



**DEPARTMENT OF VETERANS AFFAIRS  
Greater Los Angeles Healthcare System  
11301 Wilshire Boulevard  
Los Angeles, CA 90073**

March 19, 2012

Mr. Dennis Mori  
Executive Officer, Project Management  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 99-17-5  
Los Angeles, CA 90012-2952

Dear Mr. Mori,

The VA Greater Los Angeles Healthcare System (GLAHS) is writing in regards to the proposed Westside Subway Extension construction proposed at the West Los Angeles VA Healthcare Center (WLAHC). The GLAHS fully supports the Westside Subway Extension and the benefits it will bring to the citizens of Los Angeles and our Veterans. In the meeting held on May 6, 2011 between GLAHS, the Los Angeles County Metropolitan Transportation Authority (LAMTA), and Los Angeles County Supervisor Zev Yaroslavsky, the GLAHS agreed in concept to a "Kiss & Ride" subway station, however stressed that additional feasibility and engineering analyses be completed to mitigate the impact to Veteran patients and employees. In previous meetings with the LAMTA, it was GLAHS' impression that the Final Environmental Impact Statement would be available in January 2012. Since the report is not available for comment or review at this time, the GLAHS is writing to express our concerns with the current conceptual design plans.

The most recent conceptual design schemes presented by the LAMTA impose serious risks to WLAMC operations both during and following the Westside Subway Extension. GLAHS and LAMTA project management staff met three separate times in late 2011 (September 21, November 22, & December 8). In all of these meetings, it was apparent to GLAHS that LAMTA considered the GLAHS conceptual approval as justification for development of new design plans that include the WLAHC as the primary drilling and construction staging site for the entire project. The proposed plan to utilize the WLAHC campus as a primary drilling site and staging area never once discussed with GLAHS prior to these meetings. As stated in these meetings, the GLAHS does not agree with these proposed plans to make the WLAHC a primary staging area nor wishes to affect care to Veteran patients with a decade or more of heavy construction. The impact

In Reply Refer To: 691/00PA

Bakersfield Community  
Based Outpatient Clinic  
1801 Westwind Drive  
Bakersfield, CA 93301  
(661) 632-1800

Los Angeles Ambulatory  
Care Center  
351 E. Temple Street  
Los Angeles, CA 90012  
(213) 253-2677

Santa Barbara Community  
Based Outpatient Clinic  
4440 Calle Real  
Santa Barbara, CA 93110  
(805) 683-1491

Sepulveda Ambulatory Care  
Center and Nursing Home  
16111 Plummer Street  
North Hills, CA 91343  
(818) 891-7711

West Los Angeles  
Healthcare Center  
11301 Wilshire Boulevard  
Los Angeles, CA 90073  
(310) 478-3711

to the everyday operation of the WLAHC have to be evaluated in a comprehensive and thorough manner to ensure that Veterans receive only the best access & healthcare services that GLAHS can offer.

The most recent plan involves utilization of a number of acres of VA property (Patient Parking Lot 42) for no less than eight years for construction lay down space for the entire project. The area proposed by LAMTA would make the GLAHS the primary drilling, excavation, and storage location for the length of the project. This proposed plan is unacceptable to WLAHC operations and the use of this land was, whether for permanent or temporary use, never once discussed with GLAHS or VA leadership. The proposed conceptual design plans indicate that the GLAHS would be the last stop on in West Los Angeles and have no supporting parking areas for riders of the LAMTA Rail system. The assumptions provided by LAMTA indicate that, despite GLAHS concerns that this stop will be the last stop on the west side, LAMTA riders would not utilize GLAHS parking for personal use. GLAHS believes assumptions made by LAMTA that riders would find additional parking within community are incomplete and require further discussion with the GLAHS and local neighborhood community.

The VA Greater Los Angeles Healthcare System West LA Medical Center has over 360 acres of land and the majority of the property is under land use restrictions mandated by various Congressional laws. To date, LAMTA has proposed a parking garage, with an unspecified amount of parking spaces, as compensation for the Westside Subway stop. Considering the large impact, both permanently and throughout the duration of construction activities, GLAHS believes this to be inadequate compensation and recommends further discussions take place to alleviate these concerns.

GLAHS is one of the largest, busiest, and most complex healthcare organizations and our ability to provide Veterans continuous quality healthcare and maintain unobstructed access to this care for our patients is GLAHS' number one priority. In addition, GLAHS is dedicated to creating and maintaining a peaceful healing environment for our Veterans. The GLAHS has over \$1.4 billion in planned construction over the next decade and the proposed Westwood/VA Subway plans will only magnify the impacts to the medical center and Veterans. Therefore, further in-depth studies and evaluations of the impacts to the GLAHS and community, as a whole must occur in order to develop a comprehensive design plan.

GLAHS disagrees with the proposed plans and believes that there are multiple serious points of concern regarding access, noise, security, traffic impacts, parking impacts, and historical impacts that need further evaluation and discussion. While the GLAHS met multiple times with

LAMTA staff the aforementioned concerns were neither considered nor addressed in the LAMTA project planning process. The GLAHS fully supports the Westside Subway Extension rail station for the West Los Angeles Community however, the current proposal as outlined will severely hinder the GLAHS mission and ability to provide healthcare for Veterans of the Greater Los Angeles community. While GLAHS understands the formal environmental and public involvement process, GLAHS would like to reiterate our concerns and document the results of these meetings with the LAMTA. Please contact John Pechman, Strategic Planner at (310) 478-3711 x49799 or via email at [John.Pechman@va.gov](mailto:John.Pechman@va.gov) with any questions.

Sincerely,

A handwritten signature in cursive script, reading "Donna M. Beiter".

Donna M. Beiter, R.N., M.S.N.  
Director

April 16, 2012

Mr. Arthur T. Leahy, Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

Re: Westside Subway Entrance for Museum Row and the Miracle Mile

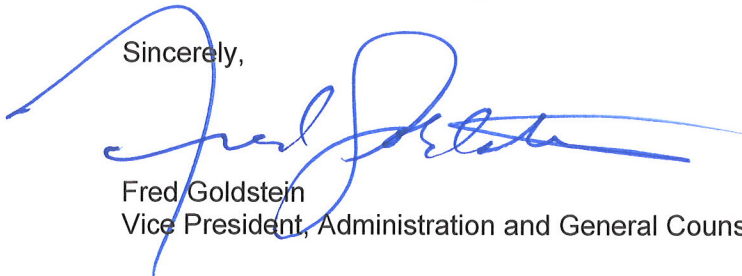
Dear Mr. Leahy:

Museum Associates has been meeting with the MTA staff and the Metro Station Area Advisory Group over the past year with respect to issues involved in the Wilshire/Fairfax station entrance location for the proposed Westside Subway Extension. The staff has previously recommended in the FEIS/FEIR that the primary entry portal for this station be located on the north side of Wilshire Boulevard, west of Fairfax, between the Johnnie's Restaurant and the 99 Cents Store.

Based on our recent conversations with MTA staff, we now mutually understand and agree that there are nearly two million visitors a year to LACMA and the Page Museum, a figure that MTA previously thought would only be attained in 2035 but, in fact, we are attaining now. In light of this information, MTA and Museum Associates now agree that it is preferable to have the main portal of the Wilshire/Fairfax subway station built across the street from the museum at Wilshire Boulevard and Orange Grove, a short block from Fairfax Avenue. Moreover, at the request of Supervisor Yaroslavsky, Museum Associates is prepared to commit, subject to the approval of our Board of Trustees, to raising the funds necessary to pay for the construction of a second entry portal to be located on the north side of Wilshire Boulevard directly across from the Orange Grove entrance. It is anticipated that this LACMA entry portal will be constructed concurrent with the Wilshire/Fairfax subway station and would not result in any increase in cost to the project. We believe that this makes the most sense from the point of view of ridership, joint development opportunities, public convenience and access to three of the county's premier cultural and natural attractions (LACMA, the Page Museum and the Rancho La Brea Tar Pits).

We look forward to working with you to provide for a station that not only serves the maximum number of riders in the most efficient manner, but that also provides the most direct access to, and truly reflects, the importance of Museum Row and the Miracle Mile as the cultural center of Los Angeles.

Sincerely,



Fred Goldstein  
Vice President, Administration and General Counsel

CC: MTA Board of Directors

Laurence S. Wiener  
City Attorney



April 18, 2012

**VIA ELECTRONIC CORRESPONDENCE AND FIRST CLASS MAIL**

Metro  
One Gateway Plaza  
Los Angeles, California 90012-2952  
Attention: Planning and Programming Committee

Chair DuBois and Committee Members:

Please be advised that the City of Beverly Hills hereby objects to any action being taken on Item Number 13 of the Planning and Programming Committee Agenda for its April 18, 2012 meeting (the "Agenda"). This item proposes actions concerning the Westside Subway Extension Project. The actions described in the Agenda would violate the California Environmental Quality Act ("CEQA"). Taking any other action would violate the State's open meetings law, the Ralph M. Brown Act (the "Brown Act").

Agenda item 13 states that the Committee will consider, among other actions, "approving the Project Definition for the Westside Subway Extension Project," which includes locating the Century City Station "under Constellation Boulevard at Avenue of the Stars with corresponding subway alignments between Beverly Hills and Westwood." In addition, the agenda states that the Committee will consider "Certifying the Westside Subway Extension Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR)" and "Authorizing the Chief Executive Officer to file a Notice of Determination with the Los Angeles County Clerk and State of California Clearinghouse."

CEQA does not allow the Planning and Programming Committee to take such actions certifying the FEIS/FEIR. Only the decision making body may do so. In this case the decision making body is the full Board of the Metropolitan Transportation Authority. Of course, the Committee also lacks the authority to approve the project definition. That authority also resides with the full Board.

In telephone conversations yesterday afternoon, Metro staff informed our office that, contrary to the plain descriptions in the agenda, the Planning and Programming Committee will not be acting on the Westside Extension Project and the related

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FEIS/FEIR. Instead, the Committee will be providing a recommendation to the full Board of Directors for its consideration. This letter therefore confirms the City's understanding that the Committee will not be taking final action on any items related to the Westside Subway Extension at its meeting today. However, such statements from staff do not cure the problems with Agenda item 13.

More disturbing than the potential failure to comply with the Authority's obligations under CEQA is the potential that the Committee will fail to comply with the State's open meetings law, the Ralph M. Brown Act. The Brown Act requires the Authority to post a proper agenda at least seventy two hours before a regular meeting of the Committee. The agenda must describe any business to be discussed or transacted. Clearly the Authority has failed to fulfill its obligation with regard to item 13 and the Westside Subway extension because the description set forth in the Agenda describes actions that cannot legally be taken by this Committee and the Committee's staff has stated that the actions described in the Agenda will not be the actions considered by the Committee.

The City of Beverly Hills hereby demands that the Authority refrain from committing a Brown Act violation and continue the consideration of item 13 until such time as a proper agenda is posted describing the actual business to be discussed and the actual actions of the Committee that are proposed.

The City would also like to emphasize that this demand is not simply for the purpose of creating delay. The City believes that it is truly inappropriate for the Committee to be considering any aspect of the Westside Subway extension today, before the Committee has received the comments from other governmental agencies and the public concerning the recently released FEIS/FEIR.

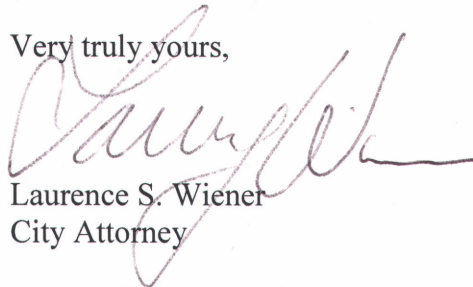
As you may know, the Authority has requested that other agencies and members of the public share their views on the Westside Subway Extension and the FEIS/FEIR by sending comments to the Authority no later than April 23, 2012. If the Committee members believe that input from other governmental agencies and the public should have any impact on their consideration of this matter, then continuing this matter until some time after April 23<sup>rd</sup> is the only responsible action. The Committee cannot possibly make an informed recommendation to the Board of Directors without considering the public comments Metro has invited. Even scheduling the Committee meeting before the end of the public comment period is an example of the disregard

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that the Authority has shown for meaningful consideration of issues important to the Beverly Hills community.

In sum, the Committee cannot take any action on Agenda item 13. Taking any action on this item as set forth in the Agenda would violate CEQA. Taking any other action would violate the Brown Act. In either case, taking action would show a blatant disregard by this Committee for the opinions of the public and other governmental agencies who have been asked to submit comments by April 23<sup>rd</sup>. In order to remedy the potential violations of law and show respect for the comments that have been invited, we strongly urge the Committee to continue Agenda item 13 to a date after April 23<sup>rd</sup> at which time the Committee can consider the item with the benefit of the input of affected public agencies and members of the public.

Very truly yours,



Laurence S. Wiener  
City Attorney

cc: The Honorable Mayor and Members of the Beverly Hills City Council  
Jeffery Kolin, City Manager  
David Mieger, Metro Project Director

# CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA  
MAYOR

April 11, 2012



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WASTEWATER ENGINEERING SERVICES DIV.  
2714 MEDIA CENTER DRIVE  
LOS ANGELES, CA 90065  
FAX: (323) 342-6210 OR 342-6211

File: SC.CE.

Ms. Jody Litvak  
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
One Gateway Plaza, MS 99-13-1  
Los Angeles, CA 90012

Dear Ms. Litvak:

## Westside Subway Extension Project – Final EIR

This is in response to your March 16, 2012 letter requesting a review of your proposed 9 mile transit project that will extend the Metro Purple Line from its current terminus at the Wilshire/Western Station west to Westwood/VA Hospital Station. The Bureau of Sanitation has conducted a preliminary evaluation of the potential impacts to the wastewater and stormwater systems for the proposed project.

## WASTEWATER REQUIREMENT

The Bureau of Sanitation, Wastewater Engineering Services Division (WESD) has conducted a preliminary study of the existing sewer lines and gauges located within the vicinity of the proposed project location.

The City of Los Angeles sewer system consists of primary sewers (16-inches and larger in diameter) and secondary sewers (less than 16-inches in diameter). The secondary sewers service the property laterals and feed into the primary sewer lines. The primary sewers are represented by the trunk, interceptor, and outfall portions of the system. These sewers ultimately convey the wastewater to the Hyperion Treatment Plant which has sufficient capacity for current and future development.

The majority of sewer lines within the proposed project area consist of secondary lines. Per our available information, the secondary reaches run along Wilshire Blvd in four segments:

- 1) between Centinela Ave and Federal Ave near the Wilshire/Bundy proposed station
- 2) between Veteran Ave and Whittier Dr near the Century City proposed station
- 3) between Schumacher Dr and Ogden Dr near the Wilshire/Fairfax proposed station
- 4) between McCadden Pl and Normandie Ave near the Wilshire/Western proposed station



The primary sewer reaches run along Wilshire Blvd in two main segments: between Sepulveda Blvd and Midvale Ave near the Century City proposed station, and between Ogden Dr and McCadden Pl near the Wilshire/La Brea proposed station. Primary outfall sewer lines share the same right-of-way as the proposed subway lines at the following locations: Lower Central Interceptor Sewer (LCIS) at Sweetzer Ave, La Cienega – San Fernando Valley Relief Sewer (LCSFVRF) at Hauser Blvd, and Wilshire-Hollywood Interceptor Sewer (WHIS) at Norton Ave. Gauging within the project area shows relatively low flows which indicates the existing sewer system might be able to accommodate future discharges related to this project.

Currently, the project description lacks sufficient information for us to conduct a detailed wastewater capacity analysis. Should more project details related to the construction dewatering or sewer discharges become available, please continue to send us information so that we may determine if a sewer assessment is required in the future.

If you have any questions, please call Kwasi Berko or my staff at (323) 342-1562.

### **STORMWATER REQUIREMENTS**

The Bureau of Sanitation, Watershed Protection Division (WPD) is charged with the task of ensuring the implementation of the Municipal Stormwater Permit requirements within the City of Los Angeles. We anticipate the following requirements would apply for this project.

### **POST-CONSTRUCTION MITIGATION REQUIREMENTS**

The project requires implementation of stormwater mitigation measures. These requirements are based on the Standard Urban Stormwater Mitigation Plan (SUSMP) and the recently adopted Low Impact Development (LID) requirements. The projects that are subject to SUSMP/LID are required to incorporate measures to mitigate the impact of stormwater runoff. The requirements are outlined in the guidance manual titled "*Development Best Management Practices Handbook – Part B: Planning Activities*". Current regulations prioritize infiltration, capture/use, and then biofiltration as the preferred stormwater control measures. The relevant documents can be found at: [www.lastormwater.org](http://www.lastormwater.org). It is advised that input regarding SUSMP requirements be received in the early phases of the project from WPD's plan-checking staff.

### **GREEN STREETS**

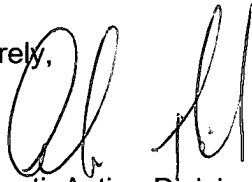
The City is developing a Green Street Initiative that will require projects to implement Green Street elements in the parkway areas between the roadway and sidewalk of the public right-of-way to capture and retain stormwater and urban runoff to mitigate the impact of stormwater runoff and other environmental concerns. The goals of the Green Street elements are to improve the water quality of stormwater runoff, recharge local ground water basins, improve air quality, reduce the heat island effect of street pavement, enhance pedestrian use of sidewalks, and encourage alternate means of transportation. The Green Street elements may include infiltration systems, biofiltration swales, and permeable pavements where stormwater can be easily directed from the streets into the parkways and can be implemented in conjunction with the SUSMP/LID requirements.

## CONSTRUCTION REQUIREMENTS

The project is required to implement stormwater control measures during its construction phase. All projects are subject to a set of minimum control measures to lessen the impact of stormwater pollution. In addition for projects that involve construction during the rainy season that is between October 1 and April 15, a Wet Weather Erosion Control Plan is required to be prepared. Also projects that disturbed more than one-acre of land are subject to the California General Construction Stormwater Permit. As part of this requirement a Notice of Intent (NOI) needs to be filed with the State of California and a Storm Water Pollution Prevention Plan (SWPPP) needs to be prepared. The SWPPP must be maintained on-site for the duration of construction.

If there are questions regarding the stormwater requirements, please call Kosta Kaporis at (213) 485-0586, or WPD's plan-checking counter at (213) 482-7066. WPD's plan-checking counter can also be visited at 201 N. Figueroa, 3<sup>rd</sup> Fl, Station 18.

Sincerely,



Ali Poosti, Acting Division Manager  
Wastewater Engineering Services Division  
Bureau of Sanitation

cc: Kosta Kaporis, BOS  
Daniel Hackney, BOS  
Rowena Lau, BOS

April 18, 2012

Via Hand Delivery

PHONE: (213) 620-0460  
FAX: (213) 624-4840  
DIRECT: (213) 621-0809  
E-MAIL: ddennis@hillfarrer.com  
WEBSITE: www.hillfarrer.com

Members of the Metro Board  
Planning and Programming  
Committee  
One Gateway Plaza  
Los Angeles, CA 90012-2952

Re: **FEIS/EIR on Westside Subway Extension Project**

Dear Planning and Programming Committee Members:

We represent the Beverly Hills Unified School District (BHUSD) in conjunction with the consideration of proposed subway alignments for the Century City Station.

When Metro released its Draft EIS/EIR in September, 2010, the Metro Board did not select an alignment for proceeding west from the Wilshire/Rodeo station. Instead, it chose to continue to study two different alignments and resulting station locations in Century City (Santa Monica Boulevard and Constellation Boulevard). As of the release of the Draft EIS/EIR, insufficient environmental analysis had been done to warrant selecting one alignment and station location over the other. "The analysis completed by the release date of the Draft EIS/EIR had not led to a conclusive recommendation regarding the feasibility of a station at this location."<sup>1</sup> According to Metro, "a Board motion was approved to request more detailed exploration of station location and alignment options at Century City."<sup>2</sup> According to Metro, "the Board decided to continue to study two station locations in Century City (Santa Monica

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<sup>1</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012, page 8-44.

<sup>2</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 1-1.

and Constellation) to address concerns raised by the community regarding the safety of tunneling under residences and schools (Constellation Boulevard Station) and locating a station close to a seismic fault (Santa Monica Boulevard Station.)”<sup>3</sup> And further Metro explained, “The Draft EIS/EIR disclosed that the Century City (Santa Monica Boulevard) Station Option alignment would run within proximity to the Santa Monica Fault....[T]he Board deferred the decision on the station site at Century City based on the uncertainty of the location of the Santa Monica Fault and the safety of constructing and operating a station at the Santa Monica Boulevard site.”<sup>4</sup>

After more than a year of studying the seismic conditions at Santa Monica Boulevard, Metro released its fault investigation studies in October 2011.<sup>5</sup> The gist of those studies was the finding of active faulting at the Santa Monica Station site. This resulted in the following recommendation of Metro staff in February 2012: “In light of the unsuitability of the Santa Monica Boulevard sites for a Century City Station due to seismic considerations, and the conclusion of the Century City Area Tunneling Safety Report that tunnels to Century City Constellation station site can be constructed safely and without adverse impact to the properties above, it is recommended that the Century City Station be sited at Constellation Boulevard.”<sup>6</sup> This recommendation was carried over into the FEIS/EIR Metro released to the public in March 2012.<sup>7</sup> According to that report:

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<sup>3</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 2-1.

<sup>4</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 2-5

<sup>5</sup> Metro, Westside Subway Extension Project, Fault Investigation Report, October 2011; Metro, Westside Subway Extension Project, Century City Area tunneling Safety Report, October 2011.

<sup>6</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 3-1.

<sup>7</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012.

**“During the Final EIS/EIR phase, Metro conducted further geotechnical studies, which identified two active fault zones in the Century City area....This investigation concluded that both the Santa Monica Fault zone and the WBHL are active fault zones....Based on the results of these fault investigations, there is clear evidence that the station locations on Santa Monica Boulevard (both east and west) would be in active fault zones and are not viable locations for station options. The station on Constellation Boulevard would not be within an active fault zone and is a viable option for a station location. In summary, both of the Century City Santa Monica Station options are located within active fault zones, but the Century City Constellation Station site is located outside zones of active faulting and can be considered a viable option.”<sup>8</sup>**

October 2011 was the first time the public had been able to see any detail seismic information about the Santa Monica Station site and February/March 2012 was the first time that Metro announced to the public what the recommended alignment would be.

Upon the release of Metro’s October 2011 seismic studies, interested public agencies, including the City of Beverly Hills and the BHUSD were able for the first time to analyze and comment upon the seismic analysis. In February, 2012, the City of Beverly Hills released an independent analysis by Exponent that concluded:

“While the Century City Area Tunneling Safety Report and Century City Area Fault Investigation Report outline many of the hazards associated

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<sup>8</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012, page 8-45.

with the tunneling project, such as fault rupture, gas explosion and ground settlement, Exponent's overarching opinion is that neither report demonstrates the presented findings as based on rigorous risk assessment(s) on these subjects. Specifically, no attempt is made to quantify or even qualitatively assess the potential risks from these scenarios. No quantitative or qualitative risk assessments have been presented to either a) estimate the likelihood of such events or b) characterize the potential severity of such events to the public.<sup>9</sup>

Based on the findings reported in the Metro-sponsored reports and supporting review comments, momentum seems to be building against construction of a station on Santa Monica Boulevard based on perceived fault rupture hazards. It is Exponent's view that the alternative Constellation Boulevard station, while generally in a more favorable location with regards to faulting issues, is instead faced with potential methane gas hazards that could represent at least as great a hazard to the public as the faulting hazards associated with the Santa Monica Boulevard station. In the absence of a quantitative risk assessment, the choice between the stations is more likely to be made on the basis of risk perception rather than risk quantification. Additional steps can and should be performed at both station locations to better quantify the seismic and gas hazards at these locations. Potential adjustments to the proposed locations should also be considered."

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<sup>9</sup> Exponent, Hazard Assessment Study Westside Subway Extension Project, Century City Area, California, February 7, 2012, page ii.

Metro did not specifically address or respond to this report in the Final EIS/EIR. The suggestions made by Exponent are largely to be covered in the expert reports now being prepared by BHUSD.

Independent seismic experts retained by BHUSD have also been performing more detailed seismic studies. As part of that process, BHUSD made requests to both the U.S. Federal Transit Administration, as the lead agency for purposes of the National Environmental Policy Act (NEPA) environmental review, and Metro, as the lead agency for purposes of the California Environmental Quality Act (CEQA) environmental review, to extend the comment period for 30 days for review under NEPA and to similarly continue the Metro Board's April 26, 2012 scheduled consideration and certification of FEIS/EIR under CEQA. BHUSD requested this modest delay to ensure that both the decision makers and the public have full access to all available, objective expert reports. Because of the technical, complicated and time consuming scientific nature of the seismic work, BHUSD's expert reports have not been completed. This request was included in a letter from BHUSD Board President Brian David Goldberg, dated April 3, 2012, to Metro explaining the need for the additional time:

"In late October of last year, Metro released to the public, without sharing with BHUSD, its Century City Area Fault Investigation Report ("Fault Investigation Report"). The scope and implications of that report have gone well beyond issues related to the Westside Extension and, left unexplored, would substantially and negatively impact the continued use of the BHHS property. The Metro Report opined as to numerous active faults, previously unknown to anyone, which Metro asserts underlie substantial portions of Century City and the surrounding area including BHHS and the El Rodeo elementary school. The Fault Investigation Report further recommended that those areas be considered for an Alquist-Priolo restriction on the construction of habitable

structures - a recommendation of regional and statewide concern. Based on the conclusions in the Fault Investigation Report, Metro staff has now recommenced against any Century City station on Santa Monica Boulevard in the draft FEIS/EIR.

As a result of Metro's Fault Investigation Report, numerous regulatory agencies, public agencies and private parties have been forced to consider the Metro Fault Investigation Report and its implications for existing structures and future projects.

The Metro Fault Investigation Report alleged serious safety issues with two BHUSD campuses. In response to the Metro Fault Investigation Reports, BHUSD immediately retained a team of prominent geologists, seismic engineers and geotechnical engineers to do a detailed seismic investigation and analysis of the area. The analysis and results of the BHUSD investigation differ substantially from the Metro investigation in depth, regulatory oversight and time invested. Crucially, BHUSD's investigation includes seismic trenching, the only recognized method to positively determine the presence of faults at the surface plus extensive testing and analysis to age area soils and potential faulting - the only methods to absolutely determine whether an area is actually underlain by active faulting - simple and straightforward steps which Metro failed to do before reaching its far-impacting conclusions.

Due to the implications of the conclusions of Metro's Fault investigation Report, BHUSD's work must ultimately satisfy numerous and various State agencies which oversee school sites, including the California Geologic Survey (CGS) which has strict regulatory oversight over all

school seismic and geotechnical analysis. CGS has been actively involved in our field investigations, has made numerous visits to our field sites, and has requested additional investigation and analysis. The United States Geologic Survey (USGS) has also made repeated visits to our field sites because of the regional and statewide implications and reviewed our analysis and conclusions. BHUSD believes that its ongoing cooperation with all involved public agencies is necessary to allow a reasoned decision making process and evaluation of the impacts of Metro's proposed Westside Extension project on its school properties. However, that process is not sensitive, or responsive, to the time constraints imposed by Metro's proposed schedule. It does not allow BHUSD to fully and completely respond to the complex issues raised by Metro. Adhering to the current time constraints as proposed will deprive the Metro Board of the opportunity to fully and completely evaluate the impacts of its proposed Westside Extension project. We are confident that this is not a result that is desirable to the Metro Board or in the interest of the public it serves.

The experts retained on behalf of BHUSD to evaluate the Metro conclusion have been working on an expedited schedule since the release of Metro's Fault Investigation Report - working through holidays and on weekends - to complete their studies as soon as possible. This work is being completed as expeditiously as reasonably practicable and was made necessary to evaluate the claims put forth by Metro which substantially impact the on-going use of the property for school purposes. While this work is necessary to assure compliance with State requirements for school properties, BHUSD has made every effort to meet Metro's deadlines at great expense to BHUSD. The

experts retained on behalf of BHUSD now advise us that they anticipate completing the necessary groundwork within the next few days (weather permitting). They expect to deliver a comprehensive fault investigation report and analysis of the Metro Alquist-Priolo recommendation to the CGS by early May. As a result of the Metro Fault Investigation Report BHUSD has incurred expenses in excess of \$1,000,000 for a comprehensive geotechnical investigation to evaluate Metro's conclusions.

BHUSD and its Board is confident that the Metro Board would benefit from the results of its investigation and understands the importance of the need for Metro to have the opportunity to consider all relevant data in making this very important decision which will impact our community. BEUSD further believes that the results of these reports, and the data and analysis contained therein, are important for the Metro Board to consider before certifying the FEIS/FEIR. Delaying the Metro Board vote until May will allow the Metro Board members and staff sufficient time to fully review and consider all reports prior to consideration of the FEIS/FEIR for the Westside Extension project. This request is reasonable in light of the scope and potential impacts of the proposed Project.

A one month extension of time is consistent with Metro practice on other projects and given the more than seven years already spent in project development will have a negligible impact. It makes no sense, after several years of developing an EIS/EIR, for the Metro Board to vote on the FEIS/FEIR without first at least reviewing the critical information that will be contained in BHUSD's reports - particularly after the District

has gone through such great lengths and incurred such expense to create this report. (See Exhibit A attached)

No response to Mr. Goldberg's letter was ever received from MTA. However, on April 6, 2012, the FTA Regional Administrator granted the requested extension "[g]iven the importance of the Project." (See Exhibit B attached)

Similarly on April 12, 2012, Congressman Henry Waxman wrote to Art Leahy, Chief Executive Officer of Metro:

"I have heard a great deal of concern from the Beverly Hills community about the proposed Century City station at Constellation Boulevard, because of the possible safety risks involved with tunneling under Beverly Hills High School. The City of Beverly Hills and the Beverly Hills Unified School District have commissioned independent studies and made a strong case that the route poses safety risks and would be less desirable for cost, speed and ridership. These concerns must be weighed carefully alongside the study commissioned by Metro which identified serious seismic concerns for alternate station locations on Santa Monica Boulevard." (See Exhibit C attached)

Similar requests for extension were contained in letters from BHUSD counsel to Metro counsel dated March 27, 2012 and April 10, 2012. The latter urged Metro to grant the extension in light of the FTA action. (See Exhibit D attached)

Nevertheless, on April 13, 2012, counsel for Metro denied the requested extension:

“I received your letter dated April 10, 2012 renewing BHUSD’s request to extend the public review period for the Westside Subway Extension Project. As you know, there are two levels of approvals required for transit projects seeking federal funding. Local approval by the MTA Board must occur before federal action by the Federal Transit Administration. The MTA Planning and Programming Committee is still scheduled to review the Projects Final EIS/EIR on April 18. The following week, on April 26 the MTA Board will consider recommended actions to approve the Project and certify the environmental documents pursuant to CEQA.” (See Exhibit E attached)

To be clear, BHUSD did not ask Metro to delay its consideration under CEQA until after the FTA approval; it only requested that Metro delay its consideration (as the FTA did) to afford time to consider all of the independent studies commissioned by BHUSD. Metro has refused to do so. Apparently, Metro intends to proceed to evaluate its compliance under CEQA before all the environmental studies are received and considered and to do so despite the fact that the FTA has determined that it needs to wait and consider these studies in order to comply with its responsibilities under NEPA.

**I. Metro has refused to extend the time for review thus undermining one of the fundamental purposes of CEQA.**

The purpose of an EIR is to give the public and governmental agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564.

In Bozung v. Local Agency Formation Commission of Ventura County (1995) 13 Cal.3d 263, 283, the court held the purpose of CEQA is:

“[N]ot to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. **At the very least, however, the People have a right to expect that those who must decide will approach their task neutrally, with no parochial interest at stake.**” (Emphasis added.)

The critical issue before the Metro Board for the two Century City optional alignments is the seismic posture of the two alternative station sites. This is an issue where testing takes weeks if not months and is not easily confined to a 30-45 day comment period. After the Draft EIR was published in September 2010, it took Metro until October/November 2011 (or more than a year) to complete and finalize its seismic studies. The interested public was only then able to see what Metro was planning and why. Evaluating and testing these studies takes weeks, if not months. Only then can the public comment as it usually would comment on a Draft EIR.

Unlike the FTA, the Metro Board has now decided to proceed with its lead agency responsibilities under CEQA without considering significant information being prepared by experts commissioned by BHUSD in response to the Metro studies. This is contrary to the purposes of CEQA and indicative of an improper commitment to a particular alignment and station location prior to full CEQA review and without fully evaluating the environmental effects.. “While an agency may certainly adjust its rules so as to set ‘[t]he exact date of approval’ ... an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR.” Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 132. The

FTA made its decision to extend the comment period so that it would have all the relevant environmental information before it makes its decision. In contrast, Metro raises the risk that the EIR will be viewed as a post hoc rationalization of the agency's action -- undermining CEQA's goal of demonstrating to the public that the environmental implications of the project have in fact been analyzed.

**II. Metro should recirculate that portion of the EIS/EIR based on significant new information,**

If significant new information is added to an EIR after it has been made available for public review, the EIR should be revised and recirculated for public comment before being certified by the lead agency. (Guidelines, § 15088.5 subd. (a); Public Resources c. § 21092.1)

“New information is ‘significant’ within the meaning of section 21092.1, only if as a result of the additional information ‘the EIR changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.’ (Accord, CEQA Guidelines...., §15088.5 subd. (a).) Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new significant impact or a substantially increased impact on the environment.” Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 447.

In this case, the formal public comment period closed in October 2010 after the publication of the Draft EIR in September 2010. Metro did not even have enough information about the seismic conditions in

the area in September 2010 to make a decision about the preferred alignment. The Project Description (specifically what the alignment would be and where the Century City station would be located) was not even established as of the draft. In Metro's own words, studies were commissioned after the close of the public comment period requesting a "more detailed exploration of station location and alignment options at Century City." Nor were the "open issues" some minor, insignificant item to be studied; for an underground subway, the final alignment and location of the stations are fundamental to the Project Description. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193.

"Additional information," particularly Metro's Fault Investigation Report, and Century City Area Tunneling Safety Report, both from October 2011, nearly a year after the formal public comment period closed under CEQA, provided significant, new information that changed the EIR in a way that deprived the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project since the formal comment period had closed over a year earlier and requires recirculation – particularly if Metro will not provide enough time for BHUSD's expert seismic information to be fully vetted and considered.

There is no argument that Metro's seismic reports merely clarify or amplify the previously circulated Draft EIR. These reports provided significant new information going to the very heart of the subway project: what the alignment would be and where the stations would be located. The faulting that Metro's reports purport to identify was not known prior to this time. Moreover, the Exponent Report and BHUSD's anticipated analysis on methane gas at Constellation raise significant new issues

calling into question which station is the less environmentally damaging. See, Pub.Res.C. §§ 21002, 21081. Mountain Lion Foundation v. Fish and Game Comm'n. (1997) 16 Cal.4th 105, 141 (A project may not be approved if less damaging, alternatives or mitigation measures are available, except where 'specific economic, social, or other conditions make infeasible such...alternatives or ... mitigation measures.")

Contrast this situation with the typical timeline under CEQA. Initially, CEQA contemplates a scoping period where the Project Description is set and studies are undertaken based upon that project description. The Draft EIR is then circulated for public review, giving all parties time to review and comment on the project. Typically, the comment period is then closed, and the lead agency proceeds to prepare the Final EIR, which is basically the draft plus the Lead Agency's response to any public comments.

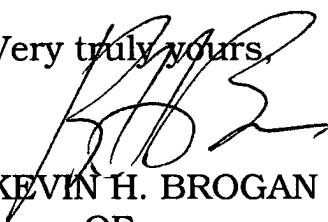
Here the public could not comment intelligently during the comment period in September-October 2010 because the Project Description was not set and the studies needed to make informed decisions about the alignment and station location had not been performed. Metro itself stated that in September 2010, "the Board decided to continue to study two station locations in Century City (Santa Monica and Constellation) to address concerns raised by the community regarding the safety of tunneling under residences and schools (Constellation Boulevard Station) and locating a station close to a seismic fault (Santa Monica Boulevard Station.)" That process took more than a year to complete.

In late 2011 and early 2012, when Metro completed its seismic studies and reached its conclusion that the Santa Monica Station was not seismically safe and the alignment would be based on the Constellation Station, it should have recirculated the draft and provided all interested parties and agencies ample time to comment on this significant new information. Because of the lack of information available to Metro at the time it released its Draft EIR and its inability to decide on a definite alignment at that time, the Draft EIR was more akin to a

preliminary scoping document providing the “options” for further study. The Final EIR, released in March 2012, which finally set the Project Description after the significant studies were completed, is more akin to the typical Draft EIR. Only after the final EIR was released did the public know the preferred route alignment and station location and only now can the public review and comment in any informed way upon the environmental impacts of that selection. Analysis of potential impacts of a project, that normally would be set out in a Draft, were, in this case, deferred to the Final EIR.

This is a classic case for recirculation; the Project Description was not set at the time Metro published its “draft” and anticipated further study which would provide significant new information upon which the entire project rested. Instead of releasing a Final EIS/EIR, Metro should have produced a revised Draft EIR related to the Century City alignment and station issues.

Very truly yours,



KEVIN H. BROGAN  
OF

HILL, FARRER & BURRILL LLP



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Unified School District

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By Messenger

Hon. Antonio R. Villaraigosa  
Chair  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 3rd Floor  
Los Angeles, CA 90012

Re: Westside Subway Extension Project

To the Los Angeles County Metropolitan Transportation Authority, Hon. Chairman and  
Members of the Board of Directors:

I am the President of the Board of the Beverly Hills Unified School District, a District which currently serves approximately 5,000 students and their families. The Beverly Hills Unified School District (BHUSD) will be substantially and negatively impacted by the Westside Subway Extension project (Westside Extension) as currently recommended by staff. By this letter, BHUSD asks the Board of Directors of the Los Angeles County Metropolitan Transportation Authority (Metro) for a continuance of the consideration of the Final Environmental Impact Report/Final Environmental Impact Statement (FEIS/FEIR) to the May 30<sup>th</sup>, 2012 Metro Board Meeting. As set forth below, there is very good cause for the Metro Board to delay its consideration of this FEIS/FEIR for Metro's proposed Westside Extension so that the Metro Board may fully and completely consider and evaluate the impacts of its proposed project.

Metro proposes to build an extension of its subway system to serve portions of the west side of the Los Angeles metropolitan area. Despite our efforts to work with Metro staff, BHUSD was surprised to learn that one of the proposed routes serving Century City in the Draft EIS/EIR for this proposed project would pass directly underneath the District's only high school—a route not identified by earlier Metro planning. This alternative route will substantially impact Beverly Hills High School (BHHS). In response to objections to the proposed alignment, the Metro Board directed staff to undertake work to characterize certain seismic and geotechnical issues related to alternative station locations on Santa Monica Boulevard which would not impact BHHS. BHUSD, in good faith, cooperated with all Metro requests to access BHUSD property but was not allowed access to the results of this additional work until it was released to the public in the fall of 2011.

In late October of last year, Metro released to the public, without sharing with BHUSD, its Century City Area Fault Investigation Report ("Fault Investigation Report"). The scope and implications of that report have gone well beyond issues related to the Westside Extension and, left unexplored, would substantially and negatively impact the continued use of the BHHS property. The Metro Report opined as to numerous active faults, previously unknown to anyone, which Metro asserts underlie substantial portions of Century City and the surrounding area

Los Angeles County Metropolitan Transportation Authority  
April 3, 2012

including BHHS and the El Rodeo elementary school. The Fault Investigation Report further recommended that those areas be considered for an Alquist-Priolo restriction on the construction of habitable structures – a recommendation of regional and statewide concern. Based on the conclusions in the Fault Investigation Report, Metro staff has now recommended against any Century City station on Santa Monica Boulevard in the draft FEIS/EIR.

As a result of Metro's Fault Investigation Report, numerous regulatory agencies, public agencies and private parties have been forced to consider the Metro Fault Investigation Report and its implications for existing structures and future projects.

The Metro Fault Investigation Report alleged serious safety issues with two BHUSD campuses. In response to the Metro Fault Investigation Reports, BHUSD immediately retained a team of prominent geologists, seismic engineers and geotechnical engineers to do a detailed seismic investigation and analysis of the area. The analysis and results of the BHUSD investigation differ substantially from the Metro investigation in depth, regulatory oversight and time invested. Crucially, BHUSD's investigation includes seismic trenching, the only recognized method to positively determine the presence of faults at the surface plus extensive testing and analysis to age area soils and potential faulting – the only methods to absolutely determine whether an area is actually underlain by active faulting - simple and straightforward steps which Metro failed to do before reaching its far-impacting conclusions.

Due to the implications of the conclusions of Metro's Fault Investigation Report, BHUSD's work must ultimately satisfy numerous and various State agencies which oversee school sites, including the California Geologic Survey (CGS) which has strict regulatory oversight over all school seismic and geotechnical analysis. CGS has been actively involved in our field investigations, has made numerous visits to our field sites, and has requested additional investigation and analysis. The United States Geologic Survey (USGS) has also made repeated visits to our field sites because of the regional and statewide implications and reviewed our analysis and conclusions. BHUSD believes that its ongoing cooperation with all involved public agencies is necessary to allow a reasoned decision making process and evaluation of the impacts of Metro's proposed Westside Extension project on its school properties. However, that process is not sensitive, or responsive, to the time constraints imposed by Metro's proposed schedule. It does not allow BHUSD to fully and completely respond to the complex issues raised by Metro. Adhering to the current time constraints as proposed will deprive the Metro Board of the opportunity to fully and completely evaluate the impacts of its proposed Westside Extension project. We are confident that this is not a result that is desirable to the Metro Board or in the interest of the public it serves.

The experts retained on behalf of BHUSD to evaluate the Metro conclusion have been working on an expedited schedule since the release of Metro's Fault Investigation Report – working through holidays and on weekends - to complete their studies as soon as possible. This work is being completed as expeditiously as reasonably practicable and was made necessary to evaluate the claims put forth by Metro which substantially impact the on-going use of the property for school purposes. While this work is necessary to assure compliance with State requirements for school properties, BHUSD has made every effort to meet Metro's deadlines at great expense to BHUSD. The experts retained on behalf of BHUSD now advise us that they

Los Angeles County Metropolitan Transportation Authority  
April 3, 2012

anticipate completing the necessary groundwork within the next few days (weather permitting). They expect to deliver a comprehensive fault investigation report and analysis of the Metro Alquist-Priolo recommendation to the CGS by early May. As a result of the Metro Fault Investigation Report BHUSD has incurred expenses in excess of \$1,000,000 for a comprehensive geotechnical investigation to evaluate Metro's conclusions.

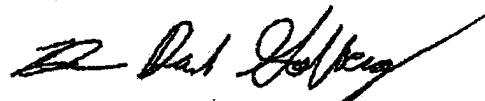
BHUSD and its Board is confident that the Metro Board would benefit from the results of its investigation and understands the importance of the need for Metro to have the opportunity to consider all relevant data in making this very important decision which will impact our community. BHUSD further believes that the results of these reports, and the data and analysis contained therein, are important for the Metro Board to consider before certifying the FEIS/FEIR. Delaying the Metro Board vote until May will allow the Metro Board members and staff sufficient time to fully review and consider all reports prior to consideration of the FEIS/FEIR for the Westside Extension project. This request is reasonable in light of the scope and potential impacts of the proposed Project.

A one month extension of time is consistent with Metro practice on other projects and given the more than seven years already spent in project development will have a negligible impact. It makes no sense, after several years of developing an EIS/EIR, for the Metro Board to vote on the FEIS/FEIR without first at least reviewing the critical information that will be contained in BHUSD's reports – particularly after the District has gone through such great lengths and incurred such expense to create this report.

The Beverly Hills Unified School District, on behalf of its students, parents and concerned citizens, respectfully requests that this Board extend the time to review, consider and comment on its proposed FEIS/EIR for the Westside Extension to its regularly scheduled meeting on May 30, 2012. Please do not hesitate to contact the undersigned if you have any questions or would like to discuss this further.

Thank you for your time and consideration.

Respectfully submitted,



Brian David Goldberg, Ph.D.  
President of the Board of Education  
Beverly Hills Unified School District

CC: MTA Board Members et al. (by Overnight Mail and/or Email as Noted)

<b>MTA ADDRESS</b>	<b>ALTERNATIVE ADDRESS</b>
Diane DuBois Second Vice Chair Metro One Gateway Plaza Los Angeles, CA 90012-2952	Vice Mayor Diane DuBois Lakewood City Council 5050 Clark Avenue Lakewood, CA 90712 E-mail: kheit@gatewaycog.org
Hon. John Fasana City Council Member, Duarte Metro One Gateway Plaza Los Angeles, CA 90012-2952	Hon. John Fasana Councilmember Duarte City Hall 1600 Huntington Drive Duarte, CA 91010
José Huizar City Council Member, Los Angeles Metro One Gateway Plaza Los Angeles, CA 90012-2952	Hon. José Huizar City Council Member, 14 <sup>th</sup> Dist City of Los Angeles 200 N. Main Street, 4 <sup>th</sup> floor Los Angeles, CA 90012
Richard Katz City of Los Angeles Metro One Gateway Plaza Los Angeles, CA 90012-2952	
Hon. Don Knabe Los Angeles County Supervisor Metro One Gateway Plaza Los Angeles, CA 90012-2952	
Julie Moore Transport. Deputy for Don Knabe Metro One Gateway Plaza Los Angeles, CA 90012-2952	

<p>Hon. Michael D. Antonovich  First Vice Chair  Los Angeles County Supervisor  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Hon. Michael D. Antonovich  Los Angeles County Supervisor  Supervisorial District #5  615 East Foothill Blvd., Suite A  San Dimas, CA 91773</p>
<p>Michael Cano  Transport. Deputy for Michael Antonovich  Supervisorial District #5  615 East Foothill Blvd., Suite A  San Dimas, CA 91773</p>	
<p>Hon. Antonio R. Villaraigosa  Chair  Mayor, City of Los Angeles  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>E-mail: <a href="mailto:boardsecretary@metro.net">boardsecretary@metro.net</a></p>
<p>Boja Leon  Transport. Deputy for Antonio Villaraigosa  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Gloria Molina  Los Angeles County Supervisor  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Nicole England  Transport. Deputy for Gloria Molina  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	

<p>Hon. Ara Najarian  Mayor, City of Glendale  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Hon. Ara Najarian  City of Glendale  613 E. Broadway #200  Glendale, CA 91206</p>
<p>Hon. Pam O'Connor  City Council Member, Santa Monica  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Hon. Pam O'Connor  City of Santa Monica  1685 Main Street  Santa Monica, CA 90407-2200</p>
<p>Hon. Mark Ridley-Thomas  Los Angeles County Supervisor  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Dan Rosenfeld  Transport. Deputy for Mark Ridley Thomas  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Mel Wilson  City of Los Angeles  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Hon. Zev Yaroslavsky  Los Angeles County Supervisor  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	

<p>Vivian Rescalvo  Transport. Deputy for Hon. Zev Yaroslavsky  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	
<p>Arthur T. Leahy  Chief Executive Officer  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Tel.: (213) 922.6888  E-mail: leahya@metro.net</p>
<p>Paul Taylor  Deputy Chief Executive Officer  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Tel.: (213) 922-3838  E-mail: taylorp@metro.net</p>
<p>Lynda Bybee  Deputy Executive Officer – Regional  Communications Programs  Metro  One Gateway Plaza  Los Angeles, CA 90012-2952</p>	<p>Tel.: (213) 922-6340  E-mail: bybeel@metro.net</p>



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

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Margaret M. Strand, Esq.  
Venable LLP  
575 Seventh Street NW  
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**APR 6 2012**

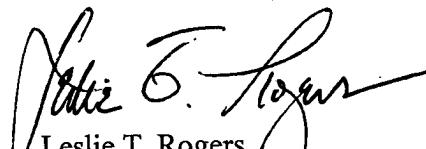
Re: Westside Subway Extension Project  
Los Angeles, California

Dear Ms. Strand:

This responds to your letter, dated March 23, 2012, in which you, on behalf of the Beverly Hills Unified School District Board of Education, requested an extension of the public comment period for the Final Environmental Impact Statement ("FEIS") for the Westside Subway Extension Project ("Project") to 60 days. Given the importance of the Project, FTA will grant the requested extension of the FEIS public comment period. That comment period will now close on May 22, 2012. The extension of the FEIS public comment period will be published in the Federal Register.

Should you wish to discuss any of these issues, please call Renee Marler, Regional Counsel, at (415) 744-2736 or Joonsik Maing, Assistant Regional Counsel, at (415) 744-2737.

Sincerely,

  
Leslie T. Rogers  
Regional Administrator

DISTRICT OFFICE:  
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LOS ANGELES, CA 90048-4183  
(323) 651-1040  
(818) 878-7400  
(310) 652-3095

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0530**

HENRY A. WAXMAN  
30TH DISTRICT, CALIFORNIA

April 12, 2012

Mr. Arthur T. Leahy  
Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, California 90012

Dear Mr. Leahy:

As a strong proponent of the Westside Subway Extension, I write to request the Metro Board's careful consideration of the Century City station location as it reviews the Final Environmental Impact Statement/Report (EIS/EIR) for the project.

As you know, subway safety has been a top priority of mine. I have heard a great deal of concern from the Beverly Hills community about the proposed Century City station at Constellation Boulevard, because of the possible safety risks involved with tunneling under Beverly Hills High School. The City of Beverly Hills and the Beverly Hills Unified School District have commissioned independent studies and made a strong case that the route poses safety risks and would be less desirable for cost, speed and ridership. These concerns must be weighed carefully alongside the study commissioned by Metro, which identified serious seismic concerns for alternate station locations on Santa Monica Boulevard.

I appreciate your assurances that safety is Metro's number one consideration. Safety should remain the top concern as the Metro Board evaluates the EIS/EIR and the Century City station. I would urge the Metro Board to only choose a route that would require tunneling under the school if there is a definitive conclusion that it is the safest alternative.

With kind regards, I am

Sincerely,



HENRY A. WAXMAN  
Member of Congress

March 27, 2012

Via Messenger

Ronald W. Stamm  
Principal Deputy County Counsel  
Transportation Division  
County of Los Angeles  
One Gateway Plaza  
Los Angeles, CA 90012-2951

PHONE: (213) 620-0460  
FAX: (213) 624-4840  
DIRECT: (213) 621-0809  
E-MAIL: [ddennis@hillfarrer.com](mailto:ddennis@hillfarrer.com)  
WEBSITE: [www.hillfarrer.com](http://www.hillfarrer.com)

Re: Westside Subway Extension – BHUSD

Dear Mr. Stamm:

On behalf of the Beverly Hills Unified School District we request Metro support a 30-day extension of the public comment period for the FEIS/FEIR. Such a request has been made directly to the Federal Transit Administration (please see attached). As you know, the BHUSD Board is nearing completion of a crucial seismic study that will prove the presence or absence of a seismic fault in Century City. The FEIS/FEIR and any federal, state or local decisions based on it should be delayed until this information is available to ensure compliance with the National Environmental Policy Act and the California Environmental Quality Act.

As noted in the letter to the FTA, the 30-day window for public comments on the FEIS/FEIR is against the public interest given the importance of these issues. Similarly, given the long time horizon for such projects, the additional 30 days will create no overriding hardship. In contrast, if Metro rushes to judgment without the complete information, the public may be harmed. It is the goal of both the state and national environmental laws to provide the decision makers with the latest, accurate and complete environmental information available. A great deal of time and expense has gone into providing this expert information, and the Metro Board deserves to have the complete picture before it decides what route alternative best serves the public interest.

Very truly yours,

KEVIN H. BROGAN  
OF  
HILL, FARRER & BURRILL LLP

cc: Lisa Korbatov  
Gary W. Woods, Ed. D., Superintendent

April 10, 2012

Via U.S. Mail & E-Mail

Ronald W. Stamm  
Principal Deputy County Counsel  
Transportation Division  
County of Los Angeles  
One Gateway Plaza  
Los Angeles, CA 90012-2951

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E-MAIL: [ddennis@hillfarrer.com](mailto:ddennis@hillfarrer.com)  
WEBSITE: [www.hillfarrer.com](http://www.hillfarrer.com)

Re: Westside Subway Extension - BHUSD

Dear Mr. Stamm:

The Beverly Hills Unified School District (BHUSD) hereby requests that Metro reconsider its denial of the BHUSD's request to extend the public comment period and consideration of the FEIS/EIR for the Westside Subway Extension Project to the May Board meeting, which was documented by your letter of April 6, 2012 .

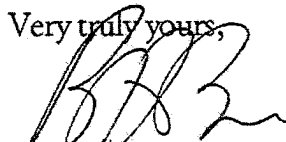
Shortly after your letter was received, the BHUSD received a letter from Leslie T. Rogers, Regional Administrator of the Federal Transit Administration (enclosed), granting BHUSD's request extend the FEIS public comment period to May 22, 2012. Based on this new development, combined with our previously stated reasoning, BHUSD respectfully requests that Metro reconsider its decision to hastily move forward with the public comment period and consideration of the FEIS/EIR for the Westside Subway Extension Project

As you know, BHUSD requested this modest delay to ensure that both the decision makers and the public have full access to all available , objective expert reports reviewing Metro's conclusions only recently released in the March 2012 FEIS/EIR. Because of the technical, complicated and time consuming scientific nature of this work, especially as it relates to the critical issue of seismic safety, the reports are still in process but will be released as soon as reasonably possible. In granting the extension, the FTA has recognized the need for a full airing of these issues given the importance of the project, especially the decision on where to locate the Century City station, in an effort to get this decision right. Indeed, as Metro has stated numerous times, there is only one chance to get this right!

In light of the FTA action, please let us know how Metro intends to proceed and whether consideration of the FEIS/EIR will now be continued to a date after May 22, 2012.

Ronald W. Stamm  
April 10, 2012  
Page 2

Very truly yours,



KEVIN H. BROGAN

OF

HILL, FARRER & BURRILL LLP

cc: Members of the Metro Board of Directors  
Gary W. Woods, Ed. D., BHUSD Superintendant



U.S. Department  
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APR 6 2012

Margaret M. Strand, Esq.  
Venable LLP  
575 Seventh Street NW  
Washington, DC 20004

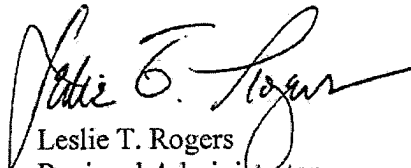
Re: Westside Subway Extension Project  
Los Angeles, California

Dear Ms. Strand:

This responds to your letter, dated March 23, 2012, in which you, on behalf of the Beverly Hills Unified School District Board of Education, requested an extension of the public comment period for the Final Environmental Impact Statement ("FEIS") for the Westside Subway Extension Project ("Project") to 60 days. Given the importance of the Project, FTA will grant the requested extension of the FEIS public comment period. That comment period will now close on May 22, 2012. The extension of the FEIS public comment period will be published in the Federal Register.

Should you wish to discuss any of these issues, please call Renee Marler, Regional Counsel, at (415) 744-2736 or Joonsik Maing, Assistant Regional Counsel, at (415) 744-2737.

Sincerely,

  
Leslie T. Rogers  
Regional Administrator



April 18, 2012

Metro  
1 Gateway Plaza, 99-22-5  
Los Angeles, CA 90012

OFFICE OF THE ADMINISTRATIVE VICE CHANCELLOR  
2211 MURPHY HALL  
Box 951405  
LOS ANGELES, CALIFORNIA 90095-1405  
PHONE: (310) 825-2411  
FAX: (310) 825-0414

ATTN: David Meiger, Project Director  
DEO, Countywide Planning & Development

RE: Westside Subway Extension Final EIR/EIS

Dear Mr. Meiger:

The Regents of the University of California, on behalf of its Los Angeles campus (UCLA), as both a Responsible and Participating Agency, are pleased that the Westside Subway Extension (WSE) project is proceeding and that the Final EIR/EIS has been released. As stated in two previous letters, dated October 8, 2007, and October 15, 2010, UCLA supports the subway extension and perceives that the project will provide access and mobility benefits to the myriad of destinations at UCLA, including the Ronald Reagan Medical Center, numerous medical facilities, several museums, and the general activities of a large, urban research university. While these future benefits are desirable, it is only through the process of collaborative planning that the potential benefits will be reached. In this light, following a full review of the EIR/EIS, UCLA makes the following comments and questions.

1. The adopted Long Range Transportation Plan lists the WSE as a phased project that will reach Westwood in 2029. The Final EIR/EIS identifies the need to obtain a temporary easement over UCLA's Lot 36 for construction laydown in order to facilitate construction of the Westwood subway station. As was stated in our October 2010 correspondence to Metro, "Although presently improved with a surface parking lot, a one-story modular building, and a three-story building, the University's long-term intent is to redevelop Parking Lot 36 with higher density uses. The campus has long considered the site to be valuable land that could accommodate high-rise development consistent with the surrounding context, though the timetable for this development has thus far not been within previous Long Range Development Plans. As a dense urban campus with limited land and a continuing need for developed space, Parking Lot 36 remains important for a variety of possible future development scenarios." Accordingly, the suggestion in the Final EIR/EIS that Lot 36 will remain unbuilt and still operating as a parking lot for decades is in error. Given the great uncertainty in the Westwood subway station construction timeframe, UCLA cannot commit to an open-ended construction easement over Lot 36 and as such, alternative construction laydown areas should be identified. Moreover, even if the duration of a proposed easement is determined acceptable by UCLA, the EIR/EIS fails to identify the location of alternate, proximate replacement parking for UCLA employees.
2. The project proposes a permanent easement over a significant portion of the southeast corner of Lot 36 (see Exhibit I) and extends to the corner of Veteran Avenue and Wilshire Boulevard, far west of the Westwood subway station box. The southwestern and southeastern corners of Lot 36 are critical corners for the University in its relationship with Westwood Village and the surrounding communities. UCLA must retain the ability to develop these corners, as they represent future gateways to the University. The EIR/EIS does not describe the purpose or need for the proposed permanent easement over Lot 36 located outside of the portal and portal equipment area. Please describe the purpose of the extended footprint of the proposed Lot 36 permanent easement area outlined on Exhibit I.

3. Regarding construction and truck traffic, please provide more detail regarding haul routes to and from UCLA property, noting in particular the ingress/egress locations to the construction laydown area. Of particular concern are potential, significant traffic delays associated with the project. Please provide a map showing the haul routes and detail the pathways of both incoming and outgoing vehicles in Westwood. Do they proceed directly to the 405 Freeway? Do they use Sepulveda Boulevard or Veteran Avenue? Please clarify.
4. We were unable to identify in the Final EIR/EIS any specific valuation assumption related to the proposed permanent and temporary construction easements on UCLA's Lot 36. Please clarify the assessment and property valuation process used in the EIR/EIS. The University would want to evaluate any assessment in terms of property value relative to potential development capacity. Also, if potential or future University development projects need substantial structural or other architectural considerations due to the sub-surface easements and restrictions, UCLA would want those costs to be considered.

UCLA appreciates this opportunity to comment on the Final EIR/EIS for the Westside Subway Extension project. We understand that the Final EIR/EIS is due to be considered by the Metro Board of Directors on April 26, 2012. While we continue to be supportive of the project as a whole and of locating a station portal on our property, the University requests additional information related to our comments and questions herein in order to allow for informed decision-making by giving due consideration to the environmental consequences of the proposed project in accordance with the California Environmental Quality Act.

