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December 19, 2018

Los Angeles Department of City Planning
Citywide Policy Planning
200 N. Spring St. Room 750
Los Angeles, CA 90012
Attn: Rubina Ghazarian

Re: Comments on CF 14-1169 CEQA Thresholds Update

Dear Ms. Ghazarian:

The Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, Inc. (BIA), is a non-profit trade association of nearly 1,200 companies employing over 100,000 people all affiliated with building and development.

We understand that State guidelines require all cities to update their transportation impact analysis metrics to vehicle miles traveled (VMT) before July 1, 2020). However, we believe that it would be a mistake to make this change before the state-mandated year 2020. LA is a large city which covers a diverse geographic area, and changing the assessment to VMT would negatively impact housing projects in many areas of the City, such as the San Fernando Valley, to the point that those potential projects will no longer be affordable to the existing market. Furthermore, requiring VMT in lieu of the traditional Level of Service (LOS) model will open projects up to significantly more CEQA legal challenges, delaying projects and much-needed housing in the region.

Beware The Cost Impacts of Using the VMT Metric

The Standardized Regulatory Impact Assessment (SRIA) significantly understates the cost of both preparing a VMT analysis and fails to analyze the costs of mitigation associated with VMT and associated litigation. The cost to develop and build infill projects is considerably higher than greenfield projects, due to higher land costs, increased costs associated with taller buildings, and higher litigation risk. For this reason, greenfield projects have been the preferred housing option of those struggling to afford a home in California. However, implementing these new metrics will increase the cost to housing, making those once-affordable projects infeasible, and unaffordable to the workforce.

The California Building Industry Association (CBIA) tested the impact of the new guideline. They compared infill projects with greenfield projects (comparable to areas of the Valley) and found that while greenfield projects would have to achieve greater reductions in VMT to meet the threshold suggested by the Technical Advisory, infill projects had very significant and expensive reductions in VMT that would be required. The infill project (which is detailed below) required a surprising 26% reduction in VMT and the greenfield project required a 35% reduction. To us,

this does not suggest that the new guideline will incentivize infill projects. Instead, we believe it will make all housing projects more expensive. That will push people into making longer commutes as they search for less expensive housing.

CBIA looked at an approved 240-unit multifamily project located in Orange County across the freeway from the John Wayne Airport. Their analysis found that the project exceeded the established VMT per capita threshold by 30%. To reach the 20.98 VMT per capita threshold, the VMT would need to be reduced by approximately 26%. The project does contribute to improved traffic flow; however, no range of effectiveness was quantified by the Association of Air Pollution Control Officers Association (CAPCOA). The remaining 25% VMT reduction can come from a variety of combinations of mitigation measures. Unfortunately, the recommended mitigation measures recommend a one-size-fits-all approach, and all come at a high cost. For example, reduced parking mitigation commonly leads to additional community backlash and therefore additional CEQA lawsuits. The cost and delay due to litigation is greater than the cost savings attributable to reduced parking.

Another suggested mitigation measure is to provide transit passes to residents. It is very expensive to accomplish this seemingly benign and potentially effective measure. To implement a subsidized or discounted transit program and reach the 10.15% average VMT reduction, 100% of the residents must be eligible for a 10.15% discount on transit. But it is difficult to determine compliance with these strategies to accurately anticipate the VMT reduction. If this were an owner-occupied building where an endowment would be required, this measure would make the project profoundly more expensive or would be infeasible.

In the past, transportation districts have attempted to require new home construction to pay a fee – calculated as an endowment – to mitigate VMT impacts.¹ This is based on a shared belief that there are no other means of financing transit subsidies for owner-occupied housing. Endowments require a high amount of principle to throw off enough income to cover the annual cost of a bus pass. Because there is inflation over time, the endowment must include enough to cover inflation. As of February 16, 2018, the 10-year Treasury Inflation Protected Securities (TIPS) are implying a 10-yr inflation rate of 2.11% which means that after inflation the real yield is .79%.²) As an example, if a monthly bus pass costs \$110, this means that for every passenger, an endowment of \$167,088 would be required. Each home in the Los Angeles area has an average of 2.83 people per household (2013-2017 are the latest numbers reported by the US Census Bureau); this means that the cost of the bus pass per household is \$472,859. If only 10% of the households are subsidized by bus passes or all residents receive a 10% discount that would represent an additional \$47,285 added to the cost of a new home.

