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**By email only to BoardClerk@metro.net and LAART@metro.net**

Planning and Programming Committee  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

RE: Los Angeles Aerial Rapid Transit Project  
Comments on Final Environmental Impact Report (SCH 2020100007)

Dear Committee Chair Dupont-Walker and Committee Members:

This letter is submitted on behalf of LA Parks Alliance<sup>1</sup> in response to the Final EIR for the Los Angeles Aerial Rapid Transit Project (the “Project”). LA Parks Alliance submitted two extensive comment letters on the Draft EIR in December 2022 and January 2023. Following review of the Final EIR LAPA concludes that it suffers from many of the same fatal flaws that caused the Draft EIR to be inadequate, as well as providing evidence of additional defects.

LAPA joins with many community groups and members of the public in urging the Metro Board not to certify the proposed Project’s grossly inadequate Final EIR, and respectfully requests that your committee recommends the Board vote no on certification of the Project’s EIR. Council Member Eunisses Hernandez (Council District 1) explains an important reason:

**It is troublesome to prioritize a single, unsolicited project without a comprehensive understanding of all potential traffic mitigation measures available to the City and Metro that best serves the local community while reducing regional dependency on automobiles to arrive at the stadium, especially given the everlasting impact of a fixed aerial transit system amongst shifting dynamics of these neighborhoods.<sup>2</sup>**

Councilmember Hernandez’s motion provides a funding mechanism for LADOT to do what Metro should have done *before* agreeing to act as lead agency: conduct a “robust, holistic, and unbiased study” of *all* potential measures to mitigate Dodger Stadium traffic.<sup>3</sup> The last such study was completed more than 30 years ago. Angelenos, especially those most impacted by the Project, deserve a thorough, unbiased review. The Project FEIR is neither thorough nor unbiased.

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<sup>1</sup> LA Parks Alliance (“LAPA”) was formed in 2019 to protect the integrity of LA State Historic Park. Its members advocate for parks and public spaces. <https://www.laparksalliance.org>.

<sup>2</sup> Motion 24-0011-S4 (Hernandez), Jan. 24, 2024, p. 1. The motion is available at: [https://clkrep.lacity.org/online/docs/2024/24-0011-S4\\_misc\\_01-24-24.pdf](https://clkrep.lacity.org/online/docs/2024/24-0011-S4_misc_01-24-24.pdf).

<sup>3</sup> *Ibid.*

Comments on the Final EIR follow.<sup>4</sup>

**I. The FEIR frustrates CEQA’s fundamental purpose to allow informed decisionmaking and meaningful public participation.**

The purpose of the California Environmental Quality Act (“CEQA”) includes both protecting the environment and allowing for informed decision making and public participation.<sup>5</sup> These fundamental goals are particularly important for controversial proposals such as the Project. An agency’s environmental review process should “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”<sup>6</sup> Sadly, Metro’s FEIR for the proposed Project fails to meet that basic standard.

“[B]efore project approval, the law presumes the lead agency is neutral and objective and that its interest is in compliance with CEQA. ... The agency’s unbiased evaluation of the environmental impacts of the applicant’s proposal is the bedrock on which the rest of the CEQA process is based.”<sup>7</sup> The FEIR’s responses to public comments on the Project’s DEIR repeatedly evince Metro’s failure to maintain a neutral and unbiased perspective. Responses to DEIR comments are frequently argumentative and defensive, and not responsive to the specific issues raised by commenters.

For example, FEIR responses frequently note the DEIR’s length of 7,877 pages as evidence of its thoroughness.<sup>8</sup> But the informational adequacy of an EIR is not measured by the page. The length of a DEIR says nothing about the completeness of the environmental review, or of the failure to meaningfully engage with legitimate environmental concerns raised by public commenters. As discussed below, rather than engaging the issues presented by commenters, the FEIR instead often uses inaccurate and deceptive language to allay their concerns.

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<sup>4</sup> On Saturday, February 10 Metro released the February 14 agenda of the Metro Planning and Programming Committee along with additional Project documents, including a document entitled “Findings of Fact and Statement of Overriding Considerations.” LAPA anticipates it will comment on the additional documents prior to the Metro Board’s February 22 meeting.

<sup>5</sup> CEQA Guidelines, § 15002(a); see also *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1184-1185.

<sup>6</sup> *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.

<sup>7</sup> *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 782.

<sup>8</sup> The length of the DEIR is mentioned at least 54 times in the FEIR, including most often in the following sentence, which appears in DEIR Section 6.0 *almost 50 times*:

“The Draft EIR includes 7,877 pages of detailed analysis from experts in their respective fields, intended to provide the public and decision makers the information that they need to meaningfully consider the proposed Project’s potential environmental impacts, as well as a shorter executive summary that explains the analysis and conclusions in clean and simply language.”

(See, e.g., FEIR, § 6.0, pp. 6.0-287, 294, 352, 356, 358, 519, 576, 699, 798, 840, 852, 857, 922, 1,045, 1,188, 1,226, 1,348, 1,355, 1,771, etc.)

An EIR must “include[ ] enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>9</sup> “Whether an EIR will be found in compliance with CEQA involves an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to *foster informed public participation* and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”<sup>10</sup> Here, the repeated failure of the Final EIR to adequately respond to the significant environmental concerns raised by commenters frustrates CEQA’s informational purpose.<sup>11</sup> Numerous examples follow.

**A. The Final EIR continues to ignore the obviously foreseeable future development of Dodger Stadium parking areas.**

It is black letter law that a CEQA project is the “whole of an action” and includes all activities that have “a potential for resulting in *either* a direct physical change in the environment, *or a reasonably foreseeable indirect physical change in the environment...*”<sup>12</sup> Case law further informs this already broad standard. Segmentation is perhaps easiest to understand where a project by its very nature can be seen as having multiple phases. In such cases the EIR must analyze future project phases if they are (1) foreseeable, and (2) “will likely change the scope or nature of the initial project or its environmental effects.”<sup>13</sup>

The FEIR provides a five-page defense of its decision not to include analysis of potential development at Dodger Stadium in Topical Response G, focusing on three points: (1) the proposed Project as described by the Draft and now Final EIR doesn’t include any other development than the proposed gondola from LAUS to Dodger Stadium, (2) no *current* proposal exists for such development, and (3), if there were a future project it would have to go through its own separate approval process, including environmental review. (FEIR, pp. 6.0-79 to 83.) The FEIR asserts: “[t]here is no proposal for development of, nor is there any commitment to develop, the property surrounding Dodger Stadium...” (FEIR, p. 6.0-80).

