



January 17, 2023

Via Electronic Mail  
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Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, Mail Stop 99-22-6  
Los Angeles, CA 90012

**RE: Comments on the Draft Environmental Impact Report for the Los Angeles Aerial Rapid Transit Project**

Dear Mr. Cory Zelmer:

We appreciate the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Los Angeles Aerial Rapid Transit Project (“Project”). These comments are on behalf of the Natural Resources Defense Council and our many thousands of members and activists throughout California. Our comments are offered to ensure Metro’s consideration of the Project complies with the California Environmental Quality Act (“CEQA”), California Code of Regulations, title 14, § 15000 et seq. (“CEQA Guidelines”), and the Los Angeles CEQA Threshold Guide. We urge Metro to consider the issues identified below and to update the EIR to fully and accurately describe the Project and analyze its impacts.

NRDC has a vested interest in preserving the quality, character, accessibility, and enjoyment for those visiting the Los Angeles State Historic Park given our decades-long advocacy along with many other community allies to protect and create the parkland. Los Angeles State Historic Park was created after a tremendous community campaign to defeat a warehouse development plan that threatened the 32-acre open space. We offer the following comments to ensure Metro adequately considers all the impacts the Project will have on the park and adjacent downtown Los Angeles neighborhoods.

**I. The DEIR’s impact analysis is flawed and should be revised.**

The DEIR appears to employ an overly broad and contradictory analytic approach that may not describe with adequate specificity the full range of significant negative impacts the Project will have on the aesthetic and cultural characteristics of the Project site and surrounding areas. As such, a court might find that the DEIR fails in its basic purpose as a useful, informational document for the public and decision makers.<sup>1</sup>

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<sup>1</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

**A. The DEIR's aesthetic impacts analysis should be augmented and revised.**

The DEIR presents an insufficient analysis of the aesthetic impacts the Project will have on the immediate surrounding areas, particularly near Los Angeles State Historic Park. The DEIR divides the immediate vicinity of the Project alignment into six different Landscape Units that encompass the location of the Project alignment and adjacent areas beginning in the southern portion of the Project alignment and ending in the north. Of most significance, the DEIR does not sufficiently analyze the aesthetic impacts to Landscape Unit 4, which begins at the southwestern corner of Los Angeles State Historic Park. The LA CEQA Thresholds Guide notes the value of preserving sightlines to designated scenic resources or areas of visual interest from public vantage points. The DEIR acknowledges that the subjects of valued or recognized views may be focal or panoramic, including urban skylines, mountain ranges, or large bodies of water. The DEIR further acknowledges the Project's interruption to the panoramic skyline views of downtown Los Angeles from Los Angeles State Historic Park.

Los Angeles Historic State Park is a large open space that is in stark contrast to the dramatic skyline of downtown Los Angeles.<sup>2</sup> Sometimes referred to as the "front porch" of Los Angeles, there are no other sites that capture this welcoming view of downtown.<sup>3</sup> Despite acknowledging the aesthetic significance of the downtown Los Angeles urban skyline, the DEIR concludes the Project will have no significant impact for a variety of unpersuasive reasons. For example, the DEIR vaguely relies on a "walkway in the park" as an area that will continue to have uninterrupted views.<sup>4</sup> The DEIR further asserts that there are no significant aesthetic impacts because "existing views of downtown from other areas in the park are already interrupted under existing conditions by trees."<sup>5</sup> The mere possibility that one may potentially be able to find an area within the park where the view may be seen would not seem to negate the significant negative impact to a designated area of visual interest. CEQA does not require that a view be hindered from every possible vantage point; rather, CEQA demands an inquiry into whether the Project would have potentially significant impacts with respect to views if the Project's development were to obstruct an existing view of a valued visual resource.<sup>6</sup>

Further, the DEIR purports to describe its consistency with the Los Angeles State Historic Park General Plan. For a project in an urban area, a significant impact to visual character or quality occurs if the project conflicts with applicable zoning regulations or other regulations governing scenic quality. The DEIR appears to contain contradictory statements regarding the Project's consistency with the Los Angeles State Historic Park General Plan. On the one hand, it states that the proposed Project must obtain an amendment to the Los Angeles State Historic Park General Plan to allow transit uses within the park. However, later in the DEIR it states that the proposed Project would be consistent with Los Angeles State Historic Park General Plan

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<sup>2</sup> Los Angeles State Historic Park General Plan (2005), <https://lastatehistoricpark.org/wp-content/uploads/2021/07/LASHP-General-Plan.pdf>.

<sup>3</sup> *Id.* at 38.

<sup>4</sup> Draft Environmental Impact Report, Appendix C- Visual Impact Assessment at 74, [https://www.dropbox.com/sh/trfpt09to0kp4a8/AACPE0qySShhT2mqXi172mAha/Documents/Draft%20EIR%2010.17.22/Draft%20EIR%20and%20Appendices?dl=0&preview=Appendix+C\\_VIA.pdf&subfolder\\_nav\\_tracking=1](https://www.dropbox.com/sh/trfpt09to0kp4a8/AACPE0qySShhT2mqXi172mAha/Documents/Draft%20EIR%2010.17.22/Draft%20EIR%20and%20Appendices?dl=0&preview=Appendix+C_VIA.pdf&subfolder_nav_tracking=1).

