

June 30, 2016

**VIA FEDEX AND EMAIL**

Mr. Emil F. Dai, P.E.  
Principal Environmental Engineer  
MTA New York City Transit  
2 Broadway, 5<sup>th</sup> Floor  
New York, NY 10004

**Re: Proposed Emergency Ventilation Plant for the Lexington Avenue Subway Line  
(the "Project")**

Dear Mr. Dai:

We are environmental counsel to the Archdiocese of New York, which has as one of its parishes the Church of Our Saviour located at 39 Park Avenue on the northeast corner of Park Avenue and east 38<sup>th</sup> Street in Manhattan. We write to comment on the seventy-page "Draft Scoping Document" and the accompanying one hundred and sixty-page "Alternatives Analysis and Feasibility Evaluation," and long form Environmental Assessment Form supporting the proposed project. Our comments, such like the comment period provided in the Scoping Document, are truncated and by no means express fully the Archdiocese's myriad concerns about this most disruptive and ill-considered project. Accordingly, we and our client reserve our rights to make further comments during the SEQRA process, including, without limitation, commenting on the Draft and Final Environmental Impact Statements and appearing before the MTA Board.

**The Truncated Comment Period**

First and foremost, we urge MTA/NYCT to expand the comment period on the voluminous and prolix technical documentation circulated in connection with the Project. The designated comment period – a mere two weeks and one day after the June 16, 2016 Scoping Meeting – may meet the minimum requirements of 6 NYCRR Part 617.3, the limitation to that minimum is clearly contrary to the intent of the applicable regulation, i.e., that "Scoping meet



include an opportunity for public participation." (6 NYCRR Section 617.8(e) (emphasis supplied). Implicit in the cited language is a requirement that such public participation is meaningful. The Project, which by MTA's estimate, has been studied for several years and will subsume more than 4 ½ years of construction underneath a major avenue. There is certainly no reason whatsoever why public review of the scope of an EIS should be so limited in time. Moreover, the timing of Scoping Meeting and the abbreviated comment period – at the end of the school year and the week immediately preceding the Independence Day holiday weekend – evidences a disregard for the public's involvement in this process.

### Substantive Comments

Turning to the substance of the Scope of the EIS, there are several patently obvious deficiencies in the proposed analysis. These include (a) construction impacts to, traffic, historic resources and access to and operation of community facilities such as the church; (b) direct and indirect operational impacts to historic resources and community facilities; and (c) operational traffic impacts.

### Construction

The principal defect in the construction analysis is the severely understated estimate of the duration of construction activities. The EAF and Scoping Document assume that the construction period for the Project will be four-and-a-half years. This is grossly understated. If prior MTA/NYCT projects are an example of the actual timing for constructing a ventilation facility, one need look only to the experience of the East Side Access ventilation structure on East 30<sup>th</sup> Street. That facility has been under construction for eight years and is still not complete. Based on this experiential fact, the EIS scope should be expanded to analyze significantly more than four and-a-half years. Moreover, because of this reasonable worst case, there should be at least two analysis years studied, not just the second year of construction as state in Section 5.0 at page 60 of the Draft Scoping Document.

Moreover, the Draft Scoping Document makes scant reference to the manner in which direct construction impacts on historic resources, such as the Church of Our Savior, will be analyzed. Mere recitation of the New York City Department of Building standards and codes and reliance on those codes is no substitute for thorough analyses. The Church, which would be in almost direct proximity to the location of Alternatives 11 and 12, is of historic significance. We also note that there is no reference in the Draft Scoping Document to MTA's legal obligation to enter into consultation with the Office of Parks Recreation and Historic Preservation (OPRHP) pursuant to Section 14.09 of the New York State Historic Preservation Act.

Section 5.3 of the Draft Scoping Document -Discussion/Evaluation of Transportation - notes that the traffic study area will be limited to intersections along three avenue blocks. This is, we submit, an inadequate universe of affected intersections. Park Avenue in the area between East 42<sup>nd</sup> Street and East 37<sup>th</sup> Street is heavily trafficked most times of day. A prolonged lane closure as anticipated in connection with the Project will most certainly cause spill-over of traffic beyond Lexington Avenue to the east and Madison Avenue to the west. This is particularly apt with respect to East 37<sup>th</sup> Street, which is a designated and popular through street from the Midtown Tunnel to the Lincoln Tunnel that often-time experiences back up beyond Lexington and Madison Avenues.

With respect to pedestrian impacts, Section 5.3 recites that the analysis will be limited to "qualitatively" assessing but two locations. This too is inadequate. An appropriate analysis would look at all intersections where pedestrians would be diverted by closures, noise and fugitive dust from construction in the roadway. Moreover, there is no commitment to follow the requirements of Mayor de Blasio's "Vision Zero" program for pedestrian protection.

Finally, with respect to construction impacts, there is but fleeting reference to interference with access to our client's church or to other community facilities and residences in proximity to the location of the Project and its prolonged construction schedule.

### **Operational Impacts**

In a somewhat glib fashion devoid of any hard look, Section 5.0 of the Draft Scoping Document recites that the "analysis of operational impacts will largely be qualitative in nature...." The public and the community should be provided a more fulsome description of the basis for that conclusion.

In addition to the above, the proposed scope of analysis of operational impacts - traffic, impact on historic resources - suffers from the same defects as those attendant to the more intensive construction impacts and need to be expanded to provide the public and our client with the type of full-fledged disclosure and analysis the SEQRA mandates.

### **Conclusion**

As noted above, the truncated comment period has limited our client's ability to provide more detailed comments to the Draft Scoping Document and we reiterate our request for a reasonable extension of the comment period through the remainder of the summer months to enable us and the balance of the community affected by this proposed Project and that will be subjected to the traffic, noise, vibration, air emissions and other impacts of the Project to participate in the scoping process in a more meaningful way. MTA/NYCT has not demonstrated that there is any real need for this Project or more particularly, any need to rush through or fast track its environmental review.

Very truly yours,



Richard G. Leland

cc: The Honorable Andrew Cuomo,  
Governor  
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The Hon. Liz Kruger, New York State Senator  
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The Hon. Brian Kavanagh, New York State Assembly  
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The Hon. Bill de Blasio, Mayor  
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