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Sunday, August 9, 2015

Los Angeles City Council

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Re: The Mobility Plan 2035 Update to the 1999 City of Los Angeles  
Transportation Element of the General Plan  
Council File # 15-0719  
Case No.: CPC-2013-0910-GPA-SP-CA-MS and  
CEQA No.: ENV 2013-0911-EIR  
City Council Hearing: Tuesday, August 11, 2015

Dear Honorable Councilmembers:

Hollywoodians Encouraging Logical Planning [HELP] and Citizens Coalition Los Angeles [CCLA] submit their additional comments on the Mobility Plan 2035 [MP 2035]. Please add these comments to the Administrative Record and distribute them to City Councilmembers.

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**HELP and CCLA Comments on MP 2035 Statement of Overriding Considerations**

**1. The City Misuses the CEQA  
Statement of Overriding Considerations:**

Final authority to approve or disapprove Mobility Plan 2035 rests with the City Council. *Hixon v. County of Los Angeles* (2d Dist. 1974) 38 Cal.App.3d 370, 374 The City as the responsible agency is responsible for the Statement of Overriding Considerations which explains the general reasons which merit the approval of the project, such as additional jobs, less air pollution, generate taxes, etc. *Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School District* (2<sup>nd</sup> Dist. 1994) 24 cal.App.4th 826, 847

Independent of the EIR, the Statement of Overriding Considerations [SOC] must be supported by substantial evidence in the Administrative Record. *Sierra Club v Contra Costa County*, (1<sup>st</sup> Dist. 1992) 10 Cal.App. 4<sup>th</sup> 1212, 122-1224 The lack of Substantial Evidence may be attacked in several ways:

(1) Administrative Record lacks substantial evidence for the SOC.

For example, there is no factual support for the claim Point #10 that Mobility Plan 2035 will bring more than 80% of the population and 85% of its employment within one high of “high quality transit facility.” In fact, an analysis of the data shows that those projections are wishful thinking and based on fatally flawed data. It is also vague and ambiguous and hence misleading as it ignores the fact that residents who live contiguous to “high quality transit facility” often do not use such facilities.

Furthermore, the Mineta Transportation’s August 3, 2015, report, *Changes in Transit Use and Service and Associated Changes in Driving near a New Light Rail Transit Line*, rebuts the contention that more LRT will be substantially used by those who live within one-mile. Basically, it found that those beyond one-half (½) mile will NOT use it.

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(2) The DEIR lacks substantial evidence for its conclusions.

Once it has been shown that MP 2035 is based on fatally flawed data and wishful thinking, its SOC falls fails. Among other significantly false data, the population project for 2035 is fatally flawed and inconsistent with other City population projections for the same time period, e.g. Sustainability Plan.

(3) The alleged facts in the EIR and in the SOC are not facts, but rather they are conclusions.

None of the pertinent CEQA documents, DEIR, Final EIR, the Staff Reports, the Planning Commissions Report, The Findings of Fact, SOC, actually contain facts. MP 2035 has to produce those facts which establish a causal link between the current situation and why and how the proposed alternative addresses the problem. The City fails on all counts to base Mobility Plan 2035 on facts. Because the City only assumes that its proposal will be beneficial, its SOC is legally worthless.

For example, the City has no factual foundation for the current situation of the transportation infrastructure and how it arrived in its present condition. Saying that Los Angeles has the worst roads in the nation may be factual in that it is based on independent and reliable studies by professionals in transportation and land use, but those facts, standing alone, are deficient. There needs to be some factual analysis how Los Angeles ended up with such terrible streets.

Without a factual understanding how Los Angeles arrived at its present situation of decaying infrastructure, there is no factual basis on which to propose remedies. Have our streets deteriorated due to having rain storms and mud tearing up the pavement? If so, then we need better drainage management. If on the other hand, our streets have deteriorated because the city has diverted funds away from road repairs and to special interests, then the cause is more financial, ethical and criminal than physical. Causes beyond CEQA's reach.

