GIBSON DUNN

The SDEIS/RDEIR must provide additional details and analysis so that the public and the decision makers can appropriately assess the impacts of the Project, as is required by law. For example, the SDEIS/RDEIR indicates that the preliminary capital cost for a maintenance facility is estimated to range from $116 to $333 million, but no break down of the costs or supporting information is provided so that the public and decision makers can verify the assumptions made. The SDEIS/RDEIR should provide a breakdown of the estimated costs consistent with the underlying assumptions regarding relocation. On its face, it seems to make no sense to locate the Project on land related to airport uses, if the cost to relocate the displaced use will be as high or higher than the cost of land for the Project.

We request that additional information and analysis be provided on the Project so that the significant environmental impacts are disclosed. We request that the SDEIS/RDEIR be recirculated with an accurate reassessment of the impacts and possible mitigation. We look forward to reviewing additional reports and analysis, and providing additional comments on the Project.

Very truly yours,

Amy R. Forbes

ARF/hhk

cc: Lorie M. Tallarico
Erika R. Randall

101054015_3.DOC

Response to comment S.20-4A.

Comment noted. The project was analyzed for consistency with the City of Los Angeles General Plan and was found to be consistent with all of the applicable land use policies.

Response to comment S.20-4B.

Comment noted. The SDEIS/RDEIR acknowledges that adverse effect to displacement and relocation could occur with the selection of the Site #14 – Arbor Vitae/Bellanca Alternative.

Response to comment S.20-4C.

Comment noted. Policy 7.2.13, facilitating environmentally sound operation and expansion of the port and airport, is not generally applicable to the project, but the provision of a maintenance facility would not prohibit expansion or operations of the port or airport. The project would be consistent with Policy 7.3.4, supporting airport expansion and modernization, because it would provide the infrastructure to transport airport-related employees and passengers within the area without contributing to the high levels of traffic surrounding the airport and thereby resulting in lower energy consumption from fewer automobile trips.

Response to comment S.20-4D.

Comment noted. The project would not prevent the optimization of LAX's critical role in supporting the economy as a major generator of economic activity as stated in Goal 3 of the airport plan. Site #14 is located in an industrial area along the Harbor Subdivision railroad right-of-way and would be compatible with adjacent lands uses as stated in Goal 5 of the airport plan. The displacement of businesses on Site #14 – Arbor Vitae/Bellanca, which includes car rental facilities, would not adversely affect the public benefits of airport development to adjacent land uses. Relocation benefits would be provided to businesses and owners displaced by the maintenance facility alternative. The provision of a maintenance facility would allow an alternate mode of transportation, with greater public utility, to provide accessibility to the airport and surrounding airport-related development. The area vacated by residences that have been purchased as part of the airport noise abatement zone would provide the opportunity for such additional development should the demand require it.

Response to comment S.20-4E.

Comment noted. The adverse effect to businesses displaced on the preferred maintenance site alternative is acknowledged and would preempt approximately 14 acres of development. The provision of a maintenance facility would allow an alternate mode of transportation, with greater public utility, to provide accessibility to the airport and surrounding airport-related development. The area vacated by residences that have been purchased as part of the airport noise abatement zone would provide an opportunity for such additional development of airport-related businesses should the demand require it. Therefore, the displacement of these businesses would not be inconsistent with the City's general plan to support airport development.

Response to comment S.20-4F.

Comment noted. The comment asserts that because the SDEIS/RDEIR does not consider off-airport operations, that it is not consistent with the LAX Master Plan. Because the exact programming and site layout of the consolidated rental car facility is unknown at this time, the SDEIS/RDEIR does not rely on any specific assumptions related to whether car maintenance facilities associated with rental car facilities could be provided in the consolidated rental car facility. Mitigation Measure DR3 is provided to support and ensure compatibility with the LAX Master Plan and to reduce the effects of displacement and relocation to the greatest extent feasible. Implementation of this mitigation measure would not reduce displacement and relocation effects to less than adverse. The project would remain consistent with the LAX Master Plan.

Response to comment S.20-4G.

Comment noted. The SDEIS/RDEIR provides Mitigation Measures DR1 and DR2 to reduce the effects to displacement and relocation to the greatest extent feasible. Mitigation Measure DR3 is provided to maintain consistency with the LAX Master Plan. Effects to displacement and relocation would remain adverse after mitigation.

Response to comment S.20-4H.

Comment noted. The mitigation measure the commenter refers to is provided to maintain consistency with the LAX Master Plan and is not focused on the specific relocation issues that are being referred to by the commenter. Metro can only provide relocation benefits and the exact location where tenants and owners would relocate cannot be reasonably foreseen. The consolidated rental car facility is part of an adopted plan and the mitigation identified is to provide consistency with that plan.

Response to comment S.20-4I.

Comment noted. Refer to response to comment S.20-4H. Because the future sites of relocation for the businesses displaced by the project cannot reasonably foreseen, the analysis of those future impacts cannot be determined.

Response to comment S.20-4J.

Comment noted. The preliminary costs provided for the maintenance facility alternatives are provided as a relative comparison of sites, based on similar assumptions, and cost estimating factors, and are not intended to be final costs. The final costs would be dependent on preliminary engineering and real estate negotiations, which would not be completed until after the environmental document is certified. The SDEIS/RDEIR acknowledges that there would be adverse effects from displacement and relocation for Sites #14, #15, and #17. The refinement and breakdown of costs would not alter that determination.

COMMENT: S.20-5. Hannah Bentley, Fusion Homeowners' Association Board of Directors.

S20 - 5

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April 11, 2011

Mr. Roderick Diaz
Project Manager
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, MS 99-22-3
Los Angeles, CA 90012

Hon. Members of the Board of Directors
Metropolitan Transportation Agency
One Gateway Plaza
Los Angeles, CA 90012
Attn: MTA Board of Directors

VIA MESSENGER – HAND DELIVERY

Mr. Raymond Sukys
Office of Planning and Program Development
Federal Transit Administration Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105

Mr. Ray Tellis
Federal Transit Administration Region IX
Los Angeles Metropolitan Office
888 S. Figueroa St., Suite 1850
Los Angeles, CA 90017

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Re: Comments on Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement for the Crenshaw/LAX Transit Corridor Project

Honorable Members of the Board of Directors, and Messrs. Diaz, Sukys, and Tellis:

This letter provides the comments of the Board of Directors of the Fusion Homeowners' Association on the Crenshaw/LAX Transit Corridor project Supplemental Draft Environmental Impact Statement/Recirculated Draft Environmental Impact Report ("the SDEIS/RDEIR"). This letter will address the following topics in order: (1) What is the Fusion Homeowners' Association, and how we are relevant to the SDEIS/RDEIR, (2) Why we have problems with the process that the MTA and its staff have followed with regard to the development of a Maintenance Facility Alternative, (3) Why the analysis of environmental and public health effects in the SDEIS/RDEIR is deeply flawed, (4) Why the economic impact analysis in the document is skewed and reveals deep bias in favor of development at Division 22, and (5) Why we implore you to take these issues seriously – and identifies a ***minimum*** list of specific questions this comment letter raises which we think you should answer in your response to comments. There are a variety of Attachments to this letter, some relevant documents from MTA and related agencies; some further detail in support of the issues we have with the SDEIS/RDEIR itself. The attachments are of course part of this letter and need to be part of the Administrative Record or ROD in the event we or some other party has a dispute with MTA and/or FTA. A

