d. MTA Has Improperly Relied on "Regulatory Thresholds" in a Manner That Violates Established CEQA Precedent

One of the most litigated aspects of CEQA is the degree to which other regulatory standards can inform an agency's conclusion as to whether or not an environmental impact is or may be significant. Since a finding that an impact is or may be significant plays a critical role under CEQA, "[a] long line of the Courts of Appeal decisions holds . . . that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework." *Communities for a Better Environment v. South Coast Air Quality Management District,* 48 Cal.4th 310, 321 (2010), (citations omitted).

Similarly, and perhaps even more to the point, in *Communities for a Better Environment v California Resources Agency,* 103 Cal.App.4th 98,(2002) the state Court of Appeal in Sacramento invalidated the California Resources Agency's former version of Guidelines 15064(h)(3), which had provided that a lead agency should rely on a "threshold" promulgated by another agency with jurisdiction unless there was (1) a statutory mandatory finding of significance, (2) a conflict in thresholds between agencies with jurisdiction, or (3) the lead agency found the standard was not based on substantial evidence. The Court found that the Guideline improperly limited the duty of a lead agency under CEQA, because the Guideline mandated "the application of an established regulatory standard in a way that forecloses the consideration of any other substantial evidence showing that there may be a significant effect." 103 Cal.App.4th at 114.

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Thus, MTA cannot rely on another agency's regulatory standard or permit process to refuse to do analysis regarding how the environment will change as a result of the project.

With regard to NEPA, "One agency cannot rely on another's examination of environmental effects under NEPA" – it is not proper simply to rely on another agency's grant of a permit to conclude there is no possible significant environmental effect. *Southern Oregon Citizens Against Toxic Sprays v Clark,* 720 F.2d 1475, 1480 (9th Cir. 1984). Additionally, under NEPA federal agencies must deal more forthrightly with possible impacts in the event of scientific uncertainty.

3. Why the Environmental and Public Health Analysis in the SDEIS/RDEIR is Deeply Flawed.

We will break down our comments on the SDEIS/RDEIR's analysis of public health and environmental matters into the seven categories where we believe its failures are the most glaring: (1) Significance of Impacts, given that the document misrepresented the affected environment (that is, the nature and density of the Fusion residential site), the location and nature of the project, (2) Analysis of Alternatives regarding Maintenance Sites, (3) Air Quality Impacts from the Proposed Facility (Both for Construction and Operation), (4) Noise Impacts from the Proposed Facility (Both for Construction and Operation), (5) Land Use Planning Consistency and Zoning, and (6) Traffic Impacts, both during Construction and Operation, and Public Safety, (7) Cumulative Impacts, Including Those of Electromagnetic Fields.

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a. For Division 22, the Consideration of Significant Impacts Did Not Consider the Whole of the Expansion Project.

As noted in our discussion of segmentation, in Section 2.c. of this letter, MTA understated the impacts of this project by failing to analyze all the reasonably foreseeable development and use at Division 22 should the use of that site be approved. Under CEQA, an EIR "must include an analysis of the environmental effects of future expansion or other action if (1) it is a reasonably foreseeable consequence of the initial project, and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Ass'n v.*

Board of Regents, 47 Cal.3d 376, 296 (1988). *See also* Pub. Res. Code 21065. The Division 22 project meets this standard for many reasons previously mentioned.

As noted, the SDEIS/RDEIR misrepresents the Division 22 project and its impacts by repeatedly contending that the project is only the acquisition and development of the 3.5 acre parcel. This characterization badly skews its assessments of impacts with regard to, at the very least, alternatives, its discussions of land use, zoning and the division of existing communities, air quality, hazardous materials[16], and noise (construction noise at least, probably operational noise as well).

Finally, the SDEIS/RDEIR mentions components of the present maintenance facility project at the existing Division 22 site which it has not assessed in adequate detail at all. Into this category fall impacts from a permanent paint & body shop for rail cars from both the Green Line and the Expo Line which would emit toxic air pollutants headed toward our toddlers using Fusion's only playground, just over the boundary line wall. Additionally, apparently there is a planned "transformer/generator" for operational use on the site – we don't know how big it is, what it will run on, or how often it will run. We suspect it will run on diesel fuel, meaning that it will emit diesel particulate matter ("DPM"), another toxic air contaminant. Again, we don't know. N

Other anomalies or false statements: (1) The DSEIS/RDEIR asserts that the complex is made up of 18 "two story buildings" when they are four story buildings – apparently because this helps minimize impacts in the Visual Impacts section, or perhaps with regard to noise impact assessments. *See, e.g.*, SDEIS/RDEIR at 3-38. (2) It asserts that there is no pedestrian or bicycle traffic past the facility on Aviation, *see* SDEIS/RDEIR at 3-2, 3-7, when there is quite a bit – from Fusion and surrounding areas – and that traffic is affected by vehicle traffic in and out of Fusion and the Maintenance Facility (and will be more affected by increased traffic and construction traffic were MTA to approve the project at this site).

b. MTA's Alternatives Analysis Lacks Logical Coherence

Both CEQA and NEPA Require Adequate Alternatives Analysis. CEQA and NEPA both require a thorough analysis of alternatives – for two very important reasons. First, it is only through an analysis of alternatives that the decision-making body or acting agency can consider environmental effects and less damaging options. Second, both recognize that it is the *public's* right to understand and participate in this process.

CEQA's Standards. According to Guidelines 15026.6, the "key question" in considering alternative sites is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. "*Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered.*" *Id*. If no alternative is feasible, the EIR should explain why, and "where a previous document has previously analyzed a range of alternatives," the agency should look to that previous document for guidance. *Id*. Thus, avoiding the significant environmental effects of a project, not "economic feasibility," should guide an agency's selection and analysis of alternatives. *Friends of Eel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859 (2003), *San Franciscans Upholding the Downtown Plan v. San Francisco*, 102 Cal.App.4th 656 (2002). MTA most definitely did not follow these rules. O

In *Laurel Heights I*, 47 Cal.3d 376, the California Supreme Court made clear that an agency's alternatives analysis must to be meaningful and transparent, emphatically rejecting the arguments by the Regents of the University of California that they had done enough:

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16 In the hazardous materials section the SDEIS/RDEIR actually characterizes a potentially hazardous underground storage tank on the existing Division 22 property as an "offsite" hazard – even though, for all we know, it is directly underneath the area where MTA needs to do excavation and grading for construction. *Cf. McQueen v. Board of Directors*, 202 Cal.App.3d 1136 (1988).

> The Regents argue that alternatives had already been considered and found to be infeasible during the University's various internal planning processes and that an EIR need not discuss a clearly infeasible project alternative. The Regents apparently believe that, because they and UCSF were already fully informed as to the alleged infeasibility of alternatives, there was no need to discuss them in the EIR.
>
> ***The Regents miss the critical point that the public must be equally informed. Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.*** We do not impugn the integrity of the Regents, but ***neither can we countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials***. 'To facilitate CEQA's informational role, ***the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.' An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised*** by the proposed project.

47 Cal.3d at 404-405 (some emphasis in original; further emphasis supplied; multiple citations omitted).

The Court made profoundly clear that its ruling rested on the lead agency's duty to the public under CEQA:

> Even if the Regents are correct in their conclusion that there are no feasible alternatives to the Laurel Heights site, the EIR is nonetheless defective under CEQA. As we stated in a context similar to CEQA, ***there must be a disclosure of the "analytic route the . . . agency traveled from evidence to action***." . . . An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making.

47 Cal.3d at 404 (emphasis supplied), *citing Topanga Assn. for a Scenic Community* v. *County of Los Angeles*, 11 Cal.3d 506, 515 (1974) ("*Topanga*"), *and San Bernardino Valley Audubon Society, Inc.* v. *County of San Bernardino* 155 Cal.App.3d 738, 751 (1984). *See also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713 (1994), *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438 (1989), *and Kings County Farm Bureau v City of Hanford*, 223 Cal.App.3d 692 (1990).

The NEPA Parallel. Under NEPA, an alternatives analysis serves the same role, and must provide "substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." 40 C.F.R. 1502.14(b).

