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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Exposition Metro Line Construction Authority for an order authorizing the construction of a two-track at-grade crossing for the Exposition Boulevard Corridor Light Rail Transit Line across Jefferson Boulevard, Adams Boulevard, and 23rd Street, all three crossings located along Flower Street in the City of Los Angeles, County of Los Angeles, California.

And Consolidated Proceedings.

Application 06-12-005
(Filed December 6, 2006)

Application 06-12-020
(Filed December 19, 2006)

Application 07-01-004
(Filed January 2, 2007)

Application 07-01-017
(Filed January 8, 2007)

Application 07-01-044
(Filed January 24, 2007)

Application 07-02-007
(Filed February 7, 2007)

Application 07-02-017
(Filed February 16, 2007)

Application 07-03-004
(Filed March 5, 2007)

Application 07-05-012
(Filed May 8, 2007)

Application 07-05-013
(Filed May 8, 2007)

OPENING BRIEF OF THE LOS ANGELES UNIFIED SCHOOL DISTRICT

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**OPENING BRIEF OF THE
LOS ANGELES UNIFIED SCHOOL DISTRICT**

I. Summary of Position

The Exposition Metro Line Construction Authority (“Expo”) seeks approval of what it calls a grade-separated crossing at the intersection of Harvard Boulevard (“Harvard”) and Exposition Boulevard (“Exposition”) and what it admits is an at-grade crossing at the intersection of Farmdale Boulevard (“Farmdale”) and Exposition. The proposed crossing at Harvard is, by any realistic definition, at-grade and cannot be approved as proposed in Expo’s application. The proposed at-grade crossing at Farmdale is grossly unsafe, a condition that cannot practicably be avoided except by placing the tracks either above- or below-grade.

The Farmdale at-grade crossing would create enormous hazards and poses the risk of truly calamitous accidents. Expo’s claim to the contrary is based entirely on a studied refusal to consider the actual population being exposed to the risk. From its earliest design to its defense in this hearing, Expo has ignored the fact that the pedestrians at issue are not adults but juveniles, who are endemically inattentive to hazards, attracted to risks, and engaged with one another in ways fundamentally different from the abstract adult-commuter drone walking from point A to point B. The strong public policy in favor of grade-separation led the California Public Utilities Commission (“CPUC” or “Commission”) to require Expo to tender alternatives to the proposed at-grade crossing. This hearing has focused on three of those alternatives: a pedestrian overpass with Farmdale closed, grade separation by an elevated light rail transit (“LRT”) overcrossing,

and an LRT undercrossing. Belatedly recognizing the infirmities of its at-grade proposal, Expo has tried to advance the least-expensive alternative, the pedestrian overpass. Expo's efforts have even extended to manipulating studies to make its environmental effects disappear. The fundamental reality is that only by separating the trains from both pedestrians and automotive traffic, and by keeping Farmdale open at Exposition, can the project be implemented without creating an extraordinary risk to life and without significantly harming the community and its environment.

Expo's proposal at Harvard is premised on the facile notion that a crossing is grade-separated so long as there exists a physical path for pedestrians at a different elevation than the trains — even if, as in this case, the putative path consists of a subterranean tunnel locked closed for all but five hours a week. In the real world of children and adults trying to cross Exposition, the proposed Harvard crossing is at-grade and is unsafe. Expo's crossing will block all access across Exposition for emergency responders on foot and in vehicles, and it will pour hundreds more pedestrians onto already overburdened neighboring crossings. Expo's only attempt to show those crossings' capacity to absorb the overflow consists of a deeply flawed computer simulation that was, as it turns out, based on faulty assumptions. The sole workable, practicable alternative at Harvard is to construct a pedestrian overpass across Exposition.

II. Legal Standard

The Commission has established “a very heavy burden” on an applicant seeking to create an at-grade crossing. (*City of San Mateo* (“San Mateo”) (1982) 8 CPUC 2d 572, 581.) The “[a]pplicant bears the heavy burden of proving safety, rather than protestants

proving unsafe conditions. Where there is a request for an at-grade separation a mere preponderance of evidence will not suffice. The safety of the proposed at-grade crossing must be convincingly shown.” (*Los Angeles to Pasadena Metro Blue Line Construction Authority* (“*Blue Line*”) (2002) D.02-05-047, p. 13.) The Commission begins with a presumption of grade-separation. (*Ibid.*) An at-grade crossing will not be permitted if a grade-separation is practicable. (*San Mateo*, 8 CPUC 2d, at *8.) The Commission has gone to great lengths to distinguish the concept of “practicability” from “practicality”:

“And it should be carefully noted that the word used in the statute . . . is ‘practicable’ rather than ‘practical.’ ‘Practicable’ means being possible physically of performance, a capability of being used, a feasibility of construction. On the other hand, ‘practical’ connotes the means to build, the possibility of financing. For example, ‘a plan might be practicable in that it could be put into practice, though not practical because . . . too costly. . . .’” (*Id.* at p. 625, quoting *Webster’s New Dictionary of Synonyms* (1973).)

Safety is the Commission’s paramount concern. (*San Mateo*, 8 CPUC2d, at *10.)

Accordingly, the Commission favors grade-separation because separation eliminates entirely the risk of accident inherent in any at-grade crossing. (*Id.* at *8.) For example, the Commission has denied an at-grade crossing where an applicant contended that operating restrictions on trains and behavioral modification by users of the crossing would ensure that a gated at-grade crossing functioned safely. (*City of San Diego* (1998) 82 CPUC 2d 160 [“there would be the ever present danger of a collision on the tracks, whether by negligence on the part of a driver or train operator or malfunction of either the train, a vehicle, or of the crossing protection.”].) “[I]f the Commission could count on both the railroads and the motorists using extra caution at crossings there would be no

need for proceedings such as the instant one. Experience has shown that existence of a duty is not sufficient to bring about compliance.” (*Ibid.*) Thus, the applicant must conclusively demonstrate that an at-grade crossing eliminates all safety risks, *without* reliance on the behavior of others outside of the applicant’s control. (*Ibid.*)

Expo emphasizes the need for the Commission to consider the comparative cost of grade-separation and of an at-grade crossing. (Expo Exh. 3, p. 6.) The Commission was clear in its decision in *Blue Line* that comparative cost is relevant but “much less persuasive than safety considerations.” (D.02-05-047, p. 12.) Although the Commission stated that it would consider comparative costs, it did so noting that it was “also aware that the cost of a separation will, with very few exceptions, be multiples of the cost of an at-grade crossing.” (*Ibid.*) The Commission has already accounted for the fact that grade-separation is more costly than an at-grade crossing, and continues to require an applicant to conclusively demonstrate that any crossing design eliminates all safety hazards.

Expo postulates that a new definition of “practicability” should be applied to at-grade crossings in the light-rail context. The argument that the Commission should apply a separate standard to light rail finds no support in the statutory language of Public Utilities Code section 1202, which applies without distinction to both “railroads” and “street railroads.” (Pub. Util. Code, § 1202, subds. (a) & (c).) Furthermore, while Expo would insist upon a separate, statutorily unsupported distinction for light rail trains based on their performance characteristics, Expo would ignore the different performance

characteristics of the affected population, in this case vulnerable children and teenagers rendered more vulnerable by their own performance characteristics.

In fact, Expo's rationale for a different standard for light rail is vitiated in this case by the greatly increased frequency of the light rail trains over the line, as compared with the frequency of typical freight operations. At these locations, Expo proposes to operate upwards of 200 trains per day. While there may be grounds to say that the risk of each train is smaller for LRT, there is no basis for claiming that the risk from 200 LRT crossings per day is smaller than, say, three or four large trains. Furthermore, at the Farmdale crossing, the trains will be running at high speeds on an exclusive right-of-way. To the extent that Expo's arguments seeking a different standard have any force at all, their relevance is limited to the portions of the line where the train is operating in street running mode and obeying traffic restrictions. Where the light rail train moves at a higher speed than traffic, in its own right-of-way, it should be treated no differently than any other type of rail.

As the leading case on grade-separation notes, an at-grade crossing may remain unsafe in spite of the use of the latest safety measures. "Despite substantial advances, there are numerous situations remaining where grade crossing protection can never provide a satisfactory solution due to limiting physical and operating conditions. In such locations, grade separations are the only solution." (*San Mateo*, 8 CPUC 2d, at *10.) The Los Angeles Unified School District ("LAUSD" or "the District") submits that the crossings before the Commission present situations in which the only solution is grade-separation.

