

**RECEIVED**  
JUL 27 2022

**APPEAL**  
**REQUEST FOR CITY COUNCIL OR PLANNING COMMISSION PUBLIC HEARING**

TO: City Clerk's Office, City of Garden Grove  
11222 Acacia Parkway, Garden Grove, CA 92840  
(714) 741-5040

BY: [Signature]  
11 AM

Pursuant to Section 9.32.110 of the Municipal Code, I hereby appeal the decision of the **Planning Commission / Zoning Administrator** in Case No. SP-107-2022, PUD-141-01(A), SV-002-2022, and petition the **City Council / Planning Commission** for a Public Hearing to consider **approving / denying / modifying** the subject application for the following reasons:

SEE ATTACHED LETTER, INCLUSIVE OF EXHIBITS

Date: 7/27/22 Appeal Fee (see reverse): \$350

Appellant: UNITE HERE LOCAL 11 & MARLENE PEREZ

Address: 464 S. LUCAS AVE.

City & ZIP: LOS ANGELES, 90017 Phone No.: 818-534-7999

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BY: [Signature]  
11 AM

## **TITLE 9 APPEALS**

### **SECTION 9.32.110 PURPOSE**

The purpose of an appeal of a Hearing Body decision is to allow an applicant or an interested party of a land use action who feels aggrieved by the decision to seek review of the case by another imported hearing body.

### **SECTION 9.32.120 TIME FOR APPEAL**

A decision of a Hearing Body on a land use action may be appealed by the applicant or an individual within twenty-one (21) days of the date on which the decision was rendered.

### **SECTION 9.32.130 FILING OF AN APPEAL**

All appeals shall be submitted to the City Clerk on a City application form along with all applicable fees and shall specifically state the basis for the appeal.

### **SECTION 9.32.140 NOTICE OF AN APPEAL**

Notice of an appeal hearing shall conform to the manner in which the original notice was given, as described in Section 9.32.040-100 of this Chapter.

### **SECTION 9.32.150 APPEAL HEARING/DECISION**

- A. The hearing and decision procedures of an appeal shall be in accordance with 9.32.040-100 of this Chapter.
- B. Any modification of a land use action that was appealed by City Council shall be returned to the City Council for review.

Appeal Fee*	
General Plan Amendment	\$350
Amendment	\$350
Site Plan Amendment	\$350
Site Plan	\$350
Variance	\$350
Conditional Use Permit	\$480
Unclassified Use Permit	\$350
Planned Unit Development	\$350

\*Tenants/Owners/Residents within legal notification area (300 feet) the appeal fee is \$100.00.

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
c/o Maria Parra, Senior Planner  
11222 Acacia Parkway  
Garden Grove, California 92840  
andrea@ggcity.org  
mariap@ggcity.org

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840  
judym@ggcity.org

**RE: APPEAL OF NICKELODEON HOTEL PROJECT (12241 HARBOR BLVD., GARDEN GROVE, CA 92840);  
PROJECT APPROVALS PUD-141-01, SP-107-2022, & IS/MND (SCH No. 2022060174);  
ACTION ON ITEM C.2 & D.1 OF THE JULY 7, 2022 PLANNING COMMISSION HEARING**

Dear City of Garden Grove ("City") Clerk and Judy Moore:

In accordance with the appeal procedures authorized by the Garden Grove Municipal Code ("GGMC" or "Code"), UNITE HERE Local 11 ("Local 11") and City-resident Marlene Perez (collectively "Appellants"), hereby appeal ("Appeal") the City Planning Commission's ("Commission") approval of a 500-room, 23-story hotel with the 600-seat Nick Studio theater ("Project") at the 3.72-acre location referenced above ("Site") proposed by Kam Sang Company ("Applicant").<sup>1</sup> Specifically, at its July 7, 2022 hearing (i.e., Items 2c and D.1),<sup>2</sup> the Commission took the following actions in furtherance of the Project:

1. Adopted Resolution No. 6044-22 that (a) *recommends* City Council adopt the Project's Mitigated Negative Declaration and associated findings/determination ("MND"),<sup>3</sup> and (b) *recommends* City Council approve an ordinance creating Planned Unit Development No. PUD-141-01(A) ("PUD");
2. Adopted Resolution No. 6045-22 *conditionally approving* Site Plan No. SP-107-2022 ("Site Plan"), subject to the City's Council approval of the PUD and the vacation/disposition of Thackery Drive and a public alley within the Project Site (i.e., Street Vacation No. SV-002-2022 ("Street Vacation"); and
3. Adopted Resolution No. 6046-22 *finding* and reporting to the City Council that the proposed Street Vacation is consistent with the City's General Plan.

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<sup>1</sup> Herein, page citations are either the stated pagination (i.e., "p. #") or PDF-page location (i.e., "PDF p. #").

<sup>2</sup> See City (7/7/22) Planning Commission Staff Report ("Staff Report"), PDF pp. 3-4, 72, 84, 289-299, <https://ggcity.org/sites/default/files/commissions/planning-commission/a07072022.PDF>.

<sup>3</sup> [https://ggcity.org/sites/default/files/2022-06/Slte%20B2%20Hotel%20Project%20Draft%20Initial%20Study\\_Mitigated%20Negative%20Declaration.pdf](https://ggcity.org/sites/default/files/2022-06/Slte%20B2%20Hotel%20Project%20Draft%20Initial%20Study_Mitigated%20Negative%20Declaration.pdf).



