

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP
JOHN M. BOWMAN, State Bar No. 137383
jbowman@elkinskalt.com
1800 Century Park East, 7th Floor
Los Angeles, California 90067
Telephone: 310.746.4400
Facsimile: 310.746.4499

Attorneys for Petitioner
NEIGHBORS FOR SMART RAIL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHEAST DISTRICT

NEIGHBORS FOR SMART RAIL, a non-profit California corporation,

Petitioner,

v.

EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY, a public entity;
EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY BOARD;
and DOES 1 through 10, inclusive,

Respondents.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY, a public entity;
LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY
BOARD; and ROES 1-10, inclusive,

Real Parties in Interest.

Case No. BS125233

Assigned for All Purposes to the Hon.
Thomas I. McKnew, Jr.

**PETITIONER'S OPENING
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

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1 I. INTRODUCTION

2 Respondent Expo Metro Line Construction Authority ("Expo") is currently building a light
3 rail line from downtown Los Angeles to Culver City ("Expo Phase I"). In February of this year,
4 Respondent Exposition Metro Line Construction Authority Board ("Expo Board") approved a 6.6-
5 mile extension of the Expo Phase I light rail project from its terminus in Culver City to Santa
6 Monica (the "Project"). The approved alignment for the Project generally follows an existing
7 right-of-way for several miles through primarily residential neighborhoods, crossing a number of
8 major north/south streets at grade, and eventually diverging from the right-of-way and running
9 down the center of Colorado Avenue to the proposed terminus in downtown Santa Monica.

10 Once operational, over 280 light rail trains will cross several major north/south streets at
11 grade level each day (every 2 ½ minutes during peak periods), blocking these streets for up to 112
12 seconds. The proposed surface street crossings, some of which are adjacent to schools, will create
13 serious safety risks for motorists and pedestrians. The Project will also generate substantial noise
14 from "wheel squeal," horns, audible warnings at crossing gates, and other sources. The impacts of
15 the Project will be borne by everyone who lives or works in the Westside for decades to come.

16 Petitioner Neighbors For Smart Rail ("NFSR") is a non-profit corporation comprised of a
17 coalition of homeowners' associations, community groups and unaffiliated citizens who support
18 the development of intelligent transportation solutions for Los Angeles that are safe, well-planned,
19 and environmentally beneficial. Many of its members live and work in the immediate vicinity of
20 the proposed Expo Phase 2 project. NFSR does not oppose the Project per se, but seeks to ensure
21 that all decisions concerning the Project are based on an adequate environmental study, with
22 meaningful opportunity for public comment.

23 As set forth below, the Expo Board certified a final environmental impact report ("EIR")
24 for the Project that does not comply with the requirements of the California Environmental
25 Quality Act ("CEQA"), Public Resources Code §§ 21000 *et seq.*, in numerous respects. Among
26 other things, the EIR fails to properly evaluate the potential significant adverse impacts of the
27 Project, fails to identify adequate mitigation measures, and fails to evaluate a reasonable range of
28 Project alternatives, including grade separation (*e.g.*, running the rail line beneath the streets in a

shallow trench) at proposed crossings between and including Overland Avenue and Sepulveda Boulevard. Expo also violated CEQA by failing to recirculate the EIR for public comment, despite making major changes to the Project and adding significant new information to the EIR after the comment period on the draft EIR had closed. NFSR brings this action on behalf of itself and the public to compel Expo to set aside its decision and to comply with CEQA by preparing and circulating a complete and adequate EIR before taking any further action on the Project.

II. STATEMENT OF FACTS

A. The Expo Phase 2 Project

Expo proposes to "extend high-capacity, high-frequency transit service from the Westside of Los Angeles to Santa Monica." (Tab 6, AR 00155.)¹ This project, known as the Exposition Corridor Transit Project Phase 2 ("Expo Phase 2"), would operate within the Exposition Transit Corridor, which generally follows the Exposition right-of-way ("ROW")² from downtown Los Angeles to Santa Monica. (Tab 8, AR 00214.) Expo Phase 2 would traverse approximately 7 to 8 miles of the Westside of Los Angeles (the "Westside") from the terminus of the Expo Phase I project at the Venice/Robertson Station in Culver City to downtown Santa Monica. (*Ibid.*; Tab 3, AR 00018.)

B. Notice of Preparation/Scoping

On February 12, 2007, Expo issued a Notice of Preparation ("NOP") announcing its intent to prepare an environmental impact report ("EIR") for Expo Phase 2. (Tab 6, AR 00156; Tab 196, AR 20839-44.) During the ensuing public "scoping" period, Expo received over 1,800 comments from public agencies and members of the public, including hundreds of comments from individuals, homeowners' associations and businesses, regarding the proper scope of EIR. (Tab 6,

¹ "AR" means the certified portion of Record of Proceedings in this matter, which was lodged with the Court in electronic form concurrently with the filing of this opening brief. "Tab" means the tab number of the document as shown on the AR index. The numbers following "AR" are the page number(s) from the AR as indicated at the bottom center of each page.

² The ROW is owned by Real Party-in-Interest Los Angeles County Metropolitan Transportation Authority ("Metro"). (Tab 8, AR 00214.)

AR 00156; Tabs 222-223, AR 21259-23626.) Many of these public comments expressed strong opposition to any project that included at-grade rail crossings of major north-south streets, particularly Overland Avenue, Westwood Boulevard, Military Avenue and Sepulveda Boulevard (see, e.g., Tab 222, AR 22161-67; 21273, 21298-9; 23192-3), and specifically requested that Expo study the feasibility of grade-separation at these major surface streets (e.g., constructing a segment of the rail line below grade). (See, e.g., Tabs 222, AR 22986-95; 23150; 23407-25.)

C. Draft EIR

On January 28, 2009, Expo released a draft EIR for the Expo Phase 2 project (the "DEIR") for public comment. (Tab 520, AR 33405-6). The DEIR did not define a single proposed "project" for evaluation. Rather, the DEIR purported to describe and evaluate six project alternatives, including the "No-Build Alternative," which was defined as existing transit services plus certain approved regional transportation improvements to be constructed by the year 2030, and the "TSM Alternative," which would consist of a new a rapid bus route connecting downtown Culver City with downtown Santa Monica and service improvements to various bus routes. (Tab 520, AR 33405-6; Tab 78, AR 12428-30.) The remaining four alternatives discussed in the DEIR involve the construction of a light rail line that would begin at the terminus of the Expo Phase 1 project in Culver City and terminate in downtown Santa Monica, each utilizing a somewhat different alignment:

- LRT 1 Expo ROW – Olympic ("LRT Alternative 1"). This alignment would utilize the ROW from the Expo Phase I terminus in Culver City to Olympic Boulevard, and would then follow Olympic Boulevard to the proposed terminus in Santa Monica.
- LRT 2 Expo ROW – Colorado ("LRT Alternative 2"). This alignment would also utilize the ROW from the Expo Phase I terminus in Culver City to Olympic Boulevard, but would then continue within the ROW to west of 19th Street, where it would diverge from the ROW and follow the center of Colorado Avenue to the proposed terminus.
- LRT 3 Venice/Sepulveda – Olympic ("LRT Alternative 3"). This alignment would follow Venice Boulevard west from the Expo Phase I terminus in Culver City, then north on Sepulveda Boulevard until reaching the ROW, and then west to the proposed terminus in

1 Santa Monica using the same route as LRT Alternative 1.

- 2 • LRT 4 Venice/Sepulveda – Colorado ("LRT Alternative 4"). This alignment would follow
3 Venice Boulevard west from the Expo Phase I terminus in Culver City, then north on
4 Sepulveda Boulevard until reaching the ROW, and then west to the proposed terminus in
5 Santa Monica using the same route as LRT Alternative 2.

6 (Tab 78, AR 12428-9.) Each of these light rail alignments are further broken down into
7 segments (1, 1a, 2, 3, and 3a), as shown on DEIR Figure 2.4-1 (Project Map-By Segment). (Tab
8 78, AR 12510.) Segment 1, which is common to both LRT Alternative 1 and LRT Alternative 2,
9 is an approximately 3-mile-long portion of the ROW that passes through a predominately
10 residential area near schools and parks. (Tab 78, AR 12511-14.) As defined in the DEIR, both
11 LRT Alternative 1 and LRT Alternative 2 would include four consecutive at-grade (surface)
12 crossings within Segment 1, from and including the ROW's intersections with Overland Avenue,
13 Westwood Boulevard, Military Avenue, and Sepulveda Boulevard. (*Ibid.*) This segment also
14 includes a proposed at-grade station (the "Expo/Westwood Station") and 170-space parking lot
15 within the ROW east of Westwood Boulevard. (Tab 78, AR 12514.)