The FEIR argues that “analysis of a larger project is not required without evidence that a larger project exists or that there is an intention to proceed with a larger, more grandiose project in the future.” (FEIR, p. 6.0-80). This is not the law, nor could it be. Such a rule would allow every project applicant or lead agency to evade review of reasonably foreseeable environmental

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<sup>9</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 (quoting *Laurel Heights*, *supra* fn. 6, 47 Cal. 3d at 405).

<sup>10</sup> *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1356 (emphasis added). See also CEQA Guidelines, § 15151.

<sup>11</sup> See Continuing Education of the Bar, Practice Under the California Environmental Quality Act (*hereafter* “Practice Under CEQA”), Section 16.7, citing *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615.

<sup>12</sup> CEQA Guidelines, § 15378 (emphasis added).

<sup>13</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396. See discussion of *Laurel Heights I* in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 98-99.

impacts simply by explaining them away with clever denials. More important, there *is* substantial evidence presented by numerous DEIR commenters regarding foreseeable development of the parking lots surrounding Dodger Stadium that would likely follow Project approval.

The FEIR acknowledges that the original Project Sponsor, LA ARTT LLC, was a subsidiary of a McCourt Global entity until the company along with the Project were donated to Zero Emissions Transit. (FEIR, p. 6.0-114).<sup>14</sup> As described in numerous DEIR comments, McCourt Global has a substantial ownership interest in the land surrounding Dodger Stadium, currently used for automobile parking. (See, e.g., FEIR, pp. 6.0-568 to 569; see also FEIR, p. 6.0-350.) Record evidence shows a second McCourt Global entity entered into a complex agreement regarding stadium land in which the parties “agree that it is contemplated that portions of the [stadium land] will be developed for other purposes...” (FEIR, p. 569.) The development could include “sports-related development opportunities” or “office buildings,” hotel and exhibition facilities,” “residential buildings,” “medical buildings,” “academic buildings,” “parking structures,” and “retail, dining, and entertainment facilities.” (*Ibid.*)

Substantial evidence justifies LAPA’s and other commenters’ concerns about reasonably foreseeable development at Dodger Stadium not being analyzed as part of the Project’s environmental review. Many comments detail precisely how the gondola project paves the way for such development.<sup>15</sup> Despite the overwhelming evidence, the FEIR fails to meaningfully engage with the issue. Instead, the FEIR includes carefully calibrated denials that there is no current proposal and no commitment to future development. (See, e.g., FEIR, p. 6.0-80.)

The transfer of the Project from one McCourt entity to a new Project Sponsor may seem to attenuate the McCourt entities’ interest in or control over the Project, but McCourt entities are still a clear beneficiary of approval. Even if they were not, the FEIR remains inadequate for not considering that a clearly foreseeable result of the Project would be increased development at Dodger Stadium.

The FEIR also argues that the proposed gondola Project “has independent utility to connect LAUS to Dodger Stadium for game and event days...” (FEIR, p. 6.0-80.) But the operative rule on piecemealing is *not* whether a proposed project as described can be conceived of as an activity with “independent utility,” especially where, as here, the development ambitions of the original project proponent are well-known and project approval would clear away major hurdles to foreseeable development. “A proposed project is part of a larger project for CEQA purposes if the proposed project is a *crucial functional element of the larger project* such that, without it, the larger project could not proceed.”<sup>16</sup>

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<sup>14</sup> On information and belief, this transfer occurred on or about September 2023.

<sup>15</sup> See, e.g., DEIR Comment Letter G012 (*Sierra Club*), p. 2; DEIR Comment Letter G013 (*NRDC*), pp. 4-5; DEIR Comment Letter G014 (*LA Parks Alliance*), pp. 3, 28-33, Exhibits A-C, I; and DEIR Comment Letter G017 (*The California Endowment*), pp. 12-13, 28-35, Enclosures 7, 9-11.

<sup>16</sup> *Communities for a Better Environment*, *supra* fn. 13, 184 Cal.App.4th at 99 (emphasis added), discussing *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27

This is true here, where even if the proposed Project has some “independent utility” from the reasonably foreseeable future development of Dodger Stadium, a mass transit option to the stadium is a necessary first step to unlock development potential under existing restrictions at the stadium.<sup>17</sup> Former Dodgers owner Frank McCourt personally acknowledged this when he unveiled a proposed makeover of the stadium in 2008, described in an LA Times article as a “year-round destination for dining, shopping and recreation that will be fan- and environment-friendly.” (FEIR, Appx. C.3, p. 310.)<sup>18</sup> The article cites McCourt as stating, “he hoped local leaders would ‘tweak and adjust subway lines’ to add a Dodger Stadium stop and provide ‘bus access in the interim.’” (*Id.*, p. 312.)

The FEIR further argues that land use regulations and existing approvals at Dodger Stadium restrict the use of that property, and therefore any future development “would require additional City designations and zoning, permits and approvals, including potentially, environmental review...” (FEIR, p. 6.0-81.) But it is commonplace for a local agency such as the City of Los Angeles to consider issuance of entitlements to change land use designations, zoning, and all manner of entitlements to allow projects to be constructed. The fact that future approvals and environmental review may be required before a future action can occur does not excuse the failure to perform adequate environmental review at the outset when that action is foreseeable.<sup>19</sup>

That is not to say that Metro should be expected to do the impossible, and with no specific proposal before it to simply guess as to potentially significant impacts that future development at Dodger Stadium might cause. Nor does LAPA suggest that the FEIR should study the previously proposed “Next 50” project as if it were currently proposed. The purpose of including evidence regarding the 2008 “Next 50” proposal in LAPA’s DEIR comment letter was not to say that it is *the* project that would follow construction of the gondola. It is merely evidence that development of some sort is reasonably foreseeable.

Instead, LAPA agrees with the Natural Resources Defense Council’s suggestion to address the DEIR’s (and now FEIR’s) failure to adequately analyze induced growth that would likely occur as a result of the Project, a suggestion that applies equally well to other environmental analysis categories:

It is not our position that the DEIR must analyze with significant detail every conceivable development scenario; however, the DEIR needs to analyze the impacts in relation to the most probable development patterns.

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Cal.App.4th 713, and *Tuolumne County Citizens for Responsible Growth, Inv. v. City of Sonora* (2007) 155 Cal.App.4th 1214.

<sup>17</sup> See DEIR Comment Letter G014, pp. 29-33; DEIR Comment Letter G017, pp. 27-35. See also, *Tuolumne County Citizens*, *supra* fn. 16, 155 Cal.App.4th at 1227-1230.

<sup>18</sup> Dylan Hernandez and Bill Shaikin, *Stadium makeover is unveiled*, LA Times, Apr. 25, 2008, available at <https://www.latimes.com/archives/la-xpm-2008-apr-25-sp-stadium25-story.html>.

<sup>19</sup> *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282. See also, CEQA Guidelines, § 15004(b) (“EIRs...should be prepared as early as feasible in the planning process...”).