The DEIS/DEIR and SDEIS/RDEIR Disclose that MTA Did Not Follow An Analytic Route from Evidence to Action – At Least, Not One that Qualifies Under CEQA. In *Topanga*, the Supreme Court ruled that an agency action must be based on findings, so as to assure "orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions," to "enable the reviewing court to trace and examine the agency's mode of analysis," and to "persuade the parties that the administrative decision-making is careful, reasoned, and equitable." 11 Cal.3d 506, at 516-517. The alternatives analysis process in the SDEIS/RDEIR and DEIS/DEIR before it does not stand up by any of these standards, and it does not stand up under CEQA.

The "Tiered Screening Process" Was Neither Tiered, Nor a Screening Process. The SDEIS/RDEIR breaks the alternatives analysis process up into essentially five phases, which it seeks to suggest were "tiered" in a logical order.

- ***First***, two of the sites considered in the DEIS/DEIR were rejected at the Board's December 2009 meeting. SDEIS/RDEIR Section 1 ("Purpose and Need"). We don't know what happened as to the other two. SDEIS/RDEIR at 2-1 to 2-4.

- ***Second***, sixteen sites were identified and reviewed in early 2010 in workshops staff held with involving members of the community consulted on the original Crenshaw/LAX project. Division 22 was not on this list, nor were any other sites from outside the original Study Area. No scoping or consultation process took place such as would have happened for an EIR/EIS.

- ***Third,*** apparently, as a result of that process, using the twelve criteria, the list of sixteen was cut down to eight. Division 22 was not on the list of eight. SDEIS/RDEIR at 2-4.

- ***Fourth***, the "Project's Technical Advisory Committee" cut the list of eight down to four based on unidentified technical planning concerns. Division 22 was not on the list of four. The four sites that remained on the list as of that time, however, had (at least according to the SDEIS/RDEIR) gotten there as a result of the screening criteria identified in Table 2-2 of the SDEIS/RDEIR. SDEIS/RDEIR at 2-4 to 2-5.

- ***Fifth,*** apparently the Technical Advisory Committee chose to eliminate two more of the original sixteen sites, so there were only two left. Then it added two more that had never been screened to begin with. ***IT IS THE FOUR RESULTING SITES – TWO SCREENED EXTENSIVELY UNDER THE ORIGINAL CRITERIA, AND TWO THAT WERE NEVER MADE TO MEET THOSE CRITERIA – THAT ARE EVALUATED IN THE SDEIS/RDEIR***. SDEIS/RDEIR at 2-5 to 2-6.

Thus, the two sites the Technical Advisory Committee identified were never subject to review under the original criteria identified by at least some members of the public, nor (in the case of Division 22) do we meet those criteria. None of the four sites have been subject to a CEQA/NEPA scoping or consultation process, and only two have been subject to any review by members of the public at all.[17], were suddenly added based upon "potential economic effects," which apparently meant "potential economic effects to MTA's capital budget." The stated reasons for adding Division 22 and the Redondo site were (see SDEIS/RDEIR at 2-6):

- ***Right of way acquisition costs***
- ***Connection costs***
- ***Displacement of jobs/residents and difficulty of relocating existing businesses.***

The SDEIS/RDEIR concedes that not only were the new sites added without meeting the original screening criteria, but the Technical Team ***also*** apparently decided that a smaller footprint could meet the needs of the maintenance facility. Nevertheless, it went forward with the previously unscreened Division 22 and Redondo sites, and it did not go back to reconsider any of the other 18 sites screened out on the basis that a new smaller footprint would do.

The Only Identified Basis for Eliminating Sites B and D Was Politically Powerful Opposition. As the SDEIS/RDEIR notes, MTA's Board first considered alternatives for a maintenance facility site in connection with the Crenshaw/LAX project in the DEIS/DEIR. This is how the SDEIS/RDEIR summarizes what happened:

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17 The only public process the SDEIS/RDEIR refers to for this phase is "meetings with key property owners and tenants." In some cases, perhaps, since MTA was the landowner involved as well as the project proponent, these were meetings between MTA and itself. SDEIS/RDEIR at 2-6, 2-7. There is no mention of any meetings or attempts to contact residents at Fusion or the City of Hawthorne. To the contrary, it appears to us that all efforts were calculated to obscure the process from us for as long as possible.

> Based on the analysis, the four potential maintenance facility sites were ranked [with B and D being the preferred choices]. Site A and Site C were screened out based on the criteria and Site B and Site D were evaluated in the DEIS/DEIR. ***During circulation of the DEIS/DEIR, Site D and Site B elicited local opposition from some, including municipal officials, elected representatives, and abutting business and property owners.***
>
> ***To try to address and resolve these concerns, the Metro Board directed that Sites D and B be removed from further consideration*** and an additional alternative maintenance facility sites [sic] be evaluated.

SDEIS/RDEIR at 1-4.

"The criteria" that the SDEIS/RDEIR refers to in the above passage was a list of seven standards included in Table 2-3 from the DEIS/DEIR.

- Size and Proximity,
- Land Use and Zoning,
- Land Ownership,
- Buffers,
- Potential Expansion,
- Community Disruption, and
- Preemption of Most Valuable/Best Use.

DEIS/DEIR at 2-18.

Sites B, C and D all were zoned industrial, B and C required demolitions. Sites C and D did not require buffers from residences. Sites B and C would have had moderate community disruption, and D would have low disruption. D was judged by staff to be the least likely to preempt a better use. As far as we can tell, the site has not been developed. We cannot tell who owns it. It is bordered by train tracks used by BNSF for transporting material on behalf of Chevron's refinery nearby. A parcel to the south is industrial and use and has been for some time. A parcel somewhat to the north is now occupied by a shopping center. We believe the site is either owned or rented by a large railroad or a large oil company.

Sites B and D were indeed eliminated by the Board at the December 2010 regular meeting, for reasons not explained in the Minutes of that Meeting. The only explanation offered for the elimination of these sites in the SDEIS/RDEIR or anywhere that we have found is that they were politically unpopular.

After mapping the sites identified it also appears that sites A and C were not revisited in 2010.

The Division 22 Site Never Met the Original 12 Screening Criteria – and It Cannot. The SDEIS/RDEIR notes that the 2010 process started with 12 screening criteria that all sixteen of the initial sites met. Those criteria included proximity to residences. Had the D22N site been among the sites proposed for evaluation in 2010, it would never have met the initial screening criteria. Among the early sites, any of these conflicts was considered a fatal flaw and that site was removed from consideration. Quoting directly from the SDEIS/RDEIR, with numbering added here for comparison purposes:

> *Initial Screening*
> After the identification of initial sites, a screening process was initiated that considered the following evaluation criteria:
> [1.] Minimize Impacts to Residential Areas
> [2.] Minimize Potential Noise Impacts

[3.] Compatible with Adjacent Land Uses and Adopted Plans
[4.] Minimize Displacement
[5.] Construction Cost Effectiveness
[6.] Accessibility of Site to Workers
[7.] Minimize Traffic Disruption
[8.] Accessibility to LRT Tracks
[9.] Adequate Size and Shape
[10.] Minimize Impacts to Other Transportation Facilities
[11.] Minimize Impacts to the LRT System
[12.] Ease of Land Acquisition

These evaluation criteria were used to eliminate unacceptable sites."

SDEIS/RDEIR at 2-4, *see also id.* at 2-5 (Table 2-2). As a result of this initial screening, eight sites allegedly had fatal flaws, and they went on from there. SDEIS/RDEIR at 2-4, 2-5. O

How would the D22N site have stacked up against these screening criteria? Let's review:

1-fail (would affect 280 homes directly adjacent to the south)
2-fail (sensitive receptors as close as 22 ft from operational activity)
3-fail (The MTA facility would be the only truly industrial use in the area)
4-fail (certain to disrupt and possibly displace 280 households due to inverse condemnation and one storage business)
5-pass (one of only two redeeming characteristics of this site)
6-fail (construction and employee traffic has on entrance on an already congested street with no traffic control device)
7-fail (Aviation cannot handle existing traffic without severe congestion)
8-pass
9-fail (does not meet any of the size and shape criteria in the initial sourcing criteria and allows no room to expand to meet future needs)
10-fail (severe disruption to vehicular traffic on a major north-south traffic corridor)
11-fail (construction at the existing yard would undoubtedly disrupt existing maintenance functions)
12-pass (MTA already owns most of it.)

