improve Angelenos' health and well-being by incorporating a health perspective into land use, design, policy, and zoning decisions through existing tools, practices, and programs.
- **Plan for Healthy LA Policy 5.2 – People:** Reduce negative health impacts for people who live and work in close proximity to industrial uses and freeways through health promoting land uses and design solutions.
- **Plan for Healthy LA Policy 5.4 - Noxious activities:** Protect communities' health and well-being from exposure to noxious activities (for example, oil and gas extraction) that emit odors, noise, toxic, hazardous, or contaminant substances, materials, vapors, and others.
- **Plan for Healthy LA Policy 5.7 - Land use planning for public health and GHG emission reduction:** Promote land use policies that reduce per capita greenhouse gas emissions, result in improved air quality and decreased air pollution, especially for children, seniors and others susceptible to respiratory diseases.

This constitutes a land use impact of the proposed Project. While the original Letter of Determination issued by the ZA analyzed the Project's consistency with selected General Plan policies, it only addressed policies with which the Project may be argued to be consistent and ignores those policies with which the Project is inconsistent. The City therefore placed on the scales only those policies with which the Project is arguably consistent. The analysis is thus inappropriately prejudice in favor of the Project and fails to identify clear General Plan policy conflicts of the Project.

More importantly, a project that is not consistent with the applicable general plan designation **and all** applicable general plan policies as well as with applicable zoning designation and regulations is not eligible for a Class 32 Exemption. The proposed Project is not therefore not eligible for a Class 32 Exemption and the Class 11 Exemption applies only to Project signs. The appeal must be granted and the Project approval reversed pending preparation of an appropriate environmental document.

IV. THE APPLICANT'S REBUTTAL WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

On April 8, 2024, the Applicant's attorney, Dana Kennedy of Miller Star Regalia, filed a response to Appellant's original appeal to the South Valley Planning Commission and the response lacks substantial evidence.

A. APPLICANT ADMITTED QUEUING ANALYSIS WAS OUTDATED AND COULD NOT PROVIDE RELEVANT CONTENT FOR TRIP COUNTS IN OUR APPEAL JUSTIFICATION OR THEIR APPLICATION

Appellant’s original appeal justification to the APC referenced a Traffic Study for a proposed In-N-Out in Monrovia by the applicant’s traffic consultant, Ganddini Group, which was done May 26, 2022, and provided queuing data for the following seven existing In-N-Out drive-throughs:

Survey Location	Weekday Count Dates	Weekend Count Dates
Corona – 2305 Compton Avenue, Corona, CA 92881	12/4-8/2017	12/2-3/2017
Highland – 28009 Greenspot Road, Highland, CA 92346	12/4-8/2017	12/2-3/2017
Indio - 82043 Highway 111, Indio, CA 92201	6/27/2019	6/22/2019
La Quinta – 78611 Highway 111, La Quinta, CA 92253	6/27/2019	6/22/2019
Long Beach - 6391 E Pacific Coast Hwy, Long Beach, CA 90803	5/16/2012	5/19/2012
Los Angeles - 9149 S Sepulveda Blvd, Los Angeles, CA 90045	5/16/2012	5/19/2012
Thousand Palms – 72265 Varner Rd, Thousand Palms, CA 92276	6/27/2019	6/22/2019

Applicant criticized Appellant’s use of the traffic study as follows:

“Appellant included, as Table 1 in its brief, outdated queuing counts for seven existing In-N-Out locations that were collected for a different purpose between 2012 and 2019. The selected locations spanned well over 100 miles of Southern California, from Los Angeles to Indio, and everywhere in between. Appellant did not (and indeed could not) provide any relevant context for these counts to provide a meaningful comparison against the proposed Project.”

However, the Traffic Study for the Project attached to the Miller Starr Regalia letter was similarly done by the Ganddini Group, and is dated November 18, 2021, six months earlier than the study we cite, and, relied on the same seven **“outdated queuing counts for seven existing In-N-Out locations that were collected for a different purpose between 2012 and 2019,”** criticized by Miller Starr Regalia, as shown in the following table reproduced from page 55 of the Project’s Traffic Study:

Survey Location	Weekday Count Dates	Weekend Count Dates
Corona – 2305 Compton Avenue, Corona, CA 92881	12/4-8/2017	12/2-3/2017
Highland – 28009 Greenspot Road, Highland, CA 92346	12/4-8/2017	12/2-3/2017
Indio - 82043 Highway 111, Indio, CA 92201	6/27/2019	6/22/2019
La Quinta – 78611 Highway 111, La Quinta, CA 92253	6/27/2019	6/22/2019
Long Beach - 6391 E Pacific Coast Hwy, Long Beach, CA 90803	5/16/2012	5/19/2012
Los Angeles - 9149 S Sepulveda Blvd, Los Angeles, CA 90045	5/16/2012	5/19/2012
Thousand Palms – 72265 Varner Rd, Thousand Palms, CA 92276	6/27/2019	6/22/2019

The applicant's attorneys, Miller Star Regalia, are correct in their criticism of these queuing counts, the: **“selected locations spanned well over 100 miles of Southern California, from Los Angeles to Indio, and everywhere in between.”** The Project Traffic Study **“did not (and indeed could not) provide any relevant context for these counts to provide a meaningful comparison against the proposed Project.”** The applicant thus **failed to provide substantial evidence** to support their queueing-related Project impact conclusions, according to their own Real Estate Lawyers. However, as noted in Appellant's original appeal justification to the APC, the information replicated in the applicant's own Traffic Study shows near constant queueing.

B. TRIP GENERATION DATA USED BY APPLICANT CONCERNS IN-AND-OUTS IN TEXAS

According to the applicant's attorneys, Miller Star Regalia, on page 9 of their letter, as with Appellant's queueing analysis comments in its original appeal justification:

Similarly, Appellant seeks to use outdated and inapplicable projected trip generation data for then-proposed In-N-Out restaurants in Santa Rosa and San Juan Capistrano to back its way into a trip generation count for the Project site.

Miller Star Regalia deemed the trip generation rates Appellant used, “outdated and inapplicable project trip generation data.” However, Appellant's appeal letter contained more current, more relevant, and better documented information than the applicant's Traffic Study regarding In-N-Out Burger-specific trip generation. Unlike the analysis Appellant provided in its original appeal justification to the APC, which is based on trip generation studies done in 2021 conducted in the greater Southern California metropolitan area, the applicant's Traffic Analysis trip generation rates rely primarily on “a new trip count survey conducted in July 2020 at an In-N-Out in Fort Worth Texas.” As explained on pages 34-35 of the applicant's Traffic Study attached to the Miller Star Regalia letter:

Project Trip Generation, Distribution, and Assignment

To determine a trip generation rate specific to In-N-Out fast-food restaurants for the PM peak hour and daily, **a new trip count survey was conducted in July 2020 at an In-N-Out in Fort Worth, Texas.** The new trip count survey data was **combined with other historic trip count survey data previously collected at various locations in Northern and Southern California to derive the average trip generation rates.** These restaurant locations were selected as survey sites because they are generally comparable to the proposed project in terms of the building size, site configuration, and typical operations. In total, the survey sites used as the basis for calculating average trip generation rates include the following seven existing In-N-Out restaurant locations:

- Redwood City, CA – 949 Veterans Boulevard, Redwood City, CA 94063

- Rocklin, CA – 5490 Crossings Drive, Rocklin, CA 95677
- Vacaville, CA – 170 Nut Tree Parkway, Vacaville, CA 95687
- Fairfield, CA – 1364 Holiday Lane, Fairfield, CA 94534
- Long Beach, CA – 6391 East Pacific Coast Highway, Long Beach, CA 90815
- Los Angeles, CA – 9149 South Sepulveda Boulevard, CA 90045

...

Although the new trip count survey was conducted during the COVID-19 pandemic, the trip count results are within the range of trips observed by the **historical trip counts** at other locations prior to the pandemic. Detailed trip count worksheets and trip generation calculations are contained in the Memorandum of Understanding in Appendix B.

As shown in Appendix B, the surveyed In-N-Out PM peak hour and daily trip rates are higher than standard ITE Trip Generation Manual PM peak hour and daily trip rates for fast-food restaurant with drive thru (Land Use Code 934). It should be noted that In-N-Out restaurants are not open during the AM peak hours.

Table 4 shows the proposed Project trip generation based upon trip generation rates obtained from the surveyed In-N-Out trip rates which are more conservative than the Institute of Transportation Engineers (ITE) Trip Generation Manual (10th Edition, 2017) fast-food restaurant with drive-through (Land Use Code 934).