VMT Will Not Encourage Higher Density Projects

Implementing the VMT metric to encourage higher density is a misguided measure. Higher density means higher construction costs due to increased engineering, insurance, labor, materials and building code compliance costs. Taking a two-story, single family home as the norm, a three-story home is 1.3-1.5 times more expensive, a four-story home is 2x more expensive, a five-story is 3-4x more expensive, and 8-10 stories is 5.5-7.5x more expensive than a single-family home.³ Additionally, new housing projects are the most frequent target of CEQA lawsuits for which there is a private sector applicant. In the most recent data (2013-2015), 25% of new housing projects were subjected to CEQA lawsuits – that's up 4% from

¹ AB 1627 (2011-Dickinson).

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1627

² <https://fred.stlouisfed.org/series/T10YIE> and <https://fred.stlouisfed.org/series/DFI110>

³ *In the Name of the Environment*, 2015, Holland & Knight, p.68.

http://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714

2010-2012. The percentage of CEQA lawsuits challenging higher density multifamily/mixed use housing projects like apartments and condominiums also increased—from 45% to 49%.⁴

VMT Will Not Encourage Infill Projects

While the proposed Guideline hopes to increase infill, we don't believe that this proposal will result in such an outcome. According to the most recent data, the percentage of CEQA lawsuits aimed at infill projects has jumped from 80% (2010-2012) to 87% (2013-2015). 98% of the LA region's CEQA housing lawsuits target infill housing. 70% of the LA region's CEQA litigation targeted transit oriented higher density housing.⁵ Adding a VMT analysis designed to move projects to infill areas that have a high propensity to be targets of CEQA litigation due to their infill nature, is not going to result in more infill housing.

VMT Will Not Encourage People to Live Closer to Their Workplace

While there is a general desire to reduce commutes in the abstract, the means to accomplish this outcome have largely failed because there has not been an understanding of why people are so willing to endure long commutes.⁶ It is a rarified part of the market that has unlimited financial resources to expend on shelter. Even a lawyer and her husband, a software engineer moved 40 miles away from her job in Palo Alto to be able to afford a home in Santa Cruz.⁷ According to Regulation & Housing: Effects on Housing Supply, Costs & Poverty, California Center for Jobs & the Economy⁸: "California's current high housing costs have resulted in longer commutes as Californians seek housing they can afford in outlying areas. Previous analyses by LAO found that a 10% increase in a metro area's rental costs produced a 4.5% in commuting times. (P.5). A portion of the report with the heading *California Commuters Continue Reliance on their Own Cars* states: "In spite of decades of investments in public transit, carpool lanes, and other alternative modes for commuting, California commuters have continued to show a clear preference for the privacy, security, and flexibility of single occupant vehicles as the housing choices they can afford move further away from the urban cores." (P. 43).

For these reasons, we believe that the Technical Advisory (TA) makes the proposed VMT Guideline inconsistent with existing law (SB 375) and undermines the purpose of reducing GHG emissions. Therefore, we believe the TA in this regard should be ignored.

This Proposal Will Increase Housing Costs on All of LA's Projects, But Make Valley Projects Extinct

⁴ *California Environmental Quality Act Lawsuits and California's Housing Crisis*, Jennifer Hernandez, Hastings Environmental Law Journal, Volume 24, No. 1, Winter 2018, p.29, http://journals.uchastings.edu/journals/websites/west-northwest/HELJ_V_24_1.pdf

⁵ *California Environmental Quality Act Lawsuits and California's Housing Crisis*, Jennifer Hernandez, Hastings Environmental Law Journal, Volume 24, No. 1, Winter 2018, p. 28, 30, 32. http://journals.uchastings.edu/journals/websites/westnorthwest/HELJ_V_24_1.pdf

⁶ NBC News: *This Mom Has a Six Hour Daily Commute, Here's Why She Does It*. <https://www.nbcnews.com/video/this-mom-has-a-six-hour-daily-commute-here-s-why-she-does-it-1146643011898> and <http://www.latimes.com/local/california/la-me-lopez-commute-cherry-20171216-story.html>

⁷ *Lawyer quits Palo Alto planning board over housing costs; monthly rent in shared house was \$6,200*, ABA Journal, August 22, 2016. http://www.abajournal.com/news/article/lawyer_quits_planning_board_over_housing_costs_monthly_rent_shared_with_an/

⁸ https://centerforjobs.org/wp-content/uploads/center_for_jobs_regulation_and_housing_study_may_2017.pdf