16 The DEIR also briefly discussed several alternatives that were "considered" but rejected by
17 Expo, including an alignment that would follow Venice Boulevard from Culver City to a station in
18 Venice. (Tab 78, AR 12538-50.) The DEIR did not discuss any alternative that would include
19 grade-separated crossings at within the Segment 1 between and including Overland Avenue and
20 Sepulveda Boulevard, as had been requested by the public during the scoping process.

21 With respect to LRT Alternative 1 and LRT Alternative 2, the DEIR concluded that the
22 Expo Phase 2 project would have "significant and unavoidable" impacts on aesthetics and air
23 quality during construction. (Tab 78, AR 13010-12.) In all other respects, the DEIR concluded
24 that the potential impacts of LRT Alternative 1 and LRT Alternative 2 would be less than
25 significant or could be reduced to a "less than significant" level by implementing specified
26 mitigation measures. (Tab 78, AR 12429-33, 12437-66, 13040-44.) For example, the DEIR
27 concluded that the potential traffic impacts of LRT Alternative 1 or LRT Alternative 2 would be
28 less than significant and that no mitigation measures were necessary (other than parking). (*Ibid.*)

1 The DEIR reached this counterintuitive conclusion by, among other things, incorporating certain
2 proposed street improvements (*e.g.*, adding traffic lanes) into the description of these alternatives
3 *before* analyzing the potential traffic impacts. (Tab 78, AR 12511-22.)

4 D. Public Comments on the DEIR

5 During the public comment period on the DEIR which concluded on March 27, 2009,
6 Expo received over 8,979 written and oral comments from governmental agencies, organizations
7 (including schools, neighborhood associations and business groups) and private individuals. (Tab
8 3, AR 00156, Tab 33, AR 00950-01045.) Many of the comments expressed substantive concerns
9 about various elements of the DEIR. (Tab 34, AR 01055-84.) For example, NFSR submitted
10 detailed comments on the DEIR, including a technical brief detailing numerous flaws in the
11 DEIR's Transportation/Traffic section. (Tab 34, AR 01566-84.)

12 Expo also received detailed and, in some cases, highly critical comments from other
13 governmental agencies. For example, in a letter dated March 26, 2009, the Los Angeles
14 Department of Transportation ("LADOT") stated that, based on their own analysis of the proposed
15 at-grade crossings along the right-of-way alignment, "significant unmitigated impacts could occur
16" (Tab 34, AR 01179.) After noting that "several of the proposed at-grade crossings are
17 adjacent to or near schools and parks and are expected to present safety issues for pedestrians
18 accessing these [crossings]," LADOT identified various concerns about each proposed at-grade
19 crossing, including "[o]perational, safety and parking problems for traffic, residents, pedestrians
20 and light rail trains" at Overland Avenue, and the "[i]nfeasibility of creating additional travel lanes
21 on Westwood Boulevard without creating unmitigated impacts to fronting residences" (Tab
22 34, AR 01184.) Similarly, the California Public Utilities Commission commented that
23 "[c]onstructing tracks at the existing Right of Way elevations is likely to result in trespassing
24 issues and pedestrian conflicts similar to those currently experienced along other Metro Rail
25 corridors in Los Angeles." (Tab 34, AR 01109.)

26 E. Recommended Preferred Alternative

27 Shortly after the close of the public comment period on the DEIR, the Expo Board voted to
28 pursue LRT Alternative 2 (hereinafter "Project") as the "recommended preferred alternative" in

1 the FEIR. (Tab 101, AR 14947-8.) Over the next eight months, Expo staff consulted with various
2 public agencies, conducted additional surveys, and prepared additional studies. (Tab 6, AR
3 00156; Tab 34, AR 01056-60, 01067-8.)

4 F. Final EIR

5 The FEIR was released on December 18, 2009. (Tabs 5-76; see Tab 3, AR 00016.) The
6 Project, as described in the FEIR, had changed substantively and materially from the description
7 of LRT Alternative 2 in the DEIR. Among other things, the Project now included a grade-
8 separated crossing at Centinela Avenue, a third northbound lane on Sepulveda Boulevard, and the
9 "redistribution" (*i.e.*, elimination) of parking from the Colorado/4th Street Station. (Tab 7, AR
10 00173.) The FEIR also evaluated several new "design options," including the "Expo/Westwood
11 Station No Parking" option (eliminating the 170 surface parking spaces proposed to be dedicated
12 to transit patrons at the Expo/Westwood Station) and the "Sepulveda Grade Separation" option
13 (grade separation with a bridge structure and an aerial Expo/Sepulveda Station). (Tab 7, AR
14 00174.) The FEIR reflected extensive revisions to the DEIR due to Project changes, the
15 conclusions of the additional studies that had been completed after the DEIR was circulated for
16 comment, and other new information. (*See, e.g.*, Tabs 7, 9-11, 13-14, 21, 24, and 28; see also
17 underscored and crossed-out text, *passim*.)

18 G. Expo Board Decision

19 On February 4, 2010, the Expo Board certified the FEIR, adopted findings of fact
20 ("Findings") and a Statement of Overriding Considerations, and approved the Project. (Tabs 1-3,
21 AR 00001-131.) The Expo Board also adopted motions directing Expo staff to include the
22 Expo/Westwood Station no parking design option and the Sepulveda Grade Separation design
23 option as part of preliminary engineering that will be conducted over the next six months, and to
24 report back "regarding additional funding that may be available to fund the Sepulveda Grade
25 Separation." (Tab 118, AR 15030-1.)

26 III. STANDARD OF REVIEW

27 In reviewing challenges to the certification of an EIR, the court must determine whether
28 the lead agency abused its discretion by failing to proceed in a manner required by law or by

making a determination or decision that is not supported by substantial evidence. Pub. Resources Code § 21168.5. "Courts are 'not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document.' [Citations.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.)

"The substantial evidence standard is applied to conclusions, findings and determinations [of the EIR.]" *Ibid.* Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines,³ § 15384(a).)

"An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 405 ("Laurel Heights I").) "[A] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the goals of the EIR process." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [Citation]" (*Laurel Heights I, supra*, 47 Cal.3d at 390.)

IV. THE FEIR IS INADEQUATE AS AN INFORMATIONAL DOCUMENT AND DOES NOT COMPLY WITH CEQA IN NUMEROUS RESPECTS

The importance of a complete and adequate EIR cannot be overstated. As noted by the California Supreme Court in *Laurel Heights I*:

The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate,

³ All references to "Guidelines" are to the State CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15000 *et seq.* The courts "should afford great weight to the Guidelines," which are "binding on all public agencies in California." *Laurel Heights I*, 47 Cal.3d at 391, fn. 2; Guidelines, § 15000.

and enhance the environmental quality of the state.' [Citation.] The EIR is therefore 'the heart of CEQA.' [Citation.] The EIR is an 'environmental "alarm bell" whose purpose it is to alert the public and its responsible official to environmental changes before they have reached ecological points of no return.' [Citation.] The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' [Citations.] Because the EIR must be certified or rejected by public officials, it is a document of accountability. ... The EIR process protects not only the environment but also informed self-government.

(*Id.* at 392.) See also Pub. Resources Code, § 21100. As explained below, the FEIR in this case fell well short of achieving these important public policies.

A. The EIR Fails to Properly or Adequately Evaluate the Potential Environmental Impacts of the Project

The FEIR fails to properly or adequately evaluate the potential significant impacts of the Project in several respects. First, the FEIR's analysis of the Project's potential impacts on traffic, air quality, and climate change utilizes an improper environmental baseline. Second, the FEIR's conclusions with regarding to traffic impacts are not supported by adequate analysis. Third, the FEIR's discussion of the potential growth-inducing and cumulative impacts of the Project are incomplete and wholly inadequate. Each of these issues are addressed in more detail below.

1. The FEIR Employs an Improper Environmental Baseline

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published ... [to serve as] the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125(a).) In the absence of an accurate baseline to use for comparison, "the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred." (*Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 128).

