



Metro

Public Hearing

~~Los Angeles Public Library - Central Library~~

~~Tuesday, June 30, 2015, 12:00 p.m. to 1:30 p.m.~~

7-7-15 JAPANESE MUSEUM

Comment Card

Name: ROBERT MEINERT

Affiliation (i.e. organization, resident, business): TRANSIT ADVOCATE (FORMER MEMBER)

Address: _____

Phone: _____

Email: eclecticexplorer@gmail.com

Comment Type: Written Comment Verbal and Written Comment

Comment: I SUPPORT THE FEIR PERTAINING TO TUNNELING ON FLOWER ST, HOWEVER IN LIGHT OF THE GENTLEMAN'S COMMENT WHO SPOKE ON TUNNELING DISRUPTIONS WITH THE CUT & COVER METHOD, I WOULD ENCOURAGE METRO TO BUILD THE BEST PROJECT POSSIBLE WITH THE FINANCIAL RESTRAINTS IN THE BUDGET.

Please use the reverse side for additional comments. Comments may also be mailed to: Ms. Dolores Roybal Saltarelli, Project Manager, Metro, One Gateway Plaza, Los Angeles, CA 90012 or emailed to roybald@metro.net

Responses to Comments

PC2

Responses to Comments from Meinert, Robert

Response to Comment PC2-1

Metro appreciated your comment and is dedicated to building the most feasible and cost effective alternative. Support for the construction methodology as identified in the Final EIS/EIR for the Project is noted.



Metro

**Regional Connector - Draft Supplemental Environmental Impact Statement (SEIS)
Public Hearing**

PC3

~~Los Angeles Public Library - Central Library~~ Japanese American National Museum
~~Tuesday, June 30, 2015, 12:00 p.m. to 1:30 p.m.~~ July 7, 2015, 6:30 p.m. to 8:00 p.m.

Comment Card

Name: CHRISTOPHER SUTTON

Affiliation (i.e. organization, resident, business): WESTIN BONAVENTURE HOTEL

Address: 586 LA LOMA ROAD, PASADENA, CALIF. 91105

Phone: 626-683-2500

Email: christophersutton.law@gmail.com

Comment Type: Written Comment Verbal and Written Comment

Comment: The Supplemental EIS fails to analyze a lower alignment as directed by the Court's order. See attached alternative diagrams. Lower alignment allows TBM tunneling between 4th and 5th. Both Alt. A & B are not the lower alignment proposed by the Bonaventure Hotel, which is lower, as shown on the attached diagrams.

Please use the reverse side for additional comments. Comments may also be mailed to: Ms. Dolores Roybal Saltarelli, Project Manager, Metro, One Gateway Plaza, Los Angeles, CA 90012 or emailed to roybald@metro.net

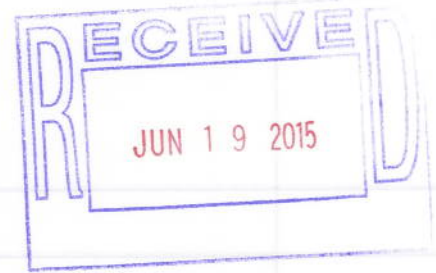
Responses to Comments

PC3

Responses to Comments from Sutton, Christopher

[Response to Comment PC3-1](#)

Thank you for your comment. Please see response to Comment PC5-4.

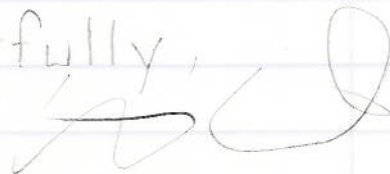


Robert Watson
4287664 - Legal Mail
29330 The Old Road
Castaic, Ca. 91384

Ms. Mary Nguyen
LA Metro Office
Federal Transit Admin. Region IX
888 S. Figueroa St., Ste. 2170
Los Angeles, Ca. 90017

Ms. Nguyen,

I am writing to request whatever information you can send me regarding the DSEIS for the Regional Connector Transit Corridor Project. I would like to know about the tunneling methods and any other information you can provide. If you are unable to help, a response with a referral of someone who can would be greatly appreciated.

Respectfully,


Responses to Comments

PC4

Responses to Comments from Watson, Robert

[Response to Comment PC4-1](#)

Metro appreciated your interest in the project and a copy of the DSEIS was provided to Mr. R Watson via U.S. Postal Mail.

