Nicholas Maxwell

See attached.

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF:
THE APPLICATION OF YUCCA GROWTH INFRASTRUCTURE LLC FOR AN AIR QUALITY PERMIT, NO. NSR 10883

No. AQB 26-57 (P)

MAXWELL'S PUBLIC COMMENT TO NMED CONCERNING ITS SELECTION AND PREPARATION OF THE HEARING VENUE

Public Comment to the New Mexico Environment Department:

I submit this comment specifically to the New Mexico Environment Department concerning its selection and preparation of the physical venue for the public hearing on Yucca Growth Infrastructure, LLC's application for Air Quality Permit No. NSR 10883.

The applicable air-permitting rule places responsibility for the hearing's time, date, and place with the Department. Section 20.2.72.206(C) NMAC states that public hearings must be held in the geographic area likely to be affected by the source and that "[t]he time, date, and place of the hearing shall be determined by the department." The same provision requires that all interested persons receive a reasonable opportunity to submit data, views, or arguments and to examine witnesses.

The Hearing Officer will necessarily manage the conduct of the proceeding, and the Hearing Clerk and local facility personnel may implement many of the logistical arrangements. Nevertheless, the underlying selection of the venue is the Department's responsibility. This comment therefore asks NMED to verify that the location it selected can actually support the anticipated attendance and the full practical requirements of an extensive adjudicatory hearing.

This comment does not request postponement of the technical hearing, take a position on the ultimate permit decision, or seek to restrict attendance or public comment. Its purpose is to prevent foreseeable venue problems from excluding participants, consuming hearing time, interfering with technical testimony, or producing unsafe or unreasonable conditions.

The Department should identify the exact hearing space and its usable capacity.

The hearing location has been identified generally as the Sunland Park Multigenerational Center at 4700 McNutt Road. That identification does not tell the public which room or configuration the Department has selected, the certified occupant load of that space, or the number of seats that will actually remain available to the public.

The complex appears capable of materially different meeting configurations. One is the comparatively small council-style chamber used for ordinary governmental meetings. Another appears to be a larger open or multipurpose area used for special proceedings. The capacity, layout, and practical limitations of those spaces are not interchangeable.

If the Department selected the smaller council chamber, it should explain how that room will accommodate the Hearing Officer, Hearing Clerk, court reporter, counsel, technical staff, Applicant's representatives, numerous intervenors, witnesses, interpreters, media, security personnel, microphones, exhibits, cameras, screens, and anticipated public attendance.

The smaller chamber presents an evident risk that much of its nominal capacity will be consumed by the official hearing participants before any substantial number of public seats is provided. It may also provide limited room for accessible seating, a public-comment microphone, movement of witnesses, interpreters, exhibits, media equipment, and required aisles.

If the Department selected the larger open or multipurpose area, it should identify that space expressly and disclose both its certified occupant load and the seating layout proposed for the hearing. Any figure suggesting that the area accommodates approximately 150 persons should be clarified. The Department should state whether that number represents the fire-code occupant load of the particular room, the entire building, the number of chairs that can fit in an otherwise unobstructed space, or the number of people who can actually be seated after the adjudicatory-hearing layout is installed.

A nominal occupancy figure is not the same as the number of public seats. Tables, microphones, cameras, projection equipment, interpreter stations, accessible seating, aisles, exits, media space, security clearances, and witness-movement areas may materially reduce the space available to the public.

NMED should publish or otherwise provide a basic room diagram and state separately:

1. the precise room or area selected;
2. its certified occupant load;
3. the total number of seats after the hearing layout is installed;
4. the number reserved for the Hearing Officer, staff, parties, witnesses, interpreters, media, and security; and
5. the resulting number of seats actually available to members of the public.

Because the building appears to contain substantial exterior glazing, the Department should also verify whether direct sunlight or glare will materially affect any seating area, display screen, interpreter location, witness area, or official work area during the hearing hours. This concern does not require an extensive separate analysis. It should simply be considered when

determining whether every counted seat is reasonably usable and whether available shades, blinds, lighting, and temperature controls are functional.

The Department should establish a genuine overflow plan.

Given the expected level of attendance, NMED should not assume that the principal hearing room alone will be sufficient, even if the larger configuration is selected.

An overflow room is not meaningful merely because it contains a screen showing a livestream. Persons placed there remain participants in the public hearing. They must be able to follow witness testimony, questions, objections, rulings, exhibits, schedule changes, and instructions concerning public comment.

The Department should identify each overflow room, its location, certified occupant load, usable seating, and relationship to the principal hearing space. It should explain how admission will be managed and how members of the public will know whether seats remain available.

The audiovisual connection should be tested under conditions approximating actual use. NMED should confirm that persons in overflow will receive intelligible audio and video and will be able to see exhibits or screens being discussed. The Department should also determine whether the connection has a meaningful transmission delay and establish a backup procedure for failures involving internet service, microphones, speakers, displays, cameras, or electrical equipment.