Before we get into the heart of this letter, we need to say this: Many Fusion residents, including members of the Board, appreciate the value of transit in the Los Angeles County region. We recognize its importance in reducing emissions due to automobile traffic (both in terms of criteria pollutants and greenhouse gases). Many of us voted for the Measure R Sales Tax. Many of us support the provision of new light rail transit to the Crenshaw Community and believe the process with regard to the line itself may B

well have been productive and inclusive. Having said that, planning and environmental analysis based upon GHG emissions concerns (worldwide or within the state) needs to go hand-in-hand with responsible planning regarding local impacts from construction, emissions, and toxic air pollutants. Planning for transit for an underserved community does not meet environmental justice goals when it plops a giant paint & body shop down right next to a toddler's playground in a densely packed multifamily complex between a busy arterial and a freeway. Especially when that site was chosen after the rejection of a large industrial-zoned space, well buffered from any residential sites, to favor the interests of a major railroad and Oil Company. B

Nothing in Measure R or any state, or federal law allows you to ignore the actual residents of the community in which you plan to do construction in conducting CEQA and NEPA review. It is also just not a very good idea.

Having seen the way MTA has completely disregarded our community in the CEQA/NEPA process, sidestepped meaningful review, having seen how staff plugged the site right over the wall from us into the "final tier" of maintenance sites to be considered (even though that tier was supposedly created with community participation based on a list of criteria that our site does not meet), we are profoundly distressed. We would not have voted for Measure R had we known that the sales taxes we pay would be used to evade meaningful environmental review and fundamental public process. We may not vote for future MTA efforts to raise revenue. We can be expected to closely monitor your expenditure of resources, your efforts to lobby for new resources, and your contentions as to why your process is adequate. C

We do not think that MTA has been a good neighbor.

1. ***Division 22's Neighbor to the South and East: The Densely-Packed Fusion Residential Community With Numerous Sensitive Receptors***

Who We Are. Fusion is a complex of 280 condominiums and townhomes, with approximately 500 residents, located directly adjacent to the Metro Division 22 Maintenance Facility ("Division 22"), to the South and East. The community's residents are diverse in terms of socioeconomic background, racial and cultural heritage, income level, age, and citizenship. We have many young families with small children, we have elderly residents, and we have everything in-between. A number of us work from home, are retired, or stay at home to care for children who also live in the complex.

How Long We Have Been Here. The Fusion community was built between 2005 and 2008 and most, if not all, of the residences had been occupied by the time that the original Draft Environmental Impact Statement and Environmental Impact Report for the Crenshaw/LAX Transit Corridor ("the DEIS/DEIR") was being circulated. Certainly, by the time that the MTA Board of Directors held its hearing on the DEIS/DEIR in December of 2009, the Fusion Complex was fully occupied, a development approved by the City of Hawthorne under its adopted Willow Glen Specific Plan, surrounded by what is zoned as C-1 (for "Freeway/Commercial/Mixed Use Classification"). We were Division 22's existing, very close, residential neighbors to the south, and until this development proposal came up, it is probably fair to say we were willing to tolerate the existing facility.[1] D

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1 This statement is somewhat qualified because Division 22 does much of its work at night and this has always created noise disturbances for the residents facing the facility. The Fusion Board has heard of calls being made by residents to the Facility next door regarding the bells from trains that go off all night (50 feet from residences, at 2, 3, or 4 a.m.), and that staff members at Division 22 have informed residents that the operators are not to use the bells, and will be told not to. The bells still go off nightly. We understand from a number of residents that they cannot keep their windows open at night for this reason, regardless of the temperature outside. We are aware that MTA Staff put together a video for the March 31, 2011 Open House showing pictures of Fusion residences, windows closed, and a caption asserting that Fusion residents were happy with existing noise levels, and kept their windows open. This is rather like a

How Close Are We? As noted, our complex is directly adjacent to Division 22 to its South and East. This fact could scarcely have gone unnoticed by the MTA's staff, including its environmental and project management staff working on the LAX/Transit Corridor project or the new Maintenance Facility RDEIS/RDEIR. Those working at Division 22 must have been consulted[2], and they would have had a hard time missing the large four-story-plus-U shaped buildings, each containing 16 to 18 units, rising up around them. The Green Line Train operators bringing trains into Division 22 would have had difficulty not seeing building 5400, roughly 22 feet to their left, as they were bringing their cars in to Division 22 for maintenance. A total of approximately 42 units are within about 25 feet of MTA's property line and roughly 24 are within about 50 feet of MTA's planned new construction on the Division 22 site.

How Close Are Our Common Recreational Facilities? Hawthorne's Zoning Code provides in general that condominiums must have a minimum common open space/recreational component,[3] and in keeping with that mandate, Fusion has three small recreational open areas for all of its 500-plus residents, all three of which would be impacted by the proposed construction on the Division 22 site. The first is an open air barbeque facility and grassy area in the Northwest corner of the complex, immediately adjacent to Division 22's present parking lot on Aviation – an area from which much of the planned construction would have to be staged. The second is a quarter-sized basketball court with one hoop combined with a small sand lot that has a tiny jungle-gym apparatus on which small children can play tic-tac-toe (the "tot lot"); this space is immediately adjacent to Division 22's Southeastern corner, and 50 to 100 feet from where MTA would erect several buildings two stories in height, including a Paint & Body Shop from which it plans to vent VOCs and other noxious chemicals. Our third recreational space - an open-air pool and jacuzzi area - is on the other side of the complex from the Division 22 Yard; however, the space between much of the planned Division 22 construction and the pool itself is largely open and would easily be a corridor for dust and noise from the project. E

So below are:

(1) How you depicted "the Division 22 Northern Expansion Alternative" in a variety of places throughout the SDEIS/RDEIR (actually, *all* of them, except the one diagram of where the actual construction would occur) (*Fusion Figure 1-1a, 1-1b, 1-1c, 1-1d,* and *1-1e* are reproductions or details of figures from the SDEIS/RDEIR. We have added red outlines showing the existing F

Soviet-era Five Year Plan. There is no support in the record, or reality, for Staff's assertions, and they appear to be posturing to bolster the agency's position should it be taken to court for approving the Division 22 alternative.

