



December 14, 2006

Dr. Elaine Chang
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Re: Majestic Realty Co. Comments
Draft 2007 Air Quality Management Plan

Dear Dr. Chang:

Thank you for the opportunity to share both our support and concerns regarding the recently released Draft 2007 Air Quality Management Plan (AQMP). We understand the serious challenge before the South Coast Air Quality Management District (SCAQMD) – that of facing the prospect that the regional population is expected to increase by nearly 6 million people over the next thirty years and at the same time, the region must come into compliance with federal standards in both PM 2.5 and 8-hour ozone standards.

Founded in 1948, Majestic Realty Co. (Majestic) has been the largest industrial real estate developer in Southern California for more than a decade. We are portfolio builders – in industry terminology, that means we “build and hold.” With a current portfolio of more than 70 million square feet, we are long term stakeholders and actively engaged in all our communities. On a number of different fronts, we work diligently to help find effective solutions for building sustainable, balanced communities.

It has been represented that the District will experience 100 tons per day (tpd) shortfall in emission reductions by 2014. Given the SCAQMD’s jurisdictions and mitigations to date, it is quite clear that most of the future emission reductions must be obtained from mobile sources, i.e. trucks, ships, automobiles and locomotives. And, the SCAQMD’s dilemma is that the main purview of mobile sources lies with the California Air Resources Board (CARB).

The bottom line is that we face statewide issues that require statewide solutions and we all have to work together. Given the magnitude of the reduction challenges, there appears to be an almost adversarial relationship amongst the various regulatory agencies and consequently we believe that there missed opportunities for success in accomplishing everyone’s goal – clean air.

First of all, there is no agreement on the baseline emission inventory information that is accepted by all the stakeholders – industry and the various agencies. The number of port truckers is an excellent example of the complete lack of accurate, agreed-upon information and yet we are trying to make decisions and rulings on just how to solve the problems. How can potential reduction figures be valid when the inventory itself is inaccurate? How can we argue about .5 ton per day reduction in NOx as being necessary from development projects when we do not even have accurate inventory numbers to estimate such necessary reductions?

In addition, the Draft AQMP does not include sufficient consideration of upcoming CARB regulations, primarily within the mobile source category or the mitigation of the proposed bond improvements. Incentive-based or voluntary programs are viewed as inconsequential or ineffective and yet, many would argue that this is the only way we will all accomplish our mutual goal.

Further, there is no analysis of what it would mean to “do nothing.” If development activities slow down significantly or cease all together in the Basin, our problems are only going to be compounded and the inefficiencies and pollution impact expanded.

The Draft AQMP recognizes that the California Air Resources Board (CARB) does not plan to release its State and federal strategy for the California SIP until January 2007. Therefore, the District has proposed suggestions for state and federal mobile source control measures to be included in the 2007 AQMP to accelerate vehicle turnovers and the use of cleaner fuels. We believe strongly that the District needs to work in a productive and collegial manner with CARB to focus on the adoption and implementation of effective and efficient technologies already available and technologically feasible for the short term and simultaneously work in a proactive way to find new solution for the long term.

Often measures like those of the AQMP have unintended consequences in addition to the intended ones. Adding yet another development fee onto the long list of fees already required will continue to push development further and further out of the Basin. The argument could be made that this may be a good thing. However, the unintended consequence of such a measure and fee would be that vehicle miles traveled. People in cars will have to drive longer distances to get to their jobs and residences. Trucks from the ports will have to drive longer distances through the Basin to get to these developments. At the end of the day, greater amounts of emission will result with development being pushed out of the Basin due to accumulation of fees mandated by all the agencies, now also including the District. This is an unacceptable and untenable position in which to place developers.

