

Communication from Public

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Council File No: 22-0603

Comments for Public Posting: Please find the attached Memorandum as a summary of the appeal points raised by Park La Brea Impacted Residents Group (“PLBIRG”) in the within California Environmental Quality Act (“CEQA”) appeal before the City (the “Appeal”).

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June 16, 2022

VIA EMAIL

Councilmember Marqueece Harris-Dawson, Chair
Los Angeles City Council
Planning and Land Use Management Committee
200 N. Spring Street
Los Angeles, CA 90012

Re: ENV-2018-2771-EIR-1A - City Council File 22-0603

Honorable Councilmembers:

Memorandum

Please find this Memorandum as a summary of the appeal points raised by Park La Brea Impacted Residents Group ("PLBIRG") in the within California Environmental Quality Act ("CEQA") appeal before you (the "Appeal").

The EIR¹ which is the subject of the Appeal should be deemed invalid because the following material information was not disclosed or was intentionally misrepresented. Therefore, the EIR is inadequate as a matter of law, and the City's decision to approve it is null. We would be happy to welcome the Project to our community, but only after its true scope is transparently disclosed and its true impacts are adequately studied and mitigated, as required by CEQA. Exhibits and further details can be found in the Attachment to the Appeal of PLBIRG attached hereto (and which was previously filed with the City Planning Department on 5/18/22).

The EIR is INVALID because:

1. The EIR touts the Project as "pedestrian-activating" yet fails to disclose any of the nine pedestrian casualties (including two fatalities) resulting from vehicle vs. pedestrian collisions along the Project's perimeter in the past 36 months², and it completely fails to analyze how the Project's increased density will exacerbate these already hazardous conditions. The Project was improperly exempted from environmental review of the Fairfax perimeter and half of its 3rd St. perimeter³.

¹ For purposes of this Memorandum, the term "EIR" refers to the Draft Environmental Impact Report dated February 11, 2021 ("DEIR") and Final Environmental Impact Report published December 29, 2021 ("FEIR").

² Source: LAPD Traffic collision data obtained via Public Records Act request.

³ The Appeal documents that LADOT conducted studies in 2020, alone and with Applicant, in response to public requests to mitigate these hazards. The EIR fails to mention these or any other pedestrian studies.

2. The EIR falsely asserts that there will be no alterations or redevelopment of the “western portion” of the Town and Country shopping center (the “**Project Site**”). The EIR claims that Project development activities will be strictly limited to the eastern portion of the Project Site (the EIR refers to this as the “**Development Site**,”) inducing the Director of Planning to erroneously designate the western portion as “Not a Part” of the Project and exempt it from the Project’s environmental impacts. In fact, Whole Foods Market (“WFM”) will vacate its current 40,100 sq. ft. structure on the western portion to move to a 53% larger (63,082 sq. ft). store to be built for it in the Project - - a material fact the EIR concealed to promote a false distinction between “Development Site” and “Project Site”, as part of a scheme to upzone the property illegally and piecemeal the environmental review.⁴

3. Because it fails to disclose WFM's expansion and relocation to the mixed-use structure on the Development Site, the EIR fails to study the many adverse impacts stemming therefrom, including but not limited to the traffic/transportation impacts of a massive expansion of a regional-serving retailer (WFM), on a site that is bordered by unusually narrow abutting roadways (Fairfax, 3rd St., and Ogden), particularly as they pertain to emergency response time.

4. The EIR fails to include any information about potential uses (or demolition and redevelopment) of the vacated 40,100 sq. ft. structure currently occupied by WFM, after WFM moves to its new location in the Project. This is an intrinsic, foreseeable element of the Project - - an inevitable “Part II” of the Project’s environmental impacts.

5. The EIR fails to reflect Applicant’s plan to *de facto* divide the property into two parcels, so that the Project Site owners can seek entirely new entitlements for the western portion after maxing out the Floor Area Ratio allowed for the entire Project Site with the current Project. The Applicant has called this claim “speculative”, but it highlights that the EIR failed to analyze the impacts of any of the many possible outcomes of WFM vacating its current structure, and whatever the actual outcome might be doesn’t lessen the requirement that the EIR disclose and study all relevant information.

6. The EIR fails to include any pedestrian studies or to address public requests for safe, marked crosswalks to connect the Project with The Grove retail center across from its 3rd St. entrance, and to connect the Beverly Wilshire community across from the Project’s Fairfax entrance at Blackburn. PLBIRG notified the City and Applicant of the hazardous crossings in its Scoping comments in March 2019, and again notified the City and Applicant with comments to

⁴ The EIR and Letter of Determination (“**LOD**”) describe the Project as having 83,994 sq. feet of “new commercial space,” which the Applicant’s site plans and artist renderings misleadingly show as generic retail operations. But a deep dive into the EIR’s Transportation section fine print finds a vague reference to the Project having a 63,082 sq. ft. “supermarket” space (see footnote 20, page IV.I-44). The only reason the supermarket space is mentioned here is to justify exempting the Project from “work” VMT impacts per the cited opinion of an LADOT engineer. It is CLEAR that this 63,084 sq. ft. flagship size “supermarket” space is being built for WFM, since PLBIRG members have received confirmation from several WFM team leaders and store managers employed at the 3rd & Fairfax store that WFM's operations will be relocating to that space. The mystery of why this has been concealed in the EIR and LOD is explained in the Appeal.