Sincerely,



Jack Powazek  
Administrative Vice Chancellor  
University of California, Los Angeles

w/Attachment

cc: University of California, Los Angeles:  
Gene Block, Chancellor  
Scott Waugh, Executive Vice Chancellor & Provost  
Steve Olsen, Vice Chancellor & Chief Financial Officer  
Keith S. Parker, Assistant Vice Chancellor, Government & Community Relations  
Sue Santon, Associate Vice Chancellor, Capital Planning & Finance  
Jeff Averill, Campus Architect, Capital Programs  
E. Felicia Brannon, Executive Director, Government & Community Relations  
Brad Erickson, Executive Director, Campus Services Enterprises  
Glen Fichman, Senior Counsel, Legal Affairs  
Renée A. Fortier, Executive Director, Events & Transportation  
Dave Karwaski, Senior Associate Director, Planning, Policy & Traffic Systems

City of Los Angeles:

Paul Koretz, Councilmember 5<sup>th</sup> District, City of Los Angeles

### Exhibit I – UCLA Parking Lot 36

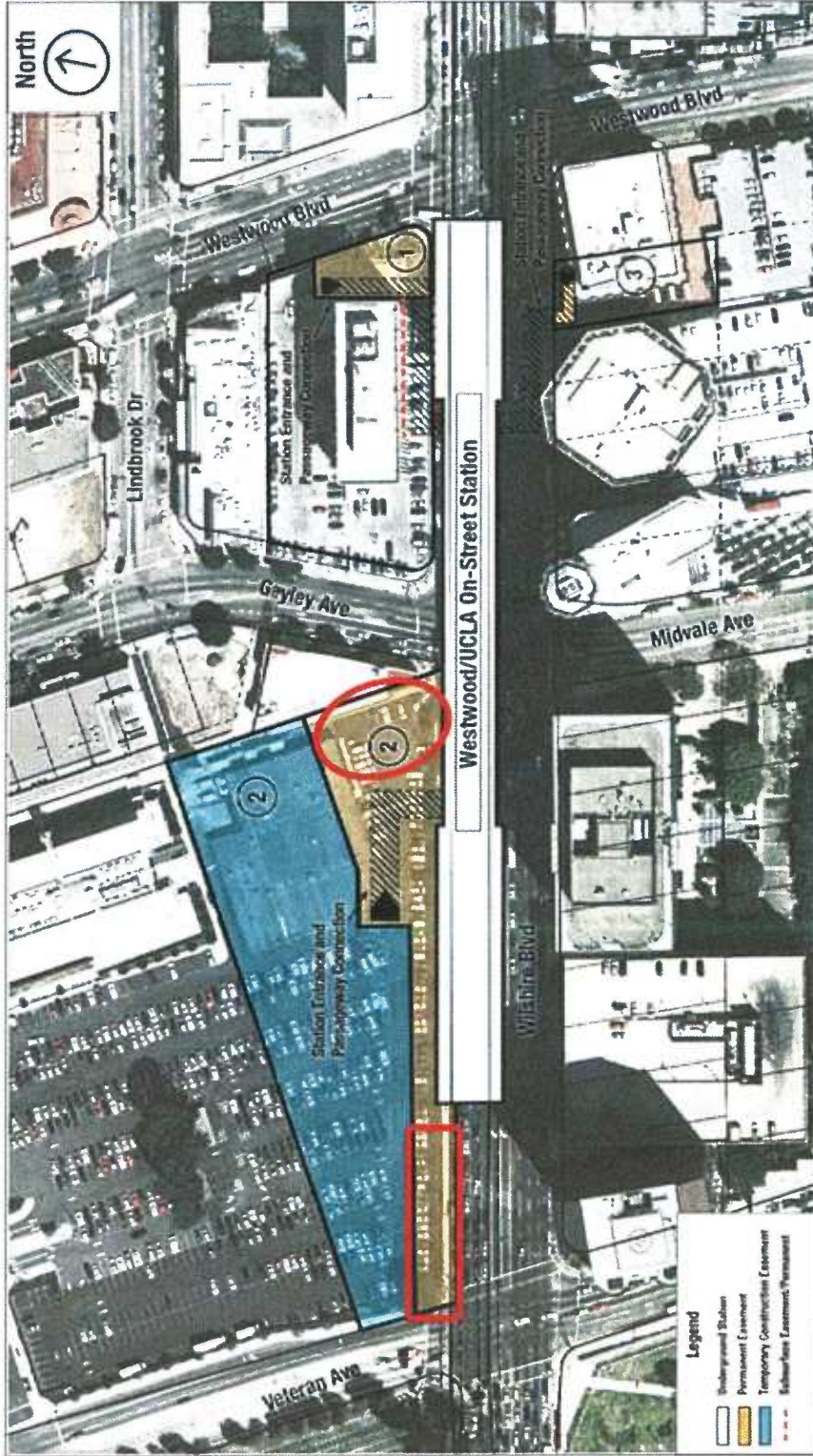


Figure C-18. Westwood/UCLA On-Street Station Split North-South Station Entrance Option



# COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400  
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998  
Telephone: (562) 699-7411, FAX: (562) 699-5422  
www.lacsd.org

GRACE ROBINSON CHAN  
Chief Engineer and General Manager

April 4, 2012

File No: 31-900.13.10J

Mr. Ray Tellis, Team Leader  
Los Angeles Metropolitan Office  
Federal Transit Administration  
888 South Figueroa Street, Suite 1850  
Los Angeles, CA 90017

Dear Mr. Tellis:

### Westside Subway Extension Project

The County Sanitation Districts of Los Angeles County (Districts) received a Final Environmental Impact Statement/Final Environmental Impact Report for the subject project on March 22, 2012. We offer the following comment:

- The proposed project may impact existing and/or proposed Districts' trunk sewers over which it will be constructed. Existing and proposed Districts' trunk sewers are located directly under and/or cross directly beneath the proposed project alignment. The Districts cannot issue a detailed response to or permit construction of the proposed project until project plans and specifications that incorporate Districts' sewer lines are submitted. In order to prepare these plans, you will need to submit a map of the proposed project alignment, when available, to the attention of Mr. Jon Ganz of the Districts' Sewer Design Section at the address shown above. The Districts will then provide you with the plans for all Districts' facilities that will be impacted by the proposed project. Then, when revised plans that incorporate our sewers have been prepared, please submit copies of the same for our review and comment.

If you have any questions, please contact the undersigned at (562) 908-4288, extension 2717.

Very truly yours,

Grace Robinson Chan

Adriana Raza  
Customer Service Specialist  
Facilities Planning Department

AR: ar

c: J. Ganz



April 23, 2012

**Submitted electronically**

David Mieger  
Metro  
1 Gateway Plaza, 99-22-5  
Los Angeles, CA 90012  
Email: [WestsideExtension@metro.net](mailto:WestsideExtension@metro.net)

**Re: Westside Subway Extension Project Final EIS/EIR**

Dear Mr. Mieger:

On behalf of the Los Angeles Conservancy, thank you for the opportunity to comment on the Final Environmental Impact Statement/Environmental Impact Report (FEIS/FEIR) for Metro's Westside Subway Extension Project. The Los Angeles Conservancy is the largest local historic preservation organization in the United States, with nearly 7,000 members throughout the Los Angeles area. Established in 1978, the Conservancy works to preserve and revitalize the significant architectural and cultural heritage of Los Angeles County through advocacy and education. We appreciate the efforts Metro has made to avoid impacts to historic resources as part of the Westside Subway Extension. However, significant adverse impacts remain, and we offer the following mitigation measures to further avoid or substantially lessen the impacts.

**I. Conduct further analysis on feasibility of retaining and incorporating Ace Gallery into the design of the Wilshire/Rodeo Station entrance**

The FEIS/FEIR identifies the Southwest corner of Wilshire Boulevard and Reeves Drive as the recommended location for the Wilshire/Rodeo Station entrance, stating "demolition of the Ace Gallery would be required for the Wilshire/Rodeo Station entrance on the south side of Wilshire Boulevard and for construction staging."<sup>1</sup> Because the Ace Gallery is an identified historic resource in the FEIS/FEIR, the Conservancy urges Metro to further analyze the potential of retaining and incorporating this building into the station entrance to ensure that all options have been explored.

The Ace Gallery's unique C-shaped form includes a central, courtyard-like space accessed from Wilshire through an expansive entrance portal integrated into the design of the building's ground level. The building's unique plan has the potential to lend itself to the design of an integrated station entrance with construction staging in the courtyard/driveway area. Alternatively, construction staging can be accommodated at the northeast corner of Wilshire Boulevard and Canon Drive identified as a potential staging site that does not contain an identified historic resource. Under the California Environmental Quality Act (CEQA), such feasible mitigation measures and alternatives that avoid or substantially lessen adverse impacts to a historic resource should be explored and incorporated before the project is approved.

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<sup>1</sup> Westside Subway Extension, FEIS/FEIR, February 13, 2012: 2-39.

## **II. Implement mitigation measures for identified historic resources consistent with other Metro rail projects**

The proposed mitigation measures for historic resources outlined in the Mitigation Monitoring and Reporting Plan included in the FEIS/FEIR is inconsistent with the construction monitoring proposed in other Metro rail projects. For instance, the Regional Connector project provides procedures for pre-construction, as well as post-construction monitoring, building protection measures and contractor requirements as part of the mitigation measures for historic resources. Such measures were also implemented for the Gold Line extension to Boyle Heights.

We urge Metro to include similar language for effective protection of resources along the preferred route of the Westside Subway Extension. In the event construction impacts do occur, we urge Metro to include a mitigation measure committing funds to repair substantial damage attributable to the construction of the Westside Subway Extension as determined through the proposed monitoring. Such repairs should conform to the Secretary of the Interior's Standards and should be overseen by a qualified architectural historian or historical architect in consultation with the City of Los Angeles Office of Historic Resources.

### **a. Mitigation measures should apply to all historic resources impacted by project construction**

The mitigation measures should be more broadly applied to not just the four identified historic resources listed in the Mitigation Monitoring and Reporting Plan: LACMA West May Company – WSE 24 (6067 Wilshire Boulevard); Union Bank Building – WSE 14 (9460 Wilshire Boulevard); Linde/Westwood Medical Plaza – WSE 10 (10921 Wilshire Boulevard; and VA Medical Center Historic District – WSE 41 (11301 Wilshire Boulevard).<sup>2</sup> A historic resource that is directly impacted by construction staging activities or station entrances, including those at secondary or alternative station entrances if and when they are constructed, should also receive a similar level of mitigation.

Furthermore, additional historic resources have been identified in both the DEIS/DEIR and FEIS/FEIR that are in close proximity to proposed station locations. These resources may also be impacted by ground-borne vibration and differential settlement from construction closer to the surface and should be called out in Metro's Mitigation Monitoring and Reporting Plan. For instance, the National Register-eligible Saban Theatre (former Fox Wilshire Theatre) at 8440 Wilshire Boulevard is located within one block of the proposed underground station at Wilshire/La Cienega, while Johnie's Coffee Shop is on the same legal parcel as the Wilshire/Fairfax station (see below). The potential impacts of their proximity to the station box should be evaluated, and adequate mitigation measures implemented if needed.

### **b. Enhance protection of historic resources directly adjacent to station entrances and construction staging areas**

The FEIS/FEIR indicates that the Beverly Hills Porsche (former Clock Market), 8425 Wilshire Boulevard, is located directly adjacent to the proposed construction staging and laydown area at the Wilshire/La Cienega station. In addition, Metro will be acquiring the corner parcel at Wilshire and

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<sup>2</sup> Westside Subway Extension, FEIS/FEIR, March 2012: Appendix I, Mitigation Monitoring and Reporting Plan, I-26.

Fairfax, on which Johnie's Coffee Shop is located, as part of the acquisitions to facilitate construction of the Wilshire/Fairfax station.<sup>3</sup> Johnie's Coffee Shop is located on the same property as the proposed construction staging and station entrance for the Wilshire/Fairfax Station. Both of these sites and other historic resources abutting construction staging and station entrances should receive additional protection to ensure that they are not adversely affected during construction and operation of the subway. This may include proper fencing, sufficient separation, and added training of construction staff, as well as structural reinforcement and protection of interiors to avoid inadvertent damage.

Additionally, as a historic resource slated for Metro acquisition, the Conservancy encourages Metro to ensure the long-term preservation of Johnie's Coffee Shop with an additional mitigation measure to either submit or support a Historic-Cultural Monument nomination application for local landmark designation. Johnie's Coffee Shop is highly significant as one of the few remaining, largely intact examples of Googie Coffee Shop architecture in Los Angeles. Local landmark designation will ensure that this historic resource receives protection from both demolition and inappropriate alterations via design review by the Los Angeles Office of Historic Resources and the Los Angeles Cultural Heritage Commission. We also seek greater clarity from Metro on the agency's future plans for Johnie's Coffee Shop including intended uses post construction, long-term maintenance and upkeep, and potential terms for sale or lease of the historic resource.

Thank you for the opportunity to comment on the Westside Subway Extension Final EIS/EIR. Please don't hesitate to contact me at (213) 430-4203 or [afine@laconservancy.org](mailto:afine@laconservancy.org) should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Adrian Scott Fine". The signature is written in a cursive, slightly slanted style.

Adrian Scott Fine  
Director of Advocacy

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<sup>3</sup> Westside Subway Extension, FEIS/FEIR, March 2012: Appendix C, Acquisitions, C-16.

Laurence S. Wiener  
City Attorney



April 23, 2012

David Mieger  
Project Manager  
Metropolitan Transportation Authority  
One Gateway Plaza, MS 99/22/5  
Los Angeles, CA 90012

Re: Westside Subway Extension Final Environmental Impact Report

Dear Mr. Mieger:

The City of Beverly Hills submits the following comments on the Final Environmental Impact Report ("Final EIR") for the Los Angeles County Metropolitan Transportation Authority's ("MTA") Westside Subway Extension ("the Project"). As detailed in this letter, the City does not believe that the Final EIR complies with the requirements of the California Environmental Quality Act, Public Resources Code section 21000, *et. seq.* ("CEQA").

Among the most prominent deficiencies in the environmental review for the Project is the decision – made after the close of the public comment period on the Draft EIR – to change the location of the Century City station, and as a result, to change the alignment of the Project through Beverly Hills. This substantial change in the Project was made without public review and without the opportunity to meaningfully comment on the underlying assumptions and analyses that allegedly informed that decision.

This change, however, is not the only substantial difference in the Project or the environmental review that appears for the first time in the Final EIR. Among other changes, the Final EIR proposes to substantially modify the construction schedule, to relocate the terminus of the first phase of construction, and to change the format of particular stations, as well as the construction technique for the tunnel in specific areas along the alignment. All of these changes will result in new and significant impacts that were not disclosed in the Draft EIR and which are not adequately analyzed or mitigated in the Final EIR.

The Final EIR, like the Draft EIR, also fails to include an adequate discussion of the significant environmental impacts of the Project. In particular, construction of the Project will result in significant and unavoidable impacts along its entire route. These impacts include significant noise, air quality, and traffic impacts, none of which are adequately disclosed or mitigated in the EIR. These impacts will, in turn, have substantial adverse economic and social impacts on the City and public services. The EIR, however, minimizes these significant impacts and as a result fails to identify feasible mitigation to address them.

Because the environmental review for the Project fails to fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of CEQA. *See* Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”). Therefore, the EIR must be revised to include a full analysis of the Project as MTA intends to approve it, and it must include adequate mitigation for all of the Project’s significant impacts. This revised EIR then must be recirculated for public review so that the public and decisionmakers have a full and fair opportunity to review and comment on the Project.

**I. MTA Must Recirculate the EIR Before it Can Certify the EIR and Approve the Project.**

**A. The Final EIR Contains Significant New Information Regarding the Relocation of the Century City Station.**

Following publication of the draft EIR in September 2010, MTA continued to conduct substantial study and analysis of potential project impacts. This information includes additional seismic studies, additional study of potential impacts to Beverly Hills High School, additional geotechnical investigation, and revised noise and vibration assessments – all specifically related to the decision to relocate the Century City station from Santa Monica Boulevard to Constellation Boulevard. According to MTA, these studies indicate that the location of the Century City station at Santa Monica Boulevard will result in significant and unavoidable impacts due to the Santa Monica Fault and the Beverly Hills Lineament. MTA proposes to avoid these impacts through the relocation of the Century City station to Constellation Boulevard. This new information, along with the other information discussed below, requires that MTA recirculate the EIR and consult with affected agencies prior to certification of the EIR and approval of the Project.

Specifically, Public Resources Code section 21092.1 provides:

when significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21105 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

CEQA Guidelines section 15088.5 similarly provides that a public agency must recirculate an EIR if “significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review . . . .” CEQA Guidelines, § 15088.5(a). In this context, “information” means “*changes to the project . . . as well as additional data or other information.*” *Id.* (emphasis added). Among other requirements, the agency must recirculate the EIR if it “is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect . . . .” *Id.*; *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1129.

The situation here is akin to that in *Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 134. In that case, a supplemental EIR developed after the close of public comment indicated that the project proponents intended to rely on a newly asserted riparian water right to serve the proposed development. *Id.* at 131-34. While petitioners did not appear to provide detailed information about impacts from this water supply, the court held that it was enough that petitioners showed that the new information “raised important water issue questions.” *Id.* at 134. The court noted that any less-than-fully developed arguments could be “attributed in part to the fact that the applicants asserted their intent to utilize their riparian rights very late in the environmental review process.” *Id.* In requiring recirculation, the court focused on the key purposes of public participation, noting that “public review provides the dual purpose of bolstering the public’s confidence in the agency’s decision and providing the agency with information from a variety of experts and sources.” *Id.* at 133 (quoting *Schoen v. Department of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556, 573–574).

Prior to issuance of the Final EIR, MTA's preferred alignment had always been through the Santa Monica Boulevard station. As a result, parties that would be affected by locating the Century City station at Constellation Boulevard did not have an adequate opportunity to comment on potential impacts associated with that location.

Moreover, a significant amount of study and debate concerning the alignment of the Project, the location of the Century City station, and the impacts associated with these issues has occurred outside of the CEQA public review process. MTA itself has continued to develop new information regarding the impacts of tunneling under Beverly Hills High School, which was not included in the Draft EIR. In fact, at its October 28, 2010 meeting the MTA Board directed staff to:

fully explore the risks associated with tunneling under the [Beverly Hills] High School, including but not limited to the following: risk of settlement, noise, vibration, risks from oil wells on the property, impact to use of the school as an emergency evacuation center, and overall risk to student faculty and community; [and]

analyze the possibility of moving the subway tunnel in order to avoid all school buildings and avoid any future plans to remodel BHHS.

MTA also directed staff to conduct additional analysis of the seismic hazards associated with the location of the Century City station at Santa Monica Boulevard.

All of this analysis, contained in documents such as the Century City Area Tunneling Safety Report, the Tunnel Advisory Panel Final Report, the Century City Area Fault Investigation Report, and the Preliminary Geotechnical and Environmental Report, has been conducted after circulation of the Draft EIR. There are, however, substantial questions as to the accuracy of these reports and whether they can form the basis for the recommendation to relocate the Century City Station. For example, Shannon & Wilson, Exponent, and PrimeSource Consulting (on behalf of the Beverly Hills Unified School District) have all concluded that MTA would need to conduct more detailed geotechnical investigation, including trenching and borings, to determine whether the Santa Monica Fault is active – the basis upon which MTA has apparently concluded the station location is not safe. *See Shannon & Wilson, Preliminary Review Comments of Century City Fault Investigation Report (2011); Exponent, Inc. Hazard Assessment Study; Westside Subway Extension Project Century City Area (2012); April 19, 2012 Report, PrimeSource Consulting (submitted by the BHUSD.)*

Exponent also noted in its assessment of safety issues related to the location of a Century City station that the EIR fails to address significant methane hazards in the vicinity of the Constellation Boulevard station and it does not identify the location of a fault line that may impact that station. Nonetheless, MTA has failed to conduct the level of review for the Constellation Boulevard station as it has for the Santa Monica station, which calls into question the validity of the Final EIR's analysis. Exponent, Inc. *Hazard Assessment Study; Westside Subway Extension Project Century City Area* (2012).

MTA continues to consider issues related to the safety of the Santa Monica Station and tunneling under Beverly Hills High School today. Yet, none of this analysis has been circulated for public review per the requirements of CEQA, which calls for public comment and agency response to comments. As a result, members of the affected public have not had an opportunity to comment on the information in the documents, to test their assumptions, and to submit additional information regarding the potentially significant impacts of the Project and alternatives to the proposed re-alignment through the Constellation station. The late release of numerous proposals, studies, and analysis subverts the fundamental purpose of public review. Courts do not look favorably on "the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final EI[R] that is insulated from public review." *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052.

A similar failing occurs with respect to the conclusion that the change in alignment will not affect Beverly Hills High School as an historic resource under section 4(f) of the US Department of Transportation Act of 1966. *See* Final EIR at 5-31. Although this report concludes that such impacts will not be significant, it has not been subject to the public comment and agency response requirements of CEQA, which are specifically designed to test the assumptions of the lead agency and to facilitate public participation in the environmental review process.

**B. The Final EIR's Selection of an Alternative Alignment Superficially Analyzed in the Draft EIR Necessitates Recirculation.**

Even if MTA could properly conclude that there are no new or expanded impacts resulting from the shift to the Constellation Boulevard Station, this assertion does not relieve MTA from its obligations to recirculate a draft EIR. The Constellation Station was evaluated in the Draft EIR as an *alternative* to the proposed project. CEQA law is clear that an EIR's analysis of an alternative can be significantly less detailed than that of the proposed project. *See, e.g.,* Guidelines § 15126.6(d) ("the significant effects of the alternatives shall be discussed, but in less detail than the significant effects of the projects

as proposed”); *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 548 (upholding the use of short descriptions and a simple matrix to evaluate alternatives); *Foundation for San Francisco’s Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 910 (“The discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness.”).

The Draft EIR in this case perfectly illustrates the effects of this lesser standard. Because the Draft EIR assumed that the Century City station would be located at Santa Monica Boulevard, it did not engage in a serious consideration of the impacts of locating the station at Constellation Boulevard. As a result, much of the information necessary to assess the impacts of changing the station and the alignment of the subway tunnels has been developed since the Draft EIR was issued.

Recirculation is required when a draft EIR fails to include sufficient information to allow informed public comment. CEQA Guidelines § 15088.5(a)(4). *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74 is illustrative. In that case, evidence submitted to the Board of Supervisors revealed that the proposed landfill project would have potentially negative impacts on a groundwater aquifer. The Court noted that the EIR contained no information about the volume of water in the aquifer. The court held that the lack of detail was fatal: “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.” *Id.* at 95.

Such is the case here. As an alternative to the proposed project, the Constellation Station was evaluated in far less detail than the proposed Project. This insufficient detail prevented the City of Beverly Hills from providing meaningful comment on the DEIR and failed to provide adequate notice that the lead agency was seriously considering the Constellation Station alternative. The EIR must be recirculated to provide the City of Beverly Hills, other agencies, and members of the public, the opportunity to meaningfully analyze the revised Project.

**C. The Final EIR Contains New Information Demonstrating that Project Impacts Will Be More Significant Than Revealed in the Draft EIR.**

**1. The changes in construction phasing constitute significant new information requiring recirculation.**

The analysis in the Draft EIR was based on a project proposal that called for the phased construction of the Project. According to the Draft, Alternative 2 would be constructed over a period of 14-19 years. Draft EIR, p. 4-253. In the Final EIR, however, MTA proposes a dramatically altered construction schedule which calls for concurrent construction of the Project. This proposed change in construction will result in more intensive impacts over a 10-year construction period. In particular, air quality impacts will be more intense and will exceed thresholds of significance set by the South Coast Air Quality Management District. For example, the Final EIR concludes that the concurrent construction scenario will result in exceedences of all of the South Coast District's thresholds, except for carbon monoxide (CO) in phase 1. (Final EIR, p. 4-349, 4-351.) These impacts will not be mitigated below a level of significance. (Final EIR, p. 4-452.) In contrast, the Draft EIR found that construction of the Project would result in the exceedence of only one threshold—nitrogen oxide (NO<sub>x</sub>).

The Final EIR also indicates that construction emissions of carbon dioxide (a greenhouse gas) will be far greater than assumed in the Draft EIR. Although the Draft estimated that construction would result in the emission of 18 metric tons/day of CO<sub>2</sub> (Draft EIR, p. 4-266), the Final EIR now indicates that those levels will be as much as 9 times—164 metric tons/day for concurrent construction and 102 metric tons per day for phased construction. Final EIR, p. 4-356. Both of the levels estimated in the Final EIR would exceed thresholds of significance for CO<sub>2</sub> emissions. (Final EIR, p. 4-357.)

The CEQA Guidelines require recirculation of an EIR when “significant new information is added to the EIR” that discloses a “substantial increase in the severity of an environmental impact . . . unless mitigation measures are adopted that reduce the impact to a level of insignificance.” CEQA Guidelines § 15088.5(a)(2). The decision in *American Canyon Community v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1075-76.<sup>1</sup> is on point. In that case, the developer modified a shopping center project by

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<sup>1</sup> Though *American Canyon* specifically addresses a supplemental EIR rather than the need for recirculation of a draft EIR, the standard for recirculation of a draft EIR prior to certification is lower than that which governs the preparation of subsequent (footnote continued)

increasing the size of one building by 6.5 percent. *Id.* at 1066, 1069, 1075. Though this minor change would increase project-generated traffic by only 2.3 percent, the court held that even this slight increase in vehicle traffic constituted “significant new or substantially increased effects on the environment.” Consequentially, the court invalidated the city’s approval. *Id.* at 1083.

Here, the Final EIR discloses substantial increases across all types of emissions, resulting in new significant environmental impacts. The Final EIR provides no mitigation measures that would reduce these increases to less than significant. Under the clear language of CEQA and the holding in *American Canyon*, the EIR must be recirculated.

In addition, regardless of construction phasing, the Final EIR reveals for the first time that the construction of the Project will result in significant noise impacts. Although both the Draft EIR and Final EIR include only a general discussion of noise impacts from construction, the Draft EIR did not indicate that noise levels would be significant. The Final EIR, however, concludes that noise impacts from construction would be significant and unavoidable, even with mitigation. (Final EIR at 4-358.)

This new disclosure reveals the Project will have significant new environmental impacts that were not disclosed in the Draft EIR. MTA’s failure to address these potential noise impacts in the Draft EIR “‘deprived the public . . . of meaningful participation’ in the CEQA discussion” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 (quoting *Laurel Heights II*, 6 Cal.4th at 1131). Therefore, MTA must recirculate a draft EIR and consider and respond to additional comments before it may approve the Project. Pub. Res. Code §21092.1; CEQA Guidelines §15088.5.

**2. Changes in the terminus of phase 1 of the project and construction techniques will result in significant impacts that have not be disclosed, analyzed or mitigated.**

The Final EIR also proposes to relocate the terminus of Phase 1 construction from the Fairfax station to the La Cienega station. This change in location will result in

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environmental review after an EIR has been certified. *Laurel Heights II*, 6 Cal.4th at 1127-28 (analogizing between standards for recirculation and supplemental review, but also finding the recirculation is required where new information renders the draft EIR “meaningless” as a public information document).

significant increases in ridership and boardings at the La Cienega station. In particular, this change will increase boardings at La Cienega from 6,500 boardings per day to over 10,000 boardings per day. This change will result in increased traffic, parking, and pedestrian safety impacts in the vicinity of the La Cienega station that were not previously disclosed. Increased ridership and people in the vicinity of the stations also has the potential to result in additional calls for service to police and fire, as well as increased traffic and noise impacts.

This change in the location of the terminus for Phase 1 also has resulted in an expansion of the staging areas with a corresponding increase in construction-related impacts that were not disclosed in either the Draft or the Final EIR.

La Cienega now will be a cross over station, resulting in 1,000 linear feet of open cut construction – a 66 percent increase over the amount of construction estimated in the Draft EIR. As detailed in the attached memorandum from Bijan Vaziri (Exhibit A), this increase will result in substantially longer closures of Wilshire Boulevard and will result in exceedences of the standards of significance for traffic impacts in the City of Beverly Hills. The additional traffic and increased street closures also will negatively affect response times by safety personnel, including the police and fire departments.

Further, the information provided in Appendix E is inadequate to disclose the potential impacts at the Wilshire/La Cienega station, where “a temporary TBM [tunnel boring machine] retrieval shaft” is contemplated. (Final EIR, Appendix E at p. E-6.) Appendix E states that “An alternative to dismantling the TBM would be to excavate a separate retrieval shaft. However, from a traffic management standpoint, due to traffic impacts at the retrieval shaft, retrieving the TBM is less desirable than dismantling it. An exception is if the TBM could be re-used immediately or in a reasonable time frame for constructing the next reach of the tunnel. In such cases, the disruption caused by retrieval from the street may be justified.” (Final EIR, Appendix E, p. E-21.)

The Final EIR admits that traffic impacts would result, but has made no effort to analyze or disclose the impacts of retrieval shafts at any location, and in particular the Wilshire/La Cienega station. Based on the information in Appendix E, it appears that retrieval shafts may be needed not only for the segment from Century City to Wilshire/La Cienega, but also for the segment from Wilshire/La Brea to Wilshire La Cienega, since MTA may decide at that time that re-use of the TBM is needed immediately or in a reasonable time frame, thus dictating retrieval rather than dismantling and removal. Based on the foregoing, the EIR fails to adequately analyze and disclose the potential impacts of TBM retrieval.

Finally, the Final EIR reveals that tunnel depths will be substantially shallower than assumed in the Draft EIR. Specifically, the Draft EIR assumed that the top of the tunnels would be 30 to 70 feet underground. (Draft EIR, p. S-14.) The Final EIR, however, indicates that the *track* depths will be between 35 and 100 feet below ground. (Final EIR, p. S-6.) Given that the top of the tunnels must be at least 20 feet above track depths, this is a significant change from the Draft EIR. Yet, there is no information in the Final EIR about where tunnels will be more shallow and how and whether those shallower depths will result in significant noise, vibration or safety impacts.

## **II. The EIR Fails to Consistently and Accurately Describe the Project.**

In order for an environmental document to adequately evaluate the adverse impacts of a project, it must first provide a comprehensive description of the project itself. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713, 730 (1994), quoting *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977). NEPA similarly requires an accurate and consistent project description in order to fulfill its purpose of facilitating informed decision-making. 43 U.S.C. § 4332(2)(C). Courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal.App.4th at 730.

Accordingly, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* (citation omitted). While extensive detail is not necessary, the law requires that EIRs describe proposed projects with sufficient detail and accuracy to permit informed decision making. *See* CEQA Guidelines, §15124 (requirements of an EIR). The EIR here fails to meet this basic threshold. In particular, the switch in project phasing, alternative project alignments, and multiple alternative station locations from the Draft EIR to the Final EIR has resulted in an inconsistent and shifting project description. As detailed above, these multiple changes in the Project have deprived the public of the opportunity to meaningfully comment on the Project and its environmental impacts.

In addition, the EIR is unclear and inconsistent about several aspects of the Project, such as the depth of the tunnels, the construction techniques that will be used in specific areas, the duration of construction, and the location of station entrances. For example, as mentioned above, there appears to be a substantial difference in the tunnel depth between the Draft and Final EIR. While the noise analysis assumes that subway tracks are located a minimum of 50 feet below grade, the Final EIR indicates track depths

may be as shallow as 35 feet. The depth of the tunnels and tracks affects noise and vibration impacts, yet the shifting description of the Project makes it impossible to assess those impacts or where they will occur. Moreover, there is no evidence that the EIR has evaluated the noise impacts associated with locating the tracks at a much more shallow depth. As such, the project description must be revised to clearly and consistently describe the Project, and that description must be used for all of the impact analyses.

There is also an inconsistency in the length of construction activities. For example, the Draft EIR assumed tunnel construction would last 6-10 months (Draft EIR, 4-255), while the Final EIR assumes it will extend for a period of 8 months to a year per mile of tunnel. Final EIR, 4-333. The length of the construction period will increase construction related impacts, yet it is unclear whether the Final EIR took into account the longer construction periods when estimating project impacts.

### **III. The EIR Does Not Adequately Analyze Project Impacts.**

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* CEQA Guidelines section 15126.2(a) (An EIR *shall* identify and focus on the significant environmental effects of the proposed project) (emphasis added). To effectuate the fundamental purpose of CEQA to "inform the public and responsible officials of the environmental consequences of their decisions before they are made, (*Laurel Heights II*, 6 Cal.4th at 1123), an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990).

As explained below, the EIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow MTA and the public to make informed decisions about the Project. Rather, the EIR contains only a generalized discussion of potential project impacts related to the Project as a whole. Although the Project and its construction will result in substantial localized impacts, the EIR contains little if any analysis of impacts on a local level. As detailed below, the EIR fails to comply with the requirements of CEQA.

#### **A. The EIR Fails to Adequately Address Significant Construction-Related Impacts.**

The EIR's discussion of construction-related impacts is particularly deficient. Although Project construction will occur over a ten-year period under even the most compressed schedule, the EIR fails to seriously address the significant impacts that will result from such an extended construction period. The Southwest Beverly Hills

Homeowners Association has raised several questions that remain unanswered in the Final EIR (a copy of these questions in their entirety is attached as Exhibit F). For example, where will traffic be diverted when the intersections of Wilshire and Beverly, Rodeo, Canon, El Camino, and La Cienega are closed or partially blocked? Will traffic be diverted into residential areas during those weekends? Were economic studies conducted regarding the loss of property value, transient occupancy taxes, and sales tax revenue? What are the noise and access issues that could adversely affect guests of the Beverly Wilshire, Montage, and Thompson Hotels?

Moreover, City planning staff has substantial experience reviewing construction projects and their environmental impacts, including noise, traffic, and air quality impacts. In reviewing the EIR, and as discussed more fully below and in their reports (attached as Exhibits A through D), City staff has determined that the construction-related impacts of the Project will be far greater than disclosed in the EIR.

**1. The analysis of construction related noise impacts is inadequate.**

First, the EIR fails to include sufficient information to assess the impacts of construction on a local level. For example, with respect to noise, the EIR only indicates that construction noise levels will be significant. Final EIR at 4-358. However, there is no information about existing noise limits, the noise levels that actually will occur with construction, where and when construction noise levels will exceed levels set by local ordinances, and how to mitigate such significant noise impacts. It is not enough that the Final EIR concludes that construction related noise impacts will be significant. The EIR must disclose how adverse those impacts will be. *Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818 (the conclusion that a project will have significant and unavoidable impacts is not sufficient; “[w]hat is needed is some information about how adverse the adverse impact will be”).

A direct and foreseeable consequence of failing to detail the significant impacts is that the EIR does not and can not recommend appropriate mitigation without a more detailed discussion concerning impacts. For example, the EIR notes that haul trucks will operate in the evening and night-time hours and will pass through several residential areas. (Final EIR, p. 3-100, 3-104.) Yet, the EIR contains no analysis of the actual noise impacts that such truck traffic will cause during the quiet evening and night-time hours nor does it adequately mitigate such impacts. The sole mitigation measure to address these impacts is the use of “designated haul routes.” (Final EIR, p. 3-109-110.) Given that the EIR already has indicated that these haul routes will impact residential

neighborhoods and uses, it does not appear possible that the designation of these routes would avoid or mitigate potentially significant noise impacts.

As explained by the City's Director of Community Development in her memorandum (attached as Exhibit B), an adequate noise analysis must include, at a minimum, a thorough description of the duration and amplitude of the exposure at a particular receptor. The evaluation should include the locations of sensitive receivers in the Project area, a description of existing ambient noise levels at these sensitive receivers, predicted noise levels during each phase of construction at the sensitive receivers, and a comparison of noise levels during construction to the existing ambient noise levels. In addition to identifying residences, the revised document must identify each motel and hotel, library, religious institution, hospital, nursing home, active sport area, picnic area, recreation area, playground, and park that would be potentially affected by Project-generated construction noise. It should also establish appropriate significance thresholds to judge if the increase in noise levels would be substantial, and determine whether noise levels would substantially increase. Without a thorough and project-specific evaluation of the construction noise environment, it is impossible to conclude with any accuracy whether temporary or periodic increases in ambient noise levels would be significant.

Based on the experience of City staff, a proper analysis of noise impacts would demonstrate that a construction project of this magnitude will result in noise levels that far exceed City noise standards. (See Exhibit B.) A 2004 EIR that analyzed the construction of a hotel, public garage and gardens building that is located immediately adjacent to the proposed Rodeo Drive subway station site concluded that nighttime construction noise would result in increases of 17 dBA  $L_{eq}$  at one residential location, 13.7 dBA  $L_{eq}$  at another residential location and 12.3 dBA  $L_{eq}$  at a third residential location. Each of these impacts substantially exceeded the City's significance threshold of an increase in ambient noise level of 5dBA. The City recently completed EIRs on two construction projects along Wilshire Boulevard less than one mile from the Rodeo Drive Station and approximately two miles from the proposed La Cienega station. In each case, the City found that construction activities would have a significant noise impact. In both cases, the City Council's environmental findings concluded that exterior construction outside hours specified in the City's noise ordinance (8:00 a.m. to 6:00 p.m.) would result in a significant environmental impact due to the proximity of sensitive receptors. Nighttime construction is anticipated at both stations located in Beverly Hills.

The EIR also does not adequately analyze vibration impacts. The City estimated that construction of a hotel and construction of a condominium building along Wilshire Boulevard would generate vibration levels of up to 75 velocity decibels (VdB) at one

hundred feet from the source. These construction activities did not involve the magnitude of excavation contemplated by subway station construction and tunneling. However, even these construction activities exceeded the 72 VdB Federal Railroad Administration threshold for residential uses, even for such uses located more than 100 feet from the source. Residential uses exist within one hundred and fifty feet of Wilshire Boulevard and in some instances are immediately adjacent to the proposed subway tunnel route, but the EIR contains no quantified analysis of the vibration impacts during construction to any residential or other sensitive uses in the City. Additionally, one elementary school has classrooms located within approximately 150 feet of Wilshire Boulevard and, of course, tunneling is proposed directly beneath Beverly Hills High School. To reduce these impacts, the City typically would include mitigation measures such as:

- Prior to issuance of grading permits, the applicant shall submit a Construction Management Plan satisfactory to the City's Director of Community Development and the Building Official. The Building Official shall enforce noise attenuating construction requirements. The Construction Management Plan shall include, but not be limited to, the following:
  - Excavation, grading, and other construction activities related to the Project shall be restricted to the hours of operation allowed under Section 5-1-206, Restrictions on Construction Activity in the City Municipal Code. Any deviations from these standards shall require the written approval of the Community Development Director.
  - Stockpiling and vehicle staging areas shall be located as far away from occupied residences as possible, and screened from these uses by a solid noise attenuation barrier. Noise attenuation barriers constructed to the specifications necessary to reduce noise levels at adjacent residential structures to no greater than 5 dbA over ambient at any time.
  - Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) sufficient to achieve the standard specified above shall be used along all the boundaries of all construction staging sites and station construction sites during.
  - All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from residential uses as possible. If this is not possible the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development to achieve the standard above.

- Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).
- Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at Beverly Hills schools. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no construction activity generating the high noise levels is undertaken during any designated testing periods at the schools.

Furthermore, the City's construction regulations prohibit pile driving. This minimal mitigation measure to reduce noise and vibration impacts has not been incorporated into the EIR and the City requests that this feasible mitigation measure be imposed as well as each of those listed above.

Even if these mitigation measures would not entirely reduce the Project's significant construction noise and vibration impacts, MTA must adopt them and ensure that they are implemented over the lifetime of the Project. *See* section III, *supra*.

**2. The EIR does not contain an adequate analysis of traffic impacts from Project construction.**

The EIR also fails to adequately analyze transportation-related impacts from construction. The EIR contains no specific discussion of how road closures will impact levels of service at any of the City streets to be affected. Moreover, it fails to include traffic counts before and after construction begins, does not identify City streets that will be impacted by diverted traffic, and does not identify how such impacts will be avoided or mitigated. Instead, the Final EIR indicates that any analysis of potential traffic impacts and mitigation will be deferred to a future date. (Final EIR at 3-103.) Specifically, the Final EIR indicates that such critical information as traffic projections, the number of haul trucks, street closures, and levels of service at specific intersections will be developed in the future. (Final EIR, p. 3-103.) All of this information is essential to determining the extent of the Project's impacts, yet MTA improperly has deferred this analysis and potential mitigation to a future date. This deferral of mitigation is not permitted under CEQA.

Although the EIR fails to conduct this analysis, City staff has substantial experience assessing the traffic-related impacts of construction. Based on this experience, and as discussed in the attached memorandum from the City's Traffic

Engineer (Exhibit C), the City has determined that a project of this magnitude clearly will have significant queuing impacts on arterial streets that will, in turn, also result in significant impacts on residential streets. The impacts on residential streets has been completely ignored in the EIR.

**3. The EIR does not include an adequate analysis of air quality impacts from Project construction.**

As detailed above, the switch from phased to concurrent construction will result in significant new air quality impacts that were not disclosed in the Draft EIR. Construction of the Project also will result in significant, local air quality impacts that have not been disclosed, analyzed, or mitigated in the EIR. It is not enough that the Final EIR discloses that air pollution emissions from the Project as a whole will be significant under the concurrent construction scenario (and will be significant for emissions of nitrogen oxides under the phased construction scenario.) Since some air pollutants have particularly local impacts, the EIR must also evaluate the impacts of air pollutants related to construction on locally affected populations.

Among other deficiencies, the EIR fails to assess the local air pollution emissions associated with intense, street-level construction, such as that associated with the La Cienega station. This failure is particularly serious with respect to the emission of toxic air contaminants, diesel particulate, and carbon monoxide – all of which are pollutants that will impact the health of nearby residents, employees, and other sensitive receptors, such as students.

For example, the EIR contains no discussion of the health impacts of PM 2.5, a particulate pollutant associated with the use of diesel fuel. The serious health risks associated with PM<sub>2.5</sub> exposure are well-documented. In its final rule designating attainment and non-attainment of PM<sub>2.5</sub> standards, the U.S. EPA noted the “significant relationship between PM<sub>2.5</sub> levels and premature mortality, aggravation of respiratory and cardiovascular disease . . . , lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia,” particularly among “older adults, people with heart and lung disease, and children.” *See* Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards, 70 Fed. Reg. 944, 945 (Jan. 5, 2005) [Vol. 2, Ex. 28-e].

Similarly, emissions from construction equipment and vehicles generally contain toxic air contaminants that are a significant threat to public health. Toxic air contaminants are associated with increased risk of asthma, cancer, and respiratory irritation and illness. South Coast Air Quality Management District, Air Quality Issues in

School Site Selection. Air Districts currently recommend that lead agencies assess the public health impacts associated with toxic air contaminants for sensitive receptors that are located within 1000 feet of a source of such contaminants. *Id.* at p. ES-4. There are hundreds of residences, several hotels, and one elementary school within 1000 feet of station construction proposed for Beverly Hills. Yet, the EIR here contains no discussion of these impacts or affected uses near construction zones. As a result, the EIR has failed to analyze a potentially significant impact of the Project itself, as well as cumulative air quality and health impacts that would result when the emissions from such a long-term and substantial construction project are added to already significant sources of pollutants, such as traffic along Wilshire Boulevard.

Not only did the EIR fail to address potential health impacts to these sensitive receptors, it also failed to address the additional impacts associated with the decision to modify the Rodeo Station configuration by adding a double crossover to the east end of that station to “optimize operations.” This change in the Project brings the station construction within 1000 feet of Beverly Vista elementary school. Therefore, MTA must revise the EIR to address increased health risk associated with construction and the revised EIR must be recirculated for public review.

The City’s experience with environmental review of construction projects demonstrates that, if MTA were to conduct the environmental review required here, the level of construction proposed will result in significant health and air quality impacts. As noted in the attached memorandum from the City’s Director of Community Development (*see Exhibit B*), less significant construction projects within the City, located on or adjacent to Wilshire Boulevard, have generated significant construction related air quality impacts. Typical mitigation measure to address such projects (although not necessarily to a level of insignificance include:

1. The construction area and vicinity shall be swept (preferably with water sweepers) and watered at least twice daily. Site-wetting shall occur with sufficient frequency to maintain 10 percent surface soil moisture content throughout all earth-moving activities. At least 80 percent of all inactive disturbed surface areas shall be watered on a daily basis when there is evidence of wind-driven fugitive dust.
2. All unpaved roads, parking and staging areas shall be watered at least once every two hours during active operations.
3. Site access points shall be swept or washed within thirty minutes of visible dirt deposition.

4. On-site stockpiles of debris or dirt shall be covered or watered at least twice daily.
5. All haul trucks hauling soil, sand and other loose materials shall either be covered or maintain two feet of freeboard.
6. All haul trucks shall have a capacity of no less than twelve and three-quarter (12.75) cubic yards.
7. Operations on any unpaved surfaces shall be suspended when winds exceed 25 miles per hour.
8. On-site-traffic speeds on unpaved areas shall be limited to 15 miles per hour.
9. Operations on any unpaved surfaces shall be suspended during first and second stage smog alerts.
10. All construction equipment shall be tuned as often as necessary to ensure its cleanest and most efficient operation.
11. Prior to leaving the site, the undercarriages of hauling trucks leaving the site shall be cleaned (e.g. washed down), and all soil loads shall be covered to prevent the spillover of materials from the construction site onto the adjacent streets.
12. The contractor shall prepare a Construction Traffic Emission Management Plan satisfactory to the City of Beverly Hills to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes.
13. The contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.
14. The contractor shall use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment.
15. The contractor shall use electric welders to avoid emissions from gas or diesel welders.
16. The contractor shall use electricity or alternative fuels rather than diesel-powered or gasoline-powered generators.

17. The contractor shall install wind monitoring equipment on each construction site, and suspend grading activities when wind speeds exceed 25 mph per Southern California Air Quality Management District (SCAQMD) guidelines.
18. The contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).
19. The contractor shall replace ground cover in disturbed areas as quickly as possible.
20. Metro shall retain a third-party air quality consultant to conduct continuous monitoring of the PM10 (dust) concentrations during the project demolition, excavation and grading phases of project construction to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using Dustrak™ aerosol monitors or other similar monitoring networks and shall meet the following requirements:
  - The third-party consultant shall be approved by the City of Beverly Hills' Director of Community Development and the Beverly Hills Unified School District.
  - Costs for the monitoring network and tests by the third-party consultant shall be borne by Metro.
  - Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the project are selected. The locations shall be selected in order to monitor the project's contribution to ambient PM10 concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near each construction site in the City and a second downwind monitor shall be located in an area beyond the construction area boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the project site. All locations in the City of Beverly Hills shall be approved by the third-party air quality consultant and the City of Beverly Hills' Community Development Director.
  - The monitoring network shall include at least one anemometer to measure wind speeds and directions.

- Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.
- Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).
- Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate the Distract monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.
- The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.
- Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM10 concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and Grading phases of project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, Metro, and the contractor on a secured internet website. The general public shall have access to 5-hour rolling average PM10 concentrations on a publicly accessible web-site.
- Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM10 thresholds are exceeded.

- All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific -corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant, the City of Beverly Hills and Metro. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.
  - Metro and the contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but at not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. Metro and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition. The project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the project site do not go beyond the construction site.
21. The contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A).

**4. The EIR's discussion of the length of potential construction and its impacts on local communities is confusing and inconsistent.**

The Final EIR indicates that the time period for street closures will be 85 to 140 days for installation of decking and another 85 to 140 days for removal of decking. (Final EIR, table 3-19.) The shorter period is provided for installing half of the decking at a time. On page 3-94, the time period given for decking installation and or removal is 2 to 3 months. At a briefing for elected officials, MTA responded to questions from Beverly Hills' representatives regarding the installation of decking and indicated that the street closures would occur over weekends only, beginning Friday evenings and reopening early Monday mornings before peak traffic periods. Using 24 hour days and estimating weekend closures to represent 2.5 days, and based upon the EIR's assumptions about the time required for construction, this would require 56 weekends to complete the 140 days of closure needed for installation of decking. MTA officials at the briefing also stated that about 40 feet of decking could be installed per weekend, which would translate to 25 weekends per 1000 feet of station decking area.

Appendix E of the FEIR Construction Methods further details the process. It identifies partial street closures necessary for the installation of piles and shoring of 20 to 70 days, and further details the need for street closure for installation of decking. In the appendix on page E-11, the weekend closure period is described as a 56 hour period in which 42 feet of decking could be installed, resulting in 24 weekends of closures. This is nearly 6 months of impact on key retailers and hotels, which represent two key sources of revenue to the City. Significant impacts of this nature are expected to compromise the City's ability to serve the project's needs while still maintaining its commitment to fully serve its residents.

At the least, these sections are inadequate and confusing and do not permit the public or the decisionmakers to understand or estimate the full impact of temporary road closures. If the upper end of the estimates is accurate, the Project would result in 25 to 56 weekends of closure. The economic impacts on retailers and hotels in the Rodeo area would be significant and have not been identified or mitigated in the document. As detailed in the report of Allan D. Kotin & Associates and Economic Planning Systems (attached as Exhibit E), these construction related impacts will be substantial, but have been grossly understated in the EIR. For example, while the EIR suggests that only 35 jobs and \$426,000 in annual property taxes will be lost, the actual expected losses are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8 of the City's total annual General Fund budget. This represents a significantly greater impact than has been disclosed in EIR, and for which no mitigation exists. This impact is

sufficiently significant that it is expected to result in physical impacts as described in the attached memorandum from the City's Director of Community Development, Susan Healy Keene (Exhibit D).

**5. The EIR Does Not Adequately Analyze Social and Economic Impacts Resulting from Construction.**

The EIR is also deficient in its analysis of economic and social impacts resulting from construction in Beverly Hills. Construction for the Project will result in street closures, noise impacts, impacts to pedestrian circulation, and aesthetic impacts for the better part of a decade. These substantial physical impacts will, in turn, adversely affect the City on multiple levels, including the loss of revenue, impacts to business, and loss of City revenue. For example, the level of construction contemplated admittedly will create dust, noise, and other nuisance effects that will discourage visitors to what is now a vibrant, luxury retail and tourist destination. The Final EIR, however, concludes that this will result in a loss of only \$426,000 per year to the City.

The Final EIR severely underestimates the Project's negative economic impacts. The economic analysis in the Final EIR is flawed because it: (1) improperly inflates the baseline area, thereby artificially decreasing the impacts felt nearest to the station locations; (2) improperly analyzes adverse impacts only on those parcels that Metro will acquire, which account for only a small portion of the land that will be impacted by construction; and (3) entirely ignores adverse impacts on business tax revenue, sales tax revenue, and transient occupancy tax – all of which are crucial contributors to the City's General Fund. As a result of these deficiencies, the Final EIR woefully underestimates the negative economic impacts to the City. As shown in the economic report prepared for the City and referenced above (*see* Exhibit E), the actual anticipated negative impact on the City due to construction will be in the range of \$1.9 million to \$6.1 million, which is between 1.6% and 3.8% of the City's annual General Fund budget. These significant reductions in the City's General Fund will adversely affect the City's ability to provide needed public services. Such economic impacts have long been recognized as cognizable CEQA impacts. CEQA Guidelines § 15064(e) ("economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment.") The EIR, however, fails to adequately describe or mitigate these impacts.

**6. The EIR fails to adequately mitigate significant aesthetic impacts.**

As detailed above, construction within the City of Beverly Hills will last for the better part of a decade. The presence of heavy machinery, trucks, open streets, traffic detours, and noise barriers will have significant aesthetic impacts.

Significant visual impacts caused by construction equipment and staging are identified, but are determined to be mitigable through only four simple mitigation measures. There are construction and staging areas located in highly aesthetic areas of Beverly Hills, and also adjacent to sensitive uses such as residential uses, luxury hotels and retail. As discussed in the memorandum from the City's Community Development Director (Exhibit B), City staff believes that the identified mitigation measures are insufficient to mitigate the impact. Additional mitigation is recommended, including substantial landscaping, fencing, and possible enclosed structures reviewed by the Architectural Commission. These are visual impacts that will occur for approximately a decade (much longer than a typical 18-24 month project), and these cannot be easily mitigated as identified in the FEIR. The City believes that the following mitigation measures must be included:

1. Construct shell buildings to enclose construction lay down areas.
2. Incorporate aesthetic design features and landscaping into screening design for lay down areas.
3. Provide graffiti coating on all exterior finishes of screen walls/structures.
4. Maintain lay down areas and construction sites in a clean and organized manner. Remove excess/unused construction materials from site as soon as it is determined that they are not needed.
5. Maintain screen walls/structures and landscaping in good condition throughout the duration of the Project.

**7. The EIR fails to acknowledge potentially significant impacts to paleontological resources.**

The Final EIR acknowledges that paleontological resources may be encountered during construction, but that they will be reduced below a level of significance with

mitigation. (Final EIR, p. 4-326.) This mitigation, which relies heavily on the development of a mitigation and monitoring report, is improperly deferred. Moreover, the conclusion that impacts can be mitigated is inconsistent with the statement elsewhere in the EIR that “mitigation for tunnel interiors is infeasible since the modern tunneling machines to be employed simultaneously drill and exude cement for tunnel walls.” (Final EIR, p. 4-316.) Given this admission, the Final EIR cannot conclude that impacts to paleontological resources have been mitigated below a level of significance.

In a related failing, the EIR also fails to evaluate the impacts associated with mitigation proposed to address potential impacts to paleontological resources. Specifically, the Final EIR indicates that it may be necessary to employ raised decking to allow for investigation and protection of paleontological resources. (Final EIR, Appendix E, p. E-9.) This decking system would be elevated above street level and would require ramps to allow traffic to transition to and from decking, but the Final EIR includes no discussion of the traffic impacts associated with such an interruption in the flow of traffic.

**8. The EIR fails to analyze impacts related to the use of specific construction techniques.**

The EIR also fails to adequately describe or analyze impacts related to specific construction techniques and issues that are contemplated by MTA. For example, Appendix E indicates that the tunnel boring machine will be dismantled and retrieved two times at the Wilshire/La Cienega station. Once upon arrival from Wilshire/La Brea and once upon arrival from Century City. (Final EIR, Appendix E, p. E-21.) However, the Final EIR includes no discussion of the method of such dismantling and its environmental impacts.

Appendix E also indicates that use of use of tie-backs could require a short section of cut-and-cover excavation in the tie-back zone. This additional construction will result in substantial environmental impacts that are not addressed in the FEIS/FEIR. (Final EIR, Appendix E, p. E-26.)

Finally, with respect underground station construction, Appendix E of the Final EIR that at some locations along Wilshire Boulevard the groundwater is near the surface and potentially under artesian pressure, however the Final EIR is silent on the environmental impacts associated with groundwater that is under artesian pressure and how and whether MTA needs to address this impact during construction. (Final EIR, Appendix E, p. E-14.)

**B. The EIR Does Not Adequately Analyze Traffic Impacts Associated with Project Operation.**

The EIR also fails to adequately address the impacts of the Project on traffic in areas where stations will be located. Most significantly, there is no parking provided for the La Cienega station. The EIR assumes that parking impacts will not be significant if there is no unrestricted parking in the vicinity of the station (3-67) However, the unavailability of parking will result in traffic impacts. Specifically, cars slowing to pick up and drop off passengers along La Cienega in front of the station will interfere with the flow of traffic and may result in an adverse impact on traffic. However, there is no discussion of this potential impact or methods to mitigate it, such as the funding of additional traffic enforcement personnel.

**IV. The EIR Does Not Propose Adequate Mitigation Measures**

An EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines section 15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Pub. Res. Code section 21002. California courts have made clear that an EIR is inadequate if it fails to suggest feasible mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

The EIR routinely defers the identification and adoption of mitigation measures and fails to specify sufficiently concrete actions to reduce identified significant impacts. For example, the EIR finds that the loss of the Ace Gallery will not be a significant impact because the Gallery will be relocated and the building is subject to photo documentation. (Final EIR, Mitigation Measure HR-2.) The loss of this historic resource, however, will be permanent and photo documentation will not avoid that loss or reduce it below a level of significance.

In addition, the EIR improperly defers analysis and mitigation of significant project impacts, including the following:

- Impacts to paleontological resources which depends on the development of a mitigation and monitoring report, whose

requirements and performance standards have not been adequately documented (Final EIR, p. 4-326, Measure PA 1).

- The reliance on a the future development of a Noise Control and Mitigation Plan to mitigate significant construction noise impacts. (Final EIR, p. 4-360, Measure CON 23).
- The preparation of additional geotechnical exploration and surveys to address potential seismic and subsidence impacts. (Final EIR, p. 4-370, Measures CON 48, 49).
- The future analysis of traffic impacts to streets and intersections due to construction activities and the future development of mitigation, such as designated haul routes, traffic control plans, transportation management plans, and parking management plans. Final EIR, p. 3-109-3-110 (TCON Measures 1, 2, 5, 7.)

Finally, as noted above, the analysis of numerous topical areas is flawed. Even with the flawed analysis that fails to fully disclose the impacts of the Project, the Final EIR concludes that there are a number of significant unavoidable impacts. But, rather than seriously consider mitigation of these impacts, MTA rushes to simply adopt a Statement of Overriding Considerations. This MTA cannot do without first adopting all feasible mitigation measures to eliminate or minimize the environmental impacts. *See* Pub. Res. Code Secs. 21002, 21002.1, 21081(b); CEQA Guidelines Sections 15021. The proposed finding in Section 10.11 of the proposed Findings of Facts and Statement of Overriding Considerations fails to take into account the additional feasible mitigation measures that must be adopted before proceeding to approve the project.

As part of Exhibit B, the City has provided a list of feasible mitigation measures that are the same as or similar to measures previously imposed by the City of Beverly Hills, the Beverly Hills Unified School District, or both. Before MTA can adopt a Statement of Overriding Considerations for this project, it must adopt mitigation measures that are substantially the same as those measures.

## **V. The Final EIR Fails To Adequately Respond to Comments.**

It is well established that the lead agency must respond to comments on a draft EIR with a “good faith, reasoned analysis.” (CEQA Guidelines § 15088(c).) The written response “shall describe the disposition of significant environmental issues raised...” *Id.*

In short, “[c]onclusory statements unsupported by factual information will not suffice.” *Id.*

Here, the Final EIR fails to fully respond to comments on the Draft EIR. For example, MTA’s responses to the City’s concerns regarding construction phasing (Comments 824-26 through 824-31) do not actually address the issues that have been raised. Instead, MTA improperly defers any discussion of mitigation regarding construction impacts and simply promises that “Continued coordination with the City of Beverly Hills will take place throughout the design process.” This is insufficient, both substantively and as a response to the City’s comments.

As another example, the City expressly requested in its comments that MTA “confirm that the analyses and conclusions presented in the Final Noise and Vibration Technical Report (page 6.2) are consistent with the City of Beverly Hills General Plan standards.” (Comment 824-38.) In response, the MTA states that “The criterion used to assess these potential impacts was defined by the Federal Transit Administration. The FTA noise criteria and mitigation measures are generally consistent with the Beverly Hills General Plan standards.” (Response to Comment 824-38.) This vague response does not adequately answer the City’s question.

## **VI. Evidence Does Not Support Rejection of the Century City Santa Monica Boulevard Station Location on Either Geologic or Ridership Grounds.**

Section 8 of the Findings of Fact and Statement of Overriding Considerations document, and specifically section 8.2, asserts that selecting the Century City Constellation station location and rejecting the Santa Monica station location will avoid alleged impacts associated with faulting. The findings state that “surface fault rupture poses a substantial hazard for this [the Santa Monica] station location that cannot be mitigated with the available techniques and measures.” (Findings at p 8-4.)

This statement and the conclusions in the EIR and findings document are, however, no longer supported by proper evidence in the record and, as noted previously, the studies on which MTA purports to rely have not been circulated for public review and comment as required by CEQA. Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. (CEQA Guidelines Section 15384.) In this instance, evidence has been introduced that demonstrates the studies upon which MTA relies are fundamentally flawed and thus the conclusions reached therein are not based on facts or reasonable assumptions based on facts.

MTA's various geologic studies start with an unsupported assumption – that there are active faults along the WBHL either on Santa Monica Boulevard or on the Beverly Hills High School campus. The Beverly Hills School District's experts find that it is unlikely that any of the faults in the area are active. (See PrimeSource Consulting Report dated April 19, 2012.) Further, Metro's analysis did not conduct trenching or consider the date of area soils and deformations, which would be standard steps in an adequate study. (Id. at p. 1).

MTA's improper assumption that active faults exist in the area of the Santa Monica Station leads to the convenient conclusion that neither the previously planned Santa Monica Station location or a location between Avenue of the Stars and Century Park East is possible. Evidence that shows the lack of active faults in the area undermines MTA's basis for rejecting a Santa Monica station location.

