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January 16, 2020

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

Governor's Office of Planning & Research

**JAN 16 2020**

**STATE CLEARINGHOUSE**

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.<sup>1</sup>

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

<sup>1</sup> 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 significance 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 impact 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, AICP  
Senior City Planner  
Major Projects  
Department of City Planning