This Appeal challenges all ripe project approvals, including but not limited to the aforementioned resolutions, MND, PUD, Site Plan, Street Vacation, and other local land use approvals in furtherance of the Project (e.g., alcohol Conditional Use Permit, Development Agreement, Tentative Tract Maps, etc.) (collectively "**Project Approvals**"). (See MND, p. 14.) In light of discussions with the City Clerk's Office, it appears at a minimum that Resolution No. 6045-22 and 6046-22 are ripe for this Appeal. This Appeal is timely filed within the 21-day deadline. (See GGMC § 9.32.120.) This Appeal alleges that conditionally approving the **Site Plan**, Street Vacation findings, and other actions taken on the other Project Approvals violate the Code and the California Environmental Quality Act ("**CEQA**").<sup>4</sup> Appellants respectfully request the City grant this Appeal and deny the Project Approvals—particularly Resolution No. 6045-22 and 6046-22—until the issues raised herein, and elsewhere in the Project's administrative record, are adequately addressed. If the City has questions or concerns about appealability or ripeness of any of the Project Approvals, please contact the undersigned.

**APPELLANTS' STANDING:** Local 11's members live and/or work in the vicinity of the Project Site, breathe the air, suffer traffic congestion, and suffer other environmental impacts of the Project. Local 11 has approximately 400 members who live and/or work in the City. Therefore, Local 11 is committed to ensuring responsible development in the City, that local land-use rules/regulations are followed, and informed decision-making by public officials regarding projects that may significantly impact the environment in the City. Appellant Marlene Perez lives in the City within one-quarter mile of the Project Site and is regularly in the vicinity of the Project Site. Granting this Appeal will confer a substantial benefit to Local 11, Ms. Perez, and the public, including citizens, residents, businesses, and taxpayers affected by the Project, and will result in the enforcement of important public rights. In sum, Appellants are *interested parties* to this land use action Appeal with *public interest* standing to raise and litigate the land use and environmental claims at issues here. (See GGMC § 9.32.110; see e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6.)

**SPECIFIC POINTS AT ISSUE IN APPEAL:** As specifically raised in Local 11's comment letter dated July 7, 2022 (attached hereto as *Exhibit A* and incorporated in its entirety by this reference), the MND fails to adequately analyze the Project's impact on greenhouse gas ("**GHG**") emissions and vehicle miles traveled ("**VMT**"). For example, the Project will generate over 3 million annual VMTs and generate GHG emissions that exceed relevant thresholds of the regional air district, which warrants greater mitigation measures—particularly those that promote carpooling, public transit, and other strategies that reduce and/or offset mobile emissions. This is substantial evidence of a fair argument that the Project will have significant VMT and GHG impacts, particularly to residential communities near and/or adjacent to the Project Site. (See MND, Fig. 3.) These impacts require further analysis, mitigation, and consideration of project alternatives in a CEQA-compliant Environmental Impact Report ("**EIR**")—instead of the MND. Additionally, the unmitigated CEQA impacts are inconsistent with policies and goals under the City's General Plan,<sup>5</sup> and invalidate the findings required under state and local law when granting the Project Approvals.<sup>6</sup>

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<sup>4</sup> Pub. Res. Code § 21000 et seq. and 14 Cal. Code Regs. ("**CEQA Guidelines**") § 15000 et seq.

<sup>5</sup> See e.g., Land Use Element (Policies LU-2.1, LU-2.4, LU-9.5), [https://ggcity.org/internet/pdf/planning/chapter02\\_landuseelement.pdf](https://ggcity.org/internet/pdf/planning/chapter02_landuseelement.pdf) and Air Quality Element (Policies, AQ-1.2, AQ-IMP-1B, AQ-2.2, AQ-3.1, AQ-4.1, AQ-5.3, AQ-IMP-5A, Goals AQ-3, AQ-4), [https://ggcity.org/internet/pdf/planning/chapter08\\_airqualityelement.pdf](https://ggcity.org/internet/pdf/planning/chapter08_airqualityelement.pdf).

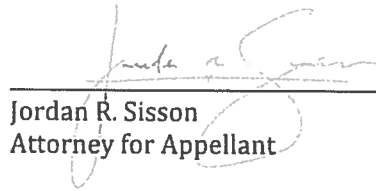
<sup>6</sup> See e.g., GGMC §§ 9.32.030-D.3.b (Site Plan findings), 9.12.030.02-F (PUD findings), and Gov. Code § 65402 (Street Vacation finding).



In accordance with GGMC § 9.32.130, this Appeal incorporates in its entirety all submitted comments by Local 11 and other commenters, including but not limited to Local 11's previously submitted written comment (attached hereto as Exhibit A) and verbal comments made by other commenters.<sup>7</sup> Appellants reserve the right to supplement these comments and specific appeal points in the future. (See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 [CEQA litigation not limited only to claims made during the EIR comment period].)

Lastly, this office requests all notices concerning this Appeal, hearings and any CEQA/land use actions involving the Project and Project Approvals, as required under applicable law. (See Pub. Res. Code §§ 21092.2, 21167(f) and Gov. Code § 65092 and GGMC § 9.32.100.G.) Please send all notices by electronic and regular mail.