III. The Crossing at Farmdale and Exposition Must Be Grade-Separated by Placing the Tracks Either Above or Below Grade

A. Expo Has Not and Cannot Eliminate All Safety Hazards from the At-Grade Crossing

1. No At-Grade Crossing, Including Expo's Proposed Crossing, Will Protect the Hundreds of Students Daily Crossing Exposition

Expo has designed a crossing at Farmdale that might function safely were it utilized solely by rational, risk-averse, situationally-aware, attentive adults seeking only to cross the railroad tracks on their way from Point A to Point B. What Expo has not designed is a crossing that will operate safely under the conditions of actual use, with the population that will actually use it. There is little doubt on this record that the approximately 700 students who cross Exposition and Farmdale every weekday afternoon engage in risky behavior that is common to the teenage years. As George Bartleson, the Principal of Dorsey High School and the witness most familiar with the students, testified, his “students are very distracted, both by the events occurring in their lives and by technologies that prevent them from hearing or focusing fully on their environment.” (LAUSD Exh. 20, p. 7.) Students commonly use iPods and cell phones that prevent them from fully focusing on the environment around them. (*Ibid.*) Students are also distracted by the social environment around them, including seeking out or avoiding fights with others. (*Ibid.*) Not only are the students distracted — they also take risks that adults would not. Mr. Bartleson testifies that his students sometimes jump the 8-foot fences around campus in order to ditch school, and he fears that they will jump the gates to try to

beat the train across the crossing or try to race the train. (*Id.*, at p. 8.) LAUSD Police Officer Jaming Arkangel testified that students regularly step into Rodeo Road, a busy four-lane street, with only a brief glance for on-coming traffic, and walk across the road without further regard for other on-coming vehicles. (LAUSD Exh. 15, p. 4.) Officer Arkangel also testified that he identifies students under the influence of alcohol or marijuana as often as two or three times a day. (*Ibid.*)

The crowding at the proposed at-grade crossing will add to the potential for student misbehavior. Mr. Bartleson testified that in situations where large numbers of students are crowded together, such as during earthquake drills, students frequently misbehave, pushing other students and inciting fights. (LAUSD Exh. 20, p. 8.) Mr. Bartleson explained that he expects to see similar behavior when students are forced into the “holding pens” to wait for the trains to cross. (*Id.*, at p. 9.) Similarly, Officer Arkangel testified that the high concentration of students present at dismissal sometimes leads to fighting. (LAUSD Exh. 15, p. 5.) He noted that something as simple as a student taking pictures of other students at dismissal can lead to a large fight. (*Ibid.*) When students are routinely packed into the “holding pen” and required to patiently wait for trains to pass and for an opportunity to be funneled through the gates and on their way home, the potential for serious fighting to occur is exponentially greater.

The testimony of United Communities Association and Neighbors for Smart Rail (“UCA/NFSR”) witness Professor Najmedin Meshkati confirms that the observations of Mr. Bartleson and Officer Arkangel are supported by the academic literature on the behavior of teenagers. Professor Meshkati notes that high school students may “feel

invincible”; “are willing to experiment with alcohol and drugs”; that “teenagers and males had less safe attitudes and self-reported behavior with regard to walking across the tracks,” and that “most pedestrian-railway fatalities [in a study] involved young males.” (UCA/NFSR Exh. 11, pp. 9, 10, 22.) UCA/NFSR witness Russell G. Quimby similarly testified that the students crossing at Farmdale are “primarily adolescents who are generally more prone to risk taking and unsafe behavior.” (UCA/NFSR Exh. 9, p. 7.)

In spite of the clear safety risks presented by the at-grade crossing, Expo’s plan to ensure the safety of the 700 Dorsey High School students who cross the intersection each day is to paint lines on the ground and to institute an education program “to follow the law. (RT 1061:16; 1060:9-16 (Expo Witness Olson).) Expo assumes that the students will suddenly choose to “follow the law” once they have been educated, in spite of Mr. Bartleson’s testimony that his students, who plainly know that it is against the law to be truants, jump the fences to escape the confines of the closed campus. The record reveals that it will take more than lines on the ground and a video about rail crossing safety to ensure that generations of students at Dorsey High School are protected from the risk-taking instincts that are inherent in their teenage years.

The safety situation at the Farmdale crossing is exacerbated by the fact that the school straddles the area of two rival gangs. (LAUSD Exh. 20, p. 9.) As Officer Arkangel testified, “students and other gang members frequently fight in the area around the school.” (LAUSD Exh. 15, p. 3.) Principal Bartleson and Officer Arkangel both testified that the gang issue at Dorsey High School compounds their concerns about the safety of students at the crossing, particularly in the holding pen. (LAUSD Exh. 20, p. 9;

LAUSD Exh. 15, pp. 3, 5.) Officer Arkangel noted in particular his concern that the students clustered in the holding pen would make an exceptional target during a drive-by shooting. Expo witness James M. Okazaki himself testified that as early as November 2006 he was made aware by school personnel that a major concern regarding the at-grade crossing were “kids scattering when there is a shooting.” (LAUSD Exh. 7, p. 4; RT 700:28-701:25 (Expo Witness Okazaki).) Mr. Okazaki testified that he learned during his initial investigation of the possibility of closing Farmdale that shootings occurred on or near campus and that students routinely scatter in response to such an event, leaving open the possibility that students could run onto the tracks when a train was nearby. (RT 701:3-25 (Expo Witness Okazaki).) The very real possibility of a violent assault on the students near this crossing creates an additional safety risk that Expo has not accounted for in the design of its proposed at-grade crossing.

2. The Legion Study, Expo’s Only Basis for Claiming That the Crossing Can Safely Accommodate the Students, Is Invalid and Cannot Be Relied upon for Any Purpose

Expo attempts to prove that the crossing at Farmdale can safely accommodate the approximately 700 students that will be crossing in a 15-minute period at the end of the day by reliance on a pedestrian simulation conducted by Legion. (See Expo Exh. 2.) That simulation cannot be relied upon to demonstrate that the crossing will function safely, to prove that the “holding pens” will not become dangerously overcrowded, nor can it prove that students will not be injured or killed as a result of the overcrowding inherent in the crossing design.

As Mr. Okazaki testified, overcrowding at rail crossings can lead to fatalities (RT 1165:15-20; 1168:15-18.) He explained that he relied on the Legion study to determine that dangerous overcrowding would not occur at the Farmdale crossing. (RT 1168:19-28 (Expo Witness Okazaki).) But the Legion study was so flawed as to be unreliable for any purpose.

As Expo witness Nick Connor testified, the Legion model simulates “entities” moving through the space being studied. (RT 343:28-344:4.) In the Farmdale and Foshay simulations, the entities modeled were pedestrians, mainly students exiting the school. (RT 344:3-5, 345:5-9 (Expo Witness Connor).) The program requires the user to endow these entities with behavioral attributes such as luggage, speed profile, and “personal space preference.” (RT 345:14-346:22 (Expo Witness Connor).) The program makes these distinctions because different assumptions can affect “absolutely everything across the board.” (RT 349:10-20 (Expo Witness Connor).) “[T]he aim is to distinguish the things that matter, pedestrian’s behavior and the end outcome.” (RT 349:25-27 (Expo Witness Connor).) So exquisitely sensitive is the model to the characteristics of the entities that Legion distinguishes between entities representing U.K, Far Eastern, North American, and Southern European pedestrians, tracking their different sizes, walking speed and stride, and especially “personal space preference.” (RT 343:10-343:28 (Expo Witness Connor).) Although British, Southern European, Asian, and American pedestrians are “[i]n practice . . . actually very similar,” Legion has gone to the trouble of providing users to simulate them separately because even those small differences “could affect the results of [the] model.” (RT 353:12-24 (Expo Witness Connor).)

But Legion did not distinguish between adults and children. Instead, the simulation Legion performed for Expo assumed that the “entities” leaving Dorsey High School were indistinguishable from adult “North American commuters.” (RT 354:1-356:12 (Expo Witness Connor).) A modeler who would not think of using the characteristics of a typical North American adult commuter to model the behavior of a typical British adult commuter used the characteristics of a North American adult commuter to model the behavior of 14- to 18-year-old Dorsey students (and 5- to 14-year-old Foshay students). The entirety of the Legion simulation for Expo used the canned “North American commuter” as the entity for these children and juveniles. (RT 355:28-356:27 (Expo Witness Connor).) Likewise, while the model distinguishes between an entity carrying nothing, a small briefcase, or large luggage, the model does not simulate the specific behavior of an entity carrying a backpack, despite the substantial behavioral differences of a pedestrian with a backpack on his or her back and one carrying luggage. (RT 351:14-352:9 (Expo Witness Connor).)

Of course, the big difference is not between students and adults is not their walking speed, what they are carrying, or even their “personal space preferences” (although any parent knows how that differs from an adult and differs between a 5-year-old and an 18-year-old), but in their behavior. As Mr. Connor testified, his entities have never gotten into a fight, dated, courted other entities, gotten drunk, formed gangs, or done any of the other things common to teenagers. (RT 365:9-366:16 (Expo Witness Connor); LAUSD Exh. 20, pp. 6-9.) If the behavior was not what would be encountered by “easterners coming off a weekend trip, or North Americans going to work,” the model

was not going to replicate it. (RT 374:17-21 (Expo Witness Connor).) The most one can really take from the Legion study is that “the queueing space at Farmdale is adequate for the pedestrian behavior of adult North American commuters.” (RT 375:12-16 (Expo Witness Connor).) The “model was intended to simulate the behavior of rational[] entities having no interests other than achieving their transportation objective.” (RT 379:14-18.)

