



South Coast Air Quality Management District

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SENT VIA E-MAIL AND USPS:

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Mitigated Negative Declaration (MND) for the Proposed Highway 111 and Dune Palms Road Specific Plan Amendment

South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final MND.

SCAQMD Staff's Summary of Project Description

The Lead Agency proposes to construct a mixed-use development consisting of 140 residential units, approximately 305,000 square feet of retail, and a hotel with 108 rooms totaling 601,816 square feet on three acres (Proposed Project). The Proposed Project is located on the southeast corner of Dune Palms Road and State Route 111. Construction of the Proposed Project is expected to occur over one year, and operation of the Proposed Project is expected in 2020¹.

SCAQMD Staff's Summary of Air Quality Analysis

In the Air Quality Analysis section, the Lead Agency quantified the Proposed Project's construction emissions and found those emissions would not exceed SCAQMD's recommended regional and localized air quality CEQA significance thresholds. Nonetheless, the Lead Agency proposed three mitigation measures². Mitigation Measure AQ-1 includes measures for implementation during project earth moving, grading, and construction activities. Mitigation Measure AQ-2 requires that "all mixed use and retail commercial projects within the Specific Plan area shall be subject to the City's Greenhouse Gas Reduction Plan³." Mitigation Measure AQ-A requires regular monitoring by the City Engineer and Public Works inspector to ensure and enforce implementation of mitigation measures during construction⁴.

The Lead Agency also quantified the Proposed Project's operational air quality impacts using the Proposed Project-specific trip generation. The Proposed Project is expected to generate approximately 8,586 daily trips⁵. The Lead Agency found that the Proposed Project's operation-related NOx emissions would be 161.44 pounds/day (lbs/day), which would exceed SCAQMD's recommended regional air quality CEQA significance threshold of 100 lbs/day for NOx for Coachella Valley⁶. However, the Lead Agency found that this impact would be less than significant because this impact was analyzed in the General Plan environmental impact report (EIR), which found that "potential air quality impacts could not be mitigated to less than significant levels" and adopted Findings and a Statement of Overriding

¹ MND. Page 19.

² *Ibid.* Page 22.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.* Page 19.

⁶ *Ibid.* Table 2. Page 20.

Considerations that were approved by the Lead Agency⁷. Additionally, while the Lead Agency stated that the Proposed Project's operational NOx emissions cannot be reduced to less than significant, the Lead Agency discussed the Proposed Project's economic and social benefits and stated that the Proposed Project would be consistent with the visions and policies in the Land Use Element of the General Plan⁸.

SCAQMD Staff's Comments

SCAQMD staff is concerned with the operational air quality impact analysis and the Lead Agency's finding that a MND is an appropriate CEQA document for the Proposed Project because the Proposed Project will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent.

MND and Tiering

One of the basic purposes of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities (CEQA Guidelines Section 15002(a)(1)). A MND is appropriate when the Lead Agency finds that there is no substantial evidence, in light of the whole record before the Lead Agency, that the project may have a significant effect on the environment, or the project's significant effects, after revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, will not have a significant effect on the environment (CEQA Guidelines Sections 15070) (*emphasis added*). Reasons to support this finding shall be documented in the initial study. Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment [...] (CEQA Guidelines Section 15074(b)) (*emphasis added*).

As stated above in the Summary, the Proposed Project's operational NOx emissions would exceed SCAQMD's air quality CEQA significance threshold. The Lead Agency stated that "although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case⁹." The Lead Agency merely stated the finding for the air quality impact in the General Plan EIR, the Proposed Project's consistency with the General Plan Land Use Element, and the Proposed Project's economic and social benefits. The Lead Agency did not include mitigation measures or make revisions to the Proposed Project to show that significant operational NOx emissions would be reduced or avoided to less than significant to justify the preparation of a MND instead of an EIR. Additionally, the Lead Agency did not analyze how the land use consistency with the General Plan and project benefits would reduce the Proposed Project's operational NOx emissions to below the significance threshold to serve as substantial evidence to support a fair argument that the Proposed Project would not have any adverse effects on air quality. Moreover, the air quality Mitigation Measures AQ-1 and AQ-A are to reduce the Proposed Project's emissions from construction emissions, not operation, and it is also unclear how Mitigation Measure AQ-2 on subjecting the Proposed Project to the requirements of the City's Greenhouse Gas Reduction Plan would reduce the operational NOx emissions.

⁷ *Ibid.* Page 20.

⁸ *Ibid.*

⁹ MND. Page 10.

