Appellate Case No.: B340838

IN THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE

LOS ANGELES PARKS ALLIANCE,
Petitioner and Appellant,
v.
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
Respondent

ZERO EMISSIONS TRANSIT; LA AERIAL RAPID TRANSIT TECHNOLOGIES LLC ; DOES 1-10
Real Parties in Interest

Appeal from Judgment in Los Angeles Superior Court
Department 54
The Honorable Maurice A. Leiter
Case No. 24STCP00944

Related to Appellate Case No. B340931
(LA Sup. Ct. Case No. 24STCP00965)

APPELLANT'S OPENING BRIEF

LAW OFFICE OF JOHN P. GIVEN
John P. Given, SBN: 269787; john@johngivenlaw.com
2309 Santa Monica Boulevard, #438
Santa Monica, CA 90404
Tel: (310)471-8485
Attorney for Los Angeles Parks Alliance

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION THREE	COURT OF APPEAL CASE NUMBER: B340838
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 269787 NAME: John P. Given FIRM NAME: Law Office of John P. Given STREET ADDRESS: 2309 Santa Monica Boulevard #438 CITY: Santa Monica STATE: CA ZIP CODE: 90404 TELEPHONE NO.: (310) 600-7261 FAX NO.: E-MAIL ADDRESS: john@johngivenlaw.com ATTORNEY FOR (*name*): Los Angeles Parks Alliance	SUPERIOR COURT CASE NUMBER: 24STCP00944
APPELLANT/ PETITIONER: Los Angeles Parks Alliance RESPONDENT/ REAL PARTY IN INTEREST: LA County Metropolitan Transportation Auth.; LA Aerial Rapid Transit Technologies, LLC; Zero Emissions Transit	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Los Angeles Parks Alliance

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 10-7-2024

John P. Given
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

STATE CASES

FEDERAL CASES

STATE STATUTES AND REGULATIONS

California Code of Regulations

Evidence Code

Government Code

Labor Code

Public Resources Code

FEDERAL STATUTES AND REGULATIONS

OTHER AUTHORITIES

I. INTRODUCTION.

Los Angeles Parks Alliance (Appellant or *LAPA*) challenges Los Angeles County Metropolitan Transportation Authority (*Metro*)'s certification of an environmental impact report and related approvals for a private aerial transit gondola project to transport passengers between Los Angeles Union Station and Dodger Stadium (the *Project*). Metro is not the proper lead agency. The EIR does not analyze and mitigate all significant environmental impacts. These violations require setting aside the EIR and related approvals.

Project construction and operation would take nearly two acres from the western side of Los Angeles State Historic Park. The Project would build a massive gondola station primarily within the park and string cable "ropeways" across the park for gondola cabins to traverse park airspace. The Project would destroy dozens of trees, require significant changes to park programming, and dramatically alter the visitor experience. Project impacts on this park, which serves a historically working-class, park-poor community, cannot be mitigated.

State parks are held in trust for the people of California. The Department of Parks and Recreation ("State Parks") has no authority to allow private transit infrastructure in a state historic park to benefit a distant landowner. The court erred by allowing Metro to defer consideration of California's statutory regime that protects our state parks from improper exploitation by private actors.

The public was not fully informed of all Project impacts when Metro certified the EIR. Metro and the court erred by concluding Metro is the proper lead agency and the EIR is legally sufficient. The EIR asserts a reduction in vehicle trips to Dodger Stadium for games and special events will lower greenhouse gas emissions and vehicle miles traveled but fails to account for new *daily* vehicle trips due to reasonably foreseeable development that will make the stadium a year-round destination.

LAPA respectfully requests this Court direct the trial court to issue a writ of mandate ordering Metro to set aside the Project EIR and related approvals and refrain from further action on the Project until fully compliant environmental review is completed by the proper lead agency.

II. STATEMENT OF APPEALABILITY.

Los Angeles Parks Alliance appeals a final judgment denying a petition for writ of mandate under Code of Civil Procedure section 904.1. Judgment was entered September 6, 2024. (Joint Appendix (*JA*) 1158-62.)

Appellant's Notice of Appeal was timely filed September 11, 2024. (JA 1186-89.)

III. QUESTIONS PRESENTED.

This appeal presents the following questions. Did Metro violate CEQA by certifying an EIR that:

a. Deferred consideration of statutory conflicts barring the private exploitation of state parks?

b. Failed to include reasonably foreseeable development and ignored related growth-inducing and cumulative impacts?

c. Failed to consider aesthetic impacts beyond the scope of thresholds of significance and failed to follow Metro's selected analytic methodology?

d. Was prepared by an improper lead agency?

In addition, LAPA joins the following questions in The California Endowment's related appeal:[1]

a. Was Metro's clear failure to provide timely notice to the Santa Monica Mountains Conservancy as a trustee agency a prejudicial violation of mandatory procedures?

b. Did Metro fail to adequately analyze alternatives and provide support for rejecting feasible mitigation measures and an environmentally superior alternative?

[1] LAPA incorporates Appellant's Opening Brief in case number B340931 by reference under Rule 8.200 subdivision (a)(5). LAPA joined TCE's briefs in the trial court. (JA 917, 1105.)

IV. STATEMENT OF FACTS.

A. The Project's Purpose, Alignment, and Components.

The Project's overall purpose is "expand[ing] mobility options for transit riders through a permanent direct transit connection between LAUS and Dodger Stadium." (AR 90280.) The Project is a "first/last mile connector" and "iconic new regional tourist destination." (AR 89869.)

The Project's proposed 1.2-mile alignment begins at Alameda Station, adjacent to LA Union Station and El Pueblo de Los Angeles Historical Monument. The alignment proceeds to Spring Street, traverses Los Angeles State Historic Park's western side, turns left at the corner of Broadway and Bishop's Road and crosses the SR-110 freeway, ending at Dodger Stadium. (AR 8392-93, 8397.) Components include three passenger stations, a non-passenger junction, three towers, cable ropeways, and gondola cabins. (AR 8392-93.)

Alameda Station would be located between Union Station and El Pueblo in the center of Alameda Street. It would be 173 feet long, 109 feet wide, and 78 feet high. (AR 8393.) Chinatown/ State Park Station would be built primarily on Los Angeles State Historic Park[2] at the park's main pedestrian entrance. (AR 8394; see AR 695, AR 46458.) The station would be 200 feet long, 98 feet high, and 80 feet wide. (AR 8394.) Alameda and Chinatown/State Park stations would feature elevated boarding

[2] About 85 percent of the station footprint and more than 60 percent of the station overhang are within the park. (AR 8554.)

platforms so cabins have space above "people, cars, trees, and other urban elements." (AR8513.) Dodger Stadium Station would be 194 feet long, 80 feet wide, and 74 feet high. (AR 8395.)

Alameda and Alpine Towers, both 195 feet tall, would be located along Alameda Street. (AR 8393.) Stadium Tower would be on private property between the SR-110 freeway and the stadium's downtown gate and would be 179 feet tall. (AR 8394.)

Gondola cabins suspended from cable ropeways would hold between 30-40 passengers (AR 8509-10, 8391, see AR 8512.) Cabin height would vary from ground level at Dodger Stadium (AR 8395) to 175 feet beneath Alameda and Alpine Towers. (AR 8393.) Cabins would traverse LA State Historic Park just 26 feet above the ground at the lowest point. (AR 102262.) At peak operation "cabins would move at a maximum speed of 13.4 miles per hour with headways of approximately 23 seconds." (AR 8543.) The system can move "approximately 5,000 people per hour per direction." (*Id*.)

The Project would require aerial clearance between cables and gondola cabins and people, vehicles, vegetation, and buildings. (AR 8515.) The horizontal aerial clearance would be 53 feet 2 inches, with an "Additional Separation Buffer" of 10 feet on each side. The vertical clearance would require five feet for buildings, vegetation, and terrain and eight feet where pedestrians are present. Road and railway clearances would be determined by the agency with jurisdiction. (AR 8515.)

B. Dodger Stadium Parking Lot Ownership and Relationship to the Project.

Frank McCourt owned the Los Angeles Dodgers between 2004 and 2012. (AR101840, 101842.) McCourt held a press event in April 2008 to unveil his proposal to build restaurants, shops, a Dodger museum, and parking garages around Dodger Stadium. (AR 101842-844, 101846-850, 101857.) The 2008 project "would enact a vision Frank McCourt outlined when he bought the team," and generate revenue "not only on game days but from year-round use of the new facilities." (AR 101842.) McCourt would not rule out "additional projects" including "residential development" when asked. (AR 101847.) (The project was never built.)

McCourt sold the Dodgers to Guggenheim Partners in 2012 for $2.15 billion. (AR 101857.) Real estate experts thought the price "didn't make sense" without additional income beyond baseball and television revenue. Stadium development was considered the likely source. (AR 101853-101855, 101857-858, 101859.) McCourt retained co-ownership of the 260-acre stadium parking lots (AR 101840-841) and entered into an agreement to "facilitate the orderly development of the [parking lot parcels]" (AR 120017) that "contemplated that portions of the Landco Parcels will be developed for other purposes…" (AR 120027.) The agreement "was designed to be flexible in accommodating whatever ideas McCourt and Guggenheim might have to build out the property over the next 25 to 50 years." (AR 101840.)

Dodger stadium has 19,000 vehicle parking spaces. (AR 120027.) The 2012 agreement requires "commercially reasonable

efforts" to reduce parking needed for stadium events by providing options to private vehicles, "including various forms of mass transportation." (AR 120027.)

An LA Times article about Mayor Garcetti's early Project support discussed McCourt's continued co-ownership of stadium parking and noted potential lenders "might be more receptive to finance a gondola that goes to Dodger Stadium 365 days a year – rather than just on 81 home-game dates." (AR 106407-412.) ARTT's project director downplayed potential development. (AR106409.) An ARTT spokesperson later confirmed there are about 100 game and event days per year. (AR 87572.)