The California Supreme Court recently confirmed that an EIR must compare project impacts to actual physical conditions existing at the time of analysis. Specifically, in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, the court held that the South Coast Air Quality Management District (the "District") violated CEQA by erroneously comparing the increased air emissions from a proposed refinery project to maximum capacity limits allowed under previously issued permits. "By comparing the

1 proposed project to what *could* happen, rather than to what was actually happening," the District
2 utilized "hypothetical" conditions as its baseline comparison resulting in "'illusory' comparisons
3 that 'can only mislead the public to the reality of the impacts and subvert full consideration of the
4 actual environmental impacts'" of the project. *Id.* at 322 (emphasis in the original).

5 The FEIR states that it evaluates the impacts of the Project "against existing conditions
6" (Tab 9, AR 00242.) On the contrary, the FEIR did not use existing conditions as the
7 "baseline" for evaluating the potential traffic, air quality, and climate change impacts of the
8 Project. Indeed, in its Findings, Expo admits that it used "future" (rather than existing) baseline
9 conditions in assessing the traffic and air quality impacts:

10 For most of the environmental topics in the FEIR and in these Findings, the
11 Authority finds that existing environmental conditions are the appropriate baseline
12 condition for the purpose of determining whether an impact is significant.
13 However, the Authority ... is electing to utilize the future baseline conditions for
14 the purposes of determining the significance of impacts to traffic and air quality.

15 (Tab 3, AR 00017; emphasis added.)

16 By electing to use assumed "future" conditions as the baseline for analyzing the potential
17 impacts on traffic, air quality, and climate change, and by omitting any discussion of the Project's
18 traffic, air quality, and climate change impacts as compared to the physical conditions that existed
19 in the area at the time the NOP was issued, the FEIR fails to comply with CEQA. For example,
20 the FEIR acknowledges that it evaluates the traffic/transportation impacts of the Project "against
21 projected future traffic conditions in the year 2030." (Tab 34, AR 1057; emphasis added.) The
22 FEIR does not, however, include any evaluation of the potential traffic/transportation impacts of
23 the Project against *existing* physical conditions in the Project area, as required by law.

24 This omission is compounded by the fact the FEIR's traffic analysis employs different
25 baselines for evaluating the traffic impacts of different alternatives, creating highly misleading
26 "oranges to apples" comparisons. Specifically, the FEIR notes that the assumed future "base"
27 traffic volumes were determined using a "growth-factoring process." (Tab 11, AR 00347.) As
28 shown on FEIR Table 3.2-3 (Tab 11, AR 00348), different growth factors were assumed for
different alternatives. Thus, the impacts of each alternative were evaluated using different
"baselines," each of which assumed a different future condition. (See Tab 11, AR 00348.)

1 The traffic impact analysis was further skewed by employing a threshold of significance
2 that compares the Project and the other LRT alternatives to the "No Build" alternative, rather than
3 the existing physical conditions. Specifically, the threshold used in the FEIR for assessing the
4 potential impacts of the Project on the operation of selected street intersections was whether the
5 Project would cause an intersection's level of service (LOS) "under the No-Build [alternative]" to
6 deteriorate from acceptable LOS to an unacceptable LOS" (Tab 11, AR 00350-2, 00382-86.)
7 The "No Build" alternative does not, however, reflect existing conditions. Rather, the No Build
8 alternative "consists of the existing transit services as well as improvements explicitly committed
9 to be constructed by the year 2030 as defined in the Southern California Association of
10 Governments (SCAG) Regional Transportation Plan (RTP)," including "full implementation of the
11 Metro Rapid Bus Program," the Overland Avenue Bridge Widening project, and various other
12 planned improvements in the region. (Tab 9, AR 00242-46.) Thus, the FEIR analyzed the
13 Project's impacts on street intersections by comparing the Project to a hypothetical future scenario
14 in which various approved (but not yet constructed) projects are *assumed* to exist, in direct
15 contravention of the Supreme Court's holding in *Communities for a Better Environment, supra*, 48
16 Cal.4th at 322 (baseline does not include hypothetical "activity that *could* or *should* be present").⁴

17 The FEIR also fails to use the existing conditions as the environmental baseline in its
18 assessment of the Project's potential impacts on air quality. Specifically, the FEIR selectively
19 defines the existing conditions baseline as equivalent to the FEIR's No-Build Alternative. (Tab 9,
20 AR 00242; Tab 13, AR 00506.) As the No-Build Alternative assumes increased regional
21 population growth through 2030, with commensurate assumed increases in traffic congestion and
22 air emissions through that time period (Tab 9, AR 00242; Tab 13, AR 00505-10), the use of this
23 hypothetical scenario provided the public and decision-makers with a misleadingly elevated

24 _____
25 ⁴ The improper use of the No Build alternative as the environmental baseline also infected the
26 FEIR's analysis of the extent to which the Project and the alternatives would cause an increase in
27 regional vehicle miles traveled ("VMT"). Specifically, as indicated in Table 3.2-5 of the FEIR,
28 instead of comparing the Project to the existing conditions, the FEIR compares the Project to the
"No-Build" alternative (see row labeled "% Diff from No Build"). (Tab 11, AR 00353-55.)

1 criteria pollutant emissions baseline. (*Ibid.*) By presenting an elevated baseline, the FEIR skewed
2 its comparison of Project emissions, and allowed the FEIR to purportedly show annual reductions
3 in air emissions in the event the Project is implemented. (Tab 13, AR 00505, 00508-10.)

4 The same fatal omission is present in the FEIR's evaluation of the Project's potential
5 cumulative effects on global climate change.⁵ In summary, the FEIR's use of an improper and
6 shifting baseline has distorted the FEIR's analysis of the potential impacts of the Project on traffic,
7 air quality, and climate change, and renders the FEIR wholly inadequate as an informational
8 document.⁶

9 2. The FEIR's Conclusions Regarding the Project's Potential Traffic Impacts
10 are Not Supported by a Sufficient Degree of Analysis

11 An EIR must be prepared with a "sufficient degree of analysis" to provide decisionmakers
12 with information which enables them to make an informed decision regarding the environmental
13 consequences of their actions. (Guidelines, § 15151.) The FEIR's discussion of the potential
14 traffic impacts of the Project fails to meet this standard because the identified study area did not

15 _____
16 ⁵ Specifically, the FEIR erroneously defines existing physical conditions as being equivalent to the
17 FEIR's No-Build Alternative. (Tab 14, AR 00526-7.) As the No-Build Alternative incorporates
18 increased regional population growth through 2030, the use of this hypothetical scenario provided
19 the public and decision-makers with a misleadingly elevated baseline. (Tab 14, AR 00527-8.) As
20 the FEIR made no attempt to present existing greenhouse gas emissions as a comparative baseline,
21 the public and decision-makers were deprived of the means to properly evaluate the FEIR's claim
22 that the Project will have a less than significant cumulative impact on climate change.

23 ⁶ The FEIR suggests that the use of "future conditions" as the baseline for evaluating the traffic
24 and air quality impacts of the Project was "necessary so that the public and the decision makers
25 may understand the future impacts on traffic and air quality of approving and not approving the
26 project." (Tab 9, AR 00242.) This statement ignores the fact that an EIR is already required to
27 take such future conditions into consideration when evaluating the required "no project"
28 alternative (which in this case is the No Build Alternative). (Tab 9, AR 00241.) See Guidelines, §
15126.6(e)(2). An EIR may not, however, define the "no project" alternative solely in terms of
foreseeable future conditions, and then use the "no project" alternative as a substitute for existing
conditions as the baseline for environmental review, as the FEIR has done in this case. See
Woodward Park Homeowners Association, Inc. v. City of Fresno (2007) 150 Cal.App.4th 683,
707-11 (EIR must compare the project to both the existing physical conditions in the area and to
the projected future conditions that would likely be brought about by the General Plan
amendment).

1 include all of the intersections and roadways that are potentially affected by the Project.

2 Specifically, the intersections and roadway segments selected for evaluation were limited
3 to a narrow "study area" along the LRT alignments, despite the Project's obvious potential to affect
4 traffic patterns throughout the Westside. (Tab 11, AR 00331-3; Tab 34, AR 01567-84.)
5 Consequently, the FEIR did not consider the potential impacts to any intersection located along
6 Westwood Boulevard north of Pico Boulevard, Pico Boulevard east of Overland, or any
7 intersection along Sepulveda Boulevard north of Olympic Boulevard. (*Ibid.*) These streets are
8 heavily congested, and common sense dictates that these and other major arterials in the area will
9 be adversely affected by the proposed at-grade crossings well beyond the boundaries of the FEIR's
10 limited study area. Over 280 trains will cross these streets each day – every 2 ½ minutes during
11 peak hours – causing motorists to stop and wait for trains to pass for up to 112 seconds. (Tab 11,
12 AR 00368, 00382; Tab 3, AR 00021; Tab 687, AR 38388.) Furthermore, as noted by LADOT,
13 "Sepulveda Boulevard serves as an alternate route to Interstate 405 Freeway when incidents occur
14 and the traffic volumes used for analysis do not consider these occurrences." (Tab 34, AR 01190.)
15 In short, the FEIR's traffic analysis improperly ignores the Project's regional context.⁷

16 The FEIR's highly curtailed study area, coupled with its failure to address the potential
17 traffic impacts of the Project on Sepulveda Boulevard during all too common "incidents" on the I-
18 405, renders the FEIR's traffic analysis incomplete and inadequate.