Publicly available resources have revealed the possibility of future development at the site of the Project... Further, the company that owns fifty percent of the parking lot at Dodger Stadium publicized its ownership interest in the 260-acre Dodger Stadium land as a “current real estate project.” [Fn. 20, citing McCourt Global web page, omitted.] Even without the aforementioned documents evidencing potential development at Dodger Stadium, the DEIR should account for the foreseeable and probable growth inducing development impacts of the Project.”<sup>20</sup>

Based on available evidence already in the record, California law requires the EIR for the proposed Project to include analysis of the reasonably foreseeable development at Dodger Stadium. The Final EIR is inadequate for failing to provide that analysis.

**B. The FEIR fails to meaningfully analyze the significant land use conflict between the Project and Los Angeles State Historic Park.**

The FEIR’s conclusory analysis of the Project’s significant land use impacts at Los Angeles State Historic Park (“LASHP”) fails to meet CEQA’s informational requirements.

First, the FEIR mischaracterizes certain of the limitations found in various Public Resources Code sections as merely aspirational. The FEIR describes several Public Resource Code sections as “provid[ing] directives to State Parks on how it *should* manage the State Park System.” (FEIR, Topical Response F, p. 6.0-70 (emphasis added.))<sup>21</sup> But describing the cited Public Resources Code sections as directory rather than mandatory is highly misleading. This deceptive language is out of place in an EIR, which must provide a “good faith reasoned analysis” of significant environmental concerns raised in DEIR comments.<sup>22</sup>

LA Parks Alliance’s purpose in citing numerous Public Resource Code sections in its DEIR comment is to show how California State Parks authority is limited and does not permit the proposed Project to use LA State Historic Park. The code sections cited by the FEIR as merely aspirational all include language mandating how State Parks is required by law to perform its responsibilities, using the words “must” and “shall” (as **bolded** in the following quotes from the statutory language):

“... state parks **must** protect California's heritage and be welcoming in order that visitors may understand and appreciate these special places that have been set aside for their inspiration and enjoyment.” (Public Resources Code, § 5001.)

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<sup>20</sup> Comment Letter G013, p. 6. See *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337.

<sup>21</sup> The FEIR refers to the Dept. of Parks and Recreation as “State Parks,” as will this letter.

<sup>22</sup> *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 941 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.)

“The director **shall** promote and regulate the use of the state park system in a manner that conserves the scenery, natural and historic resources, and wildlife in the individual units of the system for the enjoyment of future generations.” (Public Resources Code, § 5001.2.)

“The purpose of state parks **shall** be to preserve outstanding natural, scenic, and cultural values...” (Public Resources Code, § 50019.53, ¶1.)

“Each state park **shall** be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established.” (Public Resources Code, § 50019.53, ¶2.)

“Improvements undertaken within state parks **shall** be for the purpose of making the areas available for public enjoyment and education in a manner consistent with the preservation of natural, scenic, cultural, and ecological values for present and future generations.” (Public Resources Code, § 50019.53, ¶3.)

“The **only** facilities that may be provided are those **required** for the safety, comfort, and enjoyment of the visitors, such as access, parking, water, sanitation, interpretation, and picnicking... Certain agricultural, mercantile, or other **commercial activities may be permitted if those activities are a part of the history of the individual unit** and any developments retain or restore historical authenticity.” (Public Resources Code, § 50019.59.)

“Under general rules of statutory interpretation, ‘shall’ denotes something is mandatory.”<sup>23</sup> “[W]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.”<sup>24</sup> Removing any doubt how these sections are interpreted, the Public Resources Code itself states “[s]hall’ is mandatory and ‘may’ is permissive.”<sup>25</sup>

Second, the FEIR asserts that comments regarding State Parks’ “authority to grant the necessary approvals for the proposed Project’s use of LASHP do not raise substantive issues on the content of the Draft EIR.” (FEIR, p. 6.0-68.) But this is false—LAPA’s comments regarding limitations on State Park’s authority relates directly to whether approvals listed in the DEIR can be made. (DEIR, p. 2-61; FEIR, pp. 1.0-19, 3.0-71.) Further, LAPA’s comments are strong support for the argument that the mitigation measure proposed to address a significant conflict between the proposed Project and Los Angeles State Historic Park, MM-LUP-A, is not feasible. “[P]roposed mitigation measures should be reviewed...to determine whether the measures are *legally feasible* and *whether they might conflict with the requirements of other agencies* that have

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<sup>23</sup> *Guardianship of C.E.* (2019) 31 Cal.App.5th 1038, 1051.

<sup>24</sup> *Cape Concord Homeowners Assn. v. City of Escondido* (2017) 7 Cal.App.5th 180, 189 (quoting *Ellena v. Department of Ins.* (2014) 230 Cal.App.4th 198, 205).

<sup>25</sup> Public Resources Code, § 15.

authority over the project.”<sup>26</sup> “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”<sup>27</sup>

The FEIR reports that State Parks has identified conflicts between the proposed Project and Los Angeles State Historic Park as “potentially significant.” (See FEIR, p. 6.0-73: “State Parks has determined that the proposed Project would be inconsistent with the LASHP General Plan because the identified land uses in the General Plan’s Preferred Park Concept Elements did not contemplate a transit station like the proposed Project’s Chinatown/State Park Station.”) In fact, the FEIR itself identifies this impact as “significant.” (FEIR, Table 1-2: Summary of Environmental Impacts, p. 1.0-70.) State Parks’ DEIR comment letter agrees that the LASHP General Plan “would need to be amended prior to State Parks granting any administrative approvals,” and “[a]uthority for approving such state park general plan amendments rests solely with the State Park and Recreation Commission (SPRC).” (FEIR, p. 6.0-175.)

The FEIR does not engage in a serious analysis showing that revision of LASHP’s General Plan, the only mitigation measure offered, is legally feasible. Topical Response F discusses State Park’s authority in general. For example, in describing Right-of-Entry Permits, the FEIR quotes Public Resources Code section 5003: “State Parks may establish rules and regulations not inconsistent with law for the government and administration of the property under its jurisdiction. The department may expend all moneys of the department, from whatever source derived, for the care, protection, supervision, extension, and improvement or development of the property under its jurisdiction.” (FEIR, p. 6.0-68 to 69.)

Likewise, the FEIR describes that regulations allow “granting of an easement...or entering into leases...*if the transactions meet certain statutory requirements.*” (*Id.*, p. 6.0-69 (emphasis added).) Citing Public Resources Code section 5003.17, the FEIR notes that to permit a lease the Director of State Parks must find “the use would be compatible with the use of the real property as a unit and with the sound management and conservation of resources within the unit.” (*Id.*) The FEIR states that Government Code section 14666 generally allows the Director of General Services to grant “easements and rights-of-way, for those purposes and upon that consideration and subject to those conditions, limitations, restrictions, and reservations as the director deems are in the interest of the state” State Parks’ approval. (*Id.*, p. 6.0-69 to 70.)