The Project trip generation forecast shown in Table 4 also includes pass-by trip adjustments. Retail land uses will often locate next to busy roadways to attract motorists already on the street. Since the trip generation rates contained in the ITE Trip Generation Manual represent vehicles entering and exiting at the site driveway(s), it is appropriate to reduce the initial trip generation forecast by the applicable pass-by trip rate when calculating the net new trips that will be added to the surrounding street system. **Pass-by trip adjustments of 50%** were applied to the PM peak hour in accordance with pass-by rates noted in the 2020 Transportation Assessment Guidelines and the City-approved scoping agreement for the project. Pass-by trip reductions were not applied to the project driveway.

As shown in Table 4, the proposed Project is forecast to generate a total of approximately 719 new daily vehicle trips, including 62 new vehicle trips during the PM peak hour. (Emphasis added).

Table 4
Project Trip Generation

Trip Generation Rates						
Land Use	Source ¹	Unit ²	PM Peak Hour			Weekday
			% In	% Out	Rate	Daily
Fast-Food Restaurant (With Drive-Thru)	[a]	TSF	52%	48%	43.26	505.07

Trips Generated						
Land Use	Quantity	Unit ²	PM Peak Hour			Weekday
			In	Out	Total	Daily
Fast-Food Restaurant (With Drive-Thru)	3,350	TSF	75	70	145	1,692
Transit credit: (15%)	[b]		-11	-11	-22	-254
Pass-by Reduction (50%)	[c]		-32	-29	-61	-719
New Project Trips Generated			32	30	62	719

Notes:

(1) Source:

[a] = Survey of other In-N-Out Burger locations (per Memorandum of Understanding, see Appendix B).

[b] = Per LADOT Transportation Assessment Guidelines, Section 3.3.4.1; credit based on transit type and proximity.

[c] = Per LADOT Transportation Assessment Guidelines, Attachment H Pass-by Trip Rates.

(2) TSF = Thousand Square Feet

So, the Traffic Study for the Project largely relies on trip generation rates derived from traffic counts conducted at an In-N-Out in Fort Worth Texas, in July of 2020. It should be noted that in Texas, the State's Covid stay-at-home order ended April 30, 2020. Gov. Greg Abbott allowed retail stores, restaurants, movie theaters, malls, museums and libraries to operate at 25% capacity on May 1, 2020.¹² This limitation remained in effect until October 14, 2020 when most establishments were allowed to operate at 75% capacity for indoor areas.¹³ Businesses in Texas were not allowed to return to full capacity until March 2, 2021.¹⁴ While the Traffic Study does acknowledge that the Texas counts were taken during the pandemic, and have therefore been adjusted, it fails to clearly detail the specific adjustments made.

The traffic study is largely silent on how the “new trip count survey data was combined with other historic trip count survey data previously collected at various locations in Northern and Southern California to derive the average trip generation rates.” The Traffic Study therefore fails to fully document the analytic route used to arrive at the trip generation rates used.

Moreover, it should be noted that the “historic trip count data previously collected at various locations in Northern and Southern California” is just that – historic, i.e. old. Based on

¹² <https://abcnews.go.com/US/list-states-stay-home-order-lifts/story?id=70317035#:~:text=Texas%3A%20The%20state's%20stay%2Dat,25%25%20capacity%20on%20May%201.>

¹³ https://gov.texas.gov/uploads/files/press/EO-GA-32_continued_response_to_COVID-19_IMAGE_10-07-2020.pdf

¹⁴ <https://gov.texas.gov/news/post/governor-abbott-lifts-mask-mandate-opens-texas-100-percenthttps://www.restaurantbusinessonline.com/topics/texas-lifts-all-covid-related-restaurant-restrictionshttps://open.texas.gov/uploads/files/organization/opentexas/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021.pdf>

the trip count data attached to the Memorandum of Understanding with LADOT, which is an attachment to the Traffic Study, the historic trip count data used in the Traffic Study included:

- Trip counts conducted for a Redwood City California In-N-Out (949 Veterans Blvd, Redwood City, CA 94063) conducted Wednesday, **May 27, 2015**.
- Trip counts conducted for a Rocklin California In-N-Out (5490 Crossing Dr., Rocklin, CA 95677) conducted Thursday, **February 4, 2016**.
- Trip counts conducted for a Vacaville California In-N-Out (170 Nut Tree Parkway, Vacaville, CA 95687) conducted Thursday, **February 04, 2018**.
- Trip counts conducted for a Fairfield California In-N-Out (1364 Holiday Ln., Fairfield, CA 94534) conducted Thursday February 4, 2016 and Saturday **February 6, 2016**.
- Trip counts conducted for a Long Beach California In-N-Out (6391 E. Pacific Coast Highway, Long Beach, CA 90803) conducted Wednesday, **May 16, 2012**.
- Trip counts conducted for a Los Angeles California In-N-Out (9149 S. Sepulveda Blvd, Los Angeles, CA 90045, conducted Wednesday, **May 16, 2012**.