19 3. The FEIR's Discussion of Growth Inducing Impacts is Grossly Deficient

20 An EIR must discuss "the ways in which the propose Project could foster economic or
21 population growth, or the construction of additional housing, either directly or indirectly, in the
22 surrounding environment," including projects that would remove obstacles to growth. Guidelines,
23 § 15126.2(d). Moreover, in discussing such "growth-inducing" effects, "[i]t must not be assumed
24 that growth in any area is necessarily beneficial, detrimental, or of little significance to the
25

26 ⁷ The FEIR also failed to study the potential for "cut-through" traffic in the residential
27 neighborhoods that are located between the proposed rail stations and major trip generators in
28 Century City, Westwood, and UCLA.

1 environment." (*Ibid.*)

2 In this case, Expo found as follows:

3 In addition to providing a cost effective, job-producing project, the [Project] could
4 result in community investment and the development of Transit Oriented
5 Development (TOD) around station areas. Similar developments have occurred
6 around stations on the Metro Gold and Red Lines. (Tab 3, AR 00108.)

7 Indeed, the FEIR indicates that one of the basic purposes of the Project is to "[s]pur
8 redevelopment and revitalization plans through the availability of efficient and reliable high-
9 capacity transit service." (Tab 7, AR 00160.) Accordingly, developers have proposed projects
10 near the planned transit stations along the Phase II corridor, some of which vastly exceed the
11 permissible size and density allowed under current land use plans. (Tab 727, AR 46969; Tab 780,
12 AR 52797-8; Tab 781, AR 52800-1.)

13 Despite the high probability that the Project will spur development around the planned
14 transit stations, the FEIR's discussion of the Project's potential growth inducing impacts is
15 remarkably cursory (less than two pages) and wholly deficient. (Tab 29, AR 00862-3.) The
16 discussion first implies that the Project would "accommodate," rather than foster, growth in the
17 region. (Tab 29, AR 00862.) Whether true or not, this statement ignores that fact that while
18 "accommodating" regional growth, the Project will also influence where that growth occurs. By
19 failing to discuss the potential impacts of concentrating that growth around the planned transit
20 stations, the FEIR's discussion of the Project's potential growth-inducing impacts is fatally
21 incomplete. See Guidelines, § 15126.5(a) ("The EIR shall also analyze any significant
22 environmental effects the project might cause by bringing development and people into the area
23 affected."). See also *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1218 (Court voided City's
24 certification of two large shopping center EIRs because, in part, the studies inadequately analyzed
25 the projects' cumulative impacts relating to growth inducement.)

26 Furthermore, the FEIR improperly assumes that growth around the planned transit stations
27 (some of which are within in or near residential areas) is necessarily beneficial. See Guidelines, §
28 15126.2(d). Specifically, in its brief discussion of the potential growth-inducing impacts of the
Project, the FEIR states as follows:

Given that the Exposition transit corridor area is a planned and desired land use ... the intensification of land uses around transit station areas with mixed uses and higher densities reflects an embracement of "smart growth" principles—that projected growth should be focused or directed toward areas with available infrastructure and supportive of reduced vehicle miles traveled, fewer air emissions, and reduced energy consumption.

(Tab 29, AR 00862; emphasis added.) By discussing only the benefits of the "intensification of land uses" around transit station areas while ignoring the potential localized impacts of such "intensification" (e.g., traffic, parking, aesthetics, noise, light and glare, etc.), the FEIR presents a completely one-sided picture that is inconsistent with CEQA's goal of fostering informed decision-making and public participation.

4. The FEIR's Discussion of Cumulative Impacts is Inadequate

An EIR must discuss "cumulative impacts" of a project, meaning those impacts "created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (Guidelines, § 15130(a)(1).) Proper cumulative impact analysis is vital "because the full environmental impact of a proposed project cannot be gauged in a vacuum." *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1214 (quoting *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.)

The discussion of cumulative impacts must include either a list of past, present, and future projects producing related or cumulative impacts, or a summary of projections contained in an adopted general plan or related planning document which describes or evaluated regional or area wide conditions contributing to the cumulative impact. (Guidelines, § 15130(b).) The discussion of cumulative impacts must also include a "summary of the expected environmental effects to be produced by [the related] projects," and a "reasonable analysis of the cumulative impacts of the relevant projects." (Guidelines, § 15130(b)(4) and (5).) Moreover, if the lead agency concludes that the cumulative impact is less than significant, the lead agency must "identify facts and analysis" in support of this conclusion. (Guidelines, § 15130(a)(2).)

Here, the FEIR states that it conducted a "blended" cumulative impacts analysis based on an evaluation of (1) a summary of projections from plans, (2) improvement projects from the 2008 RTP and Metro's 2009 Long Range Transportation Plan, and (3) a list of recently proposed or

1 planned projects. (Tab 29, AR 00863.) The FEIR does not, however, provide a summary of the
2 expected environmental effects to be produced by the related projects as required, and fails to
3 meaningfully analyze the Project's potential cumulative impacts. (Tab 29, AR 00862-77.) This is
4 particularly evident with regard to the FEIR's discussion of cumulative traffic impacts, which is
5 exactly one sentence long: "The analysis provided in Section 3.2 (Transportation/Traffic) is based
6 upon both existing and future conditions, with and without the project." (Tab 29, AR 00866.) See
7 Guidelines, § 15130(a)(2) (An EIR must "identify facts and analysis supporting the Lead Agency's
8 conclusion that the cumulative impact is less than significant.")

9 Although the traffic analysis in Section 3.2 may have considered "future conditions," there
10 is no indication in the FEIR that the assumed "future conditions" included the traffic generated by
11 any of the "related" projects list in FEIR Table 5.4-1. (Tab 29, AR 00864-5.) Moreover, the FEIR
12 makes no attempt whatsoever to quantify the traffic generated by these related projects or evaluate
13 the potential cumulative effects on any study intersection. For example, the list of related projects
14 in the FEIR includes a large mixed-use project (Casden) proposed to be constructed on a site
15 located at 11122 W. Pico Boulevard (adjacent to the proposed Sepulveda transit station). (Tab 29,
16 AR 00865.) Although the Casden project will clearly add substantial additional traffic to the
17 nearby intersection of Pico Boulevard and Sepulveda Boulevard – which is already operating at an
18 unacceptable LOS F during the peak hour (Tab 11, AR 00338) – the FEIR made no attempt to
19 quantify the amount of traffic that the project would generate or even discuss the potential
20 cumulative traffic impacts at this highly-congested intersection. This omission is fatal to the
21 FEIR's cumulative impacts analysis. See *Kings County, supra*, 221 Cal.App.3d at 720-721. See
22 also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th
23 713, 732-3 (EIR failed to adequately discuss growth-inducing impacts of sewer expansion).⁸

24 _____
25 ⁸ The FEIR also purports to describe the potential cumulative effects of the Project on traffic
26 during construction. (Tab 29, AR 00872-3.) This brief discussion fails to acknowledge the fact
27 that the Expo Phase I project – which is clearly a "related" project – will likely be under
28 construction at the same time as the Project. The potential traffic, air quality, noise, and other
construction-related impacts resulting from both projects were improperly ignored.

B. The FEIR Fails to Describe Feasible or Adequate Mitigation Measures

An EIR must describe feasible measures which could minimize significant adverse impacts of a project. (Guidelines, § 15126.4(a)(1).) An EIR's conclusion that such mitigation measures are feasible and effective must be supported by substantial evidence. See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118-19. Furthermore, the formulation of mitigation measures may not be deferred until some future time. Guidelines, § 15126.4(a)(1)(B). Deferral is permissible only where the mitigation measures "specify performance standards which would mitigate the significant effect of the project" Guidelines, § 15126.4(a)(1)(B); see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 668-71; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.

