From:	Milena Zasadzien <milena.zasadzien@lacity.org>
Sent time:	02/03/2020 10:28:52 AM
To:	Rubina Ghazarian <rubina.ghazarian@lacity.org>
Subject:	Fwd: Caltrans' Comment Letter
Attachments:	Caltrans to DCP 19.11.25.pdf DCP to Caltrans 01.16.20.pdf

sorry, forgot to CC you!

---------- Forwarded message ---------
From: **Milena Zasadzien** <milena.zasadzien@lacity.org>
Date: Fri, Jan 31, 2020 at 10:34 AM
Subject: Fwd: Caltrans' Comment Letter
To: David Somers <david.somers@lacity.org>
Cc: William Lamborn <william.lamborn@lacity.org>

See additional Caltrand letter attached

---------- Forwarded message ----------
From: **Jason McCrea** <jason.mccrea@lacity.org>
Date: Friday, January 31, 2020
Subject: Caltrans' Comment Letter
To: Milena Zasadzien <milena.zasadzien@lacity.org>

Hi Milena,

I had forgot about this.

Kathleen had prepared this and sent it for Modera, it was approved by CA.

Thanks.

On Tue, Jan 28, 2020 at 7:00 AM Milena Zasadzien <milena.zasadzien@lacity.org> wrote:

> Hi all,
>
> Has anyone received a Caltrans letter in the last six months? If so, can you please let me and Will know, and also include the letter here in this link:
> https://drive.google.com/open?id=1FNSXz4B7tS0bWKAcRiyf2c53EHzCqi9s
>
> Thanks!!!
> Milena
>
> ---------- Forwarded message ---------
> From: **David Somers** <david.somers@lacity.org>
> Date: Mon, Jan 27, 2020 at 7:01 PM
> Subject: Caltrans' Comment Letter
> To: Milena Zasadzien <milena.zasadzien@lacity.org>, William Lamborn <william.lamborn@lacity.org>
> Cc: Rubina Ghazarian <rubina.ghazarian@lacity.org>
>
> Hi Milena and William,
>
> I talked to Alyssa Bageley today, who is the SB 743 program lead at Caltrans HQ during our regular monthly call with cities implementing SB 743. Rubina had asked if there were any updates on how Caltrans is

working with their Districts to push out guidance on how to comment on CEQA documents.

Alyssa had asked us to compile any recent letters that Caltrans D7 submitted, especially if they are addressing ramp queuing and delay. The latest I have is from the 1045 Olive Project submitted last November. Please feel froward any more recently letters that D7 sent to Major Projects.

Thanks,

David Somers
Supervising Transportation Planner I
Transportation Planning + Policy

Los Angeles Department of Transportation
213.972.5966

"I slept and dreamt that life was joy. I awoke and saw that life was service. I acted and behold, service was joy." - Rabindranath Tagore

"*Protect the Earth, explore the universe, and serve people.*" - Governor Edmund G. Brown

Notice: I am off every other Friday

--

Milena Zasadzien
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221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012
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213.847.3636 | milena.zasadzien@lacity.org

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Jason McCrea
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E-NEWS

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TTY 711
www.dot.ca.gov

Making Conservation a California Way of Life.

November 25, 2019

Ms. Kathleen King
Major Projects Section
City of Los Angeles
221 N. Figueroa Street, Room 1350
Los Angeles, CA 90012

RE: Modera Argyle
Vic. LA-101/PM 6.524-7.22
SCH # 2017081039
Ref. GTS # LA-2017-02420-DEIR
GTS # LA-2017-02865-FEIR

Dear Ms. King:

This is a follow-up to Caltrans letter dated May 30, 2019, and the Final Environmental Impact Report. Caltrans has the following comments after reviewing the Responses to Comment regarding the Modera Argyle Project.

The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. We encourage all Lead Agencies to work with Caltrans so adequate traffic impact on the State facilities can be identified and feasible mitigation can be implemented.

