

Decision 09-02-031 February 20, 2009

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 Corridor Light Rail Transit Line across Jefferson , Adams , 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)

And Related Matters.

Application 06-12-020
Application 07-01-004
Application 07-01-017
Application 07-01-044
Application 07-02-007
Application 07-02-017
Application 07-03-004
Application 07-05-012
Application 07-05-013

(See Appendix A for List of Appearances.)

DECISION ADDRESSING RAIL CROSSINGS AT FARMDALE AVENUE AND HARVARD BOULEVARD IN THE CITY OF LOS ANGELES REQUESTED BY THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

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APPENDIX A – List of Appearances

DECISION ADDRESSING RAIL CROSSINGS AT FARMDALE AVENUE AND HARVARD BOULEVARD IN THE CITY OF LOS ANGELES REQUESTED BY THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

1. Summary

The Exposition Metro Line Construction Authority filed the ten subject applications in this consolidated proceeding requesting authority to construct 38 rail crossings along the new Exposition Boulevard Corridor Light Rail Transit Line in Los Angeles County. Interim Decision (D.) 07-12-029 authorized construction of 36 of the 38 crossings. Today's decision addresses the two remaining crossings, at Farmdale Avenue and Harvard Boulevard, requested in Application (A.) 07-05-013 and A.06-12-020, respectively. Both crossings are located in the City of Los Angeles adjacent to school sites.

A.07-05-013, for an at-grade crossing at Farmdale Avenue, is denied. Grade-separated crossings provide a higher level of safety than at-grade crossings and we find here that it is practicable to construct a grade-separated pedestrian crossing at Farmdale Avenue.

The application for a grade-separated crossing over the existing Harvard pedestrian tunnel requested in A.06-12-020, is approved. In this case, we find that the existing pedestrian tunnel will not be impacted by the proposed grade separated crossing. There is no existing at-grade public crossing at the location of the pedestrian tunnel. The school and security personnel have raised the issue of the future inability for the security personnel to cross Exposition Boulevard quickly to respond to potential crime situations across the street from Foshay Learning Center once the train is built down the Exposition Boulevard median. In Expo Authority's comments, it offered to install a locked gate that may be quickly unlocked by authorized security personnel to cross the rail tracks in the median of Exposition Boulevard in situations where necessary to address

potential crime-related incidents across the street from Foshay Learning Center. We encourage Expo Authority to explore whether the installation of such a gate in the fencing along the median may assist law enforcement efforts. We further order light rail train speeds reduced to 35 mph when passing by this Harvard gate during school crossing hours to enhance the safety for the authorized security personnel responding to a crime-related situation across the street from Foshay and crossing the track. We further will require Expo Authority to submit to the Commission's Consumer Protection and Safety Division within 90 days of the effective date of this decision, its plan for safety improvements to the pre-existing underground pedestrian tunnel, such as increasing lighting in the tunnel areas and installation of surveillance cameras.

The Commission is the responsible agency for this project under CEQA. The Commission has reviewed and considered the lead agencies' environmental documentation with respect to the Harvard Boulevard grade-separated crossing and find it to adequately address the potential environmental consequences of the approved project.

This consolidated proceeding remains open to allow the applicant to amend its application regarding Farmdale Avenue, as described herein.

2. Background

The Exposition Metro Line Construction Authority (Expo Authority) was created by legislation¹ for the specific purpose of constructing the Exposition Corridor Light Rail Transit Line (Expo Line), a new 8-½ mile light rail transit

¹ Senate Bill 504 (Kuehl); 2003. Pub. Util. Code § 132600 *et seq.*

extension line that will run between downtown Los Angeles and Culver City.² The line will be powered by electricity supplied by overhead catenary lines, double-tracked, and for much of the route will run on an existing (now unused) rail right-of-way in the center median of Exposition Boulevard.

The Expo Line will be turned over to the Los Angeles County Metropolitan Transportation Authority (MTA) for ongoing operations once construction is completed. Expo Authority, MTA and the City of Los Angeles (City) entered into a Master Cooperative Agreement that provides, among many other elements, the concurrence of these agencies regarding the design, construction, operation and maintenance of the subject crossings.

All 10 of the subject applications were protested. In authorizing construction of 36 of the 38 proposed crossings, D.07-12-029: confirmed the consolidation of the 10 subject applications; determined that an evidentiary hearing (EH) was not necessary with respect to the 36 authorized crossings; found that MTA, as the lead agency for environmental review of the Expo Line project, complied with the California Environmental Quality Act (CEQA) with respect to the 36 authorized crossings; found that it was not practicable to grade-separate the 26 at-grade crossings authorized in the decision; and, left the proceeding open to examine further the two remaining crossings, at Farmdale Avenue and Harvard Boulevard.

The Expo Line will run in the center median of Exposition Boulevard at the sites of the proposed crossings at Farmdale Avenue and Harvard Boulevard.

² The Los Angeles to Culver City segment of the Expo Line, the portion subject to this proceeding, is Phase I of an overall project. Phase II, a further extension of the line to

Footnote continued on next page

Exposition Boulevard is two to three lanes wide in each direction. Any rail crossings at these sites, therefore, must cross the double set of train tracks, and the eastbound and westbound lanes of Exposition Boulevard on each side of the tracks.

At Farmdale Avenue, Expo Authority is requesting authority to construct an at-grade crossing immediately adjacent to Susan Miller Dorsey High School (Dorsey). Dorsey is on Farmdale Avenue at the intersection of Exposition Boulevard (southwest corner).

At Harvard Boulevard, Expo Authority is requesting approval to construct the rail line in the center median of Exposition Boulevard, above an existing pedestrian tunnel. The tunnel is a public facility owned by the City. The tunnel and the rail line will be completely grade-separated. The James A. Foshay Learning Center (Foshay) is located on Harvard at Exposition Boulevard (northwest corner). Harvard does not cross Exposition at street level. The tunnel at Harvard Boulevard does not comply with the requirements of the Americans with Disabilities Act (ADA), and now is in use on a limited basis as an undercrossing of all lanes of traffic and the center median of Exposition Boulevard. Foshay is immediately adjacent to the north entrance of the tunnel.

Dorsey and Foshay are approximately two miles apart. Both schools are under the jurisdiction of the Board of Education of the City of Los Angeles and the Los Angeles Unified School District (LAUSD).

Santa Monica, is in the planning stages and not subject to this proceeding or today's decision.

3. Commission's Role

The Commission has exclusive jurisdiction to determine the manner, location, maintenance, use, and type of protection devices installed at rail crossings in California, pursuant to Pub. Util. Code § 1202(a), and § 99152. Rule 3.11 of the Commission's Rules of Practice and Procedure (Rules) further states that any crossing of a light-rail transit system (such as the Expo line) must comply with the same general requirements applicable to railroad crossings.

Specifically, Pub. Util. Code § 1201 prohibits construction of a "track of any railroad corporation...across a public road, highway, or street at grade...without having first secured the permission of the [C]ommission." Furthermore, the Commission has:

exclusive power to determine and prescribe the manner, including the particular point of crossing, 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 or of a railroad by a street.³

Public Util. Code § 99152 makes any new "public transit guideway" subject to "regulation of the Public Utilities Commission related to safety appliances and procedures."

The Commission is also the responsible agency for this project under CEQA. CEQA requires that the Commission consider that portion of the environmental consequences of a project within its area of expertise that is subject to its discretionary approval. The specific activities that must be conducted by a responsible agency are contained in CEQA Guideline

³ Pub. Util. Code § 1202(a).

Section 15096. The Commission has reviewed and considered the lead agencies' environmental documentation.

As stated in D.07-12-029, and repeated here, the Commission's role in this proceeding is not to approve the Expo Line project itself, but to consider (authorize or deny) the installation of the crossings that will serve the line.

4. Parties to the Proceeding

In addition to Expo Authority, the following parties participated in this proceeding:

4.1. United Community Associations, Inc. (UCA)

UCA is the protestant of record in this proceeding. Expo Communities United (ECU), a coalition of neighborhood community groups, timely protested all 10 of the subject applications. ECU generally argued in its protests that all of the crossings and the entire Expo Line should be constructed underground below the street surface. The neighborhood groups of ECU later joined with other neighborhood groups and incorporated into UCA. On June 5, 2008, the assigned Administrative Law Judge (ALJ) ruled that UCA is the protestant of record in this proceeding, replacing ECU. We affirm the ruling of the ALJ. UCA (preceded by ECU) has participated fully in this proceeding from the outset.

