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72113-0001

August 18, 2011

VIA E-MAIL

President Garcetti and Honorable Members of the City Council
c/o Brian Walters, Clerk for City Council
City of Los Angeles
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012

Re: Request to Disapprove Contract with Martin Outdoor Media, LLC,
Return the Contract to the Board of Public Works,
And Prepare an Environmental Analysis That Complies with the
California Environmental Quality Act
Continuation: August 19, 2011; Agenda Item 32 and 42, File No. 11-1068

Dear President Garcetti and Honorable Members of the City Council:

Our office represents Norman Bench Advertising. For the reasons set forth in Councilmember Englander's Minority Report and those summarized below, we respectfully request that the Los Angeles City Council (the "Council") disapprove the proposed contract with Martin Outdoor Media, LLC, return the contract to the Board of Public Works, and prepare an environmental assessment of the purported bench replacement project (the "Project"), because the Project does not qualify as categorically exempt under the California Environmental Quality Act ("CEQA") and its implementing regulations (the "Guidelines").

1. THE PROJECT DESCRIPTION DOES NOT SUPPORT AN EXEMPTION

As a preliminary matter, the Project Description provided in the Notice of Exemption ("NOE") is entirely inadequate to allow any meaningful consideration of the applicability of the claimed exemptions to the Project and any potential impacts that could result. For example, aside from a vague directive to consider ridership when selecting bus stops across the entire City, no information regarding the actual locations of the structures appears anywhere in the NOE. Further, at least some of the proposed benches would be installed within Specific Plan areas that include scenic roadway designations, or within the rights-of-way of City-designated scenic roadways. Similarly, installations could occur on a number of State Highway segments within the City. This omission undercuts any ability to determine the appropriateness of a particular installation, let alone supporting the empty and conclusory assertion that no environmental impact could result from any of the minimum of 4,000 installations contemplated. Thus, the Project Description fails to provide any evidence, let alone substantial evidence, to support the applicability of the claimed "Class 2" and "Class 3" exemptions.

2. THE PROJECT IS NOT ELIGIBLE FOR A CATEGORICAL EXEMPTION

(a) The Project Description Does Not Clearly Require The Project To Replace Existing Benches.

The description of the Project in the NOE does not state that all—or even any—of the benches and trash receptacles fabricated and installed under the Project must replace existing benches. Thus, on the basis of the NOE alone, the Project does not clearly qualify for the "Class 2" exemption (replacement of existing structures) claimed under Guidelines section 15302.

(b) The Project Does Not Propose A Limited Number Of Accessory Structures Of The Kind Contemplated Under Guidelines Section 15303.

Additionally, the project would install a minimum of 300 benches in each Council District, and a minimum of 4,000 benches city-wide. The construction and installation of thousands of benches City-wide does not and cannot represent "limited numbers" of new facilities, as claimed in the NOE. Guidelines section 15303 is understood to pertain to accessory structures that relate to single-family homes or to improvements on single parcels. See 14 CCR 15303 ("The numbers of structures described in this section are the maximum allowable on any legal parcel"; "appurtenant structures including . . . patios . . . and fences"); see also *Martin v. City and County of San Francisco*, 135 Cal.App.4th 392, 403 (2005) ("among the [exemptions] are . . . construction of a single-family home"); *Surfrider Foundation v. California Coastal Comm'n*, 26 Cal App 4th 151 (1994), rev. denied *Surfrider Found. v. California Coastal Comm'n* (1994) (16 parking fee collection devices qualified). In no way could a minimum of 4,000 such structures qualify under this exemption, even if some of those represent replacements. Thus, the claimed "Class 3" exemption is inapplicable to the Project.

(c) The Project Will Result In Potentially Significant Environmental Impacts.

A CEQA exemption is also inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant." *Salmon Protection and Watershed Network v. County of Marin*, 125 Cal.App.4th 1098 (2004), citing 14 CCR § 15300.2 (b). Nor may a categorical exemption "be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Id.*, citing 14 CCR § 15300.2 (c).