the DEIR, and in-person comments provided at Councilmember Ryu's Town and Country Working Group meetings in 2019-20. PLBIRG members also corresponded with LADOT and Councilmember Paul Koretz's office in 2019-20 about these hazards. There have been two known fatal pedestrian collisions just in the past two years, where pedestrians have frequently been seen crossing mid-block in traffic between The Grove and the Project Site, at a rate of more than 200 per day⁵. With a new, flagship-size WFM and a host of pedestrian-activating amenities situated directly across from The Grove entrance, these mid-block crossings could easily exceed 1,000 per day (500 people going back and forth yields 1,000 crossings), especially during the holiday season.

7. The EIR fails to address the hazards of the non-compliant, hazardous 5-foot wide sidewalks abutting the Project's surface parking lot that will remain on Fairfax and 3rd Street after the Project is completed. Pedestrians, especially those who are disabled, elderly and/or otherwise vulnerable, will have no alternative sidewalk access to the Project when arriving via public transit or on foot. It is physically impossible for a disabled person in a chair to traverse the sidewalk abutting the 3rd St. bus stop that the EIR touts will be bringing throngs of people to the Project and saving the earth from vehicle trips. The Director of Planning waived dedications after the Applicant misrepresented that it couldn't widen sidewalks because doing so would eliminate parking spaces contractually owed to WFM - - failing to disclose that the current WFM lease will be terminated when WFM moves to the new mixed-use structure in the Project, where it will have far more parking than it has in its current location on the western half of the Project site.

8. The EIR fails to include or even mention Hackman Capital Partners' massive 25-acre Television City redevelopment project ("TVC 2050") located approximately a half-mile north of the Project, in its analysis of cumulative impacts. When the TVC 2050 proposal was announced on March 26, 2021, its developer shared a Los Angeles County Economic Development Corporation ("LACEDC") study that found that TVC 2050 would generate 4,220 new jobs during construction and 18,760 jobs once operational. The amount of additional traffic attributable to the enormous projected increase in the workforce at Television City will result in a substantial increase in daily vehicle trips, public transit use and related pedestrian traffic in the immediate vicinity of the Project - - yet none of these cumulative impacts has been considered, which is particularly troubling given the history of pedestrian casualties on the Project's 3rd St. and Fairfax perimeters⁶. Further, the EIR's failure to evaluate such cumulative impacts is compounded by its failure to consider the impacts of the relocation and expansion of WFM, as described above, including how it impacts emergency response time.

⁵ PLBIRG previously sent photos to City Planning documenting that the public is crossing between The Grove entrance and Town and Country at more than 45 per hour on a random Saturday in February. This extrapolates to more than 200 per day and, with the Project's increased density, could reach 1,000 per day particularly in the holiday season.

⁶ The TVC 2050 EIR was launched in July 2021 and its findings are not yet published. But LACEDC's projected workforce figures are so enormous that even if TVC 2050 were to be downsized by half, the associated vehicle, pedestrian and transit trips would still represent significant cumulative impacts for the Project.

9. The narrow two-lane eastbound 3rd St. roadway abutting the Project Site is designated for installation of a bike lane in the Mobility Plan, and the EIR fails to analyze the transportation impacts of the Project when the future bike lane is implemented, leaving only one eastbound vehicle travel lane remaining of the current two. This one remaining travel lane would have to carry the eastbound bus lines cited in the EIR along with the increased passenger and commercial vehicle trips associated with the Project's increased density, the general traffic using 3rd Street to travel east, and the cumulative increase in vehicle trips stemming from the TVC 2050 project. A bus that is dropping off riders who are going to the Project (i.e., at the bus stop situated on 3rd St. just east of Fairfax), in the sole eastbound travel lane, would preclude any forward movement of eastbound traffic behind it. This would have related impacts on the intersection itself if vehicles are unable to clear the intersection when the signal changes, and potentially result in vehicles improperly swerving into the crosswalk and/or bike lane out of frustration. None of this has been considered in the EIR.

We ask that the Councilmembers grant the within CEQA appeal.

Very truly yours,

LUNA & GLUSHON
A Professional Corporation

A handwritten signature in black ink, appearing to read "Rob Glushon", written in a cursive style.

ROBERT L. GLUSHON

Filed Appeal

ATTACHMENT TO APPEAL

DIR-2018-2770-SPR-WDI; ENV-2018-2771-EIR

Appellants: Park La Brea Impacted Residents Group (“PLBIRG”). PLBIRG is a group of multi-family Park La Brea residents living in the blocks adjacent to the proposed Project and immediately impacted thereby.

Project: demolition of an existing two-story commercial building with a basement, outdoor patio space and existing surface parking, and the construction of an eight-story, 100-foot-tall, mixed-use building which will contain up to 83,994 square feet of new commercial floor area including approximately 63,082 square feet of new Supermarket space, and 331 residential dwelling units for a total new floor area of 426,994 square feet.