The FEIR’s description of the above statutes gives an uninformed reader the false impression that a Director of Government Services can do pretty much whatever they want with state parklands managed by State Parks. But to provide the analysis necessary to determine whether MM-LUP-A is legally feasible, as the FEIR must, some discussion is needed of the specific environmental impact(s) on the park, the significance of the impact(s), and the mitigation measure or measures that could reduce the impact(s). The FEIR strongly suggests that

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<sup>26</sup> Practice Under CEQA, § 14.8 (emphasis added). LAPA notes this well-regarded treatise is cited in support of the Project FEIR at p. 6.0-2203, fn. 13.

<sup>27</sup> CEQA Guidelines, § 15364; see *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 237.



State Parks has already performed such an analysis. That analysis is described as having been completed and *a determination made by State Parks*:

*State Parks has determined* that the proposed Project would be inconsistent with the LASHP General Plan because the identified land uses in the General Plan’s Preferred Park Concept Elements did not contemplate a transit station like the proposed Project’s Chinatown/State Park Station. State Parks considers this inconsistency a potentially significant impact. Therefore, Mitigation Measure LUP-A would be implemented to require the proposed Project to obtain an amendment to the Los Angeles State Historic Park General Plan (“LASHP General Plan Amendment”). The LASHP General Plan Amendment proposes to amend the Preferred Park Concept Elements to include a “Transit” land use to allow for the proposed Project’s use, as well as to address the state historic park classification as defined in Public Resources Code section 5019.59, which permits facilities for the comfort and enjoyment of the visitors, such as access. *No other inconsistencies with LASHP General Plan policies were identified during the analysis*, and therefore no other mitigation measures are required. (FEIR, p. 6.0-73 (emphasis added).)

The final passive sentence in that paragraph aside, the described analysis does not discuss the limitations on State Parks’ authority with respect to lawfully permitted uses of state parkland or on state historic parks in particular. Public Resources Code section 5003 includes the clause “not inconsistent with law,” which substantially limits State Parks ability to issue easements and leases. Government Code section 14666 may sound like it provides unfettered authority to the Director of Government Services, but the grant of easements and rights-of-way both require “the approval of the state agency concerned.” As discussed at great length in LAPA’s DEIR comment letter, State Parks’ authority to make that approval is substantially limited by Public Resource Code sections 5001, 5001.2, 5019.53, and 5019.59, which all mandate the preservation and conservation of our state parks. The Project cannot be built on or over LA State Historic Park.

The FEIR states it will defer these questions to State Parks, which “will assess the proposed Project against its statutory authorities when the Project Sponsor seeks its approvals for use of LASHP from State Parks in the future.” (FEIR, p. 6.0-70.) Metro here acknowledges that mitigation measure MM-LUP-A, requiring a change in LASHP’s General Plan, will require a finding under Public Resources Code section 21081(a) that the mitigation is “within the responsibility and jurisdiction of” State Parks and “can and should be” adopted.<sup>28</sup> But the Metro Board cannot make such a finding where the administrative record does not include substantial evidence to support it.<sup>29</sup> Moreover, due to the absence of meaningful analysis of legal constraints on the agency in the FEIR, State Park and Recreation Commission will also not be able to “rely

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<sup>28</sup> Practice Under CEQA, § 17.24, citing Public Resources Code, § 21081(a)(2).

<sup>29</sup> CEQA Guidelines, § 15091(b) (findings must be supported by substantial evidence); see *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 465.

on the EIR to support its discretionary action as a Responsible Agency pursuant to CEQA.” (FEIR, p. 6.0-73.)

**C. The FEIR repeatedly cites collaboration with State Parks, suggesting that State Parks has prematurely signed off on the Project’s use of LA State Historic Park.**

As described above, the FEIR defers the analysis of the scope of State Parks’ authority to allow the Project to use LA State Historic Park to the time required approvals are later requested from that agency, including a park general plan amendment. (FEIR, p. 6.0-70.) At the same time, the FEIR repeatedly cites collaboration with State Parks in Project siting and design, supporting a reasonable inference that State Parks has already determined the use is acceptable.

For example:

[W]hile the proposed Project deepens the Park’s connection to its transportation theme, it has been designed to avoid impacts to the other themes—recreation, cultural-historic, and connectivity—by careful siting and **collaboration with State Parks**. (FEIR, p. 6.0-75.)

**[T]he Project Sponsor has been working cooperatively with State Parks** to avoid or minimize impacts, including aesthetic impacts to LASHP, thus helping State Parks meet its obligations pursuant to [LASHP General Plan EIR, MM Aes-1]. (FEIR, p. 6.0-76.)

In addition, **through collaboration with State Parks**, the proposed Project has been designed to provide additional benefits to the Los Angeles State Historic Park, including pedestrian improvements between Metro’s L Line (Gold) and the park, and integration of the Chinatown/State Park Station into the southern boundary of the park with hardscape and landscape, a mobility hub, and park amenities. (FEIR, p. 6.0-173.)<sup>30</sup>

There is no documentation in the available public record supporting that State Parks has collaborated with Metro or the Project Sponsor in Project siting or design decisions to minimize impacts on LA State Historic Park. To the extent these responses may suggest State Parks agrees with any FEIR conclusions, especially those suggesting that impacts to LA State Historic Park have been reduced to a level less than significant by siting the Project in the park’s southwest

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<sup>30</sup> This boilerplate comment is repeated non-responsively throughout the FEIR in response to concerns about conflicts between the Project and LASHP, including in response to the DEIR comment letter from State Parks. See, e.g., FEIR, Section 6.0, pp. 187, 245, 263, 265, 267, 422, 427, 464, 511, 606, 814, 817, 828, 832, 853, 889, 891, 894, and 899; see also, FEIR, p. 6.0-189.

sector, the decisionmaker cannot rely on them when certifying the EIR or adopting Project findings or a Statement of Overriding Considerations in the absence of substantial evidence.<sup>31</sup>

**D. The FEIR reliance on expert opinion in its inadequate analysis of aesthetic impacts is misplaced, deceptive, and fails to fully follow the cited FHA Guidance.**

The FEIR’s analysis of aesthetic impacts generally ignores public opinion and places undue reliance on expert opinion based on an analytic process and environmental threshold entirely out of place for a visual analysis of the most important cultural and historic districts in Los Angeles and within a state historic park with such important visual features that they were specifically protected by the park’s General Plan and Environmental Impact Report.