Here, the Project could result in the installation of new structures within, for example, scenic roadways designated by the Ventura-Cahuenga Specific Plan. Presumably (the Project Description does not specify), all of the benches and trash receptacles would be constructed in the same manner, without regard for the existing streetscape improvements in various rights-of-way, or without regard for compatibility with, for example, existing historical features such as structures or light fixtures. Thus, the Project could place incompatible structures within distinct and possibly historic aesthetic environments, resulting in significant impacts.

Additionally, removal of existing benches (if required) and installation of each bench and trash receptacle would require time, likely as much as 45 minutes to an hour. During that entire time, a lane of travel within the affected right-of way would likely be closed for safety

purposes, creating traffic hazards and affecting levels of service of roadway segments and intersections. Additionally, many of the installations would occur along the busiest roadways, including State Highways such as Lincoln Boulevard, Topanga Canyon Boulevard, and Santa Monica Boulevard, to name but a few. The effects of a lane closure on traffic conditions on these roadways is potentially significant. Further, nothing in the Project Description, for example, prevents lane closures or requires installation during off-peak hours. Simply put, no basis exists for the assertion that no significant traffic or traffic safety impact could occur.

Further, with traffic impacts comes the potential for air quality impacts, particularly carbon monoxide "hot spots," which are associated with decreases in roadway levels of service. However, as with traffic, the City provides no evidence to dismiss the potential for these impacts.

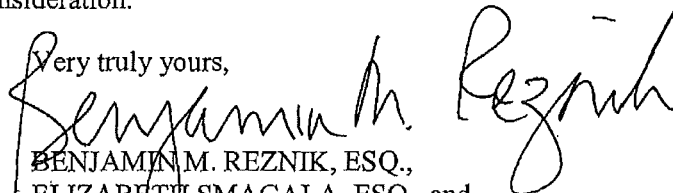
Also, noise impacts from installation could occur, especially where installation would occur on streets in largely residential areas. Even though these effects are short-term, they must still be acknowledged in any adequate CEQA analysis.

3. CONCLUSION

For all of the reasons described above, the potential exists for significant environmental impacts to result from the Project, though the inadequate Project Description prevents a full assessment of the same. Therefore, the City cannot claim that any categorical exemption from CEQA applies to the Project. Further, the City must revise the Project Description and prepare an environmental analysis of the Project that fulfills the procedural and substantive requirements of CEQA.

Thank you for your consideration.

Very truly yours,



BENJAMIN M. REZNIK, ESQ.,
ELIZABETH SMAGALA, ESQ., and
NEILL E. BROWER, ESQ. of
Jeffer Mangels Butler & Mitchell LLP

BMR:neb

cc: Hon. Carmen Trutanich, City Attorney
William Carter, Esq., Chief Deputy City Attorney
Tim McWilliams, Esq., Deputy City Attorney
Ms. Andrea Alarcon, President, Board of Public Works
Mr. Gerry Miller, Chief Legislative Analyst
Mr. Miguel Santana, City Administrative Officer
Ted Jordan, Esq., Assistant City Attorney
Mr. Lance Oishi, Bureau of Street Services
Ms. Shannon Eastenson, Bureau of Street Services
Martin Outdoor Media c/o Marcus Allen of Englander Knabe & Allen

Westwood South of Santa Monica Blvd
Homeowner's Association
Incorporated November 8, 1971
P. O. Box 64213
Los Angeles, CA 90064-0213

August 18, 2011

City Council Members
City of Los Angeles
c/o City Clerk

200 N. Spring Street, Room 395
Los Angeles, CA 90012

Via email: june.lagmay@lacity.org /
patrice.lattimore@lacity.org

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

Environmental Review // Council Agenda Items 32 and 42 / Aug. 19, 2011

Dear Councilmembers:

Our organization, Westwood South of Santa Monica Blvd. Homeowners Association (WSSM), representing over 3800 homeowners west of Century City between Sepulveda and Beverly Glen Boulevards (and including major transportation arterials Santa Monica, Olympic, Pico and Westwood Blvds.) 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 proposed categorical exemption violates CEQA unless the proposed contract amendments are put in the contract. If the amendments are not made, then the Program will result in cumulative impacts that are significant. Where there are now no or very few off-site advertisements -- due to zoning protections -- there will, if the contract is not amended, be off-site advertising that impairs otherwise protected areas.