By no means does this history represent a logical process or a process as to which the public was able to trace the route from analysis to action that its decision makers took. Perhaps that is deliberate. But we do not expect it to stand up under review by either members of the public, or the Courts.

c. ***MTA's Air Quality Projections Are Flawed – Both as to the Project's Construction and Operational Phases***

Why It is Impossible To Test or Assess the Document's Assertions on Air Quality – and They Do Not Amount to Full Disclosure. The SDEIS/RDEIR's discussions of Air Quality impacts are almost completely unintelligible, and they hide what looks to be a lot of important information that should most definitely have been the subject of CEQA review, regional review, federal review, ***and*** review by the City of Hawthorne. It is for this reason that the exclusion of Hawthorne from this process is particularly egregious. P

The SDEIS/RDEIR reaches contradictory conclusions on significance of air quality impacts. There are multiple segments scattered throughout the SDEIS/RDEIR on air quality impacts. There are two portions of the SDEIS/RDEIR itself. Then there are a couple of appendices that address it – the second half of Appendix C consists of hundreds of pages of raw computer model printouts regarding air quality, with

virtually no explanation as to inputs or assumptions. Finally, Appendix D sets out "regulatory thresholds," and contains 4 pages regarding allegedly applicable regulatory "thresholds" on Air Quality.

Working our way through them, it *appears* that Section 3.6 of the DSEIS/RDEIR itself covers Air Quality operationally, and Section 3.16 covers construction impacts.[18] Looking at significance findings through the document we find this:

- Section 3.6 (possible "operational" analysis) says none of the sites will lead to significant air quality impacts. DSEIS/RDIER at 3-45, 3-48, Tables 3-14 and 3-15.
  - The "Summary Table" at the beginning of the SDEIS/RDEIR is consistent with that. SDEIS/RDEIR at S-5.

- Section 3.16 (which is "construction" analysis, mostly, it seems) states at Table 3-41 (SDEIS/RDEIR page 3-102) that construction air quality impacts will *not* be significant at Division 22 under *either* the analysis of Localized or Regional Impacts. And it contrasts this with the situation for two of the other alternatives (Sites 14 and 15), where it posits that PM_{10} and $PM_{2.5}$ impacts ***will*** be significant. SDEIS/RDEIR at 104, Table 3-42.
  - However, this time, the Summary Table, SDEIS/RDEIR at S-8, ***is not consistent***, stating there will be a "***Significant and Unavoidable Impact***." SDEIS/RDEIR at S-8.
  - ***The inconsistency is a violation in and of itself*** is improper under CEQA, as that is what sets all review as to what the impact is and how it is to be mitigated.

This makes all the analysis in the SDEIS/RDEIR of air quality impacts which relied upon the data and models in Appendix C completely invalid. Again, the discussion is obtuse but we think that means all analysis as to operational and construction impacts for either criteria pollutants or VOCs. The reader of the SDEIS/RDEIR is simply told in the end that the air quality impacts to Fusion from construction (not operation) would be "significant and unavoidable." But that level of information is not adequate for purposes of CEQA or NEPA for an EIS/EIR.

The Raw Computer Model Runs Are Not Substantial Evidence. As noted above, Appendix C part 2 contains hundreds of pages of printouts of analysis of potential impacts from criteria pollutants at the four sites, supposedly relating to both operational and construction air quality impacts. The models assess potential exposure of "receptors" at the sites to the criteria pollutants (Carbon Monoxide, Ozone, NO_2, PM_{10}, $PM_{2.5}$, and Reactive Organic Gases (ROGs), which we assume may be a stand-in for Volatile Organic Compounds (VOCs). There are numerous underlying assumptions that go into these runs that are not disclosed. Without that disclosure it is impossible to validate their conclusions. Some of the assumptions that are disclosed invalidate the conclusions reached – but others that are relevant remain missing. P

The Significance Thresholds You Purport to Adopt Are Invalid and Self-Serving. Air quality regulation happens at the federal, state, regional, and local levels. Unless some sort of preemption applies, all of these levels of authority are important and need to be addressed. The SDEIS/RDEIR did not do this, and seems mostly to have just applied the most lenient standard. Appendix D on thresholds states:

> This section examines the affected environment related to air quality. The analysis was based on a combination of federal and local guidance. ***The toxic air contaminant assessment was based on the 2006 Federal Highway Administration (FHWA) Interim Guidance on Air Toxics Analysis in NEPA documents***. The transportation conformity analysis was based on a compilation of guidance documents published by the FHWA.

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18 It's not clear, for one, because the GHG impacts discussion covering construction is in the 3.6, the section that mostly seems to discuss operation.

The localized analysis was based on South Coast Air Quality Management District (SCAQMD) guidance.

SDEIS/RDEIR, Appendix D at 6-1 (emphasis supplied). While there is nothing wrong with assessing impacts in part with the authorities listed above, they cannot provide thresholds.

Air Toxics. The notion that a FHWA document can provided a CEQA threshold is rather astounding. Even if there were preemption there would have to be analysis. There are stringent Toxic Air Contaminant rules at the state level and rules that SCAQMD has in place to carefully limit the placement of new Toxic Air Contaminant Facilities. There are entirely valid and important rules that Hawthorne has put in place to protect residents, just as any other municipality does. The FTA may require assessment of toxics for NEPA purposes using the FHWA Manual, perhaps (albeit as a "floor," rather than as a ceiling, *see* CEQ Regulations, 1502.16), but that does not preclude MTA's duty to apply state, regional and local analysis and to follow state, regional, and local rules to protect public health and safety. Both SCAQMD rules and local zoning rules provide standards by which you need to assess the proposed actions. The agency was required to consider those local plans under both CEQA and NEPA. *See* CEQ Regulations at 1502.16.

Particulate Matter. Again, local zoning provides a relevant standard. That zoning is there to prohibit exposure to excessive dust in residential areas. That zoning would preclude the proposed project. Both PM_{10} and $PM_{2.5}$ need to be evaluated. We are unsure that the URBEMIS model you relied on, or the way in which you gave it inputs, adequately calculates the resulting PM_{10} or $PM_{2.5}$ emissions. We are not sure that the mitigation factor it relies on for SCAQMD rule compliance "per acre" is appropriately applied here or that it would lead to the same results regarding both types of pollutants.

VOCs. With regard to VOCs, to the extent this is what ROGs represent in your models, this is not something that should be eliminated from evaluation based on a regional "threshold" from SCAQMD alone. Again, Hawthorne has authority, and would not support this project. P

Permitting. Again, reliance on a future permit does not permit an agency to avoid conducting CEQA analysis of the likely impacts of the project. That pre-commitment assessment is *also* required, so that agency decision makers carefully consider the effects of their action on the environment and those who inhabit it, and so that the members of the public whom those decision makers are accountable to have the ability to consider them as well. *CBE v. SCAQMD*.

Failure to Conduct Risk Assessments MTA is required to conduct risk assessments regarding Toxic Air Contaminants emitted by the project's construction or operation under state law. We understand this measure to be mandated in the case of Toxic Air Contaminants by the California Department of Public Health and various provisions in the Health and Safety Code. The fact that those assessments may be part of a future SCAQMD permitting process does not allow you to defer those assessments until later, as they are an important part of the CEQA review of this project. We note that had you started this project before doing this review, you would have ***had*** to provide all Fusion residents with notice. *See, e.g.*, South Coast Air Quality Management District Rules 1401, 1401.1, and 212, regarding the construction of new facilities that may emit Toxic Air Contaminants located between 500 and 1000 feet of school and requiring and numerous other provisions in Title XIV and relating thereto. Risk assessments provide the detail that makes CEQA review meaningful, and they should be made available to the public before the agency commits to a project.