I. The Environmental Impact Report Does Not Comply with CEQA

The purpose of an Environmental Impact Report (“EIR”) is “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided,” before a project is built. *Cal. Pub. Res. Code* § 21002.1(a).

An EIR must provide the decision-makers, and the public, with all relevant information regarding the environmental impacts of a project. If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision making cannot occur under CEQA and a final EIR is inadequate as a matter of law. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-22 (an agency’s decision to approve a project is a nullity if an EIR does not provide the decision-makers, and the public, with sufficient relevant information, and/or misrepresents or fails to disclose relevant information, precluding informed decision-making and public participation, thwarting the statutory goals of the EIR process).

The 3rd and Fairfax project (“Project”)’s EIR has failed to provide significant relevant information to determining the Project’s environmental impacts. Material facts regarding the true scope of the Project and its impacts were not disclosed, and in some cases proactively concealed or misrepresented. The final EIR is therefore inadequate as a matter of law, and the City’s certification of the EIR, error.

- i. In what could be called the EIR's "original sin," the EIR fails to disclose that Whole Foods will be vacating its 40,100 s.f. structure on the western side of the Project Site to move into a new 63,082 s.f. store to be built expressly for such Whole Foods in the Project with its own full service restaurant and bar along with many other new customer amenities, a fact that has vast and far-reaching environmental implications for almost every aspect of how the Project will take its place in—and impact—the community. The EIR's concealment of this material fact serves to shield many of the Project's environmental impacts from scrutiny, thwarting and making a mockery of the statutory goals of the EIR process.
- ii. This withheld material fact was known by Applicant long before the DEIR was published. Whole Foods personnel report that their move to the Project has been in the making since 2018, but the original target date was pushed back due to delays in the Project's approval process.
- iii. The Councilmembers can and should verify this concealment of material information from the environmental review by reaching out to Whole Foods corporate or by walking into the 3rd and Fairfax store and speaking with any team leader or manager.
- iv. The EIR's concealment of the Whole Foods relocation and 53% expansion of operations is rooted in the EIR's separation of the "Development Site" from the "Project Site." To justify that distinction, it is provided that there will be no alterations, demolition, or redevelopment of any structure on the western half of the property associated with the Project.

A vacant 40,100 s.f. antiquated store on one of the most coveted real estate locations in LA is not going to remain vacant. Whether redeveloped or "painted and re-leased," the outcome of the vacated Whole Foods store is an intrinsic element of the Project, an inevitable "Part II" of the Project's environmental impacts.

- v. Relying on this assumption, the EIR designates the Western Half of the Project Site as "Not a Part," such designation then used to exempt half of the Project Site from environmental review, including all of the Hazardous Design Features including but not limited to those described herein, that imperil both pedestrian and vehicular access and use of the Project.
- vi. The fact of Whole Foods vacating its current structure to occupy the 63,082 s.f. "anchor tenant" space in the Project makes redevelopment of the current Whole Foods space an entirely foreseeable impact of the Project which the EIR fails at all to study or even acknowledge, along with other foreseeable impacts as described hereinbelow.

- vii. Councilmembers are urged to defer consideration of this EIR's validity until they have investigated the information presented in this Appeal. A thoughtful walk around the Fairfax and Third Street perimeter to observe conditions would confirm the existence of the hazards described below. Review of LAPD vehicle vs. pedestrian collision data would confirm that these are deadly intersections that will be exacerbated by the Project's increase in density. Failure to do diligence on these hazards hiding in plain sight may be worthy of a public corruption probe into why this Applicant was allowed to put the public at risk.

a. Hazards and Hazardous Materials.

The Project Site is located within the Salt Lake Oil Field. As documented by SWCA, the Gilmore Oil Company constructed at least two wells in the project site, as well as three storage tanks and associated structures. Confirmed by the Project's Geotechnical Investigation, Chevron USA Well Numbers 99 and 102, plugged oil and gas production wells are located within the northern portion of the Project Site. What's more, the Project's own Geotechnical Investigation states that due to the voluntary nature of record reporting by oil well drilling companies, wells may be improperly located or not shown on the location map and other undocumented wells could be encountered during construction of the Project.

Nevertheless, the EIR fails to analyze the necessary steps required to abandon the wells – a Project requirement in the City of Los Angeles – and all environmental impacts arising therefrom. To the contrary, the EIR provides that any discretionary approvals associated with the oil well re-abandonment and related activities will be subject to CEQA independently from the Proposed Project.¹ Such a delay in review is inconsistent with CEQA's policy of requiring integrated and comprehensive review.

As set forth below, the EIR also fails to adequately consider and evaluate transportation impacts. Accordingly, the emergency response or evacuation plans evaluated as part of the hazards analysis are deficient and not factually correct.

¹ Although admitting to impact in "band aid" fix MM Haz 1: If an Oil Well is located on the property beneath a new building, it shall be fitted with a Vent Cone and Venting System as required by the State of California Division of Oil and Gas.

b. Transportation

Relying narrowly on the concept of the Project “does not include hazardous design features,” the EIR fails to recognize that the increase in vehicle and pedestrian activity caused by the Project (projected to result in an increase of thousands of daily trips – see Table IV.I-3 – a figure we believe is understated) will substantially increase the hazards caused on adjacent roadways where a lack of adequate marked crosswalk capability is well-documented and admitted, by both the City and the Applicant. The EIR fails, at all, to analyze pedestrian activity impacts on adjacent roadways.