As LAPA’s DEIR comment letter notes, analysis of aesthetic impacts is not the sole province of experts. The DEIR acknowledged that “analysis of existing visual or aesthetic resources and potential visual or aesthetic impacts can be highly subjective, dependent upon the background of the assessor and the opinions of viewers.” (DEIR, p. 3.1-29.) The personal and non-expert opinion of lay persons can constitute substantial evidence of a significant environmental impact.<sup>32</sup> The record contains many such comments. But comments critical of the EIR’s inadequate analysis of significant visual impacts on historic and cultural resources do not only come from lay persons.

Adrian Scott Fine submitted a detailed comment letter raising significant concerns about the Project on behalf of the LA Conservancy.<sup>33</sup> The Conservancy’s concerns include the Project’s numerous visual intrusions: “If built, the LA ART will be clearly visible and obscure the view, setting, and future overall experience of various historic places and spaces, including Union Station, El Pueblo, Los Angeles State Historic Park, and Chinatown.”<sup>34</sup> The Conservancy letter provides a detailed counter-analysis to the DEIR’s glib minimization of the Project’s aesthetic impacts, describing in turn precisely how and why the Project impacts should not be considered less than significant.<sup>35</sup> Following review of the FEIR, Mr. Fine submitted an additional comment letter maintaining the Conservancy’s position: “Historic and cultural resources and view sheds *will be impacted and irreparably harmed* by the LA ART Project.”<sup>36</sup> The EIR “does not adequately address the proposed use and transfer of Public rights-of-way and lands and their permitted legal use, and is in conflict with Public Resources Code 5019.59.”<sup>37</sup>

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<sup>31</sup> CEQA Guidelines, § 15091(b); see *Neighbors for Smart Rail*, *supra* fn. 29, 57 Cal.4th at 465.

<sup>32</sup> *Ocean View Estate Homeowners Assn., Inc. v Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402-403.

<sup>33</sup> FEIR, Appx. C.3, pp. 419-426.

<sup>34</sup> *Id.*, p. 421.

<sup>35</sup> *Id.*, pp. 421-424.

<sup>36</sup> Adrian Scott Fine, LA Conservancy letter re Final EIR, Jan. 17, 2024 (emphasis added); currently available at: <https://laartsb44.net/api/files/5986420f-1bf0-4c61-9bee-0e91dd0fa999>.

<sup>37</sup> *Ibid.*

There is no doubt that Mr. Fine is an expert on aesthetic and other impacts to historic and cultural resources. He is the President and CEO of the LA Conservancy, where he has held a senior advocacy role since 2010. “The Los Angeles Conservancy is the largest local historic preservation organization in the United States, with nearly 5,000 members throughout the Los Angeles area.”<sup>38</sup> His prior work experience includes a decade with the National Trust for Historic Preservation where he was the national Director of the Center for State and Local Policy, based in Washington, D.C., and earlier the Director of its Northeast Field Office. Before joining the National Trust for Historic Preservation he was with Indiana Landmarks, “the largest statewide heritage conservation nonprofit organization in the United States.”<sup>39</sup>

The FEIR states that “[t]he methodology utilized to examine potential aesthetic impacts follows the guidance outlined in the Federal Highway Administration’s *Guidelines for the Visual Impact Assessment of Highway Projects* (2015).” (FEIR, p. 6.0-403.) The FEIR describes this guidance as allowing the use of individual “Landscape Units” and “Key Observation Points.” (*Ibid.*) In short, the EIR’s analysis of aesthetics divides the area of impact up into smaller units to analyze each of them independent of others. This method is somewhat analogous to project piecemealing, in which a proposed project is divided up into smaller pieces to evade CEQA. CEQA mandates that an agency may not “chop [ ] a large project into many little ones – each with a minimal impact on the environment – which cumulatively may have disastrous consequences.”<sup>40</sup> This principle should apply equally to aesthetic analysis. The methodology chosen here minimizes the obvious cumulative impacts to numerous view sheds comprising Los Angeles’s most important cultural and historic resources.

The above concerns are magnified where important parts of the FHA methodology have not been followed. The same FHA guidance relied on by the Project FEIR describes the need to engage in a “public involvement strategy,” in which the visual impact analysis includes establishment of viewer preferences, which “begin[s] with the professional observational approach (described above) to create a set of draft viewer preferences. Then, as part of the project’s NEPA *public involvement strategy*, conduct a series of workshops to verify and refine the draft document.”<sup>41</sup> The FHA Guidelines include reference to materials that an agency may use “for conducting visual preference workshops” with members of the public.<sup>42</sup>

This was *not* the approach taken in the analysis of the Project. *No* workshops were organized for members of the public to participate in the Project’s aesthetic analysis. The assessments utilized only the subjective opinion of the analyst, which are clearly biased toward a finding of no significant impact, notwithstanding the huge visual impact the Project will have on many cultural and historic resources.

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<sup>38</sup> *Id.*, p. 425.

<sup>39</sup> Los Angeles Conservancy, About – Our People – Adrian Scott Fine, available at: <https://www.laconservancy.org/about/staff/adrian-scott-fine/>. (Last viewed Feb. 12, 2024.)

<sup>40</sup> *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.

<sup>41</sup> Federal Highway Administration, *Guidelines for the Visual Impact Assessment of Highway Projects* (hereafter “FHA Guidelines”), Jan. 2015, p. 5-12 (emphasis added).

<sup>42</sup> *Id.*, p. 5-13.

Further, the FHA Guidelines recommends using an *expanded* visual impact assessment “for very complex or controversial projects where resolving visual issues has been identified as being key to public acceptance of a project.”<sup>43</sup> The Guidelines note that “*utilizing an effective public participation strategy to accurately ascertain viewer preferences is key for determining impacts to visual quality and designing effective mitigation strategies.*”<sup>44</sup>

The FEIR asserts the aesthetic analysis was performed by an “expert in the field.” (FEIR, p. 6.0-404). An expert should know that *actual* public opinion *must* be part of the analysis, rather than relying solely on the analyst’s speculation, and then minimizing these straw man opinions by suggesting viewers are used to the urban locale or are not sensitive because only visiting.<sup>45</sup>

**E. The FEIR deceptively minimizes the description of the footprint and airspace within LA State Historic Park proposed to be used by the Project.**

Numerous DEIR comment letters expressed concern about the amount of LA State Historic Park proposed to be used by the Project, including the comment letter from State Parks. (See FEIR, pp. 6.0-173 to 174.) LAPA’s DEIR comment letter expressed particular concern that in addition to the massive amount of space within LA State Historic Park used for the Project (acknowledged by the DEIR and FEIR as almost two acres, see FEIR, p. 6.0-174), the Draft EIR did not adequately define the amount of space required for an “Additional Separation Buffer.” (FEIR, Appx. C.3, pp. 59-60.)