Sincerely,



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Jordan R. Sisson  
Attorney for Appellant

Exhibit A: Local 11 Comment Letter (7/7/22)

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<sup>7</sup> <https://ggcity.org/commissions/planning-commission#>.



## **EXHIBIT A**



LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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July 7, 2022

**VIA EMAIL:**

Planning Commission ([public-comment@ggcity.org](mailto:public-comment@ggcity.org))  
Maria Parra, Senior Planner ([mariap@ggcity.org](mailto:mariap@ggcity.org))  
City of Garden Grove

**RE: Item C.2, Planning Commission Hearing Scheduled July 7, 2022;  
Nickelodeon Hotel Project (12241 Harbor Blvd., Garden Grove, CA 92840);  
Project Approvals PUD-141-01, SP-107-2022 & IS/MND (SCH No. 2022060174)**

Dear Planning Commission and Ms. Parra:

On behalf of UNITE HERE Local 11 ("**Local 11**"), this office respectfully provides the following comments<sup>1</sup> to the City of Garden Grove ("**City**") with regard to the above-referenced item<sup>2</sup> involving the 500-room, 23-story hotel with 600-seat Nick Studio theater ("**Project**") on a 3.72-acre site located at the northwest corner of Harbor Boulevard and Twintree Avenue ("**Site**") proposed by Kam Sang Company ("**Applicant**"). Pursuant to the Gardena Municipal Code ("**GMC**" or "**Code**"), Applicant seeks a variety of land use approvals (e.g., Zone Change to Planned Unit Development No. PUD-141-01(A), Site Plan No. SP-107-2022, alcohol Conditional Use Permit, Development Agreement, etc.) (collectively "**Entitlements**"). Additionally, for the purpose of review under the California Environmental Quality Act ("**CEQA**"),<sup>3</sup> the City is considering the adoption of the Mitigated Negative Declaration and associated approvals ("**MND**").<sup>4, 5</sup>

The MND fails to adequately analyze the Project's impact on greenhouse gas ("**GHG**") emissions and vehicle miles traveled ("**VMT**") and, thus, fails to incorporate sufficient mitigation. Failure to do so infects not only the City's CEQA findings but also the Code-required findings necessary to grant the Entitlements. There is a fair argument of CEQA impacts. This Project is expected to generate over 3 million annual VMTs, which is far too big for a MND. An Environmental Impact Report ("**EIR**") should be prepared. Until the issues discussed herein are resolved, Local 11 respectfully urges the City to stay action on the Entitlements and MND (collectively "**Project Approvals**").

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<sup>1</sup> Herein, page citations are either the stated pagination (i.e., "**p. #**") or PDF-page location (i.e., "**PDF p. #**").

<sup>2</sup> City (7/7/22) Planning Commission Staff Report ("**Staff Report**"), PDF p. 72 (start of Item C.2), <https://ggcity.org/sites/default/files/commissions/planning-commission/a07072022.PDF>.

<sup>3</sup> Including "**CEQA Guidelines**" codified at 14 Cal. Code. Regs. § 15000 et seq.

<sup>4</sup> City (Jun. 2022) Draft Initial Study/MND Site B-2, [https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Draft%20Initial%20Study\\_Mitigated%20Negative%20Declaration.pdf](https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Draft%20Initial%20Study_Mitigated%20Negative%20Declaration.pdf).

<sup>5</sup> Inclusive of all appendices (collectively "**APP**" or individually "**APP-##**") compiled in the 1,364-page document available online. (See City [Jun. 2022] Technical Appendices [APP-A through APP-J], <https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Technical%20Studies.pdf>).



## I. STANDING

Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix—including roughly 400 members who live and/or work in the City. The union has a First Amendment right to petition public officials in connection with matters of public concern, including compliance with applicable zoning rules and CEQA, just as developers, other community organizations, and individual residents do. Protecting its members' interest in the environment, including advocating for the environmental sustainability of development projects and ensuring the availability of housing and hotels (in compliance with state and local rules), is part of Local 11's core function. Recognizing unions' interest and union members' interest in these issues, California courts have consistently upheld unions' standing to litigate land use and environmental claims. (See *Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Furthermore, Local 11 has public interest standing to challenge the Project Approvals given the City's public duty to comply with applicable zoning and CEQA laws, which Local 11 seeks to enforce. (See e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6; *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159; *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169-170.)

## II. SPECIFIC DEFICIENCIES WITH CEQA AND MANDATORY PROJECT FINDINGS

For background, CEQA has two primary purposes; to inform decision makers and the public about the potential, significant environmental effects of a project and reduce environmental damage by requiring implementation of environmentally superior alternatives and all feasible mitigation measures. (See CEQA Guidelines § 15002(a).) Because a more comprehensive EIR was not prepared, the Project is subject to the less deferential 'fair argument' standard, which requires a lead agency to prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (See e.g., Pub. Res. Code §§ 21100, 21151; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. (*No Oil, Inc.*, supra, 13 Cal.3d at 83 n. 16.) This is a "low threshold" requiring the preparation of an EIR and preference for resolving doubts in favor of environmental review, even if the overall effect of the project is beneficial. (*Meiia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; see also CEQA Guidelines § 15063(b)(1).) "[T]he existence of contrary evidence does not excuse a lead agency from its duty to prepare an EIR." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 931; see also *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 ["decision not to require an EIR can be upheld only when there is no credible evidence to the contrary."].)