4.2. Neighbors for Smart Rail (NFSR)

NFSR, another community group, filed a timely response to A.07-05-013 (Farmdale Avenue). NFSR has participated fully in this proceeding since filing its response.

NFSR joined UCA in many of its filings, and jointly presented witnesses and evidence with UCA at the EH in this matter. In their joint closing brief, UCA/NFSR recommend that Expo Authority's applications for the crossings at

Farmdale Avenue and Harvard Boulevard be denied, and further that the Commission order grade separations at both locations. We note here that the proposed design of the Harvard Boulevard pedestrian tunnel crossing is completely grade-separated.

4.3. LAUSD

LAUSD representatives attended all of the public procedural events held in this proceeding in 2007, including the first PHC in April, a second PHC, a workshop, and a public participation hearing (PPH) at Dorsey in November. LAUSD was listed in the “information only” category on the service list for all of 2007.

On December 18, 2007, LAUSD filed a motion for leave to become a party to the proceeding and to file a position statement. The motion was filed eight days after the due date for comments to the proposed decision (draft) of D.07-12-029. By an ALJ ruling dated January 8, 2008, LAUSD was granted party status, prospectively, and its participation was limited to matters involving the crossings at Farmdale Avenue and Harvard Boulevard. LAUSD has participated fully since being granted party status.

LAUSD opposes the proposed crossing designs at both Farmdale Avenue and Harvard Boulevard. At Farmdale, LAUSD recommends the Commission order a grade-separated aerial light-rail transit guideway (train flyover) for the rail line, leaving Farmdale open to both vehicles and pedestrians. At Harvard Boulevard, LAUSD recommends the Commission order a pedestrian overcrossing (bridge) be installed instead of approving the rail line being constructed over the existing tunnel.

On April 22, 2008, LAUSD filed a Petition to Modify D.07-12-029. D.08-07-028, issued on August 4, 2008, denied the petition. LAUSD filed a

request for rehearing of D.08-07-028 on September 2, 2008. The rehearing request is pending

4.4. Consumer Protection and Safety Division Staff (CPSD)

CPSD protested A.07-01-017. Expo Authority amended A.07-01-017 in May 2007, and CPSD withdrew its protest on June 25, 2007 as the amendment resolved the matters set forth the protest. Since the withdrawal of its protest, CPSD's role in this proceeding has been advisory in nature. As directed by the assigned ALJ, CPSD staff testified at the EH regarding the practicability of a grade separation at Farmdale Avenue.

5. Procedural Events

The Amended Scoping Memo and Ruling of the Assigned Commissioner (Amended Scoping Memo) determined that an EH was necessary with respect to the proposed Farmdale Avenue and Harvard Boulevard crossings. Two prehearing conferences (PHCs), a PPH at Dorsey, a public-forum workshop at Foshay, a meet and confer session, and a facilitated mediation conference also were held in the ongoing proceeding. These events are listed below.⁴

<u>Event</u>	<u>Date</u>	<u>Location</u>
PPH	November 5, 2007	Los Angeles (at Dorsey)
1 st PHC	March 12, 2008	Los Angeles
Meet/Confer (parties)	April 23-30, 2008	Telephonic
Workshop (parties)	May 8, 2008	Los Angeles
2 nd PHC	May 9, 2008	Telephonic
Public Workshop	July 2, 2008	Los Angeles (at Foshay)

⁴ Excludes rulings of the assigned Commissioner or ALJ.

EH (procedural only)	August 11, 2008	Los Angeles
Mediation Conference	August 12-13, 2008	Los Angeles
EH (7 days)	September 2-15, 2008	Los Angeles*

* The final day of EH, September 15, 2008, was held in San Francisco.

5.1. PPH and Public Workshop

The PPH at Dorsey and the public workshop at Foshay⁵ were held for the purpose of hearing public opinion on the proposed crossings at Farmdale Avenue and Harvard Boulevard, respectively. Both events were well attended by the public (approximately 300-400 at Dorsey, and 200-300 at Foshay). Approximately 50 people testified/spoke at each event, with many more unable to do so due to time restraints. The Commission's Public Advisor also has received approximately 40-50 written statements on this matter (letters; and, notes from the PPH). Approximately 90% of the participants at both events opposed the crossings as designed. Some favored different crossing designs, but most expressed opposition to the entire Expo Line project.

5.2. First PHC

The purpose of the first PHC was to identify the issues in dispute, and determine if any of these disputes could be resolved through settlement discussions or mediation. An ongoing procedural schedule was established at the PHC that included (all dates 2008): Expo Authority to file and serve supplemental information on March 28th showing alternative design options for the Farmdale and Harvard crossings (designs other than proposed in the

⁵ A written transcript was taken at the PPH at Dorsey. No transcript was taken at the public workshop at Foshay. These events otherwise were similar in format and purpose.

applications); a meet and confer session to begin on April 23rd to allow the parties the opportunity to discuss a possible settlement; a workshop on May 8th to review any settlement issues; and, a second PHC on May 9th to set a further schedule.

Expo Authority timely filed the supplemental information and, as provided in the schedule, the other active parties filed comments. The supplement included nine alternative design options for the Farmdale crossing, and two alternatives for the Harvard crossing. The alternative designs for Farmdale were: a pedestrian bridge with Farmdale closed to vehicle traffic; a pedestrian bridge with Farmdale open to vehicles at-grade; a pedestrian undercrossing with Farmdale closed to vehicles; a pedestrian undercrossing with Farmdale open to vehicles at-grade; a train flyover over Farmdale; a subterranean LRT guide-way (train undercrossing) under Farmdale; a Farmdale overpass of the train tracks and Exposition Boulevard; a Farmdale underpass of the train tracks and Exposition Boulevard; and, completely closing Farmdale to all traffic. The alternative options for Harvard were: a pedestrian bridge with permanent closure of the tunnel; and, completely closing the crossing (no tunnel or bridge).

5.3. Meet and Confer Session

The meet and confer session was scheduled to allow the parties to discuss the alternative design options and possibly resolve some or all of the matters in dispute themselves without a hearing. The meet and confer was held by telephone with only the parties participating. No agreements or settlements were reached at the meet and confer.

5.4. Workshop/Second PHC

All parties participated in the May 8th workshop and the telephonic PHC the following day. These events were held to determine the status of a possible settlement, further discuss the design options, and set a further procedural schedule. Although the number of design alternatives were narrowed, no settlements or agreements were reached in these discussions. Issues of material fact remained in dispute, and it was determined that an evidentiary hearing (EH) would be necessary with respect to the Farmdale Avenue and Harvard Boulevard crossings.

The ongoing scope and procedural schedule of the proceeding were developed at the PHC, and confirmed by the Amended Scoping Memo.

6. Ongoing Scope and Need for Hearing

The Amended Scoping Memo, issued June 20, 2008, confirmed the need for an evidentiary hearing, determined the ongoing scope of the proceeding, and set a schedule for prepared testimony, hearings, and briefs, as described below.

6.1. Need for Hearing

As discussed at the May 9th PHC, issues of material fact remained in dispute. It was determined at the PHC that an evidentiary hearing would be necessary with respect to the Farmdale Avenue and Harvard Boulevard crossings.

6.2. Scope

As summarized in the Amended Scoping Memo, the ongoing scope of the proceeding included:

6.2.1. For Farmdale Avenue

An analysis of the proposed at-grade crossing, and an analysis of four grade-separated alternative design options: a pedestrian bridge with Farmdale

closed to traffic; a pedestrian bridge with Farmdale open traffic; a train flyover; and, a train undercrossing.

The assigned ALJ directed Expo Authority to include in its prepared testimony an analysis of the first two alternative designs for Farmdale, a train flyover and a pedestrian bridge. In its prepared testimony, Expo Authority also provided an analysis of the two other alternatives for Farmdale, a pedestrian bridge with Farmdale open and a train undercrossing.