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July 27, 2015

VIA EMAIL AND U.S. MAIL

Ms. Dolores Roybal Saltarelli
 Los Angeles Metropolitan Transit Authority
 One Gateway Plaza, MS 99-22-2
 Los Angeles, CA 90012
roybald@metro.net

Ms. Mary Nguyen
 Federal Transit Administration
 888 S. Figueroa Street, Suite 2170
 Los Angeles, CA 90017
Mnguyen@dot.gov

Re: Draft Supplemental Environmental Impact Statement for the
 Regional Connector Transit Corridor Project

Dear Ms. Saltarelli and Ms. Nguyen:

I. INTRODUCTION

We represent Today's IV, Inc., owner of the Westin Bonaventure Hotel and Suites ("Bonaventure"), which occupies the block surrounded by 4th Street, 5th Street, Flower Street and Figueroa Street, and plaintiff in *Today's IV, Inc. v. Federal Transit Administration, et al.*; Case No. CV13-00378-JAK(PLAx). The Bonaventure, along with its guests, tenants, and employees will be directly and significantly impacted by Project construction, unless changes are made to the method of construction. It is on the Bonaventure's behalf that we are providing these comments on the Draft Supplemental Environmental Impact Statement ("DSEIS") for the Regional Connector Transit Corridor Project ("Project").

1

As a preliminary matter, please ensure that notices of all hearings, actions and decisions related to the Project are timely provided to this office. All objections, including those regarding proper notice and due process, are expressly reserved.

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II. PROJECT DESCRIPTION.

We initially note that the Project against which the alternatives construction methods are measured has changed in material ways since the initial approval of the Projects in mid-2012. The Draft SEIS does not, however, reflect those changes.

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In particular, the escalator/stair alternative entrance to the 2nd/Hope Station was eliminated in May 2013 by MTA action in its instructions to its design-build bidders. Only the all-elevator option remains. (Exh. 1)¹ The elimination of the escalator/stair alternative entrance makes it far easier and more feasible to further lower the 2nd/Hope Station, in part, because less excavation is necessary. The elevators will be installed through vertical bores. Indeed, Alternative B already proposes a lower 2nd/Hope Station than was approved in April 2012 and in the May 2013 all-elevator design change. An alternative tunnel depth proposal was also provided to Metro by representatives of the Bonaventure beginning in December 2013 and repeatedly thereafter. That Deep Tunnel Alternative recognized this change – and a resulting lowering of the 2nd/Hope Station --- to about 206 above sea level – would allow tunneling to 5th Street, and do so at a flatter grade than either the Project alignment or the alternatives in the DSEIS. (Exhs. 2, 3.)²

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The Draft SEIS fails to acknowledge this Deep Tunnel Alternative and fails to analyze its merits as to lesser grades, shorter length, construction safety and duration, lesser cost, and future operational speed, safety, maintenance, noise and vibration, cost, and the lesser energy usage and lesser generation of Green House Gases.

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¹ Exhibit 1 consists of a portion of the Regional Connector Transit Corridor Project Design Build [Proposer/Contractor] Questions and Answers and a July 24, 2015 article from Metro’s blog on the updated design plans for the pedestrian bridge at the 2nd/Hope Station. The image of the surface portal that accompanies the blog post show no escalators or stairs, only elevators.

² This Deep Tunnel Alternative proposal allowed for a flatter grade by lowering the 2nd/Hope Station to an elevation below that of Alternative B. The further lowering of the 2nd/Hope Station and the tunnels in the vicinity also has the additional benefit of reducing noise and vibration impacts to Disney Hall, REDCAT Studios, and the Colburn School. The DSEIS fails to mention acoustical testing at the Colburn School in April 2013 that indicated potentially significant noise and vibration impacts at a audible disturbance level not previously identified. (See Exh. 5.)

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The Project further changed in 2013 to give the contractor additional discretion to design and demonstrative the feasibility of alternative construction methods. (Exh. 4.)

7

III. ALTERNATIVES, GENERALLY.

The final judgment in the litigation (Exh. 6) requires FTA and MTA to prepare a supplemental analysis under the National Environmental Policy Act ("NEPA") that addresses the feasibility of open-face and SEM tunneling under Flower Street from 4th Street to the 7th Street/Metro Center station tail track near Wilshire Boulevard. The DSEIS, however, goes beyond the judgment to include an alternative (Alternative B) that includes earth-pressure tunneling, identified as EPBM in the DSEIS. This makes it incumbent upon FTA to analyze other tunneling alternatives that have already been determined to be potentially feasible, but for which analysis has yet to occur. In particular, this includes EPBM of one additional block from 4th to 5th Street, followed by cut-and-cover construction south ("C/C") to the 7th Street/Metro Center station. Metro previously determined this alternative to be potentially feasible in March 2012 (AR 20184) and provided a brief summary of the alternative in an April 25, 2012 draft tunneling study. (AR 84245.)³ This one-block tunneling alternative would reduce the impacts of both the Project and DSEIS Alternatives A and B. With respect to the DSEIS alternatives, impacts would be reduced for reasons that include a drastic reduction or elimination of the need for grouting. It would also significantly reduce any Project delays because C/C south of 5th Street may occur simultaneously with tunneling.