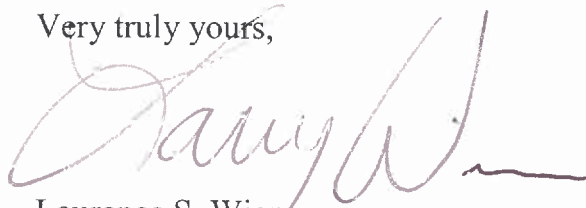
Further, ideal placement of a Santa Monica Station will result in approximately equivalent ridership as the Constellation station, at a cost savings of anywhere from \$20.5 million (FEIR, Section 9, Chapter 6, Table 6-1) and \$81 million (FEIR Technical Report 08, Tables 3-1 and 3-2), depending on which of the many inconsistent cost estimates in the Final EIR are cited. This comment should not be interpreted as agreement that the ridership calculations are accurate, since, among other defects, they took into account only the job location, and not any other sources of riders such as school or residential uses in the vicinity. Regardless, the point remains – a Santa Monica Station need not be inferior to a Constellation station location as to ridership.

Based on the foregoing, the information submitted by the Beverly Hills Unified School District last week, and information from various other studies commissioned by the District and the City, there is not substantial evidence in the record to support choosing the Constellation location and rejecting the Santa Monica location.

**VII. Conclusion**

The public, and MTA's decisionmakers, have been deprived of a full and fair opportunity to understand, analyze, and comment upon the Project that MTA is poised to approve. The City requests that MTA fully comply with both the letter and the spirit of CEQA by revising the EIR to fully analyze all Project impacts, and then recirculating the revised EIR for public comment.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Laurence S. Wiener", written over a light blue horizontal line.

Laurence S. Wiener

City Attorney

EXHIBIT A



## CITY OF BEVERLY HILLS

### DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION

April 23, 2012

**To:** Aaron Kunz, Deputy Director of Transportation  
Laurence Wiener, City Attorney

**From:** Bijan Vaziri RTE, City Traffic Engineer

**Subject:** Circulation impacts of the proposed La Cienega Subway Station as Phase One Terminus

General circulation impacts of the proposed Westside Subway Extension have been discussed in the Environmental Impact Statement/Report (FIES/EIR) prepared for this project. However, the issue of operating the proposed La Cienega station as a terminus station has not been studied in focus particularly, with respect to potential traffic, transit, parking and pedestrian impacts.

Staff is concerned about significant circulation impacts that would occur with the La Cienega station used as the Purple Line terminus station for a number of years. This FIES/EIR does not adequately discuss the impacts and recommend mitigation measures, including alternative operation strategies, nor are they adequately identified.

Staff highlights the following issues of concern (without the order of priority):

- 1) Based on estimated boarding volume of over 10,000 per day for the La Cienega Station during the phase one of the project, it is anticipated that the traffic volume of the intersection of Wilshire and La Cienega (a CMP intersection) which presently is at the level of service "F" during AM, Midday and PM peak hours would be increased to a significant impact level. On a daily basis, this intersection carries 103,000 Vehicles per Day (Wilshire 52,000 vpd and La Cienega 51,000 vpd). The saturation level of this intersection presently extends beyond peak periods and usually, the intersection is congested continuously over 6 hours of afternoon and evening hours.
- 2) The estimated 10,000 per day boarding as a terminus station would mean that passengers would use other modes of transportation to get to and from the station. It is not clear in the FEIS/EIR documents the estimated percentages of modes switched to bus, park and ride, drop and ride, pedestrian traffic, bicycle traffic and other modes. Without such analysis, it is not clear how the adjacent busy intersection of La Cienega and Wilshire Boulevards can handle such a high volume circulation pattern.
- 3) With operation of the La Cienega station as a terminus, it is anticipated that existing bus line services would be modified or re-routed to be used as bus-subway connectors. As

a comparison, the Western Avenue station of the existing Purple Line serves as a transfer and terminus area for a number of bus lines. A property adjacent to the station serves as a bus terminal or bus layover zone allowing buses to turn around within the property for bus lines serving the station. In the vicinity of La Cienega and Wilshire Boulevards, there is no potential vacant property to be used for such purposes. As the result, all bus transfer activities would need to occur along Wilshire and La Cienega curbs causing significant impacts to the intersection and adjacent areas and cause shortage of on-street parking spaces to accommodate bus layovers. The turnaround routing of the buses would mean additional bus traffic on La Cienega, Wilshire and San Vicente Boulevards contributing to the traffic congestion of the area.

- 4) The off street parking supply would be very limited for potential subway riders to utilize the park and ride system. Residential streets adjacent to the station all have permit parking regulations not allowing non-residents to park on these streets. The supply of metered spaces within the close proximity to the station is limited and already short for the use of the nearby merchants. Unlike the Western Avenue station there is no possibility of a vacant property to be used as parking and therefore staff anticipates significant parking shortage in the vicinity of the proposed La Cienega station, which will in turn create significant circulation impacts as drivers either stop illegally to drop off passengers or circulate to locate parking.
- 5) The excessive volume of pedestrian crossings usually seen at terminus subway stations could require longer signal operation cycles at adjacent signalized intersections like La Cienega and Wilshire Boulevard. This will negatively affect the operation and synchronization of adjacent traffic signals along both Wilshire and La Cienega Boulevards.
- 6) - The lack of adequate drop and ride zones in the vicinity of the station could increase the traffic on nearby residential streets to be used for such purpose, causing additional impacts to the La Cienega/Wilshire Boulevard Intersection.

In summary, the impacts of the additional vehicle traffic, bus transfers, and pedestrian activity of a Phase One Purple Line Terminus at La Cienega Boulevards has not been adequately analyzed. Staff has determined that these additional impacts would worsen the Level of Service at the Wilshire/La Cienega Boulevard Intersection and would exceed the City's Thresholds of Impacts for Traffic.

EXHIBIT B



**CITY OF BEVERLY HILLS**  
**COMMUNITY DEVELOPMENT**

**MEMORANDUM**

**TO:** Laurence S. Wiener, City Attorney

**FROM:** Susan Healy Keene, AICP  
Director of Community Development

**DATE:** April 23, 2012

**SUBJECT:** Westside Subway Extension Final EIR Comments

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I and other members of my department have reviewed the Final Environmental Impact Report (FEIR) for the Westside Subway Extension project (Project). Our planning staff has substantial experience reviewing development projects and their environmental impacts. In reviewing the FEIR, we have determined that the FEIR does not adequately analyze or mitigate the significant impacts that will result from the extended construction period proposed for the Project.

**Noise Impacts**

The FEIR fails to include any analysis of construction impacts on a local level. Instead, the FEIR only indicates that construction noise levels will be significant. (FEIR at 4-358.) The FEIR fails to include any information about the noise levels that actually will occur with construction, where and when construction noise levels will exceed levels set by local ordinances, and how to mitigate these significant noise impacts.

In our experience, an adequate CEQA noise analysis must include, at a minimum, a thorough description of the duration and amplitude of the exposure at a particular receptor. The evaluation should include the locations of sensitive receivers in the Project area, a description of existing ambient noise levels at these sensitive receivers, predicted noise levels during each phase of construction at the sensitive receptors, and a comparison of noise levels during construction to the existing ambient noise levels. In addition to identifying residences as sensitive receptors, the revised document must identify each motel and hotel, library, religious institution, hospital, nursing home, active sport area, picnic area, recreation area, playground, and park that would be potentially affected by Project-generated construction noise.

## **Vibration Impacts**

Additionally, the FEIR does not adequately analyze vibration impacts. The City previously concluded that excavation and construction of a hotel and construction of a condominium building along Wilshire Boulevard would generate vibration levels of up to 75 velocity decibels (VdB) at one hundred feet from the source. These construction activities did not involve the magnitude of excavation contemplated by subway station construction and tunneling; yet, these construction activities exceeded the 72 VdB Federal Railroad Administration threshold for residential uses, even for such uses located more than 100 feet from the source.

Residential uses exist within one hundred and fifty feet of Wilshire Boulevard and in some instances are immediately adjacent to the proposed subway tunnel route. The FEIR contains no quantified analysis of the vibration impacts during construction to any residential or other sensitive uses in the City. Additionally, one elementary school has classrooms located within approximately one hundred and fifty feet of Wilshire Boulevard and, of course, tunneling is proposed directly beneath Beverly Hills High School. The FEIR fails to adequately analyze these potential vibration impacts.

## **Air Quality**

The FEIR also fails to assess the local air pollution emissions associated with intense, street-level construction, such as that associated with the La Cienega station. For example, the EIR contains limited discussion of the health impacts of PM<sub>2.5</sub>, a particulate pollutant associated with the use of diesel fuel. The serious health risks associated with PM<sub>2.5</sub> exposure are well-documented. In its final rule designating attainment and non-attainment of PM<sub>2.5</sub> standards, the U.S. EPA noted the “significant relationship between PM<sub>2.5</sub> levels and premature mortality, aggravation of respiratory and cardiovascular disease . . . , lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia,” particularly among “older adults, people with heart and lung disease, and children.” See *Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards*, 70 Fed. Reg. 944, 945 (Jan. 5, 2005) [Vol. 2, Ex. 28-e].

This failure is particularly serious with respect to the emission of toxic air contaminants, diesel particulate, and carbon monoxide – all of which are pollutants that will impact the health of nearby residents, employees, and other sensitive receptors, such as students. Specifically, we note that there are hundreds of residences, several hotels, and one elementary school within 1000 feet of station construction proposed for Beverly Hills. Yet, the FEIR here improperly contains no discussion of these impacts or affected uses near construction zones.

Furthermore, the FEIR fails to address the additional impacts associated with the decision to modify the Rodeo Station configuration by adding a double crossover to the east end of that station to “optimize operations.” This change in the Project brings the station construction within 1000 feet of Beverly Vista elementary school. Therefore,

Metro must revise the EIR to address increased health risk associated with construction and the revised EIR must be recirculated for public review.

We note that the City routinely requires mitigation measures such as those listed below. As dictated by past experience, these mitigation measures are feasible and necessary to reduce impacts. Accordingly, we request that Metro impose all of these mitigation measures in addition to those already identified in the FEIR and include them as part of a mitigation monitoring and reporting program.

1. Prior to issuance of grading permits, the applicant shall submit a Construction Management Plan satisfactory to the City's Director of Community Development and the Building Official. The Building Official shall enforce noise attenuating construction requirements. The Construction Management Plan shall include, but not be limited to, the following:
  - Excavation, grading, and other construction activities related to the Project shall be restricted to the hours of operation allowed under Section 5-1-206, Restrictions on Construction Activity in the City Municipal Code. Any deviations from these standards shall require the written approval of the Community Development Director.
  - Stockpiling and vehicle staging areas shall be located as far away from occupied residences as possible, and screened from these uses by a solid noise attenuation barrier. Noise attenuation barriers constructed to the specifications necessary to reduce noise levels at adjacent residential structures to no greater than 5 dbA over ambient at any time.
  - Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) sufficient to achieve the standard specified above shall be used along all the boundaries of all construction staging sites and station construction sites during.
  - All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from residential uses as possible. If this is not possible the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development to achieve the standard above.
  - Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).
  - Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at Beverly Hills schools. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no

construction activity generating the high noise levels is undertaken during any designated testing periods at the schools.

2. The construction area and vicinity shall be swept (preferably with water sweepers) and watered at least twice daily. Site-wetting shall occur with sufficient frequency to maintain 10 percent surface soil moisture content throughout all earth-moving activities. At least 80 percent of all inactive disturbed surface areas shall be watered on a daily basis when there is evidence of wind-driven fugitive dust.
3. All unpaved roads, parking and staging areas shall be watered at least once every two hours during active operations.
4. Site access points shall be swept or washed within thirty minutes of visible dirt deposition.
5. All haul trucks shall have a capacity of no less than twelve and three-quarter (12.75) cubic yards.
6. Operations on any unpaved surfaces shall be suspended when winds exceed 25 miles per hour.
7. Operations on any unpaved surfaces shall be suspended during first and second stage smog alerts.
8. The contractor shall prepare a Construction Traffic Emission Management Plan satisfactory to the City of Beverly Hills to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes.
9. The contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.
10. The contractor shall use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment.
11. The contractor shall use electric welders to avoid emissions from gas or diesel welders.
12. The contractor shall use electricity or alternative fuels rather than diesel-powered or gasoline-powered generators.
13. The contractor shall install wind monitoring equipment on each construction site, and suspend grading activities when wind speeds exceed 25 mph per Southern California Air Quality Management District (SCAQMD) guidelines.

14. The contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).
15. The contractor shall replace ground cover in disturbed areas as quickly as possible.
16. Metro shall retain a third-party air quality consultant to conduct continuous monitoring of the PM10 (dust) concentrations during the project demolition, excavation and grading phases of project construction to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using Dustrak™ aerosol monitors or other similar monitoring networks and shall meet the following requirements:
  - The third-party consultant shall be approved by the City of Beverly Hills' Director of Community Development and the Beverly Hills Unified School District.
  - Costs for the monitoring network and tests by the third-party consultant shall be borne by Metro.
  - Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the project are selected. The locations shall be selected in order to monitor the project's contribution to ambient PM10 concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near each construction site in the City and a second downwind monitor shall be located in an area beyond the construction area boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the project site. All locations in the City of Beverly Hills shall be approved by the third-party air quality consultant and the City of Beverly Hills' Community Development Director.
  - The monitoring network shall include at least one anemometer to measure wind speeds and directions.
  - Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.
  - Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).
  - Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate

the Distract monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.

- The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.
- Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM10 concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and Grading phases of project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, Metro, and the contractor on a secured internet website. The general public shall have access to 5-hour rolling average PM10 concentrations on a publicly accessible web-site.
- Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM10 thresholds are exceeded.
- All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific -corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant, the City of Beverly Hills and Metro. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.
- Metro and the contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but at not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle

speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. Metro and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition. The project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the project site do not go beyond the construction site.

17. The contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A)

### **Construction Staging Aesthetics**

Finally, significant visual impacts caused by construction equipment and staging are identified, but are determined to be mitigable through four simple mitigation measures. There are construction and staging areas located in highly aesthetic areas of Beverly Hills, and also adjacent to sensitive uses such as residential uses, luxury hotels and retail. Staff believes that the identified mitigation measures are insufficient to mitigate the impact. Additional mitigation is recommended, including substantial landscaping, fencing, and possible enclosed structures reviewed by the Architectural Commission. These are visual impacts that will occur for approximately a decade (much longer than a typical 18-24 month project), and these cannot be easily mitigated as identified in the FEIR. We believe the following mitigation measures must be included:

1. Construct shell buildings to enclose construction lay down areas.
2. Incorporate aesthetic design features and landscaping into screening design for lay down areas.
3. Provide graffiti coating on all exterior finishes of screen walls/structures.
4. Maintain lay down areas and construction sites in a clean and organized manner. Remove excess/unused construction materials from site as soon as it is determined that they are not needed.
5. Maintain screen walls/structures and landscaping in good condition throughout the duration of the project.

EXHIBIT C



## CITY OF BEVERLY HILLS

### DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION

April 23, 2012

**To:** Aaron Kunz, Deputy Director of Transportation  
Laurence Wiener, City Attorney

**From:** Bijan Vaziri RTE, City Traffic Engineer

**Subject:** Closure of Wilshire Boulevard for Construction of Subway Stations

#### **Introduction:**

This memo discusses the significant construction traffic impacts to residential and commercial streets of Beverly Hills that will result from construction of two stations on Wilshire Boulevard at La Cienega Boulevard and Beverly-Rodeo Drives for the proposed Westside Subway Extension. The focus of this memo is on the construction impact of closing Wilshire Boulevard in Beverly Hills at two segments:

1. *Between La Cienega Boulevard and San Vicente Boulevard*
2. *El Camino Drive to S. Canon Drive(inclusive)*

Based on the information that became available in the Final Environmental Impact Statement/Report (FIES/EIR), it is anticipated that Wilshire Boulevard would be closed to vehicular and pedestrian traffic for a period of 56 hours (from 10PM Fridays through 6AM Mondays) for up to 60 weekends (for each segment).

#### **Background:**

Overall construction impacts of the proposed Westside Subway Extension have been discussed in the FEIS/EIR prepared for this project. However, perhaps due to a lack of detailed information at the time of the FEIS/EIR preparation, the issue of construction traffic impacts on residential streets due to the closure of Wilshire Boulevard during weekends has not been discussed in the FEIS/EIR and no clear mitigation measures have been recommended. Since the schedule of the street closure could extend for up to 60 weekends, this cannot be considered a temporary construction issue which the City usually deals with for a period of one or two weeks. Based on my professional training and my experience of 27 years as the Traffic Engineer for the City of Beverly Hills, I can confidently conclude that such a frequent closure of Wilshire Boulevard for such a long period would negatively impact residential and commercial streets; particularly in the vicinity of the proposed closure areas. These issues have simply not been addressed in the FEIS/EIR.

## Discussion:

To provide more details, staff conducted a preliminary and conservative evaluation of potential impacts from Wilshire Boulevard closures. This study was based on the assumption that the closure of Wilshire for the La Cienega station would not occur concurrently with closure of Wilshire for the Beverly-Rodeo Station.

Staff looked at potential traffic diversion routes that would be used as “detours” during the street closure. For the Wilshire Boulevard closure at San Vicente Boulevard:

Westbound traffic on Wilshire would be diverted to San Vincent Boulevard. It is estimated that the majority of traffic would turn right onto San Vicente Boulevard and proceed west by using Burton Way and eventually connect to Wilshire Boulevard west of Santa Monica. Local Beverly Hills traffic diverted to San Vicente Boulevard would generally try to use La Cienega Boulevard, Robertson Boulevard or Doheny Drive to return back to the original westbound approach of Wilshire. However, based on my experience with past street closures in Beverly Hills, a small percentage of diverted traffic would use the residential north-south streets between Burton Way and Wilshire. Based on available traffic counts estimated diverted westbound traffic (on a typical Saturday) would be about 17,000 vehicles per day per direction. Even assuming that the overwhelming majority of traffic would use La Cienega Boulevard, Robertson Boulevard or Doheny Drive, the impacts on residential streets surrounded by the above major streets would be measurable. The situation would be more crucial for eastbound traffic on Wilshire Boulevard facing the closure on La Cienega Boulevard.

Eastbound traffic on Wilshire Boulevard (18,000 on Saturdays) would be diverted to La Cienega Boulevard. Since La Cienega Boulevard carries about 38,000 vehicles per Saturday in both directions, traffic will not smoothly divert to La Cienega Boulevard without backing up on Wilshire as traffic approaches La Cienega Boulevard. It is estimated that Wilshire between La Cienega Boulevard and Robertson Boulevard will be congested to a level that drivers will divert to adjacent local streets in order to attempt to avoid the congestion. Based on a conservative estimation, the following local streets would experience the following substantial increases of Saturday traffic (calculated based on estimated percentage multiplied by 18,000 trips per Saturday on eastbound approach).

*Le Doux Road: Estimated 4% diversion of the approach volume or 700 vehicles per Saturday*

*Stanley Drive: Estimated 2% diversion of the approach volume or 360 vehicles per Saturday*

*Carson Road: Estimated 1% diversion of the approach volume or 180 vehicles per Saturday*

*Willaman Drive: Estimated 5% diversion of the approach volume or 900 vehicles per Saturday*

*Hamel Drive: Estimated 1% diversion of the approach volume or 180 vehicles per Saturday*

This means that the existing traffic on Le Doux Road could increase by 44% (for example, 700/1590 existing 24 hour traffic). Similarly, Stanley could see a 38% increase, 31% on Carson Road, 52% on Willaman Drive (because this intersection is signalized, more diversion would be anticipated) and 24% increase on Hamel Drive. These are significant increases of traffic on Saturdays and Sundays especially for such a long duration of up to 60 weekends. In addition, based on the City's Thresholds of Significance for Traffic Impacts (which are set forth in an attachment) each of these streets would experience a significant environmental impact by such increases in volume. Mitigation may be possible, but has not yet been explored and is not recommended in the FEIS/EIR.

As for the closure of Wilshire Boulevard for the Beverly/Rodeo Station construction, there are fewer options for diverting traffic to streets that can handle the volume of traffic without experiencing a significant impact because there are no arterials among the immediately surrounding streets.

Westbound Wilshire Boulevard would be diverted to N. Crescent Drive which is both commercial and residential and has a two-lane capacity in each direction. S. Crescent Drive is only 30 feet wide and has no room for diversion traffic from Wilshire Boulevard. This would mean that Charleville Boulevard, which is a residential street and runs parallel to Wilshire (one lane per direction), would be used to avoid the closure area. The Saturday traffic of Charleville Boulevard is 1,200 per direction and a conservative diversion of 2% of westbound Wilshire traffic would mean an increase of 42%. Such an increase on Charleville Boulevard with over 30 all-way stop controlled intersections would result in total congestion and potentially impact north/south residential streets, but quantifying this impact would require further analysis.

Eastbound Wilshire before the closure area has no immediate alternative for diversion. Staff anticipates that the traffic would need to be diverted prior to the closure area at North and South Santa Monica Boulevard. The traffic could then be rerouted to Burton Way and Crescent Drive to eventually return to eastbound Wilshire Boulevard. However, Santa Monica Boulevard already experiences substantial traffic on Saturdays and is not capable of absorbing all of Wilshire Boulevard's eastbound traffic without experiencing significant delays. Therefore, it is anticipated that Charleville Boulevard would be used as an eastbound as well as westbound diversion route as discussed above. The estimated percentage increase would be on the order of at least 40 to 50%.

In conclusion, staff anticipates that the closure of Wilshire at two segments for a possible 60 Saturdays and Sundays would significantly impact the residential streets surrounding the closure areas as well on a larger scale, impacting the City's weekend circulation activities. Based on City's Thresholds of Significance for Traffic Impacts a substantial number of streets would experience a significant environmental impact by such increases in volume. This impact has not been discussed in the FEIS/EIR and no mitigation has been proposed.

Attachment: City of Beverly Hills, Thresholds of Significance for Traffic Impacts

EXHIBIT D



**CITY OF BEVERLY HILLS**  
**COMMUNITY DEVELOPMENT**

**MEMORANDUM**

**TO:** Laurence S. Wiener, City Attorney

**FROM:** Susan Healy Keene, AICP  
Director of Community Development

**DATE:** April 23, 2012

**SUBJECT:** Preliminary Review of the Economic Impact Analysis on the City of Beverly Hills in Westside Subway Extension Final EIR

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I and other members of my department have reviewed the report prepared by EPS analyzing the potential economic impacts on Beverly Hills from the construction of the two proposed Beverly Hills subway stations. Based on our recent experience with a construction project immediately adjacent to the proposed Rodeo Drive subway station, we believe that extended construction along Wilshire Boulevard between Rodeo and Canon Drives will have an impact on businesses that will result in vacancies at retail locations north and south of Wilshire Boulevard.

During recent construction of the Montage Hotel, which is located immediately adjacent to the proposed Rodeo Drive subway station, businesses on Beverly Drive suffered significant declines in patronage and some of those businesses closed. The owners of the businesses appeared before the City Council frequently to testify concerning these matters and request help from the City to prevent the failure of their businesses. The City did take action to aid these businesses, including providing an on street valet parking program to make patronage of these businesses more attractive, but the business owners continued to suffer from the impacts of construction, storefronts remained vacant during the construction and those vacant storefronts had a significantly negative aesthetic impact on the 100 block of North Beverly Drive, near the construction site.

Based on information in the Final EIS/EIR for the Westside subway extension, the proposed Rodeo subway station construction will last much longer than the Montage Hotel construction, will impact more streets than the Montage Hotel construction (and will again impact the 100 block of North Beverly Drive), and will have greater traffic impacts than the Montage Hotel construction.

With these greater traffic impacts and greater economic impacts as described in the EPS report, based on my experience, I believe we will see greater vacancies which will result in a deterioration of the maintenance of the private property and adjacent right of way that will have negative aesthetic impacts to a greater extent than the Montage project. However, I have seen no analysis in the Final EIS/EIR of the potential physical impacts that will likely result from the economic impacts of the subway station construction in the heart of the City's business district.

At a minimum, Metro should incorporate mitigation measures to encourage continued patronage of Beverly Hills retail shops during the construction period. These measures should include, convenient valet parking, as was provided by the City of Beverly Hills during the Montage construction, the maintenance of clean, unobstructed sidewalks throughout the retail shopping areas of the business district, signage to promote that businesses remain open during construction and that direct patrons to valet parking; and maintenance or provision of convenient parking which can be accessed without construction obstruction.

EXHIBIT E



**Allan D. Kotin & Associates**  
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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE: PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

**DATE:** April 23, 2012

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.

Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, “high-end” physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City’s commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, “significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption.”<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large “denominator” against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
**Summary of Findings**

Tax Category	Final EIR	(Preliminary) Re-Assessed Economic Impacts						
	Permanently Lost General Fund Revenues	Impact Area (At-Risk) Annual General Fund Tax Revenues	Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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## **1. FEIR Ignores Jurisdiction-Level Impacts**

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down Months	street closure Months	traffic over decking Months	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	25			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 8/2011; EPS analysis

## 2. FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

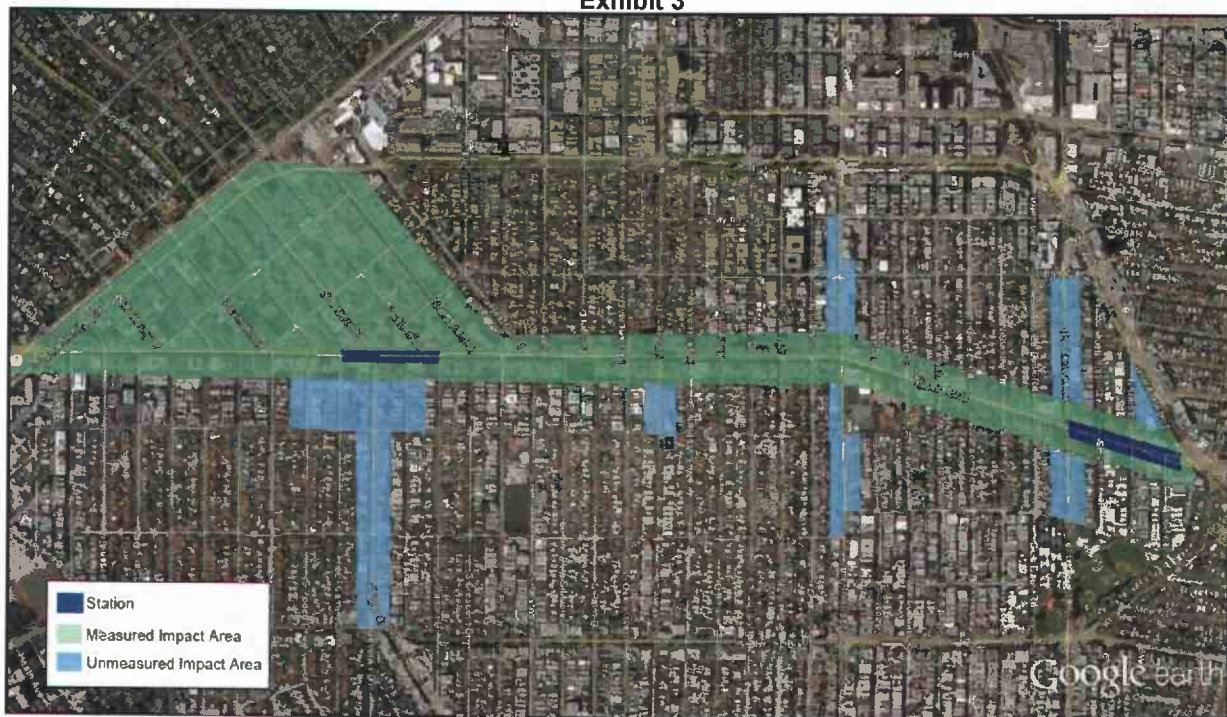
A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City’s most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

**Exhibit 3**



### **3. FEIR Considers Too Few Impact Categories**

The FEIR considers only two forms of negative economic impact: property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<b>Tax Category</b>	<b>FY 2011 Revenues</b>	<b>% of Taxes</b>	<b>% of GF</b>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	\$915,536	1%	1%
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	\$39,927,666		24%
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminihac and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolffing, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8.3% decrease to 39.9% increase
Buddemeyer, Young and Vander Giessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

- (1) Homans, Nancy. "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012. [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses).
- (2) De Solminihac, Heman E. and Robert Hamson. "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies, Washington, D.C., 1993, pp 137-143.
- (3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies, Washington, D.C., 1996, pp 76-83.
- (4) Young, Rhonda Kae, Chris Wolffing, and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record: Journal of the Transportation Research Board, No. 1924, Transportation Research Board of the National Academies, Washington, D.C., 2005, pp. 94-102.
- (5) Buddemeyer, Jenna, Rhonda Young and Steven Vander Giessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town Of Dubois". FHWA-WY-08/01F. March 2008. <http://rip.trb.org/browse/dproject.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	FY 2011 (1)			
	General Fund Tax Revenues in Measured Impact Area (2)	Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>\$124,687,131</b>		<b>27.6%</b>

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.
- (3) Business Taxes from calendar year 2011.
- (4) Beverly Hills General Fund share of the property tax estimates from FY2010.
- (5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010. City of Beverly Hills, EPS Analysis

## ALTERNATE METHODOLOGY

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

### Sales Tax

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

## **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

## **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 7**  
Business Tax Summary

Classification	Tax Amount	Concentration of Tenants in the Impact Area	Impact from the Project
Business Services	\$238.76 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63606 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,946.73 and 3,907.76 for the first 10,000 barrels with \$0.14381 to \$0.35953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Sources: City of Beverly Hills Tax Schedule FY2011, EPS

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

## Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax roles. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

## Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
Estimated Construction Impact on Fiscal Revenues

Category	FY 2011 (1)									
	General Fund Revenues in Partial Impact Area (2)	Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
TOT	\$8,961,808	10%	25%	\$896,181	\$2,240,452	\$26,594,808	3.4%	8.4%	0.6%	1.4%
<b>Total</b>	<b>\$44,008,561</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro

(3) Sales Tax loss factor based on literature survey and EPS analysis; TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor

(4) Business Taxes from calendar year 2011.

(5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, and EPS.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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**Appendix 1  
City of Beverly Hills General Fund Property Tax Share**

Parcel	Total
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgt'd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax In Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
		Proportion		Low	High	Avg.		Low	High	Low%	High%
Apparel	\$563,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,935	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,262,862	14%	42%	28%	30%	\$95,861	\$287,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$257,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,976	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,384	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	\$138,133	9%	\$1,316,808	13%	40%	27%	30%	\$52,936	\$158,807	4.0%	12.1%
	<b>\$1,550,904</b>		<b>\$14,784,617</b>	<b>13%</b>	<b>40%</b>	<b>27%</b>		<b>\$588,935</b>	<b>\$1,766,804</b>	<b>4.0%</b>	<b>12.0%</b>

(1) Citywide retail sales used as a proxy to allocate impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.



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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE:** **PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

**DATE:** April 23, 2012

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.

Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, “high-end” physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City’s commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, “significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption.”<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large “denominator” against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
**Summary of Findings**

Tax Category	Final EIR	(Preliminary) Re-Assessed Economic Impacts						
	Permanently Lost General Fund Revenues	Impact Area (At-Risk) Annual General Fund Tax Revenues	Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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## **1. FEIR Ignores Jurisdiction-Level Impacts**

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down	street closure	traffic over decking	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	25			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 8/2011; EPS analysis

## 2. FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

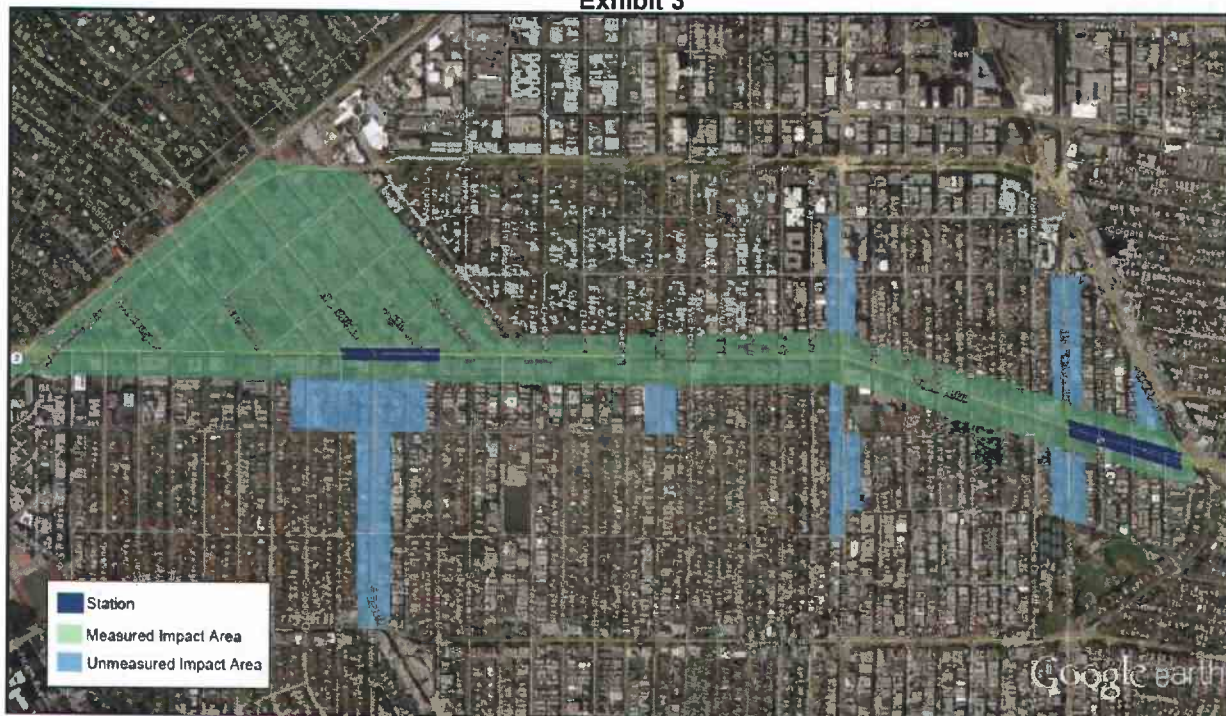
A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City's most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

**Exhibit 3**



### **3. FEIR Considers Too Few Impact Categories**

The FEIR considers only two forms of negative economic impact: property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<u>Tax Category</u>	<u>FY 2011 Revenues</u>	<u>% of Taxes</u>	<u>% of GF</u>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	\$915,536	1%	1%
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	\$39,927,666		24%
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

**Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminihac and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolffing, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8.3% decrease to 39.9% increase
Buddemeyer, Young and Vander Giessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

- (1) Homans, Nancy. "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012. [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses)
- (2) De Solminihac, Heman E. and Robert Harrison, "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies. Washington, D.C., 1993, pp 137-143.
- (3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies. Washington, D.C., 1996, pp 76-83.
- (4) Young, Rhonda Kae, Chris Wolffing, and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record: Journal of the Transportation Research Board. No. 1924, Transportation Research Board of the National Academies. Washington, D.C., 2005, pp 94-102.
- (5) Buddemeyer, Jenna, Rhonda Young and Steven Vander Giessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town Of Dubois". FHWA-WY-08/01F. March 2008. <http://rip.trb.org/browse/dproject.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	FY 2011 (1)			
	General Fund Tax Revenues in Measured Impact Area (2)	Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>\$124,687,131</b>		<b>27.6%</b>

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.
- (3) Business Taxes from calendar year 2011.
- (4) Beverly Hills General Fund share of the property tax estimates from FY2010.
- (5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, EPS Analysis

## ALTERNATE METHODOLOGY

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

### Sales Tax

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,

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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

## **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

## **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 7**  
**Business Tax Summary**

Classification	Tax Amount	Concentration of Tenants in the Impact Area	Impact from the Project
Business Services	\$238.76 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63606 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,946.73 and 3,907.76 for the first 10,000 barrels with \$0.14381 to \$0.35953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Sources: City of Beverly Hills Tax Schedule FY2011, EPS.

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

## Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax roles. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

## Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund

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revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
Estimated Construction Impact on Fiscal Revenues

Category	General Fund Revenues in Partial Impact Area (2)	FY 2011 (1)								
		Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
<b>TOT</b>	<b>\$8,961,808</b>	<b>10%</b>	<b>25%</b>	<b>\$896,181</b>	<b>\$2,240,452</b>	<b>\$26,594,808</b>	<b>3.4%</b>	<b>8.4%</b>	<b>0.6%</b>	<b>1.4%</b>
<b>Total</b>	<b>\$44,008,561</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro

(3) Sales Tax loss factor based on literature survey and EPS analysis; TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor

(4) Business Taxes from calendar year 2011.

(5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, and EPS.

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**Appendix 1  
City of Beverly Hills General Fund Property Tax Share**

Parcel	Total
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgtd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax in Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
		<i>Proportion</i>		Low	High	Avg.		Low	High	Low%	High%
Apparel	\$563,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,935	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,282,882	14%	42%	28%	30%	\$95,881	\$287,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$257,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,976	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,384	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	<u>\$138,133</u>	9%	<u>\$1,316,808</u>	<u>13%</u>	<u>40%</u>	<u>27%</u>	30%	<u>\$52,936</u>	<u>\$158,807</u>	<u>4.0%</u>	<u>12.1%</u>
	<b>\$1,550,904</b>		<b>\$14,784,617</b>	<b>13%</b>	<b>40%</b>	<b>27%</b>		<b>\$588,935</b>	<b>\$1,766,804</b>	<b>4.0%</b>	<b>12.0%</b>

(1) Citywide retail sales used as a proxy to allocate impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.



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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE:** **PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

**DATE:** April 23, 2012

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, “high-end” physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City’s commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According to the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, “significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption.”<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large “denominator” against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
**Summary of Findings**

Tax Category	Final EIR		(Preliminary) Re-Assessed Economic Impacts					
	Permanently Lost General Fund Revenues	Impact Area (At-Risk) Annual General Fund Tax Revenues	Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)

## 1. FEIR Ignores Jurisdiction-Level Impacts

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down Months	street closure Months	traffic over decking Months	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	25			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 8/2011; EPS analysis

## 2. FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City’s most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

**Exhibit 3**



### **3. FEIR Considers Too Few Impact Categories**

The FEIR considers only two forms of negative economic impact: property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.

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**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<u>Tax Category</u>	<u>FY 2011 Revenues</u>	<u>% of Taxes</u>	<u>% of GF</u>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	\$915,536	1%	1%
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	\$39,927,666		24%
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

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Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminihac and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolffng, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8.3% decrease to 39.9% increase
Buddemeyer, Young and Vander Giessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

(1) Homans, Nancy. "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012: [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses).  
 (2) De Solminihac, Heman E. and Robert Harrison, "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies, Washington, D.C., 1993, pp 137-143.  
 (3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies, Washington, D.C., 1996, pp 76-83.  
 (4) Young, Rhonda Kae, Chris Wolffng, and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record: Journal of the Transportation Research Board, No. 1924, Transportation Research Board of the National Academies, Washington, D.C., 2005, pp. 94-102.  
 (5) Buddemeyer, Jenna, Rhonda Young and Steven Vander Giessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town Of Dubois". FHWA-WY-08/01F. March 2008: <http://rip.trb.org/browse/dproject.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.

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**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	General Fund Tax Revenues in Measured Impact Area (2)	FY 2011 (1)		
		Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	\$44,008,561	\$124,687,131		27.6%

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.
- (3) Business Taxes from calendar year 2011.
- (4) Beverly Hills General Fund share of the property tax estimates from FY2010.
- (5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, EPS Analysis

## ALTERNATE METHODOLOGY

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

### Sales Tax

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,

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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

## **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

## **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

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**Exhibit 7**  
Business Tax Summary

Classification	Tax Amount	Concentration of Tenants in the Impact Area	Impact from the Project
Business Services	\$238.76 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63608 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,946.73 and 3,907.76 for the first 10,000 barrels with \$0.14381 to \$0.35953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Sources: City of Beverly Hills Tax Schedule FY2011, EPS.

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

## Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax roles. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

## Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund

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revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
**Estimated Construction Impact on Fiscal Revenues**

Category	FY 2011 (1)									
	General Fund Revenues in Partial Impact Area (2)	Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
TOT	<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>\$26,594,808</u>	<u>3.4%</u>	<u>8.4%</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro

(3) Sales Tax loss factor based on literature survey and EPS analysis; TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor

(4) Business Taxes from calendar year 2011.

(5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, and EPS.

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**Appendix 1  
City of Beverly Hills General Fund Property Tax Share**

Parcel	Total
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

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**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgt'd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis

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**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax in Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
		<i>Proportion</i>		Low	High	Avg.		Low	High	Low%	High%
Apparel	\$563,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,935	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,282,882	14%	42%	28%	30%	\$95,881	\$287,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$257,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,976	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,384	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	\$138,133	9%	\$1,316,808	13%	40%	27%	30%	\$52,936	\$158,807	4.0%	12.1%
	<b>\$1,550,904</b>		<b>\$14,784,617</b>	<b>13%</b>	<b>40%</b>	<b>27%</b>		<b>\$588,935</b>	<b>\$1,766,804</b>	<b>4.0%</b>	<b>12.0%</b>

(1) Citywide retail sales used as a proxy to allocate impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.

EXHIBIT F

## Southwest BH HOA Questions

1. Stations in Beverly Hills are planned at Wilshire and Canon/Beverly/Rodeo/El Camino and at Wilshire and La Cienega.
  - a. How long will each of those intersections be closed to traffic and/or partially blocked? We were told by Metro that Metro says it will be only for a few weekends from Friday evening until Sunday night.
2. When will above ground work be going on (during what hours and days)?
3. Exactly what hours and how many weekends will the station construction render those intersections impassable or partially blocked? (Best and worst cases?)
  - a. What were the experiences in other subway construction sites in L.A.?
4. To where will the traffic be diverted when these intersections (Wilshire and Beverly, Rodeo, Canon, El Camino and La Cienega) and streets are closed or partially blocked? And will traffic be diverted into the residential areas during those weekends?
5. What will be the effect on merchants?
6. Where will the staging areas for each of those stations be located?
  - a. What exactly are the staging needs?
  - b. How will construction equipment get from each staging area to the station?
  - c. We understand that all the dirt from the tunnel excavation will be taken out from the tunnel at the stations.
    - (1) How many truckloads a day?
    - (2) Where do the trucks wait/stage?
    - (3) While the dirt is being loaded into the trucks, are the trucks blocking streets (such as Wilshire, Beverly, Rodeo, Canon)?
    - (4) How many months/years does this process take while dirt is being excavated and off-loaded to trucks on the street?
    - (5) How much extra traffic for construction, hauling dirt, bringing in construction materials?
    - (6) Will Wilshire be blocked or cut to one or two lanes? For how long?

(7) How will the cross streets (Beverly Dr., Camden, Rodeo, El Camino, Reeves, Canon, Crescent) be impacted?

(8) Will cars trying to reach Wilshire business be trapped in our residential neighborhood on one side and in the Triangle on the other side?

(9) Routes to and from the construction site to the freeway or elsewhere?

d. Metro has switched the excavation station from Fairfax to La Cienega. What additional burdens, congestion, additional time and evocation work will thus be imposed on and around La Cienega?

7. As we understand it, there are now no plans to have any parking areas (“park and ride”) near the two Beverly Hills stations. That presumably means that people using the subways from those two stations will be dropped off and picked up (“kiss and ride”).

a. Won’t those intersections (Wilshire and Beverly, Rodeo, Canon, El Camino and La Cienega) get terribly congested with people stopping to let off passengers?

(1) Has anyone analyzed the impact on Wilshire and Beverly Dr./Canon/Rodeo Dr/El Camino/LaCienega of thousands of people being dropped off and picked up?

(2) Where will pick-up cars wait for the riders they are coming to pick-up?

(3) What will that do to traffic in the Triangle and the nearby residential areas?

b. Won’t that congestion get even worse at the p.m. (pick up) rush hour as cars wait for their passengers to emerge from their subway ride?

c. We don’t see any planned parking for the thousands of people who are projected to ride the subway who live more than ¼ mile from the subway station. Where will the people who want to park and ride go? Will they park on our streets? Will they fill-up our parking structures?

8. We have read that a building that has a subway station in it is allowed additional height and density/FAR (as much as 15 additional stories). Is that correct?

a. Does that mean that if the property at Wilshire and Canon is the site of a subway station, it could be built to 18 stories (3 plus 15)? (Same at LaCienega.)

9. Will bus routes/bus stop locations have to be changed? During construction of the subway and/or permanently?

a. After construction and when the subway is up and running, will there be additional “connector” buses to subway station areas? Routes of those?

10. How far are BH subway passengers expected to walk to a station (since we’ve been told Century City passengers won’t walk an extra bock and would just continue to drive their cars

instead)? In other words, is expected ridership worth the upheaval and NEW subway-related TRAFFIC that we don't currently even have in our already congested city?

11. Were any economic studies done re possible loss of property value, loss of TOT (hotel taxes) and sales tax revenue for BH during and after subway construction?

a. Will the Beverly Wilshire, Montage and Thompson Hotels have noise issues, access issues and/or other issues for their guests? Will Spago lose its outdoor dining ambience and valet parking access temporarily or even permanently? Spago and Bouchon are a big tourism draw for the city and the hotels. Will some or all of those attractions/revenue producers be taken by Metro by eminent domain?

12. Does Metro guarantee that there will be no loss of life, property damage or restriction on future construction for our City's only High School?



# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294  
(323) 881-2401

DARYL L. OSBY  
FIRE CHIEF  
FORESTER & FIRE WARDEN

April 9, 2012

David Mieger, Project Director  
Los Angeles County Metropolitan Transportation Authority  
1 Gateway Plaza, MS 99-13-1  
Los Angeles, CA 90012

Dear Mr. Mieger:

**FINAL ENVIRONMENTAL IMPACT REPORT, FINAL ENVIRONMENTAL IMPACT STATEMENT/FINAL ENVIRONMENTAL IMPACT REPORT, WESTSIDE SUBWAY EXTENSION PROJECT, PROPOSES TO PROVIDE A 9-MILE EXTENSION OF THE EXISTING METRO PURPLE LINE AT WILSHIRE/WESTERN STATION WEST TO A WESTWOOD/VA HOSPITAL STATION, INCLUDE SEVEN NEW STATIONS, LOS ANGELES (FFER #201200042)**

The Final Environmental Impact Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

### PLANNING DIVISION:

1. We have no further comments at this time.

### LAND DEVELOPMENT UNIT:

1. The statutory responsibilities of the County of Los Angeles Fire Department, Land Development Unit, are the review of and comment on, all projects within the unincorporated areas of the County of Los Angeles. Our emphasis is on the availability of sufficient water supplies for fire fighting operations and local/regional access issues. However, we review all projects for issues that may have a significant impact on the County of Los Angeles Fire Department. We are responsible for the review of all projects within Contract Cities (cities that contract with the County of Los Angeles Fire Department for fire protection services). We are responsible for all County facilities, located within non-contract cities.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS  
ARTESIA  
AZUSA  
BALDWIN PARK  
BELL  
BELL GARDENS  
BELLFLOWER  
BRADBURY

CALABASAS  
CARSON  
CERRITOS  
CLAREMONT  
COMMERCE  
COVINA  
CUDAHY

DIAMOND BAR  
DUARTE  
EL MONTE  
GARDENA  
GLENORA  
HAWAIIAN GARDENS  
HAWTHORNE

HIDDEN HILLS  
HUNTINGTON PARK  
INDUSTRY  
INGLEWOOD  
IRVINDALE  
LA CANADA FLINTRIDGE  
LA HABRA

LA MIRADA  
LA PUENTE  
LAKEWOOD  
LANCASTER  
LAWNDALE  
LOMITA  
LYNWOOD

MALIBU  
MAYWOOD  
NORWALK  
PALMDALE  
PALOS VERDES ESTATES  
PARAMOUNT  
PICO RIVERA

POMONA  
RANCHO PALOS VERDES  
ROLLING HILLS  
ROLLING HILLS ESTATES  
ROSEMead  
SAN DIMAS  
SANTA CLARITA

SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE  
TEMPLE CITY  
WALNUT  
WEST HOLLYWOOD  
WESTLAKE VILLAGE  
WHITTIER

The County of Los Angeles Fire Department, Land Development Unit may also comment on conditions that may be imposed on a project by the Fire Prevention Division, which may create a potentially significant impact to the environment.

2. The development of this project must comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows and fire hydrants.
3. Every building constructed shall be accessible to Fire Department apparatus by way of access roadways, with an all-weather surface of not less than the prescribed width. The roadway shall be extended to within 150 feet of all portions of the exterior walls when measured by an unobstructed route around the exterior of the building.
4. Fire sprinkler systems are required in some residential and most commercial occupancies. For those occupancies not requiring fire sprinkler systems, it is strongly suggested that fire sprinkler systems be installed. This will reduce potential fire and life losses. Systems are now technically and economically feasible for residential use.
5. The development may require fire flows up to 8,000 gallons per minute at 20 pounds per square inch residual pressure for up to a four-hour duration. Final fire flows will be based on the size of buildings, its relationship to other structures, property lines and types of construction used.
6. Fire hydrant spacing shall be 300 feet and shall meet the following requirements:
  - a) No portion of lot frontage shall be more than 200 feet via vehicular access from a public fire hydrant.
  - b) No portion of a building shall exceed 400 feet via vehicular access from a properly spaced public fire hydrant.
  - c) Additional hydrants will be required if hydrant spacing exceeds specified distances.
  - d) When cul-de-sac depth exceeds 200 feet on a commercial street, hydrants shall be required at the corner and mid block.
  - e) A cul-de-sac shall not be more than 500 feet in length, when serving land zoned for commercial use.
7. Turning radii shall not be less than 32 feet. This measurement shall be determined at the centerline of the road. A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in-length and at the end of all cul-de-sacs.
8. All on-site driveways/roadways shall provide a minimum unobstructed width of 28 feet, clear-to-sky. The on-site driveway is to be within 150 feet of all portions of the exterior walls of the first story of any building. The centerline of the access driveway shall be located parallel to and within 30 feet of an exterior wall on one side of the proposed structure.

9. Driveway width for non-residential developments shall be increased when any of the following conditions will exist:
  - a) Provide 34 feet in-width, when parallel parking is allowed on one side of the access roadway/driveway. Preference is that such parking is not adjacent to the structure.
  - b) Provide 42 feet in-width, when parallel parking is allowed on each side of the access roadway/driveway.
  - c) Any access way less than 34 feet in-width shall be labeled "FIRE LANE" on the final recording map and final building plans.
  - d) For streets or driveways with parking restrictions: The entrance to the street/driveway and intermittent spacing distances of 150 feet shall be posted with Fire Department approved signs stating "NO PARKING - FIRE LANE" in three-inch high letters. Driveway labeling is necessary to ensure access for Fire Department use.
10. Provide three sets of alternate route (detour) plans, with a tentative schedule of planned closures, prior to the beginning of construction. Complete architectural/structural plans are not necessary.
11. Notify the County of Los Angeles Fire Department, Fire Stations 7 at (310) 358-3430 and FS 8 at (323) 654-5445 at least three days in advance of any street closures that may affect Fire/Paramedic responses in the area.
12. Temporary bridges shall be designed, constructed and maintained to support a live load of at least 75,000 pounds. A minimum vertical clearance of 13' 6" will be required throughout construction.
13. Disruptions to water service shall be coordinated with the County of Los Angeles Fire Department and alternate water sources shall be provided for fire protection during such disruptions.
14. The County of Los Angeles Fire Department, Land Development Unit comments are only general requirements. Specific fire and life safety requirements will be addressed at the building and fire plan check phase. There may be additional requirements during this time.
15. When developing the infrastructure and when construction is proposed, all requirements as indicated on this report shall be incorporated into the proposed development plan submittals.
16. The County of Los Angeles Fire Department, Land Development Unit appreciates the opportunity to comment on this project.

David Mieger, Project Director  
April 9, 2012  
Page 4

17. Should any questions arise regarding subdivision, water systems, or access, please contact the County of Los Angeles Fire Department, Land Development Unit Inspector, Nancy Rodeheffer, at (323) 890-4243 or [nrodeheffer@fire.lacounty.gov](mailto:nrodeheffer@fire.lacounty.gov).

**FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:**

1. The statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources and the County Oak Tree Ordinance.
2. The areas germane to the statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division have been addressed.

**HEALTH HAZARDOUS MATERIALS DIVISION:**

1. Based on the submitted documents the Health Hazardous Materials Division has no objection to the proposed project.

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,



FRANK VIDALES, ACTING CHIEF, FORESTRY DIVISION  
PREVENTION SERVICES BUREAU

FV:ij

# CITY OF LOS ANGELES

CALIFORNIA



Jaime de la Vega  
GENERAL MANAGER

## DEPARTMENT OF TRANSPORTATION

100 S. Main St., 10<sup>th</sup> Floor  
LOS ANGELES, CA 90012  
(213) 972-8470  
FAX (213) 972-8410

ANTONIO R. VILLARAIGOSA  
MAYOR

April 23, 2012

Mr. David Mieger  
Project Director, Westside Subway Extension  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, MS 99/22/5  
Los Angeles, CA 90012-2952

### RE: COMMENTS ON THE WESTSIDE SUBWAY EXTENSION FINAL EIR/EIS

Dear Mr. Mieger:


The Los Angeles Department of Transportation (LADOT) has reviewed the Final Environmental Impact Report/Environmental Impact Statement (FEIR/FEIS) with particular attention to the location of the station entrances and their connectivity to sidewalks, local streets, bicycles and other transit modes.

We would encourage more than one station entrance be included in the design through joint development or other public private partnership for all stations. This would expand the subway service area, increase ridership and encourage more transit oriented development. The cost of constructing these extra entrances as part of the project would be much lower than retrofitting them at later dates. Modern subway stations in other cities around the world generally have multiple entrances for major subway stations.

In the station entrance areas, sufficient sidewalk width should be made available to allow adequate pedestrian access and circulation. For example, the sidewalk near the proposed station entrance at the northwestern corner of Wilshire/Westwood is narrow and obstructed and would need to be improved. Furthermore, the connection between subway stations and surface street bus services is critical to the success of the project. The Westwood/VA Station, in particular, needs to have elevator/stair/escalator connection from the bus bay on Wilshire to Bonsall Avenue and to the proposed subway station since they are on three different levels.

We will work closely with you during the detailed design phase to ensure station engineering and system connection are properly designed before the construction contract is awarded. We would also conduct joint field visits to address all safety and operational issues. Thank you for the opportunity to comment on this FEIR/FEIS. Please feel free to contact Kang Hu of my staff at (213) 972-8627 if you have any questions.

Sincerely,

  
Jaime de la Vega  
General Manager

c: Borja Leon, Deputy Mayor



**DEPARTMENT OF VETERANS AFFAIRS  
Greater Los Angeles Healthcare System  
11301 Wilshire Boulevard  
Los Angeles, CA 90073**

April 23, 2012

In Reply Refer To: 691/00

David Mieger, Project Director  
DEO, Countywide Planning & Development  
Metro  
1 Gateway Plaza, 99-22-5  
Los Angeles, CA 90012

Bakersfield Community  
Based Outpatient Clinic  
1801 Westwind Drive  
Bakersfield, CA 93301  
(661) 632-1800

Dear Mr. Mieger,

Los Angeles Ambulatory  
Care Center  
351 E. Temple Street  
Los Angeles, CA 90012  
(213) 253-2677

VA Greater Los Angeles Healthcare system (GLAHS) is responding to the March 23, 2012, release of the Final Environmental Impact Statement / Report (EIS/EIR) on the Westside Subway Extension completed by the Los Angeles County Metropolitan Transportation Authority (Metro).

Santa Barbara Community  
Based Outpatient Clinic  
4440 Calle Real  
Santa Barbara, CA 93110  
(805) 683-1491

As stated in our previous letter dated April 19, 2012, GLAHS continues to have multiple points of concern regarding the proposed construction and location of the subway station and related improvements on the U.S. Department of Veterans Affairs West Los Angeles VA Medical Center campus. GLAHS has concerns both during the construction period and post construction operation.

Sepulveda Ambulatory Care  
Center and Nursing Home  
16111 Plummer Street  
North Hills, CA 91343  
(818) 891-7711

The attached GLAHS document titled "Westside Subway Extension Review" details GLAHS' review of the Final EIS/EIR. The proposed plans developed by Metro for both the North and South campus options for the Westside Subway Extension will greatly affect the daily operations at the West Los Angeles VA Medical Center campus. Such affects would disrupt and hinder our ability to provide our Nation's Veterans with the state-of-the-art health care they expect and deserve.

West Los Angeles  
Healthcare Center  
11301 Wilshire Boulevard  
Los Angeles, CA 90073  
(310) 478-3711

GLAHS appreciates the ongoing meetings and communications with Metro staff, and looks forward to future discussions regarding this subway project. Such further discussions will enable VA to receive more information, further assess the concept, and provide further feedback.

Please contact John Pechman, Strategic Planner at (310) 478-3711 x49799 or via email at [John.Pechman@va.gov](mailto:John.Pechman@va.gov) with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donna M. Beiter". The signature is fluid and cursive, with the first name "Donna" being the most prominent.

Donna M. Beiter, R.N., M.S.N.

Director

Attachments

**Westside Subway Extension Review  
VA Greater Los Angeles Healthcare System  
April 23, 2012**

Below is an analysis and summary, prepared by VA Greater Los Angeles Healthcare System (GLAHS), for the Los Angeles County Metropolitan Transportation Authority (Metro) Final Environmental Impact Statement/Report (EIS/EIR) for the Westside Subway Extension. In the report, Metro describes plans to utilize the West Los Angeles VA Medical Center (WLA VAMC) campus as the primary drilling and construction staging site for Phase 3 (Century City to Westwood/VA Hospital) construction of the Westside Subway Extension. This project will impose serious impacts to the WLA VAMC campus both during and following construction including, but not limited to, land management, parking, traffic, access, noise/vibration, environmental, cultural resources, security, air quality, hazardous materials, and very large shutdowns for utility relocations.

GLAHS appreciates the ongoing meetings and communications with Metro staff, and looks forward to future discussions regarding this subway project. Such further discussions will enable VA to receive more information, further assess the concept, and provide further feedback.

**Construction Impacts**

1. **Site/Land Use**: The WLA VAMC has multiple Congressional laws that restrict the property for non-VA use. The listed easements required for the North & South entrance options, emergency exit shafts, etc. (Table S-15) are not possible with this legislation. The use of GLAHS property for construction staging and subway tunnel construction was never discussed or approved by GLAHS leadership. Furthermore, this summary table indicates that full closures of both Bonsall Ave and Wilshire Blvd would be required for construction of the Westside Subway. Both Bonsall and Wilshire are the two main access points for the WLA VAMC campus and the I-405 Freeway is the main freeway serving many Veterans receiving care. Closures of these access roads will have serious impacts to access and hospital operation.
2. **Construction Lay Down**: The Final EIS/EIR indicates that the WLA VAMC will provide three acres of land for construction of the Westside Subway beginning with installation of road decking and utilities relocation for the section from WLA VAMC to Century City. According to the Final EIS/EIR, construction lay down will be used for staging and storing of decking and station construction equipment, contractor field offices and parking, dewatering effluent sewage, storage for tunneling equipment, electrical substation, concrete slurry mixing plant, storage of excavated soil and materials, and workshops to support these operations. The use of three acres of VA owned land for 8-10 years of construction was not discussed with GLAHS or the VA. Metro indicates that these operations will only require 2-3 years; however the EIS/EIR indicates a much longer and larger

presence on the WLA VAMC site. Furthermore, placement of this construction staging area in the main Patient Parking (Lot 42) and utilization and shutdowns of Bonsall Avenue will present serious impacts to the entire operation of the WLA VAMC. Further studies, discussions, and engineering analysis should be conducted by Metro prior to any further preliminary design or planning work.

