

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

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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.

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)

And Consolidated Proceedings.

**COMMENTS OF EXPOSITION METRO LINE CONSTRUCTION  
AUTHORITY ON THE PROPOSED DECISION OF ALJ KOSS**

November 24, 2008

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APPENDIX A

**COMMENTS OF EXPOSITION METRO LINE CONSTRUCTION  
AUTHORITY ON THE PROPOSED DECISION OF ALJ KOSS**

In accordance with Rule 14.3 of the Commission’s Rules of Practice and Procedure, Exposition Metro Line Construction Authority (“Expo Authority”) hereby respectfully submits its comments on the proposed decision of Administrative Law Judge (“ALJ”) Koss (“Proposed Decision” or “PD”), issued October 22, 2008, in the above-captioned proceeding. These comments address the Proposed Decision’s refusal to approve Expo Authority’s proposal for a grade-separated crossing over the existing Harvard pedestrian tunnel, its failure to recognize the safety of the proposed Farmdale at-grade crossing, and its attempt to impose duties under the California Environmental Quality Act (“CEQA”) on the Los Angeles County Metropolitan Transportation Authority (“MTA”), which is not a party to this proceeding.

I.

SUMMARY OF COMMENTS

The Proposed Decision presents errors of fact and law in the following respects:

1. The Proposed Decision fails to recognize that the Harvard pedestrian tunnel is safe, is not part of the Expo Rail project, is not under Expo Authority’s control, and is not essential for safe crossing of the Expo Rail tracks.
2. The Proposed Decision fails to recognize the limited utility of a pedestrian overpass at Harvard Boulevard and the safety risks such an overpass presents.
3. The Proposed Decision fails to recognize that the Commission lacks jurisdiction to force Expo Authority to construct a pedestrian overpass at Harvard Boulevard.
4. The Proposed Decision fails to take proper account of Commission staff’s testimony and Expo Authority’s proof that an at-grade crossing proposed for Farmdale Avenue will be safe as designed.

5. The Proposed Decision improperly attempts to require MTA to conduct a supplemental environmental assessment of revised plans for the Farmdale and Harvard crossings – a function the Commission itself can and should perform as a responsible agency pursuant to CEQA.

## II.

### THE PROPOSED DECISION WRONGLY REFUSES TO APPROVE EXPO AUTHORITY’S PROPOSAL FOR A GRADE-SEPARATED CROSSING AT HARVARD BOULEVARD.

Expo Authority’s plan for the vicinity of Foshay Learning Center (“Foshay”), which it submitted for Commission approval by A.06-12-020, is to construct a concrete bridging structure above an existing pedestrian tunnel and to run the Expo Rail tracks across that concrete bridge without affecting the tunnel itself.<sup>1</sup> As the Proposed Decision recognizes, Foshay students will continue to cross the Expo Rail right-of-way either by using that pedestrian tunnel or one of two nearby intersections, each 200 yards away, for which the Commission already has authorized the construction of at-grade crossings.<sup>2</sup>

The Proposed Decision notes that the Harvard tunnel is accessible by stairways, a design not compliant with the Americans With Disabilities Act (“ADA”), and presents security issues. The PD, however, ignores the fact that adding ADA ramps to the existing tunnel would be much easier than constructing a new overpass. While acknowledging that the proposed crossing presents no risk to pedestrians from train traffic, the Proposed Decision states a concern about “access to and safe passage through the tunnel.”<sup>3</sup> However, as will be explained below, neither the City of Los Angeles (“City”), which owns the tunnel, nor the school officials who control its use have chosen to devote resources beyond an hour per day of volunteer

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<sup>1</sup> See, Exhibit Expo 15 (Supplemental Information), Item H-1 (excerpts from A.06-12-020); Expo Authority Opening Brief, at 54-55; see also, PD, at 28..

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 29.

supervision to address those concerns. Again, extending hours of operation is a much more reasonable alternative than constructing a new overpass.