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This is also implicit from the DSEIS itself. Even from the limited alternatives that Metro and FTA have analyzed in the DSEIS, two conclusions can be reached:

- (1) Between 4th and 5th Streets, EPBM is feasible, safer, less costly, and environmentally superior to C/C construction, and
- (2) South of 5th Street, C/C less risky and is environmentally superior to SEM or open-face tunneling.

9

It is therefore incumbent upon Metro and FTA to analyze EPBM from 4th to 5th Street, followed south of 5th Street by cut-and-cover construction ("C/C") to the 7th Street/Metro Center station. The DSEIS fails to do so.

The Deep Tunnel Alternative presented by Bonaventure to MTA (Exh. 3) takes advantage of the existing design of the lower depth of the 2nd/Broadway Station located adjacent to the L.A. Times Building at around 200 feet above sea level ("asl"). This

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³ AR references are to the Administrative Record in the litigation and are incorporated herein by reference.

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lower depth at that location is mandated by the need to tunnel safely under the existing Red Line subway tunnels at 2nd Street and Hill Street, which run perpendicular to the Project route under 2nd Street. The Deep Tunnel Alternative has the added construction benefits of keeping the EPBM fully within the Fernando Shale formation until 5th Street, reducing or eliminating otherwise required grouting from the surface, and shortening the overall length of tunneling by avoiding unnecessary inclines between 2nd/Broadway to 2nd/Hope and also between 2nd/Hope and 7th Street/Metro Center station.

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As proposed by MTA, the two tunnels will involve a greater linear distance: They would go up and down inclines on either side of a 2nd/Hope Station at the higher 260 feet asl when compared to the relatively level tunnels connected to a 2nd/Hope Stations at 206 feet asl proposed by Bonaventure. By shortening the tunnel and staying in the Fernando Shale less grouting is required and the safety of the construction crews is enhanced. By reducing the days of construction the cost of tunnel construction is also reduced.

11

Appendix A to the DSEIS claims that MTA's Low Alignment identified in the April 25, 2012 draft tunneling study was considered as Alternative B is the DSEIS. This is incorrect. Alternative B is EPBM **followed by SEM**. The MTA Low Alignment in the draft tunneling study was EPBM to STA 13+00 (5th and Flower Streets) **followed by C/C construction** to the 7th Street/Metro Center Station. (See AR 82422, 82425.) This error should be rectified by analysis of the corrected construction alternative provided for by the Low Alignment – EPBM to 5th Street **followed by C/C** to the 7th Street/Metro Center station.

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IV. ALTERNATIVES CONSIDERED.

Both alternatives in the DSEIS claim to retain an option for a station at 4th Street/5th Street/Flower Street (“5th/Flower station”), essentially in front of the Bonaventure. It is clear from the record, however, that a potential future station is illusory, if not deceitful. The alternatives should be re-analyzed without the station. There is no funding analysis, no funding date, or any design of the hypothetical station, and MTA admits that any such station would require subsequent environmental review.

The 5th/Flower station was eliminated from the Project in October 2010 by vote of Metro's Board. (AR 15510.) Eighteen months later, and at the last minute, a design “not to preclude” a future station was added back when the Project was approved by Metro’s Board on April 25, 2012. (AR 15677.) This was done, however, merely to allow Metro to claim any tunneling beyond 4th Street is infeasible and insulate it and FTA from having to analyze the environmental impacts of the additional tunneling, even though the possibility of a station ever being constructed is, at best, infinitesimally remote. In effect, Metro uses a potential 5th/Flower Station merely to set up straw men and avoid required analysis of feasible and reasonable alternatives. This is dishonest.

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When the 5th/Flower Station was deleted no commitments to fund either a study or propose any mechanisms to fund a station at this location were made. (FTAR 35635.) Indeed, the FEIS notes that “[a] separate NEPA/CEQA process would be completed as necessary should a future separate Flower/5th/4th Street station project be undertaken.” (AR 8163.) The station was not included in the preliminary design (DSEIS Appendix A, p. 3-4) and the 2012 FEIS notes that “no funding has been identified for such a station, and it is therefore not considered a reasonably foreseeable future phase of the Regional Connector.” (AR 8149.) The 2012 FEIS also indicates that Project objectives are met without the station. (*Id.*) Appendix A to the DSEIS also indicates that any future station would have to be constructed using C/C (p. 4-23) – meaning Flower Street would have to be dug up again – making the possibility of a future station even more implausible.

