LL-10
Latham & Watkins LLP
on behalf of the Golden Door Properties, LLC
Dated: March 29, 2018

1. Introduction

The comment letter submitted by Latham & Watkins on behalf of the Golden Door Properties, LLC, dated March 29, 2018, is a late letter that does not require a written response from the County.

Under CEQA Guidelines section 15105, the County was legally required to provide a 45-day public review period on the Draft Environmental Impact Report (EIR). To provide additional time, the County instead afforded 60 days for public review and comment. The Draft EIR public comment period began on June 15, 2017, and ended on August 14, 2017. All comment letters received after expiration of the public review and comment period ending on August 14, 2017 are considered late comments.

A lead agency is required to consider comments on the Draft EIR and to prepare written responses if a comment is received within the public comment period. (Pub. Resources Code, §21091(d); CEQA Guidelines, §15088.) When a comment letter is received after the close of the public comment period, however, a lead agency has no obligation to respond. (Pub. Resources Code, §21091(d)(1); Pub. Resources Code, §21092.5(c).) Accordingly, the County is not required to provide a written response to late comment letters, including the March 29, 2018, letter from Latham & Watkins (including the attached report/comments from Camille Sears, dated February 28, 2018). (See CEQA Guidelines, §15088(a)).

Further, the Latham & Watkins comment letter endeavors to excuse the lateness of the comment letter, stating the County did not provide electronic technical files necessary to prepare comments during the public comment period for the Draft EIR. In response, the County notes that the subject files were provided to Latham & Watkins in October 2017, approximately *five* months before submittal of this comment letter. Additionally, the Latham & Watkins comment letter was submitted to the County on or about the date of the letter — March 29, 2018. However, the report attached to this letter prepared by Camille Sears is dated February 28, 2018 — approximately one month earlier than the Latham & Watkins submittal letter. Based on this information, the County does not concur that Latham & Watkins or Golden Door provided Ms. Sears' report "at the earliest time possible," as stated on page 2 of the Latham & Watkins comment letter.

Additionally, based on Dudek's expert assessment, it is not clear that the subject files revealed any information or analysis related to Camille Sears' comments that was not already made available in the Draft EIR. By way of example, several of the comments repeat comments previously offered

by Dr. Fox and submitted by Latham & Watkins for the County's consideration in its comment letter on the Draft EIR; in those instances, responses to Dr. Fox's comments are cross-referenced (see references to individual **Responses to Comment Letter O-1.4** herein).

Nonetheless, for information purposes, the County has elected to respond to this late letter, but without waiving its position that written responses to late comment letters are not required by law. Because the letter attaches technical analysis prepared by an air quality consultant, Camille Sears (hereafter, "Ms. Sears"), the County consulted with the project's air quality consultant (Dudek) in preparing these responses. In providing these responses, the County notes that, pursuant to CEQA Guidelines section 15151, "[d]isagreement among experts does not make an EIR inadequate." Furthermore, an agency is not required to consider different methods or methodologies suggested by other agencies, experts, or other comments where the evidence relied on in the EIR is sufficient to support the conclusion reached. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 642-643.)

2. Construction Fugitive Dust Emissions

Ms. Sears notes the absence of an ambient air quality analysis (AAQA), conducted using air quality dispersion modeling, for PM_{10} and $PM_{2.5}$ emissions resulting from project construction. Please see **Response to Comment O-1.4-87**. In summary, the prior response explains that the County's guidance does not require any additional modeling because the exceedance of the screening-level thresholds for the nonattainment pollutants is evidence of a significant impact related to the potential to violate an air quality standard or contribute substantially to an existing or projected air quality violation due to the existing nonattainment status of the SDAB (County of San Diego 2007, p. 21).

Ms. Sears then states that the Draft EIR did not provide a detailed construction schedule by location within the project site. Please see **Responses to Comments O-1.4-13** and **O-1.4-19**. As discussed therein, the County has determined, based on information from Dudek's air quality experts, that the construction schedule information provided in Appendix A (Air Quality Technical Report) of the Draft EIR is sufficient for purposes of evaluating the project's impacts under CEQA.