The Amended Scoping Memo also directed Expo Authority to provide an analysis of the types of crossing warning devices and the practicability of a grade separation at Farmdale Avenue

6.2.2. For Harvard Boulevard

An analysis of the proposed grade-separated crossing over the underground pedestrian tunnel, and an analysis of a pedestrian bridge alternative.

6.2.3. Table of Design Options

The Amended Scoping Memo directed Expo Authority to prepare a table or chart outlining the various proposals and design alternatives (options), for the Farmdale Avenue and Harvard Boulevard crossings. Issues to be listed in the table included: the identification of any necessary additional environmental review, and areas of potential environmental impact (e.g., visual, historic); the estimated additional construction costs (beyond the cost of the project as currently proposed); and, the estimated additional cost and time necessary for completion of construction.

Expo Authority engaged outside consultants to perform an environmental analysis of the various design options for both crossings. Issues analyzed included traffic, historical resources, noise and vibration, and visual impacts.

Expo Authority timely served its table of design options on June 30, 2008, and provided an updated version of the table as an exhibit on the final day of the EH. Information from the updated table is shown below for each crossing.

Table of Design Options for Farmdale Avenue

	At-grade as proposed	Ped. bridge Farmdale closed	Ped. Bridge/ Farmdale open	Train Flyover	Train Under-crossing
New significant unmitigable environmental impacts	No	No	No	Yes	Yes
Areas of impacts	N/A*	N/A*	N/A*	Visual, historical resources, air quality during construction	Air quality during construction
Is subsequent EIR required	No	No	No. Addendum to prior EIR sufficient	Yes	Yes
Project Cost Increase	None	\$9 million	\$6.5 million	\$28 million	\$100 million
Project delay time #	None	12 months	6 months	18 months	30 months

* Not Applicable

In addition to the above project cost increases, Expo Authority estimates an additional \$1 million/month cost for each month the project is delayed.

Table of Design Options for Harvard Blvd.

	Proposed Pedestrian tunnel	Pedestrian bridge
New significant unmitigable environmental impacts	No	No
Areas of impacts	N/A*	N/A*
Is subsequent EIR required	No	Undetermined
Project Cost Increase	None	\$5-8 million
Project delay time #	None	6 months

* Not Applicable

In addition to the above project cost increases, Expo Authority estimates an additional \$1 million/month cost for each month the project is delayed.

6.2.4. Issues Outside the Scope

D.07-12-029, and the Amended Scoping Memo, identified several issues outside the scope of this proceeding not directly related to the rail crossing safety oversight responsibilities of the Commission, and other transportation matters with no link to the proposed crossings. These included: the planning, funding and forecasting strategies of the MTA; the general transportation policy intentions of the state legislature; the cost and benefits of bus and rail operations; auto and rail traffic patterns away from the crossing sites and/or on other unrelated rail or highway systems; and, federal transportation funding mechanisms related to the overall project. These issues and any similar issues not directly related to the safety of the proposed crossings at Farmdale Avenue and Harvard Boulevard remain outside the scope of this proceeding.

The Amended Scoping Memo determined that the ongoing scope of this proceeding also shall not revisit D.07-12-029 with respect to the 36 crossings authorized therein, unless otherwise directed by the Commission.

6.3. Schedule

The parties timely filed prepared testimony pursuant to the schedule in the Amended Scoping Memo (Expo Authority on June 6; UCA and NFSR on July 30; and LAUSD on August 6, 2008). The schedule set the EH for August 11-15, 2008, and dates for post-hearing briefs. The hearing and briefing schedule were later revised by the assigned Commissioner and ALJ, as discussed below.

We affirm the Amended Scoping Memo and the revised hearing and briefing schedule developed by the Assigned Commissioner and ALJ.

7. Evidentiary Hearing/Mediation

The EH commenced as scheduled, with the assigned Commissioner in attendance. At the first day of hearing (Monday, August 11), Expo Authority advised that revised versions of the prepared testimony of three of its witnesses had been served the evening of the previous work day (Friday, August 8). The revised testimony changed Expo Authority's environmental analysis with respect to the impacts on traffic if Farmdale Avenue were closed. In light of the content and timing of the revised testimony, the ALJ and assigned Commissioner postponed the EH, and the taking of any testimony or exhibits, until September 2, 2008, and further directed that the parties participate in a mediation conference to commence the following day (August 12th).

The mediation conference was held on August 12-13, attended by all active parties, and facilitated by a Commission third-party neutral ALJ. No settlements or agreements were reached in the mediation, and the EH continued on September 2.

Seven days of hearing were held between September 2, and September 15, 2008. Twenty-four witnesses testified at the hearing, and 73 exhibits were received into evidence. Of the eight total hearing days, seven were held in Los Angeles (August 11, September 2-5, and September 8-9), and the final day (September 15) was held in San Francisco.

The parties timely filed post-hearing opening and reply briefs, pursuant to the schedule and directives of the assigned ALJ, and the matter was submitted on October 10, 2008.

8. Practicability Standard for At-Grade Crossings

In applications for at-grade crossings, the Commission has the discretion to approve the request, order a separation of grade, or deny the application. Additionally, pursuant to Rules 3.11 and 3.7(c), applications for an at-grade crossing of a light-rail crossing shall include a showing why a separation of grade is not practicable. Pub. Util. Code § 1202(c) further gives the Commission the exclusive power to require, where in its judgment it would be practicable, a separation of grade at any crossing.

The Commission has addressed the issue of practicability many times. In D.82-04-033 (City of San Mateo), D.92-01-017 (City of Oceanside), and D.98-09-059 (City of San Diego) the Commission denied requests for at-grade crossings because it was found a separation of grade was practicable. These proceedings all involved high-speed (up to 70 mph) passenger railroad traffic and were denied based in part on the number of trains and train speeds, and also on the position of various federal rail and highway safety agencies that, generally stated, opposed any at-grade crossings along mainline railroad track with high-speed passenger traffic.

In D.02-05-047 (Pasadena Blue Line), the Commission further addressed the issue by establishing a list of six issues to be used as criteria for judging practicability in that case, and in all future grade crossing cases. The Pasadena Blue Line involved a light-rail transit system with lighter weight cars, shorter train stopping distances and different safety standards than those of standard railroad (heavy-rail) trains.

In D.03-12-018 (City of San Diego), the Commission added a seventh element, “precedent in factually similar situations,” to the list of criteria for determining practicability. In that case, the Commission approved San Diego’s request to construct an at-grade crossing over six sets of tracks (three light-rail and three heavy-rail).

The Commission now uses these seven criteria (listed below) for judging practicability in all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad). For example, in D.04-08-013, the Commission approved the City of Bakersfield’s request to construct four at-grade crossings over a freight railroad, and in D.07-03-027 approved the City of Glendale’s request to construct an at-grade crossing over a combined passenger/freight railroad line.

The seven criteria used for judging practicability are:

1. A demonstration of public need for the crossing;
2. A convincing showing that Expo Authority has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;

5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation;
6. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions; and,
7. Commission precedent in factually similar crossings.

9. Discussion

Expo Authority has the burden of proving that its proposed crossings at Farmdale Avenue and Harvard Boulevard meet the Commission's standards, including the Commission's General Orders, Rules of Practice and Procedure, and Pub. Util. Code § 99152. Expo Authority bears the burden of proving safety, rather than the protestant(s) proving unsafe conditions, and the safety of any proposed crossing must be convincingly shown.

The two crossings are discussed below.

9.1. Farmdale Avenue

The proposed at-grade design for the Farmdale Avenue crossing includes separate crossing gates for pedestrians and vehicles, swing gates to allow pedestrians to exit the rail right-of-way when the other gates are down, and a paved pedestrian plaza constructed on the Dorsey side of the crossing as a queuing area for pedestrians waiting to use the crossing.

The peak periods of use of the Farmdale crossing are on school days at Dorsey during the 20-30 minutes before and after classes are dismissed. Dorsey serves grades 9-12, with an enrollment of approximately 1,800 students.