3. **Street Closures:** Planned street closures including the installation/removal of street decking, relocation of utilities, and other phased closures are necessary according to the Final EIS/EIR. The report estimates 2-4 consecutive full weekend closures (56 straight hours) of Wilshire Blvd for station construction as well as 8-10 full weekend closures for installation of decking and an additional 8-10 full weekend closures for removal of decking for the Metro preferred South station option. The EIS/EIR indicates phased shutdowns for Bonsall Ave for both weekends and after normal business hours, however the exact frequency and lengths of these enclosures are not provided. Bonsall Ave is the main connector from our North and South campus including some of our most critical Community Living Center patients (Buildings 213 & 215) and shutdowns will cause serious impacts to access for emergencies and critical care patients.
  - a. Partial lane closures of Wilshire Blvd will also impact high traffic areas of West Los Angeles that are already congested without any closures. The WLA VAMC is a 365-day operation and shutdowns of these lengths and magnitudes were not discussed with GLAHS staff prior to release of the Final EIS/EIR. The GLAHS believes that further studies and investigations by Metro are required to alleviate the impacts to medical center operations.
  - b. Tunnel Boring: Both North & South VA Hospital scenarios were designated as Tunnel Boring Machine (TBM) sites on the WLA VAMC campus. "The size of the construction lay down area has been expanded from the Draft EIS/EIR to accommodate a Tunnel Boring Machine launch site in the Final EIS/EIR." (Section 2.6.4, Page 2-94). The decision to make the WLA VAMC a TBM site was never discussed with GLAHS or VA. The Final EIS/EIR indicates drilling would take place for approximately 2 years, however the exact time of day and level of impact to the WLAHC have been estimated as negligible compared when compared to the full project. The planned tunneling operation will take place in front of the busiest intersections in West Los Angeles and does not take into account the daily operations of the WLA VAMC.
4. **Truck Hauling:** Daily truck hauling during tunnel boring and construction will involve 100-140 10-yard dump trucks moving from the tunnel site daily for the estimated two-year duration. An estimated 80-120 of additional daily trips for the station construction and other related construction activities are indicated on Table 3-21. Truck haul routes indicate that Santa Monica Blvd & Wilshire Blvd will be the main truck routes for transfer of these trucks to the I-405 Freeway. It

is unclear what route trucks will take to get to these streets. The WLA VAMC campus is a high traffic area and introducing large truck hauling onto the site on any given day will result in serious delays and impacts to the operation of the hospital. An in depth traffic study, with GLAHS input, must be completed to investigate and mitigate these impacts.

5. **Public Transit Impacts:** The Final EIS/EIR indicates rerouting of bus lines and additional bus stop locations. Many of our Veteran patients are disabled and rerouting of bus stops, especially those on Bonsall Ave and Wilshire Blvd will greatly affect access to the WLA VAMC. Discussions of the locations and access for these bus stops is not provided and should be discussed as to mitigate any impacts to Veteran patients.
6. **Traffic & Circulation:** Mitigation measures for Traffic and Circulation impacts during construction are specified in the EIS/EIR and include:
  - a. Traffic Control Plans specific to sites will be developed. These control plans will detour access routes, street closures, available lanes, and construction site phasing. GLAHS would like input into these Traffic Control Plans as patients, employees, and public citizens use the WLA VAMC streets on a daily basis. Shutting down or congesting one area of traffic will only lead to more traffic in another area.
  - b. Designated Haul Routes: This mitigation measure specifies nighttime truck routes and operations. The WLA VAMC is a 24 hour, 7 day a week operation with many residents, acute recovering patients, and immune compromised patients. Nighttime work on the WLA VAMC will cause serious disruption to patient care and residents. The Final EIS/EIR also indicates a vehicle dispatching, including trucks that will wait on the WLA VAMC property until dispatched. Idling trucks and construction equipment will cause major environmental and noise pollution to a site that is used to encourage health and wellness for Veteran patients and staff.
  - c. Emergency Vehicle Access: Access for Emergency Vehicles for both the North and South campuses of the WLA VAMC will affect ambulance wait times and will block access to patients.
  - d. Transportation Management Plan (TMP): A Transportation Management Plan will be developed by Metro with input from local jurisdictions and Caltrans. This TMP must be discussed with GLAHS to reduce impacts to the WLA VAMC campus.
7. **Parking:**
  - a. Parking mitigation efforts during the tunneling, station construction and other construction must be properly planned between Metro and GLAHS.

Multiple sources within the Final EIS/EIR mention relocation of a Patient Parking Lot (Lot 42) in the preferred South of Wilshire VA option and that a parking garage shall be constructed to reduce the impact to the WLAHC campus. The size and timeline for construction of this garage are not included in the Final EIS/EIR. A temporary lot south of Building 501 on the WLA VAMC campus is also included on plans within the Final EIS/EIR. The use of this land, which currently holds a solar panel farm, as well as the use of Lot 42, was not discussed for use until the release of the Final EIS/EIR. The purpose of the southern temporary lot seems to indicate that LA Metro plans on beginning construction and shutting down GLAHS parking in both Lot 42 and the Physicians parking lot (planned for the new garage) concurrently. This will seriously affect the operations of the hospital, as both these lots are the closest parking lots to the hospital and will be closed concurrently. Metro must consider the needs and operation of the WLA VAMC during the parking design and planning process.

- b. Parking for contractors during the construction of the Westside Subway Extension on the WLA VAMC campus is not addressed in the Final EIS/EIR. A comprehensive parking and traffic study must be developed to limit the number of construction contractor staff on site. GLAHS is concerned that these contractors would use WLA VAMC campus parking and a traffic study and reduction plan should be presented to mitigate these concerns.
8. **Noise/Vibration:** Noise and vibration from the construction of the Westside Subway Extension and tunneling work is not presented in the Final EIS/EIR. The Final EIS/EIR does not indicate any noise mitigation plans for the WLA VAMC as it does for the City of Los Angeles and other local municipalities. GLAHS requires a Noise & Vibration Control Plan as well as an acoustical analysis of the noise impacts from a cumulative and comprehensive analysis of construction of tunnel, station, street decking, concrete slurry plant, as well as the hauling and distribution of excavated soil and waste.
9. **Air Quality/Emissions:** The Westside Subway Extension Tunnel Boring Machine (TBM) sites will exceed South Coast Air Quality Management District (SCAQMD) levels both daily and throughout the construction of the subway extension. Although there are planned mitigation measures to reduce air emissions levels, there are significantly high Particulate Matter and Nitrous Gas emissions predicted at TBM sites. GLAHS has many patients with respiratory ailments that require treatment at the WLA VAMC. GLAHS would like an Emission Control Plan that ensures that the construction of the Westside Subway on the WLA VAMC campus is well below the acceptable levels set by SCAQMD.
10. **Hazardous Waste & Materials:** The Final EIS/EIR indicates that contaminated soils and materials could be encountered during drilling or construction of the

Westside Subway Extension. GLAHS agrees with the mitigation plans, but is concerned that contaminated soils could be stored on the WLA VAMC campus until properly disposed. Metro must properly and expeditiously remove contaminants from the WLA VAMC campus.

11. **Utility Relocation**: The Final EIS/EIR mentions relocation of utilities serving various entities in the project. The WLA VAMC campus is a major operation with many of the main utility service areas travelling beneath Wilshire Blvd. The WLA VAMC is 24 hour, 7-days-a-week operation and even the slightest shutdown of any major utility could have a potentially fatal impact on some of the critically acute patients. Metro must work with GLAHS to ensure that shutdowns of major utility services are carefully planned and orchestrated to avoid serious impacts to hospital operations.

### **Permanent Impacts**

1. **Site/Land Usage**: Conceptual design plans indicate land transfer and acquisition processes. Public Laws 100-322 section 421(b) (2) and 110-161 section 224 (a) & (c) explicitly restrict transfer of property for any non-VA use. Transfer or use of any property on the WLA VAMC site was not discussed with GLAHS or VA General Counsel prior to development of the conceptual plans on VA property. Coordination with the proper Federal authorities is necessary and agreements should be done in accordance with the VA Greater Los Angeles Healthcare System Master Plan. To date, this process has not occurred.
2. **Station Location**:
  - a. The Locally Preferred Alternative (LPA) indicates a \$32.5 million difference in costs savings between the South and North Station Options. As mentioned in our letter to Metro on April 19, 2012, GLAHS agreed to conceptual planning efforts for the South option. At this time, GLAHS did not expect to be considered as a Tunnel Boring Machine (TBM) site for the project. In review of the Final EIS/EIR, it is not clear whether the \$32.5 million in savings will support the South option considering the great financial and operational impacts on the WLA VAMC campus. The location of the South VA Station, directly under the main intersection of Bonsall Ave and Wilshire Blvd, will significantly impede the access to care for our Veteran patients and families. GLAHS recommends that the Metro consider other sites, including the Army Reserve Property located adjacent to the west side of WLA VAMC campus, to reduce the impact to our medical center operations and the surrounding community.
  - b. The Final EIS/EIR includes a 50' x 100' site for an emergency generator. The location and specifics of this emergency generator, including size, general use, and operation have not been discussed with GLAHS.

GLAHS has not agreed to be an emergency generation center for the Metro Westside Subway Extension.

3. **Parking & Traffic:** The Final EIR/EIS indicates that significant impacts to Traffic & Parking Spillover will be minimal to nominal with mitigation measures despite the existing demand estimated at approximately 390 more parking spaces needed than existing (Table 3-17). The EIS/EIR states that parking mitigation measures such as Parking Monitoring & Community Outreach, Residential Parking Districts, and Shared Parking Programs will monitor the station for 6 months following construction. Unfortunately, none of these mitigation measures will reduce the 390-space demand for the Westwood/VA Hospital site. Spillover parking will occur the WLA VAMC campus and surrounding community and enforcement of parking will only lead to frustration among Metro riders, Veterans, and hospital staff searching for parking. Adequate parking should be provided by the Westside Subway Extension project to reasonably account for the demand. GLAHS and the surrounding community should not have to account for additional parking as a result of this project. Metro must come up with a realistic plan to address the parking demand in a comprehensive Parking & Traffic plan with GLAHS and surrounding community input.
4. **Noise/Vibration:** Planned ventilation and emergency generator equipment were not specified on plans or discussed with GLAHS staff during meetings & site visits. Only conceptual design plans have been provided and noise mitigation during construction are not addressed in NEPA documents. The noise and vibration of this equipment is cited as being within *Metro Design Criteria* guidelines. The Final EIS/EIR does not state the design criteria for noise and vibration. The size, location, and operation of the tunnel ventilation systems have not been specified; however GLAHS has no interest in venting over 2 miles of tunnel directly on its grounds. Furthermore, additional traffic from vehicles looking for parking spaces on the WLA VAMC campus will add to the noise from the new station and have not been addressed in the Final EIS/EIR
5. **Security:** The WLA VAMC campus consists of 387 acres and the Final EIS/EIR does not specifically address the increase in general foot and vehicular traffic on the campus. Metro includes law enforcement officers, lighting, closed circuit television monitoring, signs, etc. to mitigate these actions, however how they would interface with VA Police is unclear. Any subway station on WLA VAMC campus will significantly increase the number of people through the property on any given day. Furthermore, plans for an end stop on the Subway line could lead to increased crime not specifically addressed in the Final EIS/EIR. The location of the site would be better served, for both GLAHS and Metro, if it was relocated to a less congested, adequately secure area away from the entrance to the WLA VAMC main hospital grounds.
6. **Cultural Resources:** Although the majority of the proposed construction and station locations remain off the WLA VAMC Historical Districts, the conceptual

design renderings provided by Metro do not meet the Secretary of the Interior's Standards for Historical Properties. GLAHS believes that the historical nature and preservation of the WLA VAMC campus are of utmost importance and hope that the Metro considers this in their design plans on VA property.



One California Plaza  
37th Floor  
300 South Grand Avenue  
Los Angeles, California  
90071-3147

April 23, 2012

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E-MAIL: ddennis@hillfarrer.com  
WEBSITE: www.hillfarrer.com

Via Hand Delivery

Honorable Antonio Villaraigosa  
Chair and Members of the Metro Board of  
Directors  
One Gateway Plaza  
Los Angeles, CA 90012-2952

Re: **FEIS/EIR on Westside Subway Extension Project**

Honorable Chair and Members of the Board of Directors:

We represent the Beverly Hills Unified School District (BHUSD) in conjunction with the consideration of proposed subway alignments for the Century City Station. We presented the majority of this letter to the Metro Planning and Programming Committee on April 18, 2012. By this letter, we are providing that same information to the entire Board.

### **Recent Developments**

In addition, since the Planning and Programming Committee met, the highly regarded geotechnical, engineering firm, Leighton Consulting, Inc., has issued a report on the possible fault presence and activity at Beverly Hills High School that calls into serious question the conclusions and the methodology of the Parsons Brinkerhoff study conducted for Metro as part of their investigation for the Westside Subway Extension Project. This Report is being delivered to all Board members herewith.<sup>1</sup> The Report studies, in a much more scientifically detailed way than ever before, the possibility of active faulting on the Beverly Hills High School campus and concluded that there is no evidence of active faulting on the

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<sup>1</sup> Leighton Consulting, Inc. Fault Hazard Assessment of the West Beverly Hills Lineament Beverly Hills High School 241 south Moreno Drive Beverly Hills, California, April 2012.

campus, associated buildings or nearby District structures. The Report found direct geologic evidence to refute the Parsons Brinkerhoff conclusions that active faults are present on the Beverly Hills High School campus. This significant, new information calls into direct question Metro's conclusions that impacts on planned construction at Beverly Hills High School need not be considered since active faulting on the campus renders those plans infeasible. There are no active faults.

While the Leighton Consulting study does not directly address the presence of faulting and the viability of a subway station at Santa Monica Boulevard, Parsons Brinkerhoff used similar methodology to conclude that the Santa Monica Boulevard locations studied were subject to active faulting and also thus infeasible for a subway station. The Beverly Hills High School study delivered today thus calls into question that conclusion as well. At great expense to BHUSD, geotechnical experts are currently undertaking a study of the Santa Monica site(s) and a report will soon be issued during the extended FEIS comment period provided by the Federal Transit Administration. Part of the letter that follows urges the Metro Board to postpone its certification of the FEIS/EIR (as the FTA has done) until all of the scientific information is received. The information contained in the Leighton study provides further reason for the continuance. If the Metro Board proceeds with its certification decision on April 26, 2012 as heretofore announced, in the face of both this new, significant evidence from Leighton and the FTA's decision to wait for the additional studies, it will be ignoring its obligations under the California Environmental Quality Act and denying the public information that is critical to its decision.

### **Background Information on Seismic Evaluations**

When Metro released its Draft EIS/EIR in September, 2010, the Metro Board did not select an alignment for proceeding west from the Wilshire/Rodeo station. Instead, it chose to continue to study two different alignments and resulting station locations in Century City (Santa Monica Boulevard and Constellation Boulevard). As of the release of the Draft EIS/EIR, insufficient environmental analysis had been done

to warrant selecting one alignment and station location over the other. “The analysis completed by the release date of the Draft EIS/EIR had not led to a conclusive recommendation regarding the feasibility of a station at this location.”<sup>2</sup> According to Metro, “a Board motion was approved to request more detailed exploration of station location and alignment options at Century City.”<sup>3</sup> According to Metro, “the Board decided to continue to study two station locations in Century City (Santa Monica and Constellation) to address concerns raised by the community regarding the safety of tunneling under residences and schools (Constellation Boulevard Station) and locating a station close to a seismic fault (Santa Monica Boulevard Station.)”<sup>4</sup> And further Metro explained, “The Draft EIS/EIR disclosed that the Century City (Santa Monica Boulevard) Station Option alignment would run within proximity to the Santa Monica Fault....[T]he Board deferred the decision on the station site at Century City based on the uncertainty of the location of the Santa Monica Fault and the safety of constructing and operating a station at the Santa Monica Boulevard site.”<sup>5</sup>

After more than a year of studying the seismic conditions at Santa Monica Boulevard, Metro released its fault investigation studies in October 2011.<sup>6</sup> The gist of those studies was the finding of active faulting at the Santa Monica Station site. This resulted in the following recommendation of Metro staff in February 2012: “In light of the unsuitability of the Santa Monica Boulevard sites for a Century City

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<sup>2</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012, page 8-44.

<sup>3</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 1-1.

<sup>4</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 2-1.

<sup>5</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 2-5

<sup>6</sup> Metro, Westside Subway Extension Project, Fault Investigation Report, October 2011; Metro, Westside Subway Extension Project, Century City Area tunneling Safety Report, October 2011.

Station due to seismic considerations, and the conclusion of the Century City Area Tunneling Safety Report that tunnels to Century City Constellation station site can be constructed safely and without adverse impact to the properties above, it is recommended that the Century City Station be sited at Constellation Boulevard.”<sup>7</sup> This recommendation was carried over into the FEIS/EIR Metro released to the public in March 2012.<sup>8</sup> According to that report:

**“During the Final EIS/EIR phase, Metro conducted further geotechnical studies, which identified two active fault zones in the Century City area....This investigation concluded that both the Santa Monica Fault zone and the WBHL are active fault zones....Based on the results of these fault investigations, there is clear evidence that the station locations on Santa Monica Boulevard (both east and west) would be in active fault zones and are not viable locations for station options. The station on Constellation Boulevard would not be within an active fault zone and is a viable option for a station location. In summary, both of the Century City Santa Monica Station options are located within active fault zones, but the Century City Constellation Station site is located outside zones of active faulting and can be considered a viable option.”<sup>9</sup>**

October 2011 was the first time the public had been able to see any detail seismic information about the Santa Monica Station site and

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<sup>7</sup> Metro, Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 3-1.

<sup>8</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012.

<sup>9</sup> Metro, Westside Subway Extension Project, Final EIS/EIR, March 2012, page 8-45.

February/March 2012 was the first time that Metro announced to the public what the recommended alignment would be.

Upon the release of Metro's October 2011 seismic studies, interested public agencies, including the City of Beverly Hills and the BHUSD were able for the first time to analyze and comment upon the seismic analysis. In February, 2012, the City of Beverly Hills released an independent analysis by Exponent that concluded:

“While the Century City Area Tunneling Safety Report and Century City Area Fault Investigation Report outline many of the hazards associated with the tunneling project, such as fault rupture, gas explosion and ground settlement, Exponent's overarching opinion is that neither report demonstrates the presented findings as based on rigorous risk assessment(s) on these subjects. Specifically, no attempt is made to quantify or even qualitatively assess the potential risks from these scenarios. No quantitative or qualitative risk assessments have been presented to either a) estimate the likelihood of such events or b) characterize the potential severity of such events to the public.<sup>10</sup>

Based on the findings reported in the Metro-sponsored reports and supporting review comments, momentum seems to be building against construction of a station on Santa Monica Boulevard based on perceived fault rupture hazards. It is Exponent's view that the alternative Constellation Boulevard station, while generally in a more favorable location with regards to faulting

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<sup>10</sup> Exponent, Hazard Assessment Study Westside Subway Extension Project, Century City Area, California, February 7, 2012, page ii.

issues, is instead faced with potential methane gas hazards that could represent at least as great a hazard to the public as the faulting hazards associated with the Santa Monica Boulevard station. In the absence of a quantitative risk assessment, the choice between the stations is more likely to be made on the basis of risk perception rather than risk quantification. Additional steps can and should be performed at both station locations to better quantify the seismic and gas hazards at these locations. Potential adjustments to the proposed locations should also be considered.”

Metro did not specifically address or respond to this report in the Final EIS/EIR. The suggestions made by Exponent are largely to be covered in the expert reports now being prepared by BHUSD.

Independent seismic experts retained by BHUSD have also been performing more detailed seismic studies. As part of that process, BHUSD made requests to both the U.S. Federal Transit Administration, as the lead agency for purposes of the National Environmental Policy Act (NEPA) environmental review, and Metro, as the lead agency for purposes of the California Environmental Quality Act (CEQA) environmental review, to extend the comment period for 30 days for review under NEPA and to similarly continue the Metro Board’s April 26, 2012 scheduled consideration and certification of FEIS/EIR under CEQA. BHUSD requested this modest delay to ensure that both the decision makers and the public have full access to all available, objective expert reports. Because of the technical, complicated and time consuming scientific nature of the seismic work, BHUSD’s expert reports have not been completed. This request was included in a letter from BHUSD Board President Brian David Goldberg, dated April 3, 2012, to Metro explaining the need for the additional time:

“In late October of last year, Metro released to the public, without sharing with BHUSD, its Century City Area Fault Investigation Report ("Fault Investigation Report"). The scope and implications of that report have gone well beyond issues related to the Westside Extension and, left unexplored, would substantially and negatively impact the continued use of the BHHS property. The Metro Report opined as to numerous active faults, previously unknown to anyone, which Metro asserts underlie substantial portions of Century City and the surrounding area including BHHS and the El Rodeo elementary school. The Fault Investigation Report further recommended that those areas be considered for an Alquist-Priolo restriction on the construction of habitable structures - a recommendation of regional and statewide concern. Based on the conclusions in the Fault Investigation Report, Metro staff has now recommenced against any Century City station on Santa Monica Boulevard in the draft FEIS/EIR.

As a result of Metro's Fault Investigation Report, numerous regulatory agencies, public agencies and private parties have been forced to consider the Metro Fault Investigation Report and its implications for existing structures and future projects.

The Metro Fault Investigation Report alleged serious safety issues with two BHUSD campuses. In response to the Metro Fault Investigation Reports, BHUSD immediately retained a team of prominent geologists, seismic engineers and geotechnical engineers to do a detailed seismic investigation and analysis of the area. The analysis and results of the BHUSD investigation differ substantially from the Metro investigation in depth, regulatory oversight and time invested.

Crucially, BHUSD's investigation includes seismic trenching, the only recognized method to positively determine the presence of faults at the surface plus extensive testing and analysis to age area soils and potential faulting - the only methods to absolutely determine whether an area is actually underlain by active faulting - simple and straightforward steps which Metro failed to do before reaching its far-impacting conclusions.

Due to the implications of the conclusions of Metro's Fault investigation Report, BHUSD's work must ultimately satisfy numerous and various State agencies which oversee school sites, including the California Geologic Survey (CGS) which has strict regulatory oversight over all school seismic and geotechnical analysis. CGS has been actively involved in our field investigations, has made numerous visits to our field sites, and has requested additional investigation and analysis. The United States Geologic Survey (USGS) has also made repeated visits to our field sites because of the regional and statewide implications and reviewed our analysis and conclusions. BHUSD believes that its ongoing cooperation with all involved public agencies is necessary to allow a reasoned decision making process and evaluation of the impacts of Metro's proposed Westside Extension project on its school properties. However, that process is not sensitive, or responsive, to the time constraints imposed by Metro's proposed schedule. It does not allow BHUSD to fully and completely respond to the complex issues raised by Metro. Adhering to the current time constraints as proposed will deprive the Metro Board of the opportunity to fully and completely evaluate the impacts of its proposed Westside Extension project. We are confident that

this is not a result that is desirable to the Metro Board or in the interest of the public it serves.

The experts retained on behalf of BHUSD to evaluate the Metro conclusion have been working on an expedited schedule since the release of Metro's Fault Investigation Report - working through holidays and on weekends - to complete their studies as soon as possible. This work is being completed as expeditiously as reasonably practicable and was made necessary to evaluate the claims put forth by Metro which substantially impact the on-going use of the property for school purposes. While this work is necessary to assure compliance with State requirements for school properties, BHUSD has made every effort to meet Metro's deadlines at great expense to BHUSD. The experts retained on behalf of BHUSD now advise us that they anticipate completing the necessary groundwork within the next few days (weather permitting). They expect to deliver a comprehensive fault investigation report and analysis of the Metro Alquist-Priolo recommendation to the CGS by early May. As a result of the Metro Fault Investigation Report BHUSD has incurred expenses in excess of \$1,000,000 for a comprehensive geotechnical investigation to evaluate Metro's conclusions.

BHUSD and its Board is confident that the Metro Board would benefit from the results of its investigation and understands the importance of the need for Metro to have the opportunity to consider all relevant data in making this very important decision which will impact our community. BEUSD further believes that the results of these reports, and the data and analysis contained therein, are important for the Metro Board to consider before certifying the FEIS/FEIR.

Delaying the Metro Board vote until May will allow the Metro Board members and staff sufficient time to fully review and consider all reports prior to consideration of the FEIS/FEIR for the Westside Extension project. This request is reasonable in light of the scope and potential impacts of the proposed Project.

A one month extension of time is consistent with Metro practice on other projects and given the more than seven years already spent in project development will have a negligible impact. It makes no sense, after several years of developing an EIS/EIR, for the Metro Board to vote on the FEIS/FEIR without first at least reviewing the critical information that will be contained in BHUSD's reports - particularly after the District has gone through such great lengths and incurred such expense to create this report. (See Exhibit A attached)

No response to Mr. Goldberg's letter was ever received from MTA. However, on April 6, 2012, the FTA Regional Administrator granted the requested extension "[g]iven the importance of the Project." (See Exhibit B attached)

Similarly on April 12, 2012, Congressman Henry Waxman wrote to Art Leahy, Chief Executive Officer of Metro:

"I have heard a great deal of concern from the Beverly Hills community about the proposed Century City station at Constellation Boulevard, because of the possible safety risks involved with tunneling under Beverly Hills High School. The City of Beverly Hills and the Beverly Hills Unified School District have commissioned independent

studies and made a strong case that the route poses safety risks and would be less desirable for cost, speed and ridership. These concerns must be weighed carefully alongside the study commissioned by Metro which identified serious seismic concerns for alternate station locations on Santa Monica Boulevard." (See Exhibit C attached)

Similar requests for extension were contained in letters from BHUSD counsel to Metro counsel dated March 27, 2012 and April 10, 2012. The latter urged Metro to grant the extension in light of the FTA action. (See Exhibit D attached)

Nevertheless, on April 13, 2012, counsel for Metro denied the requested extension:

"I received your letter dated April 10, 2012 renewing BHUSD's request to extend the public review period for the Westside Subway Extension Project. As you know, there are two levels of approvals required for transit projects seeking federal funding. Local approval by the MTA Board must occur before federal action by the Federal Transit Administration. The MTA Planning and Programming Committee is still scheduled to review the Projects Final EIS/EIR on April 18. The following week, on April 26 the MTA Board will consider recommended actions to approve the Project and certify the environmental documents pursuant to CEQA." (See Exhibit E attached)

To be clear, BHUSD did not ask Metro to delay its consideration under CEQA until after the FTA approval; it only requested that Metro delay its consideration (as the FTA did) to afford time to consider all of the independent studies commissioned by BHUSD. Metro has refused to

do so. Apparently, Metro intends to proceed to evaluate its compliance under CEQA before all the environmental studies are received and considered and to do so despite the fact that the FTA has determined that it needs to wait and consider these studies in order to comply with its responsibilities under NEPA.

Since at least April of 2011, Metro has been apprised of BHUSD's specific concerns about the compatibility of Metro's planned tunnels with the Beverly Hills High School campus -- both as it currently sits and as planned under its educational master plan and modernization program. (See Exhibit F attached) Metro's FEIS/EIR ignores the impacts outlined therein.

**I. Metro has refused to extend the time for review thus undermining one of the fundamental purposes of CEQA.**

The purpose of an EIR is to give the public and governmental agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564.

In Bozung v. Local Agency Formation Commission of Ventura County (1995) 13 Cal.3d 263, 283, the court held the purpose of CEQA is:

“[N]ot to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. **At the very least, however, the People have a right to expect that those who must decide will approach their task neutrally, with no parochial interest at stake.**” (Emphasis added.)

The critical issue before the Metro Board for the two Century City optional alignments is the seismic posture of the two alternative station sites. This is an issue where testing takes weeks if not months and is not easily confined to a 30-45 day comment period. After the Draft EIR was published in September 2010, it took Metro until October/November 2011 (or more than a year) to complete and finalize its seismic studies. The interested public was only then able to see what Metro was planning and why. Evaluating and testing these studies takes weeks, if not months. Only then can the public comment as it usually would comment on a Draft EIR.

Unlike the FTA, the Metro Board has now decided to proceed with its lead agency responsibilities under CEQA without considering significant information being prepared by experts commissioned by BHUSD in response to the Metro studies. This is contrary to the purposes of CEQA and indicative of an improper commitment to a particular alignment and station location prior to full CEQA review and without fully evaluating the environmental effects.. "While an agency may certainly adjust its rules so as to set '[t]he exact date of approval' ... an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR." Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 132. The FTA made its decision to extend the comment period so that it would have all the relevant environmental information before it makes its decision. In contrast, Metro raises the risk that the EIR will be viewed as a post hoc rationalization of the agency's action -- undermining CEQA's goal of demonstrating to the public that the environmental implications of the project have in fact been analyzed.

**II. Metro should recirculate that portion of the EIS/EIR based on significant new information,**

If significant new information is added to an EIR after it has been made available for public review, the EIR should be revised and recirculated for public comment before being certified by the lead agency. (Guidelines, § 15088.5 subd. (a); Public Resources c. § 21092.1)

“New information is ‘significant’ within the meaning of section 21092.1, only if as a result of the additional information ‘the EIR changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.’ (Accord, CEQA Guidelines....., §15088.5 subd. (a).) Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new significant impact or a substantially increased impact on the environment.” Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 447.

In this case, the formal public comment period closed in October 2010 after the publication of the Draft EIR in September 2010. Metro did not even have enough information about the seismic conditions in the area in September 2010 to make a decision about the preferred alignment. The Project Description (specifically what the alignment would be and where the Century City station would be located) was not even established as of the draft. In Metro’s own words, studies were commissioned after the close of the public comment period requesting a “more detailed exploration of station location and alignment options at Century City.” Nor were the “open issues” some minor, insignificant item to be studied; for an underground subway, the final alignment and location of the stations are fundamental to the Project Description. “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative

and legally sufficient EIR . County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193.

“Additional information,” particularly Metro’s Fault Investigation Report, and Century City Area Tunneling Safety Report, both from October 2011, nearly a year after the formal public comment period closed under CEQA, provided significant, new information that changed the EIR in a way that deprived the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project since the formal comment period had closed over a year earlier and requires recirculation – particularly if Metro will not provide enough time for BHUSD’s expert seismic information to be fully vetted and considered.

There is no argument that Metro’s seismic reports merely clarify or amplify the previously circulated Draft EIR. These reports provided significant new information going to the very heart of the subway project: what the alignment would be and where the stations would be located. The faulting that Metro’s reports purport to identify was not known prior to this time. Moreover, the Exponent Report and BHUSD’s anticipated analysis on methane gas at Constellation raise significant new issues calling into question which station is the less environmentally damaging. See, Pub.Res.C. §§ 21002, 21081. Mountain Lion Foundation v. Fish and Game Comm’n. (1997) 16 Cal.4th 105, 141 (A project may not be approved if less damaging, alternatives or mitigation measures are available, except where ‘specific economic, social, or other conditions make infeasible such...alternatives or ... mitigation measures.’)

Contrast this situation with the typical timeline under CEQA. Initially, CEQA contemplates a scoping period where the Project Description is set and studies are undertaken based upon that project description. The Draft EIR is then circulated for public review, giving all parties time to review and comment on the project. Typically, the comment period is then closed, and the lead agency proceeds to prepare the Final EIR, which is basically the draft plus the Lead Agency’s response to any public comments.

Here the public could not comment intelligently during the comment period in September-October 2010 because the Project Description was not set and the studies needed to make informed decisions about the alignment and station location had not been performed. Metro itself stated that in September 2010, "the Board decided to continue to study two station locations in Century City (Santa Monica and Constellation) to address concerns raised by the community regarding the safety of tunneling under residences and schools (Constellation Boulevard Station) and locating a station close to a seismic fault (Santa Monica Boulevard Station.)" That process took more than a year to complete.

In late 2011 and early 2012, when Metro completed its seismic studies and reached its conclusion that the Santa Monica Station was not seismically safe and the alignment would be based on the Constellation Station, it should have recirculated the draft and provided all interested parties and agencies ample time to comment on this significant new information. Because of the lack of information available to Metro at the time it released its Draft EIR and its inability to decide on a definite alignment at that time, the Draft EIR was more akin to a preliminary scoping document providing the "options" for further study. The Final EIR, released in March 2012, which finally set the Project Description after the significant studies were completed, is more akin to the typical Draft EIR. Only after the final EIR was released did the public know the preferred route alignment and station location and only now can the public review and comment in any informed way upon the environmental impacts of that selection. Analysis of potential impacts of a project, that normally would be set out in a Draft, were, in this case, deferred to the Final EIR.

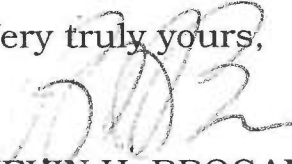
This is a classic case for recirculation; the Project Description was not set at the time Metro published its "draft" and anticipated further study which would provide significant new information upon which the entire project rested. Instead of releasing a Final EIS/EIR, Metro should have produced a revised Draft EIR related to the Century City alignment and station issues.

Members of the Metro Board of Directors

April 23, 2012

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Very truly yours,

A handwritten signature in dark ink, appearing to read 'KBrogan', is written over the closing text.

KEVIN H. BROGAN

OF

HILL, FARRER & BURRILL LLP

HFB 1140548.2 B3902002

April 25, 2012

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Via Hand Delivery

Honorable Antonio Villaraigosa  
Chair and Members of the Metro Board of  
Directors  
One Gateway Plaza  
Los Angeles, CA 90012-2952

Re: **FEIS/EIR on Westside Subway Extension Project**

Honorable Chair and Members of the Board of Directors:

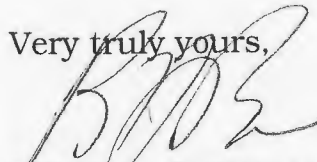
We represent the Beverly Hills Unified School District (BHUSD).

On two previous occasions, BHUSD has requested that Metro continue the April 26, 2012 hearing on the certification of the Westside Subway Extension Project Final EIR for at least 30 days to allow for consideration of scientific studies, particularly ongoing seismic work on locating the Century City station at either Santa Monica Boulevard or Constellation Boulevard. Metro has twice denied that request -- the latter despite the Federal Transit Administration having granting a 30-day extension to the comment period under NEPA to consider this significant, new information.

BHUSD is now informed that the City of Beverly Hills has invoked Public Utilities Code section 30639 and demanded a hearing before the Metro Board that complies with that provision. In the interest of the Metro Board's complete consideration of all the evidence to be presented, both in the extended NEPA comment period and in the City's statutory hearing, and to mitigate the contention that Metro has precommitted to the Constellation option prior to that evidentiary consideration, BHUSD again requests at least a 30-day continuance of the April 26 hearing.

Members of the Metro Board of Directors  
Via Hand Delivery  
Page 2

Very truly yours,



KEVIN H. BROGAN  
OF  
HILL, FARRER & BURRILL LLP

CC: Metro Board Members  
Dean E. Dennis, Esq.  
Laurence Wiener, Esq.  
City of Beverly Hills

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May 22, 2012

**BY HAND DELIVERY**

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

Re: Westside Subway Extension Final Environmental Impact Statement  
Los Angeles County Metropolitan Transportation Authority

Dear Mr. Tellis:

On behalf of the City of Beverly Hills, we are submitting the following comments on the Final Environmental Impact Statement/Environmental Impact Report ("Final EIS") for the Westside Subway Extension ("the Project") proposed by the Federal Transit Administration of the U.S. Department of Transportation ("FTA") and the Los Angeles County Metropolitan Transportation Authority ("MTA"). As detailed in this letter, the City does not believe that the Final EIS complies with the requirements of the National Environmental Policy Act, 42 U.S. C. § 4321 et seq. ("NEPA").

Among the most prominent deficiencies in the environmental review for the Project is the decision – made after the close of the public comment period on the Draft EIS – to change the location of the Century City station, and as a result, to change the alignment of the Project through Beverly Hills. This substantial change in the Project was made without public review and without the opportunity to meaningfully comment on the underlying assumptions and analyses that allegedly informed that decision. In addition, the proposed new location of the Century City station is not supported by any substantial study or analysis, so neither the public nor the decision-makers can make an informed evaluation of the change.

Moreover, this change is not the only substantial change in the Project or the environmental review that appears for the first time in the Final EIS. Among other changes, the Final EIS proposes to substantially modify the construction schedule, to relocate the terminus of the first phase of construction, to change the format of particular stations, to change the construction technique for the tunnel in specific areas along the alignment, and to change to depth of the tunnels in undisclosed locations. All of these changes will result in new and significant impacts that were not disclosed in the Draft EIS and which are not adequately analyzed or mitigated in the Final EIS.

The Final EIS, like the Draft EIS, also fails to include an adequate discussion of the significant environmental impacts of the Project. In particular, construction of the Project will result in significant and unavoidable impacts along its entire route. These impacts include significant noise, air quality, and traffic impacts, none of which are adequately disclosed or mitigated in the EIS. These impacts will, in turn, have substantial adverse economic and social impacts on the City and public services. The Final EIS, however, minimizes these significant impacts without evidence to support these conclusions, and as a result it fails to identify feasible mitigation to address them.

Because the environmental review for the Project fails fully and accurately to inform decision-makers, and the public, of the environmental consequences of the Project's proposed actions, it does not satisfy the basic goals of NEPA. (*See* 40 C.F.R. § 1500.1(b) [“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken”].) Therefore, the Final EIS must be revised to include a full analysis of the Project as FTA intends to approve it, and must include adequate mitigation for all of the Project’s significant impacts. This revised EIS then must be recirculated for public review so that the public and decisionmakers have a full and fair opportunity to review and comment on the Project.

**I. FTA Must Supplement and Recirculate the Final EIS Before It Can Approve the Final EIS and Approve the Project.**

**A. The Final EIS Contains Significant New Information Regarding the Relocation of the Century City Station.**

The base segment between the Wilshire/Rodeo station and Century City station analyzed in the Draft EIS as the preferred (base) alternative extended along Wilshire Boulevard and then turned onto Santa Monica Boulevard to a station located at Avenue of the Stars. The Draft EIS analyzed as an option an alternative station on Constellation and two alternative routes from the Wilshire/Rodeo station, both of which extended under the Beverly Hills High School ("High School").

Despite the fact that the Constellation Boulevard station and the associated two routes were not the preferred station and segments, they drew strong adverse comment from the City of

Beverly Hills (see Final EIS, Appendix H, at H-2.3-52 to -53; H-2.3-54 to 99), the Beverly Hills Unified School District (Final EIS, Appendix H, at H-2.3-1 to -15; H-2.3-16 to 28; H-2.3-29 to 48), and multiple concerned citizens. These comments focused on the multiple adverse effects the Project would have on Beverly Hills, the failure of the Draft EIS to identify, disclose, analyze, and mitigate those effects as required by the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) and NEPA, and most urgently, the failure of the Draft EIS to analyze and recognize the serious adverse effects that would be created by extending the Project under the High School.

In response, at its October 28, 2010 meeting, the MTA Board directed staff to:

"fully explore the risks associated with tunneling under the [Beverly Hills] High School, including but not limited to the following: risk of settlement, noise, vibration, risks from oil wells on the property, impact to use of the school as an emergency evacuation center, and overall risk to student faculty and community; [and]

analyze the possibility of moving the subway tunnel in order to avoid all school buildings and avoid any future plans to remodel BHHS."

MTA also directed staff to conduct additional analysis of the seismic hazards associated with the location of the Century City station at Santa Monica Boulevard.

Following publication of the Draft EIS, the MTA continued to conduct substantial study and analysis of potential Project impacts, including additional seismic studies, additional study of potential impacts to the High School, additional geotechnical investigation, and revised noise and vibration assessments. Specifically in response to comments on the Draft EIS relating to seismic safety of the Project in the Century City area, MTA obtained four subsequent studies: the *Century City Area Tunneling Safety Report*, the *Tunnel Advisory Panel Final Report*, the *Century City Area Fault Investigation Report*, and the *Preliminary Geotechnical and Environmental Report* (collectively, the "MTA Subsequent Studies").

According to the Final EIS, the MTA Subsequent Studies supported the decision in the Final EIS to change the Project relocate the preferred Century City station on Santa Monica Boulevard from Avenue of the Stars to Century Park East. (Final EIS at 2-73, 2-77, 2-78, 7-12-13.) The Final EIS also claims that these studies support the conclusion that placing the Century City station at either of the studied locations on Santa Monica Boulevard (at Avenue of the Stars, as studied in the Draft EIS, or at Century Park East, as studied for the first time in the Final EIR) will result in significant and unavoidable impacts due to the Santa Monica Fault and the Beverly Hills Lineament, and that changing the Project altogether to relocate the Century City station to

Constellation Boulevard will avoid these impacts. (Final EIS at 4-177 to 4-179, 7-12-13 Appendix H at H-2.3-86.)

Despite the substantial nature of these changes and the amount of information disclosed for the first time in the Final EIS, the draft EIS was not supplemented or recirculated. This new information, along with the other information discussed below, and the changes in the Project that were made in response to it, were not disclosed in the Draft EIS or in any document on which the public had a proper opportunity to comment, but were disclosed instead in the Final EIS in March 2012. Such an action violates NEPA. 40 C.F.R. § 1502.9(c) *requires* that an agency must prepare supplements to either draft or final environmental impact statements if:

"(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."<sup>1</sup>

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<sup>1</sup> The CEQ regulations define "significant" in terms of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity: ...

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. ...

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

*Id.* at § 1508.27.

The MTA Subsequent Studies are not the only technical studies produced by MTA or commenters prior to the publication of the Final EIS and after that address the serious seismic and other concerns raised by commenters on the Draft EIS. After the comments on the Draft EIS identified several significant areas for study, and MTA refused to initiate such investigations, both the City of Beverly Hills and the Beverly Hills Unified School District ("School District") retained expert consultants who produced several reports, to which MTA's experts responded. All of these studies, too, should have been included in a supplement to the Draft or Final EIS and recirculated for further public comment and debate.

The School District submitted reports authored by seismic experts Miles Kenney and Loring Wyllie to MTA on May 5, 2011. The School District also submitted a report to both MTA and the FTA from Leighton Consulting on May 8, 2012.

The City of Beverly Hills submitted a report by Exponent entitled, *Hazard Assessment Study, Westside Subway Extension Project, Century City Area, California*. The City submitted this report to MTA on February 7, 2012 and to the FTA on April 18, 2012. The City also submitted a report to MTA authored by Shannon & Wilson, a geotechnical environmental consultant, in 2011. In 2012, the City submitted another Shannon & Wilson report entitled *Preliminary Review Comments on Century City Area – Fault Investigation Report – Westside Subway Extension Project*. The City submitted this second Shannon & Wilson report to MTA on March 8, 2012 and to the FTA on April 18, 2012.

MTA replied to Exponent's report on April 4, 2012. Exponent then responded to MTA's Comments on Exponent's Report on April 25, 2012. In turn, MTA responded to Exponent's responses on May 15, 2012. MTA also responded to the Leighton Consulting Report on May 14, 2012.

In addition, a hearing was held on May 17, 2012, before a hearing officer for the MTA, at the request of the City of Beverly Hills. At that hearing, the MTA submitted their reports for the record as their testimony. The MTA presented no witnesses. Nor has the MTA provided any responses to the information presented at the May 17 hearing.

The City of Beverly Hills presented the following witnesses:

- **Dr. Phillip Buchiarelli, Leighton Consulting, Inc.**

Dr. Buchiarelli was on the team of multidisciplinary experts that spent almost four months trenching and conducting borings and cone penetrometer tests at the Beverly Hills High School campus. They concluded that the soils near the surface of the trenches, which spanned across nearly 90 percent of the high school campus, are between 70,000 and 100,000 years old. Under California law, a fault zone is considered active if it has been active in the last 11,000 years. Thus, even if there are faults underneath the High School, they are not active. Only active faults result in heightened safety requirements.

After Leighton and Associates submitted its report, MTA's experts, Parsons Brinckerhoff, reported a different location moving the faults to areas not covered by the trenching data, despite the fact there was no new data to justify relocation. "If the data is subject to that amount of interpretation, we question how confident you can be in the faults' [location]," Dr. Buchiarelli said. Parsons Brinckerhoff's response moved the faults approximately 20 to 30-feet from their original report. Dr. Buchiarelli believed that this was a problem because when Leighton Inc. conducted its studies at the campus, they relied on the maps' accuracy when looking for the fault lines Parsons Brinckerhoff said were there.

- **Dr. Eldon Gath, Earth Consultants International**

Dr. Eldon Gath, a geologist and engineer with Earth Consultants International who was hired by BHUSD, told the board that the Parsons Brinckerhoff study ignored obvious data found by digging trenches on the campus and presented inexplicable findings about the location of faults underneath the school. Dr. Gath criticized the Parsons Brinckerhoff study, noting that many of the active faults listed did not, in his professional opinion, actually exist. "It's not science." "It feels like it's paradigm-driven and opinion-driven."

- **Miles Kenney, Kenney GeoScience**

Miles Kenney of Kenney Geo-Science presented on his review of the original Parsons Brinckerhoff report for MTA. Kenney agreed with the research done by Leighton consulting. He opined that any faults along Santa Monica Boulevard are likely inactive.

- **Dr. Subodh Medhekar, Exponent**

Dr. Medhekar testified regarding the February 7, 2012 Exponent Hazard Assessment Study, Westside Subway Extension Project, Century City Area, California, the April 25, 2012 Exponent Response to Metro's Comments on Exponent's Report, and Metro's May 15, 2012 Reply to Exponent Responses. In Dr. Medhekar's opinion, there was an incomplete fault hazard study for the Constellation site, the gas and oil well surveys were incomplete, and the considerations for potential sources of ground settlement were incomplete. Moreover, MTA had failed to perform a qualitative or quantitative risk assessment of either the Santa Monica alignment or the Constellation alignment. That is, MTA had failed to incorporate different contributors into an overall framework to evaluate total risk in a consistent, probabilistic manner, e.g. seismic rupture hazard and the outcome of fault rupture vs. intense ground shaking; likelihood of encountering high levels of methane and outcome of methane explosion; etc. In addition, Dr. Medhekar felt that there was insufficient soil gas data obtained for approval of the Constellation Station site, and he testified that known hazards of pockets of gas exist that could migrate and

spread to other areas. Finally, Dr. Medhekar disputed MTA's contention that Exponent's probability-based risk management analysis would not be transparent and difficult to interpret. According to Dr. Medhekar, the risk analysis is done in a format that makes it very transparent, and one can prioritize the risks.

- **Dr. Roy Shlemon**

Dr. Shlemon testified via a video presentation regarding his November 6, 2011 report, prepared for Shannon & Wilson, Inc. on behalf of the City of Beverly Hills. In his report, Dr. Shlemon assessed the issues associated with construction of the Constellation station. Dr. Shlemon testified that in his scientific opinion, not enough geological work, in fact, almost no site specific work, had been performed to support the Constellation site as a subway station. A site specific investigation needs to be done to determine if active faults exist at the Constellation site, as the Constellation site is a habitable structure under California law. According to Dr. Shlemon, trenching should occur at the site, and if trenching cannot occur, then cone penetrometer tests and coring should be done. Dr. Shlemon further testified that there is analysis in the Amec Report suggesting that there could be a fault running through the Constellation site, known as the Newport/Inglewood fault branch. In the absence of a proper evaluation of the Constellation site, there could be a potential violation of the 1972 Alquist-Priolo Act, which prevents any habitable structure from being placed on a California defined active fault.

- **Tim Buresh**

Mr. Buresh is the lead engineer studying the subway alignments for Beverly Hills High School and the former regional director for the High Speed Rail Authority in Southern California. Mr. Buresh attacked the ridership models that determined the preferred station. He testified that MTA's study was faulty and that in the end, both stations would get about the same ridership. Mr. Buresh further argued that if MTA was wrong about the faults under Beverly Hills High School, as demonstrated by the previous witnesses, than it might also be wrong about the Santa Monica Boulevard fault that disqualified a station at this area. Mr. Buresh also spoke to the cost of the Constellation site versus the Santa Monica site. He said the earlier testimony stated there were faults at Santa Monica but most likely they were not active. Trenching would tell the final story. Mr. Buresh testified that the Constellation station would cost approximately \$100 million more compared to the Santa Monica station.

MTA continues to consider issues related to the safety of the Santa Monica Station and tunneling under Beverly Hills High School. Yet, none of the analysis has been circulated for public review in accordance with the requirements of NEPA, which calls for public comment and agency response to comments. As a result, members of the affected public have not had an

opportunity to comment on the information in the documents, to test their assumptions, and to submit additional information regarding the potentially significant impacts of the Project and suggested alternatives to the proposed re-alignment through the Constellation station. The late release of numerous proposals, studies, and analysis subverts the fundamental purpose of public review. The Court of Appeals for the Ninth Circuit has held that “the procedures prescribed both in NEPA and the implementing regulations are to be strictly interpreted ‘to the fullest extent possible’ in accord with the policies embedded in the Act,” and that “‘grudging, pro forma compliance [with NEPA] will not do.’” (*Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003), quoting *Cal. v. Block*, 690 F.2d 753, 769 (9th Cir. 1982)).

A similar failing occurs with respect to the conclusion that the change in alignment will not affect the Beverly Hills High School as an historic resource under section 4(f) of the US Department of Transportation Act of 1966, based on a new study, prepared after the release of the Draft EIS, entitled *Westside Subway Extension Historic Resources Properties Supplemental Survey Technical Report* (Metro 2012). (See Final EIS at 5-31.) Although this report concludes that such impacts will not be significant, like the other new information contained in the Final EIS, it has not been subject to the public comment and agency response requirements of NEPA, which are specifically designed to test the assumptions of the EIS authors and to facilitate public participation in the environmental review process.

**B. The Final EIS’s Selection of an Alternative Alignment Was Only Superficially Analyzed in the Draft EIS And Necessitates Recirculation.**

Even if the FTA could properly conclude that there are no new or expanded impacts resulting from the shift to the Constellation Boulevard Station, this assertion does not relieve the FTA from its obligations to recirculate a supplement to the Draft or Final EIS. (40 C.F.R. § 1502.9(c)). The Constellation Station was evaluated in the Draft EIS as an *alternative* to the Project’s base station on Santa Monica Boulevard at Avenue of the Stars. (See Draft EIS, pp. 2-46 – 2-46.) The base station was tied to the Project’s base segment, which traveled along Wilshire Boulevard, then turned onto Santa Monica Boulevard; the segments associated with the alternative Constellation station were analyzed as alternatives to the base segment. (See Draft EIS, p. 2-47.)

Because the Draft EIS assumed that the Century City station would be located at Santa Monica Boulevard, it did not engage in an equally serious analysis of the impacts of locating a station at Constellation Boulevard as it did of the impacts of locating a station on Santa Monica Boulevard. As a result, much of the information necessary to assess the impacts of changing the location of the station and the alignment of the associated subway tunnels has only been developed *after* the Draft EIS was issued, and much of the information necessary to assess those impacts has not been developed at all.

Again, preparation of a supplement to a draft or Final EIS and recirculation of that document is *required* when a draft EIS fails to include sufficient information to allow informed public comment. (40 C.F.R. § 1502.9(c).)

Because the Draft EIS analyzed the Constellation station in far less detail than the Project's base station on Santa Monica Boulevard, the City of Beverly Hills and the public at large were prevented from providing meaningful comment on the Draft EIS. Moreover, by failing to disclose its determination to locate the Century City station on Constellation Boulevard in the Draft EIS, the FTA failed to provide adequate notice that it was proposing to adopt the Constellation Station alternative. The EIS must be supplemented and that supplement recirculated to provide the City of Beverly Hills, other agencies, and members of the public the opportunity to meaningfully analyze the revised Project.

**C. The Final EIS Must Be Supplemented to Include Analysis of Additional Alternative Segments Between the Wilshire/Rodeo Station and the Century City Station.**

The one clear conclusion that can be drawn from the technical disagreements between MTA's experts, on the one hand, and the experts retained by the City of Beverly Hills and the School District, on the other hand, is that serious issues remain regarding the proper location of the Century City station and the proper alignment of the segment between the Wilshire/Rodeo station and the Century City station. Again, a supplement to the Draft or Final EIS must be prepared to investigate the issues in depth.

That supplement must also analyze a better range of alternatives, particularly for the alignment of the segment to the proposed Constellation Boulevard station. NEPA requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action” (42 U.S.C. § 4332(E)), and to include in the Final EIS a “detailed statement” on alternatives to the proposed action (*id.* at § 4332(C)(iii)). This requirement to fully and objectively evaluate appropriate alternatives is “the ‘heart’ of the EIS,” and that agencies must produce an EIS that “[r]igorously explore[s] and objectively evaluate[s] all reasonable alternatives’ so that the agency can ‘sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.’” (*Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002), citing 40 C.F.R. § 1502.14; *see also Oregon Nat. Desert v. Bureau of Land Management*, 625 F.3d 1092, 1100 (9th Cir. 2010) [“As the EIS is intended to be used to guide decisionmaking, the alternatives analysis is naturally the heart of the environmental impact statement” (internal quotations omitted)].) Further, “[t]he existence of a viable but unexplored alternative renders an environmental impact statement inadequate.” (*Oregon Natural Desert*, 625 F.3d at 1100, citing *Westlands Water Dist. V. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004).)

Even assuming MTA had sufficient basis to select a Constellation station location, it made no attempt in the Draft EIS or the Final EIS to identify and analyze alternative alignments,

which could provide for such a station but avoid the significant adverse impacts of a route passing under the High School. At the May 17 hearing, the City of Beverly Hills identified at least three potential alternative alignments:

(1) one that avoids all structures in Century City except for a parking structure; extends only under vacant land, open space, landscaping, or major roadways, thereby reducing acquisition costs; complies with all MTA requirements for tunnels, including curved radius restrictions; avoids the potential Santa Monica Fault Zone completely; and only crosses the Beverly Hills Lineament in a perpendicular direction (as does the current proposed MTA alignment);

(2) one that crosses under two underground parking structures with a maximum of three subterranean floors, and crosses under a medium level office structure not likely to have a deep subterranean foundation; and

(3) one that crosses under a low-level office building, two parking structures with a maximum of three underground stories, and a mid-level office building with similar underground parking.

Exhibit G hereto depicts these three alignments. These alternative alignments should have been analyzed in the supplement to the Draft or Final EIS, and the alternatives analysis recirculated for comment.

**D. The Final EIS Contains New Information Demonstrating that Project Impacts Will Be More Significant Than Revealed in the Draft EIS.**

**1. The changes in construction phasing result in new significant impacts constituting new information requiring recirculation.**

The analysis in the Draft EIS was based on a project proposal that called for the phased construction of the Project. According to the Draft EIS, Alternative 2 would be constructed over a period of 14-19 years. (Draft EIS, p. 4-253.) The Final EIS, however, proposes a dramatically altered construction schedule which calls for concurrent construction of the Project. This proposed change in construction will result in more intensive impacts over a 10-year construction period. In particular, air quality impacts will be more intense and will exceed thresholds of significance set by the South Coast Air Quality Management District. For example, the Final EIS concludes that the concurrent construction scenario will result in exceedances of the South Coast District's thresholds for all mass criteria pollutants, and that the phased construction scenario will result in exceedances of the thresholds for all mass criteria pollutants except for carbon monoxide (CO) in Phase 1. (Final EIS at 4-349, 4-351.) These impacts will not be mitigated below a level of significance. (Final EIS at 4-352.) In contrast, the Draft EIS found that construction of the Project would result in the exceedance of only one criteria pollutant threshold—that for nitrogen oxide (NO<sub>x</sub>). (Draft EIS at 4-264, 4-265.)

As another example, regardless of construction phasing, the Final EIS reveals for the first time that the construction of the Project will result in significant noise impacts. Although both the Draft EIS and Final EIS include only a general discussion of noise impacts from construction, the Draft EIS did not indicate that noise levels would be significant. (Draft EIS at 4-268, 4-269.) The Final EIS, however, concludes that noise impacts from construction would be significant and unavoidable, even with mitigation. (Final EIS at 4-363.)

These new impacts reveal that the Project will have new significant environmental impacts that were not disclosed in the Draft EIS. The FTA's failure to address these potential noise impacts in the Draft EIS deprived the public of meaningful participation in the NEPA process. Therefore, again, a supplemental draft or Final EIS must be prepared. (40 C.F.R. § 1502.9(c).)

**2. Changes in the terminus of Phase 1 of the Project and to the Project's construction techniques will result in significant impacts that have not been disclosed, analyzed or mitigated.**

The Final EIS also proposes to relocate the terminus of Phase 1 construction from the Wilshire/Fairfax station to the Wilshire/La Cienega station. This change in location will result in significant increases in ridership and boardings at the Wilshire/La Cienega station. In particular, this change will increase boardings at Wilshire/La Cienega from 6,500 to over 10,000 boardings per day. This change will result in increased traffic, parking, and pedestrian safety impacts in the vicinity of the Wilshire/La Cienega station that were not previously disclosed in the Draft EIS. Increased ridership and people in the vicinity of this station also have the potential to result in additional calls for services such as police and fire services, as well as increased traffic and noise impacts.

This change in the location of the terminus for Phase 1 also has resulted in an expansion of the staging areas with a corresponding increase in construction-related impacts that were not disclosed in either the Draft or the Final EIS.

In addition, Wilshire/La Cienega now will be a cross over station, resulting in 1,000 linear feet of open cut construction – which requires a 66 percent increase over the amount of construction estimated in the Draft EIS. As detailed in the attached memorandum from Bijan Vaziri (Exhibit A), this increase will result in substantially longer closures of Wilshire Boulevard and will result in exceedances of the standards of significance for traffic impacts in the City of Beverly Hills. The additional traffic and increased street closures also will negatively affect response times by safety personnel, including the police and fire departments.

Further, the information provided in Appendix E to the Final EIS is inadequate to disclose the potential impacts at the Wilshire/La Cienega station, where “a temporary TBM [tunnel boring machine] retrieval shaft” is contemplated. (Final EIS, Appendix E at p. E-6.) Appendix E states that “An alternative to dismantling the TBM would be to excavate a separate

retrieval shaft. However, from a traffic management standpoint, due to traffic impacts at the retrieval shaft, retrieving the TBM is less desirable than dismantling it. An exception is if the TBM could be re-used immediately or in a reasonable time frame for constructing the next reach of the tunnel. In such cases, the disruption caused by retrieval from the street may be justified.” (Final EIS, Appendix E, p. E-21.)

The Final EIS admits that traffic impacts would result from this change, but has made no effort to analyze or disclose the impacts of retrieval shafts at any location, and in particular at the Wilshire/La Cienega station. Based on the information in Appendix E, it appears that retrieval shafts may be needed not only for the segment from Century City to Wilshire/La Cienega, but also for the segment from Wilshire/La Brea to Wilshire/La Cienega, since a decision could be made at that time that re-use of the TBM is needed immediately, or in a reasonable time frame, thus dictating retrieval rather than dismantling and removal. Based on the foregoing, the Final EIS fails to adequately analyze and disclose the potential impacts of TBM retrieval.

Finally, the Final EIS reveals that the Project's tunnel depths will be substantially shallower than disclosed in the Draft EIS. Specifically, the Draft EIS assumed that the top of the tunnels would be 30 to 70 feet underground. (Draft EIS at S-14.) The Final EIS, however, indicates that the *track* depths will be between 35 and 100 feet below ground. (Final EIS at S-6.) Since the top of the tunnels must be at least 20 feet above track depths, the minimum tunnel depth has risen to approximately 15 feet underground, which is a significant change from the Draft EIS. Yet, there is no information in the Final EIS about *where* tunnels will be shallower and *what impacts* those shallower depths will create, including, without limitation, impacts to noise, vibration and human and structural safety.

## **II. Evidence Does Not Support Rejection of the Century City Santa Monica Boulevard Station Location on Either Geologic or Ridership Grounds.**

The Final EIS concludes that there will be a major impact if the Century City station is located on Santa Monica Boulevard, but that this impact will be avoided if the station is located on Constellation Boulevard. (*See, e.g.*, Final EIS at S-48, S-82.)

This conclusion is, however, not supported by proper evidence in the record and, as noted previously, the studies on which the FTA purports to rely have not been circulated for public review and comment as required by NEPA. As the NEPA regulations acknowledge, “[a]ccurate scientific analysis ... and public scrutiny are essential to implementing NEPA.” (40 C.F.R. § 1500.1(b).) In this instance, evidence has been introduced that demonstrates the studies upon which the Final EIS relies are fundamentally flawed and thus the conclusions reached therein are not based on facts or reasonable assumptions based on facts.