Construction. As to construction there are numerous DPM-emitting items of heavy construction equipment and trucks. You acknowledged this and did *some* review as to the particulate emissions of these vehicles and machinery but not the much more concerning DPM. We are uncertain whether the asbestos removal or demolition of concrete structures also triggers risk assessment procedures; in any event that analysis seems lacking. You make the statement that you do not have to evaluate cancer risk because SCAQMD requires a cancer risk assessment for DPM as a Toxic Air Contaminant based on an assumed 70-

year exposure period, and exposure to DPM as a result of construction will only last two years. SDEIS/RDEIR at 3-105. We had not understood health risk assessments to be unnecessary under SCAQMD rules if the opponent of the project cannot show that a receptor will be exposed to a pollutant for 70 years. Such a reading may be contrary to state law even outside of that in CEQA. The 70-year individual cancer risk assessment is meant to simply provide a standard. *See, e.g.*, South Coast Air Quality Management District Rule 1401(c), discussing MICR (Maximum Individual Cancer Risk) (MICR "is the estimated probability of a potential maximally exposed individual contracting cancer as a result of exposure to toxic air contaminants over a period of 70 years for residential receptor locations.") Calculation of the risk level *does not* require likelihood or even probability of exposure for 70 years. We doubt SCAQMD reads the rules the way you do, and if it does, we question the legality of those rules, particularly if they are used as thresholds.[19]

Operation. As to operation, the project involves a Paint and Body Shop that almost certainly would be regulated under Title XIV of SCAQMD's rules. Such facilities, even much smaller ones, emit highly toxic pollutants including hexavalent chromium. Additionally, you say that operation will involve a transformer generator which likely runs on diesel and generates its own DPM.

Timing. Again, the fact that risk assessments may be conducted is supplemental to CEQA. If you want to do them with SCAQMD after your CEQA review perhaps that is OK, but you should do them twice in that instance. Even if MTA wishes to evade review of the risks under CEQA, FTA would have to look into these impacts under NEPA. *See* 40 C.F.R. 1502.22.

The SDEIS/RDEIR Significantly Underestimates Construction Impacts to Fusion In Other Respects As Well. From what we can discern, the assessment of construction impacts in the computer model runs for the criteria pollutants and ROGs were based on several assumptions that were wrong. First, Appendix D states that the analysis was based on the closest "residential receptors" being "located 150 feet or further to the south." SDEIS/RDEIR, App. D, at 6-3. Appendix D also states that there are no closer receptors. This tells us that the writers of the SDEIS/RDEIR did their analysis as if all emissions were to come from the 3.5 acre U.S. Storage Parcel – *not the actual planned construction site*. *See also* Appendix D at 16-1, 16-2 (stating that construction emissions would be less intense at D-22 site because it would only involve daily grading at "3.5 acres" as opposed to 10). It is true that some *demolition* would occur at a maximum of150 feet of one of our residential buildings, and grading, and that this would create dust. But it is also true that essentially *all* of the construction (and presumably some demolition and grading in connection with it) would occur within 50 feet of us. Furthermore, it appears that all of the dust from the site would be removed using the road on the existing Division 22 parcel, about 25 feet from our residences and playground. P

Additionally, Appendix D states that development at Division 22 would result in construction emissions that are "less intense" because it would only involve 35 truck trips per day, as opposed to 75. Again, we are not sure that the computer models accounted for the fact that the dust from those trucks was to pass within 25 feet of us.

In common with the other sites, Appendix D informs us that there would be:

- 30 worker vehicle trips per day with a round trip distance of 26.6 miles; and
- 8 pieces of heavy-duty construction equipment operating simultaneously for ten hours per day;

Appendix D at 16-1, 16-2. Since the only *construction* at Division 22 (other than the laying of planned tracks) is immediately adjacent to our homes, assumptions regarding exposure at 150 feet rather than 50 are

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19 Further, we wish to note that since operational features of the facility also would involve DPM emissions, the conclusory reliance on a two year construction time frame so as not to look into this would not be warranted.

invalid. The notion that 8 pieces of heavy construction equipment, involving 35 truck trips and 30 worker vehicle trips per day, for a period of 2 years, most of it occurring within 50-75 feet of some of our front doors, not having a significant air quality impact is implausible.

It appears that the SDEIS/RDEIR relies for its conclusions of insignificant impacts from dust based on the notion that dust will be abated to "below a significant level' based on watering the site down in the morning and evening, which the "URBEMIS 2007" model apparently says reduces dust by a factor of 61% *per acre*. That 61% assumption has to depend on how close dust is to residences to begin with and probably is based upon the notion of construction of residences in less developed areas. We think it is highly unlikely that such reduction would occur in this instance.[20] It is very difficult to foresee any kind of effective mitigation when all of this is taking place less than 100 feet from residences, with only a ten-foot high wall between the construction zone and these three- and four-story homes.

The Document Contains Other Major Inaccuracies as to the Operational Air Quality Impacts. We note that the SDEIS/RDEIR hems and haws as to the Paint & Body Shop and whether it is analyzed in this document. Section 1, purpose and need, does not refer to it as part of the project. Section 2, Alternatives Analysis, depicts the Paint & Body Shop as "a Separately Funded Project," suggesting it is ***not*** under review here. SDEIS/RDEIR at 2-16, Figure 2-17. Section 3, Affected Environment, suggests that the Paint & Body Shop ***is*** under review here. SDEIS/RDEIR at 3-48 ("Toxic Air Contaminants") (although it then states that no actual analysis is required before MTA commits to the project (further)). P

In other words, there is no analysis for Toxic Air Contaminants emanating from the giant paint & body shop for (potentially) ***all trains*** from the ***Green Line,*** the ***Expo Line***, ***Gold Line,*** or the ***Blue Line,*** and that facility is to be built about 50 feet from the boundary with our complex, and (we'll repeat this again) not much farther from our toddler's playground. As you are well aware, severe restrictions on emissions from this type of facility (if it could be built at all) would be imposed if you put it, at say, the Redondo site, since it is within 500 feet or ¼ mile of a school. That law was enacted to protect children of school age. Ironically, you seem to have chosen instead to place it much closer to a playground used by infants and toddlers.[21] You should be well aware of the impacts that Particulate Matter and DPM in particular have on the lung development of growing children. Kindly assess the potential impacts to our children in the document.

Additionally, the SDEIS/RDEIR refers to a "transformer generator," but we do not see the emissions modeled anywhere in the air quality analysis. As with the noise section, the steps from analysis to action should be set out in the document and its appendices in an intelligible way so that the public and the elected officials who represent them can make appropriate decisions based on understandable environmental analysis.

It is well established that the use of a permit does not allow an agency to avoid CEQA review. The California Supreme Court reiterated this very recently in *Communities for a Better Environment v SCAQMD*, even if a higher emissions level is permissible under other laws regulating pollution, that does not mean that an agency can avoid CEQA review because no mitigation is permissible:

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20 We recently witnessed construction that has taken way longer than anticipated and left dust clouds wafting across Aviation Boulevard from the corner of Aviation and Marine, which made visibility for those of us driving on Aviation quite poor. We know they were following the same twice-daily watering protocol.

21 So, to be clear, we do not think your siting of the Paint & Body shop would be permitted under State law, but even if you were, meaningful CEQA and NEPA review in conjunction with that process would be necessary. Please advise us of all the steps you have taken to obtain permits for the construction on the existing and expanded D22 sites.

> Finally, beyond the fact that CEQA review of the Diesel Project could not affect ConocoPhillips' right to continue operating the boilers the District's and ConocoPhillips's contentions fail for a more fundamental reason. Even if environmental review were to indicate that the project's adverse effects could be mitigated only by a condition requiring ConocoPhillips to reduce or limit its use of an individual boiler below a previously permitted level, but ConocoPhillips' vested rights precluded imposition of that condition, ***CEQA would still demand an analysis of the project's true effects. That a particular mitigation measure may be infeasible or precluded . . . is not a justification for not performing environmental review; it does not excuse the agency from following the dictates of CEQA and realistically analyzing the project's effects.***

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48 Cal.4th at 324-325 (emphasis supplied). *See also Communities for a Better Environment v. California Resources Agency*, 103 Cal.App.4th 98, 111-114 (2002) (invalidating former CEQA Guideline 15064(h) on thresholds of significance to the extent agencies could use it to rely on thresholds to evade full review of projects that might otherwise require it); *and cf. CURE v Mojave Desert Air Quality Management District*, 178 Cal.App.4th 1225 (2009).

d. <u>The SDEIS/RDEIR's Assessment of Noise Impacts to Fusion Site is Not Based on Substantial Evidence: It Relies on Thresholds of Significance that Are Legally Inappropriate, and Ignores Thresholds that Are Legally Mandated</u>

As with so many other parts of the SDEIS/RDEIR, we are unable to test the validity of the document's analysis on noise because – even if we use the FTA Manual cited – there are too many variables missing to apply the various computations provided for in the Manual. As to operational noise, for example, the document fails to provide the expected average traffic, peak traffic, traffic speed, or average number of cars.