Approximately 550 pedestrians (mostly Dorsey students) now use this crossing each school-day morning and afternoon during the peak periods (afternoon crossings generally are higher than morning crossings).

The practicability of a grade separation at Farmdale is discussed below, followed by a discussion of the four design options for a grade-separated crossing.

9.1.1. Practicability of a Grade Separation at Farmdale

The seven criteria for judging the practicability of a grade separation, with respect to Farmdale Avenue, are discussed below:

1. Public need for the crossing

No parties argued against the need for the Farmdale Avenue crossing. In its environmental review of the Expo Line project, MTA found that the project area had the highest proportion of transit ridership in the Southern California region. The proximity to Dorsey and the high number of crossings before and after school hours show the crossing is necessary.

2. A convincing showing that all potential safety hazards have been eliminated.

Expo Authority proposed a state-of-the-art system of gates and other warning devices at the Farmdale crossing, including swing gates to allow pedestrians to exit the rail right-of-way when all other gates are down. All of these gates, however, can be avoided easily by pedestrians. Considering the large number of crossings during peak periods, and the student populations using the crossing, we find that any system of gates or other warning devices at-grade would not eliminate all potential safety hazards.

3. The concurrence of local community and emergency authorities.

Expo Authority coordinated the Expo Line project with the City Bureau of Street Lighting, Fire Department, and other CITY agencies; as well as the California Department of Transportation, CPSD, and MTA.

LAUSD, however, clearly does not concur with the proposed at-grade design for Farmdale because, it argues, it would be unsafe given the children that would be using the crossing. LAUSD's position was supported by the testimony of the principal of Dorsey, as well as a school police officer assigned to Dorsey who expressed concerns with student populations using the crossing and his ability to provide security at or near the crossing.

4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing.

The public's views of the entire project specifically were addressed in MTA's Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR). Approximately 800 comments were submitted to the Draft EIS/EIR, and another 200 to the Final EIS/EIR. Approximately 77% of the comments supported the project, as a whole, with little or no opposition expressed to the proposed crossings.

We also must consider, however, that approximately 90% of the 300-400 members of the public attending the PPH at Dorsey offered testimony expressing opposition to the entire project, and to the Farmdale crossing being constructed at-grade. The Dorsey principal also testified at the EH about various concerns with the safety and design of an at-grade crossing at Farmdale.

5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation.

The comparative costs of the options for grade separating the Farmdale Avenue crossing are shown in the table of design options (included in Section 6 of today's decision). The protesting parties (UCA, NFSR, and LAUSD) questioned the cost figures as possibly being too high. The cost figures are clearly estimates which have not been subjected to scrutiny, but we find these

costs nonetheless to be useful for the purposes of comparison in judging practicability.

Three of the four grade separation alternatives (the train flyover, the train undercrossing, and the pedestrian bridge with Farmdale closed to traffic) all appear to offer similar levels of safety as each would separate completely the rail right-of-way from vehicles and pedestrians. The fourth alternative, a pedestrian bridge with Farmdale open to traffic, offers a significantly lower level of safety as vehicles still would cross the rail line at-grade and pedestrians would still be likely to cross the at-grade crossing rather than use the pedestrian bridge.

We find that grade-separated options at Farmdale to be necessary. The pedestrian bridge with Farmdale closed to traffic option, at \$9 million, is the most cost-effective design for a complete separation of grade at Farmdale. We find that the train flyover and train undercrossing are estimated to be substantially greater in cost than the pedestrian bridge with Farmdale closed option. We also find that the pedestrian bridge with Farmdale open to traffic, at \$6.5 million, to be expensive when compared to an at-grade crossing, in light of the lower level of safety provided.

6. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions.

CPSD thoroughly reviewed all of the subject applications, and participated in a diagnostic review and the hazard analysis review of the entire Expo Line project. CPSD filed a protest to A.07-01-017, but withdrew its protest as a result of an amendment to that application filed by Expo Authority.

With respect to the Farmdale Avenue crossing, CPSD staff testified at the EH that the proposed at-grade crossing at Farmdale is safe. However, staff also

testified that, with respect to engineering feasibility, the Farmdale crossing can be grade-separated.

7. Commission precedent in factually similar crossings.

The parties discussed several other crossings at or near school sites along other light-rail lines. However, none of these cases presented the unique characteristics of the proposed Farmdale crossing at Dorsey. The large number of school age youth who cross at this Farmdale site is our main concern. This issue, therefore, provided little or no weight in our determination of practicability.

9.1.2. Environmental Issues

The Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) did not examine any grade-separated alternatives at Farmdale. Although Expo Authority has provided some testimony on possible adverse environmental impacts related to grade-separated alternatives, the record is not complete enough at this time for the CPUC as the responsible agency to conduct the necessary CEQA review.

9.1.3. Traffic Study

An important element of the environmental analysis of the alternative design options discussed above is the “Traffic Study for the Exposition Light Rail Transit Farmdale Avenue Crossing” (Traffic Study), performed by consultant Fehr & Peers (F&P) for Expo Authority. The Traffic Study analyzed the impacts on vehicular traffic of the various design options for Farmdale Avenue. The study focused on the pedestrian bridge with Farmdale closed to traffic option, as the four other options (at-grade, train flyover, train undercrossing, and pedestrian bridge with Farmdale open) all would not result in meaningful changes to traffic patterns.

The protesting parties (UCA and LAUSD) argued that the Traffic Study is incomplete, and that not all data relating to the analysis was made available for review. F&P began work on the study in early 2008. Expo Authority discussed and reported on its findings at various stages as the study progressed. Expo Authority also made available several draft versions of the study, or reports on its progress. Expo Authority clearly states in the draft reports that the study was an evolving process, and that the final report would be available in the summer of 2008.

The final version of the Traffic Study, dated August 2008, finds that closing Farmdale to vehicular traffic would not result in unmitigable adverse environmental impacts. Similarly, in the supplemental information it served in March 2008, Expo Authority states that closing Farmdale likely would result in an acceptable flow of traffic at other impacted locations; and, draft versions of the Traffic Study dated May 8, and May 14, 2008 also state that closing Farmdale likely would result in an acceptable flow of traffic at other impacted locations.

However, in prepared testimony served on June 6, 2008, three Expo Authority witnesses, relying on the evolving F&P Traffic Study, stated that closing Farmdale to traffic may not be feasible as unmitigable adverse impacts may be created. This position is supported by another draft version of the Traffic Study dated July 24, 2008 that states various traffic mitigation measures would not be feasible and that significant unavoidable traffic impacts would occur if Farmdale Avenue were closed to traffic.

On August 8, 2008, relying on the final version of the Traffic Study, Expo Authority served its revised prepared testimony for the same three witnesses stating that closing Farmdale Avenue to traffic would be feasible, as no unmitigable adverse impacts would be created.

John Stutsman, a principal of F&P and the person in charge of conducting the Traffic Study, testified at the EH. He explained that the study began as a series of technical memoranda that were later converted to a report format. Stutsman stated that the conclusions in the final version of the Traffic Study regarding the traffic impacts of closing Farmdale were based on data relating to traffic patterns, school enrollments, computerized simulations of the traffic flow alternatives, and other related factors. Stutsman also advised that the City's current automatic traffic control system will be updated and improved in 2011; and, that the August 2008 version of the Traffic study represented F&P's final recommendations and findings.

The protesting parties questioned the motivation of the changed outcomes of the Traffic Study, and suggested that Expo Authority purposefully was not providing all of the data, internal e-mails, work papers, telephone records, and other materials used in making the findings in the Traffic Study. The protesting parties made various requests and motions to compel the production of such data. These motions were denied for the reasons discussed below.

The parties further alleged that Expo Authority purposefully may have directed F&P to change the conclusions of the August (final) Traffic Study to show that closing Farmdale to traffic was feasible, after F&P stated in the July 24th draft version of the study that closing Farmdale was not feasible. The alleged motivation for such directive was that if the Commission determined that a grade separation at Farmdale was practicable, Expo Authority then could chose to construct the less expensive pedestrian bridge with Farmdale closed option, instead of having to construct a more expensive train flyover or train undercrossing.