The FEIR provides only a little more detail on the width of the Additional Separation Buffer than the DEIR did but it still does not provide a clear explanation of the total square footage the Project would use along the entire alignment or within LA State Historic Park. The FEIR states: “Based on the current design, the Additional Separation Buffer is estimated to be approximately 10 feet on each side of the required aerial clearance...” (FEIR, p. 6.0-317.) The FEIR directs the reader to Section 3.4.6 (part of the Project Description) and Appendix N, which the FEIR asserts provide further details. (*Ibid.*) These FEIR portions do *not* clarify or provide additional information.

FEIR Section 3.4.6 adds no more information than the response to LAPA’s letter. In fact, the additional paragraph added to that Section is included verbatim in the response to LAPA. (Compare FEIR, p. 3.0-123 (underlined text), with FEIR p. 6.0-317 (sentence starting with “Based on the current design...”))

FEIR Appendix N is a one-page memorandum from a Project consultant. It likewise provides no additional information, and repeats the paragraph added to FEIR Section 3.4.6 in its final paragraph. (It is the apparent source of the quote).

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<sup>43</sup> FHA Guidelines, Appx. D, p. D-3.

<sup>44</sup> *Ibid.* (emphasis added).

<sup>45</sup> See DEIR, p. 3.1-45: some viewers “may have less of a personal investment in the visual appearance of the proposed Project within LU-4 because they are primarily visiting and do not necessarily reside in the adjacent area...”

The FEIR provides the total square footage of the Project's aerial clearance within LA State Historic Park, but never includes the square footage of the Additional Separation Buffer, only ever explaining that it adds ten feet on each side of the aerial clearance. (See, e.g., FEIR, p. 6.0-463: "The proposed Project's required aerial clearance would be located above approximately 59,470 square feet of the total 32-acre park, plus an Additional Separation Buffer.") LAPA can do the math that the FEIR omits.

The total aerial clearance above LA State Historic Park is 59,470 square feet. (*Ibid.*) The width of the aerial clearance is 53 feet 2 inches. (FEIR, p. 6.0-174.) The Additional Separation Buffer is an estimated additional 10 feet on each side of this aerial clearance. (FEIR, p. 6.0-317.) The total width of the aerial clearance including the Additional Separation Buffer is therefore 73 feet 2 inches. (53 feet 2 inches plus 20 feet is 73 feet 2 inches.) An aerial clearance of 73 feet 2 inches is approximately 37.6 percent wider than a width of 53 feet 2 inches. Adding the additional 37.6% width of the Additional Separation Buffer results in an approximate total aerial clearance of 81,830.72 over LA State Historic Park.

The additional 22,360.72 square feet is more than half an acre (0.51 acres) greater than the area disclosed in the DEIR, and that is just within LA State Historic Park. Assuming the Additional Separation Buffer is the same for the entire Project alignment, the lion's share of which is on *public* land, an additional twenty feet of width throughout the total Project alignment of 1.2 miles adds an astounding estimated 126,720 square feet, or more than 2.9 acres of undisclosed Project area. **The failure to disclose almost three acres of aerial rights to be granted to the Project, more than half an acre of that within LA State Historic Park, represents a colossal informational failure and invalidates the Project Description** (see FEIR, p. 3.0-62) **and the entire EIR.**

The FEIR does, however, provide some very specific numbers to *minimize* the apparent impact on LA State Historic Park. The FEIR repeatedly provides the precise square footage of the Chinatown/State Park Station proposed to be located within the park (2,195 square feet), and describes it as utilizing only "~.1% of the total 32-acre park." (FEIR, p. 6.0-176.) ***This language is highly deceptive*** and is used repeatedly by the FEIR in response to concerns about environmental impacts and land use conflicts at LA State Historic Park. (See, e.g., FEIR, Section 6.0, pp. 187, 245, 262, 315, 368, 463, 468, 475, 480, 511, 533, 601, 813, 817, 839, 853, 854, 886, 889, 890, 893, 905, 1,030, 1,033, etc.) All told the deceptive ~.1% language is used approximately 80 times in Section 6.0 of the FEIR in response to DEIR comments.

As State Parks more accurately estimates in its DEIR comment letter:

In total, the Project would require permanently taking approximately 0.21 acres for the physical transit station and up to 1.87 acres of the 32-acre park (6%) that would be restricted not only by the station, but by the overhead development and operation rights for the aerial infrastructure, including the cable ropeway, which would be suspended at just 26 feet over the park at its lowest spot. (FEIR, pp. 6.0-173 to 174.)

A project that constantly repeats that the Project *footprint* within a park is only ~.1% of the park acreage when the Project actually uses 6% (or more) of the park is grossly misleading. CEQA requires an EIR to “provide a reasonable, good faith disclosure and analysis of environmental impacts.”<sup>46</sup> The FEIR’s repeated use of deceptive language falls far short of this standard, confusing both the public and decisionmakers.

**F. The FEIR discussion of matters within the jurisdiction of Trustee Agency Santa Monica Mountains Conservancy are inaccurate and notice to SMMC was untimely.**

The FEIR describes the location of the Rim of the Valley Trail as follows:

While the proposed project is located within the boundaries of the Rim of the Valley Trail Corridor, the proposed Project would have no impact on the Rim of the Valley Trail, which is located north of Elysian Park, across Interstate I-5. The proposed Project would provide access to and connectivity between El Pueblo, Los Angeles State Historic Park, and Elysian Park.  
(FEIR, pp. 5.0-12 to 5.0-13.)

This description is inaccurate. The FEIR seems to assume that because the Rim of the Valley Trail is not complete, it is proper to identify only existing trail segments, some of which are located across Interstate I-5. But when the Trail is someday complete, there will be segments within the entire Rim of the Valley Trail Corridor, including within the Project area.

Indeed, one of the reasons that the Santa Monica Mountains Conservancy (“SMMC”) is a trustee agency is because it is perhaps the most important local agency working on future planning to connect public parks and open spaces in the Santa Monica Mountains Zone, which includes the entire project area.<sup>47</sup> The FEIR states that SMMC “has no discretionary approval authority related to the proposed Project; however, Metro notified SMMC as a trustee agency.” This sentence refers to a footnote referencing the notice SMMC received, which does not clearly identify the date of the contact. (FEIR, p. 6.0-303, fn. 11.) Metro acknowledges that SMMC is a trustee agency and asserts it notified SMMC. (FEIR, p. 6.0-303.) But it deceptively fails to acknowledge that its *notice was not timely*. And it did not miss by only a few weeks or a month.

Metro’s *only* contact with SMMC describe in the FEIR is an email sent by Corey Zelmer on June 14, 2023, to a general email address for the agency. (The record suggests that this notice

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<sup>46</sup> Practice Under CEQA (CEB), § 11.28 (citing to the leading CEQA cases on standards for the informational adequacy of environmental impact reports).