<u>*Construction Noise.*</u> The SDEIS/RDEIR concludes, at 3-106, that impacts to residences and businesses from construction of the Division 22 alternative would not be significant.

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We are not even sure MTA is standing by the statements in its Construction Impacts section on noise, as the *Summary* Section of the SDEIS/RDEIR on the Division 22 alternative is directly to the contrary, concluding that there would be a "Significant and Unavoidable Impact." *See Fusion Figure 3d-1* below (reproducing portion of Summary Table on page 5-9 of SDEIS/RDEIR).

Environmental Criteria	Site #14: Arbor Vitae/Ballanca	Site #15: Manchester/Aviation	Site #17: Marine/Redondo Beach	Division 22: Northern Expansion
Construction (Noise)	Significant and Unavoidable Impact	Less-Than-Significant Impact After Mitigation	Less-Than-Significant Impact After Mitigation	Significant and Unavoidable Impact

Obviously, where the analysis draws one conclusion and the summary reaches the opposite one, CEQA is not complied with. It is impossible to tell whether mitigation will be required or monitored. The soundness of the analysis could not be more questionable and it is not based on substantial evidence.

If there is any doubt on the point though, we just want to look carefully at the statements made at SDEIS/RDEIR page 3-106 to point out a few fundamental problems with the conclusions they reach:

> The FTA has published construction noise criteria in Transit Noise and Vibration Impact Assessment (May 2006). Based on daytime construction activity, the FTA guidance states that residential locations should be identified where residential exposure would exceed 90 dBA L_{eq} and commercial/industrial exposure would exceed 100 dBA L_{eq}.
>
> *Construction activity would generate a* ***noise level of 91.5 dBA at 50 feet.*** **The**

> ***nearest residential land use to any Project site* is located *approximately 150 feet from the Division 22 Northern Expansion site*. *At this distance*, the construction *noise level would be 82.0 dBA*, which would be *less than the 90-dBA significance threshold*.**
> . . .

(emphasis supplied). From these statements, the SDEIS/RDEIR arrives at the conclusion that "Construction activity would not result in an adverse noise impact at residential . . . land uses under any alternative." *Id*. There are a variety of problems with the conclusion. First, by its own logic, the analysis is incorrect. The construction equipment is to be used ***50 feet*** (sometimes maybe less) from the Fusion site. ***Even assuming that the FTA Manual provides the Threshold, at 50 feet we are past it: as the paragraph itself concedes, at 50 feet, the noise level would be 91.5 dBA, and that is significant for a residential area.***[22]

Second, the FTA Manual itself notes that local land use policies are the relevant measure as to permissible construction noise impacts, and that the FTA Manual is merely providing minimum guidelines in the event that the local codes do not provide such guidance. And Hawthorne's Zoning Code does provide such guidance and it makes clear that this amount of noise is *way* over acceptable maximums. ***If*** our property were zoned C-1, the general rule regarding noise levels abutting C-1 property is that it should not exceed presumed "ambient noise base levels" by 5 dbA at any time. Those "ambient noise base levels" are -

Zone	Time	Decibels
Property zoned C-1 and all property abutting such C-1 zoned property	10:00 p.m. to 7:00 a.m.	50 dbA
Property zoned C-1 and all property abutting such C-1 zoned property	7:00 a.m. to 10:00 p.m.	60 dbA
Property zoned C-1 and all property abutting such C-1 zoned property	Anytime	65 dbA

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See Hawthorne Municipal Code, section 17.25.070, parts A, B, and C. If the base level observed is higher, it may be used. According to the SDEIS/RDEIR, the base noise level would be, at most, 61 dbA, so the construction noise anticipated would be a "prima facie violation" of the Code, *see* Municipal Code Section 17.25.050, section A.2. The only exception is for "performance of emergency work." *Id*., subsection B.1. In fact, we suspect that the noise rules for properties abutting ours are more stringent. We have been unable to access the noise standards relating to noise in land uses abutting the *Willow Glen Specific Plan* area that covers the Fusion Complex, but we suspect that the restrictions on noise would be even more stringent. *See, e.g*., Hawthorne Municipal Code sections 17.21.165 (providing lower presumed maximum ambient noise levels for condominium projects in general), 17.22.060 (providing that provisions of a Specific Plan that conflict with other zoning provisions should control in a Specific Plan area, and that if the Specific Plan is silent, the general zoning provision should control).

Operational Noise. There are a number of problems with the SDEIS/RDEIR/s assessment of operational noise impacts as well. First, just as with construction noise, local law, not the FTA Manual

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22 A few pages of additional calculations on noise are provided at the end of the traffic or Air Quality portion of Appendix C. The calculations for Fusion do not provide the missing data or make us any more comfortable. They appear to suggest that the nearest noise receptor measurements may have assumed we were actually *250* feet away. Additionally they add to our concern that all noise measurements were taken inside, that accurate train traffic data was not used for the measurements, that the incremental increase to noise or vibration from the tracks 22 feet away from homes – or anywhere on the existing D22 site – was not assessed.

should provide a threshold standard if it is more stringent. Again, that would be the provisions of the Hawthorne Municipal Code.

Second, it appears MTA skews its impacts analysis here by improperly identifying "the center of the noise-generating activity" somewhere *within a maintenance building* – not the screeching wheels and train horn tests that happen repeatedly late in the evening and in the early morning hours. SDEIS/RDEIR at 3-55 ("The majority of sources would be located within the maintenance and storage facility buildings . . . If openings are necessary, building shell and openings would be designed and oriented to control noise at nearby noise sensitive land uses.") Measurements should have been taken from the outdoor noise sources nearest to Fusion, and it appears that they were not. *See* SDEIS/RDEIR at 3-55. The SDEIS/RDEIR states that its Table 3-19 shows the projected noise levels "based on the distance from the center of the work area to the sensitive receptors." SDEIS/RDEIR at 3-55.[23] It would appear that pursuant to the FTA Manual measurements should have been taken from the center of the tracks closest to Fusion as well as from inside closed buildings. That would include the tracks that are 22 feet away from residences – tracks that are now supposed to get a lot more traffic. Even as to indoor noise we do not think it evaluated noise from the nonexistent paint & body shop.

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Third, we do not think any evaluation was done on predictable increase in outdoor noise on the tracks 22 feet away from one of the residential buildings.

One of the fundamental purposes of environmental review like this is to allow the public to test the validity of the conclusions reached in the document. We do not have all the necessary variables to do that here. We do not know how the measurements were done. We do not know the volume of train traffic at the facility's busiest hour, or how much that volume is expected to increase. We do not know the point from which noise measurements were taken or whether the facility was fully operational that day. We do not know how MTA chose to project the difference between existing operations and projected new operations. Inexplicably, *all* measurements for existing operational noise are identical to those expected with the project, for *all* the sites analyzed, in Table 3-19.

Did the MTA use a proportionate increase in assessing the machinery noise inside a building? Did it assess *any* of the noise outside?[24] Did it measure train horn test noise and screeching wheel noise – or were the horns not tested on that particular day?[25] Did it consider applying a proportional factor that reflects the ***likely increased train traffic to the site for maintenance***, not just the actual increased number of cars planned stored there (per discussion in Section 3.a of this letter, above)?

The FTA Manual states that *with increasing noise, the permissible additional noise must be more and more circumscribed.*

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23 Table 3.19 in its last row refers to "Figure 3-22, ID No. 1" as depicting the "sensitive receptor" evaluated – Fusion. We note that like all the other depictions of the D22 site, it is only the acquisition parcel that is identified as "the Maintenance Site," leaving decision makers and the public to believe a fiction - that there actually is some parcel between us and the operation and construction noise.