The Proposed Decision discusses “problems the tunnel presents,” including access, safety, and supervision issues and the school’s allowance of just one hour of supervised use of the tunnel per day. The PD then describes an alternative of constructing a pedestrian bridge, equipped with elevators and stairs, which will directly cost \$5 to \$8 million and will involve a six-month project delay with further attendant costs.<sup>4</sup>

While recognizing that problems with the existing tunnel are “not directly related to the actual interface of the rail right-of-way and vehicles and pedestrians,” the Proposed Decision finds that “adequate and safe access to and passage through a proposed crossing are important elements of crossing design.” On that basis, the Proposed Decision would deny Expo Authority’s proposal to install rails above the tunnel.<sup>5</sup>

In reaching this result, the Proposed Decision fails to address the crossing Expo Authority has proposed and focuses instead on a facility the Expo Rail project will not affect. Expo Authority will show that this result is inconsistent with the evidentiary record and beyond the Commission’s jurisdiction over a crossing of this type.

A. The Proposed Decision Fails to Recognize That the Harvard Pedestrian Tunnel Is Safe, Is Not Part of the Expo Rail Project, Is Not Under Expo Authority’s Control, and Is Not an Essential Element for Safely Crossing the Expo Rail Tracks.

Expo Authority has provided evidence that the design for the grade-separated crossing is well engineered and sufficient to allow fully safe operation of Expo Rail trains along the tracks crossing above the Harvard pedestrian tunnel. Expo Authority has shown that the pedestrian tunnel is *not* part of the Expo Rail project and will *not* be affected by it and,

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<sup>4</sup> *Id.* at 30-31. This delay would entail up to \$6 million in additional project costs.

<sup>5</sup> *Id.* at 31; 37 (Finding of Fact 37), 38 (Conclusion of Law 3, Ordering Paragraph 2).

conversely, that Expo Authority's construction plans will have *no effect* on the Harvard pedestrian tunnel or on its availability for use by Foshay students and other pedestrians.<sup>6</sup>

Expo Authority has further shown that use and supervision of the tunnel are within the control and discretion of school officials and that the tunnel is *not* essential for the safety of pedestrians who will cross the Expo Rail tracks.<sup>7</sup> Specifically, Expo Authority has provided evidence that even if the pedestrian tunnel were to be closed, the already-authorized crossings at Western and Denker Avenues could easily handle the additional pedestrian traffic and would continue to be safe.<sup>8</sup>

Except for recognizing the safety of Expo Authority's plan to construct tracks above the existing pedestrian tunnel, the Proposed Decision ignores all of these relevant facts. Instead, the Proposed Decision incorrectly treats the pedestrian tunnel as if it were an essential element of the proposed Expo Rail project and expresses "concern" about "access to and safe passage through the tunnel."<sup>9</sup>

These are concerns that should be addressed by City and school officials, who control the tunnel, but should not be a concern of the Commission. City and school officials opened the pedestrian tunnel for use by Foshay students over a decade ago, and Foshay continues to supervise its use for a limited period of time each school day. School officials have chosen not to make the pedestrian tunnel available at other hours, having determined that

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<sup>6</sup> See, Exhibit Expo 2 (Olson), at 29; Exhibit Expo 15 (Supplemental Information), Items H-17 and H-18 (structural plans and calculations); Expo Authority Opening Brief, at 54-55.

<sup>7</sup> *Id.* at 55-56. The tunnel is and will continue to be owned and maintained by the City, not Expo Authority or MTA.

<sup>8</sup> Exhibit Expo 1 (Connor), at 12-14; Expo Authority Opening Brief, at 57-58. Pedestrian counts indicate that fewer than 250 students depart from Foshay each day via the pedestrian tunnel and diverting this number of pedestrians to the nearby Western and Denker crossings will not present a problem. Exhibit Expo 1, *supra*, at 10.