Hence, an MND may be used only where there is "clearly no significant effect on the environment would occur, and [] there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant impact on the environment." (Pub. Res. Code § 21064.5 (emphasis added); see also CEQA Guidelines §§ 15070(b), 15369.5.) Substantial evidence includes facts, a reasonable assumption predicated upon fact, or expert opinion supported by fact; not argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. (See e.g., Pub. Res. Code §§ 21080(e),



21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.) Courts will not blindly trust bare conclusions, bald assertions, and conclusory comments without the "disclosure of the 'analytic route the ... agency traveled from evidence to action.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 405 [quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515].)

Here, as discussed below, there is substantial evidence of a fair argument that the Project's GHG and VMT impacts are significant—thus requiring the City to prepare an EIR.

**A. MND'S GHG ANALYSIS IS FUNDAMENTALLY FLAWED AND THERE IS A FAIR ARGUMENT OF SIGNIFICANT GHG IMPACTS**

The California Supreme Court demands a robust GHG analysis to assess a project's impact on climate change. Lead agencies must provide "the contours of their logical argument," leaving no "analytical gaps" in their analysis, and supporting determinations "through substantial evidence and reasoned explanation." (*Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* ("Newhall Ranch") (2015) 62 Cal.4th 204, 227; see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("Cleveland II") (2017) 3 Cal.5th 497, 504, 519 [analysis must be "based to the extent possible on scientific and factual data ... stay[ing] in step with evolving scientific knowledge and state regulatory schemes." (Quoting CEQA Guidelines § 15064(b)).]

Here, the MND claims the Project has no GHG impacts because it would comply with the multi-tiered GHG threshold proposed by South Coast Air Quality Management District ("SCAQMD"). In short, while acknowledging the Project's mitigated GHG impact is 3,316 MTCO<sub>2</sub>e/yr (exceeding SCAQMD's Tier 3 threshold of 3,000 MTCO<sub>2</sub>e/yr), the MND claims it is 42 percent less than the Project's unmitigated GHG impact of 5,756 MTCO<sub>2</sub>e/yr (purported below SCAQMD's Tier 4 threshold of 30 percent below business as usual ["BAU"] comparison). (MND, p. 49; APP, PDF p. 75 [APP-B, pp. 7-2 – 7-3].) However, this BAU comparison is fatally flawed and improper. There is a fair argument of significant GHG impacts.

**1. MND Applies Incorrect Tier-3 Threshold**

Here, MND applies SCAQMD's Tier-3 threshold for mixed-use projects (i.e., 3,000 MTCO<sub>2</sub>e/yr). (MND, p. 49; APP, PDF p. 63.) However, the Project contains zero housing and proposes only commercial uses. Consistent with SCAQMD's multi-tier recommendations,<sup>6</sup> the MND should have used the 1,400 MTCO<sub>2</sub>e/yr for commercial projects, just like the City has done for similar hotel projects.<sup>7</sup>

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<sup>6</sup> See SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA GHG Significance Threshold, pp. 3-10 – 3-16, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf); see also SCAQMD (12/5/08) Board Letter, p. 5, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); SCAQMD (9/28/10) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf).

<sup>7</sup> See e.g., City (10/24/18) Hilton Hotel Project MND, p. 42, [https://ggcity.org/sites/default/files/2018-12/BNGroupInitialStudy\\_0.pdf](https://ggcity.org/sites/default/files/2018-12/BNGroupInitialStudy_0.pdf).

## 2. MND Relies on Outdated Tier-4 BAU Methodology

Here, as previously mentioned, the MND applies the 30 percent reduction below BAU comparison for SCAQMD's Tier-4 (i.e., Option 1). In 2008, the BAU methodology was one of the three options proposed by SCAQMD for Tier-4 compliance, based on the then-prevailing wisdom of applying the statewide GHG emission reduction percentage (i.e., 30 percent) as a project-level threshold.<sup>8</sup> However, this perfunctory application of the statewide reduction goal as a project-level threshold has been rejected by the California Supreme Court. (See *Newhall Ranch*, supra at 225.) Like the *Newhall Ranch* EIR, the MND here assumes that the level of effort required at the state-level—30 percent reduction under AB 32 (i.e., 1990 emission levels by 2020) and 40 percent reduction under SB 32 (i.e., 40 percent below 1990 emission levels by 2030)—correlates to the level of effort required for this specific Project at this specific Site. (MND, pp. 51; APP, PDF p. 75.) Critically missing from the MND is any reasoned explanation justifying any “quantitative equivalence” between the statewide context and the Project-level context. (*Newhall Ranch*, supra at p. 227.) This reasoning violates *Newhall Ranch* and CEQA.