2 In fact, we know they were, because an employee of the Division 22 Yard walked next door to the front gate of Fusion substantially before this SDEIS/RDEIR was finished, in order to ask about arranging with our property management company to take noise measurements inside the complex. He encountered a member of our Board of Directors there, gave her his card and indicated the reason for his visit. She indicated that there had been noise complaint and he acknowledged to her that MTA had indeed gotten several complaints (regarding noise from the existing facility) from Fusion residents. We believe this happened in late December or early January – way before the SDEIS/RDEIR was finished, or at least circulated. We have nothing against the employee who was likely merely doing the bidding of someone else in this regard, but it does establish that MTA Staff at Division 22 was aware of the project, was aware of Fusion's location, and did participate in the development of the SDEIS/RDEIR that does not properly describe our community or its location relative to the Division 22 site. Accordingly, we will submit a copy of this card with the authentication from the person who received it so that it may become a part of the Administrative Record ("AR") and Record of Decision ("ROD") in this matter. So as to protect that employee's privacy, we will submit it under separate cover. To protect his privacy, we might be amenable to a stipulation to be entered into the AR and ROD on this point before either such record is closed.

3 *See* Hawthorne Municipal Code, Zoning, section 17.21.072 (generally applicable to Condominiums and Community Projects).

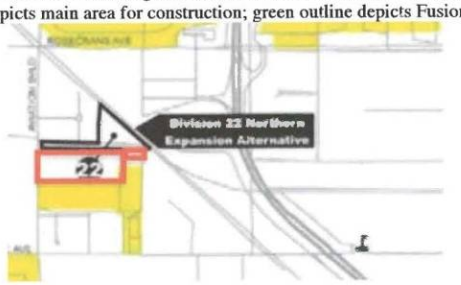
Division 22 from which most impacts will emanate, and we have added green outlines showing Fusion's boundaries where necessary),

(2) The ***one*** diagram on page 2-16 of the SDEIS/RDEIR – your Figure 2-17 – which actually shows the intensive actual construction and industrial use you plan right over the wall from us – although here you have not shown one or two of the residential buildings that are closest to your train tracks (*Fusion Figure 1-2*), so we have taken the liberty of putting those in to make the map accurate, and

(3) A figure superimposing the diagram of your planned construction over the existing and proposed D22 site and the distances of proposed building and construction from us (*Fusion Figure 1-3*): and

(4) One further aerial close-up that even the maps we marked up cannot adequately capture: the very close distance at which the MTA tracks run around Building 5400, where some of our patios are at a distance of 22 feet from the tracks. These neighbors would be impacted by noise and vibration from increased operations, in a manner that would be intolerable. *See Fusion Figure 1-4*. F

Fusion Figure 1-1a: SDEIS/RDEIR Figure 3-29 (Aesthetic Resources) from page 3-40. Red outline depicts main area for construction; green outline depicts Fusion



Fusion Figure 1-1b: SDEIS/RDEIR Figure 3-11 ("Neighborhoods and Community Facilities" from page 3-33); red outline depicts existing site for most construction, yellow area to south is Fusion

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Fusion Figure 1-1c: SDEIS/RDEIR Figure 3-32, page 3-52, regarding Noise and Vibration – the noise and the "center of the noise generating activity" would mostly come from the existing site which we have outlined in red.

F

Fusion Figure 1-1d: SDEIS/RDEIR Figure 3-2, page 3-4, depicting location of alternative. Red outline is site of existing Division 22 where most construction and noise would occur; Green outline is Fusion.

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F

Fusion Figure 1-1e: SDEIS/RDEIR Figure 3-9, page 3-27, on Displacement
Dashed Black Outline (from original) is what you have decided to call "the project." Red is area of all planned construction except new tracks. Green is Fusion.

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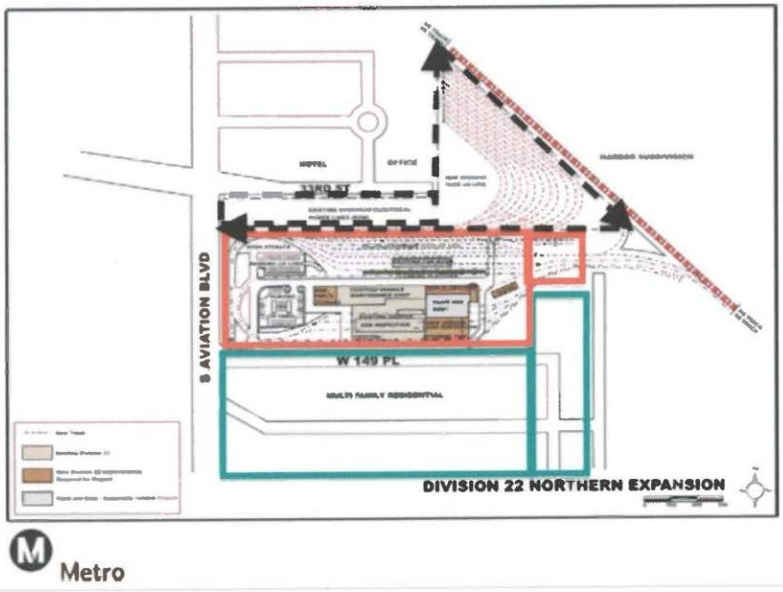
Figure 2-17. D22N Expansion Alternative Site Plan



F

Fusion Figure 1-2: Here is Figure 2-17 from the SDEIS/RDEIR; we added a bolder dashed black outline around the site your EIR calls the project since your outline was still there, but more muted, in this one instance. The site of all the proposed construction, Division 22, is outlined by us in red; our residences are outlined by us in green. The dark brown and grey buildings on the existing Division 22 site are all planned construction that is part of the project.

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Fusion Figure 1-3 : Satellite photo of the Fusion Community and proposed distances. Numbered buildings are in the Fusion Complex. The existing MTA Division 22 Maintenance Yard is to the immediate north and west. Superimposed over existing Div. 22 is Figure 2-17, from page 2-16 of the SDEIS/RDEIR. It shows planned construction on the existing site, shaded brown and grey.

Figure 1-3 Table of Features (below)

Feature of Fusion Complex	Letter in 1-1	**Approx Distances (Feet)**
Residential condominium units: Building 5405	**A** (in white)	**50 feet** (from southern wall of southernmost planned building); **25 feet** (from Div. 22 Property Line & exit road for construction vehicles)
Sandbox / Tot Lot	**B** (in black)	**Approximate -** **150 feet** from E edge of planned paint/body shop **160 feet** to edge of construction (paint/body, maint) **130 feet** to new office structure
Backboard & Basketball ¼ Court	**C** (in black)	
Residential condominium units: Building 5400	**D** (in white)	**22 feet** from existing rail lines with increased traffic **150 feet** from closest new rail line
Common Barbeque/Picnic Area; Fire Lane Exit	**E** (white)	**50 feet** from sole construction/operational exit **25 feet** from sole construction/operational exit
Common Pool/Jacuzzi Area	**F** (white)	**250 feet** from construction site

F

F

Fusion Figure 1-4: Photo, from Google Earth, of distance of planned and future tracks to Division 22 site, from Northeastern-most building in Fusion complex.
Distance from Patio to middle of MTA track is 22 feet.