24 We also are suspicious of MTA's use of the term "obstructed" with regard to its assessment of noise impacts to Fusion. Even if measurements of outside noise were used, we note that the FTA Manual provides different assessment criteria for "obstructed" and unobstructed" views. As noted in Section 3.a of this letter, the SDEIS/RDEIR states that Fusion's buildings are "two stories" rather than four. *See* SDEIS/RDEIR at 3-38.

25 Although MTA does not acknowledge it in the SDEIS/RDEIR, there is a long history of noise disturbances to Fusion residents throughout the night as a result of bells and wheel and brake screeching sounds in the late night and early morning hours when traffic is the heaviest – as noted in Section 1 of this letter.

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 33

The curve defining the onset of noise impact stops increasing at 65 dB for Category 1 and 2 land use, a standard limit for an acceptable living environment defined by a number of Federal agencies. *Project noise above the upper curve is considered to cause Severe Impact since a significant percentage of people would be highly annoyed by the new noise*. This curve flattens out at 75 dB for Category 1 and 2 land use, a level associated with an unacceptable living environment.

FTA Manual at 3-5 (emphasis supplied). By the MTA's own measurements, without the project, we are already at 61 L_{dn}. Reproduced below as *Fusion Figure 3d-1* is Table 3-1 from the FTA Manual – a table included in the SDEIS/RDEIR's thresholds discussion but apparently not used.

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3-4 *Transit Noise and Vibration Impact Assessment*

Table 3-1. Noise Levels Defining Impact for Transit Projects

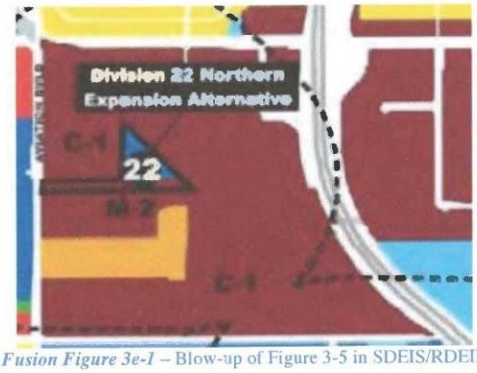
Existing Noise Exposure* $L_{eq}(h)$ or L_{dn} (dBA)	Project Noise Impact Exposure,* $L_{eq}(h)$ or L_{dn} (dBA)					
	Category 1 or 2 Sites			Category 3 Sites		
	No Impact	Moderate Impact	Severe Impact	No Impact	Moderate Impact	Severe Impact
<43	< Ambient+10	Ambient + 10 to 15	>Ambient+15	<Ambient+15	Ambient + 15 to 20	>Ambient+20
43	<52	52-58	>58	<57	57-63	>63
44	<52	52-58	>58	<57	57-63	>63
45	<52	52-58	>58	<57	57-63	>63
46	<53	53-59	>59	<58	58-64	>64
47	<53	53-59	>59	<58	58-64	>64
48	<53	53-59	>59	<58	58-64	>64
49	<54	54-59	>59	<59	59-64	>64
50	<54	54-59	>59	<59	59-64	>64
51	<54	54-60	>60	<59	59-65	>65
52	<55	55-60	>60	<60	60-65	>65
53	<55	55-60	>60	<60	60-65	>65
54	<55	55-61	>61	<60	60-66	>66
55	<56	56-61	>61	<61	61-66	>66
56	<56	56-62	>62	<61	61-67	>67
57	<57	57-62	>62	<62	62-67	>67
58	<57	57-62	>62	<62	62-67	>67
59	<58	58 63	>63	<63	63-68	>68
60	<58	58-63	>63	<63	63-68	>68
61	<59	59-64	>64	<64	64-69	>69
62	<59	59-64	>64	<64	64-69	>69
63	<60	60-65	>65	<65	65-70	>70
64	<61	61-65	>65	<66	66-70	>70
65	<61	61-66	>66	<66	66-71	>71
66	<62	62-67	>67	<67	67-72	>72
67	<63	63-67	>67	<68	68-72	>72
68	<63	63-68	>68	<68	68-73	>73
69	<64	64-69	>69	<69	69-74	>74
70	<65	65-69	>69	<70	70-74	>74
71	<66	66-70	>70	<71	71-75	>75
72	<66	66-71	>71	<71	71-76	>76
73	<66	66-71	>71	<71	71-76	>76
74	<66	66-72	>72	<71	71-77	>77
75	<66	66-73	>73	<71	71-78	>78
76	<66	66-74	>74	<71	71-79	>79
77	<66	66-74	>74	<71	71-79	>79
>77	<66	66-75	>75	<71	71-80	>80

* L_{eq} is used for land use where nighttime sensitivity is a factor; L_{eq} during the hour of maximum transit noise exposure is used for land use involving only daytime activities.

Fusion Figure 3d-1 – Table 3-1 from FTA Manual, using existing noise levels and listing increased noise levels at which project would have "Moderate" or "Severe" Impact.

e. The Discussion of Land Use Planning and Zoning Consistency Was Result-Oriented and Inadequate

The discussion of zoning and land use considerations also repeatedly confuses "the project" with the acquisition of the 3.5 acre parcel to the North of the existing Division 22 site. Below as *Fusion Figure 3e-1*, made slightly larger so that the map may be viewed, is a reproduction of a portion of the SDEIS/RDEIR's Figure 3-5:



Fusion Figure 3e-1 – Blow-up of Figure 3-5 in SDEIS/RDEIR

The small blue triangle identified as the "Division 22 Northern Expansion Alternative" is in fact zoned M-1 under Hawthorne's Zoning Map. But the brown area below it, just above the orange rectangle with the foot-shaped extension, is zoned C-1. The orange shape slightly below is Fusion, subject to the Willow Glen Specific Plan as a mixed family residential development. The brown area just above Fusion is Division 22. It is zoned C-1.

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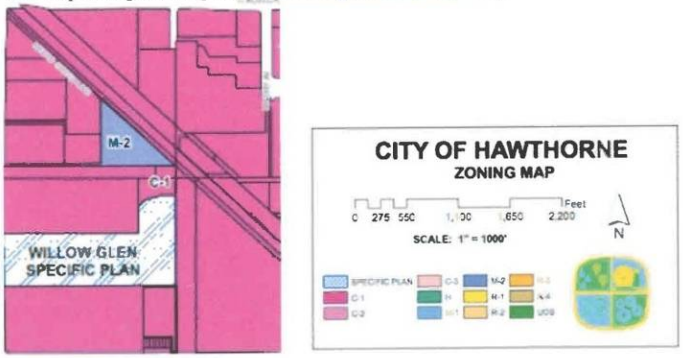
Here is roughly the same area as depicted in Hawthorne's Zoning Map, along with the key from that map as to the planning areas depicted (*Fusion Figures 3e-2 and 3e-3*):



Fusion Figures 3e-2 and 3: Portion of Hawthorne Zoning Map covering Project area and Fusion; Key to shading from map

Thus, the existing Division 22 site is within the C-1 zone (and, we are told, was in that zone when MTA acquired it). The little strip to the north of that which is part of the parcel to be acquired is also C-1. The only land zoned "industrial" (M-2) – is the small US Storage parcel itself.

Pretty much nothing MTA does on the existing Division 22 site *now* is permitted in a C-1 zone; thus, at best, these uses would be characterized as "nonconforming." *See* Hawthorne Zoning Code, section 17.25. Furthermore, Hawthorne's zoning code makes clear that increases in nonconforming uses, or additional nonconforming structures in C-1 zones, *are not to be tolerated*. *Id.*, 17.38-050.

Amazingly, even though both the present Division 22 and the new small parcel to be acquired are within the City of Hawthorne's jurisdiction, the SDEIS/RDEIR hardly bothers to discuss how the Division 22 project would affect Hawthorne's zoning, general plans and goals at all (and to the extent it does, it mischaracterizes them)[26]. We hear that MTA may be taking the position that it is not subject to municipal zoning codes (or general plans). We are not sure we agree with this legal conclusion. In any event however, for CEQA and NEPA purposes, a public agency needs to evaluate consistency with local land use laws and policies *anyway* – so as to determine whether a proposed project is compatible with the land use plans and policies. MTA and FTA most definitely have not done an adequate assessment in this regard.