Expo Authority provided the final Traffic Study, at least four draft versions of the study, related information such as e-mails and work papers, and the testimony of four witnesses (Stutsman and three others) regarding the outcomes of the study. No convincing evidence was presented to show that Expo Authority attempted to hide any results or manipulate data related to the study. We therefore find the final Traffic Study is sufficient for our review purposes.

9.1.4. Train Speeds

The projected maximum train speed through the Farmdale crossing is 55 miles per hour (mph). In testimony, Expo Authority discussed the possibility of MTA slowing trains to 10 mph before and after school hours through the Farmdale crossing. Witnesses from the protesting parties testified that slowing trains at Farmdale is problematic as pedestrians and vehicles may become familiar with the trains approaching the crossing at 10 mph during peak periods, but not be aware the trains are approaching at much faster speeds at other times of the day.

MTA will be the operator of the line, and Expo Authority did not offer any additional testimony, or support from MTA, regarding the slowing of trains at Farmdale Avenue. Expo Authority also did not offer any evidence or testimony regarding the slower speed with respect to train operators, train operating rules, or whether any similar situations exist elsewhere.

In view of these concerns, we have not considered the implementation of slower train speeds at Farmdale in today's decision.

9.1.5. Options for Grade Separation

The four options for grade-separating Farmdale Avenue are discussed below:

Pedestrian bridge with Farmdale open to traffic

We find that this option is not practicable. Most (if not all) witnesses on the subject testified that pedestrians generally will ignore any signs or signals regarding use of the bridge, and instead will use the open at-grade roadway to cross Exposition Boulevard and the rail right-of-way in the center median. We also are concerned that since motorists on Exposition may not be expecting pedestrians on a roadway not marked for pedestrians, this option may be even less safe than a marked at-grade crossing.

Train Undercrossing

Constructing the rail line below ground level (tunnel or trench) is not practicable for engineering reasons, cost reasons, and project delay time. Expo Authority's analysis shows a below-ground rail line in this area would need to be 3,200 feet long, and include special engineering and construction considerations associated with two large storm drains crossing under and adjacent to the rail right-of-way.

The additional cost of such a project, \$100 million, also is prohibitive, not only when compared to the cost of an at-grade crossing, but also when compared to the pedestrian bridge with Farmdale closed option, or the train flyover.

Train Flyover

We considered the practicability of a train flyover at Farmdale Avenue. This is the preferred option of LAUSD because it does not require Farmdale to be closed and provides full separation of the train, automobiles, and pedestrians. As Expo Authority opined in its table of design options, this option also may result in permanent unmitigable adverse environmental impacts related to visual impacts and historical resources. However, we neither concur nor refute this assertion.

Raising the tracks above the roadway would require an aerial structure approximately 1,500 feet long and 20 feet high. With sound walls and the necessary overhead catenary on the structure, the overall height would be 40-45 feet. Expo Authority's visual impacts study concluded that permanent adverse unmitigable impacts would result with the flyover constructed.

Dorsey is a historical resource under CEQA and listed in the California Register of Historical Resources. Expo Authority's Historical Resources study determined that the flyover would not change the Dorsey campus or the resource itself, but substantially would obstruct the views to Dorsey and diminish the integrity of its location. The study also determined that the other design options for Farmdale would not cause significant impacts of this type.

The additional cost of a train flyover, \$28 million, also is of concern when compared to the additional cost of the pedestrian bridge with Farmdale closed, at \$9 million, as both of these options would provide the same level of safety, and complete separation with respect to the interface of the trains with vehicles and pedestrians.

Pedestrian Bridge with Farmdale closed to traffic

We find that constructing a pedestrian bridge with the roadway closed to traffic at Farmdale Avenue is a practicable alternative to an at-grade crossing at Farmdale.

The crossing would be completely grade-separated in order to enhance safety for the pedestrians (particularly the school age pedestrians), would not cause any significant unmitigable adverse environmental impacts, and is cost-effective when compared to the cost of an at-grade crossing at the same location.

In order to comply with ADA, Expo Authority showed in its analysis that any pedestrian bridge would be accessed by an elevator and stairs on each side of the bridge.

9.1.6. Conclusion

We find it is practicable to construct a grade-separated pedestrian bridge and close the roadway to traffic at Farmdale Avenue, because the grade-separated pedestrian bridge will eliminate the potential safety hazards of large number of school age pedestrians crossing the road at-grade. Further, we find that closing Farmdale Avenue will not cause adverse unmitigable impacts and is therefore feasible. We also find that the cost of constructing the pedestrian bridge (closed at Farmdale) is cost-effective. Therefore, we deny Expo Authority's request to construct an at-grade crossing at Farmdale.

9.2. Harvard Boulevard

Expo Authority is requesting approval to construct the rail line in the center median of Exposition Boulevard, above an existing pedestrian tunnel at the extension of Harvard Boulevard, without making any alterations to the tunnel itself. The northern entrance to the tunnel is at Foshay.

Foshay is a year-round school serving grades Kindergarten-12, with a total enrollment of approximately 3,335 students (185 elementary, 2,500 middle school, and 650 high school). Approximately 2,000 students are on campus at any one time due to the year-round schedule.

Approximately 250 pedestrians (mostly Foshay students) now use the Harvard Boulevard tunnel each morning, and again each afternoon, during the 20-30 minutes before and after school hours. There is currently no surface pedestrian crossings at Harvard Boulevard. across Exposition Boulevard. During these same peak periods, another approximately 330 pedestrians cross

Exposition Boulevard at the two crossings on each side of the Harvard tunnel, located approximately 200 yards to the east and the west of Foshay (both are at-grade crossings authorized in D.07-12-029).

The only access to the tunnel is by a stairway on each side of Exposition Boulevard. This stairs-only design does not comply with the access requirements of the ADA. The tunnel, however, was constructed pre-ADA and therefore exempt from its requirements. Expo Authority proposes to construct a ground-level concrete slab over the tunnel, supported by pilings on each side. The resulting concrete “bridge” would bear no additional load on the tunnel. Since the tunnel itself would not be changed or modified, exemptions from ADA access requirements would remain.

The tunnel presents other access and security issues. Left open and without supervision, the tunnel provides a convenient location for crime (theft, robbery, assault, illegal drug use, bullying, etc.), and also presents problems related to sanitation and public health. Because of these safety and security issues, access to the tunnel is locked, except during the approximate 30-minute period before and after school hours; and, operation of the tunnel is supervised by adult volunteers (mostly parents and others associated with Foshay). We find that the access, security and other issues relating to this tunnel are pre-existing and that the operation of this tunnel is the responsibility of third parties (the City, LAUSD, and Foshay).

The issue of practicability is not considered here as the proposed crossing of the rail line and the Harvard tunnel already proposes complete grade separation. The tunnel is approximately 120 feet in length, runs under the entire

width of Exposition Boulevard (4-6 lanes of traffic and the center median), and can be accessed only by a stairway on each side.

9.2.1. Public Access and Safety

The principal of Foshay testified at the EH regarding problems the tunnel presents, including access to and personal safety inside the tunnel. A police officer assigned to Foshay also testified to the difficulties he now faces of crossing through the tunnel to handle emergency situations (i.e., lack of radio contact, losing view of ground-level criminal activity, and interference from students and others when trying to cross Exposition Boulevard quickly). At times, the officer crosses Exposition at street level, stopping traffic, when the situation warrants. At the public workshop held at Foshay, several participants also complained of various safety and security issues related to the tunnel.

Because of security issues, the tunnel now is limited to volunteer supervised use for 20-30 minutes before and after school hours. Expo Authority responds that any type of tunnel supervision is the responsibility of others (Foshay or LAUSD), a view with which we concur.

9.2.2. Alternative Crossing Design

As an alternative to the Harvard tunnel, Expo Authority analyzed a pedestrian bridge as an overcrossing of Exposition Boulevard. LAUSD prefers this option. Expo Authority estimates that a pedestrian bridge would increase the project cost by \$5-8 million, and would cause a six-month delay in project completion time.