Aerial Rapid Transit Technologies LLC (*ARTT*), a McCourt Global company, submitted the unsolicited proposal to Metro in April 2018. (AR 8814.)

In May 2021, long *after* the Project was submitted, McCourt Global's website still described the land as a "real estate project[ ]."[3] After public comments revealed the connection between the Project and potential stadium development this language was removed. (See AR 101742.)

C. Metro's Agreement to Act as Lead Agency.

Following Project submission, Metro made a confidential request for information (RFI) to ARTT. (AR 105369.) The RFI asked for planning, business model, operations, statutory and regulatory requirements, and other details. (AR 105643-647.)

[3] "Our current real estate projects include… 260 acres of land at Chavez Ravine in Los Angeles." (AR 101736-737.)

Metro also inquired about potential stadium development. (AR 105644.) ARTT's answers about stadium development were non-responsive, narrowly interpreting Metro's request as "related to the ART." (AR 89860; AR 89864.) Metro made no further inquiries.

In December 2018, Metro and ARTT began negotiations to "collaborate" on the project's environmental review. (AR89938.) Metro would be lead agency but would have only an oversight role, delegating to ARTT the responsibility for preparing the EIR. (AR 105837-838.) Metro and ARTT signed a Memorandum of Agreement in May 2019 with Metro acting as CEQA lead agency for a private project for the first time. (AR 89938-954, see AR 89185-186.)

Metro did not act as lead agency for other private transit projects proposed in 2018. Metro met with The Boring Company to ensure its Sepulveda Tunnel project would not conflict with a Metro project. (AR 119735.) At the meeting Metro "discussed what a signoff of their project plans would look like." (*Id.*) Another tunnel proposal would run from from Metro's Red Line to Dodger Stadium. (AR 119742-744.) The City of LA was lead agency for both projects. (*Id.*, AR 119727.)

D. Historic and Cultural Landmarks Along the Project Alignment.

The Project would be built and operate near treasured Los Angeles landmarks. Alameda Station would be built between Union Station and El Pueblo de Los Angeles (*El Pueblo*). (AR 805.) Union Station, "the last grand railroad station built in

America," is among the City's "most identifiable landmarks." (AR 51154.) Its passenger terminal "remains one of the great architectural statements of its time." (AR 3879.) Union Station is a City Historic-Cultural Monument and is listed on the National Register of Historic Places. (AR 1833, 109672.) "One of the most important character defining features of Union Station" is "views of its primary façade." (AR 109672.)

El Pueblo is listed on the National Register of Historic Places. (AR 1750.) Buildings and sites within El Pueblo are listed on the National Register, the California Register of Historic Resources, and California Historical Landmarks. (*Id.*) El Pueblo, "one of the oldest developed sections" of Los Angeles, is a City Historic-Cultural Monument. (AR 1750-51.) It "contains significant archaeological resources" including part of the *Zanja Madre*, "the city's first water conveyance system and possibly oldest surviving infrastructure." (*Id.*) The Avila Adobe, the City's oldest extant building, is in El Pueblo. (AR 109673.)

El Pueblo was granted to the City by a 1988 quitclaim deed from the state, which requires following state historic park restrictions. (AR 101995-996.) The state has a reversionary interest in El Pueblo if these are not followed. (AR 101996.) The Project EIR requires extensive mitigation of potentially significant impacts to El Pueblo. (AR 544-57, 578-579.)

The alignment passes near other notable locations, including the US Post Office Terminal Annex, Phillippe the Original restaurant, Homeboy Industries, and The California

Endowment (*TCE*),[4] and travels through historic Chinatown and Los Angeles State Historic Park. (AR 691, 1678.)

E. The Project Would Physically Occupy and Traverse the Airspace of LA State Historic Park.

Los Angeles State Historic Park ("LASHP") is uniquely impacted—it is the only cultural-historic resource the Project would physically occupy and traverse. (AR 1683.)

LASHP tells the story of indigenous peoples who lived in the area beginning 10,000 years ago (AR 25450) and the European settlers who established El Pueblo, built the region's first public works project, the Zanja Madre, and used the Cornfield for farming and vineyards. (23911-912.) Southern Pacific railroad built its "River Station" in 1875 and the local population doubled to 11,000 within five years. The population swelled to more than 50,000 by the late 1880s after completion of the transcontinental railroad. River Station was then Southern Pacific's headquarters, the region's largest employer. (AR 23913-915.) River Station was a working freight facility through most of the 20th century. Rail activities ended in 1992. (AR 23917-918.)

Suggestions for the vacant Cornfield site included a park, sports arena, or high school. (AR 23921.) In 1999 a 900,000 square foot warehouse complex was proposed (*id.*) which the City approved without considering alternatives. Community groups sued over the inadequate environmental review and defeated the project. (AR 23921-922.)

---

[4] Construction of Alameda Tower would impose major noise impacts at Homeboy and TCE. (AR 1132.)

Governor Davis called State Parks' 2001 acquisition of the site (AR 23922) a "once-in-a-century opportunity." (AR 23409.) The 36-member advisory committee, comprising neighborhood groups, civil rights and environmental justice organizations, nonprofits, historians, business leaders, and educators, worked with State Parks and stakeholders to establish the park's vision. (AR 23922, 23408-010.)

The Cultural/Historical Work Group of the Cornfield Advisory Committee described the site as "a vehicle for a revelatory journey through layers of history and culture, a slice through time exposing the dominant, forgotten and ignored stories alike which make Los Angeles so rich and diverse." (AR 23909.) Advisory committee member Dr. Leonard Pitt said: "No other available 32 acres holds as much opportunity to enlighten us about the history and culture of Los Angeles and this region…" (AR 25448.) Preserving the land was a historic achievement. (AR 23897.)

LASHP's General Plan and Final EIR were approved in 2005. (AR 23881.) The park's 2006 Interpretive Master Plan declares the park's purpose is "to provide the public with a place to learn about and to celebrate the ethnically diverse history and cultural heritage of Los Angeles" and to "be a sanctuary from the dense, urban environment that surrounds it." (AR 25434.) Working class communities – Chinatown, Solano Canyon, Elysian Park, Lincoln Heights, and William Mead Homes – surround the park. It is "one of the most park-poor communities in Los Angeles." (AR 25437, 25472.)

LASHP was a brownfield but has potential for natural resources (AR 23927). In May 2022 a UCLA doctoral student spotted an endangered "least Bell's vireo" there. (AR 9150-51.) Community members have undertaken natural resource projects, such as introduction of monarch butterfly habitat. (AR 87085, 113256.)

The LASHP General Plan and EIR protects the park's cultural, historic, recreational, visual, and other resources. (AR 23922-934, AR 24013.) Archeological resources include the Zanja Madre, building foundations, cobblestone paving, and archeologic artifacts. (AR 23923.)

The park's signal aesthetic feature is its "spectacular" (AR 24015) view of Los Angeles, described as the " 'front porch' of the City." (AR 23932.) "[T]here are no other sites that capture this welcoming view of downtown Los Angeles." (*Id.*)[5] State Parks is encouraged to protect these viewsheds even from development *outside* the park by "work[ing] with adjoining jurisdictions regarding land use and development within the Park viewshed that might affect the site and its aesthetic resources." (AR 23978.) The park EIR primarily protects aesthetic resources with mitigation measure Aes-1, addressing structures that "may be visually offensive and incongruent with the surrounding environment and may obstruct significant views out of the Park."

[5] Fig. 5-20a, top image, depicts an elevated perspective (AR 2647). The "front porch" view is more commonly experienced at ground level. (Fig. 5-20b, AR 2648.)

F. Metro's Project Review.

Metro issued a Notice of Preparation ("NOP") for the Project EIR in October 2020. (AR 1677-1684.) Metro received letters of concern about impacts to LA Union Station, El Pueblo de Los Angeles, Los Angeles State Historic Park, and the community. (AR 1833-35, AR 96106-112, AR 1825-27, AR 1842-44, AR 1850-51.)

Metro published the Draft EIR in October 2022. (AR 8387.) LAPA objected to Metro's designation as lead agency (AR 100072-089) and raised substantive concerns. (AR101646-102010.)

In September 2023 ARTT transferred the Project and LA ARTT LLC (*LA ARTT*) to Zero Emissions Transit (*ZET*). (AR 8814, AR 94119 *et seq.*)

Metro published the Final EIR in December 2023. (AR8377.) LAPA submitted additional comments. (AR118049-069.)

The Metro board held two Project hearings. Director Solis acknowledged the Project is controversial and questioned its motivation: "There are many other alternatives out there that we haven't even considered. And if there is something else motivating the project, then what is it?" (AR89091-092.) Five directors submitted a motion with conditions of approval (AR 88321-326), including requiring affordable housing as part of future development at Dodger Stadium. (AR 88326.) LAPA noted the condition evidences the foreseeability of development. (AR 119093-094.)

Metro certified the EIR and adopted related approvals,

including the conditions. (AR 88320-321, 89300-301.) Notices of Determination were posted on February 26, 2024. (AR1-5.)

G. Trial Court Proceedings.

1. Procedural history.

LAPA filed its Verified Petition on March 25, 2024. (JA 1.) Metro filed a Notice of Related Case for TCE's trial case on April 2, 2024. (JA 127.) The court ordered the cases related on April 8. (JA 449.)

Metro filed a "Motion to Confirm Expedited CEQA Litigation" on April 17, later joined by Real Party LA ARTT. (JA 541-42, 717-718.) The court granted Metro's motion on June 10, 2024. (JA 937.)

Metro lodged a Supplemental Administrative Record on July 25, 2024. (JA 1109-10.)