<sup>9</sup> PD, at 29.

increased use of the pedestrian tunnel is *not important enough* to warrant assigning school staff members to oversee more extended availability of that facility.<sup>10</sup>

Whether the tunnel is available for one or many hours per day or not at all, safe routes are available today, and will be available with Expo Rail in operation, for students and other pedestrians to proceed across the Expo Rail right-of-way to and from Foshay and other locations in the neighborhood.<sup>11</sup> Construction of Expo Rail tracks above the pedestrian tunnel will not affect the safety of such pedestrians in any respect.

Accordingly, the concerns raised in the Proposed Decision about access to and safe passage through the pedestrian tunnel are not applicable to the Expo Authority proposal to construct the light rail line over this existing tunnel. Thus, there is no reasonable basis to deny approval of this grade-separated crossing.<sup>12</sup>

B. The Proposed Decision Fails to Recognize the Limited Utility of a Pedestrian Overpass at Harvard Boulevard and the Safety Risks Such an Overpass Presents.

Expo Authority has provided evidence that installing a pedestrian overpass at Harvard Boulevard would provide no greater benefit than the existing pedestrian tunnel, yet would create new safety hazards, substantially increase project costs, and delay opening of the project. An overcrossing would have to be equipped with elevators and stairs rising 20 feet above grade – a much greater climb than is required for use of the existing tunnel. Expo Authority showed that elevators would introduce a new source of hazards, ranging from vandalism to predatory conduct, requiring supervision that school officials are unwilling to provide.<sup>13</sup>

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<sup>10</sup> Tr. 1011:15-1014:8 (Wills/LAUSD): see also, Expo Authority Opening Brief, at 55-56.

<sup>11</sup> Exhibit Expo 1 (Connor), at 12-14; Expo Authority Opening Brief, at 57-58.

<sup>12</sup> See, PD, at 38 (Conclusion of Law 3).

<sup>13</sup> Exhibit Expo 2 (Olson), at 32-33; Tr. 1421:8-1423:7 (Olson/Expo); Exhibit LAUSD 14 (Wills), at 9; Tr. 1020:28-1022:1 (Wills/ LAUSD); Expo Authority Opening Brief, at 59-60.

The 20-foot climb to reach the proposed walkway above the light rail tracks will discourage use of an overcrossing and will induce most students to walk to either of the nearby at-grade crossings or, if the pedestrian tunnel remains available, to use that more convenient path. Maintenance and supervision of the elevators required to make an overcrossing ADA-compliant will present constant operational and security problems that are noted in the record but *not* addressed in the Proposed Decision.<sup>14</sup> As Expo Authority summarized the evidence in its opening brief, “the pedestrian overpass seems to add very little benefit beyond what is presently available at the Harvard Boulevard crossing, at a cost of seven million dollars and delays in the Expo Rail project.”<sup>15</sup>

The Proposed Decision ignores all this evidence that a pedestrian overcrossing at Foshay will present new problems and risks. The PD includes no finding that a pedestrian overcrossing will be a useful or practical alternative to the existing tunnel or the nearby at-grade crossings – and there is no evidentiary basis for such a finding. The Proposed Decision’s failure to recognize the problems and risks associated with a pedestrian overcrossing further undermines the basis for the PD’s conclusion that authorization to construct a light rail line over the existing pedestrian tunnel should be denied.

C. The Proposed Decision Fails to Recognize the Commission’s Limited Jurisdiction Over Expo Authority’s Proposal for a Grade-Separated Crossing at Harvard Boulevard.

1. Sections 1201 and 1202 do not apply in this instance, in which Commission jurisdiction is limited to its Section 99152 authority to regulate safety appliances and procedures of public transit guideways.

The Commission’s authority to mandate a change to Expo Authority’s plan to construct rails above the Harvard pedestrian tunnel is limited. This is because Section 1201 *et*

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<sup>14</sup> See, Expo Authority Opening Brief, at 59-60, and testimony and exhibits referenced there

<sup>15</sup> *Id.* at 60.

*seq.* of the Public Utilities (“Pub. Util.”) Code does not apply to this grade-separated proposal and Pub. Util. Code Section 99152 applies solely to the Expo Rail guideway – including the rails running above the pedestrian tunnel but not the tunnel itself.