As we detail below, the history of MTA staff's efforts to involve us in the public review of this project is minimal. We cover why we were not on notice of any of the proceedings prior to the notice regarding the development SDEIS/RDEIR, which went to one resident. *See Fusion Attachment 1-1*.

2. ***How MTA's Public Process on Choosing and Analyzing Maintenance Facility Alternatives Has (It Seems Deliberately) Ignored the Fusion Residents – and the Concerns That Fact Raises***

The SDEIS/RDEIR, and the DEIS/DEIR before it, were prepared to comply with the California Environmental Quality Act ("CEQA"), and the National Environmental Policy Act ("NEPA"), among other requirements. CEQA was enacted one year after NEPA; both were intended to require public agency decisionmakers to document and consider the environmental implications of proposed actions *before* they were undertaken. *See, e.g.*, Pub. Res. Code 21000, 21001, *No Oil, Inc. v City of Los Angeles*, 13 Cal.3d 68, 73-75 (1974)("*No Oil*"), *Mountain Lion Foundation v. Fish & Game Comm'n*, 16 Cal.4th 105, 112 (1997)("*Mountain Lion*") (CEQA authorities); *see also* 42 U.S.C. 4331, 4332 (statute), 14 C.F.R. Part 1500.1 ("CEQ Regulations"), subsection (b) ("NEPA procedures must insure that environmental information is available to the public officials and citizens *before* decisions are made and before actions are taken") (emphasis supplied) (NEPA authority). Both CEQA and NEPA require agencies to follow a public process for the environmental review of projects so that the public and local agencies affected by a proposed project are informed of and can provide input into it before the agency commits to undertaking it. *See, e.g.*, Pub. Res. Code 21003(f), 21092, 21091(d) (CEQA provisions), 42 U.S.C. 4332 (statute), CEQ Regulations, Part 1500.1(b), 123 C.F.R. 771.105(c) (Federal Highway Administration and Federal Transit Administration, Environmental Impact and Related Procedures ("FTA NEPA Procedures")) (stating that it is "the policy of the Administration that . . . public involvement and a systematic interdisciplinary approach be essential parts of the development process").

G

The "purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." *Bozung v. Local Agency Formation Commission*,

13 Cal.3d 263, 283 (1975)("*Bozung*"). The intent behind NEPA, the statute on which CEQA was modeled, can hardly be said to be anything different. *See, e.g.*, CEQ Regulations, Part 1500.1(c) ("NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment").

In addition to these procedural mandates, CEQA also commands that public agencies in California decline to approve projects with significant effects if there are "feasible alternatives or mitigation measures" that can substantially reduce those impacts. Pub. Res. Code 21002, *Mountain Lion*, 16 Cal.4th at 134. The California Supreme Court has made clear that "CEQA should be interpreted so as to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v Board of Supervisors*, 8 Cal.3d 247, 259, 262 (1972) ("*Friends of Mammoth*").

With this foundation in mind, we come to some of the fundamental problems the MTA's process had with regard to Division 22 site selection and analysis. First, we question whether MTA and the FTA met their legal requirements for notice and consultation. We believe approval of the proposed project affects the fundamental interests of at least some residents such that notice and truly adequate predeprivation hearings are required. Even as to CEQA, MTA has not done what it might have done (and many other agencies routinely do, in the case of projects adjacent to landowners) to make a good faith effort to involve us in the process in the manner which CEQA and NEPA obviously intended. Second, MTA has already committed to construction of the part of the project that raises many of our greatest concerns regarding zoning and land use, noise, traffic, and air quality. This violates CEQA and NEPA. Third, the SDEIS/RDEIR represents an improper "piecemealing" of the project, as there are a number of plans MTA has in mind involving the expansion of the Division 22 facility, which it either has not analyzed or has not identified as parts of the other projects in question. Fourth, although CEQA in some cases allows agencies with appropriate authority and expertise to adopt "thresholds of significance" for evaluating particular potential impacts, MTA here seeks to adopt standards based on a result-oriented approach that is wildly at odds with any logical or legal foundation. G

a. ***MTA's and FTA's Efforts to Notify Fusion and the City of Hawthorne Regarding the SDEIS/RDEIR Certainly Were Not Calculated to Solicit Our Comment or Involvement – and May Not Have Been Statutorily or Constitutionally Sufficient***

Both NEPA and CEQA contain detailed procedures for involving "*the public*" in the environmental review of projects that affect them. Obviously, solicitation of comment from "the public" must mean from the public that would be affected by or concerned with a project. *See, e.g.*, CEQA Guidelines, 15002(i) ("Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and other agencies *concerned with the project*") (CEQA) (emphasis supplied); CEQ Regulations Part 1503.1(a)(4) ("After preparing a draft [EIS] and before preparing a final [EIS] the agency shall . . . [r]equest comments from the public, *affirmatively soliciting comments from those persons or organizations who may be interested or affected*") (NEPA) (emphasis supplied). Additionally, both CEQA and NEPA require consultation with local agencies having jurisdiction over the proposed project. ; , CEQ Regulations, Part 1506.2(d) ("To better integrate [EISs] into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law") (NEPA).

Notice to the Fusion Community and Residents Was Calculated Not to Involve Us. Fusion is located significantly to the South of the "Study Area" for the original DEIS/DEIR on the Crenshaw/LAX Transit Corridor. We were not targeted for notice with regard to that document, which identified the

alternatives for LRT Maintenance Facilities.[4] The MTA Board removed one of the proposed LRT Maintenance Sites from consideration while otherwise approving that DEIS/DEIR in December 2009 (*see Fusion Attachment 2-1*), and MTA staff apparently held one or more workshops regarding possible new Maintenance Facility alternatives in the first part of 2010.[5] Again, however, these workshops were within the original Study Area, prepared for community members and stakeholders in the Study Area, given at facilities within the Study Area, identifying additional proposed sites exclusively within the Study Area. *See, e.g.*, "Maintenance Facility Workshop #1 Presentation," titled "Crenshaw/LAX Transit Corridor Study Supplemental Maintenance Facility Site Analysis, Feb. 24, 2010" from MTA Website, Slide 9 (depicting potential sites solely within Study Area) (*Fusion Attachment 2-2*). All records indicate, and the SDEIS/RDEIR largely confirms, that "the public" outside of the Study Area was not notified or involved in the maintenance site selection process until the sites to be discussed in the SDEIS/RDEIR had already been chosen, in late 2010.[6]

The SDEIS/RDEIR also mentions, at 4-1, the December 1, 2010 10 a.m. "Open House" at Del Aire Park, describing the meeting as "Briefings to update site selection process." But even this notice was no notice at all – for two very obvious reasons.