Table 3-3 of the SDEIS/RDEIR flatly states that the Division 22 project has a "Land Use" that is "Industrial; Public Facilities," and that the Zoning is "M2-1, Heavy Industrial." SDEIS/RDEIR, Table 3-3, final row, at 3-8. This is incorrect as previously noted – only the US Storage site is industrial. The Table then describes as "Nearby Uses" "Office and hotel uses to the west, public facilities and residential to the south, and industrial uses to the north and east." Given that the construction of all new buildings and the bulk of the new use would be on the existing Division 22 site, this is not an adequate description of the project. Additionally, we see no further properties zoned industrial to the north or east of the US Storage site. *See* Fusion Figure 3e-2 above. If the site of the project were properly described, it would therefore read: "Offices and hotel uses to the west, residential to the south and east, with new, and far more intensive, industrial uses on a site that is not zoned for it." R

Additionally, the purpose of zoning laws and general plans is to prevent a patchwork of incompatible uses that break up a community. Hawthorne designated this area as C-1 to be a *mixed use, community,* zone. That is not what MTA's proposal would do.

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26 *See, e.g.,* SDEIS/RDEIR at 3-13 (Only statement regarding Hawthorne's General Plan is that "[t]he northern expansion of the Division 22 Maintenance Facility would provide additional capacity for the Crenshaw/LAX LRT line to operate in combination with the existing Metro Green Line. This would be consistent with the City of Hawthorne's land use policies which encourage the expansion of the LRT system"; no discussion regarding land use consistency).

See also SDEIS/RDEIR at 3-32 ("City of Hawthorne. The City of Hawthorne has a population over 90,000 residents and is made up of approximately eight residential neighborhoods. ***The Hollyglen community of Hawthorne is the nearest residential neighborhood to the Division 22 Northern Expansion Alternative and is located approximately 0.15 miles to the north across Rosecrans Avenue***. This neighborhood has no direct physical connection to the maintenance site alternatives. ***There is an approximately 280-unit multi-family residential development located adjacent to the south of the existing Division 22 Maintenance facility*** . . . the Willow Glen Specific Plan area. . . . The ***immediate area surrounding the Division 22 Northern Expansion Alternative is primarily industrial/commercial*** and the City of Hawthorne has designated the surrounding area as Freeway Commercial/Mixed Use") (Italicized statements are false).

f. The Traffic Impacts Analysis Was Flawed Both as to the Construction and Operational Phases of the Project

The SDEIS/RDEIR fails to analyze any traffic impacts from construction, and severely underestimates traffic impacts from eventual operation. For the same reason that construction and operation impacts from traffic would be significant, they also raise safety concerns that the document did not address.

The Analysis of Impacts to Traffic from Construction Did Not Rely on Any Studies Whatsoever, and Raise Serious Emergency Services Concerns. The SDEIS/RDEIR in Section 3.16.2.1 asserts that:

> ***Construction of the maintenance facility would be limited to the sites*** and would only require ***limited and temporary lane closures*** and/or reductions in parking. . . . ***[T]he sites are located in the airport area*** . . . . The number of truck trips and construction equipment needed to construct the facility would not adversely affect the surrounding traffic circulation patterns. ***Truck trips during construction are not anticipated to exceed eight per hour*** and ***would not degrade the level of service at surrounding intersections***. A traffic management plan to assure access to local roads and businesses would be implemented during the approximately two-year construction period. These effects would be temporary and no adverse effects to traffic, circulation and parking are anticipated.

SDEIS/RDEIR at 3-103.

The SDEIS/RDEIR seems only to be thinking about the sites near the airport, and flatly states that the surrounding uses are industrial. This is clearly not the case at D22.[27]

Additionally, the conclusory assertion that construction traffic during the two year period would result in only "temporary" lane closures that would not degrade intersection levels of service does not, in the case of the D22 site, have any support at all. There is nothing in the Fehr & Peers analysis in Appendix C that addresses construction impacts. All projections are for operation in year 2018, when Levels of Service are expected to improve. Traffic at the Aviation/Rosecrans intersection is presently at LOS F, as the Fehr & Peers data reflects.

The year 2018 operational analysis was based on a "per car equivalent" (PCE) total of 18 or 21 morning peak and 20 or 23 evening peak, representing a PCE change of 5-8 morning, and 9-3 evening attributable to the project.[28] *See* SDEIS/RDEIR Appendix C, at Approx 5, and 10 - 12 (Fehr & Peers Memo of Nov. 23, 2010, to Terry Hayes Associates, page 3, and Tables 2 and 3, "Traffic Data from MTA Division 22 Survey," and "Proposed Crenshaw O&M Facility Trip Generation Projections."), SDEIS/RDEIR at 3-2.[29] This seems attributable to a presumption that there will be 60 additional vehicle trips to the D22 facility as a result of its expansion, which we

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27 Furthermore, Section 3.16.2.4 claims that "…none of the four maintenance site alternatives would alter or block access to any community assets…" – again assuming the actual zoning of the D22 site and Fusion completely out of existence.

28 The consultant calculated PCE by doubling the value of a daily operational truck trip relative to a passenger car trip. It seems clear that the value of trip that was made by a hauling truck for heavy machinery, or a truck removing soil and debris, would have to be much higher.

29 The range of 3 in morning peak/evening peak projected traffic volumes appears to result from the assumption of only 60 LRVs being present at D22, an assumption that may not be accurate either in terms of what the analysis should have been under CEQA and NEPA given likely more extensive use. The assumption also may not be carried through in the existing analysis of the rest of the document.

think may be an underestimate. Nevertheless, there simply was no analysis done as to impacts on the LOS D and F intersections surrounding Fusion during peak hours as a result of construction traffic, and the evidence is quite clear that the traffic from construction will be much more intense. As noted with regard to Air Quality, the SDEIS concedes that there will be 30 worker vehicle trips, and 35 truck trips, per day, during the two year period, along with the moving in and out of 8 pieces of heavy duty construction equipment.[30] And it concedes that there will be lane closures and traffic interruptions. There is one road that exits the D22 site and it is directly adjacent to Fusion's approximately 20-foot wide emergency fire lane and not far from the only road that all 500-plus residents and visitors use to enter and exit the complex absent an emergency. The bare assumption that [1] providing notice to local businesses about traffic interruptions and [2] limiting construction traffic to "off peak hours, as feasible," SDEIS/RDEIR Impacts Summary, Mitigation Measures CON-18, and CON-21, will reduce the impact to peak traffic on Aviation is not supported by any evidence in the record. The assumption that this does not pose a threat to residents in terms of Emergency Service egress or ingress is completely without foundation.[31]

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g. ***The Cumulative Impacts Analysis Was Completely Absent***

The SDEIS/RDEIR Avoids Any Meaningful Discussion of Cumulative Impacts. The SDEIS/RDEIR relied on one programmatic EIR/EIS to assert that no cumulative impacts would occur. That document does not and cannot provide all material site-specific information on cumulative impacts for this site.

Additional Air Quality Concerns Required Cumulative Impact Analysis. We note that we are, many of us, within 500 feet of Aviation Boulevard, which is a major highway which may get traffic exceeding 100,000 vehicles per day such that analysis or risk assessment for particulate matter and DPM may have been required under DPH regulations as a separate matter of state law. Additionally, we are slightly over 500 feet from the 405 Freeway (on the other side). Regardless of whether other state health & safety laws required it, though, cumulatively, MTA should have looked at the overall Toxic Air Contaminant risk cumulatively. Many of us are sensitive receptors and the Children's Health Study recently indicated why such analysis is critical with regard to particulate matter and DPM.

We believe such analysis may be required under Federal law as well. *See* 40 C.F.R. 1502.22 (requiring specific minimum information be provided to the decision maker when there is scientific uncertainty).

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Electromagnetic Fields. Homes in the Northeastern corner of Fusion already have above normal exposure to EMFs – probably because they are nearest to the Division 22 facility tracks and to the SCE transmission lines. The highest reading there is 4.1mG, while the national average is 0.9mG. Expansion of the site and increased traffic of *electric* trains 22 feet from the affected residential building can only incrementally increase these readings. And it appears that the levels are steadily increasing. The initial reading at this peak point in 2007 was 3.8 mG. The reading at the same location in 2011 had increased to 4.1 mG. (All readings were taken by a Southern California Edison employee).