Now, it was not that Legion *could not* model juvenile behavior, but that it *was not asked* to do so. Mr. Connor admitted that it would have been possible to design an entity that more accurately reflected the unique attributes of the student population. He testified that Legion could be modified to simulate the behavior of “entities” like jaywalking, loitering, interacting with one another. (RT 373:9-16.) Instead, they chose to adopt

“an implicit assumption that nobody is drunk, nobody is running across the road blindly to kiss a loved one, play guitar in the middle of the road, or any of those kinds of things. It is a crowd made up of a group of people who are going to stop at a stop sign, are going to be -- that normal, sober pedestrian.” (RT 372:22-27 (Expo Witness Connor).)

This assumption alone — that the pedestrians being simulated “are strangers to one another . . . [who] have no objective in the course of [the] time in the simulation other than their . . . transportation objectives” (RT 373:2-8 (Expo Witness Connor)) — renders the Legion model unrepresentative of the population being studied and its conclusions inapplicable to this case.

What’s more, Legion did not model one of the major features of the Farmdale intersection, the pedestrian-automobile interaction. Expo’s own evidence illustrates that students consistently step into the street into the path of on-coming automobiles on

Farmdale. (See Expo Exh. 15 (video).) The design of the Farmdale crossing relocates the Dorsey High School driveway to within a few feet of the holding pen, creating ample opportunity for students to come into contact with vehicles entering or exiting the parking lot. (LAUSD Exh. 21, p. 7; LAUSD Exh. 20, p. 9.) While Legion has a model that could simulate pedestrian-vehicle interactions, it did not examine such interactions in this situation at all, because Expo did not request it. (RT 366:17-367:6 (Expo Witness Connor).) As Mr. Bartleson testified, student pedestrians have been injured by cars during the drop off at Dorsey High School. (LAUSD Exh. 20, p. 5; RT 1313:10-1314:8.) The proposed at-grade crossing increases the risk of a student being struck by a car, yet Expo did not even request that its pedestrian study evaluate the risk.

Finally, the Legion study simply employs the wrong assumptions on the timing of the gates, a fact that is highly relevant where so many pedestrians flow into the intersection each minute of the peak crossing period. Expo calculated a maximum crossing closure time, during which pedestrians were unable to cross the tracks due to trains crossing, of 80 seconds, based upon a train moving at 55 miles per hour. (LAUSD Exh. 9.) Applying similar assumptions to a train moving at 10 miles per hour, as Expo has offered to do at Dorsey High School during peak periods, the gates would be closed for at least 20 additional seconds when two trains reached the crossing one after another, the worst case scenario. (LAUSD Exh. 12.) Although Mr. Okazaki indicated that he did not know what the crossing closure time would be with the train slowed to 10 miles per hour, it is beyond clear that Expo did not determine what the time would be, and did not study how the crossing would perform under those conditions. Mr. Connor indicated that

a change in the assumptions regarding crossing closure time would change the outcome of the Legion analysis in an unknown way. (RT 364:6-365:7.) As Expo’s own counts of the volume of student pedestrians indicate, four minutes after dismissal there are 94 students that cross Farmdale and Exposition. (LAUSD Exh 10.) At five minutes following dismissal, an additional 108 students cross in the next minute alone. (*Ibid.*) The volume of additional students that could be required to wait while two trains running at 10 miles an hour clear the crossing is potentially significant, and could lead to catastrophic overcrowding in the holding pen. These statements must be qualified with the word “potentially,” of course, because Expo did not bother to determine what the outcome might be.

3. The Design of the At-Grade Crossing Is Unsafe

Even if the Legion study were an adequate model, which it is not, the location and design of the Farmdale crossing make it unsafe. Mr. Quimby provided a number of factors why an at-grade crossing at Farmdale is not safe, including the intense surges of pedestrians at the crossing, the overlap between peak vehicle and peak pedestrian usage of the intersection, and the proximity to the primary entrance and exit route for Dorsey High School. (UCA/NFSR Exh. 9, p. 6.) Mr. Quimby also testified about his concern that students would defy or evade the safety devices at the crossing. (*Id.*, at p. 7.) Upon cross-examination, Expo’s Eric Olson conceded that Dorsey students would quickly become aware that the swing gate could be opened from inside the holding pen, and that the only thing preventing students from accessing the tracks would be “obeying the rules and the law.” (RT 1406:7-14.)

Furthermore, as LAUSD expert Edward A. Morelan testified, the line of sight at the Farmdale crossing compounds all of the difficulties at this intersection. (LAUSD Exh. 22, pp. 5-6). The fencing (and proposed sound wall) to the west of the crossing obscures the view down the right-of-way to the west, which will make it difficult to see eastbound trains until they are very close to the crossing. (LAUSD Exh. 22, Attachment 4.) A student crossing at off-hours, hurrying home from an after-school athletic practice when the trains are traveling at 55 miles per hour, could certainly develop the mistaken belief that the track was clear, open the swing gate, and enter the tracks right in the path of a rushing train. Mr. Okazaki testified on cross-examination that the section of the Expo Line near Dorsey High School operates like the section of the Blue Line on which there have been the most pedestrian fatalities. (RT 1161:8-15 (Expo Witness Okazaki); LAUSD Exh. 17.) As Mr. Okazaki stated in his e-mail, it is not clear whether these accidents are caused by “not knowing the dynamic envelope of the train, or just trying to beat the train.” (*Ibid.*) Because the protections at this crossing can easily be evaded by pedestrians, and because the vast majority of the pedestrians using this crossing are in the population that is most likely to evade these protections, Expo has not shown that the Farmdale crossing can be safely operated at-grade. Expo has not met its burden of proof, and its application must therefore be denied.

B. Local Community and Emergency Authorities Do Not Concur in an At-Grade Crossing

As evidenced by the testimony presented at the evidentiary hearing, local community authorities and emergency authorities do not agree that an at-grade crossing

would be safe or appropriate at Farmdale and Exposition. The Resolution of the Los Angeles Unified School District states that the District “opposes the at-grade design of the Expo Light Rail Line at the Farmdale crossing;” and that it “is opposed to operation of any at-grade design of the Expo Light Rail Line along streets in close proximity to school sites, unless it is demonstrated that alternative mitigation measures will eliminate all safety hazards.” (LAUSD Exh. 3., p. 2.) Similarly, Officer Arkangel presented the view of the Los Angeles School Police Department that an at-grade crossing at this location would put students at risk, and that a grade-separated alternative was necessary for student safety. (LAUSD Exh. 15.) Expo’s Mr. Thorpe attempted to dismiss LAUSD’s opposition to the proposed crossing was a result of a purported “vendetta” of a single Board of Education member against the Expo Line. (RT480:1-7; 484:12-21.) However, as Mr. Morelan testified, the LAUSD had long harbored serious concerns about the crossing design and light rail operations in the vicinity of Dorsey High School, and had become a party to the proceedings when it realized that an at-grade crossing was not a *fait accompli*. (LAUSD Exh. 22, pp. 3-4.)

C. At Least a Substantial Portion of the Public Opposes an At-Grade Crossing

As evidenced by the testimony of United Community Associations’ witnesses, the community that resides nearest the proposed at-grade crossing opposes the proposal. (UCA Exhs. 12, 13, 14, and 15.) Over 500 community members attended the public participation hearing at Dorsey High School, and numerous community members testified that they opposed the at-grade crossing at Farmdale. (UCA Exh. 14, p. 5-6.) Mr.

Bartleson testified that he has been approached by parents who are concerned about the safety of their children if the at-grade crossing were constructed as planned. (LAUSD Exh. 20, p. 11.) There are many members of the community who are concerned about these plans.

D. Grade Separation Is Practicable by Elevating the LRT or by Running the Line in a Trench

Under compulsion of the Commission’s order, Expo has provided four alternatives to an at-grade crossing. (Expo Exh. 14.) One of the options, a pedestrian overpass with Farmdale left open, appears to have been abandoned by the parties, presumably because it was clear students would not use the overpass if there remained a path that avoided a stair-climb. (See RT 909:3-6 (UCA/NFSR Witness Ruzak).) The three alternatives — the pedestrian overpass with Farmdale closed, the elevated LRT (“flyover”), and the underground LRT (“trench”) — remain on the table. It is LAUSD’s position that the flyover and trench alternatives are practicable but the pedestrian overpass is not.

1. The Pedestrian Overpass with Farmdale Closed Would Enhance Pedestrian Safety but Would Not Be Practicable Due to Significant Adverse Impacts That Cannot Be Mitigated

The pedestrian overpass would provide grade-separation of trains and pedestrians, but not of trains and automobiles. It cannot be found practicable because of its safety, traffic, and environmental effects.

a. Safety

The pedestrian overpass, while protecting pedestrians from trains, does not protect them from train-automobile collisions. Mr. Quimby, applying his 22 years of experience

as a safety engineer and investigator for the National Transportation Safety Board, described the dangers not just to drivers and their passengers but also to pedestrians in the vicinity of a “catastrophic” train-car collision, in which one of the vehicles strikes nearby pedestrians or ignites fuel that engulfs the pedestrians. (UCA/NFSR Exh. 9, pp. 7-8.) To be sure, Mr. Quimby’s testimony addresses the proposed at-grade alternative, and in particular the students queued in the holding pens, not the pedestrian-overpass alternative. However, the logic remains the same, although the magnitude of the worst-case catastrophe would be smaller. There will still be pedestrians, they will be queuing at the stairs of the overpass — in smaller but not insignificant numbers, and they will still be vulnerable to death or serious injury in any of Mr. Quimby’s scenarios.