The Applicant and Department of City Planning have described the Project as promoting connectivity with the surrounding community and enhanced pedestrian activation. Yet, the EIR omits any analysis of pedestrian data and related pedestrian impacts and fails entirely to mitigate already well-known hazards that will be exacerbated by the residents, customers and employees going to and from the Project Site on foot (including the throngs coming from the future subway station and arriving by bus, according to assurances provided by the EIR).

Under CEQA, once identified, an EIR cannot simply ignore Project impacts; it must consider, evaluate and mitigate them fully. *Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724.

The EIR asserts that “because” there are no hazardous design features included in the proposed vehicular design or site plan for the Project, the Project would not impede emergency access. This is unsubstantiated, and, indeed, incorrect

c. Hazardous Design Features Not Studied in the EIR

The EIR describes the Project as one that will reduce vehicle trips by being “pedestrian activating.” An EIR for a “pedestrian-activating project” that fails entirely to study environmental impacts on pedestrians and of pedestrian activity impacts is invalid on its face.

The EIR’s assertion that there will be “no alterations” on the western half of the Project Site cannot absolve it from studying the environmental impacts the Project will have on all of its sides. People aren’t going to drop down from the sky to enter the Project; they will use the entrances provided on all of the Project’s sides, as well as the proximate street crossings and sidewalks that give them access to those entrances, as specifically shown on all of the Project plans in the record.

Under CEQA, once identified, an EIR cannot simply ignore Project impacts; it must consider, evaluate and mitigate them fully. *Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724.

The EIR fails to disclose or study the following Hazardous Design Features which will be exacerbated by the Project’s admitted increases in vehicular and pedestrian trips:

1. Hazardous unmarked crosswalk abutting Project's Fairfax entrance lacks any safety infrastructure to protect pedestrians going to and from the Project.

The EIR presents the Project entrances to include the ingress/egress on Fairfax abutting the Fairfax / Blackburn T-intersection and indicates that the current driveway will be modified to include two ingress lanes where currently there is only one, to accommodate the increase in vehicle trips associated with the Project. Yet, the EIR provides that the Project would entail no activity on the western half including its Fairfax perimeter, so the entire western half is designated "Not a Part." Under this assumption, there are not impacts evaluated or mitigated on that perimeter. But, as set forth in this Appeal, the Project's patrons, employees and residents are not going to drop down from the sky to access the Project.



Fairfax/Blackburn intersection features unmarked crosswalks that connects residents and small businesses to the Project, but lacks ADA curb cuts, zebra stripes, or signs to protect pedestrians.

This T-intersection unmarked crosswalk is an extremely dangerous footpath that currently is and will continue to be a primary route for the employees, customers and residents crossing Fairfax to and from the Project Site, a group whose numbers will increase significantly with the increased density of the Project. To have any protection as a pedestrian you have to traipse 250 feet up to 3rd St., cross Fairfax, then traipse another 250 feet to Blackburn to find yourself directly opposite where you started out. If you use a wheelchair, walker, are carrying bags of groceries, or simply short on time, a 500-foot detour up to 3rd and back is a huge burden. For years, the community and the Project Site's retail employees have used this legal but unsafe unmarked crosswalk to cross Fairfax to and from the Project Site, venturing into traffic and hoping for the best.



More than 100 pedestrians per day cross at the Fairfax/Blackburn intersection in traffic. The Project's increased density will significantly increase that number.

In November 2019, a PLBIRG member sent LADOT evidence that the crossings exceeded LADOT's 20/hr. benchmark for installing a marked crosswalk and asked that the intersection be studied for a marked crosswalk. Two months later LADOT replied that an LADOT engineer had conducted a pedestrian count in response to the request.

"The engineer assigned to your case is on vacation this week, so I will check with him when he comes back. I believe he might have finished with the study but we haven't reviewed it yet." (Email dated 1/21/2020 at 7:15 a.m. from Rudy Guevara, LADOT, to Barbara Gallen, copying CD5 staff and Rosalie Wayne of Beverly Wilshire Homes Association, which supported the crosswalk request)

LADOT never publicly shared this pedestrian study no matter how many times PLBIRG sought the findings. But LADOT wrote to Ms. Gallen a few months later:

"Reference is made to your request for the installation of a marked crosswalk at the intersection of Fairfax Avenue and Blackburn Avenue. LADOT is conducting a comprehensive traffic engineering study with a developer in order to determine the best location for installation of a HAWK, High Intensity Activated Crosswalk beacon, in the vicinity of 3rd Street and Fairfax Avenue." (Email dated 5/6/2020 at 7:24 a.m. from Keyvan Shahrouz, LADOT, to Barbara Gallen, who wrote in her then-capacity as the Zone 6 Rep on Mid City West Neighborhood Council.)