The court denied the petitions on August 12, 2024, and issued its final written decision on August 13, 2024. (JA 1142.) Judgment was entered September 6, 2024. (JA 1158-62.) This appeal was filed September 11, 2024. (JA 1186-89.)

2. Trial court decisions.

a. Decision on the motion to expedite.

The court decided Metro's motion to expedite under the substantial evidence standard. (JA 939.) Petitioners argued the court should have reviewed the motion de novo (*id.*), and that the Project and process did not meet Public Resource Code section 21168.6.9's strict requirements and omitted reasonably foreseeable development. (JA 942-47.)

The court found Metro's determinations were supported by substantial evidence, Metro substantially complied with procedural requirements, and evidence was insufficient to show the Project would lead to reasonably foreseeable development. (JA 943-947.)

b. Decision on the petitions.

Except for procedural requirements reviewed de novo, the court used the substantial evidence standard. (JA 1145.)

The court found Metro to be proper CEQA lead agency noting it "has a principal responsibility for approving and carrying out the Project,"[6] and "any procedural error in the designation" was not prejudicial. (JA 1146-47.)

The court found the project description stable and accurate. There was no discrepancy regarding the location of Chinatown/ State Park Station (JA 1149) and potential development was neither reasonably foreseeable nor a cumulative impact. (JA 1148-49.)

The court further found consultation with trustee agency, the Santa Monica Mountains Conservancy, was adequate and any delay in contact was not prejudicial. (JA 1155-56.) The court held the EIR adequately addressed potentially significant land use and aesthetic impacts. It considered the issue of State Parks' land use authority a hypothetical enforcement failure not yet ripe for review. (JA 1151.) The court held Metro's chosen methodology for aesthetic analysis was inapplicable to CEQA. (JA 1153.)

---

[6] Metro is *not* carrying out the entirely private Project. (AR 89850.)

Finally, the court held project objectives did not constrain consideration of feasible alternatives. (JA 1156-57.)

V. STANDARDS OF REVIEW.

CEQA claims on appeal are reviewed de novo. Courts review the agency action, not the trial court's decision. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) An EIR's sufficiency is reviewed for abuse of discretion, "established if the agency fails to proceed in the manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5.)

Claims an agency has failed to proceed in the manner required by law are subject to independent review. The Court must "determine de novo whether the agency has employed the correct procedures, scrupulously enforc[ing] all legislatively mandated CEQA requirements." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 935 (*Banning Ranch II*) (internal quotation marks omitted).)

An agency's failure to follow procedural mandates is presumptively prejudicial, requiring its determination to be set aside. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.) The "failure to follow… significant, mandatory CEQA regulations is by its nature prejudicial." (*Envtl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 622.)

Whether an EIR's has omitted essential information is a procedural question. (*Banning Ranch II*, 2 Cal.5th at 935; see

also, *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.) The determination of lead agency is also procedural, requiring consideration of all relevant facts. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 905-906.)

An agency's factual findings are accorded deference, but failure to support findings with substantial evidence is an abuse of discretion. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.)

VI. ARGUMENT: METRO'S PROJECT APPROVAL FAILED TO COMPLY WITH CEQA.

A. The EIR Fails to Analyze and Mitigate Significant Land Use Impacts Arising from Statutory Limitations on the Use of State Parks.

An EIR must consider potentially significant land use conflicts. (Cal. Code Regs., tit. 14 ("CEQA Guidelines"), § 15125, subd. (d).) CEQA requires discussion of "inconsistencies between the proposed project and applicable general plans, specific plans and regional plans." (*Id*.) Metro's threshold of significance more broadly states: "the proposed Project would have a significant impact on land use and planning if it would… [c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect." (AR 1036.)

The Project must obtain "an easement and/or aerial easement," "a lease or other agreement," a "right of entry," and a general plan amendment to be built in and use LA State Historic

Park. (AR 8405.) The EIR asserts these approvals are authorized under Government Code section 14666 and Public Resources Code sections 5003.17 (lease/agreement), 5003 (right of entry), and 5002.2 (general plan amendment).[7] (*Id.*)

The Draft EIR's land use and planning section provides no analysis of the comprehensive regulatory regime our Legislature has adopted to protect California's state parks. (AR 1016-17, 1052-53.) Topical Response F provides a conclusory discussion of some code sections raised by commenters, but improperly defers the question of State Parks' authority for that agency's later consideration: "comments regarding State Parks' authority to grant the necessary approvals for the proposed Project's use of LASHP do not raise substantive issues on the content of the Draft EIR." (AR 8768.) "State Parks will assess the proposed Project against its statutory authorities when the Project Sponsor seeks its approvals for use of LASHP from State Parks in the future." (AR 8770.) The EIR thus assumes State Parks may approve the Project's use of LA State Historic Park, or at least will not exceed its authority when it considers the question.

This is contrary to CEQA.

An EIR "must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) Deferring review for a later agency's consideration does not constitute the required "good faith effort at full disclosure" of the Project's

[7] All statutory references are to the Public Resources Code unless otherwise indicated.

potentially significant land use conflicts. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 522; see also *Banning Ranch II*, supra, 2 Cal.5th at 939-940.)

Moreover, a conclusory analysis that assumes later regulatory compliance will avoid environmental impacts is inadequate. (*Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-16; accord, *Sundstrom v. County of Mendocino* (1988) 202 Cal. App.3d 296, 309 (agency cannot evade review by relying on later regulatory compliance).) Deferring analysis defers consideration whether mitigation measures are needed. Even where courts permit deferred mitigation, complete analysis of impacts is a prerequisite. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; see also *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8.)

A lead agency must "consider all environmental impacts of the project before approving it." (*We Advocate Thorough Environmental Review v. City of Mount Shasta* (2022) 78 Cal.App.5th 629, 639, quoting § 21002.1, subd. (d).) Where the decision on a specific action must be deferred to a responsible agency, as here where State Parks is asked to approve an amended general plan, the *lead* agency must find this is within State Park's jurisdiction and either "ha[s] been, or can and should be, adopted." (*Id.*, quoting § 21081(a).)

1. California's statutory scheme to establish and protect state parks.

The statutory framework establishing and protecting California's state park system is found primarily in Division 5 of the Public Resources Code. This framework must be interpreted consistent with CEQA's mandate "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563-564; see also, *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 122: courts "are obligated to harmonize the objectives common to both statutory schemes to the fullest extent the language of the statutes fairly permits.")

A California statute can serve as a land use regulation. Indeed, CEQA is such a regulation. (See *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 730.) The EIR acknowledges statutes and state regulations fall within the required land use and planning analysis by including the Public Resources Code section 5019.59 and the California Green Building Standards Code. (AR 1016.) The land use analysis also discusses sections 5002.2 and 21174 before discussing regional and local regulations. (AR 1053-54.)

State Parks (formally, the Department of Parks and Recreation) controls the state park system. (§ 5001(b).) California's Legislature declares state parks are "special places that have been set aside for their inspiration and enjoyment," they "deserve to be preserved and managed for the benefit and inspiration of all state residents and visitors," and "[i]ndividual

units of the state park system derive increased importance" by "inclusion in a unified state park system that is preserved and managed for the benefit and inspiration of all Californians and visitors to the state." (§ 5001, subds. (a)(1)-(3).)

Numerous legislative findings, including section 5001, demonstrate the Public Resource Code's overarching intent to preserve and protect park resources, especially in park-poor urban areas like the community surrounding LA State Historic Park. For example:

> § 1001, subd. (b): "The state's cultural and natural resources are a shared heritage that no single individual or entity is more entitled to access to, or benefit from, than another and must be stewarded for future generations."
>
> § 5019.91, subd. (b): "The mission of the California State Park system is to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. *State parks are set aside to protect their natural, historical, cultural, and recreational values in perpetuity for the people of the state*." [Emphasis added.]
>
> § 5096.302, subd. (a): "California's local and neighborhood parks often serve as the recreational, social, and cultural centers for cities and communities, providing venues for youth enrichment, senior activities, and family recreation."
>
> § 5096.302, subd. (b): "Neighborhood and state parks provide safe places to play in the urban neighborhoods, splendid scenic landscapes, exceptional experiences,

> and world-recognized recreational opportunities, and in so doing, are vital to California's quality of life and economy."
>
> § 5701, subd. (b): "Community, neighborhood, and regional parks, beaches, recreational areas, recreational trails, and other recreational facilities, and the preservation of historic sites and structures contribute significantly to a healthy physical and moral environment and also contribute to the economic betterment of the state."

The Legislature recognizes many Californians face barriers to natural resources and outdoor spaces, including: "Lack of culturally relevant and multilingual programming; "Lack of local, quality outdoor spaces and amenities, including parks, pedestrian tree canopies, green streets, greenways, trails, community gardens, and other greenspaces;" and, "Lack of outdoor programming opportunities, including, but not limited to, recreational, cultural, and educational activities." (§ 1001, subds. (c)(4)–(6).)

These findings are not merely aspirational. The Director of State Parks has a *mandatory* duty to conserve park resources: "The director *shall* promote and regulate the use of the state park system in a manner that conserves the scenery, natural and historic resources, and wildlife in the individual units of the system for the enjoyment of future generations." (§ 5001.2.)[8] "Commercial exploitation of resources in units of the state park system is prohibited," save for several exceptions that are not

[8] In interpreting the Public Resources Code, " '[s]hall' is mandatory and 'may' is permissive." (§ 15.)

relevant to the proposed Project. (§ 5001.65, subd. (a).) State Parks "*shall* administer, protect, develop, and interpret the property under its jurisdiction for the *use and enjoyment of the public.*" (§ 5003, emphasis added.) It "may establish rules and regulations *not inconsistent with law* for the government and administration of the property under its jurisdiction." (*Id.*, emphasis added.)