The less catastrophic but even more probable danger lies in the closure of Farmdale. The closure would prevent first-responders, including school police, from crossing Exposition. According to Officer Arkangel, the closure would impose a three-minute delay in his ability to get to an emergency situation on the north side of Exposition, even with lights and siren, a delay that “would . . . matter in a law enforcement setting.” (RT 1079:26-1080:11.)

Both the flyover and trench preserve critical emergency access to the north side of Exposition from Dorsey High School. As Officer Arkangel testified, there are frequent student fights in the area north of Exposition. (LAUSD Exh. 15, p. 3.) If he is unable to reach the area quickly in a patrol car or on foot, his ability to respond to emergencies in this area would be greatly hampered. (*Id.*, at p. 6.) Officer Arkangel also explained that it is important to preserve his line of sight from the Dorsey High School campus to the

areas north of the school. (*Id.*, at p. 7.) A trench would fully preserve that line of sight. As Mr. Okazaki testified on cross-examination, there would be no traffic problems created if the light rail train were located on an elevated track. (RT 1151:2-1152:17.) No traffic mitigation would be required because there would be no change in the flow of traffic. (RT 1151:6-18 (Expo Witness Okazaki).)

b. Traffic

The Commission took extensive evidence regarding Expo's mutating traffic studies. While the account of the mutation received the bulk of the attention, sight should not be lost of the entirely separate aspect of the traffic evidence: the fact that, independent of Expo's studies of traffic volumes on adjacent streets, the closure of Farmdale has separate effects on the traffic immediately at and around Dorsey itself. Even were the Commission to ignore all prior manifestations and credit the "final" traffic study, there would remain critical, un rebutted evidence that closing Farmdale creates a serious safety hazard due to the traffic effects on Dorsey and its students.

Absence of safe drop-off area. Expo's design of the pedestrian overpass relies entirely on the creation of a drop-off and pick-up area on Exposition Boulevard near the proposed pedestrian overcrossing. (RT 1137:14-1138:11 (Expo Witness Okazaki).) Yet Expo admits it never contacted LAUSD about the proposed relocation of a drop-off site and did not calculate the amount of curb space it would require to accommodate all of the waiting vehicles. (RT 1140:4-1141:21 (Expo Witness Okazaki) ["we didn't determine the length of the -- the area that would have to be marked as a loading zone or a red curb"].) Mr. Okazaki refused to admit that supervision is necessary at a drop-off and pick-up area,

even though Mr. Bartleson testified that he uses a number of staff to supervise these activities each day. (RT 1149:13-1150:21 (Expo Witness Okazaki); LAUSD Exh. 20, p. 5.) There is simply no evidence that the traffic dangers associated with the vehicular traffic area have been addressed. These deficiencies alone, without even considering the manipulation of results in the traffic study, demonstrates that the study does not adequately evaluate the impact of closing Farmdale.

Substantial adverse traffic impacts and the morphing traffic studies. The infamous August traffic study (Expo Exh. 5) changed the unmitigated-environmental-effects entry for the pedestrian overpass from “Yes” to “No” (Expo Exh. 14), which was taken as a concession that the alternative was now practicable. If the August analysis is flawed, then the unbroken line of “draft” studies and their unbroken line of findings of traffic effects that cannot be mitigated (LAUSD Exhs. 1, 2, 7, 11) become the only credible record evidence. The “No” goes back to “Yes,” and on that basis alone, Expo has not shown the pedestrian overpass to be practicable — that is, capable of being constructed.

In a July 24, 2008, draft of its study, Expo concluded that Farmdale could not be closed without a significant impact, or without significant taking of private property. (LAUSD Exh. 2, p. 5; UCA/NFSR Exh. 1, pg. 7.) In the 15 days between the July 24, 2008, release date of this draft, and the August 8, 2008, release of the “final” version of its traffic study (Expo Exh. 5), Expo and its contractors determined that they could reroute the hypothetical traffic bringing students to and from Dorsey High School in order

to show that the street could be closed without any impact. (RT 273:25-274:17 (Expo Witness Stutsman); RT 716:23-718:20 (Expo Witness Okazaki).)

Expo's next attack on the traffic impacts was simply to eliminate one of the impacted intersections from the study. The May 8 version of the study identified La Brea and Exposition as an impacted intersection. (LAUSD Exh. 11, p. 15.) The May 14 version, just six days later, simply omitted this intersection (LAUSD Exh. 1, p. 15), and it never reappears in the subsequent reports. Mr. Okazaki initially could not remember why it was dropped (RT 845:22-846:8), but later tendered the excuse that the intersection had been "analyzed improperly" (RT 1174:9-19). It's not that they couldn't correct the error and remodel the intersection (RT 1176:9-23), they just dropped it from the analysis.

Turning to the remaining intersections, Mr. Stutsman claimed that they adopted the "mindset" of a parent (RT 288:26 (Expo Witness Stutsman)) to simply redistribute the traffic in different directions and utilized different streets in order to divert the traffic from intersections where it had caused a significant impact. (RT 718:4-20 (Expo Witness Okazaki).) In a further biasing of its findings, the final traffic study also failed to account for increased traffic traveling to the La Brea or Crenshaw stations, both located within the area analyzed in the study. (RT 1441:4-1444:23 (Expo Witness Stutsman).)

The most serious doubts about the traffic study stem from the doctoring of the trip distribution analysis in a manner that resulted in a reduction of trips sufficient to bring the impacts of the project *just below* the threshold for significant effects. Mr. Stutsman admitted that a traffic engineer could use the Synchro model to vary the distribution of traffic between intersections to alter the finding of an impact. (RT 320:22-321:2.) And

he admitted that when reassessing the distribution of trips to Dorsey in the final August traffic study (Expo Exh. 5), he and his staff ran the model several times to test whether the assumptions resulted in an impact. (RT 1449:22-28.) And although Mr. Stutsman testified that he changed the trip routing because he concluded that parents would avoid major arterials like Crenshaw Boulevard (“Crenshaw”) and La Brea Avenue (“La Brea”) if they had a safe route through the neighborhood, he admitted that he did not reroute the inbound portion of those trips away from those streets. (RT 323:8-20.)

In fact, the analysis diverted just enough traffic from each of the impacted intersections — *to intersections that the traffic study did not specifically analyze* — to bring them under the threshold of significance by 0.001. (RT 1132:16-1137:11 (Expo Witness Okazaki); compare LAUSD Exh. 2, p. 26, Table 5, with Expo Exh. 5, p. 25, Table 5.) What’s more, although claiming to modify the traffic to reflect a more realistic distribution for parents bringing their children to or from school, Expo made *no* modifications to the distribution of afternoon traffic because the previous draft found no impact at those hours. (RT 324:13-26 (Expo Witness Stutsman).) However, as LAUSD expert John Anderson testified, the District routinely employs the same distribution assumptions in both the morning and midday hours, because, as a result of its expertise in assessing traffic patterns of drivers traveling to and from schools, it has concluded that parents are likely to take the same routes in both the morning and the afternoon. (LAUSD Exh. 19, p. 5.) The redistributed traffic also takes routes leaving Dorsey High School that are entirely inconsistent with the routing in the draft studies, even though there was no reason to alter the destination of the drivers in the final draft. For instance,

Figure 7 in the July 24, 2008, draft shows 40 percent of drivers heading northbound on Crenshaw after dropping off their students. (LAUSD Exh. 2, p. 30.) By contrast, nearly half of that forty percent is diverted onto other streets *going southbound* in the final study. (Expo Exh. 5, p. 29.) This variation in the trip distributions reveals the ends-oriented analysis underlying the final draft — traffic was redistributed to remove congestion without regard to its ultimate destination.

Drawing on his long experience with such studies, Mr. Anderson concluded:

“It appears that the distributions assumed in Figure 8 have been modified in Figure 7 to siphon off a very small amount of traffic from key impacted intersections. Because it takes very little additional traffic to create a significant impact at such congested intersections, it is my opinion this distribution was manipulated for the AM peak hour to avoid the appearance of a significant impact.” (LAUSD Exh. 19, p. 7.)