Pub. Util. Code Section 1201, which prohibits construction of a railroad corporation’s track “across a public road, highway, or street at grade” without the Commission’s prior permission, does not apply to Expo Authority’s construction of track above a pedestrian tunnel. Likewise, Pub. Util. Code Section 1202(a), which gives the Commission “exclusive power” to “determine and prescribe the manner . . . and the terms of installation, operation, maintenance, use, and protection of . . . each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad . . . ,” does not apply to construction of track above such a tunnel. A pedestrian tunnel is *not* a “public road, highway, or street,” *nor* is it a “public or publicly used road or highway.”

In short, the Commission’s powers under Sections 1201 and 1202 simply do not apply to Expo Authority’s plans to run its tracks above the pedestrian tunnel at Foshay Learning Center. The Commission’s authority over Expo Authority’s proposed construction above the Harvard pedestrian tunnel is strictly limited to its powers under Pub. Util. Code Section 99152.<sup>16</sup>

2. Section 99152 does not give the Commission authority to force Expo Authority to construct a pedestrian overcrossing at Harvard Boulevard.

Section 99152 makes any new “public transit guideway” subject to “regulations of the Public Utilities Commission relating to safety appliances and procedures.” Section 99152 also provides for the Commission to inspect work on such guideways and to “make further additions or changes necessary for the purpose of safety to employees and the general public.”

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<sup>16</sup> *Exposition Metro Rail Construction Authority*, D.07-12-029, at 18 n. 11.

The statute further provides for the Commission to “develop an oversight program employing safety planning criteria, guidelines, safety standards, and safety procedures to be met by operators in the design, construction, and operation of those guideways.”<sup>17</sup>

The Commission does not have authority under Section 99152 to force Expo Authority to construct a pedestrian overcrossing at Harvard Boulevard. As noted above, Expo Authority’s plan for the vicinity of Foshay Learning Center is to construct a concrete bridging structure above the existing pedestrian tunnel and to run the Expo Rail tracks across that concrete bridge.<sup>18</sup> The Proposed Decision identifies no aspect of Expo Authority’s construction plan for this portion of its public transit guideway that has any significant impact on pedestrian traffic patterns, and so does not justify requiring Expo Authority to construct a pedestrian overcrossing in this vicinity.

The Proposed Decision is concerned about “access to and safe passage through the tunnel” and would require Expo Authority to provide a less convenient and less safe alternative. In doing so, the Proposed Decision ignores the limits on the Commission’s jurisdiction over Expo Authority’s construction plans for the vicinity of Foshay.

As noted above, Section 99152 makes the Expo Rail “guideway” subject to the Commission’s “regulations,”<sup>19</sup> provides for the Commission to inspect work on that guideway, and empowers the Commission to “make further additions or changes” for safety purposes on that guideway. The context of the provisions makes clear that such “additions or changes,” must relate to the *guideway* that is subject to the Commission’s jurisdiction – not to a tunnel

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<sup>17</sup> Pub. Util. Code §99152. The Commission has defined “public transit guideway” as a “system of public transportation utilizing passenger vehicles that are physically restricted from discretionary movement in a lateral direction.” *Brown v. Santa Clara, supra*, D.94-10-009, 56 CPUC2d 554, 556 (1994).

<sup>18</sup> Exhibit Expo 15 (Supplemental Information), Item H-1 (excerpts from A.06-12-020); Expo Authority Opening Brief, at 54-55.

<sup>19</sup> See especially, General Order 143-B, Safety Rules and Regulations Governing Light-Rail Transit, and General Order 164-D, Rules and Regulations Governing State Safety Oversight of Rail Fixed Guideway Systems.

that pre-exists construction of the guideway, is not affected by that construction, and is subject to ongoing control and use by third parties. The Proposed Decision points to no deficiency in Expo Rail's plans to construct rails across the Harvard pedestrian tunnel that justifies requiring "additions or changes" in the form of a highly problematic pedestrian overcrossing. The Commission's limited jurisdiction under Section 99152 clearly does not support such a requirement.