A pedestrian bridge at Harvard would be similar in design to the bridge alternatives at Farmdale, with access subject to ADA compliance. Expo Authority showed in its analysis that any pedestrian bridge at Harvard would include an elevator and stairs on each side of the bridge. Expo also contends that

the bridge will require purchase of existing vacant property on the south side of Exposition Boulevard, and an easement from LAUSD on the north side of Exposition.⁶

9.2.3. Conclusion

The tunnel crossing presents many problems not directly related to the actual interface of the rail right-of-way and vehicles and pedestrians. These problems include the safety and security of students and others using the tunnel, and very limited hours of access. However, these problems related to the tunnel were preexisting and are not caused by the Expo Rail. From a safety point of view, the rail crossing will not interface with the Harvard tunnel and does not affect the 250 pedestrians who use the tunnel.

Accordingly, there is already a grade-separated crossing that provides for adequate separation of pedestrians and rail operations at Harvard Boulevard. As noted above, we do not consider the practicability of a grade separation here because the interface of the rail line and the Harvard tunnel are already completely separated. Moreover, our own CPSD staff have found the grade-separated crossing to comply with our safety requirements.⁷

In comments on the Alternate Proposed Decision, LAUSD disputes the Alternate Proposed Decision's finding that there are no pedestrian crossings at Harvard Boulevard across Exposition Boulevard. LAUSD contends that there is currently an "implied crosswalk" that school children can use from Harvard Boulevard to Exposition and that Commission should condition or deny the

⁶ Expo Authority Exh. 15, CD Attachment at p. 113.

⁷ TR p. 159, L. 5-6. (Berdge).

proposed crossing.⁸ In response to this assertion, Expo Authority asserts that construction of the Expo Rail closed Harvard Boulevard and that the closure of Harvard Boulevard at Exposition was “part of the design of the Expo Rail project from the outset” and therefore, there are currently no surface pedestrian crossings at Harvard Boulevard across Exposition Boulevard. Expo Authority also notes that it “was certainly a hazardous route for school children to cross the busy, multi-lane Exposition Boulevard” and that LAUSD has never suggested previously that Harvard Boulevard at-grade was a safe route for students to take to or from school.⁹ We note that LAUSD had not previously in the proceeding raised the argument that there was an at-grade crosswalk available at Harvard for students to cross Exposition Boulevard. However, even if there were an at-grade pedestrian crossing at Harvard, we observe that the Expo Rails do not raise new pedestrian safety issues. We emphasize that there is an existing grade-separated tunnel crossing at Harvard Boulevard that is adequate. We find that closure of Harvard Boulevard by the Expo Rails does not impair the ability of students to cross Exposition Boulevard either at the nearby crosswalks at Western and Denker, or through the existing pedestrian tunnel. We will, however, require Expo Authority to submit to the Commission’s CPSD within 90 days of the effective date of this decision its plan for improvements to the pedestrian tunnel, such as increasing lighting and installation of surveillance cameras to enhance pedestrian safety.

⁸ LAUSD Comments on Alternate PD at 7.

⁹ Expo Authority Reply Comments on Alternate PD at 1-2.

LAUSD also asserts in comments on the Alternate Proposed Decision that the Expo Line will result in law enforcement issues where previously, vehicles and pedestrians could cross Exposition Boulevard. LAUSD specifically asserts that, with the Expo Rail in the center of Exposition Boulevard, the police officer stationed at the Foshay Learning Center will be forced to go underground through the tunnel to cross Exposition Boulevard if he witnesses a potential incident on the other side of Exposition Boulevard. With regard to the law enforcement issues, Expo Authority proposes that it could install a locked gate in the fencing along the Exposition Boulevard median for use by police officers or other authorized security personnel.¹⁰ The Commission has also previously approved or imposed requirements related to such security gates in the past.¹¹ We encourage Expo Authority to explore whether installing a locked security gate in the fencing along the median for this purpose will assist law enforcement. We further order that light rail trains running by this security gate during school crossing hours be reduced to 35 mph or less for the safety of the police officer assigned to Foshay Learning Center.

Therefore, we reject the arguments by LAUSD as to the adequacy and safety of the Harvard tunnel crossing and approve the grade-separated crossing at Harvard, with the requirements that: (1) Expo Authority submit a plan to

¹⁰ *Id.* at 2.

¹¹ *See, e.g.*, D.03-05-025 (ordering the Pasadena Metro Blue Line Construction Authority to construct warning devices along gates to a power plant that was adjacent to the rail line); D.89-07-010 (approving a private emergency road crossing over Southern Pacific tracks and requiring use of the emergency road crossing to be barred by locked gates except during an emergency); D.04-03-015 (approving two private service crossings near Caltrain tracks, which would be closed off locked gates when not in use).

CPSD for making improvements to the tunnel within 90 days such as increasing lighting and installation of surveillance cameras; (2) Expo Authority explore whether installing a locked gate along the fence of the Exposition Boulevard median and provide keys to security personnel for Foshay will be beneficial; and (3) require the train operator to slow the light rail trains to 35 mph or slower when passing the Harvard tunnel area during school crossing hours.

Construction may begin upon issuance of this decision.

9.3. Environmental Review

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources (PR) Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA, and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission must approve the project pursuant to § 1202 of the Pub. Util. Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.¹² Here, MTA is the lead agency for this project and the Commission is a responsible agency. As a responsible agency under CEQA, the Commission must consider the lead agency's

¹² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

environmental documents and findings before acting on or approving this project.¹³

MTA prepared a combined Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR), for the Expo Line project to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321 et seq.) and CEQA. The relevant portions of that document were summarized in D.07-12-029. The Final EIS/EIR did not consider a grade-separated crossing at Farmdale.

10. Proceeding to Remain Open for Amendments

Though we deny the application for the proposed crossings at Farmdale, we cannot authorize the construction of any of the alternative design options. The analysis provided by Expo Authority of the of the various design options for Farmdale was an integral and helpful part of our review; and, we also recognize that Expo Authority cooperated fully with all of the directives of the assigned Commissioner and ALJ by providing all requested information, analyses, and reports related to the design options. However, these analyses and reports do not include all of the necessary information required by our rules for application of a rail crossing at Farmdale.

In order to expedite the processing of any future requests for crossings at Farmdale, this proceeding will remain open to allow Expo Authority to file any amendments or a new application for that purpose.

¹³ CEQA Guidelines, Sections 15050(b) and 15096.

10.1. Future CEQA Review

The provisions of CEQA apply to discretionary projects to be carried out or approved by public agencies. The Commission must consider the environmental consequences of a project by acting as either a lead or responsible agency under CEQA. The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.¹⁴

In D.07-12-029, with respect to the 36 crossings authorized therein, the Commission found that MTA is the public agency with the greatest responsibility for supervising or approving the project, and therefore the lead agency for environmental review, and that the Commission is a responsible agency. MTA prepared a combined Final EIS/EIR for the Expo Line project to comply with the National Environmental Policy Act and CEQA. As the responsible agency, we considered MTA's environmental documents and findings and reviewed and considered the Final EIS/EIR. In our role as the responsible agency, we found in D.07-12-029 that MTA's environmental review was adequate for our decision-making purposes, and concluded that the Final EIS/EIR met the requirements of CEQA.

We are not authorizing the at-grade crossing at Farmdale in today's decision, so we therefore do not make any findings here with respect to the CEQA review process for Farmdale. However, future environmental review with respect to the Farmdale Avenue crossing may be necessary; and, since we do not have a complete application before us we now cannot determine the level or type of such environmental review.

¹⁴ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

If future environmental review is necessary, we anticipate that it would be presented as a Supplement to the existing EIR, an Addendum to the existing EIR, or as entirely new subsequent EIR. Pursuant to CEQA Guidelines Section 15163 and 15164, respectively, Supplemental EIRs and Addendums to EIRs may be prepared by either the lead agency or the responsible agency.

In this regard, and in order to expedite any future environmental review, the Commission will, as the responsible agency under CEQA, act in a lead role with respect to conducting the environmental review in any future application for a crossing at Farmdale Avenue that involve either a Supplemental EIR or an Addendum to the existing EIR. However, as a responsible agency under CEQA, we will not act in a lead role should it be necessary to conduct a new subsequent EIR.