## 3. Project Exceeds SCAQMD Tier-4 Performance Standards

Instead of the perfunctory BAU methodology, the appropriate performance standard under SCAQMD's Tier-4 analysis is the per capita efficiency standard of 4.8 and 3.0 MTCO<sub>2</sub>e/yr per service population (“MTCO<sub>2</sub>e/yr/sp”) for years 2020 and 2035 (respectively),<sup>9</sup> which the City has acknowledged in recent CEQA reviews.<sup>10</sup> Service population (“sp”) is defined as only the residents and employees served by a project.<sup>11</sup> Here, the Project includes zero housing (i.e., 0 residents), but the MND does not specify the anticipated employees generated by the Project beyond the reference to the demand for 98 employee parking spaces. (APP, PDF p. 1350 [APP-J, Tbl. 3].) Based on various data sources, the City of Los Angeles, for example, has used a job generation ratio of 0.50 jobs per hotel room for purposes of VMT modeling,<sup>12</sup> or in some cases 0.20 jobs per hotel room ratio.<sup>13</sup> Hence, 100-250 employees generated by this 500-room Project is a reasonable estimate. When dividing 3,316 MTCO<sub>2</sub>e/yr by a service population of 100 to 250, the Project would achieve an efficiency level of 33.16 to 13.2 MTCO<sub>2</sub>e/yr/sp—which exceeds both the 4.8 and 3.0 MTCO<sub>2</sub>e/yr/sp performance standards.

Despite being proposed prior to the State's adoption of more aggressive GHG reduction goals of 40 percent 1990 levels by 2030 (i.e., SB 32 and Executive Order B-30-15), SCAQMD's screening/efficiency thresholds are akin to and most consistent with bright-line/efficiency thresholds adopted by numerous other air districts in recent years, including Sacramento

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<sup>8</sup> SCAQMD Draft Guidance Document, supra fn. 6, p. 3-15.

<sup>9</sup> SCAQMD Minutes, supra fn. 6, pp. 1-2.

<sup>10</sup> City (8/18/21) Focused General Plan Update Draft EIR, p. 4.6-23, <https://ggcity.org/sites/default/files/2021-08/FGPUZA%20DEIR.pdf>.

<sup>11</sup> CAPCOA (Jan. 2008) CEQA & Climate Change, pp. 62-64, 71-72 (service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”), <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>; SCAQMD, PDF p. 6 (“sp (service population) = population + employment population”).

<sup>12</sup> City of Los Angeles (May 2020) VMT Calculator Documentation, p. 11, [https://ladot.lacity.org/sites/default/files/documents/vmt\\_calculator\\_documentation-2020.05.18.pdf](https://ladot.lacity.org/sites/default/files/documents/vmt_calculator_documentation-2020.05.18.pdf).

<sup>13</sup> City Hilton Hotel Project MND, supra fn. 7, pp. 4, 87 (25 full/part-time worker for 124-room hotel).

Metropolitan AQMD,<sup>14</sup> Bay Area AQMD,<sup>15</sup> Placer County APCD,<sup>16</sup> and San Luis Obispo County APCD.<sup>17, 18</sup> Similarly, the Association of Environmental Professionals ("AEP") has proposed a 2020 and 2030 land-use efficiency threshold of 4.7 and 2.6 MTCO<sub>2</sub>e/yr/sp (respectively, which can also be interpolated during interim years), and based on SB 32 mid-term GHG reduction goals for 2030.<sup>19</sup> By relying solely on the BAU methodology and failing to apply an appropriate performance standards (e.g., SCAQMD's Tier-4 efficiency standard), the MND fails to stay in step with evolving scientific knowledge and regulatory schemes governing GHG, as required under *Cleveland II*. The bottom line is that this a very large Project and there is a fair argument of significant GHG impacts.

#### 4. MND's Perfunctory Analysis of CARB's 2017 Scoping Plan

Here, the MND improperly relies on its perfunctory BAU analysis to claim consistency with the California Air Resources Board ("CARB") 2017 Scoping Plan. The MND fails to recognize the Scoping Plan's explicit reliance on local land-use decisions and GHG reduction at the project-level:

"Implementation of this change will rely, in part, on local land use decisions to reduce GHG emissions associated with the transportation sector, both at the project level, and in long-term plans (including general plans, climate action plans, specific plans, and transportation plans) and supporting sustainable community strategies developed

<sup>14</sup> SMAQMD (May 2018) Guide to Air Quality Assessment in Sacramento County, pp. 6:1-3, 6:10-12 ("(GHG) emissions adversely affect the environment through contributing, on a cumulative basis, to global climate change ... the District recommends that lead agencies address the impacts of climate change on a proposed project and its ability to adapt to these changes in CEQA documents ... [thus urging] evaluating whether the GHG emissions associated with a proposed project will be responsible for making a cumulatively considerable contribution to global climate change." [emphasis original]), <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>; see also SMAQMD Thresholds of Significance Table, <http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf>.

<sup>15</sup> BAAQMD (May 2017) CEQA Air Quality Guidelines, p. 2:1-4 ("No single project could generate enough GHG emissions to noticeably change the global average temperature [but rather] [t]he combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts."), [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en).

<sup>16</sup> PCAPCD (Oct. 2016) CEQA thresholds of Significance Justification Report, pp. E-2, 2, 17-22 ("CEQA requires that the lead agency review not only a project's direct effects on the environment, but also the cumulative impacts of a project and other projects causing related impacts. When the incremental effect of a project is cumulatively considerable, the lead agency must discuss the cumulative impacts in an EIR. [citing CEQA Guidelines § 15064]"), <https://www.placer.ca.gov/DocumentCenter/View/2061/Threshold-Justification-Report-PDF>; see also PCAPCD (11/21/17) CEQA Thresholds And Review Principles, <http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples>.