Other Public Resource Code sections place substantial limitations on improvements that may be made within state parks. Section 5001.9(b) declares: "No new facility may be developed in any unit of the state park system unless it is compatible with the classification of the unit." Section 5019.53 states that improvements "shall be for the purpose of making the areas available for public enjoyment and education in a manner consistent with the preservation of natural, scenic, cultural, and ecological values for present and future generations." (§ 5019.93.) Improvements "which are attractions in themselves…shall not be undertaken within state parks." (*Id.*)

Section 5019.59 is applicable to park units classified as state historic parks:

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

(§5019.59, emphasis added.)

State Parks may enter into concession agreements "for the safety and convenience of the general public in the use and enjoyment of, and the enhancement of recreational and educational experiences at, units of the state park system." (§ 5080.03, subd. (a).) Such agreements "shall not be entered into solely for their revenue producing potential" and proposed concessions "shall be compatible with" the general development plan of the park unit. (§ 5080.03, subds. (b) and (c).)

2. Exceptions to restrictions on state park development are limited and specific.

Interpretation of the above statutes is informed by specific exceptions allowing particular types of development to occur. Easements may be granted to a public agency for public roads, public bicycle and pedestrian trails, or for various types of utility lines. (§ 5012, subds. (a)-(d).) A public agency may be granted a lease or easement for small craft harbors and recreation areas. (§ 5012, subd. (e).) State oil and gas lessees may be granted easements for pipeline rights-of-way. (§ 5012, subd. (f).) To effectuate an easement under one of the exceptions, the Director of State Parks must find "the use would be compatible with the use of the real property as a unit or part of a unit and with the sound management and conservation of resources within the unit." (§ 5003.17, subd. (a).)

Under the interpretive canon *expressio unius est exclusio alterius* the section 5012 exceptions are best read to exclude development types not expressed. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13.) This harmonizes the few specific exceptions with legislative

findings and State Parks' duty to limit development and preserve and protect park lands for the use and enjoyment of the public. (See *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) The Public Resources Code must be read to prohibit private development that is not expressly permitted or that is incompatible with a unit's classification or general plan.

In addition to the express exceptions of section 5012, section 5003.5 allows private persons or entities to apply for "right-of-way across a state park for ingress and egress to a highway or road from their lands separated from such highway or road by the state park." The Project does not seek access on this basis (AR 8771), nor could it since the required findings could not be made. (See discussion, AR 101661.)

The Public Park Preservation Act also provides an exception to the general rule. (§§ 5400-5409.) The Act requires a public agency or utility acquiring real property in use as a public park "to either pay compensation that is sufficient to acquire substantially equivalent substitute park land, or provide substitute park land of comparable characteristics." (*Id.*; see also *City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal. App.4th 1780, 1788.) Whether the Act applies here, it informs consideration of mitigations that might offset the loss of state historic park land taken for the Project.[9]

[9] See discussion, AR 101664-667; see also JA 913:26-914:3, JA 1104:25-27.

3. The Project would have significant impacts at LA State Historic Park of the type protected by the Public Resources Code.

The taking of state historic park land for the benefit of a private project is itself a significant land use conflict that must be analyzed and mitigated. The Project's proposed use of Los Angeles State Historic Park (*LASHP*)'s land and airspace would take nearly two acres from the western side of the park to allow construction of a 200-foot-long, 98-foot-high, and 80-foot-wide station primarily within the park, and for cable ropeways to be strung across the park so gondola cabins can traverse the park's airspace. State Parks describes the resource impact:

> [T]he Project would require permanently taking approximately 0.21 acres for the physical transit station, and up to 1.87 acres of the 32-acre park (6%) that would be restricted not only by the station, but by the overhead development and operational rights for the aerial infrastructure, including the cable ropeway, which would be suspended at just 26 feet over the park at its lowest spot.

(AR 102262.) Metro does not dispute this. (AR 8874-75.) But Metro repeatedly minimizes State Park's description of the amount of land taken by focusing on the station's *footprint*, described as only "~.1% of the total 32-acre park." (See, e.g., AR 8887.)[10] The EIR repeats this misleading statistic 80 times. (AR 117695.)

Commenters note many Project impacts to LASHP uses and operations, historic and aesthetic resources, and park users.

[10] The station's footprint 2,195 square feet, but its overhang is more than four times that. (AR 114614, see AR 8554.)

(AR 101589-597, 114618, 109670-677.) Commenters also noted the Project appears intended for significant tourist use. (See AR 1270, AR 8264.)

The inherent land use conflict is perhaps best explained in a comment by the Executive Director of LA River State Park Partners, the nonprofit cooperative association[11] for LA State Historic Park:

> The entire point of the considerable investment of state taxpayer dollars to acquire and develop LASHP was to create an anecdote [sic: antidote] to urban life, bringing a major open green space, with all the associated long-term health and wellness benefits, to those who had no such amenity. For the historically park-poor communities that fought for decades for this park, the best use of this open green space is as a park, that is its intrinsic value, there is no better, higher use to be had.

(AR 114618.)

The Project's Alameda Station would also use part of El Pueblo for a queueing area, introducing a "new pedestrian plaza at El Pueblo" in an area now used for parking and loading. (AR 8393, see Fig. 5-5, AR 2632.)

These and other Project impacts and land use conflicts are protected against by the Public Resources Code's regulatory regime.

[11] AR 1825; see Public Resources Code, § 513.

4. The EIR fails to adequately analyze and defers conflicts with state law to State Parks.

LA State Historic Park is subject to the Public Resource Code limitations on state parks and the particular limitations of section 5019.59. (AR 8773.) El Pueblo was a state historic park and remains subject to section 5019.59's limitations through deed restrictions accepted by the City. (AR 101995-996.)

During the administrative process and below, LAPA objected to the Project's proposed use of LA State Historic Park and El Pueblo, arguing State Parks is without authority to issue the required Project approvals as they conflict with black letter law restrictions on development of state parks, especially state historic parks. (AR 101659-670, JA 913-15.)

The EIR asserts the only land use conflict created by the Project's use of the land and airspace of LASHP can be entirely resolved with a general plan amendment. (AR 1052-53.) Mitigation measure LUP-A requires an amendment to LASHP's General Plan to allow "transit uses." (AR 8456.) The EIR requires *no* mitigation for the Project's use of El Pueblo. (*Id.*)

Responding to LAPA's comments on State Parks' authority, the EIR states: "Because comments regarding State Parks' authority to grant the necessary approvals for the proposed Project's use of LASHP do not raise substantive issues on the content of the Draft EIR, no further response is required by CEQA." This is wrong. (*Californians for Alternatives to Toxics*, supra, 136 Cal.App.4th at 15-16.)

The EIR states two statutes relate to park easements but "[o]nly Government Code section 14666 is applicable to the

proposed Project." (AR 8769.) The EIR provides a description of the statute that, with no context, seems to grant unfettered authority to the Director of Government Services so long as "the state agency concerned" grants its approval. (*Id.*)

Topical Response F mentions the Director of State Parks must find "the use would be compatible with the use of the real property as a unit and with the sound management and conservation of resources within the unit." (AR 8769, see § 5003.17(a).) The EIR does not, however, provide adequate legislative context or analysis of Project conflicts with the legislative scheme to show whether such a finding would be lawful or how impacts could be mitigated.

The EIR incorrectly suggests Public Resources Code section 5001 is the only legislative findings section applicable to State Parks' authority, describing it as a "broad declaration." (AR 8770.) The EIR further suggests applicable statutes are merely directory: "Commenters raise several provisions of the Public Resources Code that provide *directives* to State Parks on how it *should* manage the State Park System." (*Id.*, citing to sections 5001, 5001.2, 5019.53, and 5019.59 in a footnote).

However, all the cited statutes contain mandatory limitations, utilizing the words "must" and "shall" or otherwise making their restrictive meaning clear:[12]

[12] See § 15; see also *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 520: courts interpret the words "must" and "shall" as mandatory.

- Section 5001, subd. (a)(1): "state parks must protect California's heritage;"
- Section 5001.2: "The director shall promote and regulate the use of the state park system in a manner that conserves…";
- Section 5019.53, second unnumbered paragraph: "Each state park shall be managed…"
- Section 5019.53, third unnumbered paragraph: "Improvements undertaken within state parks shall be… consistent with the preservation…"
- Section 5019.59: "The only facilities that may be provided…"

The Draft EIR's brief discussion of section 5019.59 reads it permissively and selectively omits the word "required" to suggest *any* facility is acceptable if it provides "access, parking, water, sanitation, interpretation, [or] picnicking." (AR 1016-17.) The EIR's discussion absurdly suggests it is necessary to read the word "required" out of section 5019.59 or no new facilities would ever be permitted. (AR 8771.)

Section 5001.65 prohibits "commercial exploitation" of park resources. The EIR states "commercial exploitation" is not defined but "it is clear that the Legislature was focused on the commercial exploitation of tangible resources like minerals and biological resources." (AR 8772.) This is unsupported speculation. Nothing in section 5001.65 suggests cultural, historic, visual, and other resources are not equally deserving of protection from commercial exploitation based on an exception to allow slant or directional drilling. In fact, an exception for slant drilling, as opposed to surface drilling, is entirely *consistent* with the protection of natural and especially visual and aesthetic

resources. Moreover, the exception is for just *one* state reserve, the Tule Elk State Reserve. The EIR's speculative and unsupported interpretation of section 5001.65 is unconvincing.

Topical Response F quotes a portion of section 5003 but omits its mandatory language and provides no analysis. (AR 8768; see section 5003: State Parks "shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public.")

The EIR states the Project is not applying for access under section 5003.5 but nonetheless finds it "allows State Parks to authorize the proposed Project" since it relates to ingress and egress to parks. (AR 8771.) LASHP is well-served by bus lines and a nearby Metro rail line just steps away from the park's main pedestrian entrance. (AR 9031.)[13]

The EIR admits none of the exceptions of section 5012 apply, because "the private Project Sponsor is not a public agency." (AR 8769.) It also states the Public Park Preservation Act does not apply. (AR 8772.)