The connection should not be solely one-directional. Persons in overflow need a means to alert hearing personnel if the feed fails and a reliable process for receiving speaker notifications.

The Department should establish how persons waiting in overflow will be called to comment, how much notice they will receive, and whether they must move to the principal room or may speak from overflow. A person should not lose the opportunity to comment because of transmission delay, inability to hear a name being called, or the time needed to move between rooms.

If comments will be taken within an overflow room, its microphone and connection must place the speaker's statement clearly into the official record. Spanish interpretation, assistive-listening services, and other accommodations must also be effective there.

The Department should decide before the hearing what will occur if the principal and overflow rooms both reach capacity. That contingency cannot reasonably be developed only after additional attendees have arrived and are waiting outside.

Admission, queuing, and reentry should be explained in advance.

High attendance may result in a line forming before the building opens. NMED should announce when doors will open, where people should queue, and how attendees will be informed when a room is full.

Signs and instructions should be provided in English and Spanish. The admission process should account separately for members of the public, parties, witnesses, media, staff, interpreters, and persons requiring accommodations without creating confusion or unequal treatment.

Because the proceeding may be lengthy or continue for multiple days, NMED should also establish a reasonable reentry policy. Attendees may need to leave temporarily for meals, medication, childcare obligations, or other necessities. They should not unnecessarily lose their places, but seats also should not remain indefinitely vacant while other people wait outside.

If indoor capacity is exhausted, NMED should identify where additional attendees may wait without blocking entrances, accessible routes, sidewalks, fire lanes, or emergency exits. Persons waiting outside should have a reliable means of receiving information about room availability, recesses, schedule changes, speaker order, and opportunities to comment.

Planning for an exterior gathering is not a basis for restricting peaceful protest, visible advocacy, or attendance. It is necessary to preserve building access and public safety.

Parking, pedestrian movement, and emergency access should be evaluated.

The Department should determine how many parking spaces will be available to hearing attendees, how many are accessible, and whether another event will be occurring at the complex.

If onsite parking is insufficient, NMED should identify lawful overflow parking before the hearing. The public should not arrive and discover that nearby property is private, restricted, or subject to towing. Remote parking should have a safe pedestrian connection or an appropriate shuttle arrangement.

The Department's plan should also account for vehicles entering and leaving McNutt Road, pedestrian movement through the parking area, rideshare and passenger drop-off, paratransit access, media vehicles, and unobstructed emergency access.

Restroom capacity, cleanliness, and continued maintenance are part of venue adequacy.

The Department should confirm the number, location, and accessibility of public restrooms and determine whether they are adequate for the expected combined occupancy of the principal room, overflow spaces, official participants, and any people waiting outside.

The question is not merely whether restrooms exist. If the hearing operates at or near occupancy for an entire day, continues into the evening, or extends over multiple days,

cleanliness, maintenance, and supply replenishment will determine whether the building remains reasonably usable.

Because NMED selected the venue, it should coordinate with the City or facility operator and identify who will be responsible for inspecting and maintaining the restrooms during the proceeding. The plan should provide for reasonable periodic cleaning, prompt response to spills or unsanitary conditions, removal of accumulated trash, and restocking of toilet paper, soap, paper towels, or other necessary supplies.

A restroom that becomes unusable because of a plumbing problem, lack of supplies, overflowing waste containers, or unsanitary conditions should not continue to be treated as available restroom capacity. Attendees should have a simple means to report a problem to identified personnel without interrupting the hearing itself.

Cleaning should be scheduled so that all public restrooms are not closed simultaneously. An accessible restroom should remain available whenever practicable. Temporary closures and alternative restroom locations should be clearly marked in English and Spanish.

Restroom access should remain available throughout the entire proceeding, including recesses, evening hours, and any time extending beyond the building's ordinary operating schedule. If attendees must leave a controlled or admitted area to reach a restroom, the reentry procedure should not cause them to lose their seats or places in the speaker order.

NMED should also verify that drinking water or functioning water fountains will remain available.

Ventilation and temperature should be assessed for expected occupancy.

A room that functions adequately for an ordinary meeting may not remain comfortable or well ventilated when filled for hours with attendees, hearing participants, cameras, monitors, lighting, and other equipment.

The Department should coordinate with the facility operator to determine whether the heating, ventilation, and cooling system can maintain reasonable conditions at the anticipated occupancy. The assessment should account for afternoon heat, solar exposure through the building's glazing, and the possibility that doors may repeatedly open as attendees move among the principal room, overflow rooms, restrooms, and exterior waiting areas.

NMED should also identify a person responsible for responding if temperature, ventilation, or indoor-air conditions become unreasonable during the hearing.

Security procedures should be disclosed and should preserve public access.