The two trip count studies conducted in the greater Los Angeles region are from 2012. They are thus twelve years old.

In contrast, the trip generation rates Appellant presented in its original appeal letter to the APC were based on trip generation studies done in 2021 conducted in the greater Southern California metropolitan area. They are from a Traffic Analysis by Linscott, Law & Greenspan for an In-N-Out in San Juan Capistrano which derived trip generation rates based on observations of In-N-Out restaurants conducted on Thursday (7/22/21) and Friday (7/23/21) at two locations: Rancho Mission Viejo (30655 Gateway Place) and Laguna Niguel (27380 La Paz Road) in the Midday and PM peak periods.¹⁵

As shown in Table 5 from Appellant's original appeal letter, these newer more applicable rates result in a much higher trip generation estimate than in the applicant's Traffic Study.¹⁶

¹⁵ See: <https://www.sanjuancapistrano.org/DocumentCenter/View/840/Traffic-Impact-Analysis-Report-PDF>

¹⁶ Appellant has therefore clearly offered facts and expert opinion to support its assertions. Miller Starr Regalia's contention that Appellant has merely "offered speculation, unsubstantiated opinion, and clearly inaccurate and erroneous information in the guise of evidence; such is readily insufficient under the law to meet the required standard and thus must be rejected as a matter of law" is clearly without merit.

Table 5 – Projected Project Trip Generation							
	Daily	MD Peak Hour			PM Peak Hour		
	2-Way	Enter	Exit	Total	Enter	Exit	Total
Empirical TE/TSF	731.5	0.51	0.49	81.39	0.48	0.52	73.15
3,426 Square feet (3.426 TSF)	2,506.119	142	137	279	120	130	251

The analytic route used to generate these rates is clear from the cited Traffic Analysis by Linscott, Law & Greenspan. The counts used to derive the rates we used in our appeal justification are more current than the counts used in the Project’s Traffic Study. The Linscott, Law & Greenspan rates are based on counts taken in Southern California within the last three years, rather than counts conducted in Texas during the pandemic and then adjusted in some not clearly disclosed manner, based on counts previously collected at various locations in Northern and Southern California from 2012 to 2018. The rates used in Appellant’s original appeal justification letter are thus rates generated by experts, and are more reliable and current than the rates used in the Traffic Study for the project. Basic high school math has been used to apply the trip generation rates to the Project and to generate a Project trip generation forecasts These simple calculations and more appropriate trip generation rates show that the Project will result in higher trip generation than calculated by the applicant’s consultant.

In addition, no substantial evidence was provided by the applicant to justify a 50% pass-by reduction or the use of a transit credit.

Any conclusions put forward by Miller Starr Regalia based on the Project’s Traffic Study and trip generation are invalid. This includes Miller Starr Regalia’s contention that the Project is consistent with the Specific Plan, a contention that depends on the inappropriately low trip generation in the Project Traffic Study.

C. AIR QUALITY ANALYSIS

As noted on page 34 of the Air Quality analysis for the Project:

The emissions generated by the vehicle miles travelled (VMT) associated with the proposed project have been analyzed by inputting the project-generated vehicular trips (VMT and trip generation rate [for weekend rates]) from the In-N-Out Burger (22822 Ventura Boulevard) Transportation Assessment (“TA”) (Ganddini, 2021) into the CalEEMod Model. The TA found that the proposed project will generate approximately 1,403 daily vehicle trips with 13,218 daily VMT.

The air quality analysis must be redone using corrected Project trip generation. As Appellant has demonstrated, the Project Traffic Study significantly underestimates project trips.

D. SAFETY IMPACTS DUE TO DRIVE THROUGH LOCATION AND DESIGN

In response to Appellant’s Justification Appeal to the South Valley Area Planning Commission, Miller Starr Regalia also missed the point of Appellant’s documentation that

customers of the nearby In-N-Out display unsafe driving behavior when accessing the fast-food restaurant, as do nearby customers of the Woodland Hills Chick-fil-A. That willingness of local drivers to engage in unsafe driving while accessing fast food is of particular concern given how Project customers will exit the site. As shown in the following figures, they will pass across the sidewalk and through a bike lane as they exit the drive through, and given the configuration of the site, and the location of signage and the six-foot high concrete wall bordering the site, will not have good visibility to safely exit the site. This site configuration issue was not addressed in the Traffic Study for the Project, despite Miller Starr Regalia representation of a geometric hazards analysis.