Topical Response F entirely overlooks the Project's predominant use for tourism. The Project's ridership analysis shows tourists would be the single largest category of users, since there are only about 100 baseball games or other events at Dodger Stadium annually (AR 87572), whereas tourist uses would occur every day, averaging between 1,265-2,575 users per

[13] See AR 87582, depicting the short three-minute walk from Metro's Chinatown Station to LASHP's pedestrian entrance where the Project would construct a 98-foot-tall station.

day on weekdays, and 1,210-3,570 on weekends. (AR 8264.) Former Mayor Garcetti opined the gondola wouldn't be "just about Dodgers games" but could be a "backdrop for first dates, nights out with friends and marriage proposals." (AR 106408-409.) But park improvements that are "attractions in themselves… shall not be undertaken." (§ 5019.53.)

Finally, the EIR does not explain whether or how mitigation measure LUP-A mitigates conflicts with the above statutes. It offers no mitigation for use of El Pueblo. (AR 8772-73.) Metro has not even found, as required by section 21081 subd. (a), that the responsibility to adopt LUP-A has been, or can and should be, adopted by State Parks. (AR 88636, 88677; see *We Advocate Thorough Environmental Review v. City of Mount Shasta* (2022) 78 Cal.App.5th 629, 639.)

Even if State Parks might have authority to approve the Project's use of LASHP's land and airspace by somehow finding the use would not conflict with California's comprehensive statutory scheme to protect our state parks, and it does not, the EIR fails as an informational document for providing only a cursory discussion. As important, Metro's failure to adequately consider the statutory land use conflicts means no effort has been made at mitigation, assuming that is even possible.

B. The EIR Fails to Analyze and Mitigate Reasonably Foreseeable Development Due to the Project.

1. The "whole of the action" must include reasonably foreseeable development.

CEQA requires that an EIR consider the entire "project." "Project" is defined as "the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, § 15378.) "Project" is interpreted broadly to maximize protection of the environment and ensure that environmental review is "prepared as early as feasible in the planning process." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395 (*Laurel Heights*).)

When considering whether a future indirect activity that may follow from an agency's approval is part of the "whole of the action," reviewing courts follow the California Supreme Court's decision in *Laurel Heights Improvement Assn. v. Regents of University of California* (*Laurel Heights*):

> [A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

(*Laurel Heights* (1988) 47 Cal.3d 376, 396.)

The rule "is consistent with the principle that 'environmental considerations do not become submerged by

chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.' " (*Id.*, quoting *Bozung* v. *Local Agency Formation Com*. (1975) 13 Cal.3d 263, 283-284 (*Bozung*).)

Analysis requires consideration of all relevant facts: "the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action." (*Laurel Heights*, supra, 47 Cal.3d at 396.) An important factor is whether the foreseeable activity is undertaken by the same proponent as the reviewed project. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223 (*Banning Ranch I*).) "[T]here may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development." (*Id*.)

It is *not* a factor that the indirect activity might later be subject to its own environmental review. Courts recognize an EIR should be prepared for foreseeable future activity at the earliest stage, even when subsequent review may or even will be required because the later activity is not yet clearly defined. (*Bozung*, supra, 13 Cal.3d at 282; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 250; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325.)

Further, no evidence of a plan, formal or otherwise, is required before later activity may be considered a reasonably foreseeable consequence. (*Laurel Heights*, 47 Cal.3d at 397-398.) Finally, CEQA requires "due consideration to both the short-term

and long-term effects" of a project. (CEQA Guidelines, § 15126.2.) Imminence of potential future activity is not an important factor.

2. Overwhelming and undisputed evidence shows development of Dodger Stadium parking lots is reasonably foreseeable.

Here, the evidence overwhelmingly supports that future development at Dodger Stadium is a reasonably foreseeable consequence of the Project.

Former Dodgers owner Frank McCourt acknowledged his desire to make Dodgers Stadium a year-round destination. (AR 101842.) He proposed one such plan to develop restaurants, shops, and a museum in parking lots around the stadium. (AR 101842-844, 101850.) McCourt stated he looked at stadium development "in a very, very long-term, also generational fashion. We're not making these decisions based on what the economy is like today. We're making these decisions as huge optimists in the future of the Dodgers." (AR 101847.) McCourt "declined to comment on whether he would pursue additional projects on the rest of the site, and refused to… rule out residential development." (*Id.*)

When McCourt sold the Dodgers, his retention of stadium parking lots caused at least one bidder (another real estate developer) to withdraw. (AR 101840-841, 101851.) The Dodgers sale price of more than $2 billion did not make sense to real estate experts unless development of stadium lands would follow. (AR 101853-101855, 101857-858, 101859.) McCourt retained co-ownership of stadium parking lots and made an agreement to facilitate their development. (AR 120017.) The agreement

includes a non-exclusive list of possible uses: "Development may include, but shall not be limited to, (i) office buildings, (ii) hotel and exhibition facilities, (iii) residential buildings, (iv) medical buildings, (v) academic buildings, (vi) parking structures, and/or (vii) retail, dining, and entertainment facilities." (AR 120040.)

McCourt's attorney described the agreement as "flexible" to "accommodate[e] whatever ideas McCourt and Guggenheim might have to build out the property *over the next 25 to 50 years*…" (AR 101840, emphasis added.) According to the attorney, using 260 acres of land around Dodgers Stadium only for parking is "an ill-conceived concept for the owner of the parking lots and the owner of the stadium." (AR 101841.)

The development agreement contemplates reducing required parking by creating a mass transit option for stadium patrons. It *requires* the parties to use "commercially reasonable efforts" to achieve that reduction:

> (i) the Parties shall use commercially reasonable efforts, on an ongoing basis, to create additional methods for Stadium patrons to attend events at the Stadium which do not require such patrons' use of parking spaces, including various forms of mass transportation, which efforts shall be aimed at reducing the Required Parking Spaces hereunder from 19,000 to a lesser amount which will not be less than 16,500, subject to such reduction being in conformity with the Development Principles, (ii) solely for Mass Transportation as contemplated in Section 5.1.2, below, or other green initiatives the Parties shall extend such commercially reasonable efforts to reducing the Required Parking Spaces below 16,500, provided that any such further reduction below 16,500 shall require City approval and the reasonable approval of Stadium Owner…

(AR 120027.)[14]

Consistent with the above agreement, a McCourt Global entity, ARTT LLC, submitted the unsolicited proposal to Metro. (AR 8814.)

Metro understood thorough environmental review required that it "have a better understanding of future development plans at Dodger Stadium and/or associated projects." (See AR 105644.) Metro might be excused for initially missing the connection between the Project and parking lot ownership, but once public commenters provided this information, Metro should have known it must investigate. (CEQA Guidelines, § 15144: agency must use "best efforts to find out and disclose all that it reasonably can.") Many commenters raised these concerns.[15]

Further, McCourt Global publicly described its stadium land holdings as a "*current* real estate project" for three years after presenting the gondola proposal to Metro. (AR 101736-737.)

Responding to these concerns, Metro directors introduced conditions of approval for the Project. (AR 88321-326.) Condition F directly addresses future potential development by requiring affordable or supportive housing to be built if it occurs:

> While no such development has been formally proposed, Metro includes an overriding clause in any

---

[14] ARTT claims the Project would remove 3,000 vehicles from local roadways, just more than the 2,500 spaces initially called for in the agreement. (AR 2198.)

[15] See, e.g., AR 104647-654, 101671-680, 99974-976, 102583-585, 102810, 120005-011, and 1790: "What is the proposed future use of the vacant parking lots at Dodger Stadium caused by the Project?"

> future lease at or near Union Station with ZET for the benefit of the Project, whereas any possible future development at or near the parking lots surrounding Dodger Stadium that does not dedicate at least equivalent to twenty-five percent (25%) of all the developable space, which excludes outdoor open space, to affordable or supportive housing shall automatically and immediately terminate the lease.

(AR 88326). LAPA argued Condition F recognizes the foreseeability of stadium development and is therefore inconsistent with the EIR, which denies foreseeability. (AR 119093-094, see AR 8779.)[16]

The Metro board discussed the conditions of approval at the final Project hearing. (AR 89186-191.) The County Counsel explained the Metro board "may impose reasonable conditions as long as there is a sufficient nexus between those conditions imposed and the projected burden of the project. And those conditions have to… be roughly proportionate to the impact." (AR 89193-89195, see esp. AR89193.) The board adopted the conditions, including Condition F. (AR 89300-301, 89168-173.)

None of the above facts are in dispute.

3. Development of stadium parking lots due to the Project is reasonably foreseeable.

Laurel Heights first prong requires sufficient evidence to show a second activity is a reasonably foreseeable consequence of the project under review. The ample and undisputed evidence here shows at least:

---

[16] The EIR's conclusion development was not reasonably foreseeable was based on the absence of an application having been filed and the Project's "independent utility." (AR 8779.)

(1) the northern terminus of the Project is a private parcel at which the reasonably foreseeable future activity would occur;

(2) the co-owner of the parcel has a longstanding desire and economic incentive to develop the land to create year-round activity and revenue;

(3) an actual plan for development of restaurants, shops, and a museum was proposed, though not built;

(4) a "flexible" agreement for the land with a 25-50 year horizon requires the parties to make efforts to build a mass transit option (such as the Project) to "facilitate" development by reducing the need for parking;

(5) the unsolicited proposal was submitted by a proxy for a co-owner of the land that would be developed;

(6) description of the land at which future activity would occur was described as a *current* real estate project three years after the Project was submitted; and,

(7) a condition of approval (Condition F) recognizing potential future development was adopted by Metro's board.