As set forth below, the FEIR failed to describe adequate mitigation measures, and improperly deferred the formulation of mitigation measures until after Project approval, in the areas of parking, noise and vibrations, safety and security, construction, and aesthetics.

1. Parking

As noted by LADOT and others, the amount of parking that will be provided at several of the proposed transit stations will not be sufficient to meet the anticipated demand. (Tab 34, AR 01186-7; Tab 11, AR 00412.) Accordingly, the FEIR notes that, without mitigation, the Project could have a significant adverse impact because "demand for parking will exceed the proposed supply at several stations, potentially resulting in some parking intrusion into adjacent neighborhoods." (Tab 7, AR 00178-9; Tab 11, AR 00413.)

In order to mitigate this potentially significant impact, the FEIR identifies mitigation measure MM TR-4, which provides, in relevant part, as follows:

In the quarter mile area surrounding each station where spillover parking is anticipated, a program shall be established to monitor the on-street parking activity in the area prior to the opening of service If a parking shortage is determined to have occurred ... due to the parking activity of the LRT patrons, Metro shall work with the appropriate local jurisdiction and affected communities to assess the need for and specific elements of a permit parking program for the impacted neighborhoods. ... Metro shall reimburse the local jurisdictions for the costs associated with developing the local permit parking programs Metro will not be responsible for the costs of permits for residents desiring to park on the streets in the permit districts. For those locations where station spillover parking cannot be addressed through the implementation of a permit parking program, alternative

1 mitigation options include time-restricted, metered, or shared parking
2 arrangements. Metro will work with the local jurisdictions to determine which
3 option(s) to implement.

4 (Tab 11, AR 00413-4; emphasis added.)

5 The FEIR concludes that this measure would reduce the impacts associated with station
6 spillover parking to "less than significant." (*Ibid.*) However, there is no substantial evidence in
7 the record to support a conclusion that this measure would be effective or feasible. Among other
8 things, the requirement that Metro (a separate agency) "work with" local agencies and the affected
9 communities to "assess" the need for a permit parking program provides no assurance whatsoever
10 that any permit parking program will be formed, let alone that such a program would be effective
11 in preventing "spillover" parking. Indeed, the last sentence of the measure concedes that it may
12 not be possible to address spillover parking in some locations though a permit parking system, and
13 there is no evidence or analysis to support a conclusion that any of the identified "back up" options
14 (e.g., metered parking) would be effective or even implemented. Moreover, a permit parking
15 program would not be adequate mitigation in any event. Among other things, it would not provide
16 the residents with the ability to park in their own neighborhood in substantially the same manner
17 that they are currently accustomed to, particularly in light of Metro's refusal to pay for permit
18 costs.⁹ See *Gray, supra*, 167 Cal.App.4th at 1116-17 (County's proposed mitigation measure to
19 provide bottled water as a replacement for the decline in neighboring well water was inadequate
20 because it did not "provide neighboring residents with the ability to use water in substantially the
21 same manner that they were accustomed to doing if the Project had not existed ..."). This measure
22 also constitutes improper deferral of mitigation because it does not include a specific performance
23 standard. See *Id.* at 1119 (a mitigation "goal" is not the same thing as a performance standard).¹⁰

24 _____
25 ⁹ LADOT also questioned the adequacy of this measure, suggesting that "[r]ather than creating
26 facilities that are expected to generate spillover parking problems and proposing unsatisfactory
27 measures to mitigate them after the fact, the project should provide an adequate supply of parking
28 at any proposed" transit stop. (Tab 13, AR 01186.)

¹⁰ The FEIR states that "[f]or those areas where parking demand was not fully realized, the Expo
(footnote continued)

1 The FEIR also acknowledges that the Project will result in the removal of on-street parking
2 spaces, and that mitigation will be necessary in areas where there is insufficient on-street parking.
3 (Tab 11, AR 00429.) For Colorado Avenue, the FEIR proposes mitigation measures MM TR-9,
4 MM TR-9(a), and MM TR-9(b). Collectively, these measures (1) concede that "[r]eplacement
5 parking would be required along the impacted portions of Colorado Avenue," (2) identifies two
6 "potential replacement parking lots," each of which would require the acquisition of property, and
7 (3) suggests that "implementation of diagonal parking on adjacent streets (after extensive
8 neighborhood outreach)" or other unspecified "replacement options" would "reduce" the parking
9 impacts. (Tab 11, AR 00431-2.) These measures suffer from the same defects noted above for
10 measure MM TR-4. Additionally, this measure is inadequate because the ability of Expo to
11 acquire "replacement parking lots" is uncertain and speculative – particular in light of the high
12 land costs in the area.¹¹

13 2. Noise and Vibration

14 The Project will generate noise from a variety of sources, including noise from steel
15 wheels rolling on steel rails (particularly within crossovers and other special trackwork), "wheel
16 squeal" along curves, train propulsion noise, train-mounted horns and crossing-gate warning bells
17 at street-level crossings, and station public address systems. (Tab 21, AR 00641-3.) Not
18 surprisingly, the FEIR acknowledges that the Project could expose the public to noise levels in
19 excess of the applicable standards during the operational phase. (Tab 21, AR 00664-80.)

20 In order to mitigate this impact, the FEIR proposes mitigation measure MM NOI-1, which
21 provides in relevant part as follows:

22 _____
23 Authority and Metro would work with the local communities and cities to limit spillover parking
24 within the adjacent neighborhoods." (Tab 9, AR 00313.) While this may be a worthy goal, it does
25 not constitute a "performance standard."

26 ¹¹ The FEIR states as follows: "Due to the high cost of property within the study area, the average
27 cost per parking space is between \$73,000 and \$105,000 (in 2008 dollars). Given this excessive
28 cost, it was therefore assumed that parking could only be provided on public rights-of-way or on
property that would be acquired for project-related features, such as stations or guideway." (Tab
9, AR 00313.)

1 Except where noise impacts are due to special trackwork at crossovers and
2 turnouts, the predicted noise impact can be eliminated with sound walls or berms
3 A 7 to 9 dB reduction in operational noise can be expected in all locations
4 where sound walls block direct lines of sight between the sound source and the
5 receiver. This excludes receivers located in high-rise apartment buildings. If
6 during Final Engineering or Operations it is determined that measures described
7 above are not practicable or do not provide sufficient noise mitigation, the Expo
8 Authority or Metro, as appropriate, shall provide for sound insulation of residences
9 and other noise-sensitive facilities as another alternative that could be used. Sound
10 insulation involves upgrading or replacing existing windows and doors, and
11 weather stripping windows and doors. Installing a mechanical ventilation system
12 may be needed so that windows do not need to be opened for ventilation. The
13 mitigation measures will ensure that noise levels will be below the applicable FTA
14 impact threshold for moderate noise impact.

15 (Tab 21, AR 00674-5; emphasis added.) This measure purports to incorporate a
16 performance standard (FTA impact threshold), but admits that the installation of sound walls
17 and/or berms will not be effective in meeting this standard in certain situations (e.g., near high-rise
18 apartment buildings and areas where special trackwork would be installed). In these situations,
19 Expo or Metro must provide for "sound insulation," mechanical ventilation, or some other
20 unspecified "alternative." The FEIR provides no information as to how such improvements to
21 private structures would be "provided" by Expo or Metro, and there is no evidence in the record to
22 support a conclusion that it would be feasible to do so in all cases. Furthermore, the
23 improvements would not be effective unless the occupants of the impacted dwelling units keep
24 their windows closed at all times. As such, the proposed mitigation would not restore the affected
25 residents to the position that they are currently accustomed to, and is therefore inadequate. See
26 *Gray, supra*, 167 Cal.App.4th at 1119.

27 3. Safety

28 In their comments on the DEIR, various public agencies and members of the public noted
that the Project could result in significant impacts in the area of public safety, including the
potential hazards for motorists and pedestrians (including children who will have to cross the
proposed rail line on their way to schools and parks). (Tab 35, AR 01764-7; Tab 34, AR 01191-
2.) For example, LADOT noted that "several of the proposed at-grade crossings are adjacent to or
near schools and parks and are expected to present safety issues for pedestrians accessing these
sites." (Tab 34, AR 01181.) Others, including NFSR, expressed concern that the Project will slow

1 the ability of emergency responders to access neighborhoods in a timely fashion, and limit the
2 egress of residents in the event of an emergency. (Tab 35, AR 01765-6).