<sup>17</sup> SLOAPCD (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5, 25-30, 42 ("No single land use project could generate enough GHG emissions to noticeably change the global average temperature. Cumulative GHG emissions, however, contribute to global climate change and its significant adverse environmental impacts. Thus, the primary goal in adopting GHG significance thresholds, analytical methodologies, and mitigation measures is to ensure new land use development provides its fair share of the GHG reductions needed to address cumulative environmental impacts from those emissions."), <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf>.

<sup>18</sup> See also AEP (Oct. 2016) Beyond Newhall and 2020, pp. 25 (Tbl. 2 identifying other air districts that have adopt/proposed similar screening/efficiency thresholds), [https://califaep.org/docs/AEP-2016\\_Final\\_White\\_Paper.pdf](https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf).

<sup>19</sup> Ibid., pp. 34, 40 40.

under SB 375 ... Local land use decisions play a particularly critical role in reducing GHG emissions associated with the transportation sector, both at the project level, and in long-term plans, including general plans, local and regional climate action plans, specific plans, transportation plans, and supporting sustainable community strategies developed under SB 375. While the State can do more to accelerate and incentivize these local decisions, local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32."<sup>20</sup> (Emphasis added.)

To this end, CARB provides various GHG mitigation measures that could be considered by the City—but the MND fails to consider incorporating many of them here (see below list).<sup>21</sup>

**B. Examples of potentially feasible mitigation measures that could be considered for individual projects under CEQA when the local jurisdiction is the lead agency.**

**Construction**

- Enforce idling time restrictions for construction vehicles
- Require construction vehicles to operate with the highest tier engines commercially available
- Divert and recycle construction and demolition waste, and use locally-sourced building materials with a high recycled material content to the greatest extent feasible
- Minimize tree removal, and mitigate indirect GHG emissions increases that occur due to vegetation removal, loss of sequestration, and soil disturbance
- Utilize existing grid power for electric energy rather than operating temporary gasoline/diesel powered generators
- Increase use of electric and renewable fuel powered construction equipment and require renewable diesel fuel where commercially available
- Require diesel equipment fleets to be lower emitting than any current emission standard

**Operation**

- Comply with lead agency's standards for mitigating transportation impacts under SB 743
- Require on-site EV charging capabilities for parking spaces serving the project to meet jurisdiction-wide EV proliferation goals

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<sup>20</sup> 2017 Scoping Plan, pgs. 76, 100-101, [https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf).

<sup>21</sup> 2017 Scoping Plan, Appendix B-Local Action, p. 7-9, [https://www.arb.ca.gov/cc/scopingplan/app\\_b\\_local\\_action\\_final.pdf](https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf)

Operation (continued)

- Allow for new construction to install fewer on-site parking spaces than required by local municipal building code, if appropriate<sup>1</sup>
- Dedicate on-site parking for shared vehicles
- Provide adequate, safe, convenient, and secure on-site bicycle parking and storage in multi-family residential projects and in non-residential projects
- Provide on- and off-site safety improvements for bike, pedestrian, and transit connections, and/or implement relevant improvements identified in an applicable bicycle and/or pedestrian master plan
- Require on-site renewable energy generation
- Prohibit wood-burning fireplaces in new development, and require replacement of wood-burning fireplaces for renovations over a certain size developments
- Require cool roofs and "cool parking" that promotes cool surface treatment for new parking facilities as well as existing surface lots undergoing resurfacing
- Require solar-ready roofs
- Require organic collection in new developments
- Require low-water landscaping in new developments. Require water efficient landscape maintenance to conserve water and reduce landscape waste.
- Achieve Zero Net Energy performance targets prior to dates required by CALGreen
- Require new construction, including municipal building construction, to achieve third-party green building certifications, such as the GreenPoint Rated program or the LEED rating system
- Require the design of bike lanes to connect to the regional bicycle network
- Expand urban forestry and green infrastructure in new land development
- Require preferential parking spaces for park and ride to incentivize carpooling, vanpooling, commuter bus, electric vehicles, and rail service use
- Require a transportation management plan for specific plans which establishes a numeric target for non-SOV travel and overall VMT
- Develop a rideshare program targeting commuters to major employment centers
- Require the design of bus stops/shelters/express lanes in new developments to promote the usage of mass-transit
- Require gas outlets in residential backyards for use with outdoor cooking appliances such as gas barbeques if natural gas service is available
- Require the installation of electrical outlets on the exterior walls of both the front and back of residences to promote the use of electric landscape maintenance equipment
- Require the design of the electric boxes in new residential unit garages to promote electric vehicle usage
- Require electric vehicle charging station (Conductive/inductive) and signage for non-residential developments
- Provide electric outlets to promote the use of electric landscape maintenance equipment to the extent feasible on parks and public/quasi-public lands

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<sup>1</sup> This is not to be confused with the Americans with Disabilities Act (ADA) requirements or other minimum parking requirements for dedicating space to clean air vehicles and/or EV charging infrastructure