MTA’s Subsequent Studies start with an unsupported assumption – that there are active faults along the WBHL either on Santa Monica Boulevard or on the High School campus. However, the experts retained by the City of Beverly Hills and the School District concluded that

it is unlikely that *any* of the faults in the area are active, and demonstrated the methodology utilized in the MTA Subsequent Studies was insufficient to enable the Final EIS to conclude otherwise, since those consultants did not conduct trenching or consider the date of area soils and deformations, which would be standard steps in an adequate study, although there are feasible areas in which appropriate trenching could have been conducted.

For example, Shannon & Wilson and Exponent, discussed above, have concluded that more detailed geotechnical investigations, including trenching and borings, must be conducted in order to determine whether the Santa Monica Fault is active – the basis upon which the Final EIS apparently initially concluded the station located at Avenue of the Stars, and then the station at Century Park East would not be safe. (See Shannon & Wilson, *Preliminary Review Comments of Century City Fault Investigation Report* (2011); Exponent, Inc. *Hazard Assessment Study; Westside Subway Extension Project Century City Area* (2012).)<sup>2</sup> Additional information was presented at the 3 1/2 hour hearing conducted on May 17, 2012 before the Board of the Metropolitan Transportation Authority, as discussed above.

Exponent also noted in its assessment of safety issues related to the location of a Century City station that the EIS fails to address significant methane hazards in the vicinity of the Constellation Boulevard station and it does not identify the location of a fault line that may impact that station. Nonetheless, the FTA has failed to conduct the level of review for the Constellation Boulevard station as it has for the Santa Monica station, which calls into question the validity of the Final EIS's analysis. Exponent, Inc. (*Hazard Assessment Study; Westside Subway Extension Project Century City Area* (2012).)

The Final EIS's improper assumption that active faults exist in the area of the Santa Monica station leads to the convenient conclusion that neither the previously planned Santa Monica station at Avenue of the Stars, or the later location at Century Park East is possible. Evidence that shows the lack of active faults in the area undermines the Final EIS's entire basis for rejecting a Santa Monica station location.

Further, ideal placement of a Santa Monica station will result in approximately equivalent ridership as the Constellation station, at a cost savings of anywhere from \$20.5 million (Final EIS, Section 9, Chapter 6, Table 6-1) and \$81 million (Final EIS Technical Report 08, Tables 3-1 and 3-2), depending on which of the many inconsistent cost estimates in the Final EIS are cited. This comment should not be interpreted as agreement that the ridership calculations are accurate, since, among other defects, they took into account only the job location, and not any other sources of riders such as school or residential uses in the vicinity. Regardless, the point remains – a Santa Monica Station need not be inferior to a Constellation Boulevard station location as to ridership.

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<sup>2</sup> This report was provided to the FTA at a meeting on April 18, 2012.

Based on the foregoing, the information submitted by the Beverly Hills Unified School District last week, and information from various other studies commissioned by the District and the City, the record does not contain substantial evidence to support choosing the Constellation Boulevard location and reject the Santa Monica Boulevard location.

### **III. The Final EIS Fails to Consistently and Accurately Describe the Project.**

NEPA takes into account the need to respond to new and changing information. Agencies must prepare a supplemental draft or final environmental impact statement if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1). Supplementation is necessary if “there remains ‘major Federal action’ to occur.” (*Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 156 (2004), quoting *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374 (1989). See also *Cady v. Morton*, 527 F.2d 786, 794 (1975) (“An ex post facto justification generally is not an acceptable substitute, as ‘NEPA . . . does not authorize defendants to meet their responsibilities by locking the barn door after the horses are stolen.’”)) (Citations omitted).

The Final EIS here fails to meet this basic threshold. In particular, the changes in Project phasing, alternative project alignments, and multiple alternative station locations from the Draft EIS to the Final EIS have resulted in an inconsistent and shifting project description. As detailed above, these multiple changes in the Project have deprived the public of the opportunity to meaningfully comment on the Project and its environmental impacts.

In addition, the Final EIS is unclear and inconsistent about several aspects of the Project, such as the depth of the tunnels, the construction techniques that will be used in specific areas, the duration of construction, and the location of station entrances. For example, as mentioned above, there appears to be a substantial difference in the tunnel depth between the Draft and Final EIS. While the noise analysis assumes that subway tracks are located a minimum of 50 feet below grade, the Final EIS indicates track depths may be as shallow as 35 feet. The depth of the tunnels and tracks affects noise and vibration impacts, yet the shifting description of the Project makes it impossible to assess those impacts or where they will occur. Moreover, there is no evidence that the EIS has evaluated the noise impacts associated with locating the tracks at a much more shallow depth. As such, the project description must be revised to clearly and consistently describe the Project, and that description must be used for all of the impact analyses.

There is also an inconsistency in the length of construction activities. For example, the Draft EIS assumed tunnel construction would last 6-10 months (Draft EIS, 4-255), while the Final EIS assumes it will extend for a period of 8 months to a year per mile of tunnel (Final EIS at 4-333). The length of the construction period will increase construction related impacts; yet it is unclear whether the Final EIS took into account the longer construction periods when estimating the Project's impacts.

#### **IV. The EIS Does Not Adequately Analyze the Project's Impacts.**

Agencies must undertake the requirements of NEPA in good faith, including taking an objective “hard look” at the environmental consequences of a proposed action and reasonable alternatives. (*See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989), quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976); *see also Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) [an agency’s “hard look” must be “taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made”]; *Morongo Band of Mission Indians v. Federal Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998).) The NEPA regulations and related guidance materials make clear that agencies must not prejudge the outcome of an environmental review; 40 C.F.R. § 1502.5 requires an agency to prepare an EIS “so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made.”

As explained below, the EIS’s environmental impacts analysis is deficient under NEPA because it fails to provide the necessary facts and analysis to allow the FTA and the public to make informed decisions about the Project. Rather, the EIS contains only a generalized discussion of potential project impacts related to the Project as a whole. Although the Project and its construction will result in substantial localized impacts, the EIS contains little if any analysis of impacts on a local level. As detailed below, the EIS fails to comply with the requirements of NEPA.

##### **A. The EIS Fails to Adequately Address Significant Construction-Related Impacts.**

The EIS’s discussion of construction-related impacts is particularly deficient. Although Project construction will occur over a ten-year period under even the most compressed schedule, the EIS fails to seriously address the significant impacts that will result from such an extended construction period. The Southwest Beverly Hills Homeowners Association has raised several questions that remain unanswered in the Final EIS (a copy of these questions in their entirety is attached as Exhibit F). For example, where will traffic be diverted when the intersections of Wilshire and Beverly, Rodeo, Canon, El Camino, and La Cienega are closed or partially blocked? Will traffic be diverted into residential areas during those weekends? Were economic studies conducted regarding the loss of property value, transient occupancy taxes, and sales tax revenue? What are the noise and access issues that could adversely affect guests of the Beverly Wilshire, Montage, and Thompson Hotels?

Moreover, City planning staff has substantial experience reviewing construction projects and their environmental impacts, including noise, traffic, and air quality impacts. In reviewing the Final EIS, and as discussed more fully below and in their reports (attached as Exhibits A

through D), City staff has determined that the construction-related impacts of the Project will be far greater than disclosed in the Final EIS.

**1. The analysis of construction related noise impacts is inadequate.**

First, the Final EIS fails to include sufficient information to assess the impacts of construction on a local level. For example, with respect to noise, the Final EIS only indicates that construction noise levels will be significant. (Final EIS at 4-358.) However, there is no information about existing noise limits, the noise levels that actually will occur with construction, where and when construction noise levels will exceed levels set by local ordinances, and how to mitigate such significant noise impacts. It is not enough that the Final EIS concludes that construction related noise impacts will be significant. The EIS must discuss those impacts and the steps that can be taken to mitigate them. (*See Robertson v. Methow Valley Citizens Council*, 409 U.S. 332, 351-352 (1989) (“To be sure, one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences. The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQ’s implementing regulations. Implicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implement,’ 42 U.S.C. s. 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided. . . More generally, omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA.”).)

A direct and foreseeable consequence of failing to detail the significant impacts is that the Final EIS does not and cannot recommend appropriate mitigation without a more detailed discussion concerning impacts. For example, the Final EIS notes that haul trucks will operate in the evening and night-time hours and will pass through several residential areas. (Final EIS at 3-100, 3-104.) Yet, the Final EIS contains no analysis of the actual noise impacts that such truck traffic will cause during the quiet evening and night-time hours, nor does it adequately mitigate such impacts. The sole mitigation measure to address these impacts is the use of “designated haul routes.” (Final EIS at 3-109, 3-110.) Given that the Final EIS already has indicated that these haul routes will impact residential neighborhoods and uses, it does not appear possible that the designation of these routes would avoid or mitigate potentially significant noise impacts – and, in fact, the Final EIS acknowledges that there will be an adverse impact remaining after mitigation (Final EIS at S-37).

As explained by the City’s Director of Community Development in her memorandum (attached as Exhibit B), an adequate noise analysis must include, at a minimum, a thorough description of the duration and amplitude of the exposure at a particular receptor. The evaluation should include the locations of sensitive receivers in the Project area, a description of existing ambient noise levels at these sensitive receivers, predicted noise levels during each phase of construction at the sensitive receivers, and a comparison of noise levels during construction to the existing ambient noise levels. In addition to identifying residences, the revised document

must identify each motel and hotel, library, religious institution, hospital, nursing home, active sport area, picnic area, recreation area, playground, and park that would be potentially affected by Project-generated construction noise. It should also establish appropriate significance thresholds to judge if the increase in noise levels would be substantial, and determine whether noise levels would substantially increase. Without a thorough and project-specific evaluation of the construction noise environment, it is impossible to conclude with any accuracy whether temporary or periodic increases in ambient noise levels would be significant.

Based on the experience of City staff, a proper analysis of noise impacts would demonstrate that a construction project of this magnitude will result in noise levels that far exceed City noise standards. (*See Exhibit B.*) A 2004 EIR that analyzed the construction of a hotel, public garage and gardens building that is located immediately adjacent to the proposed Rodeo Drive subway station site concluded that nighttime construction noise would result in increases of 17 dBA  $L_{eq}$  at one residential location, 13.7 dBA  $L_{eq}$  at another residential location and 12.3 dBA  $L_{eq}$  at a third residential location. Each of these impacts substantially exceeded the City's significance threshold of an increase in ambient noise level of 5dBA. The City recently completed EIRs on two construction projects along Wilshire Boulevard less than one mile from the Wilshire/Rodeo Drive station and approximately two miles from the proposed Wilshire/La Cienega station. In each case, the City found that construction activities would have a significant noise impact. In both cases, the City Council's environmental findings concluded that exterior construction outside the hours specified in the City's noise ordinance (8:00 a.m. to 6:00 p.m.) would result in a significant environmental impact due to the proximity of sensitive receptors. Nighttime construction is anticipated at both stations located in Beverly Hills.

The Final EIS also does not adequately analyze vibration impacts. The City estimated that construction of a hotel and construction of a condominium building along Wilshire Boulevard would generate vibration levels of up to 75 velocity decibels (VdB) at one hundred feet from the source. These construction activities did not involve the magnitude of excavation contemplated by subway station construction and tunneling. However, even these construction activities exceeded the 72 VdB Federal Railroad Administration threshold for residential uses, even for such uses located more than 100 feet from the source. Residential uses exist within one hundred and fifty feet of Wilshire Boulevard and in some instances are immediately adjacent to the proposed subway tunnel route, but the EIS contains no quantified analysis of the vibration impacts during construction to any residential or other sensitive uses in the City. Additionally, one elementary school has classrooms located within approximately 150 feet of Wilshire Boulevard and, of course, tunneling is proposed directly beneath the Beverly Hills High School. To reduce these impacts, the City typically would include mitigation measures such as:

- Prior to issuance of grading permits, the applicant shall submit a Construction Management Plan satisfactory to the City's Director of Community Development and the Building Official. The Building Official shall enforce noise attenuating construction requirements. The Construction Management Plan shall include, but not be limited to, the following:

- Excavation, grading, and other construction activities related to the Project shall be restricted to the hours of operation allowed under Section 5-1-206, Restrictions on Construction Activity in the City Municipal Code. Any deviations from these standards shall require the written approval of the Community Development Director.
- Stockpiling and vehicle staging areas shall be located as far away from occupied residences as possible, and screened from these uses by a solid noise attenuation barrier. Noise attenuation barriers constructed to the specifications necessary to reduce noise levels at adjacent residential structures to no greater than 5 dBA over ambient at any time.
- Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) sufficient to achieve the standard specified above shall be used along all the boundaries of all construction staging sites and station construction sites during.
- All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from residential uses as possible. If this is not possible the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development to achieve the standard above.
- Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).
- Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at Beverly Hills schools. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no construction activity generating the high noise levels is undertaken during any designated testing periods at the schools.

Furthermore, the City's construction regulations prohibit pile driving. This minimal mitigation measure to reduce noise and vibration impacts has not been incorporated into the Final EIS or the Project, and the City requests that this feasible mitigation measure be imposed in addition to each of those listed above.

Even if these mitigation measures would not entirely reduce the Project's significant construction noise and vibration impacts, the FTA must adopt them and ensure that they are implemented over the lifetime of the Project. (*See* section III, *supra*.)

**2. The Final EIS does not contain an adequate analysis of traffic impacts from Project construction.**

The Final EIS also fails to adequately analyze transportation-related impacts from construction. The Final EIS contains no specific discussion of how road closures will impact levels of service at any of the City streets to be affected. Moreover, it fails to include traffic counts before and after construction begins, does not identify City streets that will be impacted by diverted traffic, and does not identify how such impacts will be avoided or mitigated. Instead, the Final EIS indicates that any analysis of potential traffic impacts and mitigation *will be deferred to a future date*. (Final EIS at 3-103.) Specifically, the Final EIS indicates that such critical information as traffic projections, the number of haul trucks, street closures, and levels of service at specific intersections *will be developed in the future*. (Final EIS, p. 3-103.) All of this information is essential to determining the extent of the Project's impacts, yet the FTA improperly has deferred this analysis and potential mitigation to a future date.

This deferral of analysis and mitigation is not permitted under NEPA. NEPA is intended to ensure a decision-making process that will make relevant, "high quality" environmental information "available to public officials and citizens before decisions are made and before actions are taken." (40 C.F.R. § 1500.1(b) (emphasis added).) Indeed, timing is a critical element of the NEPA process; the United States Supreme Court has explained that NEPA "ensures that important effects [of a project] will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976)). The requirement that agencies prepare an environmental impact statement for major actions promotes this goal by ensuring that agencies "will have available, and carefully consider, detailed information concerning significant environmental impacts," and by giving the public "the assurance that the agency 'has indeed considered environmental concerns in its decisionmaking process,' and, perhaps more significantly, provid[ing] a springboard for public comment." (*Robertson*, 490 U.S. at 349, quoting *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983).)

Although the Final EIS fails to conduct this analysis, City staff has substantial experience assessing the traffic-related impacts of construction. Based on this experience, and as discussed in the attached memorandum from the City's Traffic Engineer (Exhibit C), the City has determined that a project of this magnitude clearly will have significant queuing impacts on arterial streets that will, in turn, also result in significant impacts on residential streets. The impacts on residential streets have been completely ignored in the Final EIS.

**3. The Final EIS does not include an adequate analysis of air quality impacts from Project construction.**

As discussed above, the switch from phased to concurrent construction will result in significant new air quality impacts that were not disclosed in the Draft EIS. Construction of the

Project also will result in significant, local air quality impacts that have not been disclosed, analyzed, or mitigated in the Final EIS. It is not enough that the Final EIS discloses that air pollution emissions from the Project as a whole will be significant under the concurrent construction scenario (and will be significant for emissions of nitrogen oxides under the phased construction scenario.) Since some air pollutants have particularly localized impacts, the Final EIS must also evaluate the impacts of air pollutants related to construction on locally affected populations.

Among other deficiencies, the Final EIS fails to assess the local air pollution emissions associated with intense, street-level construction, such as that associated with the Wilshire/La Cienega station. This failure is particularly serious with respect to the emission of toxic air contaminants, diesel particulates, and carbon monoxide – all of which are pollutants that will impact the health of nearby residents and other sensitive receptors, such as students.

For example, the Final EIS contains no discussion of the health impacts of PM 2.5, a particulate pollutant associated with the use of diesel fuel. The serious health risks associated with PM<sub>2.5</sub> exposure are well-documented. In its final rule designating attainment and non-attainment of PM<sub>2.5</sub> standards, the U.S. EPA noted the “significant relationship between PM<sub>2.5</sub> levels and premature mortality, aggravation of respiratory and cardiovascular disease . . . , lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia,” particularly among “older adults, people with heart and lung disease, and children.” (*See* Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards, 70 Fed. Reg. 944, 945 (Jan. 5, 2005) [Vol. 2, Ex. 28-e]).

Similarly, emissions from construction equipment and vehicles generally contain toxic air contaminants that are a significant threat to public health. Toxic air contaminants are associated with increased risk of asthma, cancer, and respiratory irritation and illness. (South Coast Air Quality Management District, Air Quality Issues in School Site Selection.) Air Districts currently recommend that lead agencies assess the public health impacts associated with toxic air contaminants for sensitive receptors that are located within 1,000 feet of a source of such contaminants. (*Id.* at p. ES-4.) There are hundreds of residences, several hotels, and one elementary school within 1,000 feet of station construction proposed for Beverly Hills. Yet, the Final EIS contains no discussion of these impacts or affected uses near construction zones. As a result, the Final EIS has failed to analyze a potentially significant impact of the Project itself, as well as cumulative air quality and health impacts that would result when the emissions from such a long-term and substantial construction project are added to already significant sources of pollutants, such as traffic along Wilshire Boulevard.

Not only did the EIS fail to address potential health impacts to these sensitive receptors, it also failed to address the additional impacts associated with the decision to modify the Rodeo Station configuration by adding a double crossover to the east end of that station to “optimize operations.” This change in the Project brings the station construction within 1000 feet of

Beverly Vista elementary school. Therefore, the FTA must revise the EIS to address increased health risk associated with construction and the revised EIS must be recirculated for public review.

The City's experience with environmental review of construction projects demonstrates that, if the FTA were to conduct the environmental review required here, the level of construction proposed will result in significant health and air quality impacts in addition to the one disclosed. As noted in the attached memorandum from the City's Director of Community Development (*see* Exhibit B), less significant construction projects within the City, located on or adjacent to Wilshire Boulevard, have generated significant construction related air quality impacts. Typical mitigation measure to address such projects (although not necessarily to a level of insignificance include:

1. The construction area and vicinity shall be swept (preferably with water sweepers) and watered at least twice daily. Site-wetting shall occur with sufficient frequency to maintain 10 percent surface soil moisture content throughout all earth-moving activities. At least 80 percent of all inactive disturbed surface areas shall be watered on a daily basis when there is evidence of wind-driven fugitive dust.
2. All unpaved roads, parking and staging areas shall be watered at least once every two hours during active operations.
3. Site access points shall be swept or washed within thirty minutes of visible dirt deposition.
4. On-site stockpiles of debris or dirt shall be covered or watered at least twice daily.
5. All haul trucks hauling soil, sand and other loose materials shall either be covered or maintain two feet of freeboard.
6. All haul trucks shall have a capacity of no less than twelve and three-quarter (12.75) cubic yards.
7. Operations on any unpaved surfaces shall be suspended when winds exceed 25 miles per hour.
8. On-site-traffic speeds on unpaved areas-shall be-limited-to 15 miles per hour.
9. Operations on any unpaved surfaces shall be suspended during first and second stage smog alerts.
10. All construction equipment shall be tuned as often as necessary to ensure its cleanest and most efficient operation.

11. Prior to leaving the site, the undercarriages of hauling trucks leaving the site shall be cleaned (e.g. washed down), and all soil loads shall be covered to prevent the spillover of materials from the construction site onto the adjacent streets.
12. The contractor shall prepare a Construction Traffic Emission Management Plan satisfactory to the City of Beverly Hills to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes.
13. The contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.
14. The contractor shall use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment.
15. The contractor shall use electric welders to avoid emissions from gas or diesel welders.
16. The contractor shall use electricity or alternative fuels rather than diesel-powered or gasoline-powered generators.
17. The contractor shall install wind monitoring equipment on each construction site, and suspend grading activities when wind speeds exceed 25 mph per Southern California Air Quality Management District (SCAQMD) guidelines.
18. The contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).
19. The contractor shall replace ground cover in disturbed areas as quickly as possible.
20. MTA shall retain a third-party air quality consultant to conduct continuous monitoring of the PM<sub>10</sub> (dust) concentrations during the project demolition, excavation and grading phases of project construction to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using Dustrak<sup>TM</sup> aerosol monitors or other similar monitoring networks and shall meet the following requirements:
  - The third-party consultant shall be approved by the City of Beverly Hills' Director of Community Development and the Beverly Hills Unified School District.
  - Costs for the monitoring network and tests by the third-party consultant shall be borne by MTA.
  - Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the project are selected.

The locations shall be selected in order to monitor the project's contribution to ambient PM<sub>10</sub> concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near each construction site in the City and a second downwind monitor shall be located in an area beyond the construction area boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the project site. All locations in the City of Beverly Hills shall be approved by the third-party air quality consultant and the City of Beverly Hills' Community Development Director.

- The monitoring network shall include at least one anemometer to measure wind speeds and directions.
- Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.
- Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).
- Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate the Distract monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.
- The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.
- Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM<sub>10</sub> concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and Grading phases of project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, MTA, and the contractor on a

secured internet website. The general public shall have access to 5-hour rolling average PM<sub>10</sub> concentrations on a publicly accessible web-site.

- Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM<sub>10</sub> thresholds are exceeded.
- All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific -corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant, the City of Beverly Hills and MTA. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.
- MTA and the contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but at not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. MTA and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition. The project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the project site do not go beyond the construction site.

21. The contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A).

**4. The Final EIS's discussion of the length of potential construction and its impacts on local communities is confusing and inconsistent.**

The Final EIS indicates that the time period for street closures will be 85 to 140 days for installation of decking and another 85 to 140 days for removal of decking. (Final EIS, table 3-19.) The shorter period is provided for installing half of the decking at a time. On page 3-94, the time period given for decking installation and or removal is 2 to 3 months. At a briefing for elected officials, MTA responded to questions from Beverly Hills' representatives regarding the installation of decking and indicated that the street closures would occur over weekends only, beginning Friday evenings and reopening early Monday mornings before peak traffic periods. Using 24 hour days and estimating weekend closures to represent 2.5 days, and based upon the EIS's assumptions about the time required for construction, this would require 56 weekends to complete the 140 days of closure needed for installation of decking. MTA officials at the briefing also stated that about 40 feet of decking could be installed per weekend, which would translate to 25 weekends per 1000 feet of station decking area.

Appendix E of the Final EIS Construction Methods further details the process. It identifies partial street closures necessary for the installation of piles and shoring of 20 to 70 days, and further details the need for street closure for installation of decking. In the appendix on page E-11, the weekend closure period is described as a 56 hour period in which 42 feet of decking could be installed, resulting in 24 weekends of closures. This is nearly 6 months of impact on key retailers and hotels, which represent two key sources of revenue to the City. Significant impacts of this nature are expected to compromise the City's ability to serve the project's needs while still maintaining its commitment to fully serve its residents.

At the least, these sections are inadequate and confusing and do not permit the public or the decisionmakers to understand or estimate the full impact of temporary road closures. If the upper end of the estimates is accurate, the Project would result in 25 to 56 weekends of closure. The economic impacts on retailers and hotels in the Rodeo area would be significant and have not been identified or mitigated in the document. As detailed in the report of Allan D. Kotin & Associates and Economic Planning Systems (attached as Exhibit E), these construction related impacts will be substantial, but have been grossly understated in the Final EIS. For example, while the Final EIS suggests that only 35 jobs and \$426,000 in annual property taxes will be lost, the actual expected losses are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8 of the City's total annual General Fund budget. This represents a significantly greater impact than has been disclosed in Final EIS, and for which no mitigation exists. This impact is sufficiently significant that it is expected to result in physical impacts as described in the attached memorandum from the City's Director of Community Development, Susan Healy Keene (Exhibit D).

**5. The Final EIS Does Not Adequately Analyze Social and Economic Impacts Resulting from Construction.**

The Final EIS is also deficient in its analysis of economic and social impacts resulting from construction in Beverly Hills. Construction for the Project will result in street closures, noise impacts, impacts to pedestrian circulation, and aesthetic impacts for the better part of a decade. These substantial physical impacts will, in turn, adversely affect the City on multiple levels, including the loss of revenue, impacts to business, and loss of City revenue. For example, the level of construction contemplated admittedly will create dust, noise, and other nuisance effects that will discourage visitors to what is now a vibrant, luxury retail and tourist destination. The Final EIS, however, concludes that this will result in a loss of only \$426,000 per year to the City.

The Final EIS severely underestimates the Project's negative economic impacts. The economic analysis in the Final EIS is flawed because it: (1) improperly inflates the baseline area, thereby artificially decreasing the impacts felt nearest to the station locations; (2) improperly analyzes adverse impacts only on those parcels that MTA will acquire, which account for only a small portion of the land that will be impacted by construction; and (3) entirely ignores adverse impacts on business tax revenue, sales tax revenue, and transient occupancy tax – all of which are crucial contributors to the City's General Fund. As a result of these deficiencies, the Final EIS woefully underestimates the negative economic impacts to the City. As shown in the economic report prepared for the City and referenced above (*see* Exhibit E), the actual anticipated negative impact on the City due to construction will be in the range of \$1.9 million to \$6.1 million, which is between 1.6% and 3.8% of the City's annual General Fund budget. These significant reductions in the City's General Fund will adversely affect the City's ability to provide needed public services. Such economic impacts are relevant under NEPA. "The fact that social or economic impacts alone are not enough to trigger the application of NEPA does not mean that such impacts are completely irrelevant. Many cases have recognized that when a federal action does have a significant environmental impact, social and economic impacts must also be considered in evaluating the action." (*National Ass'n of Government Employees v. Rumsfeld*, 418 F. Supp. 1302, 1306 (E.D. Pa. 1976).) The Final EIS, however, fails to adequately describe or mitigate these impacts.

**6. The Final EIS fails to adequately mitigate significant aesthetic impacts.**

As detailed above, construction within Beverly Hills will last for the better part of a decade. The presence of heavy machinery, trucks, open streets, traffic detours, and noise barriers will have significant aesthetic impacts.

Significant visual impacts caused by construction equipment and staging are identified, but are determined to be mitigable through only four simple mitigation measures. However,

there are construction and staging areas located in highly aesthetic areas of Beverly Hills, and also adjacent to sensitive uses such as residential uses, luxury hotels and retail. As discussed in the memorandum from the City's Community Development Director (Exhibit B), City staff believes that the identified mitigation measures are insufficient to mitigate the impact. Additional mitigation is recommended, including substantial landscaping, fencing, and possible enclosed structures reviewed by the Architectural Commission. These are visual impacts that will occur for approximately a decade (much longer than a typical 18-24 month project), and these cannot be easily mitigated as identified in the Final EIS. The City believes that the following mitigation measures must be included:

1. Construct shell buildings to enclose construction lay down areas.
2. Incorporate aesthetic design features and landscaping into screening design for lay down areas.
3. Provide graffiti coating on all exterior finishes of screen walls/structures.
4. Maintain lay down areas and construction sites in a clean and organized manner. Remove excess/unused construction materials from site as soon as it is determined that they are not needed.
5. Maintain screen walls/structures and landscaping in good condition throughout the duration of the Project.

**7. The Final EIS fails to acknowledge potentially significant impacts to paleontological resources.**

The Final EIS acknowledges that paleontological resources may be encountered during construction, but that they will be reduced below a level of significance with mitigation. (Final EIS at 4-323.) This mitigation, which relies heavily on the development of a mitigation and monitoring report, is improperly deferred. Moreover, the conclusion that impacts *can* be mitigated is inconsistent with the statement elsewhere in the Final EIS that "mitigation for tunnel interiors is infeasible since the modern tunneling machines to be employed simultaneously drill and exude cement for tunnel walls." (Final EIS at 4-316.) Given this admission, the Final EIS *cannot* conclude that impacts to paleontological resources have been mitigated below a level of significance.

In a related failing, the Final EIS also fails to evaluate the impacts associated with the mitigation proposed to address potential impacts to paleontological resources. Specifically, the Final EIS indicates that it may be necessary to employ *raised decking* to allow for investigation and protection of paleontological resources. (Final EIS, Appendix E, p. E-9.) This decking system would be elevated above street level and would require ramps to allow traffic to

transition to and from decking, but the Final EIS includes no discussion of the traffic, circulation, access or safety impacts such a grade separation would create. Moreover, these adverse impacts would be *in addition* to and compound the adverse impacts the Final EIR admits will already occur during construction as a result of the reduced traffic lanes and temporary street closures required by Project construction. (See Final EIS at S-38.)

**8. The Final EIS fails to analyze impacts related to the use of specific construction techniques.**

The Final EIS also fails to adequately describe or analyze impacts related to specific construction techniques and issues that are contemplated by MTA. For example, Appendix E to the Final EIS indicates that the tunnel boring machine will be dismantled and retrieved two times at the Wilshire/La Cienega station: once upon arrival from Wilshire/La Brea and once upon arrival from Century City. (Final EIS, Appendix E, p. E-21.) However, the Final EIS includes no discussion of the method of such dismantling and its environmental impacts.

Appendix E also indicates that if tie-backs are encountered during construction, the construction method may have to change to the cut-and-cover method in the tie-back zone. This change in construction method will result in substantially increased environmental impacts that are not addressed in the Final EIS for roadway segments, as opposed to station locations. (Final EIS, Appendix E, p. E-26.)

Finally, with respect underground station construction, Appendix E of the Final EIS states that at some locations along Wilshire Boulevard the groundwater is near the surface and potentially under artesian pressure; however the Final EIS is silent on the environmental impacts associated with groundwater that is under artesian pressure, and how and whether these impacts must be addressed during construction. (Final EIS, Appendix E, p. E-14.)

**B. The Final EIS Does Not Adequately Analyze Traffic Impacts Associated with Project Operation.**

The Final EIS also fails to adequately address the impacts of the Project on traffic and circulation in areas where stations will be located. Most significantly, no parking is provided for the Wilshire/La Cienega station. The Final EIS simply assumes, without supporting evidence, that parking impacts will not be significant if there is no unrestricted parking in the vicinity of the station (Final EIS at 3-67). However, based on the City's experience, the unavailability of parking *will* result in traffic impacts. Specifically, cars slowing to pick up and drop off passengers along La Cienega in front of the station will interfere with the flow of traffic and result in an adverse impact on traffic and circulation. However, there is no discussion of this potential impact or methods to mitigate it, such as the funding of additional traffic enforcement personnel.

## V. The Final EIS Does Not Propose Adequate Mitigation Measures

An EIS must identify feasible mitigation measures to mitigate significant environmental impacts. "An agency must discuss mitigation measures 'in sufficient detail to ensure that environmental consequences have been evaluated. A mere listing is insufficient.' Doing so helps to ensure that the agency has taken a 'hard look' at the environmental consequences of its proposed action." (*Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 872 (9th Cir. 2004).)

The Final EIS fails to discuss sufficiently concrete actions to reduce identified significant impacts. For example, the Final EIS finds that the loss of the Ace Gallery will not be a significant impact because the Gallery will be relocated and the building is subject to photo documentation. (Final EIS, Mitigation Measure HR-2.) The loss of this historic resource, however, will be permanent and photo documentation will not avoid that loss or reduce it below a level of significance.

In addition, Final EIS routinely improperly defers the identification and adoption of mitigation measures for significant Project impacts, including the following:

- Reliance on the development in the future of a memorandum of understanding with a museum regarding the proper treatment of resources from asphaltic deposits to mitigate significant paleontological impacts, whose requirements and performance standards have not been set or disclosed (Final EIS at 4-319, 4-326, Measure PA-1).
- The preparation of future development of a Noise Control and Mitigation Plan to mitigate significant construction noise impacts again without having established appropriate standards. (Final EIS at 4-360, Measure CON-23).
- The preparation of additional geotechnical exploration and surveys to determine the existing setting, determine the Project's actual impacts and then address those seismic and subsidence impacts with as yet undisclosed mitigation measures that may or may not reduce the level of those impacts. (Final EIS at 4-370, Measures CON-48, -49).
- Reliance on the future analysis of traffic impacts to streets and intersections due to construction activities and the future development of mitigation, such as designated haul routes, traffic control plans, transportation management plans, and parking management plans, to reduce significant traffic, circulation and access impacts. (Final EIS, p. 3-109-3-110, TCON Measures 1, 2, 5, 7.)

Finally, as noted above, the Final EIS's analysis of numerous topical areas is flawed. Even though its flawed analysis fails to fully disclose the impacts of the Project, the Final EIS still concludes that the Project will result in a number of adverse impacts after mitigation. The proposed finding in Section 10.11 of the proposed Findings of Facts and Statement of Overriding Considerations fails to take into account the additional feasible mitigation measures that must be discussed and considered before proceeding to approve the project.

As part of Exhibit B, the City has provided a list of feasible mitigation measures that are the same as or similar to measures previously imposed by the City of Beverly Hills, the Beverly Hills Unified School District, or both. The FTA must adopt mitigation measures that are substantially the same as those mitigation measures.

## **VI. The Final EIS Fails To Adequately Respond to Comments.**

Agencies are directed under NEPA to, *inter alia*, “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” (40 C.F.R. § 1500.2(d)). “CEQ regulations require a federal agency preparing a FEIS to ‘assess and consider comments both individually and collectively, and [ ] respond’ to those comments in the FEIS. 40 C.F.R. § 1503.4.” (*Sierra Club v. United States Dep't of Transportation*, 310 F. Supp. 2d 1168, 1194 (D. Nev. 2004).)

The Final EIS fails to fully respond to comments on the Draft EIS. For example, the Final EIS's responses to the City's concerns regarding construction phasing (Comments 824-26 through 824-31) do not actually address the issues that have been raised. Instead, the Final EIS improperly defers any discussion of mitigation regarding construction impacts and simply promises that “Continued coordination with the City of Beverly Hills will take place throughout the design process.” This response is insufficient, both substantively and as a response to the City's comments.

As another example, the City expressly requested in its comments that MTA “confirm that the analyses and conclusions presented in the Final Noise and Vibration Technical Report (page 6.2) are consistent with the City of Beverly Hills General Plan standards.” (Comment 824-38.) In response, the Final EIS states that “The criterion used to assess these potential impacts was defined by the Federal Transit Administration. The FTA noise criteria and mitigation measures are generally consistent with the Beverly Hills General Plan standards.” (Response to Comment 824-38.) This vague response does not adequately answer the City's question.

## **VII. Conclusion**

The public, and the decisionmakers, have been deprived of a full and fair opportunity to understand, analyze, and comment upon the Project that FTA is poised to approve. The City requests that FTA fully comply with both the letter and the spirit of NEPA by supplementing the

Mr. Ray Tellis  
May 22, 2012  
Page 31

Final EIS to fully analyze all Project impacts, and then recirculating the supplemented Final EIS for public comment.

Very truly yours,

GILCHRIST & RUTTER  
Professional Corporation

A handwritten signature in black ink, appearing to read "R. McMurry", written in a cursive style.

Robert I. McMurry  
Of the Firm

RIM:dj  
Enclosures

cc: Mr. David Mieger via email  
Mr. Raymond Sukys via email  
Mr. Dorval R. Carter, Jr. via email and fedex

EXHIBIT A



## CITY OF BEVERLY HILLS

### DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION

April 23, 2012

**To:** Aaron Kunz, Deputy Director of Transportation  
Laurence Wiener, City Attorney

**From:** Bijan Vaziri RTE, City Traffic Engineer

**Subject:** Circulation impacts of the proposed La Cienega Subway Station as Phase One Terminus

General circulation impacts of the proposed Westside Subway Extension have been discussed in the Environmental Impact Statement/Report (FIES/EIR) prepared for this project. However, the issue of operating the proposed La Cienega station as a terminus station has not been studied in focus particularly, with respect to potential traffic, transit, parking and pedestrian impacts.

Staff is concerned about significant circulation impacts that would occur with the La Cienega station used as the Purple Line terminus station for a number of years. This FIES/EIR does not adequately discuss the impacts and recommend mitigation measures, including alternative operation strategies, nor are they adequately identified.

Staff highlights the following issues of concern (without the order of priority):

- 1) Based on estimated boarding volume of over 10,000 per day for the La Cienega Station during the phase one of the project, it is anticipated that the traffic volume of the intersection of Wilshire and La Cienega (a CMP intersection) which presently is at the level of service "F" during AM, Midday and PM peak hours would be increased to a significant impact level. On a daily basis, this intersection carries 103,000 Vehicles per Day (Wilshire 52,000 vpd and La Cienega 51,000 vpd). The saturation level of this intersection presently extends beyond peak periods and usually, the intersection is congested continuously over 6 hours of afternoon and evening hours.
- 2) The estimated 10,000 per day boarding as a terminus station would mean that passengers would use other modes of transportation to get to and from the station. It is not clear in the FEIS/EIR documents the estimated percentages of modes switched to bus, park and ride, drop and ride, pedestrian traffic, bicycle traffic and other modes. Without such analysis, it is not clear how the adjacent busy intersection of La Cienega and Wilshire Boulevards can handle such a high volume circulation pattern.
- 3) With operation of the La Cienega station as a terminus, it is anticipated that existing bus line services would be modified or re-routed to be used as bus-subway connectors. As

a comparison, the Western Avenue station of the existing Purple Line serves as a transfer and terminus area for a number of bus lines. A property adjacent to the station serves as a bus terminal or bus layover zone allowing buses to turn around within the property for bus lines serving the station. In the vicinity of La Cienega and Wilshire Boulevards, there is no potential vacant property to be used for such purposes. As the result, all bus transfer activities would need to occur along Wilshire and La Cienega curbs causing significant impacts to the intersection and adjacent areas and cause shortage of on-street parking spaces to accommodate bus layovers. The turnaround routing of the buses would mean additional bus traffic on La Cienega, Wilshire and San Vicente Boulevards contributing to the traffic congestion of the area.

- 4) The off street parking supply would be very limited for potential subway riders to utilize the park and ride system. Residential streets adjacent to the station all have permit parking regulations not allowing non-residents to park on these streets. The supply of metered spaces within the close proximity to the station is limited and already short for the use of the nearby merchants. Unlike the Western Avenue station there is no possibility of a vacant property to be used as parking and therefore staff anticipates significant parking shortage in the vicinity of the proposed La Cienega station, which will in turn create significant circulation impacts as drivers either stop illegally to drop off passengers or circulate to locate parking.
- 5) The excessive volume of pedestrian crossings usually seen at terminus subway stations could require longer signal operation cycles at adjacent signalized intersections like La Cienega and Wilshire Boulevard. This will negatively affect the operation and synchronization of adjacent traffic signals along both Wilshire and La Cienega Boulevards.
- 6) - The lack of adequate drop and ride zones in the vicinity of the station could increase the traffic on nearby residential streets to be used for such purpose, causing additional impacts to the La Cienega/Wilshire Boulevard Intersection.

In summary, the impacts of the additional vehicle traffic, bus transfers, and pedestrian activity of a Phase One Purple Line Terminus at La Cienega Boulevards has not been adequately analyzed. Staff has determined that these additional impacts would worsen the Level of Service at the Wilshire/La Cienega Boulevard Intersection and would exceed the City's Thresholds of Impacts for Traffic.

EXHIBIT B



CITY OF BEVERLY HILLS  
COMMUNITY DEVELOPMENT

MEMORANDUM

**TO:** Laurence S. Wiener, City Attorney  
**FROM:** Susan Healy Keene, AICP  
Director of Community Development  
**DATE:** April 23, 2012  
**SUBJECT:** Westside Subway Extension Final EIR Comments

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I and other members of my department have reviewed the Final Environmental Impact Report (FEIR) for the Westside Subway Extension project (Project). Our planning staff has substantial experience reviewing development projects and their environmental impacts. In reviewing the FEIR, we have determined that the FEIR does not adequately analyze or mitigate the significant impacts that will result from the extended construction period proposed for the Project.

**Noise Impacts**

The FEIR fails to include any analysis of construction impacts on a local level. Instead, the FEIR only indicates that construction noise levels will be significant. (FEIR at 4-358.) The FEIR fails to include any information about the noise levels that actually will occur with construction, where and when construction noise levels will exceed levels set by local ordinances, and how to mitigate these significant noise impacts.

In our experience, an adequate CEQA noise analysis must include, at a minimum, a thorough description of the duration and amplitude of the exposure at a particular receptor. The evaluation should include the locations of sensitive receivers in the Project area, a description of existing ambient noise levels at these sensitive receivers, predicted noise levels during each phase of construction at the sensitive receptors, and a comparison of noise levels during construction to the existing ambient noise levels. In addition to identifying residences as sensitive receptors, the revised document must identify each motel and hotel, library, religious institution, hospital, nursing home, active sport area, picnic area, recreation area, playground, and park that would be potentially affected by Project-generated construction noise.

## **Vibration Impacts**

Additionally, the FEIR does not adequately analyze vibration impacts. The City previously concluded that excavation and construction of a hotel and construction of a condominium building along Wilshire Boulevard would generate vibration levels of up to 75 velocity decibels (VdB) at one hundred feet from the source. These construction activities did not involve the magnitude of excavation contemplated by subway station construction and tunneling; yet, these construction activities exceeded the 72 VdB Federal Railroad Administration threshold for residential uses, even for such uses located more than 100 feet from the source.

Residential uses exist within one hundred and fifty feet of Wilshire Boulevard and in some instances are immediately adjacent to the proposed subway tunnel route. The FEIR contains no quantified analysis of the vibration impacts during construction to any residential or other sensitive uses in the City. Additionally, one elementary school has classrooms located within approximately one hundred and fifty feet of Wilshire Boulevard and, of course, tunneling is proposed directly beneath Beverly Hills High School. The FEIR fails to adequately analyze these potential vibration impacts.

## **Air Quality**

The FEIR also fails to assess the local air pollution emissions associated with intense, street-level construction, such as that associated with the La Cienega station. For example, the EIR contains limited discussion of the health impacts of PM<sub>2.5</sub>, a particulate pollutant associated with the use of diesel fuel. The serious health risks associated with PM<sub>2.5</sub> exposure are well-documented. In its final rule designating attainment and non-attainment of PM<sub>2.5</sub> standards, the U.S. EPA noted the "significant relationship between PM<sub>2.5</sub> levels and premature mortality, aggravation of respiratory and cardiovascular disease . . . , lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia," particularly among "older adults, people with heart and lung disease, and children." See Air Quality Designations and Classifications for the Fine Particles (PM<sub>2.5</sub>) National Ambient Air Quality Standards, 70 Fed. Reg. 944, 945 (Jan. 5, 2005) [Vol. 2, Ex. 28-e].

This failure is particularly serious with respect to the emission of toxic air contaminants, diesel particulate, and carbon monoxide – all of which are pollutants that will impact the health of nearby residents, employees, and other sensitive receptors, such as students. Specifically, we note that there are hundreds of residences, several hotels, and one elementary school within 1000 feet of station construction proposed for Beverly Hills. Yet, the FEIR here improperly contains no discussion of these impacts or affected uses near construction zones.

Furthermore, the FEIR fails to address the additional impacts associated with the decision to modify the Rodeo Station configuration by adding a double crossover to the east end of that station to "optimize operations." This change in the Project brings the station construction within 1000 feet of Beverly Vista elementary school. Therefore,

Metro must revise the EIR to address increased health risk associated with construction and the revised EIR must be recirculated for public review.

We note that the City routinely requires mitigation measures such as those listed below. As dictated by past experience, these mitigation measures are feasible and necessary to reduce impacts. Accordingly, we request that Metro impose all of these mitigation measures in addition to those already identified in the FEIR and include them as part of a mitigation monitoring and reporting program.

1. Prior to issuance of grading permits, the applicant shall submit a Construction Management Plan satisfactory to the City's Director of Community Development and the Building Official. The Building Official shall enforce noise attenuating construction requirements. The Construction Management Plan shall include, but not be limited to, the following:
  - Excavation, grading, and other construction activities related to the Project shall be restricted to the hours of operation allowed under Section 5-1-206, Restrictions on Construction Activity in the City Municipal Code. Any deviations from these standards shall require the written approval of the Community Development Director.
  - Stockpiling and vehicle staging areas shall be located as far away from occupied residences as possible, and screened from these uses by a solid noise attenuation barrier. Noise attenuation barriers constructed to the specifications necessary to reduce noise levels at adjacent residential structures to no greater than 5 dbA over ambient at any time.
  - Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) sufficient to achieve the standard specified above shall be used along all the boundaries of all construction staging sites and station construction sites during.
  - All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from residential uses as possible. If this is not possible the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development to achieve the standard above.
  - Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).
  - Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at Beverly Hills schools. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no

construction activity generating the high noise levels is undertaken during any designated testing periods at the schools.

2. The construction area and vicinity shall be swept (preferably with water sweepers) and watered at least twice daily. Site-wetting shall occur with sufficient frequency to maintain 10 percent surface soil moisture content throughout all earth-moving activities. At least 80 percent of all inactive disturbed surface areas shall be watered on a daily basis when there is evidence of wind-driven fugitive dust.
3. All unpaved roads, parking and staging areas shall be watered at least once every two hours during active operations.
4. Site access points shall be swept or washed within thirty minutes of visible dirt deposition.
5. All haul trucks shall have a capacity of no less than twelve and three-quarter (12.75) cubic yards.
6. Operations on any unpaved surfaces shall be suspended when winds exceed 25 miles per hour.
7. Operations on any unpaved surfaces shall be suspended during first and second stage smog alerts.
8. The contractor shall prepare a Construction Traffic Emission Management Plan satisfactory to the City of Beverly Hills to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of five minutes.
9. The contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.
10. The contractor shall use electricity or alternate fuels for on-site mobile equipment instead of diesel equipment.
11. The contractor shall use electric welders to avoid emissions from gas or diesel welders.
12. The contractor shall use electricity or alternative fuels rather than diesel-powered or gasoline-powered generators.
13. The contractor shall install wind monitoring equipment on each construction site, and suspend grading activities when wind speeds exceed 25 mph per Southern California Air Quality Management District (SCAQMD) guidelines.

14. The contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).
15. The contractor shall replace ground cover in disturbed areas as quickly as possible.
16. Metro shall retain a third-party air quality consultant to conduct continuous monitoring of the PM10 (dust) concentrations during the project demolition, excavation and grading phases of project construction to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using Dustrak™ aerosol monitors or other similar monitoring networks and shall meet the following requirements:
  - The third-party consultant shall be approved by the City of Beverly Hills' Director of Community Development and the Beverly Hills Unified School District.
  - Costs for the monitoring network and tests by the third-party consultant shall be borne by Metro.
  - Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the project are selected. The locations shall be selected in order to monitor the project's contribution to ambient PM10 concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near each construction site in the City and a second downwind monitor shall be located in an area beyond the construction area boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the project site. All locations in the City of Beverly Hills shall be approved by the third-party air quality consultant and the City of Beverly Hills' Community Development Director.
  - The monitoring network shall include at least one anemometer to measure wind speeds and directions.
  - Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.
  - Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).
  - Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate

the Distract monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.

- The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.
- Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM10 concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and Grading phases of project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, Metro, and the contractor on a secured internet website. The general public shall have access to 5-hour rolling average PM10 concentrations on a publicly accessible web-site.
- Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM10 thresholds are exceeded.
- All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific -corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant, the City of Beverly Hills and Metro. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.
- Metro and the contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but at not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle

speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. Metro and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition. The project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the project site do not go beyond the construction site.

17. The contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A)

### **Construction Staging Aesthetics**

Finally, significant visual impacts caused by construction equipment and staging are identified, but are determined to be mitigable through four simple mitigation measures. There are construction and staging areas located in highly aesthetic areas of Beverly Hills, and also adjacent to sensitive uses such as residential uses, luxury hotels and retail. Staff believes that the identified mitigation measures are insufficient to mitigate the impact. Additional mitigation is recommended, including substantial landscaping, fencing, and possible enclosed structures reviewed by the Architectural Commission. These are visual impacts that will occur for approximately a decade (much longer than a typical 18-24 month project), and these cannot be easily mitigated as identified in the FEIR. We believe the following mitigation measures must be included:

1. Construct shell buildings to enclose construction lay down areas.
2. Incorporate aesthetic design features and landscaping into screening design for lay down areas.
3. Provide graffiti coating on all exterior finishes of screen walls/structures.
4. Maintain lay down areas and construction sites in a clean and organized manner. Remove excess/unused construction materials from site as soon as it is determined that they are not needed.
5. Maintain screen walls/structures and landscaping in good condition throughout the duration of the project.

EXHIBIT C



## CITY OF BEVERLY HILLS

### DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION

April 23, 2012

**To:** Aaron Kunz, Deputy Director of Transportation  
Laurence Wiener, City Attorney

**From:** Bijan Vaziri RTE, City Traffic Engineer

**Subject:** Closure of Wilshire Boulevard for Construction of Subway Stations

#### Introduction:

This memo discusses the significant construction traffic impacts to residential and commercial streets of Beverly Hills that will result from construction of two stations on Wilshire Boulevard at La Cienega Boulevard and Beverly-Rodeo Drives for the proposed Westside Subway Extension. The focus of this memo is on the construction impact of closing Wilshire Boulevard in Beverly Hills at two segments:

1. *Between La Cienega Boulevard and San Vicente Boulevard*
2. *El Camino Drive to S. Canon Drive(inclusive)*

Based on the information that became available in the Final Environmental Impact Statement/Report (FIES/EIR), it is anticipated that Wilshire Boulevard would be closed to vehicular and pedestrian traffic for a period of 56 hours (from 10PM Fridays through 6AM Mondays) for up to 60 weekends (for each segment).

#### Background:

Overall construction impacts of the proposed Westside Subway Extension have been discussed in the FEIS/EIR prepared for this project. However, perhaps due to a lack of detailed information at the time of the FEIS/EIR preparation, the issue of construction traffic impacts on residential streets due to the closure of Wilshire Boulevard during weekends has not been discussed in the FEIS/EIR and no clear mitigation measures have been recommended. Since the schedule of the street closure could extend for up to 60 weekends, this cannot be considered a temporary construction issue which the City usually deals with for a period of one or two weeks. Based on my professional training and my experience of 27 years as the Traffic Engineer for the City of Beverly Hills, I can confidently conclude that such a frequent closure of Wilshire Boulevard for such a long period would negatively impact residential and commercial streets; particularly in the vicinity of the proposed closure areas. These issues have simply not been addressed in the FEIS/EIR.

## Discussion:

To provide more details, staff conducted a preliminary and conservative evaluation of potential impacts from Wilshire Boulevard closures. This study was based on the assumption that the closure of Wilshire for the La Cienega station would not occur concurrently with closure of Wilshire for the Beverly-Rodeo Station.

Staff looked at potential traffic diversion routes that would be used as “detours” during the street closure. For the Wilshire Boulevard closure at San Vicente Boulevard:

Westbound traffic on Wilshire would be diverted to San Vincent Boulevard. It is estimated that the majority of traffic would turn right onto San Vicente Boulevard and proceed west by using Burton Way and eventually connect to Wilshire Boulevard west of Santa Monica. Local Beverly Hills traffic diverted to San Vicente Boulevard would generally try to use La Cienega Boulevard, Robertson Boulevard or Doheny Drive to return back to the original westbound approach of Wilshire. However, based on my experience with past street closures in Beverly Hills, a small percentage of diverted traffic would use the residential north-south streets between Burton Way and Wilshire. Based on available traffic counts estimated diverted westbound traffic (on a typical Saturday) would be about 17,000 vehicles per day per direction. Even assuming that the overwhelming majority of traffic would use La Cienega Boulevard, Robertson Boulevard or Doheny Drive, the impacts on residential streets surrounded by the above major streets would be measurable. The situation would be more crucial for eastbound traffic on Wilshire Boulevard facing the closure on La Cienega Boulevard.

Eastbound traffic on Wilshire Boulevard (18,000 on Saturdays) would be diverted to La Cienega Boulevard. Since La Cienega Boulevard carries about 38,000 vehicles per Saturday in both directions, traffic will not smoothly divert to La Cienega Boulevard without backing up on Wilshire as traffic approaches La Cienega Boulevard. It is estimated that Wilshire between La Cienega Boulevard and Robertson Boulevard will be congested to a level that drivers will divert to adjacent local streets in order to attempt to avoid the congestion. Based on a conservative estimation, the following local streets would experience the following substantial increases of Saturday traffic (calculated based on estimated percentage multiplied by 18,000 trips per Saturday on eastbound approach).

*Le Doux Road: Estimated 4% diversion of the approach volume or 700 vehicles per Saturday*  
*Stanley Drive: Estimated 2% diversion of the approach volume or 360 vehicles per Saturday*  
*Carson Road: Estimated 1% diversion of the approach volume or 180 vehicles per Saturday*  
*Willaman Drive: Estimated 5% diversion of the approach volume or 900 vehicles per Saturday*  
*Hamel Drive: Estimated 1% diversion of the approach volume or 180 vehicles per Saturday*

This means that the existing traffic on Le Doux Road could increase by 44% (for example, 700/1590 existing 24 hour traffic). Similarly, Stanley could see a 38% increase, 31% on Carson Road, 52% on Willaman Drive (because this intersection is signalized, more diversion would be anticipated) and 24% increase on Hamel Drive. These are significant increases of traffic on Saturdays and Sundays especially for such a long duration of up to 60 weekends. In addition, based on the City's Thresholds of Significance for Traffic Impacts (which are set forth in an attachment) each of these streets would experience a significant environmental impact by such increases in volume. Mitigation may be possible, but has not yet been explored and is not recommended in the FEIS/EIR.

As for the closure of Wilshire Boulevard for the Beverly/Rodeo Station construction, there are fewer options for diverting traffic to streets that can handle the volume of traffic without experiencing a significant impact because there are no arterials among the immediately surrounding streets.

Westbound Wilshire Boulevard would be diverted to N. Crescent Drive which is both commercial and residential and has a two-lane capacity in each direction. S. Crescent Drive is only 30 feet wide and has no room for diversion traffic from Wilshire Boulevard. This would mean that Charleville Boulevard, which is a residential street and runs parallel to Wilshire (one lane per direction), would be used to avoid the closure area. The Saturday traffic of Charleville Boulevard is 1,200 per direction and a conservative diversion of 2% of westbound Wilshire traffic would mean an increase of 42%. Such an increase on Charleville Boulevard with over 30 all-way stop controlled intersections would result in total congestion and potentially impact north/south residential streets, but quantifying this impact would require further analysis.

Eastbound Wilshire before the closure area has no immediate alternative for diversion. Staff anticipates that the traffic would need to be diverted prior to the closure area at North and South Santa Monica Boulevard. The traffic could then be rerouted to Burton Way and Crescent Drive to eventually return to eastbound Wilshire Boulevard. However, Santa Monica Boulevard already experiences substantial traffic on Saturdays and is not capable of absorbing all of Wilshire Boulevard's eastbound traffic without experiencing significant delays. Therefore, it is anticipated that Charleville Boulevard would be used as an eastbound as well as westbound diversion route as discussed above. The estimated percentage increase would be on the order of at least 40 to 50%.

In conclusion, staff anticipates that the closure of Wilshire at two segments for a possible 60 Saturdays and Sundays would significantly impact the residential streets surrounding the closure areas as well on a larger scale, impacting the City's weekend circulation activities. Based on City's Thresholds of Significance for Traffic Impacts a substantial number of streets would experience a significant environmental impact by such increases in volume. This impact has not been discussed in the FEIS/EIR and no mitigation has been proposed.

Attachment: City of Beverly Hills, Thresholds of Significance for Traffic Impacts

EXHIBIT D



**CITY OF BEVERLY HILLS**  
**COMMUNITY DEVELOPMENT**

**MEMORANDUM**

**TO:** Laurence S. Wiener, City Attorney

**FROM:** Susan Healy Keene, AICP  
Director of Community Development

**DATE:** April 23, 2012

**SUBJECT:** Preliminary Review of the Economic Impact Analysis on the City of Beverly Hills in Westside Subway Extension Final EIR

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I and other members of my department have reviewed the report prepared by EPS analyzing the potential economic impacts on Beverly Hills from the construction of the two proposed Beverly Hills subway stations. Based on our recent experience with a construction project immediately adjacent to the proposed Rodeo Drive subway station, we believe that extended construction along Wilshire Boulevard between Rodeo and Canon Drives will have an impact on businesses that will result in vacancies at retail locations north and south of Wilshire Boulevard.

During recent construction of the Montage Hotel, which is located immediately adjacent to the proposed Rodeo Drive subway station, businesses on Beverly Drive suffered significant declines in patronage and some of those businesses closed. The owners of the businesses appeared before the City Council frequently to testify concerning these matters and request help from the City to prevent the failure of their businesses. The City did take action to aid these businesses, including providing an on street valet parking program to make patronage of these businesses more attractive, but the business owners continued to suffer from the impacts of construction, storefronts remained vacant during the construction and those vacant storefronts had a significantly negative aesthetic impact on the 100 block of North Beverly Drive, near the construction site.

Based on information in the Final EIS/EIR for the Westside subway extension, the proposed Rodeo subway station construction will last much longer than the Montage Hotel construction, will impact more streets than the Montage Hotel construction (and will again impact the 100 block of North Beverly Drive), and will have greater traffic impacts than the Montage Hotel construction.

With these greater traffic impacts and greater economic impacts as described in the EPS report, based on my experience, I believe we will see greater vacancies which will result in a deterioration of the maintenance of the private property and adjacent right of way that will have negative aesthetic impacts to a greater extent than the Montage project. However, I have seen no analysis in the Final EIS/EIR of the potential physical impacts that will likely result from the economic impacts of the subway station construction in the heart of the City's business district.

At a minimum, Metro should incorporate mitigation measures to encourage continued patronage of Beverly Hills retail shops during the construction period. These measures should include, convenient valet parking, as was provided by the City of Beverly Hills during the Montage construction, the maintenance of clean, unobstructed sidewalks throughout the retail shopping areas of the business district, signage to promote that businesses remain open during construction and that direct patrons to valet parking; and maintenance or provision of convenient parking which can be accessed without construction obstruction.

EXHIBIT E



**Allan D. Kotin & Associates**  
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**Economic & Planning Systems, Inc.**  
949 South Hope Street, Los Angeles CA 90015

213-489-3808  
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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills      **DATE:** April 23, 2012  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE:** **PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, "high-end" physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City's commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According to the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, "significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption."<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large "denominator" against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.



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It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
Summary of Findings

Tax Category	Final EIR	Impact Area (At-Risk) Annual General Fund Tax Revenues	(Preliminary) Re-Assessed Economic Impacts					
	Permanently Lost General Fund Revenues		Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)



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### 1. FEIR Ignores Jurisdiction-Level Impacts

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

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**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down	street closure	traffic over decking	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	25			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 9/2011; EPS analysis

## 2.- FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City's most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

**Exhibit 3**



### **3. FEIR Considers Too Few Impact Categories**

The FEIR considers only two forms of negative economic impact: property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.



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**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<u>Tax Category</u>	<u>FY 2011 Revenues</u>	<u>% of Taxes</u>	<u>% of GF</u>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	\$915,536	1%	1%
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	\$39,927,666		24%
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

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Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminihaec and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolffing, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8.3% decrease to 39.9% increase
Buddemeyer, Young and Vander Glessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

(1) Homans, Nancy. "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012: [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses).

(2) De Solminihaec, Herman E. and Robert Harrison, "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies, Washington, D.C., 1993, pp 137-143.

(3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies, Washington, D.C., 1996, pp 78-83.

(4) Young, Rhonda Kae, Chris Wolffing, and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record. Journal of the Transportation Research Board, No. 1924, Transportation Research Board of the National Academies, Washington, D.C., 2005, pp. 94-102.

(5) Buddemeyer, Jenna, Rhonda Young and Steven Vander Glessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town of Dubois", FHWA-WY-08/01F. March 2008: <http://rip.trb.org/browse/project.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.



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**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	General Fund Tax Revenues in Measured Impact Area (2)	FY 2011 (1)		
		Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>\$124,687,131</b>		<b>27.6%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.