*Notice of the December 1 Open House Went to **One Resident** of the Fusion Complex*. It is of course hard to fathom how MTA might not have reached more of us. After all, Pub. Res. Code 21092(b)(3)(C) specifies that agencies can provide notice of a draft EIR by, among other things "Direct mailing to the owners and occupants of contiguous property shown on the last equalized assessment roll." MTA knows how to do this, because it does it all the time. And this is how MTA reached all the record owners and tenants of the parcels it is considering acquiring – by purchase or eminent domain – to attempt to negotiate purchases toward a maintenance facility alternative. The APNs of these parcels, and the identities of their tenants and owners, are included in the SDEIS/RDEIR itself, so it simply would not have been that hard to actually reach us if that had been the intent.[7] G

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4 Because this point is so obvious, and the citations to the record to prove it are so extensive, we have set out a listing of them in an Attachment to this letter, as noted earlier. *See Fusion Attachment 1-1.*

5 The SDEIS/RDEIR sets out what might initially look like an impressive list of meetings it says staff held to involve "the public" in selection and review of additional maintenance facility sites. *See* SDEIS/RDEIR at page 4-1. While the DEIS/DEIR lists five meetings on this topic which occurred prior to MTA's having identified and reviewed the sites that were included in the SDEIS/RDEIR (*February 24, March 24, March 25, March 27, March 31, 2010)* all available records indicate that the primary focus of every meeting except the first was on station location and design in the area of the meeting, *not* LRV maintenance facility alternatives. To the extent sites were discussed, they were possible sites within the Study Area, only – as the SDEIS/RDEIR effectively concedes.

6 The SDEIS/RDEIR states at 4-1 that in "September 2010 through January 2011," MTA staff held "Meetings with potentially affected individual tenants and property owners." Since, per the SDEIS/RDEIR's analysis, only *onsite* tenants or property owners were to be displaced (in the sense that their property would be taken either by purchase or eminent domain), we think the meetings referred to here did *not* constitute meetings with occupants of residences or businesses for purposes of CEQA or NEPA public participation. In any event, none of us have any record of having been notified.

7 To press the point a little further, only a few of us received notice of the March 1 Open House at the Flight Path Learning Center. Many of us signed up at, or prior to, the March 1 meeting in order to get future notices regarding the project from MTA, and last we knew a number of us had not gotten them. If notice did go out regarding the March 31, 2011 Open House in Inglewood, we should have gotten that notice, pursuant to Pub. Res. Code 21092(b)((3), CEQ Regulations, 1506.6(b)(1).

At the close of the Flight Path Learning Center Open House, the Project Manager claimed that MTA staff had acquired a "commercial mailing list" for Fusion residents, and perhaps the mailing list did not include some of the newer residents who had moved in subsequent to build-out. We find this explanation not to be credible. A number of us on the Board did not receive notices even though we are the first owners of our units. The undersigned is also an original owner, and did not receive a notice.

However, as far as we can tell, after asking around quite a bit, as far as Fusion was concerned, the Notice of the December 1, 2010 Open House was sent to:

- ***One (1) unit***
- ***In which one (1) of the community's 500-plus members lives.***

G

This situation is particularly disturbing as there are a number of Homeowners' Associations listed in Appendix B to the SDEIS/RDEIR at B-7 from as far away as Baldwin Hills, etc. A number of these HOAs are *nowhere near* any of the proposed alternative sites. We are baffled as to why our Homeowners' Association, directly next door to Division 22, closer than any other HOA to *any* of the sites, was not notified.

The Notice of the Sites Selected for Review in the SDEIS/RDEIR Indicated that MTA Was Considering Development ***Only*** *to Its North, and Not Adjacent to Fusion.* In a fallacy that was carried out and contaminated essentially all the analysis in the SDEIS/RDEIR, the flyer accompanying the notice of December 1 Open House (that went to one resident) – entitled "Crenshaw/LAX Transit Corridor Project Candidate Maintenance Sites Selected for Environmental Review" (hereafter, "the Dec. 1 Open House Flyer," or "the Flyer") – flatly states that the site under consideration for development and the construction of new facilities *is not adjacent to Fusion or any residential development*. Although the maintenance facility purpose was "to store, maintain, repair and clean light rail vehicles," the site identified as the "Metro Division 22 Northern Expansion" was pictured as a small triangle to the ***north*** of the Division 22 site, and to the ***west*** of the BNSF right of way – a piece of property which is 150 feet from the Fusion development at its closest point.

The "alternative" was described in this manner:

H

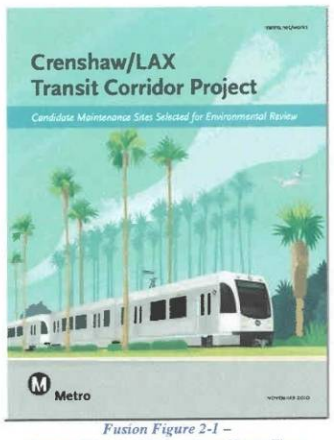
> The Metro Division 22 Northern Expansion Alternative is *approximately 3.5 acres in size* and is located in the City of Hawthorne. The *existing land use is industrial*, and *contains a public storage facility*. The site is *bounded by the existing Metro Division 22 Green Line Maintenance Facility to the south, the Harbor Subdivision to the east and north, and is adjacent to professional office buildings to the west. The site would only be accessed by rail from the existing Metro Division 22 Maintenance Facility to the south across the Southern California Edison Easement*.

(emphasis supplied). Like the SDEIS/RDEIR that followed it, the picture above that quoted text depicts the 3.5 acre parcel to be acquired – ***not*** the existing Division 22 site, ***not*** the development that would occur on the existing site (which is most of it), and ***not*** the large area of Fusion that is more or less adjacent to that development.

Images of the front of the Dec. 1 Open House Flyer, and the relevant description regarding the Project and the Division 22 ***Northern*** Expansion, are reproduced below (*See Fusion Figures 2-1, 2-2, and 2-3*). A copy of the flier itself is attached hereto as *Fusion Attachment 2-3*.

Finally, after the Flight Path Learning Center event, at which roughly 80 Fusion residents attended to uniformly register opposition to the Division 22 site and MTA's process in this matter, the Project Manager asked to come meet with the Fusion HOA Board at its March 9 evening meeting. Because he did so the day before the meeting, not many residents could be there, but we did meet with him. He asked for a mailing list for the community and we provided a compete listing of addresses for all units in the Fusion Community. Nevertheless, to our knowledge, no resident has received any notices from MTA as a result of its use of this list.

Messrs. Diaz, Sukys, and Tellis; Hon. Members of the Board of Directors of the
LA Metropolitan Transportation Authority
Re: Proposed Crenshaw Transit Maintenance Facility SDEIS/RDEIR - Comments
April 11, 2011 – page 13



Fusion Figure 2-1 –
Image of Cover of Dec. 1 Open House Flyer

Although the statements in the Flyer, insofar as they concern the acquisition of the 3.5 acre parcel, may be technically true, this far from the whole of the project that MTA is planning. The bulk of that is to happen a few feet away from us. *See Fusion Figures 1-1a-e.* This is nowhere made apparent in the Flyer's photo or text. To the contrary, it is obscured.