<sup>5</sup> *Id.*

<sup>6</sup> California Code Regs., title 14, Section 15000 Appendix G.

aesthetic resources goals to protect and enhance scenic viewsheds and features. Not only does the DEIR appear to lack any description of the Project's ability to protect and enhance scenic viewsheds and features, but the document also fails to acknowledge the project's existing inconsistency with the Los Angeles State Historic Park General Plan, which prohibits the very type of (transit) Project proposed.

The DEIR also appears to minimize the significant negative visual impacts the Project will have on the surrounding area. For CEQA purposes, visual impacts in urbanized areas are assessed based on changes to views from publicly accessible locations or public views. However, in finding that the Project will have no significant impact, the DEIR states that pedestrians and motorists may have less of a personal investment in the visual appearance of the proposed Project because they are "primarily visiting and do not necessarily reside in the area." The DEIR relies on residents not being included in viewership, while simultaneously minimizing negative impacts by asserting that public viewers have "fleeting and/or temporary views" since they do not reside in the area. The DEIR posits a circular argument, obviating the possibility that pedestrians and motorists experience significant impacts since CEQA requires the Lead Agency to only consider the views of the public, then relying on the presumption that the public could never experience a significant impact since their views are temporary as non-residents. This type of reasoning would render the viewership analysis requirements of CEQA meaningless.

CEQA requires the data in an EIR to be not only sufficient in quantity but presented in a manner calculated to adequately inform the public and decision makers.<sup>7</sup> Given the inconsistencies throughout the DEIR's examination of potential aesthetic impacts, we urge Metro to include an accurate and robust analysis of the Project's aesthetics impacts, particularly as these impacts affect Los Angeles State Historic Park.

**B. The DEIR's analysis of impacts to cultural resources is flawed and should be revised.**

CEQA and its implementing guidelines require the evaluation of potential impacts to cultural resources.<sup>8</sup> The evaluation of impacts to historical resources consists of a two-part inquiry: (1) a determination of whether the Project Site contains or is adjacent to a historically significant resource or resources and, if so; (2) a determination of whether the Project would result in a "substantial adverse change" in the significance of the resources. A "substantial adverse change" in the significance of a historical resource is an alteration that materially impairs the characteristics that convey its historical significance and justify its eligibility for listing.

Under these guidelines, the DEIR does not appear to adequately analyze the Project's impact on cultural resources. The proposed Project is located within the urbanized and developed City of Los Angeles communities of downtown, El Pueblo, Chinatown, Mission Junction, Solano Canyon, and Elysian Park. These areas are known, in part, for their rich historical and cultural resources including over thirty culturally significant buildings, sites, districts, structures, and

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<sup>7</sup> Public Resources Code Section 21000 et seq.

<sup>8</sup> CEQA Guidelines Section 15064.5.

landscapes within the immediate vicinity of the Project alignment. While the DEIR acknowledges the significant presence of cultural resources the Project may affect, it denies without explanation any significant impacts to the resources.

The DEIR minimizes the Project's significant impact to the Los Angeles Union Station Passenger Terminal and Grounds, a cultural resource listed by the federal National Historic Preservation Act of 1966 and the California Register of Historical Resources. Built in 1939, Los Angeles Union Station is an architectural gem, utilizing a unique combination of Spanish Colonial Revival and Art Deco styles. Passengers, commuters, and tourists are welcomed with lush courtyards laden with orange trees, fan palms, and espalier magnolias. The DEIR describes the Project's proposed Alameda Station as "a concrete structure and platform with a barrel-arched canopy made of custom-perforated metal." The Project station would be over 75 feet above street grade, with a platform of over 30 feet above street grade. The DEIR further states: "The proposed Alameda Station would become a dominant visual feature of Alameda Street due to its size, design, and location elevated over the street. The proposed Alameda Station would be a highly visible change to the overall setting of the Los Angeles Union Station Passenger Terminal and Grounds property, which is designated for both its architectural and historical significance." Despite the assertions recognizing the visibly dominating impacts the enormous new proposed Alameda Station will have on the Los Angeles Union Station Passenger Terminal and Grounds, the DEIR inconsistently found the Project to have a less than significant impact.

We look forward to the EIR containing a thorough and accurate analysis of the Project's impacts not only on Los Angeles Union Station Passenger Terminal and Grounds, but also to the other cultural resources identified throughout the DEIR.

## **II. The DEIR's project description may be incomplete and may not fully analyze reasonably foreseeable activities as required by CEQA.**

CEQA requires that a project be described with enough particularity that its impacts can be assessed.<sup>9</sup> The relevant standard for ascertaining what constellation of activities should be deemed to be a part of the "whole of an action" of a Project is whether such activities comprise "a group of interrelated actions" that are "part of a single, coordinated endeavor."<sup>10</sup> We are concerned that the DEIR may lack enough information to examine and evaluate the Project fully, effectively analyzing the project in a vacuum rather than including related and necessary operations, and omitting certain of the Project's foreseeable impacts.