(3) Business Taxes from calendar year 2011.

(4) Beverly Hills General Fund share of the property tax estimates from FY2010.

(5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010. City of Beverly Hills, EPS Analysis

**ALTERNATE METHODOLOGY**

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

**Sales Tax**

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,



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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

#### **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

#### **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

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**Exhibit 7**  
Business Tax Summary

Classification	Tax Amount	Concentration of Tenants in the Impact Area	Impact from the Project
Business Services	\$238.78 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63606 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,946.73 and 3,907.76 for the first 10,000 barrels with \$0.14381 to \$0.35953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Sources: City of Beverly Hills Tax Schedule FY2011, EPS

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

### Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax roles. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

### Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund



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revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
Estimated Construction Impact on Fiscal Revenues

Category	General Fund Revenues in Partial Impact Area (2)	FY 2011 (1)								
		Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
TOT	\$8,961,808	10%	25%	\$896,181	\$2,240,452	\$26,594,808	3.4%	8.4%	0.6%	1.4%
<b>Total</b>	<b>\$44,008,661</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro

(3) Sales Tax loss factor based on literature survey and EPS analysis, TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor

(4) Business Taxes from calendar year 2011.

(5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 6/2010, City of Beverly Hills, and EPS.



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**Appendix 1**  
**City of Beverly Hills General Fund Property Tax Share**

<b>Parcel</b>	<b>Total</b>
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

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**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgtd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax In Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
	Proportion			Low	High	Avg.		Low	High	Low%	High%
Apparel	\$563,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,935	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,282,882	14%	42%	28%	30%	\$95,861	\$287,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$267,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,978	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,384	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	\$138,133	9%	\$1,316,808	13%	40%	27%	30%	\$52,936	\$158,807	4.0%	12.1%
	\$1,550,904		\$14,784,617	13%	40%	27%		\$588,935	\$1,766,804	4.0%	12.0%

(1) Citywide retail sales used as a proxy to allocate impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.



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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills      **DATE:** April 23, 2012  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE:** **PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, “high-end” physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City’s commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, “significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption.”<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large “denominator” against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
Summary of Findings

Tax Category	Final EIR	Impact Area (At-Risk) Annual General Fund Tax Revenues	(Preliminary) Re-Assessed Economic Impacts					
	Permanently Lost General Fund Revenues		Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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### **1. FEIR Ignores Jurisdiction-Level Impacts**

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down	street closure	traffic over decking	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	26			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 8/2011; EPS analysis

## 2.- FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City's most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

**Exhibit 3**



### **3. FEIR Considers Too Few Impact Categories**

The FEIR considers only two forms of negative economic impact; property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<u>Tax Category</u>	<u>FY 2011 Revenues</u>	<u>% of Taxes</u>	<u>% of GF</u>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	\$915,536	1%	1%
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	\$39,927,666		24%
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

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Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminhac and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolfling, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8-3% decrease to 39.9% increase
Buddemeyer, Young and Vander Giessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

(1) Homans, Nancy. "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012. [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses).

(2) De Solminhac, Herman E. and Robert Harrison, "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies. Washington, D.C., 1993. pp 137-143.

(3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies. Washington, D.C., 1995, pp 76-83.

(4) Young, Rhonda Kae, Chris Wolfling and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record: Journal of the Transportation Research Board. No. 1924, Transportation Research Board of the National Academies. Washington, D.C., 2005, pp. 94-102.

(5) Buddemeyer, Jenna Rhonda Young and Steven Vander Giessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town Of Dubois". FHWA-WY-08/01F March 2008. <http://rip.frb.org/browse/d/project.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.



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**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	FY 2011 (1)			
	General Fund Tax Revenues in Measured Impact Area (2)	Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>\$124,687,131</b>		<b>27.6%</b>

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.
- (3) Business Taxes from calendar year 2011.
- (4) Beverly Hills General Fund share of the property tax estimates from FY2010.
- (5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, EPS Analysis

**ALTERNATE METHODOLOGY**

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

**Sales Tax**

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,



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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

### **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

### **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

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**Exhibit 7**  
Business Tax Summary

Classification	Tax Amount	Concentration of Tenants In the Impact Area	Impact from the Project
Business Services	\$238.76 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$80,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63606 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,946.73 and 3,807.78 for the first 10,000 barrels with \$0.14381 to \$0.36953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Sources: City of Beverly Hills Tax Schedule FY2011, EPS.

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

## Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax rolls. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

## Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund



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revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
Estimated Construction Impact on Fiscal Revenues

Category	General Fund Revenues In Partial Impact Area (2)	FY 2011 (1)								
		Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
TOT	<u>\$8,961,808</u>	<u>10%</u>	<u>25%</u>	<u>\$896,181</u>	<u>\$2,240,452</u>	<u>\$26,594,808</u>	<u>3.4%</u>	<u>8.4%</u>	<u>0.6%</u>	<u>1.4%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

(1) All tax numbers from FY 2011 except Property and Business Taxes.

(2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro

(3) Sales Tax loss factor based on literature survey and EPS analysis; TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor

(4) Business Taxes from calendar year 2011.

(5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills, and EPS.



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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**Appendix 1  
City of Beverly Hills General Fund Property Tax Share**

<b>Parcel</b>	<b>Total</b>
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgt'd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax in Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
		Proportion		Low	High	Avg.		Low	High	Low%	High%
Apparel	\$563,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,835	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,282,882	14%	42%	28%	30%	\$95,881	\$297,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$257,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,976	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,364	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	\$138,133	9%	\$1,316,808	13%	40%	27%	30%	\$52,936	\$158,807	4.0%	12.1%
	<b>\$1,580,904</b>		<b>\$14,784,617</b>	<b>13%</b>	<b>40%</b>	<b>27%</b>		<b>\$588,936</b>	<b>\$1,766,804</b>	<b>4.0%</b>	<b>12.0%</b>

(1) Citywide retail sales used as a proxy to allocate Impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.



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**TO:** Laurence Wiener, City Attorney, City of Beverly Hills      **DATE:** April 23, 2012  
**FROM:** Andrew E. Kaplan, Jason Moody, and Allan D. Kotin  
**RE:** **PRELIMINARY REVIEW OF THE ECONOMIC IMPACT ANALYSIS ON THE CITY OF BEVERLY HILLS IN WESTSIDE SUBWAY EXTENSION FINAL EIR**

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Allan D. Kotin & Associates (ADK&A), in association with Economic & Planning Systems, Inc. (EPS), has prepared the following preliminary<sup>1</sup> review of the findings and methodology used in the Westside Subway Extension Final Environmental Impact Analysis (FEIR) as pertains to the economic impacts on the City of Beverly Hills (City).

At issue are two subway stations and the connecting subway tunnels along the preferred alignment proposed for the intersections of Wilshire and La Cienega Boulevards and Wilshire Boulevard and Rodeo Drive in the City of Beverly Hills. This analysis focuses primarily on the construction period, which is expected to generate the bulk of the negative economic consequences for the City, and which the Final EIR has attempted to quantify and address by means of a proposed mitigation program. This preliminary review looks at the FEIR and focuses on two critical and interrelated questions:

1. Is the methodology used in the FEIR to identify and estimate negative construction period economic impacts comprehensive and methodologically sound?
2. Are the corresponding findings related to the level of significance of identified economic impacts credible and accurate?

The report is organized into three sections:

1. **Executive Summary:** A brief summary of findings.
2. **Assessment of Methodology:** A critique of the methodology used to estimate negative economic impacts on the City of Beverly Hills
3. **Alternative Methodology:** Addresses the methodological errors in the FEIR and produces a preliminary set of alternate calculations as a basis for assessing the potential range of economic impacts that may result.

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<sup>1</sup> This assessment has been prepared on an expedited schedule to meet a short deadline, and as such, it should be regarded as a preliminary assessment. Later update of the assessment may be required to bring greater accuracy and refinement to the findings. Such a revision should: define a more precise impact area for the calculation of at-risk fiscal revenues; provide a more nuanced understanding of how the construction schedule will disrupt normal activity; and employ a more refined method, supported by a deeper literature search, of how construction disruption translates into losses of sales, property, business, and transient occupancy tax revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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## EXECUTIVE SUMMARY

The Beverly Hills economy is characterized by a strong luxury retail sector, an unmatched cluster of five- and four-star hotels, and a premium location and brand identification that has made it the preferred address for many entertainment companies, medical professionals, and other service providers. The resonance of the Beverly Hills commercial district as a premium luxury brand is sustained and reinforced by a pristine, “high-end” physical environment, including a well-maintained streetscape, convenient building accessibility, and an overall pleasant and attractive atmosphere.

The proposed construction of the Beverly Hills stations at Wilshire/La Cienega and Wilshire/Rodeo may threaten the sense of luxury so important to the image and performance of many of the City’s commercial tenants. The construction, which will take place over a nearly ten-year period, will involve multiple phases of demolition, excavation, new construction, and movement of heavy materials into and out of the area. According to the FEIR, the construction will lead to disruptions in traffic, transit, and parking; produce negative air quality, noise, and vibration impacts; and result in the potential for significant business disruption.<sup>2</sup> Even after implementation of mitigation measures, “significant construction-related impacts would still remain in the areas of traffic, air quality, noise, and business disruption.”<sup>3</sup>

Despite this, the FEIR estimates a construction period negative economic impact for Beverly Hills of only 35 jobs and \$426,000 in annual property taxes lost. This relatively simplistic calculation may represent a significant underestimation of the true level of negative economic impacts. Specifically, the analytical methodology that generates these estimates is flawed in at least three key ways:

1. The FEIR measures negative impacts against a baseline that includes the entire study area, comprising parts of five separate jurisdictions. This produces a too-large “denominator” against which negative economic impacts (which tend to occur near the station location) are measured.
2. The FEIR assesses negative economic impact only on parcels Metro will acquire, which amounts to a small portion of land that may be impacted by the construction.
3. The FEIR assesses negative economic impact on property taxes and jobs, ignoring entirely business tax revenue, sales tax revenue, and transient occupancy tax—all crucial contributors to the Beverly Hills General Fund.

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<sup>2</sup> Mentioned in many of the subsidiary FEIR documents including the *Construction and Mitigation Technical Report*, Section 7.

<sup>3</sup> *Construction and Mitigation Technical Report*, August 2010, 7.3.4.



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

It is our professional opinion that the FEIR methodological flaws should be addressed by (1) using the Beverly Hills jurisdiction as the baseline for assessment; (2) assessing impacts on the General Fund revenues within an impact area that extends one-quarter to one-half mile from the station area; and (3) including an analysis of likely impacts on sales, business, and transient occupancy tax revenues.

For illustrative purposes, the ADK&A/EPS team has prepared a preliminary re-assessment of potential negative economic impacts for the City of Beverly Hills resulting from the construction phase only. These preliminary estimates are compared with the FEIR assessment in Exhibit 1 below. As shown, the annual reduction in the City of Beverly Hills General Fund revenues during the construction phase of the Westside Subway Extension project are estimated in the range of \$1.9 million to \$6.1 million, representing between 1.6% and 3.8% of total annual General Fund budget. This compares to \$426,000 per year estimated by the FEIR<sup>4</sup>.

**Exhibit 1**  
**Summary of Findings**

Tax Category	Final EIR		(Preliminary) Re-Assessed Economic Impacts					
	Permanently Lost General Fund Revenues	Impact Area (At-Risk) Annual General Fund Tax Revenues	Estimated Annual General Fund Tax Revenues Lost During Construction				% of Total General Fund	
			Low	High	Low	High	Low	High
Business Tax		\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	0.6%	1.3%
Property Tax	\$67,367	\$67,367	100%	100%	\$67,367	\$67,367	0.0%	0.0%
Sales Tax		\$14,784,617	4%	12%	\$588,935	\$1,766,804	0.4%	1.1%
TOT		\$8,961,808	10%	25%	\$896,181	\$2,240,452	0.6%	1.4%
<b>Total</b>	<b>\$67,367</b>	<b>\$44,008,561</b>	<b>6%</b>	<b>14%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>1.6%</b>	<b>3.8%</b>

Source: EPS.

## ASSESSMENT OF EIR METHODOLOGY

The analytical methodology used in the FEIR to estimate construction period negative economic impacts is flawed in three primary respects as described further below.

<sup>4</sup> FEIR estimates total property taxes generated by subject property whereas this analysis considers only the share of property tax captured by the City of Beverly Hills General Fund. This share is estimated at 17.2 percent of the 1 percent property tax based on a citywide average. (See Appendix 1 for calculation of 17.2% share)



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

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### 1. FEIR Ignores Jurisdiction-Level Impacts

The study area defined in the FEIR includes parts of five jurisdictions, which together form the baseline against which negative impacts are measured. Specifically, this relatively broad area is used as the “denominator” to calculate the level of significance associated with the specific impact categories that are quantified. However, the distribution of negative impacts will vary substantially throughout the area. In addition, the calculation of a percentage financial impact based on an artificial multijurisdictional study area is not meaningful for fiscal planning at the level of each individual jurisdiction.

Moreover, the negative impacts from construction are likely to be highly localized and focused on the commercial districts that are immediately adjacent to (and in some cases intersecting) the construction area. Because costs are imposed and must be mitigated on a jurisdictional basis, negative impacts should be measured and assessed on that basis as well.

Although the FEIR outlines a number of mitigation measures that will be pursued during the construction phase, these measures are unlikely to completely eliminate the negative impacts of the project. The FEIR notes that construction will disrupt traffic, produce negative air quality, noise, and vibration, and result in potentially significant business disruption. Much of this can be attributed to the duration of construction, the frequency and volume of truckloads, and the overall intensity of the work, which will result in frequent partial and full road closings to accommodate it. The construction schedule in Exhibit 2 shows that, with a few lulls, each station will require over eight years of medium- to high-intensity construction work. (For an index of how the construction schedule may impact fiscal revenues on an average basis and at each construction stage, see the analysis in Appendix 2.)

In general, Metro has specified a host of mitigation measures, including the use of street decking over the station construction area, to assure the minimum possible economic disruption. However, as further described below, these mitigation impacts will only partially off-set the full-range disruption likely to result from the project. Given that the City of Beverly Hills has jurisdictional authority over the primary impact area, and is responsible for the provision of most public services and facilities, including public safety, road maintenance, and the alleviation of conditions that may lead to physical blight, it should be evaluated as the primary unit of analysis with regard to level of significance. This is particularly appropriate as the period of construction will almost certainly create higher City operating expenses at the same time revenues will be depressed.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 2**  
Approximate Construction Schedule: Wilshire Rodeo Station (Proxy Also for La Cienega Station)

Construction Stage	Construction Period			Trucking		Traffic Impacts			Impact Index
	Seq. Months	Cum Months	Cum Years	Months	Loads/Day	2-3 lanes shut down	street closure	traffic over decking	H/M/L
Utility Relocations	24	24	2.0			TBD	TBD	TBD	L
<i>No work interval</i>	2	26	2.2						L
Site preparation	1	27	2.3			1			M
Shoring	2	29	2.4				2		H
Decking	1	30	2.5				1		H
Excavate Station Box	17	47	3.9	17	80			17	H
<i>No work interval</i>	26	73	6.1					26	L
Station structural Concrete	23	96	8.0	23	25			23	M
Backfill Station Box	1	97	8.1	1	60			1	M
Remove Decking/Repair Street	4	101	8.4				4		M
<b>Total months</b>	<b>101</b>			<b>41</b>		<b>1</b>	<b>7</b>	<b>67</b>	
<b>Total years</b>			<b>8.4</b>	<b>3.4</b>		<b>0.1</b>	<b>0.6</b>	<b>5.6</b>	
<b>Total truck loads</b>					<b>60,833</b>				

Sources: Westside Subway Extension Final EIR, Construction Traffic Analysis Report, 8/2011; EPS analysis

## 2. FEIR Defines Negative Economic Impact Area Too Narrowly

For the whole study area, the FEIR assesses negative economic impacts only on—and as a result of—parcels Metro will acquire to facilitate subway construction. These parcels, which are slated for construction staging and station portals, amount to a small portion of potentially impacted land. This significantly underestimates the potential negative impact of construction on Beverly Hills commercial activity as it ignores likely spill-over effects associated with vehicle/pedestrian traffic diversion, noise, reduced visibility and accessibility, and an overall reduction in the appearance and feel of impacted commercial districts. As noted above, the physical environment, including appearance, noise, and overall ambiance, is a critical component of the luxury brand that is essential to many of the businesses that locate in Beverly Hills commercial districts.

A revised impact area, shown in Exhibit 3, extends into commercial areas between one-quarter and one-half mile from each station. This is a reasonable impact area for several reasons. Wilshire Boulevard is one of two critical arteries (the other being Santa Monica Boulevard) providing access to the Golden Triangle of Beverly Hills, the City's most concentrated shopping area. Additional traffic disturbance on Wilshire, where the vast majority of construction activity will take place, will dissuade some users from entering the area and complicate circulation throughout. Furthermore, the Golden Triangle is pedestrian-oriented, featuring glossy window displays and wide sidewalks.

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Noise, vibration, dust, and smells from the construction area—whether real or imagined—are likely to discourage some pedestrian activity in the shopping district. And finally, City ordinances governing construction require construction to take place during business hours, which will compound negative impacts for business uses operating at the same time.

Exhibit 3



### 3. FEIR Considers Too Few Impact Categories

The FEIR considers only two forms of negative economic impact: property tax losses and job losses. This approach ignores several important additional categories of fiscal tax revenue for the City of Beverly Hills, including business tax revenue, sales tax revenue, and Transient Occupancy Tax (TOT). As shown in Exhibit 4 below, business, sales, and transient occupancy taxes contribute \$82 million annually to the City of Beverly Hills, fully 50% of General Fund revenues.



Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Exhibit 4  
City of Beverly Hills Fiscal Revenues**

<u>Tax Category</u>	<u>FY 2011 Revenues</u>	<u>% of Taxes</u>	<u>% of GF</u>
Business Tax	\$33,993,715	27%	21%
Property Tax	\$42,045,747	33%	25%
Sales Tax	\$22,052,861	18%	13%
TOT	\$26,594,808	21%	16%
Other Tax	<u>\$915,536</u>	<u>1%</u>	<u>1%</u>
<b>Total Taxes</b>	<b>\$125,602,667</b>	<b>100%</b>	<b>76%</b>
Other GF Revenues	<u>\$39,927,666</u>		<u>24%</u>
<b>Total GF</b>	<b>\$165,530,333</b>		<b>100%</b>

Source: City of Beverly Hills Comprehensive Annual Report FY 2011

Based on the FEIR, a separate literature review<sup>5</sup>, and our analysis, the construction is likely to result in significant negative impact on retail sales, hotel occupancy, and business tax, and to a lesser degree, on property tax. The literature review summarized in Exhibit 5 shows in particular that factors such as noise, dirt, and access limitations are often associated with significant reduction in business activity in a particular area. Although most of the literature has focused on retail sales, since this data is most readily available, these impacts can serve as a proxy for other commercial activity, especially tenants that are location-dependant and/or derive a significant level of business from customer traffic.

The construction schedule in Exhibit 2 shows multiple phases over an eight-year period of light and heavy construction that will generate considerable traffic disturbance and “nuisance” effects such as noise, vibration, dust, and visual evidence of heavy construction. The proposed mitigation measures may partially address these issues, and some construction phases will be more intrusive than others. As noted earlier, the particular “ambiance” of Beverly Hills is an important element of its appeal, which even extensive mitigation measures may be insufficient to preserve. Nevertheless, to reflect this variability in both timing and intensity of construction, we have used conservative values lower than those shown in the literature survey to estimate negative impacts on fiscal revenues.

<sup>5</sup> Quantifiable data on retail performance, especially related to rail construction, is limited. Effects identified in the case studies used in this analysis could vary significantly depending on specific location, business orientation and type, as well as construction period, location relative to a business, and specific type of improvements.

**Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

Consequently, the impact calculations represent a conservative illustration of economic loss during years of medium-to-heavy construction (roughly five out of the eight total years).

**Exhibit 5**  
Literature Review Summary

Source	Construction Context	Revenue Impact
Office of Saint Paul Mayor Christopher B. Coleman	(1) Central Corridor Light Rail construction in Minneapolis-St. Paul, MIN. Effects were for the first year of construction.	Bars and restaurants average: 20% decrease (ranging from 2% to 65%) Areas with high concentration of restaurants saw lower average declines Retail stores average: 39% decrease (ranging from 4% to 84%) The small businesses experienced the greatest decline.
De Solminihac and Harrison (1993)	(2) Houston urban highway rehabilitation, including High Occupancy Vehicles (HOV) lanes and a transit center	General merchandise: 28% decrease Food stores: 37% decrease Automotive outlets: 32% decrease Home furnishings: 17% decrease
Wildenthal and Buffington (1996)	(3) Widening a state highway in Caldwell, TX (population 3,000)	5% decrease
Young, Wolfling, and Tomasini (2005)	(4) Twelve highway construction projects in Wyoming in towns ranging in size from 807 to 53,011 people	8.3% decrease to 39.9% increase
Buddemeyer, Young and Vander Giessen (2008)	(5) Highway reconstruction near Dubois, Wyoming on the way to Jackson Hole and Yellowstone National Park	No impact: "holding steady with minor declines"

(1) Homans, Nancy, "Unique Loan Program Blunts Construction Impacts for Central Corridor Businesses". Office of Saint Paul Mayor Christopher B. Coleman. February 2, 2012. [http://www.funderscollaborative.org/CCFC\\_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses](http://www.funderscollaborative.org/CCFC_News/unique-loan-program-blunts-construction-impacts-central-corridor-businesses).

(2) De Solminihac, Herman E. and Robert Harrison, "Analyzing Effects of Highway Rehabilitation on Businesses" Transportation Research Record 1395, Transportation Research Board of the National Academies, Washington, D.C., 1993, pp 137-143.

(3) Wildenthal, MT and Buffington, "Estimated Construction Period Impact of Widening State Highway 21 in Caldwell, Texas" Transportation Research Record 1559, Transportation Research Board of the National Academies, Washington, D.C., 1996, pp 76-83.

(4) Young, Rhonda Kae, Chris Wolfling, and Michael Tomasini, "Highway Construction Impacts on Wyoming Businesses" Transportation Research Record: Journal of the Transportation Research Board, No. 1924, Transportation Research Board of the National Academies, Washington, D.C., 2005, pp. 84-102.

(5) Buddemeyer, Jenna, Rhonda Young and Steven Vander Giessen, "Highway Construction Related Business Impacts: Phase 3 Effort for the Town Of Dubois". FHWA-WY-08/01F. March 2008. <http://rip.trb.org/browse/dproject.asp?n=11090>.

For a summary of fiscal revenues associated with the partial impact area described in Exhibit 3 and at risk of decline due to construction, see Exhibit 6. Most of the fiscal revenues in the impact area are, by definition, at risk of negative economic impacts due to construction. The partial impact area generates \$44 million of at-risk revenue in FY 2012, representing 28% of the City's general fund.<sup>6</sup>

<sup>6</sup> Note on Exhibit 3 that the impact area consists of "measured" and "unmeasured" areas. The measured areas reflect fiscal revenue baseline data that was available on short notice for this assessment. The "unmeasured" areas represent additional commercial corridors likely to be impacted by the construction but for which data was not readily available. These include portions of the Beverly, Doheny, Robertson, and La Cienega corridors. Thus, this assessment only addresses a partial impact area, and as such, it may under-state negative economic impacts, as shown in Exhibit 6.



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**Exhibit 6  
Fiscal Revenues at Risk by Proposed Metro Station Construction**

Tax Category	FY 2011 (1)			
	General Fund Tax Revenues in Measured Impact Area (2)	Total General Fund Tax Revenues	% of Tax Category	% of Total General Fund (5)
Business Tax (3)	\$20,194,769	\$33,993,715	59.4%	12.7%
Property Tax (4)	\$67,367	\$42,045,747	0.2%	0.0%
Sales Tax	\$14,784,617	\$22,052,861	67.0%	9.3%
TOT	<u>\$8,961,808</u>	<u>\$26,594,808</u>	33.7%	<u>5.6%</u>
<b>Total</b>	<b>\$44,008,561</b>	<b>\$124,687,131</b>		<b>27.6%</b>

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area taxes for Business, Sales, TOT; Property taxes only from parcels to be acquired by Metro.
- (3) Business Taxes from calendar year 2011.
- (4) Beverly Hills General Fund share of the property tax estimates from FY2010.
- (5) Based on the total FY2011 General Fund budget of \$165,530,333.

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010, Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010, City of Beverly Hills. EPS Analysis

**ALTERNATE METHODOLOGY**

This section presents a preliminary estimate of potential economic and corresponding fiscal impacts associated with the construction phase of the Project based on readily available data. These calculations are provided as a basis for understanding the possible magnitude of potential economic impacts. This is neither a definitive estimate nor a comprehensive analysis of these impacts. In our view, these preliminary calculations suggest that the economic and fiscal impacts from the construction phase on the City of Beverly Hills are likely to be significant. At the very minimum, these calculations suggest that further analysis should be conducted on this issue as part of the EIR process. Such analysis would need to include a more detailed examination of the location, duration, and timing of construction relative to key commercial activity as well as a more thorough analysis on the magnitude of economic disruptions (e.g., decline in sales and/or employment).

**Sales Tax**

Retail is likely to be the hardest hit from construction activity because of the highly competitive nature of the sector and the corresponding importance of location and ambiance. Shopping choices,



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

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even in exclusive areas, are heavily influenced by convenience and ambience. While the Beverly Hills Golden Triangle represents a singular collection of luxury retailers, its retail outlets are increasingly part of non-exclusive chains, and if construction noise or work site unsightliness is perceived by shoppers, some will shop elsewhere. It should also be noted that the sales tax revenue may also be affected by reduced hotel activity, as discussed further below.

As shown in Exhibit 6, approximately \$14.8 million in sales tax revenue are at risk. Of these, we estimate that between 4% and 12% will be lost annually due to the negative impacts of construction during the whole period, which computes to a loss of between \$0.6 million and \$1.8 million. These preliminary estimates are based primarily on impacts levels identified in the literature review (for derivation of this impact range, see Appendix 3.)

#### **TOT**

Likewise, some hotel users, especially those who stay at the Montage or Beverly Wilshire hotels situated directly around the proposed Wilshire/Rodeo station, may select other hotel options. Beverly Hills has several other five-star hotels, such as the Peninsula and the Beverly Hills Hotel, which could absorb some displaced five-star customers. However, Beverly Hills hotels generally enjoy high occupancy, and some users will take their business elsewhere. Weekend and event revenues such as for wedding parties and other celebrations, which are a significant piece of the business—especially at the Beverly Wilshire—are the most vulnerable to economic losses given the nature of this demand. As shown in Exhibit 6, approximately \$8.9 million in TOT revenue are at risk. Of these, we estimate that between 10% and 25% will be lost annually because of the negative impacts of construction during the period, which computes to a loss of between \$0.9 million and \$2.2 million.

#### **Business Tax**

Business tax, which is based on gross receipts and employment, is levied on all businesses operating in Beverly Hills at variable rates per business type. As such, some business tax revenue is vulnerable to construction impacts as it directly reflects trends in business activity leading to a temporary reduction in sales and/or employment. Exhibit 7 summarizes the various types of business tax charged by the City and how various tenants in the impact area might be affected. Although precise impacts are difficult to quantify, we conservatively estimate a decline of between 5 and 10 percent in tax revenue from businesses in the impact area. This is slightly less than the retail sales reduction because some other commercial tenants, such as talent agencies and medical practices, may be less vulnerable to competition, and work and business decisions tend to be less impacted by the short-run considerations of convenience.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Exhibit 7**  
Business Tax Summary

Classification	Tax Amount	Concentration of Tenants in the Impact Area	Impact from the Project
Business Services	\$230.76 per 2,080 base hours of payroll with an additional \$0.05 per hour thereafter.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Retail	\$75 with \$0.00125 per \$1 of gross receipts over \$80,000	large	Likely be significant with retail sales adversely impacted by reduced consumer base associated with construction noise, circulation limitations, and visual obstructions. Retail relies heavily on pedestrian and vehicle traffic.
Wholesale and Manufacturing	\$75 with \$0.00125 per \$1 of gross receipts over \$60,000	minimal	Not likely to be significantly impacted by construction of the Metro.
Professionals	\$1,322.90 per 2,080 base hours of payroll with an additional \$0.63606 per hour thereafter of professional time and \$0.12778 of non-professional time.	large	Could be significant as some of the business service tenants would be displaced by construction activity with some relocating outside of Beverly Hills
Used Car Sales	A base tax of \$255 with \$0.003 per \$1 of gross receipts	minimal	Not likely to be significantly impacted by construction of the Metro.
Property Rental	\$0.012 per \$1 of gross receipts on residential rentals and \$0.0235 per \$1 of gross receipts on commercial rentals	moderate	While some property rental businesses are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant.
Lenders, Brokers, Real Estate Offices, and Lenders	\$0.0035 per \$1 of gross receipts for lenders, brokers, and real estate brokers and \$0.001 per \$1 of gross receipts by real estate agents	moderate	While some financial services, such as lenders and real estate brokers are located in the Impact Area, the impact on the performance of these businesses from construction is not likely to be significant as these businesses do not rely heavily on pedestrian and vehicle traffic.
Oil Well Tax	Between \$1,948.73 and 3,907.76 for the first 10,000 barrels with \$0.14381 to \$0.35953 per each additional barrel thereafter, depending on location within the City.	minimal	Not likely to be significantly impacted by construction of the Metro.

Source: City of Beverly Hills Tax Schedule FY2011, EPS.

As shown in Exhibit 6, approximately \$20.2 million in business tax revenue are at risk. The potential loss, at between 5% and 10%, computes to between \$1.0 million and \$2.0 million.

### Property Tax

Property tax is probably the least impacted of the various tax categories, as assessed value may not fluctuate as radically as other fiscal categories. The obvious exception to this concerns the nine parcels targeted by Metro for acquisition. As a result of this transaction, each will be permanently removed from the tax roles. To be conservative, we have made the same assumption for property tax losses as does the FEIR. Thus, property tax losses from construction amount to 100% of the property tax revenues from the targeted parcels, representing \$0.07 million.

### Conclusion

Total construction impacts are summarized in Exhibit 8. Taken as a whole, the fiscal revenues at risk within the measured (partial) impact area represent \$44.0 million, or 27% of General Fund



Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

revenues. The total estimated impacts of construction on this quantity fall in a range between \$2.6 million and \$6.1 million, representing an annual negative impact of between 5.8% and 13.8%. This computes to between 1.6% and 3.8% of the General Fund, which is above the adverse impact threshold of 1% defined in the FEIR. As discussed above, these losses represent a conservative annual estimate for the years of medium and heavy construction (roughly five years). Given that the assessment is based on only a partial impact area, and given that the estimate of property tax loss is extremely conservative, actual negative impacts during construction could well be higher.

**Exhibit 8**  
Estimated Construction Impact on Fiscal Revenues

Category	General Fund Revenues in Partial Impact Area (2)	FY 2011 (1)								
		Estimated Average Annual General Fund Revenues Lost During Construction (3)				Total General Fund Revenues	% of Tax Category		% of Total General Fund	
		Low	High	Low	High		Low	High	Low	High
Business Tax (4)	\$20,194,769	5%	10%	\$1,009,738	\$2,019,477	\$33,993,715	3.0%	5.9%	0.6%	1.3%
Property Tax (5)	\$67,367	100%	100%	\$67,367	\$67,367	\$42,045,747	0.2%	0.2%	0.0%	0.0%
Sales Tax	\$14,784,617	4%	12%	\$588,935	\$1,766,804	\$22,052,861	2.7%	8.0%	0.4%	1.1%
TOT	\$8,961,808	10%	25%	\$896,181	\$2,240,452	\$26,594,808	3.4%	8.4%	0.6%	1.4%
<b>Total</b>	<b>\$44,008,561</b>	<b>5.8%</b>	<b>13.8%</b>	<b>\$2,562,221</b>	<b>\$6,094,099</b>	<b>\$124,687,131</b>			<b>1.6%</b>	<b>3.8%</b>

- (1) All tax numbers from FY 2011 except Property and Business Taxes.
- (2) Impact area for Business, Sales, TOT; Property taxes reflect only parcels to be acquired by Metro
- (3) Sales Tax loss factor based on literature survey and EPS analysis; TOT loss factor at 200% of Sales Tax Factor; Business Tax loss at 25% of Sales Tax Factor
- (4) Business Taxes from calendar year 2011.
- (5) Property tax estimates from FY 2010

Sources: City of Beverly Hills Comprehensive Annual Report FY 2010; Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010; City of Beverly Hills, and EPS.

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 1  
City of Beverly Hills General Fund Property Tax Share**

Parcel	Total
<b>FY2010 Property Taxes</b>	
8400 Wilshire	\$17,649
8412 Wilshire	\$3,596
8420 Wilshire	\$7,681
AIN 4333029014	\$1,867
8471 Wilshire	\$21,956
8755 Wilshire	\$4,954
8767 Wilshire	\$10,089
9430 Wilshire	\$135,762
9460 Wilshire	<u>\$222,344</u>
<b>Total</b>	<b>\$425,898</b>
<b>Total Assessed Value (1)</b>	<b>\$39,166,636</b>
<b>City of Beverly Hills General Fund Share (2)</b>	<b>\$67,367</b>

(1) Based on the City's CAFR.

(2) Reflects a citywide average based on the property tax as a share of net assessed value.

Sources: Westside Subway Extension Final EIR, Economic & Fiscal Impact Analysis and Mitigation Report, 8/2010

Re: PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW

**Appendix 2  
Construction Impacts Factor Analysis**

Construction Stage	Impact Factor By Construction Stage			Impact Weighted by Duration	
	Impact Factor	Business Hours Factor	Total Construction Stage Impact	Period Duration Weight	Wgtd Impact (Rounded Down)
Utility Relocations	50%	50%	25%	24%	5.94%
<i>No work interval</i>	0%	0%	0%	2%	0.00%
Site preparation	60%	50%	30%	1%	0.30%
Shoring	100%	75%	75%	2%	1.49%
Decking	100%	75%	75%	1%	0.74%
Excavate Station Box	60%	100%	60%	17%	10.10%
<i>No work interval</i>	10%	100%	10%	26%	2.57%
Station structural Concrete	50%	100%	50%	23%	11.39%
Backfill Station Box	60%	100%	60%	1%	0.59%
Remove Decking/Repair Street	100%	50%	50%	4%	1.98%
<b>Total</b>					<b>30.00%</b>

Sources: EPS Analysis

Re: **PRELIMINARY WESTSIDE SUBWAY EIR ECONOMIC IMPACT REVIEW**

**Appendix 3**  
Retail Impacts Analysis

Retail Category	2010 City of BH Retail Sales (\$1,000)		FY 2011 Sales Tax In Impact Area by Category (1)	Revenue Loss Factor (2)			Const. Period Wtd. Avg. (3)	Estimated Revenue Loss			
	Proportion			Low	High	Avg.		Low	High	Low%	High%
Apparel	\$583,471	36%	\$5,371,514	13%	40%	27%	30%	\$215,935	\$647,805	4.0%	12.1%
General Merchandise	\$239,474	15%	\$2,282,882	14%	42%	28%	30%	\$95,881	\$287,643	4.2%	12.6%
Grocery	\$18,306	1%	\$174,509	19%	56%	37%	30%	\$9,685	\$29,056	5.6%	16.7%
Restaurants and Bars	\$257,223	17%	\$2,452,082	10%	30%	20%	30%	\$73,562	\$220,687	3.0%	9.0%
Home Furn and Appliance	\$44,198	3%	\$421,335	9%	26%	17%	30%	\$10,744	\$32,232	2.6%	7.7%
Building Materials	\$6,938	0%	\$66,139	13%	40%	27%	30%	\$2,659	\$7,976	4.0%	12.1%
Auto Dealers & Supply	\$255,777	16%	\$2,438,297	16%	48%	32%	30%	\$117,038	\$351,115	4.8%	14.4%
Service Stations	\$27,384	2%	\$261,049	13%	40%	27%	30%	\$10,494	\$31,483	4.0%	12.1%
Other Retail	\$138,133	9%	\$1,316,808	13%	40%	27%	30%	\$52,936	\$158,807	4.0%	12.1%
	<b>\$1,550,804</b>		<b>\$14,784,617</b>	<b>13%</b>	<b>40%</b>	<b>27%</b>		<b>\$588,935</b>	<b>\$1,766,804</b>	<b>4.0%</b>	<b>12.0%</b>

(1) Citywide retail sales used as a proxy to allocate impact area sales tax by category

(2) Average revenue loss factors derived from literature survey; low and high estimates base on 50% increase or decrease from average

(3) Construction Period Weighted Average derived from construction schedule, based on task durations and impact factors

Sources: California Retail Survey, 2011 Edition; City of Beverly Hills; EPS.

EXHIBIT F

### Southwest BH HOA Questions

1. Stations in Beverly Hills are planned at Wilshire and Canon/Beverly/Rodeo/El Camino and at Wilshire and La Cienega.
  - a. How long will each of those intersections be closed to traffic and/or partially blocked? We were told by Metro that Metro says it will be only for a few weekends from Friday evening until Sunday night.
2. When will above ground work be going on (during what hours and days)?
3. Exactly what hours and how many weekends will the station construction render those intersections impassable or partially blocked? (Best and worst cases?)
  - a. What were the experiences in other subway construction sites in L.A.?
4. To where will the traffic be diverted when these intersections (Wilshire and Beverly, Rodeo, Canon, El Camino and La Cienega) and streets are closed or partially blocked? And will traffic be diverted into the residential areas during those weekends?
5. What will be the effect on merchants?
6. Where will the staging areas for each of those stations be located?
  - a. What exactly are the staging needs?
  - b. How will construction equipment get from each staging area to the station?
  - c. We understand that all the dirt from the tunnel excavation will be taken out from the tunnel at the stations.
    - (1) How many truckloads a day?
    - (2) Where do the trucks wait/stage?
    - (3) While the dirt is being loaded into the trucks, are the trucks blocking streets (such as Wilshire, Beverly, Rodeo, Canon)?
    - (4) How many months/years does this process take while dirt is being excavated and off-loaded to trucks on the street?
    - (5) How much extra traffic for construction, hauling dirt, bringing in construction materials?
    - (6) Will Wilshire be blocked or cut to one or two lanes? For how long?

(7) How will the cross streets (Beverly Dr., Camden, Rodeo, El Camino, Reeves, Canon, Crescent) be impacted?

(8) Will cars trying to reach Wilshire business be trapped in our residential neighborhood on one side and in the Triangle on the other side?

(9) Routes to and from the construction site to the freeway or elsewhere?

d. Metro has switched the excavation station from Fairfax to La Cienega. What additional burdens, congestion, additional time and evocation work will thus be imposed on and around La Cienega?

7. As we understand it, there are now no plans to have any parking areas ("park and ride") near the two Beverly Hills stations. That presumably means that people using the subways from those two stations will be dropped off and picked up ("kiss and ride").

a. Won't those intersections (Wilshire and Beverly, Rodeo, Canon, El Camino and La Cienega) get terribly congested with people stopping to let off passengers?

(1) Has anyone analyzed the impact on Wilshire and Beverly Dr./Canon/Rodeo Dr/El Camino/LaCienega of thousands of people being dropped off and picked up?

(2) Where will pick-up cars wait for the riders they are coming to pick-up?

(3) What will that do to traffic in the Triangle and the nearby residential areas?

b. Won't that congestion get even worse at the p.m. (pick up) rush hour as cars wait for their passengers to emerge from their subway ride?

c. We don't see any planned parking for the thousands of people who are projected to ride the subway who live more than ¼ mile from the subway station. Where will the people who want to park and ride go? Will they park on our streets? Will they fill-up our parking structures?

8. We have read that a building that has a subway station in it is allowed additional height and density/FAR (as much as 15 additional stories). Is that correct?

a. Does that mean that if the property at Wilshire and Canon is the site of a subway station, it could be built to 18 stories (3 plus 15)? (Same at LaCienega.)

9. Will bus routes/bus stop locations have to be changed? During construction of the subway and/or permanently?

a. After construction and when the subway is up and running, will there be additional "connector" buses to subway station areas? Routes of those?

10. How far are BH subway passengers expected to walk to a station (since we've been told Century City passengers won't walk an extra block and would just continue to drive their cars

instead)? In other words, is expected ridership worth the upheaval and NEW subway-related TRAFFIC that we don't currently even have in our already congested city?

11. Were any economic studies done re possible loss of property value, loss of TOT (hotel taxes) and sales tax revenue for BH during and after subway construction?

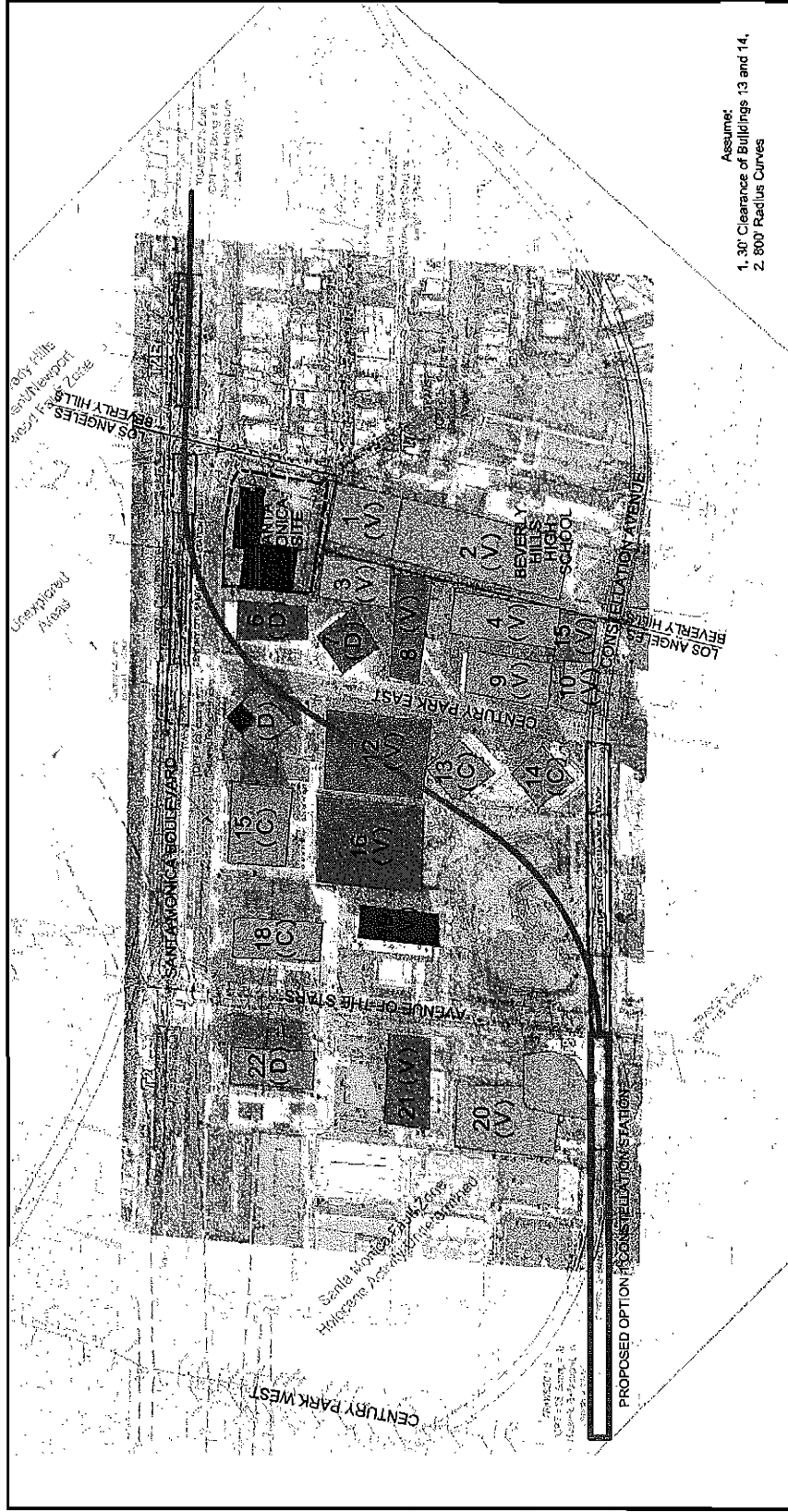
a. Will the Beverly Wilshire, Montage and Thompson Hotels have noise issues, access issues and/or other issues for their guests? Will Spago lose its outdoor dining ambience and valet parking access temporarily or even permanently? Spago and Bouchon are a big tourism draw for the city and the hotels. Will some or all of those attractions/revenue producers be taken by Metro by eminent domain?

12. Does Metro guarantee that there will be no loss of life, property damage or restriction on future construction for our City's only High School?

## EXHIBIT G

# WESTSIDE SUBWAY EXTENSION REVIEW, BEVERLY HILLS, CA HEARING BEFORE THE METRO BOARD – MAY 17, 2012

## ALIGNMENT OPTION 1

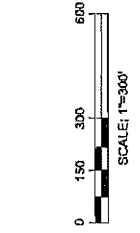


**EXPLANATION**

	No Info	Foundation Information Source
	Unknown: Likely Deep	D = Design Report
	Unknown: Likely Shallow	C = Construction Report
		V = Visual Inspection
	0' - 20'	
	20' - 50'	
	50' - 80'	

NOTE:  
See Table 1 for Building Details

REFERENCE: Page 2 and 3 From Proposed Metro Westside Extension, by AMEC, Dated 6-02-11



Westside Subway Extension Review  
Beverly Hills, California

**ALIGNMENT OPTION 1**

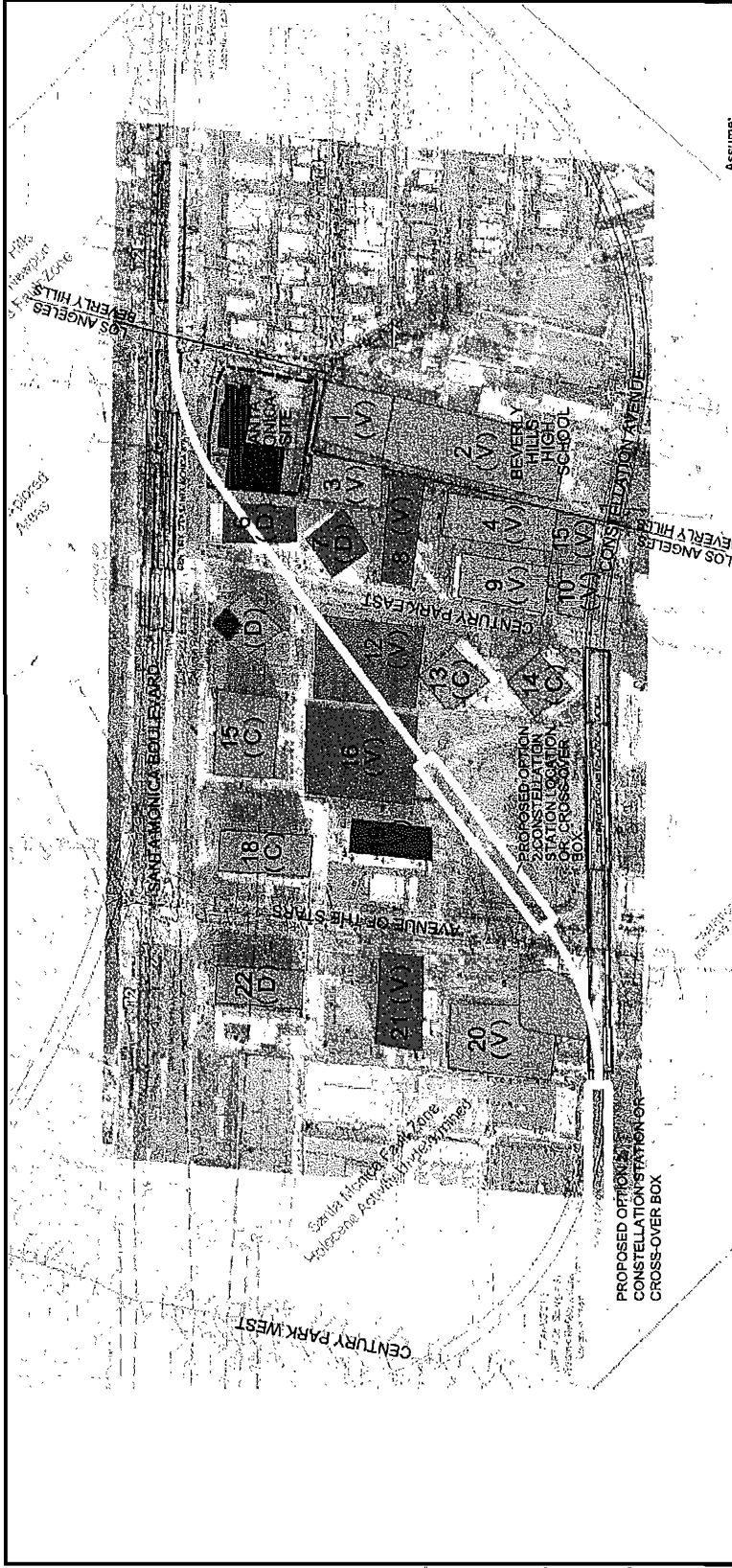
May 2012 51-1-10024-003

**SHANNON & WILSON, INC.**  
CONSULTANTS AND ENGINEERS

**FIG. 2**

# WESTSIDE SUBWAY EXTENSION REVIEW, BEVERLY HILLS, CA HEARING BEFORE THE METRO BOARD – MAY 17, 2012

## ALIGNMENT OPTION 2



Assumes:  
1. 30' Clearance of Buildings 13 and 14.  
2. 800' Radius Curves

EXPLANATION	
	No Info
	Foundation Information Source
	D = Design Report
	C = Construction Report
	V = Visual Inspection
	20' - 50'
	50' - 80'
NOTE: See Table 1 for Building Details	

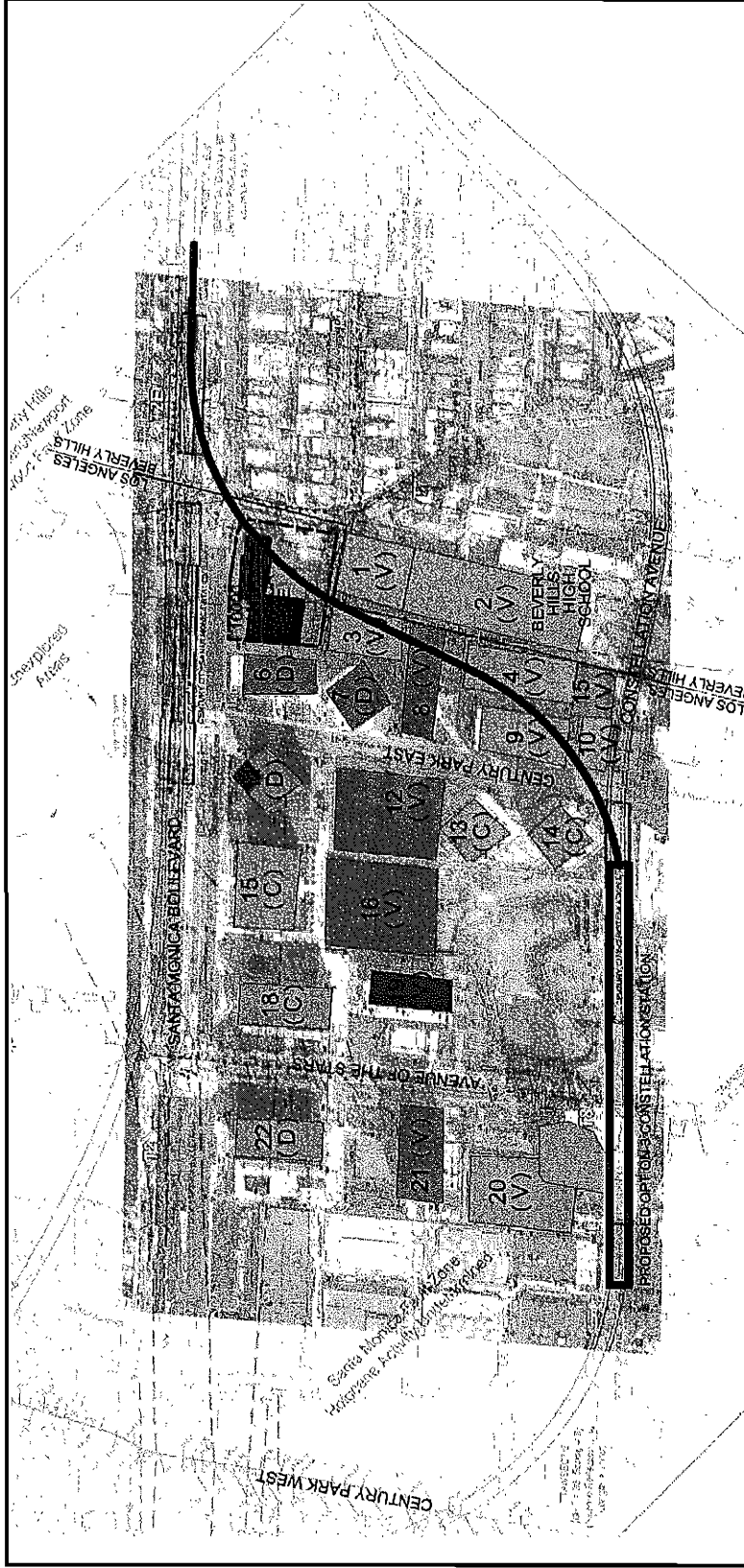


REFERENCE: Plate 2 and 3 From Proposed Metro Westside Extension, by AMEC, Dated 8-02-11

Westside Subway Extension Review Beverly Hills, California	
<b>ALIGNMENT OPTION 2</b>	
May 2012	51-1-10024-003
<b>SHANNON &amp; WILSON, INC.</b> FIG. 3	

# WESTSIDE SUBWAY EXTENSION REVIEW, BEVERLY HILLS, CA HEARING BEFORE THE METRO BOARD – MAY 17, 2012

## ALIGNMENT OPTION 3

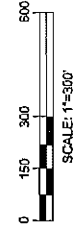


Assume:  
1. 30' Clearance of Buildings 13 and 14.  
2. 80' Radius Curves

Westside Subway Extension Review Beverly Hills, California
<b>ALIGNMENT OPTION 3</b>
May 2012 51-1-10024-003
<b>SHANNON &amp; WILSON, INC.</b> 5115 CRENSHAW BLVD., SUITE 200, BEVERLY HILLS, CA 90208 <b>FIG. 4</b>

EXPLANATION	
	No Info
	Foundation Information Source
	D = Design Report
	C = Construction Report
	V = Visual Inspection
	0' - 20'
	20' - 50'
	50' - 80'

NOTE:  
See Table 1 for Building Details



REFERENCE: Plate 2 and 3 From Proposed Metro Westside Extension, by AMEC, Dated 8-02-11

May 21, 2012

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Via Hand Delivery

Members of the Metro Board of  
Directors  
Los Angeles Metropolitan  
Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012-2952

Re: **FEIS/EIR on Westside Subway Extension Project**

Dear Honorable Chair and Members of the Metro Board:

At the May 17, 2012 hearing, conducted pursuant to Public Utilities Code Section 30639, the City of Beverly Hills presented compelling expert testimony establishing that the West Beverly Hills Lineament was formed by erosion, not faulting, and that the claimed faults plotted (and replotted) by Parsons Brinckerhoff on the Beverly Hills Lineament and the Santa Monica Fault Zone were either nonexistent or occurred well before the Holocene Period, rendering them likely inactive and irrelevant for the purposes of Alquist-Priolo.

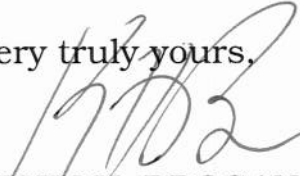
Both the quality and quantity of expert commentary on these issues conclusively demonstrates that further scientific investigation is warranted to confirm the viability of both the Constellation Station and Santa Monica Boulevard Station alternatives from a seismic perspective. This investigation may include both borings and trenching based on site availability, etc. The precise location and testing methodology required can quickly be developed by the scientists given their current familiarity with the site.

The Beverly Hills Unified School District requests the Metro Board defer any further approvals on the Project and immediately convene a meeting of all retained expert geologists who have studied these locations, including geologists from the California Geological Survey,

Members of the Metro Board  
May 21, 2012  
Page 2

to formulate a consensus on the appropriate testing protocol necessary  
to resolve the outstanding pertinent questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KBrogan', written over the typed name.

KEVIN H. BROGAN  
OF  
HILL, FARRER & BURRILL LLP

HFB 1146411.1 B3902002

---

Margaret Strand

T 202.344.4699

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MStrand@Venable.com

May 22, 2012

*Via Electronic and Overnight Delivery*

Mr. Raymond Tellis  
Senior Transportation Program Specialist  
United States Department of Transportation  
Federal Transit Administration  
Region IX  
888 South Figueroa, Suite 1850  
Los Angeles, CA 90017

Re: Westside Subway Extension Project – Comments on FEIS/FEIR

Dear Mr. Tellis:

We represent the Beverly Hills Unified School District (“BHUSD”) with regard to issues relating to the Westside Subway Extension Project (“Project”) proposed by the Los Angeles County Metropolitan Transportation Authority (“Metro”) in conjunction with the Federal Transit Administration (“FTA”).<sup>1</sup> BHUSD respectfully submits the following comments on the Final Environmental Impact Report/Final Environmental Impact Study (“FEIS”) for the Project. For the reasons set forth below, we do not believe that the FEIS complies with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”). We urge FTA to prepare and release a supplemental environmental impact statement and provide an adequate opportunity for meaningful public comment on the wide range of data that has only recently been made available to the public, yet which is critical to the evaluation of the Project’s environmental impacts.

Deficiencies in the NEPA process for the Project, including the FEIS, include the following:

- The FEIS selects an alternative location for the Century City station (Constellation Boulevard) that was only superficially analyzed in the draft environmental impact statement (“DEIS”); the DEIS did not include adequate seismic testing of a potential subway station at Constellation Boulevard, nor did it contain sufficient information to allow informed public comment on the alternative that was ultimately selected.

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<sup>1</sup> Throughout these comments, unless otherwise specified, Metro and FTA are referred to collectively as “the Agencies.”

Raymond Tellis  
May 22, 2012  
Page 2

- Metro and FTA declined to review, make available for public comment, or adequately address in the FEIS significant technical information bearing directly on the relative environmental impacts of the proposed Santa Monica Boulevard and Constellation Boulevard station locations.
- The FEIS contains a multitude of new information demonstrating that the Project's environmental impacts will be significantly greater than contemplated in the DEIS; there has been no adequate opportunity for public review and comment of this new information.
- The FEIS provides insufficient information and analysis regarding a range of impacts associated with the Project, including impacts of the newly relocated terminus of Phase I for the project (now identified as the La Cienega station) as well as construction-related noise, air, traffic, and paleontological impacts.
- The FEIS contains significant and voluminous information regarding the Agencies' decision to relocate the Century City station from the previously preferred location of Santa Monica Boulevard to Constellation Boulevard. This information was not made available for public review and comment prior to issuance of the FEIS.

These and other issues are discussed below.

### **I. Objectives and Requirements of the National Environmental Policy Act**

Under NEPA, FTA was obligated to “study, develop, and describe appropriate alternatives to recommended courses of action.” 42 U.S.C. § 4332(E). FTA was also required to include in the FEIS a “detailed statement” on alternatives to the proposed action. *Id.* at § 4332(C)(iii). The Court of Appeals for the Ninth Circuit has held that this requirement to fully and objectively evaluate appropriate alternatives is “the ‘heart’ of the EIS,” and that agencies must produce an EIS that “[r]igorously explore[s] and objectively evaluate[s] all reasonable alternatives’ so that the agency can ‘sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.’” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002), citing 40 C.F.R. § 1502.14; *see also Oregon Nat. Desert v. Bureau of Land Management*, 625 F.3d 1092, 1100 (9th Cir. 2010) (“As the EIS is intended to be used to guide decisionmaking, the alternatives analysis is naturally the heart of the environmental impact statement” (internal quotations omitted)). Further, “[t]he existence of a viable but unexplored alternative renders an environmental impact statement inadequate.” *Oregon Natural Desert*, 625 F.3d at 1100, citing *Westlands Water Dist. V. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004).