Of Condition F, Metro cannot have it both ways: if the affordable housing condition is valid, it can only be because the agency recognizes development of Dodger Stadium parking lots is a reasonably foreseeable consequence of the Project.[17]

The EIR states development is not reasonably foreseeable due to the Project because "neither the Project Sponsor nor any other applicant has *applied for* other development unrelated to

[17] Metro's conditions are presumptively lawful. (Evid. Code, § 664.) It is unnecessary at this stage to consider whether Metro's conditions satisfy the "nexus" and "rough proportionality" requirements as discussed in *Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 599.

the existing stadium uses on the Dodger Stadium property." (AR 8779, emphasis added.) This argument fails. No application needs to have been drafted or submitted to a public agency before a court may find future activity is reasonably foreseeable. No particular plan even needs to exist. (*Laurel Heights*, supra, 47 Cal.3d 376; *Bozung*, supra, 13 Cal.3d 263; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 244; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337; see also, *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168.)

In *Laurel Heights*, the leading case on piecemealing, the UC Regents acquired a new 354,000 square foot facility for UCSF's School of Pharmacy. (*Laurel Heights*, supra, 47 Cal.3d at 393.) The project under review was only a portion (100,000 square feet) of the entire 354,000 square foot facility. (*Id.*) The evidence showed 254,000 square feet in the facility was initially leased but would become available to UCSF some years later. (*Id.*)[18] Evidence showed school officials discussed using the entire space someday, but the Regents contended there were no formal plans for the building's use. (*Id.* at 396-97.)

The California Supreme Court rejected that a formal plan was necessary before environmental review could be required, finding "credible and substantial evidence" of planned development and "the general type of future use is reasonably

[18] The UC Regents purchased the facility in 1985. A Caltrans lease would end in 1990 but included an option to extend to 1995. (*Laurel Heights,* 47 Cal.3d at pp. 388, 393.)

foreseeable." (*Id*. at 397-98.) The Court observed that even if the UC Regents' plans were not sufficiently specific the EIR could discuss "at least the general effects of the reasonably foreseeable future uses of the Laurel Heights facility, the environmental effects of those uses, and the currently anticipated measures for mitigating those effects." (*Id*.)

Here, as in *Laurel Heights*, credible and substantial evidence shows stadium development is planned, even though there appears to be no particular plan and no application has been submitted to the City or another agency. Development of the Project would reduce the need for parking at Dodger Stadium by approximately 3,000 vehicles and make that space available for other uses. Here, as in *Laurel Heights*, space in use for one purpose (parking) will become available for a different use (development) when no longer needed. There is no particular project contemplated, but the general type of future use is reasonably foreseeable. The amount of parking area freed up is also foreseeable.[19]

In *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 (*Antioch*), a trial court upheld a negative declaration for construction of a road and utility improvements that were not initially proposed to be connected to other streets, nor were buildings or new land uses proposed. The trial court found review of future development was "an impossible task" because "almost

[19] When the 2008 project was proposed, McCourt said it would take 15 acres, space for about 2,000 cars. (AR 101846.) The Project could thus free up well over 20 acres.

an infinite number of potential developments" would have to be considered. (*Antioch*, 187 Cal.App.3d at 1329-30.) The Court of Appeal reversed, citing multiple cases where an EIR was required even though projects under review "did not directly involve construction of structures or actual development" and future plans were unknown. (*Id.* at 1336.) The cases surveyed by the *Antioch* court supported that even when the exact form of later development could not be known, "where significant impacts were a realistic possibility" an EIR must be prepared. (*Id.*)

Sometimes courts have found two projects may undergo separate environmental review when they can be implemented independently, even where they may be contemporaneous or similar. (See, e.g., *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 699; see also *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31.) Here, the evidence shows the second activity is a contemplated future part of the first activity. Indeed, the Project is an important "first step toward future development" (*Banning Ranch I*, supra, 211 Cal.App.4th at 1223), consistent with the agreement to make "commercially reasonable efforts" to develop mass transit to the stadium.

Moreover, an important factor toward a finding of independent utility is whether the different projects also have different proponents and serve a different purpose. (*Banning Ranch I*, supra, 211 Cal.App.4th at 1223.) Here, the record shows a McCourt Global entity submitted the unsolicited proposal to

Metro and another co-owns the parking lots.[20] The Project's stated purpose is a "permanent direct transit connection between LAUS and Dodger Stadium." (AR 90280.) This may reduce vehicles in the Project area on game and event days, but it will also remove those vehicles from stadium parking areas, a "crucial functional element" of stadium development. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 99.)

Weak denials that there are no plans for development at Dodger Stadium collapse under the overwhelming weight of the evidence. (See, e.g., 101407.)

The development of Dodger Stadium parking lots is a reasonably foreseeable consequence of the Project.

4. Development of Dodger Stadium parking lots would dramatically change the Project's scope and environmental effects.

Laurel Heights' second prong requires the reasonably foreseeable activity "must be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (47 Cal.3d at 396.) This is a low bar and readily shown.

To the extent even modest development of parking lots occurs to create a year-round destination, potential increases in GHG and vehicle miles traveled would change the scope and

[20] ARTT's 2023 donation of the Project to ZET (AR 8814) does not change the analysis. The Project still achieves the goal of reducing parking to free space for other purposes.

environmental effects of the Project.[21] Considering the stadium land use agreement, which contemplates potential uses including but not limited to office, hotel, exhibition, retail, residential, medical, academic, dining, and entertainment facilities, and the potential for 20 acres or more to be developed, it is self-evident that the reasonably foreseeable development would likely change the scope of the Project's environmental effects.

Further, the EIR currently dismisses the potential for any induced growth: "the proposed Project is intended to accommodate existing and future transportation needs of the area's population and would not directly induce growth." But this entirely dismisses the growth-inducing effects of reasonably foreseeable development. As one commenter opined, quoting CEQA Guidelines section 15126, subd. (e): "The Project would clearly 'encourage and facilitate' the future plans to redevelop the parking lot with commercial uses, and the potential impacts of that future component of the Project should have been assessed." (AR 99976.)

Moreover, and regardless of what may be developed, Condition F of the Metro board's conditions of approval requires twenty-five percent of the developed space to be used for affordable or supportive housing and would thus implicate the consideration of growth-inducing impacts from direct or indirect development of housing. (AR 88326, see CEQA Guidelines, §

[21] The failure to consider GHG and VMT from reasonably foreseeable development also undercuts the finding that the Project qualifies for section 21168.6.9 judicial streamlining.

15126, subd. (e).). "[A]n agency is not excused from environmental review simply because it is unclear what future developments may take place; it must evaluate and consider the environmental effects of the most probable development patterns." (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 292-293 (internal quotation marks omitted).)

Finally, it is also necessary to consider the reasonably foreseeable development in the context of cumulative impacts with the Project and other development in the area. (*Laurel Heights*, supra, 47 Cal.3d at 394; *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61; see also *Antioch*, supra, 187 Cal.App.3d at 1338: "[T]he fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process.") When the EIR properly considers cumulative impacts of reasonably foreseeable development, that will also likely change the scope of environmental effects.

Even if Dodger Stadium development were treated as an entirely unrelated project, the EIR's failure to consider the cumulative impacts of the Project and foreseeable development represents an additional required analysis that Metro has skipped, violating CEQA. (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 733.)

Here, both prongs of *Laurel Heights* are easily met. Metro violated CEQA by certifying an EIR that failed to analyze and mitigate reasonably foreseeable development that would occur as a consequence of the Project.

C. The EIR's analysis of aesthetic impacts is inadequate and fails to follow *Metro's* selected methodology.

The EIR wrongly concludes the Project would cause no significant aesthetic impacts, including to treasured Los Angeles cultural and historic landmarks Union Station, El Pueblo, Los Angeles State Historic Park, and Chinatown. (AR 2622.) It finds no mitigation measures are needed to achieve this result. (AR 2622.) The EIR's methodology uses a 'divide and conquer' approach to minimize obvious adverse visual effects, ignores mitigations and policy goals provided in the LASHP General Plan and EIR, and ignores public comments raising aesthetic concerns at the park and elsewhere. In arriving at its conclusion, the EIR relies entirely on the opinion of one expert who used only *predictions* rather than *actual* viewer preferences, even though Metro's chosen methodology requires considering the visual preferences of real people.

An EIR must provide sufficient information to allow "those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.) Metro violated CEQA by obfuscating and ignoring the Project's obvious aesthetic impacts, rather than analyzing and mitigating them.

1. A lead agency must consider and resolve fair arguments of significant aesthetic impacts.

Analysis of aesthetic impacts is "highly subjective." (AR 700, 2550.) For this reason, aesthetic effects are not considered "the special purview of experts," and personal opinion "can

constitute substantial evidence." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.)

Finding an impact does not exceed a selected threshold of significance is not the end of the required analysis. As explained in *Protect the Historic Amador Waterways v. Amador Water Agency* (*Amador*):

> [T]hresholds of significance can be used only as a measure of whether a certain environmental effect "will *normally* be determined to be significant" or "*normally* will be determined to be less than significant" by the agency. (Guidelines, § 15064.7, subd. (a), italics added.) In each instance, notwithstanding compliance with a pertinent threshold of significance, the agency must still consider any fair argument that a certain environmental effect may be significant.

(*Amador* (2004) 116 Cal.App.4th 1099, 1109.)

Further, using the Appendix G thresholds does not immunize an agency from failure to analyze impacts beyond their scope. "[T]he failure of appendix G to mention a particular impact does not justify the failure to discuss it." (*Yerba Buena Neighborhood Consortium, LLC v. Regents of University of California* (2023) 95 Cal.App.5th 779, 803.)

It is improper to use thresholds to "foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." (*Amador,* supra, 116 Cal.App.4th at 1109.) An agency may not use its own failure to investigate

a project's environmental effects to support a finding that there is no significant impact. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) That principle must be doubly true here, where Metro needed only to consider information provided by the public.