D. The Commission Should Approve the Grade-Separated Crossing at Foshay That Expo Authority Has Proposed.

In summary, there is neither substantial evidence nor jurisdictional authority to support the Proposed Decision's requirement that Expo Authority amend A.06-12-020 to incorporate plans for a pedestrian overcrossing at Harvard Boulevard. The Proposed Decision should be revised to authorize the entirely safe grade-separated crossing that Expo Authority has proposed.

III.

THE PROPOSED DECISION FAILS TO TAKE PROPER ACCOUNT OF  
THE SAFE DESIGN OF THE PROPOSED FARMDALE AT-GRADE CROSSING.

The evidentiary record of this proceeding is replete with testimony and documentary evidence proving that the at-grade crossing proposed for Farmdale Avenue will be safe. Expo Authority has provided convincing proof that its design for the Farmdale Avenue at-grade crossing has eliminated all significant safety hazards.<sup>20</sup> Expo Authority also has effectively refuted the attempts of other parties to challenge that proof.<sup>21</sup> Most significantly, the

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<sup>20</sup> See, Expo Authority Opening Brief, at 18-24, and evidence cited there.

<sup>21</sup> See, Expo Authority Reply Brief, at 2-20, and evidence cited there.

Commission's own Rail Crossing Engineering Section ("RCES") staff has recognized that the proposed at-grade crossing at Farmdale Avenue will be safe as designed.<sup>22</sup>

The Proposed Decision fails to take proper account of Commission staff's testimony and Expo Authority's proof that the at-grade crossing proposed for Farmdale Avenue will be safe. The PD should be modified to recognize this fact and to allow Expo Authority to construct that crossing as designed and proposed.

#### IV.

#### THE PROPOSED DECISION'S REQUIREMENT THAT MTA PROVIDE ENVIRONMENTAL ANALYSIS TO SUPPORT AMENDMENTS TO EXPO AUTHORITY'S CONSTRUCTION PLANS IS LEGALLY ERRONEOUS.

The Proposed Decision incorrectly determines MTA is the lead agency for any further CEQA review required to approve the grade separated pedestrian crossings. MTA did act as lead agency in 2005 when it certified a Final Environmental Impact Statement/Environmental Impact Report ("FEIS/EIR") for the Expo Rail Project, but MTA has no further approval authority, so its lead agency role has been completed. Any further CEQA review that may be required is the responsibility of the agency that issues the next discretionary approval.<sup>23</sup> Here, that agency will be the Commission, when it considers the amended application or applications. There will be no "approval" to trigger CEQA review until that occurs. The Commission can direct Expo Authority, as the applicant, to provide sufficient information with any amended application in order to allow the Commission to fulfill its CEQA obligations.<sup>24</sup> The Commission must independently review that information, provide for preparation of an addendum, if necessary, and consider the addendum, along with the FEIS/EIR

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<sup>22</sup> Tr. 569:21-23, 1244:17-20, 1247:25-28 (Pereyra/RCES)

<sup>23</sup> Public Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163, 15164.

<sup>24</sup> Public Resources Code § 21160.

for the Expo Rail Project, before deciding whether to approve an amended application or applications.<sup>25</sup>

A. MTA Has No Further CEQA Role, and the Commission Has No Jurisdiction to Require MTA to Take Any Further Action.

The legal finding that MTA is the responsible agency that must complete the CEQA review of any future amendments to the application is incorrect. This finding is inconsistent with CEQA's provisions governing the role of lead and responsible agencies.

MTA acted as lead agency when it approved the Expo Rail Project and certified the EIR in 2005, but its actions relating to the project have now been concluded. Expo Authority is carrying out the construction of the Expo Rail Project as approved by MTA, and the Commission is proposing changes to the approved project. Once MTA approved the project, its role as lead agency was complete and it has no further CEQA role unless MTA issues some new approval.<sup>26</sup> In addition, MTA is not a party to this proceeding and, therefore, the Commission has no jurisdiction to direct MTA to take any action.<sup>27</sup>

B. The Commission, as a Responsible Agency Under CEQA, Should Certify or Adopt Any Further CEQA Review That Is Needed, Based on Information That Expo Authority, as the Applicant, Can Be Directed to Submit for Commission Review.