<sup>47</sup> See Public Resources Code, § 33105, which states in relevant part: “The [Santa Monica Mountains Zone] shall also include Elysian Park and El Pueblo de Los Angeles State Historic Park, and for purposes of providing a recreational trail corridor, it shall also include hiking and equestrian trail connections and accessways between Griffith Park, Elysian Park, and El Pueblo de Los Angeles State Historic Park.”

was ineffective.) The NOP for the Project was issued October 1, 2020. (FEIR, Appx. A, pdf p. 16.) The Draft EIR was made available for public review on October 17, 2022. (*Ibid.*)

**The first attempt to notify SMMC was 2 years and 8.5 months after the NOP was issued, and almost 1 year and 8 months after the DEIR was released.** SMMC may appear to be a disinterested trustee, because it issued no comment letter in response to the Notice of Preparation, and it issued no comment letter in response to the Draft EIR. But that is because it had no meaningful opportunity to consult with Metro before the Draft EIR had already been complete for the better part of two years.

Since SMMC's jurisdiction extends to all parkland areas within the Project corridor, including Elysian Park, LA State Historic Park, and El Pueblo, SMMC may have had relevant comments to share that could have dramatically altered the course of the Project, perhaps causing Metro to pursue additional Project alternatives, to alter Project components, adopt additional mitigations suggested by SMMC, or even to decide based on SMMC's input not to pursue the preferred Project.

The failure to timely consult SMMC and to deceptively assert that it was properly notified of the Project represents a fatal informational flaw in the Final EIR.

#### **G. The FEIR discussion of Project Costs and Expenses is Incomplete and Misleading**

The executive summary of the FEIR includes a brief subsection on "Project Cost and Funding." (FEIR, p. 1.0-20 to 21.) The brief discussion explains that capital costs are expected to be between \$385-500 million, and operation and maintenance are expected to be between \$8-10 million. (*Ibid.*) The FEIR adds a one-page Section 4.0 with the same information, the only additional information provided being a table breaking out capital costs across four broad categories. (FEIR, p. 4.0-1.) It is unclear why the FEIR chose to create an entire section for costs and funding if it provided virtually the same information as in the executive summary. The second page of this two-page includes only the following text: "*This page intentionally left blank.*" (FEIR, p. 4.0-2 (italics in original).)

The bigger question is why both capital costs and operating and maintenance costs are presented in 2021 dollars. (FEIR, p. 4.0-1.) The Draft EIR was released in October 2022, and this information was not included in it. What justifies using 2021 dollars for a Project with an environmental impact report that will be certified at the earliest (if at all) in February of 2024?

The only reasonable theory for the FEIR's use of 2021 dollars, instead of 2024 dollars (or at least late 2023 dollars when the Final EIR was released), relates to the frequently expressed concern among many community members that in the end the Project will be *publicly* financed. Using 2021 dollars reduces somewhat the Project price-tag by three years-worth of inflation numbers. A basic online inflation calculator tool can be used to show that an item that cost \$1 in 2021 would cost approximately \$1.14 in 2024, because the cumulative rate of inflation between



2021 and 2024 is approximately 13.8%.<sup>48</sup> If you extrapolate that to the estimates provided in the FEIR, the \$385-\$500M capital cost increases to \$438-569M, and the operational costs increase to \$9.1-11.4M.<sup>49</sup>

As Topical Response L of the FEIR notes, “comments regarding the Project Sponsor and how the proposed Project would be funded do not raise substantive issues on the content of the Draft EIR, no further response is required by CEQA.” (FEIR, p. 6.0-114.) Even if that were always true, CEQA still requires information provided in an EIR to be accurate and complete. Among the many reasons commenters have raised concerns about Project financing is if the Project fails, or if the Project Sponsor fails, or *when* it is time for the Project to be decommissioned, the private entity that is responsible for covering the costs to operate and maintain the Project or to decommission it may no longer exist. Companies, including nonprofits, fail. Companies, including nonprofits, go bankrupt.

Moreover, while public materials promoting the Project trumpet that it will not cost taxpayers any money, the FEIR is equivocal on that point: “The proposed Project is not seeking Metro funding. In addition, no other public sources of funding have been sought or committed to the proposed Project.” (FEIR, p. 6.0-115.) This is another masterful passive construction that seems to leave out one key word: “yet.”

Providing estimates for the capital and operational/maintenance costs using out-of-date 2021 dollars when we have just gone through several years of unusually high inflation is very misleading. Explaining that no public funds will be used without making that a condition of approval, assuming the Project Sponsor will survive when many companies do not, and assuming that the financing plan and Project revenue will be sufficient to allow the gondola to operate at least on a break-even basis without the expenditure of taxpayer funds is a big gamble in the absence of a far-more detailed financial plan. This is all the more so where the primary ridership justifying construction of the Project, Dodger Stadium ticket holders for baseball games and special events are promised that they will ride for free. (FEIR, p. 6.0-126.) Also riding free are local community members. (*Ibid.*)

The only category of users apparently not riding free are tourists, and the estimated annual tourist ridership is 915,000. (Draft EIR, Appx. N, pdf p. 19.) LAPA has its doubts as the veracity of these estimates, and notes that the total tourist ridership is apparently greater than the number of people who will use the gondola for its primary purpose, getting to Dodger games.

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<sup>48</sup> See <https://www.usinflationcalculator.com>.

<sup>49</sup> Noted Los Angeles budget-hawk Jack Humphreville’s recent article at the CityWatch website suggests actual annual costs would be on the order of \$55M, including the operating expenses, capital costs, and a cushion to satisfy lenders or investors. The text of the article is already part of the record in this matter, but it remains available at: <https://www.citywatchla.com/la-watchdog/28370-frank-mccourts-gondolas-what-is-his-overall-plan>.

Eighty-one home games per year at the maximum theoretical ridership of 10,000 per game is only 810,000 annual riders.<sup>50</sup>

The above ridership estimates also cause significant problems for the FEIR's claim that the Project is eligible for SB44 as a "public transit" system. As explained in LAPA's DEIR comment letter, prioritized transit to a private venue via a private transportation service is not "public transit" and is more accurately characterized as a "courtesy shuttle service for patrons of one or more specific establishments." (FEIR, p. 6.0-310.) And transportation for tourist sightseeing is also not considered public transportation under federal law. (*Ibid.*, citing 49 U.S.C. § 5302, subd. (15)(B)(v).)

#### **H. There is no FTA precedent that an "aerial tramway" is a "fixed guideway."**

The FEIR asserts:

The FTA deems "aerial tramways" to be a "fixed guideway." The proposed Project is an aerial tramway. Therefore the proposed Project is a "fixed guideway" under SB 44.  
(FEIR, p. 6.0-31.)