LADOT never publicly shared the study Mr. Shahrouz described either. The developer referenced, of course, was the Applicant. The EIR fails to mention either the above-referenced pedestrian count study, or the findings of the "comprehensive traffic engineering study" LADOT said would determine the best location for installation of a HAWK Crosswalk in the vicinity of 3rd Street and Fairfax. It's unclear how such a determination could be made without studies of pedestrian activity, particularly when PLBIRG had submitted comments during the EIR scoping regarding the hazardous pedestrian crossings at Fairfax/Blackburn and 3rd St. / Gilmore Lane.

These and other existing pedestrian circulation hazards are all subject to increased occurrence related to the Project's anticipated increases in pedestrian and vehicular traffic, therefore they were inherently environmental impacts of the Project that must be analyzed, but were not.

Under CEQA, once identified, an EIR cannot simply ignore Project impacts; it must consider, evaluate and mitigate them fully. *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724

2. Illegal left turns exiting the Project's Fairfax entrance driveway are a hazard to pedestrians crossing Fairfax to and from the Project.



Illegal left turns like the one in the photo above are commonplace with cars exiting the Project Site onto Fairfax, putting these cars on a collision course with the pedestrians who cross there without benefit of any protective infrastructure. It's even more hazardous for the disabled and elderly.



Above, at left: Lack of a pedestrian curb cut at the T- intersection forces a disabled man to cross driveway to driveway, putting him squarely in the crosshairs of an uncontrolled illegal left turn out of the asphalt lot (at right) without regard for his right of way.

Besides disabled persons in chairs, PLBIRG has witnessed elders with walkers, mothers with strollers, and families with ambulatory children crossing here in traffic. These numbers will go up when the “pedestrian activating” Project is completed with all of its community gathering amenities, new 3-story Whole Foods store with full-service restaurant and bar, and 331 luxury apartments housing 800 individuals with money their pockets to patronize the small businesses on the west side of Fairfax.

Under CEQA, once identified, an EIR cannot simply ignore Project impacts; it must consider, evaluate and mitigate them fully. *Woodward Park Homeowners Ass’n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724.

3. The sidewalks abutting Project’s asphalt lot on Fairfax and the western portion of 3rd St. are narrow, hazardous obstacle courses hostile to all pedestrians, especially the elderly and disabled.

City Planning waived the legally required dedications on the Fairfax perimeter and the western portion of the 3rd Street perimeter due to the misrepresentation that there would be no development, alterations or demolition along the perimeters on the western half of the Project Site. This representation conceals the fact that Whole Foods is moving out of the western half of the Project Site and into the new Project. The claim that there are “no foreseeable changes” to the western half of the Project Site is therefore incorrect.

On May 6, 2021, Holland Partners executive George Elum wrote to City Planning:

“The main issue would be the dedications on Fairfax that are in the attached BOE letter adjacent to the existing parking lot. The dedication would take away parking protected by existing leases with Whole Foods and CVS. Furthermore, it really wouldn’t make sense since you have the CVS and Citi Bank buildings adjacent to the sidewalk as it exists today, therefore the only portion of Fairfax that could be widened would be between those two buildings and that would not be beneficial.” **(Source: Email from George Elum, Holland Partners to William Lamborn, City Planning Department, May 6, 2021 at 6:34 a.m., obtained via public records request)**

Mr. Elum’s email contains two misrepresentations. First, the parking protected by Whole Foods’ “existing lease” is irrelevant given Whole Foods’ move to new premises in the Project where an even higher amount of parking is to be provided in the Project’s parking garage (which accounts for Applicant providing a significantly higher amount of parking in the Project than Code requires). The assertion is that the sidewalk can’t be made ADA and mobility plan compliant because of a lease obligation that will disappear with the lessee’s transfer to new premises in the Project.

The second misrepresentation therein is that the existing CVS and the bank leases preclude Applicant from widening the sidewalks abutting their premises, “therefore” there’s no benefit to widening the sidewalk between them (and by extension, the 3rd St. sidewalk between the bank and the so-called “Development Site.”)

However, the sidewalks abutting CVS and the bank are much wider than the sidewalks next to the parking lot and are not impediments to holding Applicant responsible for providing the public with safe sidewalks.

Sidewalk Widths

<u>Fairfax</u>		<u>3rd St.</u>	
Abutting CVS	135" if shrubs are removed; 91" if not removed	Abutting Bank	144"
Abutting Pkg Lot	70"	Abutting Pkg Lot (& Bus Stop)	70"
Abutting Bank	140"		



The Fairfax sidewalk abutting parking lot is 70" wide but beyond, CVS sidewalk is 12-feet wide if exterior shrubbery is removed.