UCA/NFSR witness Ed Ruzak concurred that the modifications to the traffic study were suspect, and were possibly done to accomplish a desired result, and not to reflect a more realistic assessment of the traffic. (RT 881:24-883:20 (Ruzak).)

c. Environmental

Stated simply, the pedestrian-overpass alternative is an abomination on the land and an affront to the community. The closure of Farmdale would necessarily alter both vehicular and pedestrian travel routes, making trips between north and south of Exposition longer. Some fraction of those trips would logically be altered to avoid having to cross Exposition, necessarily undermining the integrity of the community. That division of the community would be manifested by no less than two 10-foot walls at grade running along each side of the tracks. (RT 638:10-18 (Expo Witness Lisecki); RT

1050:19-25 (Expo Witness Olson) (referring to the enclosed right-of-way as proposed as “a sealed corridor”.) Expo rightly extolls the sight-lines available to pedestrians and motorists down Farmdale to the south (Expo Exh. 10, pp. 21-22; RT 641:14-23, 649:15-26 (Expo Witness Lisecki)), but closure of Farmdale would at least partially obstruct that view from north of Exposition to an extent that would not occur if Farmdale remains open. It is inconceivable that these effects on aesthetics and cultural values would be found to be anything less than significant adverse effects that cannot be mitigated so long as Farmdale remains closed.

As with its manipulation of the traffic study, Expo appears to have constructed its environmental review in a manner that minimized the impacts of a pedestrian overcrossing, and maximized the impacts of the flyover. As Mr. Anderson testified, the environmental impacts identified by Expo of the flyover option are present for the pedestrian overcrossing as well. (LAUSD Exh. 19, pp. 8-9.) As for visual resource impacts, Expo witness Lee Lisecki conceded that the view looking south down Farmdale Avenue from Exposition is the primary visual resource in the area, and that this view could be somewhat preserved by the construction of an overcrossing that would permit a view down Farmdale Avenue. (RT 649:13-650:26 (Expo Witness Lisecki).) Construction of a wall to close Farmdale would, of course, block this vista entirely. Mr. Lisecki also agreed that the construction of two parallel 10-foot high walls over six or more blocks would have the potential to visually divide the community. (RT 651:16-27 (Expo Witness Lisecki).)

The pedestrian overpass simply cannot be found to be a practicable alternative to the proposed at-grade crossing.

2. The Elevated LRT Is Practicable

The flyover alternative provides greater assurance of safety than the pedestrian overpass with none of the adverse traffic, safety, or other effects. The flyover would be safer because it would separate the trains from both pedestrians and automotive traffic. It would allow Farmdale to be kept open, avoiding the traffic impacts that Expo labored so hard to make invisible. And while it would obstruct the officers' and administrators' view of the opposite side of the tracks from the Dorsey campus, the obstruction would be no greater than the obstruction from the proposed 10-foot sound wall running the length of Dorsey.^{1/} The flyover would also avoid division of the neighborhood, allowing neighbors to cross Exposition north and south along Farmdale, and would eliminate the pair of garish 10-foot sound walls Expo would erect at-grade on either side of the tracks that would bisect the community.

There is no dispute that the flyover would satisfy the Commission's standard for practicability. Expo agrees the flyover would be physically capable of construction. (RT 460:16-19 (Expo Witness Thorpe).) Expo also agrees that the flyover would be capable of being used. (RT 460:20-22 (Expo Witness Thorpe).) No community opposition has materialized from local authorities or the affected general public. The only evidence on

¹Expo Chief Executive Officer Richard D. Thorpe claimed that the sound wall would only partially obstruct the view ("not at all"), but it became clear on cross-examination that he was basing his testimony on the erroneous belief that the sound wall did not go all the way to Farmdale. (RT 455:1-457:6 (Expo Witness Thorpe); compare RT 1331:19-25 (LAUSD Witness Morelan) ("the entire length of the northern campus boundary"); RT 1426:25-27 (Expo Witness Olson).)

the views of emergency authorities is Officer Arkangel's testimony that an alternative that would keep Farmdale open would avoid a meaningful three-minute delay in his ability to get to an emergency situation on the north side of Exposition. (RT 1079:26-1080:11 (LAUSD Witness Arkangel).)

Expo contends that the flyover option has a significant impact on visual resources, even though a larger overcrossing, topped with an aerial station, located at La Brea and Exposition, just a half mile away, was found to have no impact on visual resources. (RT 630:19-637:16 (Expo Witness Lisecki).) The EIR for Phase I concluded that the aerial station at La Brea would have no impact on visual resources because of the use of design guidelines and community input; Mr. Lisecki conceded that these were mitigation measures that could be employed at the Farmdale crossing. (RT 652:21-653:25 (Expo Witness Lisecki).) Mr. Lisecki also testified on cross-examination that the visual impact of a flyover at Farmdale could be mitigated by use of a different construction technique — a mitigation measure that was not even evaluated in the environmental documents. (RT 652:2-20 (Expo Witness Lisecki).)

As for the impact on historic resources, Mr. Lisecki testified that not one of the significant historical features of Dorsey High School would be affected by the construction of a light rail flyover. (RT 657:17-659:8 (Expo Witness Lisecki).) Nor would the flyover obscure any significant views of Dorsey High School. (RT 659:21-660:26 (Expo Witness Lisecki).) Mr. Anderson explained that the impact of the proposed 10-foot sound walls on the historic resource would be similar to that of the flyover. (LAUSD Exh. 19, p. 9.)

The principal practicability issues that Expo has tendered are the cost and delay of implementing the flyover. Neither objection has merit, and neither should be allowed to trump the patent safety risks the flyover would eliminate.

Construction cost. Expo asserts that a flyover would add \$27 million to the project's cost. (LAUSD Exh. 23, p. 3.) The first observation to be made about this claim is that, even if the figure were taken at face value, it represents a 3% increase in the cost of Phase I. (\$27/\$863 (see RT 437:12 (Expo Witness Thorpe).) Even an elevated train all the way from Farmdale to La Brea would cost only \$58 million (RT 1432:19-21, 1434:20-1435:1 (Expo Witness Olson)) — less than a 7% increase in project costs.

The second observation to be made is that the cost of elevating the track is one that Expo has accepted elsewhere. Expo has already agreed to grade-separation along the Phase I part of the line at Flower and Exposition, at Figueroa and Exposition, at La Brea, at La Cienega, and at Venice — in each case to accommodate traffic conditions. (RT 986:5-14 (Expo Witness Olson).) But not once has Expo or Metro agreed to grade-separation to mitigate hazards to pedestrians. (RT 986:25-987:2 (Expo Witness Olson).) So there is nothing novel about the cost of an elevated LRT on the Expo Line — the only novelty would be that Farmdale would be the first grade-separation imposed for safety.

Furthermore, there is no basis for the \$27 million price-tag Expo hangs on this alternative. The Commission recited in D.07-12-029 that it would cost \$19 million to construct the flyover at La Brea, an overcrossing that is actually longer and no more complex than the alternative proposal for Farmdale. (RT 1398:3-12 (Expo Witness Olson).) Mr. Olson, who testified that he did not recognize the \$19 million figure (but

proffered no other), could not explain why a shorter flyover at Farmdale would cost almost 50% more than a flyover at La Brea. (RT 1398:21-27 (Expo Witness Olson).)

The entire basis given the Commission for the \$27 million figure is comprised of two pages. (RT 1399:28-1399:10 (Expo Witness Olson); LAUSD Exh. 23, pp. 4, 8.) No construction drawings, no bill of materials, none of the documentation necessary for Expo to get a bid on the job. (RT 1399:5-16 (Olson).)^{2/} However, one element of the cost-claim is conspicuous from the two pages tendered. Expo has inflated its projected cost by 25% for “contingencies.” (LAUSD Exh. 23, p. 4.) That adds over \$5 million to the claimed costs, which then gets grossed up by an unexplained, unsupported escalation factor. (*Ibid.*) This figure alone explains most of the difference between the La Brea figure in D.07-12-029 and the estimate for the shorter Farmdale flyover, which Expo puts at \$15.1 million in labor and costs bulked up by about \$12 million for profit, contingency, and cost escalation. (*Ibid.*; RT 1404:7-1405:1 (Expo Witness Olson).)

All that can reasonably be concluded on this record is that there is no basis to claim that the flyover at Farmdale would cost anything more than the flyover at La Brea, a cost the line has accepted there, a cost presumably comparable to that of several other crossings that were grade-separated for reasons far less compelling than the safety of pedestrians concerns at Farmdale.

^{2/}“Bid” is, unfortunately, only a metaphor here, since Expo does not do competitive bidding; instead it asks its pre-selected contractor to design and cost the project and then might cajole the contractor to bring the price down. Only if Expo thinks the contractor’s price is unreasonable does it actually invite competitive bids. (RT 1403:9-27 (Expo Witness Olson).)

Claims of delay. Expo claims that environmental review, design, and construction of the flyover at Farmdale would add “up to an 18-month delay” to the project, which it prices at \$1 million a month, or “[up to] 18 million in Project costs specifically due to the delay.” (Expo Exh. 2, p. 27 [bracketed text accepted at RT 1392:25-1393:1 (Expo Witness Olson)].) The plausibility of this claim is a function of three separate quantities: the time actually required, the date on which the Farmdale crossing would be the only delay in the project, and the conveniently round \$1-million-per-month figure. Expo has not substantiated any of the three quantities.

Expo does not actually claim the flyover will require 18 months, but rather “up to” 18 months. (*Ibid.*) That leaves 17 smaller integers Expo has not ruled out on the record.