The placement of a transformer generator and an electrical substation on the facility can only worsen the situation. The SDEIS/RDEIR did not analyze or even mention this issue.

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30 Section 3.16.2.1 goes on to project eight truck trips an hour, again through the one access point onto Aviation. Imagine, if you will, morning and evening rush hour traffic on that boulevard, with lines of trucks waiting to turn into the same spot that lines of cars are waiting to exit from, all while crossing at least three lanes of bumper-to-bumper commuters. We'd really rather not.

31 It seems that the City of Hawthorne was not even consulted with regard to emergency services in this regard, as Appendix D regarding thresholds mentions other police departments, but not Hawthorne's. SDEIS/RDEIR, Appendix D, at 15-1.

Prolonged exposure to levels of 2.0mG has been considered unsafe in many studies and a similar level has been regulated as the maximum in the European Union. Even though this environmental concern exists, the MTA failed to do any kind of cumulative impact analysis.

There are available standards on the matter: the state Department of Education has enacted 5 Cal. Code Regs. 140109(c) which provides that without a Department-approved exemption, all proposed school sites shall meet certain setback requirements as measured from the edge of easement of overhead transmission lines, depending on the strength of the overhead transmission lines. The minimum setback is 100 feet. Other standards exist for protecting worker health. The health of residents who sleep in these units should be given the same consideration. T

Again, even if this is a duty that MTA can evade under CEQA, FTA cannot do so under NEPA. 40 C.F.R. 1502.22 requires a worst case analysis in the absence of scientific certainty.

4. The SDEIS/RDEIR's Economic Impacts Analysis is Wholly Inadequate

Unlike CEQA, NEPA does allow for the analysis of socioeconomic impacts when "economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment." CEQ Regulations, 1508.14. To the extent that economic analysis was called for here, the analysis done with regard to impacts from the selection of the Division 22 alternative was hopelessly flawed. The manner in which MTA and FTA reflect the costs and benefits from this alternative reflect the deep bias that at least MTA seems to have in favor of this alternative. The only economic impacts it assumed were five lost jobs and the lost property tax revenue to Hawthorne in connection with the US Storage site, in the amount of slightly over $2000 a year. It left out the damage to property values for every Fusion residence and the loss of revenue to Hawthorne and other jurisdictions in this regard (including special assessments applicable to the Specific Plan area). It left out the loss of Tenant Occupancy Tax revenue from the hotels on the other side of the Division 22 site, whose business would doubtless be affected. It left out the more than likely loss of revenue to the City of Hawthorne from licensing relating to the filming that occurs at the credit unions in the same complex. It ignored the lost business to those businesses neighboring D22 and US Storage, the lost time for all 500 + daily resident and visitor trips to Fusion as a result of traffic impacts. Etc. These are all equally relevant to any economic impacts analysis under NEPA, and they amount to much more in the way of cost. No doubt, using this as a limitation made the MTA's analysis easier, but it also leaves out MTA's very possible liability to Fusion residents for inverse condemnation for noise, nuisance and dust as a result of choosing this project site. *Cf.* CEQ Regulations at 1502.23 (If an agency does a cost benefit analysis, indirect impacts as well as direct impacts must be considered, and the environmental and public health impacts must be considered as well). And, of course, economic analysis of this kind itself is prohibited in an alternatives analysis under CEQA. U

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 39

On behalf of the Fusion Homeowners' Association Board of Directors, I thank you for this opportunity to comment on your environmental document. All questions and follow-up should be directed to Christopher Richert, member of the HOA Board of Directors, whose contact information is below:

Christopher Richert
5406 W 149th Place #8
H: 424-456-7465
C: 310-429-3382
cgrichert1126@hotmail.com

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Sincerely,

Hannah Bentley, Esq.

cc: The Honorable Maxine Waters, U.S. House of Representatives, 35th Cong'l District, California
Office of the California State Attorney General, CEQA Section
The Honorable Rod Wright, California State Senate Representative, 25th Senate District
The Honorable Steven Bradford, California State Assembly Representative, 51st Assembly District
Members of the City Council, City of Hawthorne
Representatives to the South Bay Council of Governments
Mr. Gregg McClain, Director, City of Hawthorne Planning Dept.
Mr. Steve Lantz

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 40

LIST OF ATTACHMENTS

Name / Number	Description
Fusion Attachment 1-1	History, with citations, of DEIS/DEIR on Crenshaw/LAX – covering study area that did not extend to Fusion development.
Fusion Attachment 2-1	Memo to MTA Board in Advance of December 2009 Regular Meeting, concerning proposed approval of Crenshaw/LAX DEIS/DEIR and project.
Fusion Attachment 2-2	MTA February 2010 presentation regarding maintenance site screening for original Crenshaw/LAX project; MTA – and web-posted Presentation Boards from Same Series of Presentations
Fusion Attachment 2-3	MTA December 1, 2010 Open House Flyer
Fusion Attachment 2-4	MTA February 24, 2011, Regular Board Meeting Item 12
Fusion Attachment 2-5	March 18, 2011 Memo to Expo Construction Authority Board of Directors from CEO; March 18, 2011 Press Release by Expo Construction Authority
Fusion Attachment 2-6	Memo to Board, December 2010, re Maintenance Facility Consolidated Development Strategy

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 41

FUSION ATTACHMENT 1-1

DETAILED ANALYSIS OF NOTICE TO RESIDENTS RELATING TO THE CRENSHAW/LAX DEIS/DEIR

(MEETINGS AND ANALYSIS LIMITED TO THE "STUDY AREA," AS TO WHICH FUSION WAS FAR TO THE SOUTH)

The original Crenshaw/LAX Extension DEIS/DEIR addressed alternatives for the development and construction of a new transit line along the Crenshaw Corridor. Pursuant to NEPA and rules for coordinating the NEPA process with the CEQA process, the Federal Transit Administration ("FTA") issued a Notice of Preparation for the DEIS/DEIR in the Federal Register in late 2007, and Scoping Meetings were held in community facilities located within the identified project area. *See* Notice of Intent to Prepare an Environmental Impact Statement and Proposed Transit Improvements in the Crenshaw-Prairie Transit Corridor, Los Angeles, CA, 72 Fed. Reg. 56126 (Oct. 2, 2007) ("FTA Scoping Notice") (indicating that Scoping Meetings were to be held that month in facilities in Inglewood and Los Angeles within the area to be served by the Crenshaw/LAX Extension).

The Scoping Notice described the project as "transit improvements within the Crenshaw-Prairie Corridor, which extends approximately 10 miles from Wilshire Boulevard on the north to El Segundo Boulevard on the south." FTA Scoping Notice, 72 Fed. Reg. 56126. The Notice described the "study area" as "the area extending north to Wilshire Boulevard, east to Arlington Avenue, south to El Segundo Boulevard, and west to Sepulveda and La Tijera Boulevards."

Consistent with the FTA Scoping Notice, the DEIS/DEIR itself, published for circulation in October 2009, identified the study area as extending north from El Segundo Boulevard to Wilshire Boulevard. *See* DEIS/DEIR, page 1-4 ("Figure 1-1. Study Area"), consisting of a map depicting the study area's southern boundary as El Segundo Boulevard between Sepulveda Boulevard to the west and Van Ness Ave. to the west. A small copy of the full-page graphic from the original DEIS/DEIR depicting the Study Area is reprinted below (*Fusion Figure A1-1*). The DEIS/DEIR identified and analyzed four LRT Maintenance Sites "Alternatives" and depicted them on a map; all of the proposed alternatives were within the "Study Area." DEIS/DEIR at 2-48, Figure 2-25 ("Alternative LRT Maintenance and Operational Facility Sites.") The DEIS/DEIR map of the study area is more or less identical to a graphic of the study area depicted on MTA's website regarding the Crenshaw/LAX Transit Corridor project as of the end of January of 2011. *See Fusion Figure A1-2,* below.

The map of the Study Area for the proposed project was unchanged when it was included in the Report to the MTA Board in December 2009 recommending approval of the DEIS/DEIR. *See Fusion Figure A1-3a, b,* and *c* below (reprinting pages from December, 2009 Memo to the Board recommending approval of the DEIS/DEIR).