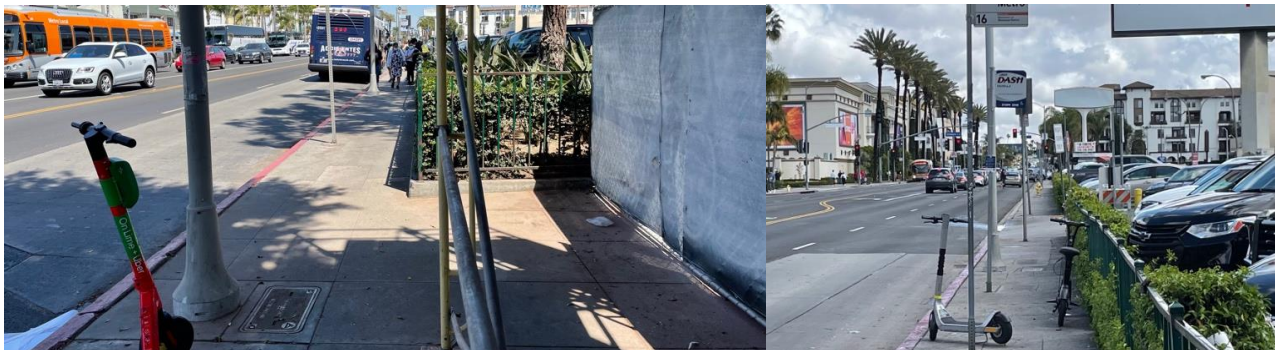


(At left) Removing the exterior shrub boxes yields a 12-foot sidewalk. Even if not removed, there are 12-ft. wide areas to stash e-scooters to keep sidewalks clear. Compare to parking lot sidewalk (at right).



The EIR fails entirely to analyze Project's pedestrian impacts on the disabled and elderly who will be forced to navigate ever greater throngs on this Fairfax sidewalk (in addition to physical obstacles) when the subway opens .5 mile to the south.

The EIR further disregards that Project patrons, residents and workers arriving on foot via 3rd St., including bus users arriving at the eastbound bus stop next to Bank, will face a hazardous obstacle course sidewalk in sharp contrast to the spacious sidewalk abutting the bank. The EIR fails to analyze the perimeter footpaths (sidewalks) the public must use to access the Project.



In the photo above at left, the Bank's 3rd St. sidewalk (currently under renovation) is nearly 12 ft. wide but the sidewalk abutting parking lot (photo at right) is a 5-ft. wide obstacle course for Project's bus users, and a Hazardous Design Feature of the Project.

To repeat: people are not going to drop down from the sky to access the Project. Those arriving on foot must traverse the perimeter sidewalks!

There is in fact a great deal of benefit to widening the sidewalks abutting the parking lot which serve as the foot paths for pedestrians coming and going to the Project. Under CEQA, a transparent environmental review that provided sufficient relevant information would have identified a need to do so.

4. Illegal, uncontrolled left turns out of Project's 3rd St. entrance have already proven deadly to the public.



On 9/8/2020 an 80-year-old man was killed crossing midblock from Farmers Market at this very spot on 3rd St., fatally struck by a car making an illegal left turn out of the Project's 3rd St. driveway, just like the car in the photo above. (Source: LAPD Traffic West)

Per LAPD data obtained through a Public Records Act request, there were at least four vehicle vs. pedestrian collisions on Third involving midblock crossings between Fairfax and Ogden (vicinity of the Grove's entrance which is immediately east of the white bus in the photo) from 2019 to 2021. This stretch of 3rd St. is on the High Injury Network.

Illegal left turns out of the Project Site here are commonplace, and since this driveway will be the Project's only vehicular ingress/egress on 3rd after the Project is completed, we can expect, along with an increase of thousands of daily vehicle trips, even more vehicles will be making this uncontrolled, unsafe left turn, colliding into even more pedestrians who are crossing midblock between the retail centers unsafe circulation and pedestrian crossing issues are well known or should be well known to both the City, property owner, and developer, yet the EIR fails entirely to acknowledge, study or mitigate this or any other pedestrian / vehicular hazardous design features of the Project.



Illegal left turns out of the Project's only 3rd St. egress, seen in photo above, are in conflict with oncoming traffic whose view is blocked by eastbound busses. The EIR lacked any analysis of such Hazardous Design Features any and all of which will be exacerbated by the steep increase in transportation trips to and from the Site including vehicular, pedestrian, and transit.

5. A hazardous midblock crossing that exists on 3rd St. between Fairfax and Ogden where hundreds of people cross daily between the retail centers straddling 3rd Street will be greatly exacerbated by the Project.

PLBIRG submitted to City officials photo evidence of 46 midblock crossings in an hour on a random February Saturday. This extrapolates, conservatively, to more than 200 per day. During holiday season, this figure is known to climb significantly higher.



Arrival of a new 3-story Whole Foods store with full-service restaurant and sports bar, and 800 affluent residents living atop the Whole Foods, directly opposite the Grove's/Farmers Market entrance, will cause this midblock crossing hazard to skyrocket.

During the holiday season, midblock crossings back and forth will easily top 1,000 per day (which reflects a mere 500 people going back and forth) as an impact of the Project's community amenities, new residences, and dazzling Whole Foods with its own amenities being situated a stone's throw across the street from the Grove's 3rd St. entrance. The EIR fails entirely to analyze pedestrian activity, even though community comments in the Scoping period and again during the DEIR comment period sounded the alarm about this and other hazardous design features of the Project.