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**Operation (continued)**

- Require each residential unit to be "solar ready," including installing the appropriate hardware and proper structural engineering
- Require the installation of energy conserving appliances such as on-demand tank-less water heaters and whole-house fans
- Require each residential and commercial building equip buildings with energy efficient AC units and heating systems with programmable thermostats/timers
- Require large-scale residential developments and commercial buildings to report energy use, and set specific targets for per-capita energy use
- Require each residential and commercial building to utilize low flow water fixtures such as low flow toilets and faucets
- Require the use of energy-efficient lighting for all street, parking, and area lighting
- Require the landscaping design for parking lots to utilize tree cover
- Incorporate water retention in the design of parking lots and landscaping
- Require the development project to propose an off-site mitigation project which should generate carbon credits equivalent to the anticipated GHG emission reductions. This would be implemented via an approved protocol for carbon credits from California Air Pollution Control Officers Association (CAPCOA), the California Air Resources Board, or other similar entities determined acceptable by the local air district
- Require the project to purchase carbon credits from the CAPCOA GHG Reduction Exchange Program, American Carbon Registry (ACR), Climate Action Reserve (CAR) or other similar carbon credit registry determined to be acceptable by the local air district
- Encourage the applicant to consider generating or purchasing local and California-only carbon credits as the preferred mechanism to implement its off-site mitigation measure for GHG emissions and that will facilitate the State's efforts in achieving the GHG emission reduction goal

**C. Additional References**

- California Air Pollution Control Officers Association, "Model Policies for Greenhouse Gases in General Plans: A Resource for Local Government to Incorporate General Plan Policies to Reduce Greenhouse Gas Emissions", June 2009 – accessible here: <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-ModelPolicies-6-12-09-915am.pdf>
- California Air Pollution Control Officers Association, "Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures," August 2010 – accessible here: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>
- Governor's Office of Planning and Research, "General Plan Guidelines" – accessible here: [https://www.opr.ca.gov/s\\_generalplanguidelines.php](https://www.opr.ca.gov/s_generalplanguidelines.php)

**B. MND'S TRAFFIC ANALYSIS IS FUNDAMENTALLY FLAWED**

CEQA requires analysis of VMT traffic impacts related to a project. (See *Kings County Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692, 727.) In particular, CEQA requires analysis of project-related traffic impacts in a manner that does not minimize cumulative impacts. (See e.g., *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("Cleveland III") (2017) 17 Cal.App.5th 413, 444-445 (on remand, traffic analysis based on methodology with known data gaps that underestimated traffic impacts necessarily prejudiced informed public participation and decisionmaking); *Kings County Farm Bureau*, supra at 718, 727 [rejecting determination that less

than one percent to area emissions was less than significant because analysis improperly focused on the project-specific impacts and did not properly consider the collective effect of the relevant projects on air quality]; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072 [upheld the use of same thresholds for immediate and cumulative impacts when its application was “undoubtedly more stringent cumulative-impact threshold”]; *Al Larson Boat Shop, Inc. v. Board of Harbor Comm’rs*, (1993) 18 Cal.App.4th 729, 749 [upheld where cumulative impacts were not minimized or ignored].) The relevant inquiry is not only the relative amount of increased traffic that the Project will cause, but whether any additional amount of Project traffic should be considered significant in light of the already serious problem. (See *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.)

Here, the MND claims the Project has no VMT impacts because it is screened out based on the City’s Traffic Impact Analysis Guidelines (“TIA Guidelines”).<sup>22</sup> (MND, pp. 81-82; APP, PDF pp. 897 [APP-I, pp. 17, 9-1 – 9-5].) In short, the MND claims that the Project is located in a Transit Priority Area (“TPA”) and meets four conditions (e.g., FAR greater than 0.75, not overparked, consistent with sustainable community strategy, does not replace affordable residential units). (Id.) However, this Project should not be screened out for several reasons discussed below.

**1. Fails to show consistency with SCAG RTP/SCS**

Here, the MND claims without any discussion that “the proposed project is consistent with the applicable [Southern California Association of Governments (“SCAG”) 2020 Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”)], as determined by the City[.]” (MND, p. 82; APP, PDF p. 966 [APP-I, p. 9-4].) Such conclusory statements are not substantial evidence under CEQA. (See CEQA Guidelines § 15384.) There is no attempt to show consistency with any specific, binding requirements for local land-use projects identified in SCAG’s RTP/SCS. For example, there is no attempt to show the Project is consistent with any of the project-level mitigation measures identified in the RTP/SCS Program Environmental Impact Report.<sup>23</sup> Nor is there any attempt to show the Project would achieve any of the benchmarks presumed in the RTP/SCS, such as daily VMT per capita reductions from 24.1 (in 2016) to 22.3 (by 2045) for the County of Orange.<sup>24</sup> Here, the MND’s air quality/GHG modeling estimates the Project would generate 3,594,058 annual VMTs. (See APP, PDF p. 300.) The MND also assumes that light/medium-duty trucks and automobiles (“LDA(s)”) are roughly 91 percent of the Project’s vehicle mix. (Id.). Thus, the Project’s LDAs would generate roughly 8,960 VMTs per day or 35.8 VMTs per service population of 250<sup>25</sup>—which exceeds the Orange County benchmark discussed above. This Project is far too big for a MND—an EIR should be prepared.

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<sup>22</sup> City (May 2020) TIA Guidelines, <https://gardengrove.novusagenda.com/AgendaPublic/AttachmentViewer.ashx?AttachmentID=4377&ItemID=3092>.