FIGURE 1 – POTENTIAL FOR CAR – PEDESTRIAN AND CAR-BICYCLE CONFLICTS



FIGURE 2 – CLOSE-UP SHOWING CAR MUST PULL ONTO SIDEWALK BEFORE DRIVER HAS LINE OF SIGHT OF POTENTIAL PEDESTRIANS ON THEIR RIGHT-HAND SIDE GIVEN LOCATION OF WALL AND SIGNAGE

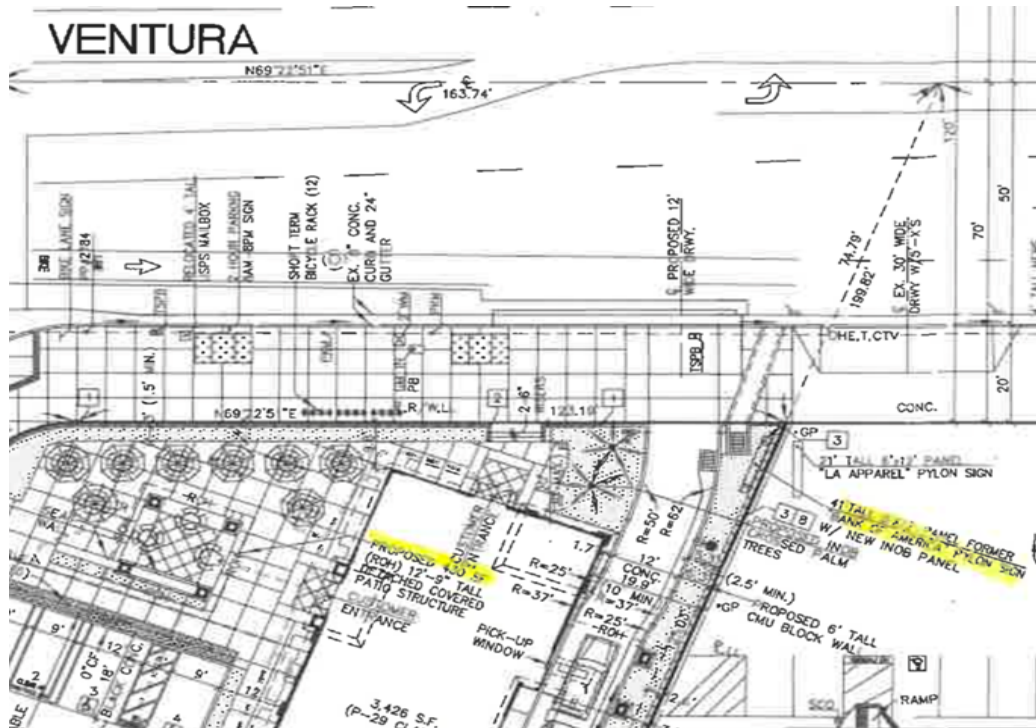


FIGURE 3 – EXCERPT OF PROJECT SITE PLAN SHOWING LOCATION OF 6-FOOT-TALL WALL AND SIGNAGE

V. CONCLUSION

Appellant has presented facts, reasonable assumptions predicated on facts, and reasonable assumptions predicated on expert studies/opinion. Appellant has shown that a constellation of factors, including the following combine to create an unusual circumstance which results in the Project generated significant impacts outlined herein:

- In-N-Out burger fast food restaurants have higher trip generation and queueing lengths than other fast-food restaurants;
- The Project site abuts and is located across the street from residential uses;
- The Project site is located within 1,000 feet of a Freeway;
- Idling cars in close proximity to existing residential use would further exacerbate air toxics exposure;
- Patrons of In-N-Out restaurants are documented to ignore turn restrictions when accessing the restaurant;

- There is a bike lane along Ventura Blvd. in front of the Project site and Project patrons would cross thorough the bike lane when entering and leaving the Project site; and,
- The Project site is located within the Ventura/Cahuenga Boulevard Corridor Specific Plan area

The appeal should be granted.

Thank you for your consideration of this matter. I may be contacted at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie T. Hall", written in a cursive style.

Jamie T. Hall