Under CEQA, once identified, an EIR cannot simply ignore Project impacts; it must consider, evaluate and mitigate them fully. *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683,

Project visitors are not going to drop from the sky. They will use the available footpaths and street crossings on all sides. The community to the north includes the customer and employee population at the Grove / Farmers Market on any given day. The unmarked midblock crossing in the vicinity of Gilmore Lane is a well-worn pathway connecting the Project with the retail centers to the north, and it is a Hazardous Design Feature of the Project until it is transparently studied, analyzed, and mitigated.

d. Greenhouse Gas (GHG)

Motor vehicles serve as the most prevalent source of GHG Emissions (see, for example, Table IV.C-4). The EIR's transportation and trip generation analyses are faulty as they rely on seriously outdated and incomplete and even misleading information, and additionally fail to reflect the anticipated increase in vehicle trips associated with Whole Foods' 53% expansion of operations which expansion includes 53% greater commercial vehicle trips to supply the expanded operations and 53% greater VMTs associated with Whole Foods' delivery service which itself reflects significant VMTs associated with "deadheading" when delivery agents return to the store empty to load up for their next delivery.

e. Cumulative Impacts

One of the basic and vital informational functions required by CEQA is a thorough analysis of whether the impacts of the Project, in connection with other related projects, are cumulatively considerable. *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal App.4th 1209. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time² *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *CEQA Guidelines* §15355.

Proper cumulative impact analysis is vital under CEQA because the full environmental impact of a proposed project cannot be gauged in a vacuum. Indeed, one of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources may appear minor when considered individually but assume threatening dimensions when considered collectively with other sources with which they interact. Therefore, cumulative effects analysis requires consideration of "reasonably foreseeable probable future projects, if any." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1414.

There are two highly foreseeable future projects located within .5 miles of the Project Site that the EIR fails to include in its analysis. One of them is located on the Project Site itself!

² "Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

1. Failure to Include Whole Foods Redevelopment

The EIR fails in its vital informational function by omitting any analysis of the impacts of Whole Foods Market vacating its existing 40,100 sq. ft. antiquated 1-story structure on the Project Site's western side to move into a brand new +53% larger 63,100 square foot, 3-story store in the Project directly across from the Grove on 3rd St. This information, provided to PLBIRG by the existing Whole Foods location, is believed to have been known by Los Angeles City officials since at least 2020, if not earlier. The EIR feigns no knowledge of this fact, and in direct response to PLBIRG's comment about cumulative impacts of the redevelopment of the Western portion, in fact denies that any redevelopment is imminent, and states:

“[t]here are no current plans to redevelop the existing retail and commentarial structures on the western portion of the Project site and those retail spaces are currently operational.” **(FEIR response to PLBIRG comment 7.14)**

This response was and is intended to mislead and circumvent CEQA because the Applicant knew and knows that Whole Foods will be vacating the current structure, leaving a vacant 40,100 s.f. 1 story structure in which Whole Foods would NOT be operational.

The Applicant has taken pains to mislead the public and decisionmakers as recently as the CAPC hearing on April 12, 2022 when it continued to publish professional renderings of the Project showing a generic retail store “Anthology” occupying the upper level of what will in fact be a 3-story Whole Foods store. The Plans depicted in the EIR identify the Whole Foods space as “Retail” with no indication of the true intended occupant of that space. The Director's Letter of Determination (LOD) certifying the EIR describes the Project as having “up to 83,994 square feet of new commercial space,” never mentioning that fully 75% of that new commercial space (63,082 s.f.) will be occupied by Whole Foods, an already regional-serving business seeking to expand their operations by 53%.

Only a deep dive into the EIR's Transportation section unearths vague reference to a “Supermarket” space of approximately 63,082 sq. ft., but it too fails at all to discuss either the identity of the intended occupant of this supermarket space, or the environmental impacts associated with it. The EIR Transportation analysis claims no VMT impacts from the supermarket space based on the theory that supermarket space is inherently “local serving.” Whole Foods is anything but a “local serving” retailer as further described herein. It further asserts that the presence of residential units in the same project as the supermarket exempts the Project from Work VMT impacts.

“Per LADOT, when a supermarket is part of a mixed-use project, it is not reflected in the VMT Calculator so as to reflect the synergy of trip-making between the supermarket and residential components. This internal trip-making yields the less than significant VMT impact.” **(FEIR Transportation Analysis, footnote, page IV.I-44)**

Whole Foods is not undertaking the expense and investment of expanding their current operations—already among the largest in Los Angeles—by 53% to serve the influx of 800 tenants living in the apartments above their new store in the Project.

Even the EIR's discussion of Applicant putting in parking well in excess of Code-required parking fails to acknowledge that they are doing so to accommodate Whole Foods' parking requirements for its new larger store.

The EIR's concealment of Whole Foods' 53% expansion means a failure to study any of the related impacts of such expansion required for a valid environmental review. One example of such failure, without limitation, is that it fails to anticipate the expected increased number of vehicle trips associated with a regionally serving "flagship" size Whole Foods store and instead simply relies on a boilerplate vehicle trip growth factor.

The current 40,100 s.f. store is already one of the largest Whole Foods stores in the Los Angeles area. The 53% expansion into the Project will make it *the* largest Whole Foods store in a 13 mile radius, by a large margin. To the north and easterly directions, it will be the largest (by an even larger margin) in a 21 mile radius, second only to Pasadena, 22 miles away. The Project's new Whole Foods store will debut with a host of new amenities designed to make the venue a major "drinking, dining and lifestyle destination," including a full-service restaurant and bar, happy hour, full service Amazon Hub Counter. The 3rd and Fairfax location serves a wider swath of the City than virtually any other Whole Foods store in Los Angeles, all the way down to the 10, east to Koreatown and north to the Hollywood Hills. (For example, despite the existence of a small Whole Foods operation at the corner of Fairfax / Santa Monica Boulevard, Whole Foods officials have acknowledged that due to 3rd and Fairfax location's greater selection of items, depth of inventory and services, they field significant numbers of delivery orders from the Hollywood Hills.)