Once any new application is filed with the Commission, Expo Authority shall provide all related environmental documents it has in its possession to the Commission's CEQA analysis team.¹⁵ The CEQA team will review the documents, determine which review process best applies, and then consult with Expo Authority regarding the next steps in the review process. The CEQA team will ensure that public notice, review by other parties, and any necessary approval by the Commission shall comply with applicable CEQA requirements.

11. Outstanding Motions

Most of the motions made in this proceeding have been addressed by the assigned Commissioner or ALJ, and we affirm all of the prior rulings.

¹⁵ The "Environmental Section" of the Energy Division. Further information is available on the Commission's web-site at: cpuc.ca.gov/PUC/energy/electric/Environmental.

On October 10, 2008, the due date for reply briefs and the date this case was submitted, UCA and NFSR submitted a joint motion to supplement the testimony of one of its witnesses, or the record in this proceeding, with additional information regarding recent rail accidents that occurred at various locations throughout the state. Expo Authority opposed the motion, stating that the information is not relevant, outside the scope of the proceeding, and late. We agree with Expo Authority on all points and, therefore, summarily deny the motion.

All other outstanding motions not previously addressed also are denied.

12. Categorization

D.07-12-029 confirmed the category of this consolidated proceeding as ratesetting. No party has objected to this categorization and we find the proceeding is properly categorized.

13. Comments on Alternate Proposed Decision

The alternate proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on January 12, 2009 and reply comments were filed on January 20, 2009.

We address these comments above in this decision.

14. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Expo Line is a new light rail line being developed in Los Angeles County for service between downtown Los Angeles and Culver City.
2. The Expo Line will be a double-track configuration powered by electricity from overhead catenary lines.
3. Expo Authority is responsible for constructing the Expo Line and filed the 10 subject applications for authority to construct 38 new crossings along the corridor.
4. Expo Authority entered into a Master Cooperative Agreement with MTA and the City regarding the design, construction, operation and maintenance of the proposed crossings.
5. The completed project will be turned over to MTA for operation.
6. UCA (formerly ECU) protested all of the applications.
7. NFSR filed a response to A.07-05-013.
8. LAUSD is an interested party to the proceeding, as described herein.
9. All protests, responses, and replies were filed timely.
10. Interim D.07-12-029 authorized Expo Authority to construct 36 of the 38 requested crossings.
11. The two crossings not authorized in D.07-12-029 are the at-grade crossing at Farmdale Avenue, requested in A.07-05-013, and the grade-separated pedestrian tunnel crossing at Harvard Boulevard, one of the 11 crossings requested in A.06-12-020.
12. Dorsey is adjacent to the proposed Farmdale Avenue crossing.
13. Foshay is adjacent to the existing Harvard Boulevard tunnel.
14. The scope of this proceeding, as described herein, is appropriate.

15. It was necessary to hold an evidentiary hearing with respect to the proposed crossings at Farmdale Avenue and Harvard Boulevard.

16. Related procedural events included: a PPH, two workshops, two PHCs, a meet and confer session, and a mediation conference, as described herein. No agreements or settlements were reached by the parties.

17. The criteria we use in judging the practicability of a grade separation was established in D.02-05-047, and D.03-12-018.

18. A crossing at Farmdale Avenue is necessary for public access.

19. Expo Authority has not shown that all safety hazards at the Farmdale crossing have been eliminated.

20. All local authorities do not concur with the proposed design of the Farmdale Avenue crossing.

21. Public opinion varies on the Farmdale Avenue crossing.

22. The final F&P Traffic Study is sufficient for purposes of our review.

23. Expo Authority's estimated costs of the various alternative design options are sufficient for the purpose of comparison.

24. A pedestrian bridge with Farmdale Avenue closed to traffic is practicable.

25. The comparative costs of a train undercrossing at Farmdale Avenue are prohibitive, in light of the level of safety provided.

26. The comparative costs of a grade-separated pedestrian bridge with Farmdale Avenue open to traffic are prohibitive in light of the level of safety provided.

27. CPSD staff reviewed the Farmdale Avenue crossing and finds that the design of the proposed at-grade crossing is safe; and, further finds that for engineering purposes it is feasible to grade-separate the crossing.

28. CPSD staff reviewed the Harvard Boulevard crossing and finds that the design of the proposed grade-separated crossing is safe.

29. The proposed grade-separated crossing at Harvard Boulevard is practicable.

30. The pedestrian tunnel at Harvard Boulevard is a preexisting condition.

31. There is no surface pedestrian crossing at Harvard Boulevard.

32. Construction of the Expo Rail does not create new problems for pedestrians crossing the tunnel at Harvard Boulevard.

33. It is not necessary that we consider adequate and safe access to the Harvard Boulevard tunnel, and safe passage through the tunnel, in our review of the proposed crossing.

34. Access to the Harvard Boulevard tunnel is locked except for an approximate one-half hour before and after school hours at Foshay.

35. It is reasonable to keep this proceeding open to allow Expo Authority to file necessary amendments or new applications, as described herein.

36. MTA is the lead agency for the Expo Line project with respect to CEQA compliance.

37. The Commission is a responsible agency under CEQA.

38. Pursuant to CEQA Guidelines, the Commission, as a responsible agency, may act in a lead role for conducting any necessary future environmental review with respect to the Farmdale Avenue crossing, if such review involves either a Supplemental EIR or an Addendum to the existing EIR.

39. The Final EIS/EIR for the Expo Line examine the at-grade crossings at Farmdale Ave. and the grade separated crossing at Harvard Boulevard.

40. The Commission will not act in a lead role for conducting any future CEQA review if a new subsequent EIR is found to be necessary.

41. This proceeding is properly categorized.

42. The October 10, 2008 joint motion of UCA and NFSR to supplement the record in this proceeding is not relevant, outside the scope of the proceeding, and late.

Conclusions of Law

1. It was necessary to hold an evidentiary hearing with respect to the Farmdale Avenue and Harvard Boulevard crossings

2. A.07-05-013, for authority to construct and at-grade crossing at Farmdale Avenue in the City of Los Angeles, should be denied.

3. Authorization to construct a light rail line over an existing pedestrian tunnel crossing at Harvard Boulevard, in the City of Los Angeles, requested in A.06-12-020, should be approved and construction may begin immediately.

4. This consolidated proceeding should remain open, within statutorily established timelines, to allow Expo Authority to amend A.07-05-013, as described herein.

5. Pursuant to CEQA Guidelines, the Commission, as a responsible agency, should act in a lead role with respect to conducting the environmental review in any future applications for crossing at Farmdale Avenue that involve either a Supplemental EIR or an Addendum to the existing EIR.

6. The Final EIS/EIR was adequate for consideration of the environmental impacts of the proposed grade-separated crossing at Harvard Boulevard.

7. As a responsible agency under CEQA, the Commission should not act in a lead role for environmental review if such review involves a new subsequent EIR.

8. The joint motion of UCA/NFSR dated October 10, 2008 to supplement the record in this proceeding should be denied.

O R D E R

IT IS ORDERED that:

1. Application (A.) 07-05-013 by the Exposition Metro Line Construction Authority (Expo Authority) for an at-grade rail crossing at Farmdale Avenue in the City of Los Angeles is denied.
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 approved.
3. The train operator shall slow the speed of the train to 35 mph or less when passing by Harvard Boulevard, during school crossing hours.
4. Within 90 days of the effective date of this decision, Expo Authority shall submit to the CPSD its plan for improvements to the pedestrian tunnel at Harvard Boulevard, such as increasing lighting and installation of surveillance cameras.
5. As a responsible agency under the California Environmental Quality Act, the Commission will act in a lead role with respect to conducting the environmental review in any future amendment or application for a crossing at Farmdale Avenue that involve either a Supplemental Environmental Impact Report (EIR) or an Addendum to the existing EIR.
6. The October 10, 2008 joint motion to supplement the record by United Community Associations, Inc. and Neighbors for Smart Rail is denied.

A.06-12-005 et al. COM/CRC/sid

7. A.06-12-005, A.06-12-020, A.07-01-004, A.07-01-017, A.07-01-044, A.07-02-007, A.07-02-017, A.07-03-004, A.07-05-012, and A.07-05-013 remain open.

This order is effective today.

Dated February 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

I reserve the right to file a dissent.