Ms. Sears further opines that "CalEEMod … is not reliable for calculating fugitive dust emissions from NSP's construction activities," suggesting that CalEEMod includes incorrect calculation methods and emissions factors and lacks tools to analyze specific emissions sources. However:

> "[CalEEMod] is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects. … The model was developed for the California Air Pollution Control Officers Association (CAPCOA) in collaboration with California

> Air Districts. Default data (e.g., emission factors, trip lengths, meteorology, source inventory) have been provided by the various California Air Districts to account for local requirements and conditions. … The model can be used for a variety of situations where an air quality analysis is necessary or desirable such as preparing California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) documents, conducting pre-project planning, and, verifying compliance with local air quality rules and regulations, etc."[1]

CalEEMod has been in use for approximately eight years, following its development by multiple California air districts and air pollution control experts. The model has been subject to several updates to expand the sources it evaluates, and to improve its usefulness and precision. The model has been accepted and recommended by the San Diego Air Pollution Control District (SDAPCD)[2] the County of San Diego, and numerous other lead agencies for CEQA purposes. The use of CalEEMod and its acceptance as the industry-standard emission estimation model is addressed further in **Response to Comment O-1.4-19**. Thus, while many of Ms. Sears' comments set forth alternative methods to calculate the project's construction-related fugitive dust emissions, CEQA does not require that every alternative methodology be studied and pursued, provided the one used is supported by substantial evidence. Here, CalEEMod is the established modeling platform for CEQA analysis for land use development projects, and it is supported by substantial evidence and the expertise provided by Dudek's air quality specialists.

As evidence suggesting that the Draft EIR preparers agree that CalEEMod is inadequate, Ms. Sears notes that "off-model" calculations were prepared for rock crushing and blasting. However, these are not common activities for many construction projects; thus, they are reasonably not expected to be included in CalEEMod. In any case, such an "off-model" assessment of these sources does not suggest that CalEEMod is in adequate or needs to be corrected.

Ms. Sears also states that CalEEMod does not include emission calculations for scrapers (which are a type of heavy-duty construction equipment). However, Appendix A of the CalEEMod User's Guide includes a table showing the assumed acres of land disturbance per 8-hour workday for crawler tractors, graders, rubber-tired dozers, and *scrapers* (CAPCOA 2016, p. 8). Similarly, while Ms. Sears states that the Draft EIR failed to quantify PM_{10} and $PM_{2.5}$ emissions that will be associated with off-site road widening and construction, those emissions were indeed evaluated in the Air Quality Technical Report. Please see **Responses to Comments O-1.4-34**, **O-1.4-35**, and **O-1.4-36** for responsive information.

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[1] See CalEEMod website, available at: http://www.caleemod.com/.

[2] SDAPCD recommends use of CalEEMod for estimating emissions from proposed land use development projects (see the "What is CalEEMod" link at https://www.sdapcd.org/content/sdc/apcd/en/air-quality-planning/ceqa.html).

Additionally, while Ms. Sears opines that the wind speed used to calculate the PM emissions from drops and transfers during the rock crushing operations was too low, the project's air quality analysis used a wind speed of 2.98 miles per hour, based on an annual average of three years of Escondido meteorological data. This analysis is considered more than adequate. However, Ms. Sears suggests that the calculation should have used a daytime average of 11.6 miles per hour, using the same meteorological data. To assess the effect on maximum daily construction emissions, the rock crushing emission were recalculated using the higher wind speed suggested by the comment. Overall, unmitigated construction emissions would increase from 780.23 pounds per day (lb/day) to 851.33 lb/day for PM_{10}, and from 101.27 lb/day to 112.03 lb/day for $PM_{2.5}$. Thus, the maximum estimated construction emissions would increase approximately 10%. Based on the relatively small change in overall construction emissions, which already exceeded the significance thresholds,[3] no change in the significance conclusions for the project construction emissions would occur.