13
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Discussion of operations in DSEIS Appendix A also belies any notion of a future 5th/Flower station. Page 5-6 of the DSEIS indicates that the desired operational speed necessary to meet Project objectives is 55 mph along Flower Street. The DSEIS, however, notes that the desired operation speed cannot be met with the 5th/Flower Station because of the closer station spacing. (*Id.*) This means that Project objectives cannot be met even by the Project with the inclusion of a 5th/Flower Station.

Metro designed the vertical alignment of Alternative B with a modified “sag” to, as the DSEIS states, “reduce the probability of the tunnel alignment encountering tie-backs located under Flower Street between 4th Street and impacting the 4th Street Bridge foundations.” (p. 2-41.) This “sag,” according to Metro, results in a 5.9% gradient on the south end and a 4.6% gradient on the north end of the “sag,” resulting in an unacceptable reduction of the Flower Street segment’s operational speed from 55 mph under the Project to 35 mph. (*Id.*) The “sag” with corresponding gradients, however, is also a straw man. It is an alternative purposely designed to fail. Changes to the Project in 2013 after Project approval made more level lower alignments feasible with a 2nd/Hope Station at about 206 feet asl. The “sag” is caused by the higher elevation of the 2nd/Hope Station. The tunnels must dip downward at a steeper angle to pass under the 4th Street bridge foundations, return to level, and then come up at a steeper angle. The “sag” is designed by Metro to create the unacceptable slopes and predestine the alternative to a low rating.

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Bonaventure's Deep Tunnel Alternative proposal provided to Metro beginning in December 2013 (**Exh. 3**) has no such “sag.” It shows the bottom of the tunnel below the 4th Street Bridge foundations at 213 feet asl. (**Exh. 2.**)⁴ Metro's own diagrams show the 7th Street/Metro Center tail tracks at 240 feet asl, and the linear distance from 4th Street

⁴ The underlying graphics are taken from the 2012 Final EIS.

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to the tail track as 1450 feet. (AR 17766.) The rise of 27 feet over 1450 feet results in a slope of less than 2% - substantially less than that claimed by Metro and well within design and operational criteria. Lowering the 2nd/Hope Station also reduces the slope between 2nd/Broadway and 2nd/Hope from 4.6% to 0.46%, allowing for increased operation speeds along that leg of the Project as well.

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Moreover, if failure to meet an operational speed of 55 mph on the Flower Street leg of the Project disqualifies an alternative, as MTA suggests it is, then both Alternatives A and B truly are improper straw men because the operational speed cannot be met with the hypothetical station.⁵ The 5th/Flower Station must be deleted from not only the alternatives, but from the Project, and new analysis recirculated.

15

The purported 7 month increase in construction time Metro attributed to the Alternatives could be substantially shortened if C/C is used south of 5th Street instead of SEM after tunneling to 5th Street because the C/C could be undertaken concurrently.

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V. NOISE.

The SDEIS claims that construction noise levels will be higher under Alternative B. There is however, no analysis provide in the DSEIS, so there is no substantial evidence to support the conclusion. There is also no analysis of the Project, so there is no substantial evidence to support any comparison. The only "analysis," of the LPA in the DSEIS (such as it is) is to list each individual piece of equipment used during a particular construction activity and provide the noise level associated with that piece of equipment. (AR 6386.) This is far from an adequate analysis and violates the very FTA protocols for quantitative noise assessment that the EIS purports to follow. (See AR 40625-40626.) FTA provides a laundry list of mitigation, but simply providing mitigation and reaching a conclusion as to the remaining impact does not give Metro or FTA license to forego the analysis. Without having given the public the opportunity to review the analysis of noise impacts, this section of the DSEIS, at the least, must be recirculated with that required information.

17

This omission is critical because Metro has changed the Project to significantly increase the possibility of nighttime construction, and has done so without analysis. This increase in the scope and intensity of nighttime construction includes water main relocation and pile and beam installation, and also includes the temporary removal of decking in order to remove and transport excavated soils that would otherwise be removed only through the TBM removal shaft. These nighttime construction activities do not appear in the 2012 FEIS or DSEIS; instead they only appear in a Settlement

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⁵ This also means even the Project itself doesn't meet Project objectives.

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Agreement dated June 30, 2015 between Metro and South Flower Street Associates, LLC, successor to 515/555 Flower Associates, LLC, for purposes of settling the CEQA and NEPA litigation. (**Exh. 7** [Sections 3.2 and 9.10, respectively].)