In seeking to understand why the EIR, in violation of CEQA requirements, would fail to study what are already potentially deadly hazardous design features even before the Project's increased density is factored in, we find a clue to their rationale in the FEIR's response to a community comment:

“The commenter implies that the Draft EIR should have analyzed the redevelopment of other areas (outside of the Development Site) on the Town and Country Shopping Center (the Center) because it is inevitable redevelopment of those areas would occur. The comment provides no evidence to support this claim. The Draft EIR clearly identified the boundaries of the Development Site and the totality of the Proposed Project. The Draft EIR analyzed all impacts related to the scope of development set forth in Section II, Project Description. Numerous figures in the project description illustrate, and differentiate, the Project Site from the west side of the Center, which is not proposed to be altered or redeveloped as part of the Proposed Project. There are no current plans to redevelop the existing retail and commercial structures on the western portion of the Project Site and those retail spaces are currently operational. The Proposed Project would utilize the available development potential of the Project Site under the requested entitlements, and any future development plans for the western portion of the Project Site would be subject to new entitlements and new environmental clearance under CEQA.” **(FEIR Response to PLBIRG Comment 7.14)**

First, there ARE current plans with regard to the Whole Foods structure on the western portion, but those current plans have not been publicly disclosed. Failure to disclose material facts invalidates the EIR.

Second, with this response, the EIR alerts the true rationale for concealing the facts associated with the Whole Foods move: doing so serves to minimize scrutiny of a plan to divide the Project Site into two, and seek entirely new entitlements for the western half despite having maxed out the FAR for the entire Site with the Project.

The western half’s proximity (.5 miles) to the future subway station would be the basis for the property owner to seek FAR bonuses for a potential project under either the City’s TOC or density bonus programs. Upon achieving such bonus, the Applicant / property owner would have in effect retroactively gained a density bonus for the current proposed Project in return for providing zero affordable housing units (Project is 100% luxury market rate) by gaining more FAR than the eastern portion of the Site would have been entitled to had the eastern portion been restricted to half the FAR of the entire Project Site, instead of all of the remaining FAR for the Project Site.

These comments are called “speculative.” However, the EIR has failed to analyze the impacts of any of multiple potential and foreseeable outcomes of Whole Foods vacating its current structure concurrent with the Project’s opening, and whatever the actual outcome might be doesn’t lessen the requirement under CEQA to disclose and study all relevant information to determining the true impacts of a Project.

2. Failure to Include Television City Redevelopment

The EIR failed to consider the cumulative impacts of the massive 25-acre Television City (“TVC”) redevelopment project (“TVC 2050”) 0.5 miles north of the Project Site on Fairfax. The TVC 50 project was fully foreseeable as of July 2, 2021, if not before.

The implications of this for transportation hazards on Fairfax and 3rd Street abutting the Project are immense because there is no penetration through the Grove to Television City; the only way to get there from 3rd Street or points south is via Fairfax, or Grove Drive. Either will put a major increase in traffic in the Project’s immediate vicinity, and therefore increased pedestrian and vehicle hazards, on 3rd Street and not just traditional peak times because Production operates on its own clock.

Developer Hackman Capital has publicly projected that TVC 2050 will result in “4,220 new jobs during construction” and “18,760 jobs new direct, indirect and induced jobs once operational.” Regardless of Hackman’s stated commitment to support alternate transportation modes, 18,000+ people going to and from work at TVC on any given day would increase traffic in the vicinity of 3rd and Fairfax *by several orders of magnitude* above the projected daily vehicle trips for the Project. It would also increase pedestrian traffic and transit use in the immediate vicinity. None of this has been considered.

The Lead Agency for the Project’s EIR is the same agency that issued the Notice of Preparation for the Television City Redevelopment Project on July 2, 2021, a full six months before the Project’s FEIR was released—more than enough time to consider the kinds effects a 25-acre redevelopment project would have on the Project’s impacts. Yet the EIR and Letter of Determination omitted even a mention of it.

Cumulative effects analysis requires consideration of “reasonably foreseeable probable future projects, if any.” *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1414.

Furthermore, there is no process by which to feign ignorance to a new, substantial identified environmental impacts under CEQA. *Vineyard Area for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447-49; *see also Mira Monte Homeowners Assn. v. County of Ventura* (1985) Cal.App.3d 357 (baseline must be updated to reflect new knowledge).

While the findings of the TVC 50 EIR are yet unknown, even by making an ultra-conservative projection that TVC 50 is slashed to half of its proposed size, that would still mean more than 9,350 new jobs at their campus once the project is complete and operational. That is still an increase in transportation impacts of several orders of magnitude above the projected daily vehicle trips for the Project, with a concomitant increase in pedestrian traffic and transit use.