Ms. Sears also quotes a statement regarding emissions associated with wind erosion from a CalEEMod-related technical paper (SCAQMD et al. 2011, p. 4, erroneously cited as the CalEEMod User's Guide), specifically:

> Wind-blown fugitive dust is not calculated in CalEEMod because of the number of input parameters required such as soil type, moisture content, wind speed, etc. This limitation could result in underestimated fugitive dust emissions if high wind and loose soil are substantial characteristics for a given land use/construction scenario.

The CalEEMod User's Guide itself states:

> Fugitive dust from wind blown sources such as storage piles and inactive disturbed areas, as well as fugitive dust from off-road vehicle travel, are not quantified in CalEEMod, which is consistent with approaches taken in other comprehensive models. (CAPCOA 2016, p. 2)

After reviewing the U.S. Environmental Protection Agency's *Compilation of Air Pollutant Emission* Factors (AP-42) Section 13.2.5 (Industrial Wind Erosion) (EPA 2006c), contrary to Ms. Sears' conclusion, it is unclear that the emission estimation technique in this AP-42 section should be applied to wind erosion from exposed soils during construction. This particular AP-42 section focuses primarily on wind erosion of storage piles. The background document for the November 2006 update of the relevant sections of AP-42 Section 13.2 (Fugitive Dust Sources) states:

[3] The significance thresholds are 100 lb/day and 55 lb/day for PM_{10} and $PM_{2.5}$, respectively.

> Industrial wind erosion is associated with crushed aggregate materials, such as coal or metallic ore piles. Examples would include open storage piles at mining operations.
>
> For the dust component of particulate emissions from open area wind erosion (*not currently addressed in AP-42*), a $PM_{2.5}/PM_{10}$ ratio of 0.15 is recommended. Open area wind erosion is associated with exposed soils that have been disturbed, removing the protection afforded by natural crusting. [emphasis added] (Midwest Research Institute 2006)

Based on this evaluation, it would not be appropriate to evaluate wind erosion emissions using the methods in AP-42 Section 13.2.5. Moreover, in light of the project detail that would be required to estimate wind erosion emissions, even using the inappropriate methods in AP-42 Section 13.2.5, such a calculation would not have been feasible. The need to estimate wind erosion emissions was also addressed in **Response to Comment O-1.4-75**. It also is noted that several mitigation measures would be implemented to minimize wind erosion emissions, as discussed in the referenced response.

Finally, Ms. Sears also appears to have overstated the fugitive dust emissions impacts for the following reasons:

- Ms. Sears appears to have picked an arbitrary, and low, threshold friction velocity from AP-42 Section 13.2.5, which would tend to increase the particulate emission factor.

- The particle size multipliers, k, for PM_{10} (0.5) and $PM_{2.5}$ (0.075) do not appear to have been applied to the total particulate emission factor. It is also unclear how the *total* particulate emission factor was adjusted to *maximum* particulate emission factor. (Note that Ms. Sears' estimate of total particulate emissions could not be reproduced due to insufficient information provided in the comment letter.)

- Ms. Sears applied the emission factor to the entire Phase 1 construction area (Hillside, Knoll, Mesa, Terraces, and Valley residential area developments), which was reported as 1,109,040 square meters (approximately 274 acres).[4] It would be unlikely that wind erosion and the resultant particulate emissions would occur at an equal level over so large an area.

- Ms. Sears did not take into account fugitive dust mitigation, including but not limited to watering or utilizing an SDAPCD-approved dust control on the grading areas at least four times daily to minimize fugitive dust, constructing paved roads and building pads as soon

[4] It is unknown how this acreage value was generated. Ms. Sears did not provide a source of this value. The construction emissions estimate was based on grading 565 acres.

as possible, and suspending all soil disturbance and travel on unpaved surfaces if winds exceed 25 miles per hour.

In closing, the project's fugitive dust emissions were calculated pursuant to accepted CalEEMod protocols and methodologies, providing a reasonably accurate estimation of project-related PM emissions. Further, Ms. Sears' comments would not alter the conclusions of the construction-related PM analysis, as Section 2.3 (Air Quality) of the Draft EIR concluded that PM emissions would be significant and unavoidable during the construction period.