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The City is taking the same “fact free” approach with Mobile Plan 2035 as it took with the Hollywood Community Plan. Rather than provide a factual analysis, it invented false data and then relied on what Judge Goodman kindly called “wishful thinking” for the proposed solutions.

For the most part, by ‘facts’ the city means it tells people what it will do. “We will build X miles of Bike Lanes” is not a fact for CEQA – that is part of an alternative. More people will ride bikes is not a fact, it is a “wish.”

“People who live near TODs will take the subway.” That is too vague to be a fact under CEQA. How many people? How did you arrive at that number? Does The City have facts to the contrary? The City specializes in “Minus Facts.”

“Minus facts” is the situation where the City omits facts in order to mislead the public the conclusions which the City favors. Civil Code, § 1710 uses the terms fraud and deceit, but those words are not part of CEQA. However, those concepts best describe what the politicians have brought to Angelenos.

*Civil Code*, § 1710. A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

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Thus, when studies from across the nation show that bringing more cars into TODs aggravates traffic congestion, we have form of Fraud and Deceit.

When the City conceals the serious health risks that bike lanes in major thoroughfare pose to children, we have Fraud and Deceit.

Sufficient data has been added by the general public to the public record to establish to a court that neither the DEIR nor the SOC are supported by substantial evidence, i.e. facts.

(4) The SOC contradicts the DEIR, etc.

Although the “facts” in the EIR may be wrong, the SOC may not use as substantial evidence facts which its own DEIR reject. It is a matter consistency. The public is denied its rights under CEQA when the City presents materially different scenarios and divergent facts within the same plan.

**2. Mobility Plan 2035 Is Based on a Material Misunderstanding of the Law**

Because the Mobility Plan 2035 is based on material misunderstandings of the CEQA law, everything fails including the SOC. *City of San Diego v Board of Trustees of The California State University*, (8-3-2015) S199557, California Supreme Court.

In this recent case, the Board of Regents claimed that it Statement of Overriding Considerations was adequate due to the case of *City of Marina v. Board of Trustees of The California State University* (2006) 39 Cal.4th 341 (*Marina*) which said it could not agree to pay its share of mitigation without the legislature making specific appropriation.

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In construing Pub. Resources Code, § 21168.5 about substantial evidence and SOC, the Supreme Court said its review was *de novo*. Slip at 11 The City's failure to use the correct standards does not qualify as a sufficiently information document. In that situation, the City has failed to proceed "in a manner required by law."

Nor may the lead agency avoid its duties by being silent about the factual and legal assumptions on which it is based. CEQA does not allow The City ignores substantial evidence because that evidence would show Mobility Plan 2035 to be materially defective. There can be no informed self-government when the City refuses to alter the public to significant factual and legal issues. *Citizens of Goleta valley v Board of Supervisors*, (1990) 52 Cal.3d 553, 546.

The City has the duty to provide all material information within its possession, that it fully and adequately respond to comments from the public. The public cannot make meaningful input when the City conceals vital data. *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 133, Pub Resources Code, § § 21080.5(d)(2), 21091 (d)(2) CEQA Guidelines, § 15088.

The City habitually ignores its own foundational study of the mathematics, topography, and finances of mass transit in Los Angeles, its 1915 *Study of Street Traffic Conditions in the City of Los Angeles*. Mathematics have not changed in 100 years. Euclid's theorems study apply. The topography of Los Angeles as a huge radiant (circular) city has not changed, nor have the finances of subways and Light Rail Transit.

The City may not ignore the 1915 Study. The City had an affirmative duty to assess the 1915 Study on its merits and then share that analysis with the public. It has not done so. As has been brought to the City's attention many times over, on page 38 the 1915 Study warns that Transit Oriented Districts serve to enrich the few to bring harm of everyone else.

