August 18, 2011

City Council Members
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012

Re: City-Wide Bus Bench Program
Council File No. 11-1068
Environmental Review

Dear Councilmembers:

The Brentwood Residents Coalition ("BRC")[1] opposes the recommendation that the City of Los Angeles adopt a categorical exemption for the City-Wide Bus Bench Program (the "Program"). The proposed contract between the City and Martin Outdoor Media LLC, as currently drafted, would have significant cumulative effects on the environment, which preclude any exemption. At a minimum, CEQA requires that the contract be amended to:

> (**1**) Preclude the installation of bus benches, trash receptacles or other items with advertising on or adjacent to scenic and historic highways, corridors and resources, and within coastal zones; and
>
> (**2**) Expressly require compliance with all zoning laws, including restrictions on off-site advertising set forth in Planning Documents such as the General Plan, Community and Specific Plans, and the California Coastal Act.

Without these amendments, and the other amendments now being considered by the Council, a categorical exemption would be wholly improper under CEQA.

The public has no information on the City's environmental review for this Project other than the recent revelation that a categorical exemption will be recommended. But a categorical exemption cannot be issued for this Program unless, at a minimum, the contract is amended as stated above. These amendments are necessary because the Department of Public Works has taken the position that City zoning regulations apply only to private property, not to

[1] The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

public property, streets or rights of way, and that Public Works has exclusive jurisdiction over the installation of off-site advertising on public streets and rights of way. The BRC's August 16, 2011 letter (attached) refutes that interpretation of municipal law. Nevertheless, we understand that Public Works has adopted this (erroneous) interpretation and will therefore allow the contractor to install benches and other items with advertising on public rights of way regardless of any zoning restrictions.

Consequently, under Public Work's interpretation of municipal powers, the contractor, Martin, will have the contractual right to install off-site advertising in protected scenic areas where zoning regulations have so far precluded or restricted off-site advertising. The installation of Bus Bench facilities with commercial advertising in otherwise protected areas throughout the City over the lifetime of this 10-year contract will significantly impair aesthetic resources that the City has recognized as important through its Planning Documents. A categorical exemption cannot be issued for a project that threatens such cumulative impacts.

This City-wide Program implicates aesthetic interests protected by prohibitions and restrictions on off-site advertising. The City has consistently recognized that off-site advertising creates visual blight and the courts have recognized that the City has a legitimate interest in protecting against such commercial blight. *Metro Lights LLC v. City of Los Angeles*, 551 F.3d 898, 901-902 (9th Cir. 2009). The impacts of the Program would be particularly significant because (1) it would create a contractual right to violate existing zoning restrictions on off-site advertising; (2) restrictions set forth in the General Plan, for scenic highways, and Specific and Community Plans, for scenic corridors, highways, roads and districts, coastal zones, and other scenic or historic areas, are designed to protect or revitalize "scenic resources;" and (3) the contract would have the cumulative impact of allowing successive installations in zoning-protected areas over a 10-year period. The Program would cumulatively result in the installation of hundreds of new off-site advertisements in scenic areas where such advertising is currently limited or prohibited. The cumulative nature of these significant impacts precludes a categorical exemption. *Committee to Save Hollywoodland Specific Plan v. City of Los Angeles*, 161 Cal.App.4th 1168, 1186-87 (2008).

Specifically, CEQA prohibits categorical exemptions where (among other things) (1) "the cumulative impact of successive projects of the same type in the same place, over time is significant;" (2) "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;" *or* (3) the project "may result in damages to scenic resources" (a category that covers but is not limited to state designated scenic highways). Res. Code Section 153000.2(b), (c), (d). All three of these "exceptions" to categorical exemptions apply in this situation. Further, CEQA also prohibits categorical exemptions that "may cause a substantial adverse change in the significance of a historical resource." Res. Code Section 15300.2(f). Some of the protected areas feature historical resources, including the Mulholland Scenic Parkway, a designated scenic highway, and the San Vicente Scenic Corridor, the site of Historic-Cultural Monument No. 148, the Coral

Tree-lined median, which would be degraded by the installation of off-site advertising. A categorical exemption would violate all four of these exceptions, thereby precluding issuance of an exemption.