3. Air Dispersion Modeling Analysis

As discussed above, and in **Response to Comment O-1.4-87**, the County guidance does not require dispersion modeling because exceedance of the screening-level thresholds for the nonattainment pollutants is evidence of a significant impact relating to the potential to violate an air quality standard or contribute substantially to an existing or projected air quality violation due to the existing nonattainment status of the SDAB (County of San Diego 2007, p 21). As such, the modeling completed by Ms. Sears does not result in the identification of a new significant environmental impact, as the Draft EIR previously disclosed the project's potential to violate an air quality standard or result in an air quality violation within SDAB. Nonetheless, the following information is provided in response to Ms. Sears' dispersion modeling.

First, contrary to the approach taken by Ms. Sears, AP-42 Section 13.2.5 states, "Calculated emissions represent *intermittent* events and should not be input directly into dispersion models that assume steady-state emission rates" (EPA 2006c). Second, please note that application of the emission calculation methods in Section 13.2.5 are not believed to be appropriate for open surfaces disturbed during construction as discussed above. Third, Ms. Sears references recent guidance from the South Coast Air Quality Management District (SCAQMD) about air quality dispersion modeling using AERMOD in areas where the terrain is both above and below the elevation of the emission sources. In response, the SCAQMD is not the governing air district for the project; the site is located in the SDAPCD, which has not published similar guidance. Additionally, the SCAQMD guidance was posted on its website after the release of the Draft EIR for public review. And, this comment appears to apply to the construction ambient air quality analysis suggested by Ms. Sears; as discussed above, dispersion modeling is not required.

4. Health Risk Assessment

Ms. Sears states that the Draft EIR incorrectly modeled DPM emissions associated with project construction, covering only a small portion of the project and assessing only a fraction of the total construction DPM emissions. In response, as stated in the project's Air Quality Technical Report, the construction-related health risk assessment focused on modeling a selected area of proximate receptors:

> The nearest sensitive receptors to the project Site are residences located approximately 100 feet (30 meters) from the southern section of the project Site. In addition to off-site receptors, onsite receptors that may occur following the completion of residential units in Phase 1 were analyzed. To analyze impacts to on-site receptors, a receptor grid was placed surrounding the 10-acre construction activity area as described in Section 3.1.4 to determine the maximally exposed individual. The maximum concentration, and thus, maximum impact, would occur approximately 33 feet (10 meters) from the construction volume sources.

Further, the technical report states, "emission sources during construction would not remain in one location for an extended period of time, as equipment and trucks would continually move farther away from receptors as construction is completed in any one specific area." Accordingly, the preferred modeling approach recognizes the potential impacts to receptors located near the source of DPM emissions over several years (7 years for on-site receptors and 10 years for off-site receptors).

In preparing her health risk analysis, for the fraction-at-home (FAH) factor, Ms. Sears used a factor of 1 (i.e., the resident is home 100% of the time) for children from the third trimester through age 16. While this factor is recommended by OEHHA where a school is located near the source and the estimated cancer risk exceeds 1 in 1 million, that would not be the case for construction activity, where residents may inhabit homes before the school is constructed. Also, OEHHA's recommendations for FAH are 0.85 for third trimester and birth to age 2, 0.72 for ages 2 to 16, and 0.73 for ages 16 to 70 years. As such, Ms. Sears assumed more time at home and resultant higher exposures during childhood than OEHHA recommends.

Of note, the majority of the construction DPM emissions that could occur near receptors would generally be proportional to the area in which they would occur (i.e., 10 acres). Thus, what Ms. Sears refers to as "only a fraction of the total construction DPM emissions" are, in fact, the proportional emissions over the 10-acre modeled area compared to the project area and annual average construction DPM emissions. The methodology and rationale for this approach is discussed in detail in Section 3.1.4 of the Air Quality Technical Report. Additional discussion regarding the DPM emission rate used in the construction health risk assessment is found in **Response to Comment O-1.4-106**.