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The SDEIS is inconsistent in its conclusions, saying there will be no substantially adverse impact on page 4.4-7, but there will be adverse impact on page 4.4-8. Moreover, asserting that “As with the Project, potentially construction-related adverse effects would remain after implementation of these mitigation measures,” is inconsistent with the FEIS, which notes, “[d]uring construction of the LPA, potential noise impacts to sensitive land uses would not be significant.” (AR 6393.)

19

It is also clear the mitigation will not work and/or is not being followed by Metro. Mitigation Measure NV-13 provides as follows:

“The construction mitigation plan shall prohibit noise levels generated during construction from exceeding the FTA construction noise criteria. This could include prohibiting simultaneous operation of major pieces of construction equipment if simultaneous operation exceeds FTA construction noise criteria. If a noise complaint is filed during project construction, noise monitoring shall be conducted in the vicinity of the area in question. Although it is not expected to do so with the application of appropriate BMPs, if monitored noise levels exceed FTA construction noise criteria, the contractor shall use all or a combination of the following measures (NV-14 through NV-17) to reduce construction noise levels below FTA construction noise criteria.”

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Project-related utility relocation has been on-going adjacent to Bonaventure for several months, based on the representations made by Metro’s counsel to Judge Kronstadt that the specific utility work would be required regardless of whether tunneling or C/C was used. FTA’s noise thresholds have been routinely exceeded.

Attached as **Exhibit 8** (63 pages) are Bonaventure's continuous email communications with Metro commencing in June 2014 through July 10, 2015, with the decibel readings of excessive noise levels, and Metro's repeated assurances that the matter would be addressed. Also included are several letters from Bonaventure's sound engineer, Marland Hale, setting forth the repeated violations of noise standards by Metro and its contractors. Many of the emails include attached photographs of the work which generated the excessive noise or the face of the noise meter, showing its readings. Metro

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and its contractors have been consistently unable to meet the noise limits established in the 2012 FEIR. Nothing in this 2015 DSEIS offers or analyzes new techniques of measure to prevent excessive noise levels near the Bonaventure. It appears that the types of activities and construction contemplated by Metro along Flower between 4th and 5th Streets will exceed the noise limits and there is no method to reduce or mitigate this.

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VI. CLIMATE CHANGE.

The DSEIS only addressed GHG emissions during construction because, according to the SDEIS, “operations and the associated climate change impacts would be nearly identical under the Project and the tunneling method alternatives.” (p. 4.3-1.) There is, however, no substantial evidence to support this conclusion, and a qualitative analysis suggests the contrary.

21

The Deep Tunnel Alternative provided to Metro beginning in December 2013 lowers the 2nd/Hope Station and provides a track profile grade that does not exceed 2% between 2nd/Broadway and the tail track at the 7th Street/Metro Center Station. (Exh. 3.) Metro’s Project alignment, though, has profile grades as high as 4.6%. (Id.) More energy is necessary to move trains over the steeper grades, resulting in greater GHG emissions than for the Deep Tunnel Alternative. Metro assumes a project with greater inclines and fails to analyze the Deep Tunnel Alternative with inclines closer to level.

22

The increase may be substantial on an annual basis: Each trains of about 100 tons in weight will climbing the steeper inclines over 300 times per day. GHG generation will be much more significant over the 100 year lifetime of the Project. The goals of GHG reduction in California are on a decades-long time line. The increase in GHG emissions due to steeper tunnel grades over the Project lifetime is especially greater when compared to the less than four year construction period provided for in the DSEIS. (p. 4.3-2).⁶ Yet the DSEIS fails to analyze the Deep Tunnel Alternative for GHG emission reductions over the lifetime of the Project.⁷

Moreover, EPBM to 5th Street, followed by C/C construction south of 5th Street to the tail track at the 7th Street/Metro Center Station reduces construction-related GHG impacts over the Alternatives by eliminating the need for grouting altogether. It also eliminated the need for hundreds of truck trips hauling away the excavation spoils and

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⁶ While SCAQMD recommends use of a 30-year life of Project for the purpose of amortizing construction GHG emissions (p. 4.3-2), the actual life of the Project will be much longer. New York subways have been in operation for over 100 years.

⁷ The increased energy use that may be associated with a deeper elevator shaft will be negligible because the elevators will be counterweighted.

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returning fill soils between 4th and 5th, because with EPBM the earth and rock above the tunnel depth will remain in place and will not need to be re-filled.