* * * * * * *

In conclusion, the recommended categorical exemption would violate CEQA unless, in addition to the other amendments under consideration, the contract is amended to:

> (**1**) Preclude the installation of bus benches, trash receptacles or other items with advertising on or adjacent to scenic and historic highways, corridors and resources, and within coastal zones; and
>
> (**2**) Expressly require compliance with all zoning laws, including restrictions on off-site advertising set forth in Planning Documents such as the General Plan, Community and Specific Plans, and the California Coastal Act.

We understand that Public Works has informally expressed confidence that Martin will choose not to install very many Bus Benches in protected areas. While we do not share that confidence, especially given the 10-year term of the proposed contract, if indeed Martin does not intend to install many benches in protected areas, then it should not be difficult to attain Martin's consent to the proposed amendments.

Respectfully submitted,

Thomas R. Freeman

Wendy-Sue Rosen

Donald G. Keller

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cc: Carmen Trutanich, City Attorney
Jane Ellison Usher, Special Assistant City Attorney
Michael LoGrande, Planning Director
Alan Bell, Deputy Planning Director

August 16, 2011

City Council Members
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012

Re: City-Wide Bus Bench Program
Council File No. 11-1068, Item #23 on Aug. 16, 2011 Agenda

Dear Councilmembers:

The Brentwood Residents Coalition ("BRC")[1] asks that the Council delay consideration of the City-Wide Bus Bench Program (the "Program") pending further review of the legal issues raised in this letter. The Program, as currently presented, violates the City's own Planning Documents and the California Environmental Quality Act ("CEQA").

1. The Program Violates Planning Documents That Prohibit Off-Site Advertising In Specific Plan Areas and Along Scenic Highways.

The City's Planning Documents, including the General Plan, Community Plans, and Specific Plans, govern land use in the areas covered by such plans. Many areas covered by these planning documents prohibit or restrict the placement of outdoor advertising, including the type of off-site advertising that would be permitted under the Program. The purpose of these planning restrictions on off-site advertising is to preserve and enhance the visual character of protected areas by prohibiting or strictly limiting the placement of outdoor advertisements.

The City's **General Plan** explicitly restricts the placement of signs and outdoor advertisements on Scenic Highways, which include roadways designed under the General Plan or Community or Specific Plans as "Scenic Highways," a category of protected roadways that includes Sunset Boulevard, portions of Santa Monica Boulevard, Avenue of the Stars, and portions of Wilshire Boulevard. The General Plan provides that (1) "Only traffic, information, and identification signs shall be permitted within the public right-of-way of a Scenic Highway;" and (2) "Off-site outdoor advertising is prohibited in the public right-

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of-way of, and on public-owned land within five hundred feet of the center line of, a Scenic Highway." General Plan, Transportation Element, Section D, subd. (4)(a).

Similarly, **Specific Plans** have been enacted that likewise prohibit or strictly limit the placement of off-site advertisements in the following areas, among others: The San Vicente Scenic Corridor, the Mulholland Scenic Parkway, the Pacific Palisades Commercial Village and Neighborhoods, Westwood Village, the Westwood Boulevard Pedestrian Oriented District, the Westwood Pico Neighborhood Oriented District, and the Santa Monica Boulevard Transit Parkway.

While the Department of Public Works has authority over the public right of way, that authority is not exclusive where, as in this instance, the installation of advertisements would violate zoning restrictions, such as those reflected in City Planning Documents. The intent of zoning restrictions set forth in Planning Documents is to preclude off-site advertising in such protected areas. That intention would be undermined by allowing off-site advertising along public rights of way within areas subject to such zoning protection.

We understand that some have asserted that Planning Documents do not cover advertising on public streets, sidewalks or rights of way, because such zoning restrictions apply only to the use of private property. That interpretation not only conflicts with the clear intention of the Planning Documents to regulate visual blight in scenic areas, it would also violate a cardinal rule of statutory construction by nullifying express language from the General Plan and certain Specific Plans.

Under this erroneous interpretation, Section D(4)(a) of the General Plan's Transportation Element would be a *nullity* because it expressly prohibits advertising on and along Scenic Highways and rights of way. Specifically, the following restrictions would be *completely ineffective* if the General Plan only restricts the use of private property: (1) "Only traffic, information, and identification signs shall be permitted **within the public right-of-way of a Scenic Highway**;" and (2) "Off-site outdoor advertising is prohibited **in the public right-of-way** of, and **on public-owned land within five hundred feet of the center line of**, a Scenic Highway."