The County believes this approach is reasonable given the uncertainty about where the DPM emission sources (e.g., off-road equipment and vehicles, delivery trucks) could occur over several hundred acres and 10 years of construction. By pinpointing the construction area relative to the proximate off-site receptors, it was expected that this approach would provide a reasonable and conservative estimate of the construction-related health impacts.

For the operational health risk assessment, Ms. Sears evaluated only a 9-year exposure to on- and off-site receptors. It is unclear why this approach was used, although she indicates that this period

"is the most sensitive 9-year period of life, and OEHHA has developed age sensitivity factors and age specific breathing rates for children which greatly increase the excess cancer risk compared to the same exposure for adults." Typically, OEHHA recommends use of a 30-year exposure as the default period for reporting purposes, with the option of reporting 9- and 70-year exposure period results. The Draft EIR reported the cancer risks using all three periods, except that a 9-year exposure was only used for the proposed school. The 30-year period does include the higher age sensitivity factors and age specific breathing rates for children for the first 9 years of life, as well as those through age 16.

The Draft EIR reported that significant cancer risk (maximum cancer risk of 26.4 in 1 million) would occur to residents located in the north-east corner of the Town Center residential area. Mitigation Measures M-HR-1, M-HR-2, M-HR-3, M-HR-4, and M-HR-5 would be implemented as a result of this significant impact. Cancer risk at the proposed school, based on a 9-year exposure period, was found to be less than 10 in 1 million. Mitigation would reduce the maximum cancer risks at the residential point of maximum impact to 9.1 in 1 million, which is below the threshold of significance. Ms. Sears did not acknowledge implementation of these mitigation measures to effectively minimize and mitigate the identified significant impact.

5. Crystalline Silica

Ms. Sears states that the Draft EIR only "obliquely addresses crystalline silica emissions" and "fails to identify the crystalline silica content of the Newland Sierra site soils and subsequent fugitive dust emissions." In addition, Ms. Sears recommends that the silica content be applied to annual-average modeled PM_{10} emissions caused by construction activities (please see **Response to Comment O-1.4-87** for information regarding why it is not necessary to undertake air quality dispersion modeling of construction emissions).

The crystalline silica analysis (Appendix F of the Air Quality Technical Report) focuses on dust emissions generated during blasting of the rock underlying the project Site. The analysis provides justification as to why fugitive dust generated during other construction activities would not be respirable and not a significant source of crystalline silica exposures. Collecting samples of this rock would require extensive excavations of the overburden and sampling of numerous locations to generate an average silica content. In contrast, Ms. Sears suggests sampling of the site soils, which would not generate applicable information for a more refined silica analysis.

The crystalline silica analysis further notes:

> Air dispersion modeling for blasting was not undertaken because the Gaussian dispersion models (i.e., AERMOD) assume steady state conditions which are not appropriate for an event like blasting. Other models that could be used to evaluate a "puff" type source require input that is not feasible to obtain for this project.

For these reasons, the County considers that such an investigation as recommended by Ms. Sears would not be feasible. The County also considers the evaluation of crystalline silica impacts in the Draft EIR to be appropriate, adequate, and based on expert analysis.

6. Conclusion

Ms. Sears' comments on the analysis completed by Dudek to assess the air quality impacts of the proposed project are of a highly technical nature. The County recognizes that different consultants can utilize different approaches in evaluating a technical issue. The County also acknowledges that CEQA analysis for air quality, by its very nature, requires estimation and forecasting (because the emissions inventory data is prepared to anticipate the emissions profile of sources in the future). In this case, the County finds that Dudek used the standard, industry-accepted model—the California Emissions Estimator Model —as supplemented by available project-specific inputs to evaluate the project's air quality impacts under CEQA. CalEEMod has been recognized by multiple expert agencies as supported by substantial evidence, and is appropriate for use in CEQA. Thus, the County finds that the Draft EIR's analysis is supported by substantial evidence and elects to rely on the air quality analysis, as presented by Dudek's air quality experts.

References

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