Section 15164(a) of the CEQA Guidelines provides that the responsible agency prepares an addendum, if required, when it takes the next discretionary action with respect to a project. Here, unless the Proposed Decision is modified as these Comments request, the next

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<sup>25</sup> CEQA Guidelines, § 15162(d).

<sup>26</sup> Public Resources Code, § 21166(a); CEQA Guidelines, § 15162(c); *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180 (holding that, to trigger the need for additional CEQA review, there must be some change in the project itself); *Fort Mojave Indian Tribe v Department of Health Services* (1995) 39 Cal. App.4th 1574, 1597 (new developments after an agency's approval under CEQA do not reopen that approval).

<sup>27</sup> *Rothschild v. Erda* (1968) 258 Cal.App.2d 750, 753 (holding that trial court had no power to issue an injunction where it did not have jurisdiction over the party to be enjoined); *Estate v. Hampton* (1942) 55 Cal.App.2d 543, 558 (no one can be "bound by a decree until he has had his day in court"). CEQA does not expand the Commission's jurisdiction or powers. Public Resources Code §21004.

discretionary action will be the possible Commission approval of one or two pedestrian overcrossings. The Commission's invitation of amended applications and Expo Authority's submissions in response to that invitation would not be approvals under CEQA and would not require CEQA review.<sup>28</sup> Rather, the next discretionary approval would be the Commission's decision to approve the amended application or applications.

Expo Authority, as applicant, can provide the information the Commission needs to prepare and approve an addendum. Indeed, the Commission has authority to direct Expo Authority to provide this required information in connection with any amended application.<sup>29</sup> The Commission must independently review the information provided, but can rely upon the information provided by Expo Authority in adopting an addendum or taking other steps pursuant to CEQA.<sup>30</sup> In any event, the tasks of further CEQA compliance must be accomplished by cooperation between the Commission and Expo Authority – this is not a responsibility that can be assigned to MTA.

## V.

### CONCLUSION

As Expo Authority has explained above, the Proposed Decision is defective in important respects. First, the Proposed Decision would wrongly deny Expo Authority's request to construct rails over the Harvard pedestrian tunnel absent construction of a pedestrian overcrossing that has not been justified. Further, adoption of the Proposed Decision would be legally erroneous in purporting to require MTA, a public agency that is not even a party to this

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<sup>28</sup> See *City of Vernon v. Board of Harbor Comm'rs* (1998) 63 Cal.App.4th 677, 688 (statement of intent by agency's director is not a project approval because it did not commit the agency to proceeding with the project); *St. Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1001 (resolution directing staff to prepare general plan amendments, subject to further consideration by the City Council, was not an approval under CEQA).

<sup>29</sup> Public Resources Code § 21160.

<sup>30</sup> CEQA Guidelines, § 15164 (d).

proceeding, to provide environmental analysis to support amendments to Expo Authority's construction plans. The Commission also should recognize that the at-grade crossing proposed for Farmdale Avenue will be safe as designed and so should approve construction of that crossing. Expo Authority respectfully urges the Commission to correct the demonstrated errors in the Proposed Decision and to adopt its corrected decision with the changes proposed and without unnecessary delay.

Respectfully submitted,

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CONSTRUCTION AUTHORITY

November 24, 2008

## APPENDIX A

### PROPOSED REVISIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

#### I. PROPOSED REVISIONS TO FINDINGS OF FACT

37. The Harvard Blvd. tunnel is owned by the City of Los Angeles.

37.1 Operation of the Harvard Blvd. tunnel is controlled by the Los Angeles Unified School District and Foshay Learning Center.

~~37. It is necessary that we consider adequate and safe access to the Harvard Blvd. tunnel, and safe passage through the tunnel, in our review of the proposed crossing.~~

38. The ~~proposed~~ existing pedestrian tunnel crossing at Harvard Blvd. ~~will~~ is not ~~be~~ in compliance with ADA requirements.