At the time of this project application, there were 108 related projects in the Hollywood vicinity, including the Hollywood Center Project (previously called the Millennium Hollywood Project). The Modera Argyle is approximately two blocks away from Hollywood Center Project. The project applicant for that project the City have invited Caltrans to participate scoping meetings before a traffic analysis has been prepared. Here, although Caltrans does not have any record of providing meaningful and significant consultation for the City and the traffic consultant prior to the preparation of this traffic analysis, in Response to Comment No. 3-7, the FED states that "[t]he City and Traffic consultant have consulted with Caltrans throughout the environmental process (i.e., through the Notice of Preparation [NOP] process, LADOT Memorandum of Understanding [MOU], and public comment period for he review of the Draft EIR)",. If the City has record of these consultation, please forward for our record.

The City further states that "[t]he City's continued reliance on the Caltrans Agreement was based upon a verbal direction from Caltrans that the Agreement would remain in effect until

the City formally implements a VMT methodology, which occurred on July 30, 2019." We have no record of any given the City any such verbal direction and reiterate our position expressed in our letter dated May 30, 2019, that the Agreement has expired and should not be relied upon until a new Agreement is executed. However, we are delighted that the Caltrans facilities were analyzed per Appendix G of the Transportation Impact Study.

Overall, Caltrans continues to have traffic concerns after reviewing the Response to Comment. In order to promote the public interest and develop a meaningful outcome, we would like the opportunity to meet with City staff, the applicant, and the traffic consultant to discuss Caltrans' traffic concerns further, so those impacts can be addressed and mitigated.

If you have any questions, please feel free to contact Alan Lin the project coordinator at (213) 897-8391 and refer to GTS # 07-LA-2016-02865AL-FEIR.

Sincerely,

MIYA EDMONSON
IGR/CEQA Branch Chief

cc: Scott Morgan, State Clearinghouse

DEPARTMENT OF
CITY PLANNING

COMMISSION OFFICE
(213) 978-1300

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DEPUTY DIRECTOR

January 16, 2020

Miya Edmonson
Department of Transportation
District 7 – Office of Transportation Planning
100 S. Main Street, MS 16
Los Angeles, CA 90012

Re: Modera Argyle Project

Dear Ms. Edmonson:

The Department of City Planning received your May 30, 2019 and November 25, 2019 comment letters regarding the Draft and Final Environmental Impact Report (EIR) for the Modera Argyle Project (Project). To summarize, the letters raise questions regarding the analysis included in Section IV.G, Transportation of the Project Draft EIR, assert that the agreement between the City of Los Angeles Department of Transportation's (LADOT) and Caltrans (i.e. Caltrans Agreement) has expired, request implementation of mitigation measures, allege that the developer is willing to discuss entering into a Fair Share Agreement with Caltrans in the future, and state that Caltrans has no record of providing consultation prior to the preparation of the Project Transportation Impact Study (TIS).

The Project Final EIR was published on October 17, 2019 and the Deputy Advisory Agency Certified the EIR on November 15, 2019. In compliance with Public Resources Code (PRC) 21092.5 and the California Environmental Quality Act Guidelines (CEQA) Section 15088 a detailed response to the Caltrans Draft EIR comment letter dated May 30, 2019 was included and addressed all issues and questions raised in regards to the Draft EIR analysis.[1]

In addition to the response provided in the Final EIR, we wish to respond to your assertion about the methodology used in the Project Draft EIR. Among your claims, you note that "the agreement between Caltrans and LADOT expired in December 2016…" and that "Caltrans consultation for future methodology, study locations, and significant threshold is recommended." The City's continued reliance on the Caltrans Agreement is based upon verbal direction from Caltrans that the Agreement would remain in effect until the City formally implements a VMT methodology. The fundamental objective of the Caltrans Agreement was to establish criteria by which projects are excluded from requiring further analysis. The methodologies and assumptions used to prepare the TIS, included as Appendix J.1 of the Draft EIR, complied with the screening criteria included in the Caltrans Agreement. The TIS included a screening analysis in the Memorandum of Understanding (MOU), as provided in Appendix A, to determine if additional evaluation of freeway mainline segments and ramps was necessary beyond the Congestion Management Program (CMP) requirements. The Project did exceed the Caltrans screening criteria. Therefore, further

[1] Modera Argyle Final EIR, Section II, Response to Comments pgs. II-11 – II-25.

analyses of Caltrans facilities were conducted, and the results of the analysis are included in Appendix G of the Project TIS.