The legal standard is clear: "[I]n preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect." (*Amador,* supra, 116 Cal.App.4th at 1109.) Metro fails to meet this standard.

2. Metro's selected thresholds of significance and methodology.

Metro chose the State CEQA Guidelines, as informed by the City's CEQA Thresholds Guide, as its thresholds of significance. (AR2548-50.) Under these thresholds a significant aesthetic impact would be found if the Project would: (1) "have a substantial adverse effect on a scenic vista;" (2) "substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;" (3) "conflict with applicable zoning and other regulations governing scenic quality;"[22] and, (4) create new sources of light or glare adversely affecting views. (AR 2548-49.)

[22] The first clause of this threshold applies to non-urbanized areas and is omitted. (AR 2584.)

The EIR's analysis does *not* consider the LASHP General Plan and EIR, which provides guidance and mitigation measures for aesthetic impacts having to do with new facilities within the park. (AR 9126; see 23978-979, 24013-017.)

Metro's chosen analytic methodology claims to "generally follow[ ] the guidance outlined in the Guidelines for the Visual Impact Assessment of Highway Projects (2015) published by the Federal Highway Administration" (*FHA Guidelines*). (AR 2550.)

The FHA Guidelines provide two approaches for establishing viewer preferences. The "Professional Observational Approach" begins with *assumptions* about viewer preferences. (AR 32020.) Public review of these assumptions is required for this type of visual impact assessment, which is only appropriate for "[p]rojects with average complexity and a minimum of controversy." (*Id.*) The "Public Involvement Approach" should be used for "more complex and controversial projects," such as the Project.[23] (*Id.*) The Public Involvement Approach *begins* with professional observation but then collects actual viewer preference through viewer workshops to verify the analyst's conclusions.

The EIR provides a list of the eight steps it followed. The fifth explains the analyst must "[d]escribe *potential*

[23] Director Solis: "There is no doubt this is a controversial project." (AR 89089.)

viewers and *predict* viewer response, including exposure and sensitivity." (AR 2550 (emphasis added.) This is not consistent with the FHA Guidelines for a complex and controversial project, which calls for obtaining actual viewer preferences using the Public Involvement Approach.

3. Metro failed to consider and resolve all fair arguments of significant aesthetic impacts and failed to follow its selected methodology.

The Los Angeles Conservancy's Draft EIR response found the Project would "obscure the view, setting, and future overall experience of various historic places and spaces, including Union Station, El Pueblo, Los Angeles State Historic Park, and Chinatown" and would "irreparably harm[ ]" these resources. (AR109672-673, AR109676.) The letter from State Parks, a *responsible agency*, requested further analysis of the "impairment of scenic viewsheds and high-value open space" at LASHP. (AR102263.)

Metro received detailed comment letters on the EIR's weakly supported conclusion that aesthetic and other impacts at LASHP were not significant. (AR101697-708, AR109672-673, AR110914-916, AR101589-594, AR100519-520.) Failure of the EIR to consider and protect viewsheds of and from Los Angeles State Historic Park was frequently noted, as was the constant and distracting motion of gondola cabins. The California State Park Rangers Association commented:

> Still photos cannot portray the attention-grabbing movement of the gondola cars. The DEIR, limited by focusing mostly on distant views, concludes that impacts are insignificant because cables are just part

> of a busy scene that includes other existing lines, and gondola cabins would be constantly moving in and out of view. That very movement – one gondola cabin after another in rapid motion – is instead a convincing argument for a significant impact.

(AR 110915.) LA River State Park Partners (LASHP's cooperating association) agreed and was concerned by the massive station placed within the park:

> Putting a large-scale station at the end of the park will affect the park experience from multiple vantage points, especially from the bridge. What is currently a spectacular vista will now be marred by a new large building that encroaches on state park land, with constant movement emanating out of that building. This is a fundamental change in the park experience and is inconsistent with the original vision outlined in the General Plan.

(AR101593.) This organization also expressed concern at the loss of 81 trees not evaluated relative to the park's design. (AR 101591-592.)

In response to a comment letter from the California State Parks Foundation (AR AR100519-520), the EIR acknowledges views of historic landmarks and views of the City from LASHP are "visually memorable." The EIR explains Metro's selected thresholds reference "scenic vistas," and "there are no designated scenic vistas present in the area of potential impact." (AR 8958.) The EIR continues: "the proposed Project would not block any designated scenic views, alter a designated scenic area, or block panoramic views." (*Id.*) The EIR concludes that there is no impact and ignores the commenter's request for "a set of visuals that show what park visitors in the southwestern third of the park

would see and experience at ground level after the proposed project is constructed." (AR 8957-58.)

Moreover, the EIR disclaims it must consider the viewshed protections provided in LASHP's General Plan and EIR. (AR 9126: "CEQA does not require an analysis of this type of view.")

Thus, the thresholds of significance were used to limit the type of aesthetic impact commenters could expect to be mitigated. This is improper. (*Amador,* supra, 116 Cal.App.4th at 1109.) Even if the EIR met its chosen thresholds, which LAPA does not concede, CEQA requires Metro "must still consider any fair argument that a certain environmental effect may be significant." (*Id*.) Metro may not ignore these arguments as it did LASHP's General Plan and EIR, it must "consider and resolve" them. (*Id*.)

Finally, Metro failed to follow the FHA Guidelines methodology for establishment of actual viewer preferences. The EIR claims it followed the FHA Guidelines, but it did not. The FHA Guidelines call for using the "Public Involvement Approach" for complex and controversial projects. Metro chose not to use it. (AR 32020.) And even if Metro followed the inappropriate Professional Observation Approach it was still required to verify its conclusions against comments received during the public review process. (AR 32020.) In response to the fair arguments received after the Draft EIR was published, however, not one word of Appendix C was changed to reflect the expert's wildly inaccurate prediction of viewer preferences. (See AR 8573-76.)

Here, following the FHA Guidelines would have ascertained the *true* visual preferences of stakeholders rather

than relying on one expert's predictions. (AR 9114.) The EIR was required to consider and resolve fair arguments raised by commenters, rather than responding with technical justifications why they could be ignored.

The trial court accepted Respondents' weak argument that Metro could abandon the FHA Guidelines because those only apply to NEPA, not CEQA. (JA 981, fn. 25; JA 1153). This overlooks that *Metro* selected the FHA Guidelines. LAPA does not disagree with the methodology, but with *Metro's decision not to follow it*. Thus, Respondents are not assisted by cases holding disagreement with an agency's chosen methodology does not constitute evidence that an EIR is inadequate. (See, e.g., *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 642-43.)

Metro failed to consider and resolve the many fair arguments raising significant aesthetic impacts as required by CEQA. It compounded this error by failing to follow its selected methodology. The EIR's aesthetic analysis is inadequate without an accurate baseline of actual viewer preferences against which the Project's potentially significant aesthetic impacts may be considered. By not providing the required information and analysis Metro violated CEQA. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.)

Worse, Metro's cynical approach not to follow the methodology it selected fails to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered

the ecological implications of its action." (*Laurel Heights*, supra, 47 Cal.3d at 392.)

D. Metro is Not the Proper Lead Agency.

1. CEQA requires the agency with greatest responsibility as a whole to be lead agency.

Determination of lead agency is a procedural question subject to independent review. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 905-906 (*PCL v. DWR*); see *Banning Ranch II*, supra, 2 Cal.5th at 935.) Improperly acting as lead agency is a failure to proceed in the manner required by law and an abuse of discretion. (*PCL v. DWR*, supra, 83 Cal.App.4th at 912.)

CEQA Guidelines section 15051 provides the criteria for determining proper lead agency. The lead agency for a project carried out by a private entity "shall be the agency with the greatest responsibility for supervising or approving the project as a whole." (CEQA Guidelines, § 15051, subd. (b).) An agency with "general governmental powers, such as a city or county" is preferred to one "with a single or limited purpose." (CEQA Guidelines, § 15051, subd. (b)(1).) Subdivision (c) of the guideline applies only where two agencies "equally" meet the requirements of subdivision (b) and normally will permit the first to act agency to be lead agency. Subdivision (d) allows agencies to agree on lead agency only where the earlier subdivisions "leave two or more public agencies with a substantial claim to be the lead agency." Such agreements may not contravene CEQA. (*PCL v. DWR*, supra, 83 Cal.App. 4th at 906.)

2. The City of Los Angeles has greatest responsibility for the Project.

The City of Los Angeles has greatest responsibility for Project approvals and therefore the Project. This makes sense – the City's rights-of-way constitute the primary location in which most Project components will be built and through which the Project's gondola cabins will mostly travel, and where the Project's impacts will be experienced by residents and visitors. The City has an extensive list of legislative and other approvals that the Project would need to obtain, including:

(1) a franchise agreement for use of City rights-of-way;

(2) a 20-year Development Agreement;

(3) creation of a Specific Plan;

(4) creation of a Sign District;

(5) modification of the Dodger Stadium conditional use permit;

(6) relief from the River Implementation Overlay District;

(7) relief from City's Cornfield Arroyo Seco Specific Plan;

(8) approval from the Cultural Affairs Commission; and,

(9) "Other discretionary and ministerial permits, approvals, consultations, and coordination will or may be required, including, but not limited to, temporary street closure permits, demolition permits, grading permits, excavation permits, archaeological permits, encroachment permits, building permits, dewatering permits, stormwater permits, noise variances, work hour variances, haul routes, sign permits, any operational agreements, consultation with the State Historic Preservation Officer and other agencies, and any

applicable permits or clearances related to water and/or energy infrastructure or emergency access."

(AR 668-69.)