Furthermore, the Lead Agency's discussion on the General Plan EIR suggests that the Lead Agency is tiering the Proposed Project's air quality impact analysis from a broader EIR. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR [...]. Tiering does not excuse the Lead Agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration (CEQA Guidelines Section 15152(b)). A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR (CEQA Guidelines Section 15152(f)). Significant environmental effects have been "adequately addressed" if they have been *mitigated or avoided* as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or they have been examined at a sufficient level of detail in the prior EIR to enable those effects to be *mitigated or avoided* by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project (CEQA Guidelines Section 15152(f)(3) (*emphasis added*)). Here, it appears that the Lead Agency used the air quality impact analysis contained in the prior, broader General Plan EIR as substantial evidence to support that the Proposed Project's operational air quality impacts would not be significant because the Proposed Project is located in the Regional Commercial Zone and the impacts of development in the RC Zone had been analyzed in that large-scale General Plan EIR¹⁰. However, since the air quality impacts in the General Plan EIR found that potential air quality impacts could not be mitigated to less than significant levels¹¹, the Proposed Project's operational NOx emissions were found to be significant and could not be adequately addressed in the prior EIR. Therefore, SCAQMD staff recommends that the Lead Agency include feasible mitigation measures to show the Proposed Project's operational air quality impacts would be mitigated to less than significant in the Final MND; otherwise, an EIR should be prepared for the Proposed Project.

Recommended Mitigation Measures

CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize or eliminate any significant adverse air quality impacts. Therefore, SCAQMD staff recommends that the Lead Agency incorporate the following mitigation measures in the Final MND.

- Provide electric vehicle (EV) charging stations. Require at least 5% of all vehicle parking spaces include EV charging stations.
- Limit delivery vehicles' idling time to no more than five minutes. For any delivery vehicle that is expected to take longer than five minutes, the vehicle's operator shall be required to shut off the engine. Notify the vendors of these idling requirements at the time that the delivery purchase order is issued and again when vehicles enter the gates of the facility. To further ensure that drivers understand the vehicle idling requirement, post signs at the facility's entry gates stating that idling longer than five minutes is not permitted.
- Reduce mobile source emissions from employee commute, if applicable. Encourage any employer that employs 250 or more employees at a work site, on a full or part-time basis, to implement an Employee Commute Reduction Program (ECRP) under SCAQMD Rule 2202, On-Road Motor Vehicle Mitigation Option. For more information on Rule 2202 and guidelines for the ECRP, please visit SCAQMD's website, at: <http://www.aqmd.gov/home/programs/business/business-detail?title=rule-2202-on-road-motor-vehicle-mitigation-options>.

¹⁰ *Ibid.* Page 20.

¹¹ *Ibid.*

- Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs and/or on the project site to generate solar energy.
- Maximize the planting of trees in landscaping and parking lots.
- Use light colored paving and roofing materials.
- Utilize only Energy Star heating, cooling, and lighting devices, and appliances.
- Require use of electric or alternatively fueled sweepers with HEPA filters.
- Require use of electric lawn mowers and leaf blowers.
- Use of water-based or low VOC cleaning products.

Several resources are available to assist the Lead Agency with identifying potential mitigation measures for the Proposed Project, including:

- Chapter 11 of SCAQMD's CEQA Air Quality Handbook
- SCAQMD's CEQA web pages available here: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies>
- SCAQMD's Mitigation Monitoring and Reporting Plan (MMRP) for the 2016 Air Quality Management Plan (2016 AQMP) available here (starting on page 86): <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-mar3-035.pdf>

Other Comment

The Proposed Project's air quality impact analysis discussed and potentially tiered from the air quality analysis and findings from the prior, broader General Plan EIR. Because the MND for the Proposed Project did not state where a copy of the General Plan EIR may be examined, SCAQMD staff was not able to review or comment on completeness or adequacy of the Air Quality Analysis for the Proposed Project. "When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR" (CEQA Guidelines Section 15152(g)). To foster meaningful public participation and input, and informed decision making, SCAQMD staff recommends that the Lead Agency state where a copy of the prior General Plan EIR may be examined or incorporate by reference all or applicable portions of the prior environmental analysis in the Final MND.

Conclusion

Pursuant to CEQA Guidelines Section 15074, prior to approving the Proposed Project, the Lead Agency shall consider the MND for adoption together with any comments received during the public review process. Please provide SCAQMD with written responses to all comments contained herein prior to the certification of the Final MND. When responding to issues raised in the comments, response should provide sufficient details giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful or useful to decision makers and to the public who are interested in the Proposed Project.

SCAQMD staff is available to work with the Lead Agency to address any air quality questions that may arise from this comment letter. Please contact Robert Dalbeck, Assistant Air Quality Specialist, at rdalbeck@aqmd.gov or (909) 396-2139, should you have any questions.

Sincerely,

Lijin Sun

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Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

LS:RD

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