23
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Metro's failure to analyze the Deep Tunneling Alternative in the DSEIS violates not only NEPA, but Metro's own Climate Action and Adaptation Plan, adopted in June 2012. The Plan "establishes a framework to identify the areas of greatest opportunity for Metro to reduce GHG emissions, based on estimates of cost and emissions impacts." (Exh. 9 [p. 1].) The Deep Tunneling Alternative – which Metro has known of since at least December 2013 – is a reasonable alternative with the potential to reduce GHG emissions below that of the Project and the Alternatives. Because it provides an opportunity for Metro to reduce GHG emissions, the failure to analyze the Deep Tunneling Alternative is inconsistent with the Plan.⁸

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VII. ENVIRONMENTAL JUSTICE.

The DSEIS suggests that Alternatives A and B create disproportionate adverse environmental justice impacts on Little Tokyo that are not created by the Project. This conclusion is based solely on the increased truck traffic necessary to remove spoils from the tunnel, but is not supported by substantial evidence.

25

First, the conclusion in the DSEIS is contradicted by the SEA, approved as part of the 2012 FEIS. According to the SEA, "[s]poils (excavated soil) would be removed within the Mangrove property, and trucks would be routed to the east and/or north to reach the freeway, and would not pass through Little Tokyo." (SEA p. 4.18.2-8.) Thus, the additional spoils removal will not result in a legally significant new adverse environmental justice impact. The Mangrove property is northeast of Little Tokyo and closer to the 101 Freeway, avoiding any truck trips through Little Tokyo.

26

Second, in making the assertion, FTA and Metro have impermissibly piecemealed tunneling along Lower Flower from the rest of the Project. Tunneling along 2nd Street will result in 35-70 truck trips per day for 24-48 months. (SEA p. 4.18.2-8.) While this does create a disproportionate impact (2012 FEIS, p. 4-421), the 2012 FEIS does not conclude that it is *significantly* adverse. (See 2012 FEIS, pp. 4-422, 424 ["congestion would increase slightly, though truck trips would be routed onto primarily industrial streets and existing truck routes whenever practicable"].) The additional spoils-related truck traffic generated by tunneling along Lower Flower for the additional amount of time estimated by Metro does not change that conclusion.

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⁸ This inconsistency with a plan adopted for the purpose of avoiding or mitigating an environmental effect creates another potentially significant impact that has not been identified or analyzed.

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To the extent there are additional impacts from the spoils-related truck traffic, they can be reduced substantially by an alternative that uses EPBM to 5th Street followed by C/C for the remainder of Lower Flower. That will reduce the duration of additional tunneling to less than one month.

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 cont'd

VIII. PROJECT COMPARISONS.

A. Operational Considerations

The SDEIS presents a false comparison of maximum operational speed along Flower Street. See Section IV, *supra*. The presence of a potential future 5th/Flower Station in the Project (p. 5-7) also limits the maximum speed to 35 mph. If Metro is using this section to now somehow claim the Project does not include a potential 5th/Flower Station (see p. 5-6), then Metro has lied to the public and lied to the Court, previously asserting the possibility of a potential future 5th/Flower Station had to be incorporated into the Project. Again, however, as noted in Section IV we believe the 5th/Flower Station is illusory, and it must be deleted from not only the alternatives, but from the Project, with the new analysis recirculated without it.

28

Metro has also chosen a design for Alternative B that is, in effect, a straw man designed to fail by creating unnecessary gradients of 5.9% and 4.6%. Again as noted in Section IV, an alternative depth design with a gradient of less than 2% is feasible and has already been provided to Metro. (See **Exhs. 2, 3.**)

B. Scheduling Impacts

Claiming an increase of an additional 29 months in scheduling impacts for the Alternatives is an improper post hoc rationalization. What Metro is saying is that going back and doing what it was legally required to do in the first place creates an unacceptable delay. This “hardship” is entirely of Metro’s creating and cannot be used to unfavorably compare the Alternatives to the Project.⁹

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This leaves only a relatively short 7 month increase in time for Alternative B. The purported 7 month construction time increase, however, could be substantially shortened if C/C is used instead of SEM after tunneling to 5th Street because the C/C construction can be undertaken concurrently.

⁹ Metro’s claim is also a classic example of chutzpah, what federal courts define as “that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan.” Embury v. King, 361 F.3d 562, 566 n.22.

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In fact, Metro has already discussed the Deep Tunnel Alternative with its design-build contractor, and Metro was informed that the Deep Tunnel Alternative could be constructed and constructed within the existing schedule. But only if a full analysis is performed on this feasible alternative will be time benefits be confirmed. Metro has chosen to omit the Deep Tunnel Alternative from the DSEIS in violation of NEPA.