3 The FEIR acknowledges the Project's potential adverse impact on public safety, but asserts
4 that the Project's potential to substantially limit the delivery of community safety services, such as
5 police, fire, or emergency services, would be mitigated to level of insignificance by implementing
6 mitigation measure MM SAF-1. (Tab 24, AR 00726-7.) Measure MM SAF-1 generally provides
7 that Metro shall "coordinate" with the affected cities, "inform" them of Metro's emergency
8 response procedures, and "provide a detailed description" of its emergency response procedures so
9 as to provide such agencies with "knowledge" of Metro's response plan. (*Ibid.*) Additionally,
10 measure MM SAF-1 provides that Metro shall "encourage" the cities to update their procedures to
11 address implementation of an LRT Alternative. (*Ibid.*) There is no evidence in the record to
12 support the FEIR's conclusion that these vaguely-defined coordination and planning efforts would
13 reduce the identified public safety impacts to a level of insignificance.

14 4. Construction

15 The FEIR states that, during the four-year period while the Project is under construction,
16 the Project has the potential to cause numerous significant impacts, including traffic impacts
17 associated with street and lane closures and diversion of traffic through residential areas. (Tab 7,
18 AR 00200-1; Tab 28, AR 00822-6.) The FEIR concludes, however, that these construction-related
19 traffic impacts can be mitigated to a level of insignificance. (*Ibid.*)

20 At least two of the measures identified in the FEIR are inadequate and constitute improper
21 deferral of mitigation. Specifically, measure MM CON-2 requires the preparation of Worksite
22 Traffic Control Plans ("WTCP") prior to construction, but includes no performance standards.
23 (Tab 28, AR 00823-4.) Furthermore, this measure requires that the traffic control plans be
24 designed to maintain designated Safe Routes to School "wherever possible" during times when
25 nearby schools are in session, but does not address the potential safety impacts that may arise
26
27
28

1 where maintaining designated Safe Routes to School would not be possible.¹² (*Ibid.*)

2 Similarly, measure MM CON-3 provides that no designated Major or Secondary Highway
3 will be closed to vehicular or pedestrian traffic except at night or on weekends, "unless approval is
4 granted by the jurisdiction in which it is located." (Tab 28, AR 00824.) This mitigation measure
5 is inadequate because no standards are established for when such an approval may be granted.

6 C. The FEIR Fails to Adequately Describe or Evaluate Project Alternatives

7 An EIR must "describe a range of reasonable alternatives to the project ... which would
8 feasibly attain most of the basic objectives of the project but would avoid or substantially lessen
9 any of the significant effects of the project, and evaluate the comparative merits of the
10 alternatives." (Guidelines, §15126.6(a); see also Pub. Resources Code, § 21001(g).) Although an
11 EIR need not consider every conceivable alternative, it must discuss a "reasonable range of
12 potentially feasible alternatives that will foster informed decisionmaking and public participation."
13 (*Ibid.*) The discussion must focus on alternatives that "are capable of avoiding or substantially
14 lessening any significant effects of the project, even if these alternatives would impede to some
15 degree the attainment of the project objectives, or would be more costly." (Guidelines,
16 §15126.6(b).) An EIR must contain a meaningful discussion of alternatives, whether or not those
17 impacts can be rendered less than significant through the imposition of mitigation measures.
18 *Laurel Heights I, supra*, 47 Cal.3d at 403-408.

19 For the reasons discussed below, the FEIR's discussion of alternatives fails to foster
20 informed decision-making or public participation and is therefore inadequate.

21 1. The FEIR Does Not Evaluate a Reasonable Range of Alternatives

22 As stated above, only six alternatives were selected for consideration in the FEIR.
23 However, according to the FEIR, two of these alternatives (the No-Build Alternative and the TSM
24 Alternative) "do not meet the purpose and need for the Expo Phase 2 project." (Tab 7, AR 00163,
25 _____)

26 ¹² LADOT noted that the Project's "construction phase is expected to result in conflicts with the
27 City's Pedestrian Routes to School Program, resulting in unsafe conditions" (Tab 34, AR
28 01186.)

00174.) Thus, the FEIR discussed only four alternatives that would meet "most" of the objectives of the Expo Phase 2 project. All of these alternatives, however, involve the extension of the Expo Phase 1 light rail line, would follow roughly the same alignment, and would have similar environmental impacts. Indeed, the FEIR acknowledges that all of the "LRT Alternatives would lead to localized traffic impacts and removal of parking spaces, as well as potential noise and vibration impacts, visual quality and potential cultural resource impacts, and property acquisitions ..." (Tab 7, AR 00166.) Furthermore, as described in the FEIR, LRT Alternative 3 and LRT Alternative 4 would require costly elevated guideways and stations along major portions of Venice and Sepulveda Boulevards, which "would result in aesthetic/visual quality impacts" and the "acquisition and removal of many buildings." (*Ibid.*) Thus, LRT Alternative 3 and LRT Alternative 4 are little more than straw men, designed to make the remaining two alternatives look better from a cost and environmental standpoint. Of the remaining two alternatives, LRT Alternative 2 is the Project, and LRT Alternative 1 is but a minor variation of the Project which offers little or no environmental benefits over the Project. (*Ibid.*)

Given the regional significance and sheer magnitude of the Project, the "range" of alternatives addressed in the FEIR does not remotely satisfy the "rule of reason." (Guidelines, § 15126.6(a).) Although Expo's duty to evaluate a reasonable range of alternatives is not conditional upon NFSR or any other member of the public proposing a specific alternative (see *Laurel Heights I, supra*, 47 Cal.3d at 403), there are at least three glaring omissions from the FEIR's discussion of project alternatives. First, the FEIR should have described and evaluated a transportation systems management and/or rapid bus transit alternative that would achieve most of the objectives of the project.¹³ Second, the FEIR should have evaluated at least one alternative that terminated in a different location, such as the "LRT on Venice/Venice" that was "withdrawn" from consideration in the DEIR by Expo. (Tab 78, AR 12538-50.) Third, the FEIR should have described and evaluated an alternative that includes grade separation within Segment 1, from and

¹³ Notably, the TSM Alternative discussed in the FEIR was identified as the least costly and most cost effective alternative. (Tab 7, AR 00169-70; Tab 3, AR 00096.)

1 including Overland Avenue and Sepulveda Boulevard, as discussed in more detail below.

2 2. The FEIR Fails to Adequately Evaluate Grade Separation in Segment 1

3 The proposed at-grade crossings within Segment 1 generated substantial concern and
4 controversy within the community. (Tab 34, AR 01057-60; Tab 222, AR 22161-67, 21273,
5 21298-9.) Moreover, the record is replete with evidence that such at-grade crossings are unsafe
6 and can result in significant traffic, noise, vibration, aesthetic, and other environmental impacts.
7 (Tab 34, AR 01180-4; Tabs 729, 730, 731.)

8 As mentioned above, during the public scoping process, members of the public specifically
9 requested that Expo consider an alternative that would include grade-separation within Segment 1
10 (from and including Overland Avenue to Sepulveda Boulevard) in order to explore this potential
11 feasible way to avoid or lessen the impacts of the Project. (Tab 222, AR 22161-67, 21273, 21298-
12 9.) This request apparently fell on deaf ears, as the DEIR did not even mention this alternative.
13 Moreover, while the FEIR briefly discussed and rejected the option of grade-separation at
14 Overland Avenue and Westwood Boulevard, this truncated discussion was highly dismissive of
15 concept, and did not address the extent to which such an alternative could potentially avoid or
16 reduce the impacts of the Project. (Tab 11, AR 00356-59.)

17 Numerous technical reports support the conclusion that grade separated rail is necessary to
18 reduce vehicle delay and air emissions impacts. (Tab 34, AR 01577-81; Tab 776, AR 52612.)
19 Moreover, it is the policy of various public agencies, including both the Federal Railroad
20 Administration and the California Public Utilities Commission ("CPUC"), to discourage any net
21 increase in the number of at-grade crossings. (Tab 34, AR 01109; Tab 34, AR 01577-81.)
22 Importantly, the CPUC must give final regulatory approval for any proposed "at-grade" rail
23 crossing, "notwithstanding the recommendations resulting from application of the [Metro Grade
24 Crossing] Policy" (Tab 11, AR 00346.) As such, the CPUC is a "responsible agency" under
25 CEQA.¹⁴ (Tab 8, AR 00239.) As a responsible agency, the CPUC must "consider the

26 _____
27 ¹⁴ "Responsible agency" means all public agencies other than the lead agency which have
28 discretionary approval power over any aspect of the project. (Guidelines, § 15381.)