While the City adopted the VMT ordinance on July 30, 2019, as stated in a Memorandum issued LADOT on August 9, 2019,

> *"On July 30, 2019, the City of Los Angeles adopted vehicles miles traveled (VMT) as a criteria in determining transportation impacts under the State's California Environmental Quality Act (CEQA). This adoption was required by Senate Bill (SB) 743 and the recent changes to Section 15064.3 of the CEQA Guidelines….To manage this transition LADOT will honor executed MOU's for traffic studies that were processed under the prior LOS-based guidelines; however, we strongly recommend that these projects also evaluate VMT as part of their transportation analysis. The VMT analysis will help guarantee the project discloses the appropriate information as required by CEQA in the event that the project does not receive their entitlements prior to July 1, 2020, which is the State's official deadline for required compliance by all projects."*

Thus, as the Project was filed and the Draft EIR was circulated prior to the City's adoption of the VMT methodology, the Project is not required to provide a VMT analysis and the previous Appendix G threshold XVI.(b) pertaining to CMPs is addressed in the Draft EIR. The methods and findings of the Project's TIS were approved by LADOT in an Inter-Departmental Correspondence to the Department of City Planning on May 8, 2018 which is provided in Appendix J.2 of the Draft EIR.

Regarding the implementation of mitigation measures, your letter notes, "A discussion of mitigation measures appropriate to alleviate anticipated traffic impacts is needed." However, as stated on Page II-16 of the Final EIR and as determined in Section IV.G, Transportation, of the Draft EIR, Project construction and operational transportation impacts were concluded to be less than signification and no mitigation measures are needed. Further, while your letter dated May 30, 2019 contends that "Caltrans anticipates potential significant cumulative traffic impacts on the State facilities…" and that "…the decision makers should be aware of this issue and be prepared to mitigation potential significant cumulative traffic impacts," the Project's Traffic Impact Study adequately analyzed cumulative traffic impacts according to the applicable and adopted thresholds of significance, as determined by the City, the lead agency. Your letter, contrary to the express language in CEQA Guidelines Section 15204, does not identify with any particulars or specificity why the Draft EIR analysis would be insufficient, including providing any substantial evidence supporting the need for different analysis or conclusions. Thus, as Caltrans has not developed or identified specific incremental criteria to measure the significance of Project effects on freeway mainline segments or intersections with ramp termini, it is not possible to identify whether a specific facility would be affected. Without a defined Caltrans threshold to determine whether a Project could affect State facilities, a direct nexus of the potential impacts of a project cannot be identified, as well as any feasible mitigation measures that may be necessary to reduce impacts to a level of less than significant.

Estimates of future traffic conditions both without and with the Project (representing cumulative conditions) were developed as part of the traffic and supplemental analyses. The TIS accounted for both ambient growth and growth resulting from related projects results in a highly conservative estimate of future cumulative conditions. Specifically, the buildout years of many of these related projects are uncertain and may be well beyond the buildout year of the Project; moreover, notwithstanding that some related projects may never be approved or developed, they were all considered as part of the TIS and conservatively assumed to be completed by the Project buildout year of 2023. Both ambient growth and related projects growth were considered in the Future

year 2023 and 2035 analyses of Caltrans facilities, which are presented in Appendix G of the TIS. The Project's proportionate share of future traffic growth with regard to Caltrans freeway mainline segments based on the methodology provided in Appendix B of Caltrans' Guide for the Preparation of Traffic Impact Studies (December 2002) (2002 TIS Guide), was calculated for informational purposes in the Project's TIS, but for the reasons explained above, is not correlated to any relevant project requirement impact or mitigation.