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 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. We refer to the Brentwood Residents Coalition letter of August 16, 2011 which refutes that interpretation of municipal law. It is our understanding that Public Works has adopted the (erroneous) interpretation that would 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 endangers 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 15300.2(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.

As proposed, the Martin Bus Bench Program violates planning documents that prohibit off-site advertising limitations 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. (We initially raised concerns about these issues (and others) in a letter to the Public Works Commission dated May 25, 2011 which is attached for your information.)

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-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, Westwood Pico Neighborhood Oriented District, Westwood Boulevard Pedestrian Oriented District, and the Santa Monica Boulevard Transit Parkway. The Program as proposed violates planning documents that prohibit off-site advertising in Specific Plan areas and along scenic highways. Attempts to approve the Program as proposed without changes in the language and without an Environmental Impact Report would be a violation of CEQA.

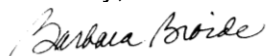
The recommended categorical exemption would violate CEQA unless, in addition to the other amendments under consideration, the contract is amended to:

(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.

While we have been told that Martin will "work with the community" in the placement of benches and that, for example, protections in "close proximity" to community benches can be negotiated, we have not seen language that articulates or defines the rights of the community in any stated process. While some express confidence that Martin will choose not to install very many Bus Benches in protected areas, we do not share that confidence, especially given the 10-year term of the proposed contract with a vendor new to this City and without a track record here. Problems with the previous contractor do not add to our level of confidence. We seek the Council's support of efforts to remove the ambiguity that now exists and replace it with the language proposed so that our current zoning laws and plans are protected and so that the community and all those affected can understand the parameters of the contract and the contractor's rights. We seek and require confidence in the protection of our streetscapes without the need to seek legal action. We trust that Martin will not only understand our concern and the minimal impact it will have on their proposed Program, but will themselves welcome the opportunity to clarify the parameters of their contract with the City at the outset and will consent to the proposed amendments, thus avoiding possible future delays in its adoption and/or implementation.

Sincerely,



Barbara Broide
President

cc: Carmen Trutanich, City Attorney
Jane Ellison Usher, Special Assistant City Attorney
Michael LoGrande, Planning Director
Alan Bell, Deputy Planning Director
Paul Koretz, CD 5

From: bbroide@hotmail.com
To: william.weeks@lacity.org
CC: cynthia.ruiz@lacity.org; paul.koretz@lacity.org; chris.koontz@lacity.org
Subject: 5/25 Board of Pubic Works Item #6 - Bus Bench Contract
Date: Wed, 25 May 2011 07:21:09 -0700

Dear Mr. Weeks and President Ruiz,

I regret that I will be unable to attend the 5/25 meeting of the Board. I had planned to attend in order to provide some remarks on the proposed bus bench contract (item #6 on your agenda).

I do not believe that many in the public are aware that a new contract is moving forward at this time. As you may know, over the years of the current Norman contract, there have been many complaints related to placement, graffiti and vandalism, trash, and vendor response. These and other issues of concern to the general public should be discussed and considered as part of the process involved in the issuance of a new bus bench contract.

I would like to suggest that outreach be done to the neighborhood councils, community councils, homeowner associations and chambers of commerce before action is taken on the contract. While I can understand that the City might be anxious to ratify a contract in order to begin receiving income from it (and perhaps to get the Norman benches off the street), it is important that concerns be considered. While I have not yet read the entire contract in detail, I would like to be certain that the following issues have been and are being discussed:

- 1) Is there a way for the contract to contain restrictions against alcohol advertising? The benches will be placed within the public right-of-way. Many would say that the City should not wish to promote alcohol consumption on benches placed on public land. While alcohol ads may be prohibited near schools, our children are quite mobile and will see ads placed on bus benches as they walk and are driven through their neighborhoods and the City. (Tobacco ads are already excluded.)
- 2) Does the contract require the recipient to comply with all local zoning regulations such as specific plans, scenic corridors, etc. that prohibit off-site advertising. As Community Plans are re-written, can there be a way to ensure that there will be compliance with those plans? (Ten years is a very long time to have to wait for such compliance; how can this be addressed?)