1 environmental effects of the [Project] as shown in the [FEIR], and must rely upon the FEIR in
2 making its decision regarding the proposed crossings. (Guidelines, §15096(a) and (f).) Because
3 the FEIR did not discuss grade-separation on Overland Avenue and Westwood Boulevard as an
4 alternative, the FEIR will not provide the CPUC with the environmental information that it
5 requires to make an informed decision.

6 The FEIR identified certain technical "challenges" and additional costs that might be
7 associated with grade-separation within Segment 1. (Tab 9, AR 00303-6.) However, the FEIR
8 did not reach any conclusion regarding the feasibility of such grade-separation. See *Save Round*
9 *Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457 ("In determining the nature
10 and scope of alternatives to be examined in an EIR, ... local agencies shall be guided by the
11 doctrine of 'feasibility.'). CEQA defines the term "feasible" as "capable of being accomplished in
12 a successful manner within a reasonable period of time, taking into account economic,
13 environmental, social, and technological factors." (Pub. Resources Code, § 21061.1.)

14 The FEIR indicates that the crossings at Overland and Westwood were evaluated under the
15 Metro Grade Crossing Policy. (Tab 11, AR 00356-61; Tab 34, AR 01057-60.) However, that
16 evaluation did not specifically address the question of whether a grade-separated crossing (e.g.
17 trench) was "feasible." Rather, that evaluation addressed the opposite question of whether the at-
18 grade configuration preferred by Expo would be feasible, with a focus on operational
19 considerations. (Tab 9, AR 00303-6.) Furthermore, the Metro Grade Crossing Policy has been
20 the subject of serious controversy, and has been roundly criticized for placing too much weight on
21 ability of trains to operate and too little consideration of safety and environmental concerns. (See,
22 e.g., Tab 730; see also Tab 34, AR 01577-81.)

23 The FEIR mentions that the cost of grade separation at Overland and Westwood via trench
24 or aerial structure would be "greater" than an at-grade crossing. (Tab 9, AR 00305-6.) However,
25 the fact that the costs would be higher does not, standing alone, support a finding of infeasibility.
26 As the court noted in *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587:

27 The fact that an alternative may be more expensive or less profitable is not
28 sufficient to show that the alternative is financially infeasible. What is required is
evidence that the *additional* costs or lost profitability are sufficiently severe as to

render it impractical to proceed with the project."

Id. at 599 (quoting *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181) (emphasis in original). No such showing was made in this case. Moreover, as noted in the CPUC's comment letter, "the CPUC normally does not take cost into it consideration of the practicability of grade separating a crossing." (Tab 34, AR 01110.)

The FEIR cites various technical "challenges" to constructing a trench at this location, such as the presence of a large storm drain and certain hydrological constraints. (Tab 9, AR 00303-6.) The FEIR does not, however, demonstrate that these challenges could not be overcome, or that the alternative of grade separation is otherwise infeasible. NFSR, on the other hand, presented a study prepared by a qualified engineering firm demonstrating that a "depressed profile alternative" (*i.e.*, trench) extending under Overland Avenue, Westwood Boulevard, Military Avenue, and Sepulveda Boulevard is feasible. (Tab 728.) See *Save Round Valley, supra*, 157 Cal.App.4th at 1457 ("If an alternative is identified as a least potentially feasible, an in-depth discussion is required.").

Even if the FEIR's brief discussion of grade-separation within Segment 1 was intended to demonstrate infeasibility of this alternative, it is wholly inadequate for that purpose. The factors that may be used to eliminate alternatives from detailed consideration in an EIR include: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental effects. (Guidelines, § 15126.6(c).) Here, the FEIR did not address items (i) or (iii), and stopped well short of demonstrating item (ii). See *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884 (holding that an EIR's discussion of the infeasibility enclosing a proposed waste composting facility was insufficient).

In short, grade separation within Segment 1 from and including Overland Avenue to Sepulveda Boulevard had the potential to avoid or lessen the environmental impacts of the Project, was at least potentially feasible, and should have been discussed in detail as a potential alternative to the Project as proposed.

V. EXPO FAILED TO RECIRCULATE THE EIR PRIOR TO CERTIFICATION AS REQUIRED BY LAW

A lead agency must recirculate the EIR, and permit additional public comment, "[w]hen

1 significant new information is added to an environmental impact report" after notice and comment
2 from the public but "prior to certification[.]" (Pub. Resources Code, § 21092.1.) The term
3 "information" can include changes in the project ... as well as additional data or other
4 information." Information is "significant" if its addition to the EIR "deprives the public of a
5 meaningful opportunity to comment upon a substantial adverse environmental effect of the project
6 or a feasible way to mitigated or avoid such an effect (including a feasible project alternative) that
7 the project's proponents have declined to implement." (*Laurel Heights Improvement Assoc. v.*
8 *Regents of the Univ. of California* (1993) 6 Cal.4th 1112, 1129 (*Laurel Heights II*); see also
9 Guidelines, § 15088.5(a).)

10 After circulation of the DEIR, numerous additional studies were undertaken and major
11 changes were made to the Project. (Tab 11, AR 00331, 00342; Tab 14, AR 00525-30; Tab 21, AR
12 00641.) As a result of these additional studies and Project changes, "significant new information"
13 was added to the FEIR that required recirculation of the FEIR.

14 A. Major Changes Were Made to the Project After Circulation of the DEIR

15 In response to comments on the DEIR, Expo conducted "extensive agency coordination
16 and community outreach" and "conducted additional technical and environmental analysis," which
17 resulted in major changes to the LRT Alternatives and new "design options" that are discussed in
18 the FEIR. (Tab 7, AR 00159; Tab 9, AR 00251.) These changes included, but are not limited to,
19 the addition of a third northbound lane on Sepulveda Boulevard, grade separation at Centinela
20 Avenue (Tab 11, AR 00360), modifications to the "parking replacement options along the project
21 ..." (Tab 11, AR 00431), the elimination of the proposed parking lot at the Colorado/4th Street
22 station,¹⁵ and modifications to the noise and vibration mitigation measures based on additional
23 noise and vibration testing at nearby studios and schools. (Tab 21, AR 00666-7.) The FEIR also
24 described and evaluated several new "design options," including a design option that involved
25 major changes to the layout of the proposed maintenance facility in Santa Monica. (Tab 7, AR

26
27 ¹⁵ This change is euphemistically referred to in the FEIR and the Findings as the "redistribution"
28 of parking to "nearby public parking facilities" (Tab 11, AR 00404; Tab 3, AR 00021.)

00174.) This "Maintenance Facility Buffer" option was ultimately approved by Expo as part of the Project.¹⁶ (Tab 3, AR 00009.)

The new information added to the FEIR in order to incorporate the Project changes referenced above was extensive, and clearly deprived the public of a meaningful opportunity to comment upon the potential adverse effects of the Project or feasible ways to mitigate or avoid such effects. As such, recirculation of the FEIR was required.

B. New Information Was Added to the EIR After Circulation of the DEIR

"Significant new information" requiring recirculation includes a disclosure showing that a "substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance." Guidelines, § 15088.5(a)(2). Recirculation is also required where an EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect. See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 447-50 (2007) (County's inclusion of information for the first time in the FEIR regarding a potential adverse reduction in stream flow as a result of the project's proposed groundwater extraction required recirculation).

In this case, substantial additional data and information was added to the FEIR that requires recirculation of the FEIR, as discussed below.

1. Additional Data and Information Regarding Noise Impacts

New information in FEIR shows that the number of receptors impacted by operational noise for the Project will increase substantially. Specifically, the number of receptors that will be "moderately" impacted will increase from 162 to 171, and the number of receptors that will be "severely" impacted will increase from 49 to 67. (Tab 21, AR 00672.) Furthermore, new

¹⁶ The FEIR also discussed a new "design option" that would eliminate the proposed 170-space park and ride lot at the Expo/Westwood Station. (Tab 7, AR 00174; Tab 9, AR 00251.) This design option was not approved by the Expo Board on February 4, 2010. However, the Expo Board directed Expo staff to include this design option "as part of the preliminary engineering that will be conducted over the next six months" (Tab 118, AR 15030.)

1 information in FEIR shows, for the first time, that the studio uses along the Sepulveda to
2 Cloverfield segment will be severely impacted by noise. (Tab 21, AR 00666-70.) The FEIR also
3 includes new information regarding station public address systems, which have the potential to
4 cause significant noise impacts during nighttime hours. (Tab 21, AR 00642.)