In addition to the above approvals, the City is listed in the EIR as a monitoring and enforcement agency on all but three of the required actions listed in the Project's Mitigation Monitoring and Reporting Program. (AR 11995-12035.) The City would be responsible in whole or part for: the Construction Monitoring Plan (AR 12008), Cultural Resources Monitoring and Mitigation Plan (AR 12009), Archaeological Testing Plan (AR12012-15), Data Recovery Plan (*ibid.*, AR 12031-32), Soil and Groundwater Management Plan (AR 12018), Construction Noise Management Plan (AR 12020-26), Vibration Monitoring Plan (AR 12026), Construction Traffic Management Plan (including detour plan and Temporary Disaster Route Plan) (AR 12028-31), Utility Relocation Plan (AR 12032), Fire Protection Plan (AR 12033-35), and Emergency Operations Plan (AR 12035). The City must also approve the Site-Specific Final Geotechnical Report (AR 12016) and monitor hazardous materials abatement. (AR 12019.)

Metro's Project responsibility is comparatively limited. It is responsible for only three approvals:

1. "review and approval of plans for design, construction, and implementation" under Public Utilities Code section 130252;
2. "an easement or other agreement" allowing the Project to use part of LA Union Station; and
3. "an encroachment permit or other agreement" to allow the Project to cross a Metro rail line.

(AR 668.) Moreover, two of the required Metro approvals are similar to approvals needed from other agencies. Caltrans must issue an encroachment permit for the Project to cross the SR-110 freeway. (AR 664.) State Parks must issue an encroachment permit or lease for the use of LA State Historic Park. (AR 668.) Along with a franchise agreement, the City must issue encroachment or permits for City rights of way. (AR 668-69.)

As the public agency with "general governmental powers" and "greatest responsibility for supervising or approving the project as a whole," (CEQA Guidelines, § 15051, subd. (b)), the City of Los Angeles is the proper CEQA lead agency.

3. Public Utilities Code section 130252 does not require Metro to act as lead agency.

Metro's theory appears to be that it *must* act as lead agency under Public Utilities Code (hereafter *PUC*) section 130252. (See, e.g., AR 87392, 89179.) But section 130252 does not require Metro to act as lead agency, as its previous actions, interpretations, and public statements of its Board make abundantly clear.

Subdivision (a) of PUC section 130252 grants Metro oversight of "public mass transit systems or projects," so that Metro can determine whether the project "conforms to the appropriate adopted regional transportation plan." Director Krekorian explained that was just what Metro was doing when it considered the Project: "When we say 'approval of the project under the PUC,' … we are simply saying it is not inconsistent with the Regional Transportation Plan." (AR 89216.)

In the Metro–ARTT agreement, ARTT agreed it would submit its plans to Metro, but noted "in PUC Section 130252, plans means the project description and not the detailed project plans, specifications, and estimates." (AR 89938.)

ARTT elsewhere explained to Metro that "aerial gondolas and tramways are regulated by the California Labor Code, Sections 7340-7357, and the detailed implementation of design, plans, and specifications falls under the jurisdiction of the Department of Industrial Relations, Division of Occupational Safety and Health." (AR 89867, AR 668 (referencing Project approvals from Cal/OSHA.)

Metro has repeatedly stated this is the first time it has acted as lead agency for a private project. (AR 89179, 89185-186.) Not coincidentally it is also the first time Metro has so broadly interpreted PUC section 130252. When two projects were proposed by The Boring Company in 2018 (the same year the Project was submitted) the City of Los Angeles acted as lead agency. (AR 119727, 119742-744.) Metro met with The Boring Company and described its section 130252 authority as requiring only a "signoff." (AR 119733, 119735.) Like the Project, one of those would have transported passengers from near a Metro station to Dodger Stadium. (AR 119742-744.)

Metro's board understood Metro's limited role. Director Horvath noted Metro does not have land use authority over the Project, its role "is to consider the EIR… the project itself is reviewed by the City." (AR89097.) Director Dupont-Walker agreed. (*Id.*) Director Krekorian explained the "land use approval

of this project… is not within the province of [Metro]." (AR 89216-217.) The County Counsel agreed. (AR 89217.)

Metro's novel interpretation of PUC section 130252 makes little sense. It broadly overstates Metro's authority by ignoring the statute's purpose to ensure transportation projects are consistent with adopted regional transportation plans. An agency's inconsistent and vacillating interpretation of a statute is simply not entitled to judicial deference. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13.)

ARTT asked and Metro agreed to act as lead agency. (AR 89938.) It is unnecessary to speculate why ARTT may prefer Metro in the lead agency role. Neither public nor private entities are "at liberty to anoint" a *preferred* lead agency to the *proper* lead agency under CEQA Guidelines section 15051. (*PCL v. DWR*, supra, 83 Cal.App.4th at 906.)

4. Metro's action as lead agency is prejudicial; harmless error analysis is inapplicable.

Designation of the wrong lead agency is prejudicial and requires new environmental review to be undertaken by the properly designated lead agency. (*PCL v. DWR*, supra, 83 Cal.App.4th at 912.)

The California Supreme Court explains Public Resources Code section 21005 should not be read to require reviewing courts to undertake harmless error analysis in every instance: "[W]e assume that the enactment of section 21005 was simply a reminder of the general rule that errors which are insubstantial or de minimis are not prejudicial." (*Environmental Protection*

Information Center v. California Dept. of Forestry & Fire Protection (2008) 44 Cal.4th 459, 487, fn. 10 (*EPIC*).)

When the wrong lead agency undertakes environmental review the proper lead agency is shielded from accountability. "CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review." (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731; see also *PCL v. DWR*, supra, 83 Cal.App.4th at 907 (disapproving delegated decisionmaking).)

Two (of fifteen) Los Angeles City Councilmembers and the Mayor sit on the Metro board, but not in their City capacities. (AR 89218; see also, AR 89217-218 (Director Krekorian comments).) The Court cannot assume the City's environmental review process would disclose the same information or result in the same public and agency comments. Indeed, the City has already moved to study additional transportation alternatives beyond those in the EIR. (AR 117832-833.)

As the court in *EPIC* found, citing *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013: "courts are generally not in a position to assess the importance of the omitted information to determine whether it would have altered the agency decision, nor may they accept the post hoc declarations of the agencies themselves." (*EPIC*, supra, 44 Cal.4th at 487.) "When an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

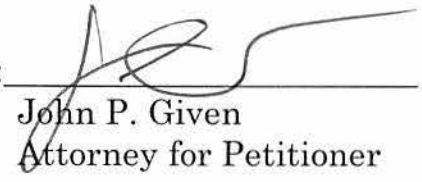
VII. CONCLUSION.

Metro is not the proper lead agency. The Project EIR it certified fails to analyze and mitigate all significant environmental effects, including significant land use conflicts arising from the unlawful use of Los Angeles State Historic Park and El Pueblo, fair arguments of aesthetic effects that were not considered, and impacts from reasonably foreseeable development and associated growth-inducing and cumulative impacts. Metro prejudicially failed to timely consult with a trustee agency, improperly rejected a feasible project alternative, and failed to adequately support its statement of overriding considerations and findings. Due to these informational and procedural deficiencies, neither the public nor Metro were fully informed of all Project impacts.

Metro prejudicially abused its discretion. The EIR must be set aside.

DATE: October 7, 2024

Respectfully Submitted,

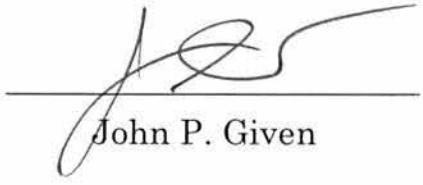
By: 

John P. Given
Attorney for Petitioner

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rules 8.204 and 8.520, subd. (c)(1), I hereby certify that this APPELLANT'S OPENING BRIEF is proportionally spaced, has a typeface of 13-point, proportionally-spaced font and contains 13,999 words, according to the word counting function of the word processing program used to prepare this brief.

Executed on this 7th day of October, 2024, at Los Angeles, California.



John P. Given

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2309 Santa Monica Blvd., #438, Santa Monica, CA 90404.

On October 7, 2024, I served the following document(s):

APPELLANT'S OPENING BRIEF

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **VIA ELECTRONIC SERVICE THROUGH TRUEFILING.** Based on a court order or an agreement of the parties to accept service by electronic transmission through TrueFiling, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am acting for the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on October 7, 2024 at Los Angeles, California.

John Given

SERVICE LIST

California Supreme Court
Via 2DCA

Attorneys for Respondent, LA County Metropolitan Transportation Authority
Dawyn R. Harrison, County Counsel
Charles M. Safer, Assistant County Counsel
Ronald W. Stamm, Principal Deputy County Counsel
LOS ANGELES COUNTY COUNSEL
One Gateway Plaza
Los Angeles, CA 90012
stammr@metro.net

Tiffany K. Wright
Laura M. Harris
REMY MOOSE MANLEY, LLP
555 Capitol Mall, Ste 800 | Sacramento, CA 95814
twright@rmmenvirolaw.com
lharris@rmmenvirolaw.com

Attorneys for Real Party in Interest, LA ARTT LLC
James L. Arnone
Benjamin Hanelin
Sam Seikkula
LATHAM & WATKINS LLP
355 South Grand Avenue, Ste 100
Los Angeles, CA 90071-1560
james.arnone@lw.com
benjamin.hanelin@lw.com
Samantha.Seikkula@lw.com

Attorneys for The California Endowment
Douglas P. Carstens
Michelle N. Black
Sunjana Supekar
CARSTENS, BLACK & MINTEER LLP
2200 Pacific Coast Hwy, Ste 318
Hermosa Beach, CA 90254
dpc@cbcearthlaw.com
mnb@cbcearthlaw.com
sss@cbcearthlaw.com

Via US Mail

California Attorney General
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Honorable Maurice A. Leiter
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012