Expo calculates this delay as a set-off from the timing of the at-grade proposal. Since at-grade cannot be defended, the real question is the time difference between the alternative with the smallest claimed delay, the pedestrian overpass with Farmdale closed, and delay associated with the flyover. Expo variously attributes to the pedestrian overpass a delay of 7 to 10 months (RT 1291:18-23 (Expo Witness Olson)) or 12 months (Expo Exh. 2, p 25; RT 1392:17-23 (Expo Witness Olson)), so the delay putatively attributable to Alternative 2 would be “up to” 18 months minus something between 7 and 12 months — a maximum of 11 months, with plenty of room for less. In fact, of course, there need be no delay associated with Alternative 1; Expo can, with the Commission’s approval, run the trains with an at-grade crossing while the pedestrian overpass is build. (RT 1391:1-1392:9 (Expo Witness Olson).) While this might reinstate Mr. Olson’s “up to 18 months,” it also demonstrates how deeply flawed his delay-estimates are, without

the benefit of even a modicum of analysis of ways to shorten the time. If it took LAUSD's cross-examination of Mr. Olson to illuminate the possibility of no delay for Alternative 1, we know the up-to-18-month claim for Alternative 2 reflects no search for similar time savings.

We also know that Expo decided to elevate the crossing at Culver City this past April (RT 500:1-27 (Expo Witness Thorpe)) — five months before this hearing convened, seven months before the Commission will render its decision. If the Commission orders a flyover at Farmdale, there is no reason to believe that it would delay more than seven months, even assuming no parallel operations and no efficiencies at the two crossings.

All of this assumes, of course, that any additional time to elevate the Farmdale crossing translates into a one-for-one change in operation of Phase I. Expo concedes that there are at least six other potential sources of delay, four aerial structures (La Brea, La Cienega, Ballona Creek, and the Culver City aerial station), a power-line relocation, and a storage and inspection facility. (UCA/NFSR Exh. 20, p. 12.) Each is a “potential critical path issue[] . . . any one of which actually occurred, it could cause delay to the overall project schedule.” (RT 1277:6-10 (Expo Witness Olson).) Mr. Olson conceded on cross that “[r]ight now, the contractor is showing a couple months['] delay” at Culver City, but he claims a resourcefulness apparently inapplicable to the Farmdale flyover when he says that “we’re working with [the contractor] to see what we can do to expedite that and get back on schedule.” (RT 1279:11-13 (Expo Witness Olson).) His claims of being on-schedule use phrases like “showing those being completed on schedule” (RT 1293:6

(Expo Witness Olson)) and “[a]s it stands now” (RT 1292:12). And when it came to a source of delay not before the Commission for decision, the storage and inspection facility, Expo came up with a workaround to avoid project delay. (RT 1273:21-1274:2; 1285:28-1286:17; 1286 :6-1287:18 (Expo Witness Olson).)

Finally, the \$1-million-per-month figure cannot stand up to scrutiny. A modicum of cross-examination revealed the number to be just a “judgment call” (RT 1385:27-28 (Expo Witness Olson)) for which Expo tendered no documentary support (RT 1384:25-1385:4 (Expo Witness Olson)), based on the assumption that there will be nothing else going on to justify Expo maintaining the full complement of its existing administrative overhead and half of its consultants’ and contractors’ costs just for the Farmdale crossing. (RT 1385:11-24 (Expo Witness Olson).) On cross-examination, it was revealed that Mr. Olson had double counted the putatively unavoidable “professional services line item” because they were already in the estimated costs of the alternatives. (RT 1393:17-28 (Expo Witness Olson) [“I stand corrected”].) Furthermore, Mr. Olson had not taken into account the fact that some of those same costs would have to continue after project operation to administer completion of the deferred maintenance facility. (RT 1386:19-1387:13 (Expo Witness Olson).) And Mr. Olson’s figures erroneously double-counted delay costs were the Commission to order grade-separation at both Farmdale and Harvard. (RT 1411:14-1412:3 (Expo Witness Olson).) What the record is left with is a wholly arbitrary, undocumented, thoroughly impeached \$1-million-dollar-per-month number that has been utterly discredited.

There is simply no basis on this record to establish any delay that would be attributable to this Commission ordering the flyover alternative at Farmdale and no basis for translating any delay that did occur into any dollar figure. That simply leaves the unremarkable fact that, like elevated tracks throughout the Expo system, the flyover option at Farmdale is eminently practicable.

3. The Trench Is Practicable

In many ways the underground LRT is the optimal design for the crossing. It is at least as safe as the flyover. The trench would be the least obtrusive to the community and have the least impact on the environment, would minimize obstruction of views, and would wholly avoid bisection of the community. And the trench is practicable. While Expo cites reasons to believe undergrounding would be more expensive, owing largely to the presence of storm drains below Farmdale, there is no reason to doubt that it could be built and operated. Its lesser impacts would translate into easier environmental review and approval. The trench has no governmental, community, or public opposition.

Expo, of course, hangs a price-tag of nearly \$100 million on Alternative 3 and warns of 36 months' delay. There is every reason to doubt the accuracy of either number, but there is little reason to doubt that the trench is a more complicated project that would be more expensive to construct. LAUSD believes that, on the record before the Commission, the trench remains a practicable alternative.

However, there is also little reason to dwell on the practicability of this alternative. As we have seen, the flyover is a practicable alternative at a cost that Expo puts at less than a third the cost of the trench. While Expo has not substantiated either estimate on

this record, its figures apparently reflect its preference for the flyover. Expo retains the right to choose among practicable forms of grade-separation. Therefore, LAUSD concedes that Expo has the right to avoid the trench by constructing the flyover.

E. Commission Staff Concur on the Practicability of Grade-Separation; Staff's View of the At-Grade Crossing Will Need to Be Reassessed

Commission staff agrees with LAUSD and the community groups that grade-separation is practicable. Mr. Pereyra testified on behalf of the Rail Crossing Engineering Section that the proposed crossing at Farmdale had not eliminated all safety hazards, and that only a grade-separation could eliminate all crossing hazards. (RT 571:13-22 (Staff Witness Pereyra).) Mr. Pereyra testified that grade-separation at Farmdale was practicable. (RT 579:10-18; 1249:15-21 (Staff Witness Pereyra).) What's more, Mr. Pereyra testified that if the inputs to the Legion study were erroneous, he would have to reassess his opinion on the safety of the at-grade crossing. (RT 1251:27-1252:7 (Staff Witness Pereyra).) As Mr. Thorpe himself testified, the Commission staff has expertise in rail crossing safety and design. (RT 495:22-26 (Expo Witness Thorpe).) Staff's conclusion that the proposed crossing design does not eliminate all safety hazards, and that grade-separation is practicable, should be given the weight that Mr. Thorpe himself accorded to the opinions of the Commission staff.

The staff, represented by Jose Pereyra, was of the view that the at-grade crossing is safe. (RT 569:21-22.) However, Mr. Pereyra acknowledged that his view relied on the Legion report and the views of the Los Angeles Department of Transportation ("LADOT"). (RT 1250:16-1251:26.) To the extent the Legion report proved unreliable

and LADOT may have relied upon it, Mr. Pereyra “would want to reexamine” the safety question. (RT 1251:27-1252:7.) Since the Legion report has now been shown to be based on erroneous inputs and unrealistic assumptions regarding pedestrian behavior, the staff’s opinion in reliance on it cannot be accorded weight.

F. Commission Precedent Supports Grade-Separating the Farmdale Crossing

This Commission has considered no case presenting facts anything like the Farmdale crossing. There is no reported case considering a crossing located just feet from a high school campus where approximately 700 students cross during a 15 minute period at the end of the school day while trains are rushing by in CAB mode. Yet the Commission’s precedent is clear that grade-separation is essential where there is any documented risk to safety at a crossing. Expo’s efforts to establish “precedent” by citing examples of other LAUSD and Southern California schools located near rail lines are misplaced. As Mr. Morelan’s testimony makes clear, none of the referenced schools are similar in any meaningful way to Dorsey High School with respect to their proximity to the rail line, the speed of the train, and the number of students utilizing any nearby crossing. (See RT 1332:3-1339:22 (LAUSD Witness Morelan); see also LAUSD Exh. 22, pp. 8-10.) Mr. Morelan’s testimony on each of the Expo “precedents” refutes any claim of similarity between Dorsey High School and these other LAUSD campuses:

- **Monte Vista Elementary School** is a long city block from the Gold Line rails, is in street running mode, and there is automobile traffic between the school and tracks. (RT 1332:5-25 (LAUSD Witness Morelan).)