<sup>23</sup> SCAG (Dec. 2019) Final Program EIR, pp. 2.0-18 – 2.0-71 (see “project-level mitigation measures” for air quality, GHG, and transportation impacts), [https://scag.ca.gov/sites/main/files/file-attachments/fpeir\\_connectsocial\\_complete.pdf?1607981618](https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618).

<sup>24</sup> SCAG (9/3/20) 2020 RTP/SCS, p. 122, [https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial-plan\\_0.pdf?1606001176](https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial-plan_0.pdf?1606001176).

<sup>25</sup> Calculated:  $[(3594058 \text{ annual VMTs}) (91\%)] / [365] / (250 \text{ employees})$ .



## 2. *There Is a Fair Argument That Project VMTs are Significant*

Under the City's TIA Guidelines, the TPA screening is appropriate only when there is "absent substantial evidence to the contrary."<sup>26</sup> Here, there is a variety of indicia showing the Project's VMTs are significant, such as:

- The Project would generate 5,122 average daily trips ("ADT(s)") compared to the Site's zero ADTs (MND, p. 71), which exceeds the City's 110 ADT screening threshold for small project's that is based on the VMT guidance provided by the Governor's Office of Planning and Research ("OPR");<sup>27</sup>
- The Project is not a local-serving hotel or located in a low VMT area screening area (APP, PDF pp. 964-966);
- The MND's GHG Study shows the Project would generate 3,594,058 annual VMTs (i.e., 9,846 daily VMTs) as compared to zero VMTs generated by the vacant site (APP, PDF p. 300), which exceeds OPR's no net increase threshold for redevelopment projects;<sup>28</sup> and
- As discussed above, the Project would achieve 35.8 daily VMTs/sp, which exceeds SCAG's 2020 RTP/SCS assumption of 22.3 daily VMTs per capita.

In sum, substantial evidence demonstrates that this destination hotel Project will generate significant VMTs that warrant a full VMT analysis and mitigation, such as those recommended by CARB, SCAG, CAPCOA, and the City.<sup>29</sup> An EIR should be prepared.

## C. *CEQA ISSUES RUN COUNTER TO CODE-REQUIRED FINDINGS*

The above-mentioned CEQA issues run contrary to various goals and policies under the City's General Plan (e.g., policies LU-1.5, LU-IMP-1C, LU-2.1, etc.)<sup>30</sup> as well as Code-required findings necessary to grant the entitlements (e.g., GGMC §§ 9.32.030-D.3.b [site plan review findings]; 9.12.030.02-F [planned unit development findings].) Findings need to be supported by substantial evidence that bridge the analytical gap between the raw evidence and City's decisions. (See e.g., *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514-515; *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 9(1974) 11 Cal.3d 506, 16, 923.) Until the CEQA issues discussed herein are corrected via a CEQA-compliant EIR, the City lacks substantial evidence to grant the Project Approvals.

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<sup>26</sup> City TIA Guidelines, supra fn. 22, p. 16.

<sup>27</sup> See City TIA Guidelines, supra fn. 22, p. 18; see also OPR (Dec. 2018) Technical Advisory: On Evaluating Transportation Impacts In CEQA, pp. 12, [https://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf).

<sup>28</sup> OPR Technical Advisory, supra fn. 28, p. 17.

<sup>29</sup> 2017 Scoping Plan: Appendix B-Local Action, supra fn. 21; SCAG Final Program EIR, supra fn. 24; City TIA Guidelines, Attachment B-TDM Strategies, <https://gardengrove.novusagenda.com/AgendaPublic/AttachmentViewer.ashx?AttachmentID=4348&ItemID=3092>; CAPCOA (Dec. 2021) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, [https://www.airquality.org/ClimateChange/Documents/Final%20Handbook\\_AB434.pdf](https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf).

<sup>30</sup> City's Land Use Element, [https://ggcity.org/internet/pdf/planning/chapter02\\_landuseelement.pdf](https://ggcity.org/internet/pdf/planning/chapter02_landuseelement.pdf).



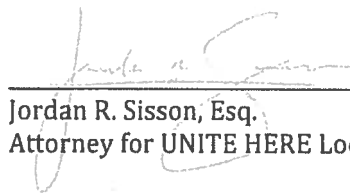


### III. CONCLUSION

Local 11 appreciates the opportunity to provide these comments. We respectfully request the City reject the Project Approvals until the issues discussed herein are resolved in a CEQA-compliant review that adequately analyzes and mitigates the Project's GHG and VMT impacts. There is a fair argument of CEQA impacts. This Project is expected to generate over 3 million annual VMTs, which is far too big for a MND. An EIR should be prepared. Lastly, this office requests all notices concerning any CEQA/land use actions involving the Project and Project Approvals, as required under applicable law. (See Pub. Res. Code §§ 21092.2, 21167(f) and Gov. Code § 65092.) Please send all notices by electronic and regular mail.

Thank you for consideration of these comments. We ask that this letter be placed in the Project's administrative record.

Sincerely,



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Jordan R. Sisson, Esq.  
Attorney for UNITE HERE Local 11

BRIDGET McCONAUGHY

183

Date 7/27/22

PAY TO THE ORDER OF CITY OF GARDEN GROVE \$ 350.00

Three Hundred and fifty Dollars

Heat Sensitive Ink

*Bmm*

Memo

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RECEIPT

DATE July 27 20 22

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FOR Three Hundred & Fifty Dollars & 0/100 AMOUNT \$ 350.00

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