We have a number of scenic highways/corridors in our area and the appropriateness of any signage on those streets has been an issue of great concern. The General Plan contains explicit restrictions on placement of signs and outdoor advertising on Scenic Highways, regulating which signs may be placed in the public right-of-way. "Only traffic, information, and identification signs shall be permitted within the public right-of-way of a Scenic Highway." (General Plan, Transportation Element, D, subd (4)(a)) Further, "(o)ff-site outdoor advertising is prohibited in the public right-of-way, and on public-owned land within five hundred feet of the center line of a Scenic Highway." (Id., subd. (4)(b))

- 3) How can there be some mechanism for community input on placement (Neighborhood Councils, Community Councils, etc.)? How can we be certain that placement is based on rider need/demand and not solely on potential ad income? How can we protect residential property adjacent to bus stops (particularly on busy streets) from having more benches than needed? If a process for input prior to placement will not be included, what kind of appeal mechanism can be adopted?

4) What kind of periodic public review process can be incorporated into the contract? Who will have the responsibility of keeping track of problems and their resolution to determine contract compliance? The vendor currently under consideration does not appear to have any contracts the size of the one here in Los Angeles (or outside of Florida). Is there a mechanism whereby complaints and their resolution can be posted on a website in an ongoing manner? Is it possible to think that an online registry of locations could be posted and that any issues and date reported could be reported along with resolution date?

I hope that you will allow time to solicit input from the community by providing notice about the pending contract prior to taking a formal vote. As you know, the contract is a lengthy one and those willing to invest the time to review it should have an opportunity to comment and forward their thoughts for consideration.

Thank you.

Sincerely,
Barbara Broide
President
Westwood South of Santa Monica Blvd. Homeowners Association
PO Box 64213, Los Angeles 90064
bbroide@hotmail.com
wssmhoa@gmail.com

* You might consider requesting to make a presentation on the contract to the PLANCHECK LA neighborhood council group that meets monthly downtown to discuss land use and planning related issues. Representatives from across the City attend those monthly meetings on the second Saturday morning of each month.

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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.

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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

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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

Donald G. Keller

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

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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-

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.

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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

BRENTWOOD RESIDENTS COALITION

“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

BRENTWOOD RESIDENTS COALITION

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,



Thomas R. Freeman



Wendy-Sue Rosen

Donald G. Keller

Donald G. Keller

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

From: bnapharris@aol.com <bnapharris@aol.com>
To: June.Lagmay@lacity.org <June.Lagmay@lacity.org>
Cc: RosenFree@aol.com <RosenFree@aol.com>
Sent: Thu Aug 18 21:01:39 2011
Subject: Proposed 10-Year Bus Bench Contract

856 Wellesley Ave.
Los Angeles, CA 90049

August 18, 2011

Re: New 10-Year Bus Bench Contract

Dear Councilmember Rosendahl,

I am concerned about the new 10-year bus bench contract that has been proposed for the City. It is my understanding that this contract with Martin Outdoor Media will allow the installation of these bus benches with commercial advertising throughout the City without regard for zoning requirements. Like so many others in Brentwood, I am concerned that unless measures are taken to require this company to follow zoning codes, we may see bus benches with commercial advertisements along our Scenic Highways and Corridors and other protected areas.

I do hope that you and other City Councilmembers will take appropriate measures to ensure that Martin Outdoor Media is required to comply with all code and zoning restrictions when installing these bus benches.

Thank you so much for all your hard work on our behalf.

Sincerely,
Bette Harris

cc: City Clerk

BRENTWOOD RESIDENTS COALITION
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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.