In short, the Dec. 1 Open House Flyer appears carefully framed to dissuade potentially interested parties (including residents of Fusion, the City Council of Hawthorne, and any regional public agencies concerned with land use planning or transit, other than MTA) from worrying about the proposed plans or looking into the matter further. Whether or not the intent of the Flyer was to mislead, it did so. We know that some of the residents of Fusion, who at some point received and eventually reviewed a copy of the Dec. 1 Open House Flyer concluded that any construction or development would occur on the U.S. Storage site, not right next to us.

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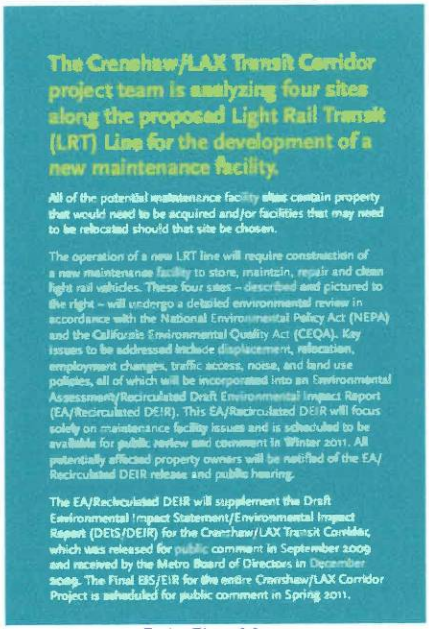

The Crenshaw/LAX Transit Corridor project team is analyzing four sites along the proposed Light Rail Transit (LRT) Line for the development of a new maintenance facility.

All of the potential maintenance facility sites contain property that would need to be acquired and/or facilities that may need to be relocated should that site be chosen.

The operation of a new LRT line will require construction of a new maintenance facility to store, maintain, repair and clean light rail vehicles. These four sites – described and pictured to the right – will undergo a detailed environmental review in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Key issues to be addressed include displacement, relocation, employment changes, traffic access, noise, and land use policies, all of which will be incorporated into an Environmental Assessment/Recirculated Draft Environmental Impact Report (EA/Recirculated DEIR). This EA/Recirculated DEIR will focus solely on maintenance facility issues and is scheduled to be available for public review and comment in Winter 2011. All potentially affected property owners will be notified of the EA/Recirculated DEIR release and public hearing.

The EA/Recirculated DEIR will supplement the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for the Crenshaw/LAX Transit Corridor, which was released for public comment in September 2009 and received by the Metro Board of Directors in December 2009. The Final EIS/EIR for the entire Crenshaw/LAX Corridor Project is scheduled for public comment in Spring 2011.

Fusion Figure 2-2 –
Project Description – Flyer p2

Metro Division 22 Northern Expansion

The Metro Division 22 Northern Expansion Alternative is approximately 3.5 acres in size and is located in the City of Hawthorne. The existing land use is industrial, and contains a public storage facility. The site is bounded by the existing Metro Division 22 Green Line Maintenance Facility to the south, the Harbor Subdivision to the east and north, and is adjacent to professional office buildings to the west. The site would only be accessed by rail from the existing Metro Division 22 Maintenance Facility to the south across the Southern California Edison Easement.

Fusion Figure 2-3 –
Div 22 Alternative Description & Photo – Flyer p2

H

Good Faith Efforts to Notify and Involve Division 22's Directly Adjacent Neighbors – If Not Required Under CEQA, NEPA, or Related Planning Laws – Were Nevertheless Required Constitutionally. It is true that in its most recent iteration, Pub Res Code 21092 does not require notice to all adjacent property owners for CEQA purposes, *if* there has been notice posting at the site of the proposed project *or if* notice of the EIR was published in a newspaper of general circulation. We don't know if either happened here: the RDEIR does not attach the notice that was used.[8] The burden of proof for compliance with respect to notice is on the agency, not the public. *See, e.g., Burrtec Waste Industries v. City of Colton,* 97 Cal.App.4th 1133 (2002). If the Maintenance Facility Project involves agency approvals that require more extensive public notice than under CEQA's general notice rule, that more extensive notice would

8 Prominent legal commentators suggest providing notice to adjacent property owners even where CEQA does not explicitly require it - and many agencies listen to them. Providing notice to adjacent property owners, even if it is not technically required, tends to avoid the sort of controversy that has erupted here.

have been necessary.[9] CEQA also requires notice to adjacent landowners where certain fuels are to be burnt, or burnt in greater quantities.[10]

As noted above, some individual members of our community specifically signed up for notices on this project and have not gotten any. To the extent there have been notices that were not sent to them, this ***does*** represent a violation of the notice provisions of CEQA and NEPA, every time it happens. Pub. Res. Code 21092(b)((3), CEQ Regulations, 1506.6(b)(1).

Finally, the notice you did not give us was required as a constitutional matter. Projects which may affect the "fundamental interests" of certain persons require notice "reasonably calculated to afford affected persons the realistic opportunity to protect their interests." *Horn v. County of Ventura*, 24 Cal.3d 605, 617-618 (1979). This is a due process standard, and when it applies, it requires a *meaningful* predeprivation hearing to affected property owners. A hearing in connection with the environmental review of a proposed project does not qualify as a meaningful predeprivation hearing. *Horn*. The property values of the Fusion residents will be severely affected by this project, particularly in its projected two-year construction phase. Other constitutional interests may be impacted as well: their simple ability to live in their homes during construction will be disrupted by noise, dust including particulate matter (PM10 and PM2.5) and diesel particulate matter ("DPM"). This right to notice may depend on whether the property owners' interests were impacted by a "quasi-adjudicative" or a "quasi-legislative" agency decision. In a quasi-legislative action an agency makes rules, in a quasi-adjudicative action, it applies those rules to a particular situation. We are in the latter category – both because the agency supposedly is applying set criteria to a variety of possible sites, and, more importantly, because as a zoning matter, MTA is purporting to grant itself a conditional use permit for a C-1 zoned site so that it can erect ever-more nonconforming buildings and engage in ever-more non-conforming uses. The grant of a Conditional Use Permit is a clearly quasi-adjudicative function. *See Horn*, 24 Cal.3d at 617-618, *see also Cadiz Land Co v. Rail Cycle*, 83 Cal.App.4th 74, 118-120 (2000), *Neighborhood Action Group v County of Calaveras*, 156 Cal.App.3d 1176, 1186 (1984). If you wish to argue that you are granting yourself a variance instead, the result would be the same. *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974).[11]

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9 Such may be the case here either because MTA or some other state or regional agency is required to amend plans or issue other approvals in connection with this project. Such may be the case here also because Hawthorne's approval may be required for a conditional use permit so that MTA may expand nonconforming uses and put in new nonconforming buildings on the site at Division 22, which is zoned C 1, and has been ever since MTA acquired it.