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C. Cost and Funding Considerations

Metro's claims here are improper, based on faulty and inaccurate assumptions. First, Metro may not incorporate pre-construction delay into any estimate. To do so is an improper and illegal post hoc rationalization. Any pre-construction delay is solely the result of Metro's failure to do what it was legally required to do in the first place. It may not rely on a hardship of its own making to now dismiss the alternatives. Cost and funding considerations must be revised accordingly.

31

Metro has failed to analyze the cost and funding considerations of the Deep Tunnel Alternative. The Full Funding Grant Agreement between Metro and FTA explicitly states that EPBM tunneling is roughly half the linear foot cost of C/C construction. (Exh. 10 [excerpts].) This is obvious because spoils (soil and rock) from above the tunnel level remain in place and do have to be re-filled. An extra block of EPBM tunneling to 5th Street will likely reduce the Project cost. This is true not only because EPBM tunneling is cheaper than C/C construction, but also because the Deep Tunnel Alternative is shorter than Metro's straw man alternatives A and B.

32

The cost of delay is also purportedly based on sequential, rather than concurrent, construction. (p. 5-11.) However, that delay is substantially shortened or eliminated if C/C is used instead of SEM after tunneling to 5th Street because the C/C construction south of 5th Street can be undertaken concurrently with tunneling.

The increased cost is also, according the Metro, based on the underground constraints and increased risk on Lower Flower. Even Metro, however, acknowledges that the risk of using EPBM to 5th Street to be minimal, noting in the April 2102 draft Tunneling Study that "[s]ince the TBM tunneling will occur in the Fernando Formation the need for ground stabilization due to the tunneling operation for utilities along Flower Street is not anticipated. The EPB TBM drive beneath Flower Street provides a minimum of 10 ft clearance from the theoretical position of existing tie-backs, although most of the alignment provides much greater than 10 ft clearance." (AR 82425.) In other words, the risk of encountering tiebacks or alluvial soils from this construction alternative between 4th and 5th Streets is minimized, if not eliminated.

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The lack of risk from tiebacks to any form of tunneling along Flower from 4th to 5th Streets is corroborated by tieback diagrams obtained from Metro through a Public Records Act request. They show the elevations of the Bonaventure's foundations and note the removal of the portion of anchor rods in the street right-of-way with 20 feet of existing grade. (**Exh. 11.**)

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cont'd

Cost and funding considerations should take this into account and be revised accordingly. The Deep Tunnel Alternative avoids all tie-backs north of 5th Street, even those Metro plans to encounter and removed between 3rd and 4th behind the World Trade Center. Metro must study it.

This is equally applicable to construction and risk considerations. (p. 5-14.)

Because the DSEIS has not noted material changes the Project, such as the elimination of the escalator/stair entrance at the 2nd/Hope Station, is it reasonable to assume that cost and funding considerations also do not take this into consideration. Cost and funding considerations must be revised accordingly.

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D. Purpose and Need.

The SDEIS claims that Alternative A and B do not perform as well as the Project, basing its assertion entirely on reduced operating speeds. (p. 5-14.) This, however, is false as it is based on the improper assumption that the Alternatives contain a 5th/Flower Station, but the Project does not. See Sections IV and VIII.A, supra. The Deep Tunnel Alternative would increase operating speeds by eliminating unnecessary inclines, but Metro chose not to analyze that alternative, even after having extension discussion about that alternative with its design-build contractor in 2014 and early 2015.

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E. Environmental Considerations.

The conclusion that the two MTA Alternatives have greater environmental impacts than the Project rests almost entirely on the existence of grouting. (p. 5-15.) However, the Low ("sag") Alignment that Metro reviewed and found potentially feasible in approving the Project in April 2012 (AR 10) and the Deep Tunnel Alternative proposal provided to Metro beginning in December 2013 (**Exhs. 2, 3**) eliminates grouting by (1) using EPBM to 5th Street, and (2) using C/C construction south of 5th Street instead of other construction methods. This significantly reduces the impacts to a level less than that of Alternatives A and B (the latter of which Metro falsely claims is the Low Alignment reviewed in the April 2102 draft tunneling study), as well as that of the Project. Because the SDEIS should contain as reasonably complete a discussion of mitigation measures that could be implemented, the SDEIS must consider EPBM to 5th Street, with C/C south of 5th Street for the remainder of Lower Flower.

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The SDEIS claims that any alternative will shift the majority of effects from handling spoils from Lower Flower to Little Tokyo. This is false. See Section VII, supra.