- **Arroyo Seco Alternative Middle School** is below the rail lines by approximately 60 to 70 feet, contains a sound wall between the rail and school, there is a “third rail” between the track and the school to prevent derailment, and there are no pedestrian crossings of rail near the school. (RT 1332:26-1333:25 (LAUSD Witness Morelan).)
- **Santee Educational Complex** is about a block south of the tracks, the train is in street running mode, the intersection is signalized, and the street serves as a buffer between the sidewalk and the tracks. (RT 1333:26-1334:11 (LAUSD Witness Morelan).)
- **San Pedro Street School** is also about a block from the tracks, located where the train is in street running mode, and the automotive traffic serves as a buffer between the sidewalk and the train. (RT 1334:12-25 (LAUSD Witness Morelan).)
- **Griffith Middle School** is located directly across from a station, which will require the trains to slow and stop consistently in front of the school, and the main gate of the campus exits on the other side of the lot on which the campus is located, a full block away from the tracks. (RT 1335:6-27 (LAUSD Witness Morelan).)
- **Belvedere Elementary School** is nearly a full block north of the rail line, the primary entrance to the campus is on the other side of the lot from the rail line, and the rail lines run in the middle of the street, so automotive traffic separates the pedestrian sidewalk from the rail. (RT 1336:3-24 (LAUSD Witness Morelan).)
- **Ramona Opportunity School** is located on a parcel where Metropolitan Transit Authority required acquisition of LAUSD property in order to accommodate a sharp turn in the tracks, a turn which requires trains to slow to 8 to 10 miles per hour. The MTA also constructed a sound wall and a crash wall adjacent to the school. A station is also located adjacent to the school, where the train comes to a full stop. (RT 1337:1-1338:2 (LAUSD Witness Morelan).)
- **Mission High School**, or East Los Angeles High School No. 1, is located in a section where trains are in street running mode so that there is a buffer between the pedestrians and the tracks, and is positioned directly in front of a station that includes elevated platforms. In addition, Utah Street Elementary school is located near the new school, and crossing guards will be provided for the benefit

of students at both schools. (RT 1338:4-1339:6 (LAUSD Witness Morelan).)

- **Dorsey High School**, by contrast, is immediately adjacent to the rail line, the rail is not in street running mode, there is no buffer between the rail and the school property line, and it has a pedestrian crossing immediately adjacent to the school that will be used by hundreds of students daily. There will be no crossing guards at Dorsey High School. (RT 1339:7-24 (LAUSD Witness Morelan).)

The fact that all of these schools are in sections where the other lines are in street running mode is highly relevant. As Mr. Okazaki testified, his research into pedestrian accidents on the Blue Line revealed that most of the accidents occur on the CAB running segment, a section of the line on which the trains run at high speeds and in which all crossings are gated — just as Expo proposes for the Farmdale crossing. (RT 1161:3-20 (Expo Witness Okazaki).) As Mr. Okazaki explained, he was not certain whether the cause of the accidents were people standing too close to the train or trying to beat the train across a crossing. (RT 1161:21-1162:15; see also LAUSD Exh. 17.)

Expo's additional examples include several schools outside of LAUSD, most notably Blair High School, which was the subject of the video included in Expo's Supplemental Information. (Expo Exh. 15, Attachment 6.) It is apparent from the video alone that the numbers of students crossing near Blair High School at any one time are far lesser than the number of students that currently cross Exposition at Farmdale. (*Ibid.*) As Mr. Morelan testified on cross-examination, he has observed the crossing near Blair High School on numerous occasions as he lives in the area, and has not observed the large numbers of students that are expected to use the crossing at Dorsey High School. (RT 1374:1-5 (LAUSD Witness Morelan).) Mr. Olson confirmed that the number of students

simultaneously at the Farmdale crossing would be “an order of magnitude” higher than anything shown in Expo’s video from the vicinity of Blair High School (RT 1381:12-1382:4.) There is no precedent at any of these schools for the Commission to cite to for the use of an at-grade crossing at Dorsey High School.

Finally, the delay in emergency response and difficulties for law enforcement that would result from the use of an at-grade crossing at this location is relevant and must be considered.

“We note at this point that there would be even greater value to the emergency vehicles, as well as to traffic flow and neighborhood revitalization, if there were a grade-separation constructed, rather than a grade crossing. With a separation, an emergency vehicle attempting to use the crossing would not find itself blocked, and possibly trapped, in the event of an approaching train. Safety of the general public would be improved, since there would be no temptation to sneak around a closed gate. A stalled vehicle would not present a hazard to an on-coming trolley or its passengers.” (*City of San Diego*, 82 CPUC 2d 160.)

The evidence in the record is clear that a full grade-separation — either by an aerial overcrossing or a trench — would best preserve the current state of the intersection, allowing for school police, other law enforcement, and emergency response activities with minimal impediment. The Commission’s precedent recognizes that emergency access is an important factor and must be considered in the decision to approve or deny at-grade crossing. Here, the routine need for emergency access on the north side of Exposition counsel in favor of a grade-separation for the Farmdale crossing.

IV. The Crossing at Harvard and Exposition Is Not Grade-Separated and Should Be

A. Expo Has Not Eliminated All Safety Hazards by Preserving a Tunnel That Can Be Open Only One Hour a Day

At Harvard, Expo proposes to construct a support bridge to run the light rail over an existing tunnel below Exposition. That tunnel is currently closed to all access for more than 23 hours a day. Between 7:00 and 7:30 a.m., and again between 3:15 and 3:40 p.m., the tunnel is open and supervised by parent volunteers overseeing students traveling to and from the Foshay Learning Center Campus. (LAUSD Exh. 14, p. 5.) LAUSD acknowledges that in the Harvard tunnel itself, there is no risk of accidents between students and the train. That is not to say, however, that the proposed crossing eliminates all safety hazards. There are three ways in which the proposed crossing creates risks to the students at Foshay and the community at large: it interferes with and inhibits emergency response, it does not accommodate pedestrians with disabilities, and there is no showing that the capacity of the other nearby at-grade crossings is sufficient to adequately accommodate all pedestrians when the tunnel is not open.

LAUSD School Police Officer Travis Fenderson testified about the safety risks of relying on the tunnel to conduct law enforcement activities when the rail line is operational. (LAUSD Exh. 13, pp. 3-5.) As Officer Fenderson testified, he is currently experiencing conditions similar to those that will be present when the rail line is operational, because “K-rails” have impaired his ability to physically cross Exposition at Harvard Boulevard. (*Ibid.*) Although Expo’s cross-examination misleadingly implied that the K-rails were only temporary (RT 1036:7-17 (LAUSD Witness Wills)), the physical conditions at the intersection are the same as will be present when the rail line is operating: access across Exposition in this area will be impossible due to fencing. Officer Fenderson testified that, since the start of construction, he has observed an increase in

criminal activity on the far side of Exposition, where he is unable to easily access the area on foot. (LAUSD Exh. 13, p. 4.) He explained that the tunnel presents an unsafe situation for law enforcement. He is forced to go underground, out of visual contact with the perpetrators, and out of radio contact with other law enforcement. (*Id.*, at p. 3.) On emerging from the tunnel, he is not able to be instantly aware of the locations of potentially dangerous suspects. (*Ibid.*) Officer Fenderson testified that an overcrossing would allow him to remain in visual contact with the scene at all times, and to maintain radio contact with other law enforcement officials and with school staff. (*Id.*, at p. 6.) Of course, when the tunnel is not open, Officer Fenderson is unable to reach the other side of Exposition on foot, and must drive to Western in order to make a U-turn and reach individuals on that side of the street. (*Id.*, at p. 5.) From the law enforcement perspective, a grade-separation in the form of a pedestrian overpass would do a great deal to ensure the safety of Foshay students and others in the community who would otherwise be at risk for criminal activity on the far side of Exposition.

Furthermore, as Foshay Principal Veronique Wills testified, the tunnel is current not equipped for pedestrians with disabilities. (LAUSD Exh. 14, p. 6.) For a student with a disability to cross Exposition, that student would have to travel to Western or Denker. For such a student, the additional distance traveled is a significant inconvenience and presents added safety risks, due simply to the additional transportation. A crossing that accommodates the disabled would provide greater safety for this population.

As Principal Wills testified, students and other community members come to Foshay at all hours, including in the early mornings, middle of the day, and the early

evening, not just at the limited times of day that the tunnel is open and available.

(LAUSD Exh. 14, pp. 3-4.) These students and visitors are unable to use the tunnel at all, so they must rely on the crossings at Western and Denker — crossings which have not been demonstrated to have the necessary capacity to safely accommodate all the pedestrians that might be required to wait for a train to pass. A true grade-separation, in the form of a pedestrian overcrossing, would eliminate this risk and concern.

Finally, as at the Farmdale crossing, Expo relied on modeling conducted by Legion to demonstrate that the intersections nearest the Harvard tunnel could function safely when the tunnel is not open. This analysis, however, was seriously flawed and cannot be relied upon to demonstrate the safety of the nearby crossings when the Harvard tunnel is closed. Mr. Connor acknowledged on cross-examination that his analysis of the crossings at Western and Denker did not include a “Phase Omit” cycle that allows for the signal to skip a pedestrian crossing phase when the train is coming, nor did it account for the train having traffic signal priority over other phases at an intersection. (RT 404:16-407:6 (Expo Witness Connor).) As Mr. Connor admitted, these incorrect assumptions could “have an impact” on the results of his modeling. (RT 408:12 (Expo Witness Connor).) Because these assumptions relate to the amount of time that pedestrian will queue, and therefore the total number of pedestrians queueing, Mr. Connor admitted a study with the correct assumptions could show an insufficient space to queue and dangerous queueing on the street. (RT 408:20-409:4 (Expo Witness Connor).)