10 The SDEIS/RDEIR indicates that the planned facility will have a "transformer generator" and a "traction power substation," SDEIS/RDEIR at 1-7 to 1-8, and that these items are part of the "Proposed Project Specific Maintenance Facility Requirements." *Id*. at 1-7. We presume the transformer generator will run on diesel fuel and generate diesel particulate. We do not believe this was evaluated adequately or at all in terms of quantity of emissions or proximity to our residences. This should have been evaluated in the SDEIS/RDEIR if it is part of the project and it is relevant to the adequacy of statutory notice. Of course, notice may very well also have been required due to the Paint & Body Shop unevaluated in the SDEIS/RDEIR.

11 Even if MTA's decision were legislative in nature, due-process-type notice would be appropriate in an instance in which an agency's legislative action reflected a particularized animus toward a property owner affected by that action. *See Harris v. County of Riverside*, 904 F.2d 497 (9th Cir. 1990). With all due respect, we must advise you that looking into some kind of animus seems appropriate. There was a complete lack of notice to us regarding the consideration of a Division 22 alternative until you had already decided to include it, and then the notice mischaracterized the proposed development in a manner that seems deliberate. Given that your Division 22 staff and management see us daily and are well aware that some of our buildings are about 50 feet from where you propose to put major new buildings, we think some sort of review regarding animus is appropriate.

Notice and Consultation with the City of Hawthorne Was Deficient. Consultation with the City of Hawthorne, within whose boundaries MTA lies, also appears to have been inadequate. CEQA requires that public agencies engage in consultation with "responsible agencies" having jurisdiction over a resource or area – or bordering upon it – "prior to completing an environmental impact report." Pub. Res. Code 21153, 21104. This obligation begins anew in the case of an EIR that is not certified and has to be recirculated. Pub. Res. Code 21092.1. *See also* CEQA Guideline 15088.5 (public agency must reinitiate "consultation pursuant to [Guidelines] Section 15086" in case of recirculated EIR). We note that with other cities, the notice of the SDEIS/RDEIR was sent to the entire City Council. In our case, it was sent to the Mayor, but not any members of the City Council or Planning Commission. We do not know the content of the notice, or when it was sent, but it was not sent to the member of the City Council who sits on the South Bay Council of Governments, it was not calculated to alert the City to the significant potential impacts from the project. The content of the DEIS/DEIR did not include our area as part of the Study Area, and even your promotional materials did not indicate that anything would occur except on the 3.5 acre site zoned "industrial," so we do believe MTA did not give notice in a manner calculated to actually involve the City. J

b. MTA Has Already Precommitted to Expansion of Division 22, Without Giving Us Notice or the Opportunity to Comment.

"CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, *before* it approves that project." *Laurel Heights I*, 47 Cal.3d 376, 394, *quoting No Oil Inc. v. City of Los Angeles*, 13 Cal.3d 68, 79 (1974) (italics in original).

At its February 2011 Regular Meeting, the Board of Directors approved a Funding Agreement Term Sheet and Master Cooperative Agreement Term Sheet and authorized MTA's CEO to execute agreements in compliance with those Term Sheets. The agreements were to be entered into with the Exposition Metro Line Construction Authority and were to identify costs to be allocated between Metro and the Construction Authority in relation to Phase 2 of the Project. A true and correct copy from the MTA's website of the Memo to the Board of Directors from its February 2011 meeting (Item 12) reveals that the funding agreement was specifically to provide that MTA would build a Paint & Body Shop, right next door to Fusion at Division 22, about 70 feet away from residences, to service – apparently – ***all the cars from the Expo Line***, since the Expo Line does not have a Paint & Body Shop. *See Fusion Attachment 2-4* (MTA February 24, 2011, Regular Board Meeting Item 12, *see page* 12). Based on that Board Memo, the planned (that is, committed-to) Division 22 Paint & Body Shop would be designated to service at least 47 cars from the Expo Line. K

The Budget approved by the Board in connection with the Funding Agreement provided for $11 million to be expended toward this Paint & Body Shop, starting this year with $500,000. *Id.* at 29. While we do not seem to be able to find a copy of the agreement entered into online, we know it was executed according to numerous news reports. We think the agreement may have actually assigned the cost for the Paint & Body Shop to the Construction Authority – but it apparently has not changed its location. Metro and the Construction Authority have precommitted to construct a giant Paint & Body Shop right next door to us, without any environmental review. *Fusion Attachment 2-5* (Expo Construction Line Authority Memo to Board and Press Release re Conclusion of Agreement, March 2011). We're not exactly sure why that change was made – perhaps because precommitting to a project might present a CEQA/NEPA problem. It does. But getting another agency to do it for you – particularly a different agency, when it is pursuant to an agreement you entered into with that other agency? . . . Well, we aren't sure that is any better.

The images below (*Fusion Figure 2-4*) are just excerpts of the key paragraphs of the Term Sheet (*Fusion Attachment 2-3*) approved by the MTA Board on which MTA's CEO relied in order to fund the placement of the Paint & Body Shop next door. And to agree with another agency that that was what MTA would do.

> 4. LACMTA shall incur costs and expenses for the Expo Project Phase 2 and the LRV Project as set forth below (the "LACMTA Project Costs").
>
> . . .
>
> B. The LACMTA Project Costs are to be used solely for:
>
> . . .
>
> ii. Cost and expense for LACMTA to design and construct a new Body Repair and Painting Facility at the Green Line Storage and Maintenance Facility located at Division 22, otherwise known as Hawthorne Yard. Since the O & M Facility to be provided as part of Expo Project Phase 2 will not include a body and paint shop, these costs at Division 22 are part of the LACMTA Project Costs.

K

Fusion Figure 2-4: Excerpts from MTA-approved form of agreement with Expo Construction Authority (*see also* our Attachment 2-4)

This sort of precommitment to a project makes CEQA and NEPA review meaningless. *See, e.g., Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 132 (2008), *Riverwatch v. Olivenhain Municipal Water Dist.*, 170 Cal.App.4th 1186 (2009). In *Save Tara*, the California Supreme Court made clear that a CEQA compliance condition would not save an agency agreement from challenge if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project." As the Supreme Court noted, "a public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project." The Court concluded that it had "emphasized the practical over the formal in deciding whether CEQA review can be postponed, insisting it be done early enough to serve, realistically, as a meaningful contribution to public decisions." *Save Tara*, 45 Cal.4th at 135.[12]

While MTA entered into a contract with another public agency, not a private party, the effect is the same. The agency committed to using public funds (at least some of which funds obtained through the Measure R sales tax) to constructing a facility that should never have even been considered as an alternative. And it committed those funds without having done the required environmental review.[13]

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12 There is no specific CEQA compliance condition in the Funding Agreement Term Sheet, and, as we said, we have been unable to obtain a copy of the executed Funding Agreement itself, although we know that it exists. There are a couple of opaque provisions that may be interpreted as referring to or calling for CEQA compliance. If they call for it in the future, they would have to satisfy the tests set out in *Save Tara*. If they refer to past CEQA/NEPA compliance then that review would have to have been conducted by the appropriate agency in a process that reached out to and involved all affected stakeholders, including, in the case of expansion of Division 22, us, and the City of Hawthorne, etc.