5 As a result of the increase in severity of noise impacts, the FEIR proposes additional
6 mitigation. Specifically, at least five additional locations are identified that will require sound
7 walls. (Tab 21, AR 00673-75.) The public was denied an opportunity to comment on the efficacy
8 and potential impacts of these additional sound walls. See Guidelines, § 15088.5(a)(1).).

9 2. Additional Information and Data Regarding Traffic Impacts

10 After circulation of the DEIR, additional studies were performed regarding the evaluation
11 of additional grade separations in response to comments received on the DEIR. (Tab 11, AR
12 00356-61.) These additional studies, and the FEIR's conclusions based on these studies, were
13 discussed in the FEIR. (*Ibid.*) The public did not have a meaningful opportunity to review and
14 comment on any of these additional studies and conclusions.

15 Furthermore, the FEIR noted that, after circulation of the DEIR, "signal phasing at the
16 intersection of Westwood Boulevard and Exposition Boulevard North was refined, resulting in a
17 revised LOS and delay" as shown in FEIR Tables 3.2-14 and 3.2-15. (Tab 11, AR 00358, 00383-
18 6.) The DEIR indicated that, during the morning peak hour, the LOS at this intersection would
19 remain at LOS A, and that the delay would be only 4 seconds. (Tab 78, AR 12616-7.) The FEIR,
20 on the other hand, shows that the LOS would go from A to D, and that the delay would increase
21 from 4 seconds to 38 seconds (a 950 percent increase). (Tab 11, AR 00383-86.)¹⁷

22 3. Additional Information and Data Regarding Parking Impacts

23 After the DEIR was circulated for public comment, additional parking surveys were

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25 ¹⁷ Similarly, for the afternoon peak hour, the DEIR indicated that the LOS at this intersection
26 would be B, and that the delay would be 10.9 seconds. (Tab 78, AR 12616-7.) However, new
27 information in the FEIR shows that the LOS at this intersection would go from B to C, and that the
28 delay would more than double from 10.9 seconds to 23.4 seconds. (Tab 11, AR 00383-86.)

conducted. (Tab 11, AR 00342.) Moreover, the "areas of the surveys were expanded to further clarify the parking availability and restrictions on adjacent streets." (*Ibid.*) As a result of the additional surveys and analysis, significant new information was added to the FEIR regarding the availability of, and restrictions on, the "potential replacement options" that had been identified in the DEIR for the loss of on-street parking spaces along Sepulveda Boulevard, Westwood Boulevard, and Overland Avenue. (Tab 78, AR 12642-47; Tab 11, AR 00416-21, 00417-20.) For the reasons discussed in Section IV(B)(1) above, this new information directly undermines the FEIR's conclusion that the Project would have a less than significant impact upon the supply of on-street parking along Sepulveda Boulevard, Westwood Boulevard, and Overland Avenue.

4. New Information Regarding the Potential for Grade Separation

Recirculation is also required where new information discloses a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt. (§ 15088.5(a)(3)). In this case, NFSR commissioned a detailed study (the "Southstar Report") by a qualified engineering firm which demonstrated that a "depressed profile alternative" (trench) between Sepulveda Boulevard and Overland Avenue was feasible and would lessen the impacts of the Project. (Tab 728.) Although Expo made no attempt to refute any of the conclusions in the Southstar Report, Expo failed or refused to implement the depressed profile alternative. As such, the Southstar Report constitutes significant new information requiring revision and recirculation of the FEIR. (*Save our Peninsula Committee, supra*, 87 Cal. App. 4th at 128-31.) Recirculation is also required because the DEIR's failure to address grade-separation from and including Overland Avenue to Sepulveda Boulevard rendered the DEIR "fundamentally and basically inadequate and conclusory in nature such that meaningful public review and comment were precluded." Guidelines, §§ 15088.5(a)(4).¹⁸

¹⁸ Although the FEIR includes a brief (and inadequate) discussion of the grade separation at Overland Avenue and Westwood Boulevard and addressed grade separation at Sepulveda Boulevard as a potential "design option," none of this information appeared in the DEIR. The requirement that an EIR consider a reasonable range of alternatives applies to draft EIRs as well as final EIRs. See Guidelines, §§ 15084(a), 15126.6(a).

1 5. New Information Regarding Greenhouse Gas Emissions

2 Significant new information was added to the FEIR regarding the Project's impact on
3 climate change. Specifically, the FEIR added, for the first time, estimates of greenhouse gas
4 ("GHG") emissions that will be generated by operation of the Project, and compared, for the first
5 time, these estimates in light of other project alternatives. (Tab 14, AR 00525, 00527-8.) The
6 additional information added to the FEIR reveals that the Project's operation, rather than resulting
7 in a net reduction of total, annual regional GHG emissions will, in actuality, result in a net annual
8 increase in GHG emissions. (Tab 14, AR 00527-8.)

9 For the reasons summarized above, Expo was and is required to recirculate the FEIR.

10 VI. EXPO'S DECISION WAS NOT SUPPORTED BY ADEQUATE FINDINGS

11 No public agency may approve or carry out a project for which an EIR has been certified
12 which identifies one or more significant effects on the environment that would occur if the project
13 is approved or carried out unless it makes one or more of several specified findings. See Pub.
14 Resources Code § 21081. See also *San Bernardino Valley Audubon v. County* (1984) 155
15 Cal.App.3d 738, 752 (grounds for decision "must be clearly disclosed and adequately sustained").

16 In its Findings, Expo fails to acknowledge that the No Build Alternative and the TSM
17 Alternative would avoid the "unavoidable" adverse air quality impacts associated with
18 construction of the Project, or that the LRT Alternative 3 and LRT Alternative 4 would avoid the
19 "unavoidable" aesthetic impacts associated with constructing the Westwood Boulevard station in a
20 residential area. (See Tabs 28, 12, and 3.) Furthermore, while the Findings express various
21 reasons why Expo may prefer the Project over the No Build Alternative, the TSM Alternative,
22 LRT Alternative 3, and LRT Alternative 4, the Findings do not address the question of whether
23 any of these alternatives would be feasible. As such, the Findings are inadequate and do not
24 comply with Public Resources Code section 21081.

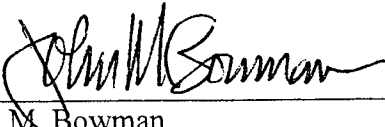
25 VII. CONCLUSION

26 For all of the foregoing reasons, a writ of mandate should issue setting aside Expo's
27 decisions to certify the FEIR and approve the Project.
28

1 DATED: October 5, 2010

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP

2
3
4 By:


John M. Bowman
Attorneys for Petitioner
NEIGHBORS FOR SMART RAIL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1800 Century Park East, 7th Floor, Los Angeles, California 90067.

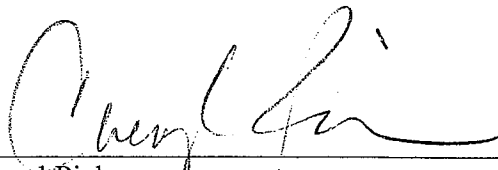
On October 5, 2010, I served true copies of the following document described as document **PETITIONER'S OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

X BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 5, 2010, at Los Angeles, California.


Cheryl Pickens

SERVICE LIST

Robert D. Thornton, Esq.
John J. Flynn, III, Esq.
Robert C. Horton, Esq.
Nossaman LLP
18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
Attorneys for Respondents
Exposition Metro Line Construction
Authority and Exposition Metro Line
Construction Authority Board

Ronald W. Stamm
Principal Deputy
Office of County Counsel
1 Gateway Plaza
Los Angeles, CA 90012
Attorney for Real Parties-in-Interest
Los Angeles County Metropolitan
Transportation Authority and
Los Angeles County Metropolitan
Transportation Authority Board

SERVICE LIST

Robert D. Thornton, Esq.
John J. Flynn, III, Esq.
Robert C. Horton, Esq.
Nossaman LLP
18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
Attorneys for Respondents
Exposition Metro Line Construction
Authority and Exposition Metro Line
Construction Authority Board

Ronald W. Stamm
Principal Deputy
Office of County Counsel
1 Gateway Plaza
Los Angeles, CA 90012
Attorney for Real Parties-in-Interest
Los Angeles County Metropolitan
Transportation Authority and
Los Angeles County Metropolitan
Transportation Authority Board