/s/ TIMOTHY ALAN SIMON
Commissioner

APPENDIX A

List of Appearances

For Exposition Metro Line Construction Authority:

Nossaman, Guthner, Knox & Elliott, LLP, by Martin A. Mattes, and
Cox, Castle & Nicholson LLP, by Frederick H. Kranz,

For United Community Associations, Inc.:

Sonnenschein, Nath & Rosenthal, LLP, by Ivor E. Samson, and
Christopher E. Prince.

For Los Angeles Unified School District:

Strumwasser & Woocher LLP, by Michael J. Strumwasser, and
Beverly Grossman Palmer.

For Neighbors for Smart Rail:

Heller & Edwards, by Lawrence E. Heller.

For Consumer Protection and Safety Division:

Patrick S. Berdge, Attorney at Law

(END OF APPENDIX A)

***** SERVICE LIST *****

Last Updated on 26-DEC-2008 by: JP4

A0612005 LIST

A0612020;A0701004;A0701017;A0701044;A0702007;A0702017;A0703004;A0705012;
A0705013

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**Dissent of Commissioner Timothy Alan Simon
February 20, 2009 Commission Meeting**

1. Introduction

On February 20, 2009, I asked for the support of my fellow Commissioners for Item 60, the revised Proposed Decision (“PD”) of Administrative Law Judge Kenneth Koss issued in response to 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 corridor Light Rail Transit Line across Jefferson, Adams, and 23rd Street, all three crossings located along Flower Street in the City of Los Angeles, County of Los Angeles, California, And Related Matters*. Instead, by a vote of 4-1, my fellow Commissioners voted in favor of the Alternate Proposed Decision (“Alternate”), Item 60-a.

As a result of that vote in favor of the Alternate, I submit the following Dissent, in part, to that portion of the Alternate that authorizes the construction of a rail line over an existing pedestrian tunnel crossing at Harvard Boulevard, without first providing the Commission with a comprehensive management plan to address how the safety and security of pedestrians using that tunnel will be ensured.

2. Background

The Exposition Metro Line Construction Authority (“Expo Authority”) filed 10 applications with the Commission for authority to construct a series of 38 rail crossings along the “Exposition Corridor Light Rail Transit Line” in Los Angeles County, which will be a new 8-½ mile light rail transit extension line that will run between downtown Los

Angeles and Culver City.¹⁶ An interim decision in this proceeding, D.07-12-029, authorized the construction of 36 of the 38 crossings, and construction has commenced at those crossings. D.07-12-029 also directed that the proceeding remain open to address further the two remaining crossings at Farmdale Avenue and Harvard Boulevard. In Application 07-05-013, the Expo Authority proposed an at-grade crossing at Farmdale Avenue where the Susan Miller Dorsey High School (“Dorsey”) is located. In Application 06-12-020, the Expo Authority proposed a grade-separated crossing over the existing Harvard pedestrian tunnel located adjacent to the James A. Foshay Learning Center (“Foshay”).

3. Discussion

This has been a contentious proceeding rife with issues that reflect disparate opinions on transit planning and safety. All 10 of the Expo Authority’s applications were protested, and pleadings were filed by the Expo Authority, United Community Associations, Inc., Neighbors for Smart Rail, and the Los Angeles Unified School District. The public participation hearings, meet and confer sessions, workshops, two pre-hearing conferences, and evidentiary hearings were well attended. Additionally, the Commission facilitated a mediation. Throughout this proceeding, it became apparent that there were opposing views regarding the safety of the potential crossing options at Farmdale Avenue and Harvard Boulevard.

For the Farmdale Avenue crossing, both the revised PD and the Alternate reject the at-grade crossing proposed by the Expo Authority in favor of a pedestrian bridge. (PD, page 2; Alternate, page 2.) This is the appropriate outcome. Having attended public meetings regarding these crossings and looked at the record in this proceeding, I have questioned whether the proposed at-grade crossing, at such close proximity to an

¹⁶ The Expo Authority was created by Senate Bill 504 for the specific purpose of constructing this project. Senate Bill 504 (Kuehl); 2003. Pub. Util. Code Section 132600 *et seq.*

active high school, would provide adequate safety and security for the students of that high school.

My concerns were heightened by the suggestions of a party to this proceeding, made to my staff and other individuals with access to Commission decisionmakers, that an at-grade crossing at Dorsey High School would be equivalent to other Commission-approved at-grade crossings near schools such as the Griffith Middle School, Blair High School, and Mission High School. As a factual matter, with Farmdale Avenue and the proposed rail line located immediately adjacent to Dorsey, none of the previously-approved at-grade crossings are in the same or similar proximity to a school as an at-grade crossing at Farmdale Avenue would be to Dorsey High School. Furthermore, because there are train stations near the Griffith and Mission Schools, trains stop in the vicinity of those schools, and the velocities of the trains are necessarily slower.

I am pleased that, despite these potentially misleading statements regarding the merits of an at-grade crossing at Farmdale Avenue, the Commission has determined that a grade-separated crossing is appropriate for the health and safety of the local community, and is practicable.

Where the revised PD and the Alternate differ, however, is with respect to the Harvard Boulevard crossing near the Foshay Learning Center. I have made multiple visits to this crossing site. I also conducted a public hearing in the Foshay Auditorium and listened first-hand to the concerns of the local community. Under the revised PD, both the existing pedestrian tunnel and a pedestrian bridge remain viable alternatives as the safest grade-separated crossing options, but the revised PD finds that, for the Expo Authority to construct its new rail line, safe use of the tunnel is a proper matter for Commission consideration:

The Harvard tunnel crossing presents many problems not directly related to the actual interface of the rail right-of-way and vehicles and pedestrians. These problems include the personal safety and security of students and others using the tunnel, limited hours of access, and access by safety and security personnel needing to cross Exposition Boulevard. We find here, however, that adequate and safe access to and passage through a proposed crossing are

important elements of crossing design; and, that these elements certainly should be considered in our review of the Harvard tunnel. (PD, pages 32-33.)

Thus, the revised PD does not approve the use of the grade-separated pedestrian tunnel as a crossing at Harvard Boulevard, but instead orders the Expo Authority to return to the Commission with a detailed management plan that addresses safety, tunnel access, and use by students and law enforcement. (PD, pages 30-31.)

In contrast, the Alternate jumps the gun by approving the pedestrian tunnel at Harvard Boulevard without vetting the Expo Authority's plan for making improvements to the tunnel, and removes the option of constructing a pedestrian bridge. Instead, the Alternate requires Expo Authority to submit a plan to the Commission's Consumer Protection and Safety Division for safety improvements to the tunnel within 90 days, and does not require any Commission review or approval of the plan. (Alternate, page 47.) The Alternate also requires trains to travel at 35 mph or less when passing the Harvard tunnel area during school crossing hours. (Alternate, page 46.) These measures, however, do not ensure that the Expo Authority will have considered all of the necessary safety measures at the Harvard crossing before it is given approval to proceed with construction.

And while it is also true that this Commission retains jurisdiction over rail crossing safety, and also must approve Expo Authority's safety certification plan prior to the commencement of revenue operations, it would be better for the health and safety of the children, who are predominantly students of the Los Angeles Unified School District, for Expo Authority to have the incentive of providing a fully fleshed out management report as a condition to receiving construction authorization for the Harvard crossing from this Commission.

Finally, while both the revised PD and the Alternate note the Expo Authority's claim that constructing a pedestrian bridge at Harvard would delay completion of the entire project by six months, there is nothing in the record that indicates that a delay to allow the Commission to review a safety management plan prior to approving the already existing pedestrian tunnel as a crossing would result in any such delay. As a practical matter, any delays resulting from our regulatory review will be

caused by construction of a grade-separated crossing at Farmdale Avenue, a requirement that is the same in both the revised PD and the Alternate.

4. Conclusion

As noted previously, 36 of the 38 crossings related to this project have already been approved and construction has commenced. The review of a safety management plan before approval of the pedestrian tunnel at Harvard Boulevard would not have impacted construction at the other 36 crossings, and would not have resulted in delay of the project.

It is for these reasons that I must respectfully dissent, in part.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon

Commissioner