Furthermore, the TIS was prepared with LADOT's adopted policies, procedures, and standards as outlined in LADOT's TIS Guidelines (December 2016). The intersections of freeway ramp termini are located within the City of Los Angeles, and as such the City's adopted significant im0pact threshold criteria were employed in the traffic analysis. The cumulative traffic analyses at intersections with development of the retail/restaurant and grocery store options are outlined in Chapter 6 and Chapter 8 of the TIS. It was concluded that the Project's contributions to cumulative conditions at the freeway ramp termini intersections would be less than significant as shown in Table G-10 and Table G-11, respectively. Therefore, mitigation is not required or legally warranted.

In your November 25th letter, you assert that Caltrans "does not have any record of providing meaningful and significant consultation for the City and the traffic consultant prior to the preparation of this traffic analysis." To clarify, in accordance with CEQA Guidelines Section 15082(a), a copy of the Project's Notice of Preparation (NOP) of an EIR and public scoping meeting dated August 18, 2017, as well as a revised and recirculated NOP dated August 23, 2019 were both sent to Caltrans. The City has no record of Caltrans attending the scoping meeting and/or providing a comment regarding the preparation of the Project's TIS. As noted, the City received Caltrans' Draft EIR comment letter and pursuant to CEQA Guidelines Section 15088(b), the City provided an electronic copy of its written response to Caltrans 10 days prior to certifying the Project EIR on November 15, 2019. While your letter dated November 25, 2019 states that after reviewing the Final EIR Caltrans continues to have traffic concerns, the City has fully responded to all concerns raised thus far that fall within the purview of CEQA.

Finally, with respect to the Traffic Mitigation Agreement (TMA), the City has not been provided substantial evidence to support that this TMA is a legally defensible mitigation measure. It is improper under CEQA to defer mitigation and any mitigation measure warranted by the Project needs to be supported with substantial evidence. If Caltrans would like the City to consider including TMA as a mitigation measure in EIRs and enforced on projects, Caltrans would need to share the methodology it used to identify the need for the mitigation measure, the threshold it relied on in identifying the impacts for which is requiring the TMA, the basis for finding that it is reasonably foreseeable the mitigation measure will reduce the identified significant impacts and provide substantial evidence to support all of the above. The City reserves its discretion as the lead agency to select the appropriate thresholds of significance and methodologies for the preparation of its EIRs.

As a general matter, for a mitigation fee to be considered mitigation for cumulative impacts, the fee would need to be legally enforceable and part of an adopted fee scheme that ensures funds will be available to pay for the facilities necessary to mitigate the impacts. We are not aware that Caltrans has prepared the necessary fee study or adopted a fee program to make fees under a TMA legally enforceable. Absent evidence the TMA is part of a reasonable and legally enforceable plan for mitigation of the impacts, the City would not include the TMA in the EIR or condition the TMA on the project. *See Tracy First v. City of Tracy* (2010) 177 Cal.App.4th 912, 938-39. The

City is not prepared to condition a project on the collection of voluntary fees to be paid to another agency, including Caltrans, as this may expose the City's project approval to legal vulnerability, including under the takings clause.

The City recommends that Caltrans consider a Freeway System Nexus Study that identifies an improvement plan for the freeway system, establishes the nexus between new development and regional traffic impacts, identifies specific physical improvements, and establishes a fee program with a legal mechanism allowing for the exaction of mitigation fees. Such a program would be highly advantageous to the region as it could provide another significant funding source for transportation improvements to the State Highway System.

Please keep the City of Los Angeles informed on your efforts to undertake such a study so that it may be reflected in future MOUs between Caltrans and LADOT.

Sincerely,

Debbie Lawrence

Debbie Lawrence, AICP
Senior City Planner
Major Projects
Department of City Planning