The FEIR then quotes from a 2004 document listed in the federal register as evidence that the agency considers aerial tramways to be a fixed guideway as a matter of law. (*Ibid.*)<sup>51</sup> But the source document is merely a notice from the Federal Transit Administration (FTA) regarding FY 2005 funding. Section IV of the notice provides "funding and program-related information for major FTA program areas."

Subsection IV.D of the FTA notice does include the quoted language referenced in the FEIR, but this text in an FTA notice is not dispositive of the question whether an aerial tramway is necessarily considered to be a "fixed guideway," because it is not itself a source of law, it is only a notice. Thus, it is not correct to say that the use of the term in this one document published in the federal register nearly 20 years ago reflects the *current* interpretation of 49 U.S.C. Section 5309 by either the Federal Department of Transportation or the Federal Transit Administration.

Moreover, it is incorrect to characterize the FTA notice as furnishing a "precedent." "In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing... authority for the determination of an identical or similar case afterwards arising, or of a similar

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<sup>50</sup> LAPA notes that the FEIR discussion of Dodger ridership sometimes includes inaccurate information. See, e.g., FEIR, p. 5.0-16, describing "84 Dodger games/events at Dodger Stadium each year." It is common knowledge that there are 162 games per season for each MLB team, with 81 played at the home stadium. If the Dodgers reach the World Series, they could have as many as 93 home games. (See <https://www.mlb.com/news/mlb-playoff-format-faq>, which explains the current MLB playoff format.)

<sup>51</sup> See FEIR, p. 6.0-31, fn. 5, citing the Federal Transit Administration's "FTA Fiscal Year 2005 Apportionments, Allocations and Program Information," including a weblink to the document.

question of law.”<sup>52</sup> The FEIR’s use of the term “precedent” suggests that the interpretation is final as a matter of law, but the evidence provided is far from conclusive on the matter.

Further, the proposed Project would be overwhelmingly used for free transportation by ticket holders to Dodger Stadium baseball games and special events (essentially a last-mile courtesy shuttle system) and paid trips by tourists. As discussed above and in LAPA’s January 17, 2023, DEIR comment letter, neither of these types of transportation service are recognized in Section 5309 as legitimate public transportation.

The Project is not a public transit system and is not eligible as an SB 44 project.

Moreover, the entire purpose of SB 44 was to place certain Los Angeles area transportation projects on a fast track for judicial review so that if challenged upon their approval they could more quickly move through the judicial process.<sup>53</sup> But the FEIR repeatedly notes that use of the Dodger Stadium parking lots as a satellite parking lot for the 2028 Olympics is not only not planned, but it is not a reasonably foreseeable use. (See, e.g., FEIR, p. 6.0-355.) Further, the FEIR notes the Project is not included as part of Metro’s approved 2028 Games Mobility Concept Plan, and not on the 2022 Prioritized Mobility Concept Plan Project List. (*Ibid.*)

Given the stated legislative purpose of SB 44 to fast track the judicial review of true public transit projects in time for the Olympics, it is unclear why the Project proponents argue that it should be considered an SB 44 project when it is not eligible under either the purpose or the text of the statute.

## **II. Additional Comments.**

### **A. The sustainability of proposed new structures at LA State Historic Park is not relevant when those structures are not permitted to use the park in the first place.**

The FEIR is proud of the numerous sustainability features the Project will promote. (See FEIR) And in general, LAPA agrees (as most reasonable people do) that development projects should be built as sustainably as is feasible, even if people will differ on precisely what constitutes sustainable development.

Some of the claims of sustainability, however, strain credulity. The FEIR asserts that the site selected for the Chinatown/State Park Station is a “sustainability feature” of the Project, because instead of being located such that gondola cabins traverse the middle of the park, it will instead be sited along the western edge. (FEIR, p. 6.0-401.) But this claim is nonsensical. If the Project were instead an office building that planned to take 6% of the area of LA State Historic Park, it would not matter if it received the highest LEED certification—it would still be

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<sup>52</sup> *Schmier v. Supreme Court* (2002) 96 Cal.App.4th 873, 881 (quoting Black's Law Dict. (7th ed. 1999) p. 1195).

<sup>53</sup> SB 44, § 1 (legislative findings), available at: <https://legiscan.com/CA/text/SB44/id/2436321>.

inappropriate for the park. Whether the Project is constructed at the eastern edge, the western edge, or in the middle of LA State Historic Park, it is still inappropriate there.

To claim that the taking of approximately 2.9 acres (6%) of LA State Historic Park for a structure and aerial right of way for a private gondola Project is a “sustainability feature” of the Project is one of the more absurd claims found in an FEIR that is sadly riddled with them.

**B. The Project does not “honor and expand upon” the Los Angeles’s “ethnically diverse history and cultural heritage.”**

In response to LAPA’s recitation of one of the most important statements in the LA State Historic Park General Plan (including a notable quote from historian Dr. Leonard Pitt explaining that “[n]o other available 32 acres holds as much opportunity to enlighten us about the history and culture of Los Angeles and this region...”, FEIR, pp. 6.0-368 to 369), the FEIR makes the bold claim that its Project, which has no place in a state historic park, was “*designed* to honor and expand upon” the City’s rich ethnic diversity and cultural heritage.

This is an astounding assertion given that the Project would take over 6% of LA State Historic Park, and would significantly impact protected views from many more acres of the park that even Metro and the Project sponsor acknowledge took decades to create. Use of LA State Historic Park for the Project represents a gross environmental injustice.

**C. The FEIR proposes to cut down 75 trees at LA State Historic Park and then asserts that Chinatown/State Park Station will provide “much-needed shade” at the Park.**

In response to the DEIR comment letter from State Parks, the FEIR acknowledges that the Project would require the removal of 75 trees within Los Angeles State Historic Park. (FEIR, p. 6.0-175.)

Later, in response to State Park’s request “that the project applicant further analyze the following impacts in the DEIR: (1) the substantial loss of property within LASHP,” the FEIR unironically asserts that the Chinatown/State Park Station canopy “would provide much needed shade.” (FEIR, p. 6.0-176.)

Trees also provide shade and are appropriate in the state historic park. Private transportation infrastructure is not.

**III. Conclusion**

Based on all the above, on LAPA’s previous comments to the record of this matter, the clearly inadequate environmental review, the environmental injustice of harming El Pueblo, LA State Historic Park, and other historic and cultural resources, and in light of the many community organizations and individuals opposed to the Project, Los Angeles Parks Alliance urges the Planning and Programming Committee and the entire Metro Board not to certify the Final Environmental Impact Report.

Metro Planning and Programming Committee

February 13, 2024

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Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

John Given

Cc (by email only):

All Metro Board Members

Stephanie Wiggins, Metro CEO

Corey Zelmer, Metro Deputy Executive Officer