Furthermore, it is not just the SCAQMD that is focused on these issues. Both of the Ports in the Basin have recently adopted their Clean Air Action Plan and the voters in the State

have approved transportation bond measures that include funds for reducing the environmental impacts. However, all of these plans call for additional funding sources to accomplish their goals. It is important that all of these efforts are coordinated. It seems inconsistent for the voters to approve housing bonds to provide more affordable workforce housing, only to have other agencies turn around and add additional fees to drive the costs right back up.

In a recent communication from the California Trucking Association (CTA) to the San Pedro Bay Ports, CTA expressed support for the Ports Clean Air Action Plan goals of reducing emissions related to port operations and yet expressed concern for the lack of meaningful dialogue with stakeholders. Indeed, the same concern is shared regarding the AQMP. Majestic is also concerned with the overall process in the formulation of the AQMP. Stakeholders are not involved in any meaningful way, there is no discussion or dialogue, and even after the fact when input is solicited, the interaction is set up to be reactionary and not proactive nor collaborative.

Majestic Realty Co.'s primary concern with the AQMP that is shared by most in the development community centers around the newly proposed stationary source control measure, EGM-01, that seeks to obtain "emission reductions from new or redevelopment projects" of NO_x, VOC, and PM_{2.5}

Measure EGM-01 is a primary example that lacks adequate or any socioeconomic analysis and yet is already included in the AQMP. The AQMP and the District staff have both recognized that the socioeconomic analysis would follow inclusion of this measure to the AQMP. We believe this is putting the cart before the horse. How does the District expect support from the development community with such potentially huge economic impact to future development in the Basin with such minimal benefits? The amount of reduction projected by 2020 that would cost the development industry millions of mitigation fees is clearly **not** cost effective.

Majestic's specific concerns regarding the proposed measure, EGM-01, are as follows:

The Draft AQMP contains over 15 measures and rules that provide for more stringent control measures than those already in place and implemented for years that significantly affect the development/building/construction industry. These measures range from "super compliant" coatings to energy efficiency and conservation to construction and industrial fleet modernization and much, much more. Majestic is in support of many of these "on-site" measures and have already implemented all required and voluntary mitigation measures in its own development projects, to the extent possible.

The description provided for this source category – development and redevelopment projects - states that the typical emissions during the construction phase include fugitive dust emissions, combustion emissions from off-road mobile sources (construction

equipment) and on-road mobile sources, and coating and asphalt evaporative emissions. The typical emissions during the operational phase include area sources (e.g. water heater emissions), on-road mobile source emissions, consumer products, and more. The District already has very stringent rules in place that require mitigations to address any potential emissions produced during both construction and operation phases and the 2007 AQMP proposes even more stringent measures in this arena. Therefore, we believe that an additional measure that goes well beyond the objectives of emission reductions during both construction and operational phases of development, i.e. on-site emission reductions, is neither necessary nor required.

The reduction estimates from the draft control measure for new or redevelopment projects, EGM-01, established for 2020 has reduction targets of .5 tpd of VOC, 1.0 tpd of NOX, and .5 tpd of PM2.5. At the same time, the required socio-economic analysis for cost effectiveness of such a measure has yet to be conducted. The Draft AQMP states that the “cost effectiveness of this control measure would vary depending on the mitigation measures selected by the developers or lead agencies.” Preliminary analysis performed by the development industry clearly indicates that this measure would be completely non-cost effective. The Draft AQMP also states that “if a mitigation fee program is to be established, the fee schedule to be established for the mitigation program will be based on the control options available at the time of program development.”

The South Coast AQMD requires “best” available control technology (BACT) versus other air districts that require “reasonable” available control technology (RACT) like San Joaquin Valley Air District. BACT is an impossible and indefinable economic standard to meet. Therefore, if a development cannot implement all BACT mitigations, then, it is inevitable that a mitigation fee would have to be paid if in fact such a mitigation fee program is established. Therefore, the argument that the “cost effectiveness of this control measure would vary depending on the mitigation measures selected by the developers or lead agencies” is completely invalid since it is our understanding that the objective of this measure is to mandate that development and redevelopment projects mitigate emissions down to the level of CEQA insignificance, as defined in the District’s CEQA Handbook advisory guidance.