### **A. The DEIR may be lacking critically important details in its project description.**

Despite our understanding that documents exist associating the Project with foreseeable commercial and residential growth at the 260-acre McCourt Global property, the DEIR omits any mention of near-future commercial activity or development plans at Dodger Stadium. CEQA prohibits a project proponent from seeking approval of a large project in smaller pieces in order

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<sup>9</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

<sup>10</sup> *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 636.

to take advantage of environmental exemptions or lesser CEQA review for smaller projects.<sup>11</sup> California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”<sup>12</sup> Absent a complete project description, courts view the environmental analysis under CEQA as impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.<sup>13</sup>

California courts have articulated “general principles” for determining whether two actions are one CEQA project, including “how closely related the acts are to the overall objective of the project,” and how closely related they are in time, physical location, and the entity undertaking the action.<sup>14</sup> The appropriate inquiry is whether two projects are related to one another, *i.e.* they comprise the “whole of an action” or “coordinated endeavor.”<sup>15</sup>

Courts have found improper piecemealing when the purpose of the reviewed project is to be the first step toward future development.”<sup>16</sup> It is both logical and reasonable to infer that the Project is soon likely to be associated with development activity given the facts surrounding Dodger Stadium and the practical effects of the Project. For example, there are 81 home games in a regular baseball season, with up to 12 post-season games. The City of Los Angeles’s Conditional Use Permit for Dodger Stadium allows a maximum of four special events per month. Even assuming additional special events, the Project is likely to be used at capacity no more than one hundred fifty days of the year. Accordingly, developing the area surrounding the Dodger Stadium Tower for entertainment, retail, and other commercial activities is a reasonable conclusion that could provide a practical basis and explanation for carrying out the Project.

We recommend that the EIR be revised to consider the entirety of the Project, including all reasonably foreseeable phases, consistent with CEQA.

### **B. The DEIR should include an analysis of induced growth.**

Section 15125.2(d) of the CEQA Guidelines requires a discussion of the ways in which a project could induce growth. This includes ways in which a project would foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Induced growth is any growth that exceeds planned growth and results from new development that would not have taken place without the implementation of a proposed project.

When evaluating the potential environmental impact of a project that has growth inducing effects, an agency is not excused from environmental review simply because it is unclear what future developments may take place; it must evaluate and consider the environmental effects of

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<sup>11</sup> *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, (2002) 101 Cal.App.4th 1337, 1340.

<sup>12</sup> *County of Inyo, supra*, 71 Cal.App.3d 185, 193.

<sup>13</sup> *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.

<sup>14</sup> *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226-1227.

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

<sup>16</sup> *Laurel Heights Improvement Assn., supra*, 47 Cal.3d 376; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325.

the “most probable development patterns.”<sup>17</sup> In fact, even if there is uncertainty as to the precise form of development that would eventually occur, a Project is not insulated from CEQA.<sup>18</sup>

It is not our position that the DEIR must analyze with significant detail every conceivable development scenario; however, the DEIR needs to analyze the impacts in relation to the most probable development patterns. Publicly available resources have revealed the possibility of future development at the site of the Project. For example, information from the Los Angeles County Recorder’s Office details possible future developments at Dodger Stadium that “may include, but are not limited to (i) office buildings, (ii) hotel and exhibition facilities, (iii) residential buildings, (iv) medical buildings, (v) academic buildings, (vi) parking structures, and/or (vii) retail, dining, and entertainment facilities.”<sup>19</sup> Further, the company that owns fifty percent of the parking lot at Dodger Stadium publicized its ownership interest in the 260-acre Dodger Stadium land as a “current real estate project.”<sup>20</sup> Even without the aforementioned documents evidencing potential development at Dodger Stadium, the DEIR should account for the foreseeable and probable growth inducing development impacts of the Project.

The EIR should examine ways in which the proposed Project could foster economic growth, either directly or indirectly, in the surrounding environment.

### **III. Conclusion**

We have concerns as to whether the DEIR is adequately disclosing, analyzing, and mitigating the Project’s environmental impacts. CEQA requires that Metro’s review adequately identify and analyze the Project’s foreseeable direct, indirect, and cumulative impacts. Thank you for your consideration in this matter. We look forward to reviewing your responses to our comments.

Respectfully submitted,

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<sup>17</sup> *Aptos Council v. Cnty. of Santa Cruz* (2017) 10 Cal.App.5th 266.

<sup>18</sup> *Antioch*, supra, 137 Cal.App.3d 1325, 1337.

<sup>19</sup> “Declaration of Covenants, Conditions, Restrictions, and Easements of Chavez Ravine,” Section 14.3, Los Angeles County Recorder’s Office, Document #20120642991.

<sup>20</sup> “Our Company,” McCourt Global, <http://web.archive.org/web/20210724150915/https://www.mccourt.com/mccourt-global-overview>. Accessed via The Wayback Machine.