B. Local Community and Emergency Authorities Do Not Concur That Preserving the Tunnel Provides Adequate Crossing

As is clear from the testimony of Principal Wills, Officer Fenderson, Mr. Morelan, and Mr. Smith, neither LAUSD nor the Los Angeles School Police Department believes that the Harvard tunnel currently provides a safe alternative to a fully grade-separated crossing. (LAUSD Exhs. 13, 14, 21, and 22.)

C. At Least a Substantial Portion of the Community Seeks True Grade-Separation at the Harvard Crossing

The testimony of UCA's witnesses demonstrates that a significant number of community members seek true grade-separation at Harvard Avenue. UCA witness Celia Castellanos testified that she spoke with residents on Exposition between Arlington and Normandie and that every individual who learned that the line would be run at-grade expressed their opposition to the project. (UCA Exh. 16, pp. 4-5.) At the Commission's Public Workshop at Foshay Learning Center, numerous individuals testified that they had serious concerns about reliance on the limited grade-separation provided by the Harvard tunnel.

D. Grade-Separation by a Pedestrian Overcrossing Is Practicable

While Expo proffered three design alternatives for the Harvard crossing (Expo Exh. 14), the alternative addressed in the hearing was the construction of a pedestrian overpass across Exposition, connecting the Foshay Learning Center to vacant land on the east side of Harvard south of Exposition. (Expo Exh. 15, H-13, pp. 117, 118; RT 1436:20-1437:10 (Expo Witness Olson).)

There should be no doubt that the pedestrian overpass is practicable. It would be physically possible and capable of being used. Indeed, Mr. Olson acknowledged that the

pedestrian overpass could be constructed while the trains were in operation. (RT 1391:-1392:9 (Expo Witness Olson).)

Expo's objection apparently is that the \$5 to \$8 million it attaches to the overpass. (Expo Exh. 15, p. 115.) Even the upper number would represent less than a 1% increase in Phase I costs of \$863 million (RT 437:10-12 (Expo Witness Thorpe).) In a system replete with flyovers, bridges, and even the occasional trench, it would be fatuous to assert that an investment in safety of this magnitude would be impracticable. Nor can Expo claim any delay or delay costs from the pedestrian overpass, given Mr. Olson's acknowledgment that the bridge could be built even while the trains are running. (RT 1391:-1392:9 (Expo Witness Olson).)

The Expo Line will wreak havoc at Foshay, most of it at intersections that have been ruled to be beyond the scope of this proceeding. The pedestrian overpass will at least reduce the burden on the other intersections and will give law enforcement improved access to the south side of Exposition at a reasonable cost.

E. Staff's Opinion Does Not Reflect the Record Evidence on the Actual Pedestrian Impacts

Staff appears to have concluded that the Harvard tunnel is grade-separated, and has thus not opined on the safety of the crossing. LAUSD respectfully submits that a definition of "grade-separation" that relies on pedestrians, trains, and automobiles sharing the same grade over 23 of every 24 hours is not realistic and does not conform to the safety objectives of this proceeding.

F. Commission Precedent Supports a True Grade-Separation at the Harvard Crossing

As with Dorsey High School, Expo presents a number of schools that it claims are similarly situated to other rail lines in an effort to show that precedent supports its proposal for the Harvard crossing. As Mr. Morelan testified, however, these schools are not sufficiently similar to Foshay Learning Center to provide a relevant comparison.

(LAUSD Exh. 22, pp. 10-11.) For instance:

- **Celebration Kids Elementary** has a population of 24 students of pre-school age. (LAUSD Exh. 22, p. 10.)
- **Arroyo Vista Elementary School** has a sound wall between the rail and the school, and is located a block from the nearest gated crossing. (LAUSD Exh. 22, p. 10-11; Attachment 6.)
- **Monte Vista Elementary School** is located a full block from the rail line. (LAUSD Exh. 22, p. 11.)
- **Arroyo Seco School** is located significantly below the rail line, has a derailment protection, and there are no pedestrian crossings near the school. (LAUSD Exh. 22, p. 11.)
- **Blair High School** is located one block from the nearest crossing, which provides pedestrian and vehicle gates. (LAUSD Exh. 22, p. 11.)
- **Santee Complex** and **San Pedro School** are both situated away from Washington Boulevard, and there are no vehicular or pedestrian gates in the vicinity of the schools. (LAUSD Exh. 22, p. 11.)
- **Foshay Learning Center** has approximately 3,300 students, over 2,000 of which are in middle school. The rail line passes immediately in front of the campus. The campus is a block from the Western Avenue crossing which has no vehicle or pedestrian gates. (LAUSD Exh. 22, pp. 10-11.)

As at the Farmdale crossing, the Harvard crossing presents a compelling case for grade-separation to ensure emergency access. (See *City of San Diego*, 82 CPUC 2d 160.) As Officer Fenderson testified, his ability to respond to crime on

the far side of Exposition has been significantly hampered now that he is unable to freely cross Exposition. (LAUSD Exh. 13.) The Commission should order a pedestrian overpass to give law enforcement at least some of the access it requires.

V. Proposed Outcome

Everyone seems to recognize the odd procedural posture in which we find ourselves: Expo has an application for an at-grade crossing at Farmdale and what it calls a grade-separated crossing at Harvard. The Commission has required Expo to proffer alternatives, but those alternatives are not presently in any application. So the only formal, non-dicta actions the Commission can take seems to be to approve the two applications, which, LAUSD submits, it cannot on this record, or to disapprove the applications without any application before the Commission to approve.

While LAUSD maintains that the two pending applications *must be disapproved*, LAUSD does not intend that the Expo Line not be constructed along the proposed route. Nor does LAUSD believe it to be in the public interest for the CPUC simply disapprove the two applications, wait for two new applications to be filed, and hold another hearing on them. LAUSD believes that all parties have had an opportunity to address the issues associated with each proposal — with the exception of the traffic impacts of the Farmdale pedestrian-overpass alternative, where, LAUSD continues to maintain, the parties were was deprived of a meaningful hearing by denial of access to the relevant work papers and other documents that show the interstices of the apparent manipulation of technical

analyses. With that exception, LAUSD is of the view that the Commission could accompany its order disapproving the pending applications with findings, based on the evidence adduced in this hearing, of practicability of the proffered alternatives. We would then agree that Expo could submit new applications, on which the Commission could rule relying on its findings in this hearing, subject only to a showing of relevant new matter unavailable for this hearing. The order in this proceeding should indicate that it is the final action on the denials but that possible rehearing or judicial review will properly await the decision on the approved application.

LAUSD therefore proposes the following outcome of this hearing:

- The application for a crossing at Farmdale should be denied. The Commission should make findings that each of the proffered alternatives would, were Expo to apply for them, be disapproved on safety and environmental grounds, except that either the above-grade (flyover) or below-grade (trench) proposals would be found to be practicable.
- The application for a crossing at Harvard should be denied. The Commission should make findings that a new application that included a pedestrian overpass at Harvard would be found to be practicable.

And now a word about the alligator in the bathtub: Expo claims that the trains will be ready to roll July of 2010 and anybody who would alter the design will have to answer to prospective passengers standing at train stops waiting to be picked up. Expo accompanies this claim with dire predictions of multi-year delays

from each of the alternatives. Comments from the bench about the importance of expediting the hearing and getting the transit system going (see RT 962:26-962:5; see also RT 233:28-234:2, RT 337:14-16) appear to reflect some acceptance of this view. Were the Commission to take Expo's claims at face value, the Commission would then have has no choice but to approve each application as filed.

As discussed above, many of Expo's claims of cost and delay from each alternative have been thoroughly discredited, casting doubt on the credibility of all Expo's assertions. Likewise, there is ample evidence that the July 2010 opening is more a hope than a reality, and that Expo has at its disposal means undisclosed on this record to expedite critical steps. But if, ultimately, some quantum of delay is necessary, it would be a delay of Expo's own making. Expo has known at least since the Scoping Memo that the Commission has concerns about these two crossings, and it has known for years the Commission's policy against at-grade crossings. Expo could have worked to accommodate those who were expressing those same concerns and invoking that same policy to argue for these modifications. At a minimum, Expo could have engaged on studies and planning on each of the alternatives such that it could implement them as quickly as possible — studies and planning that are nowhere reflected in Expo's claims of delay.

The alternative would be a surrender of the CPUC's jurisdiction to an applicant that would then have managed the process to deprive the Commission of discretion in its final decision. If Expo is allowed to present the Commission with a *fait accompli* that trumps the substantial safety and environmental hazards of this

proposal, then the Commission must bear responsibility for what follows.

There is still time — there must still be time — for a safe, lawful design of each of these crossings.

Dated: September 30, 2008

Respectfully submitted,

By _____ / s / _____

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