...

41 A new pedestrian bridge at Harvard Blvd. would comply with ADA requirements, but would present additional security and access problems due to the limited security oversight of its use, the likelihood of illicit conduct in the elevators, and the height of the structure.

41.1 Pedestrian access to the Harvard Blvd. tunnel is not essential for safe operation of the Harvard Blvd. crossing as proposed by Expo Authority

41.2 Pedestrian access to the Harvard Blvd. tunnel is not essential for Foshay students to cross the Expo Rail tracks safely because of the proximity of safe pedestrian crossings at Western Ave. and Denker Ave.

42. It is necessary that this proceeding remain open for the purpose of reviewing any future amendments with respect to the Farmdale Ave. ~~and Harvard Blvd~~ crossings.

43. MTA ~~is~~ was the lead agency for the Expo Line project ~~for compliance with CEQA,~~ and certified the Final EIS/EIR for the Expo Rail Project in 2005.

~~44. — MTA is the lead agency for any future environmental review associated with Farmdale Ave. and Harvard Blvd. crossings.~~

4544. The Commission, in exercising its exclusive jurisdiction over rail crossings for this project, is a responsible agency under CEQA.

45. The Commission may require Expo Authority, as the project applicant, to provide such information as is necessary for the Commission to carry out its duties as a responsible agency under CEQA.

## II. PROPOSED REVISIONS TO CONCLUSIONS OF LAW

2.1 Sections 1201 and 1202 of the Public Utilities Code do not apply to, or grant the Commission jurisdiction over, Expo Authority's plans to construct Expo Rail tracks above the Harvard Blvd. pedestrian tunnel.

2.2 Section 99152 of the Public Utilities Code gives the Commission jurisdiction to regulate safety appliances and procedures of public transit guideways, including the guideway of the Expo Rail project.

2.3 Section 99152 does not authorize the Commission to require Expo Authority to construct a pedestrian overpass at Harvard Blvd. to address concerns about a pre-existing pedestrian tunnel that is not part of the proposed Expo Rail guideway.

3. Authorization to construct a light rail line over an existing pedestrian tunnel crossing at Harvard Blvd., in the City of Los Angeles, requested in A.06-12-020, should be ~~denied~~ granted.

...

~~5. The responsible agency for environmental review under CEQA regarding any future amendments should be the MTA.~~

5.1 In its role as a responsible agency under CEQA, the Commission is responsible for CEQA compliance in connection with any action on any amended application in this proceeding, and the Commission may require Expo Authority, as the project applicant, to submit such information as is necessary for the Commission to carry out that responsibility.

### III. PROPOSED ORDERING PARAGRAPHS

2. A.06-12-020 by Expo Authority to construct a rail line at ground level over an existing pedestrian tunnel crossing at Harvard Boulevard in the City of Los Angeles is ~~denied~~ approved.

3. Expo Authority may amend the above applications by proposing the alternative crossing designs for each crossing, as described herein. ~~The Los Angeles County Metropolitan Transportation Authority, as the lead agency under the California Environmental Quality Act, shall provide the appropriate environmental analysis regarding any amendments.~~ Expo Authority as the applicant shall provide to the Commission sufficient information so that the Commission may carry out its responsibilities as a responsible agency under CEQA in considering these applications. The Commission as a responsible agency shall provide any environmental analysis that is needed and shall consider that analysis, together with the previously certified Final EIS/EIR, in considering any proposed amendments.

## CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I will serve the foregoing **COMMENTS OF EXPOSITION METRO LINE CONSTRUCTION AUTHORITY ON PROPOSED DECISION OF ALJ KOSS**, by electronic mail or hand delivery on the attached service list for Application No. 06-12-005, *et al.*:

By electronic mail:

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Executed this 24th day of November, 2008, in San Francisco, California.

*/S /JEANNIE WONG*

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PROCEEDING: A0612005 - EXPOSITION METRO LIN  
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