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While the objection that the 1915 Study is old is meritless, those who reject this landmark study without consideration will have to contend with the 2001 Mineta Study, *A New Planning Template for Transit-Oriented Development*, which **validates** the 1915 LA Study. The most recent study was released a few days ago on August 3, 2015, *The Mineta, Changes in Transit Use and Service and Associated Changes in Driving near a New Light Rail Transit Line*, also **verifies** the 1915 Study.

All the data for the subway and LRT is fatally flawed. The history of Hollywood shows that such transportation does not revitalize areas, but can be a significant factor in their decline. Council District 13, through which the Hollywood Subway runs, lost so many people after the subway opened that it ceased to be a legal council district. Furthermore, HELP's 2011 analysis showed that the population loss in Hollywood was greatest in the census districts contiguous to the Metro Stations.

To aggravate matters the City purposefully misrepresents the retail benefits at Metro Stations. The Hollywood-Western Metro station, for example, never has been able to rent more than ½ of its retail space and now it has one tenant, US Bank, which occupies about 1/4 of the retail area. Going as far back as Laura Chick as City Controller, studies have shown that retail at Metro Complexes are financial failures.

Next to transportation and parking, crime is the greatest public concern. The Mobility Plan 2035 follows plans which will increase crime. The public was deprived of an opportunity to learn about the connection with the type measures which MP 2035 proposes and crime as the City has been systematically under reporting crime. Now that the City has been forced to be more honest, we see a huge increase in crime.

The public's right of informed participation is destroyed when it is told that crime is decreasing in the TODs which are integral to MP 2035, when I

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reality crime has been increasing in TODs. Without that data, the public was deprived of an opportunity to study the causal connection between the City's transportation and housing policies and increased crime. *Mountain Lion Foundation supra* 16 Cal.4th 105, 133-134

The written response requirement ensures that members of the Commission will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. (Cf. *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813, 820 [176 Cal. Rptr. 342]; *Rural Landowners Assn. v. City Council, supra*, 143 Cal. App. 3d 1013, 1020-1021.) It also promotes the policy of citizen input underlying CEQA. (*People v. County of Kern* (1974) 39 Cal. App. 3d 830, 841 [115 Cal. Rptr. 67].) *Mountain Lion Foundation, supra* 16 Cal.4th 105, 133

The requirement ensures there is evidence of the public agency's actual consideration of alternatives and mitigation measures, and **reveals to citizens the analytical process by which the public agency arrived at its decision.** (*Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal. App. 3d 433, 440-441 [243 Cal. Rptr. 727]; *City of Poway, supra*, 155 Cal.App.3d at p. 1046; *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal. App. 3d 886, 896 [236 Cal. Rptr. 794].) (9) Under CEQA, the public agency bears the burden of affirmatively demonstrating that, notwithstanding a project's impact on the environment, the agency's approval of the proposed project followed meaningful consideration of alternatives and mitigation measures. *Mountain Lion Foundation, supra* 16 Cal.4th 105, 134

The City's modus operandi is to state what it plans to do without bothering to ascertain if the public shares in its goals. There is zero public in-put about the nature and quality of life that Angelenos desire. Rather the politicians desire what they want and what their campaign contributors desire and those wishes become the goals and objectives.



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**3. Summary:**

The City provides no meaning factual analysis of the current situation or what policies brought Los Angeles to the decayed state set forth in the 2020 Commission's report, *A time For Truth*. Unless a citizen has independent knowledge of land use and transportation, there is no way that they can make meaningful input. City's duty is to include everything, the so-called the Good, The Bad and the Ugly. Let the public see the current situation with all its warts and let them see various future alternatives; again with the Good, the Bad and the Ugly. Rather, Mobility Plan 2035 is a sales brochure to mislead Angelenos into buying a very bad future. MP 2035 is a failure as a CEQA document.

**4. Conclusions:**

Because the DEIR is factually and legally deficient, the Statement of Overriding Considerations fails. By shunning facts and providing a legally deficient process which feigns public input, the City made it impossible for the Statement of Overriding Consideration to be supported by Substantial Evidence.

Respectfully submitted,

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Citizens Coalition Los Angeles [CCLA]  
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