As project applicants, our builder members always begin a project with the end in mind. This means we must understand what the consumer wants constrained by what they can afford. No one will commit resources to a project for which there is no market. Traditionally, residential projects in LA's Valley have been naturally-affordable due to their location being further away from job centers and the urban core. Thus land costs have been lower, allowing a developer to deliver a price-attainable product for the middle class. However, these areas are delicate, and the slightest increase in production cost would produce a product that cannot be sustained by the Valley market. Based on our experience as project proponents who entitle, construct and sell or rent projects to consumers who have limited funds, we find that the proposed regulations will increase the cost to consumers. Those increased costs will come from the uncertainty created by the thresholds contained in the TA, the cost of preparing the VMT analysis and the mitigation measures imposed, the increased time to get controversial projects approved, and the increased litigation risk. Higher housing costs increase, rather than reduce, VMT. This fact has been acknowledged by the Center for Jobs report and the Legislative Analyst's Office, as noted above. Less expensive transit options or the elimination of vehicles (assuming such a social outcome could be achieved in more than a handful of places) does not make up for the increases in housing costs.

VMT Metrics Will Not Eliminate the LOS Metric

Underestimating the cost of preparing a VMT analysis begins with the statement that, "[t]he update related to transportation, however, will replacement [sic] one study methodology with another" (See Standardized Regulatory Impact Assessment [SRIA] p. 4). As the SRIA views the VMT Guideline, VMT entirely replaces LOS. However, the Frequently Asked Questions Regarding the Proposed Updates to the CEQA Guidelines, November 2017 (FAQ), states the contrary: "If level of service can still be used for planning purposes, isn't the proposal related to transportation analysis just adding another layer of study?"

Because SB 743 preserves local government authority to make planning decisions, LOS and congestion can still be measured for planning purposes. In fact, many general plans and zoning codes contain LOS requirements. The proposed Guidelines would not affect those uses of LOS. LOS may also still be used to measure roadway, including highway, capacity projects. And while traffic studies may be required for planning approvals, those studies will no longer be part of the CEQA process. (FAQ, p.2)

LOS Will Not Bring Housing Costs Down, As Stated

We agree with the FAQ and highlight the statement that "LOS may also still be used to measure roadway, including highway, capacity projects". Thus, to the extent that the "Transportation Projects" component of the proposed guidelines (section (b)(2)) will require analysis of roadways to be constructed as part of a "Land Use Project," the analysis of "Land Use Projects" will often necessarily require an LOS analysis for the proposed roadways. Therefore, the SRIA should not indicate a cost savings for no longer preparing an LOS analysis.

Project Opponents Will Have a New Tool to Halt Projects

More troubling, we anticipate that project opponents will maintain that Guideline section 15125(d), along with Appendix G section XI(b), requires projects to analyze potential inconsistencies with general plans, regional transportation plans and congestion management plans, where LOS is contained. They will argue that LOS does measure an environmental impact – air emissions caused by congestion and delay. Although section 21099(b)(2) of the Public Resources Code (SB 743) tries to exclude these, they will argue that subsection (b)(3) brings them in because it states that, "This subdivision [(b)] does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality...." Additionally, subsection (4) states that "This subdivision does not preclude the application of local general plan policies...." Again, this brings LOS back into the *CEQA process*. The cost analysis

ignores that CEQA lead agencies are political bodies, largely representing existing voters and they will respond to their concerns. Auto delay and congestion, and the need to mitigate them, will not magically go away just because a law is passed. As described above, these concerns will continue to be raised in the CEQA process and will continue to result in additional cost and litigation.

Implementing the New Guidelines is Bad for Los Angeles, Worse for the Valley

LOS will still play a role even in CEQA, through general plans, regional transportation plans and/or congestion management plans. In order to conduct the kind of VMT analysis necessary to satisfy SB 743, an LOS analysis must be conducted first; and congestion and delay will still need to be mitigated but will now require VMT mitigation for the LOS mitigation. VMT will not replace LOS. Therefore, we believe the proposed revisions will add significant costs to projects, which will increase housing costs, especially for infill projects, pushing people into longer commutes. We ask that the implementation of these new CEQA Guidelines is delayed so as to not destroy opportunities to create new housing. We are available to provide any additional discussion or feedback, and we thank you for your thoughtful consideration.

Sincerely,



Tim Piasky
Chief Executive Officer
BIA-Los Angeles/Ventura