NEPA does not dictate a certain outcome but rather is intended to ensure a decision-making process that will make relevant, “high quality” environmental information “available to

Raymond Tellis  
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public officials and citizens before decisions are made and *before* actions are taken.” 40 C.F.R. § 1500.1(b) (emphasis added). Indeed, timing is a critical element of the NEPA process; the United States Supreme Court has explained that NEPA “ensures that important effects [of a project] will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976). The requirement that agencies prepare an environmental impact statement for major actions promotes this goal by ensuring that agencies “will have available, and carefully consider, detailed information concerning significant environmental impacts,” and by giving the public “the assurance that the agency ‘has indeed considered environmental concerns in its decisionmaking process,’ and, perhaps more significantly, provid[ing] a springboard for public comment.” *Robertson*, 490 U.S. at 349, quoting *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983).

The NEPA regulations acknowledge that “[a]ccurate scientific analysis ... and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Agencies are directed under NEPA to, *inter alia*, “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” *Id.* at § 1500.2(d). An agency preparing an environmental impact statement must discuss the environmental impacts of the proposed action and its alternatives, including issues related to “urban quality, historic and cultural resources, and the design of the built environment.” *Id.* at § 1502.16(g). The FTA-FHWA joint regulations to implement NEPA, set forth at 23 C.F.R. Part 771 and intended to complement the regulations of the Council on Environmental Quality (“CEQ”), provide that the agency should evaluate alternatives and make decisions “in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.” 23 C.F.R. § 771.105(b). Ultimately, an agency is free to determine that other values outweigh the environmental costs of a proposed action, provided “the adverse environmental effects of the proposed action are adequately identified and evaluated” by the agency. *Sierra Forest Legacy v. U.S. Dept. of Agric.*, 646 F.3d 1161, 1177 (9th Cir. 2011), quoting *Robertson*, 490 U.S. at 350.

The NEPA regulations further require that agencies “make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.” 40 C.F.R. at § 1502.9(a). Further, agencies must discuss “at appropriate points in the [FEIS] any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.” *Id.* at § 1502.9(b).

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NEPA also takes into account the need to respond to new and changing information. Agencies must prepare a supplemental draft or final environmental impact statement (“SDEIS” and “SFEIS,” respectively) if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (ii) there are significant<sup>2</sup> new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. *Id.* at § 1502.9(c)(1). Supplementation is necessary if “there remains ‘major Federal action’ to occur.” *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 156 (2004), quoting *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374 (1989).

Agencies also have the option to prepare an SDEIS or SFEIS “when the agency determines that the purposes of [NEPA] will be furthered by doing so.” 40 C.F.R. at § 1502.9(c)(2). In addition, in preparing an FEIS, an agency must “discuss at appropriate points ... any responsible opposing view which was not adequately addressed in the draft statement and [must] indicate the agency’s response to the issue raised.” *Sierra Forest Legacy*, 646 F.3d at 1182, quoting *Robertson*, 490 U.S. at 350 n. 13.

It is important to note that agencies must undertake the requirements of NEPA in good faith, including taking an objective “hard look” at the environmental consequences of a proposed action and reasonable alternatives. *See Robertson*, 490 U.S. at 350, quoting *Kleppe*, 427 U.S. at 410 n. 21; *see also Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (an agency’s “hard look” must be “taken objectively and in good faith, not as an exercise in form over substance,

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<sup>2</sup> The CEQ regulations define “significantly” in terms of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity: ...

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. ...

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40.C.F.R. at § 1508.27.

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and not as a subterfuge designed to rationalize a decision already made”); *Morongo Band of Mission Indians v. Federal Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998). The NEPA regulations and related guidance materials make clear that agencies must not prejudge the outcome of an environmental review; 40 C.F.R. § 1502.5 requires an agency to prepare an EIS “so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made.” A guidance document from the CEQ further clarifies that although “an agency’s preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency’s preferred alternative over the other reasonable and feasible alternatives.” *Questions and Answers About the NEPA Regulations* (“Forty Questions”), 46 Fed. Reg. 18026 (Mar. 23, 1981). The Court of Appeals for the Ninth Circuit has held that “the procedures prescribed both in NEPA and the implementing regulations are to be strictly interpreted ‘to the fullest extent possible’ in accord with the policies embedded in the Act,” and that “‘grudging, *pro forma* compliance [with NEPA] will not do.’” *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003), quoting *Cal. v. Block*, 690 F.2d 753, 769 (9th Cir. 1982).

## II. The Westside Subway Extension DEIS, Comment Period, and Subsequent Studies

The FEIS is deficient and should be supplemented for various reasons associated with the station selection at Century City. Fundamentally, the Agencies ignored relevant information and failed to provide adequate public notice and comment on the information pertinent to the station selection.

For years, all indications from the Agencies were that the proposed Century City subway station would be located somewhere along Santa Monica Boulevard. The data contained in the DEIS, when considered by any objective measure, supports the selection of a Santa Monica Boulevard station location over that of a Constellation Boulevard location. This comparison is based on evaluating the criteria considered most relevant to FTA, including:

- *Capital cost* – The DEIS estimates that a Constellation Boulevard station alignment is *at least* \$60,000,000 – and likely much more than that – more expensive than a Santa Monica Boulevard alignment, in part due to the need for a longer, deeper subway route and the necessary acquisition of additional personal property.<sup>3</sup>

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<sup>3</sup> Metro’s decision to ignore these additional costs of is particularly alarming given that the Project received a “low” rating for Cost Effectiveness in FTA’s FY 2013 *Annual Report on Funding Recommendations*. FTA’s FY 2013 Annual Report states that the Project has a cost-per-hour of user benefit of \$32.83. An August 2010 FTA Fact Sheet on the Project noted that “[p]rojects must be at or below the FTA cost-effectiveness target of \$31 to be competitive for Federal New Starts funds.” For both FY 2013 and FY 2012, the Project is the *only* project to apply for federal

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- *Travel time* – Because of the additional length associated with the Constellation Boulevard alignment and two major curves in this alignment, riders will face significantly increased travel time under the Constellation Boulevard alternative.
- *Ridership* – The DEIS makes clear that greater development, more retail activity, and larger population near the Santa Monica Boulevard location relative to a Constellation Boulevard location translate to increased ridership under the former.

For these and other reasons, based upon the data in the DEIS any objective comparison would easily weigh in favor of a Santa Monica Boulevard location for the Century City station.

The first indication of seismic concerns associated with a Santa Monica Station appeared in a Geotechnical and Hazardous Materials Technical Report issued by Metro in August 2010 (“Metro Geotechnical Report”). The DEIS was released only one month later. The DEIS stated that the Santa Monica Station alignment would run within proximity to the Santa Monica Fault, increasing the risk of a potential surface rupture from an earthquake along the fault line that might limit the viability of the Santa Monica Boulevard option. Even in the September 2010 DEIS, however, the Santa Monica Boulevard location was set forth as the preferred (base) location.

Because the DEIS raised for the first time the possibility of tunneling through the Beverly Hills High School<sup>4</sup> campus (“BHHS” or “Campus”), BHUSD provided two separate comment letters alerting the Agencies of multiple concerns associated with tunneling underneath the Campus. The first BHUSD letter, dated October 12, 2010, noted amongst other things that tunneling through the Campus would have a significant impact on the BHUSD’s proposed modernization plan. The letter states:

We hope you recognize that the Beverly Hills Unified School District is currently undergoing a much needed and extensive modernization of its buildings. The community supported this modernization plan by passing a \$334 million dollar bond measure in 2008. . . .

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“New Starts” funding that received a “low” rating in Cost Effectiveness. On top of this, FTA’s letter approving the Project for Preliminary Engineering noted “the capital cost estimate for the [P]roject appears to be understated.” FTA put the cost estimate in the range of \$5.257 billion to \$8.301 billion. Metro’s cost estimate was approximately \$5.1 billion.

<sup>4</sup> Information regarding the BHHS, its history, the adult and youth student populations it serves, relevant plans for the property, and significant historical and geographical characteristics of the School is provided in Section E below.

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The then-Superintendent of the BHUSD also provided the Agencies with notice of the many significant problems that would result from tunneling through the Campus, including issues relating to student and teacher safety, noise, traffic, and air quality.

The City of Beverly Hills (“City”) also submitted comments during the DEIS comment period alerting the Agencies to significant concerns associated with locating a station on Constellation Boulevard. The City’s comments pointed out that the two “Constellation” alignments considered in the DEIS “would involve tunneling under residential properties, the Beverly Hills High School, and the site of the Beverly Hills Oil Field.” The comments went on to state that “the safety and well-being of the High School’s students and faculty” is of paramount importance, and noted that there had not been “adequate identification of ‘wild cat’ or ‘capped’ oil wells at [the Constellation] site.”

The City submitted with its comments a report from Shannon & Wilson, a geotechnical environmental consultant hired by the City to review the DEIS. The Shannon & Wilson report noted:

Given the uncertainty of the Santa Monica Fault and the West Beverly Hills Lineament, further evaluation to identify fault traces should be completed prior to final location of the Santa Monica base station. The Santa Monica Fault could have one or more distinct traces that could impact the station location. The trace(s) would be identified during the geotechnical investigation of the project using a combination of geophysical techniques, subsurface explorations and/or trenching (where possible).<sup>5</sup>

Metro responded to the concerns of BHUSD and City and their recommendations for further study, but only after the close of the DEIS comment period. At an October 28, 2010 Metro Board meeting, Metro directed staff to:

fully explore the risks associated with tunneling under the high school, including but not limited to the following: risk of settlement, noise, vibration, risks from oil wells on the property, impact to use of the school as an emergency evacuation center, and overall risk to student, faculty and the community... [and to] analyze the possibility of moving the subway tunnel in order to avoid all school buildings and avoid impacting any future plans to remodel Beverly Hills High School.

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<sup>5</sup> A copy of the City comments on the DEIS, including attachments, is attached hereto as Exhibit A.

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October 28, 2010 Metro Board Meeting, Item 22.<sup>6</sup>

While Metro did commission studies of Century City-area faults, the results of these studies were not released until October 2011 – *a full year after the close of the public comment period on the DEIS*. See “Century City Area Tunneling Safety Report” and “Century City Area Fault Investigation Report” (collectively, “Metro Seismic Studies”). The Metro Seismic Studies found that due to the presence of active faults within Century City, the proposed subway station could not be located along Santa Monica Boulevard and would instead have to be located at Constellation Boulevard. These studies are discussed in Section II.C, below.

A. The Kenney and Wyllie Reports

In response to the seismic concerns raised in the Metro Geotechnical Report and the DEIS, BHUSD hired two seismic experts to study the seismic issues further, as the Shannon & Wilson report had recommended. BHUSD hired Miles Kenney, PhD, PG to review existing technical literature and provide a geomorphic evaluation of the eastern Santa Monica Fault Zone and potential impacts from surface rupture at the two potential Century City sites. BHUSD also hired Loring Wyllie, a licensed structural engineer specializing in earthquake considerations of structural design and a Senior Principal at a highly regarded structural engineering firm, Degenkolb Engineers, to evaluate the station alternative locations from a structural engineering perspective. To facilitate this evaluation, both Dr. Kenney and Mr. Wyllie requested that Metro produce the geotechnical data associated with its investigation of the Century City area; Metro declined to produce any of the requested data.

The Kenney Report concluded that, given the likely characteristics of the faulting models and the fact that the Santa Monica Station would be located at the far eastern extremity of any such fault (if it existed), any slip across the fault in the event of an earthquake at the Santa Monica Station would be very small (*i.e.*, in the order of centimeters). The Kenney Report also suggested that the Constellation Boulevard station rests on a deep man-made artificial fill, a fact that is relevant to the assessment of potential damage likely to occur at the Constellation Boulevard Station resulting from ground shake during an earthquake.

Similarly, the Wyllie Report concluded that (i) under certain fault models, displacement would either not occur in the area of the Santa Monica Fault, or such displacement would be minimal; (ii) certain models suggested in the Kenney Report would place the Constellation Boulevard Station at *greater* risk from an earthquake along the Santa Monica Fault; and (iii) the biggest vulnerability of either station from an earthquake would be from lateral racking due to

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<sup>6</sup> [http://www.metro.net/board/minutes/2010/minutes\\_20101028rbm.pdf](http://www.metro.net/board/minutes/2010/minutes_20101028rbm.pdf), p. 22.

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ground shaking rather than from fault displacement and the Constellation Boulevard Station would be more vulnerable to lateral racking as it appears to be located in deep fill.

BHUSD provided both the Kenney and Wyllie Reports to Metro in a letter dated May 5, 2011. In the same letter, BHUSD urged MTA to defer any recommendations for the Century City station location until additional data could be obtained regarding whether or not there were active faults in Century City. A copy of this letter is attached as Exhibit B.

B. Shift of Santa Monica Station Location

In September 2011, before it released any seismic studies to the public, Metro quietly announced on its website that it was moving the location of the Santa Monica Station one block east – away from population centers such as the Westfield Mall – to the intersection of Santa Monica Boulevard and Century Park East. This “announcement” was buried in a general update on Metro’s “Frequently Asked Questions” website page for the Project. In fact, the only people likely to become aware of this change were those who regularly tracked Metro’s website. No public notice was given for this important shift in the Project plan, which Metro used to justify a wild change in ridership projections in the FEIS. Nor was an adequate rationale for the shift ever provided.<sup>7</sup> In short, this critical information was not conveyed in a manner that allowed for any meaningful public review or comment.

C. Seismic Studies Undertaken by Metro, the Beverly Hills City Council, and BHUSD

As noted above, the Metro Seismic Studies were released in October 2011– a full year after the close of the comment period on the DEIS – and made public for the first time several new, bold assertions regarding the presence of active faults within Century City. Among other things, the Metro Seismic Studies asserted that:

- The West Beverly Hills Lineament (“WBHL”) is part of the Newport-Inglewood fault system, representing a major extension of that fault system<sup>8</sup>;
- The WBHL Fault Zone and the Santa Monica Fault Zone are both *active* fault zones;
- The Santa Monica fault system extends all the way from the Newport-Inglewood fault system near Santa Monica Boulevard, and fault strands are believed to lie under all existing buildings in Century City and a significant portion of Westwood fronting on Santa Monica Boulevard;

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<sup>7</sup> Metro’s rationale for moving the station – to keep it further away from the *active* Santa Monica Fault - has been undermined by subsequent seismic testing.

<sup>8</sup> The Newport-Inglewood fault system is centered approximately two miles south of Century City, so this assertion represented a major extension of the fault system.

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- These newly identified portions of the Newport-Inglewood and Santa Monica faults should now be listed on the state's Alquist-Priola map, meaning that future development along a broad strip of land adjacent to these faults would be prohibited.

The Metro Seismic Studies concluded that, because of these newly asserted facts, a Century City subway station could not be located anywhere along Santa Monica Boulevard and would have to be located at Constellation Boulevard. In February 2012, Metro issued the following recommendation:

In light of the unsuitability of the Santa Monica Boulevard sites for a Century City Station due to seismic considerations, and the conclusions of the Century City Tunneling Safety Report that tunnels to Century City Constellation station site can be constructed safely and without adverse impact to the properties above, it is recommended that the Century City Station be sited at Constellation Boulevard.<sup>9</sup>

The February 2012 report made clear that the basis for this decision was the claim in the Metro Seismic Studies that the Santa Monica Fault and the WBHL were both *active* fault zones.

In order to evaluate the assertions made in the Metro Seismic Studies and to identify any additional concerns associated with the various proposed Century City locations, the City retained independent experts from Exponent and Shannon & Wilson to conduct additional seismic studies. The Exponent report entitled "Hazard Assessment Study, Westside Subway Extension Project, Century City Area, California" ("Exponent Report"), provided to Metro<sup>10</sup> on February 7, 2012 and attached hereto as Exhibit C, found that the findings of the Metro Seismic Studies did not appear to be "based on rigorous risk assessment" and that "no attempt is made [in the Metro Seismic Studies] to either a) estimate the likelihood of such events or b) characterize the potential severity of such events to the public." Exponent Report at ii. The Exponent Report goes on to state:

Based on the findings reported in the [Metro Seismic Studies] and supporting review comments, momentum seems to be building against construction of a station on Santa Monica Boulevard based on perceived fault rupture hazards. *It is Exponent's view that the alternative Constellation Boulevard station, while generally in a more favorable location with regards to faulting issues, is instead faced with potential methane gas hazards that could represent at least as great a hazard to the*

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<sup>9</sup> Westside Subway Extension Project, Century City Station Location Report, Feb. 2012, page 3-1.

<sup>10</sup> A copy of the Exponent Report was given to FTA at a meeting on April 18, 2012.

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*public as the faulting hazards associated with the Santa Monica Boulevard station.* In the absence of a quantitative risk assessment, the choice between the stations is more likely to be made on the basis of risk *perception* rather than risk *quantification*. Additional steps can and should be performed at both station locations to better quantify the seismic and gas hazards at these locations. Potential adjustments to the proposed locations should also be considered.

*Id.* (emphasis added).

The report from Shannon & Wilson entitled “Preliminary Review Comments on Century City Area – Fault Investigation Report – Westside Subway Extension Project (“Shannon & Wilson Report”), provided to Metro<sup>11</sup> on March 8, 2012 and attached hereto as Exhibit D, also involved a review of the Metro Seismic Studies and their underlying data. The Shannon & Wilson Report also contradicted the conclusions reached in the Metro Seismic Studies, stating:

The WBHL does not appear to be active based on the trenching completed at BHHS, but, as discussed above, should be confirmed with additional trenching along Santa Monica Boulevard.

Shannon & Wilson Report, p. 2.

The Shannon & Wilson Report also emphasized the need for additional testing along Constellation Boulevard, stating:

It is our opinion that [Metro] should provide justification for that the profile drawn for the existing explorations along the Constellation Boulevard alignment is sufficient, or label it as preliminary, warranting a much greater level of study as was undertaken in other areas (even in some areas where faults were not previously mapped)<sup>12</sup>. . . [I]n our opinion, additional explorations at Constellation Station are warranted based on the questions we discussed above regarding the [Metro Seismic Studies], coupled with the directives for these studies. The directive on Page 1 of the Fault Report states that “. . . *Metro staff was directed to fully investigate the nature and location of faults in the Century City area and their potential impact on the proposed station locations. Based on this directive, we do not believe the WBHL and the Constellation Station were fully*

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<sup>11</sup> A copy of the Shannon & Wilson Report was given to FTA at a meeting on April 18, 2012.

<sup>12</sup> i.e. along Santa Monica Boulevard.

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*investigated particularly when compared with the studies performed at the Santa Monica Station.”* (emphasis added).

*Id.*, page 6.

While the experts retained by the City merely reviewed the seismic data provided by Metro, BHUSD retained Leighton Consulting (“Leighton”) to conduct a new, comprehensive investigation to determine whether there were any active seismic faults in the vicinity of Santa Monica Boulevard. BHUSD directed Leighton to do a new study, using more precise methodologies and advanced technologies than those employed in the Metro Seismic Studies. In particular, BHUSD directed Leighton to employ seismic trenching in the course of its investigation, a technique that while costly and time consuming provides certainty regarding the presence (or absence) of an active fault.

BHUSD retained Leighton Consulting in late 2011. Aware of the imminent release of the FEIS and the corresponding fast-approaching – and brief – window for public review and comment, BHUSD directed Leighton to work overtime, including weekends and holidays, to finalize its report as quickly as possible in the hopes that it could be taken into consideration by Metro and FTA prior to issuance of an FEIS.<sup>13</sup> To date, BHUSD has spent approximately \$2,000,000 on the Leighton Report, including increased costs associated with this expedited timetable. As a result of this accelerated schedule the review undertaken by Leighton – which is significantly more complex than the studies which Metro took over a year to complete – is nearly complete. The first volume of the Leighton’s report, which was provided to Metro and FTA on May 8, 2012, concluded that the WBHL is *not* an active fault. The report explains:

A recent geologic investigation for the proposed ‘Westside Subway Extension’ (Parsons, 2011b) stated that a series of north-south active faults forming the West Beverly Hills Lineament (WBHL) trend through or towards Beverly Hills High School (BHHS) and several other district structures and adjacent properties. As authorized by the Beverly Hills School District, we undertook a several phase investigation to confirm or reject the Parsons (2011b) fault interpretation.

Based on site-specific trenching and logging, *we found no active faults*; rather, we exposed sediments and soils, dated by a variety of relative and numerical methods, as being unfaulted and substantially older than 11,500

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<sup>13</sup> The Leighton Report actually consists of three separate reports (i) a review of the WBHL, (ii) a review of the area surrounding the El Dorado campus and (iii) a review of the Santa Monica Fault Zone.

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years, the defining number for an active fault in California. Deep borings, recovery and interpretation of continuous cores and cone penetrometer data verify our observations and documentation of the on-site trench exposures. Accordingly, we conclude that *no active faults associated with the WBHL have ruptured to the surface for at least 100,000 years and as such poses no hazard to the BHHS campus or nearby structures.*

Leighton Report, p. 1-2. The cover letter for the first volume of the Leighton Report, which summarizes its conclusions, is attached as Exhibit E. Preliminary results of the other two reports, which are expected to be finalized by the end of May, similarly call into question many of the assertions made in the Metro Seismic Studies, as well as the data and methodology on which those studies are based.<sup>14</sup>

The studies provided by the City and BHUSD put Metro and FTA on notice regarding the limitations of the Metro Seismic Studies on which the Agencies are relying. It would have been impossible to provide these materials to Metro and FTA during the official comment period on the DEIS as the Metro Seismic Studies to which these more recent studies responded were not made available for public review *until a year after the close of that comment period*. BHUSD has contacted Metro and FTA on many occasions to ensure the Agencies are aware of existence and progress of these studies, and to urge the Agencies to delay any final action, including issuance of an FEIS, until the Agencies had adequate time to review and respond to the completed studies.<sup>15</sup> In light of the many years and tremendous resources that have gone into the Project, and the high stakes associated with these siting issues and related seismic concerns, it would be prudent to delay any final action until, at a minimum, those studies currently underway and bearing directly on the evaluation of the Project's environmental impacts are complete and available for agency review and public comment.

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<sup>14</sup> BHUSD wrote to FTA on May 14, 2012 requesting an additional thirty-day extension to the comment period on the FEIS to allow adequate time for meaningful public review of these studies within the comment period. FTA denied this request on May 16, 2012.

<sup>15</sup> On March 23, 2012, BHUSD asked FTA for a 30 day extension of the public comment period under NEPA to allow the Leighton Report to become part of the public record. On March 27, 2012 BHUSD made a similar request to Metro to allow the Leighton Report to become part of the public record under CEQA. On April 3, 2012 BHUSD requested that Metro delay its vote on the FEIS for one month, until the Leighton Report was complete. On April 6 FTA granted BHUSD's request and extended the NEPA public comment period until May 22. That same day, Metro rejected the BHUSD's request to extend the public comment period or delay a vote on the FEIS. On April 9 BHUSD asked Metro to reconsider its decision in light of FTA's decision to extend the public comment period. On April 13, Metro once again denied BHUSD's request even though FTA had granted a similar request. On April 26, 2012 Metro voted to certify the FEIS for the Project but divided the Project into two Parts and delayed the route selection for Part II, which included the location of the Century City station.

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Metro has drafted reports in response to the Exponent Report, the Shannon & Wilson Report and the first Leighton Report.<sup>16</sup> *Thus, since the closing of the comment period on the DEIS, there have been no less than nine reports (with at least two more expected in the next two weeks) regarding seismic activity around the Santa Monica and WBHL fault zones.* The sheer volume of newly available information bearing directly on an analysis of the impacts of the Project and alternatives argues strongly in favor of the need for Supplemental EIS. More importantly, the fact that these reports go to the heart of the reason for Metro's station selection means that they provide critical, relevant information which should be subject to the full public review required under NEPA.

D. Additional Studies Conducted After Issuance of DEIS

In addition to the many new seismic studies discussed above, a significant body of additional data related to the environmental impacts of the Project was generated, including information related to those impacts associated with the Santa Monica Boulevard location and the Constellation Boulevard alternative. Following publication of the DEIS in September 2010, Metro conducted additional geotechnical investigation, noise and vibration assessments, and studies focused on the potential impacts to BHHS.<sup>17</sup> These additional studies contain significant new information. For example:

- the Technical Report Summarizing the Results of the Forecasted Alternatives contains a material “coding refinement” for the Century City station location options that wildly changes ridership projections – which itself has a material impact throughout the FEIS;
- the Technical Report Summarizing the Results of Forecasted Alternatives justifies the movement of the Santa Monica Boulevard station from Avenue of the Stars to Century Park East in order to “avoid locating the station box on the Santa Monica Fault (an explanation that Metro has since changed);
- The Noise and Vibration Study was completed based on site-specific noise criteria generated at three specific locations (test sites G164, G165, and G166). This report concluded that there would be no exceedance of FTA criteria, although the report did note that of the three classrooms studied one of them (Room 107) showed “significantly increased levels [of indoor vibration measurements] at low frequency.”<sup>18</sup> These results are highly suspect as Metro's Noise and Vibration Technical Report dated August 2010 concluded that the existing buildings at Beverly Hills High School campus would be

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<sup>16</sup> In fact, Metro's most recent report in response to the first volume of the Leighton Report actually moves the purported location of the fault to areas that were not trenched as part of that report.

<sup>17</sup> See, e.g., Noise and Vibration Study, August 2011; Century City Station Location Report, February 2012; Technical Report Summarizing the Results of the Forecasted Alternatives.

<sup>18</sup> ATS Consulting, Results of Borehole Vibration Propagation Tests for Westside Subway Extension, p. 4; p. 40.

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impacted by Ground-borne noise in excess of the FTA standards based upon general assessment criteria.

All of these additional studies were undertaken in direct connection to the possible relocation of the Century City station from Santa Monica Boulevard to Constellation Boulevard. Although the Agencies point to these data as support for the decision to proceed with a Constellation Boulevard station – rather than the previously preferred Santa Monica Boulevard location on which many stakeholders had previously focused their comments – the Agencies failed to supplement the EIS with this wealth of new information. As a result, affected members of the public have not had an opportunity to review and comment on the information in these studies, to test the methodologies and assumptions of the studies, and to submit additional information regarding the potentially significant impacts of the Project and alternatives to the proposed realignment through the Constellation Boulevard station. The late release (or failure to release) these various studies undermines the very purpose of the NEPA review process. By denying the public a meaningful opportunity for review and comment on information which appears to drive the decisions reached by the Agencies.

E. The May 17, 2012 PUC Hearing

On April 23, 2012, the City requested a public hearing (“PUC Hearing”) before Metro on the location of the Century City subway station pursuant to California Public Utilities Code § 30639.<sup>19</sup> The first portion of this hearing took place last week, on Thursday, May 17. At the hearing four seismic experts familiar with the relevant issues – including experts from Exponent, Shannon & Wilson and BHUSD – presented their evaluation of the Metro Seismic Studies and described the results of their own studies.

All of the presenters agreed that the conclusions in the Metro Seismic Studies were deficient and advocated for additional seismic testing along Santa Monica Boulevard and Constellation Boulevard and a risk assessment for both stations. Copies of each of the four presentations that were made at the PUC Hearing are attached hereto as Exhibit F. After the PUC Hearing, BHUSD wrote a letter requesting a meeting of all retained expert geologists who have studied the issue to formulate a consensus regarding the appropriate testing protocol necessary to resolve outstanding issues. A copy of this letter is attached as Exhibit G.

Due to the length of the presentations at the PUC Hearing there was not enough time for any public comments. Metro has effectively denied the BHUSD request for more studies and has scheduled a vote on adopting findings regarding the PUC Hearing and approving the location

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<sup>19</sup> This Section provides that “any City within the territorial jurisdiction of [Metro] has the right to request a hearing before the Board of Authority concerning the proposed location of any facilities.”

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of the Century City Station for this Thursday, May 24. Metro has scheduled a special board meeting for public comment to take place on Thursday *at the same time that they are scheduled to vote on adopting findings and approving the location of the Century City Station.*<sup>20</sup>

F. Changes Made to the Proposed Project and Significant New Information Triggered the Need for Issuance of a Supplemental DEIS

As explained above, NEPA imposes on agencies an obligation to supplement a DEIS whenever (i) the agency makes *substantial changes* in the proposed action that are *relevant to environmental concerns*, or (ii) there are *significant new circumstances or information* relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1) (emphasis added).

The decision by Metro and FTA to relocate the Century City station is without question a “substantial change” in the proposed action that has a direct bearing on the environmental impacts – including, but not limited to, seismic concerns and methane hazards – of the Project. Even if FTA felt that the DEIS, by merely mentioning the Century City location, provided some public notice, there is significant new information that goes to the heart of the station selection, both post DEIS and post FEIS, that must be considered under NEPA. The various studies commissioned by Metro and made available only after the close of the DEIS comment period, as well as the studies commissioned by the City Council and BHUSD in response to the Metric Seismic Studies, clearly constitute “new information relevant to environmental concerns and bearing on the proposed action or its impacts.” Accordingly, NEPA required the substantial changes and significant new information to be made available for public review and comment in an SDEIS.

**III. The Westside Subway Extension FEIS**

A. Release of the FEIS; Omission of Significant Information

Despite access to a significant body of credible, independent scientific data calling into question the Metro Seismic Studies on which the Agencies are relying – and awareness that additional relevant studies are nearly complete and could shed further light on the seismic issues relevant to the Project – Metro and FTA released the FEIS on March 19, 2012. Rather than acknowledge the troubling limitations identified in the Metro Seismic Studies or acknowledge

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<sup>20</sup> See, Metro Regular Meeting of Board of Directors May 24, 2012 at 9:00 a.m., Items 58 and 59 ([http://www.metro.net/board/Agendas/2012/05\\_may/20120524ARBM.pdf](http://www.metro.net/board/Agendas/2012/05_may/20120524ARBM.pdf)) and Metro, Special Board Meeting May 24, 2012 at 9:00 a.m. ([http://www.metro.net/board/Agendas/2012/05\\_may/20120524ASBM.pdf](http://www.metro.net/board/Agendas/2012/05_may/20120524ASBM.pdf)).

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the informational benefit of the soon-to-be-released studies, the FEIS adopted the February 2012 recommendation to proceed with the Constellation Boulevard station location.

The FEIS omits significant data regarding a potential Constellation Boulevard station. The Exponent Report explained that the DEIS failed to identify the location of a fault line that could impact that station, and urged further study at both the Santa Monica and Constellation Boulevard stations to “better quantify the seismic and gas hazards at these locations.” Exponent Report at 17. It also called attention to an issue that could be of extreme significance to an evaluation of the environmental and safety risks of the Constellation Boulevard location: the presence of methane hazards in the vicinity of the Constellation Boulevard location. However, the FEIS reveals that Metro and FTA declined to conduct as rigorous a review of the Constellation Boulevard as it has for the Santa Monica station. This casts significant doubt on the validity of the conclusions drawn in the FEIS that a Constellation Boulevard station is safer than a Santa Monica Boulevard station.

B. Previously Unreleased Information Regarding Environmental Impacts of Project

Not only does the FEIS neglect a considerable amount of significant data directly relevant to the Project and its environmental impacts, it includes a large amount of previously unreleased information demonstrating that those impacts will be more significant than contemplated in the DEIS. Among the most significant impacts revealed for the first time in the FEIS:

- *Altered construction schedule* – The analysis in the DEIS turned on a project proposal that utilized a phased construction, involving construction over a period of fourteen to nineteen years. DEIS at 4-253. In contrast, the FEIS contemplates a dramatically altered construction schedule, requiring concurrent construction of the different components of the Project. The schedule set forth in the FEIS would result in more intensive impacts over a much shorter (ten-year) construction period.
- *Increased air quality impacts* – As a result of the accelerated construction period proposed in the FEIS, air quality impacts will be more severe and will exceed thresholds of significance established by the South Coast Air Quality Management District (“SCAQMD”). For example, whereas the DEIS concluded that the Project construction would result in the exceedence of only one threshold (nitrogen oxide), the FEIS concludes that the shorter construction period will result in exceedences of *all but one* of the SCAQMD’s thresholds. FEIS at 4-349, 4-452. These impacts will not be mitigated below a level of significance. *Id.* at 4-452.
- *Increased carbon dioxide emissions* – The FEIS also indicates that emissions of carbon dioxide, a greenhouse gas, associated with construction will far exceed the levels

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contemplated in the DEIS. Although the DEIS estimated that construction of the Project would result in the emission of eighteen metric tons per day of carbon dioxide (DEIS at 4-266), the FEIS indicates that those levels will be as much as nine times greater (164 metric tons per day for concurrent construction, and 102 metric tons per day for phased construction). FEIS at 4-356. Both of the levels projected in the FEIS would exceed thresholds of significance for carbon dioxide emissions. *Id.* at 4-357.

- *Significant noise impacts* – The FEIS makes clear for the first time that the Project construction will result in significant noise impacts. Although both the DEIS and the FEIS include only a general discussion of noise impacts from construction, the DEIS did not indicate that noise levels would be significant. The FEIS, in contrast, concludes that noise impacts associated with construction would be significant and unavoidable, even in light of mitigation. at 4-358.

This information makes clear that the environmental impacts associated with the Project are likely to far exceed those contemplated and made available for public comment in the DEIS. Without question, this information falls within the category of “significant new circumstances or information relevant to environmental concerns and bearing on the [Project] or its impacts” for which an agency is required to prepare a supplemental FEIS. *See* 40 C.F.R. § 1502.9(c)(1).

#### C. New Information Regarding Terminus of Phase I of the Project

The FEIS also reveals a substantial change in the proposed action for which there has been no prior opportunity for public review and comment. Specifically, the FEIS proposes to relocate the terminus of Phase 1 construction from the Fairfax station to the La Cienega station. This change will result in significant increases in ridership and boardings at the La Cienega station (from 6,500 boardings per day to over 10,000 boardings per day) and will in turn lead to increased traffic, parking, and pedestrian safety impacts in the vicinity of the La Cienega station. The increased vehicular and pedestrian traffic are likely to lead to increased demand for police and fire services, raising additional traffic, noise, and public safety concerns. None of these impacts were previously disclosed or properly aired for public review and comment.

The change in the proposed Phase I terminus location also translates to an expansion of the staging areas with a corresponding increase in previously undisclosed construction-related impacts. La Cienega will now be a cross-over station, resulting in 1,000 linear feet of open cut construction, representing a 66% increase over the amount of construction contemplated in the DEIS. This increase will result in substantially longer closures of Wilshire Boulevard and will result in exceedences of the standards of significance for traffic impacts in the City of Beverly Hills. Again, these traffic complications will have implications for public safety, emergency response time, and noise in the vicinity of the La Cienega station. While the FEIS provides some

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information on traffic impacts in Appendix E, this information is inadequate from a NEPA perspective. The public was not provided with any opportunity to review and comment on these significantly changed circumstances. Moreover, the FEIS makes no effort to disclose or thoroughly analyze the impacts associated with this proposed approach, including those impacts associated with the retrieval shaft contemplated in connection with this proposed change.

Clearly, these changes are “substantial” and directly relevant to the environmental impacts of the Project. Accordingly, the NEPA regulations plainly require that an SFEIS be issued to provide the public with a meaningful opportunity for review of this new information; such supplementation is appropriate at this stage as there remains “‘major Federal action’ to occur.” *See Norton*, 542 U.S. at 156, quoting *Marsh*, 490 U.S. at 374. Moreover, the Agencies have failed to take the requisite “hard look” at this important and environmentally-relevant information in the FEIS; a thorough explanation and analysis of all significant information should be included in the SFEIS.

D. The FEIS and Other Materials Suggest that the Agencies Pre-Judged the Outcome of the Environmental Review for the Project

As discussed above, NEPA requires that a federal agency *objectively and in good faith* take a “hard look” at the environmental consequences of a proposed action and reasonable alternatives, without pre-judging the outcome of that environmental review. CEQ’s guidance makes clear that agencies are not to “slant” an EIS in favor of the agency’s preferred alternative over other reasonable and feasible alternatives. *See Forty Questions*, question 4c.

Several aspects of the NEPA review process for the Project call into question the objectivity of the Agencies in conducting this review. For example, even though the Constellation Boulevard location did not appear as a viable alternative until the publication of the DEIS, it appears that – long before issuance of the DEIS – FTA accepted documents from Metro that were predicated on the Constellation Boulevard alignment and approved the Project for Preliminary Engineering.<sup>21</sup> Those submissions indicate that even before publishing the DEIS the Agencies had predetermined the selection of the Constellation Boulevard alternative.

Perhaps most telling, the Agencies have rushed through a vote on the FEIS before the Leighton Report is complete. Metro refused multiple requests by the City and BHUSD for even a modest extension of the FEIS comment period knowing full well of the imminent release of the Leighton Report - which is expected to provide a definitive conclusion as to the existence of active earthquake faults in the vicinity of Santa Monica Boulevard. At the April 26, 2012 Metro

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<sup>21</sup> The Board only discovered these documents in the course of reviewing records provided in response to a May 17, 2011 Freedom of Information Act request.

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Board Meeting, when the FEIS was approved, Metro was forced to delay selecting the Century City station location due to the City's request for a PUC Hearing (described above). However, these actions since release of the FEIS/EIR do not solve the NEPA deficiencies. Moreover, Metro has placed the selection of the Century City station location on the agenda for its May 24, 2012 Board meeting<sup>22</sup> – even though the final two volumes of the Leighton Report will not yet have been finished.

A comparison of the FEIS with the DEIS is replete with examples of Metro biasing the FEIS in favor of Constellation Boulevard. Examples include:

- Metro's Rush To Approve The FEIR Before The Leighton Report Could be Completed – Metro, and thus FTA as well, has refused to provide a NEPA review and consideration of the conclusions and recommendations of the Exponent Report, the Shannon & Wilson Report and the Leighton Report.
- Metro's Manipulation of Ridership Data – The DEIS showed more riders with a Santa Monica Boulevard station than with a Constellation Boulevard station. However, the FEIS now shows wildly different ridership numbers because Metro (i) changed the location of the Santa Monica station just far enough away from population centers to affect the ridership calculations and (ii) changed the ridership calculation methodology – both without public comment. These are highly suspect alterations that result in “numbers” favoring the Constellation Boulevard location.
- Metro's Treatment of the Cost Differential –The DEIS demonstrated that a Constellation Boulevard station was at least \$60,000,000 more expensive than a Santa Monica Boulevard station just in terms of track construction costs alone. The FEIS attempts to mask this fact by disclosing only the overall Project cost.

Materials posted by Metro on its website after publication of the DEIS but before release of the FEIS strongly suggest a bias in favor of the Constellation Boulevard location. An example is how Metro appears to manipulate ridership projections in the FEIS by changing the Santa Monica Boulevard station location and its ridership methodology process. In its FAQ section MTA poses the question, “Would a Constellation Boulevard Station have higher ridership than a Santa Monica Boulevard Station in Century City?”<sup>23</sup> Without acknowledging that the DEIS showed more riders on Santa Monica Boulevard, that they had moved the station or that they had changed methodology, Metro's FAQ response provides only:

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<sup>22</sup> [http://www.metro.net/board/Agendas/2012/05\\_may/20120524ARBM.pdf](http://www.metro.net/board/Agendas/2012/05_may/20120524ARBM.pdf).

<sup>23</sup> Metro's website no longer includes this question.

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Most studies of the issue show that one-quarter of a mile is considered to be a comfortable walking distance for transit commuters and that a greater proportion of riders comes from workers or residents within one-quarter of a mile of a station location. The proportion of riders drops sharply beyond that distance. A station under Constellation Boulevard would be closer to the center of Century City and be approachable by large numbers of pedestrians from all directions. A station under Santa Monica Boulevard would . . . draw patrons primarily only from the South. On the other hand, the Santa Monica Boulevard Station may be more convenient for Santa Monica Boulevard auto and bus passengers who might wish to transfer to the subway.

Westside Subway Extension – Frequently Asked Questions, [www.metro.net/projects/westside](http://www.metro.net/projects/westside) (Sept. 2012). Where the critical distance for ridership estimates is ¼ mile (1455 feet), a minor shift in the location of the station entrance can have major consequences in projecting ridership. Between the DEIS and FEIS, *Metro moved the station entrance at the Santa Monica location* approximately 700 feet away from its prior location. Given the layout of streets and residences, this minor shift generated vastly changed numbers. Using common sense, it is not rational to base a station location decision on numbers that vary so wildly if subway entrances move by only 700 feet. The numbers may be “accurate” but they are not sensible. The public had a right to understand all of the information behind this important change.

A May 16, 2012 report from DKS Associates, a transportation planning and engineering firm, entitled “Westside Subway – Century City Ridership Forecast” (“DKS Report”) confirms this. The DKS Report states:

Based upon our analysis, the ridership differential between the Santa Monica and Constellation station sites would not be as large as reported in the [FEIS]. . . . Our analysis aligns more closely with the [DEIS] which indicates that there would be a difference of less than 1,000 daily boarding between stations. Further, because of the extensive auto-oriented development near Constellation (over 21,000 parking spaces within 1,000 feet – more than double the count within 1,000 feet of the Santa Monica station) and the potential for future development sites along Santa Monica Boulevard (including the Robinson May site) the future for transit oriented development is greater for Santa Monica station site.

A copy of the DKS Report is attached as Exhibit H.

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Such evidence raises serious questions of bias, which call into question the validity of the environmental reports and analysis encompassed by the ESI and included in the FEIS supporting the Constellation Boulevard alternative.

E. FTA Failed to Adequately Consider the Impacts on Beverly Hills High School, under NEPA and under Section 4(f)

Federal law prohibits the Department of Transportation (“DOT”) from authorizing the use of federal funds to finance transportation projects through certain public parks, recreation lands, wildlife and waterfowl refuges, and historic sites if a “prudent and feasible” alternative site exists. 49 U.S.C. § 303(c) (“Section 4(f”). Further, even if a determination is made that no prudent and feasible alternative exists, the program or project affecting the Section 4(f) property must include “all possible planning to minimize harm” to the protected property. *Id.* Under applicable Section 4(f) regulations, 23 C.F.R. § 774.5, FTA is required to coordinate with “the official(s) with jurisdiction over the Section 4(f) resource” before making a selection. The regulations also require documentation of why there is no “feasible and prudent” alternative that avoids the protected resource.

FTA was required under both Section 4(f) and NEPA<sup>24</sup> to take into consideration the 2008 Beverly Hills School District Master Plan and other publicly available planning documents when evaluating the impacts of the proposed Project and alternatives. As explained below, such a review would have made clear that the tunneling under BHHS necessitated by the Constellation Boulevard station location will have a significant and adverse impact on the property and on the BHHS’s established development plans. FTA’s failure to consider these local planning documents is in direct violation of both NEPA and Section 4(f).

As the FEIS recognizes, the BHHS campus is a protected historic property under Section 4(f). Moreover, as described below, FTA was fully aware of BHUSD’s plans for the BHHS site consistent with that site’s designation as a 4(f) property. FTA also had ample information showing that the proposed Constellation Boulevard station would significantly hinder and in many cases entirely preclude the implementation of those plans. However, despite being provided with a substantial body of evidence demonstrating the adverse impacts of tunneling under the campus – including a lengthy letter written by the then-BHUSD Superintendent

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<sup>24</sup> See 40 C.F.R. at § 1502.16(g) (CEQ regulations require an agency completing an EIS to consider “urban quality, historic and cultural resources, and the design of the built environment”); see also 23 C.F.R. § 771.105(b) (FTA-FHWA joint regulations to implement NEPA provide that the agency should evaluate alternatives and make decisions “in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals”).

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explaining that the BHUSD planned to build “three or four stories below current grade across the entire prime building area.”<sup>25</sup> the FEIS concludes that such tunneling will result in “no impairments” to the BHHS property. *See* FEIS at 5-31. This unsubstantiated and conclusory statement is based only on a reference to a 2005 Federal Highway Administration statement regarding 4(f) policy for tunneling projects. It is wrong for many reasons, most particularly because the Agencies were fully aware of BHUSD’s \$334 million modernization plan, as described below. Under NEPA and Section 4(f), FTA must give due consideration to these locally approved plans.

These issues are discussed in detail below.

1. DOT Section 4(f) Regulations; FHWA Tunneling Policy

DOT’s Section 4(f) regulations are set forth at 23 C.F.R. Part 774. These regulations define “use” as occurring “(1) [w]hen land is permanently incorporated into a transportation facility; (2) [w]hen there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose as determined by the criteria in § 774.13(d); or (3) [w]hen there is a constructive use of a Section 4(f) property as determined by the criteria in § 774.15.” In defining “constructive use,” the regulations provide that, where a “transportation project does not incorporate land from a Section 4(f) property, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired,” DOT is required to evaluate that use in accordance with 23 C.F.R. § 774.3(a) (*i.e.*, as if it were a direct use of the Section 4(f) property). *Id.* at § 774.15(a)-(b). The regulations include a non-exhaustive list of situations determined to constitute constructive use, including:

- (1) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f) ...;
- (2) The proximity of the proposed project substantially impairs aesthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property ...;
- (3) The project results in a restriction of access which substantially diminishes the utility of a significant publicly owned ... historic site; [or]
- (4) The vibration impact from construction or operation of the project substantially impairs the use of a Section 4(f) property, such as projected

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<sup>25</sup> See the April 27, 2011 “Master Plan Implications Letter,” p. 11, described in detail in Section E.9 below.

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vibration levels that are great enough to physically damage a historic building or substantially diminish the utility of the building, unless the damage is repaired and fully restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties . . . .

*Id.* at § 774.15(e).

Under the regulations, a “feasible and prudence avoidance alternative” is defined as one that “avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property.” *Id.* at § 774.17. The regulations further provide that an alternative is not feasible “if it cannot be built as a matter of sound engineering judgment,” and is not prudent if:

- (i) It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
- (ii) It results in unacceptable safety or operational problems;
- (iii) After reasonable mitigation, it still causes:
  - (A) Severe social, economic, or environmental impacts;
  - (B) Severe disruption to established communities;
  - (C) Severe disproportionate impacts to minority or low income populations; or
  - (D) Severe impacts to environmental resources protected under other Federal statutes;
- (iv) It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
- (v) It causes other unique problems or unusual factors; or
- (vi) It involves multiple factors in paragraphs [(i) through (v)] of this definition, that while individually minor, cumulatively cause unique problems or impact of extraordinary magnitude.

*Id.*

In addition to finding that no feasible and prudent alternative exists, in order to proceed with use of a Section 4(f) property DOT must also determine “that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in § 774.17, on the property.” *Id.* at § 774.3(b). The regulations provide that, for historic sites, “*de minimis* impact” means that DOT has determined “that no historic property is affected by the

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project or that the project will have ‘no adverse effect’ on the historic property in question.” *Id.* at § 774.17.

The Department of Transportation spells out its policy for Section 4(f) compliance for Federal Highway Administration (“FHWA”) Projects in a 2005 document entitled “FHWA Section 4(f) Policy Paper” (“FHWA Policy”). FTA points to the FHWA Policy, and specifically to its discussion of tunneling projects, as the basis for its conclusion that BHHS will suffer no impairments as a result of the proposed Constellation Boulevard station location. *See* FEIS at 5-31. This document also elaborates on the regulatory definition of “constructive use,” explaining that constructive use occurs in those situations where “the proximity impacts of a project on the 4(f) property are so severe that the activities, features or attributes that qualify the property or resource for protection under Section 4(f) are substantially impaired.” FHWA Policy at 10. The FHWA Policy goes on to state that

Substantial impairment occurs when the activities, features or attributes of the 4(f) property are substantially diminished ... which means that *the value of the resource in terms of its Section 4(f) significance will be meaningfully reduced or lost*. The degree of impact and impairment should be determined *in consultation with the officials having jurisdiction over the resource*.

*Id.* (emphasis added).

The specific policy on tunneling impacts on which FTA relies in the FEIS is provided in response to the question, “Is tunneling under a publicly owned public park ... or historic site subject to the requirements of Section 4(f)?” *Id.* at 22. The FHWA Policy responds that, in the case of historic sites, “Section 4(f) would apply only if the tunneling ... [s]ubstantially impairs the historic values of the historic site.” *Id.*

## 2. Citizens to Preserve Overton Park; Agency Discretion Under Section 4(f)

The United States Supreme Court has held that agency discretion in weighing the detriment to a Section 4(f) property against other factors is constrained to a certain extent by the language and intent of the statute. In *Citizens to Preserve Overton Park v. Volpe*, the Court pointed out that it is “obvious that in most cases considerations of cost, directness of route, and community disruption will indicate that parkland [or other protected Section 4(f) land] should be used for highway construction whenever possible,” adding that “if Congress intended these factors to be on an equal footing with preservation of parkland there would have been no need for the [Section 4(f)] statutes.” 401 U.S. 402, 411-12 (1971) (*overruled on unrelated grounds*).

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The Court's assessment of Congress' intent in passing this legislation is phrased in the context of parklands, on which the *Overton Park* litigation was focused, but is equally applicable to all Section 4(f) land, including valuable and unique historic properties:

Congress clearly did not intend that cost and disruption of the community were to be ignored by [DOT]. But the very existence of the statutes indicates that protection of [Section 4(f) land] was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were *truly unusual factors present* in a particular case or the cost to the community disruption resulting from alternative routes *reached extraordinary magnitude*. If the statutes are to have any meaning, [DOT] cannot approve the destruction of [Section 4(f) land] unless he finds that alternative routes present *unique problems*.

*Id.* at 412-13 (emphasis added); *see also City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1113 (C.D. Cal. 1999) ("Section 4(f) resources 'may be used for highway purposes only if there are truly unusual factors present in the case, if feasible alternative routes involve uniquely difficult problems, or if the cost or community disruption resulting from alternative routes reach extraordinary magnitudes'" (quoting *Stop H-3 Ass'n v. Dole*, 740 F.2d 1442, 1449 (9th Cir. 1984) (internal quotations omitted))).

### 3. FTA's Failure to Consider Impacts to BHHS Under Section 4(f)

FTA's dismissal of the significance of impacts to BHHS lacks any careful inquiry into the property and the BHUSD plans for the property. In fact, as indicated throughout these comments and explained in greater detail below, this conclusion ignores a significant body of evidence showing that tunneling beneath the BHHS property will certainly have substantial, adverse impacts. The FEIS needed to address the impact of tunneling on the approved BHUSD plans, discussed in greater detail below, as the tunnel could render use of the BHHS property a "direct use" within the meaning of Section 4(f). If the tunneling is not considered a direct use, the proposed Constellation Boulevard location without question constitutes a "constructive use" within the meaning of the Section 4(f) regulations. In either case, it is plain that Section 4(f) precludes authorization of federal funding for the Project absent a finding that factors of "extraordinary magnitude" render any alternative locations, such as Santa Monica Boulevard, imprudent and not feasible.

Although FTA acknowledges that the BHHS campus is an historic property under Section 4(f), the FEIS contains only a cursory discussion of the impact to BHHS that would

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occur under the Constellation Boulevard alternative. The portion of the Section 4(f) chapter relevant to BHHS states in its entirety:

The alignment would require an easement for the tunnel under three of the five properties: Beverly Hills High School, AAA Building, and The Barn. Where tunneling would occur under a publicly owned park, recreation area, wildlife or waterfowl refuge, or historic site and an easement is required, "Section 4(f) would apply only if the tunneling ... substantially impairs the historic values of the historic site" (FHWA 2005 [FHWA Policy]). There would be no impairments to the properties due to of noise [*sic*], vibration, or visual quality; therefore, there is no use under Section 4(f). For further discussion of the properties, refer to the *Westside Subway Extension Historic Resources Properties Supplemental Survey Technical Report* (Metro 2012b).

FEIS at 5-31. This discussion is altogether unsatisfactory and does not include analysis of any kind. Moreover, this brief discussion entirely ignores the BHUSD's plans for the BHHS campus – plans that are consistent with the use for which the site was designated as a Section 4(f) property, and of which FTA and Metro have long been aware.

The FEIS has lowered the tunnel alignment from that shown in the DEIS for areas not running under the public right of way. Under some existing and proposed buildings, the FEIS has lowered the tunnel elevation by as much as 50 feet.<sup>26</sup> Under the Beverly Hills High School, however, the alignment was lowered only by approximately 5 feet on the eastern end and 15 feet on the western end. However, this depth below surface is still inadequate to provide sufficient separation between the existing buildings on the eastern end with less than 45 feet of separation between the Adult Education and Special education classroom building and the top of tunnel.

It is widely recognized in the industry and within FTA that a separation of less than 50 feet between subway structure and building foundations will result in vibration and vibration induced noise issues (reference FTA Noise and Vibration Impact Assessment, May 2006). The adjustment between the DEIS and the FEIS was totally insufficient to provide sufficient separation between the top of tunnel and the future building elevation: the contemplated tunnel would encroach into the future buildings for at least the western 400 feet of the high school

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<sup>26</sup> For example, in response to public comments the FEIS contemplates an alignment for the Westwood/UCLA station that is 50 feet deeper than described in the DEIS in order to accommodate a proposed hotel development. The FEIS elsewhere contemplates an alignment that is 45 feet deeper than described in the DEIS in order to accommodate a private parking structure.

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campus site. For the remaining 600 feet of the campus traversed by the tunnel alignment, the separation would range from zero to a maximum of 15 feet. There is no discussion in the FEIS or any supporting documents regarding the impacts of such very close proximity.

The materials provided to the Agencies over the past several years and throughout the EIS process for the Project – in particular the “Master Plans Implications Letter” - make clear that FTA was fully aware of the existence of BHUSD’s plans for the BHHS property and that those plans were consistent with the use for which the property was designated as a Section 4(f) property.

The tunneling required in connection with the Constellation Boulevard station location will substantially impair – and, in many respects, entirely preclude – those plans. This is a Section 4(f) direct use, or certainly a constructive use as set out in 23 C.F.R. § 774.15(e)(3), as the tunneling “project results in a restriction of access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site.” Further, under Section 4(f), FTA was required to consider the degree of impact and impairment to BHHS *through consultation with BHUSD*, as the officials having jurisdiction over the property. As there exists a viable alternative (Santa Monica Blvd location), FTA had to and did not even try to explain under Section 4(f) why the Constellation Avenue location could be selected. Moreover, FTA was obligated under NEPA to take a hard look at the impact of the proposed Project on BHHS and its plans for the property; the FEIS reveals no such searching inquiry. The cursory discussion in the FEIS, particularly when considered in the context of the voluminous information provided to the Agencies over the years regarding BHHS plans and the impacts of sub-BHHS tunneling, reveals a complete failure by FTA to comply with the requirements of both NEPA and Section 4(f). And obviously there is a viable alternative that could have avoided these impacts – the Santa Monica station location.

#### 4. Beverly Hills High School: Background

The information summarized here was provided the Metro and FTA throughout the EIS process. BHHS is a four-year, college-oriented high school that serves approximately 2,000 high school students. The school has a stellar academic reputation, and in 2004 was named a National Blue Ribbon School. BHHS serves an additional 3,000 adult education students from throughout the greater Los Angeles region.

BHHS is the only high school campus located within the City of Beverly Hills. The site of the school has been in continuous usage as a high school for nearly a century. BHHS cannot be moved, and there is no practical alternative site for a high school in the City of Beverly Hills. The City is effectively built out and property acquisition required to either expand the current

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site or find a replacement site would be prohibitively expensive, if not impossible. Based upon physical, financial and policy considerations, the current site will remain the only high school campus for the school district for the foreseeable future.

At the same time, BHHS as it currently exists is considered undersized for the current student population under California Department of Education standards for high schools. The number of high school students has been increasing over the past several years, due to both natural population growth and a significant increase in the number of students leaving private schools and returning to public schools as a result of the recent economic downturn. The campus must accommodate continued growth due resulting from the overall population increase of the surrounding community. Future population growth may require BHHS to ultimately serve up to 4,000 high school students – nearly double its current high school student population.

BHHS also provides services for the entire community. There is a cooperative use agreement in place with the City that allows community functions on campus. In addition to regular school-related activities, the campus theatre, auditorium, and performance spaces are used for hundreds of public, non-school events each year. The campus athletic fields are regularly used by the community at large. The BHHS campus also must serve as an emergency center, if necessary, for the community of Beverly Hills. The City of Beverly Hills has no facilities with comparable capacities that can serve these various functions.

Unfortunately, many of the facilities on the BHHS campus do not meet *current* program requirements. For example, the older classrooms are undersized and do not meet California state educational standards; likewise the gymnasiums and swimming pool do not meet California Intramural Federation (CIF) standards. Due to these outdated and in many respects insufficient facilities, BHHS cannot meet its goal of providing gender parity in its athletic programs – a goal mandated by federal Title IX law. In short, despite its stellar academic reputation, BHHS currently lacks adequate facilities to be in full compliance with federal requirements and to meet various state educational standards.

A number of other unique characteristics of the BHHS campus bear on the school's development plans and are directly relevant to the assessment of impacts from the proposed tunneling under the campus, including:

- *Oil wells* – BHHS is unusual in that it has a working oil well on the campus. In fact, portions of the campus have been actively producing oil for 100 years. In addition, there are numerous abandoned oil wells, sumps, pipelines and other facilities scattered over the campus; some are mapped and recorded, but many others are not.

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- *Parking* – Parking at and around BHHS is in short supply. Most BHHS adult students are transit-dependent, and an increasing number of the high school students are commuters from outside of the district. The surrounding neighborhood, which consists primarily of multi-family structures, faces its own parking challenges. Community events held at the School frequently overwhelm all on-campus and neighborhood parking.

5. The BHUSD 2008 Master Plan

BHUSD recognized its campus deficiencies years ago. In August, 2008, after spending two years analyzing the campus layout, BHUSD released a draft five-year master plan (“Master Plan,” attached hereto as Exhibit I). The Master Plan was designed to be a “road map for the future of [BHUSD’s] facilities,” and included a list of potential projects (“Project List”) identified as key priorities for future development. The Project List includes a “total campus reconfiguration” for the high school, including:

- Seismic upgrades to the existing structures;
- Demolishing a portion of Buildings B and H;
- Creation of a new public entry building
- Additional parking;
- New athletic facilities, tennis courts softball field and parking; and
- A new separate and contained maintenance facility.

The Project List also includes projects at the other BHUSD campuses.

BHUSD created a Facilities Advisory Committee (“FAC”) in October of 2009 to prioritize the projects identified on the Project List. The stated purpose of the FAC is to review, analyze, advise and make recommendations to the BHUSD Board of Education (“Board”) regarding the planning and programming for the BHUSD facilities.

A calendar of upcoming FAC meetings, agendas and minutes from meetings, beginning with the first FAC meeting held on October 29, 2008, are posted on the Board’s website. Significant additional information regarding the FAC and BHUSD’s plans for BHHS are also on the FAC website.

6. 2008 Measure E - \$334 Million Bond to Modernize and Improve BHHS

On November 4, 2008 City voters passed Measure E, which authorized the BHUSD to issue general obligation bonds in an amount not to exceed \$334 million in order to modernize

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and improve BHHS facilities. This vote took place a full two years before Metro announced the proposed alignment that would pass under the BHHS campus. The ballot measure for Measure E expressly stated its purpose was to “provide safe and modernized school facilities, make necessary structural seismic safety repairs, upgrade, repair and reconstruct aging classrooms, infrastructure, multiuse, gyms, libraries, science, technology & labs, roofing, plumbing, heating, ventilation and electrical systems. . . .”

There was, of course, significant public discussion surrounding Measure E, with proponents and opponents of the measure each distributing thousands of mail pieces and flyers. Ultimately, Measure E was approved by City voters with 64.89% of the vote.

A detailed explanation of Measure E appears on the Board’s website, along with information on the Citizen’s Oversight Committee that is charged with overseeing the spending of bond proceeds.