BRENTWOOD RESIDENTS COALITION

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

BRENTWOOD RESIDENTS COALITION

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:

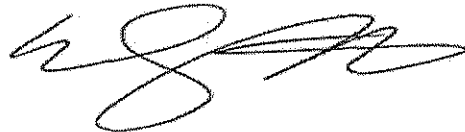
- (1) Preclude the installation of bus benches, trash receptacles or other items with advertising on or adjacent to scenic and historic highways, corridors and resources, and within coastal zones; and
- (2) Expressly require compliance with all zoning laws, including restrictions on off-site advertising 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

Donald G. Keller

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

BRENTWOOD RESIDENTS COALITION

ZONING | LAND USE | PLANNING | ENVIRONMENTAL

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-

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.

BRENTWOOD RESIDENTS COALITION

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

BRENTWOOD RESIDENTS COALITION

“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.

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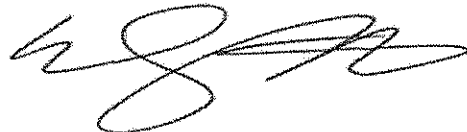
The Program is not subject to a categorical exemption, even if a category would otherwise appear applicable, because the installation of off-site advertising on this scale would create far more than a reasonable possibility of a significant environmental impact. That potentially significant impact precludes 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).

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Respectfully submitted,



Thomas R. Freeman



Wendy-Sue Rosen

Donald G. Keller

Donald G. Keller

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

SANTA MONICA MOUNTAINS CONSERVANCY

RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207



August 18, 2011

Los Angeles City Council
200 North Spring Street
Los Angeles, California 90012

**Citywide Bus Bench Program
Council File #11-1068**

Honorable Councilmembers:

The Santa Monica Mountains Conservancy (Conservancy) opposes any commercial signage within the Mulholland Scenic Parkway. Such signage detracts from the unique visual resources of the corridor and degrades the quality of the visitor experience for this worldwide attraction. The proposed contract with Martin Outdoor Media, LLC, contains broad provisions allowing placement of outdoor advertising within the public right-of-way, including along Mulholland Drive and other scenic resources in the City. On previous occasion, outdoor advertising was installed at the bus shelters on Laurel Canyon Boulevard at Mulholland Drive, serving Metro Local 218. The Conservancy is concerned that the proposed contract's broad provisions would allow similar degradation of scenic resources in the Mulholland Scenic Parkway in the future, in violation of the applicable Specific Plan. Any installation of outdoor advertising, no matter its size, in the Mulholland Scenic Parkway would constitute a significant visual impact and would thus render inapplicable the Categorical Exemption for the proposed contract. Unless the contract is amended to remove scenic corridors, further environmental review of aesthetic impacts is warranted.

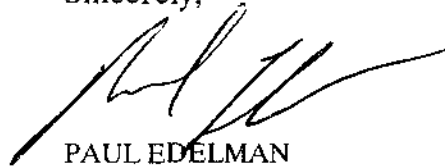
The Conservancy appreciates and supports the City's and Metropolitan Transportation Authority's (Metro) desire to provide shelter for its transit patrons. However, we believe that this should not come at the expense of scenic resources. We encourage the City and Metro to install shelters and street furniture that complement Mulholland Drive's scenic setting rather than apply the one-size-fits-all approach more suited for urban areas outside the Parkway. Mulholland Drive's rural character is fundamentally different from other areas of the City and protected by the Mulholland Scenic Parkway Specific Plan. What may be a normal urban amenity in other areas of the City would be a blight on the Scenic Parkway. The Conservancy is willing to partner with the City to find more appropriate context-sensitive solutions to provide needed shelter that do not impact visual resources.

Los Angeles City Council
Citywide Bus Bench Program; Council File #11-1068
August 18, 2011
Page 2

We urge the Council to remove the Mulholland Scenic Parkway corridor from the proposed contract.

Should you have any questions, I can be reached at (310) 589-3200 ext. 128.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Edelman', written over a horizontal line.

PAUL EDELMAN
Deputy Director
Natural Resources and Planning

cc: Michael LoGrande, Planning Director