Projects unable to reduce emissions all the way to the CEQA significance threshold would be required to pay a mitigation fee to the District and this collected fee may or may not be used in the community in which the impacts will occur. Realistically, the CEQA significance threshold would simply be unattainable for most of the development projects and therefore this will become yet another huge fee that will be added onto an already lengthy list of fees required of any development in the South Coast Basin and there is no plan as to how these fees would provide a quantifiable improvement to air quality. As a side note, the CEQA significance thresholds were designed for point sources, not area wide and mobile sources and were certainly never intended as the basis for an emissions mitigation requirement tied to a fee.

Further, the mitigation fee being considered with this measure would go primarily towards retrofits of diesel trucks and buses and to provide incentives for clean vehicle purchases. Currently, there are a number of funding sources towards both objectives. The Carl Moyer Fund is such an example. This Fund was established as a voluntary grants program that funds the extra capital cost of cleaner vehicle engines and equipment. A very recent CARB audit has found that while the District has provided for some exemplary programs, it has also not expended significant available funds, i.e. Proposition 40 funds, in a timely manner. As of July 2006, the District had not spent \$10 million of the \$15.6 million Proposition 40 funds received by the District. As a result, approximately two-thirds of the anticipated reductions, over 300 tons per year of NOx and approximately 15 tons per year of PM, have not yet been achieved. Simply put, lack of AQMD staff resources is the main reason the District has given for this failure. It is very clear that the District should expend the resources necessary to correct the problems associated with the now potential return of these funds back to CARB for remand to the State's General Fund. We believe strongly that the District should continue to effectively and efficiently expend the funds already available towards cleaner vehicle engines and equipment and not focus on trying to obtain additional fees from the development community via EGM-01.

Finally, there should be much more of a coordinated focus towards redesigning the Carl Moyer Fund program to encourage independent truckers whose vehicles are one of the main sources of emissions in the Basin rather than discourage and even prohibit their participation. If these trucks could be retrofitted and converted; it would go much, much farther to reach the emissions reductions that the AQMD is seeking than the implementation of any number of measures like the proposed EGM-01. The Ports are working on an accelerated implementation strategy and Majestic would encourage SCAQMD to work on revamping the implementation of the Carl Moyer Fund programs to actually reach the objectives of SCAQMD.

Conclusion

In conclusion, we would urge the District to not include Measure EGM-01 in the 2007 AQMP for all the reasons stated above. In the event that a version of this measure is deemed to be necessary in order to obtain the emission reduction amounts of .5 tpd of NOx, 1.0 tpd of VOC and .5 tpd of PM2.5 by 2020 in the 2007 AQMP, the only portion of the three proposed approaches that we would marginally support would be under the CEQA Approach of Improved Documentation of CEQA Mitigation Measures and Enhanced CEQA Review and in particular, allowing "lead agencies, namely, the cities and counties making ultimate land use approval decisions under CEQA – would apply the updated and expanded guidance and mitigation recommendations to individual projects; determine the reasonably feasible emission reduction mitigation requirements and, thus, the conditions of approval; and monitor and enforce implementation of the mitigation measures". We do not support the San Joaquin Valley Approach that is also currently



under litigation, the New Development Threshold Approach, or the third prong of the CEQA Approach of CEQA Mitigation Fee Program.

We appreciate the extensive work of the District staff in tackling the monumental task of putting together the 2007 AQMP. We ask for your consideration of the one main area of concern in the 2007 AQMP that would have tremendous potential impact to the development community. We look forward to continuing to work with the District to come up with solutions toward our mutual objective of clean air.

Sincerely,



MAJESTIC REALTY CO.
Fran Inman
Senior Vice President

cc: South Coast Air Quality Management District Governing Board
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