#### 7. BHHS Plans - Site Constraints and Prime Building Area

BHUSD has moved steadily forward with implementation of the Master Plan since the passage of Measure E in 2008. Over the course of the two years spent developing the Master Plan BHUSD came to recognize that several factors significantly constrain future building design and placement. These constraints include:

- There is no excess capacity in the existing structures, so existing buildings must remain operational until new construction comes on line. Any classrooms lost during construction will require temporary portable classrooms, for which there is limited space. Moreover, under the California State Education Code students may only be placed in Field Act-compliant structures, from which all commercial structures are excluded.
- The “Graduation Lawn” area is one of the rare open spaces in the community, is used frequently for school and community events and must be maintained relatively intact.
- The community places a high priority on open space, driving expectations that when certain buildings are removed the remaining areas will be dedicated to open space.
- The campus is bisected by Heath Road, a public street which could potentially be relocated but cannot be eliminated because of fire access requirements and the need to serve the BHHS parking areas. There are numerous utilities including water, storm, and sewer underlying Heath Road that would also require relocation.
- The above-ground oil operations area at the south end of the campus.
- The south end of the campus must essentially remain a sports area for multiple reasons:
  - It acts as a buffer to noise or traffic impacts from Olympic Boulevard.

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- It is underlain by abandoned oil wells, sumps and production facilities, plus operating oil wells and pipelines. Cleaning up the abandoned facilities and contaminated soils and relocating operating wells to allow continued oil production would be prohibitively expensive.
- It is the only part of the BHHS campus that is flat enough and of sufficient size to accommodate the football field and track.
- It provides the best public access to the BHHS campus from local public streets. The BHHS campus is not level; it rises approximately 40 feet from east to west and approximately 10 feet from north to south.
- BHUSD is limited in its ability to build upward above grade. As a result, certain new buildings must be able to extend three or four stories below current grade.

In light of these constraints BHUSD recognized a prime location available for new construction (“Prime Building Area”) that cuts through the middle of the campus. The Prime Building Area is defined as the area bounded by: Moreno on the east; Buildings E and F on the south and southeast; the athletic fields on the south; the Century City border on the west; and Building A, Building B and the Graduation Lawn on the north. Maps of the campus and Prime Building Area is attached hereto as Exhibit J. In order to fully implement the Master Plan, the Prime Building Area must accommodate additional facilities that will allow for a 3,000 student build-out and a 1,000-car parking garage capacity.<sup>27</sup> Given the property constraints summarized here, to meet these goals BHUSD likely will need to put parking capacity underground, thus constructing a building with deep foundations. Notably, this is precisely the location that Metro and FTA propose to use for the tunnel to run the subway to the proposed Constellation Avenue station location.

## 8. The Current Projects

As part of the Master Plan implementation, several major projects are currently being considered by the Board and the FAC. These include:

- Adding a new CIF-compliant gymnasium and aquatics building while maintaining the current sports facilities;
- Adding a community sports administration, processing, and bus transfer facility;
- Adding a parking garage with at least 600 new spaces to replace parking spaces lost to anticipated construction;
- Adding additional community functions and classroom space to make up for undersized facilities in current structures; and

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<sup>27</sup> See the April 27, 2011 “Master Plan Implications Letter,” p. 10, described in detail in Section E.9 below.

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- Adding replacement classrooms for any existing space lost to the renovation program.

These were all identified in the 2008 Master Plan Project List and the Measure E Project List. Each of these has been the subject of significant discussion by the FAC over the course of several years. As noted above, agendas and minutes of FAC meetings are posted on the Board's website.

9. The Board Details Its Plans for BHHS to Metro

Metro has been well aware of BHUSD's plans for BHHS since at least 2008, when the Board released the Master Plan and City voters approved Measure E. BHUSD warned Metro of its plans in its October 12, 2010 comment letter to the DEIS. The letter states:

We hope you recognize that [BHUSD] is currently undergoing a much needed and extensive modernization of its buildings. The community supported this modernization plan by passing a \$334 million dollar bond measure in 2008. The Board is gravely concerned about the tunneling under Beverly Hills High School which would be required by all proposed routes other than the Santa Monica Boulevard route. We are specifically concerned that the underground parking structures and other proposed projects on the BHHS campus could directly conflict with the depth of the subway tunnels. . . . Stated simply, the Board objects to any project that would prevent the District from fully and safely developing its property.

BHUSD also provided Metro with a detailed memo describing its plans for BHHS and how a tunnel that went directly through the Prime Building Area would disrupt those plans. However, Metro has failed to take the Board's plans into consideration. This is evidenced by a March 31, 2011 letter (the "Existing Buildings Letter") from Metro's chief counsel to the Board's outside legal counsel. The Existing Buildings Letter states:

For several months, MTA has been trying to obtain from Beverly Hills Unified School District a copy of the plans and drawings for the existing buildings on its High School campus. As you know, the information contained in foundation drawings is extremely helpful in determining the feasibility of tunneling under developed property.

Despite knowledge of the Master Plan and Measure E, nowhere in the Existing Buildings Letter does Metro request information regarding the Board's future plans for BHHS. Nor has Metro

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ever requested information from the Board about those plans. A copy of the Existing Buildings Letter is attached hereto as Exhibit K.

In response to the Existing Buildings Letter, on April 27, 2011, the Superintendent of BHUSD sent Metro a letter entitled “Westside Subway Extension – Beverly Hills High School Master Plan Implications for Metro” (“Master Plan Implications Letter”). The Master Plan Implications Letter included a 24-page attachment that described the constraints on building (discussed above) and explained how a subway alignment that required tunneling underneath the Prime Building Area would have a devastating impact on the Board’s ability to implement its Master Plan. In the Master Plan Implications Letter the Board informed Metro that, among other things:

- The Prime Building Area is the *only* area available to BHUSD for large new school construction.
- BHUSD is very likely in the near future to build a new athletic facility in the area immediately above the proposed Metro tunnels, and this structure may include underground parking. Construction of this structure will be either concurrent to or ahead of construction of the Project.
- BHUSD plans to build at least one new education building and parking garage in the Prime Building Area, immediately above the location of Metro’s tunnels, with a lower floor elevation of no less than 235 feet. This elevation would eliminate any vertical separation between the building and the tunnels.
- Existing 1930s-era buildings exist on the BHUSD campus that will remain in operation for many decades and which would be over or adjacent to the tunnel alignment.
- Various site constraints, future growth issues and public access requirements may force BHUSD to substantially expand and maximize the amount of construction in the Prime Building Area.
- Future BHHS buildings may not use spread footing systems for their foundation. New construction may require deeper pile based foundation systems based on normal structural design criteria contained in the Field Act and as applied by the California Division of the State Architect.
- Portions of the BHHS campus have been actively producing oil for 100 years, and numerous abandoned oil wells, sumps, pipelines, and other facilities are scattered over

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the campus. Metro's proposed route intersects several known abandoned oil sumps of undetermined depth and abatement status.

Metro never responded in writing to the Master Plan Implications Letter. A copy of the Master Plans Implications Letter is attached hereto as Exhibit L.

The Agencies' treatment in the FEIS of the issues associated with tunneling underneath the BHHS campus in the FEIS is wholly unsatisfactory and does not meet the requirements of NEPA or Section 4(f). One searches the FEIS in vain to find any discussion of the fact that the tunneling under BHHS needed for the Constellation Avenue Station would impair the use and value of the property, including its well documented plans for improvements consistent with the use for which it qualifies under Section 4(f). Under NEPA, these approved local plans for use of the BHHS property needed to be addressed and considered in the selection of appropriate NEPA alternatives. The FEIS fails to meet this requirement.

Conclusion

On behalf of the BHUSD, we ask that the FTA prepare and circulate a Supplemental DEIS and FEIS that addresses the issues identified in this letter. We ask that the FTA not approve the selection of the Constellation Avenue station at Century City until the Supplemental NEPA documents are completed and adequately address the points that have been raise.

Sincerely,



Margaret N. Strand

cc: Peter Rogoff, Administrator (w/o encls.)  
Dorval R. Carter, Jr., Chief Counsel  
Leslie Rogers, Regional Administrator, Region IX  
Renee Marler, Regional Counsel  
Joonsik Maing, Assistant Regional Counsel (w/o encls.)  
Art Leahy, CEO of LA Metro  
Dr. Gary Woods, BHUSD Superintendent  
Dr. Brian Goldberg, President, BHUSD (w/o encls.)  
Lisa Korbatov, BHUSD Board (w/o encls.)  
Scott Gluck, Esq. (w/o encls.)



October 19, 2010

David Mieger  
Los Angeles County Metropolitan Transportation Authority - Metro  
One Gateway Plaza, MS 99-22-3  
Los Angeles, CA 90012-2952

Subject: Comments on the Metro Westside Subway Extension Draft Environmental Impact Statement/Draft Environmental Impact Report, State Clearing House No. 2009031083

Dear Mr. Mieger,

The City of Beverly Hills City Council strongly supports the Westside Subway Extension and has, on every opportunity, formally endorsed extension of the subway through the City of Beverly Hills under Wilshire Boulevard and Santa Monica Boulevards. Although strongly supportive of the Westside Subway Extension, the City has significant concerns about and strongly opposes the "Constellation North" and "Constellation South" alignment alternatives outlined in the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) that would tunnel under residential properties and Beverly Hills High School.

The City of Beverly Hills also expresses support for the 30/10 plan that would provide for construction of the entire Westside Subway Extension in one phase. This plan would bring critical mass transit to the entire Westside within a reasonable timeframe, promote job creation, and minimize construction impacts.

On August 4, 2009, the City Council, by Resolution No. 12692, unanimously adopted the recommendations of the citizen based Beverly Hills Mass Transit Committee supporting the Westside Subway Extension, including:

- Support of the Wilshire alignment, with the alignment at the west end of Beverly Hills continuing under Wilshire Boulevard and then veering southwest under Santa Monica Boulevard to Century City rather than under commercial or residential properties.
- Support of two stations within Beverly Hills near Beverly Drive and Wilshire Boulevard and near La Cienega Boulevard



On January 12, 2010, the City Council, by Resolution No. 10-R-12725, unanimously adopted amendments to the City's General Plan which included policies to support extension of the subway through Beverly Hills along the Wilshire Boulevard/Santa Monica Boulevard alignment with stations at La Cienega Boulevard and Beverly/Rodeo Drive.

The City of Beverly Hills with the assistance of its consultant, the firm Shannon & Wilson, Inc., has reviewed the DEIS/DEIR and is providing the following broad comments on the options studied in the document. In addition to these comments, a list of specific comments and technical questions is attached.

### **Alignment to Century City**

Of critical importance to the City of Beverly Hills is that the "Base" alignment from the Wilshire/Rodeo station (which tunnels under Wilshire and Santa Monica Boulevards) be selected as the preferred route.

The Westside Subway Extension alignment only deviates from Wilshire Boulevard to specifically provide transit service to Century City. The City of Beverly Hills agrees that the Westside Subway Extension should have a station to serve the employment densities of Century City but not at the expense or risk of tunneling under Beverly Hills High School and residential properties. According to the DEIS/DEIR, a "Constellation station" would cost \$56 million more than the "Base" Santa Monica Boulevard Century City station. We find no evidence in the DEIS/DEIR that a "Constellation" station would result in significantly higher ridership than the "Base" Santa Monica Boulevard station.

The alternative alignments in the DEIS/DEIR deviate from tunneling under Wilshire and Santa Monica Boulevards to provide mass transit to Century City. The City of Beverly Hills believes that the "Base" Santa Monica Boulevard station accomplishes the goal of providing a station to Century City. A station would provide a direct transit link to buses that operate along Santa Monica Boulevard. Pedestrian amenities and/or transit circulators could provide connections to the employment centers in Century City.

The two "Constellation" alignments would involve tunneling under residential properties, the Beverly Hills High School, and the site of the Beverly Hills Oil Field. Of paramount importance is the safety and well being the High School's students and faculty. There has not been adequate identification of 'wild cat' or 'capped' oil wells at this site. The attached comments address the City's specific concerns, request additional studies and identification of all mitigations required for this tunneling, before any further consideration of these alternate alignments. The City Council of Beverly Hills is unanimous in its strong opposition to tunneling under Beverly Hills High School when Century City can be provided a "Base" station on Santa Monica Boulevard. In reviewing the DEIS/DEIR, the City finds no conclusive evidence that proves the Santa Monica alignment not to be feasible because of seismic impact. If, however, the identified location of the "Base" Santa Monica Boulevard station is indeed determined to be problematic after further seismic study, the City of Beverly Hills strongly requests that Metro explore alternatives that do not involve tunneling under Beverly Hills High School or residential properties.

### **Station Locations**

The City of Beverly Hills finds the DEIS/DEIR consistent with the City of Beverly Hills formally adopted recommendations with respect to the station locations at La Cienega Boulevard and Beverly/Rodeo Drives.



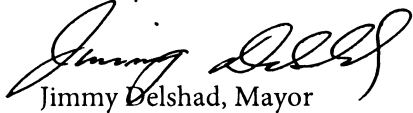
The City agrees that the “Base” station on the east side of La Cienega Boulevard is the preferred location to facilitate transfers to the north/south bus lines on La Cienega Boulevard. Also, the east side of La Cienega Boulevard is preferred because it is closer to the multiple family residential areas and has more viable staging and portal locations than the west side. To reduce pedestrian crossings at the highly congestion intersection at La Cienega/Wilshire Boulevard, the City requests that portals be placed both on the north and south sides of the street.

The City also concurs with the “Wilshire/Rodeo” station proposed in the DEIS/DEIR. Due to the large concentration of commercial businesses on both sides of Wilshire Boulevard, including South Beverly Drive, it is essential that portals be located both on the north and south sides of Wilshire Boulevard.

**Conclusion**

Thank you for the opportunity to comment on the Westside Subway Extension DEIS/DEIR. The City of Beverly Hills continues to strongly support the Westside Subway Extension along Santa Monica Boulevard and will work actively with Metro to resolve these critical issues.

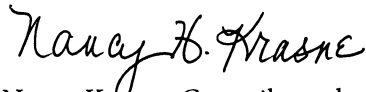
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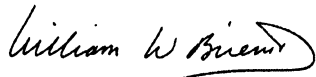
Jimmy Delshad, Mayor  
City of Beverly Hills



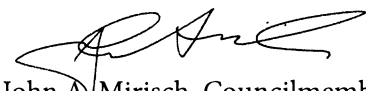
Barry Brucker, Vice Mayor  
City of Beverly Hills



Nancy Krasne, Councilmember  
City of Beverly Hills



William W. Brien, M.D., Councilmember  
City of Beverly Hills



John A. Mirisch, Councilmember  
City of Beverly Hills

Attachment A: City staff comments

Attachment B: Shannon & Wilson comments



The City of Beverly Hills has reviewed the Draft Environmental Impact Statement/ Draft Environmental Impact Report (DEIS/DEIR) and is providing the following comments to be addressed in the Final report along with the comments provided in the cover letter.

- 1) **CONSISTENCY WITH EXISTING ENVIRONMENTAL REPORTS-** Environmental Impact Reports were conducted for projects near Santa Monica Boulevard and Avenue of the Stars, and near Avenue of the Stars and Constellation Boulevard in 2006 and 2004 respectively. The environmental findings in this report should not be inconsistent with the findings in those reports, and if inconsistencies do exist, a full explanation regarding the inconsistent conclusions should be provided. Specific information regarding the EIRs follows:
  - a. Environmental Impact Report for the New Century City Plan associated with properties located at 10250 Santa Monica Blvd, 1801 Avenue of the Stars, and 1930 Century Park West (City of Los Angeles: ENV-2006-1914-EIR)
  - b. Environmental Impact Report for properties located at 10131 Constellation Blvd (City of Los Angeles: ENV-2004-6269-EIR)
- 2) **LOCATION OF THE BEVERLY HILLS LINEAMENT** – The Alternatives Screening and Refinement Following Environmental Scoping Report (page 4-15) suggests that the location of the West Beverly Hills lineament has been identified. However, prior to concluding that the location of this lineament is understood, additional analysis is necessary including the analysis recommendations provided by the City of Beverly Hills’ Geological/ Geotechnical Consultant (Attachment B).
- 3) **CENTURY CITY STATION AND ALIGNMENT** –
  - a. **Santa Monica Station** - If the Century City Station were to be located on Santa Monica Boulevard with an alignment along Wilshire and Santa Monica Boulevards, additional geological and geotechnical study is necessary, as has been detailed in the attached geological/ geotechnical comments.
  - b. **Constellation Station** - If the Century City Station were to be located on Constellation Boulevard, further study of the a “Constellation North” and “Constellation South” alignments as described in the report including additional geological and geotechnical study would be required and must include the following:
    - i. Location of the Beverly Hills Lineament –
      1. Additional geologic and geotechnical studies must be conducted as required above for the Santa Monica Blvd. station and alignment.
    - ii. Study of Abandoned Oil Wells –
      1. The location of abandoned oil wells on the Beverly Hills High School property, and other properties near the alignment must be exhaustively researched and analyzed, with all potential impacts fully disclosed and mitigated to the extent feasible. Nonetheless, the City strongly maintains that an alignment that goes under the High School is unacceptable.
      2. Means and methods of addressing abandoned wells within and near the potential subway tunneling area must be fully disclosed.

- iii. Further, the Final EIS/ EIR should analyze the effect on property values in and near the potential subway alignment during construction and thereafter.
  - iv. Further study of potential noise and vibration impacts from operation of the subway underneath residences and the High School is necessary to fulfill CEQA's mandate to disclose the Project's potential impacts
  - v. The EIS/EIR, at page 2-4, states that seven goals were established to screen out alternatives and identify those carried forward into the Draft EIS/EIR. The Alternatives that would traversed under Beverly Hills residential neighborhoods and the Beverly Hills High School do not meet several of these goals including Goals C and D (Cost effectiveness and Project Feasibility): These alternatives would have increased costs due to the need to acquire easements under private property, and invite additional risks in the event of any subsidence or damage to existing development. Further, as to Goal G (Public Acceptance), the City of Beverly Hills, the Beverly Hills Unified School District, and hundreds, if not thousands, of Beverly Hills residents and property owners oppose the alignments under the Beverly Hills High School site.
  - vi. While the City of Beverly Hills strongly objects to any alignments that traverse under its residential neighborhoods and High School, the City is not opposed to the Constellation station location, provided the alignment from the Wilshire/Rodeo station stays under Wilshire and Santa Monica Boulevards in Beverly Hills.
- 4) **ROBERTSON CONNECTION BOX** –The Final Noise and Vibration Technical Report indicates that the connection structure would be located west of the Wilshire/ Robertson intersection (page 5-14); however Appendix A indicates that the structure may be located within the intersection itself. If the connection box is to be constructed, the box should be located on either side of the Wilshire/ Robertson intersection but not located within the intersection, to avoid closing both Wilshire and Robertson during initial construction. Additionally, please provide more information about the connection box with respect to the following:
- a. Venting. The potential ventilation shaft studied in alternatives 1-5 and MOS 2 (temporary termination at Century City) for the connection structure, including the vent's location, purpose, and potential air emissions resulting.
  - b. Property acquisitions. Appendix C "Acquisitions" indicates that properties at the northeasterly corner of the Wilshire and Robertson intersection would be acquired (page C-3). These properties have been identified as "Acquisitions 34 and 35". The report indicates that these properties are currently under construction. Given that a new building with subterranean parking is being constructed on the sites, alternative sites should be identified in the event that the West Hollywood alignment is considered and the link between the West Hollywood line to the Wilshire line is located near Robertson Blvd.
  - c. If the Robertson Connection Box is installed, it would likely foreclose consideration of alternate locations in the future, such as a connection at the La Cienega station location, which would provide better ability for transfer between future rail lines. The City prefers

that the connection occur at La Cienega rather than installing the stand-alone connection box at Robertson. Before any final decision is made as to the Robertson Connection box, further study of the potential future connection in this area must be undertaken because the decision would likely foreclose other options.

- 5) **MITIGATION MONITORING PLAN** - The mitigation monitoring plan needs to include the following:
- a. Additional study and analysis is needed for economic losses during construction, potential construction related impacts and specific effective mitigation measures to address potential construction related effects on visual quality, air quality, noise and vibration, exposure to hazardous substances and other construction related aspects.
  - b. The Final Construction and Mitigation Technical Report should not be considered final at this time. Estimations for construction related impacts cannot be truly validated 20 plus years in advance of actual construction; therefore, construction impacts and mitigation need to be revisited and be re-certified within 4 or 5 years prior to the actual start of construction. Impacted intersections (both en-route and diverted), arterial street segments and local street segments should be identified at that time and re-counted for latest volume and speed data. Local thresholds and calculation methods in effect at that future time should be used to conduct the analysis. Further, potential mitigation measures proposed to address potential impacts that could occur within the City of Beverly Hills should be identified, designed in coordination with the City of Beverly Hills staff, and eventually be approved by the Beverly Hills City Council. This process shall continue when the actual date and schedule of construction is identified and a construction task force for Beverly Hills is formed.
  - c. The DEIS/DEIR must identify a means of maintaining the state of residential neighborhoods, and addressing any economic or operational impacts to the human environment that may occur in the commercial/ retail areas during construction of the station boxes. Of particular concern to the City of Beverly Hills are impacts that would result in unnecessarily high traffic volume in residential neighborhoods, or impacts that cause substantial business interruptions or closures, and thus result in a substantial loss of revenue for local businesses. Careful consideration of potential impacts must occur along with coordination with the City of Beverly Hills, in the development of construction phase planning and project design, including the location of construction management plans and implementation of various mitigation measures intended to address construction impacts. Related activities such as staging areas, haul routes, generators, construction parking and other necessary activities during the construction phase must be considered in subsequent plans.
  - d. Groundwater in the Hollywood basin is not contaminated and every effort should be taken to preserve water quality. The City of Beverly Hills has reverse osmosis treatment plant and processes water from the basin for beneficial use. Ground water needs to be addressed in one of three ways: 1. Pay the City for replacement water, 2. Inject the water back into the basin, or 3. Make beneficial use of the water. For further information please refer to the Beverly Hills Municipal Code Title 9, Chapter 4, Section 610.

- 6) **CONSTRUCTION PHASE** – The DEIS/DEIR includes draft design details for station location and design, track alignment and design, ancillary equipment and facilities, and construction related temporary facilities and operations. As the project proceeds into the preliminary engineering phase and forward to final engineering plans, the City requests the opportunity to review and comment on all design and engineering drawings and plans, construction plans and operational plans including but not limited to the following:
- a. All construction activity; truck routes, tunnel/dig activity, detours, lighting, and timing (p.3-69) in the City of Beverly Hills.
  - b. All lane closures, detour routes and means of local access, closure timing and length of closures, in the City of Beverly Hills.
  - c. Construction hours, work schedules and ancillary support requirements (lighting, materials delivery, hauling), for work in the City of Beverly Hills
  - d. Community outreach and notification alerting residents and businesses within and near the construction zone of land closures, timing of construction activity, etc., for work in the City of Beverly Hills.
  - e. Any plans for other construction related activities and facilities that may be planned for within the City and all necessary information on related environmental effects, such as traffic delays. Such construction related activities and facilities would include a slurry plant if planned within the City.

The intent of the requested City review is to allow City input on ways to minimize impact on the City's residences, businesses, and circulation systems.

- 7) **STAGING LOCATIONS** – The City acknowledges the challenges of identifying suitable staging locations at the two locations within the City of Beverly Hills. The City will work with Metro to select the most appropriate staging location. A mitigation plan will need to be developed to reduce the impact of station construction and operation to neighboring businesses, including hotels adjacent to the Beverly Rodeo station. Mitigation plans should address noise, times of construction, and economic impacts, including compensation for businesses directly impacted during the construction phase.
- 8) **OPERATION** –
- a. A number of ancillary equipment and facilities would be installed or constructed to support the subway. In the Final Noise and Vibration Technical Report, the Wilshire/ La Cienega station is not included on the list of stations that would have an emergency electrical power generator (page 5-13); however the Final Traffic Impact Analysis Report indicates that the station would have a generator (page 2-5). Please clarify if this station would have a generator or not. If the station would have a generator, please provide additional information on the generator, as well as any other generators that may be contemplated in the Beverly Hills segment. The Final Traffic Impact Analysis Report indicates that an emergency generator is proposed at the Wilshire/La Cienega station requiring approximately 50'x100' of off-street space (page 2.5, section 2.5.2). The report indicates that this would require property acquisition. Where is this generator planned? Is it to be located within the station space, or is additional land required? Please define

the location, and potential air quality, noise and vibration effects on any potential sensitive receptors in the area. If mitigation is necessary, please include any necessary mitigation in the mitigation monitoring program.

- b. The West Los Angeles area has not constructed one new fire station in 60 years, while the regional population has increased geometrically over that time. The DEIR/DEIS needs to study the ability for local emergency responders to effectively triage, transport and treat patients in the event of an accident or disaster on the subway system in the context of this increased population, lack of increase in emergency protection facilities and with consideration to the closure of nearby regional hospitals (Century City and Midway Hospitals). Additionally, the DEIS/DEIR and project must address fire suppression within the subway and protecting passengers from hazardous toxic fumes as a result of a fire.
  - c. The DEIR/DEIS should provide information on how Metro will ensure that there is sufficient liability coverage to recover costs and damages incurred by persons, property, businesses and other entities in the event of a subway disaster
  - d. Emergency Response. The Parklands and Other Community Facilities Technical Report (page 4-2) considers typical response times for local jurisdictions emergency responders (police and fire). The report, however, does not indicate if the local jurisdictions would be the first responders. Please clarify if local jurisdictions would be the first responders, or if this a function of county emergency services.
  - e. Emergency Response Times. Typical response times are provided for the local jurisdictions in the Parklands and Other Community Facilities Technical Report (page 4-2), however if the local jurisdictions are the first responders (police and fire) the report needs to study any potential for increases in the number of calls that may affect the current response times and local work force needed to maintain current response times.
- 9) **NOISE AND VIBRATION.** Please confirm that the analyses and conclusions presented in the Final Noise and Vibration Technical Report (page 6.2) are consistent with the City of Beverly Hills General Plan standards. The Beverly Hills General Plan establishes the following noise level standards:

**N 1.5 Noise Mitigation Measures.** Require noise mitigation measures for noise-sensitive receptors when a significant noise impact is identified. A significant noise impact occurs when there is an increase in CNEL, as shown in the table below. (Imp. 1.3, 2.1, 2.2)

<b>CNEL (dBA)</b>	<b>dBA Increase</b>
55	3
60	2
65	1
70	1
Over 75	1

***Community Noise Equivalent Level (CNEL)**—A 24-hour average  $L_{eq}$  with a 10 dBA “weighting” added to noise during the hours of 10:00 P.M. to 7:00 A.M. and an additional 5 dBA weighting during the hours of 7:00 P.M. to 10:00 P.M. to account for noise sensitivity in the evening and nighttime.*

- 10) **VENTING** – According to the DEIS/DEIR (page s-23), mid-segment venting will be required for segments that exceed 6,000 feet. At present, it appears that there will be no need for mid-segment vent shafts in Beverly Hills, since segment lengths are less than 6,000 feet. (See. Final Construction and Mitigation Technical Report (page 4-50). In the event that there are changes that require vent shafts, full disclosure an analysis of any potential impacts would need to be undertaken.
- 11) **TRAFFIC ANALYSIS** – The Traffic Impact Analysis Report analyzes potential traffic effects during construction and once the subway extension is operating. The following analysis should be conducted and the results addressed in the final report:
  - a. Thresholds (page 5-2). New Traffic Threshold of Significance criteria have been developed for the City of Beverly Hills for estimating impacts on traffic. The estimation of traffic impacts should be reanalyzed using these new criteria (Attachment C).
  - b. Review any changes resulting from changes to LOS “D” at signalized intersections and changes to residential ADT ranges. Of the 192 intersections studied, only one intersection produces any impacts along the proposed subway corridor. The Final Traffic Analysis Impact Report (page 3-15, section 3.2.2) states “the affected jurisdictions for the Westside...consider LSO D the minimum acceptable LOS. Therefore; LOS D will serve as the minimum acceptable standard for the Westside Extension Transit Corridor project.” The City recently changed the criteria at signalized intersections from 4% to a 3% threshold, thus approximately 19 intersections operating at LOS D, E and F with the Beverly Hills project area should be analyzed for impacts. Additionally, the criteria for residential streets impacts was also amended and require application of the new threshold levels (1-2,000 volume per day (vpd): 16% daily and peak hour; 2,001-4,000vpd: 12% daily and peak hour; 4,001-6,750vpd: 8% daily and peak hour; greater than 6,750vpd: 6.25% daily and peak hour.
  - c. The Level of Service (LOS) Analysis for selected intersections is based on using the HCM signalized intersection Capacity analysis software. City of Beverly Hills uses the ICU method for the LOS calculations. Basic assumptions are different in these two methods. For example, ideal flow per lane is assumed to be 1700 (vphpl) for HCM method and 1600 for ICU method. This yields different results for the LOS calculations. However, this is an inter-jurisdictional project and it is not appropriate to use the same method of the LOS calculations for the entire study area. Particularly, when the future (2035) LOS for the project is only compared with the “No Built” scenario of year 2035. In that perspective the HCM method of the LOS calculations for the purpose of the project impact evaluations as presented. But for evaluation of potential construction impacts which would be a primarily a local issue, staff requests that the ICU method of the LOS calculations be provided for Beverly Hills intersections and City’s thresholds of

significance criteria be used for such evaluations. Further, certain residential streets shall be evaluated for potential construction impacts. (Page 5-2)

- d. The report refers to a forecasting process used to develop Year 2035 AM and PM hour VISUM models for the No Build and each Build Alternative based on the Existing Conditions calibrated/validated VISUM model. It is not clear what assumptions were used in the development of this model. For example, what growth factor was used for the next 25 plus years? Did the Metro Regional Travel Demand Model that was used for origin-destination trips prove to be accurate of the study area, or did its trend disagree with the original assumptions? Although, the assumptions may have been noted here and there in the DEIS/DEIR; a collective and clear explanation of the basic assumptions used for developing the year 2035 model needs to be included. (page 4.3)
- e. The report states (Chapter 3, page 3.1.4 – Programmed Roadway Improvements), that “local jurisdictions are not planning any major roadway expansion projects through 2035” due to build-out conditions and high density. Although the City does not plan any widening efforts, the Santa Monica Blvd Improvement project will involve a major street reconstruction within the next 3 years to improve the physical road conditions and traffic signals/synchronization; the improved conditions will contribute to improved (existing and future) bus transit and connectivity at the SMB/Ave of the Stars in Century City, thus supporting the SMB station location. Consider any potential construction issues (street level and underground) if the 30/10 plan is pursued.
- f. The Final Traffic Impact Analysis Report (page 3-2) should include Burton Way/S Santa Monica Boulevard as an arterial street, even though it is not technically classified as an arterial. The street functions as an arterial, carrying over 30,000 vehicles daily. The traffic analysis should take into account Burton Way/ S. Santa Monica Boulevard.
- g. In the Final Traffic Impact Analysis Report (page 3-8), the traffic impact analysis must be revised to include the N Santa Monica Boulevard Improvement project and improved public transit/bus interface on N Santa Monica Boulevard between Century City, Beverly Hills, and West Hollywood. The analysis should include benefits to regional connectivity on Santa Monica Blvd, thus retaining the Santa Monica Boulevard alignment and station in Century City.

12) **GENERAL COMMENTS** – The following corrections and clarifications should be made to the final report:

- a. The DEIS/DEIR indicates that the City of Beverly Hills does not have a bicycle plan, however, the City adopted a preliminary bicycle plan in 1977 and is currently in the process for updating and formalizing that plan for implementation. (Chapter 3, pages 3-19, 3-21).
- b. It should be noted both in the text on page 3-19 and on the map on 3-20 that these are “existing” volumes of pedestrian activity. (Chapter 3, pages 3-19, 3-20).
- c. Please clarify what is meant by “A majority of the new trips would come from autos.” (Chapter 3, page 3-30). Is this for all scenarios tested?
- d. Population – Beverly Hills – The DEIS/DEIR states the City of Beverly Hills population to be 35,000. This is the resident population. The City of Beverly Hills General Plan

Technical Background Report (2005) estimated the City's daytime population to be as high as approximately 294,000 people, with up to an additional 46,000 people in transit through the City during the evening peak commute hours (Chapter 4, page 4-27).

- e. The Community and Neighborhood Technical Report (page 3.3, section 3.3.3), provides a summary of the Beverly Hills general plan. That summary should be corrected to state that: "Amendments to the city's general plan were adopted on January 12, 2010. The city's amended general plan includes the required elements for Land Use, Open Space, Circulation, Conservation, Noise, Safety, and housing and also includes optional elements for Historic Preservation, Economic Sustainability and Public Services. The City's bicycle master plan has been made free standing to facilitate future updating. Applicable policies from the City of Beverly Hills General Plan are:

- **LU 3.1 Conservation.** Conserve existing residential neighborhoods, and non-residential areas where new development builds on and enhances the viability of existing business sectors that are the City's strengths, promotes transit accessibility, is phased to coincide with infrastructure funding and construction, and designed to assure transitions and compatibility with adjoining residential neighborhoods. (Imp. 1.3, 2.1, 2.2)
- **LU 14.1 City Form.** Accommodate a balanced mix of land uses and encourage development to be located and designed to enable residents access by walking, bicycling, or taking public transit to jobs, shopping, entertainment, services, and recreation, thereby reducing automobile use, energy consumption, air pollution, and greenhouse gases. (Imp. 1.2, 2.1)
- **LU 17.2 Regional Coordination.** Cooperate with adjoining and regional agencies to jointly plan land uses, transportation, and infrastructure that provide a cohesive and integrated strategy to accommodate growth that is environmentally, economically, and socially sustainable. (Imp. 7.1, 7.2)
- **ES 3.3 Multi-modal Transportation.** Encourage and promote the use of existing public transportation to link these areas with the Triangle while developing alternative means of public transportation to ease congestion and facilitate successful, high-quality development throughout the City. (Imp. 3.7)
- **CIR 2.1 Metro Subway Extension.** Support the extension of the Metro subway extension through the City along Wilshire Boulevard with stations at Beverly/Rodeo and La Cienega to enhance transit service and increase transit ridership within the City and the West LA region. Explore other stops as appropriate. (Imp. 3.7)
  - **CIR 2.1a Linking Transit and Development.** Encourage appropriate development that may include parking for local transit riders, local-serving retail, high-end retail, restaurant and supporting uses in and around transit stops and stations. (Imp. 3.7)

- **CIR 2.2 Multi-modal Transit.** Consider a variety of transit services including rail, light rail transit, bus rapid transit, trolleys (streetcars), enhanced buses, express buses, local buses, school buses, and neighborhood shuttles to meet the needs of residents, workers, and visitors. (Imp. 3.7)
  - **CIR 2.3 Transit Design.** Support a well-designed transit system and stations to meet the mobility needs of residents and visitors, including seniors, the disabled and transit-dependent persons. (Imp. 3.7)
  - **CIR 2.4 Inter-jurisdictional Cooperation.** Work collaboratively with regional agencies and adjacent jurisdictions to improve transit service, accessibility, frequency, and connectivity, and to encourage increased ridership and fewer personal automobile trips. (Imp. 7.1)
  - **CIR 2.5 Transit Frequency.** Support increased-frequency transit service and capital investments to serve high-density employment, commercial, residential, or mixed-use areas and activity centers. (Imp. 3.7)
  - **CIR 2.6 Transit Priority Measures.** Consider improvements in transit efficiency and travel times by implementing transit priority measures to help bypass congested areas. Such measures may include transit signal priority, queue bypass lanes, and exclusive transit lanes. (Imp. 3.7)
  - **CIR 2.10 Interconnected Transit System.** Create or collaborate on an interconnected transportation system that allows a shift in travel from private passenger vehicles to alternative modes, including public transit, ride sharing, car-sharing, bicycling, and walking. Before funding transportation improvements that increase vehicle miles traveled, consider alternatives such as increasing public transit or improving bicycle or pedestrian travel routes. (Imp. 3.7)
- f. The Final Geotechnical and Hazardous Materials Technical Report includes a reference to the City of Beverly Hills General Plan Technical Background Report and indicates that it was released in 2008. Please correct the reference to list the report as being released in 2005.
- g. Headings in the Final Noise and Vibration Technical Report, section 2 and section 5, are illegible. In the same report, Figure 5-4 (Vibration Sensitive Locations) is blurry and the numbered locations presented on the map are difficult to read, especially for numbers located near Beverly Drive and Robertson Drive.
- h. The Parklands and Other Community Facilities Technical Report references the City of Beverly Hills general plan (page R-1). Please correct the reference to read as follows. The correct reference is, “The City of Beverly Hills General Plan was amended on 1/12/2010 and \_\_\_\_\_ is \_\_\_\_\_ available \_\_\_\_\_ at: [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)”

- i. The Parklands and Other Community Facilities Technical Report includes a list of policies (page 3-3) pulled from the City of Beverly Hills general plan. That list should be replaced with the City of Beverly Hills general plan policies as follows:
  - LU 2.2 **Public Streetscapes and Landscape.** Maintain and enhance the quality and health of the “green infrastructure” that contributes to the City's identity and quality of life, including its street trees, landscaped medians and parkways, parks, and open spaces, while seeking to conserve water resources. (Imp. 3.1, 3.6)
  - LU 5.4 **Complete Neighborhoods.** Maintain, improve, and, where necessary, expand parklands and community facilities to serve the City's neighborhoods. (Imp. 3.1, 6.1)
  - LU 13.1 **Adequate Community-Supporting Uses.** Seek to ensure that adequate public and private community-supporting facilities and services are located throughout the City. (Imp.3.1, 6.1)
  - LU 13.5 **Expansion of Existing Community Facilities.** Consider opportunities for the expansion of existing, and the development of new, parklands, recreational facilities, schools, lifelong learning, cultural, and other public and quasi-public facilities, provided that such improvements are cohesively integrated with, are complementary to, and are compatible with, existing development and adjoining land uses. (Imp. 3.1, 6.1)
  - LU 13.8 **Residential Care Facilities.** Encourage the development of senior daycare facilities, assisted living facilities, hospice, child care, and other residential care facilities in appropriate areas throughout the City. (Imp. 2.2)
  - LU 13.9 **Assembly Facilities.** Encourage and support the development of assembly facilities for social, cultural, educational, and religious organizations in appropriate locations of the City. (Imp. 2.1, 7.3)
  - **LU 13.10 Parks and Open Spaces.** Seek to expand the City's parklands, greenways, and open spaces as land becomes available or as existing buildings are demolished. Consider alternative prototypes and standards for park development in urban areas where available land is limited. (Imp. 3.1, 6.1)
  - **OS 8.1 Park and Open Space Standards.** Strive to meet National Recreation and Park standards for the provision of parks space based on the community's park needs and the number of residents. (Imp. 2.1)
  - **OS 8.4 Parkland Acquisition Criteria.** Assess opportunities to acquire additional land at appropriate locations for the development or expansion of parks. Use the following criteria when considering acquisition for parkland:
    - a. City's identified current and projected needs for recreation and sports facilities
    - b. City's needs for recreation facilities based on location of existing facilities
    - c. The preservation of natural resources and historic and cultural areas
    - d. Ease of accessibility

- e. Usability of proposed parklands considering topography and other landform constraints
- f. Fiscal impact on the General Fund for any immediately needed refurbishments and ongoing maintenance
- g. The existence of a deficiency in a particular sector of the City.
- h. Potential to improve the aesthetics along a street or in a neighborhood, or to enhance the City's garden quality in general. (Imp. 1.3, 6.1)
- OS 8.5 **Urban Parks.** Encourage and allow opportunities for new development to provide small plazas, pocket parks, civic spaces, and other gathering places that are available to the public to help meet recreational demands. (Imp. 2.1, 2.2)
- OS 8.7 **Recreational Parkland Replacement.** Protect parkland from non-recreational uses that result in loss of acreage used for recreational purposes; any loss of park land shall be replaced with acreage suitable for comparable uses so that the City's current park land acreage is not decreased. (Imp. 1.3, 2.1)
- S 3.3 **Fire Protection Services.** Require that new development and re-development of structures provide adequate fire safety features and responder access so as not to cause a reduction of fire protection services below acceptable, safe levels. (Imp. 2.4)



October 14, 2010

City of Beverly Hills  
345 Foothill Road  
Beverly Hills, California 90210

Attn: Mr. Aaron Kunz

**RE: GEOTECHNICAL ENGINEERING COMMENTS LETTER, WESTSIDE  
SUBWAY EXTENSION (WSE), REVIEW OF DRAFT ENVIRONMENTAL  
IMPACT REPORT (DEIR), BEVERLY HILLS, CALIFORNIA**

We understand the City of Beverly Hills (City) will submit this letter with their DEIR comments to the Los Angeles Metropolitan Transportation Authority (Metro). The purpose of this letter is to summarize our review findings from our Geotechnical Engineering Report dated October 13, 2010 (Report) and provide a brief statement of qualifications regarding our tunneling experience.

#### **COMMENTS ON WSE DEIR**

The following comments are based on the recommendations provided in our Report. Refer to this Report for details on these comments for the WSE DEIR:

**General:** The appendices for the DEIR Geotechnical Report were not included on the Metro website. The appendices include subsurface profiles and an environmental database search of the alignment. These appendices should be made available to the public.

**Fault Rupture:** Given the uncertainty of the Santa Monica Fault and West Beverly Hills Lineament, further evaluation to identify fault traces should be completed prior to final location of the Santa Monica base station. The Santa Monica Fault could have one or more distinct fault traces that could impact the station location. The trace(s) would be identified during the geotechnical investigation of the project using a combination of geophysical techniques, subsurface explorations, and/or trenching (where possible). If a trace is discovered passing through the proposed station, then the station would likely need to be relocated.

**Ground Shaking:** We noted a discrepancy in the design earthquake probabilities for the Maximum Design Earthquake (MDE). The peak ground acceleration and recurrence interval values stated in the DEIR for the MDE are consistent with a design earthquake having a 2 percent probability of exceedance in 50 years. However, the DEIR defines the MDE as having a

1 percent probability of exceedance in 100 years. Please review and correct the MDE information.

**Liquefaction:** Without additional geotechnical studies, we disagree with the DEIR assumption that liquefaction would not impact the tunnels or station foundations. The liquefaction depth should be investigated to at least 20 feet below the lowest expected foundation elevation, in this case the tunnel invert and station foundation. If liquefiable soils are still present at these depths, the explorations should extend at least 10 feet deeper.

**Subsidence:** Surface settlement monitoring, with closely spaced survey points on streets, utilities, and buildings, as well as ground deformation monitoring instrumentation placed in boreholes, will be needed to assess ground behavior during and after tunneling. Areas susceptible to potentially large ground losses, resulting in unacceptable settlements, are curved alignment and cross passages. In the City, the West Hollywood Connection alignments and Constellation alignments are curved. Cross passages typically connect the twin tunnel every 700 to 800 feet.

**Hazardous Subsurface Gases:** Perhaps the greatest risk of gas infiltration into a tunnel or subsurface station may be associated with earthquakes, either through cracking of liners or walls, offset of gasketed tunnel liner joints, and/or disabling the ventilation system. The earthquake risk should be highlighted and discussed in the final report.

**Hazardous Waste and Materials:** We recommend additional research of properties that are in close proximity to the proposed stations and connection structure, as the potential for soil and groundwater contamination would impact these facilities. Additional studies to confirm the presence or absence of known and unknown oil wells should be performed.

**Noise and Vibration:** Operational noises and vibrations are generally not noticeable with the exception of businesses requiring precision measuring devices. Special mitigation measures, including vibration isolation measures for foundations, could be needed in these cases. During construction, tunneling and cut-and-cover station excavation-induced vibrations are typically on par with bus and trash truck noise and vibrations. Noise and vibrations are the most noticeable at night, when background noises are at a minimum. Additional mitigation measures, such as utilizing sound walls, sound proofing, mufflers, and modifications to safety warning devices, should be evaluated. Nevertheless, some residents and hotels could notice nighttime noise and vibration during construction. This could sometimes be reduced by installing multiple pane windows, wall insulation, and other sound-reducing measures for affected residences.

**Staging Areas and Construction Traffic:** We recommend that the City and Metro begin evaluating the potential locations for staging areas within a couple blocks of the Wilshire/La Cienega base and option stations, the connection structure, and the Wilshire/Rodeo station. Significant construction traffic should be anticipated in the vicinity of these areas for soil disposal, backfill, concrete, and other construction material deliveries.

**Public Awareness/Outreach:** We suggest a public relations campaign be coordinated with the pre-construction surveys and utility relocation. The City should coordinate these efforts with Metro to provide as much notice as possible during these early stages of the project.

**Dewatering:** The EIR/EIS should evaluate the potential for disposal of large quantities of water into the City's wastewater systems from the possible excavations at the Wilshire/La Cienega base and option stations, the connection structure, and the Wilshire/Rodeo station. Further, consideration should be given to beneficial use of any extracted water, in accordance with the codes and policies of the City.

**Excavation and Tunneling Obstructions:** Significant project disruptions due to encounters with underground obstructions (abandoned tiebacks, oil well casings, etc.) could be greatly reduced by performing the necessary literature research, case history evaluations and site investigations to determine what if any obstructions are likely to be present and in what quantities. This should be completed during the EIR/EIS phase so that the potential for environmental impacts and potential mitigation measures associated with obstruction along the various alignment alternatives is analyzed and disclosed.

### STATEMENT OF QUALIFICATIONS

Over the last 30 years, Shannon & Wilson's current underground staff has provided geotechnical services for tunneling on over 900 projects. Our experience encompasses all phases of underground engineering from conceptual design, through design and specification, to construction support. We have state-of-the-practice experience in evaluating and choosing the right tunneling technology for subsurface and construction conditions. Our experience includes working under "live" road conditions and with minimal impact on the environment. Shannon & Wilson's tunneling experience and expertise includes:

City of Beverly Hills  
Mr. Aaron Kunz  
October 14, 2010  
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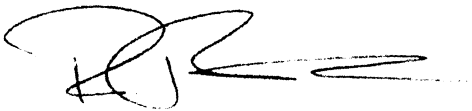
SHANNON & WILSON, INC.

- ◆ Exploration using a wide range of mapping, geophysical and boring techniques suitable for the various soil and rock conditions at different sites
- ◆ Groundwater evaluations to assess dewatering requirements, impacts of dewatering on adjacent structures, and the potential for moving contamination towards the excavation
- ◆ Soil and rock property evaluations from field and laboratory tests to provide reliable input for design
- ◆ Prediction of soil and rock loads on shafts, tunnels and underground openings using both empirical and computer techniques such as finite difference codes
- ◆ Estimation of likely impacts of underground construction on adjacent facilities
- ◆ Preparation of technical specifications and plans such as: tunnel excavation, tunnel support, dewatering, portal shoring, and geotechnical instrumentation
- ◆ Implementation of field instrumentation systems to measure the loads, stresses, deformations, and groundwater levels associated with underground construction

Shannon & Wilson is experienced in a wide range of tunnel excavation methods and the impacts of geotechnical conditions, including: drill and blast excavation, earth pressure and slurry pressure balance tunnel boring machines, jack and bore tunnels, microtunneling, horizontal directional drilling and pipe ramming. We have been involved in the geotechnical aspects of tunnel liner support systems including: grouted dowels and shotcrete, cast-in-place reinforced concrete, bolted and gasketed precast concrete segments, welded and snap together steel pipe sections, gasketed concrete pipe sections, and fiberglass pipe sections. We have worked on trenchless projects ranging from 8-inch diameter horizontal directional drill conduits for utility lines, jack and bore and microtunnels ranging from 24-inch to 16-foot diameter, to the world's largest diameter soft ground tunnel with an outside diameter of 85 feet.

Sincerely,

**SHANNON & WILSON, INC.**



R. Travis Deane, P.E., G.E.  
Associate

RTD/rtd

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May 5, 2011

*VIA HAND DELIVERY*

Arthur T. Leahy  
Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

Re: Evaluation of Purported Seismic Issues Associated with the Santa Monica  
Boulevard Base Station

Dear Mr. Leahy:

This law firm represents Beverly Hills Unified School District ("District"). By this letter, we wish to present evidence relating to certain seismic issues raised in the Metropolitan Transit Authority's ("MTA") Draft Environmental Impact Statement/Environmental Impact Report for the Westside Subway Extension ("Draft EIS/EIR") and the August 2010 Geotechnical and Hazardous Materials Technical Report ("Geotechnical Report"). In particular, we wish to address the suggestion contained in various places throughout the foregoing documents that the presence of the Santa Monica Fault in the vicinity of the original Santa Monica Boulevard Base Station presents a risk of surface rupture from earthquake which may require the relocation of the Base Station, specifically to the Constellation Boulevard site described in the Draft EIS/EIR.

In order to test the foregoing theoretical suggestion that the Century City station should be relocated from the Base Station site to the Constellation Station site because of earthquake concerns, the District engaged Miles Kenney, PhD, PG to review existing technical literature and provide a geomorphic evaluation of the eastern Santa Monica Fault Zone and potential impacts from surface rupture at the two alternative proposed Century City subway station sites. Dr. Kenney's May 2, 2011 report is enclosed. In addition, the District engaged Loring Wyllie, a licensed structural engineer specializing in earthquake considerations of structural design and a Senior Principal at highly regarded structural engineering firm, Degenkolb Engineers, to evaluate the station alternative station locations from a structural engineering seismic design perspective. Mr. Wyllie's May 3, 2011 report is also enclosed for your review and consideration.

### **The Draft EIS/EIR**

The September 2010 Draft EIS/EIR includes as an Option 4 two alternative sites for the station intended to serve the area in and around Century City. The original station site, sometimes referred to in the Draft EIS/EIR as the Base Station, would be located generally at the intersection of Santa Monica Boulevard and Avenue of the Stars. The alternative or replacement site, referred to in the Draft EIS/EIR as the Constellation Boulevard Station, would be located under the center of Constellation Boulevard, straddling Avenue of the Stars and extending westward to east of MGM Drive.

The Beverly Hills Unified School District supports the Westside Subway Extension and particularly supports the placement of the Century City subway station at the original Base Station site on Santa Monica Boulevard. The location of the Base Station is markedly superior to the Constellation Boulevard Station by all relevant criteria, including: (1) it is considerably less costly; (2) it will attract greater ridership because of its proximity to more Century City office space and accessibility to connecting bus lines as well as the Beverly Hills community; and, (3) it substantially reduces travel time to Westwood. However, the District strongly opposes the Constellation Boulevard site because, among several other reasons, locating the station on Constellation Boulevard will necessarily require that the subway tunnel be constructed directly beneath Beverly Hills High School and through the Beverly Hills Oil Field. On the other hand, locating the station at the original Santa Monica Boulevard Base Station site avoids completely tunneling beneath the high school.

### **The Enclosed Kenney and Wyllie Reports**

The MTA's Draft EIS/EIR and Geotechnical Reports suggests that the Century City station should be relocated from the original Base Station site because of purported risks and hazards from surface rupture from an earthquake. The District engaged Miles Dr. Mile Kenney, a geologist, and Loring Wyllie, a structural engineer to test the MTA's suggested basis for relocating the station. Kenney and Willie's reports may be summarized as follows:

Dr. Kenney's Report states that in order to determine with precision the style, location and magnitude of faulting the subject area it would be necessary to review site specific subsurface data.<sup>1</sup> However, based on existing information Kenney suggests and

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<sup>1</sup> For several weeks, District consultants have informally requested the MTA to produce the geotechnical data and reports relating to its geotechnical investigation of the area in and around Century City, including in the vicinities of the Beverly Hills High School and both the Base Station and the Constellation Boulevard Station. After the District's informal efforts to obtain this data proved unsuccessful, the District served the MTA with requests for documents pursuant to the California Public Records Act in order to obtain all geotechnical and related investigations at or around the high school and in connection with the alternative Century City station locations. The MTA has neither responded to the foregoing Public Record Act requests nor produced any relevant documents. The District must obtain, review and have the opportunity to comment on all geotechnical documents *before* the MTA selects the location for the Century

analyzes three alternative fault models in the area of the Century City stations. Given the likely characteristics of the faulting models and the fact that the Santa Monica Boulevard Base station would be located at the far eastern extremity of any such fault where the fault's active surface expression is weakening, Kenney expects that the slip across the fault in the event of an earthquake at the Base Station site would likely be very small, in the order of centimeters. On a side note, Kenney's cross-sectional analysis also suggests that the Constellation Boulevard Station rests on a deep man-made artificial fill which, as discussed in Wyllie's Report summarized below, may be significant in assessing potential damage to the Constellation Boulevard Station from ground shake during an earthquake.

Based on his expertise and relying in part on Dr. Kenney's findings, Mr Wyllie also concludes that additional information is necessary in order to make a solid case supporting either the Base Station or the Constellation Boulevard Station. However, Wyllie's report is significant in that it states: (1) under certain fault models suggested in the Kenney Report displacement would either not occur in the area of the Base Station or such displacement would be minimal; (2) certain other fault models suggested by Kenney would place the Constellation Boulevard Station at greater risk from earthquake than the Santa Monica Base Station; and, (3) the biggest vulnerability of either the station from earthquake would be from lateral racking due to ground shaking than from fault displacement and the Constellation Boulevard Station would be more vulnerable to lateral racking as it appears to be located in deep fill. In addition, the Wyllie Report questions the validity of the Draft EIS/EIR to the extent that it states that the station should be located away from the vicinity of Santa Monica Boulevard and Avenue of the Stars because of seismic concerns because the geologic knowledge was not known in September 2010 with enough certainty to make such statements.

The MTA should not base its selection of a location for the Century City subway station on any purported risks and hazards associated with faulting in the area of the Santa Monica Boulevard Base Station, nor should the staff make any recommendations with respect to such selection, unless and until the MTA has produced to the District all documents that are the subject of the District's pending Public Record Act requests *and* the District and its consultants have had a reasonable opportunity to review such documents and submit comments.

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City station. The District's request for all relevant geotechnical information is all the more compelling because the MTA concedes that its consultant Mactec will "present the results of their fault study in a forthcoming addendum report." (Geotechnical Report, § 3.2.4, at page 3-14. So far, the MTA failed to produce the Mactec addendum report or any other requested geotechnical data.



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May 3, 2011

Mr. Mark Rochefort  
Alston & Bird LLP  
333 South Hope Street, 16<sup>th</sup> Floor  
Los Angeles, California 90071

Reference: **Siting of Century City Station**  
**MTA Westside Subway Extension**  
**[Degenkolb Job Number B1138002.00]**

Dear Mr. Rochefort:

As requested, I have reviewed information contained within the September 2010 Draft EIS/EIR for the MTA Westside Subway Extension relative to the two proposed options for the Century City Station. The first option, called the Base Station, would locate the station under Santa Monica Boulevard at the Avenue of the Stars. The alternative would locate this station under Constellation Boulevard also at the Avenue of the Stars. I have also reviewed a Report by Miles Kenney of Kenney GeoScience dated May 2, 2011, regarding preliminary literature and geomorphic evaluation of the eastern Santa Monica Fault Zone and potential impacts associated with fault surface rupture relative to these two proposed station locations.

The MTA's Draft EIS/EIR and related documents for the Westside Subway Extension suggest that, because of seismic concerns, the Century City station should possibly be relocated from its original planned location at the intersection of Santa Monica Boulevard and Avenue of the Stars ("Santa Monica Base Station") to Constellation Boulevard ("Constellation Station"). Specific statements supporting this suggestion include the following:

- a) "For the Century City Station, the feasibility of the Santa Monica Boulevard (Base) site assumed in the Base Alignment for the five Build Alternatives is compromised by its close proximity to the Santa Monica Fault which runs directly beneath Santa Monica Boulevard in this area. The optional Constellation site is farther from the fault and would have a lower seismic risk." *Draft EIS/EIR, Executive Summary, at p. S-62.*

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- b) "Because surface faulting is generally confined to a relative narrow zone 10s to several hundred feet wide, avoidance can be a practical means of avoiding surface fault rupture hazards for facilities such as stations." *Draft EIS/EIR, Chapter 4, Section 4.8.3, at p. 4-161.*
- c) "For the Century City Station, the feasibility of the Santa Monica Boulevard site assumed in the Base alignment for the five Build alternatives is compromised by its close proximity to the Santa Monica fault. The optional Constellation site is farther from the fault and would have a lower seismic risk." *Draft EIS/EIR, Chapter 7, Section 7.3.4 at p. 7-12.*
- d) MTA's EIS/EIR also states that the capital cost of the project will be increased by \$60.4 to "more than" \$140 million if the Century City station is relocated to the Constellation Blvd. site. *Draft EIS/EIR, Chapter 7, Section 7.3.4, at p. 7-12.*

The Santa Monica Fault Zone has been documented in various studies to come on shore in Santa Monica and extend inland to the Cheviot Hills near Century City. This is a fault length of about 12 to 14 kilometers however it is believed the fault extends offshore for a total length of perhaps 40 kilometers. A fault of this length might generate a displacement of about 2 meters, although in the Century City location near the end of the fault, the fault offset might be only one meter or less.

We have relied on the Report by Miles Kenney of Kenney GeoScience for information regarding the Santa Monica Fault. He notes that there is no clear understanding of the location, magnitude and style of deformation associated with the Santa Monica Fault in the vicinity of Century City. Detailed geologic and geotechnical studies are needed in the Century City region to define the nature and potential of the fault and how it might affect the two station locations.

There may be a lineament attributed to the Santa Monica Fault along the north side of Santa Monica Boulevard. This is illustrated in the Kenney report. If this is the surface fault expression and the fault is a north dipping reverse fault, fault displacement would all be to the north and the location of the Santa Monica Base Station would be free of faulting in its proposed location. Since to the west of the station the tunnels must curve north towards Westwood and cross this fault location, it may be desirable to relocate the station slightly to the south under the east bound lanes of Santa Monica Boulevard to allow the tunnels to cross the fault in a shorter distance as well as providing a bit more margin between fault and station. If the fault is more of a strike-slip fault as suggested by Kenney, the same recommendations would apply if the fault location is just north of Santa Monica Boulevard.

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If the active portions of the eastern end of the Santa Monica Fault Zone near Century City are really a series of bifurcated blind faults at depth with some slip partitioned to each fault causing local uplift and relatively small scale offsets across numerous strands, different concerns arise. Since this fault zone is believed to be south of the lineament on the north side of Santa Monica Boulevard, the proposed Constellation Station location may be at greater risk due to fault displacement.

A few comments are appropriate regarding how a Metro Rail Station might behave if it is very close to a fault strand that offsets. The Century City stations are both approximately parallel to the known or suspected fault traces so we will focus on that situation. A strike-slip fault displacement may exert longitudinal forces on the station and the station is extremely rigid and strong in that direction due to the thick and strong side walls, mat and roof. We would expect very little damage except to side entrance tunnels, etc., if they do not have an expansion joint. Likewise, the attached tunnels need to have provision for longitudinal relative movement where they connect to the station. If the faulting is more vertical in slip, concern would be more lifting one side of the station leaving it out of level. In both of these cases the station may be strong and rigid enough to force a small fault displacement to the side of the station. The biggest vulnerability of the station would seem to be lateral racking more from ground shaking than fault displacement. This was previously predicted for MTA's Hollywood Boulevard stations and caused a failure of a station in Kobe in 1995. The Constellation station would be more vulnerable to this lateral racking as it appears to be located in deep fill soils.


In conclusion, the geologic information is too incomplete at this time to make a solid case supporting either the Santa Monica Base Station or the Constellation Station with respect to performance relative to the Santa Monica Fault. Further geologic and geotechnical studies are needed to document the fault types and location in this area. Fault location should be easier to document at Santa Monica Boulevard as the soils are native soils at that location where fault activity at shallow depths should be preserved. In contrast, the Constellation Station is at a site with 40 to 45 feet of fill which covers any evidence of recent fault displacement. The Santa Monica Boulevard Base Station should be considered the first choice since it appears to be \$60 to \$140 million more economical unless fault offsets are documented exactly at the station location. Both station locations are considered "near fault" and the Constellation Station should be more vulnerable to near fault racking from ground shaking as it is located in deep fill. We question the validity of the three quoted statements in the Draft EIS/EIR quoted at the beginning of this letter as we do not believe the geologic knowledge was known in September 2010 with enough certainty at that time to make those statements. When adequate geologic information is obtained it should be thoroughly peer reviewed due to the lack of clear information available at this time.



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Please call if you have any questions. We can be more definitive in our recommendations once the geologic situation is more clearly documented and understood.

Very truly yours,  
DEGENKOLB ENGINEERS



Loring A. Wyllie, Jr.  
Senior Principal, SE 1648