Security may be appropriate given the size and public interest of the proceeding, but any screening procedures should be disclosed before attendees arrive. NMED should state whether bags will be searched, whether identification will be requested, what items are prohibited, when screening will begin, and how disability-related or medical needs will be handled.

Security personnel should understand that this is a public administrative hearing rather than a private event. Lawful signs, written materials, note-taking equipment, mobility devices, medication, interpretation equipment, and ordinary personal belongings should not be prohibited merely because they relate to support for or opposition to the project.

The procedures should distinguish actual disruption from disagreement, criticism, peaceful protest, or visible advocacy. The controversial nature of the proceeding makes orderly management important, but controversy itself does not justify diminished access.

The seating and security plan must preserve aisles, exits, accessible routes, fire lanes, and emergency access. The Department should confirm that the proposed arrangement is consistent with the certified occupant load and local fire-safety requirements.

Disability and Spanish-language access must extend to overflow areas.

NMED should identify accessible parking, an unobstructed route to the entrance, accessible seating in the principal and overflow rooms, accessible restrooms, and microphone arrangements that can be used by persons with mobility disabilities.

The hearing notice should explain how to request American Sign Language interpretation, assistive-listening devices, large-print materials, remote participation as an accommodation, and other disability-related assistance. Accessible seating should not be placed only in areas with obstructed sight lines, excessive heat, or significant glare.

Spanish interpretation is currently planned as a normal component of this hearing in view of the affected community. Interpretation should cover procedural announcements, public-comment instructions, speaker notifications, schedule changes, room-capacity information, emergency directions, and other information necessary to participate.

Interpretation and disability access should be effective in overflow rooms as well as the principal hearing room. Moving a person to overflow should not effectively deprive that person of an accommodation available in the principal room.

The Department should clearly describe remote access.

NMED should state whether remote access will be available and whether it will permit observation only or also oral public comment, party participation, witness examination, or accommodation-based participation.

The notice should explain registration, telephone access, technical requirements, muting, speaker recognition, interpretation, exhibit access, and the procedure if a remote participant loses the connection.

A livestream may provide useful additional access, but it should not be used to justify inadequate physical capacity when remote viewers cannot participate on the same terms as persons attending in person.

Supplemental public-comment sessions could reduce pressure on the selected venue.

NMED should consider conducting supplemental bilingual sessions devoted to nontechnical public comment after the Department's analysis and draft permit are available but before the technical evidentiary hearing.

One session could be held in a larger facility in Las Cruces. A second evening session could be held in or near Santa Teresa so that residents closest to the proposed facility and persons unable to attend during ordinary working hours have a practical opportunity to speak.

These sessions could be treated as additional sessions of the same public hearing, recorded or transcribed, and incorporated into the same administrative record. A person could be provided one oral-comment opportunity across the supplemental sessions and technical hearing, without restricting written comments, technical testimony, witness examination, rebuttal, or attendance at the evidentiary proceeding.

These sessions should supplement rather than replace access to the technical hearing. Their purpose would be to reduce the number of people waiting to comment during the technical proceeding, relieve pressure on the Department's selected venue and its overflow and restroom

facilities, reduce interruptions, and preserve more scheduled time for sworn testimony and examination.

Requested action by the Department.

I respectfully request that NMED, in carrying out its responsibility to determine the hearing's place:

1. Identify the exact room and configuration selected for the hearing.
2. Publish the certified occupant load, proposed layout, and actual number of seats available to the public after the formal hearing setup is installed.
3. Confirm that sight lines, direct sunlight, glare, and temperature have been considered when determining usable seating and locating screens, witnesses, interpreters, and accessible seating.
4. Identify each overflow room, its usable capacity, and the procedures for admission, audiovisual communication, speaker notification, interpretation, and technological failure.
5. Publish plans concerning parking, accessible parking, pedestrian access, entrances, queuing, reentry, emergency egress, security screening, and exterior congregation.
6. Confirm the number and accessibility of public restrooms and establish responsibility for restroom inspection, cleaning, supply replenishment, waste removal, problem reporting, and continued access throughout an extended or multi-day hearing.
7. Confirm that ventilation, temperature control, and drinking-water access will remain adequate under the expected occupancy.
8. Provide Spanish interpretation and disability access in the principal and overflow rooms.

9. Explain the extent of remote observation and participation.
10. Establish a contingency plan for attendance exceeding the combined usable indoor capacity.
11. Consider supplemental bilingual public-comment sessions in a larger Las Cruces facility and during evening hours in or near Santa Teresa.

These requests concern the Department's exercise of its express authority to determine the place of the hearing. Even where the Hearing Clerk, Hearing Officer, City, or facility personnel perform particular operational tasks, NMED should ensure that the venue it selected provides the reasonable and practical opportunity for participation required by 20.2.72.206(C) NMAC.

Project Jupiter is expected to draw attendance well beyond that of an ordinary municipal meeting. The Department's venue selection and preparation should reflect that foreseeable demand.

Respectfully submitted,

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