13 One wonders whether, if MTA were to approve the Division 22 project in whole or in part, and Fusion's HOA chose to challenge it in court on behalf of its residents, the HOA would be in the unenviable position of having to pay its own litigation costs during the proceeding, *and* MTA's by virtue of the Measure R sales tax. Would those of us in the complex who voted for Measure R do so again knowing that our funds would be spent in this manner? Maybe not.

Finally, whether MTA is a responsible agency or a lead agency with regard to the Paint & Body Shop as a result of this agreement makes not a bit of difference under *Riverwatch*. [14] K

c. ***MTA Has Improperly "Piecemealed," or Segmented, Its Review of the Division 22 Expansion So As to Minimize or Fully Avoid Analysis of Its Likely Environmental and Public Health Impacts***

The SDEIS/RDEIR purports to analyze the expansion of Maintenance Facility Capacity in connection with – as one might expect – the construction of the Crenshaw/LAX transit project. However, in an effort to "kill two birds with one stone" – or maybe three or four – MTA is actually seeking approval for expanded rail capacity for the construction of *multiple* new lines and expansions. The SDEIS/RDEIR states,

> In December 2010, the Metro Board adopted a consolidated development strategy for maintenance facilities associated with the expansions of the Metro Green Line and the three new transit extensions – the Crenshaw/LAX Transit Corridor, the South Bay Metro Green Line Extension, and the Metro Green Line Extension to LAX. ***In order to accommodate future growth of all these lines***, consideration is being made for the maintenance facility to have a base capacity of 45 LRVs and to eventually expand the maintenance facility to accommodate up to 70 LRVs. L

SDEIS/RDEIR at 1-1 (emphasis supplied). When read in context with background MTA documents approved by the Board already, it is clear that MTA plans to expand the use of the chosen site here far beyond that required for the Crenshaw/LAX Extension. At a minimum, it seems the project for a maintenance facility involves potentially ***all train cars from the Green Line, as extended to include all three of the new projects*** – not just Crenshaw. MTA Memo to Board, December 2010, *Fusion Attachment 2-6,* at 2.

Additionally, it appears that the Maintenance Facility alternatives addressed in this SDEIS/RDEIR are meant to cover – apparently – the underserved maintenance needs of *four existing and expanded Metro Light Rail Lines as of 2018: (1) the Green Line (expanded by three or four projects), (2) the Gold Line (which needs a paint & body shop), (3) the Blue Line, and (4) the Expo Line (phases 1 and 2). See* SDEIS/RDEIR at 1-6 to 1-8; *see also* Table 1-3 at 1-7.

While the SDEIS/RDEIR asserts that all the needs assessed are those of the Crenshaw/LAX project, we question whether the document accurately analyzes the impact in terms of volume of trips to and storage at the Division 22 site. Indeed, the document asserts – or at very least suggests - that most or potentially all Paint & Body Shop work for the excess capacity on all four lines would be serviced by Division 22. SDEIS/RDEIR at 1-4 through 1-7. Even if the storage for cars at Division 22 (as expanded) would be limited to 60, or 70, or 90 cars (depending on various scenarios mentioned), the additional traffic of rail cars into and out of the facility could be staggering if facilities at Division 22 are relied on for maintenance needs, including heavy repair and paint and body work, for all these lines – as expanded.

"Piecemealing" and "Segmentation" are alternate terms that refer to the situation in which an agency cuts a project into smaller pieces rather than reviewing "the whole of [the] action." It is prohibited under both CEQA, *see, e.g.*, Pub. Res. Code 21159.27, and NEPA, since the result is that the environmental effect of the whole project may never be fully analyzed, and certainly may not be before the first parts of the project are undertaken and committed to.

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14 One last note: we did not get notice of the DEIS/DEIR on the Expo Phase 1 or Phase 2 projects. We hear the Phase 1 environmental review was recently finalized and has been challenged. We were not part of the study area and we don't believe that document reviewed the environmental impacts of a Paint & Body Shop.

The words used in a foundational case on segmentation with regard to the environmental review of the Port of LA are applicable here. In response to agencies' efforts to break analysis of a container terminal into three phases, the Court of Appeal wrote,

> This case goes to the first principles of CEQA. The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish. *This examination is intended to provide the fullest information reasonably available upon which the decision makers and the public they serve can rely in determining whether or not to start the project at all, nor merely to decide whether to finish it. The EIR is intended to furnish both the road map and the environmental price tag for a project so that the decision maker and the public both know, before the journey begins, just where the journey will lead, and how much they – and the environment – will have to give up in order to take that journey.*
>
> Here, the [MTA and the Expo Transit Authority] have reduced CEQA to a process whose result will be largely to generate paper to produce an EIR that describes a journey whose destination is already predetermined and contractually committed to before the public has any chance to see either the road map or the full price tag. . . . [T]his is segmentation of the project and a *per se* violation of the statute.

L

Natural Resources Defense Council v. City of Los Angeles, 103 Cal.App.4th 268, 271-272 (2002) (emphasis supplied).

As noted in the Section 2.b of this letter immediately above, MTA's agreement with the Expo Construction Authority is a precommitment that violates other precepts of CEQA and NEPA – but as a precommitment that was not reviewed as a part of this SDEIS/RDEIR, it is also evidence of piecemealing. In the particular case of the construction of the Paint & Body Shop, the agreement calls for the construction of infrastructure that would have the "cumulative impact of opening the way for future development." *City of Antioch v. City of Pittsburg*, 187 Cal.App.3d 1325, 1333-1334 (1986).[15]

Why does it matter that MTA is trying to evaluate filling its maintenance needs for other Green Line projects – and for other Metro Rail line needs – with this SDEIS/RDEIR? Of course there is nothing wrong with efficiency – but it should be pursued in compliance with CEQA. If MTA wants to fulfill all these needs with a single maintenance facility, it should have a full public process that frankly addresses that point. That did not happen here. In preparing and circulating a DEIS/DEIR, state and federal agencies need to go through a scoping process and consultation process that is not fully replicated in the context of a *Supplemental* DEIS / *Recirculated* DEIR; it was not fully replicated in this instance. A number of the Scoping and Consultation requirements simply were *not* followed here. CEQA and NEPA include those procedures so as to involve all interested stakeholders from *all* affected communities on the development of alternatives *as well* as the commenting stage. This is one reason why precommitment and segmentation are prohibited. Another reason – as the Court noted in *NRDC* – is that it makes it very difficult to assess what the true impacts of the full project will be. Both potential concerns fully play out here.

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15 The SDEIS/RDEIR and its Appendices are truly schizophrenic as to whether or not those documents intend to provide environmental review of the Paint & Body Shop. We will address this in Section 3.c of this letter below. However, even if the SDEIS/RDEIR had conducted environmental review on the Paint & Body Shop, and even if that review were adequate, MTA precommitted to the project by planning for and entering into a contract with the Expo Line Construction Authority to build it in advance of actually considering the results of that review.