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In unfavorably comparing the Alternatives to the Project with respect to transportation/circulation, the DSEIS fails to acknowledge that the alternatives will avoid the potential to temporarily shut down vehicular ingress/egress to the Bonaventure garage, something acknowledged in the 2012 Final EIS. (AR 8152.) Indeed, utility relocation, which Metro represented to the Court as a relatively minor activity that will be required regardless of whether C/C or tunneling is used, has already resulted in temporary losses of access to the Bonaventure's loading dock. (Exh. 12.)

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Substantial evidence does not exist to support a conclusion that the Alternatives have a climate change impact greater than the Project. Construction impacts for Alternatives A and B may be greater, but operational impacts may be greater for the Project, which will occur for a far longer amount of time than construction. See Section VI, supra. The Deep Tunnel Alternative reduces GHG emissions over the lifetime of the Project and during construction.

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Moreover, a Deep Tunnel Alternative alignment that lowers the 2nd/Hope Station and replaces SEM or open-face tunneling with C/C construction south of 5th Street will reduce operational energy use and eliminate grouting, thus resulting in less climate change impact than the Project. Id.

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The basis for the greater impact of the two MTA Alternative with respect to visual quality and air quality is based almost entirely on the need for grouting. (p. 5-15.) A Deep Tunnel Alternative alignment that lowers the 2nd/Hope Station and replaces SEM or open-face tunneling with C/C construction south of 5th Street eliminates grouting. This alternative thus does not have greater visual or air quality impacts than the Project, and by reducing the need to remove much of the spoil between 4th and 5th will actually reduce air quality and noise impacts.

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IX. METRIO'S INSTITUTIONAL BIAS

Metro is biased against analyzing changes in the project design that would significantly reduce environmental impacts. This bias means Metro will not even acknowledge alternatives such as the Deep Tunnel Alternative (**Exhibit 3**) provided to Metro and its design-build contractor commencing in December 2013. In October 2014, at a Project event held at the Little Tokyo office of the Project, Metro's design-build contractor acknowledged to representatives of Bonaventure in the presence of Metro employees the following when copies of Deep Tunnel Alternative were again distributed by Bonaventure: "We have spent a lot of time looking that this." Metro staff did not

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contradict this statement by Michael Aparicio, Executive Vice President of Skanska Civil West, the lead construction partner in the consortium designing and building the Project.

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cont'd

Metro has failed to include in the record or appendices of the 2015 DSEIS any of the emails or discussions between Metro and Skanska analyzing or even mentioning the Deep Tunnel Alternative provided to them by Bonaventure. This omission is willful. This omission is an attempt by Metro to conceal analysis and avoid considering a meaningful alternative to construct the Project. It appears that neither Skanska nor the other members of the design-build consortium were provided copies of the 2015 DSEIS or asked to comment on the alternatives, analysis and conclusions therein.

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Metro remains pre-occupied with its errors in supervising the Red Line construction along Hollywood Boulevard in the early 1990's when a major cave in occurred. Metro attempted to blame the events on the contractor, Tutor-Saliba, but after over a decade of litigation the contractor was vindicated and Metro ordered to pay all withheld payments. Ironically, the Deep Tunnel Alternative keeps the construction fully within the safer Fernando Shale Formation for the block from 4th to 5th. Metro's "straw man" alternatives in the DSEIS are shallower and occur along the transition zone between the shale and the alluvium level, they very type of conditions where the Hollywood Boulevard disaster occurred. Metro is repeating its errors of the 1990's by not even considering the Deep Tunnel Alternative. Metro's bias against changing its mind is preventing a full and fair discussion of all feasible alternatives.

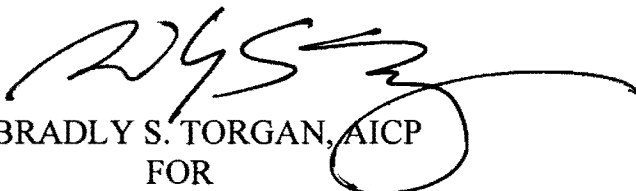
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X. CONCLUSION.

It is clear from the SDEIS that the alternatives proffered by MTA are straw men, designed from the outset to fail. With minimal tweaking, a Deep Tunnel Alternative exists that is environmentally superior to the Project, will meet the purpose and need for the Project to the same extent the Project does, and does so with negligible construction delay. We ask the FTA and Metro to analyze that which Metro found potentially feasible over three years ago, EPBM to 5th Street and C/C construction from 5th Street to the 7th Street Metro Station, and do so in the SDEIS.

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Very truly yours,


BRADLY S. TORGAN, AICP
FOR

THE SILVERSTEIN LAW FIRM