Similarly, the advertising restrictions within Specific Plan areas, such as the San Vicente Scenic Corridor Specific Plan, would be nullified in part. The San Vicente Specific Plan prohibits the placement of off-site advertisements within "the San Vicente Scenic Corridor," an area defined to encompass "[t]he land area visible from and normally contiguous to, a Scenic Highway which can realistically be subjected to protective land use controls. Minimally it will incorporate the Scenic Highway [San Vicente Boulevard in Brentwood] and the adjacent lots but may extend to the line of sight." San Vicente Corridor Specific Plan, Section 6(A)(1) & Section 3. Further, the construction holding that such zoning regulations apply only to private property would nullify the Specific Plan provision regulating the dimensions of public sidewalks, requiring 12-foot sidewalks, and the maintenance of an

"unobstructed width of 10 feet for pedestrian access." *Id.* Section 9(A)(1). These Specific Plan regulations were drafted to control aesthetic aspects within the public rights of way, which would be completely nullified if the restrictions only applied to private property.

Any interpretation that would limit the scope of Planning Documents to the regulation of land uses on private (but not public) property would violate a central "canon" of statutory interpretation. This basic tenet "generally preclude[s] judicial construction that renders part of the statute 'meaningless or inoperative.' [Citation.]" *Anders v. Superior Court*, 192 Cal.App.4th 579, 587 (2011) (quoting *Hassan v. Mercy American River Hospital*, 31 Cal.4th 709, 715–716 (2003)). Here, the Planning Documents can and must be construed as applying to public and private property, as the plain meaning of such ordinances require, and the Charter's specification of Public Work's jurisdiction must be construed as non-exclusive with respect to matters of zoning.

For these reasons, the Program and proposed contract must be revised to clarify that such advertisements cannot be installed within Scenic Highway or Specific Plan areas where Planning Documents prohibit off-site advertising.

2. The Program Cannot Be Approved Without An Environmental Impact Report.

The City has consistently recognized that the installation of outdoor advertising signs create visual blight and impair traffic safety. *Metro Lights LLC v. City of Los Angeles*, 551 F.3d 898, 901-902 (9th Cir. 2009). The Program would result in the installation of hundreds of new off-site advertisements in areas where such advertising is prohibited by the General Plan and Community and Specific Plans. Even if the Planning Documents are deemed inapplicable within rights of way, which they are not, the Program's likely significant environmental impacts would trigger CEQA's mandate that the City prepare an environmental impact report before approving the Program.

Under the Program, Martin Outdoor Media, LLC ("Martin") would receive a "blanket permit" to install off-site advertising throughout the City, without any public process governing the placement of such advertising. *See* Contract for 10 Year Bus Bench Program (rev. 6/14/11) ("Contract"), Sections 5.1, 6.2.6, 8.4. The Program, which would authorize the installation of outdoor advertisements throughout the City, constitutes a "project" under CEQA because it is an activity that may cause a direct physical change in the environment. Pub. Res. Code Section 21065. The granting of a blanket permit, as under the Contract, is a discretionary determination and therefore subject to CEQA review. Pub. Res. Code Section 21080(a). Because the blanketing of the City with such off-site advertisements may have a potentially significant impact on the environment – in terms of both the aesthetic and traffic impacts (*Metro Lights*, 551 F.3d at 901-902) – an EIR is required under CEQA. See *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 938-940 (2004) (holding that project's

potentially significant aesthetic impacts require EIR); *Mejia v. City of Los Angeles*, 130 Cal.App.4th 322, 340, 342 (2005) (holding that EIR was required to assess potentially significant traffic impacts).

The Program is not subject to a categorical exemption, even if a category would otherwise appear applicable, because the installation of off-site advertising on this scale would create far more than a reasonable possibility of a significant environmental impact. That potentially significant impact precludes application of a categorical exemption. 14 Cal. Code Regs. Section 15300.2(b), (c). That is particularly true in this case, given the cumulative impacts of the many installations throughout the City. *Committee to Save Hollywoodland Specific Plan v. City of Los Angeles*, 161 Cal.App.4th 1168, 1186-87 (2008).

For these reasons, the Program cannot be approved in its current form. The Program must be revised to remove areas in which Planning Documents preclude or restrict the installation of off-site advertising. The BRC therefore recommends that the Council defer its decision on this matter pending further analysis by the Office of the City Attorney, addressing the issues raised in this letter.

Respectfully submitted,

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